



City of Keene
New Hampshire

**PLANNING, LICENSES AND
DEVELOPMENT COMMITTEE
AGENDA
Council Chambers A
October 26, 2016
7:00 PM**

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

-
1. Periodic Report - Zoning Board of Adjustment
 2. Relating to the Establishment of the Main Street Historic Overlay District
Ordinance O-2016-13
Ordinance O-2016-14-A
Ordinance O-2016-15
 3. Council Policy - Political Advertising on City Property and Rights-of-Way
Resolution R-2016-31

MORE TIME ITEMS:

- A. Advocacy Letter Request – NH Community Solar – Cities for Climate Protection
- B. Request for Lodging House License - 85 Winchester Street
- C. Relating to Dormitory, Lodging or Rooming Houses and Residential Board and Care
- D. Ordinance O-2016-01: Creation of Residential Preservation District, a Business Growth District and Re-Use District
- E. Ordinance O-2016-02: Zone Change - Marlboro Street Project Area
- F. Amendment to the Zoning Ordinance - High Density 1

Non Public Session



City of Keene, N.H.
Transmittal Form

October 25, 2016

TO: Planning, Licenses and Development Committee

FROM:

THROUGH: Patricia A. Little

ITEM: 2.

SUBJECT: Relating to the Establishment of the Main Street Historic Overlay District

ATTACHMENTS:

Description

Farrar Communication

NH Division of Historical Resources

Ordinance O-2016-13

Ordinance O-2016-14-A

Ordinance O-2016-15

BACKGROUND:

The Public Hearing on the establishment of a Main Street Historic District was held October 20, 2016. The Mayor continued the public hearing until 1:00 PM on October 25, 2016 for signed, written comments. A communication was submitted from Jeananne Farrar who encouraged the Council to protect what remains of Keene's historic, cultural and architectural places.

Mayor Lane, City Councilors, City Manager,

I am writing today in regard to the public hearing held on October 20, 2016, at city hall concerning the Main Street Historic District. The Heritage Commission did its work appropriately in following procedure to establish this district starting in 2008. The subcommittee that drew up guidelines/regulations for the district were well versed in that procedure as well. They were stonewalled from the outset by a few property owners living in the neighborhood at the far end of the street who wanted no part of it and were not about to listen to or work with them. Sad story.

Perhaps if you go to the city's web site and read the Area Form for the Keene Main Street Historic District, the report compiled by the Preservation Company for the city, it would help you to fully understand what we have the risk of losing without the protective guidelines that should be made. Every master plan that has been produced has called for the protection of the Main Street Corridor.

Keene State College has been cooperative in the past in the building of the Alumni Center and honoring other agreements relating to expansion to the east side of Main Street. Their buildings and campus have greatly expanded and are well cared for adding great beauty to the area. As well, the Historical Society of Cheshire County respects their properties. The history and programs of the Wyman Tavern are truly unique. There are others on the street who have posed no opposition to this district. My point is the majority of the Main Street area do not seem to have a problem with being included in an historic district. It would seem the neighborhood property owners would welcome the protection and honor of being a part of it

The idea that we should be likened to Strawberry Bank is not only silly, it is unrealistic, and shows a lack of understanding of the process. Each community in the state has its own unique history, and it is important that we should respect that. We do not, nor should we, be a Sturbridge Village or museum-like city. We, as a city, are constantly evolving but should strive to maintain some of the character of the community instead of becoming an Anyplace America. Not every area of the city has the kind of significant history such as this one that warrants protection.

There have been numbers of people/volunteers who have come forward in the past sixteen years who have worked countless hours helping with HC and HDC work. Those working on this district recently have been met with rudeness, the spread of incorrect information and dealt with unpleasant and disappointing encounters with some of the people in the proposed district.

Is there any wonder the HC and the HDC have chosen to withdraw the application for placing this area in a special district? The true test of a democracy is the willingness to learn about the process by attending public meetings (HC and HDC are always open to the public), understanding it, and asking questions so intelligent discourse can take place. In other words: get involved. The guidelines have been

watered down to the bare minimum and with the recent amendments at the October 20th meeting are nearly useless.

Efforts, past and present, have been directed to caring for and protecting what remains of our historic, cultural, and architectural places in our community. I certainly hope that continues to have the support of our governing bodies and the community at large. That is now in your hands. We are the stewards for a short time now, and, hopefully, for future generations

This year is the 50th anniversary of the National Historic Preservation Act. The state of New Hampshire has adopted this through its legislature and the New Hampshire Division of Cultural and Historic Resources. There are currently over 56 Historical Districts in New Hampshire and many active and involved preservationists.

FYI:

I have enclosed the information as an attachment on the New Hampshire statutes under Project Review and Compliance (Section 106). Simply scroll down to New Hampshire Statutes Annotated 227-C:9 Directive for Cooperation in the Protection of Historic Resources. I hope you will find time to read it. This was of help in the past with the NHDOT project of the Route 101 bypass, and with the KSC Alumni Center.

Thanks for listening.

Sincerely,

Jeananne Farrar

A handwritten signature in cursive script, reading "Jeananne Farrar".

New Hampshire Division of HISTORICAL RESOURCES

Tuesday, October 25, 2016

an official NEW HAMPSHIRE government website



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skip navigation

- HOME
- About Us
- Programs
- Project Review & Compliance (Section 106)
- SCRAP
- Publications
- Grants
- Consultant Lists
- News & Events
- Links
- Contact Us
- Site Map



Project Review & Compliance > Introduction to Project Review - Section 106

Historic preservation "Review & Compliance" is a consultation process to identify significant historic properties so that any harm to them from government-assisted actions can be avoided or minimized. It is intended to be a conflict-resolution and problem-solving system that balances the public interest in historic preservation with the public benefit from a variety of governmental initiatives.

