

**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  
Jenn Marsh, Economic Development

**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

**Thursday, August 6, 2020**

**31 Wakefield Street, Rochester, NH**

Meeting conducted remotely

**6:00 PM**

**Minutes**

**1. Call to Order**

Councilor 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. All Councilors were present and indicated that they were alone in the location from which they were connecting remotely.

## 2. Public Input

Ray Barnett, resident (via conference line), addressed the committee regarding impact fees and the suggestion of exempting the school portion for elderly residents. Mr. Barnett also referenced the noise ordinance discussion on the agenda and a recent incident in his neighborhood regarding early morning construction vehicle noise from a cement truck at 5:45 AM.

## 3. Acceptance of the Minutes

### 3.1 February 6, 2020 *motion to approve*

Councilor Lauterborn clarified that the February 6, 2020 meeting had been cancelled due to inclement weather. The minutes erroneously supplied in the packet were from the September 2019 meeting which had been already accepted at the March 5, 2020 meeting. No motion or action is necessary for this item.

### **3.2 March 5, 2020 *motion to approve***

Councilor Hainey **MOVED** to **ACCEPT** the minutes of the March 5, 2020 meeting. Councilor Abbott seconded the motion. Councilor Lauterborn made a correction to a passage on page 12 of the packet which indicated that Councilor Walker had made a motion. Councilor Walker had not been present and it had, in fact, been Councilor Lachapelle who made the motion. Councilor Lauterborn **MOVED** to **AMEND** the minutes as stated. Councilor Lachapelle seconded the motion. There was a brief discussion on the adjusted start time of meetings and at which meeting the decision had been made. Councilor Hainey **MOVED** to **ACCEPT** the minutes as amended. Councilor Abbott seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Lauterborn, Abbott, Lachapelle, Rice, and Hainey all voting in favor.

#### **4. Temporary amendment to 275-29.13 regarding Political Signage**

Councilor Lachapelle gave some brief background information on this item. He stated that this item had come forward from Councilor Lachance who wanted to allow political signs to be placed in the right-of-way due to restrictions COVID-19 places on electioneering and soliciting door to door.

City Attorney O'Rourke clarified that the City does not have authority to declare an emergency which would allow this change in the signage ordinance; only the Governor and the State legislature would have such authority. Councilor Hainey recalled a time where the City did allow political signage to be placed on public property and asked for clarification on what is considered a right-of-way. Attorney O'Rourke said that public property is considered a right-of-way and that the current rules have been in place since at least the 2014 rezoning. He stated that regardless of the City ordinances, in 2015 the Supreme Court ruled that a City cannot have an ordinance that distinguishes between the contents of a sign; you cannot say that political signs are allowed in a right of way but other signs are not allowed. This Supreme Court ruling reaffirmed that the City's ordinance was correct. Attorney O'Rourke clarified that the way the current ordinance is written, a sign placed in the right-of-way will be removed regardless of its content. He stated that the zoning ordinance can regulate criteria such as size of signs, duration they can be placed, and other dimensional criteria, but not the content of the signs themselves.

Councilor Hainey asked if it would be possible to change the ordinance to temporarily allow only political signage to be placed in City right-of-ways from August through November and prohibit other types of signage. Attorney O'Rourke stated that this is not permissible. It was clarified that there is no action needed on this agenda item at this time.

Ray Varney, resident (via conference line), spoke about the great deal of time and effort which had been put into developing the City's sign ordinance. He cautioned against making changes which would allow for "snipe" signs and other signage to clutter the City's right-of-ways.

#### **5. Proposed Amendment to Chapter 80: Outdoor Dining**

Councilor Lachapelle referenced the recent changes to the ordinance which City Council had made to allow for extended hours at downtown restaurants and asked Jenn Marsh, Economic Development, if there were any additional recommended changes at this time. Ms. Marsh said there

were some minimal changes which could be considered and will be brought back to Council in the future. She inquired about a recent staff meeting in regards to allowing entertainment at downtown establishments. Attorney O'Rourke said that staff from multiple departments had met to discuss the entertainment aspect. The primary concern was spacing; taking ADA compliance into consideration and ensuring that there is no obstruction of walkways and sidewalks as well as minimizing potential for driver distraction. Attorney O'Rourke said that, with the approval of Director of City Service Nourse, the City would be looking into making North Main Street downtown a single lane for next spring and summer. It will be attempted, and if it works well and is received favorably, it can be considered as a permanent change with extended sidewalks and larger areas for tables and seating. Attorney O'Rourke said that the change would also allow for any downtown business, not only restaurants, to consider outdoor seating or entertainment.

Councilor Rice asked what systems and methods (jersey barriers, etc.) would be utilized during the first year when this single lane is being trialed. Attorney O'Rourke said although they have not finalized details, the parking spaces would be eliminated and blocked off to allow for seating and entertainment space. There may be allowances for certain businesses to maintain parking spaces if needed as long as space allows.

