



**City of Rochester, NH
Preamble for February 4, 2021
Codes & Ordinances Committee Meeting**

Good Evening, as Chairperson of the Codes and Ordinances Committee, I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of City government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

a.) **Public Input:** Due to the ongoing situation with COVID-19, the City of Rochester will be taking extra steps to allow for public input, while still ensuring participant safety and social distancing. In lieu of attending the meeting, those wishing to share comments, when permitted, with the City Council (Public Hearing and/or Workshop settings) are encouraged to do so by the following methods:

- **Mail:** City Clerk/Public Input, 31 Wakefield Street, Rochester, NH 03867 (*must be received at least three full days prior to the anticipated meeting date*)
- **email** PublicInput@rochesternh.net (*must be received no later than 4:00 pm of meeting date*)
- **Voicemail** 603-330-7107 (*must be received no later than 12:00 pm on said meeting date in order to be transcribed*)

Please include with your correspondence the intended meeting date for which you are submitting. *All correspondence will be included with the corresponding meeting packet (Addendum).*

In addition to the above listed public access information, the City Council will be allowing the public to enter Council Chambers and speak in person during the Public Input portion of this meeting. In an effort to adhere to CDC guidelines: enter only at the front Wakefield Street entrance and exit on the side closest to the police department and adhere to 6-foot social distancing while inside. Hand sanitizer and facemasks will be available at the Wakefield Street entrance. Participants will be admitted into Council Chambers one at a time to speak, and will exit directly thereafter. Please note; the seating in Council Chambers will not be available for the public during meetings.

At this time, I also welcome members of the public accessing this meeting by phone. The public can call-in to the below number using the conference code. This meeting will be set to allow the public to "listen-in" only, and there will be no public comment taken via conference line during the meeting.

Phone number: 857-444-0744

Conference code: 843095

b.) **Roll Call:** Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Let's start the meeting by taking a Roll Call attendance. When each member states their name (and/or ward), also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. (Additionally, Council members are required to state their name and ward each time they wish to speak.)

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City Clerk's Office

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
 Councilor Elaine Lauterborn, Vice Chair
 Councilor Tom Abbott
 Councilor Laura Hainey
 Councilor Christopher Rice

**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

Thursday, February 4 2021

31 Wakefield Street, Rochester, NH

Meeting Conducted Remotely

6:00 PM

Agenda

1. **Call to Order**
2. **Public Input**
3. **Acceptance of the Minutes**
 - 3.1 January 7, 2021 *motion to approve*
4. **Code of Ordinances Review**
 - 4.1 **Update:** Amendments to Chapter 80 regarding Outdoor Dining
 - 4.2 **Building, Zoning, and Licensing Services**
 - 4.2.1 Chapter 80 – Food and Food Services
 - 4.2.2 Chapter 11 – Adult –Oriented Establishments
 - 4.1 **Discussion:** Amendment to the General Ordinances of the City of Rochester
 Creating Chapter 41, Disorderly Residence
5. **Other**
6. **Adjournment**

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City Clerk's Office

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Tom Abbott
Councilor Chris Rice
Councilor Laura Hainey



Others Present

Terence O'Rourke, City Attorney
Jennifer Marsh, Economic Development
Donald Hamann, City Councilor

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, January 7, 2021

31 Wakefield Street, Rochester, NH

Meeting conducted remotely

6:00 PM

Minutes

1. Call to Order

Councilor Lachapelle called the Codes & Ordinances meeting to order at 6:00 PM and read the following preamble:

Good Evening, as Chairperson of the Codes & Ordinances Committee I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of City government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

a.) **Providing public access to the meeting by telephone:** At this time, I also welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in a unique manner under unusual circumstances, the usual rules of conduct and decorum apply. Any person found to be disrupting this meeting will be asked to cease the disruption. Should the disruptive behavior continue thereafter, that person will be removed from this meeting. The public can call-in to the below number using the conference code. Some meetings will allow live public input, however you must have pre-registered online, otherwise, the meeting will be set to allow the public to "listen-in" only, and there will be no public comment taken during the meeting. [Public Input Registration](#) (Please note: In order to notify the meeting host that you would like to speak, press 5* to be recognized and unmuted)

Phone number: 857-444-0744 Conference code: 843095

b.) **Public Access Troubleshooting:** If any member of the public has difficulty accessing the meeting by phone, please email PublicInput@RochesterNH.net or call 603-332-1167.

c.) **Public Input:** Due to the ongoing situation with COVID-19, the City of Rochester will be taking extra steps to allow for public input, while still ensuring participant safety and social distancing. In lieu of attending the meeting, those wishing to share comments, when permitted, with the City Council (Public Hearing and/or Workshop settings) are encouraged to do so by the following methods:

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Please include with your correspondence the intended meeting date for which you are submitting. *All correspondence will be included with the corresponding meeting packet (Addendum).*

d.) **Roll Call:** Please note that all votes that are taken during this meeting shall be done by Roll Call vote. Let's start the meeting by taking a Roll Call attendance. When each member states their name (and/or ward), also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. (Additionally, Council members are required to state their name and ward each time they wish to speak.)

Deputy City Clerk Cassie Givara took the roll call. The following councilors were present and indicated that they were alone in the location from which they were connecting remotely: Councilors Abbott, Hailey, Lachapelle, Rice and Lauterborn.

2. Public Input

Councilor Lachapelle read correspondence from Steve Beaudoin, resident, in regards to agenda item 4.1 – Chapter 41, Disorderly Residences.

Cassie Givara, Deputy City Clerk, read correspondence from Tim Fontneau, Penny Boucher, Gerry Hanscom, and Nick Norman, all in regards to Chapter 41.

All correspondence submitted for public input will be included as an addendum to the online Codes & Ordinances packet.

3. Acceptance of the Minutes

3.1 December 3, 2020 *motion to approve*

Councilor Lauterborn **MOVED** to **APPROVE** the minutes of the December 3, 2020 Codes

& Ordinances meeting. Councilor Rice seconded the motion. The **MOTION CARRIED** by a unanimous voice vote with Councilors Hainey, Rice, Lauterborn, Lachapelle, and Abbott all voting in favor.

4. Code of Ordinances Review

4.1 Amendment to the General Ordinances of the City of Rochester Creating Chapter 41, Disorderly Residence (*Addendum A*)

Councilor Lauterborn inquired if the City of Franklin, where the wording for this ordinance originated, had been enforcing this ordinance and how it had been working in that City. Councilor Lachapelle stated that in 2018 when the Committee had last discussed this ordinance, the City of Franklin had not experienced any issues at that point. Attorney O'Rourke stated that he didn't have any current information from Franklin, but would look into it.

Councilor Lauterborn acknowledged that there is an actual problem which resulted in this ordinance being proposed and expressed sympathy for the landlords involved; however she stated that she hoped there would be an alternative solution to help out the neighborhoods and residents dealing with these disorderly residences. Councilor Lachapelle recalled that when this issue had been discussed in 2018, the police commission and police staff had intended to work with local landlords to develop policies and procedures.

Councilor Hainey felt that the committee should discuss and develop a process and procedure moving forward to help affected residents. She spoke about the residents in her neighborhood who have approached her about long-term, ongoing problems requiring police presence. Councilor Hainey said it is not only her neighborhood where these issues take place habitually, and she felt that something needed to be done before it was too late. She requested the report of information generated from the police commission in 2018 after the last time this was discussed.

Councilor Lachapelle said that he felt this was more of a State issue. He felt that landlords should have more power to take action within the State statute and that there is only so much which could be done at the City level. He suggested approaching local representatives to have it brought up at the State level and addressed. Councilor Hainey said it is a local issue as it concerns the police. She stated that the police are in the same neighborhood weekly, multiple times a weekend, and they are not able to make arrests or stop the issues from reoccurring.

