



PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
Council Chambers A, Keene City Hall
June 8, 2022
6:00 PM

A. AGENDA ITEMS

1. Pablo Fleischmann - Keene Music Festival - Request for Use of City Property - September 3, 2022
2. Zone Change - 19 Whitcomb's Mill Road - Rural to Low Density-1 Ordinance O-2022-02
3. Relating to Licenses and Permits - Parklets Ordinance O-2022-07

B. MORE TIME ITEMS

1. Keene Elm City Rotary Club - Use of City Property - Clarence DeMar Marathon
2. Relating to Amendments to the Land Development Code Ordinance O-2022-04
3. Terry Clark - Relating to Small Wireless Facility Deployments in Public Rights-of-Way

NON PUBLIC SESSION

ADJOURNMENT



**Keene Music Festival
37 Roxbury Street
Keene, NH 03431
(603) 499-6656**

January 11, 2022

The Honorable Mayor and City Council
Keene City Hall
3 Washington Street
Keene, NH 03431

Re: 2022 Annual Keene Music Festival

The Keene Music Festival wishes to sponsor this year's Annual Keene Music Festival on Saturday, September 3, 2022. The scheduled hours for performances and other activities are 10:00 AM until 10:30 PM; with performances ending by 10:00 PM.

As with previous events, we are seeking permission to use the common area and bandstand in Central Square, Railroad Square and those sections of the following sidewalks that are located within the Downtown area: Main Street, Lamson Street and Gilbo Avenue. Musicians, merchants and city permitted restaurants will use the sidewalks. In no instance will a sidewalk be blocked in a manner that restricts pedestrian traffic. In addition to these locations, City Tire Company (124 Main Street), Lindy's Diner (Possible!), The Toadstool Book Shop (Emerald Street), The Monadnock Food Coop (Cypress Street) as well as other possible downtown businesses, will also be designated as performance venues. We would like to request and reserve the use of parking metered space #'s: 164, 166, 168, 170, 172, and 174 on Main Street in front of the City Tire Company. The Main Street metered spaces are being requested to serve as a staging area to allow the sound crew to prepare equipment to be set up in the City Tire Company parking lot; and could be opened for use later in the day.

While we do not request that Railroad Street, from Main Street to the parking garage be officially closed, we are asking that the Public Works Department please provide us with adequate barriers for that eventuality. If the Keene Police Department determines that there is a safety issue, we will close the street as needed. We are also requesting to place a stage at Lamson Street; in the area between Main Street and the sidewalk. We would request access to portable safety barriers to place at the entrance to Lamson Street to serve as a buffer between Main Street and the performers. The performance area would be designed to fit within the area between Main Street and the sidewalk adjacent to Lamson Street.

As with prior years, and in a manner consistent with community event protocol, we ask that the City please give due consideration to absorbing any additional cost of Police Officers, Public Works and Fire Department Personnel for the day. We are requesting that Police and Fire Department Personnel be detailed to the event between the hours of 11 :00 AM and 10:30 PM.

As required, we will provide a \$1 Million certificate of insurance to the City, and work closely with City staff to ensure that this is a safe and enjoyable event.

Our previous Music Festivals have always been a great success. There have been no public issues; the performances have been amazing, and the crowds' orderly. As in previous years, Keene Music Festival does not consider or accept outside vendor applications. We prefer to encourage our guests to explore local businesses and shops as they enjoy the musical well as the array of the current licensed Food Trucks, who will be invited to participate in the Downtown area.

Events such as this add to the vibrancy of our Downtown, and the City in general, helping Keene be the exceptional place that it is. We thank you in advance for your continued consideration and support.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Pablo', followed by a long, sweeping horizontal line that extends across the right side of the page.

Pablo Fleischmann
Keene Music Festival Director



CITY OF KEENE

Ordinance O-2022-02

Twenty-two

In the Year of Our Lord Two Thousand and
 Relating to Amending the Zoning Map to Change the Zoning Designation at 19
 AN ORDINANCEWhitcomb's Mill Road from Rural and Agricultural to Low Density-1.....

