PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
Council Chambers A, Keene City Hall
October 12, 2022
6:00 PM

A. AGENDA ITEMS

1. Keene Kiwanis Club – Request to Use City Property – Tree Lighting Ceremony
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. Memorandum of Understanding - Retaining Wall - Woodbury and Washington Street - City Manager
4. Communications relative to public health concerns of small cell wireless facilities, and possible revisions to Ordinance O-2019-18-A

B. MORE TIME ITEMS

1. Relating to Amendments to the Business, Growth and Reuse District - Recreational/Entertainment Facility - Indoor
   Ordinance O-2022-11
2. Relating to the Use of Central Square Common and Railroad Square
   Ordinance O-2022-14
3. Councilor Mitchell Greenwald - Amendment to the City Council Rules of Order - Remote Access

NON PUBLIC SESSION

ADJOURNMENT

Kiwanis
CLUB OF KEENE

63 Emerald Street
PMB 451
Keene, NH 03431
keenekiwanis.org

OFFICERS:

Pete Southwell
President

Art Trombly
Vice President

Elizabeth Sayre
Past President

Pam Wilson
Treasurer

Janet Genatt
Assistant Treasurer

Peg Bruce
Assistant Treasurer

Peg Bruce
Secretary

Pam Wilson
Assistant Secretary

DIRECTORS:

Phyllis Custer
David Ganio
Diana Sommer
Patti Spears
Jeff Swenson
Scot Ward

PAST PRESIDENTS:

Elizabeth Sayre 2020-21
Arthur Walker 2019-20
David Ganio 2018-19
Eli Rivera 2017-18
Paul Bothwell 2016-17
Peg Bruce 2015-16
David Ganio 2014-15
Beth Healy 2013-14
Gary Grashow 2012-13
Carl Allen 2011-12

Keene Kiwanis is a 501 (c) 3 Organization: tax exempt number – 020458160.

August 12, 2022

Mayor Hansel and the Keene City Council
3 Washington Street
Keene, NH 03431

Re: 11/25/2022 Kiwanis Tree Lighting, Central Square, Keene, NH

Dear Mayor Hansel and the Keene City Council:

The Kiwanis Club of Keene requests a license to produce the 2022 Kiwanis Tree Lighting Event. The proposed date and time of the event is November 25, 2022, 5 p.m. to 8:00 p.m. This event continues to compliment the Kiwanis' mission of supporting our local youth.

Keeping with tradition, we would once again like to decorate the Bandstand on Central Square with wreaths and lights, decorate the City tree on Central Square and hope to put up a second tree with battery operated mini lights on the Roundabout at the Marlboro Street and Winchester Street intersection. We plan to do the decorating of Central Square on a Saturday in the month of November 2022 and take the decorations on Central Square down by the second week of February 2023. (If possible, we would keep the lights on through the Ice and Snow Festival, weather and City permitting.) We plan to string bars of soap on the trees to deter the squirrel population from damaging the light strings. We had no lights damaged this past year.

In spite of the bad weather, this past year's event was enjoyed by many and the decorations are very much appreciated by our community. The children enjoyed the entertainment with the bands and Mrs. Claus reading "Twas the Night Before Christmas. Santa's grand entrance with assistance from Keene Fire Department was especially spectacular! Each year Kiwanis youth groups participate and provide cookies and cocoa. Kiwanis distributes close to 600 Christmas bells for the children to ring as Santa rounds the Common. We greatly appreciate the support of the City of Keene departments who work together with Kiwanis to make the community event special each year!

Feel free to contact me should there be any questions. I can be reached at 603-762-7276 or at keenekiwanisinfo@gmail.com.

Thank you for your consideration of this request.

Sincerely,

Peg Bruce

Peg Bruce
Kiwanis Club of Keene
63 Emerald Street, PMB 451
Keene, NH 03431
603-762-7276

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

ITEM #A.3.

CITY OF KEENE
NEW HAMPSHIRE

Meeting Date: October 12, 2022

To: Planning, Licenses and Development Committee

From: Elizabeth Dragon, City Manager

Through:

Subject: **Memorandum of Understanding - Retaining Wall - Woodbury and Washington Street - City Manager**

Recommendation:

Move to authorize the City Manager to do all things necessary to execute a Memorandum of Understanding between the City and the Community College System of New Hampshire with respect to the retaining wall abutting the property owned by the Community College and adjacent to Woodbury Street; and further to authorize the City Manager to do all things necessary to negotiate and to executive permanent cross easements for the construction, and future maintenance of the wall by the Community College, and for the improvements to Woodbury Street to be made by the City.

