

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, June 22, 2016

7:00 PM

Council Chambers

Members Present:

David C. Richards, Chair
Philip M. Jones, Vice-Chair
George S. Hansel
Bettina A. Chadbourne

Staff Present:

Medard Kopczynski, City Manager
Tom Mullins, City Attorney
Kurt Blomquist, Director Public Works
Duncan Watson, Asst. Manager DPW
Michele Chalice, Planner

Members Not Present:

Robert B. Sutherland

Other Councilors Present

Terry Clark

Mayor Kendall Lane

Chair Richards called the meeting to order at 7:00 PM.

1)PERIODIC REPORT: Cities for Climate Protection

Ms. Chalice introduced Peter Hansel, Vice-Chair of the Cities for Climate Protection Committee to provide the annual review. Mr. Hansel read the following report to the Committee.

Mission: Created to aid in the reduction of greenhouse gas emissions and increase the community's adaptive capacity to the expected impacts of a changing climate in order to protect the viability of the community and to protect public health, safety, and welfare.

While referencing the City Code provisions for the Committee; Mr. Hansel identified the specific accomplishments of the Committee as it related to their function, including encouraging the City Council to adopt a Complete Streets Policy; discussing the urban forest contributions to removal of air pollutants; discussing the feasibility of municipal composting; hearing updates on the municipal recycling facility and the now-defunct KEAP project. He added the Committee was currently following the Community Supported Solar project at Monadnock Food Co-op, the East Side Redevelopment project and the Woodland Cemetery Project. In terms of legislation, the Committee sought

Council's endorsement of HB 208 (withdrawal of NH from the Regional Greenhouse Gas Initiative) and SB 333 *of SB 333* (raising of the net-metering cap for renewable energy.)

Mr. Hansel then reviewed on-going goals that the Committee is currently working on, which included: exploring transportation, particularly car-sharing; promoting a local economy; promoting energy efficient measures in residences and continuing the dialogue on the relevancy of the Intergovernmental Panel on Climate Change Plan, the New Hampshire Climate Plan; and the Climate Resilient Communities Plan. In addition, the committee anticipated developing a new Greenhouse Gas Reduction goal to the City Council and creating a "Community Development Impact Checklist." Mr. Hansel stated Keene should be very proud to be one of the first Cities for Climate Protection in the State.

Chair Richards asked for Committee questions.

Councilor Jones mentioned that Mr. Hansel was the first recipient of the "Green Business of the Year" award when it was created about 10 years ago. Councilor Jones was also glad to hear Mr. Hansel mention car sharing as the Joint Committee is working on implementing the Master Plan and one of the five goals they picked was intermodal transportation which includes car sharing. Councilor Jones noted his pleasure in seeing the Committees working along the same lines. Mr. Hansel commented one of the things Committee's like the CCP need to do is coordinate and collaborate with other committees. Ms. Chalice noted Chair Shedd's recommendation that CCP members attend a Joint Committee meeting to talk about collaboration as it goes forward with transportation as one of its priorities.

Chair Richards noted the Marlboro Street redesign should be of interest and encouraged coordination/collaboration. Mr. Hansel indicated he would encourage this.

State Representative Marge Shepardson, of Marlborough thanked the Committee for the work it is doing; she noted it is great to see it dovetailing like this.

There being no further questions or comments from the Committee or public, Chair Richards asked for a motion.

Councilor Hansel made the following motion which was seconded by Councilor Chadbourne.

On a vote of 4-0, the Planning, Licenses and Development Committee moves to accept the periodic report from the Cities for Climate Protection as informational.

2) COMMUNICATION: Anthony & Fenella Levick – Request to Sell Fruit Beer at the Farmer's Market of Keene.

Mr. Fenella noted he was present to ask permission to sell their fruit beers once again at the Farmer's Market. He noted they have already applied to the Farmers Market and have been granted permission. The home farm, Monadnock Berries, is located at 545 West

Hill Road, in Troy, and they have been growing berries for over 20 years. Their brewery, Mooselick Brewing is located at 244 North Main Street in Troy. Mr. Fenella continued he would also like to take advantage of the law change (effective August 2, 2016) that permits the serving of samples. Mr. Fenella indicated there is one other vendor that will probably be interested in serving samples also. Mr. Fenella reported in Troy he charges (\$1.50) for a 4-ounce sample, but the 2-ounce sample would be free at the Farmer's Market.

