KEENE CITY COUNCIL
Council Chambers, Keene City Hall
November 17, 2022
7:00 PM

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**MINUTES FROM PRECEDING MEETING**

- November 3, 2022

## A. HEARINGS / PRESENTATIONS / PROCLAMATIONS

1. Presentation - Promoting the Monadnock Region Initiative - Greater Keene and Peterborough Chamber

## B. ELECTIONS / NOMINATIONS / APPOINTMENTS / CONFIRMATIONS

1. Nominations - Alternates
   Energy and Climate Committee
   Conservation Commission

## C. COMMUNICATIONS

1. Downtown Infrastructure Project – Inclusion of Protected Bicycle Facilities - Monadnock Alliance for Sustainable Transportation
2. Efforts to Reduce the Risk of Lead Poisoning from Lead Paint - Councilor Robert Williams

## D. REPORTS - COUNCIL COMMITTEES

1. Rules of Order Amendment – Quorum and Remote Participation – City Attorney *and* the More Time Item - Communication from Councilor Greenwald Regarding Remote Access

2. Donation - Trees at Patricia T. Russell Park - Parks, Recreation and Facilities Director

3. Donation - to Build the Keene Skatepark - Parks, Recreation and Facilities Director

4. 12 Gilbo Ave - Lease - Keene Barber - Parks, Recreation and Facilities Director

5. Engineering Services for Sludge Pump Replacement Project - Change Order 1 - Assistant Public Works Director/Operations Manager

## E. CITY MANAGER COMMENTS

## F. REPORTS - CITY OFFICERS AND DEPARTMENTS

1. Acceptance of Donation - Finance Director

2. Rules of Order Amendment – Remote Participation – City Attorney

## G. REPORTS - BOARDS AND COMMISSIONS

1. Bicycle, Pedestrian Path Advisory Committee – Emphasis on Walking and Cycling in the Final Design of Downtown Infrastructure Project

2. Energy and Climate Committee - Incorporation of Bicyclist Infrastructure in Redesign of Main Street

## H. REPORTS - MORE TIME

## I. ORDINANCES FOR FIRST READING

1. Relating to Personal Leave
   Ordinance O-2022-17

## J. ORDINANCES FOR SECOND READING

1. Relating to Amendments to the City of Keene Land Development Code - Zoning Ordinance - Providing for Amendments to the Conservation Residential Development Subdivisions in Rural, Low Density, and Low Density 1 Zoning Districts
   Ordinance O-2022-09-B

2. Relating to Amendments to the Land Development Code - Zoning Ordinance - Business, Growth, and Reuse District – Recreational/Entertainment Facility – Indoor
   Ordinance O-2022-11

3. Relating to the Use of Central Square Common and Railroad Square
Ordinance O-2022-14-A

4. Relating to Notice Requirements for Small Cell Wireless Facility Deployments *and* More Time Item - Communications relative to Public Health Concerns of Small Cell Wireless Facilities
Ordinance O-2022-16-A

## K. RESOLUTIONS

## NON PUBLIC SESSION

## ADJOURNMENT

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

ANNOUNCEMENTS

Mayor Hansel announced that on November 11 at 11:00 AM there would be a Veteran's Day program at the Recreation Center.

MINUTES OF THE PRECEDING MEETING

A motion by Councilor Powers to adopt the October 20, 2022 regular meeting minutes as printed was duly seconded by Councilor Bosley and the motion carried unanimously.

PROCLAMATION – SALAMANDER CROSSINGS

Mayor Hansel welcomed Brett Thelen, Science Director for the Harris Center of Conservation Education, and Duncan Watson, Assistant Public Director. Ms. Thelen referred to the annual salamander brigade and road closures that have occurred in Keene over the last few years. She continued that recently the Harris Center awarded the City of Keene an award for this work together. She read from the Laurie Bryan Partnership Award:

*If you spend enough time shepherding salamanders and frogs across roads on rainy nights as Ms. Thelen and many volunteers so, seeing the impacts a few cars can have on nights when thousands of amphibians are afoot, you will eventually wonder: why can we not just close the road? But when it is your job to ensure safe traffic flow in a City of 25,000 people, the answer to that question is not so clearcut. So, when one of our crossing volunteers set up a meeting with Duncan Watson, the Assistant Public Works Director for the City, in 2017 to discuss the idea of closing aphibian road crossing sites to vehicles on migration nights, Ms. Thelen expected to be sent on her way. Instead, Mr. Watson listened thoughtfully and said let's see what we can do. That was the first of many conversations with Mr. Watson, the City Engineer, and other members of the Public Works Department, with the Police Department, the Parks Department, and eventually the Mayor and City Council, who needed to give their approval for such road closures to proceed. Five years later, big night detours are an annual spring occurrence at North Lincoln Street and this past spring they expanded to a site on Jordan Road, which the Council approved. That site is home to the Jefferson salamander, which is a species of concern in NH. Keene is the first and only community in the State to close roads for amphibian migrations. Ms. Thelen was confident they would not be the last. This is a true partnership between the Harris Center and the City of Keene. The City provides their transportation planning expertise to provide smooth and safe detours, as well as the barricades and signs to make that happen. The City also spreads the*

*word to their considerable network, sometimes with very little notice. The Harris Center uses their many years of community science data on the salamander to predict when migrations are most likely to occur. We work with interns and volunteers to put the barriers and crossings in place, and train and coordinate hundreds of crossing brigade volunteers every year in Keene and beyond to collect the amphibian migration data that that informs the road closure decisions. We also welcome visitors to the North Lincoln Street site when that road is closed, orienting them, answering questions, and teaching them the basics. Over the past five years, these detours have provided safe passage for thousands of amphibians and provided a safe space for hundreds of people to experience the magic of the spring amphibian migration, including elders, toddlers, and others who would not have felt safe attending if that road were open to traffic. This project has become a source of pride for the people of Keene and the Harris Center. Every year she hears from people in other places who have been inspired by Keene's actions and ask how they can bring their own big night detours to their own towns. Keene is the first but would not be the last. We could not do this work without our partners at the City and vice versa. The Laurie Bryan Partnership Award at the Harris Center was created to honor the care and thoughtfulness that former Executive Director, Laurie Bryan, brought to the Harris Center's many community partners and to recognize that we can accomplish more together than we ever could alone. So, for saying "let's see" instead of "no" and for stepping with us into this uncharted territory and coming out the other side as leaders in grassroots wildlife conservation, and for the joyful rainy nights at North Lincoln Street over the past five years and many nights at Jordan Road and North Lincoln Street to come, is my honor to present the Laurie Bryan Partnership award to the City of Keene.*

Mayor Hansel thanked Ms. Thelen and Mr. Watson for facilitating this partnership. Mr. Watson said that if you have never seen this amphibian crossing in March–April on cool rainy nights, to check it out because it would bring out your inner child.

PUBLIC HEARING – AMENDMENT TO ZONING ORDINANCE – PROVIDING FOR RECREATION/ENTERTAINMENT FACILITY AS AN INDOOR PRINCIPAL PERMITTED USE IN THE BUSINESS GROWTH AND REUSE ZONING DISTRICT (ORDINANCE O-2022-11)

The City Clerk read the public hearing notice and Mayor Hansel called the hearing to order at approximately 7:10 PM.

Mayor Hansel heard from Community Development Director, Jesse Rounds. Mr. Rounds provided background on this amendment, which was originally introduced before the Council on August 18. The public workshop before the joint Planning Board, Planning, Licenses, and Development Committee occurred on September 12, and the Planning Board voted that the Ordinance change was consistent with the Comprehensive Master Plan and the PLD Committee voted to forward it to a public hearing. He said public comments at the workshop were positive and Staff supported the change.

Mayor Hansel opened the floor to public comments, and hearing none, he closed the public hearing at approximately 7:12 PM. Written comments will be accepted up until 1:00 PM next Tuesday, November 8. Written comments must be signed and submitted to the City Clerk by that date and time to be included in the record.

A true record, attest:

City Clerk

PUBLIC HEARING – AMENDMENT TO THE ZONING ORDINANCE – PROVIDING FOR AMENDMENTS TO THE CONSERVATION RESIDENTIAL DEVELOPMENT SUBDIVISIONS IN RURAL, LOW DENSITY, AND LOW DENSITY 1 ZONING DISTRICTS (O-2022-09-B)

The City Clerk read the public hearing notice and Mayor Hansel called the hearing to order at approximately 7:12 PM. Mayor Hansel reminded that these proposed changes do not include the five-to-two-acre change, which would come forward through a separate process.

Mayor Hansel welcomed Senior Planner, Mari Brunner to introduce this item. Ms. Brunner agreed that this Ordinance was revised during the public workshop phase to remove the lot size change from five acres to two acres. Ms. Brunner continued this Ordinance was introduced to Council for first reading on July 21 and it went to the Joint PB-PLD Committee for its first public workshop on August 8. At that Joint meeting, minor changes were made to the wording, and the Ordinance moved forward as an "A" version for a public hearing with a recommendation from the Planning Board that it was consistent with the Comprehensive Master Plan. City Council held the first public hearing on the "A" version of the Ordinance on September 1, when it moved forward to the Planning, Licenses, and Development Committee. Because there was a lot of concerns from the public at the first public hearing, the City Council sent the matter back to Committee on September 15, with a recommendation to remove the change to the minimum lot size. The Joint Committee held their second public workshop on October 17, when the Committee decided to remove the minimum lot size change from five to two acres, creating a "B" version, and recommended that the Ordinance as amended was consistent with the Comprehensive Master Plan. The PLD Committee requested the Mayor set this public hearing.

Ms. Brunner continued that "B" version of the Ordinance mostly deals with the Conservation Residential District (CRD) subdivision regulations. She briefly reviewed what a subdivision is: explaining when the owner of a property wants to divide their land into additional lots from the parent parcel through a subdivision and if approved, there are new boundary lines separating the parent parcel into two or more lots. The only person with authority to subdivide the land is the property owner or someone with the written permission of the property owner. The City cannot subdivide land. To do a subdivision, the land must be surveyed by a licensed surveyor in NH. In addition, if there are surface waters on the land, a wetland scientist must delineate boundaries of those waters and the locations of the surface water protection buffer, which in this zone is 75 feet. Then the applicant must go through a public hearing process before the Planning Board,

who must confirm that the subdivision requirements are met and whether the subdivision complies with zoning regulations. In addition, there are other local regulations that depend on the site. There are Planning Board site development standards, such as drainage and storm water management. If there are any surface waters on the site that would be impacted by the subdivision, the applicant would need a Conditional Use Permit through the Surface Water Protection Ordinance.

Ms. Brunner discussed a CRD subdivision, which is one where 50% of the starting tract of land must be designated as open space in perpetuity. Then, the developer can cluster the dwelling units on the remaining portions of the tract of land. A traditional subdivision utilizes the majority of the site for house lots, leaving fragmented pockets of open space, and most of the land is transformed into lawn and yard areas. Alternatively, the CRD clusters house lots and retains a large contiguous area of open space and the amount of impervious area reduced, with protection for streams. In both scenarios the overall number of dwelling units are the same; CRDs are considered density neutral overall unless they include a density incentive. When Ms. Brunner talked tracts, she referred to the parent parcel, whereas the lots are newly created through the subdivision, and the conservation space must include all primary conservation areas, which is done by a professional surveyor or wetland scientist and those include all wetland and surfaces waters, slopes greater than 25% grade, floodways, and springs. CRDs are only allowed in three zoning districts: rural, low density, and low density 1 zoning districts.

Within the CRD regulations, there are specific dimensional requirements. The parent parcel must be a minimum of 10 acres in the rural district and five acres in the low density and the low density 1 districts. There is a minimum amount of frontage required and setbacks are required around the outer tract boundaries, including from roads. The CRD regulations also include uses that are different from the underlying zoning district. The total number of units in a CRD are calculated using a density factor: tract area/density factor = number of units. Today's density factors in the rural district has a density factor that has a density bonus over the underlying zoning density. One unit for every four acres for regular CRD and one unit for every three acres if 60% of the parent tract is open space.

Within the CRD regulations, they include permitted uses and provide more flexibility on housing type. Compared to a traditional subdivision, in a CRD single-family homes and duplexes are allowed in all three districts and in the low-density district, there can be a single-family home with up to six units. This is intended to provide more efficient use of the land, reduce impervious coverage, and reduce fragments between open spaces.

