City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE MEETING MINUTES

Wednesday, November 13, 2024 **6:00 PM** **Council Chambers, City Hall**

Members Present:
Kate M. Bosley, Chair
Philip M. Jones, Vice Chair
Andrew M. Madison
Robert C. Williams
Edward J. Haas

Members Not Present:
All Present

Staff Present:
Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Amanda Palmeira, Assistant City Attorney
Rebecca Landry, Deputy City Manager
Patricia Little, City Clerk
Terri Hood, Deputy City Clerk
Don Lussier, Public Works Director

Jay V. Kahn, Mayor

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

1) **Greater Monadnock Collaborative – Request to Use City Property – Central Square and Railroad Square – 30th Anniversary Celebration of the Release of the Film Jumanji**

Chair Bosley welcomed Cathy Bergstrom of the Greater Monadnock Collaborative. Ms. Bergstrom explained the plan to have a family friendly event over the course of a weekend in recognition of the 30th anniversary of the release of the film, Jumanji.

Friday evening, the event would begin with a screening of the film at the Colonial Theatre that would hopefully include some cast extras who are still in the Keene area to take part in a Q&A On Saturday, there would be a road race up Main Street and Central Square, with participants wearing inflatable costumes mimicking some of the animals that were in the stampede in the film, with a parade immediately following. There would be a rolling road closure for that part of the festival. There would also be a scavenger hunt with any of the downtown businesses that are interested in participating; participants would receive a map and a list of items to find and take selfies and be in a drawing for a prize. The downtown businesses would have Jumanji themed foods, drinks, and any other goods they want to sell. On Sunday, the organizers propose dedicating a mural to Robin Williams and mental health awareness. Ms. Bergstrom noted that a former Keene police officer who was assigned to protect the children on the film also died from

suicide this year. They would want to honor him as well. She said the organizers hope this event would help support the downtown merchants before the downtown constructions begins.

Chair Bosley requested City staff comments. The Deputy City Clerk, Terri Hood, said that the protocol meetings for this event had occurred and there had been some slight adjustments to the timing because of the downtown project. Otherwise, she said that staff were comfortable with issuing the licenses and the protocol meetings would continue to finalize things.

Chair Bosley opened the floor to public comments.

Ted McGreer of 18 Forestview Road said that Ms. Bergstrom had done the legwork for this event, including getting the permission from Sony Pictures Entertainment to use the name Jumanji so downtown merchants could sell things with the name on them. However, as a downtown merchant, Mr. McGreer said the hope was that this event could happen in June. He said that Central Square was an important part of filming Jumanji, but the organizers were told that because of the downtown construction, the event needed to be moved to April, which could mean a 32° vs. a 70° day. He said that he wanted to be very clear that the downtown will need as many events as possible to survive reconstruction. Further, he said that the presence of the downtown construction could not mean a moratorium on downtown events, and he did not want to see things pushed aside because of construction. He urged being creative and working around it.

Vice Chair Jones thanked Ms. Bergstrom for mentioning mental health, noting that Robin Williams suffered from Lewy body dementia, something that is close to the Vice Chair.

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

On a vote of 5–0, the Planning, Licenses & Development Committee recommends that the Greater Monadnock Collaborative be granted a license to use downtown City property from Friday, April 11 through Sunday, April 13, 2025 to host a Celebration of the 30th Anniversary of the film Jumanji, conditional upon the following:

- The signing of a standard revocable license and indemnification agreement;
- That the petitioner provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of $1,000,000;
- That the Petitioner agrees to absorb the cost of any City services provided to the event, and agrees to remit said payment within 30-days of the date of invoicing;
- That the Petitioner is permitted to conduct a road race reenactment of the “stampede” depicted in the film and a parade to occur on Main Street on Saturday, April 12, at noon with assistance from the Keene Police Department to temporarily close certain streets or rights-of-way intersecting with the planned route; and
- That the petitioner is permitted to close a portion of Church Street from Main Street to just east of the Hannah grimes parking lot each day of the event from 11:00 AM to 8:00

PM to allow food trucks to participate, with the road being reopened to traffic at the close of each day. Additional 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

- That the petitioner is permitted to use areas on the sidewalk adjacent to the Colonial Theatre on Friday, April 11, as well as Central Square common, Railroad Square and Gilbo Avenue along the bike path on Saturday, April 12 for other planned activities; and
- That the Petitioner is permitted to place portapotties in City parking spaces with the specific locations to be determined in conjunction with City staff from Friday, April 11, 2025 to Monday April 14, 2025 which will be chained together and affixed to ensure they are not vandalized while unattended overnight;
- The submittal of signed letters of permission from any private property owners for the use of their property; 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.

To Mr. McGreer's point, Chair Bosley said she was aware that City staff tried to help ensure that this event could occur in June, but it would have meant a different footprint, and the Chair liked this recommended footprint better for this specific event, so she was glad they were able to make some of the adjustments work. Chair Bosley added that she knew staff were working hard with all City events to ensure they could continue through construction; she said they were committed to putting in as much effort as possible to ensure the downtown merchants have a successful few years.

2) Jared Goodell – Proposed Amendment to Land Development Code – Side Setbacks

Chair Bosley welcomed Jared Goodell of 39 Central Square, who recalled that he previously had an issue before the full Council for this same project. He said this project was like a cottage court development but was not one. A stumbling block to his development was an interior side set back in the existing dimensional requirement of the Downtown Edge District, the project location. He explained that the interior side set back dimensional requirement in the Land Development Code at this time was 0 feet unless the property's interior side abutted the Downtown Transition and so the setback became 20 feet. Mr. Goodell said that there were only four instances in the City of Keene Downtown Edge abutting Downtown Transition on the interior side; two properties he owned and two currently legally non-conforming uses. Mr. Goodell explained that he was asking the City Council to ask City staff to look into this and rewrite this portion of the Land Development Code as had been practiced recently, specifically pertaining to lot sizes around downtown zoning districts. He said it would help get these six units on the market faster, reiterating that it was only a small portion of the Land Development Code impacting four parcels, so it seemed like an easy fix.

Chair Bosley requested staff comments. The City Attorney, Tom Mullins, explained that unfortunately, the staff member with the most knowledge of this had to be absent for medical

reasons. The City Attorney did not speak to Mr. Goodell's specific project, but suggested to the Committee that the proper way for Mr. Goodell to proceed in this effort would be to work with the Community Development Department on the 4th floor of City Hall to submit a properly completed petition for the purposes of amending the Zoning Ordinance. There is also a process through the City Clerk's office on the 1st floor of City Hall for notice issues. The City Attorney said the petition needs to identify: the individual, the location, the intent, how many parcels may be affected, and all abutters. The City Attorney recalled that Zoning amendments occur in a few ways: the City can propose those it believes are for the public benefit and have a fairly wide application within the City, which is not uncommon. Individuals with needs can also proposal Zoning amendments. However, the correct process is to submit the paperwork.

Councilor Haas asked Mr. Goodell if he had gone through City's Zoning Board of Adjustment (ZBA) process to seek a variance. Mr. Goodell said a variance was granted but it did not fit the dimensional needs of the site as it stood at the time of this meeting. Councilor Haas asked if Mr. Goodell could request to modify that variance. Mr. Goodell replied that he was attempting to do that concurrently with making this request of this City Council, because he said the ZBA process was cumbersome, and he was looking for the path of least resistance. He said his ultimate goal was to get these units on the market before winter so people could occupy them instead of shelters or hotel rooms. Councilor Haas said he understood Mr. Goodell's points that that the normal zoning process could be complicated and time consuming but suggested that he pursue both the ZBA process and the zoning amendment process at the same time. Mr. Goodell said that was essentially what he was doing. At this time, he had an application pending with the ZBA.

Mr. Goodell responded to the City Attorney's comments. Mr. Goodell stated that when the City petitions the Council for changes to the Land Development Code, it is a similar application and similar process, except that there are some cost differences. He recalled that the City and Council had talked for years about clearing pathways for housing to be developed. So, in this instance, given that there were already dimensional changes on the table for the downtown zoning districts, it seemed to him there would be no real reason for the City not to submit this change and get the process rolling as it had with other issues. He said that ultimately, it would not matter to him whether he submits the application, or the City does—stating that the Community Development Department staff are great people to work with—but said it would be nice if the City did this.

