

City of Keene
New Hampshire

MUNICIPAL SERVICES, FACILITIES AND INFRASTRUCTURE COMMITTEE
MEETING MINUTES

Wednesday, October 11, 2017

6:00 PM

Council Chambers

Members Present:

Randy L. Filiault, Vice-Chair
Stephen L. Hooper
Gary P. Lamoureux

Members Not Present:

Janis O. Manwaring, Chair
Robert J. O'Connor

Kendall W. Lane, Mayor

Staff Present:

Elizabeth Dragon, City Manager
Thomas Mullins, City Attorney
Kürt Blomquist, Public Works Director
Beth Fox, HR Director/Assistant City Manager
Duncan Watson, Public Works
Steve Russo, Police Chief
Bill Byrne, Highway Division Superintendent
Charles Nichols, Highway Division
William Dourdounas, Highway Division

Vice Chair Filiault called the meeting at order at 6:00 PM, welcomed the public, and explained the rules of procedure.

1) Departmental Presentation – Away Goes Trouble Down the Drain – Highway Division

Vice Chair Filiault welcomed Bill Byrne, Highway Division Superintendent, who introduced Charles Nichols and William Dourdounas to share a presentation on the work of the Highway Division.

Mr. Dourdounas thanked the Committee for this opportunity to represent their division with pride and enthusiasm. He began by sharing some things the public might not know about their division/work:

- 23 employees
- 64 pieces of light and heavy duty equipment
- Maintain:
 - 126 miles of roads
 - 52+ miles of sidewalks
 - 32 bridges
 - 2 parking structures
 - 6 surface parking lots
 - 80 miles of drain line
 - Approximately 4,300 catch basins
 - Several miles of multi-use trails and bridges
 - Various rivers, brooks, and tax ditches
- The Work:

- Sidewalk construction and repair
- Pave and repair road surfaces
- Perform regular road inspections
- Plow and treat streets
- Plow and treat sidewalks
- Downtown maintenance
- Downtown trash
- Prune trees and perform seasonal roadside mowing
- Regularly inspect waterways
- Emergency response
- Assist other City departments
 - Clerk's Office:
 - Voting booths
 - Fire Department:
 - Clearing snow around hydrants
 - Airport:
 - Winter maintenance and snow removal
 - Code & Health:
 - Trash-out's, locking vacant properties
 - Youth Services:
 - With additional personnel if a child needs community service
 - Police Department:
 - Traffic control
 - Parks and Recreation:
 - Ensuring cemeteries are in pristine condition for Memorial Day

Mr. Dourdounas continued that a catchphrase of the Highway Division is as "A universal donor of the City." They try to help other departments as much as possible and remain flexible and organized to deploy equipment quickly when needed. He shared photos of the Highway Division work shop, standard sidewalk installation work, and ancillary services such as facilitating installation of the Central Square Christmas tree.

Mr. Nichols continued explaining the work the Highway Division does regarding drainage in the City. He said there is no way he could present on all of the work the Highway Division does throughout the year; it is a diverse set of work responsibilities conducted by employees from all walks of life and experiences. Drainage, of all their work, is a year-round job. He continued explaining Highway Division year-round drainage work:

- Prevention & Maintenance:
 - Regularly check bridges and inlets for obstructions
 - Contracted basin cleaning on a three-year rotation, closely monitored by City staff (a contractor has been hired for five years)
 - Paint fish used to identify location of basins (reminds citizens that water drains through streams and to make basins easier to find in winter)

- Cut brush, mow, and maintain ditches
- During an Event: (mostly monitoring during floods)
 - Clear obstructions
 - Sand bags (stored at 580 Main Street along with a sand pile)
 - Emergency response trailers
 - Place barricades and signage where needed
 - Rule out an obstructed drain
 - Monitor back roads
- Repairs After an Event:
 - Clean-up debris
 - Repair roadside washouts
- Waterways that Run through the City:
 - Ashuelot River
 - Beaver Brook
 - Black Brook
 - Ash Swamp
 - 2 Mile Dam
 - White Brook
 - Tannery Brook
 - Various Tax Ditches
- Work Examples:
 - Fallen trees in waterways
 - Beaver dams
 - Log jams
 - Litter/trash
 - Bank erosion clean-up and stabilization
 - Overrun banks and slow draining basins during storms
 - Obstructions to water flows
 - Flooded roadways
 - Root systems clogging pipes
 - Dredging to help water flow through the City
 - Replacing corroded drain lines

In summary, Mr. Nichols said the Highway Division does a lot throughout the year with the goal of providing the best service possible to all customers – travelers, taxpayers, business owners, and emergency response providers.

