

City of Keene  
New Hampshire

**PLANNING, LICENSES AND DEVELOPMENT COMMITTEE**  
**MEETING MINUTES**

**Wednesday, July 13, 2016**

**7:00 PM**

**Council Chambers**

**Members Present:**

David C. Richards, Chair  
Philip M. Jones, VICE-Chair  
George S. Hansel  
Bettina A. Chadbourne  
Robert B. Sutherland

**Staff Present:**

Thomas Mullins, City Attorney  
Patricia Little, City Clerk  
Andy Bohannon, Parks & Rec Director  
John Rogers, Acting Health & Code Director  
Rhett Lamb, ACM/Planning Director  
Beth Fox, ACM/HR Director  
Mark Howard, Fire Chief

**Members Not Present:**

**Other Councilors Present**

Terry Clark

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

**1) COMMUNICATION: Rick Blood-Proposed Amendment to the Rules of Order**

Rick Blood of 61 Sparrow Street stated that in an attempt to improve the broadcast quality of the Council meetings, he is suggesting that councilors not be required to stand before addressing the Council. Mr. Blood noted a seated position provides a nicer visual shot of the speaker as well as a much improved audio signal.

Chair Richards asked for Committee questions.

Councilor Chadbourne asked if Mr. Blood had considered putting the microphones in a different place or position. Mr. Blood replied in the affirmative noting that papers would still be between the speaker and the mic.

Chair Richards asked how the video was when people stand up. Mr. Blood replied the video is alright for some people; for people like Councilors Sutherland and Hansel we see the top of their heads.

The City Clerk noted the Mayor was unable to attend and had asked her to represent his perspective on this issue. The City Clerk provided background information on the request

to rise, stating that this is part of the Rules of Order, Section X. In addition to our local rules this, concept of rising is also found in both Robert's and the Mason's Rules of Order. She continued saying the Mayor would concur with this process because it provides for an orderly flow of the meeting and discourages cross conversation with the focus directed to the speaker. In addition, it reflects an appropriate amount of respect to the political process and the presiding Chair. The City Clerk reported the Mayor is not in favor of an amendment to the rules; the Mayor is supportive of anything we can do to improve the audio/video component of our meetings. The Mayor is asking the Committee to consider instructing staff to work with Cheshire TV to see if there are some alternative solutions to improving the audio while keeping the requirement to stand.

Chair Richards asked if this worked for Mr. Blood. Mr. Blood replied in the affirmative adding as long as we are working towards a solution he is satisfied. Mr. Blood noted a conversation with the Mayor regarding another solution; he also referred to the City Clerk's comments regarding cross conversations and reported that even whispers can be heard in the control room.

Mr. Blood clarified he is not here on behalf of Cheshire TV; he is here because he cares about these meetings and how they look to the public.

Chair Richards asked for additional questions from the Committee.

Councilor Sutherland commented we should at least pursue moving the microphones onto the top of the pedestal to help avoid the paper shuffling noises. Mr. Blood indicated he was in favor of the Mayor's suggestion to work together to resolve these issues.

Councilor Chadbourne commented she agrees with the Mayor's comments about working with staff and not changing the rules.

Councilor Jones mentioned his involvement with the Cable Television Commission (prior to having Cheshire TV) and their findings; one of their priorities was cablecasting of meetings. Councilor Jones noted he appreciates Mr. Blood's perfectionist attitude; he also noted he somewhat agrees with the Mayor because of that Commission's finding that the public should not be dissuaded from attending public meetings. Councilor Jones also addressed the Rules of Order and Pat Russell's interpretation of the requirement to rise suggesting this might be a halfway meeting point for this issue (stand to address the presiding Officer).

The City Clerk indicated this problem will be minimized when the paperless packets are introduced. She noted there will always be a need for Committee Chairs to have some paper materials in front of them. The City Clerk suggested there will always be some shuffling of papers for the Chairs. Mr. Blood agreed with the City Clerk's comments; he also noted he has no idea how the new computers (paperless packets) will affect the audio.

Chair Richards also thanked Mr. Blood for the work he does.

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 5-0, the Planning, Licenses and Development Committee recommends that staff work this out administratively with Cheshire TV.

**2) MEMORANDUM: Rescission of Resolution R-2012-05: Council Policy- Relating to the Michael E.J. Blastos Community Room**

Andy Bohannon, Parks & Recreation Director, reported this is more of a housekeeping item and provided the history of the Resolution. He addressed the issue noting during the construction of the Keene ICE arena, the City outlined in a Memorandum of Understanding (MOU) with Keene ICE, the responsibility for the non-profit to manage and operate the Michael E.J. Blastos Community Room. The agreement continues to provide the City with access for City functions, specifically the election process; however, all additional reservations are booked directly with Keene ICE. Resolution R-2012-05 is, therefore, not necessary and should be rescinded. Keene ICE will continue to have the responsibility to manage the Michael E.J. Blastos Community Room.

Chair Richards noted his agreement and asked for Committee questions.

Councilor Chadbourne asked if City events take precedence for bookings over other people. Mr. Bohannon replied it depends on when and what it is. For example elections take precedence. Mr. Bohannon also advised that most of the City events take place during the week as opposed to the weekends. He also reported Keene ICE keeps the booking fees and the City does not pay to rent the room. The City does take care of the maintenance for City events.

Councilor Sutherland referred to kids finding open doors and asked who is responsible for security and maintenance (access to bathrooms adjacent to Police Department). Mr. Bohannon replied there are two doors entering into the ice area which should be locked at all times, along with the doors that go into the hallway. The other door, in the back of the room, goes to Police public storage area that is alarmed and has a camera. The cleaning responsibility is sort of shared; City staff is responsible for the bathrooms and waxing of the Blastos room floor.

There being no additional questions/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 Chadbourne.

On a vote of 5-0, the Planning, Licenses and Development Committee moves to recommend that the City Council rescind Resolution R-2012-05, to allow Keene ICE to

manage the reservations for the Michael E.J. Blastos Room as provided for in the Memorandum of Understanding.

Chair Richards referred to a question Councilor Chadbourne asked him and clarified the City is a non-profit but not a 501-c3. The City Attorney noted there may be another tax designation and that donations made to the City are tax deductible.

**3) MEMORANDUM & ORDINANCE O-2016-09: Relating to Dormitory, Lodging or Rooming Houses and Residential Board and Care**

The City Clerk provided the background information noting as part of the continuing effort to shift licensing requirements from the City Council to the administrative staff; discussions have taken place between several departments to determine which department was the most appropriate to administer a lodging house license. Because it was determined that compliance with fire and life safety codes was the most important consideration for the licensing of a lodging house, the Fire Department was selected as the most appropriate department to administer the process.

Chief Howard addressed the Committee noting the City Clerk provided a good summary; Chief Howard then listed the City staff that was involved in the discussions. As a result of these discussions Article X of Sec. 46 has been moved to Sec. 42 Fire Prevention Code and Ordinances. Chief Howard explained it establishes a permit process which shortens that process by two weeks. He noted the facilities will be tracked within the database; the database generates inspection lists one and a half months in advance of the inspection date. The permitting process as far as the Fire Department's internal requirements hasn't changed; the license is changing. Chief Howard referred to Sec. 42-135 – Definitions noting we wanted to make it very clear there were no inconsistencies with how these facilities were defined. Chief Howard explained to comply with NFPA1 Fire Code and the NFPA 101 Life Safety Code, lodging houses will be referred to in the Ordinance as a "residence house." A "residence House" will also include dormitory, rooming houses, and residential board and care. Chief Howard indicated one step would be eliminated in this process. He also suggested the remaining sections are self-explanatory.

Chief Howard reported the fees were not adjusted with the Ordinance (Attachment B); this will be coming back to the Committee with a recommendation to accept the 2015 NFPA standards. He advised we are currently operating within the 2009 standards.

Chair Richards clarified this is the last step in streamlining these processes so that the public has a much easier time.

Chair Richards asked for Committee questions.

Councilor Jones asked if staff has the same authority as Council to set conditions; he used the United Church of Christ/Hundred Nights as an example. After additional comments Chief Howard said from the Fire Chief's standpoint if they have a permit to have a shelter it is irrelevant to us what hours they operate. Councilor Jones noted this was not the part he was getting at. The City Attorney interjected noting the short answer to Councilor

Jones' question is no. Discussion ensued with regards to whether or not conditions were set for the above license. The City Clerk verified conditions were set that will terminate at the end of the license (one year).

Councilor Hansel asked how many Lodging House licenses the City has out right now. Chief Howard indicated there are possibly two; we only know about those that have followed the City's permitting process. Chief Howard suggested more may be uncovered while conducting the occupancy inspections. Owners will be made aware and they will have to comply with the permitting process. Chief Howard explained the previous process and the Fire Department's involvement. Councilor Hansel then agreed the new process provides a huge benefit. Chief Howard summarized it is not about enforcement, it is all about compliance and life safety.

Councilor Sutherland referred to Sec. 42-138 Resident Agent and asked for clarification this means the resident agent has to reside on the premises. Attorney Mullins noted his understanding is that the person needs to reside at the location.

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

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

The Planning, Licenses and Development Committee recommends the adoption of Ordinance O-2016-09 relating to Dormitory, Lodging or Rooming Houses and Residential Board and Care.

Councilor Jones indicated he was opposed to the motion because it is taking away the transparency and public participation. Councilor Sutherland noted his agreement with Councilor Jones and suggested the matter should be given more consideration.

Chair Richards noted he understands the comments made by Councilors Jones and Sutherland, but is leaning in favor of this pointing out all the other processes that have been streamlined. Councilor Hansel noted his agreement with Chair Richards noting if a new lodging house were to be erected they would have to go through the site plan review process. Speaking for the Fire Department, Chief Howard noted if the public raises a complaint about a property it is investigated whether it's the Fire or Police Department.

Noting her favor of streamlining the processes Councilor Chadbourne and referred to Sec. 42-136 Enforcement Officer. She asked if there will still be a process for Code to go through those houses. Chief Howard advised the Fire and Code Enforcement Departments work together daily. Councilor Chadbourne added she agrees with the Chair's comments and supports this.

On a vote of 3-2, the Planning, Licenses and Development Committee recommends the adoption of Ordinance O-2016-09 relating to Dormitory, Lodging or Rooming Houses and Residential Board and Care. Councilors Jones and Sutherland voted in opposition.

**4) MEMORANDUM & DRAFT RESOLUTION: Relating to Eversource Energy's Petition to the PUC for Distribution Rate Tariff for Cost Recovery**

Attorney Thomas Mullins provided the background information. He explained the Public Service Company of New Hampshire d/b/a Eversource Energy has petitioned the New Hampshire Public Utilities Commission (PUC) for approval of a gas infrastructure contract with Algonquin Gas Transmission, LLC relative to the proposed Access Northeast pipeline project (Docket No. DE 16-241). In its petition, Eversource requests that the PUC make a determination that the contract is in the public interest and consistent with New Hampshire law. Eversource's petition also requests that a distribution rate tariff be imposed to allow Eversource to recover the cost from electric utility users. The provided Resolution in opposition to Eversource's request was drafted as directed by the City Council at its meeting on June 16, 2016. Attorney Mullins noted the two components of the issue are 1) to enter into a contract for the purchase of gas over a 20-year period, and 2) allowing Eversource to bill the cost of that contract to the ratepayers. After reiterating comments from previous testimony the City Attorney suggested the issue (decision of the PUC) would end up in the Supreme Court. Should the New Hampshire Supreme Court decide Eversource has the authority to move forward with this the PUC will then have to decide whether or not this is in the public interest. If the New Hampshire Supreme Court says there is no authority here this will be the end of the story. Attorney Mullins continued it will either end at the Supreme Court or the Supreme Court will allow the process to continue. In any event what this Resolution is designed to do is to go to the PUC and say on behalf of the City Council, the City of Keene requests that you find that there is no legal authority in the first instance for Eversource to go forward with this contract. Attorney Mullins noted this would be placing us on the same side as the Consumer Advocate on that question.

Chair Richards asked for Committee questions.

Councilor Hansel indicated he had questions for the City Attorney and some comments.

1. Is it your personal legal opinion that the law does not allow for these types of contracts. Attorney Mullins stated he was not prepared to answer that question.
2. Are we trying to offer a legal opinion as a Council? Attorney Mullins replied you are offering more of an opinion as a Council that you would prefer that the Public Utilities Commission not conclude that there was legal authority for them to do that.
3. Does the Council have a history of weighing in on these legal determinations? Attorney Mullins noted the Council in the past has issued Resolutions onto the State on certain questions. During Attorney Mullins tenure here this is the first time the Council has weighed in on a question before the Public Utilities Commission.

Councilor Hansel shared his experience meeting with a solar power developer last week. Councilor Hansel reported he discussed this issue with them; he noted in order to build these facilities they get contracts for 20 to 30 years in order to get the financing to build the solar farms. Councilor Hansel reported he was told this is standard practice across the nation and the energy industry. The question he asked himself was would the Keene

City Council have the same objection if it was a large scale solar farm developer seeking a 20-year contract with Eversource. Councilor Hansel suggests thinking very carefully whether it is appropriate for the Council to be weighing in on these legal determinations; especially since our City Attorney is not prepared to offer an opinion whether the language explicitly excludes these contracts. Councilor Hansel noted the interpretation of the law needs to be fair and unbiased for everyone. He is not saying he agrees with the idea of applying rate tariffs to finance these projects, but he doesn't see how the Council's input will have the desired effect. Councilor Hansel also said if this reaches the Supreme Court will the City of Keene's decision weigh in on any judge's ruling.

Attorney Mullins commented the record being built is a public record for the PUC. If there were an appeal to the Supreme Court the way to influence the Supreme Court with respect to the legal issue would be to file a brief. He continued this doesn't mean the Supreme Court won't recognize the comments being submitted with respect to this. Attorney Mullins referred to the comments in the docket noting he had not read them all. Attorney Mullins reiterated the direction to draft something was given to him at the last Council meeting; this is not his personal opinion.

Councilor Jones suggested asking the Petitioner (Councilor Clark) if this meets his goals before going any further. Terry Clark replied in the affirmative and agreed it says to the PUC we don't want our constituents to be charged for a pipeline before it is built. He noted this is what we need to say; he also added we are not weighing in on a legal opinion.

Councilor Jones referred to comments on exclusivity made at the Council meeting by Councilor Jay Kahn and asked if that was included in the Resolution. Attorney Mullins asked for an explanation of exclusivity. Councilor Jones replied exclusive to that project and the funding for that project. Attorney Mullins noted it came up in the context of this particular project, however it seems to Attorney Mullins that if the PUC concludes that this particular contractual arrangement (Eversource with Algonquin) is acceptable as a matter of law that means that any other entity in a similar circumstance could also file. Attorney Mullins continued the legal question is broader than this.

Councilor Sutherland reiterated the history of this issue and asked if the PUC was appointed by the Governor. Attorney Mullins replied it is a statutory body and is a creature of the State Legislature. The PUC can propose rules that then go to the State Legislature for a review process. Attorney Mullins continued it is possible to influence the rules process through the legislative process. Councilor Sutherland asked if an amicus brief would then be filed through the Office of the Consumer Advocate. Attorney Mullins replied in the affirmative if it goes to the Supreme Court. Councilor Sutherland noted his understanding of the agreement between Eversource and Algonquin is not so much the issue as the tariff Eversource is seeking to apply from the costs of generation to the distribution (the gas would be for the generation of electricity). Attorney Mullins noted his understanding is that Eversource still has to buy the electricity to send out to everyone (they are no longer a producer). Referring to questions by the Consumer Advocate, such as why are you concerned about the cost of production if you're not a

producer anymore. Attorney Mullins noted Eversource's response of being able to reduce future costs by buying down the market. Discussion continued in this vein with Councilor Sutherland suggesting the tariff is on the distribution costs; Attorney Mullins noted his understanding that the tariff is on the gas production itself. After additional comments Councilor Sutherland commented he could buy his electricity from somebody else and the tariff could still hit his bill through Eversource's distribution costs. Attorney Mullins agreed. Councilor Sutherland reiterated his previous testimony regarding who can represent the consumer other than the City Council noting the Council has no authority and this letter is really just a "feel good". Attorney Mullins agreed it is a statement of aspiration.

Councilor Jones commented the Council sends a lot of opinions to the State Legislature every year; the only difference here is we're sending it to the PUC. Attorney Mullins agreed with Councilor Jones this is a common practice for the Council to take positions. Councilor Hansel noted his disagreement and opposition to the Resolution. Attorney Mullins provided additional information and reiterated the direction he was provided.

Councilor Clark referred to Councilor Hansel's comments regarding a solar company coming in with the same proposal noting he would be opposed to any industry making rate payers investors without their consent for private companies. Dialogue continued between Councilor Hansel and Councilor Clark. Councilor Sutherland suggested he was opposed to these tariffs as a means for mitigating the risks for private corporations. After additional comments Councilor Sutherland noted his opposition to the Resolution because he feels we're barking up the wrong tree. Chair Richards also shared his interpretation of the Resolution's intent.

There being no further questions from the Committee or public Chair Richards made the following motion.

Chair Richards moved to recommend submission of R-2016-28 to the City Council for review and action. Councilor Jones seconded the motion. The motion failed to carry on a vote of 3-2 with Councilor's Chadbourne, Sutherland, and Hansel voting in opposition.

Attorney Mullins pointed out this wasn't a Resolution before this Committee, he commented one way to look at this is that you failed to recommend moving forward with a Resolution to the PUC on this issue. The City Clerk clarified the motion failed to ask us to introduce the Resolution to City Council; she noted it stops here and won't go on the next Council agenda. She continued it is a Committee Report with no real resolution. The City Attorney suggested the Committee Report would be that the Committee failed to recommend moving forward with the Resolution. The City Clerk asked Chair Richards if it was his intent this be introduced to City Council. Chair Richards noted he would like this to be introduced to City Council; Councilor Chadbourne agreed. Attorney Mullins agreed Council needs to hear it and noted that could be done with a failed recommendation; he continued the Committee report would be the Committee failed to recommend the submittal of a Resolution to the PUC.



PLD Meeting Minutes  
July 13, 2016

There being no further business before the Committee Chair Richards adjourned the meeting at 8:15 PM.

Respectfully submitted by,  
Mary Lou Sheats Hall  
July 14, 2016