

City of Keene
New Hampshire

MUNICIPAL SERVICES, FACILITIES & INFRASTRUCTURE COMMITTEE
MEETING MINUTES

Wednesday, August 24, 2022

6:00 PM

**Council Chambers,
City Hall**

Members Present:

Mitchell H. Greenwald, Chair
Randy L. Filiault, Vice Chair
Robert C. Williams
Catherine I. Workman

Staff Present:

Elizabeth A. Dragon, City Manager
Thomas P. Mullins, City Attorney
Amanda Palmeira, Assistant City Attorney
Steve Russo, Police Chief

Members Not Present:

Kris E. Roberts

Chair Greenwald called the meeting to order at 6:00 PM and explained the procedures of the meeting.

1) Councilor Philip Jones – Resolution in Support of a “Protect Our Police Bill” – Councilor Philip Jones

Chair Greenwald asked to hear from Councilor Jones.

Referring to his communication, Councilor Jones stated his intent is to ask the State to outlaw bullets that will pierce armor, the same armor that the City buys for the Keene Police Department (KPD). Councilor Jones continued that his recommendation is that the City Council authorize staff to draft a resolution in support of a “Protect Our Police Bill.” He continued this is not just a social resolution. The City Council is the steward of the KPD. They need to help their Police Officers, as well as every other police agency in the state. He does not see a reason why these type of bullets are available to the public. In a recent school shooting, the shooter used this type of bullet, and as a result, the children who were shot could not even be identified, because the bullet explodes on impact. He does not understand why outlawing body piercing bullets is not a law right now.

He branded the issue “protect our police bill” on purpose. He could have just said “Amend RSA 159-A,” but you get more attention when you brand it, and he did not want to make it sound like (Keene) was doing something about gun control. It is more about protecting Keene Police. The resolution would be sent to all State elected officials, requesting that legislation be enacted and supported, which would outlaw the owning, storing, buying, selling, distributing, manufacturing, or custom-making of any gun-loading ammunition designed to penetrate bullet-proof armor. The Keene Sentinel had an article on this and he has already received replies from all over, 97% positive. NH Public Radio picked it up, too. He received a lot of positive feedback, but the negative feedback he received made him even more

determined to do this. He is proud to be presenting this. It is the City Council's job, as the stewards of the Police, to protect the Police wherever they can. He does not understand why the RSA only calls for it to be unlawful for these body piercing bullets to be used in a crime. People want these bullets off the street; they do not want the bullets to only be confiscated after they have been used in a crime.

Chair Greenwald asked Thomas Mullins, City Attorney, for comments, followed by Police Chief Steve Russo.

The City Attorney stated that he spoke with Councilor Jones before he submitted this and told him it was something the City Council would need to think about. He continued that there are two statutes at play with respect to this. The one Councilor Jones referenced is RSA 159:18 Felonious Use of Teflon-Coated, Armor-Piercing and Exploding Bullets and Cartridges. As Councilor Jones pointed out, it is a Class B Felony if a person uses or attempts to use of these "*Teflon-coated, armor-piercing and exploding bullets and cartridges*" in the course of committing any misdemeanor or felony. It is not currently unlawful to possess these items, or transfer, buy, or sell them, as long as one is not doing that in commission of a felony or misdemeanor.

The other statute to point out, which is the reason Councilor Jones is suggesting that this happen by legislative action, is RSA 159:26. The State has preempted any local bylaw or ordinance with respect to the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or "other matter" pertaining to firearms, which includes ammunition. The State has taken upon itself the sole right to regulate that in any manner, which is why Councilor Jones is suggesting this has to be through legislation (and not a City Ordinance). Whether or not the City Council as a group wants to support that request is up to the City Council.