Councilor Hooper said he thinks many people have the perception that pipes are too small or do not work; in reality they are clogged and must be cleaned and maintained from there. Mr. Nichols replied yes, cleaning is always the first step. Most problems are with the old clay pipes (since the 1800s) that root systems can easily infiltrate the pipe joints and catch debris. The Highway Division works to keep the pipes functioning to the best of their ability. Councilor Hooper asked if it saves money to regularly clean the pipes versus replacing them. Mr. Nichols replied yes, and that regular maintenance is necessary.

Councilor Lamoureux made the following motion, which was seconded by Councilor Hooper.

On a vote of 3-0, the Municipal Services, Facilities and Infrastructure Committee recommends accepting the Highway Division presentation as informational.

2) Councilor's Clark & Richards – Intended Use of Highway Funds Allocated to the City through SB 38

Vice Chair Filiault said this item has been placed on the agenda for the October 25th MSFI meeting and will be brought forward by staff for discussion at that time.

Vice Chair Filiault made the following motion, which was seconded by Councilor Lamoureux.

On a vote of 3-0, the Municipal Services, Facilities and Infrastructure Committee recommends the communication from Councilors Clark and Richards be accepted as informational.

3) Continued Discussion – an Ordinance for Disorderly Residences

Mayor Lane said he brought this request to draft an Ordinance forward to try to spark discussion he thinks is appropriate to have about certain residences in the City. He said there are three to four homes, at most, where anti-social behavior and activities are occurring that require police presence on a regular basis. He said as a result, the police and therefore the taxpayers are in effect managing those properties. He thinks the citizens would rather see the police downtown address other issues such as drug dealers and panhandlers. The Mayor continued the downtown is of critical importance to the City and it is unfortunate the Keene Police Department spends excessive time attending to problems on just a few properties in the City. He said the City Council needs to decide if they consider this a significant enough issue to ask the City Attorney to draft an Ordinance to bring back to Council for review.

Mayor Lane continued that if the Council wants to move forward, they should refer back to 2013 when this issue was last considered. At that time Council decided not to move forward after several months of discussion and staff work. The Council thought an agreement was reached between the landlords and City; landlords agreed to establish an association to begin dealing with these tenant behavior issues. Mayor Lane said he was unsure a landlord's association still exists but the behavior issues do. He showed a graph displaying growth in behavioral issues in neighborhoods over the last five years; he said issues have grown in neighborhoods and it is an increasingly significant problem to get a handle on. As the City looks toward creating investments in neighborhoods around downtown, the behavioral activities in these neighborhoods are critical if we want families to live there and to upgrade and improve the City. He said we have to pay attention to behavior and activities such as: large gatherings "with 1,500 people in the backyard", fighting, public drunkenness, drug use, etc. He said all of these behaviors

warrant repeated complaints to the KPD. Mayor Lane noted that he hopes the MSFI Committee will seriously consider paying attention to this issue, and he asked the Committee to recommend the City Attorney draft an Ordinance.

Mayor Lane listed a few other issues regarding this Ordinance:

- The system currently used by the KPD to record incidences is too complex and difficult; it needs to be simplified to provide consistent statistics that demonstrate how many times the KPD responds to a particular problem.
- Any Ordinance drafted should not deter people from reporting domestic violence; domestic violence will not be tolerated and those reporting it will not be a part of this system.
- Many landlords are concerned about being notified about incidents on their properties. There is a presumption in the law that property owners know what is going on with tenants at their properties. They have an obligation to track and monitor their properties.

