

Codes and Ordinances Committee

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



Others Present

Mayor Paul Callaghan
Terence O'Rourke, City Attorney
Katie Ambrose, Finance Director
Mark Sullivan, Deputy Finance Director

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, March 3, 2022

Council Chambers

6:00 PM

Minutes

1. Call to Order

Chair Lachapelle called the Codes & Ordinances meeting to order at 6:00 PM. Deputy City Clerk Cassie Givara took a silent roll call. All Councilors were present. Additionally, Mayor Callaghan was present.

2. Public Input

There was no one present for public input.

3. Acceptance of the Minutes

3.1 February 3, 2022

Councilor Beaudoin **MOVED** to **ACCEPT** the minutes of the February 3, 2022 Codes and Ordinances Committee meeting. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Discussion: Chapter 80 – Outdoor Dining ordinance

Chair Lachapelle referenced an email received by Bill Elwell, resident, with some suggested changes to the ordinance. Attorney O'Rourke stated that the majority of the suggestions were grammatical and were not substantive changes; therefore, they did not need to be reviewed in

detail by the Committee to make these minor changes.

Chair Lachapelle reported that he, along with Councilor Beaudoin, had met with City staff as well as local business owners, in order to review the outdoor dining situation. Due to continuing development on North Main Street, there will likely be a construction crane stationed in at least one lane, which would potentially cause the breakdown lane to be used as a travel lane for traffic. This lane had previously been used for outdoor dining. He stated that the businesses are aware that if these barriers and dining areas are constructed prior to the developer submitting plans, they may need to be removed to accommodate construction.

Chair Lachapelle directed the Committee to the proposed change to Chapter 80-26, section A, which is suggested to be amended as follows:

- A. Outdoor dining establishments shall be separated from the public pedestrian space on the adjacent municipal sidewalk by an enclosure system as approved by the City Manager or his/her designee; **The enclosure system is defined as the out object that impedes passage or access for people or vehicles.** 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~~ **36** inches and the maximum height shall be ~~36~~ **48** inches, measured from the lowest point of the public space being utilized.

Chair Lachapelle **MOVED** to recommend to full Council the amendment to Chapter 80-26, section A as listed above. Councilor Beaudoin seconded the motion. Councilor Beaudoin explained that the Liquor Commission has a *minimum* height requirement of 36 inches to differentiate between public spaces and areas where alcohol is being served. This amendment will ensure compliance with the Liquor Commission standards as well as making the language less narrowly restrictive in regards to height requirements. The **MOTION CARRIED** by a unanimous voice vote.

Chair Lachapelle referenced the proposed to amendment to Chapter 80-26, section B with the following suggestions:

- 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. **Any outdoor games or activities not related to the conduct of outdoor dining service, that are designed to be conducted within the Area, must be included in the Site Plan required by §80-15 of this Chapter with specific details on location, intensity, and hours of use. If, after the issuance of an Area Service Agreement, an applicant desires to add games or other activities to the Area, such games and activities will only be permitted upon application to the Licensing Board for a Special Event Permit.**

Chair Lachapelle **MOVED** to recommend the amendments to Chapter 80-26, section B as listed above. Councilor Beaudoin seconded the motion. Mayor Callaghan inquired if the permit would have to be applied for daily/each time the event was planned. Attorney O'Rourke stated that the length of the permit would depend on the businesses' application to the licensing

board and would take into consideration location of the activity, noise level, and other factors. He clarified that the amendment is stating that if the business had not already included these events as part of their original application, they would need to obtain a special events permit to host these types of activities. Chair Lachapelle stated that the March 1st deadline for applications had been extended to March 15th and there was a potential it would be extended further if needed. Councilor Desrochers speculated that if there were a permit fee for each application, this might be prohibitive for some businesses. Chair Lachapelle clarified that the provision is already in the ordinance that requires a special events permit for live entertainment; the change this evening is to add this requirement for hosting games and outdoor activities as well. The **MOTION CARRIED** by a unanimous voice vote.

Chair Lachapelle directed the Committee to the proposed changes in Chapter 80-27, section D, with the following proposed amendments:

§ 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:

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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. **Any outdoor heating devices or open flames of any kind must be approved by the Fire Department.**

Chair Lachapelle **MOVED** to recommend to full Council the amendments to Chapter 80-27, section D as outlined above. Councilor Beaudoin seconded the motion. Councilor Beaudoin explained that many of these heating devices have the potential to be tipped over if not properly anchored. However, the devices could be approved if they are anchored to a secure surface (other than City sidewalks) such as a deck. The **MOTION CARRIED** by a unanimous voice vote.

5. Proposed Amendments to Chapter 7-58 “Audit of City Accounts” and Chapter 7-80 “Bonds Required”

Katie Ambrose, Finance Director, referred the Committee to the proposed amendment as follows:

§ 7-58 Audit of City accounts.

An independent audit of all accounts of the City shall be made annually by certified public accountants selected by the City Council **upon recommendation by the City Manager** and experienced in municipal accounting in accordance with the provisions of Section 46 of the Rochester City Charter.

She explained that current practice is that these items go out to bid, and then the City Manager enters into an agreement with the organization to which the bid is awarded. The proposed amendment just clarifies the City Manager’s role in the process. Councilor Beaudoin **MOVED**

to recommend the amendment to Chapter 7-58 as proposed by City Staff. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Finance Director Ambrose directed the Committee to the proposed amendments to Chapter 7-80 as follows:

~~§ 7-80 Bonds required; amount.~~

All City officials as are required by the New Hampshire Department of Revenue Administration or other obligee shall be bonded under coverage provided by the City's risk management provider. All City officials as are required to give bonds for the faithful discharge of their duties shall file the same with the City Clerk within 30 days after their election or appointment, in the amounts following:

~~_____ A. _____ Tax Collector: amount required by New Hampshire Department of Revenue Administration.~~

~~_____ B. _____ City Treasurer: twenty thousand dollars (\$20,000.).~~

~~_____ C. _____ City Clerk: twenty thousand dollars (\$20,000.).~~

~~_____ D. _____ Chief of Police: five hundred dollars (\$500.).~~

~~_____ E. _____ Deputy Chief of Police: three hundred dollars (\$300.).~~

~~§ 7-81 City Council may require bond.~~

~~_____ Other officers may be required to give bond as the City Council may determine.~~

~~§ 7-82 Form of bonds.~~

~~_____ All bonds shall be drawn by the City Solicitor or approved by him/her as to legal form and proper execution before the same are presented to the City Council for approval and shall conform as near as possible to the following form:~~

~~_____ KNOW ALL MEN BY THESE PRESENTS:~~

~~_____ That we of Rochester, County of Strafford and State of New Hampshire, as principal, and _____ as surety, are holden and stand firmly bound and obliged unto the City of Rochester, a municipal corporation in said county and state, in the sum of _____ dollars, to be paid to the City of Rochester, its successors or assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.~~

~~_____ Sealed with our seals and dated this _____ day of _____ A.D. 20____~~

~~_____ The condition of the above obligation is such that whereas said _____ has been duly elected the _____ of such City of Rochester for the year 20____ now, therefore, if the said _____ shall faithfully perform all the duties incumbent upon him/her as _____ and shall serve all processes lawfully directed to him/her and perform all other things whatever which a _____ may or ought by law to do and shall really and truly account to said City for all money coming into his/her hands as said _____ then this instrument shall be null and void, otherwise to remain in full force and effect.~~

~~_____ Signed, sealed and delivered _____ In the presence of us,~~

Director Ambrose explained that the ordinance is no longer applicable based on how the City now approaches the bonding of officials; the City currently has blanket coverage under their risk provider.

Councilor Beaudoin suggested that the statutory reference that requires this bonding be

included in the ordinance. Councilor Beaudoin **MOVED** to recommend the amendments to chapter 7-80 with the addition of the reference to the relevant RSA. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

6. Proposed Amendments to Chapter 7-63 of the General Ordinances of the City of Rochester “Economic Development Special Reserve Fund”

Chair Lachapelle pointed out a change which he and Councilor Beaudoin had found within the document to a year cited incorrectly. The amendment should be completed as follows:

A. Statement of purpose.

- (1) It is currently estimated that the permitted capacity of the TREE Waste Disposal Facility (TLR-III) will be reached in approximately the year ~~2023~~ 2034....”

Chair Lachapelle **MOVED** to recommend the amendment to Chapter 7-63 as listed above. Councilor Beaudoin seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Mark Sullivan, Deputy Finance Director, directed the committee to the second paragraph of subsection A in Chapter 7-63, to which the following verbiage is being proposed:

- (2) Therefore, the City Council of the City of Rochester, pursuant to the authority granted by RSA 47:1-b and 47:1-c, hereby establishes a special revenue reserve fund from the specific source identified in Subsection B of this section for capital expenditures or expenditures for capital projects, transfers to capital projects, transfers to capital reserve, or for any other appropriation of a nonrecurring nature in support of economic development as determined by the City Council. Ineligible uses of Economic Development Special Reserve funds are administrative, marketing, conferences, or travel expenses....

Councilor Fontneau **MOVED** to recommend the changes to Chapter 7-63, subsection A (2) as outlined above. Councilor Desrochers seconded the motion. Councilor Beaudoin referenced NH RSA 47:1(b) “Special Revenue Funds” which already states these ineligible uses; however, he stated that it is not a bad idea to reiterate this within the City ordinances. The **MOTION CARRIED** by a unanimous voice vote.

Mr. Sullivan stated that previous Councils had expressed concerns that the money being put in the fund was not being used for the purposes for which they were originally intended. The proposed verbiage would lay out the eligible uses. He then spoke about the proposed addition to the end of subsection B, to read:

Further, the proceeds from any City owned land sales, with the exception of all TIF 162-K development zones, shall be allowed to be directly received into the Economic Development Special Reserve Fund unless City Council directs otherwise.

He clarified that this verbiage would allow the proceeds for any land sales, other than those within a TIF district, to be put into the Economic Development fund unless the Council directs otherwise.

Chair Lachapelle **MOVED** to recommend the amendments to Chapter 7-63 regarding the Economic Development Special Reserve Fund. Councilor Fontneau seconded the motion. Councilor Beaudoin referenced NH RSA 47:1(b) "Special Reserve Funds" which states,

"Any surplus in such fund shall not be deemed part of the general fund accumulated surplus nor shall any surplus be expended for any purpose or transferred to any appropriation until such time as the legislative body shall have voted to appropriate a specific amount from said fund for a specific purpose related to the purpose or source of the revenue." and goes on to state, *"The provisions of this section shall be limited to those municipal activities funded primarily through user fees including, but not limited to, municipal airports and solid waste facilities."*

Councilor Beaudoin felt that revenue generated from the sale of property did not fall within the definition in the State RSA. He spoke about the potential sale of two Rochester schools in anticipation of a proposed new school being developed, as well as the sale of two downtown lots; the total amount of revenue from all these sales, which would be significant, would be automatically placed into the Economic Development Special Reserve fund if this amendment is approved. He speculated that the Council could vote to have the money deposited into the General Fund; although this would take a 3/4 vote of the Council and a public hearing to do so. Councilor Fontneau agreed that the proposed wording allowed authority that was too broad and he did not feel that the funds from all sales should be placed in the special reserve fund. Chair Lachapelle clarified that the way the amendment is written would still allow Council the authority to direct the money where they see fit. Deputy Director Sullivan stated that the intent of this new verbiage was to allow the money to be placed in the Economic Development Special Reserve Fund, but to still allow Council the authority to decide if they would like the money directed elsewhere. He suggested a change in the verbiage to clarify the intent, and if desired, it could be revised that the money comes to Council first for control on where the money would be directed.

Councilor Beaudoin stated his understanding was that the Economic Development fund was an "in and out" account, where land/property purchases are made using this funding and when there is a sale made, the proceeds are returned to the fund. Throughout the process, Council has final oversight of the money. He said that he agreed with the intent of this addition to the ordinance he just felt it needed to be reworded. Councilor Desrochers expressed concern that rewording the ordinance to give Council full oversight, as opposed to a collaborative or supportive approach, could potentially impede or delay development in the City.

Mayor Callaghan referenced the last sentence of the proposed addition which states "...unless City Council directs otherwise." He said that this decision would already come before Council. Mr. Sullivan stated that current practice is that the Council already needs to approve purchase and sales agreements. At the time of that approval, the Council could vote on where the money is to be placed upon completion of the sale which would allow for Council control.

Councilor Beaudoin asked the City Attorney for his interpretation of the portion of RSA

47:1-b, which indicates that these funds “...shall be limited to those municipal activities funded primarily through user fees including, but not limited to, municipal airports and solid waste facilities.” Councilor Beaudoin speculated that property sales did not fall under the umbrella of user fees. Deputy Finance Director Sullivan stated that host fees, which are also not user fees, are the primary source of revenue for the Economic Development fund. Councilor Beaudoin surmised that host fees fall under the referenced “solid waste facilities.” Attorney O’Rourke agreed that host fees are not user fees. He clarified that the wording in the RSA states that these fees are “primarily” funded through these activities, but does not make a definitive requirement. He stated that the fees generated from a property sale could potentially be classified as user fees and summarized the reasoning. Attorney O’Rourke did not feel that the proposed wording is in violation of the state RSA.

Finance Director Ambrose suggested the wording be changes as follows:

Further, the proceeds from any City owned land sales, with the exception of all TIF 162-K development zones, shall **may** be allowed to be directly received into the Economic Development Special Reserve Fund ~~unless~~ **upon** direction of City Council directs otherwise.

Attorney O’Rourke agreed with the suggested revision to the wording and said that it would trigger Council approval for fund distribution each time a property is sold. He equated it to the tax deeded property auctions to which Council needs to approve and suggested in this process, the Council would vote on a resolution stating where they would want these monies saved.

Councilor Beaudoin read the portion of 7-63, section 2 (b) which reads:

“...transfer to said City of Rochester Economic Development Special Reserve Fund unappropriated host community fees in an amount not to exceed the difference between the total amount of host community fees received from Waste Management of New Hampshire, Inc., during such fiscal year and the amount of such host community fees previously appropriated by the Rochester City Council during such fiscal ...”

Councilor Beaudoin stated that if the proposed changes were approved, this above listed section would need to be reworded in order to accommodate the intent. Mr. Sullivan clarified that the referenced provision allows any excess host fee funds brought in above the budgeted amount to be transferred into the Economic Development Fund; however, he said that this option has not been utilized since 2015.

Chair Lachapelle **WITHDREW** his original motion. Councilor Fontneau withdrew his second. Chair Lachapelle **MOVED** to recommend the addition of the verbiage to Chapter 76-3 as suggested by Finance Director Ambrose above. Councilor Fontneau seconded the motion. Councilor Beaudoin stated that he would vote against the motion because he felt the ordinance still did not comply with the state RSA and that there is not a clear distinction between host fees and user fees. The **MOTION CARRIED** by a majority voice vote.

7. Proposed Amendments to Chapter 7-64 of the General Ordinances of the City of Rochester “Conservation Fund”

Mr. Sullivan explained the current practice of Chapter 7-64 regarding the Conservation Fund is a complicated process involving multiple departments and steps. Currently, the first \$25,000 raised from land-use change tax, collected through the Assessing Department, stays in the General Fund; the next \$10,000 generated goes to the Conservation fund, then all remaining money beyond that first \$35,000 stays with the General fund. At the end of the fiscal year, the City needs to look at what was billed and collected in that fiscal year, but also what carried over from prior fiscal years. The Finance Department has to annually present to Council to report the excess money generated, and a resolution needs to be approved to transfer that money from the General Fund into the Conservation Fund. Mr. Sullivan gave further details on the current process and the steps involved. He said that the suggested amendment to the ordinance would allow this first \$25,000 to remain with the Conservation Fund, where it will be of better use. It would also make the process more efficient and allow for fewer potential errors in bookkeeping. The current process also makes it impossible to determine how much is actually in the Conservation Fund until the entire process is complete at the end of the year. He suggested the following amendments:

~~C.— Establishment of annual Conservation Fund budget. The City Manager shall include in the budget prepared and submitted to the City Council annually, pursuant to Section 40 of the Rochester City Charter, an appropriation to the Conservation Fund in an amount hereinafter provided for, the source of funds for which appropriation shall be specified as being drawn in their entirety from revenues received by the City during such budgetary period from the so-called "current use change tax" provided for in RSA 79-A:7, or the corresponding provision of any recodification of such statute. Said appropriation shall be in an amount equal to all revenues, in excess of twenty five thousand dollars (\$25,000.), projected in the budget to be received by the City during such budgetary period from the so-called "current use change tax." In the event that the funds received by the City from the so-called "current use change tax" shall exceed the amount projected in the budget to be received from such source during such budgetary period, the City Manager shall, prior to the close of the fiscal year in question, present a supplemental appropriation in the amount of the excess receipts funds so received and identifying such excess receipts as the source of funding for such supplemental appropriation. The City Council shall act on such supplemental appropriation in the ordinary course. [Amended 8-6-2002]~~

C. All revenues collected related to Current Use Tax Warrants provided by RSA 79-A:7 shall be recorded in the Conservation Fund pursuant to RSA 79-A:25-Disposition of Revenues. The Finance Department shall provide to City Council by July 31st of each year the fund balance status of Conservation Fund, and prior fiscal year activity. City Council reserves the right to adjust percentages of future collected revenues placed in the Conservation Fund, or establish a not to exceed fund balance amount.

Councilor Beaudoin **MOVED** to recommend the amendments and additions to Chapter 7-64 as detailed by City Staff. Councilor Desrochers seconded the motion. Councilor Beaudoin asked for clarification on how the process would work if approved. Mr. Sullivan stated that current use taxes collected through the assessing department would be automatically placed in the Conservation Fund. However, there is a stipulation that the Conservation Commission is not able to expend any funds until

they have been approved by City Council. Council is also able to control the percentage of funds being put into the account. There was discussion on whether or not a public hearing would be required if Council opted to change the percentage going into the Conservation Fund. Attorney O'Rourke stated that he would look into this and return with the information. The **MOTION CARRIED** by a unanimous voice vote.

8. Other

Chair Lachapelle reported that a couple years prior, the Codes and Ordinances Committee and City Attorney had come up with a list of Ordinances which needed to be reviewed and potentially amended. The relevant departments had reviewed the chapters and made suggested edits. However; there are more comprehensive and complicated chapters related to the Department of Public Works which remain to be reviewed. These chapters will likely take several meetings and there may be meetings which only include one chapter in order to minimize the meeting length.

9. Adjournment

Chair Lachapelle **ADJOURNED** the Codes and Ordinances Committee at 6:48 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk