

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

February 4, 2016

City Council Chambers

31 Wakefield Street, Rochester, NH

7:02 PM

Committee Members Present

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

Others Present

Kelly Walters, City Clerk
Terence O'Rourke, City Attorney
Police Chief Michael Allen
Councilor Ray Varney
Councilor James Gray
Marilyn Tucker, Trinity
Anglican Church Thrift Shop
Mark Saxby, Collec-Tiques
Pat Rainboth, Victims Inc.
Scott Douglas, American
Used Auto Parts
Tracey Frisbee, Quick Cash
Todd Berrios, Skele-Tone
Records
Marilyn Tucker, Trinity
Anglican Church Thrift Shop
David Hynes, Ward 4 Resident
MaryAnn Digilio, Trinity Anglican
Church Thrift Shop

MINUTES

1. Call to Order

Councilor Lachapelle called the Committee meeting to order at 7:02 PM. All members were present.

2. Public Input

Councilor Lachapelle invited the Public to come forward to speak about topics/issues, which were not listed on the agenda. No member of the public came forward. Councilor Lachapelle closed public input at 7:03 PM.

3. Approval of the Codes and Ordinances Committee Minutes

- **December 3, 2015**

Councilor Lauterborn **MOVED** to **ACCEPT** the Committee Meeting minutes of December 3, 2015 as written. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Pawnbrokers/Second Hand Dealers Ordinance Amendments

Attorney O'Rourke stated that the holding period was removed from the proposed Amendment to Chapter 34 of the General Ordinances, under Section 34.8 Junk Dealers.

Marilyn Tucker, Trinity Anglican Church Thrift Shop, questioned why there was no language exempting a nonprofit agency from the holding period and to the recording requirements. Attorney O'Rourke replied that "donated" items are excluded under Section 34.9 (3). He said Ms. Tucker's thrift shop is basically a consignment shop and cannot be exempt from obtaining a Secondhand Dealer's License **nor** from abiding to the City's General Ordinances.

The Committee discussed group shops such as the one located on Union Street. Jim Grant, Building, Zoning, and Licensing Services, said at this time, such consignment shops would be required to obtain only one secondhand dealer's license under the retailers name.

Councilor Abbott suggested giving the secondhand dealers and pawnbrokers more options to meet the proposed new regulations. He said the goal is to locate stolen items which have been pawned. He said items could be easily tracked by obtaining the identification of the customer. This could greatly reduce holding periods imposed on the business owner.

Scott Douglas, American Used Auto Parts, questioned if the junk dealers would be exempt from uploading photographs and entering specific data into the software provided. He stated that this would cause a financial burden on his business. Councilor Lachapelle confirmed that the junk dealers are exempt from the holding period; however, they would **not** be exempt from this requirement.

Pat Rainboth, Victims, Inc., questioned if Victims, Inc. would need to obtain a secondhand dealer's license. She explained that Victims, Inc. accepts donations for sales, and that three times a year they hold a holiday weekend. It was clarified that this activity would not require a secondhand dealer's license under the current and proposed Amendment. Mr. Grant explained that Victims, Inc. would need to submit a Project Narrative Form to the Planning Department in order to continue to hold these yard sales. He

added that, at some point, the Planning Department may stipulate that the yard sale, *and clean-up*, ends on the third day of the sale, in order to stay in compliance with the ordinance.

Tracey Frisbee, Co-Owner of Quick Cash Trading Center, informed the Committee that implementing this Ordinance as written would greatly affect his business. This Ordinance would require a photograph to be uploaded to the provided software and much time would be spent with typing the information into the computer for individual items. The paper copy would have to be held for a year. Lastly, there is no more room at his location to hold items for an additional 7 days. He added that this would impact the quality of service given to the customer as they wait for the transaction to be completed. Councilor Gates requested collaboration between the secondhand dealers and the local police department to draft an ordinance which is acceptable to both the Police Department and the secondhand dealer shops. Mr. Frisbee replied that he has been in compliance with the current General Ordinance for the last twenty years or more. He added that the Dover Police Department sends out letters and emails to the surrounding secondhand dealer shops in order to retrieve stolen items. This process has proven to work.

Councilor Gray questioned the need to keep written documentation along with the electronic documentation. Attorney O'Rourke clarified that the information would be entered into a computer and submitted to the local police department. Additionally, the documentation would be printed and signed by the owner and kept on file at the secondhand dealer's location for one year.

Councilor Varney requested a more specific list of items which are most often stolen. This would/could reduce or eliminate the holding period for some specific items. Chief Allen explained that he could provide such a list; however, the Police Department's goal is to protect all stolen property and return items to the rightful owner. He said it would be impossible to predict what items would be popular to steal/pawn this year as opposed to what might become most popular to pawn in the years to come.

