

**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  
Mark Sullivan, Deputy Finance Director  
Peter Nourse, Director of City Services

**CODES AND ORDINANCES COMMITTEE**  
Of the Rochester City Council  
**Thursday, July 7, 2022**  
**Council Chambers**  
**6:02 PM**

**Minutes**

**1. Call to Order**

Chair Lachapelle called the Codes and Ordinances meeting to order at 6:02 PM.

**2. Public Input**

Susan Rice, resident, stated that she had comments on specific agenda items and asked if she would be able to discuss these items when they came up on the agenda or if they should be handled during public input. Chair Lachapelle stated that he would recognize residents and allow them to speak during the discussion on agenda items under which they wanted to give input.

Cliff Newton, resident, addressed the Committee regarding the agenda item #6 regarding public hearings and the proposed 5-minute time limits. Mr. Newton spoke about guidance on running an efficient public hearing based on NHMA (NH Municipal Association) documentation. Mr. Newton submitted a copy of the documentation he referenced to the Chair.

**3. Acceptance of the Minutes**

**3.1 May 5, 2022 *motion to approve***

Councilor Beaudoin **MOVED** to **APPROVE** the minutes of the May 5, 2022 Codes and

Ordinances Committee meeting. Councilor Desrochers seconded the motion.

#### **4. Proposed Addition of Chapter 260A of the General Ordinances of the City of Rochester “Water Development Connection Fee”**

Susan Rice, resident, questioned the language used in the information contained in the packet, where the term “system development fee” is used in some areas while “impact fee” is used in other areas in the same context. She asked if this was referencing two separate fees, and if so, if the impact fee referenced was set at \$0 similar to the impact fees currently in the ordinance.

Mark Sullivan, Deputy Finance Director, explained that the water development connection fee” is a new ordinance to Rochester, with an associated schedule outlining how the fee will be derived as well as a section of the ordinance in which the fee would need to be adopted. He explained how the fee would be assessed for new developments. Deputy Director Sullivan confirmed that there is an impact fee ordinance; however, it is a separate methodology and separate fee schedule, which the Planning Board has discontinued and is currently not being assessed.

Mr. Sullivan stated that on the sewer side, there is a portion of the existing ordinance being replaced regarding the “reserve capacity assessment fee” with a similar methodology as is used on the water side for how the fee is derived.

Councilor Fontneau asked for clarification on which developments would be subject to the water development connection fee and how it would be assessed. Mr. Sullivan directed the Committee to the draft sample in the packet that shows the calculations used to arrive at the assessed fee. Peter Nourse, Director of City Services, explained that the City uses guidance through NHDES to determine the methodology for these fees and gave further detail on the fee structure. Director Nourse stated that the current practice is to apply the sewer fee to businesses and single-family homes that are part of a subdivision; it has not been past practice to apply this fee to standalone single-family homes outside of subdivisions.

Director Nourse clarified that these fees are referred to differently in various communities, but the intent is the same. Rochester chose to use the term “system development fee.” He explained that the use of the term “impact fees” as referenced by Ms. Rice was likely due to an earlier draft of the ordinance in which the term was not replaced when it was updated. He stated that any reference to “impact fee” within this ordinance could be changed to “system development fee.” Director Nourse added that this type of fee is assessed in several neighboring communities at a higher rate than is being proposed in Rochester; in some cases by several dollars.

Councilor Beaudoin asked if there was any way to estimate the amount of revenue this fee could generate over the next year or two. Deputy Director Sullivan stated that the City has been averaging 25-30 new developments per year so an estimated calculation could be done based upon this number. Councilor Beaudoin asked how the fee was being assessed for commercial industrial development, some of which are likely to have high water usage. Director Nourse explained that the guidance provided by NHDES to develop the methodology is very detailed based on the type of industry and their potential usage. He explained how the fees are derived using this guidance.

Councilor Fontneau asked if the revenue collected from this fee would be placed into a capital

improvements fund for future improvements to the system. Deputy Director Sullivan confirmed that this was true. He explained that in this process, the revenue would be allowed to accumulate and compound as needed for future projects. Councilor Beaudoin asked if projects using this revenue would require Council approval. Deputy Director Sullivan stated that the way he envisioned it, any CIP requests for Council approval could identify system development fees as a potential revenue source for said project; it could be used similarly for supplemental appropriations, with these fees being identified at the revenue source.

Chair Lachapelle recognized Susan Rice. Ms. Rice inquired if the intention of these fees was to be assessed only for new development as opposed to existing properties. Additionally, she asked if this fee would apply to duplexes and apartment buildings as well as other development. Director Nourse said that the fee would apply to apartments and duplexes as well.

Councilor Desrochers **MOVED** to send the addition of Chapter 260A of the General Ordinances regarding “Water Development Connection Fee” to the full Council. Councilor Fontneau seconded the motion. Councilor Beaudoin stated he would oppose this motion. He stated that he felt this proposed amendment is resultant from lack of foresight as well as poor management. He expressed that he did not feel that there had been circumstances occurring regarding water/sewer utilities that were unexpected and this could have been planned for better. Councilor Beaudoin stated that it was also, in part, due to inaction on the part of prior City Councils who did not adopt these amendments and have now caused larger increases in rates and fees. Councilor Beaudoin suggested that the City could just increase the water and sewer user rates and hold off on the connection fees to see if this user rate increase will be enough to reverse the deficit currently being experienced. The **MOTION CARRIED** by a 5 – 1 majority hand count vote.

#### **4.1 Amendment to Chapter 260-33 “Water Rate and fee Schedule”**

Deputy Finance Director Sullivan explained the proposed amendments that had been made to this ordinance to include the discussed system development fee for water and to update the existing fee on the sewer side. He explained that there is also an update to the fee for the sewer reserve capacity fee.

Councilor Desrochers **MOVED** to send the Amendment to Chapter 260-33 “Water rate and fee schedule” to the full Council. Councilor Beaudoin seconded the motion. The **MOTION CARRIED** by a majority voice vote.

### **5. Proposed Amendment to Chapter 200-7-T of the General Ordinances of the City of Rochester “Sewer Development Connection Fee”**

Councilor Beaudoin asked for clarification that this amendment revises the \$2.00 fee currently in the ordinance. Deputy Finance Director Sullivan confirmed that this would change the reserve capacity assessment fee from \$2.00 to \$4.33. There was further discussion on the fees that would need to be assessed based on the type of development being proposed with examples given. Councilor Fontneau asked about circumstances where a resident has an existing septic system which fails and the fee to be assessed for them to tie into the City sewer line. Director Nourse stated that it is his understanding that these fees are only being assessed for new construction, not for existing properties to tie into the sewer lines. Councilor Beaudoin stated for

the reasons he previously cited in reference to the water development fee, he would be opposing this motion. Councilor Desrochers stated that there were some circumstances that could not be foreseen that have affected the water and sewer usage, such as the growth rate of the City due to the pandemic. Councilor Desrochers **MOVED** to send the Amendment to Chapter 200-7-T of the General Ordinances of the City of Rochester regarding a Sewer Development Connection Fee to full Council. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a majority voice vote.

### **5.1 Amendment to Chapter 200-33 “Wastewater Rate and Fee Schedule”**

Councilor Desrochers **MOVED** to send the Amendment to Chapter 200-33 “Wastewater rate and fee schedule” to the full Council. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a majority voice vote.

## **6. Amendment to City Council Rules of Order Section 1.7 Public Hearings**

Councilor Lachapelle said that, based on his understanding, it is under the authority of the Chair to set reasonable time limits for public input during a meeting. Attorney O’Rourke confirmed that the Chair is able to set “time, place, and manner” restrictions on public input.

Mayor Callaghan stated that dependent on the community, there is a variety of time limits allowable throughout the state; ranging from 3 minutes all the way up to 30 minutes. However, he asserted that his understanding is that the lengthier time specifications referenced by Mr. Newton during public comment were specific to certain types of presentations during meetings; such as the annual audit presentations, and not an unlimited time allowance for general public input.

