

**Regular City Council Meeting
November 8, 2023
Council Chambers
6:00 PM**

COUNCILORS PRESENT

Councilor Beaudoin
Councilor Berlin
Councilor de Geofroy
Councilor Desrochers
Councilor Fontneau
Councilor Gilman
Councilor Gray
Councilor Hainey
Councilor Hamann
Councilor Larochelle
Councilor Malone
Mayor Callaghan

OTHERS PRESENT

Katie Ambrose, City Manager
Terence O'Rourke, City Attorney
Mark Sullivan, Finance Director
Peter Nourse, Director of City Services

COUNCILORS EXCUSED

Deputy Mayor Lachapelle

Minutes

1. Call to Order

Mayor Callaghan called the Regular City Council meeting to order at 6:00 PM.

2. Opening Prayer

Mayor Callaghan asked all to stand for a moment of silence.

3. Pledge of Allegiance

Mayor Callaghan asked Councilor Beaudoin to lead the Pledge of Allegiance.

4. Roll Call

Kelly Walters, City Clerk, took the roll call attendance. All Councilors were present except for Deputy Mayor Lachapelle who had been excused.

5. Acceptance of Minutes

5.1 Regular City Council Meeting: October 3, 2023 *consideration for approval*

Councilor Hailey **MOVED** to **ACCEPT** the October 3, 2023, Regular City Council meeting minutes. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

5.2 Special City Council Meeting: October 17, 2023 *consideration for approval*

Councilor Hailey **MOVED** to **ACCEPT** the October 17, 2023, Special City Council meeting minutes. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

6. Communications from the City Manager

Katie Ambrose, City Manager, thanked all volunteers who supported the Municipal Election for the City of Rochester. She announced that there was a 22.3% citywide voter turnout.

City Manager Ambrose announced that the deadline to request a recount is extended by one day due to the observation of Veterans Day and that all potential recounts shall be held on November 18, 2023, at the Community Center.

City Manager Ambrose's report is as follows:

6.1 City Manager's Report

Contracts and documents executed since last month:

- **Department of Public Works**
 - NHDOT Sidewalk Maintenance Agreement Rt202/Rt 11 Corridor
 - Change Order, Tara Estates Sewer Pump Station.
 - Change Order, Rt202A Water Main Extension & Tank project – D&C
 - Change Order #11, Rt 202A Water Main – D&C P.
Estimate, Demolition Chlorinator Building –

S.U.R.

- Submetering Utility Billing Agreement – Prescott Estates MHP
- Change Order, City Hall & Opera House egress remediation – Careno
- Letter of Commitment, Household Hazardous Waste Day
- Agreement for Engineering Services, Salmon Falls Sewer Pump Station – Weston & Sampson
- **Economic Development**
 - FY23-24 CAP Weatherization – Tradewind
 - FY24 CAP Weatherization , CDBG Grant
 - FY23-24 RHA Environmental Review
 - Contract for Economic Development Strategic Plan – RKG Services
 - FY23-24 CAP Weatherization – Olde Farm Lane
- **Finance**
 - Engineering Services/Ground Borings @ Nancy Loud School – S.W. Cole Engineering
- **Police**
 - Agreement for engineering services, Dispatch renovations - Weston & Sampson

The following standard report has been enclosed:

- Personnel Action Report Summary

7. Communications from the Mayor

Mayor Callaghan announced an event to be held at the Rochester Common in honor of Veterans' Day, November 11, 2023, starting at 11:00 AM.

7.1. Citation of Merit – Rochester Firefighters, dispatchers, and paramedics

Chief Dube read the North Main Street Narrative (Addendum A) and presented several Citations of Merit from the State of NH for the following members of the Public Dispatch Safety Center, Frisbee EMS Partners, and members of the Rochester Fire Department:

Public Safety Dispatch Center: <ul style="list-style-type: none"> • Alisha Wood • Ellen Spicer Frisbie EMS: <ul style="list-style-type: none"> • Amanda Woodbury • Stephanie Ladd • John McClain • Bob Frechette • Dave Emmons 	Fire Department: <ul style="list-style-type: none"> • Jarod Wheeler • Joseph Burns • Eric Lenzi • Nick Marique • Patick Couch • Matthew Parker • Matthew Woodbury • Colin Hickman • Larry Coon • John Boodey
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8. Presentation of Petitions and Council Correspondence

No discussion.

9. Nominations, Appointments, Resignations, and Elections

9.1. Municipal Election Vote Returns – Canvass of Votes *motion to accept results*

Kelly Walters, City Clerk, presented the Vote returns, which included the following write-in candidates being declared the winner of their races as follows:

- Ward 2
 - Ward Clerk
 - Shelly Back (9 Votes)
 - Selectman
 - Dennis Jepsen (18 Votes)
- Ward 3
 - Supervisor of the Checklist
 - Aiden Ankarberg (13 Votes)
- Ward 6
 - Moderator
 - Sara Eames (6 Votes)

Ms. Walters said with the canvass of votes this evening, the Filing Period for requesting a recount would be open until Thursday, November 16, 2023, at 5:00 PM. She added that all recounts shall be scheduled to occur on Saturday, November 18, 2023, at the James Foley Community

Center. The starting time of the recounts shall be announced soon.

