

City of Keene
New Hampshire

FINANCE, ORGANIZATION AND PERSONNEL COMMITTEE
MEETING MINUTES

Thursday, November 9, 2023

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Thomas F. Powers, Chair
Michael J. Remy, Vice Chair
Bettina A. Chadbourne
Bryan J. Lake
Andrew M. Madison

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Tom Lussier, City Engineer
Aaron Costa, Assistant Public Works
Director/Operations Manager for the
Treatment Facilities
Dan Langille, City Assessor
Patty Little, City Clerk

Members Not Present:

All Present

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

1) Jared Goodell - Place of Assembly Permits - Recent Charge by Fire Department

Mr. Jared Goodell and Attorney Joe Hoppock addressed the Committee. Mr. Goodell stated he was unable to be in attendance at the last meeting due to a mix up with emails from the City Clerk's office. He indicated he has however, had the opportunity to listen to the recording and review minutes from the last meeting.

Mr. Goodell went on to say he opened a business recently on Emerald Street which has occupancy of more than 99 persons and hence requires an Assembly Permit from the Fire Department. Such a permit was issued for this business. He went on to say assembly permits are authorized by State Law under RSA 155:17 – 39. Shortly after the permit was issued he was sent a bill for \$70 from the Fire Department. Because charging for an assembly permit was specifically against NH Law, he questioned the Fire Chief who indicated the fee was not for the permit but was for the inspection, despite the language used on the invoice.

Mr. Goodell stated as a result he petitioned the Council seeking relief from this fee. He noted New Hampshire State Law specifically says that assembly permits shall be issued without charge. The provision in the City Code that prescribes a fee for "assembly permit" under the heading life safety permits, is in conflict with this State Law.

Mr. Goodell went on to say the City Attorney did indicate at the last meeting that the City could not charge for an assembly permit but he believes they could charge for the inspection required to obtain the permit. Mr. Goodell however, felt the way City Code is written is not clear. Mr. Goodell felt that what the City charges is for the assembly permit. Hence the reason the invoice

he received says “assembly permit.” Mr. Goodell felt at this time, the City Code only authorizes a fee for assembly permits, not for assembly permit inspections. There is a subheading for life safety inspection fees in Appendix B. Under this section there is no assembly permit inspection fee listed. Mr. Goodell felt staff cannot add or modify language to City Code without proper notification to the public to meet their revenue goal.

He stated his first request of the committee tonight is to reduce the fee he was charged for an assembly permit to zero. With respect to changing this fee to an inspection fee, he felt a revision to the City Code was necessary.

Mr. Goodell continued that at the prior meeting, Attorney Mullins had stated you cannot take one line of the law and apply it without looking at the broader text of the body of law. He stated he agrees with the Attorney Mullins; however, what was not said is that the entire body of law pertaining to assembly permits and the reason why even charging for an inspection for an assembly permit would be against the law in this state. In order to obtain an assembly permit, as was mentioned earlier, the Fire Department is required to perform an inspection, this requirement is outlined in RSA155:34. He emphasized the inspections are a requirement to obtain the permit. This requirement is contained in the same body of law that prohibits a charge for the permit. Mr. Goodell indicated it is clear that the Legislature did know what it was doing when it put in place the law pertaining to assembly permits; and it clearly intended that in order to obtain an assembly permit, you must first get an inspection by the licensing authority. Mr. Goodell reiterated the point that the assembly permit would be issued at no charge.

Mr. Goodell also pointed out that New Hampshire is not a Home Rule state which means that cities and towns only have the powers the legislature has expressly given them. He added when a municipal ordinance conflicts with state law, the state law preempts it.

He indicated he understands his initial petition to the Council asked that a refund be given to all persons who previously paid for an assembly permit in the last two years and that request might have caused a concern to many. He stated he is withdrawing that request and asked that the fee charged to his business, for an assembly permit be reduced to zero and that no further charges be assessed for the assembly permit. He added he does not want to receive a new bill that says inspection fees after tonight because there is nothing in the City Code that authorizes that.