Councilor Beaudoin shared his experience as a State Representative at hearings in Concord. He reported that he does not recall a time where public input was limited during a hearing, and said that he felt it was poor government to impose limits on public speech. Councilor Beaudoin suggested a similar system to what is used at the Capitol: with those wishing to speak filling out sign-in cards stating what topic they would like to discuss and the length of time they are requesting to speak. He suggested that depending on how many speakers were present, the requested time could be reduced as needed or split up between speakers to allow each person adequate time. He also spoke about the small number of speakers that are typical at City Council and Committee meetings. He stated that if there are only two or three people present, they should be allowed more than 5 minutes each.

Councilor Desrochers acknowledged Councilor Beaudoin’s efforts to come up with an alternate approach such as the sign-in cards; however, she expressed concern that with this method there could be the appearance of favoritism if certain speakers are given more time than others.

Councilor Fontneau suggested that there could be a limit pre-set for the total length of time allowed for the public input portion of the meeting. That time could then be split evenly amongst anyone who signs up to speak. He spoke about situations recently where constituents have spoken at public input and reached the 5-minute limit prior to being able to complete their thoughts or convey enough information. He expressed that he would have preferred that the time

was extended to allow the speakers to finish.

Chair Lachapelle recognized Susan Rice. Ms. Rice read a prepared statement in support of not imposing 5-minute time restrictions on speech at a public hearing. She referenced a discussion the Codes and Ordinances Committee had at their February meeting in which the Committee consensus had been that there should not be strict limitations on duration of public speakers. Ms. Rice gave details on how other communities format their public input during meetings. Ms. Rice suggested that any correspondence received from the public should be read into the record and there should be a notation stating where the text could be found in its entirety.

Mr. Newton addressed the Committee regarding the difference between limiting speech during the public comment period of a meeting versus during a public hearing. He read a portion of the NHMA's publication on "Running a smooth public hearing."

Councilor Fontneau stated that he would be more comfortable with an amendment if there was some discretion allowed on the part of the Committee Chair; rather than having a set 5-minute limit, the Chair of the committee would be able to have some leniency on duration of speech. Mayor Callaghan stated that although giving the Chair discretion made common sense, it would potentially give the appearance of favoritism if certain speakers were allowed more time. He stated that is why he chose a 5-minute limit across the board, so there would be consistency for all speakers.

Attorney O'Rourke explained that a public hearing is a "limited use public forum" for a particular topic. Per the Supreme Court, a "hearing" is an opportunity to be heard. He cautioned against using discretion from the Chair for public speech, because although the public hearing can be limited to a particular topic, the hearing then needs to be viewpoint neutral; regardless of the stance of the speaker, they need to be allowed equal opportunity to speak as long as they are discussing the topic at hand. He stated that even if there is only one speaker at a hearing, and the Chair allows that speaker extra time beyond the five minutes, if the same extra time is not given to speakers at a future hearing, it can cause issues. When the Chair's discretion is unfettered, it can potentially be viewed as a violation of speakers' rights.

Attorney O'Rourke clarified the term "interest" as it refers to public hearings, as referenced by Mr. Newton and others at prior meetings. He explained how an applicant appearing at Planning Board could have an interest in a particular property or land being discussed. Though there is not a specific tangible interest to one party at hearings on the City budget or changes being made to ordinances.

Councilor Beaudoin **MOVED** to **TABLE** the motion until the August meeting to give the Committee the opportunity to review the information supplied by Representative Newton. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote to table the item until the August 4, 2022 meeting.

The discussion on an amendment to the Rules of Order Section 1.7 "Public Hearings" was kept in Committee.

## **7. Discussion: Animal Trapping and Bear Baiting**

Attorney O'Rourke gave some background on the discussion item. He explained that there had been a couple people who had approached the City of Rochester in regards to being allowed to bait for bear on City property. The State allows bear hunting on private property as long as an allowance is signed by the property owner. Attorney O'Rourke explained that the City Manager had not felt comfortable authorizing this type of hunting without first receiving guidance from Council.