Attorney O'Rourke gave a brief description of how a tie vote would be handled "by lot" once the recount is completed. The winner shall be determined through the process of a simple bingo drawing, whereas numbers 1 through 20 shall be placed in a bingo drum. Each candidate will be assigned the even or odd numbers. The first number drawn shall determine the winner, based upon whether even or odd.

Councilor Beaudoin **MOVED** to accept the tie breaking process as proposed by the City Attorney. Councilor Hamann seconded the motion. The Council briefly discussed the matter. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Desrochers **MOVED** to **ACCEPT** the Vote Returns as presented by the City Clerk. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

10 Reports of Committee

10.1 Appointments Review Committee:

10.1.1 Appointment: Dennis Raymond – Conservation Commission, Seat I, New Alternate member, *term to expire 1/2/2025* **consideration for approval**

Mayor Callaghan **MOVED** to **APPOINT** Dennis Raymond to the Conservation Commission, Seat I, as a New Alternate Member, with a term to expire on January 2, 2025. Councilor Hamann seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

10.1.2 Reappointment: Alexandra Van Binsbergen – Recreation & Arena, Seat C, Regular Member, *term to expire 1/2/2026* **consideration for approval**

10.1.3 Reappointment: Kevin Barry – Recreation & Arena, Seat D, Regular Member, *term to expire 1/2/2027* **consideration for approval**

10.1.4 Reappointment: Dale Bickford – Recreation & Arena, Seat F, Regular Member, *term to expire 1/2/2027* **consideration for approval**

Mayor Callaghan said if there are no objections, he would call for a vote on all three reappointments as stated above. Mayor Callaghan asked for a vote on all three reappointments. The **MOTION CARRIED** by a unanimous voice vote.

10.2 Codes & Ordinances Committee

10.2.1 Amendment to Chapter 7-35 of the General Ordinances of the City of Rochester Regarding the Economic Development Commission *first reading and consideration for adoption*

Mayor Callaghan read the Amendment by title only as follows:

**Amendment to Chapter 7 of the General Ordinances of
the City of Rochester Regarding
the Economic Development Commission**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struckout~~ additions in RED):

§ 7-35 Economic Development Commission.

A. The Economic Development Commission shall consist of 11 members, two of which members shall be ex officio members. Nine of the initial members of the Commission shall be those currently serving on the Commission. Thereafter, three members shall be elected annually for a term of three years with vacancies being filled by the City Council for any unexpired terms. The initial election shall be so arranged that 1/3 of the members may be elected each year. After the initial election, the three annual vacancies shall be filled by the Mayor in accordance with Section **74** of the City Charter. The Economic Development Commission shall recommend at least two persons from the private sector to the Mayor each year as potential nominees. In all cases, election shall be by the City Council. Members shall be chosen for their expertise, experience and abilities in business, industry, finance, real estate, government and law. A majority of the members shall reside within the City of Rochester and up to four of the elected members may reside outside of the City; provided, however, that any elected member residing outside of the City shall maintain a place of business or shall be employed within the City,

while serving as a member of the Commission. The Mayor and the Economic Development Director shall be ex officio, nonvoting members of the Commission.

B. The Chairperson shall be appointed annually by the Mayor, and the Commission shall elect from its members such other officers and committees as it deems necessary.

C. The Economic Development Commission shall perform the following functions:

- (1) Promote the City of Rochester, through advertising, prospect development and other means, as an attractive location for industrial and business **development and/or** expansion and **residential uses related thereto**;
- (2) Assist prospects interested in evaluating Rochester as a potential industrial or **commercial** business location; act as the official agent of the City government in matters pertaining to economic development;

Amendments are effective upon passage.

Attorney O'Rourke explained that the Codes and Ordinances Committee met to discuss amending the City Ordinance to change some of the language as outlined above in red ink. Councilor Hamann **MOVED** to **APPROVE** the Amendments. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

10.2.2 Committee Recommendation: To approve the language of the Amendment to Chapter 7-63 Regarding the Economic Development Reserve Fund to be codified into the General Ordinances of the City of Rochester *consideration for approval*

Mayor Callaghan read the Amendment by title only, see attached (Addendum B).

Attorney O'Rourke stated that the City Council adopted a resolution on July 5, 2022, to create the Economic Development Non-Capital Reserve Fund. Attorney O'Rourke explained that this is the same resolution broken down into paragraphs to be codified into the City Ordinances. Councilor Hamman **MOVED** to **APPROVE** the Amendment. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a

unanimous voice vote.

10.2.3 Amendment to Chapter 7-83 of the General Ordinances of the City of Rochester Regarding the Code of Ethics and Conduct for Elected and Appointed Officials – Board of Ethics *first reading and refer to November 21 Workshop for discussion*

Mayor Callaghan read the Amendment and referred the matter to the City Council Workshop to be held on November 21, 2023.

Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Code of Ethics and Conduct for Elected and Appointed Officials

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

ARTICLE XI

Code of Ethics and Conduct for Elected and Appointed Officials

§ 7-83 Board of Ethics.