Ms. Brunner said this Ordinance proposed to add three different density incentive options to the CRD regulations, allowing a developer to add additional units in return for some public benefit. The proposal includes the following density incentives:

1. To provide additional open space
    a. The starting tract of land must be 10 acres or more.
    b. The developer would have to put at least 65% of the tract into open space.

   c. Density bonus of 10% or one unit, whichever is greater.
2. Solar-Friendly Subdivision
   a. Developer must meet list of solar-friendly criteria.
   b. Density bonus of 10% or one unit, whichever is greater.
3. Workforce housing
   a. Developer must meet workforce housing criteria: 20% if units in the development must be workforce housing.
   b. Bonus of 20% or one unit, whichever is greater.
   c. Bonus to build triplexes
      i. Maximum height and number of stories remains at two stories.
      ii. Triplexes would be more like a townhome style development.
      iii. Overall density would be capped at 30%.

The goal of the workforce housing incentive is to encourage new developments that provide workforce housing. Workforce is defined as "for sale housing" that is affordable to a household of four earning up to 80% of the HUD area income, or rental housing that is affordable to a family of three making at least 60% of the AMI. Those exact numbers change year-to-year based on the HUD area incomes. This year, the affordable to a workforce family sale price is $233,500, which is assuming a family has an income of $71,280, which is considered middle class people working in jobs like Police Officers and nurses; this is not subsidized housing. For a rental, it would be $1,200 for rent and utilities for a family of three making at least $48,110.

Ms. Brunner concluded reviewing a few areas of the Comprehensive Master Plan, especially the chapter on Housing that calls for the need for a balance of housing and new housing opportunities across all areas and lifestyles. Under the affordability section, it states that "the community and City should support creative means to expand affordable workforce housing. It continues to read "changes in land use regulations can assist in creating a market for developers to build this type of housing through the provision of density bonuses or other incentives."

So, Ms. Brunner said the proposed workforce housing density incentive was directly called out in the Master Plan as something the City should do. The Housing chapter also talks about providing a balanced and diverse housing stack. There is also a Climate Change chapter that says "the City and community should actively pursue the integration of renewable small- and large-scale energy sources such as wind, solar, and geothermal into its energy mix. There is a chapter on Open Space and Greenway Connections that discusses the importance of open space: "restoration of important conservation values and functions is important to the community, especially as it relates to wetlands and surface waters, and to the flood mitigation these resources provide. Conservation areas around important wetland and surface areas allows the natural system space to work, such as when wetlands are flooded after heavy rains or a stream shifts its location slightly over time."

Ms. Brunner said the density incentives proposed are directly supported in the Master Plan. They also propose to fix some issues with this adoption, for example, making sure the uses allowed in

the CRD regulations are also reflected in the Zoning Ordinance so it is clear.

Councilor Greenwald asked how many rooms are included in the $1,200 rental, including utilities. Ms. Brunner believed that to be considered workforce under the State definition it must include at least two bedrooms. The City's requirement does not include the number of bedrooms, but that any units considered workforce in a development be the same quality and character as the other units of the development.

Mayor Hansel opened the floor to public comment.

Thomas Lacey of 241 Daniels Hill Road provided a handout of a map of an existing CRD. He thought it was helpful to look at that, noting that there are two presently in the city, including this one off Daniels Hill Road and another on Darling Court. The total property acreage of the example was 27 acres. There are 17 acres of dedicated open space. One residence is a 3.4-acre lot with frontage on Daniels Hill Road. There is a short street with a cul-de-sac called Skylar Way with five lots of approximately 1.25 acres branching off the cul-de-sac. Each lot has its own well and septic system and each drilled well has a statutory protective radius of 75 feet. The house footprint can encroach some on the well protection area. He said this layout showed that a house, driveway, well, and septic system essentially fill a 1.25-acre parcel. This is a CRD as it currently exists in the rural zone. The well radius must include neighbors' septic systems. The CRD allows for the opportunity for higher housing density than would normally be possible because of serious topographic limitations. He said this 27-acres property would potentially have five lots, but the topography would not allow that. Still, applying the existing CRD density formula raises the allowable number of lots to six. He said that existing CRD parameters already allow for very concentrated buildings in the rural zone and achieve preserving valuable open spaces. Mr. Lacey continued by noting that the use of a cul-de-sac prevents a lot of road building and allows many lots.

He said the new changes proposed for CRD subdivisions would allow a minimum lot size of 32,000 square feet; this would be 40% less than the example and conditions would have to be perfect to allow such a subdivision. He said it was evident in the wholesale reduction of the density factor by 50% and pushing the viability envelope in reducing the already tight lot size, the CRD will be redefined as a vehicle for enabling very concentrated development in the rural zone, with the corresponding reduction in conserved open space. He said it was becoming an exercise of how much could fit within one space. He said these could be proposed anywhere in the rural zone under the guise of conservation.

Mr. Lacey continued that an Appendix C of the Keene Master Plan lists smart growth principles, and number five reads, "Preserve NH's working landscape by sustaining farm, forest, and other rural resource lands to maintain contiguous tracts of open land and minimize land use conflicts." Mr. Lacey said that thus far, we are doing that. He continued that he was against this CRD proposal which is contrary to the theme of the Master Plan and could jeopardize rural land, which should be protected.

Eloise Clark of 1185 Roxbury Road focused her remarks on the City of Keene Comprehensive Master Plan approved on September 13, 2010. She compared how these zoning changes compare to the goals espoused in the plan. She cited the Chair of the Comprehensive Master Plan Steering Committee, Mr. Welsh. She said it was a two-year process involving input from approximately 2,000 citizens, including Ms. Clark. She might not have attended all the sessions, but she did attend some and responded to a survey. Mr. Welsh said, "you will notice when you read the plan that it frames an adaptive response to climate change aa nd proactive approach to sustainability. These were recurring themes from the public in the sessions that contributed to this master plan. However, these are not issues the City is just preparing for. When you read this Master Plan, you will see that it affirms and expands on Keene's existing plans. The new plan likewise affirms the City's long-standing preference for concentrating development within the areas bounded by the 9/10/12 bypass and RT-101 to create a walkable community. The New plan also supports and established a Keene goal with history to the 19th century of protecting green spaces, trails, parks, and natural wildlife corridors."

Ms. Clark said in the conclusion to the Master Plan on page 135 it states, "Keene is a unique community that residents are proud to call home. Although the convenience and attraction of the large metropolitan areas are close at hand, the community maintains a solidly residential working-class character complemented by a landscape of rural areas, farms, and open space. The heart of the community is its historic and vibrant downtown core, in an age when many communities are losing their sense of place, Keene has a firm sense of its identity built upon a vision of the past and a clear vision of the future." She said the last appendix of the Comprehensive Master Plan has a natural Resource Inventory completed in 2009, when she was Chair of the Conservation Commission; it is a series of maps on pages 308–324, showing a variety of natural features. She encouraged the City Council to review these maps before the crucial final vote. She pointed out steep slopes as a particular concern, noting that most of the Rural District has slopes of 15–25% or greater than 25%. To continue this exercise, she drew attention to the Hillside Ordinance O-2020-10-b, stating that the modifications were approved in 2020. Under the design use standards, there several items related to the Council's decision-making. Ms. Clark cited 12.3.1, "Development including clearing, grading, and construction on all land areas in the Hillside Protection Overlay District shall be designed, sited, and carried out in a manner that does not cause adverse impact to the physical environment and shall provide for the retention of native soil, stabilization of slopes, and prevention of erosion or sedimentation of streams and water courses." Ms. Clark said that was a worthy goal, but asked to see how it plays out as the Ordinance explains. Next, she cited section 12.3.2 on Prohibitive Slope Standards, which lists what is prohibited on slopes greater than 25% but allows several exceptions, such as driveways and utility lines. She said the Section 12.3.3 on Precautionary Slope Standards are for slopes between 15–25%; she said Chesterfield Hill is a 9% grade, for example. The Precautionary area allows for the "removal of vegetation, grading of slopes, erection buildings, addition of impermeable surfaces, installment of sewage disposal systems, and/or removal of native soil," on up to 20,000 square feet. She said the landowner can apply for a Conditional Use Permit to the Planning Board to exceed that limit. Exceptions also allowed are construction of

driveways, City streets, or private roads. She said these are the areas she is most concerned about. She continued that despite the Hillside Ordinance protections, significant development can still occur on areas of precautionary slopes of 15-25%, and there are many acres of these in the rural district. She asked the Council to study the map she provided. Ms. Clark asked, if a CRD were approved in an area with precautionary slopes, would more than 20,000 square feet of land be cleared and become impervious surface? Will runoff and siltation really be contained? Will this lead to increased flooding on the valley floor? How will wastewater be treated? Will demands grow for costly infrastructure projects to extend water and sewer pipes to the Rural Zone. Ms. Clark said there were some practical reasons why the Rural District has been minimally developed through the years. She requoted Mr. Welsh and posed the following questions: Have all avenues of development within the bypass and low density districts been fully evaluated to address the housing issue? Does pushing development into the residential district "frame an adaptive response to climate change and proactive approach to sustainability"? She asked the Council to please contemplate that question before voting. Finally, Ms. Clark quoted Mr. Welsh again as saying, The New plan also supports and established a Keene goal with history to the 19th century of protecting green spaces, trails, parks, and natural wildlife corridors." Ms. Clark hoped the City would do that.

Walter Lacey of 230 Daniels Hill Road read a prepared statement.

*The proposed changes to the CRD regulations, in his view, are unacceptable in the rural Zone. They may be acceptable in the Low Density and Low Density 1 districts, however, where there are no changes to density factor per unit per dwelling unit or open space requirements. The existing CRD requirements for the Rural Zone reflect practical solutions for development in areas that are problematic for house siting. The use of four acres per dwelling with a 50% open space minimum, or 3 acres per dwelling with a 60% open space minimum, reflects the opportunity to site houses more creatively while still acknowledging the 5 acres per dwelling in the Rural Zone and its low density status. Adopting a two acre density factor effectively destroys the original intent and positive goals of the CRD as a development tool in the Rural Zone. A CRD was recently done on Daniels Hill Road/Schuyler Way, where six houses were built on 27 acres of land for a density ratio of 4.5 acres per house. That seemed an appropriate use of the land.*

*One curious aspect of the proposed changes are the solar density incentives. It seemed to me that more land area would be desirable to maximize solar benefits, not less. The homeowner should be in control of his/her natural environment, and not dependent on a neighbor's tree cutting for unrestricted insulation. The workforce housing incentives, however well-intended, deviate from the Master Plan and practicality. The Master Plan says "housing must be conveniently located, safe, and affordable".*

*The Rural Zone is a wonderful place to live but is not conveniently located and there are no sidewalks. It further states that "areas suitable for future housing growth include downtown and certain surrounding neighborhoods, with no mention of the Rural Zone. The proposed minimum lot size is 32,000 square feet or the size of the City parking lot behind St. James Church, next to Lindy's Diner. The protection area of a well is about 18,000 square feet, which is a bit more*

*than the footprint of the Common on Central Square. A septic system requires 4,000 square feet. I think you get the picture. Where do the house, garage and driveway go? And this is the Rural Zone, mind you.*

*Constructing and maintaining a well and septic system add to the expense of rural living. The small size of the lot may even make maintenance of these necessities difficult if large equipment is needed. It would seem to be a given that City water and sewer would be critical to the affordability of workforce housing. Access to public transportation would seem to be a given, as well. The proposed changes to CRD regulations in the Rural Zone would change an already flexible program for development in the Rural Zone to one that is destructive of the qualities it was designed to honor and promote. What perverse irony to have a program that was designed to protect the Rural Zone destroy it.*

The Mayor closed the public hearing except for written public comments, which will be accepted up until 1:00 PM next Tuesday, November 8. Written comments must be signed and submitted to the City Clerk by that date and time to be included in the record.

A true record, attest:

City Clerk

CONFIRMATION

Mayor Hansel nominated Jennifer Seher to serve as a regular member of the Congregate Living and Social Services Licensing Board, with a term to expire on December 31, 2023. A motion by Councilor Powers to confirm the nomination was duly seconded by Councilor Bosley and the motion carried on a unanimous roll call vote.

COMMUNICATION – GARY WEHREIN – OPPOSITION TO ORDINANCE O-2022-09-B AND SUGGESTING THAT ACCESSORY DWELLING UNITS BE CONSIDERED AS A WAY TO PROVIDE LOWER COST HOUSING

A communication was received from Gary Wehrein, expressing his continued objection to any reduction in the minimum lot size from 5 to 2 acres and encouraging the Council to consider Accessory Dwelling Units as a way to provide lower-cost housing. Mayor Hansel filed the communication into the record as informational.

