

**City Council Special Meeting
July 21, 2020
Meeting Conducted Remotely
6:34 PM**

COUNCILORS PRESENT

Councilor Abbott
Councilor Belken
Councilor Bogan
Councilor Gray
Councilor Hainey
Councilor Hamann
Councilor Hutchinson
Councilor Lachapelle
Councilor Lachance
Councilor Rice
Councilor Walker
Deputy Mayor Lauterborn
Mayor McCarley

OTHERS PRESENT

Blaine Cox, City Manager
Katie Ambrose, Deputy City Manager
Terence O'Rourke, City Attorney
Jenn Marsh, Economic Development
Kelly Walters, City Clerk
Ray Turner, Ward 2 Moderator
Police Chief Paul Toussaint
Peter Nourse, Director of City Services

Minutes

1. Call to Order

Mayor McCarley called the Special City Council meeting to order at 7:31 PM. She had read the following preamble prior to the City Council Workshop meeting immediately preceding the Special Meeting:

Good Evening, as Chairperson of the City Council, 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 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 (*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.)

2. Roll Call

Deputy City Clerk Cassie Givara had taken the roll prior to the City Council Workshop meeting immediately preceding the Special Meeting. All Councilors were present except for Councilor Lachance who was excused. All Councilors indicated that they were alone in the location from which they were connecting except for Councilor Gray who stated his spouse was present.

3. Discussion: Outdoor Dining ordinance – Suggested changes

City Manager Cox referred to recent discussion held by Council in regards to the regulations for outdoor dining at downtown restaurants. City Manager Cox stated that City staff had met and came up with direct responses to the feedback from both Council and downtown establishments in reference to hours of operation, length of season, entertainment, and various other issues and suggested language on how Council can vote to make these changes.

Jenn Marsh, Economic Development, stated that while there are some changes which are being requested on a more immediate basis to benefit downtown establishments in regards to outdoor dining, there will be other changes which staff would like Council to review and potentially make changes to over the next few months which would not be related to outdoor dining.

Ms. Marsh stated that the first proposed change is to extend the season of operation for outdoor dining in the downtown area, which currently runs from April 1 through October 31. There has been interest shown in extending this further into the fall. The second change is for hours of operation; the current closing time is 11:00 PM Monday through Saturday and 10:00 PM on Sunday. The proposed change would extend the closing time to match the times stated by the liquor commission.

Councilor Belken inquired if there was staff available from the Department of Public Works who could speak about the potential issues encountered if the outdoor dining season is extended beyond October 31 if there is plowing required for an early storm. Peter Nourse, Director of City Services, stated that he shared the concern of having the temporary outdoor dining structures in place if plowing becomes necessary. City Manager Cox stated that the City would be in constant

communications with the downtown restaurants, keeping an eye on the weather, and taking necessary action if there was snow predicted. Mr. Nourse expressed concern about the temporary structures; if a sudden storm hit, the structures and jersey barriers would need to be removed quickly in order to plow both the streets and the sidewalks. He stated there needed to be more discussion on the matter. Mr. Nourse said he did not feel comfortable extending outdoor dining beyond October 31. Councilor Walker also asserted that there may be less interest in outdoor dining during cold weather. No action was taken on this item.

Ms. Marsh reiterated the hours of operation for outdoor dining are proposed to extend to match the indoor dining hours allowable, which is 1:00 AM at this time to per the liquor commission's guidelines (with the serving of alcohol ceasing half an hour prior to close). There was clarification of when the final drinks could be served versus when the restaurant closes. Councilor Lachapelle **MOVED** the following resolution:

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 (additions in italics and deletions struck out):

§ 80-21 Hours of operation.

Outdoor dining establishments may utilize the area for outdoor dining during their normal business, except that all tables within the area shall be cleared of all food and alcoholic beverages by ~~11:00 p.m.~~ 1:00 a.m. Monday through ~~Saturday and by 10:00 p.m.~~ on Sunday with no alcohol served within the area subsequent to ½ hour before the foregoing closure times.

The effective date of these amendments shall be upon passage.

Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Hamann, Walker, Hutchinson, Belken, Abbott, Gray, Rice, Bogan, Hainey, Lachapelle, Lauterborn, and Mayor McCarley all voting in favor.

Ms. Marsh introduced the third proposed change which would allow for outdoor entertainment in restaurants downtown. She shared an excerpt of the lease from Revolution which states:

The Lessee agrees that it will use the Premises for outdoor activities designed and intended to attract and/or entertain potential patrons and customers of the commercial, retail service, professional and/or restaurant establishments

located in Rochester downtown. Lessee may use the Premises for Outdoor Dining consistent with the provisions of City of Rochester Ordinance 26.10. Outdoor live music will conclude each night by 10:00 p.m. and no amplified music will be allowed.

