



City of Keene, N.H.  
*Transmittal Form*

November 7, 2018

**TO:** Mayor and Keene City Council

**FROM:** Planning, Licenses and Development Committee

**ITEM:** J.1.

**SUBJECT:** 79-E Community Revitalization Tax Relief Incentive District Expansion Resolution

---

**COUNCIL ACTION:**

In City Council November 15, 2018.

The report was filed into the record.

Voted unanimously to adopt Resolution R-2018-33.

**RECOMMENDATION:**

On a vote of 5-0, the Planning, Licenses and Development Committee recommends to the full City Council the adoption of Resolution R-2018-33.

**ATTACHMENTS:**

Description

Resolution R-2018-33

**BACKGROUND:**

Mr. Kopczynski stated that based on comments that Planning Department staff received about RSA 79-E and its possible use in a further area, they have come to City Council to ask if the Council has an interest in expanding that district. Based upon the City Council's direction, he said they have created a Resolution that they are presenting tonight, along with a map of the area related to it, as well as the changed language that is required to make the Resolution work relative to the map area. He stated that Community Development Director Rhett Lamb has more detailed maps to show Council if requested and is available to answer any questions they may have.

Councilor Jones asked Mr. Lamb to identify the tax increment financing district on a map. Mr. Lamb provided Council members with maps identifying the TIF and Zoning Districts. Mr. Lamb said that the Resolution is a replacement, in other words the expanded area that is shown in the map, represents one Resolution represented by the entire red line. The changes in the Resolution reflect different zoning districts, the presence of the TIF district, and for example, properties in the preservation zoning district they have established criteria for the granting or approval of 79-E for properties that are exclusively residential.

Councilor Hansel asked if there is any case in which both the TIF and 79-E could both be used together. Mr. Lamb replied that 79-E uses the incremental value and creates a temporary tax benefit to the owner who is not responsible for paying the tax on incremental value. In the case of a TIF, it is exactly the opposite; the incremental value is assessed by the City and then collected for the purpose of building some public

infrastructure that might be needed to support the development. Mr. Lamb said the Resolution includes language so that if the project requires a public investment through the TIF it is not eligible for 79-E. He said that this is important because in some cases there may still be benefit for the TIF District in the City to make some improvements necessary for development to take place. He said for each individual project creating a new increment, you would have to choose one or the other; it would not make sense to apply both to the same increment. However, if you have a project that is 79-E eligible and designated for a tax deferral for a three-year period, there is no reason why the next improvement or increment could not go through a TIF project if that were appropriate at that time. Mr. Kopczynski stated that the proposal itself does not make an either or proposition for providing tax relief, but allows the City Council to consider the fact that this may be in a TIF District and to evaluate the impact it may have with respect to existing or required City infrastructure.

Councilor Hansel asked if Mr. Kopczynski and Mr. Lamb could describe a scenario in which there are two abutting properties or lots, and one is 79-E approved and the other is stuck in a situation in which the City is stating that the project is part of the TIF. Mr. Kopczynski stated that 79-E will probably be used more in areas with existing infrastructure and therefore they did not anticipate much conflict between the two.

Mr. Lamb said that the projects done through 79-E as opposed to TIF will probably be smaller, for example, in the past a TIF parking structure was built which in turn allowed a developer to build a hotel which without the parking structure probably would not have been built. He said large projects will have funding problems on their own even with the benefit of a 79-E tax deferral so for larger projects the TIF would still be the best choice. Councilor Jones added that if they had made the railroad structure a 79-E, they would not have the funds to pay off the bonds for the TIF. Mr. Lamb agreed that if a project needs a lot of public infrastructure, it is unlikely that 79-E would be the best way to go. Councilor Jones asked if 79-E goes up to 7 years. Mr. Kopczynski replied that it can be any term up to 5 and it is individually-approved by City Council. Mr. Lamb stated that there is a two-year floor for projects which can meet one or two criteria for public benefit and for projects that can provide more public benefit it can go up to five years.

Councilor Sapeta asked if properties in the district can use 79-E and TIF multiple times over the years. Mr. Kopczynski stated that he is not aware of any restriction on that, however, final permission and approval is solely up to City Council. Councilor Sapeta asked if it allows the developer to make the choice. Mr. Lamb clarified that the 79-E is an individual property owner coming to the City and applying through the process which is established, however, the TIF District already exists, so incremental value that is being generated in the TIF district today is already going towards the bonds that were established under that TIF. Councilor Sapeta asked if it goes on forever. Mr. Lamb stated it goes on until the bonds are repaid but they can establish new bonds depending on the need. He said that individual properties do not apply for TIF projects. Councilor Sapeta thanked Mr. Lamb for the clarification.