Be it ordained by the City Council of the City of Keene, as follows:

That the Ordinances of the City of Keene, as amended, are hereby further amended, by changing the Zoning designation at 19 Whitcomb's Mill Road, TMP 237-018-000 (Map 237 lot 018) from Rural and Agricultural to Low Density-1A certain tract of land on the west side of Whitcomb's Mill Road in City of Keene, County of Cheshire and State of New Hampshire, bounded and described as follows:

Rural Zone

Beginning at a point which marks the intersection of the westerly line of Whitcomb's Mill Road (referred to in former deeds as Daniel Hill Road) and the northerly line of land of the State of New Hampshire:

Thence South 72°39'45" West 116.61 feet, more or less, along land of the State of New Hampshire to a point;

Thence a curve to the right with a radius of 1859.86 feet and a length of 568.58 feet, more or less, along land of the State of New Hampshire to a point at the agricultural zone below;

Thence North 09°55'01" West 194.54 feet, more or less, along the agricultural zone below to an iron pin at land of Mark and Alona Florenz;

Thence North 09°55'01" West 408.53 feet, more or less, along a stone wall and land of Mark and Alona Florenz to an iron pin;

Thence North 68°33'19" East 772.57 feet, more or less, along land of Weston Griswold Trust to an iron pin on the westerly line of Whitcomb's Mill Road;

Thence southerly 764 feet, more or less, along the westerly line of Whitcomb's Mill Road to the place of beginning (the "closure line" of the last course is South 04°14'19" East 759.35 feet).

Containing 11.84 acres, more or less.

Agricultural Zone

Beginning at a point on the northerly line of land of the State of New Hampshire at the southwest corner of the rural zone above;

Thence a curve to the right with a radius of 1859.86 feet and a length of 197.55 feet, more or less, along the land of the State of New Hampshire to an iron pin at land of Mark and Alona Florenz;

Thence North 40°07'49" East 154.44 feet, more or less, along a stone wall and land of Mark and Alona Florenz to a point;

Thence North 45°44'44" East 89.49 feet, more or less, along a stone wall and land of Mark and Alona Florenz to an iron pin at the rural zone above;

Thence South 09°55'01" East 194.54 feet, more of less, along the rural zone above to the place of beginning.

Containing 0.45 acres, more or less.

Containing 12.29 acres, more or less, on a survey map entitled "Preliminary Subdivision Plan of land, Sandra R. Henry Trust, Tax Map 237 Lot 18, 19 Whitcomb's Mill Road, Keene, New Hampshire"; dated May 29, 2021; prepared by Paton Land Surveying.

George S. Hansel, Mayor

In City Council January 20, 2022.
Referred to the Joint Planning Board
and Planning, Licenses and Development
Committee.



City Clerk

Staff Report - Ordinance – O-2022-02

The Ordinance

This Ordinance proposes to amend the official Zoning Map of the City of Keene by changing the zoning of one specific parcel of land from the Rural District and Agriculture District to Low Density 1 (LD-1). The total land area that would be impacted by this request is 12.2 acres.

The parcel that is the subject of this request is located at 19 Whitcombs Mill Road (TMP# 237-018-000-000-000) and is owned by Sandra R. Henry Trust. The Applicant for this proposed zoning amendment is James P. Phippard on behalf of the Petitioner, Sandra R. Henry Trust.

In rezoning decisions, the Petitioner's intended use of the property should not be considered. Rather, the permitted uses allowed in the proposed district should be evaluated for their suitability on the site. Additionally, the Board should consider and review:

- The consistency of the proposed rezoning request with the Master Plan;
- Existing and proposed zoning requirements;
- Surrounding land use and zoning patterns; and,
- Possible resulting impacts.

Background / Surrounding Land Use and Zoning Patterns

The parcel that is the subject of this proposal is located on the west side of Whitcombs Mill Road, about 0.2 miles north of NH Rt. 9 and 0.1 miles south of Arch Street. The majority of the property (11.84 acres) is located in the Rural District, and a small area in the southwest corner of the property (0.45 acres) is in the Agriculture District. Adjacent uses include the Langdon Place of Keene to the east, single family homes to the north, farmland to the west, and the Cheshire Rail Trail and forested land to the south.

The 19 Whitcombs Mill property is currently vacant land with a mix of forested and cleared gravel areas. The property has 764 feet of frontage on Whitcombs Mill Road. White Brook runs west to east immediately to the north of this parcel, and a portion of the site along the northern property boundary is located in the 100-year floodplain. In addition, wetlands are present on the parcel, which drain into White Brook to the north.



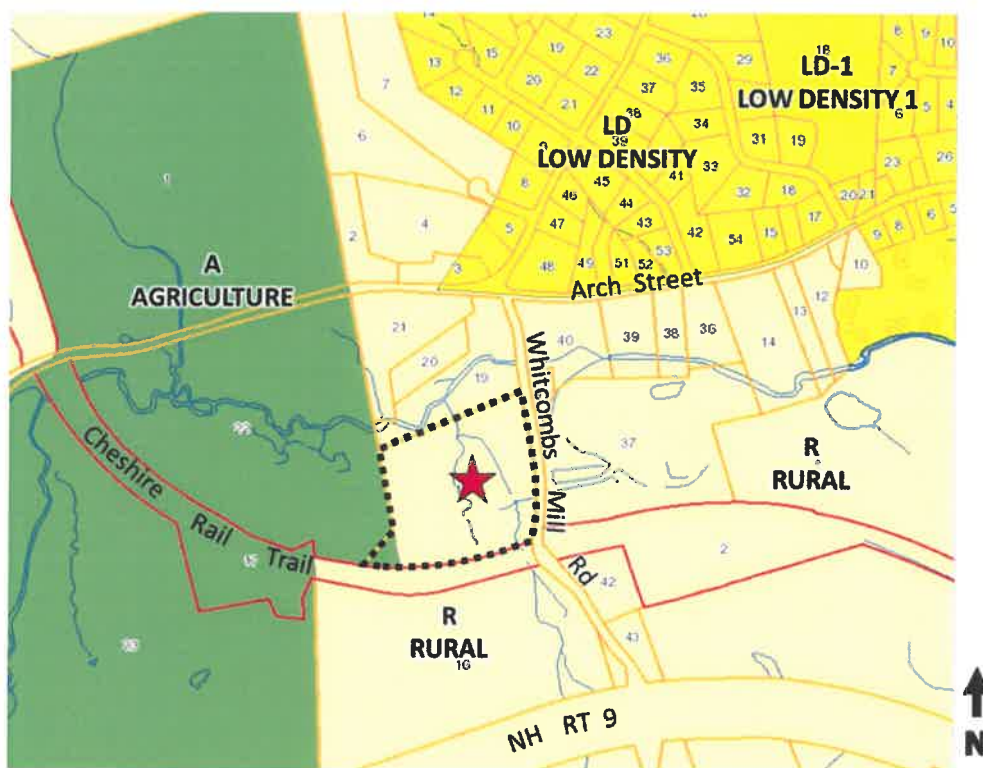
Figure 1. Aerial image showing the 19 Whitcombs Mill Road property, highlighted in yellow.

The subject property has access to City sewer via an easement on the Langdon Place of Keene property located at 136 Arch Street. This 50-foot wide utility easement runs from Whitcombs Mill Road across the Langdon Place of Keene property, crosses White Brook, and connects to Arch Street. In order to connect to City sewer, the owner or developer would need to pay to extend the sewer line from Arch Street to the site. City water is located about 0.1 miles from the property at Arch Street/Felt Road, or it could be accessed

via the utility easement across the Langdon Place of Keene property. According to City Engineering staff, there is sufficient volume and pressure available for this site to have access to City water, should the owner choose to extend service.

The proposed Ordinance would create an area of LD-1 that would be bordered by the Rural District to the north, east, and south and the Agriculture District to the west. The nearest parcels of land in the LD-1 District are located approximately 0.4 miles to the northeast. The Applicant notes in the application narrative that the reason the Petitioner is requesting this proposed zoning change is to “create an opportunity for low intensity residential housing in a portion of the City which has access to City sewer but does not have access to City water.”

The map below shows the location of the subject parcel as well as the boundaries of the nearby zoning districts.



Master Plan Consistency

Community Vision

The Vision Focus Area that is most relevant to the proposed rezoning is Focus Area 1: A Quality Built Environment. Achieving a quality built environment includes providing quality housing and balancing growth and the provision of infrastructure (among other items). This area of the City does have access to City sewer, which would be required, and could have access to City water if the developer chooses to pay to extend service. The proposed zoning change would provide the opportunity for more housing in that it would increase the number of dwelling units that would be allowed on this lot from two or three units under the existing zoning (Rural) to 12 units under the proposed zoning (Low Density 1). If the owner

were to pay to extend both City sewer and water service to the site, the number of allowed dwelling units would increase to 26 units. With respect to road and bridge infrastructure, while this site has access from both Arch Street and NH Route 9 for light duty vehicles, heavy duty vehicles such as fire trucks and school buses would need to access the site from Route 9 due to the weight limits on the 1-lane bridge over White Brook.