Chair Bosley commented on how interesting it is that until you begin working with the Code, you cannot anticipant all potential consequences. Despite writing the Code with good intentions, these intricacies could play out with time, such as a portion only impacting four boundary lines—though she was unsure if that was accurate and needed to hear from the Community Development Department. If accurate, she said the Code could be trying to solve an erroneous problem, and she would be open to hearing more about what could be done and how it would affect the other parcels so the best decisions could be made for all involved. Ultimately, Chair

Bosley also advised Mr. Goodell to go to the Community Development Department on the 4th floor of City Hall to start the petition process.

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

On a vote of 5–0, the Planning, Licenses & Development Committee recommends accepting the communication on the Proposed Amendment to Land Development Code – Side Setbacks as informational.

3) Kenneth Kost – Potential for Mixed-Use Development on Gilbo Avenue Land

Chair Bosley welcomed Kenneth Kost to share a presentation on what he thought the City should do for potential mixed-use development on Gilbo Avenue, referring to the details of his communication and proposal in the meeting packet. He spoke about land on both sides of Gilbo Avenue from Main Street to School Street having rare potential to become a new downtown neighborhood. He called it really special to have that much developable land downtown and adjacent to Main Street, so he did not think it should be misused or underused. He said the City should understand the full potential of that property. Mr. Kost continued, explaining that as a member of the Monadnock Interfaith Project (MIP), he approached the Keene State College Architecture School in 2023, and their sophomore class spent one semester studying Gilbo Avenue, and they demonstrated that parcel-by-parcel, the sites could be developed into housing, commercial, open space, public amenities, parking, and still work with the trail system. They considered how to accommodate a significant number of housing units of all ranges of incomes, consciously including a range of apartments sizes, and considering the market rate and all levels of affordability mixed together. While the students worked in groups on individual building project ideas that did not relate as a whole neighborhood idea, which would be needed in reality, it made Mr. Kost think about how the City needs to consider what it wants to achieve with Gilbo Avenue because at some point, developers would be interested in buying either parcels, or the entire thing. Mr. Kost suggested that the City create a plan or framework—not a detailed design, not imposing what a developer would have to do—but outlining the City's aspirations for Gilbo Avenue when the funds do become available.

Mr. Kost explained how he suggested that the City study this potential for Gilbo Avenue. He explained that when funds become available—acknowledging that the City did not have money to throw around—an urban designer should develop a plan showing various densities of what could be built there; how the buildings, parking, open space, amenities, and all other public spaces could work together to create this amazing neighborhood. This could guide builders and developers to what should be accomplished there. Without that, he thought Gilbo Avenue could end up as individual buildings that might preclude other projects, limit development, or do not realize the potential of the area. With the land available on Gilbo Avenue, he went on to suggest the possible number of dwelling units there—upward of 1,000—but stated that he was unsure if those numbers were real, which was why he suggested that a professional urban designer would be needed. He imagined those units priced from work force to high-end, spurring new businesses

and dynamic life in downtown Keene. He thought this design would respect existing downtown business patterns. Mr. Kost hoped that the City would engage this study at some point the City loses the opportunity to do this.

Chair Bosley thanked Mr. Kost for the effort he put into his report, stating that he was ahead of the curve of what would need to happen there. Chair Bosley related Mr. Kost's dreams for Gilbo Avenue to others' dreams for the Kingsbury property, also not owned by the City, so that tied the City's hands in a lot of ways; Kingsbury had been another very underutilized block of land downtown with so much potential. The City could be aspirational but could not require anything to happen. The Chair requested comments from the Public Works Director, noting that with the downtown project, the City would want to create the most opportunity for development as possible on this site by installing the proper infrastructure.

The Public Works Director, Don Lussier, explained that at this time, the scope included in the Capital Improvement Program (CIP) and downtown project design would extend down Gilbo Avenue as far as the intersection with St. James Street; it is not funded or planned beyond that. The section between Main & St. James Streets will include water, sewer, drainage, and utility upgrades. Mr. Lussier agreed with Mr. Kost that the parts of Gilbo Avenue beyond St. James Street begged for redevelopment, but Mr. Lussier wanted to provide an understanding of what infrastructure currently existed there at the time of this meeting.

He explained that a 6-inch water main (c. 1909) running down the section of Gilbo Avenue between St. James and School Streets would be undersized for the type of development Mr. Kost described for fire flow purposes and would have to be upgraded; he also anticipated that the pipe would be in poor condition. Mr. Lussier continued, by explaining that the drainage infrastructure in that neighborhood was both undersized and in poor condition. The corrugated metal pipe there at the end of its life would also need to be upgraded. Mr. Lussier said upgrading that system would probably mean extending it to Ralston and Davis Streets before reaching a pipe large enough to receive the increased flows from a redevelopment. There were also no existing City sewer utilities in that vicinity; the closest sewer infrastructure at this time was at the end of Wilson Street (6-inch clay c. 1930), south of the Commercial Street parking lot, which would also be inadequate for a development of this size. Mr. Lussier said he wanted to set reasonable expectations that the City would definitely have to invest in the infrastructure to support a development like the one Mr. Kost proposed.

Chair Bosley said that before thinking about the amazing things that could be developed aboveground, it would be necessary to accomplish everything amazing below ground. As a homeowner, the Chair understood the challenge of spending money on things you never see. Still, in the City's upcoming budget season and the CIP, she hoped she would see the Public Works Department consider this and the kind of funds the City could start allocating to some improvements. Mr. Lussier said the downtown project would leave things in a way that subsequent projects on Gilbo Avenue would be ready to commence. For example,

the water main will be ready to continue down Gilbo Avenue and there will be a connection to the existing old pipe. He thought the next CIP cycle would be the right process for his Department to start looking at what it would take to make Gilbo Avenue more development ready. Chair Bosley said she would be interested to see that and wanted to know if there was a Committee consensus if that would be a good investment of Public Works time. She agreed that it would be hard to convince a developer to build if they must also extend sewer lines, especially if the City is unwilling to participate in some of those utility upgrades. Mr. Lussier said that paying for some of this utility work could be tied to development with things like a tax incremental financing (TIF) districts or other programs that tie development to public infrastructure investments. While Mr. Lussier thought it would be appropriate to plan for the future, he did not advocate for fully upgrading all of the underground infrastructure to support possible development; he said to be prepared so that when there is a development plan on the table, the City is ready to support it.

Councilor Williams appreciated Mr. Kost's request for some planning on Gilbo Avenue and wondered if this was something the Master Plan Steering Committee could have a sub-focus on. In addition to fixing the underground infrastructure, Councilor Williams said the City would need a vision for what is going to happen in that area. He was concerned that the vision for a parking garage in the CIP would materialize without broader consideration of the neighborhood. He liked the idea of engaging an expert urban designer as a potentially long-term worthwhile investment.

Vice Chair Jones thanked Mr. Kost for bringing this forward, noting that this was a part of Mr. Kost's expertise. Vice Chair Jones said that Gilbo Avenue is a very important asset to this community. Vice Chair Jones referred to a University of Massachusetts student project with a landscape architect professor who lived in Keene in the past; the designs showing different landscape structures for Gilbo Avenue are in the Community Development Department. He also referenced a video by Paul Pietz proposing a trolley coming from the Colony Mill. Until 2022, there was also a Gilbo Avenue Overlay District, which provided some direction, but it was taken out when the Land Development Code was written, and he wondered if it should be revisited.

Chair Bosley thought that when creating the Land Development Code, the intent was that while the City does not have complete control over what a developer decides to do on any property, through the Land Development Code the City could encourage a certain look and feel (e.g., height of buildings, creating walkability) while still being financially viable to developers. She said that the walkable energy of the downtown ends at the parking lot in front of the pizza place on Main Street, which points to how removing buildings from the sidewalk changes the energy of spaces. Chair Bosley thought the City was committed to building downtown out toward the Colony Mill and through the Zoning rules.

Vice Chair Jones said all the issues Chair Bosley mentioned were a part of the Gilbo Avenue Overlay. So, he said it was worth revisiting again. He and Chair Bosley recalled the City being visited by an expert on walkable downtowns, Jeff Speck.