Councilor Williams stated that the RSA talks about "Teflon-coated bullets," but Teflon is a brand name that refers to the same substance used on frying pans. Is that written into the RSA? Councilor Jones replied yes. Councilor Williams asked if some other non-stick solution that could be put on bullets would also be covered by the RSA. The City Attorney replied that that is a good question and he did some research about armor-piercing bullets. He continued that the statute specifically uses the phrase "*Teflon-coated or armor piercing*." The Bureau of Alcohol, Tobacco, and Firearms's special advisory in 2015 tried to better define "armor-piercing projectile," for purposes of the Gun Control Act of 1968. That definition says "*a projectile which is constructed entirely from one or a combination of Tungsten alloy, steel, iron, brass, bronze, beryllium copper, or depleted uranium*." Another definition deals with a jacket weight of more than 25%. Thus, the State's definition seems to be narrower than that, but apparently these types of projectiles are also covered by the Gun Control Act. The Police Chief could speak more about this, but the State recently adopted legislation which limits the ability of local law enforcement to enforce gun-related legislation or rules. He suspects that even if an individual were in violation of the Gun Control Act, that violation, if it did not trigger RSA 159:18, would have to be in connection with some other State-related offense. The short answer is he thinks the State would probably need to, if they were going to adopt legislation on this, look carefully at the definition of "armor-piercing round." The ATF has tried to provide a definition.

Councilor Filiault stated that he has a legal question for the City Attorney. The State was trying to enact legislation saying the State can ignore Federal law, but State law supersedes local law, and Federal law supersedes State law, so how would that work? Can the State actually say you can violate a Federal law? The City Attorney replied no, Federal law is still supreme. He continued that Federal law might incorporate State law, to some extent, so there could be a bleed over between the two. Councilor Filiault replied that he read that the State was trying to say that if they disagree with Federal law (regarding guns), they are not going to follow it. Is it correct that no matter what they say, they are obligated to follow Federal law? The City Attorney replied yes, and the State action did not say you can violate Federal law. He continued that the State action said that local law enforcement should not *assist* Federal law enforcement agencies in the enforcement of Federal gun laws, unless it triggers an underlying State violation of some type.

Councilor Jones stated that the State law already is stricter than the Federal law, regarding the use of penetrating bullets. The City Attorney replied that again, the State law only applies in connection with the use of the bullets. He continued that his understanding, under the ATF rules and under the Gun Control Act, is that they are generally unlawful under Federal law and people are not supposed to possess them. He remembers when this debate was occurring many years ago. Councilor Jones replied that that is even better – they could then comply with Federal law. The City Attorney replied that they still have to have the State requirements in place.

Chair Greenwald asked to hear from the Police Chief.

Police Chief Steve Russo stated that he does not have the statute that was just enacted in front of him now, and he does not remember if it says “should not” or “shall not,” but his understanding is that [the KPD] cannot assist or enforce Federal laws. He continued that there are many Federal laws they cannot enforce anyway, whether they are Federal laws or not, such as immigration. The KPD has no interest in enforcing that. The KPD cannot arrest someone on a Federal law. If they have some other reason to hold the person, they can call the ATF and say [the person is violating Federal law]. The problem with the statute that the City Attorney brought up is that it does affect Gun-Free School Zone and how the KPD interacts with the SAUs, and domestic violence cases, so that is problematic in another way. If someone has Teflon-coated bullets, the KPD cannot arrest him on that, just because it violates a Federal law. The KPD can gather the information, if they can get it, and forward it to the ATF. He is not familiar enough with that to know if it is outright [illegal]. He did not think it was illegal. Chief Russo stated that ballistic vests are made at different levels. Some will stop up to X amount of handgun [rounds]. None will stop rifle rounds of any caliber, unless you have plates. The armor-piercing may or may not help you. It is not one-size-fits-all. Some of these rounds, from high caliber weapons, will go right through the plates that the KPD has in its heavy vests. It is not a good idea to have them on the street, but he does not think, unless it is a State statute, that Keene could actually regulate any of those, based on Federal law.

Chair Greenwald asked if anyone had questions for Chief Russo.

Councilor Workman asked, in the Chief's opinion, and in his Officers' experiences, how much of a need is this? How often are they seeing this type of paraphernalia? Chief Russo replied that he cannot even remember the last time it has been brought to his attention. He continued that when he was a Patrol Officer and Supervisor, he helped confiscate many guns through narcotics investigations, regular investigations, and domestic violence cases, and he cannot recall ever coming across these rounds. They are very expensive. Unfortunately, the people who want them are going to get them. He cannot imagine how much they cost; ammunition in general is expensive. However, regarding the question of whether there is a need, it is only that one time when that need may be, but unfortunately with the way society is right now, [armor-piercing bullets] will be available to the people who want to get them. It will cause many people to start saying it violates their Second Amendment rights and they should be able to buy this and that. He is not a hunter and is not very familiar with some of the rounds that are out there. He does not know why the public would need [armor-piercing bullets], but people are going to say it is their right.

