

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Steve Beaudoin Vice Chair
Councilor Skip Gilman
Councilor Ashley Desrochers
(excused)
Councilor Tim Fontneau



Others Present

Mayor Paul Callaghan
Terence O'Rourke, City Attorney
Deputy Fire Chief, Jarrod Wheeler
Councilor Laura Hainey

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, May 5, 2022

Council Chambers

6:00 PM

Minutes

1. Call to Order

Chair Lachapelle called the Codes & Ordinances Committee meeting to order at 6:01 PM. Deputy City Clerk Cassie Givara took a silent roll call. All Councilors were present except for Councilor Desrochers, who was excused.

Councilor Beaudoin **MOVED** to **AMEND** the agenda to add the item "Other" at the end of the agenda, where it had been inadvertently removed from the agenda prior to publishing. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. **"Other" was added as agenda item #8*

2. Public Input

There was no one present for public input.

3. Acceptance of the Minutes

3.1 April 7, 2022 *motion to approve*

Councilor Beaudoin **MOVED** to accept the minutes of the April 7, 2022 Codes and Ordinances Committee meeting. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a

unanimous voice vote.

4. Proposed Amendment to Chapter 75-1 of the General Ordinances of the City of Rochester “Appointment and requirement of Fire Chief”

Chair Lachapelle read the proposed amendment to the ordinance as follows (changes in red):

§ 75-1 Appointment and requirements of Fire Chief.

Upon appointment, the Fire Chief shall within six months establish residence within the City's boundaries, unless this requirement is waived by the City Manager...

Chair Lachapelle referenced the memo distributed to the Committee from City Manager Cox in support of this amendment (*addendum A*) which outlines the reasons for this change. He stated that he agreed with the City Manager’s assertion that requiring that candidates for the position live in or relocate to Rochester can limit the field of qualified applicants and potentially discount candidates who would be best suited for the job.

Councilor Fontneau stated that he had received communication from several concerned residents and business owners regarding this proposed amendment and these constituents had requested the reasoning behind the proposed changes. Councilor Fontneau asked if the change is being implemented for a particular candidate who lives outside of the City. Chair Lachapelle stated that the City Manager does the interviewing and hiring of the Fire Chief, and he is not aware if there has been a narrowing of the field or if there is a certain candidate in mind.

Chair Lachapelle stated that it make sense to require the Fire Chief to live within a reasonable distance of the City, but not to require residence. Councilor Fontneau referenced the current amendment and clarified that there is no distance requirement as it is worded. Councilor Beaudoin agreed that there is concern with lack of stated distance in the ordinance and wondered if the hiring could be done in cooperation with City Council in a non-public session to protect confidentiality of candidates. He referenced the use of a municipal vehicle and the potential wear and tear of daily driving. Chair Lachapelle pointed out that current City Manager lives outside of the City of Rochester.

Councilor Hainey stated that she had also received communication from concerned citizens who questioned why this amendment was being proposed and questioned the timing of the change coming forward.

Chair Lachapelle stated that although the Fire Chief may be called to the scene of larger emergencies when he is off duty, he is not the first on the scene and there are firefighters at the stations who are first to respond. He reiterated that the amendment is primarily to open up the field to more qualified applicants.

Attorney O'Rourke stated that he had been able to reach the City Manager who was amenable to an amendment which would require the candidate hired to reside within a 20 mile limit of the City. Attorney O'Rourke stated that the recommendation could be kept as shown above, with the stipulation that the candidate hired could live outside the City if there was a waiver from the City manager; alternately, there could be a requirement that the hired candidate live within a 20-mile distance, bypassing the requirement for a waiver. Attorney O'Rourke suggested the verbiage: "Upon appointment, the Fire Chief shall within six months establish residence within **20-miles of** the City's boundaries..."

Councilor Beaudoin reiterated that he felt that the City Council should be involved with the hiring of the Fire Chief and the verbiage should indicate that the candidate is hired "by waiver of the City manager in consultation of the City Council" to allow the Council to weigh in on the candidates' qualifications and whether they meet the criteria. Attorney O'Rourke stated that this process would violate the City Charter, which states that the City Manager hires the Fire Chief. Councilor Beaudoin clarified that he did not want the City Council to make the decision on which candidate to hire, but rather to weigh in on whether the residency policy should be waived. He gave his reasoning on why this could be beneficial. Attorney O'Rourke stated that setting this precedent for City Manager hires could be a slippery slope and could bring into question whether the Council influenced the process and prevented the City Manager from making a particular hire. Councilor Fontneau cautioned against the Council coming between the City Manager and his staff regarding hires.

Deputy Fire Chief Jarrod Wheeler stated that he felt that a vested interest in the City was of equal or greater importance to the distance a candidate lives; the leader of the Fire Department should be immersed in the City.

