

**City of Keene**  
**New Hampshire**

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

**Wednesday, April 12, 2023**

**6:00 PM**

**Council Chambers,  
City Hall**

**Members Present:**

Kate M. Bosley, Chair  
Michael Giacomo, Vice Chair  
Philip M. Jones  
Gladys Johnsen  
Raleigh C. Ormerod

**Staff Present:**

Rebecca Landry, Assistant City  
Manager/Communications Director  
Thomas Mullins, City Attorney  
Amanda Palmiera, Assistant City Attorney  
Don Farquhar, Fire Chief

**Members Not Present:**

*All Present*

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

**1) Cabana Falls Winery – Permission to Offer Samples and Sell Alcohol at Keene  
Farmers’ Market**

Chair Bosley asked for comments from Staff. Assistant City Manager/Communications Director, Rebecca Landry, noted that the applicant could not be present. She said the applicant had met the requirements and Staff had enough information to move forward if it was the will of the Committee. Chair Bosley noted that this was not a new request. Cabana Falls had the Council’s permission in the past to offer samples of their wine at the Farmers’ Market. This request was to offer a second type of sample this year.

Vice Chair Giacomo noted that he went to the Farmers’ Market almost every week last year. He said Cabana Falls had a great display and he thought they were doing good business. He had not heard any complaints. Thus, the Vice Chair did not see any reason to not approve this permit again.

There were no public comments. Councilor Johnsen made the following motion, which was duly seconded by Vice Chair Giacomo.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommended that Cabana Falls Winery be granted permission to sell alcohol and provide individual product samples to patrons at the 2023 Keene Farmers’ Market on City property licensed to the Farmers’ Market of Keene in accordance with the requirements of the State Liquor Commission. Said

permission is contingent on the following: submittal of a signed letter of permission from the Farmers' Market of Keene; obtainment of all necessary permits and licenses and compliance with all laws.

**2) Keene Family YMCA – Request for Road Closure – Summit Road – June 4, 2023**

Chair Bosley welcomed the event representative, Kelly Burns Gallagher of West Chesterfield. Ms. Gallagher said this request was for the second annual youth triathlon. She recalled that last year, the Council permitted closing Summit Road for approximately 1 hour on a Sunday morning. She said that 70–100 children between ages 5–12 are expected this year. Ms. Gallagher continued explaining that the children would use Summit Road to loop back and forth on their bikes for the cycling portion of the event. She said that last year, a Keene Police Officer blocked traffic at the intersection of the entrance to the YMCA. Last year, residents of Summit Road were also notified. Ms. Gallagher said that the YMCA website has fantastic photos of last year's event. The organizers hope the event will continue growing. Chair Bosley recalled last year's initial request and said she did not hear of any issues or concerns about the event.

Councilor Ormerod thanked Ms. Gallagher for presenting this wonderful event. The Councilor asked if the event was only open to YMCA members. Ms. Gallagher said no, it is open to the general public. She continued explaining that there were participants from as far as Maine and Connecticut last year. She said one method of promoting the event is blogs on their website. She said they try to draw participants from up and down the Interstate 91 corridor, which is an easy drive to Keene. There is also promotion on social media. In addition, organizers have reached out to YMCAs along the Interstate 91 corridor, to the Upper Valley Aquatic Center in White River Junction, and to triathlon clubs in the area. There is only one other kid's triathlon in NH and Ms. Gallagher said Keene's event is more robust, following USA Triathlon's recommendations for kids. She did not think there were any youth triathlons in Vermont.

Councilor Jones noted that he lives in the area of this road closure. He said there are five homeowner's associations (HOA) in that area. He said that one large umbrella HOA maintains the pool and clubhouse. The Councilor said that last year he included this event in the HOA newsletter and he said everyone was excited about it and residents cheered for participants. He said he would include it in the newsletter again this year. Ms. Gallagher agreed that there was very positive feedback last year.

There were no comments from the public. Vice Chair Giacomo made the following motion, which was duly seconded by Councilor Jones.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommended that the City Council grant permission to the Keene Family YMCA to sponsor a youth triathlon on Sunday, June 4th, 2023 from 8:00 AM to 1:00 PM, including the closure of Summit Road just after the YMCA entrance and Summit Ridge Drive where it intersects with Summit Road subject to the following conditions: the signing of a revocable license and indemnification agreement

and the submittal of a certificate of liability insurance in the amount of \$1,000,000 listing the City of Keene as an additional insured. This license is conditional upon the petitioners providing an adequate number of volunteer race marshals to ensure runner safety along the course, providing advance notice of the race to impacted residents, and subject to any recommendations of City staff. Petitioner agrees to absorb the cost of any City services provided, and agrees to remit said payment within 30-days of the date of invoicing.

**3) Keene SwampBats – Request to Discharge Fireworks – July 3, 2023**

Chair Bosley welcomed the applicant, Kevin Watterson of Westview Avenue, President of Keene Swamp Bats. Mr. Watterson said the Swamp Bats were entering their 26<sup>th</sup> season that they had collaborated with the City of Keene and hosted this fireworks display. He said that displaying the fireworks on July 3 allows volunteers to have the July 4 holiday off work. Mr. Watterson added that this would be the 20<sup>th</sup> season of Reading with Ribby, which he said is how most kids learn about the Swamp Bats. Chair Bosley agreed that Reading with Ribby is a fantastic program that encourages kids to keep up with their reading, and they get tickets to the game if they do. Mr. Watterson said it is actually a family pass and last year there were 4,000 kids and their families. Because it was a large event last year, he said it would be split into two nights this year.

Chair Bosley requested comments from the Fire Chief, Don Farquhar. Chief Farquhar said that Mr. Watterson met with the Protocol Committee and that he had a good plan in place. The Chief said one of the only outstanding things was the Fireworks Permit, which the Keene Fire Department would handle in conjunction with the NH Fire Marshall's office. Chief Farquhar said that Staff were in absolute support of this application.