Councilor Workman stated that Keene has the Bearcat. She continued that if they suspected there was going to be an arrest, a search warrant, or some law enforcement activity where the alleged perpetrator may have these type of weapons and paraphernalia, the KPD would anticipate that. Chief Russo replied that is correct; the KPD's operations are not just thrown together. He continued that the KPD does a risk assessment for every operation, which tells them what level of people and equipment they need to bring. Definitely, if there were a person with long guns, and perhaps abnormal ammunition, the KPD would ramp up what they need to do. Some of these rounds will go through the Bearcat or any other armored vehicle in the state, through the windows.

Chair Greenwald asked if there were any more questions for the Chief. Hearing none, he asked for comments or questions from the public or Councilors present. Hearing none, he stated that what he is wrestling with is that he does not think any Councilor is in support of armor-piercing ammunition, but he is not sure this is City Council business. He continued that the City Council is there to deal with basketballs and potholes, water, Public Works-type issues, and so on and so forth. This is State business, in his mind. He asked if Councilor Jones could outline why, and how [he sees this as Council business]. His first thought was that they should all write letters, individually, to their State representatives.

Councilor Jones replied that the issue already came before the City Council, about resolutions about State and Federal business, and the City Council said yes, they wanted to do it. He continued that secondly, Keene has a Police Department. This *is* City business. The City Council has a duty to help protect their own Police Officers. He also wants to add, for the background notes, that if the City Council does pass this resolution, he would ask that it be sent in writing to all local Keene legislators and electronically to all across the state, which is done by the push of a button. He has already contacted many legislators, who are in favor of this.

Chair Greenwald stated that Councilor Jones just answered a question he was thinking – surely, with the number of State Representatives there are, it would be quite a burden for the City Clerk's Office. However, as Councilor Jones said, if it could go electronically, that would work.

Chair Greenwald asked again if there was any public comment. Hearing none, he asked the Committee what they think.

Councilor Filiault stated that he agrees with Councilor Jones that this is City business, because as he has always said, if a constituent brings something forward, regardless of what the issue is, it is City business. If the Committee thinks that the issue is frivolous, it only takes a few minutes to determine that, and they vote the issue down. Thus, he does not mind issues of any kind coming forward from a constituent. If someone thinks it is important enough to bring to the City Council, he encourages it. Regarding this particular issue, he morally agrees completely with Councilor Jones. He is just struggling with the legality, with the State and Federal part of it. He is confused about where they go with this now, based on State law and Federal law, and comments the Chief made. If Councilor Jones wanted to approach staff and come up with a resolution, which is more of a moral resolution, he would be completely on board with that. He just does not want to write a legal resolution that would not hold up in the courts.

The City Attorney replied that to clarify, in fairness to Councilor Jones – he is not requesting that the City Council adopt an Ordinance or a Resolution prohibiting (armor-piercing bullets). He continued that Councilor Jones is requesting that the City Council communicate to the State legislature a request to enact legislation to deal with the issue. At this point, it is a purely legislative question and it would not be something that would bring (Keene) over to the Superior Court or something like that. It would purely be a request to enact legislation.

Councilor Filiault thanked him for the clarification. He continued that he does not think he would send a (request for legislation) to this current legislature in Concord, because they would probably (throw it out), but maybe after the election there would be a majority who would listen to what Councilor Jones is asking for.

Councilor Williams stated that he supports this and thanks Councilor Jones for bringing it forward. He continued that he thinks it is important for the City Council to make a statement that says if the State is going to have one law and then refuse to enforce Federal laws, it would be much better if the State and Federal law were aligned, so the State can enforce the Federal law and it can be done at a local level.

Councilor Workman thanked Councilor Jones for bringing this forward. She continued that the questions she asked were more for the public knowledge and to clarify the need in Keene for the public safety aspects versus going State-wide and Federal-wide. She supports this and does not think (armor-piercing bullets) should be as available as they are. They have seen the destruction they have done. Her question about how much money and time it would cost the City to write and draft this was answered to her satisfaction, thus, she will support asking the State to do more about this issue.

Chair Greenwald stated that as a change to the potential (motion), changing the words “draft a Resolution” to “draft a communication” would be more appropriate. He asked Councilor Jones what he thinks. Councilor Jones replied that he is fine with that. Chair Greenwald asked, regarding Councilor Filiault’s comments, when Councilor Jones would want this to go out. Councilor Jones replied the

sooner the better. He continued that sometimes it is better to get people to act on something before election time. In addition, legislators have deadlines for when they have to get bills on the table. It would be hard for a new legislature to get it there by December, or whenever the time is. It is somewhat time-sensitive.