Secondly, he asked that the committee recommend the City Council remove the fee for assembly permits from City Code as soon as possible. However, if City staff wants to bring back a new code which would charge for inspection fee for assembly permits, those fees can move through the process of a public hearing. He suggested asking the Department of Safety to weigh in on the legality of such an ordinance at that time.

Attorney Hoppock addressed the committee next – he circulated a document to the committee and referred to page 1 which is what Mr. Goodell referred to as *Life Safety Permit Fees - Place of Assembly Permits valid for one year \$70*. He noted there are other places in the code which call for inspection fees and noted Mr. Goodell is correct in that there are no references in the Code which refer to inspections related to a Place of Assembly Permit application.

He called the committee's attention to the next page which is the beginning of Chapter 155; Page 3 refers to RSA 155-19 which indicates as follows: *...A permit shall be obtained from the licensing agency by the owner or operator of any place of assembly. Such permits shall be issued without charge for one year from the date of issue and shall be revocable for cause.* Mr. Hoppock pointed out the Statute says one year, and the City's fee of \$70 says is valid for one year. *Application for a permit shall be made to the licensing agency, which may require building plans showing types of construction, exits, aisles and seating arrangements and details of decorations. No permit shall be issued by the licensing agency until the provisions of this chapter have been complied with.*

Mr. Hoppock went on to the next page and reminded the Committee that the chapter needs to be read as a whole, certain sections can't be chosen for reference. Section 34 says *the licensing agency shall inspect or caused to be inspected each place of assembly. Such inspections shall be at least semi-annually.* Attorney Hoppock indicated the City does not have semi-annual inspection fees in its Code.

Attorney Hoppock reiterated their opinion that the fee charged by the City is unlawful when sections 19 and 34 of RSA 155 are read together. As a result, they request the City waive the fee charged to him and amend the City Code to be consistent with State Law. With respect to refunding others in the community, he indicated he takes no position.

Attorney Hoppock further stated at the last meeting Attorney Mullins referred to the case of Cox vs New Hampshire 312.US.569. Attorney Mullins stated this case talks about a distinction between permits and licenses and refers to a parade permit and whether it was a violation of free speech in the exercise of free religion. The narrow holding of the case is *that a municipality is within its authority to control the use of public ways, and it cannot be denied the authority to give consideration without unfair discrimination to time, place and manner concerns in relation to the safe and proper use of public streets.* In other words, the municipality has the power and authority to issue permits to people if they want to have a parade so people can exercise their rights to free speech controlled by the municipal authority. The restriction is whether the time, place and manner are reasonable and reasonable refers to interfering with traffic, pedestrian traffic, flow of goods and services, and commerce going through the city.

Attorney Hoppock in closing stated under Section 19, being charged for a permit is not lawful.

City Attorney Mullins addressed the committee next. He stated he agrees with much of the comments made tonight and there is no doubt that RSA155:19 does not allow for the charge for a permit, this has been explained and the City code appears to do just that. He indicated staff will be seeking to amend the City code to clear up that issue.

The issue being presented today is what the City's authority is with respect to the second piece; Inspection. He noted it is important to read the Statute in whole and as indicated under RSA 155:34 - inspection by the licensing agency does give the authority to perform an inspection but it is silent on the question of whether or not there is any fee that could be charged with respect to this inspection. Attorney Mullins stated it is important to keep in mind that RSA 155 arises under Title 12 of the State Statute. Title 12 is public safety and welfare provisions of New Hampshire

State law and included in Title 12 is RSA 153. RSA 153 adopts the fire code for the State of New Hampshire and 153-36A defines the fire code in NFP101 and NFP 1. The fire code in those two sections is adopted into the State Statute through the fire code. Chapter 155, dealing with places of accommodation is an expansion of detail that is contained in NFP 1 with respect to places of public accommodation.

RSA155 and 153 contemplates NFP 1. NFP 1 talks specifically about places of assembly and authorizes the Fire Chief who has the jurisdiction *shall be authorized to establish a schedule of fees* - those fees include inspection services. NFP 1 contemplates, as does the statute, that there will be an inspection for a place of accommodation. As a result he felt the City does have the authority to charge a fee for the inspection but not for the permit.