Attachments:

None

Background:

The Community College is the current owner of the property located at 438 Washington Street (Tax Map#531-054-000-000-000). The Community College is in the process of selling the property, and during this process, questions have arisen with respect to the ownership and repair of the retaining wall located on the property adjacent to Woodbury Street, which is a City right-of-way. Both the Community College and the City have an interest in the continued stability and support of the wall. The City and the Community College have agreed that the Community College is the current owner of the wall, and responsible for the costs and expenses for its repair and ongoing maintenance. The City has agreed that it has responsibility for the adjacent Woodbury Street, and for the costs and expenses of the guard rail and sidewalk located within the City right-of-way adjacent to the property. The Community College and the City have agreed to exchange cross easements to allow each party to enter onto the property of the other as necessary for the repair, replacement, and future maintenance of the wall, and for the repair, replacement, and future maintenance of the guard rail and sidewalk. The purpose of the MOU is to memorialize the respective obligations of the parties and to assist the Community College in the sale of the property. The future owner of the property will take the property subject to the respective obligations of the Community College and the City as outlined in the MOU. The recommendation is to authorize the City Manager to execute the MOU for this purpose.

CITY OF KEENE
NEW HAMPSHIRE

ITEM #A.4.

Meeting Date: October 12, 2022

To: Mayor and Keene City Council

From: Councilor Randy L. Filiault
Terry M. Clark

Through: Patricia Little, City Clerk

Subject: **Communications relative to public health concerns of small cell wireless facilities, and possible revisions to Ordinance O-2019-18-A**

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

Recommendation:

Attachments:
1. Communication_Filiault
2. 2021 Communication_Clark
3. Ordinance O-2019-18-A

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.

Former City Councilor, Terry M. Clark submitted a communication in January of 2021 requesting that the City Council revisit Ordinance O-2019-18-A in light of the Final Report on the Commission to Study the Environmental an Health Effects of Evolving 5G Technology.

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.

In City Council January 7, 2021.
Referred to the Planning, Licenses
and Development Committee.

City Clerk

January 5, 2021

Re: Ordinance 2020-18-A - Relating to Small Wireless Facility Deployments in the Public Rights- of-Way

To Mayor and Council,

The ***Final Report on Commission to Study the Environmental and Health Effects of Evolving 5G Technology (RSA 12-K:12-14, HB 522, Ch. 260, Laws of 2019)*** was completed and sent to the governor, state senate and legislature on November 1, 2020.

In light of the recommendations made in that report, I ask the Council to revisit Ordinance 2020-18-A - Relating to Small Wireless Facility Deployments in the Public Rights- of-Way.

Thank you,

Terry M. Clark
Keene City Councilor
Ward 3
14 Barrett Ave.
Keene, NH 03431
(603)661-8347

attachments:

- ***a- Final Report on Commission to Study the Environmental and Health Effects of Evolving 5G Technology (RSA 12-K:12-14, HB 522, Ch. 260, Laws of 2019);***
- ***b- Proposed amended ordinance***
- ***c- Minutes to 5/13/2020 and 4/22/2020 PLD meetings***

http://www.gencourt.state.nh.us/statstudcomm/committees/1474/reports/5G%20final%20report.pdf

ORDINANCE

CITY OF KEENE

Ordinance O-2019-18-A

In the Year of Our Lord Two Thousand and Nineteen

AN ORDINANCE Relating to Small Wireless Facility Deployments in the Public Rights of Way

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

That the City Code of the City of Keene, New Hampshire, as amended, is hereby further amended by adding the text in the following article to Chapter 82 of the City of Keene Code of Ordinances as follows:

ARTICLE VIII. SMALL WIRELESS FACILITY DEPLOYMENTS IN THE PUBLIC RIGHTS OF WAY

Section 82-201. Purpose and Intent

1. The purpose of this article is to establish reasonable standards and procedures for the siting, construction, installation, collocation, modification, operation, relocation and removal of SWFs (SWF) in the city's public rights-of-way, consistent with and to the extent permitted under federal and state law.

2. The standards and procedures of this Article are intended to protect and promote public health, safety and welfare. They are also intended to reflect and promote the community interest by:
    a. protecting and preserving the city's public rights-of-way and municipal infrastructure;
    b. maintaining the balance between public and private interests;
    c. protecting the city's visual character from potential adverse impacts;
    d. protecting and preserving the city's environmental resources; and,
    e. promoting access to high-quality, advanced wireless services for the city's residents, businesses and visitors.

3. This Article is intended to establish procedures for application intake and completeness review, and encourage applicants to timely respond to incomplete notices.

Section 82-202. Applicability

1. Except as expressly provided otherwise, the provisions in this Article shall be applicable to all SWFs constructed and in operation as of the date of the adoption of this Article, and to all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy SWFs within the public rights-of-way after the date of the adoption of this Article.

PASSED

2. To the extent that other infrastructure deployments involve the same or substantially similar

structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements within the public rights-of-way, the Director or other official responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this Article, unless specifically prohibited by applicable law or ordinance.