Councilor Hansel asked if someone takes advantage of 79-E and gets a two year tax relief, after the two years is up, does the incremental value go into the TIF or is there no more incremental value after 79-E expires. Ms. Fox replied that the incremental value after the two-year period would only impact the TIF to the extent that it might be needed for debt service that the TIF had incurred or to support the District's operation. Councilor Hansel stated that a project that is looking for 79-E, eventually could still contribute to the TIF by increasing incremental value.

Councilor Jones asked if there is potential conflict with the ERZ. Mr. Kopczynski replied no there is no conflict with the opportunity zone and new market tax credits, this program is specifically tailored to forestall the increase in taxes as related to improvement as allowed by City Council. Attorney Mullins stated that the value of the property taxes becomes a potential expense that could boost your eligibility and offset for tax credits so there may be some interplay between those two. Mr. Kopczynski agreed that they are not exclusive.

Councilor Sapeta asked how they came up with the new boundaries. Mr. Lamb replied the boundaries reflect a combination of existing districts including central business, portions of central business limited and edges of the

downtown area. They did not include all of central business limited and south of the central business district. They only included parts of the zoning district that were modified as part of the Marlborough Street project (purple lines on map) as the rest of it was covered in the first 79-E Resolution. He said they did not include other districts which are not considered village center or downtown in the category of where 79-E is applicable in the statute. Mr. Sapeta asked if they could move it down to Proctor and Elliot Street as there are many historic properties in that area that might benefit from 79-E. Mr. Lamb said they included Grove, Willow and Water Street because they needed a connection and Proctor and Elliot are not really downtown.

Attorney Mullins said the way the statute is written, a historic structure can qualify regardless if it is downtown or not, so if there is someone located outside of the map area, they could be included in 79-E. Mr. Sapeta said that is great to know but asked how the owners would know if they are included or not. Chair Richards replied that hopefully they are watching the meeting tonight.

Councilor Jones stated that they designed a Seed District with many incentives; however, there was only one petitioner interested. He asked whether or not adding 79-E as another incentive would help the Seed District. Mr. Lamb said when they did the Seed District zoning and evaluated what types of incentives to promote interest; they determined the answer was some sort of tax relief. However, following the City Attorney's commentary of what the Statute says, the area must be defined as downtown. Mr. Lamb said most of the Seed District is in the commerce district and high density and those areas are not immediately identified with a downtown or village center designation as the Statute requires.

Councilor Jones asked what the definition of "downtown" is. Attorney Mullins said the way they have structured the Master Plan documents and zoning documents, they put central business and central business limited because that is the area that the community historically considers its downtown area. Councilor Jones said the State statute says "downtown community" but it does not specify central business or central business limited. Mr. Lamb replied that in the absence of another document defining what Keene's "downtown" is, they had to defer to the zoning definitions and purpose statements for this District.

Councilor Hansel said the best advertisement for this program will be a successful project or two, and when the applications and upgrades are demonstrated to the community, applicants will come to the City to ask how they can make 79-E applicable to their buildings and the City can revise the districts as the community need dictates.

Mr. Sapeta stated that lower Main Street going down to Winchester Street is more downtown than lower Marlborough Street, so if they are struggling with this definition maybe they should make a decision similar to how they managed for the TIF district and 79-E to coexist. He said they need to promote development so expanding 79-E down more would be great, especially for historic structures. He said they also need to focus on advertising to ensure that people will know about the program. Mr. Sapeta said he would like the Community Development Department to start thinking about changing the definitions. Mr. Kopczynski replied that definitions are by zoning district and the districts down by Main Street are residential as that could cause a conflict with residential communities being rezoned in the commercial district. Mr. Lamb added that the question is where do they stop and ideally they should focus on what the community defines as a downtown as opposed to zoning as that can become messy.

Attorney Mullins said they cannot forget the purpose of the Statute which is primarily aimed at revitalizing downtowns or village districts where economic activity has traditionally been generated. They must be careful thinking about the Statute as something that can be used everywhere in the City for every purpose. He said if they start changing the zoning ordinance it opens up complications. Councilor Sapeta asked if the Statute refers directly to zoning. Mr. Mullins said it does, which is why they did it as a zoning ordinance. Councilor Sapeta suggested that they could develop different language. Mr. Mullins replied that the source documents have a default mechanism for small communities, where historically the downtown is defined by patterns of practice the community has created. He said the City of Keene has already created the downtown structure so they have to operate by it.

Councilor Sapeta asked why Marlborough Street is included in the 79-E because it is not located downtown and they are already stretching it. Mr. Mullins said they specifically did that to allow 79-E to operate in that environment. Chair Richards said they are trying to extend downtown to Marlborough Street for economic growth. He said there is no problem with modifications by Council, but they would really like to pass the Resolution today.

