

**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  
Jim Grant, Director BZLS  
Tim Wilder, Deputy Fire Chief  
Adam Hughes, Assistant Fire Chief  
Shanna Saunders, Director of Planning  
Councilor Walker  
Nel Sylvain, Chairman of Planning Board

**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

**Thursday, February 4, 2021**

**31 Wakefield Street, Rochester, NH**

Meeting conducted remotely

**6:00 PM**

**Minutes**

**1. Call to Order**

Chairman 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](mailto: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:

- **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](mailto: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).*

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, Hainey, Lachapelle, Rice and Lauterborn.

## 2. Public Input

Robert Benoit, owner of Mitchell Hill BBQ, addressed the committee in regards to the outdoor dining ordinance and the potential of live entertainment as well as use of canopies/coverings in dining areas.\*

*\*Mr. Benoit’s written correspondence is included in the addendum to the Codes packet online.*

Chairman Lachapelle stated that there was another written correspondence in the packet

which will be discussed later in the meeting.

### 3. Acceptance of the Minutes

#### 3.1 January 7, 2021 *motion to approve*

Councilor Rice **MOVED** to **ACCEPT** the minutes of the January 7, 2021 Codes & Ordinances meeting. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous vote with Councilors Hainey, Rice, Lauterborn, Lachapelle, and Abbott voting in favor.

### 4. Code of Ordinances Review

#### 4.1 **Update:** Amendments to Chapter 80 regarding Outdoor Dining (*Addendum A*)

Chairman Lachapelle stated that he had met with City staff and reviewed the ordinance as well as the written correspondence from Stacey Marchionni, owner of the Revolution Grill & Taproom, to make some additional edits. Jenn Marsh directed the committee to the addendum to the packet which includes the existing ordinance, the changes suggested after the previous Codes & Ordinances meeting, and the final edits made following the meeting Councilor Lachapelle referenced. Ms. Marsh clarified that live entertainment which had been discussed by Mr. Benoit during public input had been inadvertently left off the final edit page and read the current suggested wording indicating that live entertainment is not permitted unless the establishment has applied for a special events permit.

Ms. Marsh summarized the remaining suggested edits: City staff is suggesting changing due date for applications for use of City property from February 1 to March 1. Ms. Marsh said that the City issued 23 temporary outdoor dining permits the previous season, but stated that only 5 of those applications falls under use of City property; this additional time will allow businesses to submit their applications and staff to review in time for April 1 openings.

Ms. Marsh directed the committee to section 80-26 (f) regarding enclosure systems. It had been discussed that use of the term “rubber tips” was too specific. This has been changed to add verbiage to allow for use of other protectant materials. Under 80-26 (h) regarding canopies, the wording has been updated to add commercial grade umbrellas and porticos. Ms. Marsh made a correction to use of the word “portico” which should read “Pergola.” Ms. Marsh questioned how these particular structures would be inspected because they do not currently fall under any of the City codes.

Councilor Lauterborn inquired about the title of 80-26 which references establishments with alcohol service. She asked why it only applied to facilities which served alcohol. Attorney O’Rourke said that the verbiage came directly from the liquor commission when it was originally adopted. He said that the specific verbiage “alcohol service” and reference thereof could be stricken from the ordinance. Councilor Lauterborn **MOVED** to strike the wording “with alcohol service” from section 80-26. Councilor Rice seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Lauterborn, Abbott, Lachapelle, Rice, and Councilor Hainey all voting in favor.

Councilor Lauterborn referenced 80-26 (b), 4 lines down which lists “public sidewalks”; she said that in the original amendments which had been made this was changed to “public property.”

Attorney O'Rourke clarified that the template which was being used to show the suggested amendments was from the previous version and this change had been inadvertently overlooked in this version. This particular amendment has already been adopted.