Councilor Fontneau asked if the Fire Chief was the only position in the City that had this residency requirement. Chair Lachapelle stated that the City Manager has a residency requirement. However, this requirement can be waived by City Council. Councilor Fontneau briefly spoke about the ability of the Fire Chief to be able to respond to larger scale emergencies, but acknowledged that other fire personnel was well equipped and trained to handle these situations without the Chief. He expressed the importance of the Chief living within a reasonable distance of the City,

There was a discussion on whether "20 miles distance" should refer to a radius from the City center, or a 20-mile distance from the City boundary. Councilor Fontneau suggested that the requirement state that the candidate must live within a 2-mile radius from the downtown (Central) Fire Station.

Councilor Beaudoin reported that the previous Fire Chief had received over \$24,000 in overtime in 2021 and suggested that travel distance be taken into consideration because overtime could become a large factor. Deputy Chief Wheeler stated that the prior Fire Chief's overtime was resultant from COVID vaccine clinics and was reimbursed through grant funds; these overtime funds were not paid by the City.

Attorney O'Rourke read the suggested amendment as follows:

§ 75-1 Appointment and requirements of Fire Chief.

Upon appointment, the Fire Chief shall within six months establish residence **within a 20-mile radius from the Fire Station located at 37 Wakefield Street ~~the City's~~ **boundaries, unless this requirement is waived by the City Manager...****

Councilor Fontneau **MOVED** to recommend to City Council the amendment to Chapter 75-

1 as detailed above. Councilor Beaudoin seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

5. Discussion: Code of Ethics and Conduct

Chair Lachapelle stated that he wanted to take this item in a different direction and after further review had found that there are certain portions of the current code which he didn't think would pass Council approval. He reported that he would do further work on the code, bring it to the City Attorney for review, and eventually back to Codes & Ordinances for discussion and Council recommendation.

This item was kept in Committee.

6. Discussion: City Council Rules of Order Section 4.7 “Public Input at Workshop or Committee Meetings” subsection 5 regarding two-way dialogue

Councilor Beaudoin spoke about his experience both as a constituent speaking at public input during Council meetings, and as a State Representative during testimony during hearings. He stated that he felt it was beneficial to be able to ask and answer questions during these hearings and have an active dialogue. He stated that at the Rochester Council, constituents tend to feel “below” the Councilors, both socially and physically due to the arrangement of the dais to the public podium, and well as the lack of reaction and response from the councilors when the public speaks.

Chair Lachapelle stated that the configuration of the raised dais was due to the City Hall garage being directly beneath the Council Chambers, which caused the elevation of the Council seats. He reported that there had been discussion in the past on moving the chambers to the City Hall annex building as part of the renovation, but the project was cost prohibitive. Chair Lachapelle clarified that at the Committee level, there is opportunity for back-and-forth dialogue, and it frequently takes place during these meetings. He reiterated that the appropriate place for two-way dialogue is at Committee meetings; however, at City Council Workshops where there is impending City business on the agenda that needs to be handled, it is more appropriate to allow constituents to have their 5-minute of time during public input without a two-way dialogue with the potential to become lengthy.

Councilor Fontneau spoke about his experience at State-level hearings and City board meetings, and the benefit to allowing discussion between the board and the public. He supported the suggestion to allow a two-way dialogue between Councilors and constituents, but stated that it was important to place time parameters on that portion of the agenda, if approved. He also emphasized the importance of the Chairs' role in maintaining decorum and preventing arguments or debate. Chair Lachapelle stated that he felt it was difficult for the Chair to maintain decorum and control during a meeting if this back and forth were to be allowed. The Chair also clarified the difference between the Planning Board interactions with speakers versus the City Council; with those appearing before the Planning Board being applicants who are looking for approval to build or open businesses within the City, whereas those speaking at City Council workshops are typically residents with concerns or complaints. Councilor Fontneau said it can be frustrating for the public to ask direct questions and potentially not get a response to their concerns.

Chair Lachapelle said that in the past, the Mayor or Deputy Mayor would make a clarification statement at the end of public hearings or public input if they had answers on items that had been addressed. The Council had handled this similarly at the past Regular Council meeting where City Staff gave statements and answers to items which had been brought up during the prior City Council workshop meeting. He suggested that this process should be followed moving forward in order to answer constituent questions and concerns.

Mayor Callaghan stated that it is his instinct to immediately address constituent questions and concerns. However, he reported that the responses that had been issued at the prior Council meeting had been thoroughly researched and had taken quite a bit of time to put together in order to deliver a measured and accurate response. He emphasized the importance of taking this time to research and provide accurate information to the public. Councilor Beaudoin agreed that the City's response to public input at the prior Council meeting had been well done and he suggested continuing with this practice, although with a more streamlined approach. He stated that dependent on the subject matter of the input, relevant City Staff or Council members could be assigned to provide the appropriate response.