3. Any license issued pursuant to this Article may be subject to retroactive modification in the event of changes in applicable federal or state law or rule requiring such modification, or in the event of revisions to this Article necessitated for the protection of public health, safety and welfare. Any license issued subsequent to such change, or revision to this Article shall be required to conform to the requirements of such change or revision.

Section 82-203. Required license and approvals

1. **SWF License.** A "SWF License," subject to the Director's review and approval in accordance with this Article, shall be required for all SWFs and other infrastructure deployments located in whole or in part within the public rights-of-way.

    a. **Indemnification Requirement.** The SWF License shall contain the City's usual and customary indemnification provisions.

2. **Other Licenses and Approvals.** In addition to a SWF License, an applicant must obtain all other licenses, permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any approvals issued by other city departments or divisions.

3. In the event that FCC Order WT Docket No. 17-79 and/or WC Docket No. 17-84 are rescinded, or determined by legal authority to be invalid or unenforceable, then this Article shall be deemed to be null and void, and any licenses issued under the terms and conditions of this Article shall be revoked upon written notice to Licensee effective 90 days after the effective date of such rescission or determination, and all equipment or appurtenances thereto shall be removed prior to the revocation date of the license. The failure to remove all equipment or appurtenances thereto prior to the revocation date of the license shall be deemed an abandonment under section 82-210(1)(m).

Section 82-204. Exemptions.

1. Notwithstanding anything in this Article to the contrary, a SWF License shall not be required for the following:
    a. Wireless facilities or other infrastructure deployments owned and operated by the city,
    b. Over-the-air reception device (OTARD) facilities.
    c. Requests for approval to collocate, modify, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to 47 U.S.C. § 1455(a).

2. An exemption from the SWF License requirement under this Section does not exempt the SWFs or other infrastructure deployments from any other permits or approvals as may be

required by any other federal, state or local government agencies, which includes without limitation any approvals issued by other city departments or divisions.

Section 82-205. Location standards

1. **Location Preferences**. To better assist applicants and decision makers in understanding and responding to the community's aesthetic preferences and values, this section sets out listed preferences for locations to be used in connection with SWFs in an ordered hierarchy. An applicant is required to demonstrate with clear and convincing evidence that the higher priority locations are not technically feasible in order for the Director to approve a SWF in a lesser-preferred location.

    a. The order of preference for locating SWFs from most preferred to least preferred is as follows:
        i. locations within non-residential districts;
        ii. any location within 400 feet from an existing small cell in a non-residential district;
        iii. any location within 750 feet from an existing small cell in a residential district;
        iv. any location within 750 feet from a K-12 school, pre-school, or daycare provider, established as of the enactment of this ordinance; and
        v. any location on Central Square or on Main Street between Central Square and the Marlboro Street/Winchester Street intersection.

2. **Prohibited Support Structures**. SWFs shall not be permitted on the following support structures:
    a. new wood poles, unless it is a replacement for an existing wood pole
    b. existing City-owned decorative poles

3. **Encroachments Over Private Property.** No SWF antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's written consent.

4. **No Interference with Other Uses.** SWFs and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any:
    a. above-ground or underground infrastructure;
    b. street furniture;
    c. fire hydrant or water valve; or
    d. doors, gates, stoops, fire escape, windows, or other ingress and egress points to any building appurtenant to the rights-of-way.

5. **Replacement Pole Location.** All replacement poles must:
    a. be located within five feet of the removed pole; and
    b. be aligned with the other existing poles along the public rights-of-way.

6. **Additional Placement Requirements.** In addition to all other requirements in this Article, SWFs, other infrastructure deployments and all related equipment and improvements shall:

a. be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
b. be placed so as to not obstruct a 200 foot all-season safe sight distance at any intersection;
c. be placed at least 5 feet away from any driveway;
d. be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency responder facilities.

Section 82-206. Design standards

1. **Height.** New support structures for SWFs shall not be more than 35 feet in height, or 10% taller than nearby structures within the public right of way, whichever is greater. In no instance shall the overall height of an existing or new structure, including any antennas, exceed 50 feet.

2. **Colors and Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in muted, non-reflective hues that match the underlying support structure and blend with the surrounding environment; provided, however, that SWFs located on Central Square or Main Street between Central Square and the Marlboro Street/Winchester Street intersection shall be black in color. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the Director's prior approval.

3. **Lights.** All lights and light fixtures must be fully shielded, dark skies compliant, and directed downwards so that their illumination effects are confined entirely within the public rights-of-way in a manner consistent with specifications by the Director. All antennas, accessory equipment and other improvements with indicator or status lights shall be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas.

4. **Trees and Landscaping.** SWFs and other infrastructure deployments shall not be installed (in whole or in part) within any tree drip line. SWFs and other infrastructure deployments may not displace any existing tree or landscape features unless:
   a. such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the Director, and
   b. the applicant submits and adheres to a landscape maintenance plan.