Attorney O'Rourke explained that there is a separate issue of trapping on City property. At a Council meeting in 2016, there was a vote taken to ban trapping on City property. However, there was not much discussion around the vote and at this point, the City feels that there should be a distinction drawn between trapping for sport and trapping for humane purposes such as relocation. Attorney O'Rourke clarified that there should be something within the ordinances that clarifies what should be allowed on City property.

Finally, Attorney O'Rourke explained that one of the applications submitted to bait on City property was within the drinking water reservoir area. There is currently no recreation (boating, fishing, swimming, hiking, etc.) allowed in that area. The Director of City Services had recommended that there be a ban on baiting in the reservoir area as well.

Chair Lachapelle asked if there would be draft ordinance language coming to the Committee in the upcoming months. Attorney O'Rourke stated that he would draft suggested language.

Director Nourse reported that one of the bear baiting requests had listed a location directly at one of the City's wellheads. He advised against allowing this type of activity in the area. Director Nourse acknowledged that there is trapping allowed in the area under certain circumstances (such as the State trapping animals for relocation) and for public safety. He stated that it is his understanding that unless it is conspicuously posted; hunting is allowed on any land. He stated that there are over 16,000 acres of watershed in Rochester, and it would be difficult to post adequately to prohibit hunting activity.

Chair Lachapelle recognized Cliff Newton. Mr. Newton spoke about bears as nuisance animals and the increased prevalence of bear sightings closer to populated areas. He suggested the City contact Fish & Game to determine the bear numbers in the area and if there is a need for reduction. He expressed concern about liability to the City if baiting were allowed and it led to a bear-related injury.

Ms. Rice agreed with Mr. Newton that the City should reach out to Fish and Game for guidance. She suggested the possibility of a lottery system for bear hunting licenses if it is determined that there is an issue.

Chair Lachapelle said that the Committee is currently tasked with discussing whether to allow baiting on City property. However, he did acknowledge that there is the separate issue of bears as nuisance animals. Councilor Beaudoin requested that the City Attorney look into any potential liability that the City could be subject to if hunting was allowed on City property. Mr. Newton reported that he had co-sponsored a bill that passed in 2012 that exempts property owners from liability resulting from injury suffered on their land. Mr. Newton clarified that, to his knowledge, there is not a limited number of bear licenses available and in fact there are too

few issued each year to properly cull the bear population. He suggested the City request information from the State specifically on bear baiting and the associated restrictions and guidelines.

The bear baiting discussion was kept in Committee.

## **8. Discussion: Chapter 275-28.3 “Noise”**

Chair Lachapelle reported that the City had recently received a couple complaints in regards to noise and questioning the ordinance. He clarified that the chapter referenced on the agenda is within the zoning portion of the ordinance and the more relevant ordinance is chapter 149-2 “Nuisances – Noise; use of public address system,” which outlines what is allowable within the City. Chief Boudreau confirmed that Chapter 149-2 of the ordinance that the police use to address noise issues. He stated that it is often a matter of residents living in close proximity to each other and the standard noise experienced in apartments and close households. Chair Lachapelle spoke about the prioritizing of police calls and speculated that most often when noise complaints are made, the issue is resolved by the time the police are able to respond.

Attorney O’Rourke confirmed that this item is on the agenda for discussion following several complaints. However, there is no requested action. He clarified that being disorderly/disorderly conduct is against the law, and that could pertain to noise and could be an arrestable offense if unaddressed.

Councilor Fontneau asked how many noise complaints the Police Department receives and if it is a problem for the department. Chief Boudreau stated that although he did not have an exact number, noise complaints are a frequent occurrence. He reported that these complaints are received at all times of day and night, and clarified that they are not all related to loud noise and music, but sometimes just the noises from larger gatherings of people which might be perceived as too noisy to the person making the complaint. Chief Boudreau stated that the right to congregate is protected by law and if a group is not being unruly or excessively noisy, the Police Department will not interfere. Councilor Fontneau asked if the current ordinance as it is written works for the police department. Chief Boudreau responded that the current ordinance works well for the Police Department.