A. A Board of Ethics ("BOE") is hereby created. This BOE shall consist of three (3) persons: one member shall be appointed by the Mayor from the City Council, one member shall be appointed by the Chair of the School Board from the School Board, and one member shall be appointed by the Chair of the Police Commission from the Police Commission.

B. Each BOE Member selected is required to serve unless the BOE Member is the subject of the Complaint, has a conflict of interest, or is excused due to unavailability or exceptional causes (such as a health issue).

C. The BOE Members shall elect a chairperson and the BOE may adopt such rules for the conduct of its business as it sees fit. The BOE shall have the power to draw upon City departments for reports and information and stenographic and clerical help.

§ 7-84 Ethics Investigation Officer.

A. The position of Ethics Investigation Officer ("EIO") is hereby created. The City Manager shall have the power to identify and retain an EIO, with approval from the BOE, to assist with the investigation and prosecution of any Complaint which has been referred for investigation. The EIO, with approval of the BOE, shall have sufficient experience and training to conduct the investigation.

§ 7-85 Complaints, Investigations, and Hearing.

A. Complaint Requirements. Any City official may submit a written complaint alleging one or more violations of the Code of Ethics and Conduct for Elected and Appointed Officials ("Ethics Code"). Such complaint must be based on personal knowledge, and set forth facts with enough specificity and detail for a determination of sufficiency for investigation. The Written Complaint must be signed under oath. The Complaint shall be delivered to the City Attorney with a copy to the Mayor and City Clerk. The City Attorney shall promptly provide a copy of the Complaint to the Charged Party.

B. Review for Sufficiency.

1. A Review for Sufficiency of the Complaint will be completed within thirty (30) days of receipt. This review will be based on the allegations contained in the Complaint and the immediately available public meetings or records referenced in the Complaint.

2. The City Attorney, Mayor, and City Manager in the case of a City Board, the City Attorney, Mayor, and Superintendent in the case of the School Board, or the City Attorney, Mayor, and Police Chief in the case of the Police Commission shall conduct the Review of Sufficiency, except in cases in which the Mayor is the subject of the Complaint. Complaints against the Mayor, School Board Chair, or Police Commission Chair shall be reviewed by the City Attorney and the Deputy Mayor, School Board Vice Chair, or Police Commission Vice Chair, respectively.

3. If the Complaint is deemed insufficient, the Complainant will be notified in writing of that decision with a copy provided to the Charged Party. A Complaint will be deemed sufficient if it is determined that the Complaint establishes on its own that it is more probable than not that a violation of the Ethics Code may have occurred.

4. If the Complaint is deemed sufficient for further investigation, it shall be referred to the EIO for further action and all parties will be notified of this step through communication in writing.

C. Investigation Phase. The EIO shall be provided the full cooperation

of the City government to conduct such investigation as may be necessary to determine whether any violation may have occurred and next steps. The Charged Party shall have an opportunity to provide a response to the Complaint.

The EIO's investigation shall be completed within forty-five (45) days of the date of referral unless the Charged party and the Chair of the BOE mutually agree to a longer period.

The EIO shall provide a written report with the conclusions reached in the completed investigation to the BOE. The EIO shall provide a non-binding recommendation as to the disposition of the Complaint to the BOE. Thereafter, all action with regard to the Complaint shall be taken by the BOE.

D. Board of Ethics Hearing.

1. The BOE shall take no further evidence on any Complaint, but shall make its determination based upon the report received by the EIO. However, the BOE shall hold at least one (1) public hearing at which the EIO, the Complainant, and the Charged Party shall be afforded an opportunity to present oral and written argument to the BOE. The BOE may hear from such other and further parties as it determines appropriate.

2. Any party may be represented by legal counsel at his or her own expense at any stage of proceedings related to the Ethics Code.

3. The BOE shall issue a written decision within thirty (30) days of the final public hearing with findings and a disposition, dismissal, or referral for further action if a violation found. If a violation has been found, the BOE shall recommend a sanction or penalty and refer the matter to the City Council, School Board, or Police Commission for disposition, sanction, or other action as set forth in the Ethics Code.

§ 7-86 Conflict Between Ethics Code and this Article. To the extent a conflict arises between the Ethics Code and this Article, this Article shall prevail.

Amendments are effective on January 1, 2024.

10.3 Community Development Committee

Councilor Hainey said the Community Development Committee is starting to receive applications for next Fiscal Year's CDBG Grant funding.

She reminded non-profit organizations to send in their applications. Mayor Callaghan thanked Councilor Hainey for her work on the Committee over the past two years.

10.4 Finance Committee

No discussion.

10.5 Planning Board

No discussion.

10.6 Public Safety

Councilor Gilman read the Committee recommendations as outlined below. Mayor Callaghan said if there are no objections, the three items could be voted upon all at once. Councilor Beaudoin requested a separate discussion on 10.6.1.

10.6.1 Committee Recommendation: To remove the broken speed limit sign from Salmon Falls Road and replace it with a 25 mph sign down by the telephone pole *consideration for approval*

Councilor Beaudoin asked where the sign would be placed on Salmon Falls Road and questioned if the entire road would be set at 25 mph. Councilor Berlin stated that the radar speed sign is the one in question that is broken and being replaced; however, the replacement sign would not be another radar sign; it would be a standard speed limit sign (25 mph).

