

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, September 7, 2022

6:00 PM

**Council Chambers,
City Hall**

Members Present:

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

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Amanda Palmiera, Assistant City Attorney

Members Not Present:

All Present

Chair Bosley called the meeting to order at 6:00 PM.

1) Keene Kiwanis Club – Request to Use City Property – Tree Lighting Ceremony

The applicant was not present, so Chair Bosley requested comments from Staff. The City Manager, Elizabeth Dragon, reported that there had not been a chance for the appropriate protocol meetings to occur, so she recommended placing this on more time to allow those meetings.

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

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends that the request for use of City property for the tree lighting ceremony be placed on more time to allow the protocol meetings with City staff to occur.

2) Relating to Amendments to the Land Development Code – Rural District and Conservation Residential Development Subdivision Regulations – Ordinance O-2022-09-A

Chair Bosley requested comments from the City Attorney, Thomas Mullins. The City Attorney reiterated that this was not another opportunity for further public comment. He continued explaining that subsequent to the public hearing on September 1, he discovered that the public hearing notice was defective per State statute. The notice did not include the statutory requirement for a specific statement to be included designating the place where the proposal is

on file for public inspection. While there was a link in the notice with the Ordinance on the website, that was insufficient per RSA 675:7. II, which recognizes that not everyone has technology access and therefore it should be on file physically. He said the case law on the matter is clear, including a 1988 case where the court looked at provisions—despite amendments since—which has essentially the same restrictions today. The court says statutory needs must be complied with and in that 1988 case, the lack of appropriate public notice caused the subsequent zoning in that case to be void, which Keene wants to avoid.

The City Attorney stated there were two solutions to this matter: 1) re-notice the public hearing and hold it again, and 2) Staff recommended this options to recommend to the City Council to return the matter to the Joint Committee of the Planning Board and Planning, Licenses, and Development Committee for another public workshop that would allow more participation, with a subsequent public hearing on the Joint Committee’s decision—including whether to split this question. It is not possible to vote on this Ordinance at this time.

Chair Bosley did watch that public hearing live and said it was great to see the public participation. However, it was not a forum to discuss and ask questions, which another Joint Committee workshop would provide the opportunity for. She agreed with the Staff recommendation to send this back to the Joint Committee workshop phase to hopefully find a resolution.

Councilor Jones agreed with sending it back to the Joint Committee given that 15 people spoke in opposition at the public hearing. The Joint Committee workshop allows a less formal conversation, but an opportunity to discuss the various sections proposed that people have issues with, in the proper venue.

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

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Council refer Ordinance O-2022-09-A back to the Joint PB/PLD Committee for a discussion regarding separating the issues in the Ordinance.

Chair Bosley invited those present for the matter to attend the public workshop. This would go to Council on September 15 to be referred to the Joint Committee meeting the second Monday of October.

Councilor Jones recalled that when this goes to Council, they could decide to move forward with the Ordinance. The City Attorney would strongly recommend that they do not; it is not the right option.

Councilor Johnsen apologized for comments she made at the public hearing questioning where the public had been throughout this process. Her comments were made in light of the two years of work that went into the matter.

3) Councilor Mitchell Greenwald - Amendment to the City Council Rules of Order - Remote Access