Mayor Lane concluded asking the MSFI Committee to recommend the City Attorney review issues related to this to determine if an Ordinance should be adopted.

Vice Chair Filiault said the last attempt at resolving this issue was, “like killing an ant with a sledge hammer.” He asked the change of direction Mayor Lane thinks the City can get the landlords on board with. Mayor Lane replied the last Ordinance attempt was overly complex and broad; it dealt with code enforcement, fire codes, and many other issues combined into one system. He suggested an Ordinance that just deals with police calls and a focus on anti-social behaviors that affect and degrade entire neighborhoods. He said he is not discussing a code or fire enforcement issue; he is concerned with the KPD being required to respond to homes many times throughout the year for the same reasons.

The City Attorney said if the Council wants to move forward drafting an Ordinance, the problems must be clearly defined. He has researched other communities with regard to this kind of Ordinance and a few principles were clearly apparent:

- The City must be very careful to not trigger areas where people have the expectation and right to contact the KPD without fear of interference in their living arrangement. Similarly, domestic violence cannot be triggered by this Ordinance.
- An Ordinance’s should not inserted the City into the relationship between landlords and tenants. This is a non-starter statutorily and he does not think the City should be involved in evictions, etc.
- The behaviors regulated and their consequences must be clearly defined and very specific.
- There are potential issues with federal statutes regarding discrimination based on home occupancy. Studies show challenges across the nation where Ordinances are imposed in highly diverse areas making some people more subject to the regulations than others.

- How the KPD collects and uses data is important. The KPD would have to be very involved in drafting this Ordinance to make sure it can be technically achieved.
- Privacy is an issue. Some similar Ordinance's require landlords to reveal details of who occupies their property to the City.

Mayor Lane said drafting this Ordinance is not intended to solve any problems; it is simply intended to be an additional tool available to the KPD and City to address behavioral issues. He said it is not a solution in and of itself. In similar communities these ordinances are never utilized; just the fact it exists is enough to warrant a change in landlord perspective. He said it is a negotiating tool as much as anything else.

Councilor Lamoureux asked the City Attorney if he found any case law in his research. The City Attorney replied yes, there was case law nationwide and the issues he highlighted came from those cases. He said there appears to be a problem in drafting these Ordinances and determining what to include. In some cases, when government enacts a penalty process like this there is no due process involved in the Ordinance (prior notification, opportunity to object, appeal rights); due process is important as government actors.

Councilor Hooper said after review the initial information he personally thinks there needs to be more discussion and information presented. He said the Committee needs to hear all sides of the issue and be very careful before moving in any direction. Vice Chair Filiault agreed because there is no Ordinance before the Committee at this time; a vote would be on the concept of a potential Ordinance.

Vice Chair Filiault welcomed comments and questions from the public, noting that transparency is important.

Councilor Philip Jones said some of the issues mentioned by Mayor Lane have been issues for more than 20 years. He said a reactive Ordinance was created in 2001 regarding noise, public urination, and lawn parking. As time went on the City began working with people instead of creating ordinances against them. When the first attempt at this Ordinance was before the Planning, Licenses and Development Committee in 2013 it was more focused on bringing landlords together; that goal was accomplished at that time. He said this proposed Ordinance is different because it is directed at any residence in the City, including single family, owner occupied residences. Mayor Lane agreed this Ordinance would be City-wide and would affect any property owner in the City including individual homeowners and landlords. Councilor Jones said it is less about picking on landlords and more about addressing issues before the KPD.

Councilor Bart Sapeta thanked Mayor Lane for bringing this up; he said if this is the third time this is being debated there is clearly a problem. He thinks the problem needs to be defined very well before making a decision that an Ordinance is needed. He is Chair of the College-City Committee, which is looking into some of these issues; he suggested a working group from that Committee to help define the problem and get feedback from

stakeholders to determine if an Ordinance is necessary. He asked if the decision at this meeting should be a recommendation for a specific type of Ordinance or a broader recommendation to provide more time to discuss and investigate the problems. He said obviously a multifaceted problem exists.

