

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Ray Varney
Councilor Robert Gates
Councilor Derek “Mac” Kittredge



AGENDA

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

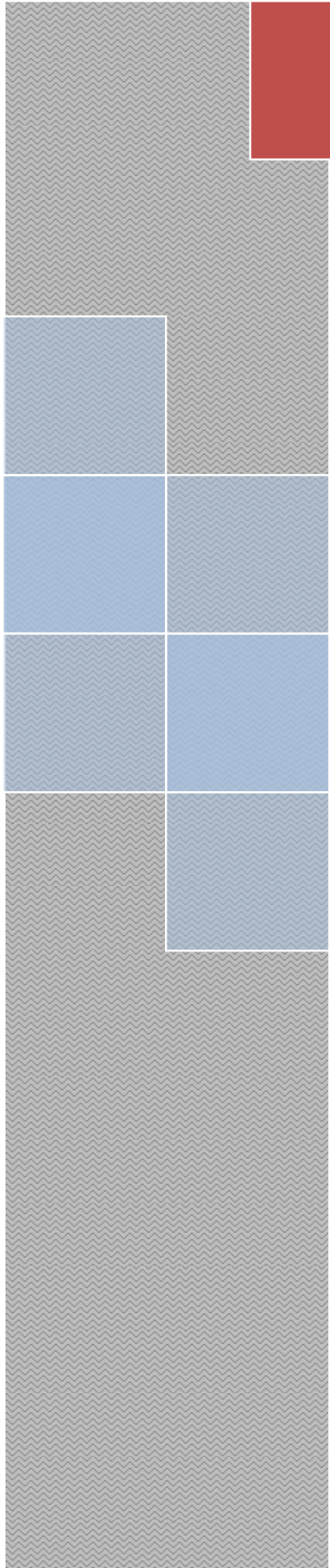
Thursday March 6, 2014

City Council Chambers

31 Wakefield Street, Rochester, NH

7:00 PM

- 1. Call to Order**
- 2. Public Input**
- 3. Approval of the Codes and Ordinances Committee Minutes P-3**
 - February 6, 2014**
- 4. Water Policies – Peter Nourse P-15**
- 5. Proposed Rental Housing Ordinance P-19**
- 6. Panhandling Ordinance Discussion P-33**
- 7. Other**
- 8. Adjournment**



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CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday February 6, 2013

City Council Chambers

31 Wakefield Street, Rochester, NH

7:00 PM

Committee Members Present

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Ray Varney
Councilor Robert Gates
Councilor Derek “Mac” Kittredge

Others Present

Jim Grant, Director of BZLS
Sheldon Perkins, Code Enforcement
Officer
Daniel Fitzpatrick, City Manager
TJ Jean, Mayor
Councilor Walker
Councilor Hamann
Councilor Gray
Councilor Collins
Peter Nourse, Commissioner of Public
Works
Matthew Beaulieu, Assistant Vice
President, Service Credit Union
Fred Leonard, Resident
Tom Kaczynski, Resident
Lisa Clark, Office Manager Department
of Public Works.

MINUTES

1. Call to Order

Councilor Lachapelle called the Codes and Ordinances Committee meeting to order at 7:00 PM. All committee members were present.

2. Public Input

Councilor Lachapelle explained that the public could speak during the discussion of the item which they have concerns with. He asked if anyone would like to address the Codes and Ordinances Committee at this time. There was no discussion at that time.

3. Approval of the Codes and Ordinances Committee Minutes

• **December 5, 2013**

Councilor Lauterborn **MOVED** to **ACCEPT** the Committee minutes of December 5, 2013. Councilor Varney seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Rules of Order

Councilor Walker recommended changes regarding Section 4, Standing Committees, of the City Council's Rules of order. On Section 4.4, he suggested making changes when it comes to incumbents up for reappointment. Councilor Walker explained why he thought this change should be made. Councilor Varney recommended that the change be added to part A of this section. All changes made are in bold.

Appointments Review Committee:

Shall consist of five (5) members.

- A. No Council Member shall serve on more than three (3) standing committees, excluding the Finance Committee.
- B. All vacancies occurring in any standing committee shall be filled by the Mayor.
- C. **Incumbents of any committee who have submitted Statements of Interest for reappointment and are running unopposed are not required to appear before the Appointments Committee**

Councilor Lauterborn recommended that "committee" should read "boards and commissions." Councilor Gray felt that in a rare case, the committee should have the right to waive the change that is being made to 4.4. Councilor Lauterborn agreed. Councilor Walker was also in agreement with changing the wording and moving the recommendation from 4.4 C to 4.4 A.

Mayor Jean and Councilor Walker briefly discussed the Appointments Committee in brief. Councilor Gates asked if the City Council has turned anyone down for an appointment. It is determined that they have.

Councilor Lauterborn read the changes to Councilor Walker's proposal. All were in agreement.

Appointments Review Committee:

Shall consist of five (5) members.

- A. No Council Member shall serve on more than three (3) standing committees, excluding the Finance Committee. **Incumbents of any board or commission who have submitted Statement of Interest for reappointment and are unopposed may not be required to appear before the Appointments Committee. The Appointments Committee reserves the right to request the presence of the candidate.**
- B. All vacancies occurring in any standing committee shall be filled by the Mayor.

Councilor Varney **MOVED** to recommend revised Section 4.4 of the Rules of Order to the full City Council meeting, March 4, 2014, for approval. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Walker made a second recommendation regarding Section 4. He reviewed his suggestion pertaining to Section 4.14, Elections by Ballot. Councilor Lauterborn had concerns with the recommendation because of a possible conflict with City Charter. Councilor Lauterborn also suggested changing the word “committee” from the recommendation to “boards and commissions.” Councilor Walker explained that it was legal to the City Charter. The committee agreed. All changes are made in bold.

SECTION 4.14 ELECTIONS BY BALLOT

In all elections by ballot on the part of the City Council, blank ballots and all ballots for persons not eligible shall be reported to the Council.. To be elected any person seeking election must receive a majority of the votes of those members present and voting. Tally of the ballots shall be reported to the Council and recorded in the minutes. Unless otherwise directed by the Council all ballots shall be destroyed after being reported.

A. Committee appointments shall be elected by ballot of the City Council with the exception of a single candidate. Single candidates upon nominations ceasing will be elected by City Council voice vote that the City Clerk cast one ballot for that candidate.

The Codes and Ordinances Committee discussed this further in regards to the Appointments Committee level versus the City Council level. Councilor Walker felt that the committee should be screening candidates. Councilor Varney discussed if this change would make it harder to turn an appointment down. He does not want to see hurt feelings. Councilor Walker stated that they very rarely deny a single candidate. Councilor Varney explained why they went to a secret ballot and he also briefly discussed the voice vote.

Councilor Walker felt that paper ballots were a waste of time for a single candidate. Councilor Gray and Walker discussed if this was charter neutral and Councilor Walker explained one vote is still being cast by the City Clerk. Councilor Gray referred to the City Charter and Councilor Varney stated that these officials are appointed, not elected, so there would not be a Charter issue. Change to the recommendation is italicized

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A. *Boards and Commissions* appointments shall be elected by ballot of the City Council with the exception of a single candidate. Single candidates upon nominations ceasing will be elected by City Council voice vote that the City Clerk cast one ballot for that candidate.

Mayor Jean **MOVED** to recommend revised Section 4.14 of the Rules of Order to the full City Council meeting, March 4, 2014, for approval. Councilor Kittredge seconded the motion. The **MOTION CARRIED** by a majority voice vote of five to two.

Kelly Walters, City Clerk, reviewed her proposal on Rules of Order where it applies to meeting minutes; these proposals can be found in the packet. She explained that it was brought to the attention of the Clerk's Office that they should be preparing the minutes in more of a summary format and referred to Robert's Rules of Order, 11th Edition. Ms. Walters also advised the committee that under NH RSA 91-A, a draft copy of the minutes needs to be signed by the subscriber of said minutes and be made available to the public as a permanent record within five business days.

Councilor Varney asked if we are required to keep two sets of minutes. Ms. Walters explained according to her interpretation they are. Councilor Walker asked if they would be allowed to mark up the original draft showing the changes to eliminate having two sets of minutes. Councilor Lauterborn agreed with Councilor Walker. Ms. Walters felt they could do that.

Councilor Varney stated that the draft minutes should be posted on the website within five days, as well, and not just in the City Clerk's Office.

Ms. Walters said that there is legislation (HB 1156), which would require the City Council to sign each set of minutes.

Ms. Walters explained that the City Clerk's office is seeking clear direction from the City Council relative to how the minutes should be written under Rules of Order, Section 4.24, Minutes. Ms. Walters explained that currently every question and answer is being addressed in the minutes and by summarizing them you would be looking at what actually happened. She referred to Robert's Rules of Order, where the name and subject of a guest speaker can be given, but no effort should be made to summarize his remarks. Councilor Walker did not feel that the minutes need to be verbatim. Councilor Lauterborn agreed to more of a summary form. Councilor Kittredge asked about the Dragon Speak software. Ms. Walters explained that she has already tried that approach. She is looking for permission to handle the minutes differently.

Ms. Walter cited that if someone "stated for the record" that they wanted their comments in the minutes then this would happen

Councilor Varney was concerned with the minutes being too brief. Councilor Gray discussed this further and Councilor Varney stated that fifteen years from now, when a resident reads the minutes, they will be able to understand what was going on during the meeting.

The Codes and Ordinances Committee discussed the minutes of the meetings further. Councilor Lauterborn did not feel that all the bantering back and forth needed to be in the minutes. The question of the video recordings was addressed as they are only a supplement to the minutes; however, they are archived for years.

Ms. Walters will re-word Section 4.24, omitting the draft minutes, because they are waiting for legislation.

Fred Leonard, resident, asked if someone from the public wants to have something included in the minutes how will that be handled. Ms. Walters explained that it is her belief that it would be up to the City Council to vote to add something to the minutes. She confirmed with him that if he spoke during public input, his views would be summarized and state whether he was for the topic or opposed to the topic.

Mr. Leonard discussed this issue further with the Codes and Ordinances Committee. Councilor Walker referred to a recent example. Mayor Jean mentioned that in Roberts Rules of Order it states that they must approve any outside document that someone wants entered into a set of minutes by having a vote. Ms. Walters explained that currently this gets added as an addendum to the packet so it is in the permanent record should someone want to find it down the road. She explained that such things as a handout or a Power Point could be added to the packet.

Ms. Walters asked if a vote is required to change the way the minutes are being done now. She discussed with the Codes and Ordinances Committee the verbiage changes to Section 4.24 to send to the full City Council. Councilor Varney agreed they could be tapered down.

Councilor Lauterborn **MOVED** to recommend the revised Section 4.24, Minutes, to the full City Council on March 4, 2014. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Existing: Section 4.24 Minutes

All meeting minutes of the City Council including all standing and special committees of the Council shall take roll call at all committee meetings and record their proceedings and provide minutes of any meeting to the City Clerk's office in a manner prescribed under **NH RSA 91A**.

Revised Proposed: Section 4.24 Minutes

All meeting minutes of the City Council including all standing and special committees of the Council shall take roll call at all committee meetings and record their proceedings and provide minutes of any meeting to the City Clerk's office in a manner prescribed under **NH RSA 91A**. **Furthermore, that Clerk staff will summarize each topic with a detailed summary of any and all decisions made. All public input and guest speakers comments will be summarized to state the person's name, topic addressed, and if they opposed or supported a certain topic.**

5. Codification

Ms. Walters discussed with the Codes and Ordinances Committee the Codification of the General Ordinances, which has been in committee for some time. She explained that codification will help with reviewing an ordinance. The ordinances would be more searchable, along with tracking the history, marking the changes, and the dates of the changes. Codification will also help with the review of State Statutes in accordance with our ordinances.

The committee reviewed the codification project and Councilor Varney felt that this should be a budget discussion. Ms. Walters wanted some guidance on this issue. Mayor Jean felt that codification could be postponed. He felt the City Clerk's Office should be able to handle it where they are doing a good job with it at this time. Ms. Walters explained that currently we have Attorney Wensley to review the ordinances. Councilor Lauterborn felt codification was an orderly way to keep the ordinance. Councilor Lachapelle asked about cost. Ms. Walters explained the proposals are in the packet. Councilor Varney asked about grants for such projects. Ms. Walters will look into grants. The Codes and Ordinances Committee discussed further and City Manager Fitzpatrick suggested that it be put in the budget under issues and options. Councilor Walker still wanted grants looked at.

6. Water Leak Enforcement

Peter Nourse, Commissioner of Public Works, handed out a proposal for changes to Chapter 17 regarding water wastage to the City and a water wastage timeline. He explained in December he had brought this issue to the Codes and Ordinances Committee and was asked to make suggestions. Mr. Nourse read the proposed language under Section 17.3, Policy Statement. This would be adding letter G to this section. Mr. Nourse is also proposing the replacement of Section 17.34, Enforcement of Water Wastage, and moving the current 17.34, Water Rate and Fee Schedule, to Section 17.35. He proceeded to read these changes to the Codes and Ordinances Committee.

Councilor Walker questioned water spikes and how do they qualify as a spike. Mr. Nourse explained that master meters tend to have large spikes when there is a leak. He cited it is harder on the individual meters. They need to look at the quarterly usage.

Councilor Walker debated the issue when it came to the bills being paid. He stated if the bill is being paid where is the problem. Mr. Nourse explained a leak would indicate additional consumption. Councilor Varney cited the Salvation Army leak. Mr. Nourse stated that they need to protect the resource and they want leaks to be addressed.

Mr. Nourse explained that Section 17.34, B of this proposal is for the accounts with individual meters, the residential customer.

Mr. Nourse brought to the attention of the Codes and Ordinances Committee the issue of the appeals. He explained that when the UAB receives a complaint the appellants are not paying until they receive a decision. It is the thought that they should be paying for the amount not contested. Mr. Nourse stated that the discussion came up in regards to extending ninety days to onehundred and eighty days, but it was felt that the ninety days is sufficient. He referred to the lower timeline when the bill is received they have ninety days to appeal

until the next bill is received. Mr. Nourse explained that this is in the sewer ordinance that an appeal needs to be made before the next bill is due. He would like to see the water and sewer ordinance to have the same verbiage.

Councilor Varney asked about the water appeal being changed to the one-hundred and eighty days. Councilor Lachapelle stated that they made the suggestion to the UAB, but have not heard back from them.

Mr. Nourse explained that his department is not hard on that and they have looked at other communities that range from thirty days to onehundred and eighty days. Councilor Lachapelle explained this came from the Salvation Army situation. The committee had further discussion on the timeline.

Councilor Walker asked how much of a spike would they have to see. Mr. Nourse explained that with a typical consumer it would have to be large based on a quarterly average. He state that the larger issues are with the mobile home parks and condos, because they are more noticeable.

Councilor Walker stated that he had issues with the shutoff notice because there could be reasons why the customer does not communicate with the department as to the increase, and if their bill is paid they would still get their water shut off after ninety days. Mr. Nourse explained that communication is the key and the billing office works very well with residents in regards to payments. Councilor Lachapelle re-iterated that if they do not communicate within ninety days, their water is being shut off even if they have paid the bill according to this proposal. Mr. Nourse concurred.

