

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
SPECIAL MEETING MINUTES

Wednesday, March 30, 2022

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Kate M. Bosley, Chair
Michael Giacomo, Vice Chair
Philip M. Jones (Arrived at 5:10 PM)
Gladys Johnsen
Raleigh Ormerod

Members Not Present:

All Present

Mayor George S. Hansel

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Amanda Palmeira, Assistant City Attorney
Rebecca Landry, ACM/IT Director
Kürt Blomquist, ACM/Director of Public
Works/Emergency Management Director
John Rogers, Acting Community
Development Director/Building & Health
Official
Medard Kopczynski, Economic Development
Director/Special Projects

Chair Bosley called the meeting the special meeting to order at 6:00 PM and declared a quorum present.

1) Danya Landis/Machina Kitchen and ArtBar – Request to Use City Public Parking Spaces – Parklets

Chair Bosley recalled this has been an ongoing discussion and requested some background be provided for the benefit of the new Councilors on the Committee.

Chair Bosley welcomed the applicant, Ms. Danya Landis and her husband Mr. Walker Landis of 433 Elm Street, co-owners of the Machina Kitchen and ArtBar on Court Street. Ms. Landis stated she was requesting to build a parklet, which she said had been valuable across cities throughout the pandemic. Parklets are a platform built within a parallel parking space in front of a building that holds seating, a small park, or other gathering space. Ms. Landis was requesting a parklet for dining with food and alcohol. Ms. Landis requested a parklet comprised of three parallel parking spaces in front of the building at 9 Court Street, which would allow for an additional 46 outdoor seats, which is what they had for the past two years during the emergency order. She said this is a great solution to their current situation, with the narrowest sidewalk of any restaurant wanting outdoor seating. Another problem is that there are beautiful old trees and parking meters, which the applicant does not want to disturb and therefore they seek a more elegant solution. They have asked to put tables on their sidewalk as they did last year without use of the parking spaces, but she

was informed the day of this meeting that there were additional problems with that option, which she is trying to work out and so she is unsure whether that was a viable option. Ms. Landis stressed that while a lot of things are opening and many at the meeting were not wearing masks, that the pandemic is still very real, especially for those who are immunocompromised and do not want to eat inside. She said their customer base is incredibly careful and she knows they are incredibly careful, and she wants to maintain that outdoor option. She did not realize how imperative the outdoor seating would be to their business' health and revenue; the calculations shows that it was 50% of their revenue during that season, which includes providing jobs, feeding people, and allowing families an opportunity for more money. They would not be able to provide as many jobs without outdoor seating, which would reduce jobs in the City. She recalled this being a year-long ongoing process since she submitted this initial letter and began talking with Mr. Kopczynski and she urged the Committee to think of ways for forward momentum. Ms. Landis suggested to approve this today with the stipulation that the ordinance would be crafted before the next Council meeting. She wanted to give it a deadline to keep it moving forward, knowing the guidelines were not set in stone. Ms. Landis appreciated everyone's help and support through this process, which can often be challenging in government, but City Staff had been incredibly responsive in helping.

Chair Bosley appreciated the overview and while she did not know the timeline, she said there is a process to ordinances being approved in the City, which requires multiple readings in front of the full Council and this Committee. She also felt this would require a lot of crafting and she hoped to get a good start on that conversation tonight. She said the Committee needed to create something holistic for the downtown community, which would require several iterations and community input, and therefore this process would not be instantaneous. Still, she hoped to gain positive momentum at this meeting.

Chair Bosley welcomed comments from the City Attorney, Thomas Mullins, who introduced the new Assistant City Attorney, Amanda Palmeira. The City Attorney went on to discuss the timeline for this matter of a possible parklet ordinance. He recalled being before this Committee during summer 2021, when he told the City Council that they did not have the authority to do this, which he said was true then. Then the Legislature decided last year to amend a section of the Liquor Commission Statute 178:24, inserting the following phrase, "In licensing and authorization for outside alcohol consumption a licensee may expand into a shared space, such as a street or sidewalk, with the approval of local officials. The Petitioner shall include written plans and diagrams that shall provide detailed information on the proposed extension of alcohol service," which the City Attorney said implies from the State Legislature's perspective that local municipalities have the authority to authorize this type of activity in the street.

The Assistant City Attorney confirmed that the information provided to the Council last year by the City Attorney was accurate and confirmed that after the emergency orders expired, the State Legislature decided to try extending those orders throughout the state via this statutory change.

While the City Attorney felt this provision for activities in the street was provided in the statute, he said there were still restrictions for what is allowed in the right-of-way. The City Attorney noted

that there is no true “bar” in NH, because all alcohol sales must be accompanied by some sort of food sale. Thus, this parklet idea would authorize the extension of a restaurant that serves alcohol into the street and would likely apply to a restaurant that does not serve alcohol as well. While there had been previous conversations about the use of the street for other merchandise sales, the City Attorney’s previous analysis found that there are specific restrictions on such sales and the Legislature had not changed its stance on that matter. Therefore, this conversation and potential ordinance only applied to restaurants, whether they serve alcohol or not. He said that proceeding with drafting an ordinance would require significant Staff work and so the City Attorney wanted to leave this meeting with clarity on whether the Council wanted to move forward on this issue. Drafting this ordinance would also take time to research the various locations in the municipality, which Staff is prepared to do with Council direction.

Councilor Jones confirmed that this would only apply to restaurants and not any other merchandise establishment and the City Attorney said that was the position he thought appropriate under the State Statute.

Chair Bosley welcomed Director of Public Works/Emergency Management Director Kürt Blomquist, and Interim Community Development Director, John Rogers. Mr. Blomquist recalled some of these discussions last year, when some work was done with Mr. Rogers and the Economic Development Director, Med Kopczynski. It was essential to look at what other communities across the country were doing with parklets, recognizing that different states have different rules and challenges. Of course, the west coast plans are more year-round, while the east coast is focused on portions of the year. There would need to be guidelines for Keene’s winters. Keene’s downtown also has various aspects such as medians, parking meters, and American Disabilities Act (ADA) ramps that are allowed in the right-of-way that can create restrictions. Also, within the downtown there are sidewalk widths ranging from 6–12 feet. Therefore, Mr. Rogers and Mr. Kopczynski, investigated the space needed in this downtown to provide passage for all mobility levels of the public, with ADA considerations.