Councilor Fontneau said some residents are confused with the speed limit on Salmon Falls Road, which changes up/down within a half mile range. He **MOVED** to remove the broken sign and to wait to replace the sign until the speed limit is reviewed and the appropriate standard signs are placed. Councilor Beaudoin seconded the motion.

Councilor de Geofroy suggested that the broken sign should be replaced and that there should be a separate discussion about the overall speed limit on that street.

Councilor Berlin agreed and said DPW would remove the broken radar sign and replace it, two feet down the road, with a standard pole sign. He felt it was important to replace the broken sign now and review

the speed limit signs posted for Salmon Falls Road at another Public Safety meeting.

Mayor Callaghan called for a vote to amend the motion to remove the broken radar speed limit sign and not to replace that sign at this time. The **MOTION CARRIED** by a majority voice vote. Mayor Callaghan called for a vote on the motion as amended. The **MOTION CARRIED** by a majority voice vote.

**10.6.2 Committee Recommendation: To install a streetlight on the existing pole at the intersection of Tebbetts and Roberts Road
*consideration for approval***

Councilor Hamann **MOVED** to **APPROVE** the Committee recommendation as stated above. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

**10.6.3 Committee Recommendation: To add a "dead end" sign at the entrance of Roberts Road
*consideration for approval***

Councilor Hamann **MOVED** to **APPROVE** the Committee recommendation as stated above. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

10.7 Public Works

10.7.1 Resolution Authorizing Supplemental Appropriation of \$17,414.03 to FY24 General Fund CIP Fund for Ground Water Monitoring *first reading and consideration for adoption*

Mayor Callaghan read the resolution for the first time by title only as follows:

Resolution Authorizing Supplemental Appropriation of \$17,414.03 to FY24 General Fund CIP Fund For Ground Water Monitoring

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

That the Mayor and City Council of the City of Rochester hereby appropriate Seventeen Thousand Four Hundred Fourteen and 03/100 Dollars (\$17,414.03) to the General Fund CIP for the purpose of paying costs associated with Groundwater Monitoring. The entirety of this supplemental appropriation shall be derived from the Monsanto Class Action lawsuit payment.

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.

Councilor Gray referred to the back-up information, which could be found in the packet on page 119. Councilor Desrochers **MOVED** to **ADOPT** the resolution. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

11 Unfinished Business

11.1 Resolution Authorizing Transfer of \$250,000 from the General Fund Unassigned Fund Balance to the Trustees of the Trust Fund for the Public Works Large Vehicle Capital Reserve Fund (CRF) *second reading and consideration for adoption*

Mayor Callaghan read the resolution for the second time by title only as follows:

Resolution Authorizing Transfer of \$250,000 from the General Fund Unassigned Fund Balance to the Trustees of Trust Funds for the Public Works Large Vehicle Capital Reserve Fund (CRF)

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

That the Mayor and City Council of the City of Rochester hereby transfer Two Hundred Fifty Thousand Dollars (\$250,000) to the Trustees of the Trust Funds for the purpose of funding the Public Works Large Vehicles CRF. The source of funding shall be the General Fund Unassigned Fund balance.

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.

Councilor Hamman **MOVED** to **ADOPT** the resolution. Councilor Fontneau seconded the motion. Mark Sullivan, Director of Finance, gave a brief overview of how the funds would be transferred into three different Capital Reserve Funds as stated in the resolutions. Councilor Beaudoin said that he initially supported the concept of setting up these Capital Reserve Funds; however, he realized that these funds (\$1,500,000) would not be included with the annual budget calculations, which he felt was a way to elude the Tax Cap. He said he would not support the resolutions unless the process could somehow include the funding of such accounts through the annual budget process. Mr. Sullivan gave details about the Tax Cap calculation process.

Councilor Beaudoin asked if the purchase of a new Fire Truck in a future year would still be bonded. Mr. Sullivan said in the past, the purchase of a new fire truck would have been bonded; however, it does not make sense to bond for that type of purchase. He said it is wiser to pay cash, use the unassigned fund balance, or to use Capital Reserve Funds to purchase a fire truck. He gave details regarding the benefit to the taxpayers to have the City properly plan these large purchases. He explained that it takes the pressure off the tax cap in the particular year in which the purchase is made because the funds are already earning interest and saved for that specific purpose. He added that the purchase of a Fire Truck must still be approved by the full City Council, which means the City Council still has control over the expenditures. He clarified that a resolution would be drafted, which must outline the funding source; if the Capital Reserve Fund is chosen, then the burden is decreased from the property tax levy for the tax year in which the large purchase occurs. He explained that the Finance Department is not proposing the expenditure of any of the funds until 2027 in order to allow the money to earn interest.

Councilor Desrochers thanked Mr. Sullivan for the explanation and clarified for the public that the motion is to transfer funds into these three Capital Reserve Funds, not to authorize the purchase of specific equipment at some point in the future.

Mr. Sullivan displayed a PowerPoint Slide outlining the Capital Reserve Fund Process. He said setting up Capital Reserve Funds is not uncommon in NH and he used the Municipality of Dover, NH as an example.