Councilor Ormerod said he was in favor of this event. He noted that when reviewing the Fireworks Ordinance later on the agenda that he thought the times within the Ordinance might have been wrong based on the time of this event. The City Attorney thought the times in the Fireworks Ordinance were written based on the Noise Ordinance in the Zone in question (10:00 AM–10:00 PM). Chief Farquhar said that the Fireworks Ordinance that was submitted covered permissible fireworks. He said that this event is permit technically non-permissible because it is a professional fireworks company and so the proposed Ordinance would not speak to this application.

Mr. Watterson said they are often concerned it will be too light out for the fireworks because the game typically ends around 9:00 PM, though he said there was always the possibility of extra innings. Still, he did not think they ever had a 10:00 PM finish. Chair Bosley thought that was likely something that could be worked out in the permit process, even under the new Ordinance.

There were no public comments. Councilor Jones made the following motion, which was duly seconded by Councilor Ormerod.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommended that the Keene Swamp Bats be granted permission for the discharge of display fireworks on Monday, July 3<sup>rd</sup>, 2023 on Alumni Field at no later than 10:00 PM subject to following conditions: the signing of a revocable license and indemnification agreement; that the Keene Swamp Bats provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of \$1,000,000; that the fireworks vendor also provide a certificate of liability insurance with the City of Keene listed as additional insured in the amount of \$1,000,000; submittal of a signed letter of permission from SAU 29 for use of their property; and obtainment of a State Fireworks permit. In addition, the petitioner agrees to comply with any recommendations of City staff. The Petitioner agrees to absorb the cost of any City services over and above any amount of City funding allocated in the FY 23 Community Events Budget for the July 3<sup>rd</sup> display. Said payment shall be made within 30-days of the date of invoicing.

Chair Bosley thanked Mr. Watterson for hosting this event each year.

**4) Fireworks Restaurant – Request to Serve Alcohol – Sidewalk Café (Agenda item #6)**

Chair Bosley welcomed the applicant, Adam Berube, the owner of Fireworks Restaurant, which opened in 2011. Mr. Berube said this application was to continue their outdoor dining again this year. He said the current patio set-up had five tables but during Covid, the previous owner was able to expand to the median sidewalk area that is currently vacant; Mr. Berube would like to add two more tables in that area.

Chair Bosley stated her understanding that when Sidewalk Café Licenses have been approved once by the City Council, they are then able to renew administratively annually through the City Clerk’s office. She said the reason Mr. Berube needed permission from the City Council again was because when ownership changes, restaurants must resubmit requests to sell alcohol in sidewalk cafés. Chair Bosley said that Mr. Berube should also work with the Clerk’s office on the table layout. She thought selling alcohol went hand-in-hand with the restaurant’s sidewalk café and she did not have any concern with permitting this.

Vice Chair Giacomo said that the restaurant had been able to do this successfully without incident for the past 12 years and he did not see any reason why Mr. Berube’s ownership would change that, given that he managed the restaurant for most of that period.

There were no public comments.

The City Attorney, Tom Mullins, said that although the City Council would be granting this license with the consumption of alcohol, it was important for Mr. Berube to know that he still needed to comply with the Liquor Commission’s rules. These rules include having a barrier around the outdoor dining area, which the City Attorney said Staff anecdotally noticed had not been in place in the past. He did not want the applicant to be surprised by that requirement. Chair Bosley asked for confirmation that the licensing condition for placement of a barrier is a Liquor

Commission requirement and not necessarily a sidewalk café regulation. The City Attorney agreed.

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

On a vote of 5–0, the Planning, Licenses, and Development Committee recommended that Fireworks Restaurant be granted permission to serve alcoholic beverages in connection with their Sidewalk Café License, subject to the customary licensing requirements of the City Council, compliance with the requirements of Sections 46-1191 through 46-1196 of the City Code, and compliance with any requirements of the NH Liquor Commission. This license shall expire on March 1, 2024.

Chair Bosley reiterated that when the license expires on March 1, 2024, Mr. Berube would need to reapply administratively through the City Clerk’s office.

**5) Request to Use City Property – 2023 Keene Pride Festival (Agenda item #4)**

Chair Bosley welcomed the applicant, Adam Toepfer of Winchester Street, President of Keene Pride. Mr. Toepfer said that Keene Pride would like permission to use City property again for the Pride Festival on Sunday, September 17, 2023, from 12:00 PM–6:00 PM. He said the timing would be the same as last year. The layout would be slightly different this year, with the food trucks and some music performances in the Hannah Grimes parking lot instead of Railroad Square, which he said felt too disconnected last year. The rest of the event would take place in and around Central Square. Chair Bosley said the layout was interesting and she looked forward to seeing how it would work. Mr. Toepfer noted that it is hard to count the participants, but he thought there were 1,000–2,000 last year, when he said participants expressed that they had a great time.

Chair Bosley requested Staff comments. Fire Chief, Don Farquhar, said that Mr. Toepfer had met once with the Protocol Committee and two more meetings were anticipated, in part to handle the different barrier plans this year. The Chief said Staff were very comfortable with this plan. Chief Farquhar complimented Mr. Toepfer for doing exceptionally well with the first event last year, including being very responsible and great to work with on last minute issues. The Chief was very confident that the event would be managed as well this year.

Councilor Jones thought it was creative to use the Hannah Grimes parking lot. The Councilor agreed that the planners did well last year. He thought this event was good for Keene and he thanked Mr. Toepfer.

Vice Chair Giacomo asked what parts of downtown were closed last year. Mr. Toepfer said that last year Central Square was closed along with a part of Roxbury Street and Railroad Square. Mr. Toepfer said the footprint would expand a little further on Roxbury Street than last year. Mr.

