



PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
Council Chambers A, Keene City Hall
December 13, 2023
6:00 PM

A. AGENDA ITEMS

1. Relating to Amendments to the Permitted Uses in the Downtown Core, Downtown Growth, and Commerce Districts Ordinance O-2023-16 - Joint PB/PLD Committee
Memorandum - Community Development Director
Ordinance O-2023-16-A
2. Relating to Amendments to the City of Keene Land Development Code, Definition of Charitable Gaming Facility
Ordinance O-2023-17
Memorandum - Community Development Director
Ordinance O-2023-17-A
3. Execute Lease for Airport Hangar - Airport Director
4. PowerPoint - Airport Brand Strategy and Marketing Plan

B. MORE TIME ITEMS

1. Keene Young Professionals Network – Request to Use City Property – 2024 Taste of Keene Food Festival

NON PUBLIC SESSION

ADJOURNMENT



CITY OF KEENE NEW HAMPSHIRE

ITEM #A.1.

Meeting Date: December 13, 2023
To: Mayor and Keene City Council
From: Jesse Rounds, Community Development Director
Through: Elizabeth Dragon, City Manager
Subject: **Relating to Amendments to the Permitted Uses in the Downtown Core, Downtown Growth, and Commerce Districts Ordinance O-2023-16 - Joint PB/PLD Committee**

Council Action:

In City Council December 7, 2023.

Referred to the Planning, Licenses and Development Committee meeting.

Recommendation:

A motion was made by Councilor Bosley to amend the definition of Charitable Gaming Facility to include the definition of Commercial Hall under New Hampshire RSA 287E. The motion was seconded by Councilor Ormerod. Councilor Jones asked if this would allow bingo halls in downtown. Councilor Bosley stated it would prohibit certain types of bingo halls in the downtown. A charitable organization that is running a charitable gaming facility would still be allowed, but a for-profit organization that is running a charitable gaming facility would not be allowed. Staff agreed that was correct. The amended motion made by Councilor Bosley carried on a unanimous vote.

A motion was made by Mayor George Hansel that the Planning Board find that the amended Ordinance O-2023-16, the A version, is consistent with the 2010 Comprehensive Master Plan. The motion was seconded by David Orgaz and was unanimously approved.

A motion was made by Councilor Phil Jones that the Planning Licenses Development Committee made a motion to formalize the public hearing already set by the Mayor for December 7. The motion was seconded by Raleigh Ormerod and was unanimously approved.

Attachments:

None

Background:

a. Ordinance – O-2023-16 – Relating to permitted uses in the Downtown Core, Downtown Growth, and Commerce Districts. Petitioner, City of Keene Community Development Department, proposes to amend Section 8.3.2. of Article 8 of the Land Development Code (LDC) to add a definition for “Charitable Gaming Facility” and amend Table 8-1, Table 4-1, and Table 5.1.5 to display “Charitable Gaming Facility” as a permitted use in the Downtown Growth District and Commerce District. In addition, the petitioner proposes to amend Section 8.4.2.C.2.a of Article 8 of the LDC to remove drive-through uses as a permitted use by Special Exception in the Downtown Core District.

Community Development Director Jesse Rounds addressed the Committee and stated the Keene Zoning Code is permissive which means it allows what is outlined. However, there is room for interpretation for uses, if it is defined, similar and after interpretation by the Zoning Administrator.

What is before the committee tonight is Charitable Gaming Facility which is allowed under Recreation and Entertaining Facilities Indoor. This is because when Charitable Gaming Facilities first came into Keene, it was a new use and the Zoning Administrator placed it under Recreation and Entertaining Facilities Indoor. Mr. Rounds went over what the definition outlines for Recreation and Entertaining Facilities Indoor “facility for spectator and participatory uses conducted within an enclosed building, including but not limited to”. It is very specific about what it allows. The City feel this is an opportunity for the City to define a use that is growing across the state and is appearing in various communities

Mr. Rounds noted this use is permitted in Downtown Core, Downtown Growth, Downtown Institutional, Commerce, Commerce Limited and Business Growth and Reuse. Downtown Core is Main Street, Downtown Growth is south side of Main Street outside of the historic part of Main Street, going east and west. Downtown, Institutional is Keene State and Commerce is West Street, Main Street south of 101. Commerce Limited more of the car dealership area. Business Growth and Reuse is intended to be neighborhood oriented, light industrial areas. These are the areas where those recreation and entertainment facilities indoor are permitted.