   Replacement trees must be installed under the supervision of a NH licensed arborist. Any replacement tree must be substantially the same size as the damaged tree unless approved by the Director.

5. **Signs and Advertisements.** All SWFs and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SWFs and other infrastructure deployments may not bear any other signage or advertisements, including logos, unless expressly approved by the city, required by law, or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.

   a. RF warning signs, if required, shall be located as close to the antenna as possible

and must face towards the street. Unless otherwise required by law or regulation, the background color of the sign must match the color of the pole or surface to which it is attached.

6. **Site Security Measures.** SWFs and other infrastructure deployments may incorporate reasonable and appropriate site security measures subject to approval by the Director. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.

7. **Compliance with State and Federal Regulations.** All SWFs and other infrastructure deployments must comply with all applicable State and federal regulations, including without limitation all applicable regulations for human exposure to RF emissions and the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.). In the event that applicable federal or State laws or regulations conflict with the requirements of this ordinance, the applicant shall comply with the requirements of this ordinance to the maximum extent possible without violating federal or State laws or regulations.

8. **Antennas.** The following provisions in this subsection are generally applicable to all antennas.

    a. **Shrouding / Concealment.** All antennas and associated equipment, including but not limited to cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware, must be concealed from view within a single shroud or radome that is finished to match the color of the support structure.
        i. For pole-top antennas, the shroud shall not exceed one and half-times the median pole diameter and must taper down to pole.
        ii. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.

    b. **Antenna Volume.** Each individual antenna associated with a single SWF shall not exceed 3 cubic feet. The cumulative volume for all antennas on a single small SWF shall not exceed:
        i. 3 cubic feet in residential districts; or
        ii. 6 cubic feet in nonresidential districts.

    c. **Overall Antenna Height.**
        i. Antennas placed on new structures may not extend more than 5 feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
        ii. Antennas placed on existing structures that meet the definition of a collocation or modification application as defined in NH RSA 12-K shall not increase the height of the structure by more than 10% or 5 feet, whichever is greater.

    d. **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project:
        i. more than 18 inches from the support structure;
        ii. over any roadway for vehicular travel; or

iii. over any abutting private property.
iv. If applicable laws require a side-mounted antenna to project more than 18 inches from the support structure, the projection shall be no greater than required for compliance with such laws.

9. **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single SWF or other infrastructure deployment shall not exceed:
   a. 9 cubic feet in residential districts; or
   b. 17 cubic feet in nonresidential districts.

   The volume limits in this subsection do not apply to any undergrounded accessory equipment.

10. **Undergrounded Accessory Equipment.**

    a. **Where Required.**
       i. For proposed facilities on Central Square or on Main Street between Central Square and the Marlboro Street/Winchester Street intersection, accessory equipment (other than any electric meter emergency disconnect switch, where permitted) shall be placed underground.
       ii. In all other locations, accessory equipment shall be placed underground unless the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.

    b. **Vaults.** All undergrounded accessory equipment must be installed in a vault that is load-rated to meet the city's standards and specifications.

11. **Pole-Mounted Accessory Equipment.** The following provisions in this subsection are applicable to all pole-mounted accessory equipment in connection with SWFs and other infrastructure deployments.

    a. **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment, which does not project over the travel way, shall be a minimum of 10 feet above ground level adjacent to the pole.

    b. **Horizontal Projection.** All pole-mounted accessory equipment shall be mounted flush to the pole surface. Pole-mounted accessory equipment shall not project:
       i. more than 18 inches from the pole surface; or
       ii. over any abutting private property.

    c. **Orientation.** Unless concealed in a manner approved by the Director, all pole-mounted accessory equipment shall be oriented so as to reduce visibility from the nearest abutting properties. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting property. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

12. **Ground-Mounted or Base-Mounted Accessory Equipment.** The following provisions in this subsection are applicable to all ground-mounted and base-mounted accessory equipment

in connection with SWFs and other infrastructure deployments.

a. **Concealment.** Where permitted, ground-mounted accessory equipment shall be completely concealed/shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets. Exterior colors shall be muted, non-reflective, and blend with the colors of the surroundings.

b. **Visibility.** No individual ground-mounted accessory equipment cabinet may exceed a height or width of 4 feet. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square feet.