Toby Tousley, 499 Washington Street, said he has been a landlord for 36 years and is familiar with these situations. He is familiar with evictions as he does his own without a lawyer; he knows how to get tenants in and out. His big issue with an Ordinance is that there are so many unknowns. He asked what this Ordinance is actually meant to achieve; he asked what defines a disorderly house. He asked how an Ordinance can be drafted if the problem and solution are not clear. He said this is why most landlords are frustrated. He noted the Mayor said this is about three or four disorderly residences; he asked if it is common practice to draft Ordinance's for a problem with so few homes. He suggested talking to those property owners. He said it seems this is mostly geared toward students and he is unsure if that was the intent. As he stated in his letter to the editor of The Keene Sentinel, he thinks there are many more issues than just the students; for example, 20% of his tenants have mental health disorders and may have more drama in their lives that requires the KPDs attention. He said an Ordinance such as this places those tenants at risk of homelessness. He asked why the City should head down this path. He said the idea of fining property owners after three calls to their property does not make sense either, especially considering the different sizes and occupancies of buildings throughout the City. He said the assertion that he should know what is happening with all 140 of his tenants at the same time is absurd and it would be different if the KPD were letting him know when things happen in the middle of the night, for example. He said he gets no feedback from the KPD and issues like this require 30 days-notice for evictions; per landlord-tenant laws, the tenant must be given the opportunity to make the situation right. With the lack of information from the KPD, there is additional time before legal action can even begin to start an eviction. Cops could be called frequently during that time and a landlord has no options to rectify the situation. He said if the City decides to go in this direction it is ridiculous; landlords should have the same opportunity to rectify the situation, just as tenants do per state law, before they are fined. He said there are too many pieces to this puzzle.

Bill Beauregard noted that although lives in Chesterfield he has rental properties in Keene. He referenced the last attempt at this Ordinance, for which he said there were also only a few problem properties. He asked, if there are again only three or four residences, where are they, what are their infractions, and have actions been taken against them. He asked what rationale there is for this exercise if there are only three or four disruptive properties; he said there were likely six times as many landlords present at the meeting. He said the question of if the KPD is issuing summons is critical; he asked if just a knock on the door will constitute a police visit. He also noted the issue of due process and said if a landlord will be fined they should have some sort of notice; he said the KPD used to notify landlords and he does not understand why they cannot with today's technology. He said if a residence has three violations they should be able to send some kind of electronic email notification so the landlord has an opportunity to correct the situation. He said landlords are not at their properties 24/7 and cannot handle behavioral issues

without notification. He continued most landlords are at their properties multiple times per week but if there is an issue in the middle of the night they may not know and should not suddenly be fined. He said if drafting an Ordinance, the City should have the support of people the Ordinance will affect. He said the problems still need to be more clearly defined.

Vice Chair Filiault asked Police Chief Russo if policy states the KPD cannot notify landlords. Chief Russo replied there is no policy written. He said the City has been through this before and as far as he knows the KPD was notifying landlords to the best of their ability many years ago via letters. At some point Code Enforcement was also notifying landlords; Chief Russo was unaware of when that stopped. The KPD does not notify landlords as a standard. He said yes the technology exists, but even if he worked with Assessing to obtain the address and name of every rental business, the information might not even lead to the landlord. He said the first step would be finding a good mechanism to get a list of landlord contact information. He said if that list were acquired, it would then have to be decided who would notify, how they would be notified, and if the City actually wants that as a procedure. He also cited the complications with domestic violence. He said until he knows what the Ordinance will look like and what current statutes and Ordinance's will be included he cannot even provide data. He said what a repeat offender is also needs to be defined; he could list some residences the KPD might visit three times per week but they do not always issue a summons because when they arrive there is no violation. He assumes visits in this Ordinance would only count if a summons is issued and also assumes when that happens there would be a due process for the landlords where they can speak with himself or the City Manager; this all depends on how the Ordinance is written and he does not know those details.

