KEENE CITY COUNCIL
Council Chambers, Keene City Hall
October 6, 2022
7:00 PM

ROLL CALL

PLEDGE OF ALLEGIANCE

MINUTES FROM PRECEDING MEETING

- September 15, 2022

A. HEARINGS / PRESENTATIONS / PROCLAMATIONS

1. Presentation of Retirement Resolution - Diane Richards Stauder
   Presentation of Retirement Resolution - Steve Russo

B. ELECTIONS / NOMINATIONS / APPOINTMENTS / CONFIRMATIONS

1. Confirmation
   Heritage Commission

C. COMMUNICATIONS

1. Juliana Bergeron - Requesting No Parking - 191 Washington Street
2. Ron Robbins/Keene Snoriders - Requesting Permission to Run Snowmobiles in the Right-of-Way along Krif Road from the Ashuelot Rail Trail to Winchester Street
3. Councilor Filiault - Safety Concerns with 5G Towers

D. REPORTS - COUNCIL COMMITTEES

1. Continued Discussion – Requesting the City Resume Maintenance of Blain(e) Street – Private Way
2. Amended FY21 Hazardous Materials Emergency Preparedness (HMEP) Grant Award - Fire Lieutenant/Training Officer

3. Acceptance of the 2021 Assistance to Firefighters Grant (AFG) - Fire Chief

4. Authorization to accept a Housing Opportunity Planning Grant for Housing Needs Analysis and Planning - Community Development Director

E. CITY MANAGER COMMENTS

F. REPORTS - CITY OFFICERS AND DEPARTMENTS

G. REPORTS - BOARDS AND COMMISSIONS

1. Relating to Amendments to the City of Keene Land Development Code Ordinance O-2022-11

H. REPORTS - MORE TIME

1. Continued Discussion – Designating City Parks – Drug-Free and Smoke-Free Zones

2. Discussion – Chapter 58 – Parks, Recreation, and Public Facilities

I. ORDINANCES FOR FIRST READING

J. ORDINANCES FOR SECOND READING

1. Relating to Probationary Firefighters Ordinance O-2022-13

K. RESOLUTIONS

NON PUBLIC SESSION

ADJOURNMENT

A regular meeting of the Keene City Council was held on Thursday, September 15, 2022. The Honorable Mayor George S. Hansel called the meeting to order at 7:00 PM. Roll called: Bryan J. Lake, Michael J. Remy, Gladys Johnsen, Michael Giacomo, Randy L. Filiault, Philip M. Jones, Andrew M. Madison, Kris E. Roberts, Raleigh C. Ormerod, Bettina A. Chadbourne, Catherine I. Workman, Kate M. Bosley, Mitchell H. Greenwald, and Thomas F. Powers were present. Robert C. Williams was absent. Councilor Filiault led the Pledge of Allegiance.

ANNOUNCEMENTS

Mayor Hansel announced that the City had a successful primary election the past week with lots of volunteers. He added that our City Clerk and her staff did an excellent job, as always, noting that the Clerk has facilitated countless successful elections. All the work that goes into elections is unbelievable, and important to ensure public confidence in the process. Mayor Hansel said it was great to see the community step-up and participate.

Mayor Hansel reported that the annual dinner at the Fire Station is Thursday, October 13 at 6:00 PM. The Finance, Organization, and Personnel Committee meeting for that evening will be canceled to allow more time for the Council, Staff, Fire Personnel, and retirees to meet, greet, and eat. The request for the parade, scheduled for October 9, will be acted upon later on the agenda.

MINUTES OF THE PREVIOUS MEETING

A motion by Councilor Powers to adopt the September 1, 2022, regular meeting minutes as printed was duly seconded by Councilor Bosley. The motion carried unanimously with 14 Councilors present and voting in favor. Councilor Williams was absent.

PRESENTATION – SHARING AN ARTIFACT FROM THE SEPTEMBER 11 ATTACK ON WORLD TRADE CENTER – WESLEY FELIX

Mayor Hansel introduced Wesley Felix, noting that Mr. Felix is a Keene resident with personal ties to the clean-up, recovery, and rebuilding project for the Twin Towers following the 9/11 attacks. In honor of the 21st anniversary of those attacks, Mr. Felix was welcomed to present an artifact from the Twin Towers he received and to make a statement to help everyone remember.

Mr. Wesley was grateful for this opportunity to share and read the following statement:

This World Trade Center piece to me represents unity. It was a time when politics, race, and religion meant nothing, just people around the world comforting those who were hurt and those who lost loved ones. It was a turning point in society, and not just New York or the United States. But the world was actually united as one, comforting and caring for the thousands of people who tragically lost their lives over the evil action of a small group. This piece brought strength in our world. It was an honor to be part of the recovery and rebuild of this project. I was also a

survivor, too. This tragic moment helped pave a way to make our country take security seriously. To look at our lives and to thank God for what we have. And at that point it was the love in our hearts that helped and comfort others in their time of need. This was the one event that brought us all together. Now we have division in our lives. Our security is gone, and we are farther apart than ever before. I have shared this piece with my schools in California, showing those across the country that we have been far. They may have been far away, but it affected people all over the world, and to never forget what we lost because we dropped our guard and allowed many to die who should have still been alive to date. Now I moved from New York to New Hampshire, and seek of a safer life for my family. I met George Hansel in the spring of 2019. After we bought our home, he welcomed us to the community, and he wasn't in any political position that I knew of. But his greeting made us feel like we made a good choice to invest in our kids' future community, so that they can grow and flourish as good people in society. I would like to thank him for his kind ways and his commitment to helping this community be a better and safer place. On one last note, I brought this World Trade Center piece up to the town in hopes that it would help in the healing unity and reminder of what's at stake when we lose focus on our community security and the caring concerns and the safety of our future.

A standing ovation ensued. Mayor Hansel thanked Mr. Felix.

PRESENTATION OF RETIREMENT RESOLUTION – MARY ALTHER, REVENUE COLLECTOR

Mayor Hansel welcomed Mary Alther, former Revenue Collector, to present her with a retirement Resolution that the Mayor read. Ms. Alther said thank you and that it was an honor to work here.

NOMINATION

Mayor Hansel nominated Molly Ellis to serve as a regular member of the Heritage Commission, with a term to expire December 31, 2025. The Mayor tabled the nomination until the next regular meeting.

CONFIRMATIONS

Councilor Powers moved to confirm the nomination of Claire Oursler to shift from an alternate member to a regular meeting on the Energy and Climate Committee and for Charles Redfern to become an alternate member on the Energy and Climate Committee. Claire Oursler's term would expire December 31, 2022 and Charles Redfern's term would expire December 31, 2023. The motion to confirm was duly seconded by Councilor Bosley. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Williams was absent.

APPOINTMENT OF AN AD HOC WINCHESTER STREET COMMITTEE

A memorandum Mayor Hansel was read, which appointed the following individuals to serve on the ad hoc Winchester Street Committee charged with providing planning, guidance, and general direction for the Lower Winchester Street Reconstruction Project, in partnership with affected residents, local businesses, the City of Keene, and the Town of Swanzey staff, and the New Hampshire Department of Transportation. The Committee will specifically focus on balancing the needs of all the various project stakeholders and providing a conduit for the community to have their concerns addressed during the design process. The Committee will provide advice to the City's consultants through the review of collected data and draft work products. Ultimately, the Committee will make a recommendation to the City Council with respect to the scope of improvements and the preferred alternative. The following membership was recommended: Douglas Hamshaw, Trevor Bonnette, Jimmy Tempesta, Christopher McCauley, Douglas Fish, Sarah Bollinger, and Jim Lamp. A motion by Councilor Powers to confirm the appointments was duly seconded by Councilor Bosley. The motion carried unanimously with 14 Councilors present and voting in favor. Councilor Williams was absent.

PLD REPORT – RELATING TO AMENDMENTS TO THE LAND DEVELOPMENT CODE – RURAL DISTRICT AND CONSERVATION RESIDENTIAL DEVELOPMENT SUBDIVISION REGULATIONS

A Planning, Licenses, and Development Committee report read, recommending that the City Council refer Ordinance O-2022-09-A, relevant to the Land Development Code, back to the Joint PB/PLD Committee for a discussion regarding separating the issues in the Ordinance. A motion by Councilor Bosley to carry out the intent of the Committee report was duly seconded by Councilor Giacomo.

Councilor Greenwald noted that he had asked that the City Clerk place copies of two letters that he had written with regard to the Ordinance. The motion carried unanimously with 13 Councilors present and voting in favor and Councilor Roberts voting in opposition. Councilor Williams was absent.

PLD REPORT – COUNCILOR MITCHELL GREENWALD – AMENDMENT TO THE CITY COUNCIL RULES OF ORDER – REMOTE ACCESS

A Planning, Licenses, and Development Committee report read, recommending the amendment to the Rules of Order regarding remote access be placed on more time to allow City Staff to develop proposed language to Section 4, considering Councilor Greenwald's letter and the PLD discussion. A motion by Councilor Bosley to carry out the intent of the Committee report was duly seconded by Councilor Giacomo. The motion carried unanimously with 14 Councilors present and voting in favor. Councilor Williams was absent.

FOP REPORT – SPECTRUM SERVICE ISSUES – COUNCILOR RANDY FILIAULT

A Finance, Organization, and Personnel Committee report read, recommending accepting the report as informational. Councilor Filiault spoke about the FOP Committee meeting, at which a Spectrum representative from the corporate office attended. He said the representative did acknowledge the issues they are working on. The FOP Committee requested that Spectrum send a representative back once every 30 days to address the Committee until the issues are resolved. If any constituents report problems, those communications can be sent to the City Attorney's offices, the City Manager's office, or the IT Department. They can also be sent to Councilor Filiault, who said it looked like the problem would be fixed. Mayor Hansel filed the report as informational. The Mayor said FOP updates are scheduled for October 13 and November 10.

