



**PLANNING, LICENSES AND
DEVELOPMENT COMMITTEE
AGENDA**

Council Chambers A
June 22, 2016
7:00 PM

City of Keene
New Hampshire

David C. Richards
Philip M. Jones
Bettina A. Chadbourne
George S. Hansel
Robert B. Sutherland

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- | | |
|---------------------|---|
| 1. PERIODIC REPORT | Cities for Climate Protection |
| 2. COMMUNICATION | Anthony & Fenella Levick – Request to Sell Fruit Beer at the Farmer’s Market of Keene |
| 3. COUNCIL REFERRAL | Ban on Single Use Plastic Bags |

MORE TIME ITEMS:

- A. Fall Festival Committee – Use of City Property

More Time Awaiting Either Public Hearings/Planning Board Review/Joint Committee:

- A. Ordinance O-2016-01: Creation of Residential Preservation District, a Business Growth District and Re-Use District
B. Ordinance O-2016-02: Marlboro Street Project – Zone Change

Possible Non-Public Session

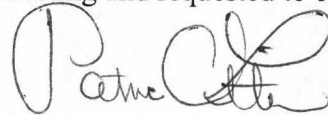
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Mooselick Brewing
Monadnock Berries
Anthony & Fenella Levick
545 West Hill Rd
Troy, NH 03465
www.monadnockberries.com

The City of Keene
The Mayor & The City Council
3 Washington St
Keene, NH 03431

In City Council June 16, 2016.

Referred to the Planning, Licenses and Development
Committee, which will meet Wednesday, June 22, 2016
at 7:00 PM in Council Chambers, Keene City Hall. You are
hereby notified of the meeting and requested to be present.



City Clerk

Date June 13, 2016

Attn: The Mayor & The City of Keene, City Clerk's Office

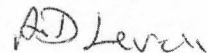
Seeking Permission to Sell our Fruit Beer at the Farmer's market of Keene

To Whom it may concern, I am writing this letter to apply to the Mayor and the City of Keene for permission to sell our fruit beers once again at the Farmer's Market. I have already applied to the Farmers Market and they have granted me permission.

This is a value added product for our farm as we use the fruit that we grow, in the beer. The home farm, Monadnock Berries, is located at 545 West Hill Rd, Troy, NH 03465 and has been providing the local folk with berries for over 20 years. Our brewery, Mooselick Brewing is located at 244 North Main St, Troy, NH 03465 our liquor license number is 203122

I ask you to kindly grant me permission to sell our beer at the Farmers Market of Keene, located in the City of Keene, NH 03431.

Your Truly,

Anthony D Levick 

Fenella D Levick 

June 14, 2016
The Farmers Market of Keene
PO Box 425
Keene NH 03431

Office of the Clerk
Keene City Hall
3 Washington St
Keene NH

Dear Mayor Lane and the Keene City Council,

This letter is to inform you that Mooselick Brewing/Monadnock Berries has permission from the Farmers Market of Keene to sell the beer they and/or their employees have made at the Keene Farmers Market in 2016.

Sincerely,

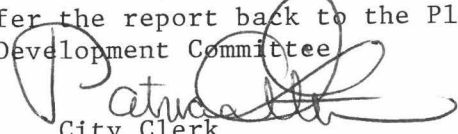
A handwritten signature in black ink, appearing to read 'SP', with a long horizontal flourish extending to the right.

Susan Parke-Sutherland
Co-coordinator
Farmers Market of Keene

In City Council May 19, 2016.
Tabled until the next regular
meeting.


City Clerk

In City Council June 16, 2016. Voted with five
opposed to refer the report back to the Planning,
Licenses and Development Committee


City Clerk 3A3

City of Keene
NEW HAMPSHIRE

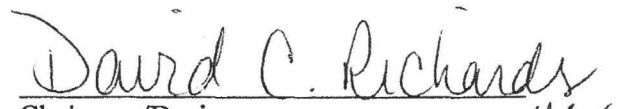
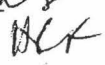
May 11, 2016

TO: Mayor and City Council

FROM: Planning, Licenses and Development Committee

SUBJECT: **CONTINUED DISCUSSION: Materials to Consider for a Ban on Single Use Plastic Bags**

On a vote of 4-1, the Planning, Licenses and Development Committee recommends this be accepted as informational. Chair Richards voted in opposition.