Councilor Williams made the following motion, which was seconded by Councilor Filiault.

Move to recommend that the City Council authorize staff to draft a communication in support of a “Protect Our Police Bill”. The communication would be sent to all State Officials requesting that legislation be enacted and supported which would outlaw the owning, storing, buying, selling, distributing, manufacturing, or custom making of any gun loading ammunition designed to penetrate bulletproof armor.

The City Manager stated that she would like to request a slight change. She continued that sending to the communication to “all State Officials” is broad, and she wants to make sure she meets the City Council’s intent. She asked if they are speaking about members of the House and Senate. Chair Greenwald replied yes. Councilor Jones replied yes, and as he said, he only asks that the communication be sent in writing to the local legislators, and electronically to the rest of the remainder of the Legislature.

On a vote of 4 – 0, the Municipal Services, Facilities and Infrastructure Committee recommends staff be directed to draft a communication in support of a “Protect our Police Bill” requesting that legislation be enacted and supported which would outlaw the owning, storing buying, selling, distributing, manufacturing, or custom making of any gun loading ammunition designed to penetrate bulletproof armor and that the communication be sent to the Keene Legislative Delegation and that the remainder of the General Court receive the communication electronically.

2) Mitch Greenwald – Designating City Parks- Drug-Free and Smoke-Free Zones – Councilor Mitch Greenwald

Chair Greenwald stated that he had a conversation with former Councilor Redfern about the new Pat Russell Park on Carpenter St., and they got to talking about all of the City parks, and the drug problem rampant in Keene. He has encountered a number of very bad situations. They need to protect at least the areas where children are at on a regular basis. He asked former Councilor Redfern to come forward and elaborate further. In conversation with the City Manager and the City Attorney, he knows there is conversation happening about designations of what is a City park, and what their rights and responsibilities are to enforce the rules in them. He anticipates that this topic can be discussed to an extent and then it would be placed on more time.

Charles “Chuck” Redfern of 9 Colby St. stated that Chair Greenwald gave a great background of how this came about, but for the benefit of the public, he wants to provide a brief explanation of these zones. He continued that while the City Attorney will have the final say on what the legal definition may be for the State of NH, he has a general understanding of a Drug-Free Zone as *“a geographical area where the*

distribution or possession of controlled substances is penalized with a sentence or fine greater than is applicable elsewhere. Areas classified as Drug-Free Zones are generally specified in the State's drug offense laws. Ordinarily, these areas are within a certain distance from a school or other place where children are found, is classified as a Drug-Free Zone. If an individual is arrested for the possession or distribution of a controlled substance within the Drug-Free Zone, the penalties of the offenses are enhanced." He continued that for example, State laws set the Drug-Free Zone at 1,000 feet. That means that if you are arrested within 1,000 feet of a school or other place where children or students congregate. Another legal definition of "Drug-Free Zone" is *"statutorily designated area or place, as a public park, beach, or school bus area, which within the distribution or possession with the intent to distribute a controlled substance is an aggravated felony."*

Mr. Redfern stated that Keene and its citizens have invested significant funds to keep Keene's youth engaged in healthy, active lifestyles. Such examples include the Pat Russell Park, the bike park, and the skate park. Some of these facilities are or may soon be populated near neighborhoods. He applauds the City of Keene for being proactive in that area, and specifically applauds the Parks, Recreation, and Facilities Director, Andy Bohannon, for being a strong advocate for active, healthy lifestyles for youth and adults. He looks forward to hearing the City Attorney's input in this conversation.

Chair Greenwald stated that questions for the City Attorney to consider include the question of who is involved in the enforcement of this. For example, could a citizen call in a complaint? He senses that this may walk into similar to what they were hearing before, the difference between State and Federal definitions.