Public Policy

Historic properties that are significant in history, architecture, archaeology, engineering, and culture are recognized by both the state and the federal governments as resources to be preserved and interpreted for the benefit of all citizens. They are non-renewable resources that are important to our individual and collective identity, and they are worthy of protection, investigation, interpretation, and conservation.

This policy does not mean that all properties of sufficient age to be considered "historic" are significant resources, nor does it mean that all significant historic properties can or should be saved. Rather, it is a directive to prevent the needless destruction of our tangible cultural heritage, and a challenge to seek conditions under which significant historical resources can exist in harmony with government-aided social and economic changes.

Statutory Authority

All federally funded, licensed, or assisted projects in New Hampshire are subject to the review requirements of **Section 106** of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), implemented by the procedures of the federal **Advisory Council on Historic Preservation (ACHP), Protection of Historic Properties (36 CFR Part 800)**.

Federal agencies or their legal designees are required to take into account the possible impacts of their projects on historical resources, and to submit proposed projects to the Director/State Historic Preservation Officer (SHPO) of the Division of Historical Resources, for a determination of potential effects on properties that are listed, or are eligible for listing, in the National Register of Historic Places.

Section 106 Process

The "Section 106" procedures require public participation and consultation with the State Historic Preservation Officer and others for each part of the process:

1. INITIATION: defining the undertaking, determining the area of potential affect (APE), developing a public participation plan, and identifying other consulting parties.
2. IDENTIFICATION / EVALUATION OF HISTORIC PROPERTIES: identifying those properties already listed in the National Register of Historic Places, preparing documentation for potentially eligible properties, and making a "determination

of eligibility" to determine whether a property or district is eligible for the National Register. Section 106 gives equal consideration to properties that are listed in OR determined to be eligible for the National Register.

3. DETERMINATION OF EFFECT: applying the Advisory Council's "Criteria of Effect" and making a "determination of effect" (if the property is eligible for the National Register, whether the project will affect its historical and architectural or engineering or archaeological integrity and significance and values). If the site is part of a National Register-eligible district, the "determination of effect" considers, among other factors, whether the proposed undertaking would have an adverse effect on the district by changing the ratio of historic to non-historic properties; whether it would impact significant archaeological resources; whether it would alter the qualities of the district and its setting, associations, and historical feeling that make it eligible for the National Register; whether it would introduce visual, audible, or other elements that are incompatible with the historic nature and prevailing architectural character of the district; whether it would lead to neglect, deterioration, or destruction of historic properties; and whether it would cause or result in transfer, lease, or sale of historic properties without adequate historic preservation conditions or provisions.

4. RESOLUTION OF ADVERSE EFFECTS: if adverse effects of state or federal projects are identified or appear to be likely, consultation continues to identify ways to achieve the project purpose and to avoid, minimize, or mitigate adverse effects, taking into consideration the values of the historic property or district, the parts of the undertaking that are essential to achieving the purpose of the project, and the adequacy of planning and of funding to achieve both the project objectives and a satisfactory resolution of adverse effects. Mitigation may include avoidance, alternative treatments, redesign, relocation, data recovery, documentation, public education initiatives or interpretive measures.

5. COMPLETION: if consultation is successful, a Memorandum of Agreement is prepared. The MOA is a legally binding document with stipulations that describe the measures that the project sponsor and/or lead agency will take to avoid, minimize, or mitigate adverse effects. If there is no agreement, the lead agency continues consultation with the Advisory Council, and the Council's final comments must be taken into account by the agency.

Consulting Parties

Changes in the ACHP regulations that became effective in January 2001 encourage early compliance with the Section 106 process. One of the most important provisions of the revised regulations is a clearer role for "consulting parties," which are defined as State Historic Preservation Officers (SHPOs), applicants, local governments, and Native American tribes and their Tribal Historic Preservation Officers (THPOs). Other individuals and organizations that have a demonstrated interest in the undertaking may also ask to become consulting parties. The federal sponsor agency, after consulting with the SHPO, decides whether they may participate. In addition to the coordination with consulting parties, the regulations call for earlier and broader general public participation in the review process. This is intended to insure that the people and entities most affected by a federally funded, assisted, or licensed project have a stronger voice in the decisions relating to it.

The Advisory Council has coverage of the revised regulations at its web site, **www.achp.gov**. Protecting Historic Properties: A Citizen's Guide to Section 106 Review, online at **www.achp.gov/citizensguide.html**, explains the Section 106 process to the general public and shows how citizens can get involved in the process. See especially "Influencing Project Outcomes," which describes how citizens may ask to become consulting parties and the roles of consulting parties in the Section 106 review procedures.

Use of NEPA Compliance to Meet Section 106 Requirements

Agencies are authorized to use the preparation of Environmental Impact Statements and

Environmental Assessments under the National Environmental Policy Act to meet Section 106 needs, in lieu of following the Advisory Council process. This is a major opportunity for agencies with well-developed NEPA processes to simplify concurrent reviews, reduce costs to applicants, and avoid redundant paperwork.

New Hampshire State Review Procedures

All New Hampshire state-licensed, assisted, or contracted projects, activities, and programs are subject to the review requirements of a similar state law, **RSA 227-C:9**, as implemented by state administrative rules. State agencies, departments, commissions, and institutions are required to submit such undertakings to the SHPO for a determination of whether such proposed actions are located in, or may affect, historical resources.