Future Land Use Plan

The 19 Whitcombs Mill Road property is located in an area that is identified within the Future Land Use Map as being on the edge between a “Conservation Residential Development /Rural / Low Density Residential / Agriculture” (CRD) Area, and a “Secondary Growth Area/Low-Medium Density Residential” Area. The Future Land Use & Policy section of the Comprehensive Master Plan notes that the CRD category includes areas for continued preservation of open space, agriculture, and rural-residential uses, and also states *“There are many areas that are appropriate for Conservation Residential Development (CRD) designed to be compatible with conservation purposes coupled with the provision of important community identified amenities.”* The Plan identifies the secondary growth area as consisting of single-family, low- to medium-density development. The proposed zoning change would allow for single-family development, or if the land is developed as a Conservation Residential Development (CRD) subdivision, it could be developed as single-family or two family homes.

Housing Chapter

In the application narrative, the Applicant states that this proposal is consistent with the Master Plan because it will encourage new housing on the City sewer system. The Comprehensive Master Plan identifies housing as a *“fundamental challenge for the community as costs of community services continue to increase and Keene’s reliance on property taxes places a growing financial burden on its residents and businesses.”* The Housing Chapter discusses the importance of providing a “balanced and diverse housing stock,” and notes that the greatest opportunity for new housing development is in developed areas. This proposal would not be considered infill development, as it is on the edge of existing developed areas; however, it would provide for housing development in an area with access to City sewer service.

Characteristics of Zoning Districts

Intent of the Zoning Districts:

The proposal is to convert the subject parcel at 19 Whitcombs Mill Road from the Rural and Agriculture Districts to the Low Density 1 District. A description of these districts from the Zoning Ordinance is included below.

- ***Current Zoning – Rural:*** The Rural (R) District is intended to provide for areas of very low density development, predominantly of a residential or agricultural nature. These areas are generally outside of the valley floor, beyond where city water, sewer and other city services can be readily supplied. (Section 3.1 of the Land Development Code)
- ***Current Zoning – Agriculture:*** The Agriculture (A) District is intended to allow for farms and farmland, and to discourage activity that is not related to agriculture. Large-scale commercial recreation, even if agriculture related, is not suitable for this district. (Section 7.2 of the LDC)
- ***Proposed Zoning – Low Density 1:*** The Low Density 1 (LD-1) District is intended to provide for low intensity residential development, which is primarily detached single-family dwellings on lots of 1-acre or larger in areas on the outer edge of available city water and sewer service. All uses in this district shall have city sewer. City water is required if sufficient volume and pressure is available as determined by the Public Works Department. (Section 3.4 of the Land Development Code)

Based on the intent statements, the proposed zoning for the subject parcel is appropriate in that City sewer is available at this site via an easement which crosses the Langdon Place of Keene property located at 136 Arch Street. The owner or developer would be responsible for paying to extend sewer service to the site. If the zoning change to LD-1 is approved, City sewer service will be required for any development on this property. City water could also be available for this site if the owner chooses to pay to extend service from either Arch Street across the Langdon Place of Keene property via the access easement, or extend it from the Arch Street and Felt Road intersection.

District Uses:

Table 1 below highlights the differences between the permitted uses of the Rural and Agriculture Districts (existing) and the Low Density 1 District (proposed). Both the Rural and Low Density 1 Districts are residential zoning districts; however, the Rural District allows for a wider variety of uses including some commercial, open space, and infrastructure uses which are not permitted in the LD-1 District.

Principal uses allowed in the Rural and/or Agriculture District, which are not allowed in Low Density 1, include:

- Dwelling, Above Ground Floor
- Dwelling, Manufactured Housing
- Dwelling, Two-Family/Duplex
- Manufactured Housing Park
- Agricultural-Related Educational & Recreational Activity as a Business
- Animal Care Facility
- Bed and Breakfast
- Event Venue
- Greenhouse/Nursery
- Kennel
- Recreation/Entertainment Facility - Outdoor
- Cemetery
- Farming
- Golf Course
- Gravel Pit
- Solar Energy System (small-scale)
- Solar Energy System (medium-scale)
- Solar Energy System (large-scale)

There are no uses that are allowed in the Low Density 1 District that are not permitted in the Rural District. A small group home would be permitted in the Low Density 1 District, but not the Agriculture District.