Councilor Hainey asked if there was any discussion on closing North Main Street downtown to traffic entirely and only keeping it open for pedestrian use. Attorney O'Rourke said that this option had been brought up by BZLS director Jim Grant. This option will be considered and discussed further over the winter; if enacted, the street would be closed down only for certain parts of the day, likely during the evening dining hours. Director Nourse of DPW will need to review this further as far as traffic patterns are concerned and where the traffic would need to filter if it cannot continue straight onto North Main Street.

Councilor Lachapelle asked if the road is narrowed to a single lane if the jersey barriers would be eliminated to allow for something more aesthetically pleasing. Attorney O'Rourke confirmed that if the trial is successful and is turned into a permanent approach, the barriers would be removed and the sidewalks would be expanded with the trees removed or relocated.

Councilor Lachapelle suggested that the further changes to the outdoor dining ordinance be worked on further by staff and changes be submitted no later than March or April at the latest, hopefully much sooner so it can go to full Council by early 2021.

## **6. Discussion: Chapter 275-28.3 Noise Ordinance**

Councilor Lachapelle referenced a complaint which had been made regarding a cannon being set off repeatedly in Gonic on July 4. Attorney O'Rourke reported that the Rob Lynch, Compliance Officer, had made contact with the owners of the cannon and informed them that their activity was not allowed due to the City's noise ordinance amongst other reasons. The owner of the cannon had indicated that the cannon was moved out of state and would not be used again.

Attorney O'Rourke addressed Mr. Barnett's concern about construction vehicle noise which had been brought up during public input. Per Director Grant of BZLS, the City ordinance states that construction activity within 300 feet of residential units is restricted to the hours of 7:00 AM to 6:00 PM Monday through Friday and 8:00 AM to 6:00 PM on Saturdays, although these hours can

potentially be modified on a case by case basis by Planning Board approval. Attorney O'Rourke said that although the police could be called for these incidents, the proper avenues would either be BZLS or the Planning department to address the issue. It was suggested that Mr. Barnett be contacted in regards to this discussion.

## **7. Other**

Attorney O'Rourke referenced the re-codification of the City Ordinances which had been completed within the recent past. He said that the ordinances still contained many acronyms and terminology which is not in current use or is outdated. He suggested that each month, the Codes & Ordinances Committee review several chapters of the Code of Ordinances to clean them up and make suggested changes. The entirety of the suggested changes would then be presented to full Council in a packet form when the review is completed.

Councilor Lachapelle agreed that this review was a good idea and asked if relevant staff would be consulted for their recommendations as well. Attorney O'Rourke confirmed that both he and relevant staff would be reviewing the chapters and sending their recommendations to the Codes & Ordinances Committee for discussion. Councilor Rice stated that he thought 3-5 chapters is manageable for each codes meeting, but cautioned that they should focus on related chapters at each meeting so the committee can tackle all ordinances from each department at the same time without having to revisit or jump around.

Councilor Lauterborn spoke about a similar project of cleaning up and organizing the ordinance which had been done approximately 12 years ago. She said it had been an enormous undertaking, and the ordinances had been further cleaned up and clarified with the recodification in 2018. She supported taking on this project of reviewing the codes chapter by chapter over time in order to make it more understandable and current.

Councilor Abbott asked City Attorney O'Rourke to address Ray Barnett's public input comments in regards to impact fees. Attorney O'Rourke said that the impact fees are set by the Planning Board, and the Codes & Ordinances is not the appropriate board for discussion on the matter. He stated that although he was not certain without review if impact fees were assessed against residential development, fees are assessed for commercial and industrial development which do not bring children into the City and which are still subject to the school portion of the fees. Councilor Abbott stated that he recalled other cities had suggested waiving impact fees for particular demographics and had been told it was an age discrimination issue and was not permissible. Attorney O'Rourke agreed. Councilor Rice agreed that it was not only the elderly population affected, but that there are other residents without children who could also argue against having to pay these impact fees and it would be a slippery slope to start the process of waiving these fees only for certain demographics. Councilor Lachapelle clarified that if there were to be any further discussion on impact fees, it should be done at the Planning Board level.

Councilor Rice inquired if there was a City policy in order to ensure that citizens received follow up when they reached out to the City with concerns. Attorney O'Rourke said that there may be individual department policies, but he was unaware of any city-wide policy. Councilor Lachapelle said that he felt this would be a City Manager directive as opposed to something determined by City ordinance. Attorney O'Rourke referenced complaint forms specifically in Building, Zoning and

licensing department which would trigger a follow up by the compliance officer.

Councilor Lachapelle stated that the next meeting would be Thursday, September 3, 2020 at 6:00 PM via Microsoft Teams.

**8. Adjournment**

Councilor Lachapelle **ADJOURNED** the Codes & Ordinances Committee meeting at 6:50 PM.

Respectfully Submitted,

Cassie Givara  
Deputy City Clerk