Councilor Berlin wished to clarify if the next funding installments proposed to occur in future fiscal years would be included as a Supplemental Appropriation or if it would be included with the budget process. Mr. Sullivan gave reasons why the FY 24 installment was not included with the CIP Budget; however, in subsequent years, the intent is to include these requests to transfer funds within the CIP Budget.

Councilor Gray said the City Ordinances regulate the unassigned fund balance and stipulate what the maximum amount ought to be; however, that maximum amount has been far exceeded for a number of years. He listed several projects which have been placed on hold because of lack of funding in the City's annual budget process. He said setting up these Capital Reserve Funds only gives the illusion of decreasing the unassigned fund balance.

Mr. Sullivan reiterated that the City Council has full authority over these funds and any expenditures would follow the City Council process, which includes a resolution outlining the funding source for the large purchase/project or to repurpose funds out of that account all together.

Mayor Callaghan called for a roll call vote. The **MOTION CARRIED** by a 9 to 3 roll call vote as follows: Councilors de Geofroy, Hainey, Larochele, Berlin, Fontneau, Hamann, Desrochers, Malone, and Mayor Callaghan voted in favor of the motion. Councilors Gilman, Gray, and Beaudoin voted against the motion.

11.2 Resolution Authorizing Transfer of \$250,000 from the General Fund Unassigned Fund Balance to the Trustees of the Trust Fund for the Fire Department Apparatus Capital Reserve Fund (CRF) *second reading and consideration for adoption*

Mayor Callaghan read the resolution for the second time, by title only as follows:

Resolution Authorizing Transfer of \$250,000 from the General Fund Unassigned Fund Balance to the Trustees of Trust Funds for the Fire Department Apparatus Capital Reserve Fund (CRF)

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

That the Mayor and City Council of the City of Rochester hereby transfer Two Hundred Fifty Thousand Dollars (\$250,000) to the Trustees of the

Trust Funds for the purpose of funding the Fire Department Apparatus CRF. The source of funding shall be the General Fund Unassigned Fund balance.

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.

Councilor Hamann **MOVED** to **ADOPT** the resolution. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a 9 to 3 roll call vote. Councilors de Geofroy, Hamann, Desrochers, Malone, Berlin, Hainey, Larochelle, Fontneau, and Mayor Callaghan voted in favor of the motion. Councilors Beaudoin, Gray, and Gilman voted against the motion.

11.3 Resolution Authorizing Transfer of \$250,000 from the General Fund Unassigned Fund Balance to the Trustees of the Trust Fund for the Public Buildings Capital Reserve Fund (CRF) *second reading and consideration for adoption*

Mayor Callaghan read the resolution for the second time by title only as follows:

Resolution Authorizing Transfer of \$250,000 from the General Fund Unassigned Fund Balance to the Trustees of Trust Funds for the Public Buildings Capital Reserve Fund (CRF)

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

That the Mayor and City Council of the City of Rochester hereby transfer Two Hundred Fifty Thousand Dollars (\$250,000) to the Trustees of the Trust Funds for the purpose of funding the Public Buildings CRF. The source of funding shall be the General Fund Unassigned Fund balance.

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.

Councilor Desrochers **MOVED** to **ADOPT** the resolution. Councilor Malone seconded the motion. The **MOTION CARRIED** by a 9 to 3 roll

call vote. Councilors Hainey, Malone, Fontneau, Larochelle, de Geofroy, Desrochers, Berlin, Hamann, and Mayor Callaghan voted in favor of the motion. Councilors Gray, Gilman, and Beaudoin, voted against the motion.

11.4 Resolution Authorizing Donation to the Veterans of Foreign Wars (VFW) Concord in the amount of \$49,640.57 *second reading and consideration for adoption*

Mayor Callaghan read the resolution for the second time by title only as follows:

Resolution Authorizing Donation to the Veterans of Foreign Wars (VFW) Concord in the amount of \$49,640.57

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

That the City of Rochester hereby makes a donation to the Veterans of Foreign Wars (VFW)- Concord in the amount of Forty Nine Thousand Six Hundred Forty Dollars and Fifty Seven Cents (\$49,640.47). The source of funds shall be derived from General Fund Unassigned Fund Balance.

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.

Councilor Desrochers **MOVED** to **ADOPT** the resolution. Councilor Malone seconded the motion. The **MOTION CARRIED** by a 12 to 0 roll call vote. Councilors Berlin, Desrochers, Gray, Fontneau, Hamann, Hainey, Larochelle, Beaudoin, Malone, Gilman, de Geofroy, and Mayor Callaghan voted in favor of the motion.

12 Consent Calendar

No discussion.

13. New Business

13.1. Amendments to Chapter 223 of the General Ordinances of the City of Rochester regarding Highways and Sidewalks *first reading and refer to*

November 21 Workshop for discussion

Mayor Callaghan read the Amendment by title only for a first time and referred the matter to the November 21, 2023, City Council Workshop, see attached (Addendum C).

13.2. Resolution Authorizing Supplemental Appropriation of Five Million Seven Hundred Fifty Seven Thousand Six Hundred Ninety Three Dollars (\$5,757,693) in relation to the JUUL E-Cigarette Litigation first reading and consideration for adoption

Mayor Callaghan read the Amendment by title only. See attached (Addendum D).