80-26 (I) which states that "no objects strictly related to advertising will be allowed in the area." She questioned if this prohibits the use of the dry erase style sandwich board signs advertising specials or entertainment at an establishment. Councilor Lachapelle answered that use of signs is covered in the sign ordinance and to add that verbiage in this section would be redundant. Jim Grant, Director of Building, Zoning, and Licensing clarified that businesses are allowed to have the types of sandwich board signs referenced; one per establishment for a \$10 fee, which are limited in size and limited to display during the businesses' hours of operation. It was stated that this section does not restrict the use of these signs, it would just be redundant to include the specific criteria within this ordinance. Councilor Lauterborn suggested adding verbiage to read "except as allowed under the sign ordinance" to clear up any confusion caused by the current wording. Attorney O'Rourke recommended that the wording direct to the zoning ordinance under which the section on signs is contained, as there is no separate sign ordinance. Councilor Lauterborn **MOVED** to amend section 80-26 (I) to read "No object strictly related to advertising shall be allowed in the area **except as allowed under the zoning ordinance**". Councilor Rice seconded the motion. Councilor Rice asked what is specifically being prohibited by this amendment. Attorney O'Rourke answered that advertising which is not directly related to the functionality of the area such as brand specific advertising; it would not affect the restaurants ability to advertise specials or brand with their own name/logo. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Rice, Lachapelle, Abbott, Hainey, and Lauterborn all voting in favor.

Councilor Lauterborn directed the committee to the suggested addition of section (K) in 80-26 which reads "Decorations must be fire retardant and meet NFPA 701 Standards. No decorations permitted except those approved on the site plan. No loosely hanging material." She stated that this had been questioned by Ms. Marchionni, Revolution owner, who had suggested striking the last two sentences. Councilor Lauterborn asked for clarification on why these suggestions hadn't been adopted. Attorney O'Rourke stated that once the site plan is approved, no additional changes can be made without coming back to the City for additional approval. Councilor Lauterborn said she felt this was far too restrictive and would prevent small items such as small seasonal decorations, pillows, or ribbon. Councilor Hainey agreed that certain items such as seat cushions or pillows should be changed out regularly for cleaning, and there should not be a need for additional approvals. Councilor Lachapelle surmised that if a particular type of decoration had already been approved in the site plan, it could be switched out and changed without coming back for approval. Councilor Rice speculated that adding another permitting process might be time prohibitive for a small business which is already stretched thin. Deputy Fire Chief Tim Wilder stated that the verbiage as presented did not come from the fire department; it may relate to larger outdoor gatherings where loose materials in a tent near heating elements could constitute a hazard. Deputy Chief Wilder said he did not object to the suggested strikeouts and did not see the need for restrictions on the types of decorations being suggested such as pillows. Shanna Saunders, Director of Planning, clarified that the site plan would not prohibit use of smaller decorations such as pillows or flags. Councilor Lauterborn **MOVED** to amend 80-26 (K) as follows: "Decorations must be fire retardant and meet NFPA 701 Standards. ~~No decorations permitted except those approved on the site plan. No loosely hanging material.~~" Councilor Rice seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Lachapelle, Hainey, Rice, Abbott, and Lauterborn all voting in favor.

Councilor Lauterborn referred to section 80-27 (A), which had also been questioned by Ms. Marchionni, to the portion reading “No food prep, grilling, cooking, appliances, service counters, wait stations, or bus buckets shall be allowed...” Councilor Lauterborn agreed that the ordinance ought to allow for occasional outdoor cooking for occasions or events such as the Riverwalk dinner, or a restaurant offering an omelet station or something similar. Councilor Lachapelle agreed that occasional use of a grill for a weekend event should be permissible. Ms. Marsh said that this section was added by the health inspector who is not available at the meeting currently for comment. Councilor Lauterborn suggested adding verbiage to allow for temporary or “one off” use of outdoor grills and cooking. Director Grant clarified that when cooking outside, there is potential fire and smoke generated in this area where there would also be traffic passing through. There would also be need for fire suppression if the cooking is being done within a tent or structure. Councilor Lachapelle suggested allowing this type of outdoor cooking activity upon application and approval of a permit. Director Grant suggested adding the fire department and police department to the approval process for this permit due to potential safety concerns with this type of activity. Councilor Lauterborn suggested that if the issue comes up during the summer and a restaurant would like to offer some sort of one-off event involving outdoor cooking/grilling, this ordinance could be revisited and reviewed for a potential change at that time.