Mr. Rogers commented that the current City Code for sidewalk cafés does have a required 6-foot clearance that must be maintained, which was part of what was considered in the analysis. The downtown sidewalks are sufficiently wide (up to 20 feet) south of the Railroad Street/Gilbo Avenue area, leaving plenty of space to configure cafés or merchandise on the sidewalk. North of that area, however, there are restrictions from handicap ramps and landing areas required to the grassy squares with trees and granite curbing. The sidewalks also vary on side streets like the narrow sidewalks on Roxbury Street and in front of Machina ArtBar, with steps coming from the building that extend onto the sidewalks and planted tree areas. He said the City was able to be flexible during the emergency order, now without it in place, a restaurant such as Machina that had so many outdoor tables during the order would be challenged to meet the 6-foot rule now.

Chair Bosley asked whether that 6-foot rule was reduced during the emergency order. Mr. Rogers replied that they were following ADA guidelines that allowed for a reduction to 3 feet for certain distances, with a 5-foot minimum bump-out. The Chair asked if there were any complaints based

on the reduction in sidewalk space. Mr. Rogers said there were a lot fewer complaints than in the past and he thought everyone was more understanding during the pandemic. He anticipated that if the same situation were laid out today, the complaints would likely increase again.

Mr. Blomquist briefly discussed processing these requests and regulating this activity in the public way, which is through the City Clerk's office, the Public Works Department, and the Community Development Department. In addition to the sidewalk measurements, Staff also assessed parallel and angled parking, with all guidance on parklets focused on parallel parking, particularly from a safety standpoint—people must slow more to enter a parallel space, whereas there is a tendency to pull-in quicker to an angled space. Keene's parallel spaces are approximately 18 feet long and angled spaces are 12 feet long. Thus, you can fit more activity into parallel spaces. A parallel space parklet would likely only use one space, whereas an angled parklet would likely require one extra space on either side to make it a squarer space. Based on all of these criteria, he said there were four possible areas for this to occur on downtown side streets, where there is more parallel parking and the sidewalk restrictions: (1) east side of Court Street, from Central Square to Vernon Street, (2) south side of Roxbury Street (no parking on the north side), from Central Square to Hannah Grimes entrance, (3) north side of Railroad Street (no parallel parking on south side), from Main Street to the entrance to the 42 Main Street Parking Lot, and (4) south side of Winter Street (north side is courthouse and county administrative building, from Court Street to the Cheshire County entrance. The Chair asked and Mr. Blomquist confirmed that it was the south side of Winter Street.

Vice Chair Giacomo asked the scope of the Staff analysis (i.e., how many blocks off Main Street). He was thinking about the west side of Ralston Street, for example. Mr. Rogers said the scope was the same as for sidewalk cafés, which is within the Downtown Core from a zoning perspective. They also considered that the four areas Mr. Blomquist mentioned currently have restaurant establishments and also considered how some sidewalks and the Code are today. With the exception of the applicant being restricted to very small tables, Mr. Rogers said the rest of the restaurants along that portion of Court Street would likely be limited to no tables on the sidewalk due to the sidewalk widths currently.

Chair Bosley asked what ruled out in front of Tokyo Express in this initial evaluation. Mr. Rogers said that in that situation, there was safety concern for how many trucks use that street regularly and narrowing the street further would eliminate turning radius on the already one-way Cypress Street.

Mr. Blomquist said he discussed with the PLD Committee last year the potential guidelines for parklets, including that they only be in areas with speed limits less than 25mph, which some of Keene's streets exceed. Safety concerns led to a discussion of jersey barriers that would minimize the potential risk of an errant vehicle and some more aesthetically pleasing products in the 700–1200lb range. They also discussed last year that the configuration would vary at each location, potentially with some locations requiring higher safety measures, such as Roxbury Street with right turning traffic and people accelerating to exit downtown, for example. This is where Staff ended their initial analysis. They did discuss a timeframe for parklets to correspond with outdoor

cafés (April 1–October 15). They also discussed maintenance, ensuring cleanliness, and maintaining gutter flow downtown, while keeping platforms safe. They did not discuss design standards, which the Committee could turn over to Staff to develop in more detail. Mr. Rogers said that each parklet space could be unique in requirements and he did not think there was one uniform pattern of how they need to be built and placed with all those variables. If approved, Mr. Rogers said Staff would need to review all the variables mentioned, which could vary by location.

Mr. Blomquist said the last thing Staff discussed in advance of this meeting was how much the City should be involved in parklets; what is the City going to do (e.g., would the City acquire, set-up, and dismantle the heavier safety components or would everything be left to the petitioner)? Mr. Blomquist had communicated with counterparts in Nashua, Portsmouth, and Manchester, NH, about their plans. It looks like in most cases they are reducing the outdoor dining area that they had during Covid-19. Nashua plans to continue the outdoor dining on their Main Street this year. The Director in Manchester indicated that their Mayor was still considering how far to go, but the sense was that they would probably do some of these activities on their Elm Street. He said Portsmouth is unique because they have tiny streets and some are no longer for vehicles; he said they were looking at consolidating. These discussions were a few weeks prior to this meeting and thus he would follow-up to see if any final decisions were made by those municipalities' elected bodies. This concluded the Community Development Department/Public Works Department presentation.

Chair Bosley welcomed comments from the Economic Development Director, Medard Kopczynski. As the Economic Development Director, Mr. Kopczynski wanted to support as much activity as possible that would energize the downtown and City. He said there had been a lot of energy the past few years that Staff wants to continue coming out of Covid-19. Over time, he said that energy had manifested in different ways, such as when the downtown was a shopping destination. Today, the energy is more arts, entertainment, and restaurants. There are also an increasing number of people living in the downtown, so as someone who oversees parking, he recognized the need to provide the opportunity for parking for various classes of people at various times. This was the sort of evaluation conducted for the Strategic Plan. He said cost needed to be balanced against the activity. He added that there is not a real science for counting parking utilization at this time. Staff conducts random samples, but their system only operates from 8:00 AM–5:00 PM. He said the Central Square parking is full in the evenings, when the City is not collecting money. He noted that more workers come downtown during the day and night, in addition to people who live downtown. Mr. Kopczynski said the system itself needs to adjust, which gets into how much parking the City has. He said the City has enough parking generally as evidenced by random zoning studies. However, as the City evolves, the parking will be less available, which is why Staff has discussed changing some of the system. There has been a discussion of on street parking and of a new parking structure because Staff recognizes that there will be impacts from City growth. He went on to provide data on the current utilization percentages in sample areas during the peak month of July:

- east side of Court Street show: 16% use at 9:00 AM and 53% at 5:00 PM.
- Central Square north: 32% use at 9:00 AM and 100% at 5:00 PM.
- Central Square east: 42% use at 9:00 AM and 63% at 5:00 PM.

- Central Square west: 54% use at 9:00 AM and 92% at 5:00 PM.
- Conversely, from April–October, generally speaking:
- Court Street east: 35% at 5:00 PM.
 - Central Square north: 31% use at 9:00 AM and 78% at 5:00 PM.
 - Central Square east: 52% use at 9:00 AM and 64% at 5:00 PM.
 - Central Square west: 45% use at 9:00 AM and 82% at 5:00 PM.

Thus, Mr. Kopczynski said that as the day picks-up, so too does parking, which is one reason he believes the City needs to change its enforcement hours. He has been looking for a mechanism in the City’s Code of Ordinances to advise and make a way to take a parking space and capture it for a period under the Ordinance. He said going forward with the parklets would require some change to the Code in some manner to either change something there now or create something unique, and he said Staff was leaning toward the latter. There is no direct analog for this and there are different meter rates, reserved space locations, and this is would take spaces out of the system, which is only accounted for in the Wells Garage, where a mechanism was created for 24/7 parking in the bottom deck (which is the only place with that unique situation in the City). When pricing that situation, Mr. Kopczynski said Staff tried to do so based on a reasonable number but also a number that would compensate the system, recognizing the uniqueness of covered parking in downtown Keene. Mr. Kopczynski concluded stating that there is an anomaly in the Code of Ordinances where the City Council has authorized permit parking/street parking on certain streets from 7:30 AM–6:00 PM. Mr. Kopczynski said he has considered cost, which he was not yet ready to reveal.

Vice Chair Giacomo asked Mr. Kopczynski, without revealing the numbers, whether those numbers were based essentially off the rate it would cost to have those spaces paid during the entire time it would normally be metered multiplied by the average utilization rate for that space; he questioned the calculation. Mr. Kopczynski said roughly, yes. Mr. Kopczynski continued that one way to calculate it would be to pretend the spaces are occupied 9 hours daily, but he said that does not really occur, so they must look at utilization. He said to recognize the difference that those spaces would be taken out of the system, making them unavailable 24/7. He said it requires balance and that some extent of guesswork is justified to the extent that it would not damage the system. Mr. Kopczynski said it was essential to ensure the parking system is making the money it is supposed to; he said Parking Services has been trying to bring the system to operating capacity, while keeping it financially viable. He thought it was a good time to begin this conversation at Committee.

Following the Staff comments, Chair Bosley said she tended to agree that she did not want to see any changes that would negatively impact the Parking Fund. She thought it important to maintain that revenue and said the intention should be to find a number that works for the City to relinquish those spaces. She said the public could be asked to walk to some of the bigger lots in exchange for some direct frontage on Main Street and side streets, without giving up extensive parking downtown. Chair Bosley thought it would require quite a balance to arrive at the appropriate number and to determine whether there needed to be limitations moving forward.

Councilor Ormerod appreciated this initial analysis, which he called very thorough. The councilor wondered if there might be some circumstances where if spaces were designated as parklets, that a driver would park someplace else with excess capacity and thus not lose the revenue; are there nearby overflow areas that traffic could be redirected to? He asked whether that was a part of the Staff analysis. Mr. Kopczynski said no, not directly. Mr. Kopczynski continued that one problem with parking in general (heard a lot regarding Arts Alive) is that everyone wants to park directly in front of their intended establishment on Main Street, despite their being better equity (longer and cheaper) parking off Main Street, and within two blocks there is free parking. Part of the challenge is getting people to realize that, which is a part of the education that Staff is working on. The strategy was not yet worked out, but Staff was looking at how some other communities do that. He said some communities do Demand Parking, which is a non-metered method where patrons pay a certain rate for one hour of parking, and the rates increase proportionately each hour, with limitations to prevent homesteading a parking space.

Councilor Jones discussed public perception, noting that during the Capital Planning process, the Council and Staff discussed the need for more parking and a parking garage, and now they were talking about taking away parking downtown. He understood the two reasons (i.e., parking garage for economic development) but asked how to get the public to perceive it the right way. Mr. Kopczynski said that also got into communication and education. Mr. Kopczynski said that during this conversation initially internally, it was clear there is a pretty even opportunity on Main Street with the width of sidewalks there; it becomes difficult on the narrow side streets. If taking parking out of the system, it would be fairly limited. The differential between parallel and angled spaces is tremendous. Mr. Kopczynski said that if taking parking out of the system it must be fairly limited. Taking angled spaces from Main Street could really start hurting the system, which cannot afford to give-up those spaces, whereas the side streets are less desirable, and the impact would be less. Mr. Kopczynski said one of the primary reasons for considering a parking facility is not just for those visiting Main Street but also those who live in the downtown and businesses that want to expand. Mr. Kopczynski said it was neither a monolithic question nor answer.

Councilor Jones asked whether having this option available on Ralston Street, Gilbo Avenue, Emerald Street, etc., would entice new restaurants opening there for economic development. Mr. Kopczynski said that when discussing reserving streets, one of the things that came up during the Strategic Plan was opening some of the side streets to people who want to add units to buildings with no place to park. He said that based on the initial evaluation, there is no reason why this same concept cannot be expanded if the City Council wanted, with parking utilization in mind.

Councilor Jones cited that Plattsburg, NY, had a fantastic example of parklets before Covid-19, with jersey barriers for safety that must be covered in approved public art. He said it looks beautiful as opposed to a town like Amherst, MA, where he said it is less than aesthetically pleasing, does not appear safe, and the barriers are covered in political signs. He agreed that looking at what other communities do would help in this process. Mr. Blomquist agreed and cited information from other cities where parklets can cost businesses in Seattle, for example, between \$15,000–\$50,000 because of the requirements, whereas other locations are more like \$1,500–

\$5,000. The City must make decisions on how simple the barriers will be. Some people are comfortable with plain jersey barriers and others are not. Mr. Blomquist said it is a balance of the City's expectations and how far the City wants to go in supporting a private business. Ideally, Mr. Blomquist wants this to be as simple as possible, and it is not a year-round program.

Chair Bosley said she was open to the conversation about year-round overnight parking in Keene, but that was not the topic at hand. Still, she said the previous discussion was evidence of symptoms of a bigger problem, with residents in this town currently who do not have overnight parking. She understood that there were complications with snow removal but said it worked in other cities she lived in. She thought part of the reason for the discussion at hand was to strike a balance; to determine the direction to go, which she thought the Committee needed to come to consensus on, and to determine the parameters to start so Staff could craft a draft ordinance.

Councilor Johnsen appreciated all the work brought forward. She understood that our City is only so big and therefore there are only so many opportunities. Still, she was looking at the fact that new young people are bringing a lot of life to this City and she hopes this conversation does not discourage that. She thought there must be a way to find a balance and change within the City as it grows.

Chair Bosley spoke to Mr. Blomquist's point, while this is a discussion about how the City might assist individual businesses, but she said that as a whole, it is the energy of the downtown that is of interest to this Council. She said that when empty, the Main Street is cold and barren, big and wide, and unwelcoming. Whereas when everyone is outside the downtown feels alive again. The Chair encouraged that ongoing feeling for our community.

Vice Chair Giacomo he said that like the Arts Core meeting the previous week, this would also be about drawing people onto side streets where the parklets would be, widening the scope of what is considered the downtown. This would draw patrons to businesses on side streets they might not know.

Chair Bosley opened the floor to public comment.

Mayor George Hansel said this was an important discussion but is one that can never make everyone happy. By looking at this, Mayor Hansel said he would likely not vote on this issue, but said the Committee would need to look at balancing needs and reducing conflicts. The Mayor strongly endorsed the Council taking the avenue that Staff had laid out by looking at the width of sidewalks to keep this as simple as possible and limited at first. The Mayor had heard from several constituents concerned about losing parking on Main Street. Mayor Hansel also asked the Committee to consider the upcoming Downtown Infrastructure Project, which is focused on Main Street. He said that project could not make everyone happy but would try to accommodate people over time; some areas have obstructions, while wider sidewalks could be reconfigured to accommodate more outdoor dining. The Mayor's advice for now was to make this an exception at first focused on the limited areas with exceptionally narrow sidewalks that inhibit business growth.

He reiterated constituent concern for losing parking on Main Street in front of multi-floor buildings.

Councilor Mitch Greenwald said that the way this agenda item was being handled put him in an awkward position. Councilor Greenwald has a conflict of interest on file as the property manager for 32 Central Square, which was primarily why he was present to speak, yet he wanted to reserve his right to discuss the overall ordinance as a City Councilor. The City Attorney suggested that Councilor Greenwald stay for the next agenda item. The Councilor clarified that he was speaking as a property manager in our City, and as such was opposed to this specific request as an advocate for his building, which opposes this specific request. The Councilor said the second-floor offices of 32 Central Square do not have adequate parking. He said Central Square is a heavily used parking area, the businesses need parking for their clients, and the loss of three parking spaces is very detrimental to the businesses. As the owner of the building, he said this would only benefit the applicant and not any other downtown business. He agreed with the potential vibrancy and energy it could bring downtown and said he would want this too as the owner of the restaurant; he applauded their design. Still, he reminded the Committee of the second-floor offices and third floor apartments all over downtown that need this parking that is under attack, which Councilor Greenwald stated that he would fight on their behalf to preserve.

Councilor Andrew Madison viewed this as a way of leveling the playing field for some restaurants down the side streets off Main Street. Many of the Main Street restaurants have very wide sidewalks and patios that have been maintained and upgraded by the City at taxpayer cost. He said those restaurants are able to use those resources for the benefit of their business. He saw allowing restaurants such as Machina ArtBar on the side streets the access to similar patio space, as leveling the playing field so they can compete with Main Street restaurants.

Councilor Williams stated that he loves this idea and thought it would make the downtown vibrant. He understood the concern for less parking but suggested investing in other ways of getting people downtown, such as on foot with quality sidewalks, with public transit, and on bikes with bike lanes available downtown. In the case of these specific parking spaces, Councilor Williams thought the highest and best use would be to have them help businesses make an income and prosper.

Jodie Newell of 32 Railroad Street loves the idea of parklets, she thinks it has worked out well. She echoed other comments about wanting the kind of community with people and neighbors in the streets.

With no further public comments at the time, Committee discussion ensued.

Councilor Johnsen said she was going to be personal. When she and her husband moved to Keene in 1993 for her to teach at Keene State College, one of the things they loved immediately was the people outside in the summer, which they never experienced before. They cherished it because they never felt old, and they liked to be around the energy of young people. Councilor Johnsen said

there is a whole constituency who might be similar and want to be amongst the spirit of people downtown as she does, and as she knows her late husband does in spirit.

Councilor Bosley thought she heard consensus on wanting to move forward having the City Attorney draft an ordinance. Having confirmed a consensus, the Chair asked the Committee to provide direction and suggestions to Staff.