Technical Assistance Reviews

If a project is conducted entirely with local, private or donated funds, and no federal or state programs are involved, review by the Division of Historical Resources is usually not required. If federal or state funds, permits or licensing become involved later, the project should then be submitted to the Division of Historical Resources for review. However, project sponsors may request a technical assistance review from the DHR (subject to DHR staff workloads and other commitments), to determine whether the proposed work meets The Secretary of the Interior's Standards for the Treatment of Historic Properties, or what would be needed to meet the standards. The DHR can also recommend less costly and damaging alternatives that would otherwise not comply with the standards.

But, if the work or the impact of the project is contrary to the Secretary of the Interior's Standards, and is knowingly authorized, and if, at a later time, the sponsor does apply for federal funds or permits for work at the property, the project's eligibility for federal assistance, licenses, permits, or approval could be jeopardized.

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NATIONAL HISTORIC PRESERVATION ACT OF 1966

Section 106 [16 U.S.C. 470F]

ADVISORY COUNCIL ON HISTORIC PRESERVATION, COMMENT ON FEDERAL UNDERTAKINGS

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

227-C:9 Directive for Cooperation in the Protection of Historic Resources.

All state agencies, departments, commissions, and institutions shall fully cooperate with the division in the location, identification, evaluation and management of historic resources, and to that end shall provide the division with appropriate information on all state licensed, assisted, or contracted projects, activities, or programs so that the division may determine the effect of such undertakings on historic resources.

II. Upon a recommendation of the division that historic resources may be adversely affected, the commissioner shall conduct, or cause to be conducted, any necessary field investigations, subject to personnel and budgetary limitations. State agencies, departments, commissions, and institutions are authorized and encouraged to expend project funds or appropriated moneys for these field investigations.

recommendation of the commissioner:

- (a) Condition the sale or transfer upon such covenants, deed restrictions, or other contractual arrangements as shall protect the historic resources for future generations.
- (b) Reserve such property from sale or transfer, provided that the reservation of such lands from sale or transfer may be confined to the actual location of the historic resources.
- (c) Defer sale or transfer of such property for the purpose of conducting field investigations, including salvage mitigation if necessary, and until the lands are released for sale or transfer by the commissioner.

NATIONAL HISTORIC PRESERVATION ACT OF 1966
Section 110 [16 U.S.C. 470h-2]
(1966, AMENDED 1992)

SEC. 110(k)

NO FEDERAL AGENCY
SHALL GIVE ASSISTANCE TO AN APPLICANT
WHO INTENDS TO INTENTIONALLY CREATE
AN ADVERSE EFFECT

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the [Advisory] Council [on Historic Preservation], determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

NATIONAL REGISTER OF HISTORIC PLACES CRITERIA
36 CFR Part 60.4

Code of Federal Regulations 36 CFR Part 60
(60.4: Criteria for Evaluation)

CRITERIA: The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. that are associated with the lives of persons significant in our past; or
- C. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. that have yielded, or may be likely to yield, information important in prehistory or history.

CRITERIA CONSIDERATIONS: Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the



CITY OF KEENE

O-2016-13

Sixteen

In the Year of Our Lord Two Thousand and
RELATING TO THE MAIN STREET HISTORIC OVERLAY DISTRICT

AN ORDINANCE

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

That Chapter 102 Article XI of the Code of Ordinances, City of Keene, New Hampshire is hereby amended to incorporate the Main Street Historic Overlay District. Said amendments appear as underlined text, which represents text to be added to the existing Code, and text that is stricken out, which represents text to be removed from the existing Code. The amended Article reads as follows:

ARTICLE XI. ~~DOWNTOWN~~-HISTORIC OVERLAY DISTRICTS

Sec. 102-1381. Purpose/intent.

The purpose of the ~~downtown~~-historic overlay districts is to recognize, preserve, enhance and perpetuate buildings, structures, and sites within the city having historic, architectural, cultural or design significance. This purpose will be safeguarded by:

- (1) Preserving the heritage of the city by providing for the protection of buildings, structures, and sites representing elements of its history;
- (2) Enhancing the visual character of the city by encouraging and regulating the compatibility of new construction and alterations to existing buildings, structures, and sites within the historic district to reflect the city's distinctive architectural identity, unique character, and prevailing scale;
- (3) Fostering public appreciation of and civic pride in the beauty of the city and the accomplishments of its past;
- (4) Strengthening the economy of the city by protecting and enhancing the attractiveness of the community to residents, tourists and visitors;
- (5) Stabilizing and improving property values within the city; and
- (6) Promoting the use of historic districts for the education, prosperity, and general welfare of the community.

Sec. 102-1382. ~~Downtown h~~Historic districts overlay district maps.

There are two historic districts in the City of Keene – the Downtown Historic District and the Main Street Historic District. Incorporated as part of this article, the downtown historic overlay district, as described in a map entitled, "Downtown Historic Overlay District Amendment" dated September 1, 2009, and the Main Street Historic Overlay District, as described in a map entitled, "Main Street Historic Overlay District" dated March 17, 2016, ~~is~~ are hereby adopted as an overlay to the official zoning map of the City of Keene.

Sec. 102-1383. General regulations.

The minimum standards of the underlying zoning district(s) shall apply in the ~~downtown~~ historic overlay districts. All uses permitted in the underlying zoning district(s) are permitted in the ~~downtown~~ historic ~~district~~ overlay districts.

Kendall W. Lane, Mayor



CITY OF KEENE

O-2016-14-A

Sixteen

In the Year of Our Lord Two Thousand and
AN ORDINANCE RELATING TO THE MAIN STREET HISTORIC OVERLAY DISTRICT
AN ORDINANCE

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

That Chapter 18 Article V of the Code of Ordinances, City of Keene, New Hampshire is hereby amended to incorporate the Main Street Historic Overlay District. Said amendments appear as underlined text, which represents text to be added to the existing Code, and text that is stricken out, which represents text to be removed from the existing Code. The amended Article reads as follows:

ARTICLE V. - HISTORIC DISTRICTS

DIVISION 1. - ESTABLISHMENT OF HISTORIC DISTRICT

Sec. 18-350. - Purpose.