Mr. Rounds next went over the definition that is being proposed in accordance with requirements of RSA-287D, which is the RSA that the State Statute that defines charitable gaming in the state and operated by a licensing gaming operator, which is a defined term in the RSA. Any facility operated by a person or entity licensed by the Lottery Commission, it does not include games licensed under our RSA 287 E. This section is specific to Bingo and Lucky 7.

Mr. Rounds stated the proposal is to locate this use in Downtown Growth and Commerce. Mr. Rounds referred on a map to the areas he had outlined earlier where this use is permitted. He stated the reason staff felt Downtown Growth would be an appropriate location is because this is where there are the bigger buildings. The Land Development Code allows for infill with a larger buildings, lot line to lot line, and has a lot of parking. He felt there are a lot of opportunities in these two districts for growth of this industry.

Mr. Kost felt the intent makes a lot of sense. He stated he sees Downtown Growth as being a little different and felt this use fits better in Commerce; lots of parking, store front and areas to build.

Mr. Rangel stated he wanted to understand a little more about Charitable Gaming Facility – he asked whether this is a business that can obtain this license and then can run charitable games out of their currently existing business or whether it was a charitable organization that could purchase a building for the purpose of running charitable games. Mr. Rounds stated the way the State Statute is that you had to obtain a license to operate such a facility. The way it is handled throughout the state is that a business obtains an operator license and charitable organizations contract with that business.

Councilor Bosley noted this ordinance does not trigger until the business obtains a license and the business does need to have five or more gaming devices or less than that for a secondary use. Someone who wanted to have this use as a small operation would not be prohibited by this ordinance. Mr. Rounds clarified if someone operates a charitable gaming facility for fewer than five days they don’t need to obtain a license. Councilor Bosley noted that there was a provision that has to do with the types of gaming not days. Mr. Rounds stated this is something he had included incorrectly.

Mr. Rangel asked why this use was brought forward for consideration. Mr. Rounds stated it has been growing across the state. In addition last year a property owner proposed a change to the definitions of Business Growth and Reuse District. Mr. Rounds added staff also received a letter from the Mayor asking staff to look into this use. Mayor Hansel added this was brought to his attention in late 2021, when someone inquired about it and he started having discussions with staff when the City was in the middle of adopting the land use code and staff suggesting waiting until that code was adopted. However, as legislation has changed and it became more popular and hence, he brought it forward again.

Mr. Rounds addressed drive-throughs next. He indicated drive-throughs are permitted in the Downtown Core and are permitted in many of Districts. They are permitted in the Downtown Core by special exception, which is a process that goes through the Zoning Board of Adjustment. Mr. Rounds stated what staff is proposing is to remove the ability to get a special exception for a drive through in the Downtown Core. This would mean there would be no future drive-throughs in the Downtown Core. However, there are currently three or four existing drive-throughs, and those would be allowed as a nonconforming use. They would continue to operate and there are some limited ways they could expand and change while still remaining a legal nonconforming use. When discussing where Charitable Gaming Facility should be located staff looked at walkable neighborhoods. He noted the Master plan and the LDC talk a lot about this issue and that Downtown Core should be this pedestrian scale. He noted special exception has confusing requirement and at times doesn't address what is intended in a district. This concluded Mr. Rounds presentation.

Mr. Kost referred to the map and noted that the area where drive-thru will not be permitted, which is Main Street and a small portion of Washington Street. Chair Bosley clarified the existing drive-throughs will be grandfathered and one permitted drive-thru that is not completed and this too would be grandfathered. Mr. Rounds agreed they would be grandfathered.