Ms. Marsh clarified that staff is suggesting the City allow duo and trio musical acts to perform acoustic music at other downtown establishments.

Councilor Bogan expressed a concern that, with multiple restaurants in such close proximity, if this could cause issues or interference when multiple restaurants have musicians playing at the same time. Councilor Rice suggested that the Council take a hands-off approach and let the restaurants determine amongst themselves who would allow music and at what time on which days; the restaurants can self-regulate and work out the logistics on their own to avoid interference. Ms. Marsh agreed that the establishments will be able to regulate a music schedule on their own.

Councilor Belken said that the clashing sound would probably be minimized by traffic noise, especially with acoustic acts. She asked if the ordinance could allow for amplification if it is kept below a certain wattage. Ms. Marsh clarified that while amplifiers are not permitted, musicians are able to use speakers and microphones. Councilor Rice inquired if this change to the ordinance would also allow for establishments to place speakers outside and play recorded music or the radio for their clientele. The sense of Council seemed to be that recorded music would fall under the same category and same regulations as live entertainment.

It was questioned how action could be taken this evening to make amendments to the ordinance regarding entertainment at outdoor dining establishments. City Attorney O'Rourke cautioned that there had been concerns expressed by staff which still needed to be reviewed further and he did not feel that this ordinance amendment was in a place to be voted on yet. He clarified that in other areas of the country where guidelines and permitting exist regarding outdoor entertainment, the ordinances are very extensive and thought out. Attorney O'Rourke suggested sending the item back to staff for further work up before any action is taken. Councilor Rice suggested that this issue be reviewed at the Codes & Ordinances Committee. Councilor Lachapelle stated there would be a Codes & Ordinances meeting on August 6 and they would be able to review whatever language City staff had drafted at that time, and the Committee can send the decision to the September City Council meeting.

Councilor Belken inquired if there was currently a permitting process to allow outdoor entertainment downtown. City Attorney O'Rourke confirmed that there is a special events permit available through the City Manager's office. It was stated that while the Council works on the language and taking action of amending

the ordinance, restaurants can go through the existing permitting process in the meantime if they want to pursue entertainment at their establishment. It was clarified that the special events permit is available only for a certain length of time or single event.

Councilor Rice directed Council to a section of the ordinance with a strikeout which would change the intention from only allowing use of sidewalks to allowing establishments to use the City's streets, green space, lots, or whatever is available to them for outdoor dining, to also allow entertainment in those spaces.

Councilor Lachapelle **MOVED** the following resolution:

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 deleting section 80-31 in its entirety:

~~§ 80-31 Use of property other than sidewalks.~~

~~Use of City property, other than sidewalks, for outdoor dining as defined in this article and the terms of said use must be separately negotiated with the City outside of the above delineated permitting process.~~

The effective date of these amendments shall be upon passage.

Councilor Rice seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Rice, Walker, Belken, Bogan, Lachapelle, Hamann, Lauterborn, Hainey, Abbott, Gray, Hutchinson, and Mayor McCarley all voting in favor.

4. Discussion: Proposed New Polling Location for Ward 2 - Chamberlain Street School *consideration for approval*

City Clerk Kelly Walters gave some background on the proposed change. She stated that St. Mary's Parish, the current Ward 2 polling location, has served the City well since 2003 and the staff has been very accommodating; but at this time with the new safety protocols required for COVID-19 voting, the space available at St. Mary's is not adequate. Ms. Walters said that at the February election, St. Mary's allowed the City to expand into the corridor of the church to use that area as well as the banquet hall, but space was still limited.

Ray Turner, Ward 2 Moderator, agreed that St. Mary's has worked well, but stated that there are challenges with layout and design as well as managing lines

in the tight space. Mr. Turner anticipated that these challenges would be increased with the upcoming elections when social distancing is factored into the equation. He said it would be

Councilor Lachapelle inquired if there was a plan to place signage at St. Mary's Church alerting voters of the new polling location if the Council does decide to vote on the change. Councilor Lachapelle said some voters may not hear about the change or see the notices in the paper and will drive to their previous polling place. Ms. Walters stated that there will be signage placed at St. Mary's for both elections and there will also be a postcard mailed to all ward 2 voters alerting them of the change in polling location.

Councilor Lachapelle **MOVED** to change the Ward 2 polling location to Chamberlain Street School. Councilor Belken seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Hainey, Lauterborn, Abbott, Hutchinson, Rice, Lachapelle, Walker, Gray, Bogan, Hamann, Belken, and Mayor McCarley all voting in favor.

5. Resolution Authorizing Acceptance of Coronavirus Emergency Supplemental Funding Program Grant and Supplemental Appropriation in Connection Therewith *second reading and consideration for adoption*

Mayor McCarley opened the discussion by stating that this resolution had failed at the previous Council meeting and was discussed at length at the Finance Committee meeting. She stated that the resolution needed to be read for a second time and adopted; after which there can be a separate discussion on whether or not the Council wants to come up with a different use for the grant money than what is stated in the current resolution.