FOP REPORT – PRIMEX3 CONTRIBUTION ASSURANCE PROGRAM (CAP) – PROPERTY AND RELIABILITY PROGRAM – ACM/HUMAN RESOURCES DIRECTOR

A Finance, Organization, and Personnel Committee report read, recommending that the City Manager be authorized to do all things necessary to enter into and execute an agreement extending participation with Primex3 in a multi-year Contribution Assurance Program (CAP) through FY26 that has provided predictable contributions and stable property and liability insurance coverage. A motion by Councilor Powers to carry out the intent of the Committee report was duly seconded by Councilor Remy. The motion carried unanimously with 14 Councilors present and voting in favor. Councilor Williams was absent.

CITY MANAGER COMMENTS

The City Manager reported that today, Councilors should have received a press release announcing the upcoming appointment of our next Police Chief. Captain Steve Stewart will serve as our next Chief effective Monday September 19. Captain Stewart has served as a member of the Keene Police Department for the past 18 years. During the last seven years he has been a member of the command staff serving in his role as Captain of field operations. An interview team made up of both City leadership staff and community representatives unanimously agreed that Captain Stewart is an excellent choice for Chief. The interview team described Steve as highly qualified, someone who leads with integrity, is collaborative and reflective and will serve the department and the community well. Joining the City Manager on the interview team were: Keene State College President Dr. Melinda Treadwell, Franklin Pierce Chief Diversity Officer Dr. Pierre Morton, Dan Langille the City Assessor, Kurt Blomquist the Public Works Director, and City Attorney Tom Mullins. The City Manager said it was her honor to promote Captain Stewart to Chief. She is confident that he will continue the great work of our Police Department into the future. His inquisitive nature leaves him open to new ideas and seeking greater understanding of all issues. This will serve us well as we work to ensure we are a welcoming and safe community for all to live, work, and play. The new Chief will be at the October 6 Council meeting, when retired Chief Steve Russo will be presented with his retirement resolution.

The City Manager continued with Covid-19 updates. On September 9, the emergency management team met with Superintendent Rob Malay and KSC president Melinda Treadwell. The group reconvened to discuss how the return to classes was going and what impacts Covid-19 was having. Superintendent Malay shared that return to school was going well and they are following CDC guidelines. They administer tests only for symptomatic students and will do so as long as the State continues providing testing supplies free to districts. Their policies now include the acceptance of home testing results—if a parent prefers to conduct their own test in place of the school doing it, the school will send home a testing kit with the student. KSC is following a similar model; they are no longer doing surveillance testing except in the case of an outbreak in a targeted population. They are only testing symptomatic students. UNH has shut down their testing lab and so KSC has contracted with a third party. They are also providing self-swabbing kits as needed and plan for vaccination clinics on campus.

The City Manager reported that Revenue Collections was forced to close Monday and Tuesday September 12 & 13 due to unforeseen circumstances—illness of employees in the office and the death of a staff member's immediate family. The office partially reopened on Wednesday. Assisting residents by appointment only and squeezing in some additional walk-in customers. This was accomplished by utilizing a staff member certified by the State for Motor Vehicle Registrations who had taken a new position in the city about a month ago in a different department. We will continue taking appointments through Friday. The City Manager expects it to be once again fully staffed on Monday September 19. The Revenue Collections Office would like to extend a special thank you to the staff member pitching in from the Assessing Department (Lani Bixby) and to the Town of Swanzey Town Clerk, Heather Estrella, for assisting the City of Keene in helping our customers with those motor vehicle situations that required immediate assistance. The City Manager appreciated the patience of all our customers and the support of City Hall staff who were so understanding and helpful during this time.

Next, the City Manager referred to a UNH Trails to Downtown blog post. There was a recent blog post about the UNH Trails to Downtown study here in Keene. Director of Parks, Recreation, & Facilities, Andy Bohannon, had done a presentation about the results of this study at MSFI back in April. When we think about trails, we often focus on the health benefits and quality of life impacts, but do not often discuss the positive economic impacts of a trail. This report focused on ways to make stronger connections between our 40 plus miles of trails to our downtown, as a way to boost our businesses. If anyone is interested in reading the full report, it is posted on the City's website on the Parks page and the link is entitled *Strengthening Connections: Downtowns & Trails ~ Keene, New Hampshire 2022 Final Report.*

The City Manager concluded her report announcing the very successful ribbon cutting ceremony at Summit Road to celebrate the completion of the Cheshire Rail Trail Phase 3 project. This project improved trail infrastructure from Hurricane Road to Summit Ridge Road via the Ammi Brown trail. This project helps connect our neighborhoods to downtown and the business community. The City Manager said that two trailhead parking lots were built as part of this project at Whitcombs Mill Road and Summit Road/Park Avenue.

CITY OFFICER REPORT – 2022 ANNUAL FIRE PREVENTION PARADE – FIRE CHIEF

A memorandum read from the Fire Chief, Donald Farquhar, recommending that the City Council move to grant the Fire Department permission to use City property for the 2022 Annual Fire Prevention Parade to be held on Sunday, October 9, 2022.

A motion by Councilor Bosley to suspend the Rules of Order to allow action upon the request for use of City property for the 2022 Annual Fire Prevention Parade was duly seconded by Councilor Giacomo. The motion carried on a unanimous roll call vote with 14 Councilors present and voting in favor. Councilor Williams was absent.

A motion by Councilor Bosley to recommend that the Fire Department be granted permission to use City property for the 2022 Annual Fire Prevention Parade to be held on Sunday, October 9, 2022, was duly seconded by Councilor Giacomo. Councilor Powers provided the background report.

Councilor Powers reflected on the "good old days" with fire prevention parades that were big, long, and a lot of fun. He said that over time, it has changed, but in the last two or three years Covid-19 presented challenges. Councilor Powers said this year the parade is back, large, and pretty nice. The Councilor encouraged all his peers and members of the community to participate in the parade and the award ceremony with refreshments after at Fuller Park. The route had changed this year, beginning on Optical Avenue, which allows for easier assembly to come down Water Street, up Main Street, and straight up Washington Street. A large turnout is expected as it was advertised widely.

Councilor Giacomo said he loves this parade and used to march in it 25 years ago with the Keene High School marching band. Still, the Councilor said this was an entire parade for the Fire Department, but yet not a single representative from the Fire Department showed up to the Memorial Day Parade this year. He understood staffing challenges and extra work. Still, if the City is going to have an entire parade, he would like to see the Fire Department come back to support the Memorial Day Parade again too; he said it was disappointing to not see them this year and there were many disappointed kids. The motion carried on a unanimous roll call vote with 14 Councilors present and voting in favor. Councilor Williams was absent.

RESIGNATION – MARTHA CURTIS FROM THE CONGREGATE LIVING AND SOCIAL SERVICES LICENSING BOARD

A communication was received from Martha Curtis, submitting her resignation from the Congregate Living and Social Services Licensing Board. A motion by Councilor Powers to accept the resignation with regret and appreciation of service was duly seconded by Councilor Bosley. The motion carried unanimously with 14 Councilors present and voting in favor. Councilor Williams was absent.

MORE TIME – KEENE KAWANIS CLUB – REQUEST TO USE CITY PROPERTY – TREE LIGHTING CEREMONY

A Planning, Licenses, and Development Committee report read, recommending that the request for use of City property for the tree lighting ceremony be placed on more time to allow the protocol meetings with City staff to occur. Mayor Hansel granted more time.

ORDINANCE FOR FIRST READING – RELATING TO PROBATIONARY FIREFIGHTERS – ORDINANCE O-2022-13

A memorandum was read from the Assistant City Manager/HR Director, Elizabeth Fox, recommending that the City Council refer Ordinance O-2022-13 to the Finance, Organization, and Personnel Committee for their review and recommendation. Mayor Hansel referred Ordinance O-2022-13 to the Finance, Organization, and Personnel Committee.

ORDINANCE FOR FIRST READING – RELATING TO THE USE OF CENTRAL SQUARE COMMON AND RAILROAD SQUARE – ORDINANCE O-2022-14

A memorandum was read from the City Attorney, Thomas Mullins, recommending that Ordinance O-2022-14, relative to the use of Central Square Common and Railroad Square, be referred to the Planning, Licenses, and Development Committee for review and recommendation. Mayor Hansel referred Ordinance O-2022-14 to the Planning, Licenses, and Development Committee.

ORDINANCE FOR SECOND READING – RELATING TO WATER AND SEWER UTILITY CHARGES – ORDINANCE O-2022-10

A Finance, Organization, and Personnel Committee report read, recommending the adoption of adoption of Ordinance O-2022-10 with an effective date of November 1, 2022. Mayor Hansel filed the report. The City Clerk noted that there were several Scrivener's errors within that would be corrected before the Mayor signs the Ordinance. A motion by Councilor Powers to adopt Ordinance O-2022-10, with an effective date of November 1, 2022, was duly seconded by Councilor Remy.

Councilor Filiault requested that the City Council hold off on this vote for a least one year. He said that many constituents have exceeded their ability to pay even basic expenses right now for a multitude if reasons. The Councilor made the same comments when discussing parking fees. He understood that this was a small amount, but it is another small amount that many constituents cannot afford. Councilor Filiault was sure this could be absorbed into the City budget but knew most people could not in their budgets. The Councilor said his second reason was basic economics. He said that for the last several years, the City has raised water costs while telling people to use less water and invest in water efficient upgrades.

Councilor Jones echoed Councilor Filiault. He recalled past community nights when the public could come and engage with the various City departments. During those times, the public was encouraged by the Water Department to purchase water saving mechanisms and now they will be paying more for using less water. He said it does not work to raise prices when business goes down. He encouraged working on a more effective plan, perhaps even a flex plan where rates go up during peak hours and go down during lower use hours, so the impact is not falling so hard on the constituents.

Mayor Hansel asked the City Manager whether this rate increase was contemplated in the budget that the City Council adopted, He inquired of the ramifications if the Ordinance was not adopted. The City Manager replied that typically the Ordinance adjustment is done closer to the budget time because the City Council made the decisions related to how much they wanted to spend on water and sewer back when they voted in the budgets.