The Codes and Ordinances Committee felt that this was a little harsh.

Mayor Jean asked about water conservation. Mr. Nourse agreed it was about conservation and if they wanted abatements for the sewer they would have to come before the UAB.

Mayor Jean tried to clarify this with the process of the abatements. The Codes and Ordinances Committee discussed this further. They addressed the seasonal usage, such as pools and irrigation, as well as water deduct meters.

Councilor Gates asked how much of a problem do they see. Mr. Nourse stated one-hundred units a quarter and even more during the summer. As of now there is no incentive to get this corrected. The department is certain of these leaks. Councilor Lauterborn thought the high bill would be an incentive.

The Codes and Ordinance Committee understood the master meter situation, but debated over the individual homeowners. Mr. Nourse understood the issue with part B and explained it could be scrapped.

Councilor Lauterborn addressed the waste wastage timeline and felt that there needed to be another step to make every attempt to contact the homeowner before they get shut off.

Councilor Gates asked how much of an issue the single family homeowner is. Lisa Clark, Secretary of Public Works, explained that they send out letters and they usually get a response. She went on to say the residents do not want to over pay, as well, so they contact the department. It is very rare that a resident does not respond to the letter. Ms. Clark stated that she probably sends out a dozen letters a month and the single family homes are not the problem.

Councilor Varney explained that some of the water issues could be a running toilet or a leaking faucet, but over a period of time this can add up.

Mr. Nourse explained this proposal is to identify leaks and to solve them in a timely manner.

Councilor Kittredge questioned the abatements on irrigation, where a special meter is required. Do residents know about these meters. Mr. Nourse and Ms. Clark explain that it is advertised and they include inserts in the water/sewer bills.

The Codes and Ordinances Committee addressed the leaks and who is responsible to pay for the repair.

Mayor Jean **MOVED** to recommend the proposed water leak ordinance, Chapter 17, excluding water shutoff under section B, to full Council on March 4, 2014. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Mr. Nourse wanted the committees view on the appellants non-contested fees. It is not an ordinance, but has been policy that as long as they are appealing they do not pay any portion of the bill. This is not written, but came out of the UAB some time ago. The billing office was notified that they did not have to force a payment until the issue was resolved. Mayor Jean asked if Mr. Nourse was looking for direction from the committee. Mr. Nourse asked if the committee would support it.

Councilor Gray felt that it had to be proposed in the document that handles the appeals process. The language should be presented there and brought back to the committee.

Councilor Varney stated that when the UAB was formed they had to pay their full bill. Mr. Nourse will bring back a proposal next month.

7. Proposed Rental Housing Ordinance

Sheldon Perkins, Code Enforcement Officer, reviewed the proposed Chapter 44 on Housing Standards, with the Codes and Ordinances Committee, which can be found in the packet. He went on to state that safety and health was of top concern and he felt that this ordinance was a more proactive approach. Some tenants find themselves in a situation where they find a rental, within their means and there could be some issues with that property. The landlord states they will be fixed, but does not follow through. With inspecting the properties, these issues can be corrected before they are rented and he gave examples of rentals not having working fire detectors or they are missing rails to the stairways.

Mr. Perkins cited that State RSA 48-A currently deals with these issues. He stated that he brought several complaints with him which could have been avoided with this ordinance in place. One property Mr. Perkins went to inspect had five broken windows and carpeting that needed to be replaced, as well as a lot of garbage outside. Some are very dangerous with electrical issues, having improper wiring to the electrical panel that is a fire hazard.

Councilor Walker asked Mr. Perkins if the rental unit would have to be inspected every time prior to renting. Mr. Perkins explained that there would be an initial inspection and then bi-annually. If the owner passed inspection they would receive a certificate. He went on to state that there are a lot of rental properties in the City that he does not hear about, but it is those landlords that do not want to invest in their property that the complaints are coming from.

Councilor Walker wanted to know what would happen if he did not call the Building, Zoning and Licensing Services Department within sixty days to notify them that he had a rental property. Councilor Varney stated that they would all be done initially and then every two years after that.

The Codes and Ordinances Committee discussed the issue when it comes to a vacancy. Mr. Perkins stated that if they had a complaint they could inspect in between the bi-annual time frame. He went on to explain that this ordinance came from a review of other communities ordinances and adapted to fit our City.

Mr. Perkins discussed the fees and fines associated with this ordinance and the possibility of waiving the initial fee; however, there is \$1000.00 fine if they don't register.

Councilor Lauterborn questioned 44.3 B (11), in regards to heating, that all habitable rooms should average 68 degrees. She did not agree with this and felt that it should read capable of reaching 68 degrees. Councilor Lauterborn felt that this was overly controlling. Jim Grant, Director of BZLS, explained that this came from the property maintenance code already being used by the State, RSA 48-A:14. Councilor Hamann addressed having the state enforce this issue. It was determined that the actual temperature in the State RSA was 65 degrees.

Councilor Lauterborn said that they have to comply within 60 days even if they have never had any problems. She stated that if they do not comply within the allotted time they shall be subject to a \$1000.00 fine. Councilor Lauterborn felt that it should be worded that they may be subject to the \$1000.00 fine.

Councilor Lauterborn asked about 44.4 E. She stated that if they go to inspect a property and find other violations that the owners could be prosecuted through the City. Councilor Lauterborn expressed her concerns at that point with the renaming of the department. It was her understanding that they wanted a more user-friendly name and get rid of enforcement, but they want to pass an ordinance with this type of statement.

Councilor Lauterborn felt that when it came to section 44.5 regarding to enforcement it should be complaint driven because it would be a better use of the department's time. She

felt this ordinance goes too far above. She addressed the issue that in Section 44.5 A, where ten residents need to complain that the residence is unfit for human habitation. She felt that only one resident should have to complain. Mr. Grant tried to address the Councilors concerns. He explained that these rentals are a business and that if they see a fire hazard his department should be able to forward that on to another level. Councilor Lachapelle agreed on that aspect. Mr. Grant stated that when it comes to ten residents making complaints that comes from State RSA.

Councilor Gates asked if the BZLS Department would need to add extra manpower to handle this ordinance. Mr. Grant stated no.

Councilor Gates stated if a landlord has to make costly repairs to their property it will drive up the rent and if this is the case will it put poor people out of the market. He feels this ordinance will have that kind of effect. Mr. Grant understood that costs could go up, but should those individuals with lower incomes be subjected to substandard housing. Councilor Gates agreed that they should not.

The Codes and Ordinances Committee discussed this further. Councilor Kittredge explained that sometimes the tenant is the problem and they cost the landlord money in making repairs after they move out. Now we are putting more on the landlord so they are caught between a rock and a hard place. Councilor Kittredge went on to give the committee examples from his experiences in Boston.

Councilor Walker did not want to see undue burden on the good landlords in the City. He would like to see it complaint driven.

Councilor Gates asked how many complaints do they see in a month. Mr. Perkins stated between thirty and fifty. Councilor Gates agreed with Councilor Walker.

Councilor Varney questioned newly built multi-family homes in regards to this ordinance. Mr. Perkins stated that they would not be inspected for two years. Mr. Grant explained that they would have already had a building inspection.

Mr. Grant had concerns with inspections on a complaint basis, because they will never know if there is unsafe housing in the City. He reiterated that everybody that rents will be on the same playing field and he felt that it would benefit them equally.

Councilor Varney suggested that they start handling it with complaints and have the landlords voluntarily request the inspection. He felt that forty to fifty complaints a month would keep them busy without having to do inspections. Mr. Perkins explained that they would have to break the City into zones and prioritize sections to do the inspections.

Councilor Varney mentioned that the young man that was honored during the City Council meeting for saving his family from a fire in a house that did not have working fire detectors.

Councilor Hamann questioned if insurance companies are already inspecting these issues. Mr. Grant explained that there are different standards in the field. He went on to

explain. Councilor Hamann has owned his property for forty years and in the last ten years if there were issues the insurance company made him aware of them. He felt that this is overkill.

Mr. Grant stated that they are following the State RSA, with exception for the right to enter. Councilor Hamann suggested letting the state handle the issue. Mr. Grant explained the state does not do it, as they debated further.

Councilor Gray suggested a compromise. His thought was to have a form, for the landlord and the tenant to do the inspection, which gets sent to the City. He felt that a safe and healthy place to live needs to be provided.

Councilor Collins felt that they were taking on more than they could handle and he questioned section 44.8 on liens and demolitions. He felt that there was a little overkill. Mr. Grant explained this section had the same language as the States RSA.

Councilor Gates stated that federal regulations are broken every day of the year. How many more rules and regulations do they want to impose and how many more can they tolerate.

Councilor Varney asked that the department come back with a complaint driven proposal. Councilor Lachapelle agreed that this ordinance needs to be softer and he asked that Mr. Grant and Mr. Perkins bring it back to the March meeting.

8. Panhandling Ordinance Discussion

Matthew Beaulieu, Assistant Vice President, Service Credit Union, addressed the Codes and Ordinances Committee regarding panhandling. He recently sent Mayor Jean a letter, which can be found in the packet, about this issue. Mr. Beaulieu reviewed the letter with the committee. Mr. Beaulieu explained some of the incidents that have happened in his parking lot. One panhandler actually reached into a customer's car. He does not want to see this ordinance go away. The credit union has seen an eighty-five percent reduction in members and staff being solicited because of this ordinance. Mr. Beaulieu is concerned for the safety of his customers and his employees.

Councilor Varney asked if the ATM was on their property. Mr. Beaulieu stated that it was on their property. Councilor Varney stated that he could take other action where it is on their property. Mr. Beaulieu explained yes, but it was easier to take steps against this type of panhandling because of the ordinance.

Fred Leonard, resident, stated that he was opposed to the panhandling ordinance from the beginning and he feels that there are current laws that will address the Service Credit Union's issues. He stated that the individual that reached into someone's car is breaking the law and the current laws are in place for this. He explained that panhandling is protected by the first amendment. Mr. Leonard also explained that he understood some individuals such as the elderly could feel intimidated by a panhandler. Currently we live in a diverse community and society and no one likes to be solicited. He would like them to find some areas to

address the illegal aspects of this issue. He thanked the Codes and Ordinances Committee for their time.

Councilor Lachapelle asked for a motion to go into non-public for a legal consultation on the matter. Mayor Jean motioned to go into non-public, but it was determined that legal representation was not present for the committee. They withdrew from going into non-public.

Councilor Varney said that the panhandling has two issues. Roadways and “aggressive” panhandling.

Councilor Lachapelle did not want to make any new proposals to the City Council at this time. He wanted to wait for further information and keep it in committee until next month pending anything new.

Councilor Varney explained that he has proposed language under Chapter 63, Rights of Pedestrians, which should be looked at next month. He took the Concord, NH ordinance into review when making this proposal. This will add Sections 63.2 and 63.3. Councilor Varney also suggested looking at the definition of aggressive panhandling to make it more defined. Per his discussion with Chief Allen, aggressive panhandling does not meet the standard of disorderly conduct.

Councilor Lachapelle wanted to request a special meeting for the existing Workshop Meeting on February 18, 2014. The Codes and Ordinances Committee were in agreement.

Councilor Varney **MOVED** to recommend repealing the existing panhandling ordinance, Chapter 31, and bring to the full City Council on February 18, 2014. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Mayor Jean asked if there would be a forthcoming replacement for Chapter 31. Councilor Lachapelle stated not at this time. He is keeping it in committee and looking for legal counsel and more recommendations.

9. Other

No other topics were discussed at this time

10. Adjournment

Councilor Lauterborn **MOVED** to **ADJOURN** the Committee meeting at 9:08 PM. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Nancy Carignan
Assistant City Clerk

**UTILITY ADVISORY BOARD MEETING
February 10, 2014
CITY COUNCIL CONFERENCE ROOM
5:30 P.M.**

MEMBERS PRESENT

Daniel Peterson
Shawn Libby
Arthur Hoffman
Tom Willis

ABSENT

Sharon Parshley

OTHERS PRESENT

Blaine Cox, Deputy City Manager
Peter Nourse, DPW Director
Mr. Paul Hatfield, Appellant
Marilyn & Tim Donnelly, Appellant
Lisa Heselton, Appellant

MINUTES

1. Call to Order.

Daniel Peterson called the meeting to order at 5:30 P.M. Sharon Parshley was absent, all other Board members were present.

2. Acceptance of January 13, 2014 Minutes

Arthur Hoffman **MOVED** to accept the minutes of January 13, 2014. The motion received a second and was **ADOPTED** with three votes affirmative and one abstention (Mr. Willis).

3. Old Business

3.1 Paul Hatfield Appeal

Deputy City Manager Cox explained that the City Attorney provided counsel that per the ordinances, the UAB could abate only one billing quarter of Mr. Hatfield's paid sewer fees. "The aggrieved user shall notify the Business Office in writing that said bill is contested before the next billing for this wastewater service."

Arthur Hoffman **MOVED** to abate 12.75 units of sewer fees and further to recommend to the City Manager and City Council to abate and refund the remainder of the sewer fees paid by Mr. Hatfield. The motion received a second and was **ADOPTED** on a unanimous voice vote.

3.2 Muzzey Abatement

Mr. Cox and Mr. Nourse explained that the City did not refuse to turn off Mr. Muzzey's water service. The City turned his service off as he requested which coincided with his plumber's repair of the leak.

3.3 Austin Appeal

Deputy City Manager Cox shared with the Board the three photos received Sunday, February 9, 2014 from the appellant. The Board determined that these failed to adequately document the details of the leak.

Mr. Libby **MOVED** to deny the abatement due to lack of documentation. The motion received a second and was **ADOPTED** on a unanimous voice vote.

3.4 Abatement Request Period

Public Works Director Nourse recommended keeping the abatement eligibility period at 90 days and also recommended that both the Water and Sewer abatement period language should read the same using the current sewer ordinance verbiage. Mr. Nourse further recommended that language be added to both ordinances requiring the appellant to pay any uncontested fees up front.

Arthur Hoffman **MOVED** to support and recommend to the City Council's Codes and Ordinance Committee the suggested changes by Director Nourse. The motion received a second and was **ADOPTED** on a unanimous voice vote.

4. Appeals

4.1 Heselton Appeal

Ms. Heselton was present and explained her abatement request.

Deputy City Manager Cox recommended that no abatement be granted.

The above recommendation is based upon the following findings:

- The customer does not dispute the metered usage amounts.
- The water was produced by the City and delivered to the customer.
- The water used entered the sewer collection system and ultimately treated by the Wastewater Treatment Facility.
- The customer is able to set up a payment plan with the Utility Billing Office.

Daniel Peterson **MOVED** to deny the abatement. The motion received a second and was **ADOPTED** on a unanimous voice vote.

4.2 MIB LLC

Deputy City Manager recommended an abatement of 878 units of sewer valued at \$5,478.72.

The above recommendation is based upon the following findings:

The customer has provided documentation showing that a leak occurred under a section of building where the leaked water was absorbed into the ground. From the usage data as well as the timing of an initial abatement request, it appears this leak has existed for the last four billing quarters.

After a brief discussion regarding the requirements of the ordinances relative to the timing of the abatements requested, Arthur Hoffman **MOVED** to abate 434.5 units of sewer valued at \$2,711.28. The motion received a second and was **ADOPTED** on a unanimous voice vote.

