

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, December 11, 2024

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Philip M. Jones, Vice Chair
Andrew M. Madison
Robert C. Williams
Edward J. Haas

Members Not Present:

Kate M. Bosley, Chair

Staff Present:

Elizabeth A. Dragon, City Manager
Amanda Palmeira, Assistant City Attorney
Rebecca Landry, Deputy City Manager
Mari Brunner, Senior Planner
Rick Wood, Fire Marshal/Building Official
Jason Martin, Fire Chief

Vice Chair Jones called the meeting to order at 6:01 PM.

1) Councilor Robert Williams – Policy on the Discharge of Fireworks

Councilor Williams explained that this was a continuation of the discussion on fireworks that the Committee had been having over the past several years. He said this was precipitated by what he thought were four commercial fireworks displays at Alumni Field in 2024, which seemed like too many to the Councilor. He said that while everybody likes the color and celebration of fireworks, they could have a negative effect, such as noise/air pollution, when they are frequent. They also could pose a hazard to local habitat/water/animals and be upsetting to people with autism or PTSD or sensitive pets. He suggested that there was a burden from having all of these fireworks displays in a single neighborhood rather than spreading them around the City, or from having fireworks alternatives such as drone shows. Councilor Williams hoped this conversation would lead to some alternatives.

Vice Chair Jones admitted concerns about fireworks because most displays occurred in Ward 5—his Ward—so he would get phone calls from upset constituents with children on the autism spectrum, or someone with PTSD or a sensitive pet. So, he agreed that this was an issue for the Council to discuss.

Vice Chair Jones welcomed comments from the City’s Fire Marshal, Rick Wood, who explained that most of the public do not know that what are referred to as “commercial” fireworks displays are actually permissible—or “consumer”—fireworks. Two of the four shows at Alumni Field in 2024 were consumer fireworks shows that were put on by a commercial vendor; those are the same fireworks that any citizen could purchase and use at their home under Chapter 42 of the

City Code. He said that sometimes those shows are based on costs and sponsorship. Two (the July 4 & First Responder events) of the four 2024 shows used commercial fireworks and the other two used consumer fireworks.

Vice Chair Jones recalled that historically, the Council had also approved fireworks applications for other locations like Keene Country Club, including three weddings in one year, as well as a corporate event at Stonewall Farm. So, he said that these events could move to other places around the City. Mr. Wood said that was worth exploring. He said that sometimes, when people think they are seeing a commercial show, they are actually *consumer* fireworks. He wanted to make sure the Committee understood that Section 42-61 of the City Code—which the Council made changes to in March 2023—restricts the sale, possession, and display of *consumer* fireworks. So, if those displays at the Country Club used consumer fireworks purchased at a local venue that any other resident could purchase, and they followed this Ordinance post-March 2023, there would have been no other requirements.

Councilor Williams asked the distinction between commercial and consumer fireworks. Mr. Wood explained the two different regulations in New Hampshire. NHRSA 160-B covers commercial fireworks and NHRSA 160-C is the consumer side. The definition is based on the amount of explosive material in the firework. He added there was also different quantities of black powder between the two.

Councilor Haas asked if anyone at the meeting attended the 2024 events and could comment on the distinctions between the consumer and commercial shows; was there a significant difference? Mr. Wood did not attend the shows, but he said the main difference is the height of the fireworks. Consumer fireworks are designed to be mostly pre-packaged, although New Hampshire does offer “reloadable shells,” as long as they meet specific requirements. For example, a one-inch shell has a 70-foot clearance, and larger shells have higher clearance requirements. From a regulatory perspective, a commercial show requires a license and many other requirements.

Councilor Madison asked what actions the City could take to regulate how many fireworks shows there could be in the City and where they could be. Mr. Wood replied that it would depend on the type of show. Under NHRSA 160-C, the City has the authority—as it had already done via Ordinance—to decide whether or not consumer fireworks are permissible and regulate them up to not permitting them in the City.

Vice Chair Jones said he asked the City Clerk’s office for a copy of the Fireworks Permit application and said he did not realize it was only a State of NH application, and that to go through the City, an applicant only had to write a letter and ask for permission. Mr. Wood said the State application covered the commercial display of fireworks for a licensed fireworks vendor; the Fire Department signs off on that. Then, per Chapter 42 of the City Code of Ordinances, the commercial applicant is required to get permission from this Committee before their final State approval. So, he said there were a few processes in the NH Fire Code that the

City could consider. For example, if the display is before a proximate audience—meaning inside a venue or much closer than normal—there is a different level of scrutiny. He also explained a pre-show inspection procedure for devices displayed in front of audiences.