The City Attorney replied that the very first question they have to ask and answer is whether Keene can do this with respect to the parks. He continued that as they have talked about, he wanted to hear what the conversation was this evening, and then look at this more closely. However, they should keep in mind that the State has already designated at least two, that he is aware of, authorities for Drug-Free Zones. One is in schools, as has been referenced. Statutory language under RSA 193-B: Drug-Free School Zones defines what happens in that context. The other area in which the City is empowered to act and create a Drug-Free Zone arises under RSA 47-17:7, which is about the general authority granted to cities to adopt ordinances and bylaws for many different things. In 1991, the State legislature created this authority to create Drug-Free Zones, but it is specific to public housing authority property. Thus, the fact that the State has chosen to provide specific authority in these two contexts makes him question whether the City has any authority to go beyond that.

The City Attorney continued that the reason why he is not prepared to give them a straight answer tonight is that he does have to consider this other statutory section, RSA 47:5, which deals with city property. City Councils have authority for *"the care and superintendence of all City buildings and all City property."* Thus, they do have rights as a general property owner. He has to think about that a bit, but he is fairly sure he can tell them tonight that even if there is some ability to regulate the idea of unlawful drugs in the context of parks, the authority to enforce that would be very limited. They would not be able to use enhanced penalties, criminal penalties, civil fines, or anything like that. He does not want the public to take away from his comments that he is going to come back and say, "Yeah, I think

you can do this,” only that he does need to think about it a little more, in the context of the rights of the City as a general property owner. Regarding the other question, of penalties, criminal enforcement, and so on and so forth, he thinks that is off the table right away.

Chair Greenwald stated that how the bike path would fit into this is another question to think about later. He continued that it is not exactly a park. The City Attorney replied that it is City-owned property and thus would be part of the thought process he was just talking about. Mr. Redfern replied that bike paths are sometimes referred to as “linear parks.”

Councilor Williams stated that he is concerned about increasing the penalties for anything. He asked if there is research showing that increasing the penalties in Drug-Free Zones has an effect. Is this an intervention that has been shown to work in other places?

Mr. Redfern replied that his understanding is that it is not so much about how it motivates the perpetrator of the sale of controlled substances, but the way in which it lets an Officer know that his/her time is best spent focusing on whatever has the higher fines or is regarded in the community as a greater offense. He thinks they would be dedicating more attention to the point of sale than what a lot of police departments focus on, trying to catch big fish at the source. The State Police handle the big picture, and he is sure that KPD are also using similar surveillance techniques. He thinks the increase of the penalty will serve as a deterrent. Some of the more libertarian people in the State legislature would be concerned about increasing fines for activities they consider “personal choices,” or crimes that “do not affect others.” However, he disagrees, and thinks society suffers greatly from the illicit use of controlled substances. For example, there was a time where the City’s resources were greatly strained because of Narcan having to be administered throughout the city. He knows of one case where the user of the drug located himself in a park near the Fire Department so that if his life was in peril, the Fire Department could administer Narcan to him.

Chair Greenwald stated that he knows the City Attorney has many questions to look into already, but he would like to add one more: the question of [designating the parks as] Smoke-Free.

The City Attorney replied that before they go into that, it is important to point out, especially to the listening public, that the possession, sale, transfer, use or substances that are otherwise controlled and prohibited is still unlawful, even in the parks. They are not creating a special zone in that sense; it is already unlawful.

The City Manager stated that as much as they would like to think they can rely on the State Police to address the larger issues of drug addiction or sale in NH communities that is just not the case. She continued that the KPD is actively involved in drug investigations in the city. They work with State and Federal authorities, but those resources are very limited. She does not want to give anyone the impression that the City relies on the State Police to enforce these types of things.

Mr. Redfern stated that the City of Keene has an excellent relationship with the NH Municipal Association, so if there is a State law that needs to be looked at, or policy review or something of that

sort, there are great avenues within the City of Keene to reach out to the NH Municipal Association and garner their support. He continued that he also came here tonight thinking this would be an easy issue, but if it is more complicated, he can assure everyone that there are resources available to be very persuasive on this matter. For example, Cheshire Medical Center has a Public Health Policy Department, and they were substantial in helping secure a No Smoking Ordinance or some controversial issue that they weighed in on, and it made a big difference. He did not come tonight with those details, because he thought this would be a simple thing to forward on either through the City Attorney or someone else.

Chief Russo stated that he wants to make sure he fully understands what they are doing. He continued that the City Attorney is looking into whether they can put signs up in the parks, because that is all they can do. He wants everyone to understand that the City cannot enact any laws, statutes, enhancements, or anything like that. That would be like the previous conversation – trying to get the legislature to include parks in the definition of Drug-Free Zones. They have not had huge luck in getting city attorneys or county attorneys to get the enhanced penalty for having sold drugs in school zones. It becomes a legal controversy and a difficult process. He agrees with [designating parks as Drug-Free Zones], but thinks it has to be incorporated into the definition at the State level. Keene unfortunately cannot make up their own.