Councilor Hainey inquired why use of canopies could not be added back into the ordinance as permissible if they are sturdy and considered “Commercial-grade.” She suggested changing the wording of 80-26 (H) to add “commercial grade...canopies” along with umbrellas and the other structures. Director Grant clarified that the term “Commercial grade” is not a recognized distinction and is a marketing term or sales gimmick which can be used by different manufacturers without a set standard. He recommended if structures are allowed, they should be held to a definitive standard such as the NFPA. Director Grant stated that as far as inspections are concerned, he is limited to what is contained in Chapter 31 for temporary structures, and this chapter primarily gives the responsibility to the fire department for inspections; although even the fire department is limited to particular standards and they do not have criteria established for inspecting these types of structures. Director Grant recommended removing the words “commercial grade” until a time where a specific standard can replace it. Director Grant also specified that by the building code definitions, a canopy is a structure suspended off a building and advised against using these definitions which differ from what is included in the building code. Deputy Fire Chief Adam Hughes agreed that the definition of “canopy” differs greatly from what is being discussed in the ordinance, and stated that the items being discussed for use at outdoor dining areas are tents. Director Grant recommended removing the reference to the IBC codes, because this information is already covered by the NFPA 701 already listed. Attorney O’Rourke stated that there are multiple other NFPA codes regarding tents and advised against using the specific chapter.

Councilor Hainey **MOVED** to remove the words “Commercial grade” and “or IBC” (see below). Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Lachapelle, Lauterborn, Hainey, and Rice voting in favor. Councilor Abbott had been excused from the meeting at 7:00 PM.

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.

Councilor Rice directed the committee to 80-26 (B) regarding special events permits. He stated that although he agreed with the need for these permits, he did not believe the businesses should have to pull a permit for each day of use but rather once every week or month or designated time period. Councilor Lachapelle stated that the permit already allows for an event/performance to occur on a particular day repeating weekly for a certain length of time. Attorney O'Rourke summarized the requirements for the City to treat all applicants equally and give equal opportunity for use of public spaces which would preclude giving one organization use of a space over long periods of time.

Councilor Lauterborn inquired about an item also in section 80-26 (B) which had been brought up by Mr. Benoit during public input regarding what constitutes live entertainment. He had asked if events like trivia night, which can generate noise, would be considered entertainment and require a permit. Director Grant stated that there are, in fact, performance standards written into the zoning code. He said that historically, noise levels coming out of establishments downtown has not been enforced and he cautioned against regulating this type of activity in the ordinances because it could cause live entertainment to be shut down. He specified that a trivia night would likely be considered live entertainment. Attorney O'Rourke confirmed that under the state RSA, this type of public competition would be considered live entertainment and would require a special event permit if the event is taking place on public property.

Councilor Rice clarified that although the outdoor dining issue is coming to fruition due to COVID, it does not mean that once the pandemic is over that outdoor dining should end in Rochester. He stated that he would like to see outdoor dining continue, especially downtown, where it has been a positive change for the City. Ms. Marsh asked that the committee consider a vote on changing the application deadline from February 1 to March 1. Councilor Rice **MOVED** to recommend the amendments to Chapter 80 to the full Council with the inclusion of the application deadline date being changed from February 1 to March 1. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous voice vote with Councilors Hailey, Rice, Lauterborn, and Lachapelle voting in favor.