Chair Bosley requested comments from Councilor Mitch Greenwald, who presented his position. The Councilor recalled a recent situation when he tried to attend the budget vote via Zoom, but despite several emails sent to the Mayor, he was denied by lack of response and therefore unable to vote on behalf of Ward Two. Upon return, it was clear to him that there is much confusion for himself and others as to who should be noticed when remote participation is requested. He said the more correct answer seems to be the City Clerk, but he did not see that written anywhere. He said this issue must be uniform and there should be communication about this. He cited the last Council meeting when Councilor Workman was intending to join remotely, but due to a technical issue with her internet there was no discussion or committee vote. He said the language identifying a reason for remote participation is unclear. He said it was also unclear whether the requests should be made in writing and what the deadline is. He understood that they must follow State laws for Zoom participation but he said that some of the reasons accepted could compromise someone's privacy when they must disclose, which concerns him. Councilor Greenwald continued asking for clarification as to whether participation is at the discretion of the Chair or the public body; he did not see a mechanism for that. While he hopes it would never happen, he could imagine a future Chair using this ability as a political tool to dissuade certain participation. He knew there was originally a limit on Zoom access because it could lead to "non-present" Councilor; he did not see that as an issue but said the public body could deny such request if abused. He suggested that perhaps Councilors should be allowed two opportunities for Zoom access for any reason that cannot be denied by the presiding officer, but the public body must vote on the matter. He spoke with County Administrator, Chris Coates, who said they follow State law for their meetings but overall, participation in any format is encouraged. Overall, Councilor Greenwald requested clarity and consistency in how these requests for remote participation should be delivered—to whom and by what deadline. He also asked that those remote Councilors be able to speak during deliberation. He thanked the Committee for hearing this matter a second time this calendar year.

Chair Bosley appreciated this issue because anytime something is added to the Rules of Order, it takes time for it to become clear how to use it practically and to find holes in how it is managed effectively. As Chair, she has had situations where a Councilor was approved by Council for long-term Zoom participation, but it was unclear what protocol she was supposed to follow in allowing them into a meeting—does the body still vote? She said fine tuning and clarifications from Staff would provide great guidance to Chairs. She stated that Section Four of the Rules of Order does state that requesters must notify the City Clerk 24 hours prior to the meeting, which she thinks is a workable time frame. She said that notifying Chairs seems to be less effective.

The City Attorney, Thomas Mullins, said Staff would continue working to clarify this section. He said the notification to the City Clerk was intended to ensure the technology is available in time and he suspected the Clerk did not want to be in the position of deciding who most meets the requirements for remote participation. He said to keep in mind that if language is added to permit extra reasons for absence, the matter would still go before the City Council, which could vote those changes down; this would require suspension of the Rules of Order and there would need to be consensus by 2/3 vote.

Chair Bosley said the matter becomes fuzzy in that the Council already approved two specific reasons to allow remote participation and one very unspecific reason. The City Attorney said that suspension of the Rules assumes that the term “reasonably practical” is removed because it gives the Council leeway to make decisions about why they need to be away. There could be a rabbit hole of adding reasons to the list without consensus. It is difficult to list every single item the Council might agree to. He said that if a Councilor feels their participation is important and they are willing to present the reason, then the Committee should vote yes or no. According to the current Rule, the Chair or Clerk alone could not deny participation. He continued that the problem is with the process Councilors have been using and that Staff on the fringes do not know what to do. Here is what should happen: if Councilor Greenwald notified the City Clerk 24 hours in advance, he would be automatically brought into the meeting via Zoom to make his case, which the public body would then vote to approve or deny. The Chair is simply allowed to ask for any objections, and hearing none can permit the participation. Chair Bosley asked how the requests get to the Chair and the City Attorney replied that is a part of the internal discussion needed. Chair Bosley thinks that is where they are losing people.

Vice Chair Giacomo thought Councilor Greenwald’s proposal was reasonable. The Vice Chair was one of the proponents of loosening these Rules for as much interpretation as possible, so he fully supported these changes. He thought Councilor Greenwald stated it perfectly—to allow two absences outside medical, disability, or out-of-town work. The Vice Chair agreed that Staff should be provided the time to better develop this framework.

Councilor Johnsen thanked Councilor Greenwald for bringing this forward, citing a past incident of a snowstorm when she would have liked to be able to participate via Zoom. She thinks it should be allowed for matters of safety. She does not think the tools would be abused.

Councilor Jones asked the City Attorney whether the Chair asking for objections from the Committee also happens at the Standing Committee meetings. The City Attorney replied that the Rules apply at the Standing Committee level. Councilor Jones could see this becoming a political tool. The City Attorney said there had been recent discussions on how everything is political, and nothing can be 100% foolproof; this depends upon people acting reasonably. Councilor Jones was thinking of abuse by future Councils, not the present.