Attorney O'Rourke opposed making a list of items to require a holding period. He said when a list is created the items which are **not** on that list will quickly become the next most popular items to steal. Chief Allen agreed and said another option would be to exempt certain items from the holding period such as clothing and furniture.

Councilor Abbott said the City must provide more options for these business owners to comply with the ordinance; otherwise, the City would see more citizens dumping items and less recycling of items.

Councilor Lauterborn pointed out that one pawnshop owner had a gift card scam/fraud here in the City of Rochester; however, the Rochester Police Department was able to shut that operation down under the existing ordinance. Chief Allen agreed that the situation had been resolved; however, it was not due to the current ordinance that is in place. He said this particular pawnbroker's license had expired and that the City did not allow this shop to renew the pawnbroker's license. He added that the current ordinance needs revision.

Chief Allen said the proposed Amendment would have a one-year trial basis, which would allow for an evaluation of the data after one year. Councilor Gates questioned if the City Council could pass an ordinance with an expiration date. Councilor Varney replied yes, it would be treated like the sunset clause.

Councilor Lauterborn questioned why the Rochester Police Department is not sending out a list of stolen items to pawnbrokers/secondhand dealers, as the Dover Police Department is currently doing. Chief Allen stated that the Dover Police Department is not sending out such information for each theft that occurs and it would not be practical to do so.

Councilor Abbott reiterated that the most common sense items to place a holding period on would be fine jewelry, firearms, and expensive electronics.

Todd Berrios, Skele-Tone Records, suggested implementing a simple system that would require customers to obtain notarized verification forms from the Police Department in order to pawn certain items.

MaryAnn Digilio, Trinity Anglican Church Thrift Shop, questioned why the thrift shop is not exempt from the new requirements as previously stated at the December 3, 2015, Codes and Ordinance Committee meeting. Attorney O'Rourke said not enough information had been provided at that time and reiterated that the Trinity Anglican Church Thrift Shop cannot be exempt because they are a consignment shop which must obtain a secondhand dealers license. Ms. Digilio strongly suggested that this Amendment not be passed until all of these questions have been answered and all the issues have been resolved. Councilor Gray clarified that under the proposed ordinance articles of clothing would **not** be required to have a

holding period: *"Individually identifiable articles. Articles that are individually identifiable by a serial number or other applied numbers, letters, characters or markings or other unique features that serve to distinguish it from any other similar article and can be used to establish ownership."*

Mark Saxby, Collec-Tiques, volunteered to be part of the next discussion to resolve some of the issues brought to the Committee's attention this evening. He questioned why a nonprofit group such as Trinity Anglican Church Thrift Shop must abide by the same requirements as the other shops in the City. He further questioned why the facility operating on Union Street, which has over 150 individual booths set up, is only required to obtain one secondhand dealer's license.

Councilor Lauterborn stated that Section 34.2 is in need of a grammatical correction: **34.2** *For purposes of this definition, yard sales, flea markets, garage sales, attic sales or similar commercial activity established as business for the sale of other people's property as described in this Ordinance ~~or if~~ such a sale ~~that~~ exceeds three days duration or is held more than three times a year shall be considered a second-hand dealer. **No motion is needed to make this correction.***

Councilor Lauterborn stated that the following sentence is included in the current ordinance [34.2]; however, it had been eliminated in the proposed ordinance:

"In the event any such articles are taken in trade for another or similar article by a retail or wholesale establishment, such transactions shall not be considered as coming within the requirements of this ordinance."

Councilor Lauterborn wished for more information as to why this language was not carried over into the proposed ordinance. Attorney O'Rourke and the Director of Building, Zoning, and Licensing Services agreed to get back to the Committee with this information.

Several Committee members gave clarification as to what would be needed for the next proposal:

- Include a revision date of the proposed draft
- Exemption to "non-profit" agencies [*for at least some of the additional requirements*] or at least provide more information on the matter
- Modify the proposed Amendment to ensure that it is written more clearly

- Rid the 30-day holding period and exclude certain items from the 7-day holding period
- More options for compliance

Councilor Lauterborn encouraged the Rochester Police Department to start notifying the Secondhand Dealers and Pawnbrokers of stolen items.

Councilor Lachapelle stated that this item would stay in Committee and would be discussed again at the next meeting scheduled for March 3, 2016.

- **Polling locations**

Councilor Lachapelle stated that if there were no objections the Committee would discuss polling locations. He invited Dave Hynes, resident of Ward 4, to address the Committee.

Mr. Hynes stated he had no objection to holding the City's elections at Home Depot; however, he questioned if any consideration had been given to holding the City's elections at Lowe's Home Improvement Store, which is also located in Ward 4.