Councilor Rice acknowledged that something did need to be done but questioned whether this ordinance was the way to go about making the change. He inquired if there was a way to mandate that landlords register their rental properties with the City. Councilor Lachapelle said that he had been informed there was a state RSA requiring landlords to register their information with the local City Clerk's Office. Councilor Rice suggested that the committee could reach out to police department representation for rental property owners. Concerned citizens from each ward could be invited to these police commission meetings to have their issues heard. He suggested reaching out

to local representatives as well as the Strafford County sheriff for guidance on how to proceed with evictions. Attorney O'Rourke agreed that this would be a good item to be added to the Police Commission agenda. He stated that prior to COVID, BZLS and police staff had started meeting with landlords, but that outreach and discussion had been put on hold. Councilor Lachapelle suggested bringing the item back to the Codes & Ordinances committee because ultimately they would be the ones making recommendation to full Council.

Attorney O'Rourke stated that part of the issue is education. There are some less experienced landlords or those with fewer properties who may not know their rights and may not know how to move forward in these situations.

Donald Hamann, councilor, spoke about his experiences as a landlord and agreed that the state laws needed to give more power to the landlords to take care of these issues with problem tenants. Councilor Abbott agreed that the focus should not be on the landlords but rather on those creating the problem and if an ordinance is going to be proposed, it should hold those responsible who are causing these issues. There was a brief discussion on absentee landlords and out of state landlords and how this affects the issue.

Councilor Hainey agreed that the focus should not be on the landlords but rather on those tenants causing the problems. She stated that discussion could spur outreach to the police commission and landlords to start taking a closer look at the ordinance to see what can be done and start making some positive changes.

Councilor Rice spoke about reviewing other ordinances which could potentially address the problems being highlighted in the disorderly residence chapter; the noise ordinance could be reviewed and possibly amended due to noise complaints being a large part of the issue. Councilor Hainey had referenced gunfire in her neighborhood. It was discussed that this incident would be governed by State RSA.

Councilor Rice suggested having a list of rental properties along with the legal tenants occupying these properties. This would allow police to penalize the appropriate parties if there were complaints involving multiple people at one call. Council Lachapelle clarified that he did not believe it was legal for the City to keep a registry of individual tenants at each property; however there is a registry of the landlords owning these properties in the city Clerk's office. Councilor Rice suggested that the confidential nature of this tenant registry could be maintained by only allowing access to the police, legal staff and City Clerks.

Councilor Lachapelle suggested inviting members of the police department staff to the next Codes meeting to further discuss this item and possibly drafting an ordinance which would work better for the City. Councilor Lauterborn stated that she felt that this was a State issue which would require a change to the statute, which is not a quick process.

5. Update: Chapter 80 – Outdoor Dining (*Addendum B*)

Jenn Marsh, Economic Development, gave a brief summary of what has occurred with the outdoor dining ordinance up until now and the process it has gone through. She outlined the additional proposed changes which have been suggested since the last time the ordinance was reviewed by the committee. Attorney O'Rourke stated that the goal had been to make the ordinance much easier in function and with increased clarity for the restaurant owners. Attorney O'Rourke said that the use of Jersey barriers to cordon off the outdoor seating areas would be in use again this upcoming season. He stated that the process as laid out will give the restaurants the ability to write their site plan and make the approval process through the Technical Review Group and final approval through the City Manager more complete and easy.

Councilor Rice asked about the requirement for rubber tips on the legs of chairs and tables to be used on concrete surfaces which had been written into the ordinance. Attorney O'Rourke stated that the surfaces on which the furniture is being placed are owned by the City and this in an attempt to protect those surfaces from damage and wear and tear as the furniture is used. Councilor Rice suggested adding to the ordinance that these protective tips should be required on pavement surfaces as well, because many of the outdoor dining locations are located on this type of surface. He questioned whether they would be necessary at the locations which have built raised wooden platforms for dining. Attorney O'Rourke stated that these details would be ironed out in the site plans submitted by each business prior to the plans going before the appropriate Board or Commission for approval.

Councilor Rice spoke against the prohibition of tents, canopies and covers in the outdoor dining areas, and noted that table umbrellas are permitted without a stipulation that they need to be affixed. Councilor Lachapelle referenced the many outdoor dining areas along the seacoast beaches which regularly use umbrellas and stated that ideally it's common sense that if these umbrellas are used, they need to be secured in case of windy weather. He did not feel that every small possibility needed to be written into the ordinance. Councilor Rice stated that if this document is intended to be thorough and permanent, these types of clarifications should be included. Ms. Marsh stated that the fire department as well as City staff is against the use of canopies at outdoor dining establishments due to the potential safety issues and damage, even when anchored, which could be caused in certain weather. Ms. Marsh questioned if other types of coverings, such as custom build wooden coverings, could be used to protect diners against the sun and heat during the summer months. City Attorney O'Rourke stated that these types of structures would need to be included in the businesses' site plan because they would need to pass building and fire codes. Attorney O'Rourke suggested adding the verbiage that umbrellas "must be anchored" into the ordinance. Councilor Rice added that he felt the ordinance should allow both umbrellas and canopies as long as they were appropriately anchored into a structure of a certain size and weight requirement. Attorney O'Rourke clarified that the canopies being used do not meet any of the relevant building or fire codes and can be dangerous for use in a busy commercial setting; they are not approved for the uses being suggested. Councilor Rice stated that vendors at the farmer's market use this same style of tent and canopy on City property and questioned why it would not be allowed for restaurants downtown. Councilor Lachapelle stated that the farmer's market uses these canopies for a brief period of time one day a week and they are removed when the market ends.

Councilor Lauterborn referenced a section in the ordinance which indicated that there would not be live entertainment at outdoor dining establishments. She stated that her recollection is that this has been allowed when it was discussed last, and the establishments would work out a schedule

amongst themselves to avoid multiple performances overlapping. Attorney O'Rourke said that if the restaurants would like to have live entertainment, they need to file for a special events permit. Councilor Lauterborn suggested changing the wording to indicate that live entertainment is permissible upon application of a special events permit. Attorney O'Rourke said the section being referenced is in regards to the site plan, and that given the limited space and the need for ADA compliance, safety codes and other criteria, it doesn't make sense for restaurants to commit to a specific designated space for live entertainment; the special events permit can be applied for to use public spaces. Ms. Marsh stated that she agreed entertainment should be allowed in downtown; however due to the heavily trafficked area and safety concerns with wires and equipment, city staff would still need to review the area and the plan to determine if it would be appropriate on a case by case basis. She said that the special events permit is an easy process and can be applied for and approved quickly. Councilor Lauterborn reiterated that she felt they should add verbiage allowing live entertainment at outdoor dining establishments with the approval of a special events permit. Attorney O'Rourke said there are other portions of the ordinances which deal with special events permits; this particular section in regards to site plans is not the appropriate place to include a section for live entertainment. Alternately, he stated that the ordinance is in reference to City property. The city needs to be equal in the allowance of use of these public spaces; otherwise it is a violation of residents' rights. He said that the special events permit process would still be the route to take for occasional live entertainment.

Councilor Hainey echoed Councilor Rice's assertion that canopies, and tents should be permissible if appropriately secured and weighted down. She also asked if it had been considered that the outdoor dining season could start March 1 as opposed to April 1. Attorney O'Rourke stated that the full Council had voted on keeping the start of the season on April 1st due to the potential for winter storms well into March.

Mr. Hamann, recounted a story of a secured tent he had used on his deck which had been destroyed and mangled in wind. He gave examples of types of tenting which could be used to potentially avoid weather damage and safety concerns.