Councilor Williams asked if Mr. Wood or the Fire Chief were aware of any safety incidents, especially since the City had legalized fireworks, and how things had been going in general since the Ordinance was adopted in March 2023. Mr. Wood had only been on staff since April 2024, but he was not aware of any fires related to fireworks discharge. The Fire Chief, Jason Martin, said that to the best of his knowledge, there had not been any accidents or any injuries with consumer fireworks since March 2023.

Vice Chair Jones noted that when the Committee approves a fireworks display, they are told how many firefighters have to be on location, and he asked how many that is typically. Chief Martin said it would usually be the same for any consumer show: a brush truck with three personnel. For a commercial show, the Fire Marshal would also be there for set-up and the three personnel would check the area for fallout from any shells afterward. Vice Chair Jones asked if the applicants are charged for employee time and equipment, and Chief Martin said yes.

Councilor Haas asked the difference between Class 1 and Class 2 fire danger days, what 4–6 are, and what happened in November 2024. Mr. Wood referred the Committee to the [State of NH Daily Fire Danger](#) website for details and provided an overview. He said the State’s Daily Fire Danger rating is based on a variety of factors including relative humidity, wind speeds, turf conditions, and more. The ratings are from Low (Green)–Extreme (Red) Hazard. In November 2024, Keene experienced an extremely dry period combined with low humidity and high wind. So, the City authorized a period of no open burning under RSA 227-17, the NH Forestry Statute.

Councilor Williams suggested that—when the City announces that open burning is prohibited because of Fire Danger—that it should also announce warnings to avoid launching consumer fireworks. Vice Chair Jones said it was a good point. Mr. Wood was unsure that there was anything in the regulation or the statute that would allow that, while the City could contact those with Fire Burn Permits. In the recent instance Councilor Haas referenced, the City emailed Fire Burn Permit holders, so they knew they were not allowed to burn during that period. The City has no way to know when consumers legally purchase fireworks, so it would be difficult. However, there could be a web announcement. Vice Chair Jones said that when he had a Fire Burn Permit in the past, he had to call the Fire Department every time he wanted to burn, and he asked if that was still the procedure. Chief Martin said no, Permit holders check the State website to see if burning is allowed that day, and if someone calls the Fire Department to express concern about burning at a specific address, the Department can look up the address and contact the Permit holder, instructing them to put out the fire because it is a High Hazard day.

Councilor Haas said it seemed that the Committee wanted to move in the direction of eventually limiting the number of fireworks events that happen in a neighborhood over the course of a year, so the same neighborhood is not excessively burdened. He asked how to do that in light of

consumer fireworks being unregulated. He said it would take a lot more imagination to craft a proper ordinance but that it was worth trying, so he challenged City staff to develop good ideas in addition to the Committee's suggestions. He supported the idea of warning against displaying consumer fireworks when no open burning is allowed.

There were no public comments.

Vice Chair Jones welcomed comments from the City Manager, Elizabeth Dragon, who wondered if the Committee was interested in placing this communication on more time based on this discussion vs. the recommended motion to direct the matter to the City Manager to investigate alternate locations for fireworks displays. She heard various interests mentioned from the Committee during this conversation, and she hoped for a clear understanding of what the Committee wanted to accomplish. Vice Chair Jones liked the idea of putting this on more time for the reasons mentioned, but also because he hoped to meet with staff to discuss educating the public about alternatives to fireworks that could be even better like drone shows, light shows, and fountain shows. The City Manager said she was happy to meet with Vice Chair Jones, but she noted that one challenge could be the higher cost of some of the alternative he mentioned. Still, she said the City could mention alternatives to the fireworks display applicants. Vice Chair Jones wondered if the costs could go down because the applicants would not need to pay for the Fire Department personnel on site.

Mr. Wood noted that drone shows would be commercial ventures, likely not on residential properties, and additional regulatory oversight would be needed, as drones in certain crowded locations could be problematic from a security perspective. So, he said those would also be things to keep in mind when looking at alternate locations. For example, typically a fireworks vendor assesses the size of a location before accepting a contract. Mr. Wood agreed that having a variety of approved locations would be helpful, but trying to dictate certain shows in certain locations would be more problematic. His greatest concern was that there would need to be a practicality to the enforcement, because it would be challenging.

Vice Chair Jones asked if the City Manager was open to this being on more time. The City Manager said that was fine, but it would be helpful for the Committee to indicate what they hoped for staff to accomplish during that time or asked if the Committee members just wanted more time for themselves to consider what they learned during this meeting. Vice Chair Jones wanted to discuss some things more with staff and he thought Mr. Wood brought up some things that staff should consider. Councilor Williams said he needed more time to consider the information he learned during this meeting and regarding permissible and non-permissible fireworks. He was interested in capping the number of fireworks shows at any one location, but he needed to consider what would happen if only capping consumer or commercial fireworks. For example, if only capping commercial shows, there could be a lot of consumer shows in turn. Vice Chair Jones agreed and added that this was a good time of year because this was not time sensitive.