13. **Support Structure Attachments.** The following provisions in this subsection are applicable to all support structure attachments (other than pole-mounted accessory equipment) and other related improvements that serve SWFs and other infrastructure deployments.

a. **Overhead Lines.** The Director shall not approve any new overhead utility lines in areas within which wires, cables, cabinets and other equipment associated with SWFs or infrastructure deployment are primarily located underground. In areas with existing overhead lines, no new overhead utility lines shall be permitted to traverse any roadway used for vehicular transit.

b. **Vertical Cable Risers.** All cables, wires, conduit attachments and other connectors must be routed through conduits within the support structure to conceal from public view. If this is technically infeasible, applicants shall route through a single external conduit or shroud that has been finished to match the underlying pole.

c. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.

d. **Electric Meters.** The Director shall not approve a separate ground-mounted electric meter pedestal. If the proposed project involves a ground- mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet.

e. **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants shall use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the city shall be subject to the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the city's infrastructure and/or prevent interference with the city's municipal functions and public health and safety.

Section 82-207. Application Requirements

1. **All Applications.** All applicants for a SWF License must include the following information and materials as part of a formal SWF License application to the city:

a. **Application Form.** The applicant shall submit a complete, duly executed SWF License application on the then-current form prepared by the city.

b. **Application Fee.** The applicant shall submit the applicable SWF License application fee established in Appendix B of City Code. Batched applications must include the applicable SWF license application fee for each SWF in the batch.

c. **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a "SWF" as defined in this Article. A complete written narrative analysis will state the applicable standard and all the facts that allow the city to conclude the standard has been met. As part of the written statement, the applicant must also include the following:
   i. Whether and why the proposed support is a "structure" as defined by this Article.
   ii. Whether and why the proposed wireless facility meets each required finding for a SWF License as provided in Sec. 82-209, subsection (2), "Required Findings for Approval."

d. **Construction drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a New Hampshire licensed engineer that depict all the existing and proposed improvements, equipment and conditions related to the proposed project. This includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholds, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must:
   i. contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions;
   ii. identify all potential support structures within 400 feet from the proposed project site and call out such structures' overall height above ground level; and
   iii. depict the applicant's preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection.

e. **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the SWF from a vantage point approximately 50 feet from the proposed support structure or location.

f. **Radio Frequency Compliance Report.** The applicant shall submit a Radio Frequency (RF) exposure compliance report that certifies that the proposed SWF

will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch.

g. **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and state law to provide the services and construct the SWF proposed in the application.

2. **Collocation Applications.** In addition to the application requirements listed in Sec. 82-207 subsection (1), all applicants proposing to place a SWF on an existing structure must include the following information and materials as part of a formal SWF License application to the city:

   a. **Property Owner's Authorization.** For any SWF proposed to be installed on an existing support structure not owned or controlled by the city, whether in whole or in part, and which is not owned by the applicant, the applicant must submit a written authorization from the support structure owner(s).

3. **Applications to install a SWF on a New Support Structure**. In addition to the application requirements listed in Sec. 82-207 subsection (1), all applicants proposing to install a SWF on a new or replacement support structure must include the following information and materials as part of a formal SWF License application to the city:

   a. **Public Notices.** For applications to locate a SWF on a new or replacement structure, the applicant shall include with the application a list that identifies all persons entitled to notice, including all owners of record and legal occupants of properties within a 300-foot radius of the proposed SWF. In addition, the applicant shall submit two sets of mailing labels and pay a fee to cover the cost of mailing to each person entitled to notice.

   b. **Site Survey.** For applications to locate a SWF on a new or replacement structure, the applicant shall submit a survey prepared, signed and stamped by a New Hampshire licensed surveyor. The survey must identify and depict all existing boundaries, encroachments and other structures within 75 feet from the proposed project site and any new improvements, which includes without limitation all:
      i. traffic lanes;
      ii. all private properties and property lines;
      iii. above and below-grade utilities and related structures and encroachments;
      iv. fire hydrants, roadside call boxes and other public safety infrastructure;
      v. streetlights, decorative poles, traffic signals and permanent signage;
      vi. sidewalks, driveways, parkways, curbs, gutters and storm drains;
      vii. benches, mailboxes, kiosks and other street furniture; and
      viii. existing trees, planters and other landscaping features.

Section 82-208. Application Review Procedures

1. **Presubmittal Conference.** The City encourages applicants to schedule and attend a

presubmittal conference with the Director and other City staff. This presubmittal conference does not cause the FCC Shot Clock or NH Shot Clock to begin and is intended to streamline the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments implicated by the proposed project; and application completeness issues.

a. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form.

2. **Application Submittal Date.** All applications must be submitted to the city on the monthly application submittal date, which shall generally be the second Tuesday of every month unless specified otherwise by the Director. Prospective applicants may submit up to 5 individual applications at one time as a batch. Any purported application received on a date other than the application submittal date, whether delivered in-person, by mail or through any other means, will be considered filed as of the next applicable application submittal date.

3. **Additional Administrative Requirements and Regulations.** The City Council authorizes the Director to develop, publish and from time to time update or amend license application requirements and technical standards that the Director finds necessary, appropriate or useful for processing any application governed under this Article, not otherwise inconsistent with the requirements of this Article. The City Council further authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments and/or submittals without appointments, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form, on file with the Director, and publicly released, to provide all interested parties with prior notice.