## **4.2 Building, Zoning, and Licensing Services**

### **4.2.1 Chapter 80 – Food and Food Services (*Addendum B*)**

Jim Grant, Director of Building, Zoning, and Licensing stated that that there was only one substantive change suggested to the chapter; the remaining changes were minor grammatical or spelling changes. The suggested change in 80-4 (B) is to change the due date for food service establishment licenses from June 20<sup>th</sup> to June 1<sup>st</sup>. Director Grant explained that the department receives a large volume of applications during this time period, and the additional time to process and review would be beneficial. The only other change throughout the chapter is changing “TSC” to “TCS” which stands for “Time and Temperature Control for Safety.”

Councilor Rice suggested that TCS be included in section 80-2 “Definitions.” Councilor



Rice **MOVED** to recommend the amendments to Chapter 80 “Food and Food Services” to full Council with the addition of the definition for “TCS” being added to section 80-2. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Rice, Lachapelle, Hailey, and Lauterborn all voting in favor.

#### **4.2.2 Chapter 11 – Adult –Oriented Establishments (*Addendum C*)**

Attorney O’Rourke stated that after the agenda was set for the Codes meeting, he had discussed this chapter with Director Grant and Planning Director Saunders for further review. He recommended striking this chapter in its entirety. He reported that these establishments are covered under the zoning ordinance which is the appropriate place for them to be, and having the chapter as a stand-alone chapter is restrictive and unnecessary. Councilor Lauterborn **MOVED** to recommend to full Council that Chapter 11 be removed in its entirety. Councilor Rice seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Lauterborn, Rice, Lachapelle, and Hailey all voting in favor.

Chairman Lachapelle announced that the next meeting agenda will include several more BZLS ordinances for review; Chapter 22: Amusements & Entertainment, Chapter 40: Building Construction & Maintenance, Chapter 54: Citations, and Chapter 94: Health and Sanitation. Director Grant said that he had forwarded the 2006 and 2015 International Property Maintenance Codes. He stated that although the changes are relatively minor, they will take some time to review. He advised the committee take a look at the codes to make suggested amendments for the next meeting. It was decided that chapters 110: Junk & Secondhand Dealers, Chapter 135: Mobile Home Parks, and Chapter 162: Pawnbrokers could also be included in the meeting due to the minor changes being made.

#### **4.1 Discussion: Amendment to the General Ordinances of the City of Rochester Creating Chapter 41, Disorderly Residence**

Councilor Hailey stated that she has spoken with the Chief of Police and they are working on a new approach for this item. She stated that she will come back to Committee with more information once it is available. It will be placed on the March agenda for further discussion.

### **5. Other**

Councilor Walker referenced Chapter 275-27.3 regarding Impact Fees and said he members of the Planning Board felt there were some gaps in the ordinance which needed to be filled. Councilor Walker stated that the ordinance primarily deals with larger developments with multiple units; there have been instances where there have been older individuals building houses on single lots, or residents moving from one home to another within a short distance, and the Planning Board had inquired about having the authority to waive impact fees in these circumstances. He directed the committee to the suggested amendment he had supplied which would allow the Planning Board to waive impact fees in whole or in part for single family homes on a single lot after the completion of an impact assessment. The assessment would review whether or not the home would partake of City water/sewer, City schools, and police and fire services.

Councilor Lauterborn cautioned against using the criteria of not having children in the school system to avoid impact fees. She stated there are already those who believe they shouldn't have to pay school taxes because they do not have current students enrolled in Rochester schools.

Attorney O'Rourke cautioned against an ad hoc system of giving exemptions which would run contrary to the equal protection clause in the State and Federal constitutions, which require equal people to be treated equally. He clarified that the impact fee is being assessed for the property itself and the development, not for the person who will reside there. He said that theoretically there could be a deed restriction placed on a property prohibiting people over a certain age from ever residing at that location, but that it is very unlikely that an individual would put these restrictions on a property. He stated that impact fees are an "all or nothing" situation and waiving them for certain parties would be opening the municipality up to legal action for discrimination.