The purpose of this article is to amend the ordinances of the City of Keene to create ~~a downtown~~ historic districts in accordance with RSA 674:46; to create an historic district commission pursuant to RSA 673:1; and to provide the rules, regulations and procedures applicable to the historic districts consistent with RSA 674:46-a.

Sec. 18-351. - Application.

The requirements of this article shall apply in addition to the requirements of the zoning ordinance, other applicable city ordinances, and state law.

Sec. 18-352. - Boundaries.

There are two historic districts in the City of Keene – the Downtown Historic District and the Main Street Historic District. Incorporated as part of this article, ~~are~~ the downtown historic overlay district map and the Main Street historic overlay district map as described in section 102-13601382 of the zoning ordinance.

Sec. 18-353. - Permitted uses.

Uses permitted in the underlying zoning districts are permitted in the historic districts.

Sec. 18-354. - Definitions.

The following words, terms, and phrases shall govern the article:

Alteration, as applied to a building or structure, means a change or rearrangement in the structural parts, or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

Architectural feature shall mean the architectural style, design, detail, and general arrangement of outer surfaces of a building or structure that represent a time or region and that, if altered or removed, would affect the character of the external appearance of the building or structure. Examples of "architectural features" include but are not limited to the kind and texture of building materials and the type of and style of windows, doors, lights, cornices, roofs, porticos, and other fixtures appurtenant to such features.

Building shall mean any structure or part thereof used or intended for supporting or sheltering any use or occupancy.

Certificate of appropriateness (COA) shall mean a written authorization by the Historic District Commission to the owners of a building, structure or site within the historic district, allowing the owner to conduct any of the regulated activities set forth in section 18-360 of this article.

Contributing resource shall mean any building, structure, or site which contributes to the overall historic and architectural significance of the historic district and was present during the period of historic significance but which possesses some diminishment of significance due to alterations, disturbances, or other changes to the building, structure, or site. Said diminishment of significance to the district is not so substantial as to prevent the building, structure or site from possessing historic and architectural integrity reflecting the character of that time or being capable of yielding important information about the historically significant period. Qualities of the building, structure, or site which contribute to the overall historic and architectural significance of the historic district include but are not limited to setback, massing, height, materials, architectural features, and/or fenestration.

Economic hardship shall mean quantifiable or verifiable expenditures or fiscal loss that is unreasonable for the property owner to bear under the circumstances.

Erect means to construct, reconstruct, excavate, fill, drain, or conduct physical operations of any kind in preparation for or in pursuance of construction or reconstruction, or to move a building or structure upon a lot.

Facade shall mean the front of a building or any of its sides facing a public way or public place.

Improvement shall mean upgrading or elevating the quality or condition of a building, structure, or site.

Incompatible resource shall mean a building, structure or site with no historic or architectural integrity and with setback, massing, height, materials, and/or fenestration that detract from the character of the historic district.

Noncontributing resource shall mean any building, structure, or site which does not contribute to the overall historic or architectural significance of the historic district due to alterations, disturbances, or other changes to said building, structure, or site, and therefore no longer possesses historic or architectural integrity, or was not present during the period of historic significance, or is incapable of yielding important information about that period. The building, structure, or site may have qualities which do not detract from the overall character of the historic district including but not limited to setback, massing, height, and materials.

Ordinary maintenance and repair shall mean work done to prevent deterioration, decay or damage to a building, structure, or site, or any part thereof, by restoring the building, structure, or site as nearly as practicable to its condition prior to such deterioration, decay, or damage.

Person shall mean any natural person, firm, partnership, association, corporation, company, organization, or other legal entity.

Primary resource shall mean any building, structure, or site which contributes to the overall historic and architectural significance of the historic district and was present during the period of historic significance and possesses historic and architectural integrity with little or no diminishment in value reflecting the character of that time or is capable of yielding important information about the historically significant period. Qualities of the building, structure, or site which contribute to the overall historic and architectural significance of the historic district include but are not limited to setback, massing, height, materials, architectural features and/or fenestration.

Structural instability/safety hardship shall mean that the building or structure is structurally unsound, or deteriorated such that demolition is required for public health or safety as determined by the code enforcement officer.

Surrounding shall mean the prevailing character as represented by primary and contributing resources within the historic district.

Sec. 18-355. - Reserved.

DIVISION 2. - HISTORIC DISTRICT COMMISSION

Note - The provisions governing the establishment of the Historic District Commission and its purposes and powers and duties are set forth in Chapter 2, Administration, Article V, Boards and Commission, Division 18, Historic District Commission.

Secs. 18-356—18-358. - Reserved.

DIVISION 3. - HISTORIC DISTRICT REVIEW

Sec. 18-359. - Scope of review.

It shall be unlawful for any person to perform any of the activities set forth in section 18-360 within the historic districts without first obtaining a certificate of appropriateness in the manner prescribed in this article, the historic district regulations, and state law. The Historic District Commission may adopt rules and procedures for the review and approval by administrative official of applications for a certificate of appropriateness for minor projects as defined in the historic district regulations, provided, however, that no application may be denied without formal action by the Historic District Commission.

Sec. 18-360. - Activities requiring certificates of appropriateness.

The activities that require certificates of appropriateness vary between the City of Keene's two historic districts. The following activities shall require a certificate of appropriateness whether or not such activity requires the issuance of a permit. These activities are organized by historic district.

