



City of Keene
New Hampshire

**MUNICIPAL SERVICES,
FACILITIES AND INFRASTRUCTURE
COMMITTEE
AGENDA
Council Chambers B
November 28, 2018
6:00 PM**

Janis O. Manwaring
Randy L. Filiault
Stephen L. Hooper
Gary P. Lamoureux
Robert B. Sutherland

-
1. Relating to the Purchase, Use, and Possession of Tobacco Products
Ordinance O-2018-20
 2. Proposed Sustainable Energy Resolution - Energy and Climate Committee

MORE TIME ITEMS:

- A. Future Consideration of 12 Gilbo Avenue - Parks, Recreation and Facilities Department
- B. Ashuelot Court Homeowners – Request to Partner in the Installation of Water and Sewer Lines on Ashuelot Court, a Designated Private Road

Non Public Session
Adjournment



CITY OF KEENE

O-2018-20

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

AN ORDINANCERelating to the Purchase, Use, and Possession of Tobacco Products.....

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 in its entirety the stricken text being Article III - Tobacco, Division 2 – Environmental Tobacco Smoke Regulations for Restaurants, in Chapter 6, Alcoholic Beverages and Tobacco, and inserting the bolded text being a new Article III – Tobacco, Division 2 - Purchase, Use, and Possession of Tobacco Products, as follows:

~~DIVISION 2. ENVIRONMENTAL TOBACCO SMOKE REGULATIONS FOR RESTAURANTS~~

~~Sec. 6-81. Definitions.~~

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

~~*Cocktail lounge* means that portion or specified area of a restaurant, hotel, motel, convention center or resort which is used primarily to serve liquor or other alcoholic beverages, irrespective of whether or not food is also served there.~~

~~*Effectively segregated* means an enclosed place separating the no-smoking area from the smoking permitted area. For cocktail lounges, up to 30 cubic feet per minute of outdoor air per occupant shall be provided for 100 people per 1,000 square feet. Room air shall be discharged directly outdoors rather than recirculated. More air shall be exhausted from the room than is supplied to it.~~

~~*Employee* means any individual person who performs services for an employer.~~

~~*Employer* means an individual person, partnership, association, corporation, trust, or other organized group of individuals, including the city or any agency that utilizes the services of one or more individual employees.~~

~~*Person* means any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing. Person in charge shall not include the owner of the property unless he is routinely present and controls the day-to-day activities or sets the policy carried out on the premises upon which smoking is prohibited.~~

~~*Private club* means places owned by social, fraternal, or religious organizations.~~

~~Restaurant means any enclosed coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and other eating establishment which gives or offers food for sale to the public, guests, or employees, as well as kitchens in which food is prepared on the premises, for serving elsewhere, including catering facilities.~~

~~Smoking means inhaling, exhaling, burning or possessing any lighted cigar, cigarette, or other tobacco product in any form.~~

~~City means the City of Keene.~~

~~This division is promulgated under the authority granted the city council by the state statutes.~~

~~Sec. 6-83. Statement of purpose.~~

~~There is conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes and irritations to the eyes, nose and throat. The harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers. Environmental tobacco smoke (ETS), more commonly known as "secondhand smoke," includes both exhaled smoke and the side stream smoke from burning cigarettes and causes the death of 53,000 Americans each year. The environmental protection agency (1993) has designated environmental tobacco smoke to be a Class A carcinogen similar to radon and asbestos with no known safe levels of exposure. In recognition of these facts, the city recognizes the right of those who wish to breathe smoke free air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in restaurants.~~

~~Sec. 6-84. Conflict with other laws or regulations.~~

~~Notwithstanding the provisions of the foregoing, nothing in this division shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.~~

~~Sec. 6-85. Public health; food service establishment permit.~~

~~Upon application for a food service establishment permit, the applicant shall attest that the restaurant is in compliance with this division. If the applicant does not attest that it is in compliance with this division no permit may be issued. The person in charge of the restaurant shall allow access to the restaurant by health/inspections department personnel of the city to inspect the restaurant for compliance with this division. Any person in charge attesting on a food service establishment permit application found not to be in compliance with this division is in violation. Failure to comply with this division shall be grounds for withholding, suspension, or revocation of the food service establishment permit required by the city health ordinance as set forth in section 46-386.~~

