

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, March 13, 2024

7:00 PM

**Council Chambers,
City Hall**

Members Present:

Kate M. Bosley, Chair
Philip M. Jones, Vice Chair
Raleigh C. Ormerod
Robert C. Williams
Edward J. Haas

Staff Present:

Elizabeth A. Dragon, City Manager
Rebecca Landry, Communications &
Marketing Director/Assistant City Manager
Amanda Palmeira, Assistant City Attorney
Terri M. Hood, Assistant City Clerk

Members Not Present:

All Present

Chair Bosley called the meeting to order at 7:10 PM and declared that a quorum was present.

1) Jared Goodell – Issues Associated with Sidewalk Cafe Licenses

Chair Bosley welcomed Jared Goodell of 39 Central Square to speak about his letter. Mr. Goodell was grateful that Councilors supported sending his communication to this Committee instead of accepting it as informational until the downtown project is designed, which indicated to him that this was a good time to discuss this. While he saw the nexus with the downtown project, he said it was unclear when that construction will occur, so he presented factors that he believed should be addressed with immediacy for the public's best interest. Mr. Goodell clarified that his comments were about outdoor cafés on sidewalks, which are public property, and not downtown restaurants that use their own private property for patios.

Mr. Goodell continued by highlighting the four key points about sidewalk cafés in his letter: Regarding the size of the café, he suggested resolving inconsistencies in the City Code to only allow sidewalk cafés to be the actual width of the frontage of a restaurant. The Code states that: "*sidewalk cafes are permitted as an extension of any restaurant in an area equal to or less than the width of its storefront.*" However, another part of the Code allows sidewalk cafés to extend beyond the area in front of a restaurant with permission from the abutting property owner and the City Clerk. Mr. Goodell continued that Keene's Land Development Code states that the Downtown Core district is, "*intended to accommodate a rich mix of commercial, residential, civic, cultural and open spaces in a highly walkable, vertically and horizontally mixed use environment.*" Mr. Goodell continued that extending sidewalk cafés beyond the actual width of the frontage of a restaurant is problematic for many reasons. He said this can present an unfair use of public property where the permission to use the extended portion comes from an abutting landowner and not the public. He said the public is the true owner of the sidewalks. He added that most of downtown was comprised of restaurants. If every inch of sidewalk was taken by an

extended sidewalk café—as allowed by Code—it would render downtown virtually unwalkable, which is inconsistent with the City’s goal for downtown to be highly walkable. For these reasons, Mr. Goodell asked the Committee to recommend removing Subsection C of Section 46-1192 from the Code in its entirety.

Regarding the license fees, Mr. Goodell recommended enacting a two-part fee for sidewalk café licenses (currently \$100, or \$200 if extending the café’s footprint), regardless of seating capacity. He said that these businesses increase their capacity by 50% for a large portion of the year, while using public property to do so. In cities like Nashua, for example, there is a flat fee plus a charge per seat. Mr. Goodell recommended a \$75 fee per license period, and an additional \$15 per seat. Further, for cafés that extend past their footprint, he recommended a \$950 fee (consistent with the City Council’s approved “parklets” during Covid) plus \$10 per seat. Mr. Goodell added that extended sidewalk space should be treated as those parklet parking spots were. Mr. Goodell said that if a restaurant wants to extend beyond its frontage into an area with arguably no connection, on property maintained by taxpayers, it is fair and equitable for restaurants to pay a premium for that space. He said these businesses will benefit most from the taxpayers’ \$15 million expenditure on the renewed downtown.

Regarding audio/visual (AV) components, Mr. Goodell stated his impression is that a café licensee was considering installing a large LED screen array in their 2024 patio design. He is familiar with these modular, weatherproof screens that can range from 15–20 feet wide. These are common in NYC Times Square or Las Vegas. They can distract drivers or cause reflections on downtown windows. Mr. Goodell did not think these screens would be good for the downtown. However, there is no City Code to prevent the screens, so he urged the Council to take action. He did not think these screens—no matter the size—would complement the historic downtown. Mr. Goodell said that some cafés also had outdoor speakers to amplify music, which he thought should be prohibited in the Ordinance to prevent a cacophony of sounds from all the cafés. He recommended specific rules for speakers, including noise level restrictions for different times of day. For these reasons, Mr. Goodell recommended that the City Council add language to the Sidewalk Café Ordinance prohibiting AV elements in sidewalk cafés.

Regarding enforcement, Mr. Goodell said that in 2023, one licensee was issued several violations, but the licensee took no action and continued to operate in violation of the Ordinance. For this reason, Mr. Goodell recommended that the Council adopt an enforcement section of the Sidewalk Café Ordinance overseen by the Community Development Department. He discussed some potential draft language that he had in Nashua’s regulations. He proposed a three-strike rule.

Mr. Goodell shared some things he hoped City Staff would consider when revising the Ordinance and reviewing applications, including the National Fire Protection Association (NFPA) 12.2.4.4 provides egress requirements for fenced-in outdoor assembly occupancies as well as the National Electrical Code (NEC) Section 590.3(B) states that holiday and seasonal lighting cannot be installed for more than 90 days.

Mr. Goodell recommended other proposed Code adjustments, including a provision to require at least one Americans with Disabilities Act (ADA) accessible seat/table or 5% of the café seating.

He said some current sidewalk cafés were not ADA accessible. He thought the City had worked hard on accessibility and he did not want to see a family dining out in Keene unable to do so because of inaccessibility. He knew some who had experienced this, so Mr. Goodell thought the City should address this immediately. He did not think such changes would be burdensome to any business.

Lastly, Mr. Goodell stated that he is pro-business, having owned many in Keene, and he has enjoyed dining at sidewalk cafés each summer. He felt that any argument that he was anti-business was disingenuous. He said the Council is responsible for weighing the best interests of the taxpayers, downtown businesses, and visitors. They are all stakeholders in this conversation. He hoped the City would take action on this instead of accepting his communication as informational.

Chair Bosley thanked Mr. Goodell for his thoughts on the broader conversation about potentially amending this Ordinance. Chair Bosley explained that the City Clerk's office administers Sidewalk Café Licenses and applicants only appear before the City Council when asking for the initial application to sell and distribute alcohol (they must follow the Liquor Commission guidelines). Otherwise, the licenses are handled administratively. Mr. Goodell agreed about the Clerk's oversight but said that the Code calls for the Clerk's office to create its own rules and he thought those should be codified.

Assistant City Clerk, Terri Hood, explained the Sidewalk Café Ordinance regulations. She felt that Mr. Goodell's presentation was accurate and succinct. She explained that Staff were already working to propose an amendment to this Ordinance before this communication from Mr. Goodell was received, particularly regarding an enforcement mechanism. Staff were working to create a framework to administer these licenses, especially for licensees with multiple infractions or unlicensed entities. The goal is for the Clerk's office to receive and administer comments from the public regarding a sidewalk café license. Complaints or other issues that require expertise would be sent for review by subject matter experts in other departments—Fire, Code, and Public Works. She said it would be important to create a mechanism for compliance, including the ability to revoke a license or prohibiting a license holder from applying for the license the subsequent year. This enforcement could go as far as removing items from the sidewalk café at the owner's expense. Ms. Hood added that Mr. Goodell was correct that there were no regulations for AV activities in sidewalk cafés. She added that the City enacted guidelines that went into effect in 2023, including implementation of an annual inspection (by Clerks, Public Works, Code, and Fire) of each licensed café to confirm it matches the submitted dimensional drawings and other details in the applications. Ms. Hood ended that staff in the City Clerk's Office would like to continue working with the City Attorney's office over the following months to bring proposed amendments to the Ordinance—particularly on enforcement—to the Council. Staff did not intend to revise the license fees at this time because it was unclear what sidewalk cafés would look like in the new downtown design. Ms. Hood added that certain elements of a café space, audio visual components for example, would be easier to change administratively if they were incorporated into the administrative guidelines, rather than proposing amendments to the City Code that require Council approval.

Chair Bosley asked the City Manager to explain the current process for reviewing violations. The City Manager, Elizabeth Dragon, said Ms. Hood explained the past challenges well, and commented that the point of contact for Sidewalk Café enforcement activities has changed over time. When the former Director of Public Works retired recently, other Staff met to confirm who should be monitoring this. Because the Clerk's office issues the licenses, Staff felt it made sense for them to take a greater role in administering these applications with other City departments for things like inspections and enforcement. The City Manager said that honestly, the City had not taken an aggressive stance in the past on enforcing this Ordinance and staff has given some leniency since Covid in an effort to help businesses recover from the pandemic, and in anticipation of the downtown project disruptions. For these reasons, the City Manager recommended waiting to make wholesale changes to the Ordinance until it is clear how much more sidewalk space will be available after the downtown reconstruction to ensure the cafés are evenly distributed, making it easier for businesses to comply. As a compromise this year, the City Manager said Staff would continue working on improving enforcement by the Clerk's office and would like them to take on this role of working with applicants on any compliance issues because of their excellent customer service skills.

Chair Bosley said it was evident to her that keeping sidewalk cafés operating was important to the whole City Council. It was a significant focus during the initial downtown design recommendations. She said it was important to determine how much sidewalk space will be available for these cafés after the downtown is redesigned to potentially include things like bike lanes at sidewalk grade, for example. So, Chair Bosley agreed with Staff's recommendation to wait on significant changes to the Ordinance until the downtown design is finalized. It will be essential to support the downtown business throughout the multiple years of downtown reconstruction.

Councilor Ormerod liked some of Mr. Goodell's ideas, particularly about encouraging a diversity of businesses downtown. Some current downtown businesses could not have cafés but might be able to after the redesign. He agreed with Mr. Goodell's suggestions to make this opportunity fairer, including not intimidating other business owners by overreaching one's storefront. Councilor Ormerod strongly supported improved enforcement, which would help the City to make better decisions during the downtown redesign. He hoped the Staff would bring back some amendments soon so that businesses are not impeded entering the summer season.

Chair Bosley opened the floor to public comments.

Toby Tousley of 500 Washington Street said that after talking with Mr. Goodell about this, he felt it was a valid issue to bring to the City's attention. Mr. Tousley said this was not intended to target any individual business. He agreed that these cafés should be supported because they contribute to the vibrancy of the downtown. Mr. Tousley also agreed that there should be enforceable regulations for these cafés. Taxpayers support those downtown businesses, which he said are prioritized for flower plantings and snow plowing, for example, compared to his business on Emerald Street. He recalled not being consulted during the Gilbo Avenue project and likened that to how he felt many businesses off Main Street are treated. It is a privilege to be on Main Street. Also, regarding the \$100 license fee, Mr. Tousley felt it was insignificant and would barely pay for City Staff to handle that paperwork. He said businesses benefit greatly from

sidewalk seating, increasing their business by 50%. which is not possible anywhere else in the City. He thought these businesses should pay their fair share as they are benefiting from Keene's beautiful downtown and its visitors.

Luca Paris, President of the Greater Monadnock Collaborative Regional Chamber of Commerce, also formerly owned a downtown restaurant. He noted how pleasant it had been to work with the Clerk's office in the past. He thought that Mr. Goodell's research and recommendations made sense, particularly regarding enforcement. He recalled the City's actions to help keep businesses open during Covid. The sidewalk cafés are important to the culture of downtown. While these restaurants have higher sales with the increased outdoor seating, Mr. Paris said it was important to remember that those extra seats are only available during good weather, which was not favorable in 2023, for example. While he understood Mr. Goodell's suggestions for the fees, Mr. Paris agreed with the City Manager that it is not worth spending the time amending the Ordinance until it is known what the available space will be after the downtown reconstruction. Mr. Paris offered to participate in any future discussions.

Dorrie Masten of 326 Matthews Road began by apologizing to the City Council, stating that she felt terrible for the rest of the downtown businesses. Ms. Masten said that Mr. Goodell's communication and presentation to the Committee stemmed from his personal feelings toward her; she said this was the second time Mr. Goodell had brought things to the Council for this reason. He said the complaint about expanding past store frontage was about her, as was the AV complaint, which she said was not submitted by a Keene taxpayer. She thought Mr. Goodell's comments on square footage were unfounded based on her research. She said these businesses invest significantly in these patios to make them look nice. Ms. Masten thought that she was the only landlord (or one of few) that these changes would affect. She is the landowner of the property where her sidewalk café exceeds her store frontage, so no one is affected but her. Ms. Masten felt this was more so about a personal disagreement between two businesses/individuals and should not have been brought to the Council to impact all other downtown businesses. She said these cafés trickle down, supporting many in the community, like the food distributors. Ms. Masten asked the Committee to make a wise, common-sense decision.

Mr. Goodell shared that there was an obscure City Code regarding increasing fees before the downtown project, 46-959E states that, *"During those times when the entire downtown area is affected by a large scale construction project as determined by the Public Works Director through the City Manager, which adversely affects access to downtown businesses, the merchant shall be afforded the opportunity to obtain licenses under this division free of charge."* Thus, he said that during the downtown project, there is a provision in the City Code that would allow sidewalk cafés to operate without fees. He thought the Council should increase fees in a way that is responsible to the taxpayers while allowing for waiving the fees during the project. Mr. Goodell also argued that business owners cannot claim that they own the property in front of their buildings because the public owns the sidewalks being used for commercial purposes. Mr. Goodell added that most restaurant owners are eager to invest in these cafés because they know there will be a significant return on that investment. He felt that the taxpayers should be reimbursed for use of the public sidewalks.

Chair Bosley referred to Mr. Goodell's comments about the Parklet Ordinance. The Chair explained that currently, there was a \$100 fee for a sidewalk café within a business' frontage, and a separate \$100 fee for extensions beyond that footprint. Mr. Goodell proposed increasing the fee for extensions outside of the store frontage from \$100 to \$950, as for the Parklets. Chair Bosley explained that the Parklet fees were intended to reimburse the City for lost revenue. She did not want to speak much more about fees without advice from City Staff on accurate figures. She said the City was not gaining revenue from an empty sidewalk. The Chair agreed that it would be most appropriate for the City Manager to return to the Committee with a long-term recommendation. Mr. Goodell said he understood that giving up this sidewalk space poses no economic loss for the City. Still, he argued that there is an economic loss for the City daily from the unrealized income to the taxpayers because the City is apprehensive about increasing fees. He compared it to charging for parking downtown, the cost of which had increased over time because of the value of those spaces. Chair Bosley did not dispute this point. Still, she explained her opinion that these cafés create a mutually beneficial relationship; whereas 20 years ago, for example, the City's attitude was more reluctant to offer this sidewalk space. She thought this attitude change had increased the vibrancy of downtown Keene. She briefly mentioned challenges with available parking in the evenings when there are more visitors downtown. Chair Bosley thought that the energy visitors experience downtown directly affects the City's ability to draw businesses to relocate here because people choose to move here. She thought it was the Council's responsibility to maintain continuity for businesses remaining open and vibrant. She appreciated Mr. Goodell's efforts, and she was confident that Staff would bring back some possible solutions.

Mr. Goodell did not think the fees he proposed for the Ordinance would have a negative impact on current licensees. He thought everyone could agree that it is good to limit noise and TVs on the downtown sidewalks. He also did not think the ADA requirement was too much to ask of businesses. He thought there needed to be a nexus between protecting downtown businesses and making the downtown experience better and more attractive.

Vice Chair Jones thanked Mr. Goodell for his efforts. The Vice Chair agreed that the City should enhance the administrative enforcement. He also thought Mr. Goodell's points about AV were important and should be addressed. He agreed about not wanting a distracting cacophony of sounds downtown given that the Sign Code, for example, disallows message changing signs because they can distract drivers. Regarding a café extending beyond its store frontage, Councilor Jones said the annual license would require permission from the abutter, but the City can revoke that permission. Regarding protections, Councilor Jones said that the licenses are purposely revokable and amendable, which he thought was sufficient in the meantime until the downtown is redesigned. Still, he said the Council was listening.

Mr. Goodell stated that in the Sidewalk Café Ordinance, there is no enforcement mechanism, which he thought was why the City struggled with enforcement in 2023. He cited a "catch-all" provision in the City Code for general violations, but he was unsure whether that applied in this case. He thought implementing an enforcement mechanism was urgent.

Vice Chair Jones said that several years ago, the City did revoke a Sidewalk Café License. At that time, a representative from the NH Liquor Commission told the Committee that the City can

restrict problematic establishments, even choosing to require an earlier closing time for the sidewalk café to restrict noise.

Mr. Goodell reiterated that there was no clear enforcement policy codified in the Ordinance. Chair Bosley said she heard the Assistant City Clerk indicate that they are working to make that part of the Ordinance stronger. Staff would likely return to present a recommendation within the next two Committee cycles.

Councilor Ormerod wondered if ADA compliance was required outside of buildings. The Assistant City Attorney, Amanda Palmeira, said she would have to investigate further, but that she had been initially surprised to learn that ADA does apply to some outdoor spaces too, including how sidewalks are constructed. She was happy to do more research and return to the Committee with an answer.

Mr. Goodell said there are a lot of ambiguities, but his understanding was that the ADA guidelines would apply to these cafés, so the Council could be more stringent. Chair Bosley said that in all opportunities, the City and Council have supported all aspects of the ADA and would continue.

Councilor Williams was in favor of higher fees, but not until after the downtown redesign. As someone who does not live downtown, he agreed about wanting to see some tax dollars from downtown used to support the rest of the community, such as much needed sidewalks repairs/replacements. He agreed that one day, the sidewalk café owners should pay a higher fee for use of a public space, just like the City charges for parking downtown. At this time, he felt that there was an overabundance of outdoor seating downtown and he thought a better balance was needed to keep pedestrians from having to navigate around so many tables and chairs. Councilor Williams was also concerned about AV and hoped that would be addressed in an improved enforcement strategy.

The Committee expected a report back from Staff with ideas as soon as possible.

The following motion by Councilor Williams was duly seconded by Vice Chair Jones.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends referring Issues Associated with Sidewalk Café Licenses to City Staff.

2) Councilor Williams – Consideration for Ordinance Amendment – Requiring Dogs with a Record of Vicious Dog Offenses to be Muzzled When in Public

Chair Bosley recognized Councilor Williams, who said he submitted this letter because a constituent spoke to him after their small dog was attacked by another dog. He wanted to work toward preventing such instances in Keene in the future. He introduced the dog owner whose pet was attacked, Deborah LeBlanc.

Ms. LeBlanc of 68 Gilsum Street explained the story of her leashed dog being attacked by another leashed dog that had a documented history of aggression. Ms. LeBlanc had taken her dog

for morning walks since she moved to Keene two years ago. During her usual walk on December 7, 2023, she moved into the roadway on North Street to avoid another dog she saw with its owner. As she tried to make herself known to the other owner that was not looking, the other dog (60–70 lbs) ran and attacked her dog (30 lbs). It took her, the other owner, and bystanders to pry the larger dog's teeth from her dog's leg. A bystander drove Ms. LeBlanc and her dog home. After taking her dog to the vet for surgery, she went to urgent care for bites she also sustained. A friend called the Keene Police Department to try to access the rabies status of the other dog to determine whether Ms. LeBlanc would need care in that regard. She was told she had to appear at the Police Department for photos of her hand. Upon arrival, she refused to undress her wounds and an officer told her the information she needed to provide for a report. She spoke with the same officer the next day about the protocol, and she was still not provided with rabies information, which NH law says must be provided within 24 hours; she did not receive that information until two days later, when she said the Police told her the dog was registered with the City but they did not have rabies information. Thus, she had to assume the dog was unvaccinated and underwent the rabies treatment to be safe.

Ms. LeBlanc said that after the incident, she emailed the City and Police Lt. Maxfield visited her home on January 10, 2024, when she was informed that the offending dog's owner had been fined in September 2023 for starting a fight with another dog at the Pride Festival. An owner can pay the fine and move on with no restrictions on the violent dog. Ms. LeBlanc felt that violent dogs with repeat offenses should have some recourse beyond a fine. Lt. Maxfield told her there was no City Ordinance for vicious dogs. Ms. LeBlanc questioned what could have happened if her young grandchild had been walking with her the day of the attack. She said something needs to change because there are a lot of people walking their dogs in Keene.

Chair Bosley thanked Ms. LeBlanc for sharing her story, which is an emotional experience for a pet owner. The Chair referred to the meeting packet, which included a copy of the Nuisance, Menace, and Vicious Dogs section of the City Code that speaks to the types of incidents that escalate the categorization. Beyond Ms. LeBlanc's incident, Chair Bosley said there needed to be a more holistic approach for the City. There were a lot of moving pieces in Ms. LeBlanc's story where there could be opportunities for improvement. The Chair advised Ms. LeBlanc to contact the City Manager about the circumstances. Ms. LeBlanc noted that during this incident, there was no City Animal Control Officer to guide her, but she spoke with the new one on the date of this meeting who felt this Committee was the proper venue to open this discussion. Chair Bosley agreed.

Chair Bosley asked for comments from the Assistant City Attorney, Amanda Palmeira, who agreed with the Chair about Section 10 of the City Code on Nuisance, Menace, and Vicious Dogs. The Assistant City Attorney also referred to NH RSA 466:39 – Dogs and Cats. This RSA gives the City the authority to regulate the licensing and restraining of dogs as deemed reasonable. Unfortunately, she explained that requiring muzzling—as Councilor Williams suggested in his letter—is specifically only allowed during a rabies epidemic. Still, there are other options the Council could deem reasonable. She added that there is a significant difference between a dog on-leash and a dog at large, which is something the City had not addressed. Part of the City Code does allow for impounding of “at large” dogs (i.e., no owner); police can seize the dog and hold it at an animal shelter. The Code also allows for “humanely disposing” of a

dog. After several offenses and fines, a dog owner could be taken to district court. Violations of this aspect of the City Code would be the lowest criminal offense. The City also has the authority to adopt a leash law. Otherwise, the Assistant City Attorney said she did not find many other solutions for the City in this regard.

Chair Bosley said it seemed like the City's greatest tool might be to increase fines.

Councilor Haas wondered if the ability to impound could be extended to include dogs that are not at large. The Assistant City Attorney said no, because the City's Code closely aligns with NH RSA. Councilor Haas said he hoped the new Animal Control Officer would focus on these issues. He felt that the punishment for a second offense was insufficient, and he thought the fine should be increased significantly. Councilor Haas added that some cities have a two-strike rule, after which a dog is considered a hazard to humanity. He recalled challenges owning a vicious dog that he had to muzzle outside of the house.

Chair Bosely agreed that many people have experiences on both sides of this issue—some with aggressive dogs and some with pets that have been attacked by vicious dogs. She was clear that dog owners are responsible for ensuring their dogs do not cause harm. She thought everyone should err on the side of all dogs being capable of these behaviors. She added how many people in the community do not keep their dogs on leashes, which poses threats to dogs on-leash with responsible owners. Chair Bosley hoped the City would work toward a solution and she hoped the Committee could have a presentation soon from the new Animal Control Officer. She also encouraged the City to share materials to educate the community about training and to share resources for when dog owners have incidents like these.

Councilor Ormerod agreed with Chair Bosley that the City should take a more active role in educating dog owners, particularly the Clerk's office could share materials when owners register their dogs each year. It occurred to him that as downtown Keene is redesigned, there will be more people and bikes, etc., concentrated downtown, along with more people walking their pets. He recalled an incident of being attacked by a dog while riding his bike in another City, which has deterred him from being an avid cyclist since. He hoped the City would explore something enforceable.

Councilor Williams was grateful for this discussion, though he was disappointed that muzzling could not be required; he wondered if it would be worth talking to State Representatives. So, he hoped the City might pursue a leash requirement. He added that this is not just about education, but also about the responsibility of dog owners. In addition to higher fines, he suggested that when registering dogs with the City Clerk annually, there could be registration tags in different colors that could indicate that others should keep their distance.

Vice Chair Jones said he felt humbled that the City could not do more in this regard. He recalled that in the past, City departments would present about aspects of their work during Standing Committee meetings. He thought a presentation from the new Animal Control Officer would be helpful to understand their and the City's abilities. Animal Control Officers do not, for example, help with wildlife in someone's home as many might think. The City Manager said a presentation was a great idea and will occur once the new Animal Control Officer has settled into

the position. The City Manager added that if a dog is licensed with the City, they must have a current rabies vaccination; the Clerk's office will not register a dog without that proof, which often is submitted to the Clerk's directly by the veterinary offices. Chair Bosley mentioned that the dog licensing portal is available on the City website.

Councilor Ormerod said it seemed like there was an opportunity to improve the fine structure. He asked if a dog license could be revoked or if the City could refuse to license a dog. The Assistant City Attorney said that registration is dependent upon vaccine confirmation, and licenses cannot be revoked for other violations.

Councilor Haas asked if there is a penalty for not licensing a dog. The City Manager explained that annually, the Council will receive a list of unlicensed dogs that result in civil forfeiture, which the Assistant City Clerk said is a \$25 fine.

Chair Bosely opened the floor to public comments.

Michael Giacomo of 615 Hurricane Road mentioned that dogs are not allowed at City festivals downtown. Regarding Ms. LeBlanc's situation, Mr. Giacomo said it was a travesty that days after this incident, she was still scrambling to get the information she needed from the City. He wondered if—during dog registration with the City Clerk—dog owners could receive a brochure with advice on what to do and who to contact in similar situations. Chair Bosley agreed that she was unaware of many specifics despite being a dog owner. The City Manager said that the Clerk's emails reminding about dog registration are automated through the billing system and limited on what can be added. Still, the City Manager agreed with Chair Bosley that the emails from that listserv could be used to send a separate email to dog owners with information.

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

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends accepting the communication on consideration for Ordinance Amendment – Requiring Dogs with a Record of Vicious Dog Offenses to be Muzzled when in Public as informational.

Vice Chair Jones clarified that despite accepting the communication as informational, the Committee had given clear directions to City Staff for next steps. The Committee thanked Ms. LeBlanc for recounting her story.

- 3) **Keene Swamp Bats – Request to Discharge Fireworks – Independence Eve Celebration – July 3, 2024**
- 4) **Keene Swamp Bats – Request to Discharge Fireworks – June 5, 2024 & July 30, 2024**

Chair Bosley heard agenda items 3 and 4 together. She welcomed comments from the President of the Keene Swamp Bats, Kevin Watterson of 10 Westview Avenue.

Mr. Watterson explained that he has appeared before the Committee this time of year annually for 20 years, since a loose collaboration between the City and Swamp Bats began. The fireworks

require 50–70 volunteers for a crowd of 4,000–5,000. He noted that it is always a very family-oriented event.

Chair Bosley noted that flexibility was built into the recommended motion for the July 3 event to have a rain date following weather interruption in 2023. The City Manager clarified that these two agenda items were for the license to display fireworks. The Keene Swamp Bats were also working toward community event funding through a separate budget process, which would be reviewed by the Finance, Organization, and Personnel Committee. The City Manager also confirmed that all protocols for these events were met, and the displays went well in 2023.

Vice Chair Jones recalled these presentations from Mr. Watterson over the last 20 years. He recalled that the Elm City Rotary used to organize July 4 fireworks, but when they could no longer staff it, Mr. Watterson took on the effort. The Councilor thanked Mr. Watterson and all the volunteers. Vice Chair Jones was pleased to see a tentative rain date.

Councilor Williams recalled that he thinks there are too many opportunities for fireworks, which means they are not as special as they used to be. Further, he noted that fireworks significantly negatively affect pets and people with autism, among many others. He thinks each City organization should be allowed one fireworks display per year. Thus, he would support this July 3 event, but would vote against the June 5 and July 30 events. Mr. Watterson said he understood, noting that the June 5 event was historically to kick-off the season; the sponsor is Monadnock Ford, and they suggested a big opening night with fireworks this year.

Chair Bosley understood Councilor Williams' points, noting that the Council hears a lot about unlicensed fireworks displays. Thus, she was pleased that these events were requesting advanced permission.

Chair Bosley opened the floor to public comments.

Deborah LeBlanc of 68 Gilsum Street agreed with Councilor Williams that fireworks are outdated, old fashioned, and bad for the environment. She suggested transitioning to something like drones that do not disturb wildlife, which does not have advanced warning about fireworks.

Councilor Haas agreed about fireworks being outdated and about the amazing options with drones. He suggested that he, Councilor Williams, and Ms. LeBlanc should get involved with the volunteer group to encourage these changes. Chair Bosley supported that effort in future years.

Councilor Haas made the following motion, which was duly seconded by Councilor Ormerod.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends that the Keene Swamp Bats be granted permission for the discharge of display fireworks on Wednesday, July 3rd, 2024 on Alumni Field at no later than 10:00 PM, and reserving a “rain date” to be determined in conjunction with City staff in the event of inclement weather. Said permission is subject to following conditions: the signing of a revocable license and indemnification agreement; that the Keene Swamp Bats provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of \$1,000,000; that the fireworks vendor also

provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of \$1,000,000; submittal of a signed letter of permission from SAU 29 for use of their property; and obtainment of a State Fireworks permit. In addition, the petitioner agrees to comply with any recommendations of City staff. The Petitioner agrees to absorb the cost of any City services over and above any amount of City funding allocated in the FY 25 Community Events Budget. Said payment shall be made within 30-days of the date of invoicing.

Vice Chair Jones made the following motion, which was duly seconded by Councilor Haas.

On a vote of 4–1, the Planning, Licenses, and Development Committee recommends that the Keene Swamp Bats be granted permission for the discharge of display fireworks on the following dates: Wednesday, June 5, 2024 and Tuesday, July 30, 2024 on Alumni Field at no later than 10:00 PM subject to following conditions: the signing of a revocable license and indemnification agreement; that the Keene Swamp Bats provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of \$1,000,000; that the fireworks vendor also provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of \$1,000,000; submittal of a signed letter of permission from SAU 29 for use of their property; and obtainment of a Class B fireworks permit for each display date. In addition, the petitioner agrees to comply with any recommendations of City staff. This permission is conditional upon the Petitioner absorbing the charges for any City services provided. Said payments shall be made within 30-days of the date of invoicing. Councilor Williams voted in opposition.

5) Charlotte and David Lesser – Noise Disturbance from a Commercial Vehicle Generator at 58 Grant Street

Chair Bosley welcomed Connie Joyce of 81 Grant Street (and owns 55 Grant Street), who was present to speak about this noise and pollution disturbance in lieu of the petitioners, Charlotte and David Lesser (48 Grant Street), who were in Arizona. Ms. Joyce had also experienced the disturbance from a large tractor trailer cab parked at 58 Grant Street since the fall of 2023. She said 58 Grant Street has absentee owners who live in California. During the first disturbance, Mr. Lesser called the Keene Police Department (KPD), who asked him to speak with the owner of 58 Grant Street about the noise and pollution issues, which Mr. Lesser did. The KPD told Mr. Lesser that there was nothing they could do about the issue because the City’s current Noise Ordinance did not apply. The neighbors contacted Councilor Williams, who immediately visited the site to witness the noise and pollution. Ms. Joyce said the disturbance had been overwhelming, day after day and night after night, as long as the truck cab was there and charging its generator before disappearing again on a long-haul trip and then returning to Keene. Ms. Joyce mentioned that both she and the Lessers have tenants in these buildings who work from home and have been impacted by this disturbance. They felt there was no recourse. She said it was unacceptable in a residential neighborhood and the neighbors hoped the Council could do something to help.

The City’s current Noise and Vibration Ordinance was included in the meeting packet.

Chair Bosley asked for comments from the Community Development Director, Jesse Rounds, who explained the series of events and why the KPD might not have been able to appropriately affect this. For anyone in the community experiencing something like this, Mr. Rounds said they should contact the Community Development Department first as they will visit the site to assess the issue. According to City records, this complaint was first brought to the City around Thanksgiving 2023, at which time the Housing Inspector and Code Enforcement Officer visited the site and found the vehicle running this generator. Because many neighbors complained about the truck cab running 24 hours/day, City Staff members spoke to the vehicle owner to inform them that the generator cannot run constantly. Mr. Rounds explained that KPD enforces the Noise Ordinance. The Community Development Department has separate authority in the Land Development Code (Article 17.2.3 – Noise & Vibration). This part of the Codes allows the Community Development Department to investigate noises that are both continuous and intermittent, which is something that is less clear in the Noise Ordinance. When the Community Development Department learned of this complaint, they visited the site to conduct a sound measurement (decibels) and found that it was a problem. So, Staff informed the owner that they could not park there overnight. The next time the truck owner was there, the Community Development Department received another complaint about them running the generator during the day. So, Staff visited again to inform the owner that they cannot run the generator all the time; the Community Development Department issued a warning and the owner stopped.

Overall, Mr. Rounds encouraged residents to contact the Community Development Department about these issues. Staff can issue tickets to the offenders. The truck is how this resident gets home to Keene, but they are parking on Grant Street to replenish their batteries and then leave to park the truck elsewhere and get a ride home. This is fine, but the noise was still disturbing the peace. In advance of issuing tickets, Community Development Department Staff prefer to talk to the resident and try to find an alternate solution.

In dealing with this issue, Mr. Rounds explained that the Housing Inspector felt that the noise section of the Nuisance Ordinance in the Zoning Code was not ideal because it cites very low, 60 decibel levels—as loud as a normal conversation—in residential areas. Thus, Staff were investigating how to make that regulation more effective, and increasing the decibel level so Staff can differentiate between a nuisance and normal parts of daily living.

Chair Bosley asked if residents should call the KPD first for noise violations at night. Mr. Rounds said yes, but the KPD cannot enforce the nuisance, the Community Development Department can. If a resident reports a nighttime concern, Mr. Rounds said Community Development Department Staff would arrange a site visit. Chair Bosley asked if the City could enforce something from a video of an issue. Mr. Rounds said no, because the decibel level would be indeterminate. He noted the challenges with this instance, because the truck runs from 10:00 PM–7:00 AM and then leaves, and neighbors do not know when it will return. The City Manager said that in this case overnight, it would be a noise violation, which KPD *can* enforce. She mentioned how the City is organized into different zones with different quiet hours. The sound during the daytime would violate the Nuisance Ordinance, not the Noise Ordinance. Mr. Rounds added that if the truck is parked at this location on Grant Street, it violates a separate part of the Zoning Ordinance, which does not allow parking a commercial vehicle overnight in a residential neighborhood.

Chair Bosley asked Mr. Rounds if he had enough language in the Ordinance to allow the Community Development Department to keep addressing this issue to the satisfaction of the neighbors. Mr. Rounds said yes.

Councilor Williams said this location is near his neighborhood and he can sometimes hear the noise from his back yard on North Lincoln Street. Thus, this noise was affecting a dense residential area. He was glad there was a way to address this. He hoped to address this issue more generally too, as he hears complaints about commercial vehicles in residential neighborhoods, for example, truck drivers park at Robin Hood Park while on breaks. In the long term, Councilor Williams wondered if there could be a way to designate a place in the City where these vehicles can park—perhaps with bathrooms and picnic tables—so they do not cause noise problems or interfere with residences.

Councilor Ormerod asked if there is a decibel meter that the KPD could use. Mr. Round said no, because the Noise Ordinance does not specify a decibel requirement, so it would be a judgement call by the KPD at the scene.

Councilor Williams made the following motion, which was duly seconded by Vice Chair Jones.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends accepting the communication Noise Disturbance from a Commercial Vehicle Generator at 58 Grant Street as informational.

Chair Bosley asked Ms. Joyce to communicate with the Lessers and other neighbors that they should contact the Community Development Department during the day, and they can always contact the City Manager.

6) Let It Shine – Request to Use City Property – 2024 Pumpkin Festival

Chair Bosley welcomed Michael Giacomo of 615 Hurricane Road, a representative of Let It Shine. Mr. Giacomo talked about his letter to the Council, which outlined the major changes (in bold) from last year’s festival. The most significant change is the date. Aligning the festival with Keene State College’s (KSC) parents’ weekend in 2023 ultimately posed significant challenges with so many people in town and public safety resources were drawn thin. In consultation with KSC and the Public Works Department, Let It Shine decided not to do the same in 2024, so the festival is proposed for the weekend before KSC’s parent’s weekend. The proposed October 12 date aligns with KSC’s fall break, when there will be fewer students on campus, freeing more resources for the festival. Mr. Giacomo cited other proposed changes this year, including increasing the number of craft vendors as they did not require as much space as anticipated last year; they would remain on Main Street, confined in the parking spots within the festival’s footprint. During the protocol meetings, they discussed whether it makes sense to not place pumpkins past Emerald Street/Gilbo Avenue; if the City decides it makes the most sense to close that area to traffic flow, it will eliminate an “S” curve at Gilbo Avenue, which challenged drivers during a different festival two years ago. No other major changes were proposed for this year’s festival.

Mr. Giacomo noted that Let It Shine was in the process of codifying its mission statement so that in perpetuity, which would limit the Pumpkin Festival to a specific size, including prohibiting things like carnival rides. Let It Shine is cognizant of past challenges, and they want to find a way to prevent those issues in the long term.

The City Manager thanked Mr. Giacomo and Let It Shine for troubleshooting the timing with KSC and other things occurring in the community. The City Manager was confident these changes would alleviate last year's concerns. The event was successful with Let It Shine, and the City Manager was grateful for what they had accomplished. While she had confidence in the current Let It Shine Board's intentions for the size of the event, she supported the idea of documenting the intent for the festival in the future. The City Manager said festivals are crucial to Keene and keeping Main Street vibrant, but there is a tipping point, at which they can become burdensome on the City's resources. She was grateful to Let It Shine.

Chair Bosley recalled that she served on the Let It Shine Board in previous years. She thought the 2023 festival was amazing and she enjoyed getting the pumpkins to and from the schools. Even setting up the pumpkins on the Friday before the festival is a wonderful experience for the community who might not be able to attend the festival. Chair Bosley looked forward to this year's event.

Mr. Giacomo said that ultimately, without building a sustainable model, Let It Shine's future success would not be guaranteed. He said it was logical for Let It Shine to build this model and they were happy to add language to keep the festival manageable in the future.

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

On a vote of 5-0, the Planning, Licenses, and Development Committee recommends that a license be granted to Let It Shine, Inc. to use Downtown City rights-of-way on Saturday, October 12, 2024, to host the Keene Pumpkin Festival subject to the following provisions:

- This license is granted based upon the event scope presented to City staff during protocol meetings held to date, changes or additions to the license may require that an amended license be issued by the City Council and no changes to this license or the associated protocol documents will be accepted after September 1, 2024;
- The Petitioner agrees to absorb the cost of any City services over and above the amount of City funding allocated in the FY 25 Community Events Budget, and agrees to remit said payment within 30-days of the date of invoicing;
- The furnishing of a certificate of liability insurance in the amount of \$1,000,000 naming the City of Keene as an additional insured;
- The signing of a standard revocable license and indemnification agreement and associated protocol documents;
- That the footprint and layout for the event shall encumber the traveled portions of Central Square, Main Street both sides from Central Square to Emerald Street and Eagle Court, and a portion of Railroad Street. Road closures may include any portions of other streets needed to facilitate detour routes. The full extent of road closures and detour routes shall

be agreed upon with City staff and will include any closures necessary to facilitate safety during pre-event setup and post event cleanup activities;

- That the Petitioner is permitted to use the Railroad Square vendor spot for pumpkin drop-off by area schools on Friday, October 11, 2024;
- That the actual event will be held from 2:00 PM to 7:00 PM with the times for set up and clean up to be established with City staff;
- The submittal of signed letters of permission from any private property owners for the use of their property;
- That free parking be granted under the provisions of the free parking policy for City parking spaces needed for logistical purposes beginning Thursday, October 10, 2024 at 6:00 AM and extending through Monday, October 14, 2024, and spaces within the event footprint on the day of the event; and
- Said permission is granted subject to obtainment of any necessary licenses or permits and compliance with all laws; and compliance with any recommendations of City staff.

Mr. Giacomo clarified that the drop off would not be at Railroad Square this year, but instead in the western northbound lane of Main Street.

Chair Bosley moved to amend the motion to replace the following, “*That the Petitioner is permitted to use the Railroad Square...*” with, “That the Petitioner is permitted to use the northbound inside lane of Main Street...” Vice Chair Jones seconded the motion to amend, which carried unanimously.

On a vote of 5–0, the amended motion carried unanimously.

7) Luca Paris/Greater Monadnock Collaborative – Request to Use Parking Spaces – Classic Cars – May 5, 2024

Chair Bosley welcomed Luca Paris, President of the Greater Monadnock Collaborative Regional Chamber of Commerce. Mr. Paris explained the idea to bring back “Cruising Main Street.” The event, which brings classic cars to Keene, was prominent for many years before Mr. Paris moved to Keene. Many in the community had spoken to him about wanting to bring the event back. He felt that Monadnock Ford would be a great partner for this event. He said the protocol meetings had occurred with City Staff and he thought the requirements had been satisfied.

Chair Bosley knew the organizers had met with the Municipal Services, Facilities, and Infrastructure (MSFI) Committee and she said this would be a nice way to support downtown’s vibrancy. She knew there had been some concern about street closures, but she thought the organizers had taken citizen safety into account.

The City Manager, Elizabeth Dragon, was appreciative of the sponsor of this event for taking the City’s feedback and being willing to talk about creating more safety for the spectators. This event was initially reviewed by the MSFI Committee. There had been concerns about impacts to the roadway based on feedback from the Ice and Snow Festival. Additionally, this would be scheduled for graduation weekend, so there were concerns about traffic and crowds. As such, there were additional protocol meetings and there was consensus on a partial lane closure to

provide some additional space, which the City Manager was pleased with. The organizers had satisfied all other protocol concerns, including agreeing to \$2,000 in additional expenses for the organizers.

There were no public comments.

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

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends that the Greater Monadnock Collaborative be granted a license for the use of City property on Railroad Square and designated spaces around Central Square and down Main Street to conduct a Classic Car Show event on Sunday, May 5, 2024 from 8:00am to 12:00pm. The applicant is permitted to close off the outer lane of Central Square and the outer northbound and southbound lanes of Main Street to Railroad Street to provide a buffer for pedestrians viewing the cars on display, as well as a portion of Railroad Street from Main Street to the westerly entrance of the Wells Street Parking Garage, if needed. This permission is granted subject to the signing of a revocable license and indemnification agreement, submittal of a certificate of liability insurance in the amount of \$1,000,000 listing the City of Keene as additional insured, submittal of signed letters of permission from the owner for any use of private property, and compliance with any recommendations of City staff. This license is subject to the Greater Monadnock Collaborative absorbing the cost of any City services provided. Use of the parking spaces is granted free of charge under the provisions of the Free Parking Policy.

- 8) **Operating Rights Agreements with Monadnock Choppers - Flight Training - Airport Director**
- 9) **Operating Rights Agreement with Monadnock Choppers - Aircraft Maintenance Services - Airport Director**
- 10) **Airport Land Leases with Monadnock Choppers Associated with their Operating Rights Agreement - Airport Director**

Chair Bosley heard agenda items 8–10 together. She welcomed the Airport Director, David Hickling, who explained that Monadnock Choppers had been in business at the Dillant Hopkins Airport for four years. They initially only wanted a two-year operating agreement with a two-year renewal to ensure their business would run well. The business had been very successful. One of Monadnock Choppers' ground leases had expired. So, the owner wanted to renew both of their leases and both of their operating agreements concurrently, so they would all now align. The two operating agreements are for flight training services and aircraft maintenance services. The two land leases are for hangars used for Monadnock Choppers' operations. The City had negotiated the lease in accordance with the Airport Land Leasing Policy and reached an agreement.

The City Manager said that Monadnock Choppers had been a great addition to the Airport and a great tenant. She was glad they wanted to continue the operating agreement. She supported moving the agreements forward.

Councilor Williams recalled that there had been concerns when Monadnock Choppers moved into the Airport, and he was glad those did not occur. Councilor Ormerod agreed that there had been a concern in his Ward, and he was pleased with how the City Manager and Airport Director managed the relationship to be a positive one for the community.

There were no public comments.

Councilor Haas made the following motion, which was duly seconded by Councilor Ormerod.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Manager be authorized to do all things necessary to execute an operating rights agreement with Monadnock Choppers to provide flight instruction at the Keene Dillant-Hopkins Airport.

Councilor Haas made the following motion, which was duly seconded by Councilor Ormerod.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Manager be authorized to do all things necessary to execute an operating rights agreement with Monadnock Choppers to provide aircraft maintenance at the Keene Dillant-Hopkins Airport.

Councilor Williams made the following motion, which was duly seconded by Vice Chair Jones.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends that the City Manager be authorized to do all things necessary to execute airport ground leases with Monadnock Choppers for lots 16 and 17 to conduct business at the Keene Dillant-Hopkins Airport associated with their operating rights agreement.

11) Relating to the Airport Development and Marketing Committee – Ordinance O-2024-03

Chair Bosley welcomed the Airport Director, David Hickling, who works with the Airport Development and Marketing Committee. He explained challenges the Committee had faced reaching a quorum, filling empty seats, getting volunteers to be Chair, and filling the Committee with Keene residents. As such, he recommended edits to the Ordinance to:

- Reduce the Committee’s seats from 11 to 7,
- Make the Fixed Base Operator, Monadnock Aviation, a permanent member of the Committee that does not time out, because the Airport relies on their services,
- Allow members who do not reside in Keene if they provide important expertise, and
- Name the Airport Director as the Chair (non-voting).

The City Manager supported these amendments, agreeing with the residency challenges, especially as the Airport is in Swanzey and has active tenants who are not Keene residents. The City Manager would remain as an ex-officio member.

Chair Bosley agreed that there had been a lot of conversations about the challenges of chairing a committee, so the consistency of the Airport Director as Chair would allow members to focus on their work.

Councilor Ormerod agreed that it is wise to allow non-residents, which had been helpful for certain other committees, like the Energy and Climate Committee.

There were no public comments.

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

On a vote of 5–0, the Planning, Licenses, and Development Committee recommends the adoption of Ordinance O-2024-03.

12) Adjournment

There being no further business, Chair Bosley adjourned the meeting at 9:29 PM.

Respectfully submitted by,
Katrnya Kibler, Minute Taker
March 17, 2024

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