Ms. Marsh clarified that there is a difference between tents and canopies. Tents above a certain size can be inspected and reviewed by the fire department and potentially allowed with a permit. Attorney O'Rourke stated that these types of tents would have to be anchored by drilling into the ground. The locations in question are on City property and drilling or modification of the ground would not be permitted.

Councilor Rice suggested keeping the ordinance in committee for one more month so councilors could review and come back in February for further discussion and amendments. Attorney O'Rourke stated that applications are due in February from the restaurants, so staff was hoping to have the committee recommend the suggested amendments to the full Council so there could be a special meeting held on February 19th for a vote. Councilor Lachapelle suggested that the amendments to the ordinance could be approved "as is" and there could be further amendments made in the future to avoid holding up any permits.

Councilor Lauterborn **MOVED** to recommend to full Council the suggested amendments to Chapter 80 regarding outdoor dining. Councilor Abbott seconded the motion. The **MOTION CARRIED** by a 4 – 1 roll call vote with Councilors Lachapelle, Abbott, Hainey, and Lauterborn

Draft
City of Rochester

Codes and Ordinances Committee
January 7, 2021

voting in favor and councilor Rice voting opposed.

6. Other

Councilor Lachapelle asked which ordinances would be covered at the February 4 meeting. Attorney O'Rourke said that Building, Zoning and Licensing and Planning had a chapter which crosses over, so they are scheduled for this upcoming meeting together. Councilor Lachapelle suggested that at the February 4 meeting, they could handle the first 4 chapters of BZLS (Chapter 11: Adult Oriented Establishments, Chapter 22: Amusements and Entertainment, Chapter 40: Building & Construction Maintenance, Chapter 54: Citations, and Chapter 80: Food & Food Services) and do the remainder of the BZLS chapters as well as the Planning ordinance at the March meeting. There will also be a spot for further discussion of the disorderly residence ordinance on the February agenda.

7. Adjournment

Councilor Lachapelle **ADJOURNED** the meeting at 7:17 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk

**Amendment to the General Ordinances of the City of Rochester Creating Chapter 41,
Disorderly Residence**

THE CITY OF ROCHESTER ORDAINS:

That the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended to create Chapter 41, Disorderly Residence, as follows:

Chapter 41: Disorderly Residence

§ 41-1 Purpose.

§ 41-2 Definitions.

§ 41-3 Documentation and classification of complaints.

§ 41-4 Notice and enforcement procedures; fines, violations and penalties.

§ 41-5 Legal action against owner for cost recovery; alternative enforcement actions.

§ 41-1 Purpose.

This chapter is adopted in accordance with RSA 47:17, RSA 31:39, I (n), and RSA 644:2, and all other relevant statutory authority. It is hereby declared a valid public purpose of the City of Rochester that in order to promote and protect the health and general welfare of the City of Rochester, its residents and its neighborhoods, a process needs to be in place to properly and adequately control and manage chronic and unlawful nuisance and disorderly activities that might occur in the neighborhoods of the City. It is the public policy of the City to utilize this chapter to control and manage the disorderly activities and properties described below, and to appropriately assign financial liability for enforcement actions to the owners of the property where such activities occur in repeated fashion. There is an obligation on the part of the property owners to take all appropriate actions to reduce or eliminate these types of events from occurring. Ongoing disorderly events consume time and energies of the Police Department, thus reducing the amount of time that can be spent on more significant crimes and community affairs. While fines and enforcement actions may be necessary, this chapter is not adopted to create a mechanism to solely impose punitive punishments on the property owners; instead the goal of this chapter is create a dialogue with property owners and engage them in a process of eliminating these disorderly activities to the greatest degree possible.

§ 41-2 Definitions.

As used in this chapter the following terms shall have the meanings outlined below:

DISORDERLY ACTIVITIES

Situations created within or in the immediate vicinity of a building by a building's owner, occupants, or tenants, or the invitees of an owner, tenant or occupant, which would have a tendency to unreasonably disturb the community, the neighborhood or an ordinary individual occupying property in or near the disorderly activity, including but not limited to loud music; boisterous parties; excessively loud or unnecessary noises emanating from within or near the building which are audible outside the building; fights within the building, or in its vicinity, involving occupants of the building or their invitees; occupants of the

building or their invitees being intoxicated outdoors in the vicinity of the building; and other similar activities in the building or in the vicinity of the building.

DISORDERLY EVENT

An activity to which the Police Department responds on the basis of a complaint and determines to be disorderly. Multiple responses to a single building that occur within a twelve-hour period may be deemed a single disorderly event at the discretion of the Police Department. The Police Department shall be the final arbiter on how events are classified and counted towards the enforcement procedures in this chapter. If the disorderly events occur at a multifamily property (more than two units) and the events are taking place at individual units on different dates and times, the Police Department, in consultation with the City Manager, shall determine how these events will be classified in reference to the notice and fine provisions of § 41-4 B through D below. The type and frequency of the events, and the degree of threat to public safety, will be factors in how the events are classified.

HABITUAL DISORDERLY RESIDENCE

A residence which has been identified and classified by the Police Chief or a designee as being either the subject of eight or more police responses for any disorderly events in any twelve-month period; or the subject of 10 or more police responses for any disorderly events in any eighteen-month period.

OWNER

The person or persons having the right of legal title to, or the beneficial interest in, a building or parcel of land, as their interest is recorded in the tax records of the City of Rochester. For the purpose of all notifications and related communications, the term "owner" shall also be defined as the landlord's agent, as provided to the City by the owner of the property subject to the provisions of RSA 540.

RESIDENCE

Any type of residential unit or building, including but not limited to a single- or two-family dwelling, a multifamily dwelling unit, family apartment, boardinghouse, condominium, rooming house or unit, or leased units in a manufactured housing park (hereinafter jointly and severally "building"). The term "residence" also includes any property (yard, driveway or parking area, etc.) associated with the residence.

§ 41-3 Documentation and classification of complaints.

The Police Department shall document all responses to complaints of disorderly activities and classify each complaint as either substantiated or unsubstantiated.

§ 41-4 Notice and enforcement procedures; fines, violations and penalties.

A.

When the Police Department determines that the first incident at a property will be subject to the provisions of this chapter, it shall notify the owner of the property and provide a copy of this chapter. The owner may voluntarily contact the Police Chief and/or City Manager to schedule a meeting to

discuss the violation; if such a meeting is scheduled, the owner may, if he or she so chooses, present the City with a plan to take proactive steps to prevent future events.

B.

Whenever a residence has been visited by the police two times in any thirty-day period, in relation to incidents involving a disorderly event, the Police Chief, the City Manager, or any other agent designated by the City Manager (hereinafter referred to as the "City") shall send a notice to the owner. The owner shall be provided with a copy of this chapter and shall be informed that a fine of \$100 shall be imposed for the event. If the owner contacts the Police Chief and/or the City Manager and schedules a meeting, within 10 calendar days of the receipt of the notice, to discuss the events, and said owner satisfactorily outlines a mechanism to prevent future disorderly events, then the fine may be waived.

C.

Whenever a residence has been visited by the police for a third event in any sixty-day period, in relation to incidents involving a disorderly event, the Police Chief, the City Manager, or any other agent designated by the City Manager (hereinafter referred to as the "city") shall send a notice to the owner. The owner shall be subject to a fine of \$1,000. If the owner contacts the Police Chief and/or the City Manager and schedules a meeting, within 10 calendar days of the receipt of the notice, to discuss the events, and said owner satisfactorily outlines a plan to prevent future disorderly events, then the fine may be waived. The plan shall demonstrate that the owner agrees to take effective and immediate measures to prevent future disorderly events. The implementation of the plan shall begin within one week of the meeting. The plan shall be in writing and shall be signed and acknowledged by the City and the owner. The owner shall submit a report to the Police Chief and the City Manager, no later than three weeks after the meeting, reporting the steps taken to prevent future events. If the City determines that the plan is not being implemented in good faith, then the full fine of \$1,000 shall be reinstated.