4.3 Donnelly Appeal

The customer seeks an abatement of both water and sewer due to a leaking water meter.

Ms. Donnelly was present and explained her abatement request. She concluded her remarks by asking the City to explain why a water meter that is only 4 years old had failed by developing a leak at the base of the meter.

Deputy City Manager Cox recommended an abatement of 412.5 units of sewer valued at \$2,574.00.

The above recommendation is based upon the following findings:

- The customer claims and City personnel have verified that a leak occurred and that the leaked usage did not enter the sewer system.
- Usage during leak period eligible for abatement is 434 units.
- Average normal usage is 21.5 units based upon four quarters of normal usage.
- Estimated leaked usage is 434 actual usage minus 21.5 average units = 412.5 leaked units.

Tom Willis **MOVED** to abate 412.5 units of sewer fees valued at \$2,574.00. The motion was seconded and was **ADOPTED** on a unanimous voice vote.

Mr. Willis also **MOVED** to direct the Public Works Department to investigate the meter failure and report back to the Board. The motion received a second and was **ADOPTED** on a unanimous voice vote.

5. Chapter 17 Ordinance Change

Director Nourse handed out a draft of "Proposed Changes to Chapter 17 of City Ordinance - Water" (copy attached).

Mr. Willis suggested a change to Section 17.34 (c). Specifically, where it reads "... the Department will advise the customer in writing of the obligation to investigate and correct such leakage at their expense" should be changed from "investigate and correct" to instead

read "investigate and respond..." Director Nourse indicated that he was amenable to the change.

Mr. Willis **MOVED** to accept and recommend the proposed changes to Chapter 17, with the minor change of "correct" to "respond," to the City Council's Codes and Ordinances Committee. The motion received a second and was **ADOPTED** on a unanimous voice vote.

6. Sewer Connection Statute and Information

There was no discussion on this item.

7. Financials

There was no discussion of this item.

8. Other

There was no discussion of this item.

9. Adjournment

Shawn Libby **MOVED** to adjourn the meeting. The motion received a second and was **ADOPTED** by a unanimous voice vote.

The meeting adjourned at 7:15 P.M.

Respectfully,

Blaine M. Cox
Deputy City Manager

BMC: sam

CHAPTER 44 HOUSING STANDARDS

- 44-1. Enforcing Authority
- 44-2. Powers of Enforcing Authority
- 44-3. Minimum Standards
- 44-4. Inspection
- 44-5. Enforcement Process
- 44-6. Appeal
- 44-7. Circuit or Superior Court Petition
- 44-8. Liens
- 44-9. Effective Date

HOUSING STANDARDS

This ordinance establishes a housing standards ordinance and fee schedule designed to protect the health and safety of occupants of residential rental properties in Rochester. The inspection program seeks to correct dilapidation, dangerous defects which are likely to result in fire, accidents, or other calamities, unhealthy lack of ventilation or sanitary facilities, or due to other unhealthy or hazardous or dilapidated conditions, including those set forth in Revised Statutes Annotated (RSA) 48-A:7 “Standards for Public Agency”.

44-1. Enforcing Authority

The Director of the Department of Building, Zoning, and Licensing Services is hereby designated to perform the duties of interpreting, administering, and enforcing this ordinance, in addition to the Director’s other duties. The Director may delegate some of the duties under this ordinance to a designee or to other employees in other departments, such as an employee of the Fire Department; however, the Director of the Department of Building, Zoning, and Licensing Services shall be ultimately responsible for interpreting, administering, and enforcing this ordinance.

44-2. Powers of Enforcing Authority

The Director of the Department of Building, Zoning, and Licensing Services, and/or his/her designees as set forth in Section 44-I of this ordinance, in performing his/her duties under this ordinance, shall be authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter including, but not limited to, the following powers:

- A.** To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for human habitation;
- B.** To administer affirmations, examine witnesses and receive evidence;
- C.** To enter upon premises for the purpose of making examinations, provided that such entries shall be made in such manner as to minimize inconvenience to the persons in possession, and to obtain an administrative inspection warrant under

RSA 595-B for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;

D. To impose fines for noncompliance with this ordinance. Said fines may be imposed after individual properties and/or dwelling units have been inspected more than two times and violations remain unabated as a result of lack of good faith efforts by the property owner as specified in Section IV- F of this ordinance. Fines of up to \$275. for each offense may be imposed pursuant to RSA 31:39-c and/or RSA 31:39-d and are in addition to other remedies provided by this ordinance.

44-3. Minimum Standards

A. In accordance with the International Property Maintenance Code the Director of the Department of Building, Zoning, and Licensing Services may determine that a dwelling is unfit for human habitation if it is found that conditions exist in such dwelling which are dangerous or injurious to the health or safety of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality. Such conditions may include the following:

1. Defects which increase beyond normal the hazards of fire, accident, or other calamities;
2. Lack of reasonable adequate ventilation, light, or sanitary facilities;
3. Dilapidation; disrepair, dangerous structural defects;
4. Uncleanliness that arises to rodent harborage or building damage;
5. Over-crowding; inadequate ingress and egress;
6. Inadequate drainage; or
7. Any violation of other health, fire or safety regulations.

B. In addition, pursuant to RSA 48-A, no residential rental property owner renting or leasing a residential dwelling shall maintain those rented premises in a condition in which:

1. The premises are infested by insects and rodents where the landlord is not conducting a periodic inspection and eradication program;
2. There is defective internal plumbing or a back-up of sewage caused by a faulty septic or sewage system;

3. There are exposed wires, improper connectors, defective switches or outlets or other conditions which create a danger of electrical shock or fire;
4. The roof or walls leak consistently;
5. The plaster is falling or has fallen from the walls or ceilings;
6. The floors, walls or ceilings contain substantial holes that seriously reduce their function or render them dangerous to the inhabitants;
7. The porches, stairs or railings are not structurally sound;
8. There is an accumulation of garbage or rubbish in common areas resulting from the failure of the landlord to remove or provide a sufficient number of receptacles for storage prior to removal unless the tenant has agreed to be responsible for removal under the rental agreement and the landlord has removed all garbage at the beginning of the tenancy;
9. There is an inadequate supply of water or whatever equipment that is available to heat water is not properly operating;
10. There are leaks in any gas lines or leaks or defective pilot lights in any appliances furnished by the landlord; or
11. The premises do not have heating facilities that are properly installed, safely maintained and in good working condition, or are not capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms located therein, to a temperature of at least an average of 68 degrees F.; or, when the landlord supplies heat in consideration for the rent, the premises are not actually maintained at a minimum average room temperature of 68 degrees F. in all habitable rooms, as set forth in the 2006 International Property Maintenance Code as adopted by the City.

C. The Director of the Department of Building, Zoning, and Licensing Services shall develop a detailed inspection checklist to be used for all inspections performed under the authority of this ordinance. Said checklist shall address the minimum standards identified in this section, shall reference specific sections of applicable codes, and shall be reviewed and approved by the City Manager.

44-4. Inspection

A. Inspections will occur upon a written complaint by an occupant of a rental property. Inspections may also occur upon a voluntary request made by a property owner or occupant of the rental unit in question.

B. The purpose of said inspections shall be to determine compliance with this ordinance; however, should other violations of the International Property Maintenance Codes be discovered during the course of such investigations, those violations may be pursued by the City.

C. Notice of any violation of the ordinances of the City of Rochester shall be given to the owner and/ or tenant(s) .The City shall re-inspect on or about 30 days from the inspection date for any non-life threatening violations, any life threatening violations shall be corrected immediately and shall be re-inspected as outlined by the City. Should the violations remain upon subsequent re-inspections of the property, the Director of the Department of Building, Zoning, and Licensing Services may determine that the owner and/or tenant(s) are not acting in good faith to remedy the violations after which the City may pursue any and all legal avenues available.