A FOP conversation was about how to break those costs down by fixed and volumetric rates, but keeping the total amount of revenue the same, because our revenue does need to match our expenses in the budget. She said this rate adjustment will cover the budget that we are currently in, which began on July 1. The rate adjustment is for the Water Department, which is struggling the most in terms of having any sort of fund balance, or equity in its account. The City Manager said the Water Fund has about a $1 million, but that is equal to about 110 days of operating expenses for the Water Department, where you should really have about 270 days of operating expenses in your fund balance. The City Manager said it was clear we are pretty short in the Water Fund, and not increasing the rates would definitely be a challenge. The majority of Water and Sewer Department costs are essentially fixed and so there is not a lot of room to move things around, and the cost of their chemicals are increasing. The cost of the electricity is increasing—all of these things are fixed when processing and it is difficult for the Water or the Sewer Department to make adjustments.

The City Manager continued stating that the place the Council has room to make adjustments in the future is how the Council decides to spend funds on capital expenditures. She said the Council knows that there are many capital needs, for which costs are increasing as well. She said that there is not a lot of room in terms of the Water Fund or money left to absorb any kind of hit. She said a great concern is that the City still needs people to be conserving water, which will help them overall, but that does not me the cost of processing and providing water and sewers is going down. The City Manager said that the volumetric cost is going to continue to go up in the future, unless the cost of chemicals, electricity, and all those other things start to go down. The City Manager thought that for the Water and Sewer Departments, in particular, is that for many years we held the rates, and we did not make any adjustments. She thinks that now we are at the point where that is much harder to do because we've eaten away at our fund balance accounts. She said the Council does have a budget and if they did not make a rate adjustment, there would not be the revenue to equal the budget, which would mean a hit to the Water Department Fund Balance.

Councilor Remy said he received some information on what the actual usage was for most constituents in the area thanks to Public Works. He said that 74% of the population uses less thank 1,800 cubic feet and from the analysis he was given shows that 90% of the population uses 5/8-inch central lines, meaning they would see an actual reduction in the fixed amount. So, he said, when they save and reduce water usage, they would see a reduction and the annual increase for the average of those 74% is $14. So, it is $3.50 if the bulk of the increase is not on the residential side. If it is on the commercial side, the Councilor said he understood where everyone was stretched. Still, he said he did not know if we were going after the right thing if this is what we are fighting for.

Mayor Hansel said the reduction in usage is coming from the commercial users, which has been a trend over the years. He said his company was a high-water user, which was a huge expense, so they invested money to cut water usage to nearly zero over time. He knew other industrial users were facing the same thing. He envisions the commercial users are going to be paying a bit more for their share even though they have been reducing their actual usage quite a bit. He thinks that is a fairer deal from the residential rate.

Councilor Jones understood the need for this and would vote for it, but he thought there should be another business approach in the years to come, including more innovation, so that when business is slow, rates do not increase; you adjust accordingly. He said everybody needs to do that. He suggested looking outside the box sometimes.

Councilor Roberts was in agreement but said this was just like the parking. He said it is an enterprise fund and income and expenses must balance. He said if we do not balance, we have to take any deficit out of the general fund. So if we are not making the users pay, then we could end up making a lot of non-users cover the difference.

Councilor Greenwald said he had some real issues with this, and he wanted to commend the Director of Public Works for a fantastic presentation, stating that all the analyses explained a lot to him. He said the time for this discussion was when the Council was adopting the budget and the numbers were decided; that is when they should also be debating parking rates. He supposed everyone had some issues with this, such has his unhappiness with charging for the fire line. Still the Director pointed out to him that if there is no charge, there will be a charge elsewhere. Unfortunately, the budget must be balanced. If the Council wanted to cut back on some capital project, it should have been discussed at budget time, which he suggested for next year.

Councilor Madison recalled that he knows a lot about water. He said this town must provide drinking water to residents and there is only a certain amount of water available for use at any time, not just for fire protection, but also key users like hospitals. They must have access to high quality, clean water at all times. Having that safe, ready to access drinking water is why the rate must increase. The chemicals must be paid for, in addition to the personnel to operate equipment,

with fewer people in the industry. He agreed that there must be a stable balance to the fund. He hoped others would vote in favor as well.

Councilor Giacomo said that he heard some great points. He said this year has been absolutely brutal, and the rate increases are across the board in every facet of people's lives. He said the problem is we do not know the future, and without small incremental increases, then in future years "we will have to pay the piper," which was his only concern. While he would love to put this off for a year. He said it is hard to know the right time to increase rates, but whenever that time does come, it is going to be even more. These were his concerns. He understood the reluctance but said it could be worse without these small incremental increases.

The motion carried unanimously on a roll call vote with 13 Councilors present and voting in favor and 1 voting in opposition. Randy L. Filiault voted in opposition. Councilor Williams was absent.

ORDINANCE FOR SECOND READING – RELATING TO CHAPTER 22 – CEMETERIES

A Finance, Organization, and Personnel Committee report read on a vote of 5–0, recommending the adoption of Ordinance O-2022-12. Mayor Hansel filed the report.

A motion by Councilor Powers to adopt Ordinance O-2022-12 was duly seconded by Councilor Remy. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Filiault voted in opposition. Councilor Williams was absent.

RESOLUTION – IN APPRECIATION OF DIANE C. RICHARDS STAUDER UPON HER RETIREMENT – RESOLUTION R-2022-28

A memorandum read from the Assistant City Manager/HR Director, Elizabeth Fox, recommending the adoption of Resolution R-2022-28. A motion by Councilor Powers to adopt Resolution R-2022-28 was duly seconded by Councilor Bosley. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Williams was absent.

RESOLUTION – RELATING TO APPROPRIATION AND EXPENDITURE OF FUNDS FROM THE SALE OF PROPERTY TO PROVIDE FUNDS FOR THE AIRPORT FEUL FARM CAPITAL PROJECT – RESOLUTION R-2022-32

A Finance, Organization, and Personnel Committee report read on a vote of 5–0, recommending the adoption of Resolution R-2022-32. A motion by Councilor Powers to adopt Resolution R-2022-32 was duly seconded by Councilor Remy.

Councilor Madison was in favor of this but asked why these items were not included in the original project design. The City Manager replied that from her understanding, the City Engineer

put them in, and she could not explain why they were not included in the original project, but NH Department of Environmental Safety reminded him that they needed to add those safety features.

Councilor Jones asked whether there was an incentive with the Swanzey ERZ Zone and the City Manager replied no. The motion carried unanimously on a roll call vote with 14 Councilors present and voting in favor. Councilor Williams was absent.

ADJOURNMENT

There being no further business, Mayor Hansel adjourned the meeting at 8:07 PM

A true record, attest:

City Clerk

CITY OF KEENE
NEW HAMPSHIRE

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Mayor George S. Hansel

Through: Patricia Little, City Clerk

Subject: **Confirmation**
Heritage Commission

Council Action:

In City Council October 6, 2022.
Voted unanimously to confirm the nomination.

In City Council September 15, 2022.
Tabled until the next regular meeting.

Recommendation:

I hereby nominate the following individual to serve on the designated Board or Commission:

Heritage Commission
Molly Ellis, slot 7 — Term to expire Dec. 31, 2025
87 Cross Street

Attachments:

1. Ellis, Molly_Redacted

Background:

Heather Fitz-Simon

Subject: FW: Interested in serving on a City Board or Commission

From: helpdesk@ci.keene.nh.us <helpdesk@ci.keene.nh.us>
Sent: Tuesday, July 26, 2022 2:19 PM
To: Helen Mattson <hmattson@keenenh.gov>
Cc: Patty Little <plittle@keenenh.gov>; Terri Hood <thood@keenenh.gov>
Subject: Interested in serving on a City Board or Commission

Submitted on Tue, 07/26/2022 - 14:18
Submitted values are:
First Name:
Molly

Last Name:
Ellis

Address
87 Cross St
Keene NH 03431

How long have you resided in Keene?
4 years in September

Email:
[redacted]

Cell Phone:
[redacted]

Employer:
I was a flight attendant with American Airlines for 9 years, and recently quit to stay home with my son

Occupation:
Homemaker

Retired
No

Please list any organizations, groups, or other committees you are involved in
I am a ballot inspector for the New Hampshire Democratic Party, I am a CASA.

Have you ever served on a public body before?
No

Please select the Boards or Commissions you would be interested in serving on:

Bicycle/Pedestrian Path Advisory Committee, Heritage Commission, Historic District Commission, Partner City Committee

Please share what your interests are and your background or any skill sets that may apply.
I majored in International Studies and was a flight attendant for nine years. I am very interested in travel and in learning about other countries and cultures as a way to create understanding and broaden horizons. I have always loved historic architecture and I am very interested in historic preservation. Lastly, I love walking and frequently walk with my young son in a stroller, and we often go on family bike rides. I think that walking and biking are wonderful ways to get exercise and get where you're going and good for the environment.

Why are you interested in serving on this committee
My husband and I have grown to love Keene and after living here for four years, we would love to be more involved in the community.

Please provide 2 personal references:
Reid Solomon-Lane
[redacted]

References #2:
Margit Foster
[redacted]

CITY OF KEENE
NEW HAMPSHIRE

ITEM #C.1.

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Juliana Bergeron
Northwestern Mutual

Through: Patricia Little, City Clerk

Subject: **Juliana Bergeron - Requesting No Parking - 191 Washington Street**

Council Action:

In City Council October 6, 2022
Referred to the Municipal Services, Facilities and Infrastructure Committee.

Recommendation:

Attachments:

1. Communication_Bergeron_redacted

Background:

Juliana Bergeron is requesting that the City enact "No Parking" at 191 Washington Street. In making the request, she indicated that the clients and employees exiting the parking lot at this location have a difficult time exiting the lot due to the number of cars parked along Washington Street, which impacts visibility.

Northwestern Mutual
Wealth Management Company®

Juliana Bergeron
CLU®, ChFC®, RHU®, CLTC, REBC®
Financial Advisor

191 Washington St
Keene, NH 03431-3131
603 352 7553 office
603 352 7244 fax
juliana.bergeron@nm.com
julianabergeron.nm.com

September 22, 2022

Mayor Hansel and Keene City Councilors:

In February of 2020, I wrote and called city employees and elected officials because I was concerned about the difficulties my tenants, our clients and I have leaving the parking lot at 191 Washington St. There have been multiple accidents and another occurred this week when an 18 year old young woman trying to turn onto Washington was hit by a car driven by an 80 year old woman. The young woman looked but could not see the car coming because so many cars are parked on the side of the street tight to each driveway. This could have been a needless tragedy that could be averted by continuing the signs I have seen at the southern end of Washington St. up just past Beaver St. "No parking from here to corner." My hope is that the City will hear me this time before someone is more seriously injured. My [redacted] if you want or need to discuss this further with me.