Councilor Giacomo presented to the Committee, City Manager, and City Attorney copies of research he had done into three other communities nationwide with parklet ordinances: Richmond, VA, Spokane, WA, and San Francisco, CA, which he called the original parklets. He presented this research to City Staff outlined as the numbers and guidelines for building parklets for all three cities on one sheet for comparison; there were 15–20 elements listed under these two areas, such as distance to corners, which all three cities agreed should be 20 feet. Vice Chair Giacomo said it was likely that more major cities in the U.S. have parklet ordinances than cities without them, a lot of which he said was due to Covid-19 but now many are finding that codifying to keep parklets was critical because of statistics on outdoor dining during Covid-19: NY City has 9,500 restaurants and 6,000 has on-street dining of some form, which became problematic. He noted that jersey barriers were not the norm for the three sample cities, noting that the barriers are a divisive issue in Keene. He said most of the cities has a soft-tip post at the corners with rubber wheel stops, essentially creating a rubber curb 3–4 feet from the edge of the parklet for protection. They also have guidelines restricting parklets to areas less than 25mph. Based on his research, Vice Chair Giacomo presented to Staff some initial conservative numbers that Keene might be able to begin with. The Committee thanked the Vice Chair for all of this work. The Chair added that this Committee puts their all into this work and it shows.

Chair Bosley continued noting that she has had many conversations with Staff about this and she thanked the Mayor for reminding her of the upcoming Downtown Infrastructure Project Steering Committee. The Chair said she would have lobbied initially for Main Street restaurants that she knows do not have adequate café areas to be able to have access to this ordinance; she hoped that would be addressed instead in the Downtown Infrastructure Project if not in this ordinance, looking at accommodations for outdoor dining in places where restaurants have turned over throughout time. The Chair said her biggest concern was limiting the maximum number of parklets possible in the City. She thought a small test number was needed and that there needed to be a way to make the City whole financially, and to ensure that safety measures are met. She saw someone parked in an outdoor dining location while it was not in service in Keene and she read an article where an elderly person drove through planters into a parklet, killing individuals; she does not want Keene's parklets to be overshadowed by a tragedy. She was not a fan of jersey barriers and did not want Main Street to look like it is under construction, she wants it to be a beautiful place everyone wants to go.

Councilor Jones asked if the City Attorney wanted suggestions for an Ordinance. The City Attorney reiterated the Mayor's advice to follow all of the Staff suggestions regarding locations and sidewalk widths. The City Attorney asked if the determining factor of where these parklets

could work was sidewalk width. Chair Bosley replied that personally, she would look at sidewalk width and availability of potential café licenses as well. She said there were many ways to approach this, and she does not want businesses with access to café licenses also being allowed parklet permits. She said the details would be important, as would the exact methodology Staff uses to determine the number of available parking spaces for parklets. The Chair wanted this limited to businesses that do not have access to current options.

Councilor Jones recalled that for café licenses, the Council approves the license the first year and then the license is approved administratively in the following years. Alternatively, if this ordinance were adopted, he wanted businesses to be reappraised each year by the City Council, not administratively because things change. The City Attorney said the Ordinance would not spell out specifically where parklets go, rather it would outline the parameters required for placement, so the ordinance does not have to change in future years. It was the license not the ordinance that Councilor Jones wanted to see before Council annually. The only pushback the City Attorney had for the Council approving these parklets annually was that the criteria for a parklet were meant to be objective and the City Council is a political body. Still, this choice is at the Council's discretion. Chair Bosley asked if there was a new licensing review board and the City Attorney replied in the affirmative, however, it is specific to congregate living facilities. The City Attorney confirmed that the board in question could not hear objections to licenses regarding sidewalk cafés or parklets the way it was constructed currently. The City Attorney pointed out a general licensing appeal process within the City Code of Ordinances, which goes to a Committee of three: the City Clerk, City Manager, and Police Chief. Councilor Jones said the process of revoking a license is the Council's. The City Attorney said it depends, the licenses is revokable but only should be for certain reasons and violations and thus putting revocability in the City Council's hands makes it a political question and no longer objective. He said that a license is essentially a property right, which is why an appeals process exists to ensure those rights are properly due processed in the case of revocation. Currently, if a license had been issued for the parklets and there was some dispute or need for revocation, the applicant would go to the appeal Board of City Staff, which would determine whether the action was appropriate. The City Attorney cautioned the City Council against changing that.

The Chair asked whether there could be a potential policy and permit application accompanying the draft ordinance. The City Manager replied in the affirmative. The City Attorney said an application would need to be drafted; first the ordinance would be drafted, second the description of required safety permissions would be drafted, and the third step would be working on all of them simultaneously.

Councilor Jones wondered if there could be a notification process to residents within a certain number of feet from a proposed parklet indicating that an application is coming before the Council. The City Attorney cautioned Councilor Jones against public notices that are not required by law. Doing so can set a precedent and then if someone were overlooked in the process and not provided notification, the action could be overturned by the courts. Thus, the City has avoided such notifications. However, the City Attorney recalled that this is a public process and he returned to

the Councilor's point about license renewal, which is something they struggled with on the congregate living licenses. He was hesitant for such notices but said the Council could consider some mechanism to notify the public about what is happening in these areas rather than sending specific notices.

Councilor Ormerod heard discussion about wanting to move quickly and decisively on what we can do now. He also heard interest in making this provisional or temporary, to then reevaluate what has worked or not. The Councilor requested clarification on what it meant to "limit," whether it was based on time or the number of spaces. The City Manager replied that she believed they were referring to restricting the ordinance language in a way that would limit the number of parklets possible in the City and therefore limit the number of parking spaces removed from the system. She said the way it was proposed currently was based on the sidewalk width and that issue is primarily on the side streets. So, the City Manager said it was more of a limiting factor of where these would be located and a potential maximum number of parklets that could be approved in a year. Councilor Ormerod said that would limit the physical space so that if something went wrong, the situation would be limited; the City Manager was not saying that there would be a sunset after one year and if it goes wrong, they do not have to live with it. He said it is a licensing issue and not a City Council issue. The Chair also thought some aspect of continuity was important for applicants potentially investing a lot of money into structures. The City Attorney said that hopefully the limitation—for lack of a better word—is based on the objective criteria put into place for the number, and if the number is greater than expected they would need to have that discussion. The City Attorney believed the criteria would become self-limiting.