Fred Haas, 70 Prospect Street, asked what percentages of apartments in Keene were owned by landlords at the meeting. He asked if any of the landlords in the room were a part of the problem. He said he does not have a problem with the KPD; he has owned rental properties for 26 years and thinks he has only been contact for problems twice. He does not want to be responsible for the actions of others. He will provide his contact information and if he is notified about a problem he will take actions he is allowed under the law. He agreed with the Mayor that nicer neighborhoods are desirable as residents, but he thinks there are far greater hindrances to that than a few disruptive apartments, like panhandlers and drug dealers, for example. He would like to know which residences are the problems. He said he also has tenants with mental health disorders and does not want to be responsible for an anonymous call someone makes about them. He said public urination, public drunkenness, and disturbing the peace are already against the law. He said he pays his taxes so the KPD can handle those situations as a part of their job. He said if it is only four homes then the KPD is not doing the jobs of landlords, they are enforcing laws that landlords cannot. He wants to be notified so he can be proactive and address problems. He said landlords do what they can and are concerned, which is why they were present at the meeting. He said if there has to be an Ordinance that is fine, but he wants to know what it is and he does not want to be accountable for the actions of others.

Trevor Grauer, 25 Winchester Court, echoed what others saying and added that landlords care about their properties and want a better City. He has serious concern about an Ordinance asserting that a landlord can control how another person behaves. Landlords abide by strict landlord-tenant laws which prevent certain actions. He noted when he has had complaints about students, he sits down with them and their parents, and yet when the cops were called he was notified by the college and not the KPD. When he tried to call the KPD to get information about the incident he was only told the date and time of the incident and that there was no report of police activity at the property since the most recent police log was October 4. He said he is an active manager of his property and is trying his best, but it is difficult to get information with the system as it is. He said it is unfair to fine property managers who are doing everything in their ability to manage their properties. He asked if an Ordinance is necessary when it is only a problem of a few residences. He asked if the Ordinance is adopted, if there will be a provision to determine if an owner is actively involved and doing everything they can.

Regina Wright, 19 Chase Place, said she has been renting for 15 years and is very involved with her tenants. She said one of her concerns is defining what the problem actually is. She said the graph Mayor Lane displayed only shows an increase in phone calls, not actual data. She hears from friends that many police calls for disturbance are over custody or parenting issues. She said the population of Keene is very different than it was 15 years ago; there is an abundance of mental health disorders, homelessness, and drug addiction. She said approximately 58% of the City is rentals and there should be a lot more issues than there are in reality. She said if student parties are the major issue, draft an Ordinance on unruly gatherings and stipulate the number of people and alcohol regulations, etc. She said we need to know what the increased police calls are actually for. She said if it is only four homes, send them a letter. She said she cannot do anything about what happens in her rentals; the spaces are rented with the stipulation they will be kept in good condition and all landlords can do is hope for good tenants.

John Therriault, 76 Bradford Road, said he does not have rental properties in Keene but is concerned about good government. He thinks everyone should consider that when the government passes ordinances there are always unintended consequences that are often adverse. He thinks this Committee should consider if it is really worth the potential unintended consequences before voting. He does not think this is a large enough problem worth the Council's time.

Andy Mackey, 23 Ellis Court, has owned one duplex since 2006 and the market for tenants was really good until the 2014 Pumpkin Festival. As the market has changed, he has also seen an increase in tenants with mental health disorders. He said he would rather see an end-of-semester college party as opposed to a mentally ill tenant who is constantly disruptive; he sees more of the latter now. He only has one building and does not know how people with multiple properties keep track of them all the time. He wants to know what the consequences will be for landlords and where their responsibility ends. He feels like there are too many questions, that landlords have been made out as the bad guys in this, and that he is worried.

Mr. Beauregard said the problems have still not be defined and clarified. He thinks the problems should be the genesis of the Ordinance and the Committee should ask what neighborhoods, what problems, have summons been issued, etc.

Mr. Tousley said similar things have been discussed for many years and the discussion is always centered on students. He said while the college did not account for these issues in the past, they have lately and are working hard. He said it seems things are already moving in the right direction, many things have been enacted, and the college is now invested in the City. He does not understand why the City is still pursuing this after 20 years.