Councilor Hamann **MOVED** to **ADOPT** the resolution. Councilor Malone seconded the motion. Councilor Beaudoin understood that both the City and School Department would be entitled to certain portions of the funding. He questioned if there were any stipulations regarding how the funding could be utilized. City Attorney O'Rourke read a portion of the settlement stating specifications of how the funding could be spent. He added that any/all attorney fees have already been paid and the remaining funds (\$5,757,693) would be utilized to address problems of youth vaping and nicotine addiction. Councilor Desrochers questioned how the funds would be distributed and how the determinations of expenditures would be decided. City Attorney O'Rourke stated that it will be determined by the City Council as ideas for expenditures are presented. City Manager Ambrose stated that the disbursements would be kept in a multi-year/non-lapsing fund. She indicated that the anticipation is that the first installment is estimated at \$1,800,000, with additional installments being received annually through December 2026. The **MOTION CARRIED** by a unanimous voice vote.

13.3. Resolution Authorizing the Application for and Acceptance of a State of New Hampshire Department of Environmental Services (NHDES) Drinking Water and Groundwater Trust Fund (DWGTF) Loan for the Salmon Falls Water Booster Station Upgrade Project in an amount up to \$3,700,000.00 first reading and consideration for adoption

Mayor Callaghan read the resolution for the first time, by title only

as follows:

Resolution Authorizing the Application for and Acceptance of a State of New Hampshire Department of Environmental Services (NHDES) Drinking Water and Groundwater Trust Fund (DWGTF) Loan for the Salmon Falls Water Booster Station Upgrade Project in an amount up to \$3,700,000.00

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

That the Mayor and City Council of the City of Rochester, by adoption of this Resolution, authorize the Department of Public Works to submit a loan application in the amount of up to Three Million Seven Hundred Thousand Dollars (\$3,700,000) to the NHDES DWGTF Loan program in order to finance the Salmon Falls Water Booster Station Upgrade Project.

Further, the Mayor and City Council of the City of Rochester, by adoption of this Resolution authorize the City Manager and/or the Finance Director to act as the City's representative(s) for the execution of all documents necessary to complete the application, process disbursements and execute loan documents associated with DWGTF.

To the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to designate and/or establish such accounts and/or account numbers as necessary to implement the transactions contemplated by this Resolution and to establish special revenue, non-lapsing, multi-year fund account(s) as necessary to which said sums shall be recorded.

Councilor Hamann **MOVED** to **ADOPT** the resolution. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

13.4. Resolution Authorizing Acceptance of a Vest Grant from the State of New Hampshire in the amount of \$10,060.88 first reading and consideration for adoption

Mayor Callaghan read the resolution for the second time, by title only as follows:

Resolution Authorizing the Acceptance of a Vest Grant from the State of New Hampshire in the amount of \$10,060.88

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

The City hereby accepts a Vest Grant of Ten Thousand Sixty and 88/100 Dollars (\$10,060.88) from the State of New Hampshire to be used by the Rochester Police Department for the purchase of new ballistic vests.

To the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to establish and/or designate such accounts and or account numbers as are necessary to implement the transactions contemplated in this Resolution and to establish special revenue, non-lapsing, multi-year fund accounts(s) as necessary to which said sums shall be recorded.

Councilor Desrochers **MOVED** to **ADOPT** the resolution. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

14. Non-Meeting/Non-Public Session**14.1 Non-Public Session – Land, RSA 91-A:3, II (d)**

Councilor Hainey **MOVED** to enter a Non-Public Session under Land, RSA 91-A:3, II (d), at 6:52 PM. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a roll call vote of 12 to 0 as follows: Councilors Hamann, Desrochers, Gilman, Malone, Fontneau, Larochelle, Gray, de Geofroy, Berlin, Hainey, Beaudoin, and Mayor Callaghan voted in favor of the motion.

Councilor Hamann **MOVED** to exit the Non-Public Session at 8:14 PM. Councilor Hainey seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Hamann **MOVED** to seal the minutes indefinitely because disclosure would render the proposed action ineffective. Councilor de Geofroy seconded the motion. The **MOTION CARRIED** by a 12 to 0 roll call vote as follows: Councilors Desrochers, Gray, Hamann, de Geofroy, Beaudoin, Gilman, Hainey, Malone, Fontneau, Larochelle, Berlin, and Mayor Callaghan voted in favor of the motion.

15. Adjournment

Mayor Callaghan **ADJOURNED** the Regular City Council meeting
at 8:15 PM.

Respectfully Submitted,

Kelly Walters, CMC
City Clerk

132 North Main Street, Rochester NH, Building Fire with Entrapment, 12/3/2022

On Saturday, December 3 at 8:23 AM, the Rochester Fire Department was dispatched to 132 North Main Street for a reported building fire. Firefighters arrived on scene to find a working bedroom fire in the 2nd floor apartment. Firefighters were immediately advised that there were still occupants in the fire apartment. Engine-4 conducted an immediate search without the protection of a hose line. Engine-2 and Truck-6 combined operations to get a hose line stretched to the fire room, protecting the stairwell, knocking the fire down, and ventilating the building to assist with rescues. Engine-4 found two occupants still in the apartment. The first victim was assisted from the building. The 2nd victim was physically disabled and became combative with rescuers due to the effects of smoke inhalation. Firefighters made attempts to assist the victim out, but eventually resorted to carrying the victim down a steep, narrow set of stairs and out of the building.