Councilor Beaudoin spoke about the noise limits that are listed in the zoning ordinance (chapter 275-28.3). He stated that he did not feel any changes are needed to the current ordinance and, if anything, the verbiage is too restrictive with the limitations currently listed. Councilor Gilman asked if Chapter 149-2 also covered vehicle noise, such as motorcycle and loud stereos from cars. Chief Boudreau read the language of the ordinance and confirmed that it would cover noise emitted from vehicles. Attorney O’Rourke added that the State RSA covering disorderly conduct specifically references noise from vehicles.

Councilor Desrochers referenced complaints she had received in the past regarding fireworks in her neighborhood being used outside the allowable time period. She acknowledged the difficulty in enforcing the fireworks issue and wondered if the reason why fireworks were not listed in the noise ordinance was due to the regulations for fireworks being covered under a separate ordinance (Chapter 75-16). Chief Boudreau reported that this year, from July 1 through July 5, there were only eleven fireworks complaint calls received.

Mayor Callaghan stated that in one of the noise complaint emails received, the resident said that they had already reported the issue to the management of the property in which they lived. He asked if the Police Department still had an officer who worked directly with landlords and rental situations. Chief Boudreau confirmed that Lt. Bossi serves as a liaison and meets with a local landlords association.

Mayor Callaghan inquired about the proposed disorderly residents ordinance that had come before Council. Attorney O'Rourke clarified that the ordinance referenced by the Mayor was never adopted; It had come to the Codes & Ordinances Committee for review and discussion several times, but had never gone to Council for a vote. Mayor Callaghan asked, if such an ordinance were adopted, if it would give the Police Department more authority to take action when there were repeated calls to the same property. Chief Boudreau said that the ordinance would potentially be beneficial, but the department also has the disorderly conduct statute that can be used. Chief Boudreau reported that, to his recollection, there is a disorderly residents ordinance on the books in Franklin. However, it has never gone to court to be challenged; the City is using it as a starting point for dialogue with landlords. Attorney O'Rourke stated that he had been in contact with officials from Franklin and they reported that the ordinance was used regularly for the first couple of years, after which point it became unnecessary because the issue mostly resolved.

Councilor Fontneau stated that the issue he had with the proposed disorderly residents ordinance was that it blamed the actions of the tenants on the landlord and held the wrong party responsible. Councilor Beaudoin stated that one of the issues he had with the proposed ordinance was that, as a landlord, he would not necessarily be aware of any issues being caused by his tenant until after the fact. He suggested that a representative at the Police Department could reach out to landlords and alert them when there was an issue at their property. Chief Boudreau stated there had been discussion on behalf of the Police Department about taking the "extra step" and reaching out to notify property owners if there had been an issue with their tenants. Chief Boudreau said that landlords are able to file records requests to find out if there had been any calls regarding their property. He recommended that this could be utilized by landlords on a regular basis.

## **9. Other**

Councilor Desrochers spoke about an item she would have coming forward proposing a revision to building permit fees that would have a space to indicate if the work being done is by an EPA Certified renovator (for instances involving lead paint restoration or repair). She stated she would bring forward more information when it is discussed in Committee. Chair Lachapelle said that he would place the discussion on the agenda for August 4, 2022.

Ms. Rice referenced a re-hearing on an upcoming ZBA agenda in regards to installing solar panels. She questioned if this is something the City should potentially be looking to facilitate with the increased prevalence of solar arrays around the City as well as the increasing electricity costs. She also questioned the useful life of solar panels and what the disposal process is following the end of their life. She asked if these inquiries could be passed along to the appropriate committee or department for further review.

## **10. Adjournment**



City of Rochester  
\*Approved on August 4, 2022

Codes and Ordinances Committee  
July 7, 2022

Chair Lachapelle **ADJOURNED** the Codes and Ordinances Committee meeting at 7:23 PM.

Respectfully Submitted,

Cassie Givara  
Deputy City Clerk