Thank you all for your consideration,

Juliana Bergeron

Juliana Bergeron

[redacted]

Juliana Bergeron is a representative for Northwestern Mutual Wealth Management Company®, Milwaukee, WI (NMWMC) (fiduciary and fee-based financial planning services), a subsidiary of The Northwestern Mutual Life Insurance Company, Milwaukee, WI (NM) (life and disability insurance, annuities and life insurance with long-term care benefits) and federal savings bank. All NMWMC programs and services are offered by representatives operating from agency offices of NMWMC. Juliana Bergeron is an insurance agent of NM and Northwestern Long Term Care Insurance Company, Milwaukee, WI (long-term care insurance), a subsidiary of NM, and a Registered Representative of **Northwestern Mutual Investment Services, LLC** (securities), a subsidiary of NM, broker-dealer, registered investment adviser, and member FINRA and SIPC. There may be instances when this agent represents companies in addition to NM or its subsidiaries.

CITY OF KEENE
NEW HAMPSHIRE

ITEM #C.2.

Meeting Date:	October 6, 2022
To:	Mayor and Keene City Council
From:	Ron Robbins/Trail Administrator - Keene SnoRiders Snowmobile Club
Through:	Patricia Little, City Clerk
Subject:	**Ron Robbins/Keene Snoriders - Requesting Permission to Run Snowmobiles in the Right-of-Way along Krif Road from the Ashuelot Rail Trail to Winchester Street**

Council Action:

In City Council October 6, 2022.
Referred to the Planning, Licenses and Development Committee.

Recommendation:

Attachments:

1. Communication_Robbins_Redacted

Background:

On behalf of the KeeneSnoRiders Snowmobile Club, Mr. Robbins is submitting their annual request for permission to run snowmobiles in the right-of-way along Krif Road from the Ashuelot Rail Trail to Winchester Street, crossing Winchester Street to the property of Perry Kiritsy at 471 Winchester Street. This request is for the timeframe of December 15, 2022, through March 30, 2023 - snow permitting.

KEENESNORIDERS
PO BOX 1511
KEENE NH 03431

Sept. 1st. 2022

To the Mayor and City Council:

The KeeneSnoRiders Snowmobile club is seeking renewal for permission to run snowmobiles in the right of way along Krif Road from the Ashuelot Rail Trail to Winchester Street, crossing Winchester Street to the property of Perry Kiritsy at 471 Winchester Street. The time frame would run from December 15TH 2021 through March 30th 2022 snow permitting.

We currently have permission from the following property owners:

Emile J. Ledger	460 Winchester Street	Tax Map: 84-02-001
Kiritsy LLC.	471 Winchester Street	Tax Map: 911-26-043
Emile Bergeron	OFF Base Hill	Tax Map: 911-26-055
State of NH		Tax Map: 911

We are asking renewals of license for permission to cross the following City of Keene properties:

Access to portion of Old Gilsum Rd. approximate one mile to Gilsum town line.
Crossing of Winchester St. at Krif Road
Crossing of Production Avenue approximately 200 ft. South of Route 9

Tax Map: 909-05-012	Off Route 10 by three mile reservoir
Tax Map: 911-26-015	Off Wetmore Street

We are available to answer any concerns you may have.

Thank You,

Ron Robbins
Trail Administrator

[redacted]

Ron Robbins

CITY OF KEENE
NEW HAMPSHIRE

ITEM #C.3.

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Councilor Randy L. Filiault

Through: Patricia Little, City Clerk

Subject: **Councilor Filiault - Safety Concerns with 5G Towers**

Council Action:

In City Council October 6, 2022.
Referred to the Planning, Licenses and Development Committee.

Recommendation:

Attachments:

1. Communication_Filiault

Background:

Councilor Filiault is requesting that the City Council address the issue of 5G cell towers and that any health issues with the 5G technology be answered before any of the recently erected 5G cell towers become operational.

October 4, 2022

FROM: Councilor Randy L. Filiault

TO: The Honorable Mayor and City Council

SUBJECT: 5G Cell Towers

Recently several 5G towers have been erected in Keene neighborhoods, despite the fact that many questions concerning health issues of 5G remain unanswered.

I respectfully request this issue be addressed by the Keene City Council before any of the 5G towers become operational.

CITY OF KEENE
NEW HAMPSHIRE

ITEM #D.1.

Meeting Date:	October 6, 2022
To:	Mayor and Keene City Council
From:	Municipal Facilities, Services and Infrastructure Committee, Standing Committee
Through:	
Subject:	**Continued Discussion – Requesting the City Resume Maintenance of Blain(e) Street – Private Way**

Council Action:

In City Council October 6, 2022.
Filed as informational.

Recommendation:

On a vote of 3-1, the Municipal Services, Facilities, and Infrastructure Committee accepted the communication regarding the maintenance of Blaine St. as informational.

Attachments:

None

Background:

Chair Greenwald asked to hear from Attorney Michael Bentley, representing Agatha Fifield.

Mr. Bentley stated that at the last meeting, City Attorney Tom Mullins talked to the Committee about what happened in 1968, in that in order for the City to consider the road having been laid out as a public way by 20 years of public use up to 1968. He continued that he looked around and could not find anyone who could come in and testify to that, because such a person would have to be about 100 years old, because the house was built in 1945. For example, if someone was 10 years old at the time and might be able to remember from age 10 forward, that person would be about 100 today. He checked with John Dibernardo, thinking he would be a historical person in that section of the city; he could not help at all. Tim Carbone was also unable to shed any light on the subject matter.

Mr. Bentley continued that his and Ms. Fifield's position is not that they have to prove this is a public way; it is their position that by the City's maintenance of the road for as long as it has maintained it, the City has, by its actions, accepted the road as a public way. There is no question about that. The City does not dispute the fact that it has maintained the road up until the last couple of years. Whether he and Ms. Fifield can find anything in the bowels of the Public Works Department about records going back that far, he does not know, but certainly for the past 15 or 20 years there is no question that the City has been down there. Had Ms. Fifield not called about the trees being in the road, they would not be here tonight, because the issue would not have been brought to anyone's

attention and the City would have continued to do what it had been doing. Ms. Fifield as a property owner, having seen what the City had done to maintain the road while she was there, called the City for assistance when the trees came down during a winter storm, and this is what she got for her trouble. He and Ms. Fifield think the record is clear that the City had been undertaking the maintenance of the road, both summer and winter, for a very long time, and by that action, the City should be obligated to continue.

Chair Greenwald asked if the Committee had questions for Mr. Bentley. Hearing none, he asked to hear from the City Attorney.

The City Attorney stated that he spoke with Mr. Bentley before the meeting, to give him a heads up about where he was going to be coming from with respect to talking to the Committee and perhaps later to the City Council. He continued that this is one of those times when the position he holds is unfortunate. It is unfortunate that he has to say what he is about to say, with an individual who clearly believed when she purchased the property that this was on a public way. Whatever happened with respect to the transfer of the property at the time, he was not a party to it, but he suspects that it was not entirely made clear. He understands why that is the case. There is no dispute, as far as he can tell, that the City did plow the road on a regular basis over time. It is less clear how much maintenance was done on the road during this period. Staff has done a fair amount of digging and cannot find specific records with respect to any maintenance. From his perspective, neither of those two things matter. What really matters, back to the 1840s when this started becoming an issue around the state, is whether the purported road was used generally by the public, and that the public expected to be able to use the road, and that because of that public expectation, there was maintenance performed on whatever the road was during that time. It is the theme throughout all of the cases that there has to be some sort of public activity with respect to it.

The City Attorney continued that two particular questions arise in this instance. Mr. Bentley touched on one of them, the question of implied acceptance. As discussed at the last meeting when this was on the agenda, there are four ways to create a public way. Two of them are an issue in this particular matter. One way is a dedication and acceptance, which is when a property owner comes through the planning process or directly to the Town (or City) and dedicates a particular area for a road for public use and the Town or City affirmatively, accepts it. Another way is by prescription, which was referenced by “20 years before 1968.” Prior to 1968, a public way could be laid out because the public just kept using it and the property owner never objected. In 1968, the legislature said you cannot do that anymore. Those are the two questions that are at issue now.

The City Attorney continued that regarding case law, there are two principle cases outstanding with respect to these. The one from 2007 deals with the implied acceptance of a road based upon maintenance or snowplowing, but that case says the same thing as another case he will talk about, which is, “That is not enough.” The public has to have been using the road, not just the titleholder to the property or their invitees. He reminded everyone that this Blaine entity basically only services this house, even though it would be a long driveway. It does not connect to any other roads in the city other than the one you can get to it on, and it is not used for basically any other purpose. It is essentially just a driveway. It does not have any public activity, as far as he can tell, and unfortunately, Mr. Bentley has not been able to present any evidence with respect to that.

The City Attorney continued that what is also very clear in case law is, as he just said, that plowing is not enough. If plowing were enough to create a public way, every driveway in the town of Temple would be a public way, because for many years, the Town of Temple’s Highway Department, as a benefit to the town’s residents, plowed the driveways. Finally that had to end, because the underlying problem is you cannot use taxpayer money for a private purpose. That is essentially what would be asked in this kind of context. It is the same thing with prescription, because there is no

evidence of public use.

The City Attorney continued that staff tried to look at other options that may be available in this instance. There were two other statutory possibilities with respect to it. One is called Winter Road Maintenance, under RSA 231:24, where the Town or City can assume just the snowplowing aspects of it. However, it has the same requirement where it has to be for the public generally, and not just to serve a private property owner. The other possibility was Emergency Lanes, RSA 231:59-A, which would have been a better option because unlike Winter Road Maintenance, which places lots of liability on the community if you adopt it, the Emergency Lanes statute specifically excludes any liability to the Town or City. However, again the statute requires that *"The public need for keeping such a lane passable by emergency vehicles is supported by an identified public welfare or safety interest, which surpasses or differs from any private benefits to land owners abutting the lane."* There are no other landowners; there is only one landowner with respect to this property, so this statute would not apply in that context. He wants the Committee to know that staff did not just summarily look at this and say "no." They looked for other possibilities. At this point, his advice to the Committee and City Council is that there are none. He recommends accepting the communication as informational.