The Committee discussed the Ward 3 polling location and holding elections in schools. Councilor Lachapelle stated that the City Council recommended changing the Ward boundary lines for Ward 3 which would Middle School as provide for a better polling location for Ward 3. Councilor Lachapelle suggested finding out more about the Lowe's Home Improvement Store. At this point, it may make more sense to look into the possibility of changing the Ward 3 boundary lines to include the Lowes Home Improvement Store. Councilor Varney requested more information be provided at the next City Council Workshop meeting. Councilor Abbott **MOVED** to recommend to the full City Council that the Ward 3 boundary lines be changed to include Lowes Department Store, pending on Lowe's Department Store's willingness to accommodate the City's needs for elections. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

5. Rules of Order

Councilor Gray suggested a change to the Rules of Order under 3.8 to accurately mimic what is outlined in the City Charter [mayoral veto].

Councilor Lauterborn agreed and **MOVED** to recommend to the full City Council that Section 3.8 be amended as outlined below. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

SECTION 3.8 MAYORAL VETO - EXERCISE AND VOTE TO OVERRIDE

To be effective, the right of veto accorded to the Mayor under the provisions of Section 10-A of the Rochester City Charter, must be exercised, and notice of such exercise must be communicated in writing to the City Clerk, within one hundred forty-four (144) hours after action by the Council. As soon as practicable after receipt of the Mayor's written notice of exercise of the veto power, and in no event later than seventy-two (72) hours after receipt of such notice, the City Clerk shall inform the Council in writing of the Mayor's exercise of such veto. The Council may override said veto by a two-thirds (2/3) vote of all Councilors (**mayor excluded**) serving in office, as provided for in Section 10-A of the Rochester City Charter, no later than the close of the next regular meeting of Council.

Councilor Abbott took issue with the Rules of Order under Section 4.14 Election By Ballot:

SECTION 4.14 ELECTIONS BY BALLOT

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

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

Councilor Abbott provided information from 91-A stating that secret ballots are not permitted in a public meeting and noted that the City Charter should be adjusted accordingly too. The Committee debated the matter. Attorney O'Rourke replied that State Law supersedes the City Charter. Attorney O'Rourke agreed to supply the Committee with a legal opinion on the matter. This Section of the Rules of Order will stay in Committee.

Councilor Varney stated that Section 1.4 should be amended to reflect what is currently the order of business at the Regular Meeting(s).

Councilor Abbott **MOVED** to recommend to the full City Council that Section 1.4 be amended as outlined below. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

SECTION 1.4 ORDER OF BUSINESS

(a) The order of business for regular meetings of the City Council shall be as follows:

1. Call to Order
2. Pledge of Allegiance
3. Prayer
4. Roll Call
5. Approval of the Minutes of the Previous Meeting
6. Communications from the ~~Mayor~~ **City Manager**
7. Communications from the ~~City Manager~~ **Mayor**
8. Presentations of Petitions and Council Correspondence [and Disposal thereof by Reference or Otherwise]
9. Nominations, Appointments, and Resignations
10. Reports of Committee
11. Old Business [Items Remaining from Prior Meetings]
12. New Business
13. Other
14. Adjournment

Councilor Varney stated that all packet material should be provided to the City Council at least five days prior to the meeting; however, if an important item must be added to the Agenda after that point, then the Agenda should be sent out as revised.

Councilor Lachapelle **MOVED** to recommend to the full City Council that Section 4.1 be amended as outlined below. Councilor Gates seconded the motion. The **MOTION CARRIED** by a majority voice vote.

SECTION 4.1 AGENDA PREPARATION

The agenda for each Council meeting shall be prepared by the Mayor, the Deputy Mayor and the City Manager in conjunction with the City Clerk. Any Councilor may place an item on the agenda provided that the items be submitted in writing or email to the City Clerk, the Mayor, the Deputy Mayor or the City Manager seven (7) days prior to the meeting of Council. The City Clerk shall provide Council members with copies of the agenda, resolutions, and subject matter, to be presented to the Council, at least five (5) days

before **prior** to the meeting of the Council. ~~All resolutions, and subject matter, to be presented to the Council shall be made available to the members prior to said Council meeting.~~

The Committee discussed the requirement of two readings and the current policy of Section 4.12 Ordinances and Resolutions; however, no action was taken.

Councilor Barnett pointed out that Section 4.7 is not clear when it comes to public input at Committee meetings.

Councilor Lauterborn **MOVED** to recommend to the full City Council that Section 4.7 be amended as outlined below. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

SECTION 4.7 PUBLIC INPUT AT WORKSHOP OR COMMITTEE

V. Public Input shall not be a two-way dialogue between speaker(s), Council Member(s), and/or the City Manager, or administrative staff; **with the exception of Committee meetings when allowed by the Chair**; and,

The Committee briefly discussed Section 4.22 Inaugural Meeting, Order exercise: To include all Election Officials to receive the Oath of Office, however, no action was taken.