44-5. Enforcement Process

A. In addition or as an alternative to the power to impose and enforce penalties set forth in Section 44-2, herein, whenever a written complaint is filed with the Director of the Department of Building, Zoning, and Licensing Services by a tenant or resident of the City charging that any dwelling is unfit for human habitation or whenever it appears to the Director of the Department of Building, Zoning, and Licensing Services by inspection that any dwelling is unfit for human habitation, the Director of the Department of Building, Zoning, and Licensing Services shall, if preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such dwelling (including persons in possession) a complaint stating the charges in that respect.

- 1.** Service may be made by registered mail for persons residing outside the state; and if there are any unascertained persons having an interest in said dwelling, notice may be given them by publication in a newspaper having general circulation in the City, such publication to be at least 10 days before the date set for the hearing.

- 2.** Such complaint shall contain a notice that a hearing will be held before the Director of the Department of Building, Zoning, and Licensing Services at a place therein fixed not less than 10 days nor more than 30 days after the serving of said complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before such public agency.

B. If, after such notice and hearing, the Director of the Department of Building, Zoning, and Licensing Services determines that the dwelling under consideration is unfit for human habitation, the Director of the Department of Building, Zoning, and Licensing Services shall state in writing the findings of fact in support of such determination and

shall issue and cause to be served upon the owner thereof an order which, if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, requires the owner, within the time specified in the order, to repair, alter, or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, requires the owner, within the time specified in the order, to remove or demolish such dwelling.

44-6. Appeal

If an owner is aggrieved by an order of the Director of the Department of Building, Zoning, and Licensing Services, the owner may appeal to the Residential Rental Housing Board. Residential Rental Housing Board shall hold a public hearing upon said appeal, notice of said hearing having first been given to the Director of the Department of Building, Zoning, and Licensing Services and to the owner at least 10 but no more than 30 days prior to the hearing date. The Residential Rental Housing Board may affirm or revoke the order of the Director of the Department of Building, Zoning, and Licensing Services, or it may modify the same in accordance with its findings. If it shall affirm or modify such order, the Director of the Department of Building, Zoning, and Licensing Services shall proceed to enforce said order as affirmed or so modified, in the manner prescribed in RSA 48-A:4 and as set forth herein. If the Residential Rental Housing Board shall revoke said order, the proceedings shall be terminated.

44-7. Circuit or Superior Court Petition

If the owner fails to comply with an order, made pursuant to the provisions of RSA 48-A:3 and Section 44-5, above, to repair, alter, improve or to vacate and close the dwelling, or to remove or demolish the dwelling, the Director of the Department of Building, Zoning, and Licensing Services may file a petition in either Rochester Circuit or Strafford County Superior Court which shall set forth the charges issued, as well as any other allegations bearing upon the unfitness of the dwelling for human habitation. The court will proceed pursuant to RSA 48-A:4 and RSA 48-A:5

44-8. Liens

A. Whenever the Director of the Department of Building, Zoning, and Licensing Services shall incur cost for the repair, alteration, improvement, vacating or closing, or for the removal or demolition of a dwelling, pursuant to an order of the superior court, the amount of such costs shall be a lien against the real property as to which such cost was incurred and such lien, including as part thereof upon allowance of the City's costs and necessary attorneys' fees, may be foreclosed upon order of the superior court made pursuant to a petition for that purpose filed in said court. Such lien shall be subordinate to mortgages of record made before the institution of proceedings under this chapter. Notice of said lien shall be filed with the register of deeds for the county in which the real estate

is situated, and shall be recorded therein. If the dwelling is demolished by the Director of the Department of Building, Zoning, and Licensing Services in accordance with 48-A:6 shall be strictly followed.

B. Whenever a court of competent jurisdiction enters a fine against a property owner for violation of the minimum standards established by this ordinance, the amount of said fine shall be a lien against the real property, and such lien, including as part thereof costs and necessary attorneys' fees may be foreclosed upon order of the superior court pursuant to a petition for that purpose filed in said court. Such lien may be filed after 45 days following the entry of the fine. Notice of said lien shall be filed with the register of deeds for the county in which the real estate is situated, and shall be recorded by the registrar. Such lien shall be subordinate to any mortgage, tax lien, or encumbrance of record filed prior to the municipality's lien. If the lien authorized by this section is not satisfied within 120 days of the recording of the judgment in the registry of deeds in which the property is located, it may be foreclosed upon in accordance with the provisions of RSA 48-A:6 and Section VII(A), above.

44-9. Effective Date

This ordinance shall take effect upon adoption by the City Council.

TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 48-A HOUSING STANDARDS

Section 48-A:1

48-A:1 Definitions. – The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

I. "Municipality" shall mean any city or town in this state.

II. "Governing body" shall mean, in a city, that governing body which is designated as such by the charter of the particular city; in a town, the town meeting.

III. "Dwelling" shall mean any building, structure, trailer, mobil-home or camp or part thereof, used and occupied for human habitation or intended to be so used and includes any appurtenances belonging thereto or usually enjoyed therewith.

IV. "Public agency" shall be a board, department, officer, or employee of a municipality, designated by ordinance, code or bylaw to exercise the powers and perform the duties conferred upon it by this chapter.

Source. 1959, 293:1. 1965, 341:1, eff. Aug. 7, 1965.

Section 48-A:2

48-A:2 Grant of Power. – Whenever the governing body of any municipality finds that there exists in such municipality dwellings which are unfit for human habitation due to dilapidation, dangerous defects which are likely to result in fire, accidents, or other calamities, unhealthful lack of ventilation or sanitary facilities, or due to other unhealthy or hazardous or dilapidated conditions, including those set forth in RSA 48-A:7, power is hereby conferred upon such municipality to adopt ordinances, codes, or bylaws to cause the repair, closing, or demolition or removal of such dwellings in the manner provided in this chapter. Any municipality which adopts such a code or ordinance which has provisions for appeal, pursuant to this chapter, shall be exempt from any provisions of RSA 48-A which are in conflict with the adopted ordinance.

Source. 1959, 293:1. 1989, 89:1, eff. June 30, 1989.

Section 48-A:3

48-A:3 Provisions of Ordinances, Codes and Bylaws. – Such ordinances, codes and bylaws shall include the following provisions:

I. That a public agency is established, consisting of such one of the following as the governing body, at its option; shall expressly provide in such ordinance, code, or bylaw:

(a) A board consisting of at least 3 members 2 of whom shall be the head of the municipal health department, and

the head of the municipal fire department, if such offices exist, and such other incumbents of municipal offices or positions as such ordinance, code, or bylaw shall prescribe. Selectmen, and city and town managers, and members of the governing bodies of cities shall be ineligible for membership on such board. No person shall serve concurrently as a member of such board and as a member of the appointing authority.

(b) A minimum housing standards enforcement officer, under such title as the governing body shall prescribe, who shall be qualified by training or experience to interpret, administer, and enforce the provisions of such ordinance, code or bylaw, which shall be his principal duty and responsibility.

(c) Any other qualified department, officer or employee of the municipality as the governing body shall designate, other than an elected officeholder, city or town manager, or member of the housing board of appeals hereinafter provided; the department, officer or employee so designated may perform the duties of the public agency in addition to his other duties, with or without additional compensation, as the governing body shall determine.