~~Sec. 6-86. Investigation.~~

~~Any complaint of violation of this division relative to ventilation, signage, physical barriers or related facility noncompliance shall be investigated by the city health/inspections department. All other complaints of violations shall be investigated by~~

~~the city police department. Any violation requiring a summons shall be served by the city police department.~~

~~Sec. 6-87. Violations.~~

~~Any person who violates this division shall be subject to a fine in an amount of \$200.00 for a first offense, \$300.00 for a second offense and, \$500.00 for a third or subsequent offense. Failure to comply with this division shall be grounds for withholding, suspension or revocation of the food service establishment permit required by section 46-386. To constitute a violation of this division, the person in charge must first inform the customer or employee that smoking is prohibited.~~

~~Sec. 6-88. Smoking prohibited.~~

~~No person shall smoke nor shall any person, employer, or other person having control of the premises upon which smoking is prohibited by this division, or the agent or designee of such person, permit a person to smoke in any restaurant. Additionally, no person shall smoke in any place in which a sign conforming to the requirements of this division is posted. No person shall remove a sign posted under the authority of section 6-89.~~

~~Sec. 6-89. Posting notice of prohibition.~~

~~Every person having control of premises upon which smoking is prohibited by and under the authority of this division shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).~~

~~Sec. 6-90. Exemption for cocktail lounges and private clubs.~~

- ~~(a) — Cocktail lounges are exempted from this division provided that they are effectively segregated from any nonsmoking area. An enclosed place must separate the no smoking area from the smoking permitted area. In addition, there must be a continuous, physical barrier such as a wall, partition or furnishing (that spans from the floor to the ceiling) that separates the no smoking area from a smoking permitted area. The barrier may contain doors or portals for exit and entry.~~
- ~~(b) — Buildings owned and operated by private clubs when used by the membership of the organization, their guests or families, or when they are rented or leased for private functions from which the public is excluded, and arrangements are under the control of the sponsor of the functions and not the organizations are exempted. Smoking shall be prohibited when such buildings are made available to the general public.~~

DIVISION 2. – PURCHASE, USE, AND POSSESSION OF TOBACCO PRODUCTS

Sec. 6-81. - 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:

E-cigarette means any electronic smoking device composed of a mouthpiece, a heating element, a battery, and electronic circuits that provides a vapor of pure nicotine mixed with propylene glycol to the user as the user simulates smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, or e-pipes, or under any other product name.

Liquid Nicotine means any liquid product composed either in whole or in part of pure nicotine and propylene glycol and manufactured for use with e-cigarettes.

Person means any individual, firm, fiduciary partnership, corporation, limited liability company, trust, or association, however formed.

Tobacco Product means any product containing tobacco including, but not limited to, cigarettes, smoking tobacco, cigars, chewing tobacco, snuff, pipe tobacco, smokeless tobacco, and smokeless cigarettes.

Sec. 6-82. - Purchase, Use, and Possession of Tobacco Products.

- (a) No person under the age of 21 shall:
 - (1) Purchase a tobacco product, e-cigarettes, or liquid nicotine.
 - (2) Use or possess a tobacco product, e-cigarettes, or liquid nicotine.
- (b) No person shall:
 - (1) Sell, give, furnish, provide, cause or allow or procure to be sold, given or furnished, a tobacco product, e-cigarette, or liquid nicotine, to a person under the age of 21.
 - (2) For the purposes of this ordinance, the terms "Tobacco Product," "E-cigarette," and "Liquid Nicotine," shall include any product or device defined herein.
- (c) Any person violating the provisions of this ordinance shall be subject to a fine of up to fifty dollars (\$50.00) for a first offense, and up to one hundred dollars (\$100.00) for a second or subsequent offense.