Councilor Lauterborn **MOVED** to recommend the following amendments to the next Regular City Council meeting for adoption. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

- **SECTION 1.4 ORDER OF BUSINESS**
- **SECTION 3.8 MAYORAL VETO - EXERCISE AND VOTE TO OVERRIDE**
- **SECTION 4.1 AGENDA PREPARATION**
- **SECTION 4.7 PUBLIC INPUT AT WORKSHOP OR COMMITTEE**

6. Penalties - Chapter 40.2

Councilor Bogan **MOVED** to recommend the Amendment to Chapter 40.2 to the full City Council. Councilor Abbott seconded the motion. The Committee discussed the proposed Amendment. Several Councilors recalled that Mr. Beaudion intended to focus on adopting new legislation that would

provide the Director of Building, Zoning, and Licensing Services the ability to seek action against a tenant; specifically to remove junk from a yard, which they [tenant] would not remove themselves. Councilor Lauterborn stated that this fine/fee schedule is much more complex than that.

Sheldon Perkins, Compliance Officer for the City of Rochester, supported the Amendment to Chapter 40.2. He said, currently, it takes too long for junk to be removed from a tenant's yard. He added that there is a false perception made by tenants, who believe the City should/could only give a citation to the landlord. The ability to write a summons to the tenant on the spot would resolve the matter.

Councilor Abbott gave a detailed explanation of why he believed that RSA 31:39-d cannot apply to the Building Code and therefore would be invalid. He supported enacting RSA 31:39-d, to a Property Maintenance Code, which could/would be treated as a Building Code for single-family homes [which can still be used for a land use citation] and then modify the Building Code for multifamily homes under a Housing Code in order to make it applicable to duplexes and above. The Committee had a lengthy debate on the matter and it was determined that more information would be needed.

Councilor Bogan **WITHDREW** her **MOTION** and Councilor Abbott **WITHDREW** his **SECOND** to the motion. This matter will be revisited at the next Codes and Ordinance Committee meeting in March.

7. Licensing Board Established - Chapter 26.1

Councilor Lachapelle **MOVED** to recommend that the full City Council approve the Amendment as outlined below. Councilor Gates seconded the motion. Councilor Gray suggested that language be included to allow the City Manager, Police Chief, or Fire Chief's designee to be appointed. The motion was restated to include this language as outlined below. Councilor Lachapelle requested a vote on the motion as amended. The **MOTION CARRIED** by a unanimous voice vote.

26.1 Licensing Board Established

There is hereby established a Licensing Board for the City of Rochester which shall consist of the City Manager, Chief of Police, **and Chief of the Fire Department, or their designees.** ~~, and one other person to be appointed by the Mayor in accordance with the provisions of Section 74 of the Rochester City Charter, at the first January meeting of the City Council following the regular municipal election for a term of two (2) years.~~

8. Polling Locations - Discussion

This discussion took place earlier in the meeting.

9. Permits - Chapter 40.16

Councilor Gray suggested adding language to the last sentence of Chapter 40.16 (c) by authorizing the City Manager to approve exemptions. Attorney O'Rourke stated that the City Manager cannot be given the authority to waive fees arbitrarily.

Councilor Abbott stated that the Building, Zoning, and Licensing Services Department cannot deny the issuance of a building permit due to non-payment of taxes; furthermore, the State RSA that outlines the collection of taxes has given specific requirements for collecting taxes and withholding building permits is not listed. He **MOVED** to strike paragraph (c) completely. Councilor Gates seconded the motion. The **MOTION FAILED** by a 2 to 3 show-of-hands vote.

The Committee discussed the matter further. Councilor Lachapelle **MOVED** to recommend that the full City Council accept the Amendment to Chapter 40.2 at the next Regular City Council meeting. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a 3 to 2 show-of-hands vote.

AMENDMENT TO CHAPTER 40.2 OF THE GENERAL ORDINANCES OF THE CITY OF ROCHESTER REGARDING PERMITS

40.2 (c) The Director of Building, Zoning, and Licensing Services shall issue no building permit, certificate of occupancy, and or/other construction permit for improvement or changes in real property for any real property for which there are delinquent municipal taxes, sewer user charges, assessments, penalties and/or fines.

(d) The City Manager is authorized to waive the provisions of subsection (c) for natural persons seeking a building permit, certificate of occupancy, and or/other construction permit for improvement or changes to the person's homestead property, if the person qualifies for an elderly tax exemption pursuant to RSA 72:39-a, a disability tax exemption pursuant to RSA 72:37-a or a elderly or disability tax deferral pursuant to RSA 72:38-a.

10. Other

No discussion.

11. Adjournment

Councilor Gates **MOVED** to **ADJOURN** the Codes and Ordinance Committee meeting at 9:50 PM. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Kelly Walters
City Clerk