Councilor Walker stated that he felt the information provided by the City attorney was not included in the City ordinance, and that as it written it already allows for certain waivers and exemptions. Attorney O'Rourke clarified that although the statute allows for the creation of exemptions, these exemptions need to be determined based on the methodology used to assess impact fees.

Councilor Walker suggested that upon development of a single family home, the City could assess an impact fee; the owner could then have the ability to file an appeal at which time the Planning Board could assess an updated fee based upon their individual impact. Attorney O'Rourke reiterated that the impact fees are assessed to the property, not the resident, and in fact when an impact fee refund is given, it will go to the current resident as opposed to the resident who paid the original fee. He stated that it is the use of the property which determines the fee.

Nel Sylvain, Planning Board Chairman, referenced consultant Bruce Mayberry who had developed the methodology used to determine the impact fees. Mr. Sylvain said that he was under the impression the Board would have the ability to customize the impact fees and adjust the percentages which went to individual municipal services. Mr. Sylvain said that he felt the whole picture had not been accurately presented to the Planning Board at the time and the information being presented currently differs. Councilor Walker stated that he felt the Planning Board should be able to assess the impact fees on a case by case basis if the proposed appeal process is followed.

Chairman Lachapelle said that, where this is an amendment to the zoning ordinance, this discussion and any action taken should come from the Planning Board before going to the full Council. Attorney O'Rourke stated that the Planning Board sets the impact fees, and although they do have the authority to raise or lower them across the board, they cannot legally give waivers to individual property owners based on their demographics. Attorney O'Rourke said there could be a discussion about doing away with the impact fees or changing the percentages, but the system being proposed would not be permitted. Councilor Hainey summarized the requests being made and stated that it appeared there are already allowances for certain waivers within the ordinance. Councilor



Hailey speculated about the possibility of more people coming forward to ask for waivers if these particular waivers are authorized.

Director Grant clarified that water and sewer are not part of the assessed impact fees; this is a separate sewer assessment fee. The impact fees are county, school, municipal, infrastructure, police and fire.

Councilor Rice inquired how often the impact fees could be adjusted by the planning board and if this is done annually. Planning Director Saunders stated that the Planning Board can adjust these fees as often as they deem suitable, but realistically these fees are reviewed every 2-3 years. Mr. Sylvain clarified that the only impact fees which had been adopted by the City were for Fire, Police, municipal, and schools. Director Saunders agreed that the items listed in the ordinance come from the State RSA and are services which the City *could* assess and impact fee, but Rochester only chose to assign values for several of those items.

There was no action taken on this item. It was referred back to the Planning Board for further discussion and recommendation to the full Council.

Councilor Rice asked for a time table on the amendments being made to Chapter 80 of the ordinances regarding outdoor dining. He asked when they would see the proposed changes which would be voted on by full council. He requested a chance to review the changes prior to the amendments being included with the Council packet in order to have adequate time review. Councilor Lachapelle confirmed that the packet would be printed on February 25<sup>th</sup> with these amendments included for review in advance of the action being taken at the March 2 regular city council meeting,

There was a discussion regarding the proposed change to the due date for outdoor dining applications being moved from February 1 to March 1, which would occur before a vote can be taken on this amendment at the Council level. Councilor Lachapelle stated that the existing ordinance is in place currently with the dates prior to amendment. In the existing ordinance, the due date is February 1 which has already passed and amending the ordinance will not affect applications for this season.

## **6. Adjournment**

Chairman Lachapelle **ADJOURNED** the Codes & Ordinances Committee meeting at 7:48 PM.

Respectfully Submitted,

Cassie Givara  
Deputy City Clerk

**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.~~ **Umbrellas, porticos, structures or tents shall be allowed if they meet NFPA 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 **except in accordance with Chapter 275, Article 29 of this Code.**

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.

**§ 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.

**Effective immediately upon passage.**

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.

#### **TCS**

Time/Temperature Control for Food Safety

#### **§ 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~~ **1<sup>st</sup>** 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~~ **1<sup>st</sup>** 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.**

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.

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### ~~§ 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.**