Chairman/Designee 

Background:

Chair Richards deferred to the City Attorney to hear his findings.

Attorney Mullins reiterated the Committee's last charge for him to act as a clearinghouse for the information to be submitted with respect to the proposed ban on plastic bags. He noted he did not include every last scrap of information provided to him in the packet. Continuing, Attorney Mullins noted he did want to provide information provided by the proponents that gave a good overview. He also included in the packet a letter submitted by Portsmouth's Mayor on behalf of their City Council to the Department of Environmental Services on April 21, 2016. This letter essentially raised the question Attorney Mullins raised with this Committee which is the authority of municipalities in New Hampshire to go forward and take this kind of action.

Attorney Mullins also included two memoranda; 1) from an outside Attorney to the City who concludes it is *likely* permitted under RSA 149-M, and 2) a competing memorandum prepared by Portsmouth's in-house Counsel who believes it would not be permitted under RSA 149-M. Attorney Mullins continued through the list of materials both pro's and con's included in the packet (Pages 6 through 72).

Attorney Mullins noted his role is not to take an advocacy position with respect to the legislative matter that you may decide, but to try to give you the information you need to make that decision. Attorney Mullins said his position with respect to authority has not really changed; it is very unclear under RSA 149-M, if the Council wanted to proceed with a ban, it would have to be located in that Chapter (reduce, reuse, and recycle).

Attorney Mullins said it is important to understand that Portsmouth is a little ahead of us on this, and hopefully they will be receiving some kind of answer from the Department of Environmental Services. Attorney Mullins also reported contacting the Department of Environmental Services, albeit not as formally as Portsmouth and the Department basically said it is not permitted and it is not prohibited. At this point Attorney Mullins turned the floor over to the proponents of the ban.

Danielle Baudrand of 19 Bridge Court said she was aware of the letter and was advised she could speak to City Council. She was also advised that Attorney Mullins had sent a letter asking for a recommendation. Ms. Baudrand continued ultimately she is still told her group has the authority to move forward with this.

Chair Richards asked the City Attorney if the Department of Environmental Services was going to weigh in on this. Attorney Mullins said if they have, he has not heard; he added the last information he received was a week ago Friday. Chair Richards commented to Ms. Baudrand that someone is asking so at least they will give us an answer to that one point of the debate whether they think it is or is not, authorized. Ms. Baudrand noted she still feels we should move forward with this pointing out all the efforts put forth to this point. Ms. Baudrand reiterated comments from previous testimony. She said she does not understand why we cannot go forward and let the full Council and the public speak.

Councilor Terry Clark referred to the court case *North Country Environmental Services v. Town of Bethlehem* (2004) noting findings that the intention of RSA 149-M does not conflict with a town banning plastic bags because it is in the interest of the town to do away with litter. Councilor Clark also noted the Attorney's conclusion that a ban does not conflict with the law. Councilor Clark noted his research did not reveal any other case to override this case law. Councilor Clark said he believes there is authority to do this; he also agrees it is time to ask the Council if they want to move forward with this. He also suggested we might want to wait until Portsmouth gets a response from the Department of Environmental Services; Councilor Clark feels this is important enough to ask Council whether or not they want to move forward.

Chair Richards said he agrees with Councilor Clark's assessment and that we should get Council to weigh in on whether or not they want us to proceed. Chair Richards noted he is in favor of this and pointed out the Committee has not been behind him on this one. Pointing out staff's

workload with other issues already, Chair Richards said it really is important to gauge the Council's support.

Chair Richards asked for questions or comments from the Committee.

Councilor Sutherland said there are two sides to this coin noting he previously expressed his concerns. He also addressed the consequences previously expressed by Councilor Jones. Councilor Sutherland pointed out we have not heard from the local businesses; referring to fossil fuels, he suggested our largest employer in town would not exist if we got rid of fossil fuels. Councilor Sutherland suggests that RSA 149-M:17 clearly denotes the town's responsibility and authority, and nowhere in that section is the authority granted to towns to ban anything. Councilor Sutherland reiterated comments from his previous testimony adding he feels we find ourselves at somewhat of an impasse. Councilor Sutherland advised he did read a good deal of the materials. He reiterated his comments saying he does not feel this is something we can do and we should not be an activist Council.