Councilor Haas asked if Mr. Kost saw anything being proposed in the draft Master Plan that would fit in this area. Mr. Kost was unsure that the scope of what he had seen of the Master Plan would create the vision and visuals to create the excitement needed, but he said that perhaps at some point a modification of the Master Plan for that kind of visioning would occur. Councilor Haas said the Master Plan could be pressed in those directions as it would come to fruition in the coming weeks and months after this meeting. Vice Chair Jones agreed that it would be hard to get into those details in the Master Plan but said the Master Plan could talk about the value of the downtown corridors.

Mr. Lussier addressed the planning study for the parking garage that was also underway, noting that there had been recent drone flights to collect data on current utilization. Part of the scope for that project would include meeting with the Community Development Department and estimating the best use for those underdeveloped parcels and projecting what the parking demand would be based on future developments there.

Without utilities past St. James Street, Mr. Kost said that a study like this, which could show what could happen further down toward School Street, could provide some sense of densities to inform infrastructure development. Regarding the parking garage, he said he did not know that project very well, but expressed concern about a consultant siting a garage on Gilbo Avenue that could preclude these other, bigger picture developments. Lastly, Mr. Kost noted (as in his letter) that he spoke with PLAN NH and they would be willing to come to Keene for a fee of $6,000. They have a team of architects and designers, who would spend two or three days conducting a charette to start to get a professional idea of what is going on if the City would not engage his broader proposal.

The City Manager, Elizabeth Dragon, thanked Mr. Kost for his research. The City Manager also reviewed the interesting Keene State College work, noting that the City gets helpful ideas from the class every year. She said that in other communities, there is a lot of upfront work that has to happen to have a successful charrette to get something meaningful it. At this time, the City's focus was on completing the Master Plan project and hiring a new Community Development Director, but something like a charette in the future sounded like a good idea to the City Manager.

Chair Bosley opened the floor to public comment.

Chuck Redfern of 9 Colby Street spoke primarily as an individual who was involved 30 years ago and saw some development occur on that lot; mainly it was the first segment for the Cheshire Rail Trail, when the railroad yard was abandoned to bring it into use for a multi-use path for the community. With a lot of press as well as political and financial support. Mr. Redfern recalled some of the support for the initial multi-use path. He stated that he would not want to see any project or development of any kind change the width, direction, or bearings of the Cheshire Rail Trail. He said it would be one thing to continue to build the Trail successfully

as in the past with huge support from the City, but equally important to maintain the city's multi-use trail on the NH Department of Transportation (DOT) property, which he said is heavily used and the surface still looked 5 years old despite being 30. Whether development occurs on Gilbo Avenue or not, Mr. Redfern hoped the Council would take these factors into consideration to incorporate development around the trails aesthetically and creatively, maintaining a sense of open space amidst an urban feel.

The City Manager said that within the past few years, Arts Alive brought people in to host a charette for Gilbo Avenue to conceptualize many of the things that were mentioned during this meeting. Some of the drawings from those activities were available. The City Manager said there had been a lot of vision over time, but a lot does come down to willingness of a developer and at some point, she said the City does hope to do more there.

Chair Bosley said that in Section 4.3 of the Land Development Code, primarily in the Downtown Growth District, there were exciting and beautiful dimensional drawings for Gilbo Avenue.

Councilor Laura Tobin of Center Street expressed her gratitude to Mr. Kost for bringing this issue forward. While she heard that the infrastructure may not been ready at this time, she appreciated the visioning and including the College because moving forward, she said that imagining different things would be what makes things happen and what makes the City want to put the infrastructure there. So, she was grateful.

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

On a vote of 5–0, the Planning, Licenses & Development Committee recommends accepting the communication on Potential for Mixed Use Development on Gilbo Avenue Land as informational.

Chair Bosley said this would not be the end of this conversation despite accepting this as informational. She thought Vice Chair Jones had good points about the Gilbo Avenue Overlay District and she suggested that Mr. Kost follow up with the Master Plan Steering Committee about how the Master Plan could promote this type of development at some of these major sites in the City.

4) <u>Relating to Licenses and Permits – Ordinance O-2024-18</u>

Chair Bosley welcomed the Deputy City Clerk, Terri Hood, to discuss amendments to Ordinance O-2024-18, the Licensing chapter, to acknowledge the upcoming downtown infrastructure project. Ms. Hood explained that a lot of Sidewalk Café licenses downtown would be impacted by this project and—rather than suspending licenses or not giving good direction to people that are going to be affected—this would be a way for the City, at the Public Works Director's discretion, to not accept applications in areas that will be impacted by a City construction project. This coming year construction would focus on Central Square and a portion of Main

Street on both sides. The propose Ordinance would allow staff to not accept applications for long-term uses of City property in these impacted areas. This would be separate from short-term events, for which Ms. Hood worked with Public Works and the Police Department to put in place an alternate footprint to offer to anyone who applies for Community Event funding or anyone that comes in looking to do a downtown event (that footprint had not yet been finalized but would be ready within two weeks after this meeting; Gilbo Avenue, Railroad Square, and the area bisecting Main Street). Staff hoped to implement this longer-term Ordinance for next year's licenses that would only affect the ones within the area impacted by construction.

Don Lussier, the Public Works Director, agreed. He said the City would be doing its best to accommodate events in different locations during the downtown construction. He thought the Jumanji event earlier in the meeting was a more location-specific. Mr. Lussier said this amendment developed because of the downtown project, but explained that it would potentially affect other licenses. For example, he said that if there was paving on Wilson Street this could impact Brewbakers' Sidewalk Café license. He showed a graphic from a presentation given to residents and business owners in June about phasing and managing construction for this project to demonstrate that every area used for these Sidewalk Cafés is going to be disrupted. However, there will be sub-phases in the construction. For example, not all parking can be taken from Central Square at once; the block in front of City Hall would be disturbed first, then the block in front of the church, etc. Every few weeks, the traffic pattern and this active work area would change. During that first phase, the sidewalk that was already torn up would not be poured right away but be left with a gravel surface until a larger portion of the project gets ready for the contractor. This means there would not be a nice smooth surface to put Sidewalk Café tables on. There would also be temporary water service run along the buildings and temporary ramps into buildings to contend with. Mr. Lussier did not think it would be practical to have licenses, on again and off again throughout the season. So, staff's recommendation was to eliminate those Sidewalk Café licenses for the duration of that project season, and then the next year, a different group of sidewalk café licensees would be impacted. The City Manager clarified something that was not clear to her to start. Vendors would not lose their licenses throughout the project; once their phase of the project (i.e., Central Square, Gilbo Avenue/Railroad Square, or Main Street) is repaved, they would get their license back.

Chair Bosley asked the downtime for Central Square. Mr. Lussier replied that the best-case scenario would be one construction season, which begins April 15–May 15 and ends between Thanksgiving/early December. Chair Bosley asked if all the Central Square sidewalks would be gravel that whole time. Mr. Lussier explained the long-term process throughout the season, with the gravel sidewalks suitable enough for walking and mobility devices, but not finished because of cost management. Chair Bosley said she had been hopeful that staff would be optimistic about giving these licenses back potentially in the same year if it was at all possible to capture any of that Sidewalk Café season. Mr. Lussier replied that he is an optimist by nature, but he preferred to have those specific downtown merchants prepare to not have outdoor dining in 2025.

With this change, Chair Bosley asked if past license holders should still submit applications for the season. Ms. Hood said the language very specifically stated that the City Clerk's office *shall not accept* applications to avoid people applying and then either being denied or having their license suspended; it is much easier to not issue anything at all than it is to revoke something or suspend something. The Clerk's office was planning to do a lot of outreach to ensure those affected would be prepared for the duration of impact and to ensure good communication. Ms. Hood added that while it was doubtful that construction would be finished by the end of August, if it was and Mr. Lussier said conditions were suitable enough, the Clerks could consider issuing end-of-season licenses. Mr. Lussier agreed, saying this had been an ongoing conversation between his office and the Clerk's Office about the basis for not issuing these licenses next year during construction, and he said this option would provide the City the ability to say that for this project and the public need, these licenses need to be curtailed for this construction season.