Kristen Petricola of 256 Beaver St. asked if alcohol is included, or if they are just talking about controlled drugs. She continued that there is frequent misuse of alcohol in this community, in places where people should not be drinking it.

Chair Greenwald replied that that is another question for the City Attorney. He continued that already, people are not supposed to drink in City parks. The City Attorney replied that there are already limitations with respect to the consumption of alcohol. Some exceptions are allowed, but in general, the public consumption of alcohol in the city of Keene is already regulated. He added that the Parks and Recreation Director is here and would like to speak.

Monica Marshall of 81 Terrace St. stated that she has been to the City Council twice this year with proposals to make various parts of Main St. or areas in the city Smoke-Free. She continued that the last proposal she made – which was not to this committee, although some members overlapped – was to start with Railroad Square. In the more than 25 years that she has lived here, Railroad Square has become a place where people with young children, or older people, or people who do not want to be surrounded by cigarette smoke, no longer go to. Her topic has not come up, and today when she called the City Clerk to find out what happened to it, she told her about this meeting and suggested she attend. In between her visits to the City Council, she goes regularly to Railroad Square, and the space is always used by a very small sliver of the population.

Ms. Marshall continued that regarding her most recent proposal, she got some business owners who would be willing to put up a play structure between Railroad Square and the Monadnock Food Co-op. Initially, there were many supportive people, but since [the issue] has not come back, they have faded away a bit. The Co-op would still be supportive, to make that area once again a place where families

feel comfortable. It used to be such a lively place. There were benches and places to sit, and more people used it. What she has heard tonight really fits with what she has been saying.

Ms. Marshall continued that she feels like they are ceding their public spaces just because there are some State laws. She is politically active and firmly believes that if Keene has laws on the books from the State, if they cannot increase the quality of life in their city when they see things are not working, they should be willing to be sued by the State. Railroad Square right now is very minimally used by the vast majority of the population. When [she and others] came [to the Council] the first time, it was stated that 85% of people in the county do not smoke. Basically, 15% of the people get to have all of the freedom of being in any space they want. Parks are filled with cigarette butts. As they talked about last time, they are not expecting Police to have to enforce that, but many places in the country, including Burlington, VT for their entire walking street, have put up signs, and then it becomes the norm as people get used to it. It could be the same with the Drug-Free Zone. She is not imagining Police will be wandering through the parks, but once something is posted, then people are empowered to help make changes in their own city. It is frustrating, as a citizen. Some State laws and Federal laws are great, and Keene should follow them, but she thinks the City should challenge the ones that they can see on the ground are not serving the Keene population and not furthering the increase in quality of life in Keene.

She continued that when she brought the possibility of having just Railroad Square and the bike path to the Co-op be Smoke-Free, she could not believe there are so many statutes. It seems like a no brainer, but then there are so many layers, with one piece owned by the State, and another piece owned by the City, and it seems like [the City] is not empowered to make its own city better. As they did before with the No Smoking in Restaurants, when Keene was one of the first in the state to do so at a time when it was illegal to do that, she encourages the City to really look at what is needed for our city. She often wants to use that little path next to Pat Russell Park, which she used to take her classes through as a shortcut, and they would clean it up. They are now doing something with Pat Russell Park, which they should be proud of. It will be beautiful, and they should be thinking proactively about who they want to use it. How can they make it the most friendly, to the most people in the community? They should not just say they cannot do it because of this law or that law. She is here today to support Councilor Greenwald's request and to bring back the idea of making the city's parks Smoke-Free. She was part of the cleanup at Robin Hood Park on Earth Day, and when she went through the park, it looked good. Then she got to the parking lot, and picked up 500 cigarette butts, all within 10 feet of the garbage cans. It is almost as if people go there and empty their ashtrays on the ground. There is no sign. If there was a sign, and you saw someone doing that, you would have some recourse to point it out to them and say, this is not the way we want to treat our city. There are "Clean up after your dog" signs, and ones saying not to litter. She wants to see people be more proactive in allowing the largest portion of the population to be free to use every part of the city.