Councilor Chadbourne thanked Ms. Baudrand for bringing this forward, being caring, and thinking about the coming generations. She also thanked the City Attorney for providing all the information to give the Committee a more balanced approach to the issue. Councilor Chadbourne would like to see a community conversation engaging Keene State College and Antioch University on a bag initiative where they create a bag to sell and promote. This might get people talking and trying to change it without having an ordinance which is problematic with no way to regulate or enforce. Councilor Chadbourne noted the community concern with economic development; she also noted speaking to several businesses who claim this would be a burden. She provided information from Richard French of the Works Café and his efforts to go green along with the additional costs he has incurred. Councilor Chadbourne referred to the article "Bag the Ban" comparing energy and costs for plastic versus paper bags; she pointed out this might have a large impact on a small business owner. She noted her concerns with the timing of this issue adding she would prefer to start with a soft-sell and get a community conversation going.

Ms. Baudrand commented that Keene High School is one of the proponents of this issue; she noted they collected several hundred signatures on a petition. Ms. Baudrand suggested the conversation is already going on in the community. She also noted being in touch with Keene State College who is trying to ban plastic bottles on campus.

Councilor Clark commented this has only been brought to court once; this is the only case law and it favors a ban. Councilor Clark made reference to ordinances in Massachusetts noting he sent these links to Committee members. He noted these ordinances exempt small businesses and provide for a buyback. Councilor Clark commented this is a local issue here and to only apply economic reasons to this is very shortsighted.

Councilor Sutherland piggybacked on some of Councilor Chadbourne's earlier comments. He said if we were to get a movement going in the City keeping in mind the intent to reuse/recycle it would not be just about plastic bags; it would also include paper bags. Councilor Sutherland thinks this would be a great project for someone from the High School or Antioch University.

Councilor Clark pointed out the City of Keene does recycle paper bags, but they do not recycle these plastic bags. He also pointed out the big recycling boxes at the grocery stores (plastic bags) are dumped at the Keene landfill. Councilor Clark suggested perhaps they are not aware that Keene does not recycle those things.

Councilor Hansel also echoed Councilor Chadbourne's comments; he also suggested perhaps we should look at the Recycling Center if that is the problem. He commented let us find a way to recycle the bags. Councilor Hansel shared the questions he asks himself when Council is taking a hard look at something; is this business friendly and would this action have any unintended consequences that might inhibit or diminish our economic development efforts and initiatives. Continuing, Councilor Hansel said looking at all this information he is unable to support a ban on plastic bags.

Chair Richards said he would make a couple of comments before opening the floor to the public because he feels we would have this same debate next week. Chair Richards agreed with the City Attorney the legal questions are murky; he noted we have made motions in the past where they were murky and we won. He also commented you do not know what the courts will do. After additional comments Chair Richards said he does not think this leads to a ban on all plastics; we are not going to stop making pacemakers or automobiles. Chair Richards pointed out one cost; he noted we had to put two million dollars in an account so we could monitor the landfill for the next 20 years. He added filling landfills has unbelievable costs between opening and closing them. Addressing Councilor Sutherland's comment regarding an "activist Council", Chair Richards commented some Councilors think we should stay local. Chair Richards believes we should set the standard and lead on these things. Chair Richards agreed we should have a more general conversation about recycling. Chair Richards reiterated he does support this and agreed we do need to know whether the full Council is onboard or not.

Chair Richards asked for comments/questions from the public.

Darryl Masterson of 44 Willow Street said he does not necessarily oppose the idea of getting rid of the plastic grocery bags. Mr. Masterson suggested the term "single use plastic bags" is way too broad and he does not think City Council should be painting with a huge brush. He said if you want to ban grocery bags then ban grocery bags. Mr. Masterson agreed with comments by Councilor Sutherland in that one thing leads to another; where will it stop. Chair Richards commented this is another reason why he wants this to go to full Council for discussion. Mr. Masterson also suggested talking with Hannaford's pointing out that he recently shopped at one in Maine where plastic bags are banned.

