

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, September 1, 2016

City Council Chambers

31 Wakefield Street, Rochester, NH

7:00 PM

Codes and Ordinances Committee Members Present

Councilor Peter Lachapelle, Chair

Councilor Elaine Lauterborn, Vice Chair

Councilor Donna Bogan

Councilor Robert Gates

Members Absent

Councilor Thomas Abbott

Others Present

Attorney O'Rourke

Councilor Gray

Councilor Keans

Councilor Varney

Andrea Lemire, Resident

MINUTES

1. Call to Order

Councilor Lachapelle called the meeting to order at 7:00 PM. All members of the Committee were present.

2. Public Input

Councilor Lachapelle invited the public to speak about any City topic that is not currently listed on the Agenda. He noted that any citizen would be allotted time to speak during each topic listed on the agenda. Andrea Lemire, 17 Pine Street, announced that she attended the meeting because fireworks are being lit off in her own neighborhood; however, she had no further comments to make at this time. Councilor Lachapelle closed the public input portion of the meeting at 7:02 PM.

3. Approval of the Codes and Ordinances Committee Minutes [August 4, 2016]

Councilor Gates **MOVED** to revise and **APPROVE** the August 4, 2016, Committee meeting minutes. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

5. Amendment to Chapter 45

Councilor Lachapelle introduced the proposed Amendment to Chapter 45 as follows:

AMENDMENT TO CHAPTER 45 OF THE GENERAL ORDINANCES OF THE CITY OF
ROCHESTER REGARDING OVERNIGHT PARKING, OCCUPANCY AND CAMPING
ON CITY OWNED PROPERTY

THE CITY OF ROCHESTER ORDAINS:

That Chapter 45 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows:

CHAPTER 45

**OVERNIGHT PARKING, OCCUPANCY AND CAMPING ON CITY OWNED
PROPERTY**

SECTION ANALYSIS

- 45.1 Authority
- 45.2 Purpose
- 45.3 Acts Prohibited
- 45.4 Definitions
- 45.5 Exceptions
- 45.6 Responsibility
- 45.7 Removal
- 45.8 Enforcement
- 45.9 Severability
- 45.10 Effective Date

45.1 Authority.

In accordance with and under the authority of New Hampshire Revised Statutes Annotated 41:11; 41:11-a; and 47:17, the City Council of the City of Rochester hereby adopts the following ordinance for the regulation of overnight parking or camping on all City-owned property.

45.2 Purpose.

The purpose of this Ordinance is to protect the public peace, preserve public law and order, promote safety and welfare and ensure proper and decent conduct for the residents of the City of Rochester and the general public, in the use of City-owned properties.

45.3 Acts Prohibited.

From and after the effective date of this ordinance it shall be unlawful for any person to camp, or to park, with occupancy by one or more persons, any vehicle or recreational vehicle, either overnight or for any two-hour period between dusk and dawn, on any City-owned lands within the City of Rochester.

45.4 Definitions.

- (a) *Camp*: Includes pitching a tent, placing or erecting any other camping device, or sleeping in or on the City-owned property.
- (b) *Recreational vehicle*: Any vehicle fitting the definition in RSA 216-I:1, VIII.
- (c) *City-owned property*: All properties owned by the City of Rochester.

45.5 Exceptions.

Restrictions in this ordinance shall not apply:

- (a) When permission has been granted by the Chief of Police or designee for official or emergency purposes.
- (b) When permission has been granted by the City Manager or Chief of Police in conjunction with a performance at the Rochester Opera House or with a written special event permit.

45.6 Responsibility.

All violations of parking restrictions and charges accompanied therewith shall be deemed the responsibility of the registered owner of said vehicle. Such registrations may be proven as set forth in RSA 261:60. Said registered owner shall be conclusively presumed to be in control of the vehicle at the time of the parking violation, and no evidence of actual control or culpability needs to be proven as an element of the offense in accordance with RSA 231:132-a.

45.7 Removal.

Any vehicle parked in violation of this Ordinance by be ordered towed by the Rochester Police Department at the expense of the owner or custodian of said vehicle.

45.8 Enforcement.

- (a) Any person who violates this Ordinance shall be guilty of a violation and shall be fined One Hundred Dollars (\$100.00).
- (b) Any duly appointed police officer for the City of Rochester may enforce this Ordinance by utilizing any process authorized by state law, including but not limited to a Local Ordinance Citation pursuant to RSA 31:39-d and Chapter 44 of the City of Rochester Ordinance.
- (c) All penalties collected for violations of this Ordinance shall be for the use of the City and deposited into the City's general fund.

45.9 Severability.

The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this Ordinance.

45.10 Effective Date.

This Ordinance shall take effect upon passage.

Attorney O'Rourke gave a brief update of why the Public Safety Committee had sent the above Amendment to the City Council for review.

Councilor Keans mentioned that LeeAnne Rymes and her crew had parked their RV overnight in the City Hall parking lot. She questioned how this Amendment to chapter 45 of the General Ordinances would be enforced and if special permits would be given out for such circumstances. She recalled that the reason for creating this ordinance to begin with was due to the fact that the Department of Public Works has a difficult job with snowplowing and overnight parking.

Councilor Lauterborn mentioned that the two-hour parking limit seemed stringent if one is having dinner with friends and needs to worry about how long the vehicles are parked. Attorney O'Rourke replied that this ordinance specifically restricts *occupied* vehicles from loitering in the parking lots, and does not have an impact on unoccupied vehicles, as a part of this proposed amendment.

Councilor Gates stated that the word "shall" should be added to section 45.7.

Attorney O'Rourke agreed to gather more information and report back to the Committee the following month. This Amendment is kept in Committee.

6. Amendment to Chapter 46

Councilor Lachapelle introduced the Proposed Amendment to Chapter 46 as follows:

AMENDMENT TO CHAPTER 46 OF THE GENERAL ORDINANCES OF THE CITY OF ROCHESTER REGARDING GRAFFITI ON PRIVATE PROPERTY

THE CITY OF ROCHESTER ORDAINS:

That Chapter 46 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows:

**CHAPTER 46
GRAFFITI ON PRIVATE PROPERTY**

SECTION ANALYSIS

- 46.1 Authority
- 46.2 Purpose
- 46.3 Acts Prohibited
- 46.4 Definitions
- 46.5 Enforcement
- 46.6 Severability
- 46.7 Effective Date

46.1 Authority.

In accordance with and under the authority of New Hampshire Revised Statute Annotated 47:17, the City Council of the City of Rochester hereby adopts the following ordinance for the regulation of graffiti on private property.

46.2 Purpose.

This purpose of this Ordinance is to promote the health, safety and general welfare of the community by creating an aesthetically pleasing environment in which graffiti is declared a nuisance which must be promptly abated by property owners and imposing penalties on vandals.

46.3 Acts Prohibited.

It shall be a nuisance for any person to place graffiti upon any property located within the City of Rochester. Any owner of property within the City of Rochester *shall* remove any graffiti on his/her property within five *business* days of notice of its placement on such property. Maintenance of property in violation of this section is a public nuisance.

46.4 Definitions.

(a) *Graffiti*: Any inscription, word, figure, marking or design that is written, marked, etched, scratched, drawn or painted on any real property that was not authorized in advance by the owner of the real property.

(b) *Owner*: Any person in possession of the affected property and any person having or claiming to have, any legal or equitable interest in the property.

(c) *Person*: Any individual, firm, partnership, corporation, association, or any other organization or entity, however formed.

(d) *Property*: All residential, industrial, or commercial real property, and other property, including but not limited to, fences, poles, signs, rocks, trees, paving, etc.

46.5 Enforcement.

(a) Any person who violates this Ordinance shall be guilty of a violation and shall be fined not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars (\$1,000.00).

(b) Any duly appointed police officer for the City of Rochester and the City of Rochester Code Enforcement Officer may enforce this Ordinance by utilizing any process authorized by

state law, including but not limited to a Local Ordinance Citation pursuant to RSA 31:39-d and Chapter 44 of the City of Rochester Ordinance.

(c) All penalties collected for violations of this Ordinance shall be for the use of the City and deposited into the City's general fund.

46.6 Severability.

The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this Ordinance.

46.7 Effective Date.

This Ordinance shall take effect upon passage.

The effective date of these amendments shall be upon passage.

Attorney O'Rourke gave a brief update of why the Public Safety Committee sent this Amendment to the City Council for review. He said the City does not currently have an ordinance to enforce property owners to clean up vandalism. This amendment would force the property owner to clean the vandalism up in a matter of 5 days, or receive a fine. Councilor Lachapelle said that if anything, it should be 5 days from the receipt of the official notice and not of the offense.