Toepfer and the Vice Chair agreed that the layout would be very similar to the Food Festival. The Vice Chair said it was an awesome, well organized event last year.

Discussion ensued between the City Attorney and the Fire Chief about wording in the proposed motion and the need to edit it to say, “an amended licenses issued by the City Clerk.” As such, there would be no implication that the applicant would need to return to the City Council for an amended license, assuming the amendments are not substantive.

Chair Bosley recalled that last year there was a lot of discussion about the date of the event, which she knew the organizers chose for some great reasons. She asked if there would be any events in June during Pride Month. Mr. Toepfer replied that Keene Pride holds more than 30 events throughout the year and a number of events were planned for this June. He noted that one event would be a Pride Prom for those who might not have been able to attend their own prom or to go with someone they cared for, an educational panel series, and a fashion show in May. Details are available on [www.keenepride.org](http://www.keenepride.org). Mr. Toepfer asked if this matter would go back to City Council. Chair Bosley explained that this Committee would make a recommendation to the City Council for final approval at their April 20 meeting.

There were no public comments. Councilor Johnsen made the following motion, which was duly seconded by Vice Chair Giacomo.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommended the Keene Pride Group be granted permission to use downtown City rights-of-way on Sunday, September 17<sup>th</sup>, 2023 to conduct a Keene Pride Celebration, including participating downtown businesses decorating their storefronts for the week leading up to the event date, conditional upon the following:

- This license is granted based upon the event scope presented to City staff during protocol meetings held to date, changes or additions to the license may require that an amended license be issued by the City Clerk and no changes to this license or the associated protocol documents will be accepted after August 1, 2023;
- The furnishing of a certificate of liability insurance in the amount of \$1,000,000 naming the City of Keene as an additional insured;
- The signing of a standard revocable license and indemnification agreement;
- That the agreed upon footprint and layout for the event shall encumber Central Square, including the traveled portion of the road requiring the following road closures: Central Square, West Street at Central Square (with a slip lane for eastbound West Street traffic to go south on Main Street), Roxbury Street from the easterly side of the Hannah Grimes Parking Lot to Central Square, Washington Street from Vernon Street to Central Square, and Court Street from Winter Street to Central Square.
- That the Petitioner is permitted to place porta-potties and a dumpster in City parking spaces located at the base of Washington Street, and additional porta-potties on Roxbury Street from Friday, September 15, 2023 to Monday September 18, 2023, which will be

chained together and affixed to ensure they are not vandalized while unattended overnight;

- That the actual event will be held from 12:00 PM to 6:00 PM with the times for set up and clean up to be established with City staff;
- That free parking be granted under the provisions of the free parking policy for City parking spaces on Washington Street and Roxbury Street needed for storage of equipment from Friday, September 15, 2023 to Monday September 18, 2023, and spaces within the event footprint on the day of the event;
- 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.

In addition, the Petitioner agrees to absorb the cost of any City services provided, and agrees to remit said payment within 30-days of the date of invoicing.

**6) Pathways for Keene – Request for License – 4 on the 4th Road Race – July 4, 2023 (Agenda item #4)**

Chair Bosley welcomed Councilor Jones to speak as a representative of Pathways for Keene. The Chair noted that Councilor Jones does hold a leadership position on the Board of Pathways for Keene. However, this was not a financial matter, and therefore Chair Bosley saw no conflict of interest. She heard no objections from the Committee to Councilor Jones voting on this matter.

Councilor Jones said that Pathways for Keene is a volunteer organization whose sole purpose is fundraising for Keene's alternative use trails on the former railway property. He said their biggest annual fundraiser is the 4 on the 4<sup>th</sup> Race, which is what this request was for. Councilor Jones reported that this would be the 20<sup>th</sup> Race; they skipped one year because of Covid. All money raised is returned to the City, which he said not all organizations could say. He invited anyone interested in participating to visit their website, where you could sign-up for either the 7:30 AM walking race or the 8:00 AM running race. The race length is 4 miles. Councilor Jones said it is a great, fun way to start the 4<sup>th</sup> of July weekend. All details of the footprint and other conditions would be the same as in years past.

Chair Bosley requested comments from the Fire Chief, Don Farquhar. Chief Farquhar said that the organizers of this event went through the necessary Protocol Committee meetings without any issues. He said that Staff felt everything was in order and there was no need for further protocol meetings. Staff would check-in with the organizers the week before the event to anticipate any heat related issues, and other than that, Staff were in full support of the application.

Councilor Jones added that at the last Finance, Organization, and Personnel Committee meeting, he and Sarah Green had the honor of presenting a \$40,000 check to the City Manager. He said that was the largest donation Pathways for Keene had ever made to the City and now, they had

donated more than \$750,000 to the City in total. Chair Bosley said that was an achievement that Pathways for Keene should be proud of and that the City appreciates it.

There were no public comments. Vice Chair Giacomo made the following motion, which Councilor Ormerod seconded.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommended that the City Council grant permission to Pathways for Keene to sponsor a running race on Tuesday, July 4<sup>th</sup>, 2023, subject to the signing of a revocable license and indemnification agreement and the submittal of a certificate of liability insurance in the amount of \$1,000,000 listing the City of Keene as an additional insured. In addition, the Police Department shall identify Railroad Street immediately adjacent to Railroad Square as a No Parking zone from the hours of 6:00 AM to 11:00 AM. This license is conditional upon the petitioners providing an adequate number of volunteer race marshals to ensure runner safety along the course, and subject to any recommendations of City staff. Petitioner agrees to absorb the cost of any City services over and above any amount of City funding allocated in the FY 23 Community Events Budget. Said payment shall be made within 30-days of the date of invoicing.