(1) Downtown Historic District

- a. Erection, construction, alteration, relocation, or demolition of a building or structure;
- b. Erection, construction, alteration or relocation of any architectural feature of a building or structure that is visible from a public way or other public place;
- c. Installation of new paving (excluding maintenance of existing paved areas);

- d. Removal of a tree(s) in excess of 15 inches in diameter at a height of four feet above grade, except where removal of such tree(s) is necessary for safety reasons as determined by a professional arborist or other qualified professional;
- e. Removal of stone wall(s), granite post(s), iron fence(s) or any portion thereof;
- f. Addition or alteration of existing exterior siding (e.g. vinyl, aluminum, stucco, wood, glass, etc.) of a building or structure;
- g. Painting in part or whole of a brick, stone, masonry, or concrete building or structure;
- h. Chemical or physical treatment to the exterior of a building, (including paint removal) such as sandblasting or abrasive cleaning;
- i. Installation of a bulk container, a waste storage container, a container pad, and/or screening of a container if visible from a public way; and
- j. Installation of a satellite dish and/or telecommunications facilities on an existing building, structure or site if visible from a public way.

(2) Main Street Historic District

- a. Construction of a new primary structure;
- b. Construction of a new accessory structure that exceeds 2450 square feet in gross floor area or exceeds 5% of the gross floor area of the existing primary structure, whichever is greater;
- c. Additions to an existing primary structure that exceed 2450 square feet in gross floor area or exceed 5% of the gross floor area of the existing primary structure, whichever is greater;
- d. Alteration to rooflines, including roof features, on buildings or structures designated as a Contributing Resource;
- e. ~~Alteration; a~~Addition or removal of window openings on buildings or structures designated as a Contributing Resource;
- f. ~~Alteration; a~~Addition or removal of doorways or entrances on buildings or structures designated as a Contributing Resource;
- g. Painting of previously unpainted brick, stone masonry or concrete on buildings or structures designated as a Contributing or Non-Contributing Resource; and
- h. Relocation, demolition, or partial demolition of buildings or structures designated as a Contributing Resource.

Sec. 18-361. - ~~Exception to certificate requirement.~~ Activities that do not require a Certificate of Appropriateness

The following activities shall not require a certificate of appropriateness from the historic district commission. These activities are organized by historic district.

(1) Downtown Historic District

- a. Any work or alteration to an existing building, structure or site that is not visible from a public street, way, park or other public place;
- b. Ordinary maintenance and repair of any building structure or site;
- c. Ordinary maintenance and repair of any architectural feature which does not involve a change in the design, dimensions, or materials of the feature or involve removal thereof;
- d. Painting or repainting of a wood surface and/or an already painted brick, stone, masonry, or concrete building or structure;
- e. Alteration or replacement of any existing roof covering or surface, provided that said alteration or replacement is with the same material, ~~the same~~ patterns and colors of the existing roof covering or surface and provided the roof plane remains the same; and
- f. Installation or replacement of storm doors and storm windows provided that the original architectural features are not altered, removed or demolished.

(2) Main Street Historic District

- a. Any work or alteration to an existing building, structure or site that is not visible from a public street, way, park or other public place.
- b. Any activity not included on the list of activities in Section 18-360 (2) of this Ordinance.

Sec. 18-362. - Review criteria.

The purposes of this article and the following criteria shall be used in making a determination on an application for a certificate of appropriateness, and in promulgating regulations to govern a regulated activity. These criteria are organized by historic district.

(1) Downtown Historic District

- a. The historical, architectural, or cultural value of the building, structure or site, and its relationship and contribution to the setting as evidenced by the ranking of the building, structure, or site in the resource ranking list; ~~as evidenced by the ranking of the building, structure or site in the resource ranking list.~~
- b. The compatibility of the proposed design, arrangement, texture, materials, and architectural features with the existing building(s) or structure(s) at the site and its setting, or if new construction, compatibility with buildings or structures immediately adjacent to the site;
- c. The scale and general size of building(s) or structure(s) in relationship to existing building(s) and structure(s) at the site and immediately adjacent thereto, including consideration of such factors as the overall height, and width of the building(s) or structure(s), street frontage, number of stories, roof type, facade openings, and architectural features; and
- d. The land upon which the building(s) or structure(s) are situated, including off-street parking, screening, landscaping, fencing, vehicle driveways, on-site walkways, sidewalks, lighting, and other factors which might affect the visual character of the building or structure.

(2) Main Street Historic District

- a. The historical, architectural, or cultural value of the building or structure, and its relationship and contribution to the setting as evidenced by the ranking of the building or structure in the resource ranking list;
- b. The compatibility of the proposed design, arrangement, and architectural features with the existing building(s) or structure(s) at the site, or if new construction, compatibility with buildings or structures adjacent to the site; and
- c. If new construction, the scale and general size of building(s) or structure(s) in relationship to existing building(s) and structure(s) at the site and adjacent thereto, including consideration of such factors as the overall height, and width of the building(s) or structure(s), street frontage, number of stories, roofline, facade openings, and architectural features.

Sec. 18-363. - Review of demolition or relocation of buildings and structures.

In determining whether to issue a certificate of appropriateness to demolish all or part of a building or structure, the historic district commission shall use the following criteria:

- (1) For buildings and structures designated as a primary resource or contributing resource, the applicant shall submit concept plans for the re-use of the site after demolition including elevations of any new construction and shall demonstrate economic hardship or structural instability/safety hardship.

Demolition requests based on structural instability/safety hardship must include a technical report prepared by an architect or professional engineer registered in the State of New Hampshire which demonstrates that the building or structure presents a risk to public health, safety and welfare.

- (2) For buildings and structures designated as a noncontributing resource or incompatible resource, the applicant must submit concept plans for the re-use of the site after demolition including elevations of any new construction and demonstrate that the concept plans for the site will be compatible with the historic, architectural, and cultural values of buildings and structures immediately adjacent to the site.
- (3) Appeals relative to the designation of a building, structure or site on the resource ranking list, or relative to a historic district commission action on an application to demolish a building shall be as set forth in section 18-366.

DIVISION 4. - APPLICATION AND ADMINISTRATION

Sec. 18-364. - Application procedures.

The following application and review procedures shall be followed by the applicant and the historic district commission.

- (1) The applicant for a certificate of appropriateness shall make written application to the historic district commission through the planning department. The applicant shall provide:
 - a. A completed application form signed by the owner or owner's representative;
 - b. A narrative description of the activity requiring a certificate of appropriateness;
 - c. Graphic materials of sufficient clarity and detail that the commission will have a clear understanding of what the applicant intends to do;
 - d. A complete list of abutters;
 - e. Payment of an application fee established by city council, as may be amended from time to time; and
 - f. Any site plans, building plans, building elevations, perspective sketches, photographs, and/or building materials samples as the historic district commission may reasonably require.
- (2) The historic district commission shall conduct a public hearing on the application and issue a certificate of appropriateness, conditional certificate of appropriateness, or disapproval of a certificate of appropriateness within 45 days of the receipt of an application deemed complete by the commission unless the applicant agrees in writing to a longer time period.
- (3) Written notice of the time and place of the public hearing shall be given to each abutting property owner by First Class mail.
- (4) Written notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the city and shall be posted in at least two public places.
- (5) In the case of a minor project as defined in the historic district commission regulations, a public hearing shall not be required.

Sec. 18-365. - Findings.

At the conclusion of its review, the historic district commission shall issue one of the following:

- (1) Certificate of appropriateness/conditional certificate of appropriateness.
 - a. If, in the opinion of a majority of the commission members present and voting, the applicant's proposal meets the purposes of this article and satisfies the historic district

regulations, then the historic district commission shall issue a certificate of appropriateness signed by the chairperson of the historic district commission or his/her delegate, together with any changes, conditions and/or stipulations necessary to secure the public health, safety and general welfare.

- b. After the issuance of this certificate, the code enforcement department may issue any building, demolition or other permit for the approved project subject to approval of any other necessary board.

(2) Notice of disapproval of certificate of appropriateness.

- a. If, in the opinion of the majority of the commission members present and voting, the applicant's proposal does not meet the purposes of this article and does not satisfy the historic district regulations, then the historic district commission shall issue a notice of disapproval in writing together with the reasons for such decision signed by the chairperson of the historic district commission or his/her designee.
- b. The issuance of a notice of disapproval shall prohibit the code enforcement department from issuing a building permit, demolition permit or other permit.
- c. If the applicant's proposal is denied, the applicant is encouraged to make modifications to the proposed plan that meet the purposes of this article and satisfy the historic district regulations and shall have the right to resubmit the application at any time after so doing.

Sec. 18-366. - Appeals.

- (a) Any persons aggrieved by a decision of the historic district commission shall have the right to appeal that decision to the zoning board of adjustment in accordance with RSA 677:2 et seq. A motion for rehearing must be filed within 30 days after the decision is rendered and must specify every possible ground upon which it is claimed that the decision is unlawful or unreasonable. The 30 days shall be counted in calendar days and shall start on the day of the decision.
- (b) The zoning board of adjustment shall either grant or deny the motion for rehearing, or suspend the order or decision complained of pending further consideration. If the zoning board of adjustment grants the motion for rehearing, it shall conduct the rehearing in accordance with its rules of procedure, as may be amended from time to time, and RSA 677:2 et seq.
- (c) Any persons aggrieved by a decision of the zoning board of adjustment relative to a motion for rehearing may appeal, by petition, to the Cheshire County Superior Court in accordance with RSA 677:4 within 30 days after the date upon which the zoning board of adjustment rendered its decision. The petition shall set forth that such decision of the zoning board of adjustment is unlawful or unreasonable, in whole or part, and shall specify the grounds upon which the decision is claimed to be unlawful or unreasonable.
- (d) Pursuant to RSA 677:5, any hearing by the Cheshire County Superior Court upon appeal shall be given priority on the court calendar.

Sec. 18-367. - Enforcement.

The historic district commission is responsible, for administering the ordinance and regulations within the historic districts. The provisions of the historic district ordinance shall be enforced through traditional zoning enforcement mechanisms as set forth in section 102-6 of the zoning ordinance and RSA 676.



CITY OF KEENE

O-2016-15

Sixteen

In the Year of Our Lord Two Thousand and
 Relating to Establishment of Zoning Overlay District – Main Street Historic District

AN ORDINANCE

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

That Chapter 102, the Zoning Ordinance of the City of Keene, New Hampshire, as amended, be and hereby further amended by amending the Zoning Map of the City of Keene, as adopted by the Keene City Council on December 15, 1977, as part of Chapter 102 entitled, "ZONING", of the said Ordinances, to include the Main Street Historic Overlay District, which would include the following parcels:

028020140000	226 MAIN ST.
028020150000	238-260 MAIN ST.
028020150100	246 MAIN ST.
028020160000	26 PROCTOR CT.
028020170000	28 PROCTOR CT.
028020180000	46 PROCTOR CT.
028020190000	47 PROCTOR CT.
028020200000	33 PROCTOR CT.
028020210000	27 PROCTOR CT.
028020220000	25 PROCTOR CT.
028020230000	266 MAIN ST.
028020240000	272 MAIN ST.
028020340000	222 MAIN ST.
028020350000	232 MAIN ST.
029010080000	338 MAIN ST.
029010090000	346 MAIN ST.
029020160000	284 MAIN ST.
029020170000	290 MAIN ST.
029020180000	298 MAIN ST.
029020190000	324 MAIN ST.
034020090000	400 MAIN ST.
034020100000	410 MAIN ST.
034020110000	420 MAIN ST.
034020120000	428 MAIN ST.
034020140000	440 MAIN ST.
034030010000	358 MAIN ST.
034030090000	390 MAIN ST.
034030100000	380 MAIN ST.
034030110000	370 MAIN ST.
054010010000	283 MAIN ST.
054020010046	281 MAIN ST.