The Chair said that anytime a presiding Chair allows or disallows participation based on their interpretation of the Rules, the Committee can object. The City Attorney confirmed. So, Chair Bosley said there had been situations where the presiding Chair did not allow Zoom, but the Committee was not notified or allowed to object. The City Attorney agreed that is where issues have arisen. Chair Bosley agreed that the opportunity for objection was the missing priority. She needed Staff to craft language stating that regardless of the Chair’s opinion, the Councilor must be able to attend, and the Committee must be provided an opportunity to object.

Vice Chair Giacomo agreed there is the future possibility for this to be used politically. He asked, if this is a City Clerk issue, whether the remote participation is then added to the pre-agenda materials/meeting preface asking for a vote. The City Attorney said that was not discussed internally but it is a possibility, depending on the City Clerk’s willingness. The City

Manager, Elizabeth Dragon, saw a problem with that timing because the agendas go out more than 24 hours before the meeting and this would tighten that process. The City Manager asked if there should be changes to the language on allowed reasons for remote participation because she sees ambiguity in how they are written currently, which got them in this current predicament. She recalled the challenge of ensuring there will be a physical quorum present, especially for Committee meetings. Her concern is balance that provides the option but ensures people attend when they reasonably can. The Vice Chair expressed disagreement, stating that remote participation is not an alternative to attending a meeting, it is an alternative to not attending a meeting. It provides people who would normally be absent the chance to still participate. He is not sure that is how the Council viewed the original language. He thinks cleaning up the processual issues is necessary with clarifying language on who should be notified.

Chair Bosley recalled the challenges in amending these Rules originally. It was a tough conversation to arrive at the present Rule. She does not want to open a can of worms and is concerned with trying to give the full Council another opportunity to amend this Rule. If the Council refuses to adopt the amendments, it will take away the policy and revert to this Rule. If allowed to start changing the reasons already listed, she saw it open to Council amendments.

Councilor Ormerod did not think it was necessary to specify the number of times and all the reasons. Rather, he said it was more important to specify the process for the Chair as the facilitator and that they must hear the reasons and allow a vote. He thinks if that is clarified, the reasons would not need to be debated at full Council.

Councilor Greenwald appreciated the discussion and freethinking. He added that he chose the two absences because Councilors still get paid after missing two meetings. But he asked if those absences would apply at the Committee level too. He agreed with Councilor Ormerod to not make this too narrow and list all reasons or even a number of times allowed because if people abuse it, they will be denied by vote. He said they were thinking of future Councils that could tighten the Rules on their own. If someone abuses this, there is a process built in to correct it, and voters would likely take notice and act accordingly. He thought there was already a Rule that allows recalling a Councilor if they miss too many meetings. Councilor Greenwald suggested this as opposed to eliminating all Zoom participation.

Councilor Johnsen said that when this was brought up before there were three Councilors that were very didactic and while it is a respectful Council, sometimes people got their feet stepped on. She thinks that if Councilor Greenwald is traveling with his family and notifies the City Clerk in advance, he should be allowed to be brought into the meeting. She did not think it was necessary to think about future Councils that could take care of themselves. She said the Council had something at its fingertips and she cited how well remote participation works for other City Committees. She asked if remote participants could vote and the Chair replied in the affirmative. Councilor Johnsen was in full support of Councilor Greenwald's proposals.

Councilor Greenwald asked if this would apply to other City Committees. The City Attorney said no, this only applies to the Council and its Standing Committees. For the Joint Committee, he suggested that because the two boards have different rules, the PLD Committee would have to

vote to make a decision to allow remote participation of its members separate from the Planning Board, which this Rule does not apply to.

Chair Bosley welcomed public comment.

City Councilor Michael Remy was one of the Councilors who initially brought this forward as a great way to encourage participation and representation of those who might not be able to attend. He could agree with some limitations on the reasons allowed but he agreed with Councilor Greenwald that it should be self-managed. He thinks using the term “reasonably able” would suffice. The Council should not be the judge and jury of whether a person is reasonably able.