With reference to the Cox decision, Attorney Mullins stated the court in that case was trying to suggest that a permit is one thing, but the licensing process that you have to go through is the necessary work that has to happen to determine whether or not you are going to operate safely in the public streets. The underlying question is whether the City has any authority to change the code to charge for the inspection process associated with issuing that permit. He felt the City does have the authority; it has been reviewed with the Office of the State Fire Marshall who agrees with that interpretation. The Attorney indicated this is the position the City is taking.

He added he understands Mr. Goodell's request, which is that the City should not have an ordinance in place which is in violation of state law. The City we will be amending it to make that distinction very clear. This concluded the City Attorney's comments.

Councilor Remy asked the City Attorney - on the second request of not charging the petitioner whether there were any concerns on avoiding a fee in this way. Attorney Mulling stated ultimately this would be a Council decision but stated he would offer the following: The first one is that it is very difficult to look at the City's Ordinance and look at 15-519 and not come to the conclusion that it does not agree.

The second is, the City Council has in various situations determined, they could waive or not collect on an item. There is no specific authority in this instance to do that, but stated he would argue in favor of waiving the fee in this particular context. He noted there is a term in the law called *ultra vires*, which essentially means "without authority". Even though City Code doesn't specifically give Council that authority, that doctrine would in this context.

The Attorney agreed there are problems in City Code and stated he appreciates Mr. Goodell coming forward so it can be corrected.

Councilor Madison asked whether there was any precedent for what other cities in New Hampshire are charging for inspection fees. Attorney Mullins stated the City did perform a review of other municipalities and have determined there are some municipalities that are very clear about the distinction between these two items and others that are not.

The Chairman asked for public comment. Mr. Toby Tousley of 500 Washington Street addressed the committee and stated he felt Mr. Goodell was bringing up a valid point. He felt when the

state was discussing this item it was the intention that smaller businesses would not be penalized. He also noted he heard from reading minutes of the last meeting, the Fire Chief indicated that these fees make up about \$8,400 of his budget which Mr. Tousley felt was an insignificant amount and felt it should be eliminated in its entirety.

Attorney Hoppock addressed the committee and responded to Attorney Mullins's comments about the NFPA 1. He indicated this is a very complex document of technical rules regarding fire and life safety codes and he is correct RSA153 does incorporate this item but it cannot be found anywhere in the public domain. He noted, however RSA 155-19 says *the permit shall be issued without a charge*. He indicated as stated earlier to issue the permit, you have to do the inspection. So inspection is part of issuing and hence, by virtue of that connection, one cannot be lawfully charged anything for the inspection in the context of this Place of Assembly Permit. Attorney Hoppock added there is nothing in NFP 1 that talks about fees.

Mr. Goodell added we can all agree there is nothing in code that talks about inspection fee. He felt the question tonight is whether the current code is legal on its face and noted Attorney Mullins indicated it was not. Therefore, the only action that the committee could take tonight is to recommend that the fee he was charged be reduced to \$0.00; until and unless City staff brings up a new code to charge for an inspection.

Attorney Mullins stated he was essentially going to suggest the same thing but indicated there is a difference of opinion with respect to the authority of the City to a charge for the inspection, but felt this was for a later time when there is an ordinance put forth.

A motion was made by Councilor Remy that the Finance, Organization and Personnel Committee recommends that the City Attorney's office be requested to draft an appropriate amendment to the fee structure with respect to Places of Assembly to make the distinction between the costs for the permit and any cost for inspection. The motion was seconded by Councilor Madison.

Councilor Chadbourne stated she appreciates that Mr. Goodell brought this forward because we as a Community are going to benefit from it. The City is going to improve our existing code so it won't be confusing moving forward. She stated she supported the motion as well as waiving the fee.

On a 5-0 vote, the Finance, Organization and Personnel Committee recommends that the City Attorney's office be requested to draft an appropriate amendment to the fee structure with respect to Places of Assembly to make the distinction between the costs for the permit and any cost for inspection.

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

On a 5-0 vote, the Finance, Organization and Personnel Committee recommends waiving the fee charged to Jared Goodell for the Assembly Permit.