- (d) **Except as otherwise modified herein, the provisions and requirements of RSA 126-K:1, et seq, as may be amended from time to time, remain in effect.**

Kendall W. Lane, Mayor

In City Council November 15, 2018.
Referred to the Municipal Services,
Facilities and Infrastructure Committee.



City Clerk



City of Keene, N.H.
Transmittal Form

November 20, 2018

TO: Municipal Services, Facilities and Infrastructure Committee

FROM: Energy and Climate Committee

THROUGH: Elizabeth A. Dragon, City Manager

ITEM: 2.

SUBJECT: Proposed Sustainable Energy Resolution - Energy and Climate Committee

RECOMMENDATION:

To recommend that the City Council adopt the proposed Sustainable Energy Resolution.

The motion was made by Peter Hansel, seconded by Jessica Baum, and carried unanimously.

ATTACHMENTS:

Description

Draft Resolution

BACKGROUND:

The Energy and Climate Committee discussed the proposed Sustainable Energy Resolution at their meeting on Wednesday, November 7, 2018. Included below is an excerpt on this topic from the meeting minutes.

"Chair Shedd stated that the Monadnock Progressive Alliance (MPA) presented a draft Sustainable Energy Resolution at the City Council meeting on Thursday, November 1, 2018. The item was referred by the Mayor to the Energy and Climate Committee (ECC) and the Municipal, Services, Facilities, and Infrastructure (MSFI) Committee, which is a City Council committee. After the ECC provides a recommendation, the MSFI Committee will discuss the draft document and provide a recommendation to City Council. She said that the ECC can choose to take one of the following courses of action at today's meeting:

- 1) Recommend adoption of draft Resolution with no changes
- 2) Recommend adoption of Resolution with modifications
- 3) Recommend against adoption
- 4) Put the item on more time (for further discussion at the next ECC meeting)

Chair Shedd said the committee does not need to make decision today, however, when they are ready to make a recommendation it will go to the MSFI committee. She said the MSFI committee is meeting tonight, but she doubts ECC members will be ready to present that soon. The next MSFI meeting is scheduled for Wednesday, November 28, 2018. After the MSFI Committee provides a recommendation, it would go to City Council, which could happen as soon as December 6th. She said there are opportunities to provide both spoken and written public comment at MSFI meetings.

Chair Shedd asked committee members to provide comments on the draft Resolution. Vice Chair Hansel stated

that he is comfortable with the Resolution as it is. Mr. Brehme and Mr. Naadzenga replied they were comfortable with the Resolution as it is. Mr. Pipp entered the room.

Chair Shedd introduced Mr. Dooley as ECC's newest member. He is the Facilities and Grounds Director for the School District. Chair Shedd said ECC has wanted representation from the School District on the committee for a long time. She asked Mr. Dooley what his first impressions are on the Resolution and Mr. Dooley replied that needs more background information before he comments on it. Mr. Dachowski said he is comfortable with the Resolution as a starting point but he wants much more to be done very soon. Chair Shedd agreed that the Resolution represents just one part of the plan, mainly setting targets for the Energy Plan. Ms. Gaunt, who hopes to join the ECC in 2019 as a member or an alternate, stated that she is very much in favor of supporting the Resolution. ECC member Mr. Pipp stated that he is also in support of the Resolution as it is written.

Chair Shedd announced that Ms. Gillard and Ms. Jones are the two community members who brought forward the proposal as members of the Monadnock Progressive Alliance and Keene citizens. Chair Shedd asked Ms. Gillard and Ms. Jones to speak about their outreach process. Ms. Gillard stated that she shared the draft Resolution with individual Council members prior to submitting the Resolution to City Council. In addition, they shared the draft Resolution with various community entities and the support has been overwhelmingly positive. She said they have a number of letters of support from businesses and churches, the Greater Keene Chamber of Commerce, the City Manager, Bensonwood, Green Energy Options, MoCo Arts, MAPS Counseling Services, Southwest Region Planning Commission, the Provost of Antioch University New England, the Church Interfaith Council and other individual churches. Ms. Gillard said that a wide variety of community entities are showing support and they have gotten some valuable input on the challenges of implementing the Resolution and most supporters were impressed with the timeline for the Energy Plan. Chair Shedd thanked Ms. Gillard and Ms. Jones and their organization for their work in stakeholder engagement as it was an excellent start for ECC's Energy Plan.