The Committee debated if this Amendment would create a burden on property owner rights.

Councilor Gray suggested revising Section 46.3 to be more specific with the amount permitted for clean up. He suggested "5 **Business Days**".

Councilor Lauterborn **MOVED** to have the Amendment revised and sent to the next Regular Council meeting to be held in October. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a 3 to 1 voice vote.

7. Amendment to Chapter 11.24

Councilor Lachapelle introduced the Proposed Amendment to Chapter 11.24 as follows:
Amendment to 11.24

**AMENDMENT TO CHAPTER 11 OF THE GENERAL ORDINANCES OF THE
CITY OF ROCHESTER REGARDING SCHOOL DEPARTMENT CAPITAL
RESERVE FUND**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 11 of the General Ordinances of the City of Rochester regarding the School Department Capital Reserve Fund and currently before the Rochester City Council, be amended as follows:

11.24 City of Rochester School Department Capital Reserve Fund.

(a) By adoption of a Resolution on December 15, 2015, the City Council established a Capital Reserve Fund pursuant to RSA 34:1 for the purpose of rehabilitating, enlarging, replacing, and/or constructing new school facilities and/or the purchase of land for the enlargement of existing school facilities and/or siting of new school facilities. The name of such fund shall be the School Building Fund.

(b) The City Council, at its sole discretion, may appropriate monies to said School Building Fund through the annual budgeting process. The City Council may also by favorable vote of $\frac{3}{4}$ of its members, transfer to such fund after a public hearing with notice as provided in RSA 34:2, not more than $\frac{1}{2}$ of its unencumbered surplus funds remaining on hand at the end of the fiscal year, within limits as provided in RSA 34:4. No transfer from the City's unencumbered surplus funds to the School Building Fund shall be considered until after the annual audit presentation by the independent auditor and confirmation of the stated surplus. The City Council may also accept and appropriate gifts, legacies and trusts to the School Building Fund by majority vote.

(c) Expenditure of funds from the School Building Fund is at the sole discretion of the City Council.

(d) Pursuant to RSA 34:6, the Trustees of Trust Funds shall have custody of all capital reserves transferred to the School Building Fund. The Trustees of the Trust Fund will hold the monies appropriated to the School Building Fund in a separate account. Appropriations made to the School Building Fund will be paid over to the Trustees of the Trust Fund after July 1 but prior to June 30 of the fiscal year of the appropriation.

(e) The City Council may dissolve the School Building Fund at its sole discretion. Upon dissolution of any portion of said fund appropriated from the General Fund said funds will lapse to surplus (Unassigned General Fund fund balance) and cannot be repurposed directly to a different capital fund or project. Any funds contained in the School Building Fund accepted and appropriated from gifts, legacies or trusts may be redirected at the discretion of the City Council.

The effective date of these amendments shall be upon passage.

Attorney O'Rourke said this is an Amendment similar to any other Capital Reserve Fund. This amendment is intended to implement guidelines for the newest Capital Reserve Fund, which had been adopted in December, 2015, by the full City Council relative to the School Department's Capital Reserve Fund.

Councilor Bogan **MOVED** to send this Amendment to the next Regular City Council meeting in October for approval. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

8. Fireworks

Councilor Lachapelle introduced the Proposed Amendment to Chapter 23. Councilor Bogan questioned how this ordinance could be enforced. It was determined if enough debris/evidence were found at a particular location without the required regulations being followed then a fine could be issued.

Several suggestions were made to tighten up the language. The matter will be kept in Committee for one month and Attorney O'Rourke is to provide a revised version to the next Codes meeting, which is meeting on October 6, 2016 at 6:00 PM in Council Chambers.

8. Drug Free Zone

Councilor Lachapelle referred to a memo from the Director of the Rochester Public Library, which indicates that the Library is already in a "Drug Free Zone".

9. Other

Kelly Walters, City Clerk, gave a brief update on the codification process. She informed the Committee that the interim City of Rochester General Ordinances could be accessed on the City's Website: <http://www.ecode360.com/RO2619> She mentioned that the Rules of Order had not been included in the initial bidding process. More information can be found on a Change Order, which would be submitted to the City Manager's Office in September.

10. Adjournment

Councilor Gates **MOVED** to **ADJOURN** the Committee meeting at 8:14 PM. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Kelly Walters, CMC
City Clerk