Vice Chair Jones referred to the proposed amendment and that it did not refer specifically to this coming construction season, which seemed different than what the Public Works Director had just described. Mr. Lussier replied that there would probably be few projects as disruptive as this one would be, but he said staff had discussed that any time work is needed on a right-of-way, the City would need to tell an establishment to move their Sidewalk Café. This Ordinance would provide that authority and give staff the tools to remove and limit those licenses for a period of time for a particular public need. Vice Chair Jones provided the example of Pathways for Keene using Railroad Square to stage the beginning/end of their annual Road Race, with 700–800 people. He asked how the City would be working with those events to move them somewhere else. Mr. Lussier said that staff were working out alternative footprints for the events that happen within the Phase 1 area in 2025 and would do the same for the subsequent two phases. In short, Mr. Lussier said that yes, the City would remain committed to finding a way for Pathways and the other City Events.

Councilor Madison asked how the City handled it in the past when a construction project impacted a license. Mr. Lussier and Ms. Hood could not think of one so significant during their tenures that had forced a licensee to not be able to set up. Councilor Madison thought it might have been when the sidewalk was reconstructed on the West Street side of Central Square in what he thought was 2017/2018, but Mr. Lussier was unsure on that year and said the prevalence of outdoor dining increased significantly during and after Covid. Councilor Madison was referring to a project in which the Pour House owner wanted to pay for a new patio and the City wanted to pay for it. Mr. Lussier said City staff did that work within a few days, a much smaller disruption. Ms. Hood did not recall having any conversation about the licenses in that area at that time, but she thought it was understood that for those few days they could not set up.

Councilor Madison asked how this would affect major events? Mr. Lussier replied that a lot of the community events that happen in Central Square and that northern end of Main Street would be located closer to Railroad Square/Gilboa Avenue, possibly using the Commercial Street or Gilbo Avenue parking lots. Chair Bosley asked if staff had started conversations with some of the earlier festivals. Ms. Hood said no, but that this was timely because staff would be sending

out the applications for Community Event funding in early December and wanted to make sure there was an alternative plan that they could consider when filling out that application.

Councilor Haas said the Ordinance seemed open ended and seemed it could refer to any City construction project anywhere in the City that would impact licenses, and it seemed to him that there should be some kind of duration. He also wondered if it should be open-ended to *any* construction project; active ones, those three years from now? He was open to suggestions for how to bound it. Mr. Lussier said that one way would be that once the project goes out to bid and the construction period is clear within the budget, the Clerk's office would know not to accommodate licenses during specific dates. Councilor Haas said that kind of language in the Ordinance stating that is how it would be bounded would be fantastic. Mr. Lussier said it might be difficult to write that level of specificity into an Ordinance that would be applied to different projects in different zones of the City for the next 20 years. He understood the Councilor's concerns and said staff had no desire to curtail these licenses unless there is an actual need to work in a specific area. Councilor Haas asked the City Attorney for more specificity in the language. The City Attorney returned to the draft language, which stated "when an area of use will be impacted by a City construction project," that says there has to be a project, which the City Attorney said was different than Councilor Haas' more open-ended phrasing of "impacted by City construction projects." The City Attorney also agreed with Mr. Lussier that it has to apply generally, and it is challenging to have it apply to unknown and unpredictable circumstances. The City Attorney also advised the Committee that this was an Ordinance subject to review and change by the Council and it could be changed in the future if it does not work; the impetus for this was the major project. Councilor Haas said it was always troubling to write something that while anticipating having to change it in the future. He asked for any boundary, such as when the project goes out to bid, which he thought would be more realistic. He noted how construction projects get delayed and he imagined a huge backlog in the Clerk's office trying to deal with applications.

Mr. Lussier asked Ms. Hood when Sidewalk Café licenses are usually issued and Ms. Hood said the process starts in January/February, with the Clerk's office notifying license holders that it is time to start the process because it takes that much time get them all in, ready, and to look at their spaces. Mr. Lussier said that aligned with the time the downtown project would go out to bid.

The City Manager said she understood the concern was not just when the project was being planned but when a project would actually be executed and impact a licensed area. She asked if "when the area of use *is impacted*" would work vs. *will be impacted*. The City Attorney said a problem could arise in that a planned construction project without an exact start date could begin at some point in a license cycle, after the license has been issued, which would create the revocation and suspension problem. The City Attorney thought that this was partly a planning problem, which he thought was one of the things Mr. Lussier was trying to identify.

Chair Bosley said she heard the City Attorney, but she reiterated that if the license holder can get back any of their season, she would want to give them that, and vice versa if a project would not start until August. The City Attorney said he did not disagree, but said it would be a fundamental change to the approach because at that point, and the license would have been extended, suspended, or revoked; meaning an appeals process built into the Ordinance. Chair Bosley understood, and asked if there was a way to write that appeal language to allow the Clerk's office the authority to suspend a license on the merits not of anything the license holder would have done wrong, but for a short term due to City construction projects. She said that would have the Clerk's office issuing licenses with a caveat that people understand a project is upcoming and should expect a suspension. Otherwise, Chair Bosley thought that withholding the license for the whole season for a short project would be irresponsible.

Councilor Madison agreed that the Clerk's office should continue accepting applications and there should be a suspension process for the bare minimum amount of time to complete construction. His concern was for the future when someone could withhold a license for a whole year for one day of work to repair a pothole, for example. So, he agreed with the Chair that Sidewalk Cafés should be able to operate until construction and reopen as soon as possible after because survival of these businesses would be key during this downtown project; he cited recent closures like Local Burger and cautioned against memories of the past like 2008.

Chair Bosley agreed that when she read the language, she was not convinced. She thought some more flexibility would be needed. She agreed about accepting and holding these applications so that people understand that they have licenses that would be issued at some point in the future. Just saying "we shall not accept" felt cold to her and she did not think it was appropriate for all future projects.

The City Attorney said he was open to suggestions but that this would need to go on more time so that staff could workshop these suggestions from the Committee and return with new language.

Chair Bosley also noted that the Committee wanted the Clerk's office to start considering revisions to the Sidewalk Café guidelines as they reopen. Ms. Hood said staff had been speaking about that with the understanding that with the way this new infrastructure would be in place, there would be areas for commerce, so she would want to ensure that the cafés are required closer to the facade vs. the curb line to create a safer atmosphere for alcohol service, for example. Chair Bosley agreed.

Vice Chair Jones thought there was also backup language should it be necessary to cancel a license for a City project. Ms. Hood said that was true, that there was language regarding temporary suspension when public safety is compromised, but it did not specifically reference a construction project.

Chair Bosley opened the floor to public comment.

Ted McGreer of 18 Forestview Road encouraged the City to be very careful about this. He said that business owners downtown figured out how to pivot and get through Covid. He said that on the weekends, construction would not be active downtown, and restaurants could put down mats over the gravel sidewalks for tables to support their staff's livelihoods. He said that throughout the project visioning sessions, etc., the business owners were told that Stantec would come down and put rubber mats in front the doors and try to mitigate dust and do all these other things. While Mr. McGreer said he understood the suspension of licenses during construction, he said the weekends matter and there would need to be more compromise. He was speaking as someone without a Sidewalk Café.

Chair Bosley thanked Mr. McGreer for speaking and said that the Council and City were listening and trying to create that exact type of flexibility for downtown businesses.

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

On a vote of 5–0, the Planning, Licenses & Development Committee recommends placing Ordinance O-2024-18 on more time.

5) Rules of Order Amendments - Section 15 "Voting and Conflict of Interests," Section 17 "Motions," Section 26 "Review of Items of Business," and Section 25 "Communications"

Chair Bosley welcomed the City Attorney, Tom Mullins, & the City Clerk, Patty Little. The Committee received three documents: (1) the original version of Section 15 "Voting and Conflicts of Interest" the amended version of Section #15 that was previously introduced to the Council and defeated, and a version of Section 15 containing suggested amendments from Mayor Kahn. In addition, copies of House Bill 1388: Relative to Ethical Standards for Members of the General Court, and NH RSA 14-B, Definitions of the State Legislative Ethics Committee were placed on the members' desks.