II. That whenever a petition is filed with the public agency by at least 10 residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public agency by inspection that any dwelling is unfit for human habitation, it shall, if preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such dwelling (including persons in possession) a complaint stating the charges in that respect. If the person to be served resides outside the state, service may be made upon him by registered mail; and if there are any unascertained persons having an interest in said dwelling, notice may be given them by publication in a newspaper having general circulation in the municipality, such publication to be at least 10 days before the date set for the hearing. Such complaint shall contain a notice that a hearing will be held before the public agency at a place therein fixed not less than 10 days nor more than 30 days after the serving of said complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before such public agency.

III. That if, after such notice and hearing, the public agency determines according to the standards of the ordinance, code or bylaw that the dwelling under consideration is unfit for human habitation it shall state in writing its findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order which, if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, requires the owner, within the time specified in the order, to repair, alter, or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, requires the owner, within the time specified in the order, to remove or demolish such dwelling.

IV. If an owner is aggrieved by an order of the public agency made pursuant to paragraph III hereof, he may appeal to the city council or mayor and board of aldermen in the case of cities, or to the board of selectmen in the case of towns. Said city council or mayor and board of aldermen or board of selectmen shall hold a public hearing upon said appeal, due notice of said hearing having first been given to the public agency and to the owner. The city council or mayor and board of aldermen or board of selectmen may affirm or revoke the order of the public agency, or they may modify the same in accordance with their findings. If they shall affirm or modify such order, the public agency shall proceed to enforce said order as affirmed or so modified, in the manner prescribed in RSA 48-A:4. If the city council or mayor and board of aldermen or board of selectmen shall revoke said order, the proceedings shall be terminated.

Source. 1959, 293:1. 1965, 341:2. 1969, 175:1, eff. May 28, 1969.

Section 48-A:4

48-A:4 Procedure for Enforcement. – If the owner fails to comply with an order, made pursuant to the provisions of RSA 48-A:3, to repair, alter, improve or to vacate and close the dwelling, or to remove or demolish the dwelling, the public agency may file a petition in the superior court in which it shall set forth the charges issued pursuant to RSA 48-A:3, II, as well as any other allegations bearing upon the unfitness of the dwelling for human habitation. The court shall thereupon direct notice to be given all parties having an interest in said dwelling, including mortgagees and persons in possession thereof. Such notice shall be given, where practicable, by personal service, except that if the person to be served resides outside the state, service may be made upon him by registered mail; and if there are any unascertained persons having an interest in said dwelling, notice may be given them by publication of the petition in a newspaper having general circulation in the municipality, such publication to be at least 10 days before the date set for the hearing. The court shall set a date for hearing such charges and additional allegations. Upon hearing, the matter shall be treated as de novo, and the court shall hear such pertinent evidence concerning the fitness of the dwelling for human habitation as may be relevant.

Source. 1959, 293:1. 1969, 175:3, eff. May 28, 1969.

Section 48-A:5

48-A:5 Order of the Court. – The court shall as soon as practicable issue its order upon said petition; and if the court finds the dwelling complained against is unfit for human habitation due to any of the causes or conditions enumerated in RSA 48-A:2, such order shall direct the public agency to repair, alter, or improve such dwelling to render it fit for human habitation if such repair, alteration or improvement can be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost; or if the repair, alteration or improvement of said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, to remove or demolish such dwelling. If the court shall find in favor of the owner, it shall award to him his reasonable costs and expenses, including counsel fees, all as determined by the court, incurred by him in his defense of the action in the superior court.

Source. 1959, 293:1, eff. Nov. 16, 1959.

Section 48-A:6

48-A:6 Lien. – Whenever the public agency shall incur cost for the repair, alteration, improvement, vacating or closing, or for the removal or demolition of a dwelling, pursuant to an order of the superior court, the amount of such costs shall be a lien against the real property as to which such cost was incurred and such lien, including as part thereof upon allowance of his costs and necessary attorneys' fees, may be foreclosed upon order of the superior court made pursuant to a petition for that purpose filed in said court. Such lien shall be subordinate to mortgages of record made before the institution of proceedings under this chapter. Notice of said lien shall be filed with the register of deeds for the county in which the real estate is situated, and shall be recorded by him. If the dwelling is demolished by the public agency, he shall sell the materials of such dwelling and pay the proceeds of such sale over to the superior court, for distribution to such persons as the court shall find entitled thereto.

Source. 1959, 293:1 eff. Nov. 16, 1959.

Section 48-A:6-a

48-A:6-a Lien for Unpaid Fines. –

I. Whenever a court of competent jurisdiction enters a fine against a property owner for violation of a housing code enacted pursuant to this chapter or for violation of the minimum standards set forth in RSA 48-A:14, the amount of said fine shall be a lien against the real property, and such lien, including as part thereof costs and necessary attorneys fees may be foreclosed upon order of the superior court pursuant to a petition for that purpose filed in said court. Such lien may be filed after 45 days following the entry of the fine.

II. Notice of said lien shall be filed with the register of deeds for the county in which the real estate is situated, and shall be recorded by the registrar.

III. Such lien shall be subordinate to any mortgage, tax lien, or encumbrance of record filed prior to the municipality's lien.

IV. If the lien authorized by paragraph I is not satisfied within 120 days of the recording of the judgment in the registry of deeds in which the property is located, it may be foreclosed upon in accordance with the process in RSA 48-A:6.

Source. 2010, 203:1, eff. Jan. 1, 2011.

Section 48-A:7

48-A:7 Standards for Public Agency. – An ordinance, code or bylaw adopted by a municipality pursuant hereto shall provide that the public agency may determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling which are unusually, abnormally, or unreasonably dangerous or injurious to the health or safety of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality. Such conditions may include the following: Defects which increase beyond normal the hazards of fire, accident, or other calamities; lack of reasonable adequate ventilation, light, or sanitary facilities; dilapidation; disrepair, dangerous structural defects; uncleanness; over-crowding; inadequate ingress and egress; inadequate drainage; or any violation of other health, fire or safety regulations.

Source. 1959, 293:1, eff. Nov. 16, 1959.

Section 48-A:8

48-A:8 Additional Provisions of Ordinances, Codes, or Bylaws. – An ordinance, code or bylaw adopted by the governing body of the municipality may authorize the public agency and its delegated officers to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter including the following powers in addition to others herein granted:

I. To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for human habitation;

II. To administer affirmations, examine witnesses and receive evidence;

III. To enter upon premises for the purpose of making examinations, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an administrative inspection warrant under RSA 595-B for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;

IV. To appoint and fix the duties of such officers, agents and employees as deemed necessary to carry out the purposes of such ordinance, code or bylaw;

V. To delegate any of its functions under such ordinance to such officers as it may designate; and

VI. To establish penalties for violations of such ordinance, code, or bylaw, which shall be in addition to any other

remedies provided under this chapter. The penalty for any separate offense shall not exceed the maximum penalty permitted under RSA 47:17, and may be enforced pursuant to the procedure established in RSA 31:39-c, RSA 31:39-d, or both, subject to the provisions and limitations thereof, or in any other manner authorized by law. For purposes of any fines imposed hereunder, each day that a violation of the ordinance, code, or bylaw continues shall be considered a separate offense.

Source. 1959, 293:1. 1991, 231:2. 2009, 270:5, eff. Jan. 1, 2010.

Section 48-A:9

48-A:9 No Abrogation of Other Powers of Municipalities. – Nothing herein shall be construed to abrogate or impair the powers of the courts or of any governing body, city council, or department of any municipality to enforce any provisions of its charter or its ordinances or regulations nor to prevent or punish violations thereof; and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

Source. 1959, 293:1, eff. Nov. 16, 1959.

Section 48-A:10

48-A:10 No Abrogation of Powers of Municipalities as to Nuisances. – Nothing in this chapter shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

Source. 1959, 293:1, eff. Nov. 16, 1959.