Chair Greenwald asked for questions from the Committee. Hearing none, he asked for questions from the public. Hearing none, he asked for comments from the Committee.

Councilor Filiault stated that this item has been on more time, and his opinion has not changed since the last time they spoke about this. He continued that he does not completely agree or disagree with anyone. He is looking at the information that has been presented to the Committee. When they talk about a public way versus a private way, and whether the public expected it to be used like a private way, he sees that it has been used as a public road since its conception. No one alive back then (in the 20 years before 1968) is alive and available to tell them, but it appears to have been a public way. Perhaps it has been a *limited* public way, but the public did use it. The road's history also shows that the City's Maintenance Department has always considered it a public way, because they have always treated it as such, plowing it and maintaining it as a public way. That is the second form of history that has shown it might be a public way. Third is the history shown from MLS listings, because it has always been advertised as a public way. Going back as far as he could, he saw that every time this was listed for sale, every owner that bought it did so with the thought that it was a public way, because that is how it has always been advertised.

Councilor Filiault continued that in all the research he has done, he has not found a single instance that shows it as a private way. The City treated it as a public way, the owners treated it as a public way, and the MLS treated it as a public way. He has not found any or any person saying this address was a private way, until a couple years ago when the City decided it was a private way. They have to look at the original intent. In his opinion, the original intent is that is has always been a public way. It may have been limited, regarding how many people used it, but it looks like it was created as a public way because he sees nothing in the history of this address that has ever shown that it was supposed to be private. If someone can show him that at any point in history this address was going to be a private way, he will listen, but otherwise, he is not changing his mind.

Chair Greenwald stated that he went out to look at this location. He continued that as he was driving there, he felt like he was going up Ms. Fifield's driveway. He is concerned that this sets a precedence for others in the city. He is concerned that it potentially implies not just plowing, but also maintenance. Would that maintenance include paving? Where would it end? There is no question about the fact that it serves one residence. He kept an open mind while driving there, trying to determine where the "public way" ends and the "private driveway" begins. Does it go all the way up to the house? Shoveling the walkway? Where do you draw the line? Ultimately, putting all of that

together, he would call it a driveway. Regarding the MLS listings, he himself is a real estate agent. comes from the owner sometime telling the agent a story, believing it, and perpetuating it. It is not a legal justification for anything. This clearly was poorly recorded somewhere.

Chair Greenwald stated that one potential motion would be to totally deny the request, but maybe that puts prejudice there, if that is the correct legal phrase. He continued that if they accept it as informational and the Petitioner wants to pursue this elsewhere, such as taking it to court to discuss it, it leaves it more neutral. He is inclined to deny the request, but by calling it informational.

Councilor Roberts stated that to him, it comes down to the plain and simple issue of what the law is. He continued that last time, the City Attorney talked about some Supreme Court cases on this matter, and it was plain and simple that agreeing to would mean agreeing to violate State law.

The City Attorney stated that his perspective is that in the absence of some other authority telling the City Council what to do, that would be the case. He continued that from his perspective, case law is clear on this. Part of the problem with respect to this whole issue as well is that there are cross easements for this property. Chair Greenwald's question is good. The property ownership is not all the way down to the house, as far as he understands. The various property owners out there have cross easements over this. Thus, the City would essentially be taking property interests with respect to this. He would be very reluctant to have any action by the Council other than through some other authority, Superior Court or otherwise. With respect to Chair Greenwald's question, accepting it as informational does not prejudice Attorney Bentley and his client with respect to whatever other steps they wish to try to take.

Councilor Williams stated that he went to see the location and concurs with Chair Greenwald's view that it seems like a driveway. He continued that when the City accepts a road, there is a process that needs to happen, and that process has never happened (here). He would possibly be open to accepting it in the future, but that would require things such as the road being brought up to City standards. He would be reluctant to accept a road that has one unit on it. If there were more units there, or if someone wanted to build there, maybe they could bring the road into the City system, but as it is, he does not think it is a good idea for the City.

Councilor Filiault stated that he is in disagreement with the majority of the Committee. He continued that regarding the law, he has to look at what the interpretation of the law was when this road was created. Clearly, it was made into a public way, and someone had to interpret it as such. Even if it was a limited public way, it was still addressed as a public way, because the City maintained it since then, until a couple years ago. There is not one article or case law anywhere that shows that someone interpreted this to be a private way. Until someone can show him anything in the history of this road that shows it was intended as a private way, he will be in disagreement with the rest of the Committee. The City saying, "Oh, it looks like we made a mistake" is not enough, because there is no proof. Unless he gets that proof, he agrees with the Petitioner.

Agatha Fifield of 22 Blaine St. stated that she is the property owner. She continued that she has heard a couple people call this her "driveway," but people usually own their driveways, and she does not own this road. She needs permission from the three property owners who do own it to drive across to get to her house. She does not own one speck of dirt on this road, and yet, the City is trying to make her legally responsible for other people's property, financially responsible for other people's property, and physically responsible. The Post Office complains about the road, asking her to cut back tree branches, on property that she does not own. She knows that Barbara Breckwoldt, one of the owners, is willing to take care of her own property. Obviously, her (Ms. Fifield's) documents for her mortgage say that it is a public, gravel road. She does not know how five years after owning her home this gets dropped into her lap. She bought this home for retirement. It was

something she could afford in her retirement, and that does not include maintenance of a road. This has become a giant mess and a great deal of stress for her. She does not own the road and does not know how she gets saddled with something like that. At one point, there was another home (on the road) that burned down. She does not know how long ago that was. She talked with Mrs. Forcier, whom she bought the house from. She said, “Aggie, in 45 years, I never called the City once to plow the road, because they always just did it.” The road was used while the apartments across from her were getting built. The road was they used, to the point where at times, she could not even get home because the trucks were there from the apartments they were building. The poles are still on the road. Four are fiber-optic cable, and whatever else those apartments use, the trucks get access by Blaine St. The trucks do not come in the other way off Lee St. for the apartments. Mr. Tasoulas is using the road for his apartments.

Councilor Roberts stated that the City Attorney stated that the Council has to be careful if they try to do something because they would be taking property from other owners. He continued that the owner right here stated that she did not own any of that property and that she had to get a right-of-way on the other three property owners just to get to her property. His question is, legally, would not the other three owners be responsible for their sections of the road?

The City Attorney replied that he needs to be careful and cannot give others legal advice. He continued that his concern is the City. That is precisely his point. The road passes over property that is actually owned by other people. In regards to Councilor Filiault’s questions, and regarding the reason this was placed on more time, there has to be evidence presented to the Council and to the court, ultimately, if it goes there, that the public generally had the right to use the road. That does not mean just going to the house, nor does it mean just the mail carrier. It has to be part of the connection of roads within the community, for lack of a better way to put it. Even if there was a petition for layout, he would have to tell the Council that it does not meet the occasion standards. To lay out a road, there has to be an occasion to do so. There has to be a greater public benefit, such as transportation of school children, transportation network generally, emergency use, numbers of houses on the road, and so on and so forth. From his perspective, it does not even fit that requirement at this point. That is his concern. Whatever is out there passes over other properties, and that is clear. Last time this was on the agenda, the Public Works Director went over this in detail. There are references in the deeds to the various properties on Blaine St., so called, that there were easements granted back and forth. That is part of the problem, from his perspective – there just is not any evidence to establish that there was any public road there. If there was, then the takings issue would not so much be an issue for him. That issue is clearly at play right now.

Councilor Filiault stated that this convinces him more than ever that they should find in favor of the Petitioner. He continued that they have argued here, and he has heard the arguments before, “We drove here and it looks like a private driveway,” but they just found out it is not a private driveway. The fact that it is a private driveway is probably why the City has been maintaining it all these years. Other property owners were involved with this particular layout. Therefore, his opinion is more strengthened than ever that this was never intended to be a private driveway, and always a public drive. Somewhere over the last 100 years, something got messed up.

Chair Greenwald stated that he assumes there is no survey. The City Attorney replied that he cannot represent to the Committee that he has seen a survey of any of the property out there, but that does not mean that there is not a survey somewhere. Chair Greenwald replied that he assumes that if one existed, they would have seen it. He continued that that would justify whether it is a driveway. The City Attorney replied that the title record has some ambiguity, but it does indicate that when they were preparing these deeds, whoever was preparing the deeds did not always think it was a public way, because they did not refer to it as a “street” or a “public way” or “city road,” or that sort of thing. That would all become part of what a court would consider, but he has not seen it.

Chair Greenwald asked if there were any further questions or comments from the Committee. Hearing none, he asked for a motion.

Councilor Williams made the following motion, which was seconded by Councilor Roberts.

On a vote of 3-1, the Municipal Services, Facilities, and Infrastructure Committee accepted the communication regarding the maintenance of Blaine St. as informational. Councilor Filiault was opposed.

CITY OF KEENE
NEW HAMPSHIRE

ITEM #D.2.

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Finance, Organization and Personnel Committee, Standing Committee

Through:

Subject: **Amended FY21 Hazardous Materials Emergency Preparedness (HMEP) Grant Award - Fire Lieutenant/Training Officer**

Council Action:

In City Council October 6, 2022.
Voted unanimously to carry out the intent of the report.

Recommendation:

On a vote of 3-0, the Finance, Organization and Personnel Committee recommends that the City Council authorize the City Manager to do all things necessary to apply for, execute, expend and accept the terms of the amended grant agreement for the Hazardous Materials Preparedness (HMEP) Grant application as presented in the amount of $37,751.25 for the purchase and installation of conferencing equipment and hazmat plan updates.

Attachments:

None

Background:

Fire Chief Farquhar addressed the Committee first and stated that Lieutenant LaPlante was present with him as the author of this grant. He indicated in April 2022 the Committee approved a grant for hazardous materials, operational planning, and technological equipment. Since that grant was awarded, the prices for the items have gone up and hence the City requested from the State to increase the amount of the award to cover the inflationary costs. The original grant was for $26,934. The State has approved another $10,817 for total of $37,751.25.