2) **Acceptance of Cybersecurity Grant – Assistant Public Works Director/Operations Manager Kurt Blomquist, ACM/Public Works Director Aaron Costa, Assistant Public Works Director/Operations Manger**

Assistant Public Works Director/Operations Manager for the Treatment Facilities, Aaron Costa addressed the Committee next. Mr. Costa stated wastewater utilities can be the subject of various types of cyber security attacks and these attacks can affect the systems operations and ability to perform essential tasks. He indicated the City will use these American Rescue Plan Act Cyber Security grant funds to implement cybersecurity improvements to the water and sewer utilities. He indicated staff has worked with the City's IT Department as well as an outside consultant to perform an assessment. Findings of that assessment are the basis for this grant work. This work will ultimately protect the City's utility systems and network, and the City will be more resilient against possible cyber-attacks.

Councilor Lake made the following motion, which was seconded by Councilor Remy.

On a 5-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to accept, execute and expend a Cybersecurity grant from the New Hampshire Department of Environmental Services (NHDES) in the amount of \$62,300 for a cybersecurity implementation project.

3) **Sale of City Property- 0 Off George Street - City Assessor Daniel Langille, City Assessor**

City Assessor Dan Langille was the next speaker. Mr. Langille stated he was before the committee to address a City owned parcel off George Street, known as Map 532, Lot 044. This parcel is approximately 1/2 an acre in size and has frontage off George Street. Mr. Langille stated because of its shape and size, it is not really a buildable lot.

He went on to say that the City took this parcel in 1977 by tax deed. During those times, the City Council talked about this parcel and concluded that there was no need to hold on to it. There were prior attempts to see if there was interest from any abutter purchase this land. However, nothing ever came to fruition, hence, the City still owns it.

As of recently, an abutter approached the City, looking to see if the City would sell the parcel to them. At that point, the City decided to send out a proposal to see if there was any other interest in the land. The City also sent certified letters to all other abutters to make sure it was a fair process.

Mr. Langille stated staff is here tonight to request City Council to specifically give authority to the City Manager to negotiate and execute the sale of this property. Sale of the property will remove any liability from the City and places the parcel back on the tax rolls. He noted this was not a significant parcel but it does provide for further development potential for the abutter.

Councilor Remy stated given the odd shape of the lot whether there was any discussion as to locating a road or frontage on this lot. Mr. Langille responded by saying there was a proposal for

a street but the City never moved forward with it and there is currently no road or driveway.

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

On a 5-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to negotiate and execute the sale of 0 off George Street, Map 532 Lot 044.

4) **Council Policy on the Review and Release of Non-Public City Council Minutes - City Attorney and City Clerk Thomas Mullins, City Attorney Patricia Little, City Clerk**

City Clerk Patty Little stated she was before the committee to talk about a recent change in state law dealing with non-public minutes. She indicated this piece of legislation was adopted and became effective on October 13, 2023. It requires that public bodies put in place a proactive process to release non-public minutes if and when the circumstances that warranted them being kept from the public are no longer valid.

Ms. Little stated the legislation says that a public body can either develop a process on how this will be put in place, or the default is 10 years from the date the minutes were sealed

Ms. Little stated she is recommending the Council adopt a policy and put in place two things. She noted there is an obligation the City goes back to non-public minutes for the year 2013. Hence, any non-public minutes before 2013 are not addressed in the legislation. She indicated the City is going to need a process to deal with these minutes in a way that is not an undue burden to staff in terms of administration. This administration would require the Clerk's Office to give the City Attorney access to those non-public minutes. The Attorney would need to review the minutes to consider whether the conditions that warranted the non-public in the first instance were still in effect.

In addition, at a Council meeting, Councilors would need to be provided full text of all non-public minutes, the attorney would give the Council his commentary as to whether the circumstances have changed. When the Council comes out of its non-public session and goes into a public session, the Council would need to vote on each one of those sets of minutes.

Ms. Little noted communities across the state are handling this requirement using different methods. Ms. Little noted some communities don't go into non-public sessions, Keene does even though it might not be often. Keene has a backlog of 100 sets of minutes. Ms. Little stated staff's proposal is that in 2023 before the end of this year, they will review and release the 2013 minutes and in December of 2024, review and release the 2014 minutes - December will be the time the review and release will happen going back ten years. For minutes that are more current, staff is recommending in the month of January and July the release of minutes would happen. The suggestion is in January to look back through June of the prior year, and in July look at six months back. However, at the same time looking at the back log of minutes. If the Council approves this recommendation, there will be a change to the Council template to add "release of non-public minutes" as an item. This would then trigger the Clerk's office when this process should be in December, January or July. After the vote those non-public minutes that are in a

separate binder will be placed in its own binder with a statement that reads “publicly released by the City Council with a specific date included”.

Councilor Remy asked for staff’s opinion on placing an estimated date for minutes to be reviewed as minutes are being sealed as part of that process; personnel records that needs to be sealed forever or a land matter that is current and can be reviewed for example in six months. He also asked for the length of these minutes.

Ms. Little stated typically they only contain comments and information from staff. It would be quite rare if there are comments attributed to a councilor. General feeling of concerns may be documented at a very high level. Generally, the non-public minutes range from 1/2 a page to up to two pages, subject matter dependent.

Councilor Chadbourne asked the attorney if Charter member reviews which are non-public should ever be available to the public. Attorney Mullins stated the Supreme Court changed the law quite significantly a few years ago; public entity’s personnel records are not exempt from disclosure to the public. They have to go through what is referred to as the privacy balance test, it is an objective standard not a subjective standard; whether privacy interest outweighs public interest. Reputational issues will be exempt from disclosure and will need to be reviewed carefully, but categorically there is no exemption for personnel records.

Councilor Lake stated the Clerk had mentioned going into non-public to discuss whether Council should release these non-public minutes and asked whether there was a reason why this could not be integrated into the non-public session already on the agenda. Ms. Little stated the purpose for going into non-public would need to be stated and felt it could be integrated; it is more of a notice to the public for that particular meeting they could expect a public release of minutes in December, January, or July.

Chair Powers asked how the minutes will be released to Council. Ms. Little stated staff has discussed this with the IT Department, they will load a file on each Council member’s desktop which will be deleted after the meeting. There will be no printed copies. Ms. Little noted this process will start with the December meeting.

Councilor Remy made the following motion, which was seconded by Councilor Chadbourne.

On a 5-0 vote, the Finance, Organization and Personnel Committee recommends the City Clerk implement the statutory release of non-public City Council minutes as outlined.

5) **Keene Police Department Social Worker Position - City Manager Elizabeth Dragon, City Manager**

City Manager Elizabeth Dragon stated this memo is being put forward both by herself and the Police Chief in reference to the Police Department social worker position, which has been discussed previously. She stated she had hoped to put in a grant application to fund the first two years but unfortunately the Opiate Abatement Commission is not likely going to put out another RGA to be able to qualify for anytime soon.

The Manager indicated because of the issues the City is currently dealing with and the demands of the Police Department, it is essential to move this forward sooner versus later. She explained the funds for this position are available in the City's Opiate Abatement Litigation Revolving Fund and accessing those funds require Council approval for which a Resolution will be presented at the next Council meeting. The Resolution will be \$52,850. It covers ½ year of the position. What is available in the fund right now is \$115,000. She stated she expects about 40 to \$50,000 coming into that fund annually and in the future it will partially offset the cost of bringing that position in the Police Department.

She called the committee's attention to the statistics regarding substance use and the overdose deaths that have been occurring in New Hampshire and in our community. She stated this position is about follow up. When the City gets a call that is related to substance use, having someone that is going to follow up with that person and connect them to treatment or other services that they may need. The hope is twofold, to help that person and to reduce return visits to help the same individual. The Manager indicated staff has reached out to other communities in New Hampshire where this program has been very successful and have added multiple positions over time because of the demand. This position will also offer training to police officers on substance use disorders. The Manager noted nationwide police departments are looking at ways to provide services without a police officer and the City is not taking a police officer out of a call with this program but are hopefully providing follow up, which then will reduce that second call to that person. She added at the next Council meeting she will be requesting Council to suspend rules to adopt the Resolution to move the position forward.

Chief Stewart stated he did not have anything more to add but was open to questions.

Councilor Chadbourne felt this individual is going to be busy but asked whether this person will also be assisting the Fire Department. The Manager stated 99% of the time when the Police Department responds to an overdose call the Fire Department responds as well. The Chief agreed that was the case.

Councilor Lake asked whether there was a reason to place this position in one department over the other. Ms. Dragon stated reports that come out of the Police Department are confidential and also the demands being placed on police officers to have to respond to these calls over and over again.

The Chair added this was a request of the department in the early nineties but due to budgetary reasons it was cut. He felt this was a great addition to the Police Department.

Councilor Chadbourne made the following motion, which was seconded by Councilor Lake.

On a 5-0 vote, the Finance, Organization and Personnel Committee recommends a Resolution be introduced that would appropriate funding for the Keene Police Department social worker position.

6) **Relating to Purchasing Ordinance O-2023-15 Merri Howe, Finance Director**

The Chairman congratulated the Finance Department on their recent award.

Yves Gukunde, Purchasing & Contracting Services Manager stated he was before the committee to address Ordinance O-2023-15 relating to purchasing. He stated the last time the purchasing Ordinance was updated was in 2017 to include the federal purchasing guidelines. The purchasing thresholds were last revised in 2009.

He indicated the Finance Department received the mid-term increases from other City departments to increase the thresholds as prices for goods and services have increased, especially in the last five years. Finance staff met with various City staff to understand the problems they were facing and what was learned is that currently vendors and contractors cannot guarantee fixed pricing for more than a month.

The Finance Department put together the first draft of this Ordinance amendment and circulated the draft to other city departments for review and to make sure their concerns were addressed.

The Finance Department then revised the first draft to include the input they received and the second draft was sent to the City Manager and City Attorney for their review before it was sent to Council for its consideration.

In comparing Keene to other municipalities with similar population size, such as Bedford and Dover, it was learned that they too are revising the thresholds to meet the current needs. The City's changes are more stringent than the federal guidelines. Mr. Gukunde stated he believes these changes will allow the City Manager and central purchasing to assist City departments in securing goods and services quickly while maintaining industry standards, auditing internal controls and providing a cost savings to the City.

Mr. Gukunde explained the proposed changes are shown in bold, strike through is the language staff is recommending be deleted.

Councilor Remy asked under the current rules how many transactions fall into each of these categories versus under the future rules. He asked whether this is something the Manager could provide for the committee for their next meeting.

Councilor Lake referred to Section 2-13345, Contract Change Orders which has two pieces: The City Manager can approve an increase in contract changes up to \$25,000. The Councilor stated he understands and agrees with that intent or 20% which whichever is greater, which is double the current percent that is included and asked the Manager to elaborate on the need for increasing this amount. The Manager stated there was a lot of debate around this item. She indicated right now it is 10% and 10% can mean a very different thing depending upon the contract. However, there are some protections in place – the Manager noted she can only approve items that have already been budgeted for but this would allow some additional flexibility as staff often comes in for contract change orders.

Mr. Gukunde added that currently the Manager is authorized to execute a contract within \$25,000. For a contract for \$10,000 change order of 20% will be \$2,000. But if the change order is for \$5,000 it is more than 20% and would require Council approval. Hence the reason for language which indicates 20% or 25,000, whichever is greater. Councilor Lake stated he is more concerned about contracts that are higher in number like the one recently approved for \$900,000. Councilor Remy agreed with Councilor Lake and indicated the City Manager is responsible with expenditures but 20% on a million dollar project could be a large number and felt it would be prudent to add a cap.

The Manager added it is very rare there will be available funding for such projects. Councilor Remy clarified the Manager cannot expend from the general fund without Council approval. The Manager agreed she could not do so without Council approval; it only allows for her to work within the budget.

Chair Powers stated this change is necessary as it is a cleanup of ambiguous items.

Councilor Madison referred to two needed changes, both on the first page, Section 2-1332, Rules for City Purchases. Under item 1, to change the last sentence from *the City Manager in his discretion, to the City Manager in their discretion*. The second change was to add a dollar sign before 50,000.

Councilor Remy stated the conversation around the fact that it cannot be funded from outside the project helped clear up his concern around the 20% issue and asked whether this addressed Councilor Lake's concern. Councilor Lake stated he still has some concern but because funds are already in the budget it does ease some of the concern - enough so, that he does not intend to propose an amendment at this time.