Member of the Agricultural Commission, Mr. Daloz, stated that agriculture is an important component of the plan; however, the Agricultural Commission currently needs new members to participate fully. Mr. Lamb stated that he is available for support about explaining the procedural elements for the City Council process. Ms. Brunner agreed that there are multiple possible timelines for bringing the Resolution to MSFI. However, if they make a motion tonight they could possibly get the Resolution on the MSFI agenda for their meeting on November 28, 2018. Chair Shedd asked if ECC members would be required to give a formal presentation at MSFI meeting or just a brief verbal comment. Mr. Lamb replied that given the Resolution has been submitted, it is up to Ms. Gillard to represent the request. He said the report from ECC would be secondary but could include a short presentation of the committee's work. Initially the responsibility is with the folks who submitted the petition.

Chair Shedd asked Mr. Lamb about the window of time for the public to submit written comment. Mr. Lamb said that is more associated with a public hearing. He said City Council operates as a committee structure and most of the lengthy evaluation of topics is done at the committee level, therefore, ECC members should be prepared to answer questions. Ms. Gillard and Ms. Jones may wish to consider having people in the room who are in support of the Resolution. Chair Shedd clarified that once it goes from MSFI to the Full Council there is no other opportunity for public comment; however there will be discussion amongst Councilors.

Ms. Baum joined the meeting and Chair Shedd introduced her to Mr. Dooley. Chair Shedd asked Vice Chair Hansel to share the draft motion he prepared in advance of the meeting. Vice Chair Hansel stated that he made some changes to the draft motion he prepared in advance of the meeting. The only changes include the wording in the second to last sentence and the last sentence:

*“While there is much work yet to be done, we believe that Keene is ready to develop a strategic energy plan that will allow us to transition away from fossil fuel energy sources and towards **100% renewables**. We*

therefore move to recommend that the Keene City Council adopt the proposed Sustainable Energy Resolution.”

Chair Shedd noted that an important stakeholder that has not been represented in developing an Energy Plan is the school system. She asked Mr. Dooley whether, based on his experience and knowledge of the school system's energy future, he sees any benefits, issues, or has any other thoughts on adopting the Resolution. Mr. Dooley replied that there would certainly be financial obligations for changing diesel energy use, propane and particularly the large amounts of heating fuel the school systems continue to use. He said changing the infrastructure for #2 heating fuel would be massive.

Chair Shedd announced that on Friday, she, Ms. Brunner, Mr. Watson and the Chair of the Peterborough Energy Committee attended an event at Dartmouth College which was led primarily by the Town of Hanover and the New Hampshire Sustainable Energy Association (NHSEA). She said that the Town of Hanover hired a consultant to help the Town develop a plan for transitioning to 100% renewable electricity, and this consultant presented an interesting array of financial tools that will allow them to broker deals with alternative energy suppliers. One example is a virtual power purchase agreement which will allow them to buy a share of a turbine 14 miles offshore of Martha's Vineyard. This one measure would cover all of Hanover and Dartmouth's energy consumption. The Town of Hanover has been working with the consultant to crunch the numbers and determine the impact on their budget. They are contemplating refining the community choice aggregation model they have used for several years. In addition, they are looking at ways to encourage citizen participation in consumer electricity "buying co-ops." Chair Shedd said other communities around the country like Atlanta have plans in place to transition to 100% renewable electricity, so these types of measures can be scaled up to larger communities. Chair Shedd said Burlington, VT, which is already 100% renewable, did very aggressive energy efficiency work early on and they use less energy now than they did in the winter of 1989.