4. **Incomplete Applications.**

a. **Initial Completeness Review.** Within fifteen (15) calendar days following the application submittal date, the Director shall complete an initial review of each application to evaluate whether the submission requirements set forth in Sec. 82-207 have been met. If the Director determines that an application is incomplete, the Director shall notify the applicant in writing of the application's nonconformance, including the specific deficiencies in the application, which, if cured, would make the application complete.

b. **Shot Clock Extensions**

i. *Collocation Applications.* Applicants proposing to collocate a SWF on an existing structure shall have fifteen days to cure all deficiencies in the application.

1. If the applicant submits all information required for an application to

be deemed complete by the Director within 15 days, the shot clock shall not be suspended.

2. If the applicant submits all information required for an application to be deemed complete after fifteen days, the shot clock shall be extended by the number of days beyond the 15-day period that it takes for the applicant to submit this information in accordance with NH RSA 12-K:10.

ii. *Applications to install a SWF on a new structure*. Applicants proposing to install a SWF on a new or replacement structure shall have fifteen days to cure all deficiencies in the application. On the date of the issuance of a written incomplete notice, the shot clock shall be suspended until the applicant submits all information required for an application to be deemed complete by the Director.

c. **Incomplete Application Deemed Denied.** Any application governed under this Article shall be automatically denied when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. A "substantive response" must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.

5. **Application Submittal Notice for SWFs Proposed on New Structures.** Within 15 calendar days after a complete application is received and prior to any approval, conditional approval or denial, the city shall mail public notice to all persons entitled to notice, including all owners of record and legal occupants of properties within a 300-foot radius of the proposed SWF. The notice must contain:
   a. A general project description;
   b. The applicant's identification and contact information as provided on the application submitted to the city;
   c. Contact information for the Director for interested parties to submit comments; and
   c. The date by which comments must be submitted to the Director.

6. **Application Decision Notice**. Within five calendar days after the Director acts on a SWF License application, the Director shall provide written notice to the applicant. If the Director denies an application (with or without prejudice) for a SWF, the written notice must also contain the reasons for the denial.

Section 82-209. Decisions

1. **Decision Deadlines.**
   a. The Director shall make a final decision to approve, approve with conditions, or deny a completed application to collocate a SWF on an existing structure within 45 days of application submittal, unless the NH Shot Clock was extended according to Sec. 82-208 subsection (4)(b).
   b. The Director shall make a final decision to approve, approve with conditions, or deny an application to place or install a SWF on a new support structure within 90 days after the application is determined to be complete.

2. **Required Findings for Approval.** The Director may approve or conditionally approve a complete application for a SWF License when the Director finds that the proposed project:
    a. meets the definition for a "SWF" as defined in this Article, if it involves a wireless facility,
    b. complies with all applicable location standards in this Article;
    c. complies with all applicable design standards in this Article;
    d. would not be located on a prohibited support structure identified in this Article; and
    e. will be in planned compliance with all applicable FCC regulations and guidelines.

3. **Conditional Approvals / Denials Without Prejudice.** Subject to any applicable federal or state laws, nothing in this Article is intended to limit the Director's ability to conditionally approve or deny without prejudice any SWF License application as may be necessary to ensure compliance with this Article.

4. **Appeals.** Any decision by the Director shall not be subject to any administrative appeals, but may be appealable to a court of competent jurisdiction.

Section 82-210. Conditions of Approval

1. **Standard Conditions.** Except as may be authorized in subsection (2) of this section, all SWF Licenses issued under this Article shall be automatically subject to the conditions in this subsection (1).

    a. **License Term.** This license will automatically renew 1 year from its issuance, and each year thereafter, conditional upon receipt of the annual license fee established in Appendix B of City Code prior to the date of license expiration.

    b. **Post-Installation Certification.** Within 60 calendar days after the final inspection for any building permit associated with a SWF, the applicant shall provide the Director with documentation reasonably acceptable to the Director that the SWF or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.

    c. **Build-Out Period**. This SWF License will automatically expire 12 months from the approval date (the "build-out period") unless the applicant obtains all other permits and approvals required to install, construct and/or operate the approved SWF or other infrastructure deployment. Upon written request, the Director may grant up to three extensions to the build-out period in 90-day increments if the applicant demonstrates justifiable cause. If the build-out period and any extension finally expires, the license shall be automatically revoked.

    d. **Site Maintenance.** The applicant shall keep the site, which includes without limitation all licensed improvements, in a safe condition in accordance with the approved construction drawings and all conditions in the SWF License. The applicant, at no cost to the city, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the applicant receives notice or otherwise

becomes aware that such graffiti or other vandalism occurred.