Councilor Lachapelle **MOVED** to read the resolution for a second time by title only. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Belken, Gray, Hamann, Rice, Lauterborn, Hainey, Lachapelle, Hutchinson, Walker, Abbott, Bogan, and Mayor McCarley all voting in favor. The resolution was read for a second time by title only as follows:

Resolution Authorizing Acceptance of Coronavirus Emergency Supplemental Funding Program Grant and Supplemental Appropriation in Connection Therewith

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER, AS FOLLOWS:

That a U.S. Department of Justice Assistance Coronavirus Emergency Supplemental Funding Program Grant in the amount of Eighty-Nine Thousand Two Hundred Twenty-Six Dollars (\$89,226.00) awarded to the City of Rochester's Police Department is hereby accepted.

Further, that a supplemental appropriation in the amount of Eighty-Nine Thousand Two Hundred Twenty-Six Dollars (\$89,226.00) be, and hereby is, appropriated to the Rochester Police Department for the purpose of carrying out the purposes of the U.S. Department of Justice Assistance Coronavirus Emergency Supplemental Funding Program Grant. The entirety of the supplemental appropriation shall be derived from the U.S. Department of Justice Assistance Coronavirus Emergency Supplemental Funding Program Grant. The funds will be used for the purchase and retrofitting of a backup mobile dispatch center trailer for the Rochester Police Department.

Still further, that the City Manager or his designee is authorized to enter into a grant agreement and any other contracts with the U.S. Department of Justice Assistance Program that are necessary to receive and administer the grant funds detailed above; and

To the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to establish and/or designate such multi-year, non-lapsing accounts and or account numbers as are necessary to implement the transactions contemplated in this Resolution. All projects will be assigned a unique account number for tracking and reported purposes.

Councilor Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Walker seconded the motion. Councilor Rice asked if the current vote was to accept the grant money but not to appropriate it to the specific project stated in the resolution. Mayor McCarley clarified that the vote was to accept the money for the specific project stated in the resolution (backup emergency dispatch trailer) and if Council wants to suggest changes to the project, they would need to apply for an amendment. Councilor Rice stated that he felt the project was not a necessity and would lead to further financial obligations down the road. Councilor Gray spoke about the potential of looking at the responsibility of an emergency backup dispatch at a county level. Chief Toussaint clarified that this item had been noted in the City's multi-hazard mitigation plan which was last updated in 2018, prior to COVID, and identified as a weakness in the City's infrastructure if there was a multi-hazard event. Chief Toussaint emphasized the need and importance for the backup dispatch trailer and reiterated that this grant was an opportunity which might not be available again. The **MOTION CARRIED** by a 11 – 1 roll call vote with Councilors Lachapelle, Walker, Hainey, Abbott, Bogan, Gray, Belken,

Hamann, Lauterborn, Hutchinson, and Mayor McCarley voting in favor and Councilor Rice voting opposed.

6. Discussion: Resuming in-person meetings *consideration for approval*

Councilor Hainey expressed that she had a change of heart from her previous statements and **MOVED** to have City Council meetings in person with the Committee and Board meetings being held in person at the discretion of the Chair. Councilor Walker seconded the motion. Councilor Lachapelle asked if Councilors are not comfortable meeting in person, how the meetings would operate. Mayor McCarley stated there would still be the option for Councilors to log in remotely via Microsoft Teams if they chose not to attend in person. Councilor Rice felt there would be challenges with a meeting where some Councilors attend in person and others via Teams. He suggested if there is not a prevailing sentiment to meet in person, the Council continue with remote meetings. Councilor Hutchinson stated there is not a rush to meet in person when the COVID-19 situation is still fluid and developing. He felt that if the Council does move toward meeting in person, there should first be safety provisions in place to ensure that both the public and staff is protected. Councilor Gray stated that the motion needs to be more thorough and include potential requirements for wearing masks, placing partitions between Councilors, and social distancing.

City Manager Cox reminded Council that when there were "mixed" meetings with some Councilors meeting in person and some connecting remotely, the feedback from those watching had been that the audio was not of good quality. There is a fix being worked on, but it is not currently in place yet. Councilor Walker reiterated that it is a disservice to the public not being able to participate in public comment. He felt that the Council should be able to meet following CDC guidelines to remain safe. Mayor McCarley clarified that the motion on the table would be for the Council to meet in person while following CDC guidelines for masking. A yes vote is to meet in person and a no vote is to continue remotely. It was clarified that the individual committees meeting in person would be left to the discretion of the Chairs. The **MOTION FAILED** by a 8-4 vote with Councilors Hamann, Hutchinson, Belken, Abbott, Gray, Rice, Bogan, and Lachapelle voting opposed and Councilors Walker, Lauterborn, Hainey, and Mayor McCarley voting in favor.