All occupants were treated by Frisbie Paramedics and transported to Frisbie Memorial Hospital for injuries sustained in the fire. One patient was admitted to the hospital for multiple days until recovered. Two others were treated and released.

The initial actions of first arriving firefighters, the professional and efficient actions of dispatchers, and expert emergency medical treatment and transport of victims, made a dramatic effect on the positive outcome of this situation. Quick decisions, actions and teamwork seriously reduced the exposure of victims to the fire and smoke conditions. One of the victims suffered from lung related medical concerns, and any additional time in that environment would have been detrimental to the chance of survival. The victim spent many days in the hospital recovering from injuries.

All personnel performed their duties with honor and skill, representative of the finest traditions of emergency services, and reflecting great credit upon themselves, the City of Rochester, Frisbie Memorial Hospital and first responders everywhere. For their actions, they have received a Unit Citation from the NH Fire and Emergency Services Committee of Merit.

Dispatchers:

- Alisha Wood
- Ellen Spicer

Frisbie EMS:

- Amanda Woodbury
- Stephanie Ladd
- John McClain
- Bob Frechette
- Dave Emmons

Fire Department:

- Jarrod Wheeler
- Joseph Burns
- Eric Lenzi
- Nick Marique
- Patrick Couch
- Matthew Parker
- Matthew Woodbury
- Colin Hickman
- Larry Coon
- John Boodey

Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Economic Development Reserve Fund

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

§ 7-63 Economic Development ~~Special~~ Reserve Fund.

A. Statement of purpose.

(1) The City of Rochester currently serves as the "Host Community" for the Turnkey Recycling and Environmental Enterprises Waste Disposal Facility (TREE) currently operated by Waste Management of New Hampshire, Inc., and located on the Rochester Neck Road. By virtue of its status as Host Community for TREE, the City of Rochester, in addition to incurring significant expenses in connection with such facility, receives significant financial benefits in the form of real property taxes, user fees (in the form of so-called "host community fees") and various other benefits relative to the cost to the City and its inhabitants of the disposal and/or recycling of various solid waste, including reduced and/or eliminated fees for the disposal and/or recycling of solid waste generated within the City of Rochester. It is currently estimated that the permitted capacity of the TREE Waste Disposal Facility (TLR-III) will be reached in approximately the year 2023. When such facility is filled to its permitted capacity, it is anticipated that the City will experience a loss in revenues, and the City and its inhabitants will experience increased costs associated with the disposal and/or recycling of solid waste, particularly in the form of reduced and/or lost user fees and reduced property tax revenues, as well as increased costs associated with the disposal and/or recycling of solid waste. Therefore, in an effort to offset the expected loss of revenues and increased costs occurring to the City as a result of the anticipated filling of the TREE Waste Disposal Facility to its permitted capacity and to promote the general fiscal strength and well-being of the City, it is necessary that economic development in the City of Rochester be promoted and/or maintained to ensure the existence and/or expansion of a vibrant economic base for the City and its inhabitants.

(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. The special reserve fund established in Subsection **B** of this section shall be known as the "City of Rochester Economic Development Special Reserve Fund." No expenditure from said City of Rochester Economic Development Special Reserve Fund shall be made without an appropriation of such funds having been adopted by the Rochester City Council, which appropriation shall provide that such appropriation is for economic development purposes and shall contain a statement and/or finding by the City Council indicating the manner in which it is anticipated that such appropriation is related to the economic development of the City of Rochester.

B. There is hereby created a non-lapsing budgetary account within the City of Rochester, pursuant to the authority granted to the City by the provisions of RSA 47:1-b, such special reserve fund to be known as the "City of Rochester Economic Development Special Reserve Fund." Such fund shall be funded on an annual basis by the appropriation by the City Council to such special reserve fund of an amount not less than one hundred thousand dollars (\$100,000.) from the funds annually payable to the City of Rochester by Waste Management of New Hampshire, Inc., from the so-called "host community fees" payable to the City pursuant to the provisions of the Host Agreement between the City and Waste Management of New Hampshire, Inc., or of any successor to such agreement. In addition to such minimum funding level, the City Manager may, during any fiscal year of the City, upon written notification to, and appropriation by, the City Council,

~~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 year (having in mind the minimum funding/appropriation requirement provided for herein and any other appropriation of such fiscal year's host community fees by the City Council during such fiscal year).~~

A. By Resolution adopted on July 5, 2022, the City Council established a Non-Capital Reserve Fund pursuant to RSA 34:1-a for the purpose of encouraging economic development within the City, encouraging the development of industrial and commercial sites, promoting the City as an attractive location for businesses and residents, and acquisition of land related to the same. The name of the fund is the Economic Development Reserve Fund.