COMMUNICATION – MATTHEW AND CATHY HALL – OPPOSITION TO ORDINANCE O-2022-09-A AND SUGGESTING ACCESSORY DWELLING UNITS BE PROMOTED AS A WAY TO PROVIDE LOWER COST HOUSING

A communication was received from Matthew and Cathy Hall, expressing their continued opposition to Ordinance O-2022-09-A and recommending that the public be educated about the benefits of Accessory Dwelling Units as a way to provide lower cost housing. Mayor Hansel filed the communication into the record as informational.

COMMUNICATION – JENN AND KAI DAFELDECKER – 5G/4G SMALL CELL WIRELESS FACILITIES ON MIDDLE, SUMMER, CARROLL AND WEST STREETS AND ASHBROOK ROAD

A communication was received from Jen and Kai Dafeldecker, expressing their strong opposition to the placement of small wireless cell towers in various locations in Keene and their concern over increased radiation to human health. Mayor Hansel filed the communication into the record as informational.

MSFI REPORT – PRESENTATION – STATUS OF DOG PARK AN DISC GOLF PARK

A Municipal Services, Facilities, and Infrastructure Committee report read, recommending the acceptance of the dog park and disc golf park presentation as informational. MSFI Committee Chair, Greenwald, clarified that acceptance of the report included the acknowledgment that both groups would begin their fundraising efforts for these projects. Mayor Hansel filed the report as informational.

MSFI REPORT – AARON A. LIPSKY – REQUESTING TREE REMOVAL – 64 HASTINGS AVENUE

A Municipal Services, Facilities, and Infrastructure Committee report read, recommending granting Aaron Lipsky's request to remove the tree in front of 64 Hastings Ave. at Mr. Lipsky's expense. A motion by Councilor Greenwald to carry out the intent of the Committee report was duly seconded by Councilor Filiault. The motion carried unanimously with 15 Councilors present and voting in favor.

MSFI REPORT – UPDATE ON THE FORMER FINDINGS PROPERTY AND KEENE SKATE PARK PROJECT – PARKS, RECREATION, AND FACILITIES DIRECTOR

A Municipal Services, Facilities, and Infrastructure Committee report read, recommending the acceptance of the conceptual plan as informational. Mayor Hansel filed the report into the record as informational.

FOP REPORT – UPDATE ON SPECTRUM SERVICE

A Finance, Organization, and Personnel Committee report read, recommending accepting the Spectrum Service update as informational. Mayor Hansel filed the report as informational. Spectrum representatives will be at the December 8th FOP meeting for another update.

FOP REPORT – HIGHWAY SAFETY AGENCY GRANT – POLICE CAPTAIN

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to accept the grant from the New Hampshire Highway Safety Agency to fund the Highway Safety Grant- Keene. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy and the motion carried unanimously.

FOP REPORT – LAND AND WATER CONSERVATION FUND GRANT ROUND 33 NOTICE OF INTENT – PARKS, RECREATION AND FACILITIES DIRECTOR

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to execute the submission of the application for Land and Water Conservation Fund Grant Round 33 for the Russell Park Renovation Project and the Skate Park Project. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously with 15 Councilors present and voting in favor.

FOP REPORT – ACCEPTANCE OF DONATIONS – HOLIDAY SPONSORSHIP PROGRAM – HUMAN SERVICES MANAGER

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to accept donations associated with the City's 2022 Holiday Sponsorship Program. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously with 15 Councilors present and voting in favor.

FOP REPORT – AUTHORIZATION TO ACCEPT INVEST NH HOUSING OPPORTUNITY PLANNING GRANT FOR REGULATORY DEVELOPMENT – SENIOR PLANNER

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to accept and expend grant funds in the amount of $91,150 from the Invest NH Municipal Planning & Zoning Grant Program for the purpose of hiring a consultant to develop regulations with the goal of increasing the supply of housing in the community. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously with 15 Councilors present and voting in favor.

FOP REPORT – AMENDED KEENE COMMUNITY POWER PLAN – SENIOR PLANNER

A Finance, Organization, and Personnel Committee report read, recommending the approval of the Keene Community Power Plan, as amended on July 31, 2022. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously with 15 Councilors present and voting in favor.

FOP REPORT – ENVIROTRAC ENVIRONMENTAL SERVICES WATER MONITORING AT CLOSED MUNICIPAL LANDFILL – CHANGE ORDER #2 – ASSISTANT PUBLIC WORKS DIRECTOR

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to negotiate and execute Change Order #2 with Envirotrac Environmental Services for expanded landfill monitoring for an amount not to exceed $29,200 for a revised contract total of $68,152. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously with 15 Councilors present and voting in favor.

FOP REPORT – IMPRINTED CROSSWALKS DOWNTOWN – CHANGE ORDER – TRANSPORTATION AND STORM WATER OPERATIONS MANAGER

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to negotiate and execute a change order with BDM for the repair of downtown imprinted crosswalks in the amount of $9,957 for a revised contract amount of $56,779. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously with 15 Councilors present and voting in favor.

CITY MANAGER COMMENTS

The City Manager had no comments this evening.

MORE TIME – REQUESTING NO PARKING – 191 WASHINGTON STREET

A Municipal Services, Facilities, and Infrastructure Committee report read, recommending the communications requesting no parking at 191 Washington St. be placed on more time for staff to look at recommendations with a report back to the Committee at their next month's meeting. Mayor Hansel granted more time.

RESOLUTION – IN APPRECIATION OF THADDEUS J. DERENDAL III UPON HIS RETIREMENT – RESOLUTION R-2022-34

Resolution R-2022-34 read by title only. A motion by Councilor Powers to adopt Resolution R-2022-34 was duly seconded by Councilor Bosley and the motion carried unanimously.

RESOLUTION – RELATING TO FY23 FISCAL POLICIES – RESOLUTION R-2022-33

Resolution R-2022-33 read by title only. A motion by Councilor Powers to adopt Resolution R-2022-33 was duly seconded by Councilor Giacomo and the motion carried unanimously.

NON PUBLIC

At 8:48 PM a motion by Councilor Powers to go into a non-public session under RSA 91-A:3, II (e) was duly seconded by Councilor Bosley. A brief recess was called. Staff who remained in attendance included, the Public Works Director, the Assistant Public Works Director/Solid Waste Manager and the Assistant City Attorney. Councilor Madison recused himself and exited the room during the non-public session. The discussion was limited to the subject matter. At 9:39 PM the session concluded. A motion by Councilor Powers to keep the minutes of the non-public session, non-public was duly seconded by Councilor Bosley. On roll call vote, 14 Councilors were present and voting in favor. Councilor Madison was absent.

ADJOURNMENT

There being no further business, Mayor Hansel adjourned the meeting at approximately 9:40 PM.

A true record, attest:

City Clerk

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #B.1.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Mayor George S. Hansel

**Through:**

**Subject:** **Nominations - Alternates**
**Energy and Climate Committee**
**Conservation Commission**

---

**Council Action:**
**In City Council November 17, 2022.**
**Tabled until the next regular meeting.**

**Recommendation:**

**Attachments:**
1. Maxfield, Lisa_Redacted
2. Swymer, Kenneth_Redacted
3. Stanish, Lee_Redacted

**Background:**
I hereby nominate the following individuals to serve on the designated Board or Commission:

Energy and Climate Committee
Lisa Maxfield, slot 12 — Term to expire Dec. 31, 2023
534 Marlboro Street

Kenneth Swymer, slot 14 — Term to expire Dec. 31, 2025
122 Court Street

Conservation Commission
Lee Stanish, alternate slot 12 — Term to expire Dec. 31, 2025
16 Starlight Drive

| | |
|---|---|
| **From:** | Patty Little |
| **To:** | Heather Fitz-Simon |
| **Subject:** | FW: FW:Interested in serving on a City Board or Commission |
| **Date:** | Tuesday, November 15, 2022 11:13:16 AM |

---

**From:** messagesolution.ew2@messagesolution.com <messagesolution.ew2@messagesolution.com>
**Sent:** Tuesday, November 15, 2022 11:13 AM
**To:** Patty Little <plittle@keenenh.gov>
**Subject:** FW:Interested in serving on a City Board or Commission

Submitted on Mon, 11/07/2022 - 15:55
Submitted values are:
**First Name:**
Lisa

**Last Name:**
Maxfield

**Address**
534 Marlboro Street, Keene

**How long have you resided in Keene?**
Almost three years

[redacted]

**Cell Phone:**
[redacted]

**Employer:**
West Hill Energy and Computing

**Occupation:**
Administrative Assistant

**Retired**
No

**Please list any organizations, groups, or other committees you are involved in**
Currently N/A; however, I attended a Keene Clean Energy Team (CET) meeting, but did not feel like it was a great fit.

**Have you ever served on a public body before?**
No

**Please select the Boards or Commissions you would be interested in serving on:**
Energy and Cli mate Committee

**Please share what your interests are and your background or any skill sets that may apply.**
I work for an energy auditing company (we audit entities, such as Efficiency VT and help inform other projects etc). Administrative tasks are my bailiwick.

**Why are you interested in serving on this committee**
Hoping to help affect real energy change in my community.

**Please provide 2 personal references:**
Carolyn Jones
[redacted]

**References #2:**
Kathryn Parlin
[redacted]

| | |
|---|---|
| **From:** | Patty Little |
| **To:** | Heather Fitz-Simon |
| **Subject:** | FW: Interested in serving on a City Board or Commission |
| **Date:** | Thursday, November 3, 2022 2:25:55 PM |

---

**From:** helpdesk@ci.keene.nh.us <helpdesk@ci.keene.nh.us>
**Sent:** Thursday, November 3, 2022 1:20 PM
**To:** Helen Mattson <hmattson@keenenh.gov>
**Cc:** Patty Little <plittle@keenenh.gov>; Terri Hood <thood@keenenh.gov>
**Subject:** Interested in serving on a City Board or Commission

Submitted on Thu, 11/03/2022 - 13:19
Submitted values are:
**First Name:**
Kenneth

**Last Name:**
Swymer

**Address**
122 Court Street

**How long have you resided in Keene?**
Just recently moved back in August of 2022, but I've lived in Keene a total of 16 years.

**Email:**
[redacted]

**Cell Phone:**
[redacted]

**Employer:**
Oregon Mutual

**Occupation:**
Underwriting Consultant

**Retired**
No

**Have you ever served on a public body before?**
No

**Please select the Boards or Commissions you would be interested in serving on:**
Energy and Climate Committee

**Please share what your interests are and your background or any skill sets that may**

**apply.**
I've been very interested and passionate about alternative clea n energy options/solutions and helping to drive awareness within the community. I've done this mostly through word of mouth and participation with local groups, most recently with the North Texas Tesla Owners Group, which held local events to increase awareness and adoption of electric vehicles and helped with delivery of new electric vehicles to show new owners the features and capabilities of the cars.

**Why are you interested in serving on this committee**
Climate change and increased adoption of renewable sources of energy is, in my opinion, the greatest challenge that we face today. Local governments are best situated to help drive awareness and showcase these solutions within their local communities. Those solutions that we work together to implement will have lasting impacts not only in our economy, but in our environment as well. I want to continue to be a part of the education and driving awareness within my local community and help others see the benefits of renewable energy alternatives and the positive impacts they can have.

**Please provide 2 personal references:**
Zach Luse
zach@paragondigital.com

**References #2:**
Hans Porschitz
[redacted]

| | |
|---|---|
| **From:** | Patty Little |
| **To:** | Heather Fitz-Simon |
| **Subject:** | Fw: Interested in serving on a City Board or Commission |
| **Date:** | Wednesday, October 26, 2022 5:33:45 AM |

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**From:** helpdesk@ci.keene.nh.us <helpdesk@ci.keene.nh.us> on behalf of City of Keene <helpdesk@ci.keene.nh.us>
**Sent:** Tuesday, October 25, 2022 7:41 PM
**To:** Helen Mattson
**Cc:** Patty Little; Terri Hood
**Subject:** Interested in serving on a City Board or Commission

Submitted on Tue, 10/25/2022 - 19:41
Submitted values are:

**First Name:**
Lee

**Last Name:**
Stanish

**Address**
16 Starlight Drive

**How long have you resided in Keene?**
4 months

**Email:**
[redacted]

**Cell Phone:**
[redacted]

**Employer:**
US geological survey

**Occupation:**
Product owner

**Retired**

No

**Please list any organizations, groups, or other committees you are involved in**
None currently

**Have you ever served on a public body before?**
No

**Please select the Boards or Commissions you would be interested in serving on:**
Agricultural Commission, Bicycle/Pedestrian Path Advisory Committee, Energy and Climate Committee

**Please share what your interests are and your background or any skill sets that may apply.**
I am interested in using science to understand the world around us and to help address real world problems. I hold a PhD in environmental studies and have conducted extensive research on how climate change affects biota living in streams. I have also carried out research in human-made environments such as drinking water distribution systems and bioreactors. I am interested in renewable energy in all sorts of forms, including algae for biofuels and microbiota for methane generation. Prior to moving to Keene, I was a volunteer for a county citizen science program that monitored soil health and really enjoyed helping local farmers learn more about their soil and becoming more aware of their needs. I am also an avid cyclist and would love to see more people riding bikes as part of their daily lives.