The City Attorney reminded everyone of how the Council got to this point. The Committee and Council had been considering amendments to the Rules of Order for quite some time, and the PLD Committee did reach a conclusion at one point and submitted various proposed amendments to the City Council for consideration. On September 19, 2024, the Council adopted some of those amendments. However, the Council did not adopt the proposed amendment to Section #15 on Voting and Conflicts of Interest on a vote of 7–8. At the Council meeting immediately after the vote, Mayor Kahn exercised his Charter right to require reconsideration of Section #15. That reconsideration occurred, and the Mayor referred the proposed amendment back to this Committee for further conversation. The City Attorney explained that because of the successful reconsideration, the original amendment that was on the table immediately before the vote is now back before the Committee (with the additional amendments from Mayor Kahn).

The City Attorney explained the Committee's options. The Committee could decide that it liked its previous recommendations to Council, or—after listening to the Mayor's proposals at this meeting—decide to recommend any or all of his amendments to the City Council for a first reading. The Attorney noted because the language proposed by the Mayor had never been previously considered by the Council a motion to introduce any amendments to Section 15 would be in order. Then in turn, Section 15 would come back to PLD for any further amendments before returning to Council for final adoption, as the process in the Rules of Procedure requires.

Chair Bosley welcomed Mayor Kahn to speak about his proposed changes to Section #15. Mayor Kahn referred to the amendments to Section #15 which had been included in the Committee's meeting packet. Whenever the text "conflict of interest" was referenced, the Mayor stated the text should read "Councilors or members of the household." Whenever the text "economic gain, pecuniary interest or personal interest was referenced, the text should read .....

Continuing on, the Mayor suggested that the definitions of "conflict of interest" and "household member" in Section #15 should parallel NH RSA 14-B:1. The definition of *conflict of interest* in NH RSA 14-B:1.I reads: "the condition in which the legislator has a special interest in any matter which could directly or indirectly affect or influence the performance of the legislator's official activities." The definition of *household member* in NH RSA 14-B:1.II reads: "any person living in the same domicile as the representative, senator, or officer of the house of representatives or senate who shares a common economic interest in the expenses of daily living, including but not limited to a spouse, child, or parents."

Mayor Kahn continued, explaining why he thought this was important for consideration by the Council. He said that as public officials, he and the Council have a responsibility to disclose. He said that the currency of elected officials is influence. Councilors have a vote and can potentially influence other Councilors and the public, and they could use that influence for personal gain or to benefit a household member, or an organization to which they belong. Therefore, he thinks public officials need to disclose those interests. Mayor Kahn said that the public has a right to know when an elected official could potentially be influenced by their jobs, other financial interests, or those with whom they are closest, like those with whom they choose to live. He said the rules for reporting could go on indefinitely about the types of relationships to report, but it would be overkill to have the types of long-standing relationships that maybe outside of the household. Still, the Mayor stressed that publicly elected officials should be held to a standard of disclosing interests of household members. He emphasized that it is about the public *perceiving inhibited and impartial judgement*, which he said that the Councilors might not see amongst themselves as colleagues.

The Mayor continued his presentation, explaining that during the past legislative session, the State passed House Bill 1388, which he said paralleled his proposed amendment to Section #15. The State's revised Statute will be effective January 1, 2025—the beginning of the new legislative term—so Mayor Kahn thought would be good for the Council to consider this conflict

of interest change in advance of the new Councilor's term, because it would notify anyone who might be considering running for Council of this requirement. He explained that his proposed amendment would still require that Councilors disclose their conflicts before the full Council, which would still have to vote on the recusal. He said that in his proposed amendment, it defined, "pecuniary interest or substantial influence in an organization that those serve" as the threshold for disclosure and this would be required for the Mayor and any Councilor to disclose for themselves and any member in their households over 18 years of age. He reiterated that this would parallel House Bill 1388. Mayor Kahn shared some examples of organizations that Councilors or members of their households have been associated with that have caused Councilors to recuse: the Keene Public Library, the Keene Housing Authority, Keene Housing Kids Collaborative, Southwest Community Services, Planned Parenthood, the Keene Downtown Group, Keene Young Professionals, Keene Rotary, Keene State College, and Monadnock Economic Development Corporation. Mayor Kahn said that the disclosure of those relationships is important, and the Council would sit in judgement as to whether conflicts of interest are serious enough for Councilors to disqualify themselves. He said it is not about misbehavior, but about the public's perception that there could be conflicts.

Brief discussion ensued between Vice Chair Jones and the City Attorney about what the Committee had before them. The City Attorney thought the Mayor was suggesting that the Committee recommend that Section #15 be introduced at the next City Council meeting that would include all of the changes the Mayor proposed, as well as any other housekeeping amendments previously considered by the Committee. This version of Section 15 was included in the Committee agenda packet.

Councilor Williams said he was fine with changing the definition of household member. Still, he reiterated that the root of his objection to this proposed amendment to Section #15 had always been the suggestion to publicly share his spouse's employment and membership information. The Councilor said that he ran for Council, his spouse did not, and he prefers to keep what is Her's private, especially in an age when people seek out information that they can use to damage others. So, Councilor Williams was fine with exchanging the definition of household member with immediate family and having a general expectation that Councilors should declare household conflicts during debates. However, he did not think those things should be pre-declared.

Councilor Haas disagreed with Councilor Williams. Councilor Haas thought it would be to the Council's benefit to have this level of disclosure documented, stating that it would avoid inference and innuendo.

Councilor Madison said he was in favor of this proposed change—he was initially one of the seven who voted for it—and he was still in support because ethics are important to him. He explained that he ran for Council because of someone's misconduct on the Council, so he has a vested interest in bringing ethics back to the Council. He said that honestly, the proposed changes did not go far enough for him. Councilor Madison stated his belief that Councilors

should disclose where their campaign funds come from. While he understood the City Clerk's office had concerns about placing more burden on their office during an election, Councilor Madison thought it might be a good idea to require Councilors to declare after they are elected. He also said Councilors should disclose any monetary or tangible gifts they receive that are potentially connected to their office.

Vice Chair Jones and the City Attorney confirmed where the proposed amendments also applied to the Mayor making the same disclosures. Vice Chair Jones continued recalling that in the past, he had mentioned that NH does not have common law marriage. Councilor Jones thought that within the definition of household, it should go beyond immediate family to include people who might be renting rooms in the household, but he no longer thought it should. Councilor Jones wanted to revert back to more permanent household members. The City Attorney reminded the Committee of it several options to act on these proposed amendments. Chair Bosley thought that the Mayor introduced this change in part to align with the State's definition of "household member" in NH RSA 14-B:1.II. Chair Bosley thought the definition would protect against the temporary residency Vice Chair Jones mentioned. Vice Chair Jones stated that he would be comfortable including the definition of "household member" listed in NH RSA 14-B:1.II in Section #15.

Mayor Kahn agreed that he was thinking about permanent residency vs. the temporary residency. The Mayor thought that permanent residency could be defined through tax returns or voter registration. Chair Bosley thought it helped to align with the Statute and the Mayor agreed that was his purpose. Vice Chair Jones recalled that he voted against this before and in the interest of transparency, he stated that he was trying to find compromise and letting go of temporary residency was his compromise.

Chair Bosley said she heard Councilor Madison's point that on the importance of transparency. Still, she did not want to be hasty regarding campaign finances, because getting into that could lose the rest of the progress made on this Rule. She said she would be open to considering a letter on the disclosure of campaign finances if Councilor Madison introduces it to the Council as something to adopt. The City Attorney agreed because there is a NH law on campaign finance contributions to review. Chair Bosley recalled the topic arising a few times since she had been on the Council, noting some controversy, though there is a different Council now that could interpret it differently.

Chair Bosley returned to a topic Councilor Haas raised during a City Council meeting that resonated with her. Chair Bosley said she supports this disclosure because it had protected her when she had to recuse herself because of her husband's employment. She had also seen Councilors inadvertently advocate for things that made her uncomfortable to watch even if their intent was not malicious. She recalled what Councilor Haas said: it is not about what the Councilors feel they should disclose, but what the public would think they should disclose. Chair Bosley said that statement was important to her. She said Councilors are in their seats because of the grace of the constituents, so Chair Bosley thinks they have the right to ask whether what

elected Councilors are doing are in the public's best interest. She had never seen it be the wrong decision for the Council to choose transparency.

Discussion ensued briefly between the Chair and City Attorney to confirm that the definition of "household member" at the very beginning of the Section—where defining a pecuniary interest or a personal interest—would state "including gain to the *Councilor* or household member," so that then, the definition of "household member" would include the Councilor, and the word "Councilor" would not have to be inserted individually throughout the Section.

Councilor Madison said he agreed with and appreciated Chair Bosley's and the City Attorney's statements about not moving forward with a proposal on campaign finances without comment from the City Clerk's office first.

Chair Bosley asked if there were any other proposed changes to Section #15 the Committee needed to scrutinize. The City Attorney recalled that the Mayor referenced "personal interest in an organization in which the Councilor has a substantial interest," and said that *substantial interest* would need a definition. The City Attorney referred to NH RSA 14-C:4-d, which outlined the six Facts & Circumstances Tending to Show *Substantial Influence*, which he suggested be incorporated and revised to fit the City:

I. The person founded the organization.
II. The person is a substantial contributor to the organization;
III. The person's compensation is primarily based on revenues derived from activities of the organization, or of a particular department or function of the organization, that the person controls;
IV. The person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees;
V. The person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or
VI. The person owns a controlling interest (measured by either vote or value) in a corporation, partnership, or trust or other entity.

Chair Bosley referred to RSA 14-C:4-e, "facts and circumstances tending to show no substantial influence," and said there was a statement that a "direct supervisor of the individual does not hold a position to exercise substantial influence over the affairs of a non-governmental organization, business or person." The City Attorney clarified that for the purposes of Keene's Rule, he was only suggesting to incorporate RSA 14-C:4-d, Facts & Circumstances Tending to Show Substantial Influence. Chair Bosley agreed. Mayor Kahn also thought the City Attorney's recommendation was appropriate and said it would always depend on the discretion of the Councilor to disclose. The Mayor added that this definition of substantial interest indicates that it is more than someone being an officer in an organization, there could be many roles in which people exercise substantial influence and there were examples provided in the RSA. Chair Bosley said this was an instance of appreciating the Rules being particularly prescriptive—much

like parts of the Land Development Code because it provides clear guidance for dealing with the many nuanced pecuniary and substantial interests that could arise. For example, a Councilor who is a member of an executive board for an organization for which the Council is voting to allocate community funds. She said Councilors tend to be volunteers—and in her experience very forthcoming, trying to do the right thing—so she thought this guidance would be a good thing.

Discussion ensued between the City Clerk, City Attorney, Chair Bosley, and the Mayor. It was confirmed that the intent was strike from Section #15, "Councilor, spouse, parent, or child 18 years of age or older, or other member of the Councilor's immediate family," and replace it with the definition of "household member" in NH RSA 14-B:1.II. The Statutory definition does not refer to "every child."

Chair Bosley opened the floor to public comment.

Inga Hansen of 499 Court Street said she supported adding household members because it is possible for people to live together who are not married and share expenses. She cited encountering such concerns when she was on the School Board. Ms. Hansen said she had seen Councilors who did not recuse themselves and she said it could have been because they were not married or because the relationship was a parent or sibling, but they still shared a household. She thought this clarified the issue and she appreciated the Committee's consideration.

Jared Goodell of 39 Central Square asked if this would apply to City staff or consultants advising the Council. Chair Bosley said that these Rules of Order only apply to the City Council. After watching Committee videos and reading minutes, Mr. Goodell expressed concern about these proposals given that there was already a lack of willing participants in City government. He agreed with Councilor Williams about there being a broader political climate, in which people might use access to public information about a Councilor's family inappropriately. Mr. Goodell also referred to NH case law indicating that a conflict of interest would only matter if that member casts a deciding vote, so he wondered if that made it worth this public disclosure, particularly in such a small municipality.

Vice Chair Jones noted that a NH RSA already existed before HB 1388, which only provided some wording changes. The Vice Chair said that for years, State representatives had been disclosing statements of interest, so HB 1388 is not new, and he said he thought it was good.

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

On a vote of 5–0, the Planning, Licenses & Development Committee requested that the City Attorney draft proposed amendments to Section #15 of the Rules of Order, incorporating the changes suggested by the Mayor and incorporating the revisions that the PLD Committee discussed at their meeting on November 13, 2024.

<u>Section #17: "Motions"</u>

The City Attorney said this proposed amendment would essentially be a housekeeping matter. He recalled Councilor Haas raising the issue that the Council had adopted the practice of accepting agenda items "as informational" without codifying it. So, this amendment to Section #17 would do so in the Table of Motions. It said, "The Mayor or Temporary Chair may receive the following incidental motions, which have no rank," meaning the Mayor could accept an incidental motion on its face. He said this would factor into the next discussion about Section #25. Accepting an item as informational through consensus would not require a second or a vote, as had been the practice, as long as there is no challenge.

There were no public comments.

Councilor Williams asked what would happen if there was a challenge to the Chair accepting something as informational. The City Attorney replied a Councilor would need to make a motion to challenge the ruling of the Chair. There would need to be a 2nd. The debate would only be between the Councilor making the challenge and the Chair. A simple majority vote would be required.

Another option would be for the Councilor to raise a point of order and request that a motion be presented. The motion would require a 2nd, but the debate could include all of the Councilors. A simple majority vote would be required.

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

On a vote on 5–0, the Planning, Licenses & Development Committee recommends the adoption of the Rules of Order Amendment – Section 17 "Motions."

Section #25: "Communications"

The City Attorney explained that the following was proposed to be *stricken* from Section #25: "Communications requesting that the City Council consider matters not germane to either the State or to the City, or over which the City Council lacks the authority to take any action, shall not be agendized by the City Clerk, provided, however, that the City Clerk shall place such communications into the Councilors' mailboxes." Similar language to what would be stricken was then proposed to be added to Section #26 (see below). Then, the City Attorney, said the following housekeeping change was proposed to be *added* to Section #25: "Communications shall be accepted by the City Clerk up until 4:00 p.m on the Tuesday preceding the City Council meeting to be included on the agenda of the City Council."

There were no public comments.

Councilor Haas appreciated the straightforward direction of this and where it was going with Section #26 as well.

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

On a vote of 5–0, the Planning, Licenses & Development Committee recommends the adoption of the Rules of Order Amendment – Section 25 "Communications."

Section #26: "Review of Items of Business"

The City Attorney explained that it seemed more appropriate to have this potential language in this section: "Communications requesting that the City Council consider matters that may not be germane to either the State of New Hampshire or to the City, or over which the City Council may lack the authority to take any action, shall be placed on the City Council agenda for a determination by the City Council as to whether or not to accept the communication as informational." He said that—in a sense—this language was substantively different than the language that the Committee just recommended striking from Section #25. In the context of Section #26, when a communication is submitted to the City and the Charter Officers—City Clerk, Attorney, & Manager—and the Mayor review them, and determine that one is non-germane to the City, it would still be placed on the Council's agenda. Then, at the Council meeting, the Mayor would have the opportunity to indicate to the Council whether or not the communication was considered not germane to the City under this Rule, and the Mayor would propose to accept the communication as informational. At that point, any Councilor(s) could make a motion as to whether the communication should be accepted as informational. If there was a majority vote, the matter would be sent to a Standing Committee for further discussion and potential action.

Chair Bosley thought this was a great way to get to the heart of what many Councilors wanted throughout this process. She recalled Councilor Madison saying that the bar of challenging the Chair was set too high at one point during this process, and Chair Bosley thought that by including the earlier language in Section #17—which would allow a motion like this to be debatable—it would give the Councilor making a motion like this the opportunity to explain their position, and then it would only require a simple majority vote. The City Attorney said that was a great summary.

Councilor Williams thought this was a significant improvement over where the amendments to this Section started. He was not happy with the previous proposal to put all communications deemed non-germane in the Councilors' mailboxes. He said a decision of the majority of the Council felt more official. Councilor Williams suggested allowing petitioners a two-week cycle to contact their City Councilors to explain why they think the communication is germane before it is placed on the Council's agenda.

Vice Chair Jones asked why it was necessary for something to be germane to the State of NH. As he reads the rule, if someone submitted a letter for a bridge in Portsmouth, the Council would have to address it. Chair Bosley said it could be accepted as informational. Then Vice Chair

Jones asked why it listed "germane to the State of NH." The City Attorney replied that his understanding was that the State does have issues that could involve municipal governments, so this was intended to limit the communications to City and State driven issues, not Federal. Chair Bosley thought the Vice Chair's concern was that people could write letters in support of other municipalities. The City Attorney said that would be possible under this Rule, but it would be at the Council's discretion whether or not to weigh in. The City Attorney said the Council's Rules could not be drafted to account for every potential scenario.

Councilor Haas appreciated that every communication from a citizen would be agendized and everything would be seen by the Council unless it is a personnel or legal matter. So, he thought it would be a great thing for the citizenry to be able to raise their voices on the issues that concern them, even if it is a bridge in Portsmouth. If the process gets out of control at some point, he said the Council would deal with that too.

Councilor Madison agreed with Councilors Williams and Haas that this was a significant improvement. Councilor Madison was initially on the side of the Council not accepting non-germane issues. However, he had since received a lot of communications from his constituents saying that the Council should care about these things, and he had not received many communications saying otherwise. So, he thought this was a step in the right direction and he appreciated the City Attorney and other City staff's work on this.

Chair Bosley opened the floor to public comment.

Mayor Jay Kahn asked the City Attorney to confirm that if a Councilor wanted to put something on the floor and they were to make a motion to do so, they would need a second. The City Attorney agreed. The Mayor wanted it to be absolutely clear that it would not be a single Councilor's desire to bring something to the table. The Mayor continued, referring to the hypothetical topic mentioned of a bridge in Portsmouth, and quoted a part in the proposed language, "over which the City Council may lack the authority to take any action." The Mayor thought that provided the guidance to say there are some things within the state of New Hampshire that do not deserve the attention of the Keene City Council and could therefore be judged as informational. Mayor Kahn thought this effort was to reinforce what the Council had generally done in the past, which was to place communications on the agenda, present the suggested action to accept as informational, and then the Council would have the authority to question that judgement. He thought this was getting closer to defining that practice, which the Mayor appreciated.

Councilor Williams said he disagreed with the first point the Mayor stated, noting that with what the Committee just recommended for Section #17, he thought a motion and a second would be needed to accept something as informational. The City Attorney suggested that once a communication is on the agenda and the Mayor indicates that he wants to accept it as informational, a Councilor's motion to challenge that decision under Section #17 would require a second, and if seconded, it would then be debatable by the Councilor making the challenge and

the Mayor. If the motion to challenge carries, the communication would be referred to a Standing Committee. Councilor Haas reiterated the City Attorney's explanation to confirm his understanding.

Chair Bosley provided further explanation. With this amendment, the Mayor would continue things as normal, accepting communications as informational by consensus. The City Attorney said that was key. Chair Bosley said that with this amendment, when Standing Committee Chairs do things by consensus (i.e., allowing remote participation), or the Mayor does something by consensus (i.e., accepting something as informational), any Councilor could declare that they "want to call a point of order" indicating that they do not want that item of business handled by consensus and could request that a motion be made to that effect, which gives them the space on the floor if there is a second for that motion, and then the matter would be debatable. She said that Councilors might have an immediate reaction to a communication and might vote in a way that is less informed than if they have an opportunity hear their colleagues' points of view. Whereas challenging the Chair would not be debatable except by the Councilor making the challenge and the Chair.

The City Attorney was clear that phraseology would be important in making motions to consider accepting something as informational. For example, a Councilor could say, "Mayor, as a point of order, I make a motion as to whether or not this communication should be accepted as informational." If the Council then votes as a majority to *not accept* the communication as informational, per the Rules of Order, the Mayor will refer the communication to the applicable Standing Committee.

Vice Chair Jones said that these amendments were much better than previous proposals for Section #26 because in the past, when challenging the decision of the Mayor to accept a communication as informational, it was not debatable by the full Council. So, the Vice Chair liked this.

Chair Bosley welcomed more public comment.

Dr. Julia Gibson of Central Square thought this would be a big step in the right direction and said they appreciated all the work and thought put into this. Dr. Gibson thanked Councilor Madison for stressing the importance of ethics, as Dr. Gibson is an ethicist. As such, they expressed some concerns about the process that had been outlined here. They thought that "germane" was a vague word and hoped the Committee would clarify a few points. Dr. Gibson posed two questions: (1) What would the process be for determining what communications are germane by both the City Clerk/Manager/Mayor and the Council; (2) Would the former group have to provide their reasoning when they flag an item as potentially non-germane, and would there be an opportunity for the petitioner to speak to why they believe it to be germane?

Dr. Gibson continued, stating that by not being transparent in the City's bylaws about the concept of germaneness and the individual rationale for deeming communications non-germane,

they feared it would be used as a shield for topics that are difficult or uncomfortable to talk about. Dr. Gibson urged the Committee to be guided by the City's mission and values, citing the City's website espousing its commitment to value everyone, obtain public input, inform the public, and continue to assess and establish priorities. As a professor of environmental studies, Dr. Gibson said it was disheartening to see that the City website also promotes Keene's commitment to reduce carbon emissions. They thought that greenhouse gasses provided a helpful metaphor for thinking about germaneness, noting that carbon emissions do not stay where they are emitted. Whatever we emit in Keene contributes to our common climate, which impacts not only us, but people around the world. Dr. Gibson stated that there is no easy way to draw boundaries around our actions in Keene and the rest of the world, and that the same is true of our values, which are diffuse and do not stay where you put them. Dr. Gibson stated that refusing to acknowledge a relationship and responsibility to a world beyond Keene and New Hampshire is not only a moral failure both to the residents of Keene and to the world at large, but a denial of reality; one that makes no more sense than the denial of the realities of our physical atmosphere. Dr. Gibson urged the City Clerk, Mayor, City Manager, and City Council to think expansively about what is germane to Keene.

Heather Servant of Keene & Swanzey began by asking if members of the public are required to state their addresses when addressing the Council as they are asked to during public meetings. The City Attorney replied that NH RSA 91-A does not require it. Ms. Servant asked whether the City Council's Rules of Order provide the Mayor the authority to file communications as informational once they have reached the City Council. The City Attorney explained that Robert's Rules of Order state that bodies can act by consensus if they wish.

Ms. Servant continued her statement, summarizing the cascade of events that occurred after she said that Mayor Kahn took away the Council's and public's right to have an item heard on May 16, 2024. Ms. Servant recalled that a petition was submitted to the City Council signed by 94 members of the public calling for a ceasefire resolution for Palestine. At that time, the official Keene for Palestine group was not established; she said it formed organically after another event. She explained that Mayor Kahn addressed one member of their group on May 16, and told them that the Council would not be hearing their agenda item due to protocol, and he accepted it as informational. She said the group thought that if they drafted the resolution themselves, that it might make it to Committee, or give it a chance for public comment. When the petition was on the June 6, 2024 Council agenda, the Mayor again accepted it as informational without discussion, and Ms. Servant said the Mayor censored the group before they could speak, stating that it "seemed clear to me and us that you do not hear the screams of Palestinian children while you sleep at night, and it was our responsibility to make sure that you were able to hear them too, if even only for a moment." She said the group spoke out of turn in an assertive but calm manner, unlike other community members who had done so in not so kind ways at other times—like when sharing their opinions on the downtown renovation project—but they were not arrested. Ms. Servant was subsequently arrested and charged with disorderly conduct on June 6 for speaking out of turn at the Council meeting. She said she had to go to two court dates and seek advice of counsel, and that the ceasefire resolution was never spoken of again. She went on

to speak about how her arrest impacted her 9-year-old son, who witnessed it, and is now too scared to go to City Hall or go with her to other anti-war activist activities. Ms. Servant stated that, "one man censored a group of individuals, leading to the arrest of a working-class single mother because we were fighting for innocent people's lives." She referred to her son's fear and worry and asked whether that made the issue germane enough for Mayor Kahn. She called it hypocritical, as "evidenced by your admissions that this Rule never existed in the 1st place." Ms. Servant said this all led her to one conclusion: "We deserve an apology from Mayor Khan and the members of City Council who refused to stand up to his overreach. The series of events which resulted from that were excessive and caused irreversible impacts on the lives of several Keene citizens. This can and will happen again if you allow one person's political bias to dictate the issues that are allowed to be addressed." She added that, "My advice to you would be to be wary of how much authority you grant to one man. The future of this country has us tumbling deeper into fascism at a faster rate. Mayor Kahn may not be my favorite person in the world, but I can only imagine what a worse man could do in his position." Ms. Servant concluded by reminding the Council that they were elected to serve the interests of the Community and not just the person in the Chair above them.