Chair Greenwald replied that he totally agrees with Ms. Marshall. He continued that to reassure her, her request did not go away. It is hanging in a category on the agenda called "More Time Items," so it is still alive. Regarding Railroad Square, he is aware of some complex title issues and questions of who owns what, about what the City has the rights to enforce. It is very frustrating, but they will get there.

Councilor Filiault asked if they have an idea of when the item will be coming off more time. The City Manager replied that they were hoping to incorporate Ms. Marshall's conversation in this potential ordinance change, and she thinks once Mr. Bohannon speaks to the Committee tonight, they can talk more about incorporating it in the parks conversation.

Chair Greenwald asked to hear from Parks, Recreation, and Facilities Director Andrew Bohannon.

Mr. Bohannon stated that Ms. Marshall's request was supposed to come back before the Committee. He continued that they looked at this in June, related to updating Chapter 58, which is related to Parks and Recreation. They were looking to define "park" and how the City uses parks, and looking at that definition is more about the spaces that the city calls parks, as opposed to what is in the parks. A lot of different language has been brought up tonight related to alcohol, smoking. To ensure that everyone understands, alcohol is not allowed in City parks, except within certain, L-shaped areas for the softball league and designated picnic areas within that space in Wheelock Park. That is the only space in the City parks where alcohol consumption is allowed. In all of the City parks, glass is not allowed. Glass is a dangerous element and also much alcohol is contained in glass, and they do not want those to mix.

Mr. Bohannon stated that regarding smoking, he cannot remember the specific time frame, but staff worked with Healthy Monadnock and the Coalition for Tobacco Free Communities to put signs up around the City's playgrounds that say not to smoke there. They made the Recreation Center a designated No Smoking area, and smoking is not allowed in front of the building. He thinks it is time that all City parks be smoke free. As Chair Greenwald brought forward related to Pat Russell Park, and with the skate park coming on board, and the potential dog park and disc golf, and the existence of the great bike park, all of these environments are attracting many people. They want those spaces to be friendly, healthy, and used, and designating all of those spaces as Smoke Free is the right direction.

Mr. Bohannon continued that Central Square and Railroad Square are both different spaces and are not parks. This is where it gets tricky. However, a City Resolution calls out specific language for those particular uses. They can update that Resolution at the same time they are doing the Ordinance, so everything aligns at the same time. He and the Assistant City Attorney have been talking about the trails. Even though the rail trails are on City property, the City has an agreement with the State, so they have to look at that combination. The new Cheshire Rail Trail Phase III is opening soon with designated trailheads. They were looking at some of those spaces earlier this week, and did a major cleanup at the trailhead of the Ashuelot Rail Trail and found some alarming things. They need to keep the signage up and make it more educational.

Mr. Bohannon continued that regarding the timeframe, because of some of the things happening in September, they would like to bring this back for October 6. That would be the first reading, at the City Council level, for a new Ordinance change. Then they would come through the MSFI Committee meeting at the end of October. They would have the first adoption opportunity at the beginning of November.

Chair Greenwald asked if there would be no need for Committee input at the September MSFI Committee meeting. He continued that he is not asking for the Ordinance to be drafted at that point, but maybe they could just get an overview. Chair Greenwald replied that they need to keep in mind that the Committee only meets once a month now. Mr. Bohannon replied yes, he had forgotten that.

The City Attorney stated that he has not seen it yet, either. He continued that the Assistant City Attorney, Amanda Palmeira, and the Public Works Director, Kürt Blomquist, have been working on this diligently. He would like to review it as well. He suggests that, without introducing it as an Ordinance yet, staff could provide it to the MSFI Committee to review, so if the Committee has any comments or suggestions before staff actually introduces it as an Ordinance, they could do that. He would rather do that than introduce it as an Ordinance, have it come to the Committee, and have the Committee look at it and suggest changes, which leads to an A version or B version. That would give Mr. Bohannon and Ms. Palmeira an opportunity to consider the Committee's and public's comments before they hard code it into an Ordinance.

Chair Greenwald replied that is exactly what he was thinking. Mr. Bohannon stated that he checked his schedule, and unfortunately, he will not be present for the September MSFI Committee meeting. The City Attorney replied that that is all right, because staff would be looking for the Committee's input and public input. Mr. Bohannon replied yes, it will all be tuned up and ready for that.