e. **Compliance with Laws.** The applicant shall maintain compliance at all times with all federal, state and local statutes, regulations, orders, permits or other rules ("laws") applicable to the applicant, the subject property, the SWF or other infrastructure deployment or any use or activities in connection with the use authorized in this SWF License. The applicant expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the applicant's obligations to maintain compliance with all laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable law shall be deemed to relieve, waive or lessen the applicant's obligation to comply in all respects with all applicable laws.

f. **Adverse Impacts on Other Properties**. The applicant shall avoid, or immediately remedy if necessary, any adverse impacts on nearby properties that may arise from the applicant's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site.

g. **Inspections; Emergencies**. The applicant expressly acknowledges and agrees that local, state, and federal officers, officials, staff, emergency personnel, agents, contractors or other designees may inspect the licensed improvements and equipment to disable or remove any licensed improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons.

h. **Applicant's Contact Information**. Within 10 days from the date of approval of the SWF License, the applicant shall furnish the city with accurate and up-to-date contact information for a person responsible for the SWF or other infrastructure deployment, which includes without limitation such person's full name, title, direct telephone number, mailing address and email address. The applicant shall keep such contact information up-to-date at all times and promptly provide the city with updated contact information if either the responsible person or such person's contact information changes.

i. **Performance Security.** Before the city issues any permits required to commence construction in connection with this license, the applicant shall post a security in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The preferred forms of security are certified checks made out to the City of Keene and letters of credit.

j. **Truthful and Accurate Statements.** The applicant acknowledges that the city's approval relies on the written and/or oral statements by applicant and/or persons authorized to act on applicant's behalf. In any matter before the city in connection with the SWF License or the SWF or other infrastructure approved under the SWF

License, neither the applicant nor any person authorized to act on applicant's behalf shall, in any written or oral statement, intentionally provide information that is materially and/or factually incorrect or omit any material information necessary to prevent any material factual statement from being incorrect or misleading. Failure to comply with this condition shall be grounds for license revocation.

k. **License Revocation**. The Director may revoke a license granted under this Article when the Director finds substantial evidence that the facility is not in compliance with the requirements of this Article, and with any applicable laws, which includes without limitation, any license or permit issued in connection with the facility and any associated conditions required by such license(s) or permits.
   i. Before any decision to revoke a license granted under this Article, the Director must issue a written notice to the applicant that specifies the facility, the violation(s) to be corrected, the timeframe within which the applicant must correct such violation(s), which shall be a minimum of 30 days, and that the Director may revoke the license for failure to correct such violation(s).
   ii. If the applicant does not correct the violations as specified in the written notice within the timeframe stated, the Director may issue a decision to revoke the license. Within five (5) business days after Director makes a decision to revoke a license, the Director shall provide the applicant with a written notice that specifies the revocation and the reasons for such revocation.

l. **Records.** Any and all documentation or data submitted to the City in connection with a SWF License application and license is a public record subject to the requirements of NH RSA 91-A, unless otherwise claimed to be confidential by the applicant and agreed to by the City in accordance with state law. In the event of a public record request for confidential information, the city shall notify the Licensee within 5 calendar days of receipt of the request, and the Licensee may, at its sole cost and expense, seek an immediate protective order from the NH Superior Court. In the event that the Licensee does not take such action within 30 days of notification, the city shall release the record subject to redactions required by law.

m. **Abandoned Facilities**. The SWF or other infrastructure deployment authorized under this SWF License shall be deemed abandoned if not operated under a valid license for any period of time that is 90 days or longer. The City shall notify the applicant in writing of the abandonment. Once deemed abandoned, the applicant and/or SWF owner shall completely remove the SWF or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition substantially similar to the condition at the time the license was initially granted. In the event that neither the applicant nor the SWF owner complies with the removal and restoration obligations under this condition within a 30-day period after the notice by the City, the city shall have the right (but not the obligation) to perform such removal and restoration without further notice, and the applicant and SWF owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities.

n. **Trees and Landscaping.** The applicant shall replace any landscape features

damaged or displaced by the construction, installation, operation, maintenance or other work performed by the applicant or at the applicant's direction on or about the site. If any trees are damaged or displaced, the applicant shall hire and pay for a NH licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city.

o. **Utility Damage Prevention**. The applicant shall comply with the requirements of NH RSA 374:48 – 56, and any adopted administrative rules.

p. **Rearrangement and Relocation.** The applicant acknowledges that the city, in its sole discretion and at any time, may perform any work deemed necessary, useful or desirable by the city (collectively, "city work") in the City right-of-way. If the Director determines that any city work will require the applicant's SWF located in the public rights-of-way to be rearranged and/or relocated, the Director shall issue written notice to the applicant of the work to be performed, and the action to be taken by the applicant. The applicant shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation within 10 days after the Director's notice. If the applicant fails or refuses to either permanently or temporarily rearrange and/or relocate the applicant's SWF or other infrastructure deployment within 10 days after the Director's notice, the city may (but will not be obligated to) cause the rearrangement or relocation to be performed at the applicant's sole cost and expense.
    i. The city may exercise its rights to rearrange or relocate the applicant's SWF or other infrastructure deployment without prior notice to applicant when the Director determines that city work is immediately necessary to protect public health or safety.
    ii. The applicant shall reimburse the city for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

2. **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any SWF License as may be necessary or required to ensure compliance with the City of Keene Code of Ordinances, this Article or other applicable law. To the extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to SWFs are no more burdensome than those applied to other similar infrastructure deployments. The Director shall provide written notice to the applicant of any required alteration to the license.