054020010048	305 MAIN ST.
054030010008	229 MAIN ST.
54030010016	239 MAIN ST.
054030010017	251 MAIN ST.
055010010000	431 MAIN ST.
055010020000	425 MAIN ST.
055010030000	419 MAIN ST.
055010040000	409 MAIN ST.
055020070000	399 MAIN ST.
055020080000	389 MAIN ST.
055020090000	383 MAIN ST.
055020100000	375 MAIN ST.
055020110000	365 MAIN ST.
055020120000	361 MAIN ST.
055030010000	349 MAIN ST.
055030020000	339 MAIN ST.
055030030000	331 MAIN ST.
079010090000	441 MAIN ST.
079010100000	11 KING CT.
079010110000	15 KING CT.

Kendall W. Lane, Mayor



City of Keene, N.H.
Transmittal Form

October 12, 2016

TO: Mayor and Keene City Council

FROM: Planning, Licenses and Development Committee

ITEM: 3.

SUBJECT: Council Policy - Political Advertising on City Property and Rights-of-Way

COUNCIL ACTION:

In City Council October 20, 2016.

The Mayor referred back to the Planning, Licenses and Development Committee.

RECOMMENDATION:

On a vote of 3-1, the Planning, Licenses and Development Committee recommends the approval of Resolution R-2016-31. Councilor Sutherland voted in opposition.

ATTACHMENTS:

Description

Resolution R-2016-31

BACKGROUND:

Patricia Little, City Clerk, provided the introduction of the Resolution noting that the Resolution is being introduced in response to a recent opinion from the New Hampshire Attorney General's (AG's) Office with respect to political signs on City property, public rights-of-way and polling locations. The Resolution specifies where political signs cannot be placed, while indicating the desire to permit the placement of political signs in all other areas of public rights-of-way. The Resolution also recognizes the statutory authority of a municipality to make bylaws regulating the distribution of campaign materials or electioneering or any activity which affects the safety, welfare, and rights of voters at any election. The City Clerk continued by saying that prior to the State Primary, the Clerk's office received a complaint about political signs at a polling location. In discussions with the City Attorney, they agreed that the AG's Office should be contacted to get their latest opinion on this particular statute, which is not clear on a municipality's authority to either grant permission or restrict political signs on public property. The last time this issue was discussed with the AG's Office was in 2008. At that point in time, the AG's Office indicated that a municipality did not have the right to give permission for political signs to be on public property. The AG's Office has changed its position on this Statute and their office is now recommending that before the City can remove a political sign in response to a complaint, that the City Council should specify locations where political signs are not permitted. Hand-held signs are not restricted by this Resolution.

In addition, the City Clerk also noted the Resolution clarifies the issue of posted political signs at the City's polling locations on Election Day. RSA 659:43 prohibits the posting of any political signs at the polling location. The Resolution clarifies that this restriction applies to the entire polling location property excepting for the area within the public right-of-way. Hand-held signs at a polling location on Election Day are not restricted by this Resolution excepting for a ten foot wide corridor that extends from the entrance to the polling location and for a distance determined by the Ward Moderator. The City Clerk said she appreciates the opportunity to clarify this matter as it has been a point of confusion both for candidates and election officials over the years.

Chair Richards asked for Committee questions/comments.

Councilor Sutherland noted the City Clerk's comment that this was initiated by a complaint and asked for the circumstances of the complaint. The City Clerk noted the location was on a public piece of property (the Recreation Center) several weeks before Election Day. She reiterated, at that time staff was not certain they had the authority to remove it. Councilor Sutherland continued by saying the governing body is now saying we have a little more leeway at the local level, and the state laws have not changed. The City Clerk verified the state laws have not changed; and the current staff attorney in charge of elections from the Attorney General's Office has a differing opinion about the municipality's authority. The City Clerk added it is a poorly worded statute.

Chair Richards asked for clarification that we are saying no electioneering can take place closer than 75 feet. The City Clerk clarified saying it is no more than 75 feet or less than 25 feet for the electioneering of handheld signs. Chair Richards clarified so 75 feet from the door you have to leave people alone, no signs no nothing. The City Clerk said handheld signs have to be at a certain distance so the voter does not have to walk through a gauntlet of political signs. This Resolution does not address that section; it is only talking about unattended signs at a polling place on Election Day. Chair Richards then asked who would be doing the policing.

Attorney Mullins said in general what happens now if there are signs in prohibited areas, the Public Works Department will collect them and store them for the candidate to come and retrieve. Attorney Mullins continued this would also be true for public property, including polling places on non-Election Day. As an example, signs would not be permitted on Recreation Center property, not even in the right-of-way. Attorney Mullins noted some latitude would be permitted on Election Day. Chair Richards commented so the day after Election Day all the signs are gone.