Councilor Jones said Ralston Street has the look and feel of a downtown and is a place that needs improvement and incentive, so if they could add the Seed District into the 79-E it would improve that part on Ralston Street. Mr. Richards replied that Ralston is not really downtown, so the message is to get people applying and they can always come back and rewrite and add changes later.

Councilor Rice said this is a good example of government working for the people, if people in different areas want to expand they can modify as the interest develops. Mr. Sapeta stated this is a redevelopment tool with very little trade-off for the City and he would like to see the program expand through the entire City as a development tool in the future. Mr. Lamb said criteria have been added for the purpose of addressing buildings that are exclusively residential. He said the first round criteria were oriented around business development and investment, but by adding an area that is exclusively residential they wanted to create criteria specific to residential areas based on public feedback. He said they came up with two criteria: (1) returning or retaining residential properties to owner occupied status, and (2) greenhouse gas emissions standards relating to carbon emissions, as a way to measure an improvement. For example, if there is a way to show that a residential property has reduced their carbon emissions it can demonstrate the public need criteria for the 79-E process.

Mr. Kopczynski provided hand-outs to committee members and said they needed to develop a method for demonstrating the carbon savings and energy improvements. He said there is a Department of Energy program called the Home Energy Score which allows you to develop a score for pre-reconstruction buildings and evaluate carbon savings of buildings which is a genuine mechanism for demonstrating that the improvements meets the criteria for the City's Climate Action Plan - a proven public benefit.

Councilor Hansel asked if the program is a certification program similar to NH Saves. Mr. Kopczynski said it is not a certification program it is a scoring program. He said the Planning staff would go through a training program to allow them to score buildings as part of the program and they may take scoring mechanisms beyond this program in the future.

Councilor Jones said this is great but it is not part of the 79-E Resolution. Mr. Kopczynski said it is related as the particular scoring system is only good for 1, 2 and 3 family houses, so if someone wanted to hire a rater in the state of New Hampshire they could do that today. This is a program that they are marrying to 79-E program but they can carry it beyond in the future. Chair Richards asked where this program can be found in the 79-E Resolution. Mr. Kopczynski said it is located under Roman Numeral 9.

Mr. Sapeta stated that number 8 states a return to owner occupancy which further underscores his comments that properties on Proctor, Elliot, Blake, Wilcox and Davis should be included in this District so there is an opportunity for people to buy those properties. Councilor Hansel agreed that the Resolution sounds promising. He suggested keeping track of staff time for ratings as there may be the option for the owners to hire a professional to do the ratings instead of City staff.

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

On a vote of 5-0, the Planning, Licenses and Development Committee recommends to the full City Council the adoption of Resolution R-2018-33.



# CITY OF KEENE

R-2018-33

In the Year of Our Lord Two Thousand and Eighteen.....

A RESOLUTION ..... RELATING TO ADOPTING THE PROVISIONS OF RSA 79-E  
“COMMUNITY REVITALIZATION TAX RELIEF INCENTIVE”.....

*Resolved by the City Council of the City of Keene, as follows:*

WHEREAS, RSA 79-E “Community Revitalization Tax Relief Incentive” (hereinafter “RSA 79-E) declares it a public benefit to enhance downtown and town centers with respect to economic activity, cultural and historic character, sense of community, and in-town residential uses that contribute to economic and social vitality; and

WHEREAS, RSA 79-E further declares it a public benefit to encourage the rehabilitation of underutilized structures in urban and town centers as a means of encouraging growth of economic, residential, and municipal uses in a more compact pattern, in accordance with RSA 9-B.; and

WHEREAS, RSA 79-E also declares it a public benefit to provide short-term property assessment tax relief and a related covenant to protect public benefit in order to encourage substantial rehabilitation and use of qualifying structures, or in certain cases, the replacement of qualifying structures, as described herein; and

WHEREAS, RSA 79-E:3 permits municipalities to adopt modifications of the provisions of RSA 79-E, as set forth within the Statute.

WHEREAS, on December 21, 2017 the City Council adopted RSA 79-E within certain districts located within the City as defined in R-2017-41; and

WHEREAS, the City Council hereby rescinds R-2017-41, and readopts and expands RSA 79-E in accordance with this Resolution;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Keene that the Council hereby readopts and re-implements the provisions of RSA 79-E, with certain modifications, as follows:

A. For purposes of administering a RSA 79-E program within Keene, the City hereby defines that a “qualifying structure” shall mean a non-residential building, a mixed use building with residential uses occupying less than 50% of the gross living area, or a residential use building, being located within the area depicted on the map labeled “City of Keene Community Revitalization Tax Relief Incentive (RSA 79-E) District” dated \_\_\_\_\_ attached hereto and made part of this Resolution.