The Chair asked for public comment next. The Chair indicated this is not a formal public hearing, it is a workshop but he will permit public comment.

Attorney Michael Atkins with Shaheen and Gordon from Peterborough, NH addressed the Committee on behalf of Dorie Masten who is a property owner downtown. He stated he was before the committee to speak in opposition of the ordinance. He noted this is a very highly regulated state statutory scheme. He felt what is being considered is preemptive by that state statutory scheme and Ms. Masten has already moved forward in the application process and has already spoken to the city in this regard to utilize her property in the Downtown Core area in accordance with RSA 287E to locate a Charitable Gaming location. Adopting this currently would not only be preempted but would suggest a regulatory taking, particularly in regard to her property.

Mr. Jared Goodell of 39 Central Square, #201 addressed the committee next. Mr. Goodell stated he has some background in charitable gaming. He owned and managed a charitable gaming facility in Keene. He felt this request was appropriate and the city has heard a lot of debate about the downtown project which is to maintain a level of old school New England. He did not feel uses such as casinos belonged on Main Street - they are loud, they attract a lot of traffic and it goes in contrary to what we want in downtown, specifically as it relates to parking.

Mr. Goodell directed the committee's attention to ITE traffic data as it pertains casino traffic volume. Mr. Goodell felt this ordinance does not go far enough particularly as it relates to the exception and noted to the last sentence of the proposal where it says does not include games licensed under RSA 287 E. He stated he understands the intent of the Community Development Department wanting to preserve the ability for fraternal organizations like the Elks, American Legion, or even churches who operate bingo games that might exist in the Downtown Core area. As it reads on its face, the body of

law that encompasses RSA 287-E and it seems to pertain only to those fraternal organizations or nonprofit organizations, who are the only people who can operate Games of Chance as it relates to Bingo or Lucky 7; Mr. Goodell felt that was not correct as that Statute does allow for commercial bingo halls, which essentially would allow slot style machines which are called Lucky 7 machines. These machines fall under the bingo statute. Under this current proposal, someone could operate a commercial bingo hall and have it be full of these machines. He felt this is not something the city is going to want in its downtown.

Mr. Goodell felt Charitable Gaming is great in Keene, it is invaluable to our local charities but did not feel it belonged downtown. Mr. Goodell proposes that language be added that says does not include games licensed under RSA 287 E except those operated by commercial bingo halls as defined in RSA 287-E:1 v-a.

He stated there was also some confusion about the license as it relates to five or more days – he noted it is five or more calendar days per year. Gaming laws in this state are “rough”. When this body of law was introduced, it was restrictive and overtime items have been added to create what it is today; it is not a clean body of law and at times can be confusing. He commended the Community Development Department for bringing this up. He indicated the Town of Conway is going through a struggle as it pertains to this very item. He indicated gaming is growing rapidly and felt now is the time for the city to take some restrictive action that makes sense.

With no further comments, the Chairman closed the public hearing.

Mayor Hansel felt this item make sense – when you look at the master plan and how it defines the downtown along Main Street, there has been a lot of growth with uses such as restaurants, Colonial Theater, retail and felt charitable gaming use is inconsistent with the uses the city has been trying to promote. The uses the city is trying to promote are geared around the parking program and moving people through the downtown for short stops or going in to see a couple hour shows.

The Mayor indicated parking in downtown is a shared resource and hence we have to be very cautious and careful as these different uses come up that the city does not disturb that ecosystem in a way that would be detrimental to the look and feel of downtown.

With that, a motion was made by Mayor Hansel that the Joint Committee find the proposed Ordinance consistent with the 2010 City of Keene Master Plan. The motion was seconded by David Orgaz.

Ms. Brunner stated the public workshop phase is the time the Joint Committee can make any changes to the Ordinance. She noted to the suggestion from the last speaker from the public regarding modification to language and stated this would be the time to make that change. Councilor Bosley asked staff for clarification.