Councilor Williams stated that he supports the idea of Smoke-Free parks, but he is concerned that people will create impromptu smoking zones on the edges of the parks. He continued that maybe it would be better if they built designated smoking zones, or at least the authority to create them as necessary, into the Ordinance. Chair Greenwald replied that of course, they would not want to create designated drinking zones or drug zones, but regarding smoking, he unfortunately agrees. The City Attorney replied that there is precedent for this at the Library campus; staff created a designated smoking area, with receptacles. Chair Greenwald stated that this might make it more successful. For example, if someone is smoking at a Little League game, people can direct them to the place to smoke.

Councilor Workman stated that one of her concerns when she read this was any increased fines for the drug-free aspect. She continued that in addition, as vilified as smoking tobacco is, it is not a criminal act. Yes, it can be annoying to non-smokers to be out in the community and go past a cloud of smoke, or encounter the litter of cigarette butts, but she hopes that when they are talking about designating any Smoke-Free Zones, they also include more receptacles for cigarette butts. She means *specifically* for cigarette butts, not just garbage receptacles, because they do not want to start fires, either.

Councilor Filiault stated that clearly, nothing they do will be perfect, but doing nothing is not an option. He continued that they should try to do the best they can and move forward. Like with many issues, they can correct it down the road if they find a flaw.

Councilor Jones stated that they can go a lot of different ways with this, but he asks that they at least make it a goal to have a No-Smoking zone, and let those groups who use that park know that one of the City goals is to not have smoking. He continued that he coached many years for what was then called

the Allison Barden League, a girls' softball league. The League had its own rules, including no smoking at the games. He, as a coach, had to approach if there was a parent sitting in the stands and lit up a cigarette, and tell them to put it out. He would tell them that they were violating one of the Allison Barden League's policies. He likes Councilor Williams's idea of having designated areas for smoking, because they do attract tournaments, which are good economically for the city. Some of the softball tournaments bring people in from Rhode Island, New York, Connecticut, and all over. Part of the reason Keene does well is because they do have that little beer garden area that people can use. He thinks they might lose people if they restricted the smoking, but if, as Councilor Williams says, they had a designated area for people to smoke in away from the general public, it might work. They should let people who are using the spaces know that it is a City goal to restrict smoking in any way they can, so if they can make it part of their policy, that would be great.

Mr. Redfern stated that he wants to make sure he understands clearly. He asked if it is correct that the City is going to do an Ordinance on Smoke-Free Zones, or expand them, but they are not taking up an Ordinance for Drug-Free Zones. Chair Greenwald replied no, they are doing both. The City Attorney replied that the Drug-Free aspect of this is not now included in the changes to Chapter 58. He continued that as he said, he wants to take a closer look at the issue with respect to doing it at all. At a minimum, as the Chief pointed out, they may be able to put up a sign saying "Drug-Free Zone," but what they do with it after that is very open to question. He understands that as Mr. Redfern has pointed out, enhanced penalties, as discussed, are clearly off the table. At least now they know they can proceed with changes to Chapter 58 and include tobacco-free aspects of it. Five years ago he would have said that was questionable, but he thinks the consensus around the state at this point is that they can do exactly that with tobacco. Drugs are a different story.

The City Manager stated that if in fact they come back after the City Attorney has concluded his research, and that is the case, what they could do, if the Council is interested, is do something similar to the [motion from tonight's first agenda item] and request that parks be added to the statute that allows Drug-Free Zone enhanced penalties.

Chair Greenwald stated that he is glad they are having this clarification conversation, because what he was hoping to hear is that the City Attorney has research to do regarding what the City can and cannot do, regarding drugs and cigarettes, and at the next MSFI Committee meeting, they will find out. The City Attorney replied that they know they can do the tobacco, and they have incorporated the tobacco already, as far as he understands, because he has not yet seen the ordinance himself. He continued that the question is the drugs. He would rather keep those two conversations separate.

Chair Greenwald thanked staff and asked if anyone had any further comments. Hearing none, he asked if there was any public input. Hearing none, he asked for a motion.

Councilor Workman made the following motion, which was seconded by Councilor Filiault.

On a vote of 4-0, the Municipal Services, Facilities, and Infrastructure Committee recommends the communication from Councilor Greenwald' on more time to allow the City Attorney to research these issues.

3) Adjournment

There being no further business, Chair Greenwald adjourned the meeting at 6:10 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Edits submitted by,
Terri M. Hood, Assistant City Clerk