Councilor Walker **MOVED** to allow the Committee Chairs to hold in person meetings if they so choose. Councilor Hainey seconded the motion. City Manager Cox asked if the motion would include allowing the public to attend in person for public comment. Councilor Walker stated that the motion does include allowing in-person public input. Councilor Hutchinson added that the individual committee members could choose to assess their risk and to not meet in person,

so there should be provisions in place for committee members who are not comfortable meeting in person. The **MOTION FAILED** by a 7 – 5 roll call vote with Councilors Walker, Bogan, Lauterborn, Hainey, and Mayor McCarley voting in favor and Councilors Rice, Belken, Lachapelle, Hamann, Abbott, Gray, and Hutchinson voting opposed.

Councilor Walker referenced the format for public input which had taken place at the last Public Works meeting and **MOVED** to run public input with this same format for other committee meetings. Councilor Rice seconded the motion. Mayor McCarley clarified that City Manager Cox had been present in City Hall and a laptop was set up to allow the public to speak directly to the Committee which was meeting via Teams. Councilor Gray questioned whether there was a motion needed for this procedure to take place. He stated it was more a matter of ensuring there was adequate staff in the building to facilitate the process. City Manager Cox said he was willing to take care of the process for any meetings at which he was in attendance; otherwise there could be staff lined up to set up and run the laptop. Councilor Lachapelle questioned the feasibility of having this form of input at every meeting due to the necessity of staff being present for each meeting. Councilor Rice stated that City staff is present at each meeting to take minutes and these same staff members should be able to set up the laptop and facilitate the public input portion of the meeting.

Councilor Hainey expressed a reluctance to ask staff members to put themselves at risk after Council had just voted to remain with remote meetings to avoid said risk. She suggested that members of the public be asked to wear masks and follow CDC guidelines. Councilor Walker stated that it had been recommended that the public wear masks and there had been masks available at City Hall, but not all participants chose to use the masks. City Manager Cox stated that staff would be wearing PPE, and if the employee was high risk or uncomfortable with the task, they would not be required to take on the responsibility. Councilor Gray suggested that an area can be constructed with a partition to protect City staff if needed.

The **MOTION CARRIED** by a 9 – 3 roll call vote with Councilors Hainey, Lauterborn, Abbott, Hutchinson, Rice, Walker, Gray, Bogan, and Hamann voting in favor and Councilors Lachapelle, Belken and Mayor McCarley voting opposed.

Councilor Walker referenced a discussion at the recent Public Works Committee meeting regarding pavement cuts on North Main Street. He said it is imperative that Council make a decision on this time-sensitive item and waiting until the August 4, 2020 meeting would not be ideal. Councilor Walker read a passage from the meeting and recommended that Council lift the moratorium on curb cuts on North Main Street as follows: 1) Union Street below the crosswalk which will be replaced 2) cut on North Main Street below the crosswalk which

will be replaced and 3) A fresh cut on Wakefield street where the pavement will be restored properly (the pavement was redone on Wakefield Street in 2018). Councilor Walker **MOVED** to lift the moratorium to allow the curb cuts on North Main Street. Councilor Hamann seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Belken, Gray, Hamann, Rice, Lauterborn, Hailey, Lachapelle, Hutchinson, Walker, Abbott, Bogan, and Mayor McCarley all voting in favor.

7. Non-Public/Non-Meeting

Councilor Lauterborn **MOVED** to enter into a non-public session under Land, RSA 91-A:3, II (d) at 8:27 PM. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Lachapelle, Rice, Walker, Hailey, Abbott, Bogan, Gray, Belken, Hamann, Lauterborn, Hutchinson and Mayor McCarley all voting in favor.

7.1. Non-Public Session – Land, RSA 91-A:3, II (d)

7.2. Non-Meeting – Personnel 91-A:3, II (a)

Councilor Lachapelle **MOVED** to exit the non-public session at 9:47 PM. Councilor Walker seconded the motion. The **MOTION CARRIED** by a 11- 0 roll call vote with Councilors Rice, Walker, Belken, Bogan, Lachapelle, Hamann, Hailey, Abbott, Gray, Hutchinson and Mayor McCarley voting in favor. Councilor Lauterborn was not present at the time of the roll call vote.

Councilor Walker **MOVED** to seal the minutes of the non-public session indefinitely because disclosure would render the proposed action ineffective. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a unanimous roll call with Councilors Hailey, Lauterborn, Abbott, Hutchinson, Rice, Lachapelle, Walker, Gray, Bogan, Hamann, Belken and Mayor McCarley voting in favor.

8. Adjournment

Mayor McCarley **ADJOURNED** the Special City Council Meeting at 9:50 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk