



City of Keene
New Hampshire

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

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

-
1. Oral Report - Planning Board - Periodic Update
 2. Request to Amend the Surface Water Protection Ordinance - Conservation Commission
 3. Relating to Dormitory, Lodging, or Rooming Houses and Residential Board and Care Ordinance O-2016-09

MORE TIME ITEMS:

- A. Ordinance O-2016-01: Creation of Residential Preservation District, a Business Growth District and Re-Use District
- B. Ordinance O-2016-02: Zone Change - Marlboro Street Project Area
- C. Amendment to the Zoning Ordinance - High Density 1
- D. Request for Lodging House License - 85 Winchester Street

Non Public Session
Adjournment



City of Keene, N.H.
Transmittal Form

November 10, 2016

TO: Mayor and Keene City Council

FROM: Conservation Commission

ITEM: 2.

SUBJECT: Request to Amend the Surface Water Protection Ordinance - Conservation Commission

COUNCIL ACTION:

In City Council November 17, 2016.

Referred to the Planning, Licenses and Development Committee.

RECOMMENDATION:

A motion was made by Councilor Manwaring that the Conservation Commission seek approval from City Council to initiate the ordinance amendment process for the Surface Water Protection Ordinance (Sections 102-1480 - 102-1496 of the Keene Zoning Ordinance). The motion was seconded by Councilor Hansel and was unanimously approved.

BACKGROUND:

The Conservation Commission established a subcommittee in August of 2014 to review the Surface Water Protection Ordinance (Sections 102-1480 to 102-1496 of the City of Keene Zoning Ordinance) and make recommendations to the Conservation Commission for addressing identified inconsistencies and propose potential changes to the Ordinance.

The Surface Water Protection Ordinance was adopted by the City in 2012, with the goal of protecting the functions and values of surface waters, and in particular, the vegetated buffers associated with these resources, which reduce the rate and volume of runoff.

After two years of work, the subcommittee has shared and discussed their recommendations with the Conservation Commission. At its meeting on September 19, 2016, the Conservation Commission voted unanimously to approve the amendments proposed by the subcommittee and to seek approval from City Council to initiate the ordinance amendment process. The minutes from the September 19, 2016 meeting are included below.

"Ms. Kessler indicated that she spoke with the City Engineer to clarify #1 under Section 102-1486. There was concern at the last meeting that "maintenance and vegetative control of the buffer," was too broad. The City Engineer included that because he wants to ensure that the City can maintain tax ditches and to protect property owners along those channels. He did not mean to imply that all property owners should have maintenance and vegetative control of the buffer. He suggested the following edit: "Maintenance and vegetative control of the buffer required to protect and maintain structures and utilities." Ms. Kessler was unsure if the new passage fully addresses the concern for more clarification.

Mr. Lacey noted the Commission has been working on this revision for a long time and part of the process was getting comments from the City Engineer and Public Works Director. Those suggested changes were not all accepted. He said this proposed addition from the City Engineer is not something the Surface Water Committee would support. Councilor Manwaring agreed. Mr. Lacey said they addressed this initially by changing the definition of buffer. They modified the definition to remove the phrase "in an undisturbed and natural condition." This modification would allow the City to maintain the buffer. Another reason to eliminate the phrase "undisturbed and natural condition," was because City homeowners should be able to maintain the buffer in practical ways. He said there is no reason to make it more specific and that it should stay broad. He suggested leaving it as "maintenance and vegetative control of the buffer."

Ms. Kessler stated that the Commission is welcome to make any proposed amendments. However, as City Staff, she thinks that broadly allowing for maintenance and vegetative control of the buffer, without further clarification, will undermine the intent of the Ordinance and allows subjectivity as to how and in what manner buffers can be managed. She questioned how something so subjective can be enforced, without allowing for all forms of vegetative control, including mowing of all vegetation to the edge of the surface water. Mr. Lacey commented that enforcement is already an issue in this Ordinance. He said this is one of the most subjective ordinances. Ms. Kessler suggested being more specific or removing number one entirely.

Ms. Kessler noted that she thought the purpose of the buffer was to provide a vegetative area that slows stormwater runoff and reduces the amount of pollutants that enter surface water. She questioned the utility of the ordinance if anyone can mow or remove vegetation to the water line. Mr. Lacey added that keeping it in a natural state is not a practical requirement either. Ms. Kessler said the buffer could be managed but the types of management activities should be clearly defined. One type of activity could be allowing for the removal of dead and diseased trees. Mr. Lacey added that these changes can be made but if someone comes in for a Conditional Use Permit, as the Planning Board still has the ability to decide what activities are allowed within the buffer area.

Mr. Lacey questioned if the intent of the Ordinance is to gradually make everything a natural area through restriction of use. Ms. Kessler replied that it is her opinion that the intent of the Ordinance was to create a vegetated buffer on the edge of water bodies. She agreed with Mr. Lacey that the original Ordinance did not successfully delineate or prioritize wetlands areas or surface waters in the community. Mr. Lacey stated that he does not think that writing the Ordinance in a way that allows for vegetative maintenance in the buffer area will lead people to begin mowing right up to the edge of wetlands. Councilor Manwaring noted there are businesses that are directly adjacent to the Branch River, and she said this is not unusual. Mr. Lacey added that the same thing happens many residential areas.

Chair Haynes questioned how to finalize the wording of amendments to the Ordinance. Mr. Lacey replied that the City can maintain buffers and ditches the way they always have if number one is removed because the definition of buffer just says it has to remain vegetative. Councilor Hansel added that removing number one would make any maintenance of vegetation subject to a Conditional Use Permit. Mr. Lacey replied that this is what the Ordinance currently requires. Mr. Lacey said the Ordinance is currently unenforceable and is not being adequately enforced.

The Commission agreed to move forward with item number one written as "Maintenance and vegetative control of the buffer," and "required to protect and maintain structures and utilities," will be removed. Ms. Kessler noted this is the version that will go before City Council for an amendment change.

Councilor Manwaring made a motion to adopt the amendments reviewed and discussed at the September 19, 2016 meeting to the Surface Water Protection Ordinance and to seek approval from City Council to initiate the ordinance amendment process. The motion was seconded by Councilor Hansel and carried unanimously.

Councilor Hansel asked what the agricultural activities and operations defined in the RSA consist of. Ms. Kessler replied that is likely mowing as long as best management practices are used in compliance with State

and local laws. Councilor Manwaring said it could also be fertilizer use, etc. not just mowing.

Mr. Lacey stated that he is confident this amendment straightens out a lot and will make the Ordinance better.



City of Keene, N.H.
Transmittal Form

December 5, 2016

TO: Planning, Licenses and Development Committee

FROM: Patricia A. Little, City Clerk

ITEM: 3.

SUBJECT: Relating to Dormitory, Lodging, or Rooming Houses and Residential Board and Care

RECOMMENDATION:

Move that the Planning, Licenses and Development Committee recommend the denial of Ordinance O-2016-09 with the understanding that further amendments to the lodging house license ordinance will be introduced after the land use code rewrite project is completed.

ATTACHMENTS:

Description

Ordinance O-2016-09

BACKGROUND:

During the previous discussions of this Ordinance, the PLD Committee expressed its interest in having an opportunity to place conditions on any lodging house license. Staff was instructed to prepare an amendment to Ordinance O-2016-09 that would return the responsibility for issuing an initial license to the jurisdiction of the City Council and any subsequent licenses issued administratively by the City Clerk's Office.

In advance of drafting that amendment, City staff met to consider whether any provisions in Ordinance O-2016-09 should be incorporated into Chapter 46 such as an expanded definition to include "residence house." In addition, staff believes it would be important that any further amendment should reconcile the definition references and other provisions that relate to a lodging house in Chapter 102 the Zoning Ordinance and in Chapter 18 Building Regulations.

Recognizing that there is an ongoing initiative to rewrite the land use code ordinances, which includes both Chapter 102 and Chapter 18; staff is recommending that further revisions to this license be deferred until the land use code rewrite is completed.