PASSED

B. For purposes of administering a RSA 79-E program within Keene, the City Council shall ensure that the proposed substantial rehabilitation provides one or more of the following public benefits, or that the proposed replacement provides one or more of the public benefits to a greater degree than would substantial rehabilitation of the same qualifying structure:

- I. It enhances the economic vitality of downtown areas;
- II. It enhances and improves a structure that is culturally or historically important on a local, regional, state, or national level, either independently or within the context of an historic district, town center, or village center in which the building is located;
- III. It promotes the preservation and reuse of existing building stock throughout a municipality by the rehabilitation of historic structures, thereby conserving the embodied energy in accordance with energy efficiency guidelines established by the U.S. Secretary of the Interior's Standards for Rehabilitation;
- IV. It promotes efficient design, safety, and a greater sense of community in a manner consistent with the Keene Comprehensive Master Plan;
- V. It will add to the City's employment base by creating at least one new, full-time job in Keene's downtown area;
- VI. It directly supports the integration of public art in the downtown; or
- VII. It promotes development of a sustainable building stock in the downtown that achieves a nationally or internationally recognized green building standard (e.g. LEED, Green Globes, National Green Building Standard, and International Green Construction Code).
- VIII. It maintains owner occupancy of a residential building or it returns a residential building to owner occupancy;
- IX. It results in an increase in energy sustainability in conformance with the City adopted greenhouse gas initiatives as determined by a home energy score of at least six (6), and demonstrated carbon emission reduction of at least 10%.

C. "Substantial Rehabilitation" shall mean rehabilitation of a qualifying structure which costs at least \$75,000 and, in certain cases, replacement of a qualifying structure which costs at least \$75,000;

D. "Tax Relief Period" shall mean that for a period of up to five (5) years the property tax on a qualifying structure shall not increase as a result of the substantial rehabilitation or reconstruction thereof, beginning only upon completion of substantial rehabilitation or, in the case of a replacement structure, upon completion of its construction;

E. In accordance with RSA 79-E:5, the duration of the tax relief period for applications filed in Keene shall be considered in the context of each specific application and shall only provide that level of tax relief necessary in the discretion of the City Council to effectuate the specific targeted public benefit(s) outlined as determined by the City Council. By way of example, a qualifying project that is deemed by the City Council to provide one or two of the public

benefits listed above may be granted a tax relief period of up to two years, and a qualifying project that provides three or more public benefits may be granted a tax relief period of up to five years; provided, however, that in determining what, if any, tax relief duration to provide, the City Council may consider the impact the proposed substantial rehabilitation will have on existing, or required, City infrastructure.

BE IT FURTHER RESOLVED that a property owner, as a condition of being granted such tax relief, shall

A. Document the proposed public benefit(s) at the time of the application for tax relief under the Keene RSA 79-E program; and

B. Provide the City promptly with all information and documentation that the City may deem relevant for review of the application for such tax relief, as well as for review of the rehabilitation or replacement project under federal, state, and local laws, codes and regulations, as may be applicable; and

C. Grant to the City a Covenant ensuring that the structure shall be maintained and used in a manner that furthers the public benefit(s) for which the property tax relief was granted and shall require the property owner to obtain casualty insurance, and flood insurance, if appropriate, for twice the term of the tax relief granted; and

D. Grant to the City a lien against the property for the purpose of ensuring proper restoration or demolition of damaged structures and property; and

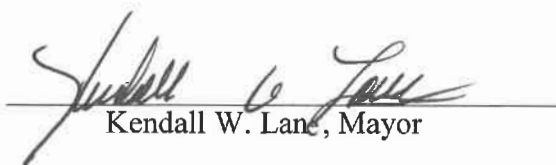
E. Maintain the property as taxable, regardless of whether the property owner is otherwise subject to property taxes under RSA Chapter 72; and

BE IT FURTHER RESOLVED that if the Covenant is terminated for any reason, the City shall assess all current and arrears taxes, with interest, to the property owner as though no tax relief was granted in accordance with RSA 79-E:9,II; and

BE IT FURTHER RESOLVED that the City Manager or her or his designee, is hereby authorized to execute all documents and undertake all actions as may be required to implement this resolution.

This resolution shall take effect upon sixty (60) days following approval by City Council.

PASSED: November 15, 2018

  
Kendall W. Lane, Mayor

In City Council November 1, 2018.  
Referred to the Planning, Licenses  
and Development Committee.

A true copy,  
Attest:

  
Patricia Cuthbert  
City Clerk

City Clerk