The City Manager suggested putting this on more time so that she could meet with Vice Chair Jones, Councilor Williams, Mr. Wood, Chief Martin, Deputy City Manager Landry, and Assistant City Attorney Palmeira to workshop the options in advance of the next PLD meeting.

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

On a vote of 4–0, the Planning, Licenses & Development Committee recommends placing any consideration of fireworks regulations on more time to allow staff to develop alternatives.

2) Sign Code Modifications Requested by Mayor Kahn

Vice Chair Jones stated that because the Mayor could not be present to address this issue, the Committee intended to postpone this.

There were no public comments.

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

On a vote of 4–0, the Planning, Licenses & Development Committee recommends placing Sign Code modifications requested by Mayor Kahn on more time.

3) Relating to Amendments to the City of Keene Land Development Code, Definition of Charitable Gaming Facility – Ordinance O-2023-16-C

Vice Chair Jones welcomed Senior Planner, Mari Brunner, who reminded the Committee that it had reviewed this Ordinance several times, including through three iterations and public hearings to date. There had been a variety of changes to the Ordinance throughout that time. It began as a proposal to allow charitable gaming facilities in the Commerce and Downtown Growth Districts. Now, it had morphed into only allowing charitable gaming facilities in the Commerce District, with a number of limitations. In addition, this version of the Ordinance would remove the ability for drive through accessory uses in the Downtown Core District with a special exception.

Councilor Haas asked where this Ordinance was in the overall process. Ms. Brunner replied that another public hearing had just occurred, and now the PLD Committee was to review the Ordinance before making a recommendation to the Council regarding adoption. She added that the next agenda item was a companion Ordinance O-2023-17-B that proposed updating the definition section of the Land Development Code (that is not in Zoning) to add the definition of charitable gaming facility and gaming position (the parking requirement was based on the latter). She said one Ordinance O-2023-16-C had to go through the Zoning amendment process and Ordinance O-2023-17-B went through the standard City Council Ordinance adoption process. If the Committee was ready to make a recommendation at this meeting, the Ordinance would move forward to City Council and the Committee would be asked to also make a recommendation on

Ordinance O-2023-17-B.

Vice Chair Jones recalled that no further public comment was allowed on this matter.

A motion by Councilor Williams to adopt Ordinance O-2023-16-C was duly seconded by Councilor Madison.

Councilor Madison thanked City staff for their work on this Ordinance and apologized for how long it had taken to work toward adoption. He hoped that the Council would adopt it this time and there would be no last-minute changes by Councilors after all this discussion for two years.

Vice Chair Jones recalled that he had been opposed to this Ordinance since the beginning because he did not think the City should be singling out this one entity and that it should be treated like all other forms of entertainment, such as bowling or a movie theater. So, he would be voting against.

On a vote of 3–1, the Planning, Licenses and Development Committee recommends adopting Ordinance O-2023-16-C. Vice Chair Jones voted in opposition.

4) Relating to Amendments to the Land Development Code, Definition of Gaming Facilities – Ordinance O-2023-17-B

Vice Chair Jones welcomed Mari Brunner, Senior Planner, who explained that Ordinance O-2023-17-B would add the definition of charitable gaming facility to the definition section of the Land Development Code.

Councilor Haas pointed out that these definitions were all in accordance with State of NH regulations and legislation. Ms. Brunner said that was her understanding as well. She believed that the City’s proposed definition would specifically exempt non-profit type bingo halls (e.g., churches) that raise money. This definition was meant more for commercial operations. Councilor Haas thought that was clear.

Vice Chair Jones recalled that no further public comment was allowed on this matter.

A motion by Councilor Madison to adopt Ordinance O-2023-17-B was duly seconded by Councilor Haas.

Vice Chair Jones stated that he would be voting in opposition to align with his long-term stance on charitable gaming facilities.

On a vote of 3–1, the Planning, Licenses and Development Committee recommends adopting Ordinance O-2023-17-B. Vice Chair Jones voted in opposition.

5) **Relating to Development on Class VI Highways and Private Roads – Resolution R-2024-43**

Vice Chair Jones welcomed Senior Planner, Mari Brunner, who described this Resolution that staff drafted in response to a request from the City Council. When the Council rescinded the previous resolution related to development on Class VI Highways, staff was directed to develop a new policy/resolution to provide guidance for when someone applies for a Building Permit under NH RSA 674:41. Ms. Brunner presented something to the Committee that she had brainstormed with the former the Community Development Director. She read the first recommended criterion:

1. The proposed development is consistent with either the existing development pattern or the desired development pattern.
 - a. The desired development patters would be based on the Future Land Use section of the adopted Master Plan.
 - b. The established development pattern shall be based on abutting properties and properties within 200 feet of the boundaries of the lot upon which a building permit is proposed.

Ms. Brunner said the first criterion developed through talking about the different situations in which a private road or Class VI highway could exist in Keene, including the very remote and rural areas, but also in the downtown. So, staff though that it would be best to consider them on a case-by-case basis, which was what the statute would require, and it would give the Council the opportunity to ensure this type of development fits with what would surround it.

Ms. Brunner read the remaining recommended criteria:

2. The proposed development will be established, maintained, and operated so as to not endanger public health, safety, or welfare.
3. The proposed development will not place an excessive burden on public improvements, facilities, services, or utilities.
4. All requirements of NH Revised Statute Annotated 674:41 shall be met.

This second criterion came from the City's Zoning regulations to align. She was unsure whether the fourth criterion was necessary. Per these criteria, the property owner would have to agree that the municipality is not liable for maintenance, and there would be various requirements trying to protect the municipality from having to take the road over and turn it back into a Class V road or into a Class V road if it was never one.

Vice Chair Jones asked if the private road would have to meet City standards. Ms. Brunner said no, it would have to meet the City's existing definition of a private road (vs. an easement). Many existing private roads in the City were not built to the current road standards, but if someone were to build a new private road, it would have to meet the City's current standards for building

a road. Vice Chair Jones added that this Resolution includes only Class VI roads, but the Joint Committee had a more time item dealing with other private roads. Ms. Brunner said this Resolution deals with Class VI and private roads. When the Council adopted the original policy, the State statute only included Class VI roads and private roads were incorporated at a later date. So, this issue arose in the City recently due to private roads in built-up areas of the City where there could be development, and because it would require a 2/3 vote of the City Council to suspend this Resolution to consider Building Permits on those roads, it made that process difficult. Vice Chair Jones said there was a difference between this and what was on more time for the Joint Committee. Ms. Brunner said yes, the Joint Committee was considering whether or not to allow private roads to be constructed, which required a variance at this time. Vice Chair Jones thought this was a good thing and another tool to develop new housing in the City, so he thanked staff for bringing it forward.

Councilor Madison agreed with Vice Chair Jones, stating that this was a commonsense solution and another tool for the City in the housing crisis to resolve minor problems, so he also thanked Ms. Brunner for the good work.

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

On a vote of 4-0, the Planning, Licenses and Development Committee recommends adoption of Resolution R-2024-43.

6) Rules of Order – Section 15 – Voting and Conflict of Interest – City Attorney

The Assistant City Attorney, Amanda Palmeira, said there was nothing new to present from the City Attorney's office, noting that this was largely an effort from the Mayor. The latest draft in the meeting packet from the City Attorney was revised at the Mayor's request.

Councilor Madison asked if the recommended motion language was from the Mayor. The Assistant City Attorney said that was correct and it was her understanding that what was presented was modeled after the State statute, which was not the direction the Committee had before.

Vice Chair Jones recalled that the Mayor was planning a Council workshop for January 28, 2025, on the Rules of Order and asked if this language would be a part of that discussion. The Assistant City Attorney said a Councilor could mention this at the workshop. She added that the details of that workshop were yet to be decided. This was on the Committee's agenda, so the next action was the Committee's prerogative.

Councilor Williams felt that the language had changed quite a bit. He said he discussed a potential comma change with Councilors Haas and Lake. It seemed to Councilor Williams that the whole thing needed to be discussed more and if the Mayor was the advocate for the changes, then he should be present for the discussion. So, Councilor Williams supported more time.

Councilor Madison agreed with Councilor Williams that it was the Mayor's prerogative to bring it to the Council so he should be the one to address it before the Committee. So, Councilor Madison supported more time. Vice Chair Jones agreed.

Councilor Haas pointed out a concern with the last paragraph, in which the third and fourth lines began read, "... the person's employer, and any board, commission, organization, association..." He said the Council would need to clarify what type of logical operator the "and" would be and if it could mean that both parts of the sentence could be true given the comma following it, which could actually suggest an "or" statement, so it was confusing. So, he asked the City Attorney to consider it while it was on more time because it could make a big change in the last paragraph. Councilor Williams suggested that the City Attorney should consult Councilor Lake about these details.

There were no public comments.

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

On a vote of 4-0, the Planning, Licenses and Development Committee recommends placing the item Rules of Order Section 15. Voting and Conflict of Interest on more time.

7) Adjournment

There being no further business, Vice Chair Jones adjourned the meeting at 6:46 PM.

Respectfully submitted by,
Katrinya Kibler, Minute Taker
December 13, 2024

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