Mr. Rounds in response stated RSA 287 E is as confusing as RSA 287 D; it is structured in the same way and it allows for an outside business to operate for example a bingo hall that does all the things Mr. Goodell outlined. The use as worded would allow the city (zoning administrator) to evaluate if a bingo hall would fit under charitable gaming or whether it was a different use. However, this item is open now and the committee could add stipulations to it.

Chair Bosley referred to the following language “... does not include games licensed under RSA287-E she clarified whether this language prohibits this ordinance from shutting down bingo halls, essentially that are run in the downtown. She asked what RSA287-D:e.1.b.a. refers to. Mr. Rounds stated it is actually RSA 287-E and added RSA 287 E:1.v.a is the definition section.

Ms. Brunner referred to the language 287-E:1 - Definitions - Section 5. v.a. Commercial Hall means any hall owned or leased by an individual Corporation, Realty Trust, Partnership, Association or any other person who rents or leases the hall to a charitable organization for the operation of Bingo games, excluding halls owned by any charitable organization or governmental subdivision is specified in RSA287-E:5,b.1. Councilor Bosley asked whether this definition gets more clearly to the heart of what the city is trying to protect. Mr. Rounds stated the reason he excluded RSA 287 E when he wrote the ordinance language was so that the city could allow charitable organizations like a church to continue to have bingo in their basement for example. He added this is new information and he did not realize it was operated in exactly the same manner; two facilities that do the same thing through different means - One is charitable gaming facilities, essentially Games of Chance, Poker, Roulette etc (table games). Then Bingo and Lucky 7 which look like slot machines. By separating these out the intention was someone could have a number of Lucky 7 machines in their bar and they would need the same license if for instance you were to have Poker.

Councilor Bosley stated she did not feel the spirit of the ordinance is intended to allow for large facilities and felt this needs to be tuned up. Mr. Rounds agreed and stated the language could be changed to ..as defined under RSA 287D 1. B.ii and RSA 287E: 1 5.a.

Ms. Brunner stated if the committee intended to amend the ordinance they would have to vote as a committee to amend the ordinance and then create an A version.

A motion was made by Councilor Bosley that the Planning Licenses and Development Committee amend the Ordinance with new language. The motion was seconded by Councilor Ormerod.

Councilor Jones asked Councilor Bosley for clarification on her motion. Councilor Bosley stated her motion is to prohibit commercial bingo halls from being located on Main Street. The City has figured out a way to protect the church basements; this motion is to not allow big commercial bingo halls. It was suggested that the motion and second be withdrawn to add more clarification to the discussion.

Councilor Bosley withdrew her motion and Councilor Ormerod withdrew his second.

Mr. Kost referred to the Downtown Growth District and noted the intention of this area is to provide the flexibility needed to create a mixed use environment suitable for commercial, residential, civic, cultural, open space in areas of downtown where growth is desired with standards for new construction and infill that complement the walkable urban form of Keene's downtown. He indicated he is comfortable with this use in the Commerce District but has concerns allowing it in the Downtown Growth District, especially those areas that get closer to Main Street.

Councilor Jones noted there is an exception for Bingo and Lucky 7 to be located in any area and suggested adding Keno to that list as well. He indicated Keno is in many cities in New Hampshire but it was defeated on the Referendum twice in Keene. He felt this was mostly because the language wasn't very clear on the Referendum. He added the Lottery Commission calls for Keno to be in any use that has a liquor license which could be any part of the city. He felt if Keno ever passed on a Referendum, the city would have to change this ordinance and go through this process again. Mr. Rounds stated the Councilor is correct Keno has been denied in the city on the Referendum but future voters could vote to approve it. He added, however, he wasn't sure if the city could create a definition for a use that is not permitted but once it is voted in by future voters it would have to go through a similar process such as this.

A motion was made by Councilor Bosley to amend the definition of Charitable Gaming Facility to include the definition of Commercial Hall under New Hampshire RSA 287E. The motion was seconded by Councilor Ormerod.