Vice Chair Giacomo was grateful for the City Attorney's comments that the criteria would become self-limiting, which was obvious to the Vice Chair just with the abbreviated criteria he had researched in the four locations identified by Staff. He added other limiting factors like crosswalks, intersections, driveways, fire hydrants, and manholes. He agreed it would be self-limiting. He said that once all the safety decisions were made, the City's GIS Technician should apply them to a City map to visualize what areas actually fit the criteria. The Vice Chair was interested in the number of parking spots that could be lost if this were limited to only parallel parking.

Chair Bosley recognized Mayor Hansel, who wanted to emphasize the importance of specifying sidewalk distance, which he said becomes extremely objective when all other considerations are stripped away. He said the reason for specifying that distance is because these are mostly places where someone could apply for an outdoor dining license now, except doing so would narrow the sidewalk to prevent free wheelchair passage. He said specifying that as a requirement, it would drastically limit the number of places that parklets could go. He said it would also solve a problem if thinking about this from the perspective of harm/conflict reduction. Mayor Hansel continued that this was not about arbitrarily picking winners and losers, or picking one business to be more successful than another, but rather creating a safer environment for people of all abilities to move freely throughout the public right-of-way.

Councilor Jones recalled when the sidewalk café licenses were first initiated and noted problems during the second year, and the Liquor Commission informed the City that they could make certain restrictions for each license. Councilor Jones said the City Attorney was making it sound like it had to be generic. The City Attorney said to remember that the case Councilor Jones cited had its own parameters of needs, necessity, and authority for serving liquor in a public space. In that context, the City Attorney said the Liquor Commission has rules. The City Attorney thought the answer to the Councilor's question was two-part: (1) the license for the parklet must originally be based upon some objective criteria for placement, and (2) regarding a specific license, the characteristics of the particular site must be considered (e.g., ADA compliance and barrier needs). The City Attorney said those are the criteria for consideration in issuance of the license and there may be situations where one specific license requires criteria that may be different than another license issued.

Councilor Johnsen noted how patient the applicants had been through this discussion and asked how they felt about what they heard.

Chair Bosley recognized Danya and Walker Landis. Ms. Landis thanked everyone for the work involved and the consideration. She was grateful to say they were flexible and urged the Committee to read their plans and design ideas. Regarding infrastructure, she said they tried to take into account things like cleanliness, drainage, and ADA requirements. They proposed planters instead of jersey barriers and they were happy to have design conversations with the City. Ms. Landis said it was important to remember, as Chair Bosley noted, that the Landis' planned to spend \$10,000–\$15,000 on this parklet and therefore did not want to see this be a one-year limit, which she said would not be worth it to them; they need to make their money back and make this a viable business option. The Landis' are very open to working with the City and were grateful for this conversation. The Chair thought the Committee was operating with more confidence this time about what they are allowed to do. Mr. and Ms. Landis agreed. The Chair recalled that this would still require a full Council vote. Ms. Landis appreciated Vice Chair Giacomo providing the examples because there are a lot of great ones they have considered.

Hearing no further discussion, Chair Bosley entertained a motion. The City Attorney noted a Scribner's error in the draft motion referring to the City Manager. Vice Chair Giacomo made the following motion, which Councilor Jones seconded.

On a vote of 5-0, the Planning, Licenses, & Development Committee directed the City Attorney to prepare an Ordinance based upon the Committee discussion to authorize the placement of "Parklets" in designated areas on public street(s) to allow for expanded outdoor dining.

Chair Bosley asked if the Committee needed to act on the applicant's letter, placing it on more time. The City Attorney said no, he would file the letter into the record.

2) Rules of Order – Section 15 – Conflicts of Interest – City Attorney

Chair Bosley said the Committee had been provided a red-lined update to Section 15. She stated that she spoke with the City Attorney herself about the matter of personal interest.

The City Attorney said that despite the evident red lines and highlights, the changes were not substantial. He continued that the areas for consideration were highlighted in yellow. He referred to the first change at the beginning of the second paragraph and the matter of whether receiving campaign (or other) contributions would be a pecuniary interest. The City Attorney emphasized that the conflict of interest must be regarding something that is *actually before the City Council*; it is something the Council must act on or discuss. Thus, if there is a matter before the City Council that it will act on, and a Councilor has a pecuniary interest in that matter—and therefore a financial interest in themselves—then it is a conflict of interest, and the Councilor should announce it and place it to the City Council’s vote.

The City Attorney said the second change at hand was regarding personal interest and based on his conversation with the Chair, he tried to make this language simpler and more direct. He continued that he removed the “non-pecuniary interests” because it was confusing. The language goes on to say, “A personal interest is any interest of a Councilor in the outcome of a matter or an issue which will provide a financial benefit to an individual, group, or organization,” which the City Attorney said means that there is a matter before the City Council and a Councilor has some interest—not a direct financial interest. For example, if a Councilor were the member of the board of an organization that is being considered for funding during the budget process, that would be a personal interest that the Councilor should announce for Council decision. The City Attorney said the language was written more broadly before, referring to personal interest in any context essentially, which he agreed with the Chair was not the intention. The underlying issue with conflicts of interest is financial benefit to a Councilor or an immediate family member that is not available to the City as a whole.

The City Attorney said the third change was to the matter of “A Councilor's spouse, parent, child, or other member of the Councilor's immediate family *living in the same household* has a financial interest.” The City Attorney said he added that language based on the discussion at the last Council meeting because if any one of those individuals living in the household has a financial interest, then the Councilor likely knows of it and should identify a conflict. However, this change was at the Council’s discretion. The City Attorney personally preferred striking “living in the same household” and just leaving it to immediate family because, for example, if the Council is voting on a contract and a Councilor's parent who does not live in household is the owner of the company under consideration, the City Attorney did not consider it proper for the Councilor to vote. Thus, the City Attorney suggested striking “living in the same household.”

The City Attorney said the final change was in the last paragraph, clarifying that for the statement of interest, “Identifying for the Mayor and for each Councilor and person in the immediate

family’s employer.” Then for the Mayor and each Councilor only, to identify “the boards and commissions or organizations that they may be a part of.”