**Why are you interested in serving on this committee**
My top choice is the energy and climate committee because I believe I have relevant technical and life experiences to contribute to this committee. For the bicycle/pedestrian path advisory committee, I have a strong personal interest and belief in alternative modes of transportation and in making cities safe places to recreate.

**Please provide 2 personal references:**
Aneliya Sakaeva
[redacted]

**References #2:**
Emily Graham-Swenson
[redacted]

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #C.1.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Will Schoefmann
Chairman
MAST Steering Committee

**Through:** Patricia Little, City Clerk

**Subject:** **Downtown Infrastructure Project – Inclusion of Protected Bicycle Facilities - Monadnock Alliance for Sustainable Transportation**

---

**Council Action:**
**In City Council November 17, 2022.**
**Referred to the ad hoc Downtown Infrastructure Improvement and Reconstruction Committee.**

**Recommendation:**

**Attachments:**
1. MAST Letter of Support_Keene DOWNTOWN INFRA NOV2022

**Background:**
The MAST Steering Committee strongly urges the inclusion of protected bicycle facilities in the Downtown Infrastructure Project as it represents an immense move towards achieving the vision for a more sustainable and multimodal transportation system in the region.

Monadnock Alliance for
Sustainable Transportation (MAST)
37 Ashuelot Street, Keene, NH 03431
www.MASTNH.org

November 9, 2022

To: Mayor Hansel and Keene, NH City Council
Copy: Downtown Infrastructure Project Steering Committee
City of Keene, NH
3 Washington Street
Keene, NH 03431

**City of Keene Downtown Infrastructure Project**

Dear Honorable Mayor and Council members,

On behalf of the Monadnock Alliance for Sustainable Transportation (MAST), I am writing to express our strong support and encouragement for the City of Keene, NH to include improved protected bicycle facilities in its Downtown Infrastructure Project.

This project is a once in a lifetime chance to improve the connectivity of not only the City's current in-street and separate grade (bike path) facilities but the region's. The inclusion of bicycles in the downtown redesign would create a safer and more reliable multimodal transportation connection between the City's vibrant downtown and connect it to the neighborhoods directly abutting downtown that currently have and are slated for further bicycle facilities via roads such as Water Street, Marlboro Street, Washington Street and lower Main Street which bring cyclists into and out of Keene's downtown. One of the Region's premier recreational rail trails, the Cheshire Rail Trail also delivers bicyclists into the heart of the project area and connects Keene's downtown to the wider regional network.

MAST is proud of its successful Complete Street Grant opportunity that the City of Keene as well as other municipalities have taken advantage of to develop in-street elements with. We are excited to see the City of Keene, NH continue to lead the way in the region and consistently setting the bar for inclusion of bicycles in its major roadways as a viable mean's of our resident's transportation options. Through the implementation of any of option B's alternatives or option C in the Stantec Design packet provided in the online survey the City would be able to accomplish this. These project designs are also directly aligned with our Action Plan strategies to expand use and availability of sidewalks and walkways, and to increase use and availability of bicycle infrastructure and public transit.

The MAST Steering Committee strongly urges you to consider fully supporting inclusion of protected bicycle facilities in the Downtown Infrastructure Project as it represents a immense move towards achieving our joint vision for a more sustainable and multimodal transportation system in our region.

Sincerely,

Will F. Schoefmann
Chairman, MAST Steering Committee

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #C.2.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Councilor Robert Williams

**Through:** Patricia Little, City Clerk

**Subject:** **Efforts to Reduce the Risk of Lead Poisoning from Lead Paint - Councilor Robert Williams**

---

**Council Action:**
**In City Council November 17, 2022.**
**Referred to the Finance, Organization and Personnel Committee.**

**Recommendation:**

**Attachments:**
1. Communication_Councilor Williams

**Background:**
Councilor Williams is requesting that the City investigate steps that could be taken that would be appropriate and effective at reducing lead poisoning risks in the community.

November 14, 2022

Bobby Williams
66 North Lincoln Street
Keene, New Hampshire 03431

To the Mayor and City Council:

I am concerned about the presence of lead paint in older homes around Keene.

Lead is an environmental toxin that can have long-term neurological effects on people who are exposed to it, particularly children. The most significant source of lead exposure risk is from dust associated with lead-based paint.

Many older homes around Keene were built before lead paint was outlawed for residential use in 1978 and are therefore at risk of having lead paint dust inside the house. This is a problem that affects both renters and homeowners, as well as landlords – but most of all, lead poisoning affects children, their families, and the adults that they grow into.

Lead hazard abatement projects are expensive, but there is both federal and state money available to enable property owners to fund them. A City of Keene effort toward public education, outreach, and support could go a long way in terms of encouraging homeowners and landlords to make use of these resources.

There is also community-level funding available through the Department of Housing and Urban Development. In 2021, Sullivan County received a $1.7 million federal grant that is being used to fund lead abatement projects for 60 housing units. I believe that Keene may be eligible for similar funding.

I am asking for the City Council to hold a discussion on this topic at the committee level, and to consider what steps the City could take that would be appropriate and effective at reducing lead poisoning risk in our community.

Sincerely,

Bobby Williams

City Councilor, Ward 2

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #D.1.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Planning, Licenses and Development Committee, Standing Committee

**Through:**

**Subject:** **Rules of Order Amendment – Quorum and Remote Participation – City Attorney *and* the More Time Item - Communication from Councilor Greenwald Regarding Remote Access**

---

**Council Action:**
**In City Council November 17, 2022.**
**Report filed into the record as informational.**

**Recommendation:**
On a vote of 3–1, the Planning, Licenses, and Development Committee recommends that the City Attorney introduce amendments to Section 4 of the Rules of Order, Quorum and Remote Participation, as discussed by the Committee. Councilor Jones voted in opposition.

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

**Attachments:**
None

**Background:**
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 of making a request 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 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 will 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 with protecting 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 a 24-hour notice is provided, the Rules require that the Clerk will 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. The City Clerk would prefer that this rule never be suspended because 24 hours is the standard notice, not only to ensure sufficient time to determine that a quorum will be present, but if there should 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 the process had become.

Vice Chair Giacomo recalled that he was the one who most recently was confused about what a 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 4 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 recommends that the City Attorney introduce amendments to Section 4 of the Rules of Order, Quorum and Remote Participation, as discussed by the Committee. Councilor Jones voted in opposition.

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.

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #D.2.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Finance, Organization and Personnel Committee, Standing Committee

**Through:**

**Subject:** **Donation - Trees at Patricia T. Russell Park - Parks, Recreation and Facilities Director**

---

**Council Action:**

**In City Council November 17, 2022.**
**Voted unanimously to carry out the intent of the report.**

**Recommendation:**

On a 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to accept donations of money for the purchase of trees for the Patricia T. Russell Park project.

**Attachments:**

None

**Background:**

Parks Recreation and Facilities Director Andy Bohannon addressed the Committee and stated the first item is a potential donation that is coming from Gentle Dental. Gentle Dental is opening a new facility and, in an effort to bring in new patients, they will be donating a tree or $57 for each new client. The donated trees will be for Russell Park. This promotion will run through the end of December and is anticipated to bring in about $5,000 in donations.

Councilor Remy asked whether there were any stipulations with reference to the choice of tree. Mr. Bohannon stated the City will choose the trees, and there will be a marker added that the tree was donated by Gentle Dental.

Councilor Lake made the following motion, which was seconded by Councilor Madison.

On a 4-0 roll call vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to accept donations of money for the purchase of trees for the Patricia T. Russell Park project.

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #D.3.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Finance, Organization and Personnel Committee, Standing Committee

**Through:**

**Subject:** **Donation - to Build the Keene Skatepark - Parks, Recreation and Facilities Director**

---

**Council Action:**

**In City Council November 17, 2022.**
**Voted unanimously to carry out the intent of the report.**

**Recommendation:**

On a 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to accept a donation of $17,566.16 for the purpose of building a new skate park.

**Attachments:**

None

**Background:**

Mr. Bohannon noted that he was before the Committee to accept a donation of $17,566.16 for the purpose of building the new skate park. Mr. Bohannon added the Committee may recall that last year the City had accepted a donation of $200,000 from the Keene Skate Park group through their fiscal agent, Pathways for Keene. Pathways for Keene has recently closed their account for the skate park to allow the group to shift their focus to fundraising for the Transportation Heritage Trail project. In total, the project currently has $242,566.16 towards their goal of $300,000. The park is being designed at the $225,000 level, which was the fund level available when the contract was signed with the consultant, Spohn Ranch.

Councilor Madison made the following motion, which was seconded by Councilor Remy.

On a 4-0 roll call vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to accept a donation of $17,566.16 for the purpose of building a new skate park.

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #D.4.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Finance, Organization and Personnel Committee, Standing Committee

**Through:**

**Subject:** **12 Gilbo Ave - Lease - Keene Barber - Parks, Recreation and Facilities Director**

---

**Council Action:**

**In City Council November 17, 2022.**
**Voted unanimously to carry out the intent of the report.**

**Recommendation:**

On a 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute a lease with John Brown and John Destromp for the space located at 12 Gilbo Avenue.

**Attachments:**

None

**Background:**

Mr. Bohannon addressed the Committee again and stated that the Keene Barber at 12 Gilbo Avenue has its lease expiring in March 2023. He has a new stylist in the shop who would like to become his partner. Instead of waiting for the lease expiration in March, staff is bringing forward a new lease to reflect the partnership. This lease would be a two-year lease with a one-year option and will utilize the same lease terms.

Councilor Remy made the following motion, which was seconded by Councilor Madison.

On a 4-0 roll call vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute a lease with John Brown and John Destromp for the space located at 12 Gilbo Avenue.

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #D.5.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Finance, Organization and Personnel Committee, Standing Committee

**Through:**

**Subject:** **Engineering Services for Sludge Pump Replacement Project - Change Order 1 - Assistant Public Works Director/Operations Manager**

---

**Council Action:**

**In City Council November 17, 2022.**
**Voted unanimously to carry out the intent of the report.**

**Recommendation:**

On a 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute Change Order 1 with Underwood Engineers to perform additional services for an amount not to exceed $7,500 for Contract 02-21-11.

**Attachments:**

None

**Background:**

Asst. Public Works Director/Operations Manager Aaron Costa addressed the Committee next with a request for a change order with Underwood Engineers for an amount not to exceed $750,000. He explained the Wastewater Treatment Plant at the present time is working on a capital project to replace six sludge pumps. The City contracted with Underwood Engineers a year ago for design and construction services. At that time, the contract did not include services to comply with the New Hampshire Department of Environmental Services State Aid Grant (SAG) program requirements. This project is SAG eligible and could potentially fund up to 20% or approximately $76,000 of the construction cost of the project, but to remain eligible the City must comply with all NHDES requirements. As a result, there are some additional engineering services to do that. In addition, during the design process, a potential cost savings was identified by replacing six pumps with five and having one pump perform both scum and sludge pumping.

However, this pump should be equipped with a variable frequency drive that was not included in the original design. This additional work will cost approximately $7,500.

Councilor Lake made the following motion, which was seconded by Councilor Madison.

On a 4-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute Change Order 1 with Underwood Engineers to perform additional services for an amount not to exceed $7,500 for Contract 02-21-11.

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #F.1.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Merri Howe, Finance Director/Treasurer

**Through:** Elizabeth Dragon, City Manager

**Subject:** **Acceptance of Donation - Finance Director**

---

**Council Action:**
**In City Council November 17, 2022.**
**Voted unanimously to accept the donation and that the City Manager be authorized to use the donation in the manner specified by the donor.**

**Recommendation:**
Move that the City Council accept the donation below and the City Manager be authorized to use each donation in the manner specified by the donor.