Councilor Jones asked if this would allow bingo halls in downtown. Councilor Bosley stated it would prohibit certain types of bingo halls in the downtown. A charitable organization that is running a charitable gaming facility would still be allowed, but a for-profit organization that is running a charitable gaming facility would not be allowed. Staff agreed that was correct.

The amended motion made by Councilor Bosley carried on a unanimous vote.

Councilor Bosley asked whether the committee wanted to address the concern raised by Mr. Kost. Councilor Ormerod asked what the economic impact would be if this use was restricted from Downtown Growth. Ms. Brunner stated staff might be not able to give the committee the economic impact if this use was prohibited in Downtown Growth but there has been desired expressed to locate this use in Downtown Growth. She added this district has the potential for development unlike Downtown Core which is mostly built out. If this use was denied from Downtown Growth, the existing use would be legally non-conforming but any new Charitable Gaming Facilities that wanted to locate in Keene will only be permitted in the Commerce District.

Mayor Hansel stated he appreciates Mr. Kost's concern because it is difficult to separate these districts and its different uses. However, the future of Downtown Growth is yet to be defined in many ways. The Mayor noted there is a lot more space in this district for parking and felt this area does not have the same kind of problems with these types of facilities as the Downtown Core, which is fully built out and has an established look, feel and uses the city is trying to promote.

Councilor Bosley agreed with the Mayor and noted Downtown Growth to the west does encroach onto Main Street but overtime the Commerce District is likely going to merge into Downtown Growth and overlap on the edge and so will Downtown Core. She felt eventually Downtown Growth will disappear and the city will end up with more defined districts.

A motion was made by Mayor George Hansel that the Planning Board find that the amended Ordinance O-2023-16, the A version, is consistent with the 2010 Comprehensive Master Plan. The motion was seconded by David Orgaz and was unanimously approved.

A motion was made by Councilor Phil Jones that the Planning Licenses Development Committee made a motion to formalize the public hearing already set by the Mayor for December 7. The motion was seconded by Raleigh Ormerod and was unanimously approved.



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: December 13, 2023
To: Planning, Licenses and Development Committee
From: Jesse Rounds, Community Development Director
Through: Patricia Little, City Clerk
Subject: **Memorandum - Community Development Director
Ordinance O-2023-16-A**

Recommendation:

Move to recommend that the City Council substitute the amended Ordinance O-2023-16-A for consideration at the continued public hearing scheduled for January 18, 2024.

Attachments:

1. O-2023-16-A Redline

Background:

Ordinance O-2023-16 was presented at a Joint Committee Public Workshop on November 13, 2023. The public provided comments and concerns. After discussion among the members of the Joint Committee, the members of PLD and the Planning Board voted to request that the Community Development Department staff develop an "A" version of the original ordinance to include Commercial Bingo Halls and Lucky 7 machines in the ordinance.

The amended ordinance allows Lucky 7 machines in Charitable Gaming Facilities, as defined, and allows Commercial Bingo Halls in the Downtown-Growth and Commerce Districts. The 'A' version does not impact the proposed change to the Zoning Ordinance to prohibit drive-throughs in the Downtown-Core District.

Ordinance O-2023-16-A will be presented, and public comment taken, at the City Council Meeting on January 18, 2023. At the next PLD Committee meeting following the January 18, 2023, hearing, the PLD will be asked to consider both O-2023-16-A and O-2023-17-A as separate ordinances but regarding the same issue.



CITY OF KEENE

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

AN ORDINANCE Relating to Amendments to the Land Development Code, Permitted Uses in the Downtown Core, Downtown Growth and Commerce Districts

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. Amend Section 8.3.2. of Article 8 to add a definition for “Charitable Gaming Facility” under the category of Commercial Uses, as follows:

I. Charitable Gaming Facility

1. Defined. Charitable Gaming Facility – A facility licensed in accordance with the requirements of RSA 287-D, and operated by a Licensed Game Operator as defined by RSA 287-D:1, VII; or any facility operated by a person or entity licensed by the lottery commission under RSA 287-D:7 to operate games of chance on 5 or more dates per calendar year. Charitable Gaming Facilities may offer Lucky 7, as defined in RSA 287-E, as long as their use complies with all licensure and operation requirements under RSA 287-E and rules published by the New Hampshire Lottery Commission. This use includes facilities licensed to operate Bingo or bingo style games as Commercial Halls (287-E:1, V-a) or as Host Halls (RSA 287-E:1, X). Does not include games licensed under RSA 287-E.

