

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, January 10, 2018

7:00 PM

Council Chambers A

Members Present:

David C. Richards, Chair
George S. Hansel
Bart K. Sapeta
Margaret M. Rice

Members Not Present:

Philip M. Jones, Vice-Chair

Staff Present:

Rhett Lamb, ACM/Planning Director
Mark Howard, Keene Fire Chief
Medard Kopczynski, Director-Economic
Development Initiatives and Special Projects
Tom Mullins, City Attorney
Elizabeth A. Dragon, City Manager
William Dow, Deputy City Clerk
Kurt Blomquist, EMD/Public Works Dir.
Beth Fox, ACM/HR Director

Other Councilors Present

Terry Clark
Randy Filiault
Carl Jacobs
Bettina Chadbourne
Jan Manwaring

Mayor Kendall Lane

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

1) Vicki Bacon, Body & Soul Road Runners - Request to Use City Property – Red Cap Run

Kurt Blomquist, EMD/Public Works Director reported this is a Community Event. Staff did meet with the petitioner and will continue to work with them. Mr. Blomquist reported no changes in the event noting staff recommends granting the event license. Mr. Blomquist verified all City requirements have been met.

Vicki Bacon, of 31 West Surry Road said this is the fourth year of the race. She noted a change in venue with the Marriott serving as the base for the race due to the increase in growth.

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

On a vote of 4-0, the Planning, Licenses and Development Committee recommends that Body & Soul Road Runners be granted permission to sponsor a running race on February 10, 2018, subject to the customary licensing requirements of the City Council. In addition, the Police Department shall identify Railroad Street from Main Street to Community Way as a No Parking zone from the hours of 6:00 AM to 11:00 AM. This license is conditional upon the petitioners providing ten volunteer race marshals, and subject to any recommendations of City staff.

2) Councilors Filiault and Clark - Recommending the City Take a Position on Net Neutrality Rules

Councilors Clark and Filiault addressed the Committee. Councilor Filiault read a description of Net Neutrality for the Committee. “Net neutrality is the principle that Internet Service Providers (ISP) must treat data the same and not discriminate or change differently by content, user, website platform, application, type of attached equipment, or method communication.” He continued it is under these principles that Internet Service Providers are unable to intentionally block, slow down, or charge money for specific websites and online content. In other words, net neutrality keeps the internet a level playing field. This policy has been overturned by the FCC and many states have come out and filed suit to get this decision reversed.

Senator Shaheen recently voiced her interest in getting this decision overturned and our entire Federal Delegation is onboard. Councilor Filiault continued he and Councilor Clark are asking for either a resolution or letter from the Mayor to the Governor and Attorney General’s Office stating we are in disagreement with the FCC decision, and that we would be in favor of both the State and Federal Delegation joining the suit with other states. Noting comments that this is a waste of time, Councilor Filiault commented silence is a waste of time. He does not feel silence is acceptable.

Councilor Clark said he does not have much more to add; noting the key phrase is a “level playing field.” The internet is a relatively new technology much like radio was in the 1930’s. It did not take conglomerates long to control radio and now we find a handful of owners are feeding us the news they want us to know. The internet was a breath of fresh air because it was a free medium where anyone could communicate with anybody else. Councilor Clark does not like the idea of small groups of people or corporations controlling what we see, hear, or read. He feels this is un-American. Councilor Clark is aware the Attorney General does not support intervening in this effort.

Chair Richards asked for Committee questions or comments.

Councilor Hansel noted it is tough for anything we say on this to have any sort of real impact. He noted the goal of the FCC ruling was to reduce unnecessary regulation. After researching the issue he found net neutrality came into effect two years ago; he does not remember hearing about it prior to that. He continued there are already provisions that require Internet Service Providers to be transparent about how they treat data over the internet. Councilor Hansel noted he is not convinced the City should weigh in on this. He feels this is more a solution looking for a problem; a non-issue being drummed up as partisan gamesmanship.

After thanking the Councilors for bringing this forward, Councilor Sapeta commented internet

access is essential to this community. He pointed out we have very little internet provider competition in our area. There is very little competition and they can price their services quite high. Councilor Sapeta feels it is a positive thing for Keene to take a stand and to join these other communities in the lawsuit. Perhaps the ultimate solution may be different regulations, which might be identified through further investigation and discussion. Additionally he recommends moving forward with a resolution.

At this point Chair Richards asked for public comments.