Chair Richards asked the City Attorney about the new law and if this would be precedent setting. The City Attorney verified the new law is effective August 2, 2016 and read the 4-ounce limitation per person per beer and a 2-ounce sample for any wine. Specific authorization from City Council is required. Continuing the City Attorney reiterated Mr. Fenella's comments regarding a second vendor who may be coming before the Council. The City Attorney also agreed this is precedent setting and it is up to the Council whether or not to allow this to happen. The City Attorney noted two optional motions were prepared for the Committee's consideration.

Chair Richards asked for questions from the Committee.

Councilor Hansel asked if any training was required for handing out samples. The City Attorney responded this is all under the Liquor Commission's purview.

Referring to the prepared motions Councilor Jones indicated he was in favor of the option that would allow for the sampling; both Chair Richards and Councilor Hansel were also in favor of the second option.

There being no additional questions or comments from the Committee or members of the public, Chair Richards asked for a motion.

Councilor Jones made the following motion which was seconded by Councilor Hansel.

On a vote of 4-0, the Planning, Licenses and Development Committee recommend that Monadnock Berries be granted permission to sell alcohol at the 2016 Keene Farmer's Market on City property licensed to the Farmer's Market of Keene and to allow samples to be provided after August 2, 2016, which is the effective date of SB 306. Said permission is contingent on the following: submittal of a signed letter of permission from the Farmer's Market of Keene, obtainment of all necessary permits and licenses and compliance with all laws, including the requirements of NH RSA 179:44 II-a.

Mr. Fenella commended the City for the work done at the Farmer's Market with the seating and the flowers; he added everyone there is also very pleased with the work.

3) COUNCIL REFERRAL: Ban on Single Use Plastic Bags

Chair Richards commented this was sent back to the Committee from the City Council without a sense of what the City Council really wants. Chair Richards indicated he doesn't think the Council should give up on the effort.

Councilor Clark shared the history of this proposal noting he thinks the City Council wants some action whether it be the full ban or other parts of the Ordinance such as a bag fee. Councilor Clark hopes the Committee would do something rather than referring it back to Council as informational, which effectively kills the effort. Councilor Clark noted the Master Plan encourages recycling and addressed a voluntary effort. He would like this Committee to study the issue in some way that they could make an impact on the problem; his hope is the Committee will go with the full ban on single use plastic bags.

Danielle Baudrand, of 19 Bridge Court read from city's website "why we buy green" section. She said this information goes into exactly what they are trying to do. Ms. Baudrand indicated she was confused why this information would be on the City's website when this issue (the ban on plastic bags) is receiving such a pushback.

Chair Richards noted that Duncan Watson from Public Works was present.

Duncan Watson, Solid-waste Manager reported he was not prepared tonight to speak on the scope of what a ban would entail. Mr. Watson reiterated testimony previously given with regards to the volume of bags (LDPE) needed for recycling, the time required to accumulate a sufficient quantity, the separate storage area needed, and the economics involved. Keene currently accepts numbers one and two plastics because they can be sold as a commodity. Mr. Watson also addressed grocery store efforts and what they claim to do with these bags; noting this has yet to be verified. Continuing Mr. Watson said the City doesn't collect these plastic bags at the Recycling Center because of the volume issue, and because they tend to get hung-up on their processing equipment. Mr. Watson reported on a proposed company that would use these bags to create a plastic lumber in Montpelier; he clarified this company is not yet in existence. With regards to the ban, Mr. Watson said he would have to do more research and report back.

Chair Richards noted he would like to see some information brought back as the following:

1. Provide an update on what the City does for recycling.
2. What does the City do to encourage recycling?
3. Has the City had any conversations with supermarkets or big retailers?
4. Provide specific information on these bags.

Mr. Watson said the questions asked are things he can research and bring back the information. Ms. Baudrand asked if Mr. Watson could do a cost analysis versus a ban.

Mr. Watson stated he can research the questions asked and bring back information to the Committee. Additionally he clarified for Ms. Baudrand the above mentioned factory is proposed (not in existence) and the machine is not a tabletop piece of equipment the City could go out and purchase.

Chair Richards asked for Committee questions.

Councilor Hansel commented he would like to see the Petitioner and the people behind this effort go out and do some of the work on their own. He suggested contacting stores to see which ones would voluntarily sign up to do a ban; maybe come up with data on the volume of bags collected on a community collection day. Continuing he said he thinks it's up to the petitioners to do a little more work and bring something back to Council that they can promote. He does not see the city Council imposing a ban, and doesn't think it is legal to do so at this time. Councilor Hansel continued he also thinks it is unfair to put all the impetus on the staff. He is in favor of a lot of the concepts, but feels it's up to the grassroots community to put something together.

Councilor Chadbourne asked if there was space available for this at the Transfer Station. Mr. Watson responded in the negative noting some reconfiguration would need to be done. Mr. Watson continued if a market were available perhaps they wouldn't have the need for baled plastic; there could be some sort of a milk run where they came down and picked it up. He also noted space at the Recycling Center will always be at a premium.

State Representative Marge Shepardson, of Marlborough reiterated a conversation with a Keene resident who had discussions with the local stores. Three of the stores reported they were doing exactly what Mr. Watson described. This resident also reported a baler would cost anywhere from \$500 to \$5,000 depending on the size needed. Ms. Shepardson noted only 10% of these shopping bags are recycled nationwide. After additional comments regarding the ecological system, Ms. Shepardson suggested placing a ten cent fee on both paper and plastic bags to help steer people towards reusable bags. Noting the people in the room that are working on this Ms. Shepardson said she hopes the Committee would provide a specific list of the things they would like to see the group bring back; she noted the materials and testimony already provided commenting it seems like it's never enough.

Chair Richards commented he doesn't see a problem working with this group; he added he doesn't think the City can force stores to charge a fee for the bags in New Hampshire. Chair Richards also indicated this question could be answered when Mr. Watson reports back.

Councilor Jones shared the processes used in the 1990's in comparison to today where everything is shrink wrapped. After additional comments Councilor Jones suggested they need to create a demand for post-consumer use plastics.

Councilor Chadbourne looked to the City Attorney to answer the question if the City has the authority to create an Ordinance to place a charge on bags. The City Attorney said he sees no authority for that. The City Attorney reiterated his previous testimony regarding RSA 149-M. Councilor Chadbourne referred to enforcement and the fact that Portsmouth is in the middle of a court case; she asked the City Attorney if he knew the status of the court case. The City Attorney reported the Department of Environmental Services has referred this to the Attorney General's office for further review on the question of whether or not municipalities have the authority under RSA 149-M to do this.

The City Attorney noted that Portsmouth has everything on hold while they wait for the process to be completed. Councilor Chadbourne asked if the outcome would pertain to any New Hampshire community. The City Attorney commented this would be an opinion and reiterated legislative conversations from the past year.

In response to Ms. Shepardson's request for a list, Councilor Hansel commented he would like to see the group engage with Hannaford's and Price Chopper to see if they are onboard with this idea and perhaps get an idea of how many bags they are collecting, as well as a better sense of what they are doing with them, and what the volume is they get from one of their collection initiatives. If that information is provided he can see the Council supporting this initiative maybe with a designated bag collection day. He added the City Council needs more information so that we can do something. Ms. Shepardson reported on conversations with the local stores where she was referred to the mother company; she added the stores have all indicated they would do whatever the municipality wants them to do. Chair Richards asked Ms. Shepardson and her group to work with Mr. Watson and come back to provide the information. Ms. Shepardson addressed educating the public noting the stores have been encouraging people to bring their reusable bags for five or six years which she believes is having some effect. Ms. Shepardson noted she has no official numbers but will try to get some to bring back. Ms. Shepardson added there is usually a 12-month phase in for educating the public.

The City Manager commented staff time comes at a cost and both Mr. Watson and Mr. Blomquist have a lot of responsibilities. The City Manager asked if Mr. Watson was clear on what was being asked of him. Mr. Watson replied the logistics of a ban is not his area of expertise; what he is best able to do is provide what it's like to be at the end of the pipe dealing with a problem that happens at the beginning of the pipe. He suggested the bags not getting into the pipe are sort of what they're talking about; locating the source of the problem and making that the solution makes sense to him. Mr. Watson said he was going to look at the recyclability aspects of plastics versus the banning; which the group will do more of the research on. The City Manager noted the other aspect of bringing back to Council and update on recycling to which Mr. Watson agreed. Discussion ensued and the decision was made to have Mr. Watson report back in the first week of September.

Karrie Kalich, of 420 Main Street commented on what people would be doing if education really worked noting that education does not result in widespread behavior change. She also commented on the number of bags (175,000) that will be sent to the Recycling Center each week the longer they postpone imposing this ban. Ms. Kalich hopes this group will not be another group of passive people that assumes someone else down the line will take care of this problem.

Councilor Chadbourne commented the Committee needs to make a couple of decisions here with the choices being either a voluntary program or going forward with an Ordinance. She referred to the City Attorney's comments and what is or isn't happening at the state level noting this indicates to her that it is not a good idea and a waste of time for the City to go forward with an Ordinance at this point. At this time she would be in

favor of gathering information for a voluntary program. Councilor Chadbourne added she is not in favor of a ban suggesting they wait to what happens with the City of Portsmouth and the Attorney General. Councilor Chadbourne commented it comes down to changing it on the State level right now because they really don't have the authority. She concluded her comments by noting it is time to make a decision and not keep putting this on more time and coming back with more discussion.

Councilor Hansel sees this as the direction they're going in with what has been requested tonight; he also doesn't see a ban on the table.

Councilor Jones suggested the term ban on plastic bags needs to go away; he indicated they could call it education on recycling or something else. He commented they've already addressed the fact that the City can't put through a ban. Councilor Jones doesn't want to see the ban on single use plastic bags put on more time for the fifth time.

Councilor Clark commented it is clear the majority of this Committee does not want the ban on plastic bags, and he is unsure if that sentiment is shared by the full Council. After additional comments he said sending the issue back to Council as informational essentially kills the issue; he also noted he thinks Council wants this Committee to act. He did agree that waiting for more information was a good idea. Councilor Clark also pointed out two members were absent at the Council vote which could have changed the outcome. Addressing Councilor Jones' comments regarding changing the term ban on plastic bags Councilor Clark suggested putting the motion to consider the plastic bag issue on more time.

Chair Richards made a motion to put this item on more time. There was no second.

Councilor Hansel made a motion to accept this as informational and request staff to report back with the update on recycling, including plastic bag recycling in September. Councilor Jones seconded the motion.

In response to Councilor Clark, Councilor Chadbourne commented what she was trying to say was they are not in a position to be able to efficiently and successfully mandate a ban which is why she feels they need to wait

Councilor Jones suggested another possible route for the City to take is for this Committee to ask that a Resolution be prepared asking the State to reconsider legislation as there will be all new legislators there in November.

Councilor Chadbourne asked the City Attorney if something can come back to the Council after it has been accepted as informational. The City Attorney advised he would have to take a closer look at the rule in this regard.

Chair Richards asked if there were any further comments from the public.

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Mya Baudrand, of 19 Bridge Court commented she feels arguing about getting rid of trash is unnecessary and suggested they should just get rid of the plastic bags.

Representative Shepardson, of Marlborough commented on the failed legislation noting it was enabling legislation that would have said that cities and towns were allowed to impose a ban on the plastic shopping bags if they wanted to. This failed in the Senate because Senators were convinced this wasn't needed and that cities could go forward under current legislation. Ms. Shepardson said she would be submitting something again this year because apparently this wasn't good enough for the cities and towns. Ms. Shepardson also asked what the repercussions would be if Keene decided to be the first test case in New Hampshire and impose a ban. Chair Richards agreed the City could be taken to court and lose.

Andrew Smeltz, of 185 Elm Street read a prepared statement for the Committee which he did not provide a copy of. He asked what kind of law they would be violating. Chair Richards explained the process and the applicable RSA. The City Attorney further clarified the municipalities authority pointing out they can't do something if the State doesn't give the municipality the authority to do. The City Attorney suggested the best way to answer this question is for the State Legislature to act. He also suggested this would be a good place for the group to focus its efforts. Mr. Smeltz agreed this is shaky legal ground and suggested this is a call to act.

On a vote of 3-1, the Planning, Licenses and Development Committee recommend the discussion on a ban on single use plastic bags be accepted as informational and request staff report back with the update on recycling, including the plastic bag recycling in September. Chair Richards voted in opposition.

There being no further business before the Committee Chair Richards adjourned the meeting at 8:23 PM.

Respectfully submitted by,
Mary Lou Sheats Hall
June 25, 2016