**Attachments:**
None

**Background:**
The City of Keene receives donations from many sources throughout the year that are brought forward to the City Council for acceptance with gratitude.

On Wednesday, October 19, the City hosted Spohn Ranch for the first design meeting with the public. Thirty-seven (37) interested park users attended and brought forward their ideas to the consultant. As a result of the meeting, a donation was made from Samuel Faller for $50 toward the construction of the skate park.

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #F.2.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Thomas Mullins, City Attorney

**Through:**

**Subject:** **Rules of Order Amendment – Remote Participation – City Attorney**

---

**Council Action:**
**In City Council November 17, 2022.**
**Referred to the Planning, Licenses and Development Committee.**

**Recommendation:**
That the City Council consider the attached proposed amendments to Section 4. Quorum and Remote Participation to the City Council Rules of Order.

**Attachments:**
1. SECTION_4.___Quorum and Remote Participation - Bold and Strike through
2. SECTION_4.___Quorum and Remote Participation - Redlined Version

**Background:**
On November 9, 2022, on a vote of 3–1, the Planning, Licenses, and Development Committee recommended that the City Attorney introduce the attached proposed amendments to Section 4 of the City Council Rules of Order.

## SECTION 4. QUORUM AND REMOTE PARTICIPATION.

The majority of the Councilors elected shall constitute a quorum. Roll call attendance will be taken before the start of all meetings of the City Council. In the event that a quorum is not achieved, the meeting shall be rescheduled by the Mayor or the Temporary Chair **("Chair")**. Unless otherwise permitted by law, a quorum shall be present at the physical location of the meeting. One or more members, but less than a quorum, may participate in the meeting electronically or telephonically when permitted to do so by the ~~Mayor or the~~ City Council, and when their physical attendance is not reasonably practical, provided that all members of the public body, and the public, can hear and/or be permitted to speak to each other. Remote participation by members is discouraged. A member wishing to participate remotely must notify the City Clerk at least 24 hours prior to the meeting or remote participation shall not be permitted. **Upon such notification, the City Clerk shall take appropriate action to provide for remote electronic or telephonic access by the member to the meeting, and shall provide the requesting member with the information necessary to access the meeting. At the time appointed for the meeting, the Chair shall recognize the member requesting remote participation.** ~~Any~~**The** member participating remotely shall state for the minutes the reason for their ~~non-attendance~~**request**, and **shall** identify any other person(s) present in the location from which the member is participating. **The Chair shall call for any objection to the request for remote participation. In the absence of objection, the request shall be granted. If there is objection, the request shall be placed before the City Council for a vote. The denial of the request shall require a 2/3 roll call vote of the members present. If one or more members are participating remotely in the meeting,** Aall votes shall be by roll call. Physical attendance shall be deemed to not be "reasonably practical" in the event of serious health issues, disability, out of town employment responsibilities, or otherwise permitted in the reasonable discretion of the public body. The foregoing Rule with respect to a quorum and remote participation shall also apply to participation in Committee meetings of the City Council.

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# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #G.1.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Drew Bryenton and Todd Horner
Chair and Vice Chair of the Bicycle Pedestrian Path Advisory Committee

**Through:** Patricia Little, City Clerk

**Subject:** **Bicycle, Pedestrian Path Advisory Committee – Emphasis on Walking and Cycling in the Final Design of Downtown Infrastructure Project**

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**Council Action:**
**In City Council November 17, 2022.**
**Referred to the ad hoc Downtown Infrastructure Improvement and Reconstruction Committee.**

**Recommendation:**

**Attachments:**
1. BPPAC Letter to City Council re Downtown Project 2022

**Background:**
The Bicycle Pedestrian Path Advisory Committee is recommending that the downtown infrastructure project emphasize walking and cycling in the final project design. The Committee has identified several features, such as protected bike lanes at sidewalk grade, and increased sidewalk widths.

TO: Mayor and City Council

CC: Downtown Infrastructure Steering Committee

FROM: Bicycle and Pedestrian Pathway Advisory Committee

DATE: November 11, 2022

RE: Downtown Reconstruction Project – Input and Recommendations

Dear Mayor Hansel and Honorable Councilmembers,

As you are aware, Keene's downtown will be undergoing major construction in the near future to fix and replace underground utilities. The project will create significant challenges during the construction period, but also represents a once in a generation opportunity to reimagine public space in the heart of our community and to create a downtown that is not just great, but world class. The City of Keene Bicycle and Pedestrian Pathway Advisory Committee (BPPAC) believes that a key component to realizing the full potential of this opportunity is to emphasize walking and cycling in the final project design. This letter summarizes the reasons why we believe this to be so and outlines recommendations regarding design features.

Rebuilding downtown as a place that fully supports the needs and preferences of those traveling on foot, by bike, or via wheelchair would produce a wide array of benefits. Here are a few examples:

- Enhanced economic productivity. A host of research provides evidence that walkability and bikeability help boost property values, increase retail sales, attract young workers, and reduce transportation expenses (thereby freeing up income for use on other purchases). Our downtown also lies at the center of an extensive rail trail network, creating substantial potential for tourist activity associated with walking and cycling. This potential was well documented in a report authored by UNH Cooperative Extension, which was accepted by City Council's Municipal Services, Facilities, and Infrastructure Committee in April 2022.
- Reduced greenhouse gas emissions. In the United States, transportation is the leading source of greenhouse gas emissions, largely from personal vehicles. Vehicle electrification on its own will not be enough to meet the city's official goal of achieving net zero carbon emission in all sectors, including transportation, by 2050.
- A downtown that welcomes everyone no matter your age or ability. Whether you're an older adult using a mobility aid, a wheelchair user, a parent pushing a stroller, or a kid riding a bike, downtown should be a place that you can safely and conveniently navigate. Universal accessibility will become increasingly important as the number of older adults in our city grows in the years to come.
- An improved experience for motorists. Yes, walkable and bikeable environments can benefit drivers too. If more people choose to walk and bike downtown because it's safe, enjoyable, and convenient, that means fewer cars on the road and less congestion. Also, let's remember that every motorist is also at some point a pedestrian during their journey to the front door of a downtown store or restaurant.

With these benefits in mind, BPPAC would like to suggest several features that we believe should be incorporated into the final project design. All of them are included in one or more of the preliminary scenarios developed by Stantec, the consulting firm engaged by the city to serve as lead on the project. We endorse the following:

- Protected bike lanes at sidewalk grade, as pictured in Option 2B and Option 3 of the Main Street design alternatives. Parked cars provide a physical barrier between cyclists and moving traffic. A curb, meanwhile, provides assurance that parked cars won't encroach on bike lanes. Also, we recommend protected bike lanes running along either edge of Main Street over a multiuse path running through the center, as depicted in Option 2C. Such a path doesn't grant cyclists access to Main Street establishments, since they must cross traffic to do so.
- Increased sidewalk widths. All the preliminary design alternatives widen sidewalks over existing conditions. We applaud this proposed change since it will open opportunities for outdoor dining while also improving accessibility in areas in front of shops.
- A single lane of vehicle traffic in each direction on Main Street, as proposed in Option 3 of the Main Street design alternatives. Today, one of the greatest hazards facing pedestrians in our downtown is a lack of visibility at crosswalks. A vehicle in one lane can block the view of a motorist traveling in the other lane, rendering a pedestrian in a crosswalk invisible until the last moment. Reducing vehicle traffic to a single lane would eliminate this hazard. It would also provide other benefits, such as reduced vehicle speeds. The City of Concord, NH provides a good example of implementing this measure in a Main Street reconstruction project. Reduction in the number of vehicle lanes enhanced the pedestrian experience without negatively impacting motorist access to downtown.
- Restructure the traffic pattern in Central Square so that park expands and connects with sidewalk space on the northern edge of the square. Options 2 through 4 of the Central Square design alternatives include this change. Today, Central Square looks nice, but it's underutilized, due in large part to the fact that it's surrounded by a cyclone of traffic. Connecting the park to the northern edge of the square would encourage use of this green space, which is a rare commodity in our downtown. Enhancing the park would also increase the appeal of dining at restaurants and visiting stores located on the square.
- A raised intersection at Main Street, Gilbo Avenue, and Railroad Street, and shown in Option 2b of the Gilbo Avenue design alternatives. This design feature would enhance east-west connectivity for pedestrians and cyclists traveling along the Cheshire Rail Trail. It would also create a plaza-like environment that would calm vehicle traffic and serve as a distinctive gateway to upper Main Street.

The BPPAC appreciates city council's time and consideration of our recommendations. We hope this letter helps illustrate why prioritizing bicycle and pedestrian infrastructure makes good sense from an economic, environmental, and social perspective. We believe this project has immense potential to shape our downtown for the better. It's conceivable, perhaps even likely, that this opportunity won't come again for another century. Let's seize the moment.

Sincerely,

Members of the City of Keene Bicycle and Pedestrian Pathway Advisory Committee

Drew Bryenton, Chair

Todd Horner, Vice-Chair

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #G.2.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Peter Hansel
Chair Energy and Climate Committee

**Through:** Patricia Little, City Clerk

**Subject:** **Energy and Climate Committee - Incorporation of Bicyclist Infrastructure in Redesign of Main Street**

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**Council Action:**
**In City Council November 17, 2022.**
**Referred to the ad hoc Downtown Infrastructure Improvement and Reconstruction Committee.**

**Recommendation:**

**Attachments:**
1. Letter of Support_ECC_Bicycle Infrastructure

**Background:**
The Energy and Climate Committee voted unanimously to recommend that bicyclist infrastructure, such as separated bicycle lanes, be incorporated into the redesign of Main Street.

City of Keene
New Hampshire

November 2, 2022

Mayor Hansel and City Council

**RE**: Keene Downtown Infrastructure Improvements

Dear Mayor and City Councilors:

I am writing on behalf of the City of Keene's Energy and Climate Committee, which voted unanimously at their meeting on November 2nd to recommend that bicyclist infrastructure, such as separated bicycle lanes, be incorporated into the redesign of Main Street. We respectfully urge you to keep energy conservation and renewable energy high on your list of concerns for the subject improvements.

As you know, the City Council approved the City's 2021 Sustainable Energy Plan which will help our community transition to 100% renewable energy for electricity by 2030 and for thermal and transportation uses by 2050. Under the Transportation sector of this plan, Pathway 1 calls for reducing vehicles miles traveled as a way of promoting energy conservation:

> *"Enabling people to get around without a car can significantly reduce fossil fuel consumption while providing many cobenefits, such as reducing transportation costs, increasing physical activity, improving air quality, and providing access to jobs and other necessities for people who either cannot afford or choose not to own a car. Increasing transportation choices to encourage more walking, bicycling, and public transit use within City limits is a well-established goal in Keene."*

One of the Priorities of this Pathway is to:

> *"Promote active transportation (walking, bicycling, and other "human-powered" transportation modes.*
>
> *A. Incorporate the adopted City of Keene Complete Streets Design Guidelines (2015) into the City's street standards for new streets, and develop Complete Streets standards for re-construction of existing streets."*

As we redesign our downtown for the future, we need to anticipate that people want to live in a walkable, bikeable community. Walking and bicycle riding use 100% renewable energy. Young people want to live near downtown and not be as reliant on cars. And for our aging population, the availability of electric-assist bikes opens up whole new possibilities for commuting and recreation. Having bike lanes downtown that are separated from pedestrians and automobiles would be a big step towards that future vision.

Respectfully,

Peter D. Hansel

Peter D. Hansel, Chair

City of Keene Energy and Climate Committee

**Copy:** Downtown Infrastructure Project Steering Committee

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #I.1.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Elizabeth Fox, ACM/Human Resources Director

**Through:** Elizabeth Dragon, City Manager

**Subject:** **Relating to Personal Leave**
**Ordinance O-2022-17**

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**Council Action:**
**In City Council November 17, 2022.**
**Referred to the Finance, Organization and Personnel Committee.**

**Recommendation:**

That the City Council refer Ordinance O-2022-17 to the Finance, Organization, and Personnel Committee for their review and recommendation.

**Attachments:**
1. Ordinance_O-2022-17_Referral

**Background:**

City Code provides a personal leave day to regular full-time employees for "perfect attendance" for each non-overlapping three (3) month period during which the employee takes no sick leave. The date on which the three (3) month period begins to run is modified each time the employee takes sick leave. Accordingly, this methodology establishes a different rolling date on when the "perfect attendance" period begins and ends in order to calculate when a personal day has been earned. This calculation methodology is not supported by the new MUNIS software system, and the method has been cumbersome to administer in the city's current software.

To support the transition to the MUNIS software for payroll, modification of the methodology for provision of personal leave for perfect attendance is recommended. This proposed amendment to City Code will establish fixed calendar year quarterly measurement periods to be used to determine "perfect attendance" and eligibility for personal leave. If during the established period (based on calendar year quarters beginning with January 1 to March 31) an employee has perfect attendance following processing of all payroll for that quarter, the employee would be awarded a personal day. The proposed methodology standardizes across the organization the perfect attendance measurement periods as well as the time line for award and lapsing of personal leave. In addition to establishing fixed periods for consideration of perfect attendance, the proposed code amendment provides employees additional flexibility setting leave use dates of June 30 and December 31.

To accommodate the transition from individual dates which vary from employee to employee to fixed quarterly measurement periods for “perfect attendance”, following processing of the first payroll in the MUNIS software, each eligible employee shall be awarded one day of personal leave.

ORDINANCE

# CITY OF KEENE

O-2022-17

In the Year of Our Lord Two Thousand and Twenty-two

AN ORDINANCE Relating to Personnel Systems and Procedures

*Be it ordained by the City Council of the City of Keene, as follows:*

That the Ordinances of the City of Keene, as amended, are hereby further amended by removing the stricken text and inserting the bold text in Chapter 62 entitled "Personnel, Article V, "Policies, Procedures and Conditions of Employment" of Division 3, "Leaves" of Subdivision V "Personal Leave" as follows:

Sec. 62-476. **Personal Leave** ~~Authorized~~.

Regular full-time~~,~~ employees shall receive one personal leave day **for each quarterly period of a calendar year (January 1 to March 31, April 1 to June 30, July 1 to September 30, October 1 to December 31)** ~~three month (non-overlapping) period~~ during which they have perfect attendance, beginning with their first day of employment. **New hires with perfect attendance shall receive a prorated award considering attendance from date of hire to the end of a quarter.** After the first six months of employment, the term "perfect attendance" shall mean no use of sick leave. **Balances of a**~~A~~ny such earned personal leave ~~day~~ must be taken prior to **June 30 or December 31** ~~the expiration of the three calendar months subsequent to the three-month period in which the personal leave day was earned~~ or it will be lost. Such earned personal leave ~~day~~ may be taken when approved in advance by the department head. The use of such personal leave ~~days~~ will not be charged to accumulated sick leave, and such earned personal leave ~~days~~ will not count toward the maximum vacation accumulation of 30 days.

**Effective Date: January 1, 2023 or following the processing of the first payroll in the MUNIS software system.**

In City Council November 17, 2022.
Referred to the Finance, Organization and Personnel Committee.

City Clerk

George S. Hansel, Mayor

PASSED

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #J.1.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Planning, Licenses and Development Committee, Standing Committee

**Through:**

**Subject:** **Relating to Amendments to the City of Keene Land Development Code - Zoning Ordinance - Providing for Amendments to the Conservation Residential Development Subdivisions in Rural, Low Density, and Low Density 1 Zoning Districts**
**Ordinance O-2022-09-B**

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**Council Action:**
**In City Council November 17, 2022.**
**Report filed as informational. Voted with 12 in favor and two opposed for the adoption as Ordinance O-2022-09-B.**

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

**Attachments:**
1. Ordinance O-2022-09-B True Copy Attest
2. Ordinance O-2022-09-B - Redlined

**Background:**
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 initial 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 this is opposed to a developer being able to build and conserve no land. In the case of a CRD, at least 50% would be guaranteed and 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.

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 recommends the adoption of Ordinance O-2022-09-B, and the revision of **Section 19.3.6.C.1.b** regarding workforce housing resale value, as discussed by the Committee. Councilor Jones voted in opposition.

ORDINANCE

O-2022-09-B

# CITY OF KEENE

In the Year of Our Lord Two Thousand and **Twenty-Two**

AN ORDINANCE **Relating to Amendments to the Land Development Code**

## *Be it ordained by the City Council of the City of Keene, as follows:*

That Chapter 100 of the Code of Ordinances of the City of Keene, New Hampshire, as amended, is hereby further amended by deleting the stricken text and adding the bolded and underlined text, as follows:

1. That Section 3.1.5 "Permitted Uses" of Article 3 be amended to display "Dwelling, Two-Family / Duplex" and "Dwelling, Multifamily" as permitted uses by a Conservation Residential Development Subdivision in the Rural District.

2. That Section 3.3.5 "Permitted Uses" of Article 3 be amended to display "Dwelling, Two-Family / Duplex" and "Dwelling, Multifamily" as permitted uses by a Conservation Residential Development Subdivision in the Low Density District.

3. That Section 3.4.5 "Permitted Uses" of Article 3 be amended to display "Dwelling, Two-Family / Duplex" and "Dwelling, Multifamily" as permitted uses by a Conservation Residential Development Subdivision in the Low Density 1 District.

4. Update Table 8-1 "Permitted Principal Uses by Zoning District" in Article 8 to display "Dwelling, Two-Family / Duplex" and "Dwelling, Multifamily" as permitted uses by a Conservation Residential Development Subdivision in the Rural, Low Density, and Low-Density 1 Districts.

5. That Section 19.3.2.C "Density" of Article 19 be amended as follows:

   **C. Density.** ~~The maximum number of dwelling units allowed within a conservation residential development subdivision shall be determined by dividing the total area of the existing tract by the density factor per dwelling unit specified in Table 19-2.~~

   1. **The number of dwelling units allowed within a conservation residential development subdivision shall be determined by dividing the total area of the existing tract by the density factor per dwelling unit specified in Table 19-2.**

   2. **A density bonus may be granted to developments that meet the criteria for one or more of the density incentives detailed in Section 19.3.6. In no instance shall a total density bonus of more than 30% above the standard allowable density be granted to any single development. This section shall not be waivable.**

6. That Table 19-1 "Dimensional Requirements for Conservation Residential Development Subdivisions" in Article 19 be amended to change the minimum lot area for the Rural District from 1 acre to 32,000 square feet.

PASSED

November 17, 2022

7. That Table 19-1 "Dimensional Requirements for Conservation Residential Development Subdivisions" in Article 19 be amended to add a footnote that states "New lots in the Rural District that are created as part of a CRD that are less than 1 acre in size may utilize an approved Subsurface Disposal System."

8. Remove Section 19.3.2.D "Open Space Reserve," sub-section 2 of Article 19, which sates "Conservation residential development subdivisions in the Rural zoning district that permanently reserve 60% of the existing tract area or greater as open space shall be eligible for a density bonus, as noted in Table 19-2."

9. That Table 19-2 "Density & Open Space Requirements" in Article 19 be amended as follows:

| Zoning District | Density Factor per Dwelling Unit[1] | Min Open Space |
|---|---|---|
| Rural | ~~4 acres~~ **2 acres** | 50% |
| | ~~3 acres~~ | ~~60%~~ |
| Low Density-1 (without city water) | 1 acre | 50% |
| Low Density-1 (with city water) | 20,000 sf | 50% |
| Low Density | 10,000 sf | 50% |

***[1] Density bonus(es) may be granted as specified in Section 19.3.6***

10. That Table 19-3 "Conservation Residential Development Permitted Uses" be amended as follows:

| Permitted Use | Rural District | Low Density-1 District | Low Density District |
|---|---|---|---|
| Single-Family Dwelling | P | P | P |
| Two-Family Dwelling | P | P | P |
| Multifamily Dwelling | **P[1] (max of 3 dwelling units per structure)** | **P[1] (max of 3 dwelling units per structure)** | P (max of 6 dwelling units per structure) |

*"P" = Permitted Use " - " = Use Not Permitted*

***P1 = Use permitted with workforce housing density incentive***

11. That a new Section entitled "Optional Density Incentives" be added after Section 19.3.5 of Article 19, as follows:

**Section 19.3.6: Optional Density Incentives**

**Conservation Residential Development Subdivisions that meet certain performance criteria shall be eligible for a density bonus above the standard allowable density, up to a maximum of 30%. The 30% density cap shall not be waivable. If a density incentive is granted, the minimum lot size specified in Table 19-1 shall be waived.**

**A. Open Space Density Incentive. Conservation Residential Development Subdivisions with a minimum tract size of 10 acres that permanently reserve at least 65% of the existing tract area as open space shall be eligible for a density bonus of 10% or one dwelling unit, whichever is greater.**

**B. Solar Density Incentive. Conservation Residential Development Subdivisions that meet the following criteria shall be eligible for a density bonus of 10% or one dwelling unit, whichever is greater:**

1. **At least 50% of the lots shall be solar-oriented. A "solar-oriented lot" shall mean a lot with its longest lot line dimension oriented to within thirty (30) degrees of a true east-west line.**
2. **The long axis of all dwelling units on solar-oriented lots shall be oriented so that the long axis faces within 20 degrees of true south.**
3. **At least four (4) kilowatts of solar PV shall be installed for each dwelling unit on a solar-oriented lot.**
4. **Where, as determined by the City, topographic, environmental, and soil conditions, and existing street configurations permit, the predominant pattern of new streets in subdivisions subject to this section shall be oriented within thirty (30) degrees of east-west orientation.**

**C. Workforce Housing Density Incentive. Conservation Residential Development Subdivisions that meet the criteria below shall be eligible for a density bonus of 20% or one dwelling unit, whichever is greater. In addition, the permitted uses for a development that meets this section in the Rural District or Low Density-1 District shall include "multifamily dwelling" (max of 3 units per structure).**

1. **Workforce Housing, Owner-Occupied. A Workforce Housing Density Incentive will be granted to developments that guarantee the following:**
   a. **Twenty percent (20%) or more of the units constructed will be sold at initial sale for a price that can be afforded by a household with an income not more than 80% of the HUD Median Area Income for a family of four in Cheshire County.**

   b. **Units will be sold with a deed restriction and recorded housing agreement that names an Income Verification Agent who will verify that the purchaser meets the income requirements. 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 price plus two times the accumulated consumer price index, whichever is greater.**

**c. All units built under this provision shall be of the same approximate size, character, quality, and construction as the market rate units, and shall be distributed evenly throughout the project.**

**d. Affordability shall be defined as housing that can be purchased under a conventional mortgage whereby the combined annual expenses for principal, interest, property taxes, homeowner's insurance and condominium fees (if applicable) will not exceed 30% of household income.**

**2. Workforce Housing, Rental. A Workforce Housing Density Incentive will be granted to developments that guarantee the following:**

**a. Twenty percent (20%) or more of the units constructed will be rented for a price that can be afforded by a household with an income not more than 60% of the HUD Median Area Income for a family of three in Cheshire County.**

**b. Units will be rented with a deed restriction and recorded housing agreement that names an Income Verification Agent who will verify that the renter meets the income requirements. The rental value of the unit shall be restricted to the affordable rental price for a period of 30 years.**

**c. All units built under this provision shall be of the same approximate size, character, quality, and construction as the market rate units, and shall be evenly distributed throughout the project.**

**d. Affordability shall be defined as housing that can be rented whereby the combined annual rental and utility expenses will not exceed 30% of household income.**

**3. Assurance of Continued Affordability. In order to qualify as workforce housing under this section, the application shall make a binding commitment that the dwelling units will remain affordable for a period of 30 years. This shall be enforced through a deed restriction, restrictive covenant, or some other contractual arrangement through a local, state or federal housing authority or other non-profit housing trust or agency to administer this provision. No dwelling unit created by this bonus shall be occupied until written confirmation of the income eligibility of the tenant or buyer of the unit has been documented.**

12. That Section 25.10.5 "Submittal Requirements," sub-section C "Conservation Residential Development Subdivision Applications" of Article 25 be amended as follows:

In addition to the submittal requirements for a subdivision or boundary line adjustment in Section 25.10.5.B, a completed application for a proposed conservation residential development subdivision shall include the following.

1. An overview plan (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17- in paper; and, an electronic pdf file), which displays the entire tract and any existing public roads, public or private protected lands, woodlands areas, surface waters, and precautionary or prohibitive slopes located within 200-ft of the tract.

2. An existing conditions plan displaying the location of primary and secondary conservation values as defined in Section 19.3 of this LDC.