D.

For any fourth disorderly event within any 60 days from the third event, or for any subsequent event within 180 days from the date of the first event, the Police Chief, the City Manager, or any other designated agent shall send a notice to the owner. The owner shall be subject to a fine of \$1,000 for the fourth event and for each subsequent event. The fine for the fourth event may be reduced or waived by the City Manager if the owner demonstrates a good-faith effort to prevent future disorderly events.

E.

The notices described above shall include a brief narrative outlining the circumstances of the disorderly events [date, time, and nature of the event(s)]. The notice shall be delivered to the owner or the appropriate representative by hand or by first-class mail. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.

F.

At the time of any meeting between the owner and the City, the City may request documentation including but not limited to:

(1)

A copy of the names of all tenants or other persons authorized to reside or presently residing in the building and the units they occupy;

(2)

Management contracts with any building supervisor or other person responsible for the orderly operation of the building.

G.

Failure to meet with city officials or enter into such an agreement at the conclusion of said meeting will be deemed a violation of this chapter, and the city shall file a complaint in a court of competent jurisdiction seeking all compensatory and equitable relief permitted by law.

H.

If a residence that has been the subject of enforcement action under the provisions outlined above becomes subject to a second round of enforcement under this chapter, then the city is under no obligation to meet with the owner but may proceed directly with a complaint to a court of competent jurisdiction, seeking all compensatory and equitable relief permitted by law

I.

The provisions of Subsections **B** through **H** above notwithstanding, if a specific residence becomes identified as being a habitual disorderly residence by the Chief of Police or a designee, then the City is under no obligation to issue any notices or meet with the property owner. The City may, in these cases, issue a notice of violation and assess fines of \$1,000 for each event.

§ 41-5 Legal action against owner for cost recovery; alternative enforcement actions.

In addition to any notice or enforcement provision outlined above, the city may file a legal action against the owner seeking court costs, response charges, and all damages and remedies to which it is entitled pursuant to state and local laws. The City of Rochester also reserves the right to take any other enforcement action allowed by any other local ordinance or state statute as an alternative to this Disorderly Residence Ordinance.

The effective date of these amendments shall be upon passage.

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City Clerk's Office

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Article II Outdoor Dining Establishments

§ 80-15 Site plans required.

Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curblines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for outdoor dining, lighting, dimensioned routes of travel within the outdoor dining area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like. These plans will be reviewed by the Technical Review Group and suggestions forwarded to the City Manager. **Once Site Plans are approved, no changes shall be allowed without the approval of the City Manager.**

§ 80-26 Site design standards for establishments with alcohol service.

Outdoor dining establishments with alcohol service should meet the following site design standards:

- A. Outdoor dining establishments shall be separated from the public pedestrian space on the adjacent municipal sidewalk by an enclosure system ~~consisting of heavy-duty black decorative metal materials or equivalent~~ as approved by the City Manager or his/her designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and ensure public safety; the minimum height of the enclosure system shall be 30 inches and the maximum height shall be 36 inches, **measured from the lowest point of the public space being utilized.**
- B. Outdoor dining establishments shall not have live entertainment of any type located outside, and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed toward patrons in the outdoor dining area.
- C. Seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the area approved by the City Manager. Exceptions to this provision will be allowed consistent with New Hampshire State Liquor Commission approval for particular licensees.
- D. The internal dimensions and table/chair layout of the outdoor dining area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.
- E. Outdoor dining establishments must provide a five-foot radius clearance from the center of restaurant doorways (exterior), and doorways shall be kept clear at all times and a five-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.
- F. The enclosure system, tables and chairs shall be movable/nonpermanent. **The applicant shall affix and maintain rubber tips to the legs of any table or chairs used on concrete, brick or granite surfaces. It is the applicant's responsibility to ensure that all movable items within the outdoor dining area are secured against wind or theft. The City accepts no liability for lost, stolen or damaged property.**

- G. In all areas where outdoor dining establishments are allowed the width for the pedestrianway adjacent to the area shall, at a minimum, be three feet and, in any event, meet ADA requirements, but will depend on site conditions. The pedestrianway in both instances shall allow for and provide clear unimpeded passage and access along the area. The pedestrianway shall be located entirely on the public sidewalk-
property and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the area interfere with accessibility or public safety, including safe lines of sight for motor vehicles.
- H. Canopies over the outdoor dining areas shall not be allowed. ~~unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the outdoor dining.~~ Table umbrellas are allowed, but must not extend beyond the area. **No tents or covers shall be permitted over the outdoor dining space.**
- I. No object strictly related to advertising shall be allowed in the area.
- J. No improvements or personal property located within the area shall extend on or over any City property located outside the area.
- K. **Decorations must be fire retardant and meet NFPA 701 Standards. No decorations permitted except those approved on the site plan. No loosely hanging material.**

§ 80-27 Rules and regulations.

Outdoor dining establishments shall agree at all times to comply with all local laws, rules, regulations and orders, including but not limited to the following:

- A. The Health Department shall approve outdoor food service operations and cleaning operations, with the area to be left in a clean and sanitary condition at all times, and no outdoor garbage containers will be permitted. The area shall be left in clean condition at close of business with all garbage removed in its entirety from the area, and any ground debris swept up, at close of daily business. No food prep, grilling, **cooking, appliances, service windows, service counters, wait stations,** or bus buckets shall be allowed in the area and no condiments, paper products or the like shall be stored on the tables in the area. The Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
- B. The Director of Buildings, Zoning, and Licensing Services shall review/approve that bathroom facilities are sufficient to support outdoor dining seating. **Outdoor dining capacity must be in compliance with State law and the Food Code to ensure that each restaurant is approved for additional seating.**
- ~~C. Only decorative lighting shall be permitted.~~
- C. **The permittee is responsible for removing trash and regularly cleaning the areas being used for outdoor dining (including the areas where servers traverse between the restaurant and extended tables and chairs). Restaurant patron trash shall only be disposed of in the restaurant's commercial trash containers and not in the sidewalk trash receptacles.**
- D. A place of assembly inspection and updated place of assembly permit shall be required from the Fire Department, and the Fire Department shall review/approve means of egress as part of the Technical Review Group process.

Amendments to Chapter 80 of the General Ordinances of the City of Rochester Regarding Outdoor

Dining

THE CITY OF ROCHESTER ORDAINS:

That Chapter 80 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

**Article II
Outdoor Dining Establishments**

[Adopted 1-12-2016 (§ 26.10 of the 1995 Code)]

§ 80-14 Requests for use of City property.

Requests for use of City property for outdoor dining providing food and alcohol service shall be made in writing to the City Manager on an annual basis by February 1 with no expectation of continued year-to-year use of the City property on a continuing basis. Requests will only be accepted by businesses licensed to serve food to the public. In the event that a new business opens during the outdoor dining season and wishes to incorporate outdoor dining in its plans, an application will be allowed for the remainder of the dining season only.

§ 80-15 Site plans required.

Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curblines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for outdoor dining, **lighting**, dimensioned routes of travel within the outdoor dining area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like. These plans will be reviewed by the Technical Review Group and suggestions forwarded to the City Manager. **Once Site Plans are approved, no changes shall be allowed without the approval of the City Manager.**

§ 80-16 Area service agreement; season.