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

On a vote of 3-0, the Finance, Organization and Personnel Committee recommends that the City Council authorize the City Manager to do all things necessary to apply for, execute, expend and accept the terms of the amended grant agreement for the Hazardous Materials Preparedness (HMEP) Grant application as presented in the amount of $37,751.25 for the purchase and installation of conferencing equipment and hazmat plan updates.

CITY OF KEENE
NEW HAMPSHIRE

ITEM #D.3.

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Finance, Organization and Personnel Committee, Standing Committee

Through:

Subject: **Acceptance of the 2021 Assistance to Firefighters Grant (AFG) - Fire Chief**

Council Action:
In City Council October 6, 2022.
Voted unanimously to carry out the intent of the report.

Recommendation:
On a 3-0 vote, the Finance, Organization and Personnel Committee recommends that the City Council authorize the City Manager to do all things necessary to accept and expend the FY 2021 Assistance to Firefighters Grant in the amount of $219,589.09 with a 10% City match.

Attachments:
None

Background:
Chief Farquhar stated the Department was notified last week they were successful in their application for this year's Assistance to Firefighters Grant (AFG). This grant was awarded for rescue technician training, which includes full price of the classes and the overtime backfill. The grant award is an amount of $219,589 and the City's 10% match would be approximately $21,858 which would come from the Department's training budget line.

The Chief went on to say that the Keene Fire Department plays very large role within the county for all levels of rescue. Within the State of New Hampshire the department is designated as the county-wide swift water, building collapse, and trench rescue team. Also, by default, the department provides a lot of support for surrounding communities with other technical disciplines. The proposed training will be very beneficial for their personnel.

The Manager asked that the motion be amended to reflect $219,589.09 as the grant award with a 10% City match.

Councilor Remy stated because from what the Chief has stated the City seems to be the county seat and when the City engages with its outside partners, he felt the expenses associated with this should be paid by outside towns that are relying on the City for its service - he added his comment is not tied to this item but as part of a broader conversation. The Chief agreed. Chair Powers added one of the realities of being designated by the State as the agency for hazmat and other rescues is that

expenses could be reimbursed. Chief Farquhar stated this speaks to the earlier grants, which Councilor Madison has been gracious enough to lend his expertise on. He added as they take a closer look at how the hazmat materials team is funded and responds, there are some avenues for some better funding, and also speaks to the limited, but needed support from other communities financially. The Chief stated this is something they are softly pushing into as they go through that process.

City Attorney Mullins stated with the issue of being able to be reimbursed for this assistance, it is true the City can be reimbursed, but one of the things that the City has discovered over the years is the statutory process for reimbursement can be vague and stated it would be helpful when the City moves forward with its legislative work to look at some possible amendments to determine who the responsible party is in those situations. At times the responsible party, even though they are the holder of the hazardous materials doesn't have any resources from which to recover from.

Councilor Madison stated leaning on his experience with the State, he can certainly verify the City Attorney's comments. He stated frequently, the Department of Environmental Services encounters a situation where you may have a responsible party, but that responsible party may not be able to lend financial resources or they may not have an insurance company and an individual has perished in an accident.

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

On a vote of 3-0, the Finance, Organization and Personnel Committee recommends that the City Council authorize the City Manager to do all things necessary to accept and expend the FY 2021 Assistance to Firefighters Grant in the amount of $219,589.09 with a 10% City match.

CITY OF KEENE
NEW HAMPSHIRE

ITEM #D.4.

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Finance, Organization and Personnel Committee, Standing Committee

Through:

Subject: **Authorization to accept a Housing Opportunity Planning Grant for Housing Needs Analysis and Planning - Community Development Director**

Council Action:

In City Council October 6, 2022.
Voted unanimously to carry out the intent of the report.

Recommendation:

On a vote of 3-0, the Finance, Organization and Personnel Committee recommends that City Manager do all things necessary to accept and expend the Housing Opportunity Planning Grant for Housing Needs Analysis and Planning in the amount of $15,500 from Invest NH Municipal Planning & Zoning Grant Program as funded by the New Hampshire Department of Business and Economic Affairs for the purposes of hiring a consultant to complete a Housing Needs Analysis for the City of Keene.

Attachments:

None

Background:

Community Development Director Jesse Rounds stated he was before the Committee to request authorization to accept a housing opportunity planning grant for a housing needs analysis and planning study.

He stated staff was before the Committee a couple months ago to request the ability to hire a consultant for this service. At that time, staff had indicated they were attempting to seek a grant to pay for about a third of the cost. He indicated staff is before the committee hoping to finalize both the acceptance of the grant and hiring of the consultant.

The Manager noted this motion is to accept the grant, but it doesn't award the contract and asked for clarification. Mr. Rounds stated at this time he is only asking for approval to accept the grant; he added the manner in which the State outlines the grant is that the consultant needs to be advised that they are hired to be able to obtain the funds.

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

On a vote of 3-0, the Finance, Organization and Personnel Committee recommends that City Manager do all things necessary to accept and to expend the Housing Opportunity Planning Grant for Housing Needs Analysis and Planning in the amount of $15,500 from Invest NH Municipal Planning & Zoning Grant Program as funded by the New Hampshire Department of Business and Economic Affairs for the purposes of hiring a consultant to complete a Housing Needs Analysis for the City of Keene.

CITY OF KEENE
NEW HAMPSHIRE

ITEM #G.1.

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Jesse Rounds, Community Development Director

Through: Elizabeth Dragon, City Manager

Subject: **Relating to Amendments to the City of Keene Land Development Code Ordinance O-2022-11**

Council Action:

In City Council October 6, 2022.
Public Hearing set for Thursday, November 3, 2022 at 7:00 PM.

Recommendation:

A motion was made by Councilor Michael Remy that the Planning Board find Ordinance O-2022-11 consistent with the Comprehensive Master Plan. The motion was seconded by David Orgaz and was unanimously approved on a 5-0 vote.

A motion was made by Councilor Kate Bosley that the PLD Committee recommend that the Mayor set a public hearing on the Ordinance. The motion was seconded by Councilor Gladys Johnsen and carried on a unanimous roll call vote.

Attachments:

None

Background:

Included below is an excerpt from draft minutes of the September 12, 2022 Joint Planning Board and Planning, Licenses, and Development Committee meeting where this item was discussed.

"Public Workshop: Ordinance O-2022-11 – Relating to amendments to the Business Growth & Reuse Zoning District. Petitioner, Randall Water proposes to amend Table 8-1 and Section 5.4.5 of Chapter 100 Land Development Code (LDC) of the City Code of Ordinances to permit "Recreation/Entertainment Facility – Indoor" as a principal permitted use in the Business Growth & Reuse Zoning District

Public Workshop

Mr. Randall Walter Architect and Developer addressed the Committee and noted considerable amount of work has gone into the development of the BGR District. Mr. Walters stated he had made a similar application a while ago with reference to activities in the district. He noted there are 29 individual parcels in the BGR District of different varieties. However, there is one thing many have in common which has to do with scale. Mr. Walter stated he wanted to talk about the scale of buildings

in this district relative to indoor activities as it pertains to both children and adults. Families are driving long distances to other communities for indoor activity.

Mr. Walter noted the City does have the rink which is located in this district but this pre-dates the BGR District. However, things like bowling allies, laser tag, puzzle based games, indoor golf, are seeking homes and felt the larger industrial buildings will be good fit for these types of activities. Mr. Walter noted the Kingsbury property which is the heart of BGR is a 15-acre indoor space located on a 21 acre parcel, which has a lot of opportunities. He further stated within the indoor entertainment sector there are a couple of uses that can be considered to be wholesome and others that could cause concern to the neighborhood. However, felt some of these uses overlap with each other; a restaurant is permitted in the BGR but not a Night Club.

Staff comments were next. Community Development Director Jesse Rounds addressed the Committee. Mr. Rounds stated this ordinance proposes to amend Chapter 100 Land Development Code of the City Code of Ordinances to permit "Recreation/Entertainment Facility - Indoor" as a principal permitted use in the Business Growth & Reuse Zoning District and also seeks to amend Table 8-1 and Section 5.4.5 permitted uses in Article 8.

Mr. Rounds stated the BGR District was established in 2017 as part of the Marlboro Street rezoning effort. The intent of the District is to serve as an additional downtown zoning district that provides opportunity for redevelopment and revitalization of this area in an environmentally sensitive manner that is sensitive to the scale of the surrounding neighborhoods.

Mr. Rounds stated BGR is a relatively small zoning district which contains 29 parcels which support a variety of commercial uses including warehousing, office space, a municipal complex, industrial uses, Keene Ice Arena, and some retail uses. The BGR District is surrounded by the Residential Preservation District to the west, which is largely limited to single family dwellings, the Neighborhood Business District is to the south along Marlboro Street, which promotes small-scale commercial development. The Medium Density District and a small portion of the Downtown Growth District are to the north. The Low Density District is to the east, which is a single family zoning district.

The district as it exists right now allows for a number of uses such as Art Gallery, Art/Fitness Studio, Gym, Bed and Breakfast, Office, with a focus on smaller scale retail.

Mr. Rounds went on to say in terms of this proposal being consistent with Comprehensive Master Plan; the Plan states as follows:
"To the east side of Main Street, along Marlboro Street, there are similar opportunities to balance higher density housing with the existing single- and two-family residential neighborhoods. There is also the opportunity to extend light commercial uses from the Main Street roundabout to the Public Works Facility just before Optical Avenue. It also recommends *inclusion of a higher density of industrial / manufacturing / business / office uses should be pursued with the provision of connections to adjacent neighborhoods, creating a walkable area."*
The plan reiterates on Page 118 that design details and sensitivity to surrounding neighborhoods should be considered. The BGR District was intended primarily as an area to attract industrial redevelopment and is surrounded by residential neighborhoods, hence, scale is important so as not to overwhelm those areas. However, "Recreation/Entertainment Facility – Indoor" is a commercial use that would support pedestrian traffic in the neighborhood, which is a positive aspect. Staff is concerned about specific uses such as a Night Club which is not a use defined in the code. This concluded staff comments.