2. Amend Section 8.4.2.C.2.a, “Specific Use Standards” of Article 8 to remove drive-through uses as a permitted use by Special Exception in the Downtown Core District, as follows:
 - a. Drive-through uses shall only be permitted by right in the Commerce and Commerce Limited Districts and by special exception from the Zoning Board of Adjustment in the Downtown-Growth and ~~Downtown-Core~~ Districts.
3. Update Table 8-1 “Permitted Principal Uses By Zoning District” in Article 8, Table 4-1 “Downtown Districts Permitted Uses” in Article 4, and Table 5.1.5 “Permitted Uses” in Article 5 to display “Charitable Gaming Facility” as a permitted use in the Downtown Growth District and Commerce District under the category of Commercial Uses.



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: December 13, 2023
To: Planning, Licenses and Development Committee
From: Jesse Rounds, Community Development Director
Through: Patricia Little, City Clerk
Subject: **Memorandum - Community Development Director
Ordinance O-2023-17-A**

Recommendation:

Move to recommend that Ordinance O-2023-17-A be placed on more time.

Attachments:

1. O-2023-17-A Redline

Background:

O-2023-17 is the definition of a Charitable Gaming Facility to be added to Chapter 28 of the Land Development Code. This section lies outside the City's Zoning Code and therefore follows a different approval process.



CITY OF KEENE

In the Year of Our Lord Two Thousand and _____ Twenty Three

AN ORDINANCE Relating to Amendments to the Land Development Code, Definition of Charitable Gaming Facility

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 adding the bolded and underlined text, as follows.

1. That Article 28 “Defined Terms” be amended to include a definition for “Charitable Gaming Facility,” as follows:

Charitable Gaming Facility – A facility licensed in accordance with the requirements of RSA 287-D, and operated by a Licensed Game Operator as defined by RSA 287-D:1, VII; or any facility operated by a person or entity licensed by the lottery commission under RSA 287-D:7 to operate games of chance on 5 or more dates per calendar year. Charitable Gaming Facilities may offer Lucky 7, as defined in RSA 287-E, as long as their use complies with all licensure and operation requirements under RSA 287-E and rules published by the New Hampshire Lottery Commission. This use includes facilities licensed to operate Bingo or bingo style games as Commercial Halls (287-E:1, V-a) or as Host Halls (RSA 287-E:1, X). ~~Does not include games licensed under RSA 287-E.~~

George S. Hansel, Mayor



CITY OF KEENE NEW HAMPSHIRE

Meeting Date: December 13, 2023
To: Planning, Licenses and Development Committee
From: David Hickling, Airport Director
Through: Elizabeth Dragon, City Manager
Subject: **Execute Lease for Airport Hangar - Airport Director**

Recommendation:

That the City Manager be authorized to execute a lease agreement with Hexagon Hangar LLC. for land and associated hangar structure at the Keene Dillant-Hopkins Airport.

Attachments:

None

Background:

With the expiration of the lease for the Hexagon hangar, a new lease was negotiated with the following new terms:

- Lease term 3 years. (Article VIII))
- Increase lease rate from \$4,520 annually to \$5,383 annually. (Article VII (1))
- Change annual escalator from CPI to fixed 3%. (Article VII (3))
- Clarify language that releases City from any obligation for maintenance or repairs to hangar structures. (Article III (A))
- Add a clause that would allow us to terminate the contract with no less than 90 days' notice should we agree to lease that parcel for new hangar development.