The City Attorney recapped. Councilor Greenwald made a specific request, and the City Attorney will work to incorporate those changes into the Rules for Council review and further discussion if needed. The underlying issue from the City Attorney’s perspective is the assumption made in the process because this is not an individual Chair’s or Mayor’s decision, and that aspect got lost in the language. When the City Attorney rewrites this, he will spell that out in more detail. He knew it was difficult to open these permissible reasons issues, but that is what Councilor Greenwald requested and the Council can decide whether it wants these changes.

Chair Bosley recalled that the Committee has the authority to make specific requests from Staff and she did not hear anyone from the Committee state that they wanted to remove the two reasons that would always be primarily allowed—medical and work travel. She asked if the Committee wanted to maintain “at the reasonable discretion of the body” and then the Council could authorize or vote to add a preauthorized number of Zoom uses. Councilor Greenwald recalled that his communication called for only two permitted remote participations when they are not reasonably available, but he was not demanding that be incorporated. He preferred a compromise and liked Councilor Ormerod’s suggestion to let the body make the decision without a preauthorized number of times allowed. Councilor Greenwald suggested massaging the language for reasonable discretion.

Regarding the Rules of Order, the Vice Chair asked the City Attorney if any discussion was allowed on these votes to allow remote participation. The City Attorney replied that is something the body could determine itself. Robert’s Rules of Law apply in the absence of a Rule, so he could draft debate or discussion into the proposed change. The Vice Chair thinks the opportunity for debate and discussion would help to dissuade abuse of this privilege. The City Attorney confirmed there is space for Committee discussion and deliberation but said there is the law of unintended consequences from debating every personal reason for remote participation, which he suspected fell under the reasonable discretion standard. He imagined the Council would never debate a disability or medical issue, but he still offered caution. The Vice Chair said people should be trusted and extra language was not needed.

Councilor Johnsen said the Council is full of 15 adults who want to be present. She noted that it is foolish to abide entirely by 200-year-old rules because this is today. She was unsure whether additional reasons should be added, but she did not want people to abuse it. She thanked Councilor Greenwald for bringing this forward.

Chair Bosley thought Councilor Johnsen was like a lot of Councilors who thought that was the appropriate process, but it sounded to the Chair like someone who had the authority and Staff could come up with something processual, perhaps via the City Clerk.

The City Manager said the Council or Committee had the full authority and the requester would automatically be brought into the meeting once a request has been made to the City Clerk.

The City Attorney confirmed he was not changing the language of any numbers or reasons, which the Council could choose to do. Rather he would be clarifying the question of these items needing full Committee vote to allow remote participation.

While he suspects that most of these votes on participation would be 14–0, Councilor Remy suggested requiring a 2/3 majority vote to dissuade any abuse for political reasons. If that majority of the Council thinks the request is reasonable, then it likely is. This would eliminate the issue of close votes. The Chair asked the City Attorney whether the Council has the power to impose that 2/3 majority requirement. The City Attorney said that the Council has control over its Rules, besides those that require a majority by State law. A super majority action for denial could be written into these Rules. Councilor Ormerod supported the 2/3 majority suggestion because it is biased toward acceptance. It is a reasonable approach.

Councilor Jones asked if a Committee vote was split between four people, what would happen. The City Attorney replied that the requester would automatically be allowed to participate in such an instance.

Councilor Greenwald asked the City Attorney to better document if and when the requester can vote.

Hearing no more discussion, Chair Bosley entertained a motion from Vice Chair Giacomo, which was duly seconded by Councilor Jones.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends placing the request for an amendment to the Rules of Order regarding remote access on more time to allow City Staff to develop proposed language to Section 4, considering Councilor Greenwald's letter and the PLD discussion.

4) **Adjournment**

There being no further business, Chair Bosley adjourned the meeting at 6:57 PM.

Respectfully submitted by,
Katrinya Kibler, Minute Taker

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