Councilor Remy asked whether there was a different noise ordinance for downtown versus the BGR District. Mr. Rounds stated he wasn't sure – the Councilor stated he felt the BGR was 10 pm and the

downtown was 11pm which would hence be a natural cutoff for the night club issue.

Mr. Kost noted to language which calls for the district to be oriented towards pedestrian and bicycle access and asked for explanation of that language as it pertains to the industrial district. Mr. Rounds felt the Comprehensive Master Plan was looking toward the extension of the Rail Trail being able to access these properties as well as slower speeds onto the main roads.

The Chair asked for public comment next. With no comments from the public Chair Russell Slack closed the public hearing.

Councilor Remy addressed the noise ordinance issue and stated the 11 pm noise ordinance is effective through Water Street. Looking at the BGR map 100 Nights property would be exempt from the 10 pm cut off and falls under the 11 pm cutoff. He added 163 Washington Street is the only property that is in the BGR District and in the 11 pm zone.

Chair Bosley stated she is excited the applicant brought this item forward and encouraged staff to review this list for acceptable uses for this area. She felt the entire community will benefit from seeing some development in this area especially in the Kingsbury property. She indicated she has young children who have limited indoor activity options and her family travels as far as Nashua to attend such activities. She applauded the applicant for thinking outside the box and added the term night club would not stop her from voting in favor of this item.

Councilor Jones with reference to the noise ordinance stated To tag off of what Mike said first, the Noise Ordinance is a compliance driven ordinance. Somebody could play music until 2am and if no one complains it just happens so I don't think it's a real issue, I think we've only had 2 complaints and that was a long long time ago on Colorado Ave. He further stated the Economic Development Plan that was complete a few years recommended more activities for young people in the community and felt this would be another way to attract young people to the community.

Chair Russell Slack stated she is in favor of this proposal as she supports anything that improves business growth and housing growth.

Councilor Giacomo noted the rail trail goes right through the middle of the BGR District which he felt was a positive aspect to commute people to various recreational opportunities. The Councilor also noted to the new Pat Russell Park and the new skate park both of which will be very close to the rail trail and continue right into the BGR District. He further stated he feels this proposed use is more in line with what this district is intended for versus some of the industrial uses which are part of its history not necessarily part of its future. Councilor Giacomo stated he was in favor of this proposal.

A motion was made by Councilor Michael Remy that the Planning Board recommends that Ordinance O-2022-11 is consistent with the Community Goals and Comprehensive Master Plan. The motion was seconded by David Orgaz and was unanimously approved.

A motion was made by Chair Kate Bosley that the Planning Licenses and Development Committee recommends that the Mayor set a public hearing on Ordinance O-2022-11. The motion was seconded by Councilor Philip Jones and was unanimously approved by roll call vote."

CITY OF KEENE
NEW HAMPSHIRE

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Municipal Facilities, Services and Infrastructure Committee, Standing Committee

Through:

Subject: **Continued Discussion – Designating City Parks – Drug-Free and Smoke-Free Zones**

Council Action:

In City Council October 6, 2022.
Reported out as informational.

Recommendation:

On a vote of 4-0, the Municipal Services, Facilities, and Infrastructure Committee placed this item on more time until the next meeting.

Attachments:

None

Background:

Chair Greenwald asked to hear from staff.

The City Attorney stated that at the last Committee meeting this was discussed at, they discussed that they would be looking at Chapter 58 generally, and specifically, the question of tobacco use in the parks. He, along with Assistant City Attorney Amanda Palmeira and Parks, Recreation, and Facilities Director Andy Bohannon had an extensive meeting about a week ago with respect to the work that Mr. Bohannon and Ms. Palmeira have been doing regarding Chapter 58. They have done some great work, but it was clear after they all talked that Chapter 58 "is not ready for prime time yet" for them to submit a draft Ordinance on it. They discovered that unfortunately Chapter 58, like some of the other portions of City Code, became sort of a "dumping ground" for things that no one knew where else to put. It does not deal just with parks; it deals with other City properties, woodlands, wetlands, and so on and so forth. That needs to be separated out, in order to make the chapter more coherent and cohesive. It is a work in progress, although they hope to complete it rather quickly. They are designating specific parks with respect to those and the proposed Ordinance will include a list of those. They will also prepare a GIS map for the public, so it clear when the Parks, Recreation, and Facilities Director adopts rules that regulate activities in the parks just what those boundaries are.

The City Attorney continued that with respect to tobacco use, staff will be presenting in the Ordinance the prohibition on the use of tobacco products in City parks. The Ordinance will use the definition of

"tobacco products" that is already in City Code, which includes vaping, chew, and so on and so forth. Unless the Council decides otherwise, there is no proposal for a designated smoking area. Mr. Bohannon thought that would be problematic and difficult to enforce. Five or eight years ago, he (the City Attorney) would have had a little concern with regulation of tobacco products, but generally, in the attorney bar, there is an understanding that can do that.

The City Attorney continued that drug use is much more problematic, as he alerted the Committee to last time. State law has two specific places where Drug-Free Zones can be established. First, a specific statute gives statutory authority for schools to enact Drug-Free Zones and specific requirements associated with that and enhanced penalties associated with that. The other place that caught his attention was in RSA 47:17, Bylaws and Ordinances. At first, he thought that Drug-Free Zones could be established, but the caveat is that the City has the authority to establish a Drug-Free Zone in *"any area inclusive of public housing authority property and within 1,000 feet of such public housing authority property."* He dug deeper into the statute. This statute does not define "public housing authority property," but there is a statute that creates public housing authorities. The City of Keene created one through Keene Housing. Believing this referred to Keene Housing, he contacted Josh Meehan and said, "You own a lot of property in the City; you'd have to draw a thousand feet around each one." Mr. Meehan replied no, they do not. With the way the ownership structure works for these various properties, Keene Housing only owns one, on Webster St. All the other properties are held by 501c3 limited liability companies (LLCs), of which Keene Housing is not just a minority member, but a *very* minority member. That unfortunately did not work. What he did draw from the fact that the State has authorized this in two instances is that that is where the specific authority lies, and the municipal does not have the authority to create Drug-Free Zones with enhanced penalties anywhere else in the city, unfortunately.

The City Attorney continued that the other issue he had to consider in connection with this was Chapter 318, the State law that deals with the regulation of unlawful drugs, unlawful drug activities, fines and penalties, and so on and so forth. He thinks that if the City tried to adopt a Drug-Free Zone it would fall afoul of the "preemption requirement," that the State has probably occupied that whole field at this point, to the exclusion of any regulation from any of its political subdivisions. It is a very comprehensive statute. All that being said, his opinion is that he does not think the City can . At a minimum, they might be able to put a sign on the property that says "Please don't use unlawful drugs within the confines of the park," but they would not be able to impose any penalties, enhanced penalties, or criminal penalties.

Chair Greenwald stated that drug use is illegal, whether they put up a sign or not. He continued that if they acknowledge that the enhanced penalties are off the table, putting up a sign saying the use or sale of illegal drugs is not permitted, or however they want to phrase it, that is just restating the obvious. He does not see anything wrong with saying that.

The City Attorney replied that he thinks they *can* say that, if they wanted to put up a sign that says that. He continued that something along the lines of "the use of unlawful drugs within this area is a violation of RSA 318." They would just be saying what is true.

Chair Greenwald stated that he is of the opinion that most people do the right thing. He continued that when most people see a sign that says "Don't," they do not do it. To think that the Police are going to run around busting people for smoking cigarettes in the park is fantasy, when they have a hard enough time busting drug dealers. Putting up a sign at least sends the right message. He realizes that enhanced penalties would be nice, but people are not likely to be arrested anyway to get the enhanced penalty. He is still staying with this. He had some doubts over the past several weeks, about the certainty of lack of enforcement, and the restriction of personal rights. Years ago, (former) Councilor Dibernardo stood up when they were talking about smoking in restaurants and said,

“What’s next? French fries? Large, caffeinated sodas?” At what point does the government step out of people’s lives? Nonetheless, he thinks it is important to make a statement regarding drugs and cigarettes in the parks, where there are children, whether it will be enforced by the Police or not.

The City Attorney replied that that is up to the Committee and the Council. He continued that that is a rule/regulation/operation of the park that he thinks the Parks, Recreation, and Facilities Director could do individually; it might not even need to be in the Ordinance. It could be a request to the Parks, Recreation, and Facilities Department, through the City Manager, to develop signage for that purpose. They do want to include the No Smoking provision in the Ordinance for the parks; that is something he thinks they do need.

Councilor Filiault stated that regarding RSA 47:17, if they wanted a change to that they would have to request that someone in the State legislature introduce a bill and get it passed. The City Attorney replied that that is exactly right. Councilor Filiault replied that that will be his intent.

Chair Greenwald asked if there were any more questions or comments from the Committee. Hearing none, he asked for public comment.

Charles Redfern of 9 Colby St. stated that for starters, he thanks the City Attorney for the effort he put into this. He continued that he appreciates the research City Attorney did with the statutes. He likes the tack that Councilor Greenwald has taken, which is that there is nothing to prohibit the posting. It may be obvious , but it is sort of like the No Smoking signs, which will refer to an Ordinance, he assumes. Perhaps instead of attempting to throw this into an Ordinance, which may be challenged as not having statutory authority, they could do a Resolution. The City has used Resolutions for advisement. Although Resolutions do not carry any legal consequence, in and of themselves, . For example, State law prohibits ATVs from being on the City’s trail system, because the trails were paid for with Federal funding from the Highway Department. Nonetheless, the City passed a Resolution saying that ATVs would not be allowed on the trail system. Thus, there is a stated, public position on that matter that was passed by a governing body, that being the City Council. Until he became a City Councilor back in the day, he did not know the difference between an Ordinance and a Resolution, which both sounded like legalese to him, and he thinks that is how many Keene citizens may regard it as well. At least, they will know the position their governing body has taken on this.

Mr. Redfern continued that he agrees with and appreciates what Councilor Filiault said as well, that this needs to go to the State level. This is, to him, a no brainer. He is not thinking so much about the enhanced penalties against the user, but against the ; they are the ones who definitely need to be targeted.