[Amended 3-1-2016]

The terms and conditions of any such requests that are approved by the City Manager in any given year shall be described in an annual area service agreement, which includes a clear depiction of the area approved for outdoor dining use and the time period of approved use ("season"), with said area service agreement to be signed by the City Manager and the party or parties making the request. The season shall run from April 1 through October 31.

- A. Area service agreements shall not be assignable to other parties.
- B. Use of the area subject to the area service agreement (the "area") may be precluded, modified or made subject to any such terms and conditions as may be determined by the City Manager at any time during the season in order to accommodate special municipal events.

§ 80-17 Fee.

A minimum fee for the season of twenty-five dollars (\$25.) shall be required even if the size of the area subject to the agreement is less than 100 square feet. A fee of one dollar (\$1.) per square foot will be charged for the area subject to the agreement for all square feet above 100 square feet. The fee shall be due and

payable to the City of Rochester prior to authorization to use the area.

§ 80-18 Restoration of area.
[Amended 3-1-2016]

The area specified for outdoor dining use in the area service agreement shall be restored upon termination of the area service agreement at season's end. Specifically, at season's end, the enclosure system, tables, chairs and all other materials in their entirety shall be removed from the City-owned area with the area left in an unobstructed, undamaged, clean and sanitary condition at no cost to the City. Semi-permanent objects may remain in the area at season's end at the discretion of the City Manager.

§ 80-19 Indemnification; insurance.

Outdoor dining establishments on City property shall indemnify and hold harmless the City of Rochester and shall maintain and provide insurance of the types and amounts specified by the City's Legal Department and shall list the City as additional insured. A certificate of insurance documenting said types and amounts of insurance is to be submitted to the City's Legal Department before the start of the season.

§ 80-20 Damaging or obstructing public facilities.

Outdoor dining establishments shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, or make the same inaccessible for public use (other than within the approved area) or maintenance purposes.

§ 80-21 Hours of operation.

Outdoor dining establishments may utilize the area for outdoor dining during their normal business hours, except that all tables within the area shall be cleared of all food and alcoholic beverages by 1:00 am Monday through Sunday with no alcohol served within the area subsequent to 1/2 hour before the foregoing closure times.

§ 80-22 Alcoholic beverages.

- A. Outdoor dining establishments shall agree at all times to comply with all laws, rules and regulations of the New Hampshire State Liquor Commission and all other local, state and federal laws. Approval of the area service agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission and the City Manager. See RSA 178:24 and 179:27.
- B. Outdoor dining establishments shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering food with service at tables conducted by wait staff only.

§ 80-23 Accessibility.

Outdoor dining establishments will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act (ADA).

§ 80-24 Suspension of area service agreement.

The area service agreement may be suspended at the sole discretion of the City on an administrative basis.

§ 80-25 Revocation of area service agreement.

The area service agreement may be revoked in its entirety, excepting for indemnity provisions, by the City Manager at any time.

§ 80-26 Site design standards for establishments with alcohol service.

Outdoor dining establishments with alcohol service should meet the following site design standards:

- A. Outdoor dining establishments shall be separated from the public pedestrian space on the adjacent

municipal sidewalk by an enclosure system ~~consisting of heavy-duty black decorative metal materials or equivalent~~ as approved by the City Manager or his/her designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and ensure public safety; the minimum height of the enclosure system shall be 30 inches and the maximum height shall be 36 inches, **measured from the lowest point of the public space being utilized.**

- B. Outdoor dining establishments shall not have live entertainment of any type located outside **unless the establishment has applied for and received a Special Event permit pursuant to RSA 286 and Chapter 123 of this Code.**, ~~and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed toward patrons in the outdoor dining area.~~
- C. Seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the area approved by the City Manager. Exceptions to this provision will be allowed consistent with New Hampshire State Liquor Commission approval for particular licensees. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- D. The internal dimensions and table/chair layout of the outdoor dining area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.
- E. Outdoor dining establishments must provide a five-foot radius clearance from the center of restaurant doorways (exterior), and doorways shall be kept clear at all times and a five-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.
- F. The enclosure system, tables and chairs shall be movable/nonpermanent. **The applicant shall affix and maintain rubber tips or equivalent to the legs of any table or chairs used on concrete, brick or granite surfaces. It is the applicant's responsibility to ensure that all movable items within the outdoor dining area are secured against wind or theft. The City accepts no liability for lost, stolen or damaged property**
- G. In all areas where outdoor dining establishments are allowed the width for the pedestrianway adjacent to the area shall, at a minimum, be three feet and, in any event, meet ADA requirements, but will depend on site conditions. The pedestrianway in both instances shall allow for and provide clear unimpeded passage and access along the area. The pedestrianway shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the area interfere with accessibility or public safety, including safe lines of sight for motor vehicles.
- H. Canopies over the outdoor dining areas shall not be allowed. ~~unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the outdoor dining.~~ **Commercial grade umbrellas, porticos, structures or tents shall be allowed if they meet NFPA or IBC codes. They must be securely fastened or anchored in a manner approved by the City Manager and must not extend beyond the area approved for outdoor dining. It is recommended that applicants contact the appropriate City department before purchasing said items to ensure the product is allowed.**

~~Table umbrellas are allowed, but must not extend beyond the area and must be anchored.~~

- I. No object strictly related to advertising shall be allowed in the area.
- J. No improvements or personal property located within the area shall extend on or over any City property

located outside the area.

- K. Decorations must be fire retardant and meet NFPA 701 Standards. No decorations permitted except those approved on the site plan. No loosely hanging material.

§ 80-27 Rules and regulations.

Outdoor dining establishments shall agree at all times to comply with all local laws, rules, regulations and orders, including but not limited to the following:

- A. The Health Department shall approve outdoor food service operations and cleaning operations, with the area to be left in a clean and sanitary condition at all times, and no outdoor garbage containers will be permitted. The area shall be left in clean condition at close of business with all garbage removed in its entirety from the area, and any ground debris swept up, at close of daily business. No food prep, grilling, ~~cooking, appliances, service windows, service counters, wait stations,~~ or bus buckets shall be allowed in the area and no condiments, paper products or the like shall be stored on the tables in the area. The Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
- B. The Director of Buildings, Zoning, and Licensing Services shall review/approve that bathroom facilities are sufficient to support outdoor dining seating. **Outdoor dining capacity must be in compliance with State law and the Food Code to ensure that each restaurant is approved for additional seating.**
- ~~C. Only decorative lighting shall be permitted.~~
- C. **The permittee is responsible for removing trash and regularly cleaning the areas being used for outdoor dining (including the areas where servers traverse between the restaurant and extended tables and chairs). Restaurant patron trash shall only be disposed of in the restaurant's commercial trash containers and not in the sidewalk trash receptacles.**
- D. A place of assembly inspection and updated place of assembly permit shall be required from the Fire Department, and the Fire Department shall review/approve means of egress as part of the Technical Review Group process.

§ 80-28 Approval of agreement.

No area service agreement should be approved by the City Manager except in conformance with the foregoing.

§ 80-29 Other terms and conditions.

The above are policy guidelines that will serve as the basis for area service agreements, which may include other terms and conditions deemed by the City Manager to be in the public interest.

§ 80-30 Number and location of establishments.

The number and location of outdoor dining establishments on City property shall be at the sole unfettered discretion of the City Manager acting in the public interest, and no entitlement is created by this policy for any party to have outdoor dining at any location.

Abacus Restaurant Corporation d/b/a
 Revolution Taproom & Grill
 61 N. Main Street
 Rochester, NH 03867
 T 603.244.3022



January 19, 2021

To: City Council, City of Rochester NH

RE: Outdoor Dining Ordinance Updates

I am writing to request that changes proposed to the Outdoor Dining Ordinance for the City of Rochester be amended as follows.