Mr. Lamb encouraged Chair Shedd and members to be able to define exactly what 100% renewable means when they go to Council because utilities are very different than transportation. Vice Chair Hansel stated that the Resolution splits that into two different time frames, and noted that achieving 100% renewable energy from the utilities will be easier than achieving the same goal for transportation. He said he received a call from someone who is interested in building a one megawatt solar array on his property in Hillsboro and is considering Keene as a purchaser, so there are methods to obtain that type of energy. The other thing to consider is that Keene utility companies are already providing a percentage of their power that is renewable (up to 14%) and if you look at municipal solid waste it is up to 50%. Vice Chair Hansel said there are ways to solve the electrical side of the equation. However, the thermal and transportation issues are not as much under the City's control, for example, automobile efficiency. For that reason, the Resolution provides more time to solve that part of the problem, until 2050. Mr. Lamb reiterated that they are going to need to be clear about what they mean by 100% renewable as committee members would appreciate an explanation.

Ms. Brunner stated that the Hanover event brought together different municipalities that are thinking about adopting, or have already adopted, ambitious renewable energy targets. She said the highlight of the day was the consultant presentation from 3Degrees, which outlined five different scenarios under which the Town of Hanover could achieve 100% renewable energy for electricity. The consultant also provided a baseline scenario that looked at what would happen if the Town does nothing. For example, because of the renewable energy portfolio standard in NH, if they do nothing then 25% of their electricity will come from renewable energy sources by 2050. She said the consultant outlined five different paths that the town of Hanover could use to get to 100% renewable electricity, which was inspiring to see. Ms. Brunner said there was very little talk about transportation or heating and that the event was focused instead on electricity. She said there was also a great presentation from Henry Herndon from the NHSEA about the Public Utilities Commission (PUC) docket process, which included information about how municipalities can become interveners and participate in that process to promote policies that are more environmentally-friendly.

Vice Chair Hansel stated that he is beginning to gather information on renewable energy production in Keene. He said that with the help of Ms. Brunner and Keene State students, he is creating an inventory of solar

production in Keene which Eversource places at about 1.3 megawatts. He said he is making good progress on inventorying installed solar sites in Keene. Vice Chair Hansel stated that the percentage of solar production is probably less than 5% but that is significantly more solar production than several years ago. Chair Shedd added that by the time the City adds the 350 Marlboro Street location it will bring solar production up to 2 megawatts.

Chair Shedd said her take-home lesson from looking at some of the renewable energy plans from other communities is that it requires a balance of locally-distributed generation of renewables which is important for Keene's emphasis on local resilience. She added that with various forms of community aggregation and aggregate purchasing among different institutional consumers, as well as some creative financing models, renewable energy is achievable. Chair Shedd stated that fundamentally changing how we power our society is a paradigm shift but the changes are happening and there are resources moving forward. She said ICLEI possesses a whole set of resources on going 100% renewable that are available to Keene as ICLEI members.

Mr. Naadzenga asked Chair Shedd what the public perceptions of this shift are and if there are any measures of willingness to support this type of change. Chair Shedd said there is no currently no public perception survey data for Keene, however, a majority of U.S. citizens recognize climate change as an important issue. Mr. Brehme added that there are creative ways to motivate the public and to engage others in how to go about addressing climate change. Ms. Baum replied that "Gamification" and "Community-Based Social Marketing" are important tools for motivating the public.

Mr. Lamb suggested moving the last sentence of the Draft Sustainable Energy Resolution for Keene to the front of the statement. He said the memo from the community would include today's minutes and any background information.

Mr. Hansel made the following motion:

We move to recommend that the Keene City Council adopt the proposed Sustainable Energy Resolution.

Since the Spring of 2000 when the Keene City Council passed Resolution R-2000-14 which committed Keene to join other cities around the country in the Cities for Climate Protection campaign, our City has been a model both in New Hampshire and the country in pursuing the reduction of greenhouse gas emissions and preparing for the effects of climate change. Not only has it set goals for municipal and community-wide GHG reduction, but it has also set up the mechanisms for measuring results and monitoring performance going forward. While there is much work yet to be done, we believe that Keene is ready to develop a strategic plan that will allow us to transition away from fossil fuel energy sources and towards 100% renewables.