Mayor Callaghan referenced the R.U.N. (Rochester United Neighborhoods) meetings, which police department staff had formerly conducted several times a year in each City Ward. He suggested if they were still holding these meetings that the Councilors from the respective wards could attend to answer constituents questions. Chair Lachapelle stated that he thought the RUN meetings had been discontinued during COVID but may be starting up again.

Chair Lachapelle spoke briefly about the engagement with the public that is possible at the committee level with a more relaxed atmosphere and suggested the committee meetings remain as-is.

Councilor Hainey stated that at the State level during testimony, the discussion was geared towards specific topics and the questions and dialogue were clarifying questions. However, at the City Council level the input being given by constituents can be more personal and subjective on items such as how or why the City is spending funds. She cautioned against starting back and forth discussions and giving answers without all the backup knowledge or information available.

Councilor Fontneau recommended that there be a policy established which would detail how responses would be given to constituents. Attorney O'Rourke cautioned against developing a formal policy and explained that it may use the City to have to respond to every question without exception, with some of these questions or comments being opinions and items which are outside Council's purview. He stated that it also put the Chair in a position to determine subjectively on whether or not the question is pertinent. Attorney O'Rourke reminded constituents that they are always able to contact their ward Councilors directly with questions and concerns, and the request would then be able to go through the proper channels to be addressed. He stated that every Councilor has the ability to have topics added to the agenda and this could alleviate some questions.

Councilor Beaudoin urged constituents to pay attention to the committee agendas and attend the meetings where there is the opportunity to have exchanges with Councilors and for these

discussions to result in recommendations and action.

This item was kept in committee.

7. Discussion: Proposed addition of an additional “public input” at the close of Workshop meetings

Councilor Beaudoin referenced a comment which had been by a constituent at the prior Workshop meeting in which the resident expressed difficulty or inability of some other residents to attend the meetings at the scheduled time and, if desired, to make it in time for public input which starts early in the agenda. He suggested if there was an opportunity for an additional public input item later in the agenda prior to adjournment, it would give these residents opportunity to have their voice heard. Mayor Callaghan reminded constituents that if they are unable to attend meetings directly, there is an option to submit public input online to be read at the meeting and included as an addendum to the packet online.

Councilor Fontneau said the benefit of a closing public input would be for constituents to respond and given feedback to particular items that had been discussed on the agenda. He expressed concern that if this was not the intention, there could be the same group of constituents speaking both at the beginning and end of the meetings about the same items which could lengthen the meetings greatly.

Councilor Beaudoin reiterated that although an earlier meeting start time may work for Councilors, it could be difficult for some residents. He stated that the City should be cognizant of not shutting out residents.

This item was kept in committee.

8. Other

Chair Lachapelle spoke about a discussion that had resulted from a noise disturbance at the past Council meeting and whether or not it was permissible by RSA 91-A (Right to Know) to close the doors to Council Chambers to prevent the disturbance. Attorney O'Rourke stated that he had a greater concern with how closing the doors to Chambers might violate fire code. Deputy Chief Wheeler stated that he would review the occupancy limit in the room and pointed out that there is no panic hardware installed on the Council Chambers door, which is a concern. He stated that there might need to be a crash bar installed to meet the fire code.

Chair Lachapelle reviewed a proposed amendment to the Rules of Order drafted by the City Attorney as follows:

SECTION 1.8 OPEN DOOR

Except in circumstances when the City Council is using Council Chambers for Non-Public Sessions or Non-Meeting, the door to Council Chambers shall remain open. However, if the Chair determines that noise or other distractions emanating from the rest of City Hall are interfering with the conduct of business, the Chair

may order the door to be closed. If the Chair does order the door closed, the door shall be immediately affixed with a sign stating “Meeting In Session, Open to the Public, Please Enter Quietly, Door to Remain Closed.” As soon as any interference with the conduct of City Council business has terminated, the door to Council Chambers shall be ordered open by the Chair.

Chair Lachapelle asked if there needed to be an answer from the fire department regarding code and hardware prior to a vote being taken. Attorney O’Rourke stated that a vote could be made to send the item to full Council and the Fire Department could supply and answer prior to the next Regular City Council meeting at which action would be taken on the item.

Councilor Hainey questioned whether this amendment to the Rules of Order would also apply to meeting locations outside of Council Chambers, such as the conference rooms in the Annex. She stated that at the meetings held in the Annex, the doors are regularly closed. Chair Lachapelle stated that this may be addressed by placing a sign on the exterior of the door stating that there is a meeting in progress and inviting the public to enter.

Mayor Callaghan pointed out that the door to Council Chambers has a combination key pad on the exterior and will lock automatically after being closed for a few seconds. There was a discussion on whether this lock could be overridden.

Councilor Gilman **MOVED** to recommend the addition to the City Council Rules of Order, section 1.8 “Open Door”, to the full Council. Councilor Beaudoin seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Chair Lachapelle reported that he had received complaints following the prior City Council meeting in regards to signage that was held up in the Council Chamber’s audience blocking the view of those further back. Chair Lachapelle said he had no issue with signs being displayed at a public meeting, and understood that they were positioned purposely to be seen on camera, but he felt the signs needed to be displayed in the back of the audience where their presence would not obstruct the view of others. Councilor Beaudoin stated he had received a similar complaint. Attorney O’Rourke stated he would research and review the policy of other Cities and come back to the next Council meeting with suggestions on how to handle the issue. Chair Lachapelle suggested that in the meantime the Mayor of Committee Chair could observe for such an obstruction and ask the party displaying signage to relocate, even if temporarily. Attorney O’Rourke confirmed that Chair has the authority to enforce decorum at a meeting.

This item was kept in Committee.

Councilor Fontneau stated that a constituent had contacted him with a question regarding a specific ordinance. This resident owned a single-family lot in the agricultural zone. When they tried to apply for a building permit for a single family home, they were informed that they would need to install sprinklers in the house. There was a brief discussion on the matter. Councilor Beaudoin confirmed that for rural homes, there is a requirement to install either sprinklers or a cistern on the property (due to lack of access to City water). Councilor Fontneau stated that he understood these requirements for new development, but questioned the requirement for a lot already on record. Councilor Beaudoin suggested the resident contact the State Fire Marshalls office. Deputy Chief Wheeler recommended the constituent reach out to Assistant Fire Chief

Wilder who manages code enforcement on the fire department side of the City and would have answers regarding the specific situation.

9. Adjournment

Chair Lachapelle announced that there would be no Codes & Ordinances meeting in June unless something urgent arises.

Chair Lachapelle **ADJOURNED** the Codes and Ordinances Committee meeting at 6:55 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk



City of Rochester, New Hampshire

Office of the City Manager

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April 29, 2022

Rochester City Council
Codes And Ordinance Committee
c/o Chairman Deputy Mayor Lachapelle

Deputy Mayor Lachapelle:

This letter is written regarding your May 5, 2022, agenda item #4 concerning the proposed amendment to Chapter 75-1 of the General Ordinances. ***I am writing to support the contemplated change that would add a provision allowing a waiver to the residency requirement placed upon the position of Fire Chief.***

Residency requirements upon municipal employees, which were once more common especially for public safety employees, have been relaxed across the country in recent years. The removal of these requirements has been the result of both legal challenges and economic factors.

From my perspective, there are two factors that likely prompted the residency requirement upon our Fire Chief position. These are (1) response time and (2) community engagement.

From a response time perspective, the concern is with the ability of the Fire Chief to return to the city after normal working hours in a timely manner when the Chief's presence is needed during an emergency event. To this end, it would seem more appropriate to delineate a travel distance or travel time that would allow a timely return to the city. Furthermore, it would seem that such a restriction would not be limited to the Fire Chief but would be applicable to all public safety personnel that would be needed to return to the city in a timely manner for an emergency event in their off-duty hours. The fact that such a restriction is not placed on any other public safety personnel and this has not been problematic, calls into question the validity of this reason for a residency requirement.

From a community engagement perspective, the impetus to have the Fire Chief reside in the city is to encourage the chief to be an active and engaged member of our community. I strongly agree that it is a great benefit to the community to have the Fire Chief engaged and active in Rochester's community! This is true both professionally as Fire Chief and civically as a contributing member of our community. I would argue, however, that living within the city's borders is not required to be an engaged community member nor does living within the borders of the city guarantee that the person serving as Fire Chief will be engaged.


A residency restriction greatly restricts the candidate pool when seeking to fill a vacancy in the Fire Chief position. In addition, in the current housing market it would be very difficult for a new to the city candidate to find a home in the city. Finding a highly

qualified chief, from a technical as well as managerial perspective, far outweighs the need to have a chief live within the city's borders.

Currently, the City of Rochester has only two positions that have a residency requirement – City Manager and Fire Chief. There is no such requirement for any other positions. The City Manager residency requirement has a waiver provision that can be exercised by the hiring body, the City Council. However, the Fire Chief residency requirement does not have a waiver provision granted for the hiring authority, the City Manager.

It is for the reasons outlined above; I support the contemplated change that would add a provision allowing a waiver to the residency requirement placed upon the position of Fire Chief.

Respectfully,

DocuSigned by:

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Blaine M. Cox
City Manager