1. In the opening paragraph, (80-15 Site Plans Required), the proposed last sentence should read “ ... no major changes shall be allowed ...”;
2. As regards 80-26 Site Design Standards for Establishments with Alcohol Service: this ordinance should be amended to apply to an establishment with outdoor dining whether or not they have alcohol service;
3. As regards 80-26 B and Outdoor Entertainment: It is preferable that there be no express ban on entertainment. But at a minimum, the language should read “Outdoor dining establishments shall not have outdoor entertainment of any type located outside unless such entertainment has been duly approved by the City via issuance of a special permit ... ”;
4. As regards 80-26 F and Furnishings: Language could read: “Establishments shall take reasonable care to prevent furnishings from scratching or otherwise damaging the sidewalks, patios, parking lots and other areas being utilized for dining.” At a minimum, the words “or plastic” should be added to rubber;
5. As regards 80-26 H and Canopies: There should not be a prohibition of canopies and tents. Language should read: “Canopies, awnings, tents and umbrellas are permitted in the outdoor dining areas so long as they are properly secured and inspected by the City, and the installation of same does not damage or destroy the City property on which they are installed.”;
6. As regards 80-26 I and Advertising: Strike the language as is and insert: “Temporary signage related to advertising the establishment, outdoor dining, and entertainment may be installed for seasonal use.”;
7. As regards 80-26 K and Decorations: What is the definition of “Decorations”? Strike this in its entirety. No need for City Manager to approve pillows on benches, and they don’t come with a tag that says they meet NFPA codes. Strike the language as to cannot change decorations. Strike the language as to no loose hanging material.

8. As regards 80-26 A: Add language to allow for occasional outdoor cooking on a grill or other such appliance, not a permanent fixture, but a temporary, one-off occasion such as you might do for the Riverwalk dinner, grill onsite for guests, or set up an omelette station.

Attached are several images of outdoor commercial restaurants successfully utilizing awnings, tents, canopies, curtains, enclosures and all manner of commercially sold products to create welcoming, safe and protected outdoor dining spaces. Please do not limit our ability to be creative and create welcoming environments that will draw people to our businesses. The recommended changes to the outdoor dining ordinance do just that; they limit our ability to think outside the box, to utilize new systems being created constantly in the private market for outdoor spaces, and limit us in our ability to be profitable and successful. Given the hardship restaurants are facing, this is an especially bad time to make the recommended changes.

Last year the summer was especially dry. What if it is a very wet and rainy spring and summer this year? What if COVID lingers all year and outdoor dining becomes our main source of income? What if the government shuts down our indoor dining again and our hands have been tied as to what we can do outdoors by the language proposed herein? You will see strong businesses that have invested hundreds of thousands of dollars in your downtown fail. Let's not go down this road. Let us determine what we need to do, and so long as we are not damaging city property or creating a hazard ... let us do what we need to do to survive. Not only did we do that last year, but we made the downtown the most appealing it has been in decades, to the delight of tens of thousands of people. Main Street came alive last year. The City gave us space, and we created gorgeous enclaves for dining, relaxation, and live music. We created spaces for people to relax and enjoy themselves.

There are several times, as Councilor Rice pointed out, that the City allows and itself utilizes canopies for events. At the end of the day, if safety is the main concern, they should not be allowed on the streets or parking lots for events, farmers markets or the like. If it is a safety hazard, then 2 hours is no different than 8 hours than 8 hours for 5 days, etc, etc.

Thank you for your time and attention to my comments and recommendations. We are overall pleased with the speed with which the City and it's staff is trying to help businesses create their outdoor spaces, and the willingness they have shown to assist with any and all requests made of them. I hope that the recommendations made herein will be accepted so that we can create the spaces that will make Rochester a gem on the Seacoast.

Very truly yours,

Stacey Marchionni

Stacey Marchionni, Owner

Revolution Taproom & Grill
E stacey190@gmail.com

Hello City Council,

Robert Benoit (Mitchellhillbbq@gmail.com) has sent you a message via your contact form (<https://www.rochesternh.net/users/city-council/contact>) at Rochester NH.

If you don't want to receive such e-mails, you can change your settings at <https://www.rochesternh.net/user/661/edit>.

Message:

Good day. I would like to take a moment and discuss your upcoming meeting. Having yet to see the new proposed process for approval I can only comment on what has been on public display through newspapers and broadcasts of city meetings. First I would like to say that this vote taking place without a public input session is disappointing in that your decisions could affect the livelihood of many businesses and the overall dining experience of hundreds if not thousands of dining patrons. I respectfully ask that you reconsider and postpone the vote until public comments could be afforded. Also in viewing public broadcast of the committee meeting I felt Terrence's negativity in. Moments and demeanor towards outside dining was out of place and inappropriate.

There are two significant items that are causing negative press for City government and The fallout has begun. The issues are outside entertainment and table coverings. Both of these have relatively easy solutions if we work together to resolve rather than city government saying "you can't do that". I will be the first to admit that standard easy ups were a challenge last year but quite honestly umbrellas were far worse but we have to have something for the safety of Our patrons. There are alternatives... I wanted to attach a link to this message but cannot. We should discuss. In regards entertainment... the people want it we need to figure this out and once again it is not hard. Also, whatever solution is decided upon should be consistent with all public property including factory court. The discussion by city government and the concerning. "Battle of the bands". Between competing restaurants doesn't make any practical sense. The bottom line here is please let independent business owners responsibly run their business.... we believe we can do it exceptionally well without having city government tell us how to do it. Outside dining this past summer was one of the most positive things in our city in many years I urgently request that it not go backward but more importantly find resolutions to perceived issues so that it can grow. If anyone wants to google search butterfly canopy you will find several variations on Amazon that can be Viewed. Our seasonal site campground utilizes these around there pool... 24/7 may to October. Very sturdy and designed for Wind resistance

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City Clerk's Office

Amendments to Chapter 80 of the General Ordinances of the City of Rochester

THE CITY OF ROCHESTER ORDAINS:

That Chapter 80 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

Chapter 80

Food and Food Service

[HISTORY: Adopted by the City of Rochester as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Health and sanitation — See Ch. 94.

Article I

Food Service Establishments

[Adopted 6-6-1995 as Ch. 25, Art. 3, of the 1995 Code; amended 8-4-1998; 6-15-2004; 5-1-2007]

§ 80-1 Food Code adopted.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

The City of Rochester hereby adopts the provisions of the Food Code of the State of New Hampshire, Department of Health and Human Services, Division of Public Health Services, as presently enacted and as may be amended from time to time.

§ 80-2 Definitions.

As used in this article, the following terms shall have the meanings indicated:

BOARD

The Board of Health of the City of Rochester.

FOOD CODE

The State of New Hampshire, State Department of Health and Human Services, Food Code as adopted by § 80-1 above, and as the same shall be amended from time to time by the Department of Health and Human Services.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

FOOD SERVICE ESTABLISHMENT

Any fixed or mobile restaurant, temporary food service establishment, cafeteria, coffee shop, cocktail lounge, catering kitchen, sidewalk cafe, commissary, grill, luncheonette, short-order cafe, sandwich shop, soda fountain, ice cream shop, mobile ice cream truck, mobile lunch truck, tearoom, drive-in theater, mobile theater, drive-in restaurant, nightclub, roadside stand, grocery store, meat market, bakery, warehouse, juice bar, industrial feeding establishment, food vending operation **with TCS* foods** (whether attended or unattended), private, public or nonprofit organization or institution serving the public, or similar place in which food is prepared for sale or consumption or any establishment where

food is stored, manufactured and/or processed or packaged or any other eating or drinking establishment where food or drink is served or provided for the public with or without charge.

HEALTH OFFICER

The Health Officer of the City of Rochester or his/her designee.