Mayor Lane said his last comment was to simply state this is not intended to be a solution to what is an unfortunate problem that has existed in the City for a long time. He only intends this Ordinance to be an additional tool for the City. He said it should not be the responsibility of the KPD to manage these properties, especially those of out-of-town landlords; he said the majority of properties affected have an out-of-town landlord and no one knows who they are. He is not suggesting beginning to punish landlords for the activities of tenants; this is just a mechanism to begin discussions with landlords, particularly those with a high number of citations on their properties, about how those properties can be better managed. He said this is not a draconian effort to attack landlords.

Councilor Lamoureux thanked everyone for coming to the meeting and sharing. He thinks it is important to understand that something has been identified as a problem and a solution is needed. He said the Mayor brought this forward to at least initiate a discussion again and maybe new ways to work with landlords can be discovered. He is not looking for an Ordinance, but possibly to start building a better relationship with landlords and communication about problems. He hopes the Council will not just adopt an Ordinance but instead discuss ideas and solutions with landlords to try to make the City better for everyone. He said more discussion is needed and he hoped the people in the room would be a part of that discussion.

Councilor Hooper echoed Councilor Lamoureux and thanked everyone for coming to the meeting. He said this idea of an Ordinance for disorderly residences stimulated the conversation and he thinks it is a good start. He heard a lot of great ideas and good communication will be pivotal to resolving these problems. He does not think it is a good idea to do anything with an Ordinance at this point but rather to discuss, define the problem, share ideas, and determine how to better enforce these issues. He endorsed continuing the conversation before talking about an Ordinance.

Vice Chair Filiault agreed with the other councilors and thanked the audience for a civil and polite conversation. He agreed more time is needed to review this issue and there was no Ordinance before the Committee to vote on. He said there are more questions than answers and his initial feeling is an Ordinance is unnecessary. Maybe all that is needed to solve this problem is better policies, guidelines, and conversations. He encouraged the Mayor and landlords to have open dialogue and try to solve this without an Ordinance.

Councilor Hooper made the following motion, which was seconded by Councilor Lamoureux.

On a vote of 3-0, the Municipal Services, Facilities and Infrastructure Committee recommends the discussion of an Ordinance for Disorderly Residences be placed on more time.

Vice Chair Filiault suggested landlords reach out to their Councilor's and the Mayor to continue dialogue before the discussion comes back to this Committee. Mayor Lane said he intends to speak with the City Attorney about a framework for an Ordinance to decide how to move forward.

4) Relation to Snow and Street Maintenance Periods – Public Works Department Ordinance O-2017-18

The Public Works Director noted this is a follow-up conversation regarding a request from residents for overnight summer parking. Currently Downtown and in areas immediately adjacent, overnight parking is restricted between 2-6 AM in the summer for regular City maintenance of those roadways. Staff from the Public Works and Police Departments looked at current activity to identify possible changes to recommend to Council. He showed a graphic displaying the original maintenance period as it is today and the streets effected; the current restrictions have been in effect for more than 30 years. Staff determined it best to divide the area into two primary maintenance areas: 1) Downtown, Business, and Commercial where access is needed seven days per week to maintain appearance; 2) Areas adjacent to Downtown where access is needed two days per week for maintenance. With this Ordinance, overnight parking will only be restricted in areas adjacent to Downtown on Wednesdays and Thursdays from 2-6 AM. This Ordinance amends this section of the City Code and creates two summer periods for the Downtown core and Downtown-adjacent. Summer maintenance is only from May 1-October 30.

Councilor Lamoureux thanked staff for addressing this issue; he asked how the signage will change. The Public Works Director replied that signs in the Downtown core will remain the same, but signs in the Downtown-adjacent areas will be changed.

Councilor Lamoureux made the following motion, which was seconded by Councilor Hooper.

On a vote of 3-0, the Municipal Services, Facilities and Infrastructure Committee recommends the adoption of Ordinance O-2017-18 relating to snow and street maintenance periods.

5) Adjournment

Hearing no further business, Vice Chair Filiault adjourned the meeting at 7:30 PM.

MSFI Meeting Minutes
October 11, 2017

Respectfully submitted by,
Katie Kibler, Minute Taker