Councilor Lake made the following motion, which was seconded by Councilor Remy.

On a 5-0 vote, the Finance, Organization and Personnel Committee recommends adoption of Ordinance O-2023-15.

7) **Appropriation of Funds for Safety Improvements on Woodbury Street Resolution R-2023-37 Donald Lussier, City Engineer**

City Engineer Don Lussier stated he was before the committee to address Resolution R-2023-37. He indicated in October of 2022, the City Manager came forward with a request to authorize her to negotiate an execute an agreement with the Community College System of New Hampshire (CCS&H) related to the guardrails along Woodbury Street. The issue at that point was related to the agreement and exchange of easements with CCS&H. The item was referred to the PLD Committee instead of the Finance Committee. That agreement was negotiated and executed and calls for CCS&H to be responsible for repair and maintenance into the future the retaining wall that runs along Woodbury Street next to the former Roosevelt School. The city is conversely responsible for the repair and maintenance of the sidewalk and the guardrail along the top of that wall.

Mr. Lussier stated the existing guardrails don't meet modern safety features. The fact that CCS&H is now looking to sell this property has brought this issue to light. He indicated these safety improvements need to be done. CCS&H has entered into a purchase and sale agreement with Keene Housing that calls for them to be responsible for fixing the wall in the first instance, and then it gets turned over to the new property owner for maintenance into the future. The structural engineer that CCS&H hired to do the design and repair of the wall had some significant concerns about mounting the guardrail immediately adjacent to the existing wall. There are no real records of how that wall was designed or built. Hence, it is difficult for an engineer to say that it can absorb an impact from a vehicle hitting it at 30 miles an hour. The concept that has been agreed to would add a pedestrian railing, essentially a chain link fence along the top of the wall and a guardrail between the sidewalk and traffic on Woodbury Street. This would move any impact load from cars hitting the guard rail far enough away from the wall, that the mass of earth between them absorbs that energy. All parties agree to this plan.

The Resolution is because the funding was not programmed to come through normal channels. The Resolution would appropriate funds out of the unallocated fund balance to cover the cost of construction. What has also been decided is the City's portion which is the sidewalk, fencing and guardrail will be included in CCS&H's contract documents. They will put the project out to bid and administer the contract, City staff will inspect and accept the public infrastructure portion (sidewalk, fencing and guardrail). This will enable the work to be done as one contract.

The second piece of the Resolution is to authorize the City Manager to enter into a reimbursement agreement with Community College System and also to expend the funds raised by the appropriation for the purpose of building these improvements. Mr. Lussier stated the amount being requested he anticipates is more than what the City is going to need. The estimate staff has at the present time is \$165,000 but the work will be going out to bid in the spring.

Councilor Chadbourne noted the wall needs a lot of work and clarified this would be the responsibility of CCS&H. Mr. Lussier answered in the affirmative.

The Councilor felt regardless of what the City completes, that work would depend on how well CCS&H completes their work. Mr. Lussier stated the agreement the Manager entered into with CCS&H does stipulate the repair of the wall in its current condition and ongoing maintenance into the future. The Councilor asked whether the contract asks for CCS&H to complete their work before the City invests in its work. The Manager stated the work will be done at the same time. Councilor Chadbourne stated she raised this repair request 12 years ago and is glad it is being addressed now. The Chair noted Keene Housing will not purchase this building until the wall is repaired. Mr. Lussier noted the Purchase and Sales Agreement is contingent upon the wall being repaired.

Councilor Remy stated he has a real concern about the cost of this repair. The estimate comes to 300 feet at \$700 a foot. Mr. Lussier stated it is about 340 feet, and this cost includes the guardrail, sidewalk and the fencing. The Councilor asked for a breakdown of the estimate. The Chair asked for the width of the sidewalk. Mr. Lussier stated it is about five feet six inches wide.

Councilor Lake made the following motion, which was seconded by Councilor Remy.

On a 5-0 vote, the Finance, Organization and Personnel Committee recommends adoption of Resolution R-2023-37.

There being no further business, Chair Powers adjourned the meeting at 7:22 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

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