**7) Relating to the Sale, Possession and Display of Fireworks – Ordinance O-2023-07**

Chair Bosley welcomed the Fire Chief, Don Farquhar, to discuss this Ordinance. Chief Farquhar said that this Ordinance O-2023-07 had been stalled for several years. So, he said City Staff took a fresh look at the document and he believed the Ordinance, as proposed, was a nice approach. He said that in NH RSA-160, there is a section called “Local Option” under “Permissible Fireworks.” He said that law allows each municipality in NH to make their own decision about how they want to manage local fireworks. The City’s choices ranged from prohibited (none at all), to permissible with no restrictions, to a formal process via City Hall or the Fire Department to apply for a permit (much like a dog license or burn permit). The Chief thought part of the reason this Ordinance had stalled over time was because such permitting becomes very difficult logistically. He thought Staff had come up with a good solution of allowing fireworks as permissible but with restrictions, which was how the Ordinance was proposed. He said the nice thing about restrictions was that everything required to achieve safe use of permissible fireworks is already bounded in RSA-160 or City Code. He thought this was a good balance between the safe use of fireworks and public safety. He thought the document was very streamlined. In essence, he said the Ordinance established the rules in which permissible fireworks could be used safely in a self-contained Ordinance that requires no further action by the City except for enforcement, which is well bounded in existing City Code and NH law.

Chair Bosley said she read the Ordinance and received some clarifications in discussion with the City Attorney, Tom Mullins. Chair Bosley thought the Ordinance made a lot of sense. She recalled that in the past, this Ordinance was convoluted and hard to follow, so she appreciated Staff reworking it.



Councilor Jones said RSA-160 is even more convoluted than this Ordinance had been in the past. He asked if the classes of fireworks had changed from Classes A-C. Chief Farquhar said the classes had been renamed, with a distinction between permissible and non-permissible that distinguishes between something that could be used by a licensed versus unlicensed person. Chair Bosley recalled an earlier petitioner that was for commercial fireworks and asked if those were non-permissible. Chief Farquhar said yes, commercial fireworks are non-permissible. Chair Bosley asked if all fireworks that were purchasable at a fireworks “mart” in NH were permissible. Chief Farquhar said that was exactly correct. He noted that “permissible” has a very clear definition in RSA-160 that talks about the amount of explosive available and what they are able to do, and there is a clear boundary between permissible and non-permissible. Chair Bosley said a standard resident would not have commercial style fireworks available to them and the Fire Chief said yes, they should not.

The City Attorney asked the Chief to explain what someone would need to do if they wanted to set off fireworks in their backyard, for example. Chief Farquhar said that under the old system, the individual would need to find the rules and come to the Fire Station to complete a permit form. If they were a renter, they would have needed written permission from their landlord. He thought the old rules were problematic in that they were difficult to achieve and he thought there had been a lot of noncompliance. He said that voluntary compliance is always the best option and is best achieved with a reasonable, easy to follow Ordinance. Under the new Ordinance O-2023-07, the individual would first need to know the Ordinance exists and what rules apply. He said it would be self-regulated so that individuals would have to ensure they are not within 35 feet of a structure, there is something available to extinguish a fire nearby, and if not the landowner, then the individual would need the owner’s permission.

Chair Bosley said she thought that under the previous rules, even a backyard fireworks display required a Council permit. The City Attorney said that was correct. Chair Bosley said she thought had made this overly burdensome because the Council takes a regular break during the summer and an applicant might not know far enough in advance to have a request heard before the Council break. She thought that was prohibitive and that people had probably just ignored it. Chair Bosley could not recall any requests for permits issued during her 4 years on the PLD Committee, but she said there were still fireworks happening in town. She thought that some sort of parameters for safety that the Fire Department could use to hold people accountable was a step in the right direction.

Vice Chair Giacomo recalled hearing 1 or 2 requests for fireworks during his time on the Municipal Services, Facilities, and Infrastructure Committee, and he noted that they were always time consuming addressing all the details. He thought that having these clear guidelines outlined in a public location was better for the user. He said that based on the number of fireworks he heard in his old neighborhood and new one, compared to the permits requested, the current rules did not work. He could not imagine there would be less compliance with this Ordinance than there was previously. He hoped this Ordinance would do more while demanding less Staff time.

Councilor Jones recalled times in the past, when the Council got some requests for fireworks at weddings at the country club, for example. He noted how fireworks can be problematic for pets and people with autism, among others. He said there is not much someone can do when they see fireworks nearby. Councilor Jones asked what Councilors should say when their constituents call them about active fireworks. Chief Farquhar replied that residents or Councilors could always call the non-emergency phone number for the Fire Department or Police Department. He said it is true that it is sometimes hard for officers to determine an exact location, but the Chief said that if there is something large in the air going “boom” then it was assuredly not permissible.

Chair Bosley said she understood the Ordinance to require contacting the Fire Department. She quoted, “Fireworks can only be discharged on days when fire danger is Class I, II, or III as determined by the NH Division of Forest and Land.” She asked if it was like a burn permit, when the individual must contact the Fire Department to see if it was safe. Chief Farquhar said those are updated actively on the NH Division of Forested Land’s website but said he could speak to the IT Department about linking that to the City’s website. He added that individuals could call the firehouse, which would always have that information. He noted that there was also a change to the Burn Permit to have it also link to the State of NH online program. Assuming that a Police Officer would be following-up on any complaints, Chair Bosley thought it was important for the Police Department to know all of these very restrictive items to do with location, backsets, age, associated alcohol use, and more.

Councilor Ormerod said there was nothing in the Ordinance about 12:00 AM on New Year’s Day. He asked if the Ordinance would not be enforced at that time. He noted that where he lives in Ward 1 has a lot of trees and wires that could be considered obstructions. Chair Bosley thought Councilor Ormerod was pointing out that there are certain days when fireworks are more prominent, such as the 4<sup>th</sup> of July and New Year’s Eve/Day. The Chair and City Attorney agreed that in the case of midnight on New Year’s Day, it would be after the 10:00 PM cutoff listed in the Ordinance, which is also in accordance with the Noise Ordinance. He said that 10:00 PM cutoff would not apply to licensed shooters. If a licensed event was going to happen at 12:00 AM on New Years Day, that would be permitted in the Noise Ordinance because there can be noise after 10:00 PM if pursuant to a license or permit issued by the City. However, if individuals were setting off fireworks after 10:00 PM, that would be a violation of the Ordinance and they could potentially be fined. Councilor Ormerod said he only knew of 1 or 2 lots in Ward 1 that are not obstructed by trees or wires. If he is hearing fireworks in Ward 1, he is concerned because there are no safe places for them. He asked if that would be a matter of calling and making a report. Chief Farquhar said that was that right place to start for immediate needs and further needs could be addressed with an educational campaign in the long-term, working with neighborhoods and/or through landlords. He said that in a large portion of the City, the 50-foot distance requirement to any structure limits the use of fireworks. Like anything else, he said this would be new and they could correct things immediately, but that a lot of good would be done with a long-term educational campaign.

The City Attorney agreed that when Staff were drafting this Ordinance, they discussed the need for educational campaigns leading up to those holidays to let the public know that the Fireworks Ordinance exists. He thought the Chair had a good point about ensuring that the Police Department is familiar with these requirements because they have the same sort of enforcement rights.

Vice Chair Giacomo said that approximately 13 years ago, NH changed the law to allow mortars as permissible. He understood there was a difference in scale, but he said that many permissible things could make big booms. So, the Vice Chair agreed that educating the public would be very important. Chair Bosley agreed that she sees fireworks set off in the downtown area that clearly in violation of these requirements and she imagined that there were instances of renters who do not have their landlords' permission. So, she also agreed that there would be a lot of things for a Police Officer to know when responding to these complaints. The Chair asked what the fine would be under this Ordinance. The City Attorney said that there is a set of fines for City Code violations and because the Ordinance itself does not specify a fine, that Chapter 2 of the Administrative Code has a set of fines that apply if no other fine is specifically stated. He recalled running into that issue with the Mask Ordinance. Chair Bosley and the City Attorney agreed that the fine could go up to \$1,000, which Chair Bosley said could be a significant deterrent to someone violating a second time.

Councilor Jones asked if what the City Attorney just described could also be applied with the Noise Ordinance, which is a warning before a fine. The City Attorney said yes, there is the potential for multiple violations under this, and the Noise Ordinance could be one of them as a separate requirement.

Chair Bosley opened the floor to public comments. Councilor Bobby Williams of Ward 2 said he was concerned that this Ordinance could open the door to a lot more fireworks in his neighborhood, which is an urban area that experiences a lot of air pollution and people breathe the smog from fireworks. In addition to dogs being bothered by fireworks, he said many people are, including his wife, so he does not want them in his neighborhood. Councilor Williams said his real concern was ecological, especially if this was getting pushed out into the Rural Zone. He said dogs are not the only animals startled by fireworks, but all wildlife is. He said Keene values its wildlife and blowing things up is a great way to drive that wildlife away. He cited a case near his home where an owl visited regularly and then never did again after some fireworks, which he said would happen at a larger scale with more explosions in the rural areas.

There were no further public comments. A motion by Councilor Jones to adopt Ordinance O-2023-07 was duly seconded by Vice Chair Giacomo.

Chair Bosley agreed with Councilor Williams about the impacts to wildlife, noting how fireworks scare her horses, giving them anxiety in their stalls, which can be dangerous. She hoped this would give the Police and Fire Departments some authority to regulate non-permissible fireworks. She said that with the way it was set up prior to this Ordinance, people did

not even try to comply. At least with some criteria, the City could try to minimize non-permissible uses and issue fines when needed.

The City Attorney agreed that fireworks are challenging for many people, citing the example of the challenges his son faced with them after returning from serving in Afghanistan, when he could not go outside on the 4<sup>th</sup> of July. He said it is something people should be aware of and think about. He said that it could also be the will of the Council to prohibit fireworks, though he questioned whether that was palatable or politically viable. Chair Bosley agreed and hoped that the challenges faced by some community members and threats to wildlife could also be discussed in future educational campaigns around the holidays. She said people still need to be respectful in their communities and this is not just a license to misbehave.

Vice Chair Giacomo said it did not make sense to codify this, but asked whether during educational outreach, the City could also suggest notifying neighbors as a courtesy before using fireworks. He recalled instances when he would have appreciated a heads-up. Chair Bosley thought that was great to encourage, much like Councilor Jones notified his homeowner's association so his neighbors would not be surprised by the 4 on the 4<sup>th</sup> Race mentioned earlier in the meeting.

On a vote of 4–1, the Planning, Licenses, and Development Committee recommended the adoption of Ordinance O-2023-07. Councilor Ormerod voted in opposition.

**8) Relating to Amendments to the Planning Board Subdivision Regulations – Ordinance O-2023-08**

Chair Bosley welcomed Senior Planner, Mari Brunner, to walk the Committee through this Ordinance on behalf of the Planning Board. Ms. Brunner said that the Planning Board has subdivision regulations housed within the Land Development Code. These subdivision regulations used to be exclusively under the Planning Board's authority but are now included in the City Code as well. Ms. Brunner explained her intent to review the proposed amendments that had already been through a public hearing before the Planning Board, which voted unanimously to adopt them. She added that before the Planning Board could make the amendments official, the changes had to be referred to the City Council to be incorporated into the City Code, which is the reason this item is on the agenda.

Ms. Brunner explained that the intent of these proposed amendments was to address some concerns the public expressed during the public workshops and hearings on Ordinance O-2022-09, which went through the City Council process last year. Ordinance O-2022-09 included proposed changes to the Conservation Residential Development (CRD) regulations and reduction of the minimum lot size in the Rural District from 5 acres to 2 acres. Ms. Brunner said that Ordinance O-2022-09 was ultimately amended to remove the minimum lot size proposal. Still, there was a lot of public comment during those 2 workshops and 2 public hearings on the potential ways the City could protect the Rural District when subdivisions are proposed. Ms.

Brunner said that some of the concerns included potential negative impacts to the character of the Rural District, the suitability of soils in the Rural District for septic systems, and the need to protect important natural and scenic features such as surface waters, steep slopes, and wildlife habitats. The proposed amendments in Ordinance O-2023-08 were intended to address those concerns and give the Planning Board additional guidance when reviewing subdivision applications for the Rural District. Ms. Brunner noted that a subdivision must be initiated by a property owner and is a proposal to create one or more new lots, which would be reviewed by the Planning Board as if they are developable.

Ms. Brunner discussed the first proposed change called “Preservation of Existing Features.” The Planning Board has the ability to require that existing features be preserved. She said this amendment would provide the Planning Board with additional clarification and guidance on how that preservation could occur. The current language provides examples of the existing features: surface waters, steep slopes rare and/or unique scenic features, stonewalls, rock outcroppings, and historic landmarks. This proposed amendment would add a statement that says, “*or any of the attributes listed in Section 19.3.4 – Primary and Secondary Conservation Areas of this Article,*” which Ms. Brunner said is a list of important natural features to protect that already exists within the City’s regulations. She said the amendment continues stating that, “*in order to ensure that the objectives of this section are met, the Planning Board may require additional studies or mitigation, including but not limited to the following.*” She said that one of the tools Staff highlighted in the regulations that the Planning Board has used in the past was their ability to require the designation of a “no cut buffer” along public rights-of-way. Ms. Brunner said the purpose of that designation is to preserve existing mature tree canopies and vegetation along the road, thus preserving the character of the Rural District. She said another option the Planning Board could require is that a proposed development be designed and located to fit into the landscape in order to minimize significant impacts to existing features or views/vistas. Ms. Brunner said that the proposed amendment clarified that the Planning Board already has that authority.

Councilor Jones asked why this was being codified as a new Ordinance instead of as an amendment to the CRD Ordinance. Ms. Brunner explained that this is an amendment to the existing subdivision regulations, so this is not a whole new standard but an amendment to the existing Land Development Code standards. Councilor Jones said it did not show as an amendment or “A” version of what already existed. The City Attorney, Tom Mullins, said this was a proposed amendment to an existing section of the City Code, so it would not be an “A” version because the existing section is already there. If the Council were to amend this Ordinance O-2023-08, it would become an “A” version.

Vice Chair Giacomo said the function of the Planning Board is to determine suitability vis-à-vis the Master Plan, so he wondered if it was up to the Planning Board to define “significant,” which he said was used a lot in these amendments. Ms. Brunner said yes, the City relies on the Planning Board as local experts who live in Keene and act in a quasi-judicial capacity. The Planning Board public hearing process includes presentations from applicants and comments from abutters

or concerned citizens. The Planning Board uses their judgement about what is fair and what makes the most sense. Ms. Brunner recalled an example of a small multi-family development proposed in an area with mostly single-family homes. She said that in that example, while the development was allowed under the Code, there were a lot of concerns from the residents that the visual impact would change their property values. In that case, the Planning Board required that the existing forest canopy along the roadway be maintained as a way to mitigate those concerns. Vice Chair Giacomo asked if the Planning Board must use their judgement to determine what is “significant” and Ms. Brunner said yes, there is a lot of judgement involved. Chair Bosley thought that was the distinction between the Planning Board and Zoning Board of Adjustment, which applies a specific set of criteria to applications, while there is more judgement involved relative to the Planning Board.

Ms. Brunner continued presenting the second proposed amendment, which was a change to the section on utilities. As currently written, the subdivision regulations were very specific on allowing subdivisions in parts of the City where there was either existing water or sewer. Ms. Brunner said that when these regulations were written, Staff had contemplated subdivisions occurring mostly on the valley floor, where City water and sewer are readily available. However, subdivisions occur in the Rural District today and Ms. Brunner said they would likely continue happening, but the current utilities section does not speak to that specifically. In such instances, she said it has been Staff’s practice to ask for things like soil percolation tests and test pit data that are already performed by developers. This amendment would require developers to submit copies of such tests to the City to demonstrate whether it is possible to have a well or septic system on a proposed new lot. Ms. Brunner said that this requirement is clearly within a Planning Board’s jurisdiction to ensure a lot is going to be developable once the plot is approved and recorded at the registry. She said this proposed amendment was to add a “Section C” that states, *“if an area is not currently served by City sewer, it shall be the responsibility of the applicant or their agent to provide adequate information, such as test pits and percolation tests to demonstrate that the land and area of each lot is adequate to permit the installation and operation of an individual sewage disposal system. In accordance with Env-Wq 1000, for subdivisions with lots smaller than 5 acres, subdivision approval from the NH Department of Environmental Services shall be required.”* Ms. Brunner said a reference to the State document was added to these proposed amendments so applicants are aware it is a requirement and so the Planning Board is aware they should be making it a condition of approval.

Ms. Brunner explained the final proposed amendment to the CRD regulations. Ms. Brunner recalled that CRDs are a type of subdivision, in which the starting lot must be at least 10 acres in size. If a CRD occurs in the Rural District, at least 50% of the land must be permanently preserved as open space, and units could be clustered closer together on the remaining land. In the CRD subdivision regulations, there is something called a “perimeter building setback,” which Ms. Brunner illustrated with an image. The perimeter building setback is an increased setback from all external lots and an additional setback along the existing right-of-way that is even larger. For example, in the Rural District, there is a 100-foot setback from the road and a 50-foot setback along the perimeter of the entire tract, but then internally the individual lots could be

closer together. This amendment was to ensure that the development is buffered from the surrounding area and the external roadway. Ms. Brunner noted this amendment proposes a no cut area within the perimeter setback along the external road to preserve the existing tree canopy. So, in an area where there is a mature tree canopy, it would require keeping that vegetation in place to maintain the look and feel of the surrounding area.

Vice Chair Giacomo referred to the image Ms. Brunner displayed, stating it was interesting because depending on the shape of the parcel, 40–50% of the 10 acres could be occupied by these buffers, which would leave small lots for building houses. Vice Chair Giacomo said he was in favor of this Ordinance, but he thought it was important to address the concerns the public expressed about destroying the rural character. He asked if the buffers counted toward the open space requirement and Ms. Brunner responded yes, if they are designated as permanent open space. She said the regulations do not dictate where the open space land must be located but most often the open space would be built around the natural features that cannot be developed. She added that the open space land does not have to be contiguous, though the regulations encourage keeping open spaces as connected and continuous as possible.

Vice Chair Giacomo continued asking if the no cut buffer was around the whole property perimeter. Ms. Brunner said the no cut area is just along the external roadway, “The area within the perimeter setback along external roads.” So, Ms. Brunner confirmed for the Vice Chair that the 50-foot setback buffer around the whole parcel is not a no cut area, but only the 100-foot perimeter along the roadway was mandated as no cut. Ms. Brunner said the 50-foot perimeter is a buffer in which no development could occur. She said that with this amendment, if there is already an existing tree canopy along the roadway, it must be preserved as forested land. The Vice Chair asked if there is a minimum size in the CRD for conserved land per parcel. He asked if a developer could try designating the 50-foot buffer as a conserved area. Ms. Brunner replied that a developer could try but it ultimately would depend on what the PB is willing to accept. She added that the open space standards in the CRD do speak to the connectivity of the open space land. Vice Chair Giacomo said he appreciated these modifications and that it was clear Staff listened to the public’s concerns.

Councilor Ormerod agreed with Vice Chair Giacomo. Councilor Ormerod said he questioned whether it was going too far to demand no cutting along the roadway. He said that for people building new lakeshore properties, many lakes will say some trees could be cut but that the trees on the lakefront must be maintained, for example. He said this amendment was mandating no trimming of anything and asked if someone, for example, might want to do some cutting in that area for a walking path between the trees. Ms. Brunner replied that the amendments did not include a specific definition of “no cut.” She said Staff had interpreted a no cut buffer as disallowing any clear cutting and she said Staff would likely not be concerned if there was selective tree cutting or brush management in that buffer. She said it was more about keeping the tree canopy as a visual screen between the road and the development itself and she imagined Staff would not be that concerned with management and maintenance of the area. Still, that area

would be labeled as a no cut buffer on the subdivision plans so all future owners of that land would be aware of their responsibilities. She said the intent is not to micromanage maintenance.

Chair Bosley said she agreed with these changes and did not want to get too far “into the weeds” about it, but she pointed out that what Ms. Brunner said was important. The Chair said that if that 100-foot no cut zone was not included in the CRD conservation area it would eventually be owned by someone else and she asked if it needed to be recorded as a deed restriction. Ms. Brunner said it would be required to be shown on the plan that is recorded at the County Registry. Ms. Brunner anticipated that when someone buys a property with a CRD that there would be something like a homeowner’s association that would manage the common land. She said the no cut buffer should be written clearly on the subdivision plans. Chair Bosley thought that would be too sophisticated for most people and that there would be a need for education—perhaps through the CRD process—on the responsibility of the homeowner’s association. She said that when purchasing a property there has to be deed research with an attorney, who should notify applicants of anything they should be concerned about. The Chair thought this requirement was unique, and she was unsure if that level of research would happen or be identified for a new property owner. She added that someone purchasing a property in a CRD would likely not know about this Ordinance and she felt that process deserved some thought.

Vice Chair Giacomo referred to the first amendment Ms. Brunner presented on conservation areas, where item one talked about no cut buffers along public rights-of-way. The Vice Chair said he envisioned a scenario in which a developer could clear cut a parcel and sell it for lumber before turning it into a CRD, with the only responsibility being to revegetate the first 100 feet along the roadway. He hoped that the Planning Board would have something to say about such an instance, but he did not think there was any step in which such a developer would have to appear before the Planning Board. He said this was more of a procedural question. Ms. Brunner replied that forestry is unique in NH. She explained that if a property owner is logging their land, they would need to file an intent to cut and then they could basically go do it. She said that it is not a requirement, but the Planning Board may decide that, *“any property that has been clear cut within the preceding 10-year period, or any property that will be clear cut as a result of any proposed or future development may be required to conduct revegetation or other mitigation.”* Ms. Brunner said that is obviously not ideal in a case with a mature forest, but this language at least gives the Planning Board some guidance on what they could do in that situation. Vice Chair Giacomo questioned the definition of revegetation in this instance, noting that it might not be revegetating in a manner congruent with the adjacent properties or with the parcel’s history. Ms. Brunner said the Planning Board could require vegetation that is in-kind with what was historically on the parcel. Chair Bosley stated that such an ability would have been helpful when Maple Avenue was revegetated, for example.

Councilor Jones said he was initially 1 of the 5 Councilors opposed to the CRD. However, he thought these amendments were a step in the right direction to giving the Planning Board some guidance. He stated he would support this Ordinance.



The City Attorney shared some history. He said the blunt reality was that these regulations are statutorily within the purview of the Planning Board. The City Council's opportunity on this was pretty minimal; referring to as it "ministerial". He continued stating that he was not a proponent of putting the subdivision and site plan regulations in the Land Development Code as an Ordinance because of this conversation. He said that once the City Council is involved, it begins taking away some of the Planning Board's statutory authority to do this via their public hearing process. Unfortunately, by wanting to have a unified Land Development Code, the decision was to include this Ordinance, which made him uncomfortable because it could create a conflict between the City Council and Planning Board in areas where the City Council has no authority. Attorney Mullins cautioned there is potential for that to happen at some point and said it was possible that he could return to the Council in the future to recommend severing those amendments from the Land Development Code. Part of the reason is because the Planning Board's function is to take these regulations, which are not as specific as the Zoning Ordinance, and work with applicants under this structure that is not as defined but is necessary for everyone to do with respect to the property. The Planning Board's role is regulatory and the City Council's is not—it is a political body. He said that some other proposals were included in these amendments initially that some in the public found controversial and they wanted the City Council to say "no" to those, which would have created a direct conflict under the statute. If the Council has serious issues with the amendments, it could send them back to the Planning Board for rehearing, but it was ultimately the Planning Board's authority to do what it wants.

Vice Chair Giacomo said he appreciated the City Attorney's explanation and Ms. Brunner's responses. The Vice Chair said their points were well-taken and he was glad to have gained a better understanding of the interpretive nature of the Planning Board's function.

Chair Bosley said this was an interesting conversation. She recalled the Joint PB-PLD Committee meeting on April 10, when there was a line drawn between the 2 Committees on an opinion about something. She said that as a Councilor, she felt the things the PLD was talking about were important for Councilors to see happen after sitting through many workshops and discussing many ordinances that were controversial. She said this was an opportunity for the Council to see Staff responding to some of the neighbors' concerns and mitigating some of the controversial pieces of those changes. She said she thought that there were a lot of things the Council is asked to do that they have no control over, such as whether the PLD Committee should ask or demand public hearings when exiting a Joint Committee hearing. She thought it was important for the Council to be educated so they understand what the Planning Board is doing. She imagined there were other opportunities to address public concerns through ordinances in the Land Development Code. She said that if there were really problems to not go through the Planning Board but to just change the Ordinance and let that go through the public process to learn their feelings about it. She said that ultimately, these are the public's ordinances, and they are the ones who should be giving opinions about them. If the ordinances are not being interpreted well by the Planning Board, she said someone needs to know. Chair Bosley agreed that if the Council has no authority to say no to the Planning Board about changing their own regulations then those changes should not be coming before the Council. She said there has to be

a role for the Council in creating the structure the Planning Board has to apply regulations. She said that ultimately the Planning Board is deciding whether there should be a no cut zone, but that could not happen unless the Council creates an Ordinance that allows the subdivisions. She said it all ultimately ties together.

The City Attorney recalled that the unified Land Development Code now has these various sections within it. He said the Zoning Ordinance is what essentially permits a CRD to occur. The Planning Board has regulations regarding CRDs. The City Attorney said that it is fine for things like this to exist in the City Code. He said the opportunity for the City Council and public to weigh in regarding subdivision and site plan regulations is during the public hearing process before the Planning Board. The hearing provides that opportunity to the public and the City Council to have that conversation with the Planning Board.

Chair Bosley asked, if this no cut zone did not find its way into the Planning Board regulations and the public told the Council they were uncomfortable with the way CRDs were visually appearing in the community, would the Council have the authority to amend the Ordinance so the Planning Board would have to abide by that. The City Attorney said not necessarily and that is the point of conflict. He said the Planning Board has control over its regulations and the only reason this was appearing before the City Council was because there was a decision made to put these regulations into this overall Ordinance. The Chair asked if these sorts of decisions could not be the basis of an Ordinance, much like for the Congregate Living and Social Services screening requirements that the Planning Board sought authority to waive; the City Council told the Planning Board that a Variance would be needed from a subjective committee in that instance. The City Attorney said the CRD is likely not a good example but noted that there is a specific connection between the Zoning Ordinance and CRD; there is a bleed over between those two. However, the Planning Board's subdivision and site plan regulations are outside of the Zoning Ordinance. He said there is no opportunity for the City Council—by Ordinance—to influence those regulations because it has no influence in that regulatory structure.

Ms. Brunner added that there is also bleed over with something called a “conditional use permit” (CUP), which is one of the innovative land use controls that is relatively new compared to site plan and subdivision powers. She said a CUP crosses all boundaries in that it is created in the Zoning Ordinance, which is adopted by the City Council, but the City Council can designate the Planning Board as the body that actually implements the CUP. So, when an applicant comes to get a CUP, they can do so concurrently with their site plan review. She said there is a lot included in the Planning Board regulations that the City Council has a say in; the two exceptions are the site development standards for site plan review and the subdivision standards that are outside the CRD.

Councilor Jones tried to simplify by saying the City Council can establish the Zoning and what uses go in the zones but stays away from site plans. The City Attorney said that was correct as a general proposition; regulatory aspects like site plan review reside with the Planning Board. It is important to separate what is happening in the City administratively from what the regulatory

bodies are doing. He said that bleed over could lead to allegations of impropriety. Chair Bosley asked why not clean that up now. The City Attorney said the reason was because this process was in place. He said it was important to get the subdivision regulations in place. He added that frankly, in a larger sense this was a vehicle to have this very conversation with the PLD Committee and Council. Chair Bosley said she would prefer to not have it come to a head on one particular issue and suggested cleaning it up sooner. The City Attorney thought the Chair would see that coming to the Council imminently.

There were no public comments. Councilor Ormerod made the following motion, which Councilor Jones seconded.

On a vote of 5–0, the Planning, Licenses, and Development Committee recommended the adoption of Ordinance O-2023-08.

**9) Adjournment**

There being no further business, Chair Bosley adjourned the meeting at 7:50 PM.

Respectfully submitted by,  
Katrnya Kibler, Minute Taker  
April 14, 2023

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