Table 1. Permitted Principal Uses by Zoning District (P=Permitted, P ¹ = Permitted with limitations, SE= Special Exception, CUP = Conditional Use Permit, - = Not Permitted)			
Permitted Use	Rural	Agriculture	Low Density 1
Dwelling, Above Ground Floor	-	P	-
Dwelling, Manufactured Housing	P ¹	-	-
Dwelling, Single-Family	P	P	P
Dwelling, Two-Family/ Duplex	-	SE	-
Manufactured Housing Park	P	-	-
Agricultural-Related Educational & Recreational Activity as a Business	-	P ¹	-
Animal Care Facility	P	P	-
Bed and Breakfast	SE	SE	-
Event Venue	-	SE	-
Greenhouse / Nursery	P	P	-
Kennel	P	P	-
Recreation/Entertainment Facility - Outdoor	-	SE	-
Group Home, Small	CUP	-	CUP
Cemetery	P	P	-



CITY OF KEENE NEW HAMPSHIRE

ITEM #A.3.

Meeting Date: June 8, 2022
To: Mayor and Keene City Council
From: Thomas Mullins, City Attorney
Through:
Subject: Relating to Licenses and Permits - Parklets
Ordinance O-2022-07

Council Action:

In City Council May 19, 2022.

Referred to the Planning, Licenses and Development Committee.

Recommendation:

Recommend that Ordinance O-2022-07 that would establish a permitting process for parklets be referred to the Planning, Licenses and Development Committee for their review and recommendation.

Attachments:

1. Ordinance O-2022-07_referral

Background:



CITY OF KEENE

O-2022-07

Twenty-Two

In the Year of Our Lord Two Thousand and
 Relating to Parklets

AN ORDINANCE

Be it ordained by the City Council of the City of Keene, as follows:

That the City Code of the City of Keene, New Hampshire, as amended, is hereby further amended by deleting the stricken text and adding the bolded text in the following sections of Article XVII entitled "Sidewalk Obstructions" of Chapter 46 entitled "Licenses and Permits: Section 46-1 "Definitions", Section 46-63 "Designated Licensing Officials", Section 46-956 "Required", Section 46-957 "Parklets", Section 46-958 "Application; Agreement; Issuance", and Section 46-959 in Appendix B "Fee Schedule" as follows:

Section 46-1. *Definitions Related to Licenses and Permits.*

Parklet means an outdoor dining area placed and/or constructed on parking spaces(s) determined to be public ways, as defined by this section and authorized by RSA 176:24 (2021), in which patrons may consume food and/or beverages provided by a licensed restaurant holding a valid license to sell alcohol issued by the New Hampshire Liquor Commission.

Section 46-63. *Designated licensing officials.*

Type of License/Permit	Licensing Official
Parklets	City Clerk

Article XVII. *Sidewalk and Right-of-Way Obstructions.*

Section 46-956. *Required.*

No person who owns or operates a business in ~~the central business district~~ **downtown core district** shall put or place or cause to be put or placed as a contiguous extension of his business, in an area equal to or less than the width of his business, any display, merchandise, goods, tables, chairs, vending machines, sandwich board sign as defined below, **parklet as defined in Section 46-1 and described below**, or any other obstruction ("obstruction") on any sidewalk or right-of-way maintained by the city, whether publicly or privately owned, unless he shall have received written permission in the form of a license from the city clerk. **With the exception of parklets,** Aall licenses issued under this division shall expire on March 1 next following their date of

issuance. There shall be no pro-rated license fees to reflect use of the sidewalk for a portion of the year.

Section 46-957. *Reserved. Parklets.*

- (a) A “parklet,” as defined in Section 46-1 and authorized by RSA 176:24 (2021), is permitted in the downtown core district after written permission in the form of a license issued by the city clerk is received. Said license may be suspended with reasonable notice, if there are public safety concerns as determined by the public works director, emergency management director, the police chief, or fire chief including but not limited to during those times when the downtown core district is licensed for a street fair or other community event as provided for in Article XVIII of this chapter pertaining to street fairs or community events. Said licenses are not transferable or assignable.**
- (b) The Public Works Director is authorized to develop and issue parklet design guidelines used in implementing an issued license for a parklet. Such guidelines will be known as City of Keene Parklet Guidelines, and shall include guidelines on construction, placement, aesthetics, etc.**
- (c) A parklet may be established as an extension of a restaurant onto a public parking space where:
 - (1) Any of the following three conditions exists:
 - a. The distance from the face of a building to the curb is eight (8) feet or less;**
 - b. The distance from the face of a building to the curb is impeded by steps, planted areas, parking meters, or other permanent objects such that the distance from the face of the building to the curb line is eight (8) feet or less; or**
 - c. The distance from the face of a building to the curb is impeded by a crosswalk, or other surface feature intended to comply with the Americans with Disabilities Act, such that the distance from the face of the building to the curb line is eight (8) feet or less;****
 - (2) The parklet is placed in a maximum of three adjacent parallel parking spaces, including wheel stop, buffer areas, and other structures or objects as required by the City of Keene Parklet Guidelines, but excluding designated loading zones and accessible parking spaces; and**
 - (3) The parklet otherwise complies with the City of Keene Parklet Guidelines as determined by the Public Works Director.****
- (d) Parklets shall not be placed within 15 feet of fire hydrants or utility accesses. Parklets must be placed at least one parking space’s length away from intersections or street corners.**
- (e) Parklets shall not block drainage or stormwater flow.**
- (f) A parklet must comply with all applicable city ordinances, design requirements, and state laws, applicable to restaurants licensed to sell alcohol. Failure to ensure compliance may result in suspension or termination of the license.**

- (g) Parklets may be licensed between April 1 and October 15 of the calendar year, and this period shall be referred to as the license period for parklets. Licenses shall be issued on a first come first served basis. Licensees may operate a parklet beginning on any date within the license period. The license fee and administrative fee associated with a parklet in Appendix B shall apply and shall not be prorated regardless of when the license was granted or when the licensee began operating the parklet. Any such fees are non-refundable.**
- (h) Except for the administrative fee, fees collected for parklet licensing shall be deposited into the Parking Fund.**
- (i) A Licensees failure to remove all parklet materials from the parking spaces by the end of the license period will be subject to removal by the city and will subject the licensee to the cost for removal and storage of any such material.**
- (j) The City disclaims any liability for any costs or expense, or damages, relating to or arising from the placement or use of a parklet in the public way.**
- (k) Notwithstanding any provision of the City Code of Ordinances to the contrary, the licensing, installation and use of a parklet in public parking spaces shall be governed by this Article.**

Section 46-958. *Application; agreement; issuance.*

- (a) Completed application forms for the license required under this division along with a scaled drawing of the portion of the sidewalk or public right-of-way showing the location of the obstruction shall be reviewed by the code enforcement superintendent to insure unimpeded public use of the sidewalk, and:**
 - (i) Applications for a license to obstruct a sidewalk shall be reviewed by the code enforcement superintendent to ensure unimpeded public use of the sidewalk.**
 - (ii) Applications for a license to obstruct a right-of-way for the use of a parklet shall be reviewed by the public works director to ensure compliance with Section 46-957 and compliance with City of Keene Parklet Guidelines.**
- (b) If the license is approved, a revocable license and indemnification agreement shall be required in addition to liability insurance listing this city as an additional insured in an amount specified by the city clerk.**
- (c) Licenses to obstruct a sidewalk such license shall be issued in accordance with guidelines established by the city clerk.**
- (d) In addition to the requirements stated in Section 46-957, an application for a parklet will only be issued after review and approval by the following, or their designee:**
 - a. Public Works Director, to review for compliance with Section 46-957;**
 - b. City Clerk, to ensure compliance with Section 46;**
 - c. Parking Operations Manager to review for compliance with Chapter 94;**
 - d. Community Development Director to review compliance with public health requirements; and**

- e. **Fire Chief, to ensure compliance with any applicable requirements of the state Liquor Commission and local and state fire codes.**

Appendix B

Chapter 46. Licenses and Permits.

...

§ 46-959. License fees for sidewalk **and right-of-way** obstructions:

Per storefront area, per year100.00

Additional administrative fee for merchant requesting use of ~~areas~~ **sidewalks** beyond the immediate area in front of his establishment, **or for a parklet license**100.00

Business other than on ground floor, per storefront100.00

Per parking space for a parklet, per license period\$950.00

George S. Hansel, Mayor

In City Council May 19, 2022.
Referred to the Planning, Licenses
and Development Committee.



City Clerk