Councilor Hansel said he was curious as to the net effect of time saved by not having these signs in some of these areas. Kurt Blomquist, Public Works Director, explained the difficulty these signs can create in certain areas, for example when mowing. Mr. Blomquist added by having to remove each individual sign the time is increased by approximately 25%. Mr. Blomquist also noted retrieving the signs is a little easier noting he picks them up on trips back and forth to City Hall this takes less time than trying to do maintenance around them. Councilor Hansel asked if Public Works was in favor of this Resolution. Mr. Blomquist explained the difference between the 2008 decision and this Resolution noting now we are allowed to specify areas without getting into arguments with people.

Noting the different interpretations over the years Councilor Sutherland said he was in favor of sticking with the state law and having the City Clerk's office advising people of the City's preferences. He asked the City Attorney to help him understand why this Resolution would be more beneficial to the City of Keene, and why we have to have our own rules compared to every other municipality. Noting he did not agree with the interpretation in 2008, and keeping in mind we are not talking about the Attorney General but, the individual who holds this particular spot at a particular time, Attorney Mullins indicated the turnover is fairly frequent. Attorney Mullins noted his opinion in 2008 reflects what the current opinion is; you have to read the statute in its entirety. He noted in particular that does argue in favor of having a standard that everybody can see, and everybody can read, and there is no political underpinnings necessitated by it that people will have to follow. After additional comments by Attorney Mullins, Chair Richards agreed this sounds a little better than in 2008.

Councilor Hansel noted he had a question about the language in the Resolution; he read from the Resolution and asked for clarification we are only talking about public property. Attorney Mullins replied in the affirmative noting on private property you can put your sign where you want. Councilor Hansel then asked if the language could be adjusted to make that clear. Attorney Mullins noted it does not apply under the statute.

Councilor Jones referred to a policy of no campaign signs at the roundabout and noted a letter received from Peter Bradshaw asking that the medians in that area also be included. He continued at the time there was a reason why we could not. The City Clerk noted this was the same time period when the Attorney General said we did not have the authority to do that. She also noted at that time there was a discussion going on about the definition of a splitter island. Councilor Jones also asked if non-political signs fall under the same requirements. Attorney Mullins noted they fall under the Sign Code. Mr. Blomquist noted an object within the right-of-way is considered an obstruction unless permission has

been given through the Public Works office.

Councilor Clark noted he is totally in favor of this Ordinance. Councilor Clark shared his experiences over the years. He likened this issue to that of putting lines on streets. Councilor Clark also referred to the interpretation indicating the problem is because the politicians are the ones breaking the law and putting their signs in public ways; he added there is no actionable penalty for this behavior. After additional comments Councilor Clark recommended taking advantage of this Attorney General's opinion before they change their mind.

Councilor Sutherland noted he feels this is too restrictive on speech, and is part of the political process so he will be voting against this Resolution.

Councilor Hansel said he does not see this as a big deal; he added people are realizing what little affect these signs actually have especially with social media and other ways of getting yourself out there. Councilor Hansel is in favor of making it easier for Public Works and the people who maintain these grounds.

There being no additional questions or comments from the Committee or members of the public Chair Richards asked for a motion.

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

On a vote of 3-1, the Planning, Licenses and Development Committee recommends the approval of Resolution R-2016-31 Councilor Sutherland voted in opposition.



CITY OF KEENE

R-2016-31

In the Year of Our Lord Two Thousand andSixteen.....

A RESOLUTION COUNCIL POLICY: RELATING TO POLITICAL ADVERTISING ON CITY
PROPERTY, PUBLIC RIGHTS-OF-WAY AND POLLING LOCATIONS

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

WHEREAS: The establishment of policies relating to the City's land, rights-of way, and buildings provides greater awareness of the policy and ensures consistency; and

WHEREAS: RSA 31:41-c authorizes municipalities to make bylaws regulating the distribution of campaign materials or electioneering or any activity which affects the safety, welfare and rights of voters at any election; and

WHEREAS: RSA 664:17 prohibits the placement or affixing of political advertising on public property or highway rights of way without the owner's consent, which advertising includes, but is not limited to political campaign signs, and which authorizes the removal of non-permitted political advertising by the City; and

WHEREAS: RSA 659:43 prohibits the posting of any campaign material at a polling place on Election Day; and

WHEREAS: The City desires to prohibit the placement or affixing of political advertising in the locations specified herein, but desires to permit the placement or affixing of such advertising on all other City rights-of- way to the extent that such placement or affixing does not interfere with maintenance of the location, obstruct the safe visibility of, or safe passage of, bicyclists, pedestrians, or motor vehicles, or otherwise impair public safety.

NOW THEREFORE BE IT RESOLVED: That political advertising is prohibited on the Main Street, Marlboro Street, Winchester Street Roundabout and splitter islands, Court Street, Maple Avenue, and East Surry Road Roundabout and splitter islands, Court Street, Allen Court and the hospital entrance Roundabout and splitter islands, Island Street, Pearl Street, and Winchester Street intersection and splitter island, Ashbrook Road median, Base Hill Road and NH Route 12 intersection medians, Winchester Street median, Maple Avenue median in front of the Middle School, Washington Street and Old Concord Road intersection, Main Street right of way (east and west side) and median north from the Main Street, Marlboro Street, and Winchester Street Roundabout to Central Square, the Central Square Common and splitter islands, and on medians or islands within the Commercial Street, Elm Street, Gilbo East and Gilbo West Parking lots or within any City park, City cemetery, or at any City facility and its adjacent rights of way other than polling locations on Election Day .

BE IT FURTHER RESOLVED: That all political advertising shall be hand-held at all polling places on Election Day except for the area within the public right-of-way, where political signs are permitted to be placed.

Kendall W. Lane, Mayor