Chair Bosley felt this language has been refined once again and that it was more cohesive. She heard questions from the Committee about the red line changes.

Councilor Jones liked the changes, stating that they were a little better. Still, he prefers no changes at all because he likes the old way of doing it that worked for more than 50 years: when someone had an issue, they would bring it forward and the Council voted. He recalled a change a few years ago for a unique situation when the Mayor was negotiating with the City on behalf of someone; the change confused some Councilors and initiated this process. Councilor Jones thought that issue could have been settled easily at the time. He still believes that if any Councilor feels that another Councilor has any conflict, then they should just bring it forward. The City Attorney stated that Councilors could still do so under this change. He appreciated Councilor Jones’ comments and said this was another opportunity for him to emphasize that this was a policy question; the City Attorney was asked to help draft these rules, which he is happy to do. He said Councilor Jones was right that the City Charter does have a conflict of interest provision, which was essentially based on pecuniary interest. Then the fiduciary issue arose, which confused people.

Chair Bosley wanted to point out that she had personally championed some of these changes because early in her Council career she witnessed a fellow Councilor (non-maliciously) advocate additional funding for an organization—for which they served on the board—during the budget process, without announcing a conflict. Chair Bosley was green at the time and did not know her responsibility in that context. Based on such situations, the Chair would like such information (i.e., boards and commissions) to be public for transparency and to keep people honest; she said people do not always do what you expect. Councilor Jones recalled the instance the Chair had cited and said that information should have been disclosed. For instance, Councilor Jones sits on the Board of Directors for Pathways for Keene and asked what would happen if they came before the Council for a license to use City property or for community event status. The City Attorney said neither instance would not apply, which was why the language in the body of the paragraph discusses a financial benefit to the individual group or organization, which a license does not do. If voting on the budget and money is going to that organization the Councilor is on the leadership for, that would present a conflict. In response to Councilor Jones, the City Attorney confirmed that community events are not considered because they would still have to vote on that budget.

Councilor Johnsen stated all due respect to Councilor Jones, whose comments she always appreciates, but she disagreed. Councilor Johnsen sees this as a living document and thought the City Attorney has worked hard to clarify the language, which keeps the Council up to date.

Councilor Ormerod pointed out the end of the second paragraph, and the discussion of whether to use “immediate family” or “same household.” The Councilor wanted clarification: in the instance that they would strike “living in the same household,” he presented the situation of his three brothers, two sisters, and three children—many of whom are employed, and their companies do

not conduct business in this City or state. Councilor Ormerod asked if he needed to acquire all of their personal employment information to disclose for the statement of interest. The City Attorney said that was a valid question and his reaction was that it would be good to add limiting language indicating immediate family that lives in the area. He now saw some logic in including “living in the same household,” as limiting language. Councilor Ormerod agreed and said he preferred to keep that language. The City Attorney continued referring to Councilor Johnsen’s comment about a living document, and the City Attorney said that ultimately it is the City Council who decides whether someone has a conflict of interest, and he cannot cover every possible situation in this document. The City Attorney stated that he had changed his opinion and no longer suggested striking “living in the same household” based upon the Councilor's example and Councilor Ormerod agreed. The City Attorney said that if a contract were before the City for a Councilor's parent who owns the associated company but does not live in the same household, the City Attorney said it was still the Councilor's obligation to disclose, even under this language.

Chair Bosley welcomed public comment.

Mayor George Hansel stated his believe that the statement of interest should be limited to the individual and not their family. He said all the Councilors run for these positions and agree to have their information available as public figures, but their family members do not sign-up for that. He said that if family members were included, he asked that they be anonymous (e.g., sister works here vs. listing a name). Mayor Hansel hoped they would not be required to list names and occupations on the statement of interest for family member that did not sign-up for it.

Chair Bosley spoke to the Mayor’s points, noting when she had a conflict of interest based on her spouse’s employer. She appreciated the draft language because it would put her in an awkward situation to not approve funds being requested by her spouse’s employer, which could have a negative impact on his employment status. So, she appreciated that this language left her some protection from such a situation. She asked how that could be extended to protect family members too in this statement of interest; was there an easy way to accommodate that?

Vice Chair Giacomo suggested adding something that stipulates locality, which is hard to define. Ultimately, the Vice Chair agreed with the City Attorney that at the end of the day, it is up to the Council to decide whether a conflict exists. The Vice Chair suggested keeping “living in the same household” and adding limiting language about those living within the locality. He also referred to the issue of spouses, who he said are very often tied financially. Something that directly impacts money his spouse would get from the City could obviously impact the Vice Chair. Thus, he agreed that spouses should be included. However, he did not agree with the rest of the family members listed. The Vice Chair appreciates that some people’s parents are local and involved in the community but thought that was something a Councilor would have to disclose on their own.

The City Attorney felt that two things were being conflated. He said that the first paragraph defines that for those individuals (spouse, parent, child, or other family member), the City Attorney suggested keeping “living in the same household” because if they have a pecuniary interest in a

matter then the conflict is clear. What he thought they were conflating was the statement of interest. The City Attorney did not necessarily disagree with the Mayor that family members did not run for office. Thus, he said that language could be stricken to just read, “For the Mayor and each Councilor, the person’s employer...” The City Attorney said a spouse or parent’s employer does not need to be disclosed on this statement of interest because their pecuniary interests are already addressed in the first paragraph. Chair Bosley was comfortable with that change because it would satisfy her reasoning to have Councilor's be transparent. The City Attorney suggested striking “for other persons in the immediate family, the person’s employer.” The Chair agreed.

Vice Chair Giacomo said he still did not love the language. He agreed that a spouse is the pecuniary interest of a Councilor and agreed with declaring that. He appreciated the Mayor’s point that he was the one that ran for office, not his family members. However, the Vice Chair said that if those family members are contributing to the household, he did not understand why that would not be declared as well.