Mayor Lane commented access to the internet is extremely important to everyone using it. He said we have to be concerned with our access and others trying to control that access. The Federal government has pre-empted that access; the access is controlled by the FCC. The recent FCC decision can be overturned congressionally or by the courts. The Governor and Attorney General have determined they will not intervene. Congress on the other hand has not made that decision. If we want to be effective we need to apply pressure where the decision has not already been made. Mayor Lane suggested the City Council authorize him to write a letter to the congressional delegation that can be shared with other members of Congress in support of overturning the FCC decision regarding Net Neutrality. New Hampshire has already made the decision to not be involved in litigation.

David Crawford, 36 Marlboro Street does not recommend voting for this. He commented market demand is the best regulation. He also commented business is not a level playing field.

Councilor Clark commented he totally agreed with the Mayor's recommendation. He noted their letter was written before the Governor and Attorney General had made their decision not to intervene.

Councilor Hansel said this is kind of funny; we have a threat that essentially does not exist- the metering of internet speeds for consumers. He continued this whole issue is aimed at building in protections for one of the two big businesses either the content providers or the ISPs. He hopes people will see this for what it is and not look at it at this micro-level.

Councilor Filaault echoed Mayor Lane and Councilor Clark's comments. He agreed the letter presented was written before the holiday break so it did get held up. He agreed the letter should be addressed to the Congressional Representatives.

Agreeing that silence is not an option, Councilor Sapeta said whatever letter we send should also be sent to the Attorney General. Councilor Sapeta also echoed the Mayor's comments. Councilor Filaault agreed the letter should also go to the Governor and Attorney General. Councilor Filaault commented he does not feel there would be much opposition in the community to sending this letter.

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

Councilor Sapeta made the following motion which was seconded by Chair Richards.

The Planning, Licenses and Development Committee recommends that the Keene City Council endorse a resolution asking the New Hampshire Congressional Delegation to join other states in the lawsuit against the FCC defending the Net Neutrality position.

Councilor Rice asked if having the Mayor write a letter was the same as having a resolution. Chair Richards replied in the negative. He also withdrew his second from the motion.

Councilor Sapeta made the following motion which was seconded by Councilor Rice.

On a vote of 3-1, the Planning, Licenses, and Development Committee recommends that the Mayor write a letter to the New Hampshire Congressional Delegation regarding the Net Neutrality position taken by the FCC. Councilor Hansel voted in opposition.

Chair Richards said he would move agenda item 4 on the Legislative Update up so that Councilor Manwaring could be present to speak on agenda item 3. Proposed Amendments to the City Council Rules of Order.

3) Legislative Update

Elizabeth Dragon, City Manager welcomed all to the 2018 Legislative session. Noting we as a government cannot often work quickly enough to bring things to Council for their support the City Manager said often times staff is involved in testifying in Concord or writing letters either in support or opposition to some legislation. The City Manager has two pieces of legislation to discuss this evening.

The City Manager advised she sent a letter in support of HB-92 and HB-168. These two Bills support the State adopting the 2015 Building and Fire Codes. After discovering the issue was somewhat controversial she had discussions with Code Enforcement and the Fire Chief. The City Manager noted the 2015 Fire Codes have already been adopted locally. She indicated the controversy arose around the Building Code; and whether or not to change from the 2009 to the 2015 version. The City Manager reported the Building Code did not make it through the first phase and has fallen out of the legislative process. She also noted the three parties who comprised the letter are here to answer questions. The Manager reiterated that the letter she submitted represented the professional opinion of City staff. Although there are times when a letter from the elected officials is important; in this instance the timing of the legislative process did not allow obtaining a political position from the City Council.

Continuing, the City Manager said House Bill 561 impacts employees working after retirement. The bill puts further restrictions in place. As proposed, the current 32-hour per week limit would change to 1,040 hours per calendar year which averages 20 hours per week. It also creates a 60 day waiting period before a retired employee can be rehired. The 20 hours per week was later amended to 25 hours per week and the 60 day waiting period was changed to 28 days. The Manager continued that ACM/Human Resources Director, Beth Fox is testifying today at a public hearing, in opposition to this Bill, on our behalf. If this Bill were to move forward it would impact about a half dozen employees we have in place. The City Manager also noted her cover letter stated the letter was written from staff's perspectives. She said one of the things

discussed was the restrictiveness of this Bill. She added she understands there have been abuses of the system in the state which has probably caused the conversation to come back. It is her belief the Retirement System should be looking to enforce their rules rather than place further restrictions on municipalities. These two items were included in the agenda packet. The Manager also spoke about the benefits of using former police officers who retired to use them in a part-time position to provide for a transition or train a new person into the position.

The City Manager noted she also wanted to mention something related to the Farm Bill which is what defines a rural community. This is at the Federal level and she did reach out to our delegation in relation to looking at defining rural communities at a population of 25,000 instead of 23,000. This would allow Keene to apply and potentially receive more funds through the Rural Development Program. Keene meets the definition of a rural community except for its population. In addition to the City Manager reaching out to Senator Shaheen, ACM/IT Director Rebecca Landry has also contacted the Senator.

The City Manager also reported having a couple of meetings with Senator Kahn who has been helpful in putting forward a couple of Bills for Keene. SB-339 relative to voting by Zoning Boards to make a procedural clarification and SB-430 relative to the priority of liens for liability of support of assisted persons. If we provide assistance the City can place a lien on the individual's property for the return of that assistance if the property is ever sold or transferred hands. Currently, the priority of the lien is very low.

Relative to SB-339 Attorney Mullins noted this is relative to an issue we recently had come up in one of our Zoning Board hearings. It rises in the context of a three member Board; they are generally a five member Board. The Statute now requires three affirmative votes of the ZBA to approve an application or overturn a decision of the Administrative Officer. It does not also state that in order to deny an application it takes three votes. It came up recently that if there is a 2-1 vote the application is denied. Attorney Mullins response to this is no because if the statute requires an applicant to get three affirmative votes to approve it should also require three affirmative votes to deny. Attorney Mullins position is this is a due process violation. He further explained if you are the applicant it takes three affirmative votes to approve the application with somebody opposed only needing one vote. For clarification purposes the statute should require three votes from the ZBA for all purposes to approve and to deny. We requested the Senator submit this to clarify a procedural question. Should there not be a majority vote was asked by Chair Richards. Attorney Mullins replied in the affirmative adding if there were five members it would be a majority vote. Attorney Mullins reiterated the Statute requirements. Councilor Sapeta asked if this is why we always present our motions in the affirmative; Attorney Mullins concurred.

Returning to the City Manager's presentation, Councilor Sapeta asked if there are plans to adopt the 2015 Building Code in Keene whether or not it passes at the State level. Med Kopczynski responded it is not as simple as one would think. Mr. Kopczynski provided background information noting most changes come about through industry. He continued Building and Fire Codes are revised on a three year cycle utilizing the ANSI balance process. Most people think of changes in codes being stricter; this is not true, what does happen is the code evolves. Having the Building and Fire Codes out of sync means you have two codes not talking to each other.

Mr. Kopczynski does not think the City is entertaining adoption of the 2015 Building Code and he is unsure where that leaves us. Having the 2015 Fire Code and not having the 2015 Building Code could lead to some problems at some point.

The bigger issue for us, from the insurance standpoint, is where does this leave us? He continued it changes were we are from the Community Rating System and ISO standpoints. It seems the Federal government through FEMA will be looking for disaster relief to match policies they have related to the most current codes (2018). Referring to this legislation, Mr. Kopczynski noted he feels this could have deep consequences for the City of Keene and the State of New Hampshire.

Continuing Councilor Sapeta asked what it would take for us to be in sync. Mr. Kopczynski replied it would take more discussion with John Rogers to see what he thinks about that. There is a Bill to study the process of adoption of codes. Mr. Kopczynski provided information on how codes were adopted prior to 2000. He also explained the Building Code Review Board and its purpose. Mr. Kopczynski clarified we do not adopt portions of the Code; we enforce the state code. He added the Fire Prevention Code has no analog in the Building Code. Noting this is an investment in the community Councilor Sapeta recommended staying on top of this. Chair Richards commented the safety side of it is important to him.

Referring to the impact to employees Chair Richards said what it does not say is the impact to City or government employees. He noted both police and fire are highly trained and he understands why someone would want to bring them back. Continuing he said over time we get a reputation for hiring back retirees (they get two checks one from the retirement system and the other from the City). Chair Richards feels this is unfair and asked why not give somebody a career rather than just bringing back retirees; he can understand this with police and fire because the average person does not have their skill level. Chair Richards asked for the City Manager's thoughts on this. The City Manager said it depends noting there are several positions other than fire and police that require a lot of training. With regards to them working part-time to supplement their income the City Manager feels it is better for us to keep them here. She continued the issue here is some cities and towns have downgraded full-time positions to part-time positions to get around the rules; this is what she has an issue with. The City Manager is talking about using these people in positions that are already part-time. Another issue the City Manager mentioned is recruitment, noting we are a graying population and we need to find a way to keep retirees active and working. Although we would love to recruit new people into the community and have them work up through the ranks; sometimes we just cannot do that.

Referring to the other piece of the Bill, the 60 day waiting period made no sense to the City Manager. Her feelings are that this is a perception issue. The City Manager commented this really impedes our ability to keep that person in place for 10, 20 hours per week to help with the transition time (train or fill-in). Rather than this Bill the City Manager would rather see the Retirement System go after the people who are abusing the system.

Chair Richards commented this seems like an opportunity to bring in someone new, train them, and get more people into the workplace. He also noted his concern for the perception. Councilor Rice added to this discussion noting part-time jobs might not be great for someone

fresh out of college. She is not opposed to the retirees in part-time positions and suggests sustainable career path for young people. Chair Richards commented the problem is young people are leaving New Hampshire because the jobs are not here.

The only downside Councilor Hansel said he sees is the opportunity for a bad perception. On the other side what he is hearing from the City Manager is employer flexibility is the key issue we are looking for.

Carl Jacobs, Ward 2 Councilor said he wants to understand the harm that this is remedying. The City Manager replied she does not see the harm with retired persons working in these roles. This gives us the greatest flexibility in filling the positions. Councilor Jacobs asked why the restrictions are there. The City Manager shared information regarding the previous high profile cases that happened over on the coast and the resulting community perceptions. Councilor Sapeta asked if we have checks and balances in place so we do not have that perception here.

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

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

On a vote of 4-0, the Planning, Licenses and Development Committee recommends the Legislative Update be accepted as informational.

4) Mayor Lane - Proposed Amendments to the City Council Rules of Order

Chair Richards outlined what he felt was the contentious issue from the last meeting being the City Manager's direct referral to staff.

Mayor Lane said after listening to comments from City Councilors and staff, we have worked to adjust the language we feel addresses the issues from the last meeting. Mayor Lane deferred to the City Attorney who authored the specific revisions to the rules.

In Section 10 Decorum and Order the last sentence has been changed to the following: *"The Mayor and Council members are expected to devote their attention to the business of the City Council, and to refrain from the use of electronic devices during City Council meetings not germane to the business before the Council."* No Committee opposition was expressed with this change.

Councilor Chadbourne asked if cellphones must be silenced means turning them off. Chair Richards and the City Attorney clarified just the ringer is to be silenced.

In Section 25 Communications the language was changed as follows: *"Communications to be introduced to the City Council ~~or directly to the City Manager, through the City Clerk's office,~~ must be signed by the person introducing the same and must give his or her residential address, mailing address, if different, at which he or she can be reached to be notified of committee meetings, etc. Communications containing a scanned image of the person's actual signature may be submitted electronically. Communications not containing all of the above will not be*

accepted by the City Clerk and will not be directed to the City Manager or placed on the agenda of the City Council. Communications addressed to a Councilor of a personal or argumentative nature shall not be introduced in Council.” The City Manager commented the only thing that is changing is the way we report out at the Council meeting. No Committee opposition was expressed with this change.

Chair Richards asked Councilor Manwaring if she had any concerns with these changes. Councilor Manwaring said she really appreciates all the work that was done and talking about this, and that the City Manager understood how important it was to her that the people got to see that their City Councilors were involved, and that their issues were taken seriously. Councilor Manwaring posed no opposition to the changes presented.

In Section 39 Council Policies the language was changed as follows: *“Policies to be introduced to the City Council governing the operations of the City Council shall be in the form of a Resolution and, upon its adoption; they shall be indexed and appended to the Rules of Order for ease of reference. A Council policy shall remain effective until superseded by a vote of the City Council. When an issue comes before the City Council, which it believes has merit, but which is inconsistent with an adopted policy, the City Council shall first consider an amendment to the policy before considering the issue at hand. ~~The City Council shall annually review 20% of all adopted policies selected and presented by the City Manager to be certain that the intent of the policy remains valid, and if not, the City Council may vote to rescind the policy.~~ The City Council may, from time to time on its own initiative, or when so requested by City Staff, review adopted policies and determine whether to keep the policy, to revise the policy, or to rescind the policy.”* Chair Richards reiterated his comments from the previous meeting noting by now we have reviewed all the policies and we are not going to force the issue. There was no Committee opposition to the changes presented.

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

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

On a vote of 4-0, the Planning, Licenses and Development Committee recommends the adoption of the proposed amendments to the City Council Rules of Order as presented.

5) Adjournment - There being no further business before the Committee Chair Richards adjourned the meeting at 8:16 PM.

Respectfully submitted by,
Mary Lou Sheats Hall
January 11, 2018