Section 48-A:11

48-A:11 Minimum Standards; Barring the Use or Occupancy; Violations and Punishment. – Any municipality may (by ordinance adopted by its governing body):

- I. Prescribe minimum standards for the use and occupancy of dwellings throughout the municipality;
- II. Prevent the use or occupancy of any dwelling which is injurious to the public health, safety, or welfare.
- III. Enact, in the sections of their housing codes dealing with infestations of insects, provisions directed at the unique problems posed by infestations of bed bugs, provided that such provisions are no less protective of the residents of dwelling units in which bed bug infestations are found than are the provisions dealing with infestations of other kinds of insects.

Source. 1959, 293:1, eff. Nov. 16, 1959. 2013, 48:3, eff. Jan. 1, 2014.

Section 48-A:12

48-A:12 Exceptions. – An ordinance, code or bylaw adopted pursuant to the authority of this chapter may provide that any dwelling, building or structure situated within an historic district that is established under RSA 31:89-b, or within such other classes of dwellings, building or structure as the governing body shall determine to have special significance to the public interest and shall expressly define in such ordinance, code or bylaw, may be approved by the board of aldermen as a special exception, after public hearing, and the provisions of such ordinance, code or bylaw may

be waived in their application to such dwelling, building or structure, in whole or in part or otherwise so modified as the housing board of appeals may determine.

Source. 1959, 293:1. 1965, 341:3, eff. Aug. 7, 1965.

Section 48-A:13

48-A:13 Conflicting Provisions. – Whenever the regulations made under the authority hereof differ from those prescribed by any statute, ordinance or other regulation, that provision which imposes the higher standard shall govern.

Source. 1965, 341:4, eff. Aug. 7, 1965.

Section 48-A:14

48-A:14 Minimum Standards Established. – No landlord, as defined by RSA 540-A:1, I, renting or leasing a residential dwelling in a municipality which has not adopted ordinances, codes or bylaws pursuant to this chapter shall maintain those rented premises in a condition in which:

I. The premises are infested by insects and rodents where the landlord is not conducting a periodic inspection and eradication program;

I-a. The premises are infested by bed bugs and the landlord is not conducting a periodic inspection and remediation program. In this paragraph "remediation" means action taken by the landlord that substantially reduces the presence of bed bugs in a dwelling unit for a period of at least 60 days;

II. There is defective internal plumbing or a back-up of sewage caused by a faulty septic or sewage system;

III. There are exposed wires, improper connectors, defective switches or outlets or other conditions which create a danger of electrical shock or fire;

IV. The roof or walls leak consistently;

V. The plaster is falling or has fallen from the walls or ceilings;

VI. The floors, walls or ceilings contain substantial holes that seriously reduce their function or render them dangerous to the inhabitants;

VII. The porches, stairs or railings are not structurally sound;

VIII. There is an accumulation of garbage or rubbish in common areas resulting from the failure of the landlord to remove or provide a sufficient number of receptacles for storage prior to removal unless the tenant has agreed to be responsible for removal under the rental agreement and the landlord has removed all garbage at the beginning of the tenancy;

IX. There is an inadequate supply of water or whatever equipment that is available to heat water is not properly operating;

X. There are leaks in any gas lines or leaks or defective pilot lights in any appliances furnished by the landlord; or

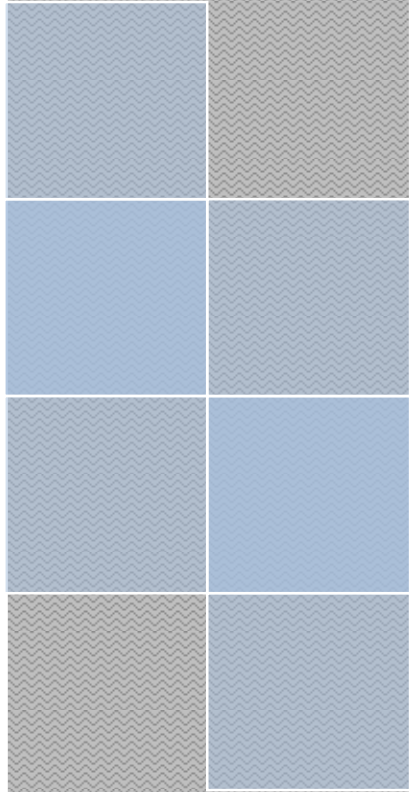
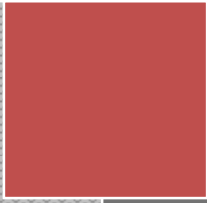
XI. The premises do not have heating facilities that are properly installed, safely maintained and in good working condition, or are not capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms located therein, to a temperature of at least an average of 65 degrees F.; or, when the landlord supplies heat in consideration for the rent, the premises are not actually maintained at a minimum average room temperature of 65 degrees F. in all habitable rooms.

Source. 1979, 305:7, eff. Aug. 21, 1979. 2013, 48:2, eff. Jan. 1, 2014.

Section 48-A:15

48-A:15 Enforcement of Minimum Standards. – In municipalities which have not established a public agency as described in RSA 48-A:3, a violation of the minimum standards set forth in RSA 48-A:14 shall be a violation, and each continuing day of violation after notice shall be a separate offense.

Source. 2001, 274:4, eff. Jan. 1, 2002.



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AMENDMENT TO ORDINANCES
ADOPTING A NEW CHAPTER OF THE
GENERAL ORDINANCES OF THE CITY OF ROCHESTER
TO BE KNOWN AS CHAPTER 68 OF THE
GENERAL ORDINANCES OF THE CITY OF ROCHESTER

THE CITY OF ROCHESTER ORDAINS:

I. That the General Ordinances of the City of Rochester, as presently amended, be further amended, by adding a new Chapter to Title IV – Traffic Code thereof, said Chapter to be known as Chapter 68 of the General Ordinances of the City of Rochester and entitled “Distribution of Items To and From Motor Vehicles,” said Chapter 68 to provide as follows:

“CHAPTER 68

DISTRIBUTION OF ITEMS TO AND FROM MOTOR VEHICLES

68.1 Intent of Ordinances.

This Ordinance is intended to provide for the free flow of motor vehicle traffic on roadways in the City. The City Council finds that persons who distribute any item to, receive any item from, or exchange any item with, the occupant of a motor vehicle upon a Roadway present a threat to the free and safe flow of motor vehicle traffic. By this Ordinance, the City Council intends to promote the health, safety and welfare of the citizens traveling by vehicle in the City.

68.2 Definitions.

For purposes of this Chapter, the following definitions apply:

- (a) Pass/Passing: Distributing any item to, receiving any item from, or exchanging any item with the occupant of a motor vehicle that is located in the Roadway.
- (b) Roadway. All public roads open to motorized vehicles within the City. This definition excludes private roads and private property. This definition also excludes areas in which parking is permitted in the City.
- (c) Item. Any physical object.

68.3 Prohibition of Roadway.

It shall be unlawful to violate any of the prohibitions set forth below in the City.

- (a) No person shall knowingly distribute any item to, receive any item from, or exchange any item with the occupant of any motor vehicle when the vehicle is located in the Roadway.
- (b) This Ordinance shall not apply to the distribution, receipt or exchange of any item with the occupant of a motor vehicle on private property or in a permitted parking area.
- (c) This Ordinance shall not apply to any law enforcement officer acting in the scope of his/her official duties.

68.4 Penalty.

A person found in violation of this section shall be guilty of a violation and may be fined not more than \$500.00.

68.5 Severability.

If any provision of this section is declared invalid or unconstitutional by any Court of competent jurisdiction, the remaining provisions shall be severable and shall continue in full force and effect.”

- II.** This ordinance shall take effect upon its passage.”

CC FY14 02-18 AB 32a