Councilor Jones thought the Committee could go on and on with this. He recalled a situation of a real estate investment before the Council. Councilor Jones said that when he heard the entity was looking to develop in Keene, he immediately sold his stocks in the company. He asked if it would have been a conflict of interest had he not sold. The City Attorney said he would need to know more detail; just owning stock in an entity is not an issue unless that entity is requesting something from the City Council that would benefit the entity and perhaps increase its stock price, in which case the Councilor should declare that.

Councilor Ormerod reiterated that the first paragraph should be strong enough in declaring a conflict of interest if a spouse is employed by an entity that could benefit from the decision. The City Attorney said that is stated in the first paragraph. The Councilor agreed that it was stated strongly. Whereas from the privacy standpoint, he thought that not having the spouse’s employer listed on the statement of interest was nothing more than a filing matter. Councilor Ormerod wondered if Councilor Giacomo’s point could be incorporated by strengthening subsequent language by stating that the Mayor or Councilor's spouse be considered? The City Attorney replied that it is stated already when it says that spouses’ pecuniary interests must be disclosed in a potential conflict, whether listed on a statement of interest. The City Attorney expressed frustration because he said at some point, the Mayor and Councilors must simply act ethically, and this document could not be drafted in a way to ensure that happens.

Chair Bosley said that creating a statement of interest was a step in the right direction toward creating transparency, which was sufficient for her. She thought it was clear that if someone’s spouse, parent, or child has a pecuniary interest then Councilor's are obligated to disclose. She thought the statement of interest was a foot in the for transparency and accountability, which she said was most important, not knowing where spouses work, which she was fine striking.

Vice Chair Giacomo said he conceded and was on board with what the Chair was saying. While he had only been a Councilor for a short time, the Vice Chair stated that he had “seen some very

seriously unethical things, so forgive me if I don't have the inherent trust." He said we have to trust our Councilors and he was comfortable striking family's personal interests on the statement of interest.

The City Attorney clarified that the last paragraph of Section 15 on statement of interest should read, "For the Mayor and for each Councilor, the persons employer, and for the Mayor and each Councilor the..." The Chair confirmed.

Chair Bosley opened the floor to public comment.

Councilor Andrew Madison agreed with removing spouses and immediate family from the statement of interest. He said he appreciated the City Attorney stating that the Mayor and Councilors must act ethically and use their common sense and intuition if something does not feel right. He added that the Council must trust each other. Councilor Madison stated that he supported the proposed changes. He continued asking the City Attorney about his specific employment in an enforcement capacity for the State of NH, through which his obligations to the State could cross with his obligations as a City Councilor. Councilor Madison assumed he would just discuss those matters with the City Attorney when they arise. The City Attorney said that in such situations the Councilor should call the City Attorney to discuss. However, in the situation the Councilor posed, the City Attorney said that the Councilor has a pecuniary interest in keeping their job and therefore, if a State matter conflicted with an action by the Council, it would be an instance for the Councilor to recuse.

Chair Bosley addressed a question from Councilor Madison made at the last Council meeting about campaign contributions. Councilor Madison agreed that he asked whether campaign contributions should be included on the statement of interest. The City Attorney stated that would be a whole different conversation because there is a whole Statute on campaign contribution disclosure. Because of Councilor Madison's question, the City Attorney tried to narrow the language about conflicts being very specific to actions before the Council. So, although an entity might give a campaign contribution, unless the Council were dealing with a specific request from the entity, then the City Attorney did not see a conflict to disclose.

Councilor Madison said he brought it up because he foresees it as a future problem. He stated that in the last few City elections, a lot of outside funds were poured into local campaigns. As both a Councilor and a citizen, Councilor Madison found that very concerning. He said that there is a publicly searchable database of campaign contributions from the Secretary of State because many offices must disclose, like the Governor; there is also one federally through the Federal Election Commissions. He said that historically, local elections required some signs and energy to walk door-to-door. Today, he said a lot of political groups and individuals are pumping a lot of money into local elections. Councilor Madison looked at the Secretary of State's Office for campaign information for three individuals who had run for local office, of which only one was available for Mayor Hansel, which he called concerning. With less grassroots financing in Keene, Councilor Madison thinks the citizens should be aware of the outside sources supporting local candidates.

Chair Bosley acknowledged everything Councilor Madison said and agreed that it was an important conversation. She said that when the words “campaign contribution” arose at the Council meeting, many in the room were less than content, which almost sent the whole conflict of interest matter out. She said this has been before this Committee many times to refine the language and make it better, and now it is at a place she feels good about; she feels it is transparent. The Chair also thought that Section 15 now gave a perspective on what a conflict of interest is, and she hoped that the Council would understand that campaign contributions should have their own separate conversations, without attaching it to Section 15 so the hard work does not move forward. Councilor Madison stated his agreement that it does not belong in this Section. The Chair said it was an important topic, nonetheless.

Hearing no further public comment, Chair Bosley entertained a motion from Vice Chair Giacomo to recommend the adoption of City Council Rule Section 15, Voting and Conflict of Interest, as amended by the Committee, which was duly seconded by Councilor Ormerod.

Councilor Jones stated that he has a different work situation from others, with multiple 1099's. While he appreciated the changes and liked them, he still liked the old way better and did not think the Clerk's office should be the police of this statement of interest. Thus, he said he would vote No, but appreciated the work put into this. The City Attorney stated that all Councilor Jones must disclose on the statement of interest is that he is self-employed, nothing further. Councilor Jones stated that he still saw a potential conflict. The City Attorney understood the Councilor's point but referred again to the first paragraph, which indicates that if a 1099 that Councilor Jones works for is before the City Council and wants Councilor Jones to do something, that is a conflict. Councilor Jones said exactly.

On a vote of 4–1, the Planning, Licenses, & Development Committee recommended the adoption of City Council Rule Section 15, Voting and Conflict of Interest, as amended by the Committee. Councilor Jones voted in opposition.

3) Adjournment

There being no further business, Chair Bosley adjourned the meeting at 8:06 PM.

Respectfully submitted by,
Katrinya Kibler, Minute Taker
April 1, 2022

Edits submitted by,
Terri M. Hood, Assistant City Clerk