

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Tom Abbott
Councilor Donna Bogan
Councilor Robert Gates

**Others Present**

Councilor Sandra Keans
ACO, Sue Paradis
Lt. Andrew Swanberry
City Atty. Terence O'Rourke
Director BZLS, Jim Grant
Deputy Finance Director, Mark Sullivan

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, September 5, 2019

31 Wakefield Street, Rochester, NH

City Council Chambers

6:00 PM

Minutes**1. Call to Order**

Councilor Lachapelle called the Codes and Ordinances Committee meeting to order at 6:00 PM. Susan Morris, Certified Clerk Typist II, took a silent roll call and all committee members were present.

2. Public Input

Councilor Lachapelle opened public input at 6:02 PM.

Jackie Raab of East Rochester spoke about fireworks still being an issue in East Rochester. Ms. Raab stated that every weekend since the 4th of July, there have been fireworks set off in her neighborhood. She stated that residents are shooting fireworks off earlier in the evening due to it becoming dark earlier. She stated that this item was brought to the Police Commission and that it was stated that when the Police Department reaches full staffing, the Commission would be in favor of a dedicated police detail to address the fireworks issue during this time of year.

Devin Robbins of Gonic addressed the committee regarding a complaint made by her neighbor in reference to Ms. Robbin's dog's nuisance barking. She came to the Committee to receive clarification on what is considered a nuisance. Councilor Lachapelle stated that the Committee would be addressing this item on the agenda shortly and suggested Ms. Robbins address this further at that time.

Councilor Lachapelle closed public input at 6:10 PM.

3. Acceptance of the Minutes: August 1, 2019

Councilor Abbott **MOVED** to **ACCEPT** the minutes of August 1, 2019. Councilor Bogan

seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Chapter 28 Animals – Nuisance

Councilor Lachapelle addressed Lt. Andrew Swanberry and Animal Control Officer, Sue Paradis, to confirm that NH state law defines a nuisance as thirty (30) minutes or more of continuous barking. ACO Paradis stated that this criteria relates to daytime hours; during nighttime hours, any amount of time could be considered a nuisance. ACO Paradis stated that nighttime is defined as half-hour after sunset to half-hour before sunrise. If a dog barks and disturbs the neighborhood during these hours, the owners can be fined. If a neighbor calls the police and complains, then the police need to go out and investigate. The police department does take the time to educate the person on the law and has a conversation regarding the potential consequences, although the responding officer is able to use their discretion on whether or not to issue a fine.

Councilor Lachapelle called Devin Robbins back up to the podium and inquired if her dog is outside in her yard continuously. Ms. Robbins answer that her dog was not outside continuously and stated that there are a couple of dogs in the neighborhood which do bark continuously. When an officer responded to her residence in regards to the complaint, Ms. Robbins asked the officer whether the police department needs to substantiate a nuisance claim before a determination is made that a dog is barking too much. She stated that the officer was very clear on the law, although she questioned why she was being singled out when there were clearly other nuisance barkers. Councilor Lachapelle stated that this was complaint driven, so the officers were doing their job investigating the complaint.

Councilor Abbott stated that this ordinance was changed a few years ago, specifically because of this particular neighborhood in question. This ordinance previously mirrored the state statute and it was changed due to a resident alleging that a neighbor's dog barked, but they could not prove it was for longer than half hour. Councilor Abbott suggested that the City Ordinance is very vague, and that this should be changed back to mirror the state statute to then put the burden of proof on someone other than the dog owner. Councilor Bogan stated that she understands letting a dog out and it barks, but listening to a dog bark for a half hour is excessive. She stated that is too long of a period to allow a dog to bark. Councilor Bogan stated that the Committee should leave this ordinance as-is and leave it to the discretion of the police officers. Councilor Abbott stated that he respectfully disagrees because, having worked for the City, any decision made by discretion can be publicized. Councilor Abbott suggested the Committee entertain a different length of time to be considered a nuisance. Ms. Robbins stated that an addition of the word "continuously" or "nonstop" would be a great addition to the ordinance. Councilor Bogan suggested the length of time considered a nuisance be defined as fifteen (15) minutes. Douglas Robbins came forward and addressed the board as well.

Councilor Abbott **MOVED** to send to the Legal Department to amend the **City Ordinance Chapter – 28 Animals – Nuisance** to mirror the language of the State RSA excepting that **15 minutes** be inserted where it says **30 minutes**, and the word **continuous** replaced with **sustained**. The amendment will then be sent to the full City Council for approval. Councilor Bogan seconded the motion. Further discussion was held. Councilor Lachapelle asked the ACO, Sue Paradis and Lt. Swansberry if this would give them more to work with to enforce the ordinance ACO Paradis stated that the way the ordinance is written is based on the person placing the complaint, their comfort level and repose. Further discussion was held. The **MOTION CARRIED** by unanimous voice vote.

Current State RSA:

466:31 Dogs a Menace, a Nuisance or Vicious. –

II. Under this section, a dog is considered to be a nuisance, a menace, or vicious to persons or to

property under any or all but not limited to the following conditions:

(b) If it barks for sustained periods of more than 1/2 hour, or during the night hours so as to disturb the peace and quiet of a neighborhood or area, not including a dog which is guarding, working, or herding livestock, as defined in RSA 21:34-a, II(a)(4);

5. Proposed definition of “Donation Bin”

City Attorney O’Rourke stated that he did research from all over the country and came up with the documentation presented in the packet. Councilor Lauterborn stated that in section 167-25 “Licenses and Permit Requirements,” it states someone who wants to place a donation bin is required to obtain a license for a fee of \$200. She stated that she felt the fee was excessive to pay annually for a donation bin when they are just trying to perform a good deed. Councilor Gates confirmed with Attorney O’Rourke that the Committee, as a governing body, can set the fees. Discussion was held among Committee members.