Bridgett Hansel of 61 Bradford Road commented she hopes the Committee knows that Keene is a leader in sustainability in this country which is an important thing to think about. Ms. Hansel also advised there was a very good article in the New Yorker (May 2, 2016) that addresses the movement to ban plastic bags in New York City which did succeed. Ms. Hansel also addressed the landfill noting plastic will be there forever; she added that is not true of paper bags.

Karrie Kalich of 420 Main Street said she wanted to take us back to why this is important; suggesting it turns into will this be a hassle. She said this issue is important to us because we care

about the environment and the beauty of our community; most importantly we care about what the world will look like for future generations. She suggested we have no choice but to act and be responsible. Ms. Kalich agreed with Chair Richards comment about setting the bar in Keene. Ms. Kalich indicated she had spoken to local vendors and Hannaford's who said they would support whatever the community wants to do. She concluded noting she is happy there is at least some support for this concern.

Georgia Cassimatis of Swanzey referred to Councilor Sutherland's comments about the breakdown of fossil fuels. She stressed the point that this is a renewable resource that will live as long as we are here; she added we can count on the trees. Ms. Cassimatis' next point was all she sees as the number one point with plastic bags is convenience. She finds this point very uneducated and just does not get it. Ms. Cassimatis suggested it will take the Council doing something for us that will create the paradigm shift. She also suggested the overwhelming resources for banning plastic is evident; pointing out the Committee only provided one resource in opposition. Ms. Cassimatis is not in favor of an everything plastic ban; she considers this an extreme and not what the proponents are trying to do. She does agree with involving the Main Street businesses.

Councilor Hansel said he sees this as two issues; 1) you have the vision and argument against plastics and plastic bags, and 2) then you have the vehicle to get you there. Councilor Hansel commented he sees a lot of positive energy here and agrees seeing the stores voluntarily stop using plastic bags would be a positive method to get to the vision being talked about. The vehicle to the ban, the logistics, enforcement, ramifications, and costs are big things that are kind of behind the scenes. He suggested continuing with the grassroots efforts will have the most effect and get you (the proponents) closer to the people you are trying to educate. He continued an ordinance does not educate the people, it tells them what to do. Councilor Hansel hopes this can move forward without some sort of mandate from the City.

Councilor Chadbourne advised Mr. Hansel there was information in the packet regarding the efforts to ban plastics in New York City. Councilor Chadbourne acknowledged that Keene is a green city. She reiterated her previous suggestions/concerns 1) the timing, and 2) she prefers the soft sell and getting businesses involved. After additional comments Councilor Chadbourne said she does not see this as a stopping point, but as a beginning.

Councilor Sutherland clarified earlier comments noting he thinks the laws we have on the books in New Hampshire are with good intent. He addressed solid-waste suggesting it includes everything. His understanding after reading and researching is that vendors went to thicker bags after a ban was imposed; it is also his understanding that paper uses more energy and more water to produce and to recycle, which was his point. Councilor Sutherland also agreed recycling of plastic bags is something the City should consider or direct to occur. Councilor Chadbourne referred to previous testimony from Councilor Clark regarding it taking a year to gather enough plastic bags at the Recycling Center to create a bale that they then could send off/sell. She noted this is one of the reasons why we do not recycle them at this time. Councilor Clark affirmed this to be true.

Chair Richards asked the City Attorney if the Committee should ask for a draft Ordinance in order to gauge Council support. Attorney Mullins said the Committee could make a recommendation to City Council to direct City staff to draft an Ordinance with respect to the ban on single use plastic bags.

There being no further questions/comments from the public or Committee Chair Richards asked for a motion.

Councilor Sutherland made the following motion which was seconded by Councilor Jones.

On a vote of 4-1, the Planning, Licenses and Development Committee recommends this be accepted as informational. Chair Richards voted in opposition.

Chair Richards noted he will call this back up at Council. Attorney Mullins recommended talking to the Mayor about the process. Chair Richards asked for confirmation that this is possible. Attorney Mullins replied in the affirmative. Chair Richards advised this will go to full Council next week where the debate will continue.