Chair Bosley said that regarding Section #26, it felt like some authority was being given back to the Councilors in a balanced and fair way so they can stand up for things important to them and their constituents.

A motion by Vice Chair Jones to recommend the adoption of the Rules of Order Amendment – Section 26 "Review of Items of Business" was duly seconded by Councilor Madison.

Chair Bosley recognized Dr. Gibson, who asked if the Committee would consider allowing—at Council meetings—the petitioner to speak about why they think their communication is germane once there has been a motion and second by Councilors to debate why they think a communication is informational. Chair Bosley explained that outside of noticed public hearings, members of the public are not allowed to speak at City Council meetings. There is a structure, through which all public comments generally come through these Standing Committee meetings, which helps Councilors to specialize in certain parts of the process. If there is a matter of concern/importance, Chair Bosley advised Dr. Gibson and members of the public contact City Councilors. Members of the public can contact Councilors at any time, including in advance of communications appearing on agendas. Chair Bosley also said that Councilors read their agenda packets, in which their communications appear, but they cannot debate the merits with the petitioner unless that conversation is opened. So, she said emails can be sent anytime explaining perspectives or your points of view. The Chair also explained that if the Mayor accepts something as informational, a Councilor could ask for reconsideration at the following Council meeting, so that provides two weeks to follow up and communicate with Councilors about the germaneness. Dr. Gibson suggested a statement on the City Clerk's webpage encouraging those submitting communications to indicate why their communications are germane to the City or State of NH.

Dr. Gibson also asked if the Committee would recommend requiring that the person who declares that a communication is informational—City Clerk, City Manager, City Attorney, and/or Mayor—to submit in writing why they think it is not germane and why it is informational in the Council's agenda packet. Chair Bosley said no, she would not support that. The Chair said that the Council accepts things as informational all the time, such as earlier in this meeting with Mr. Kost's proposal for the City to expend funds to develop Gilbo Avenue. She said that to form and submit a written explanation as to why communications are being accepted as informational would become pretty cumbersome. Dr. Gibson thought that written statements in the meeting packets indicating why items are being accepted as informational as a part of the official record would be more transparent to the democratic process. Chair Bosley said those discussions happen during the Council meetings and Dr. Gibson argued that people should have a chance to read why before the meetings.

Chair Bosley asked the City Attorney to weigh in. The City Attorney said the matter had not been decided yet. He understood the intent of Dr. Gibson's requests. Still, the City Attorney said that the reality of the Keene City Council's process is that these things would occur at publicly noticed City Council meetings. There would be a statement by the Mayor that they do not believe the matter is germane to the City. The City Attorney stated that the Rule says "germane," which he said is a defined term in the dictionaries. He advised the Committee that the process being considered would be for any Councilor to raise the point of order during a Council meeting and to debate why they think something should not be accepted as informational.

Chair Bosley asked to keep the conversation focused on the motion on the floor. She added that she thought the Committee had discussed its process, and that the Committee was ready to send this amendment to the Council for a broader discussion. Dr. Gibson said it was disappointing, and she hoped it would change in the future.

Councilor Williams said he was still not happy with the process of a Councilor basically having to challenge the Mayor and another Councilor to second that challenge. Councilor Williams said that can place a lot of pressure on a single Councilor, especially if there is not a second. He said that is unfair. It also requires the petitioner to have a relationship with some City Councilor and to convince them to stand up for them ahead of time. Councilor Williams thought that might not be treating everybody equally. He said his preference would be for the Mayor to have a vote to accept a communication as informational, and if it does not get eight affirmative votes, it would be referred to a Standing Committee. Councilor Williams did not agree with the extra step of Councilors having to object and having to have a second.

Dr. Gibson offered their own understanding of the procedural process being debated. Chair Bosley requested that Dr. Gibson take a seat and allow the Committee members to continue their discussion.

Chair Bosley noted that Councilor Williams could make an amendment. The Chair also noted the pressures associated with being City Councilors; it can be uncomfortable. She said that even though it would be hard, each Councilor would become the best version of themselves when they are the minority of a 14–1 vote and stand up for something they truly believe in. She added that sometimes silence speaks too.

A motion by Councilor Williams to amend Section 26 so that if the Mayor declares a communication as informational because it is not germane, it will go directly to a vote of the City Council as to whether or not to accept it as informational. The motion was duly seconded by Councilor Madison.

Councilor Haas asked—if this amendment was adopted—would it replace a vote by consensus, which he called a vote of silence, with an active vote. The City Attorney responded off mic. Councilor Haas stated it seemed like the Council was replacing the practice of consensus with formal motions.

The City Clerk asked if a motion would be needed before a vote. It was unclear in the Councilor's proposed amendment as to whether a motion and a 2nd would occur before the vote. The Clerk added the Mayor cannot make a motion. While the City Attorney was considering Councilor Williams' amendment, the City Manager explained that there are other things accepted as informational that do not have to be broken down on the agenda when accepted as informational. For instance, things that are not under their Council's purview but are the Police Chief's or City Manager's by statute.

Dr. Gibson requested to be recognized for comment. The Chair responded that the Committee was deliberating amongst itself at the moment and that Dr. Gibson should take a seat until recognized.

The City Attorney provided advice to work with items that might initially be determined as non-germane under the Rule. He considered the "Communications" section on the City Council agenda. Initial language for Section #26 that the City Attorney considered was: "shall be placed on the City Council agenda for a motion by a Councilor as to whether or not the matter accepted as informational," and then a second would be required, and a debate could ensue, That would take the matter away from the Mayor. Councilor Williams said it was affirmative as the City Attorney described but it would get difficult when a Councilor would need to make a motion to "accept a communication as not informational."

Chair Bosley asked about the procedure if Councilor Williams' amendment on the floor passed. The City Attorney replied that on the Council agenda, they might build in a section under "Communications" for those accepted as non-germane. A greater discussion would be needed with the City Clerk, and this could not be implemented by the subsequent Council meeting. Due to the hour and what the Committee was trying to obtain, the City Attorney advised that he

needed more time to think about these changes and the mechanics of how motions could work in this context.

Dr. Gibson noted that Councilor Williams' amendment would align with the language the Committee approved for Section #17, so it seemed like the Committee was moving toward language that made sense for consistency of the process all around.

Regarding Section #17 of the City Council's Rules of Order, Chair Bosley wanted to be very clear that the Council operates by consensus on all of the motions therein almost all of the time, and that the Mayor takes things from the table by consensus. She said it was very rare for someone to make a point of order and challenge the Mayor taking something from the table at a given meeting. Chair Bosley added that was not unusual for the Committee to adopt something as informational by consensus as a matter of practice all the time.

On a vote of 3–2, Councilor Williams' amendment to the proposed language in Section 26 passed. Chair Bosley and Councilor Jones voted in opposition. This would amend Section #26 so that if the Mayor declares a communication as informational because it is not germane, it will go directly to a vote of the City Council as to whether or not to accept it as informational.

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

On a vote of 4–1. The Planning, Licenses & Development Committee recommends that the City Attorney present to the City Council for first reading proposed changes to Section #26 of the City Council's Rules of Order, "Review of Items of Business," with respect to motions submitted by a City Councilor regarding matters that are germane or non-germane. Vice Chair Jones voted in the minority.

6) Adjournment

There being no further business, Chair Bosley adjourned the meeting at 9:12 PM.

Respectfully submitted by,
Katryna Kibler, Minute Taker

Additional edits by,
Terri M. Hood, Deputy City Clerk