SEASONAL FOOD SERVICE ESTABLISHMENT

Any food service establishment as defined above, fixed or mobile, which operates within the City of Rochester for a period of time longer than 14 days but no longer than six months during any fiscal year, and provided, further, that the applicant seeking a license for a seasonal food service establishment shall be required to designate in writing, at the time of filing an annual application for such license, the six months in which such seasonal food service establishment shall be operated, and such months shall be noted on the license issued to such applicant.

TEMPORARY FOOD SERVICE ESTABLISHMENT

Any food service establishment as defined above which operates at a fixed location for a temporary period of time, not to exceed 14 days, in connection with a fair, carnival, circus, public exhibition, or similar transitory gathering.

§ 80-3 License required.

It shall be unlawful for any person to operate a food service establishment within the City of Rochester who does not possess a valid license for that purpose issued to him/her by the Board. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a license. Licenses shall not be transferable from one person to another person or another place. A valid license shall be conspicuously posted in every food service establishment. Licenses for temporary food service establishments shall be issued for a period of time not to exceed 14 days.

§ 80-4 Issuance of license; fees. [Amended 9-3-2013; 3-5-2019]

Every applicant for a license to operate a food service establishment shall make written application therefor on forms provided by the Board. Upon receipt of an application and the designated license fee, and after inspection to ensure compliance with the Sanitary Food Code, a license shall be issued to the applicant by the Board if the requirements of this article have been met. All licenses issued hereunder shall expire on the first day of July in each year.

A. Fees. Based upon highest classification.

- (1) Class A. Food service establishments having a seating capacity of 200 persons or more; retail food store with four or more food preparation areas: three hundred dollars (\$300.).
- (2) Class B. Food service establishments having a seating capacity of 100 through 199 persons; retail food store with two to three food preparation areas: two hundred dollars (\$200.).
- (3) Class C. Food service establishments having a seating capacity of more than 25 but fewer than 100 persons; retail food store with one food preparation area; caterers; bar or lounge that serves food; service/fraternal clubs with bar/liquor lounges; nursing homes: one hundred fifty dollars (\$150.).
- (4) Class D. Food service establishments with a seating capacity of 25 or fewer (including but not limited to

bakeries); food service establishments with take-out service and no seating; drive-in movie theaters; service/fraternities and sororities; group day-care facilities; shared homes; rest homes; sheltered homes; boarding homes; home food manufacturers; and mobile food operators: one hundred dollars (\$100.).

- (5) Class E. Bed-and-breakfast; ice cream vendors - scooping; lodging facilities serving continental breakfast: eighty-five dollars (\$85.).
 - (6) Class F. Retail food store - no preparation areas; wholesalers/distributors of ~~TSC~~ **TCS*** food; vending machines serving ~~TSC~~ **TCS*** foods; bakeries which do not serve ~~TSC~~ **TCS*** food or have seating; food service establishments selling only pre-packaged products: seventy-five dollars (\$75.). (~~TSC~~ **TCS*** - Time/Temperature Control for Food Safety)
 - (7) Class G. Bar or lounge with no food preparation area that serves alcohol; arena/theater concessions serving non-~~TSC~~ **TCS*** food; retail food stores serving pre-packaged ice cream only; institutions; private schools; senior meal sites; sellers of pre-packaged frozen USDA meat or poultry; temporary food establishments; ~~vending machine operators per location that do not dispense TSC* food~~; social clubs; residential day-care facilities: fifty dollars (\$50.). (~~TSC~~ **TCS*** - Time/Temperature Control for Food Safety)
 - (8) Class H. Nonprofit charitable organizations not holding a liquor license and not serving meals on a daily basis; public and private schools; government facilities: no fee.
 - (9) Class I. Seasonal food service establishments (open less than six months of the year): fee is 1/2 the annual fee for corresponding nonseasonal Class A through Class H establishments set forth above.
 - ~~(10) Class J. Food establishments at Rochester Fair: sixty-five dollars (\$65.).~~
- B. All applications for food service establishment licenses shall be filed with the Board on or before June 20^{1st} of each year. In addition to the fees provided for in this section, there shall be a late fee of ten dollars (\$10.) for any renewal application received after June 20^{1st} of any year.

§ 80-5 Suspension of license.

- A. If in the judgment of the Health Officer a licensee has failed to comply with any provision of this article, the licensee shall be notified in writing by the Health Officer of such failure of compliance and the licensee shall thereafter immediately bring his/her food service establishment into compliance with this article. If the licensee fails to bring his/her food service establishment into compliance with this article, the Health Officer may petition the Board in writing that the license be suspended and the Board shall give the licensee at least seven days' notice of the scheduling of the hearing on said petition. As a result of said hearing, the Board may suspend the license during such a period of time as the failure of compliance exists.
- B. Notwithstanding any other provision of this article, whenever the Health Officer or Board finds unsanitary or other conditions in the operation of a food service establishment which, in his/her or its judgment, constitute a substantial and immediate hazard to the public health, the Health Officer or any member of the Board may issue a written notice to the licensee citing such condition and the corrective action to be taken and specifying the time period within which such action shall be taken. Any person to whom such order is issued shall immediately comply therewith but upon written petition to the Board

shall be afforded a hearing as soon as possible and not later than seven days from submission of such petition. Pending a hearing on such petition, if the Health Officer finds an immediate and substantial hazard to public health, he/she may order that the license be immediately suspended and all food service operations immediately discontinued.

§ 80-6 Reinstatement of suspended license.

Any person whose license has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the license. Within five days following receipt of a written request, including a statement signed by the applicant that in his/her opinion the conditions causing suspension of the license have been corrected, the Health Officer shall make a reinspection. If the Health Officer shall find that the food service establishment is in compliance with the requirements of this article, he/she shall so certify in writing to the Board and the license shall be reinstated forthwith.

§ 80-7 Revocation of license.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

For serious or repeated violations of any of the requirements of this article or for interference with the Health Officer in the performance of his/her duties, the license may be permanently revoked after opportunity for hearing has been provided by the Board. Prior to such action, the Board of Health shall notify the licensee in writing, stating the reasons for which the license is subject to revocation and advising that the license shall be permanently revoked at the end of five business days following the service of such notice, unless a request for hearing is filed with the Board by the licensee within such five-day period. A license may be suspended for cause pending its revocation or hearing relative therein.

§ 80-8 Hearing.

The hearings provided for in this article shall be conducted by the Board at the time and place designated by it. The Board need not make a record of such hearing beyond that required by the Right To Know Law. The Board shall make its finding based upon the evidence and testimony presented at the hearing and shall sustain, modify or rescind any official notice or order in issue at the hearing. The Board may make any further findings, orders or rulings it shall deem necessary and appropriate as a result of such hearing. A written report of the hearing decision shall be furnished to the licensee by the Board.

Commented [1]: Editor's Note: See RSA 91-A.

§ 80-9 Inspection of food service establishments.

At least annually the Health Officer shall inspect each food service establishment located in the City of Rochester and shall make as many additional inspections and reinspections as are necessary for the enforcement of this article.

§ 80-10 Access to establishments.

The Health Officer, after proper identification, shall be permitted to enter at any reasonable time any food service establishment for the purpose of making inspections to determine compliance with this article. He/she shall be permitted to examine the records of the establishment and to obtain pertinent information pertaining to food and supplies purchased, received, or used, and persons employed.

§ 80-11 Service of notices.

Notices provided for under this article shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the licensee or person in charge of the food service establishment or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the licensee. A copy of such notice and return receipt shall be filed with the records of the Health Officer.

§ 80-12 Food from food service establishments outside City.

Food from food service establishments from outside the City of Rochester may be sold within the City of Rochester if such food service establishment conforms to the provisions of this article or to substantially equivalent provisions. To determine the extent of compliance to such provisions the Health Officer may accept reports from responsible authorities in other jurisdictions where such food service establishments are located.

§ 80-13 Review of future construction.

When a food service establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a food service establishment, plans and specifications for such construction, remodeling or alteration, showing layout, arrangement and construction materials or work areas and the location, size and type of fixed equipment and facilities, shall be submitted to the Health Officer for approval with respect to compliance with this article before such work is begun. No building permit shall be issued until such approval has been given by the Health Officer.

Amendments effective upon passage.

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City Clerk's Office

Amendments to Chapter 11 of the General Ordinances of the City of Rochester

THE CITY OF ROCHESTER ORDAINS:

That Chapter 11 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

Chapter 11

Adult-Oriented Establishments

[HISTORY: Adopted by the City of Rochester 6-6-1995 as Ch. 25, Art. 4, of the 1995 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Amusements and entertainment — See Ch. 22.

Health and sanitation — See Ch. 94.

Nuisances — See Ch. 149.

Peace and good order — See Ch. 167.

Zoning — See Ch. 275.

§ 11-1 Legislative findings and purpose.

It is hereby found:

- A. That there are a number of types of adult-oriented establishments which when established require special supervision from the City's public safety agencies in order to protect and preserve the health and welfare of the patrons of such establishments, as well as the health, safety and welfare of the citizens of the City.
- B. Statistics and studies performed by a substantial number of cities and towns in the United States indicate that:
 - (1) Large numbers of persons, ~~primarily male~~, frequent such adult-oriented establishments, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called "adult" motion pictures and/or videotapes and/or live entertainment;
 - (2) Such closed booths, cubicles, studios and rooms have been used by patrons, clients or customers of such adult-oriented establishments for the purpose of engaging in certain sexual acts;
 - (3) ~~Male and female~~ **P**rostitutes have been known to frequent such establishments in order to provide sex for hire to the patrons, clients or customers of such establishments within such booths, cubicles and rooms;
 - (4) Doors, curtains, blinds and/or other closures installed in or on the entrances and/or exits of such booths, cubicles, studios and rooms which are closed while such booths, cubicles, studios and rooms are in use encourage patrons using such booths, cubicles, studios and rooms to engage in sexual acts therein with

prostitutes and/or with other members of the same sex, thereby promoting and encouraging prostitution and the commission of sexual acts which cause blood, semen and urine to be deposited on the floors and/or walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits; and

- (5) The reasonable regulation and supervision of such adult-oriented establishments tends to discourage such sexual acts and prostitution, and thereby promotes the health, safety and welfare of the patrons, clients and customers of such establishments.
- C. The continued unregulated operation of adult-oriented establishments, including, without limitation, those specifically cited in Subsection A of this section, is and would be detrimental to the general welfare, health and safety of the citizens of Rochester.
- D. It is not the intent of the City, in enacting this chapter, to deny to any person rights to speech protected by the United States and/or State Constitutions, nor is it the intent of the City to impose any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, videotapes, books and/or other materials. Further, by enacting this chapter, the City does not intend to deny or restrict the rights of any adult to obtain and/or view any sexually oriented materials protected by the United States and/or State Constitutions, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of such sexually oriented materials may have to sell, distribute or exhibit such materials.

§ 11-2 **Definitions.**

For the purposes of this chapter, the following words and phrases used therein shall have the following meanings ascribed to them:

ADULT BOOKSTORE

An establishment having a ~~substantial or significant~~ **primary** portion of its stock and trade in books, films, videocassettes, or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below, and in conjunction therewith has facilities for the presentation of adult entertainment, as defined below, and including adult-oriented films, movies or live entertainment, for observation by patrons therein.

ADULT ENTERTAINMENT

Any exhibition of any adult-oriented motion pictures, live performance, display or dance or any type performance which has as a ~~substantial or significant~~ **primary** portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal services offered customers.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

ADULT MINI MOTION-PICTURE THEATER

An enclosed building with a capacity of fewer than 50 persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by patrons therein.

ADULT MOTION-PICTURE THEATER

An enclosed building with a capacity of 50 or more persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by patrons therein.

ADULT-ORIENTED ESTABLISHMENT

Includes, without limitation, adult bookstores, adult motion-picture theaters, and adult mini motion-picture theaters and further means any premises to which the public, patrons, or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, studios, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An adult-oriented establishment further includes, without limitation, any adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio, or any other term of like import.

EMPLOYEE

Any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult-oriented establishment.

ENTERTAINER

Any person who provides entertainment within an adult-oriented establishment.

MINOR

Shall be deemed to be a person under the age of 18 years.

OPERATOR

Any person, partnership or corporation operating, conducting or maintaining an adult-oriented establishment.

SPECIFIED ANATOMICAL AREAS

A. Less than completely and opaquely covered:

- (1) Human genitals or pubic region;
- (2) Buttocks; or
- (3) Female breasts below a point immediately above the top of the areola; and

B. Human male genitals in a discernibly turgid state, even if completely opaquely covered.

SPECIFIED SEXUAL ACTIVITIES

A. Human genitals in a state of sexual stimulation or arousal.

B. Acts of human masturbation, sexual intercourse or sodomy.

- C. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.
- D. "Sexual activities" as used in this chapter, is not intended to include any medical publications or films or bona fide educational publications or films, nor does it include any art or photography publications which devote at least 25% of the lineage of each issue to articles and advertisements dealing with subjects of art or photography. Nor does this definition apply to any news periodical which reports or describes current events and which from time to time publishes photographs of nude or semi-nude persons in connection with the dissemination of the news. Nor does this definition apply to publications or films which describe and report different cultures and which, from time to time, publish or show photographs or depictions of nude or semi-nude persons when describing cultures in which nudity or semi-nudity is indigenous to the population.

§ 11-3 Requirements for adult-oriented establishments.

- A. No operator or employee of an adult-oriented establishment shall allow or permit any minor to loiter in any part of such establishment, including parking lots immediately adjacent to such establishment used by patrons of such adult-oriented establishment.
- B. Every adult-oriented establishment doing business in the City shall be well lighted at all times and be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be clearly visible from the common areas of the premises. Visibility into such booths, cubicles, rooms or stalls shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. It shall be unlawful to install enclosed booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purposes, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures, or other types of adult-oriented entertainment.
- C. Each adult-oriented establishment shall be responsible for and shall provide that any room or other area used for the purpose of viewing adult-oriented motion pictures or other types of live entertainment shall be well lighted and readily accessible at all times and shall be continuously open to view in its entirety. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1.0 footcandle as measured at the floor level. It shall be the duty of the operator and its agents to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- D. No apertures or openings of any kind shall be allowed to exist between any two booths, cubicles, rooms or stalls used for the purpose of viewing adult-oriented motion pictures or other types of adult entertainment.
- E. Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- F. An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be

subject to the penalties imposed by this chapter.

- G. All adult-oriented establishments shall be open to inspection at all reasonable times by the Rochester Police Department and/or employees of the Building, Zoning, and Licensing Services Department of the City. **[Amended 10-15-2013]**

§ 11-4 Violations and penalties.

- A. Any person, partnership or corporation who or which is found to have violated this chapter shall be fined a sum not exceeding one thousand dollars (\$1,000.) for each such violation.
- B. Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one hour of time shall be considered a separate offense for each hour of violation.

§ 11-5 Severability.

Should any court of competent jurisdiction declare any section, clause or provision of this chapter to be unconstitutional, such decision shall affect only such section, clause or provision so declared unconstitutional and shall not affect any other section, clause or provision of this chapter.

Amendments effective upon passage.

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