CITY OF KEENE

O-2016-09

Sixteen

In the Year of Our Lord Two Thousand and
 RELATING TO DORMITORY, LODGING OR ROOMING HOUSES
 AN ORDINANCEAND RESIDENTIAL BOARD AND CARE.....

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

That the Ordinances of the City of Keene, as amended, are hereby further amended by deleting Article X, Lodginghouses, of Chapter 46, Licenses and Permits, in its entirety, and adding a new Article VI, Dormitory, Lodging or Rooming Houses and Residential Board and Care, to Chapter 42, Fire Prevention and Protection, as follows:

ARTICLE VI. DORMITORY, LODGING OR ROOMING HOUSES, and RESIDENTIAL BOARD and CARE.

DIVISION 1. - GENERALLY

Sec. 42-135. – Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Permitting Authority shall mean the Fire Chief or his duly authorized designee.

Dormitory, Lodging, or Rooming Houses and Residential Board and Care (collectively “Residence House”) shall be as defined in the adopted NFPA1 Fire Code and NFPA 101 Life Safety Code.

Sec. 42-136. – Enforcement officer.

For the purposes of this article, the enforcement officer shall be the Fire Chief for Fire and Life Safety Codes; provided, however, that where compliance with building, plumbing, wiring and housing codes is concerned, the enforcement officer shall be the Health Director (collectively “Enforcement Officer”).

Sec. 42-137. – Fraternity and sorority houses.

Fraternity and sorority house shall mean a place of residence, with or without meals, for more than four persons attending a college or university, who are all members of, or pledged to, a local or national fraternity or sorority that is recognized by a college or university with a Keene campus. For purposes of this article, a fraternity or sorority shall be treated as a Residence House.

Sec. 42-138. – Resident agent.

Resident agent shall mean the owner or operator of a Residence House and/or his or her agent who resides on the premises. Each Residence House operator shall cause his resident agent to be readily available and shall authorize such agent to be responsible for the day-to-day operation of the Residence House, to receive notices in his name and to be responsible for the conduct of persons therein.

Sec. 42-139. – Penalties.

Any person who owns and/or operates a Residence House without having first obtained a permit in accordance with this article shall be fined \$275.00 for each day that such operation continues in violation of this article.

DIVISION 2. - PERMIT

Sec. 42-140. – Required.

From and after the effective date of the ordinance from which this article derives and notification by the city, no person shall keep, permit or suffer to continue a Residence House without first having filed an application with, and having obtained a permit from, the Permitting Authority. Such permit shall list the following:

- (1) The owner of the property;
- (2) The address of the property;
- (3) The operator of the Residence House;
- (4) The resident agent of the Residence House
- (5) The addresses and business and home telephone numbers of each;
- (6) The number of persons authorized to reside on the premises; and
- (7) The effective and expiration dates.

Sec. 42-141. – Certificates of compliance.

Prior to the issuance of an initial permit under this division, and any permit renewal, the Enforcement Officer shall make or cause to be made an inspection to determine if applicable laws, ordinances, codes and rules and regulations have been complied with.

Sec. 42-142. – Expiration.

Each permit issued under this division shall expire one year from its effective date, subject to inspection and renewal for the ensuing year. An issued permit that is eligible for renewal shall not require a new permit application.

Sec. 42-143. – Display.

The permit issued pursuant to this division shall be displayed in a prominent place on the ground floor near the front door of the Residence House.

Sec. 42-144. – Suspension or revocation.

A Residence House permit may either be suspended for a stated period of time, or revoked by the Permitting Authority, on complaint of the Enforcement Officer of violation of this article. Notice shall be sufficient if sent by certified mail to the owner of the premises and the Resident Agent of the Residence House at their addresses listed on the permit. A party aggrieved by the decision of the Permitting Authority may appeal the decision of the Permitting Authority to the Board of Appeal established under City Code Chapter 2, Article V, Division 6, if an appeal of the fire/life safety code, or to the Housing Standards Board of Appeal established under Chapter 2, Article V, Division 21, if an appeal of the housing code.

Sec. 42-145. – Fee.

The fee for each Residence House permit issued shall be set forth in the schedule of fees in Appendix B to this Code.

Kendall W. Lane, Mayor