~~3. A yield analysis (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file) to determine the number of residential units that may be permitted within a conservation residential development subdivision. Although this plan shall be drawn to scale, it need not be based upon a field survey. The yield analysis may be prepared as an overlay to the existing conditions plan.~~

~~a. The yield analysis shall be performed by applying a conventional subdivision layout, including lots conforming to the dimensional standards of the underlying zoning district and streets needed to access such lots. The conventional layout shall reflect a development density and pattern, taking into account surface waters, floodplains, steep slopes, existing easements or encumbrances, and the suitability of soils for private subsurface wastewater disposal if City sewer service is not available.~~

~~4~~ **3**. A proposed conditions plan including the following.

a. The area(s) designated as Open Space, any common land and any specifically protected conservation values.

b. Any proposed uses of the Open Space (e.g. agriculture, recreation, forestry, etc.) and/or common lands shall be noted on the plan.

c. The location and dimensions of any proposed roads, sidewalks, and trails.

~~5~~ **4**. A landscaping plan (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file) providing the following information:

a. The location of existing wooded and vegetated areas and proposed changes to the outline of these areas.

b. The location, species and size of all landscaping materials proposed to be installed on the site, including street trees.

c. A table listing all plant species to be installed on the site, indicating the size (average height and width) at planting and at maturity as well as the number of each species to be installed.

~~6~~ **5.** Written documentation of the process applied by the applicant in the layout of the proposed conservation residential development subdivision to ensure that proposed or future development does not adversely impact primary and secondary conservation areas as defined in Section 19.3 of this LDC.

**6. Applications that include a request for the Solar Density Incentive in Section 19.3.6.B shall include the following information:**

**a. A written request for the density incentive that describes how the application meets the requirements of Section 19.3.6.B.**

**b. A solar access plan that displays the building areas or locations of structures on all solar-oriented lots in order to demonstrate that it would be possible to site a structure**

**which is unshaded by other nearby structures, site features, or topography. This solar access plan shall demonstrate that the building areas or structures on solar-oriented lots are not obscured by any vegetation, building, or object for a minimum of four hours between the hours of 9:00 AM and 3:00 PM Standard time on any day of the year. This plan may be included as an overlay to the subdivision plan or site plan, if required.**

**7. Applications that include a request for the Workforce Housing Density Incentive in Section 19.3.6.C shall include the following information:**

**a. A written request for the density incentive that includes a calculation of the number of units provided under this section and a description of each unit's size, type, number of bedrooms, estimated cost, location within the development, and other relevant data.**

**c. Written statement describing how the proposed development will meet the requirements of Section 19.3.6.C.3.**

**d. The Planning Board shall request additional information if, in their judgment, it is necessary to determine whether the requirements of Section 19.3.6.C have been met.**

13. That Section 25.10.9 "Filing," sub-section C of Article 25 be amended as follows:

C. For approved conservation residential development subdivision applications, applicants shall also submit written documentation of any legal instruments required for the management of the designated Open Space land ~~to the Community Development Department~~. **In addition, applicants shall submit written documentation of any legal instruments required to demonstrate compliance with the criteria of any and all optional density incentives granted by the Planning Board.** Such documents **shall be submitted to the Community Development Department and** are subject to the review and approval of the City Attorney prior to signature.

George S. Hansel, Mayor

A true copy, attest:

City Clerk

PASSED November 17, 2022

**Twenty-Two**

**Relating to Amendments to the Land Development Code**

That Chapter 100 of the Code of Ordinances of the City of Keene, New Hampshire, as amended, is hereby further amended by deleting the stricken text and adding the bolded and underlined text, as follows:

1. That Section 3.1.5 "Permitted Uses" of Article 3 be amended to display "Dwelling, Two-Family / Duplex" and "Dwelling, Multifamily" as permitted uses by a Conservation Residential Development Subdivision in the Rural District.

2. That Section 3.3.5 "Permitted Uses" of Article 3 be amended to display "Dwelling, Two-Family / Duplex" and "Dwelling, Multifamily" as permitted uses by a Conservation Residential Development Subdivision in the Low Density District.

3. That Section 3.4.5 "Permitted Uses" of Article 3 be amended to display "Dwelling, Two-Family / Duplex" and "Dwelling, Multifamily" as permitted uses by a Conservation Residential Development Subdivision in the Low Density 1 District.

4. Update Table 8-1 "Permitted Principal Uses by Zoning District" in Article 8 to display "Dwelling, Two-Family / Duplex" and "Dwelling, Multifamily" as permitted uses by a Conservation Residential Development Subdivision in the Rural, Low Density, and Low-Density 1 Districts.

5. That Section 19.3.2.C "Density" of Article 19 be amended as follows:

   C. Density. ~~The maximum number of dwelling units allowed within a conservation residential development subdivision shall be determined by dividing the total area of the existing tract by the density factor per dwelling unit specified in Table 19-2.~~

   1. The number of dwelling units allowed within a conservation residential development subdivision shall be determined by dividing the total area of the existing tract by the density factor per dwelling unit specified in Table 19-2.

   2. A density bonus may be granted to developments that meet the criteria for one or more of the density incentives detailed in Section 19.3.6. In no instance shall a total density bonus of more than 30% above the standard allowable density be granted to any single development. This section shall not be waivable.

6. That Table 19-1 "Dimensional Requirements for Conservation Residential Development Subdivisions" in Article 19 be amended to change the minimum lot area for the Rural District from 1 acre to 32,000 square feet.

7. That Table 19-1 "Dimensional Requirements for Conservation Residential Development Subdivisions" in Article 19 be amended to add a footnote that states "New lots in the Rural District that are created as part of a CRD that are less than 1 acre in size may utilize an approved Subsurface Disposal System."

8. Remove Section 19.3.2.D "Open Space Reserve," sub-section 2 of Article 19, which sates "Conservation residential development subdivisions in the Rural zoning district that permanently reserve 60% of the existing tract area or greater as open space shall be eligible for a density bonus, as noted in Table 19-2."

9. That Table 19-2 "Density & Open Space Requirements" in Article 19 be amended as follows:

| Zoning District | Density Factor per Dwelling Unit[1] | Min Open Space |
|---|---|---|
| Rural | ~~4 acres~~ **2 acres** | 50% |
| | ~~3 acres~~ | ~~60%~~ |
| Low Density-1 (without city water) | 1 acre | 50% |
| Low Density-1 (with city water) | 20,000 sf | 50% |
| Low Density | 10,000 sf | 50% |

***[1] Density bonus(es) may be granted as specified in Section 19.3.6***

10. That Table 19-3 "Conservation Residential Development Permitted Uses" be amended as follows:

| Permitted Use | Rural District | Low Density-1 District | Low Density District |
|---|---|---|---|
| Single-Family Dwelling | P | P | P |
| Two-Family Dwelling | P | P | P |
| Multifamily Dwelling | P[1] (max of 3 dwelling units per structure) | P[1] (max of 3 dwelling units per structure) | P (max of 6 dwelling units per structure) |

*"P" = Permitted Use " - " = Use Not Permitted*

***P1 = Use permitted with workforce housing density incentive***

11. That a new Section entitled "Optional Density Incentives" be added after Section 19.3.5 of Article 19, as follows:

**Section 19.3.6: Optional Density Incentives**

**Conservation Residential Development Subdivisions that meet certain performance criteria shall be eligible for a density bonus above the standard allowable density, up to a maximum of 30%. The 30% density cap shall not be waivable. If a density incentive is granted, the minimum lot size specified in Table 19-1 shall be waived.**

**A. Open Space Density Incentive. Conservation Residential Development Subdivisions with a minimum tract size of 10 acres that permanently reserve at least 65% of the existing tract area as open space shall be eligible for a density bonus of 10% or one dwelling unit, whichever is greater.**

**B. Solar Density Incentive. Conservation Residential Development Subdivisions that meet the following criteria shall be eligible for a density bonus of 10% or one dwelling unit, whichever is greater:**

1. **At least 50% of the lots shall be solar-oriented. A "solar-oriented lot" shall mean a lot with its longest lot line dimension oriented to within thirty (30) degrees of a true east-west line.**
2. **The long axis of all dwelling units on solar-oriented lots shall be oriented so that the long axis faces within 20 degrees of true south.**
3. **At least four (4) kilowatts of solar PV shall be installed for each dwelling unit on a solar-oriented lot.**
4. **Where, as determined by the City, topographic, environmental, and soil conditions, and existing street configurations permit, the predominant pattern of new streets in subdivisions subject to this section shall be oriented within thirty (30) degrees of east-west orientation.**

**C. Workforce Housing Density Incentive. Conservation Residential Development Subdivisions that meet the criteria below shall be eligible for a density bonus of 20% or one dwelling unit, whichever is greater. In addition, the permitted uses for a development that meets this section in the Rural District or Low Density-1 District shall include "multifamily dwelling" (max of 3 units per structure).**

1. **Workforce Housing, Owner-Occupied. A Workforce Housing Density Incentive will be granted to developments that guarantee the following:**
   a. **Twenty percent (20%) or more of the units constructed will be sold at initial sale for a price that can be afforded by a household with an income not more than 80% of the HUD Median Area Income for a family of four in Cheshire County.**
   ~~b. Units will be sold with a deed restriction and recorded housing agreement that names an Income Verification Agent who will verify that the purchaser meets the income requirements. For a period of 30 years, Tthe resale value of the unit shall be restricted to either the affordable purchase price or for a period of 30 years. The resale value of the unit is not to be more than the original purchase price plus two times the accumulated consumer price index, whichever is greater..~~
   b. **Units will be sold with a deed restriction and recorded housing agreement that names an Income Verification Agent who will verify that the purchaser meets the**

**income requirements. 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 price plus two times the accumulated consumer price index, whichever is greater.**

**c. All units built under this provision shall be of the same approximate size, character, quality, and construction as the market rate units, and shall be distributed evenly throughout the project.**

**d. Affordability shall be defined as housing that can be purchased under a conventional mortgage whereby the combined annual expenses for principal, interest, property taxes, homeowner's insurance and condominium fees (if applicable) will not exceed 30% of household income.**

**2. Workforce Housing, Rental. A Workforce Housing Density Incentive will be granted to developments that guarantee the following:**

**a. Twenty percent (20%) or more of the units constructed will be rented for a price that can be afforded by a household with an income not more than 60% of the HUD Median Area Income for a family of three in Cheshire County.**

**b. Units will be rented with a deed restriction and recorded housing agreement that names an Income Verification Agent who will verify that the renter meets the income requirements. The rental value of the unit shall be restricted to the affordable rental price for a period of 30 years.**

**c. All units built under this provision shall be of the same approximate size, character, quality, and construction as the market rate units, and shall be evenly distributed throughout the project.**

**d. Affordability shall be defined as housing that can be rented whereby the combined annual rental and utility expenses will not exceed 30% of household income.**

**3. Assurance of Continued Affordability. In order to qualify as workforce housing under this section, the application shall make a binding commitment that the dwelling units will remain affordable for a period of 30 years. This shall be enforced through a deed restriction, restrictive covenant, or some other contractual arrangement through a local, state or federal housing authority or other non-profit housing trust or agency to administer this provision. No dwelling unit created by this bonus shall be occupied until written confirmation of the income eligibility of the tenant or buyer of the unit has been documented.**

12. That Section 25.10.5 "Submittal Requirements," sub-section C "Conservation Residential Development Subdivision Applications" of Article 25 be amended as follows:

In addition to the submittal requirements for a subdivision or boundary line adjustment in Section 25.10.5.B, a completed application for a proposed conservation residential development subdivision shall include the following.

1. An overview plan (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17- in paper; and, an electronic pdf file), which displays the entire tract and any existing public roads, public or

private protected lands, woodlands areas, surface waters, and precautionary or prohibitive slopes located within 200-ft of the tract.

2. An existing conditions plan displaying the location of primary and secondary conservation values as defined in Section 19.3 of this LDC.

~~3. A yield analysis (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file) to determine the number of residential units that may be permitted within a conservation residential development subdivision. Although this plan shall be drawn to scale, it need not be based upon a field survey. The yield analysis may be prepared as an overlay to the existing conditions plan.~~

~~a. The yield analysis shall be performed by applying a conventional subdivision layout, including lots conforming to the dimensional standards of the underlying zoning district and streets needed to access such lots. The conventional layout shall reflect a development density and pattern, taking into account surface waters, floodplains, steep slopes, existing easements or encumbrances, and the suitability of soils for private subsurface wastewater disposal if City sewer service is not available.~~

~~4~~ **3**. A proposed conditions plan including the following.

a. The area(s) designated as Open Space, any common land and any specifically protected conservation values.

b. Any proposed uses of the Open Space (e.g. agriculture, recreation, forestry, etc.) and/or common lands shall be noted on the plan.

c. The location and dimensions of any proposed roads, sidewalks, and trails.