Councilor Roberts stated that he agrees with the signs, because many people see a sign and will obey it, due to group pressure. He continued that for example, if many other people are not littering, people will pick up and put their trash in the right place. He also agrees with Chair Greenwald that the Police are not going to be running around and issuing citations to everyone who is smoking in a park. There are plenty of parks and green spaces and they do not have enough police to do that. cleaned out a lot of the Russell Park area, and the area by the basketball court, and when they did that, many drug users the area. On the other side of the bike path, along the fence where they are building a new Hundred Nights shelter, there are people and someone overdosed there recently. It seems like the most effective way to cut down on drug use is to clean up the area. In that area, in particular, signs would help, because many people do not understand that that parking lot belongs to the City. To go to the City Attorney’s point, the Parks, Recreation, and Facilities Director can have a lot more control and be much more effective than sending the Police at people to get them to stop smoking or drinking. The big softball tournaments at Wheelock Park have signs

saying “No drinking past this point.” He went to a softball tournament there, and people did what they were told and did not bring their drinks past that sign. There are many ways this can be done, and ways this can be done by the Parks, Recreation, and Facilities Department.

Councilor Filiault stated that there are not going to be any quick answers here tonight, but he thinks they are making headway.

Councilor Filiault made the following motion, which was seconded by Councilor Williams.

On a vote of 4-0, the Municipal Services, Facilities, and Infrastructure Committee placed this item on more time until the next meeting.

Assistant City Manager Rebecca Landry stated that she wanted to make sure everyone was aware that she does not think the Committee needs to do anything specific in order for staff to go to the Parks, Recreation, and Facilities Director and suggest they do some signage, if it is the will of the Council. Staff can just take that and run with it.

CITY OF KEENE
NEW HAMPSHIRE

ITEM #H.2.

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Municipal Facilities, Services and Infrastructure Committee, Standing Committee

Through:

Subject: **Discussion – Chapter 58 – Parks, Recreation, and Public Facilities**

Council Action:
In City Council October 6, 2022.
More time granted.

Recommendation:
On a vote of 4-0, the Municipal Services, Facilities, and Infrastructure Committee placed the discussion of Chapter 58 on more time.

Attachments:
None

Background:
Councilor Williams made the following motion, which was seconded by Councilor Filiault.

On a vote of 4-0, the Municipal Services, Facilities, and Infrastructure Committee placed the discussion of Chapter 58 on more time.

CITY OF KEENE
NEW HAMPSHIRE

ITEM #J.1.

Meeting Date: October 6, 2022

To: Mayor and Keene City Council

From: Finance, Organization and Personnel Committee, Standing Committee

Through:

Subject: **Relating to Probationary Firefighters**
Ordinance O-2022-13

Council Action:

In City Council October 6, 2022.
Filed the report.
Voted unanimously to adopt Ordinance O-2022-13.

Recommendation:

On a vote of 3-0, the Finance, Organization, and Personnel Committee recommends the adoption of Ordinance O-2022-13.

Attachments:

1. Ordinance O-2022-13_Adopted
2. Ordinance O-2022-13_redlined

Background:

Assistant City Manager/Human Resources Director Beth Fox indicated this item is a proposed amendment to City Code pertaining purely to probationary firefighters. The amendment has two focuses; the first is to align the Code to the current practice for probationary operational firefighters who work 24-hour shift schedules. The second component is to address a situation where the City has recently hired two probationary fire prevention officers from outside the organization, so they are now subject to the City Code and to amend the Code in a manner that provides those employees who work a traditional five-day schedule, paid holidays off instead of a lump sum holiday pay. Ms. Fox added other firefighters work regardless of holidays and get a lump sum holiday pay. However, these employees who are focused more on serving the public and responding to business activity, don't have to work for instance on Christmas Day.

Ms. Fox explained this code amendment will both clarify current practice for the employees that are assigned to work rotating shifts (24 hours) and provide during the probationary period paid holidays for these newly hired employees.

Chair Powers stated he has provided the Committee with some amended language to the Ordinance, which will not change the intent, but it would make the language clearer. These amendments would be incorporated as clerical changes and would not result in an "A" version of the Ordinance.

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

On a 3-0 roll call vote, the Finance, Organization, and Personnel Committee recommends the adoption of Ordinance O-2022-13.

ORDINANCE

O-2022-13

CITY OF KEENE

In the Year of Our Lord Two Thousand and .....Twenty-two.....

AN ORDINANCE ..... Relating to Probationary firefighters .....

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 removing the stricken text and inserting the bold text in Article V, "Policies, Procedures and Conditions of Employment", Division II "Hours of work", Subdivision II "Overtime", Section 62-303 "Probationary firefighters" as follows:

Sec. 62-303. Probationary firefighters.

(a) **Not withstanding any other provisions of City Code to the contrary related to overtime and holidays, probationary full-time firefighters/EMTs shall be governed by this Section 62-303.** Full-time firefighters/EMTs, who have not yet successfully completed 12 months of employment, will be compensated for overtime **when required to work in excess of the established work schedule. Whenever such fire department personnel work in excess of the established work schedule, such time shall be compensated in minimum increments of ¼ hour.** ~~beyond the normal 42 hour workweek if they voluntarily respond to first alarm and special call on still alarm calls while off duty.~~ On such occasions, **when work is an off-duty call back**, fire department personnel will receive a minimum of one hour compensation for each response and, in addition, will be compensated in minimum increments of **¼ hour** ~~½ hour~~ for time worked over the first hour or portions of **¼ hour** ~~½ hour~~. Compensation for this overtime will be at a rate of 1½ times the regular pay rate. ~~as further set forth in this section~~. ~~The overtime rate for regular full-time employees classified in the fire/ambulance pay schedule will be based on the annualized base rate divided by 2,184 hours.~~

~~(b) Response to second alarms while off duty will be mandatory, unless excused by the chief, and overtime for this will be compensated on actual time spent, with the rate compensated in the same manner as for first alarms and still alarms as mentioned in this section.~~

(b)~~(c)~~ ~~Such~~ Personnel, **typically working a 24 hour shift schedule,** will work their assigned shifts without regard to holidays. **These** ~~Each~~ employees will receive additional pay in November of each year for the number of holidays designated by section 62-246 that occurred since their employment in the same manner holiday pay is provided to full-time firefighters who have successfully completed the probationary period. In the event such personnel work on Independence Day, Labor Day, Thanksgiving Day or Christmas Day, they shall be paid at 1½ times the regular rate for all hours worked on such holiday.

(c) Personnel serving in staff officer positions, typically subject to a 5 day shift schedule, will be provided holidays with pay as prescribed by Section 62-246. In the event such personnel work on Independence Day, Labor Day, Thanksgiving Day or Christmas Day, they shall be paid at 1½ times the regular rate for all hours worked on such holiday.

(d) If fire department personnel are paid by another fire department, other municipalities, the state, or other agencies, hours spent on overtime will not be calculated or reimbursed by the city to more than the overtime rate.

George S. Hansel, Mayor

PASSED October 6, 2022

Twenty-two

Relating to Probationary firefighters

That the Ordinances of the City of Keene, as amended, are hereby further amended by removing the stricken text and inserting the bold text in Article V, "Policies, Procedures and Conditions of Employment", Division II "Hours of work", Subdivision II "Overtime", Section 62-303 "Probationary firefighters" as follows:

Sec. 62-303. Probationary firefighters.

(a) **Not withstanding any other provisions of City Code to the contrary related to overtime and holidays, probationary full-time firefighters/EMTs shall be governed by this Section 62-303.** Full-time firefighters/EMTs**,** who have not yet successfully completed 12 months of employment**,** will be compensated for overtime **when required to work in excess of the established work schedule. Whenever such fire department personnel work in excess of the established work schedule, such time shall be compensated in minimum increments of ¼ hour.** ~~beyond the normal 42 hour workweek if they voluntarily respond to first alarm and special call on still alarm calls while off duty.~~ On such occasions**, when work is an off-duty call back**, fire department personnel will receive a **m**inimum of one hour compensation for each response and, in addition, will be compensated in minimum increments of **¼ hour** ~~½ hour~~ for time worked over the first hour or portions of **¼ hour** ~~½ hour~~. Compensation for this overtime will be at a rate of 1½ times the regular pay rate. ~~as further set forth in this section~~. ~~The overtime rate for regular full-time employees classified in the fire/ambulance pay schedule will be based on the annualized base rate divided by 2,184 hours.~~

~~(b) Response to second alarms while off duty will be mandatory, unless excused by the chief, and overtime for this will be compensated on actual time spent, with the rate compensated in the same manner as for first alarms and still alarms as mentioned in this section.~~

(b)~~(c)~~ ~~Such operational response~~ pPersonnel**, typically working under a 24 hour shift schedule,** will work their assigned shifts without regard to holidays. **These** ~~Each~~ employees will receive additional pay in November of each year for the number of holidays designated by section 62-246 that occurred since their employment in the same manner holiday pay is provided to full-time firefighters who have successfully completed the probationary period. In the event such personnel work on Independence Day, Labor Day, Thanksgiving Day or Christmas Day, they shall be paid at 1½ times the regular rate for all hours worked on such holiday.

(c) Personnel serving in staff officer positions, typically subject to a 5 day shift schedule, will be ~~assigned a schedule that provides for~~ provided **holidays with pay as prescribed by Section 62-246. In the event such personnel work on Independence Day, Labor Day, Thanksgiving Day or Christmas Day, they shall be paid at 1½ times the regular rate for all hours worked on such holiday.**

(d) If fire department personnel are paid by another fire department, other municipalities, the state, or other agencies, hours spent on overtime will not be calculated or reimbursed by the city to more than the overtime rate.

George S. Hansel, Mayor

City of Keene
New Hampshire

October 7, 2022

TO: File

FROM: Patricia A. Little, City Clerk

SUBJECT: Collective Bargaining – Keene City Employees, AFT Local #6288, ATF-NH, AFL-CIO

At a regular meeting of the Keene City Council held on October 6, 2022, the following action occurred following an adjournment for collective bargaining:

Voted unanimously that the City Manager be authorized to do all things necessary to execute the negotiated contract with the Keene City Employees, AFT Local #6288, ATF-NH, AFL-CIO to b effective July 1, 2022 through June 30, 2025.

Attest:
City Clerk