Councilor Abbot **MOVED** to **AMEND** the proposed amendment of the General Ordinances of the City of Rochester, chapter Section 167-25 as follows:

§167-25 LICENSES AND PERMITS REQUIREMENTS

Whether for the owner of the premises or the person who has obtained the written permission of the owner the fee to obtain the initial license to own, install, operate, or use a drop-off bin is ~~\$200~~ **\$25.00** that must be tendered at the time of license application. Such license may be annually renewed on or before the anniversary date of the application for an annual renewal fee of ~~\$200~~ **\$25.00**. Regardless of the number of drop-off bins owned, installed, operated, or used by a license applicant, the applicant shall only pay one annual license fee. The initial permit fee for a drop-off bin is ~~\$50~~ **\$10.00** per bin payable at the time of application for the license. The annual renewal fee for each drop-off bin permit is ~~\$50~~ **\$10.00** payable on or before the anniversary date of the initial application. Each drop-off bin shall display its current permit at all times.

Councilor Bogan seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

Councilor Abbott **MOVED** to send the **Amendment to Chapter 167 of the General Ordinances of the City of Rochester Regarding Drop-Off Bins** as **AMENDED** to the full City Council for approval. Councilor Bogan seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

6. Rental Inspection Program

Councilor Lachapelle stated that he received correspondence from the Department of Building. Zoning and licensing that there are no updates on the Rental Inspection Program at this time. BZLS Director Jim Grant came forward and stated that they will be meeting with the Strafford County Rental Properties Association on October 3, 2019. An update may be brought forward to the October 3rd Codes and Ordinances Meeting, though there most likely will not be any documentation in the packet as these two meeting are on the same day. Councilor Lachapelle stated that this item would be kept in Committee.

7. Waiver to Certain Building Permit Fees, Which Do Not Require an Inspection

BZLS Director Jim Grant, stated that this item originally came in from a constituent who came in to talk about permit fees for items which are not inspected by the department. Such as, but not limited to fences, sheds and roofing. These permits are required mainly for zoning purposes. He went on to explain different types of permits and the regulations which need to be followed even though there are no inspections required. BZLS Director Grant proposed that the Committee amend the following section

40-15 Permits to read:

The following permits shall be charged only the minimum permit fee of ten dollars (\$10.), in addition to an application fee of ten dollars (\$10.) for each permit.

- (a) **Fences**
- (b) **Roofing (Re-Shingling only)**
- (c) **Siding**
- (d) **Sheds under 200 square feet**

Mr. Grant supplied a handout which described the potential deficit in revenue from the change in permit fees. He also stated that potentially the council will look at the possibility of increasing permit fees to make up the lost revenue and to be comparable to surrounding communities. Councilor Lauterborn stated that she has no problems with the potential loss of revenue if it means a savings to the home owners. Councilor Abbott stated that he would be in favor of the flat \$10 permit fee.

Councilor Abbott **MOVED** to add to the **City Ordinances of the City of Rochester Section 40-15 Permits (1)** at the end of that section, the following and to send to full Council for approval:

The following permits shall be charged a flat permit fee of ten dollars (\$10.00)

- (a) Fences***
- (b) Roofing (reshingling only)***
- (c) Siding***
- (d) Sheds under 200 square feet***

Councilor Bogan seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

8. Fireworks

Councilor Lachapelle stated that the Police Commission did meet and discuss this item at their last meeting. They stated that when the police department is up to full staff, they hope to have officers for a dedicated detail during the two days in which fireworks are allowed.

Councilor Lachapelle stated he did not have any further updates. He asked Jackie Raab if she had anything else to add to the discussion. Ms. Raab addressed the Committee asking if it was a possibility to have the fire department go out to observe the fireworks situation in her neighborhood, gather names and pass the information to fire dispatch for follow up when time and staffing allows.

Councilor Gates stated that he would prefer to see an armed and trained police officer address these situations as these officers are equipped to handle these situations; having the Fire Department respond would put them in unknown dangerous situations.

Councilor Lachapelle stated that the City could ban fireworks outright, but the Committee does not want to punish residents who are following the rules due to the handful that are not following the rules. Councilor Lachapelle stated that even if the City did ban fireworks outright, some residents are still going to set them off regardless.

9. Ordinance Enrollment: Chapter 275

Councilor Lauterborn **MOVED** to Enroll Chapter 275 of the General Code to be put online
Councilor Bogan seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

10. Other

Deputy Finance Director, Mark Sullivan, presented amendments for the following:

- a. General Ordinances – Administrative Code Chapter 7-40 Purchasing
- b. General Ordinances – Administrative Code Chapter 7-62 Undesignated Fund Balance & proposed Fund Balance Policy

Discussion was held among committee members.

Councilor Lauterborn **MOVED** to send proposed amendments to **General Ordinances – Administrative Code Chapter 7-40 Purchasing** and **General Ordinances – Administrative Code Chapter 7-62 Undesignated Fund Balance & proposed Fund Balance Policy** to the full City Council for approval. Councilor Gates seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

Councilor Keans came forward to speak about the Fire Codes which the City Council adopted; specifically a section in the code which talks about a required 50-square feet of living space per individual living in a property. Councilor Keans inquired how the City plans to enforce this requirement when the complaints start coming in. She stated that there are several areas and homes which surely do not meet this requirement currently.

11. Adjournment

Councilor Gates **MOVED** to **ADJOURN**. Councilor Bogan seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

Respectfully Submitted,

Susan Morris
Certified Clerk Typist II
City of Rochester
City Clerk's Office