Section 82-211. Preapproved designs

1. **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the city, the City Council authorizes the Director to designate one or more preapproved designs for SWFs and other infrastructure deployments. This Section sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.

2. **Adoption.** The Director may, in the Director's discretion, establish a preapproved design

when the Director finds that a proposed preapproved design meets or exceeds the design standards in this Article. The Director shall make preapproved designs publicly available at the offices of the Director and at the time of application.

3. **Repeal.** The Director may repeal any preapproved design by written notice posted at Keene City Hall and at the offices of the Director. The repeal shall be effective to any application received after the date of the repeal.

4. **Modified Findings**. When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Sec. 82-209 subsection (2)(c) of this Article are satisfied and shall evaluate the application for compliance with the remaining findings for approval listed in Sec. 82-209 subsection (2).

5. **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

Section 82-212. Definitions

The definitions in this Section shall be applicable to the terms, phrases and words in this Article. If any definition assigned to any term, phrase or word conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

"Accessory equipment" means equipment other than antennas used in connection with a SWF or other infrastructure deployment. The term includes "transmission equipment" as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

"Antenna" means an apparatus designed for the purpose of transmitting or receiving electromagnetic radio frequency signals used in the provision of personal wireless service and any comingled information services.

"Antenna facility" means an antenna and associated accessory equipment.

"Applicant" means any person who submits an application and is a wireless provider.

"Batched application" means more than one application submitted at the same time.

"Clear and convincing evidence" means the presentation of objective facts which are sufficient to show that it is highly probable, and not merely likely, that the higher priority location is not technically feasible.

"Collocation" means mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure, as defined by the FCC in 47 C.F.R. § 1.6102(g) (as may be amended or superseded). "Collocation"

does not include a "substantial modification."

"Decorative pole" means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

"Director" means the Public Works Director or their designee.

"FCC" means the Federal Communications Commission or its duly appointed successor agency.

"FCC Shot Clock" means the presumptively reasonable timeframe, accounting for any tolling or extension, within which the city generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded.

"Height" means the distance measured from ground level to the highest point on the structure, even if such highest point is an antenna. The term "ground level" means the average existing grade or elevation of the ground surface within the footprint of the structure prior to any alterations such as grading, grubbing, filling, or excavating.

"NH Shot Clock" means the presumptively reasonable timeframe, accounting for any tolling or extension, within which the city generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined in NH RSA 12-K:10 and as may be amended or superseded.

"Nonresidential district" means any zoning district that is not included in the definition of "Residential district."

"OTARD" means an "over-the-air reception device" and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded.

"Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

"Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. See 47 U.S.C. § 332(c)(7)(C)(i).

"Personal wireless service facilities" means facilities for the provision of personal wireless services as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

"Persons entitled to notice" means the record owners and legal occupants of all properties within a 300-foot radius of the proposed SWF. Notice to the legal occupants shall be deemed given when sent to the property's physical address.

"Public right-of-way" or "Public rights-of-way" means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes, or other public access.

"Residential district" means a zoning district that is intended primarily for residential uses. This term includes the following zoning districts:

1. Rural
2. Low Density
3. Low Density-1
4. Medium Density
5. High Density
6. High Density-1
7. Residential Preservation

"RF" means radio frequency or electromagnetic waves.

"Shot clock days" means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock or NH Shot Clock. The term "shot clock days" does not include any calendar days on which the Shot Clock is tolled (i.e., "paused").

"Small Wireless Facility" or "SWF" means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, except as modified in this Article. A SWF meets each of the following conditions:

1. The facility is mounted on a structure that:
    a. is 50 feet or less in height including the antenna; or
    b. is no more than 10 percent taller than other adjacent structures; or
    c. does not extend the existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

2. Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet.

3. All other wireless equipment attached directly to a structure associated with the facility is cumulatively no more than 28 cubic feet in volume.

"Support structure" means a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded. This section states that a "structure" means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

"Technically infeasible" means a circumstance in which compliance with a specific requirement within this Article is physically impossible and not merely more difficult or expensive than a noncompliant alternative.

George S. Hansel, Mayor

Passed May 21, 2020