~~5~~ **4**. A landscaping plan (1-copy on 22-in by 34-in paper or larger size; 1-copy on 11-in by 17-in paper; and, an electronic pdf file) providing the following information:

a. The location of existing wooded and vegetated areas and proposed changes to the outline of these areas.

b. The location, species and size of all landscaping materials proposed to be installed on the site, including street trees.

c. A table listing all plant species to be installed on the site, indicating the size (average height and width) at planting and at maturity as well as the number of each species to be installed.

~~6~~ **5.** Written documentation of the process applied by the applicant in the layout of the proposed conservation residential development subdivision to ensure that proposed or future development does not adversely impact primary and secondary conservation areas as defined in Section 19.3 of this LDC.

**6. Applications that include a request for the Solar Density Incentive in Section 19.3.6.B shall include the following information:**

**a. A written request for the density incentive that describes how the application meets the requirements of Section 19.3.6.B.**

**b. A solar access plan that displays the building areas or locations of structures on all solar-oriented lots in order to demonstrate that it would be possible to site a structure which is unshaded by other nearby structures, site features, or topography. This solar access plan shall demonstrate that the building areas or structures on solar-oriented lots are not obscured by any vegetation, building, or object for a minimum of four hours between the hours of 9:00 AM and 3:00 PM Standard time on any day of the year. This plan may be included as an overlay to the subdivision plan or site plan, if required.**

**7. Applications that include a request for the Workforce Housing Density Incentive in Section 19.3.6.C shall include the following information:**

**a. A written request for the density incentive that includes a calculation of the number of units provided under this section and a description of each unit's size, type, number of bedrooms, estimated cost, location within the development, and other relevant data.**

**c. Written statement describing how the proposed development will meet the requirements of Section 19.3.6.C.3.**

**d. The Planning Board shall request additional information if, in their judgment, it is necessary to determine whether the requirements of Section 19.3.6.C have been met.**

13. That Section 25.10.9 "Filing," sub-section C of Article 25 be amended as follows:

C. For approved conservation residential development subdivision applications, applicants shall also submit written documentation of any legal instruments required for the management of the designated Open Space land ~~to the Community Development Department~~. **In addition, applicants shall submit written documentation of any legal instruments required to demonstrate compliance with the criteria of any and all optional density incentives granted by the Planning Board.** Such documents **shall be submitted to the Community Development Department and** are subject to the review and approval of the City Attorney prior to signature.

_____

George S. Hansel, Mayor

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #J.2.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Planning, Licenses and Development Committee, Standing Committee

**Through:**

**Subject:** **Relating to Amendments to the Land Development Code - Zoning Ordinance - Business, Growth, and Reuse District – Recreational/Entertainment Facility – Indoor Ordinance O-2022-11**

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**Council Action:**
**In City Council November 17, 2022.**
**Report filed as informational. Voted unanimously for the adoption as Ordinance O-2022-11.**

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

**Attachments:**
1. Ordinance O-2022-11_True Copy Attest

**Background:**
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 recommends the adoption of Ordinance O-2022-11.

ORDINANCE

# CITY OF KEENE

O-2022-11

**Twenty-two**

In the Year of Our Lord Two Thousand and .....

AN ORDINANCE ..... **Relating to Amendments to the Business, Growth & Reuse District – Recreation/Entertainment Facility** .....

*Be it ordained by the City Council of the City of Keene, as follows:*

That Chapter 100 entitled "Land Development Code" of the Code of Ordinances of the City of Keene, New Hampshire, as amended, is hereby further amended as follows:

1. That "Recreation/Entertainment Facility = Indoor" be added as a permitted primary use to the Business Growth and Reuse District.

2. Update Table 8-1 "Permitted Principal Uses by Zoning District" and Section 5.4.5 "Permitted Uses" in Article 8 to display Recreational/Entertainment Facility – Indoor as a permitted use in the Business Growth and Reuse District under the category of Commercial Uses.

George S. Hansel, Mayor

A true copy, attest:

City Clerk

PASSED November 17, 2022

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #J.3.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Planning, Licenses and Development Committee, Standing Committee

**Through:**

**Subject:** **Relating to the Use of Central Square Common and Railroad Square Ordinance O-2022-14-A**

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**Council Action:**
**In City Council November 17, 2022.**
**Report filed as informational. Voted unanimously for the adoption as Ordinance O-2022-14-A.**

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

**Attachments:**
1. Ordinance O-2022-14-A_True Copy Attest

**Background:**
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 recommends the adoption of Ordinance O-2022-14 to incorporate the proposed amendments as discussed by the Committee.

ORDINANCE

# CITY OF KEENE

O-2022-14-A

In the Year of Our Lord Two Thousand and Twenty-two

AN ORDINANCE Relating to the Use of Central Square Common and Railroad Square

***Be it ordained by the City Council of the City of Keene, as follows:***

That the Ordinances of the City of Keene, as amended, are hereby further amended by deleting the stricken text and inserting the bolded text in Chapter 46, Licenses and Permits; Article XVIII, Street Fairs or Community Events; Division 2, Permits; and, Article XXI, Use of Central Square Common and Railroad Square; Division 2, Permits, as follows:

## ARTICLE XVIII. STREET FAIRS OR COMMUNITY EVENTS

### DIVISION 2. ~~PERMIT~~ **LICENSE**

Sec. 46-1006. Criteria for issuance.

The city council may grant a street fair or community event **license** ~~permit~~ for a period not to exceed three days for the purpose of conducting street fairs or other community events, including but not limited to the sale of merchandise by commercial retailers or by community associations.

Sec. 46-1007. Approval of uses.

Under the provisions of such street fair or community event ~~permit~~ **license, the license holder shall have control and supervision within the licensed event area of** all uses**, including but not limited to,** ~~by~~ vendors, groups or sidewalk obstruction license holders, **which** shall be approved by the ~~person receiving the permit~~ **license holder; provided however, that the City shall retain authority, supervision and control over the public health, safety and welfare within the licensed event area**.

Sec. 46-1008. Registration.

Hawkers and peddlers and other such vendors will be required to register with the holder of the street fair or community event ~~permit~~ **license** and shall be exempt from division 2 of article VIII of this chapter pertaining to hawkers and peddlers, except those organizations requiring registration by the charitable trust division of the office of the attorney general.

Sec. 46-1009. Participation fee.

The holder of the street fair or community event ~~permit~~ **license** shall assess no more than one-half the normal participation fee for hawkers and peddlers or sidewalk obstruction license holders

PASSED

November 17, 2022

currently licensed by the city clerk who ~~wish to participate~~ **are permitted by the license holder to participate** in the street fair or community event.

Sec. 46-1010. Fee.

The fee for a license granted under this division shall be as set forth in the schedule of fees in appendix B to this Code.

## ARTICLE XXI. USE OF CENTRAL SQUARE COMMON AND RAILROAD SQUARE

### DIVISION 2. PERMIT

Sec. 46-1161. Scope.

**Except as provided in ARTICLE XVIII, authorizing a license for Street Fairs or Community Events,** Central Square Common and Railroad Square are public areas that are intended for public use. Accordingly, no person or group shall claim any kind of exclusive right to use or occupy either of these public areas.

Sec. 46-1162. Required; application; rules; standard fees for use.

(a) Exclusive use of any of the public facilities (e.g., bandstand, electricity) located on Central Square Common or Railroad Square may be granted for a time period of definite duration.
(b) Application for such a permit shall be made at the parks, recreation and facilities department during normal business hours, Monday through Friday.
(c) The parks, recreation and facilities director may develop rules for the use of such public facilities on the Central Square Common and Railroad Square.
(d) The director will establish standard fees for the use of these facilities which must be paid in advance.

Sec. 46-1163. Limitations on issuance.

The issuance of a permit by the parks, recreation and facilities director for the use of any of the public facilities located on the Central Square Common or Railroad Square shall in no way be construed as a license for any person or group to:

(1) Claim exclusive use of the remainder of either public area, **except as provided in ARTICLE XVIII**;
(2) Expect extra or special police protection or traffic control;
(3) Alter any public facility;
(4) Use any sign other than a handheld sign as defined in chapter 74 containing the sign code;
(5) Block pedestrian or vehicle traffic;
(6) Become disorderly; or

(7) In any other way violate the law.

Sec. 46-1164. Payment of costs.

Any person or organized group which sponsors a gathering of people in the Central Square Common or at Railroad Square which results in significant cleanup costs or damage to public property or extra police protection or traffic control shall be billed the total of such costs, and such group shall be responsible for paying such costs to the city. Accordingly, any person or group contemplating such a gathering at Railroad Square or the Central Square Common is encouraged to contact the parks, recreation and facilities department well in advance of any such gathering so that the person or group can have an idea in advance of the potential costs that may be involved and so that the parks, recreation and facilities department can begin to alert other city departments to be prepared for the gathering to the extent necessary.

George S. Hansel, Mayor

A true copy, attest:

City Clerk

PASSED November 17, 2022

# CITY OF KEENE
# NEW HAMPSHIRE

**ITEM #J.4.**

**Meeting Date:** November 17, 2022

**To:** Mayor and Keene City Council

**From:** Planning, Licenses and Development Committee, Standing Committee

**Through:**

**Subject:** **Relating to Notice Requirements for Small Cell Wireless Facility Deployments *and* More Time Item - Communications relative to Public Health Concerns of Small Cell Wireless Facilities**
**Ordinance O-2022-16-A**

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**Council Action:**
**In City Council November 17, 2022.**
**Report filed as informational. Communications from Councilor Filiault and Terry Clerk reported out. Voted unanimously for the adoption as Ordinance O-2022-16-A.**

**Recommendation:**
On a vote of 4–0, the Planning, Licenses, and Development Committee recommends 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

On a vote of 4–0, the Planning, Licenses, and Development Committee recommends adopting Ordinance O-2022-16-A.

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

**Attachments:**
1. Ordinance O-2022-16-A True Copy Attest
2. Ordinance O-2022-16-A_redlined

**Background:**
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. 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 there be greater notice of these installments so the public can make comments, citing a recent application she did not get to comment on until later in the process. She listed her concerns. She 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, ecology, 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 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 Vanentia 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, 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 saft. 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 no 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 had received information from the City and had 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 of the facts.

On a vote of 4–0, the Planning, Licenses, and Development Committee recommends 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 recommends adopting Ordinance O-2022-16-A.

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

ORDINANCE

# CITY OF KEENE

Ordinance O-2022-16-A

In the Year of Our Lord Two Thousand and Twenty-two

AN ORDINANCE Notice Requirements for Small Wireless Facility Deployments

*Be it ordained by the City Council of the City of Keene, as follows:*

That the Ordinances of the City of Keene, as amended, are hereby further amended by deleting the stricken text and inserting the bolded text in paragraph (3.a.) of Section 82-207 "Application Requirements," and paragraph (5) of Section 82-208 "Application Review Procedures," of Article VIII "Small Wireless Facility Deployments in the Public Rights of Way" Chapter 82, entitled "Streets, Sidewalks and Certain Other Public Places," as follows:

**Sec. 82-207. Application requirements.**

(3) *Applications to install a SWF on a new support structure.* In addition to the application requirements listed in section 82-207(1), all applicants proposing to install a SWF on a new or replacement support structure must include the following information and materials as part of a formal SWF License application to the city:

a. *Public notices.* For applications to locate a SWF on a new or replacement structure, the applicant shall include with the application a list that identifies all persons entitled to notice, including all owners of record and legal occupants of properties within a ~~300-foot~~ **750-foot** radius of the proposed SWF. In addition, the applicant shall submit two sets of mailing labels and pay ~~a fee to cover~~ the cost of mailing to each person entitled to notice.

**Sec. 82-208. Application review procedures.**

(5) Application submittal notice for SWFs proposed on new structures. Within 15 calendar days after a complete application is received and prior to any approval, conditional approval or denial, the city shall mail public notice to all persons entitled to notice **at the expense of the applicant**, including all owners of record and legal occupants of properties within a ~~300~~ **750**-foot radius of the proposed SWF. The notice must contain:

a. A general project description;

b. The applicant's identification and contact information as provided on the application submitted to the city;

c. Contact information for the director for interested parties to submit comments; and

~~c.~~ **d.** The date by which comments must be submitted to the director.

PASSED

November 17, 2022

George S. Hansel, Mayor

A true copy, attest: Patricia Little City Clerk

Twenty-two

Notice Requirements for Small Wireless Facility Deployments

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c. Contact information for the director for interested parties to submit comments; and

~~c.~~ d. The date by which comments must be submitted to the director.

George S. Hansel, Mayor