Chair Shedd stated that the committee has not yet defined what the word "renewables" means, and suggested that they refine the definition. Mr. Lamb said that they can speak in general terms and then tell the committee that those specifics will be detailed in the plan. He said they have already submitted the Resolution so unless they want to make recommendations about the language it is already in front of City Council. Mr. Pipp asked whether or not they should omit the word "draft" from the Resolution. Mr. Lamb says it has a Resolution number by now at City Clerk's office so the Community Development department will insert the number for them.

Chair Shedd noted that the MPA has shared the draft Resolution with various City department heads and Council members, who have not raised any objections to the language. She asked Mr. Lamb if there are other steps where City Staff would want to amend this, perhaps at MSFI. Mr. Lamb said the MSFI committee can propose changes and make recommendations. He said they may have questions about goals so the more examples they can provide them with, the better. He said there are a lot of people in the City who are involved in energy issues and setting energy policy and these are the groups they will draw together for writing the Energy

Plan. Ms. Gillard said Mr. Bohannon informed her that they would like to be included in the process as he is in charge of parks and recreation and Mr. Blomquist also wants to be involved in the process of moving the plan forward.

Hearing no more discussion, Chair Shedd asked for a second for the motion made by Mr. Hansel. Ms. Baum seconded the motion, which passed unanimously.

Chair Shedd thanked everyone for their support and said that the Resolution sets the stage for a lot of changes and also a lot of work for ECC to create an Energy Plan for Keene by the proposed 2020 deadline. Ms. Gillard thanked the ECC and other community entities for their help and support."

10/25/18

DRAFT Sustainable Energy Resolution for Keene

WHEREAS, The City of Keene has formally recognized the challenges of Climate Change since the year 2000 when it became a participant in the Cities for Climate Protection Program and

WHEREAS, The City of Keene then developed and implemented a Climate Action Plan in 2004 and a Climate Adaptation Plan in 2007 and incorporated the Climate Action and Adaptation Plans into its 2010 Comprehensive Master Plan after extensive community stakeholder engagement and

WHEREAS, The State of New Hampshire 2009 Climate Plan set a goal of reducing Greenhouse Gas Emissions by 80% from 1990 to 2050 and

WHEREAS, the challenges presented by Climate Change have become increasingly apparent in the intervening years, as reported in the Congressionally-mandated National Climate Assessments (see reference below) and

WHEREAS, the combustion of fossil fuels accounts for as much as 76% of US Greenhouse Gas Emissions (see US EIA citation below) and

WHEREAS, energy efficiency measures that drive down energy demand are the most cost-effective means to reduce fossil fuel consumption, and clean energy sources such as solar, wind, and small hydro may now be cost-competitive with fossil fuel sources and

WHEREAS, local, distributed generation of energy can provide resilience to weather-related interruptions of energy supply and economic disruptions of energy pricing while reducing air pollution and associated public health risks, and

WHEREAS, clean, renewable energy is one of the nation's fastest-growing employment sectors and represents an enormous economic opportunity for Keene to create jobs in the emerging industry, fulfilling the vision of a vibrant economy outlined in the Comprehensive Master Plan and the Economic Development Action Plan and

WHEREAS, economically disadvantaged residents, older people and children, people who are homeless, people with disabilities or health conditions, and members of other under-represented minorities experience the impacts of climate change disproportionately and

WHEREAS, cities across the nation have made commitments to transition to 100 percent clean energy and Keene strives to remain a leader among its peer cities,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Keene that:

- 1. It is the goal and policy of the City of Keene that all electricity consumed in the City will come from renewable energy sources by the year 2030 and that 100% of all thermal energy and energy used for transportation come from renewable energy sources by the year 2050. This goal will apply to the entire Keene community, not just municipal government operations.**
- 2. The City of Keene develop a strategic plan by April, 2020 to meet this renewable energy goal through a transparent and inclusive stakeholder process.**