B. The City Council, at its sole discretion, may appropriate funds into said Economic Development Reserve Fund through supplemental appropriations or the annual budgeting process, however, in no case shall said annual appropriation be less than One Hundred Thousand Dollars (\$100,000.00). Revenue sources can be Waste Management Host Fee Revenues, or General Fund Unassigned Fund Balance. In addition, other unanticipated revenue sources, and proceeds from transactions that were originally derived from the Economic Development Reserve Fund, may also be appropriated into the fund upon a majority vote of the City Council.

C. Pursuant to RSA 34:6, the Trustees of Trust Funds shall have custody of all non-capital reserves transferred to the Economic Development Reserve Fund. The Trustees of the Trust Fund will hold the monies appropriated to the Economic Development Reserve Fund in a separate liquid investment account. Appropriations made to the Economic Development Reserve Fund will be submitted to the Trustees of the Trust Fund within the same fiscal year of the appropriation.

D. Pursuant to RSA 34:10, the City Council names the Economic Development Commission as its agent to carry out the objects of the Economic Development Reserve Fund. All expenditures made by the Economic Development Commission shall be made only for or in connection with the purposes for which said Fund was established and only in accordance with §7-38-40 of the City Code. All requests for expenditures shall be approved by the 2/3rds vote of the Economic Development Commission prior to being presented to City Council for final approval. Upon said 2/3rds vote expenditure requests may then be presented to City Council. Expenditure requests shall identify expense categories, or specific project scope detail. General administrative, travel and conference activities shall be ineligible expense activities. Expenditure requests can be presented as part of the annual budget process, or through supplemental appropriations. All approved expenditures shall follow the City's Purchasing Policy.

E. The City Council may dissolve the Economic Development Reserve Fund at its sole discretion. Upon dissolution of any portion of said fund appropriated from the General Fund said funds will lapse to surplus (General Fund Unassigned Fund balance) and cannot be repurposed directly to a different capital fund or project.

Amendments are effective upon passage.

Resolution Authorizing Supplemental Appropriation of Five Million Seven Hundred Fifty Seven Thousand Six Hundred Ninety Three Dollars (\$5,757,693) in relation to the JUUL E-Cigarette Litigation

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

That the Mayor and City Council of the City of Rochester hereby appropriates Five Million Seven Hundred Fifty Seven Thousand Six Hundred Ninety Three Dollars (\$5,757,693) the purpose of addressing the problem of youth vaping and nicotine addiction. The entirety of this supplemental appropriation shall be derived from payments received as part of the City's settlement of the JUUL E-Cigarette lawsuit.

The total School & City Settlement award is Five Million Seven Hundred Fifty Seven Thousand Six Hundred Ninety Three Dollars (\$5,757,693). The School Department's allocation is Four Million Seven Hundred Thirty Eight Thousand One Hundred Ninety One Dollars (\$4,738,191), and the City's allocation is One Million Nineteen Thousand Five Hundred Two Dollars (\$1,019,502). The initial settlement payments shall be disbursed in November-2023, with the remainder disbursed annually each December from 2023 to 2026. Below is the anticipated disbursement schedule.

School Department Settlement		\$4,738,191
City Settlement		\$1,019,502
Total		\$5,757,693
Initial Disbursement		Amount
Nov-23	School Department	\$1,528,848.53
Nov-23	City	\$328,957.74
		\$1,857,806.27
Remaining Disbursements-Estimate		
Dec-23	School Department	\$802,335.62
Dec-23	City	\$172,636.07
		\$974,971.68
Dec-24	School Department	\$802,335.62
Dec-24	City	\$172,636.07
		\$974,971.68
Dec-25	School Department	\$802,335.62
Dec-25	City	\$172,636.07
		\$974,971.68
Dec-26	School Department	\$802,335.62
Dec-26	City	\$172,636.07
		\$974,971.68

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.



City of Rochester, New Hampshire

PUBLIC WORKS DEPARTMENT

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INTEROFFICE MEMORANDUM

TO: City Council
FROM: Peter C. Nourse, Director of City Services
DATE: 02 November 2023
SUBJECT: Update to Chapter 223 Streets and Sidewalks
CC: Katie Ambrose, City Manager
Terence O'Rourke, Cit Attorney
Shanna Saunders, Director of Planning

In 2020 the City Council directed the Department to update the City Ordinances under its charge. Enclosed are the proposed changes to the Streets and Sidewalks ordinance. In formulation of the proposed changes, I reviewed all State RSAs pertaining to public highways. The proposed changes were further developed with other departments including Planning, Building and Licensing. Fire and Police. The City Attorney has reviewed all proposed changes.

The proposed changes provide a much-improved ordinance. In general, the current ordinance has a very old feel, is difficult to interpret in places, and does not reflect current City practices, modern methods of highway regulation, nor current terminology. For example, about ½ of the current ordinance is dedicated to the regulation of news racks.

The proposed changes reflect a complete overhaul of the existing ordinance. Some of the proposed changes include:

- A new process for obstructions in the right of way, sidewalks and City parking lots
- More comprehensive street acceptance requirements for developers
- More comprehensive construction standards
- Addressing traffic calming techniques
- Addressing requirements of private roads
- Addressing winter maintenance practices
- Addressing licensure of utility companies excavating in right of way
- Addressing surety requirements for excavations and pavement restoration
- A process to evaluate oversize and overweight vehicles
- A process for Outdoor dining impacts to the right of way
- Addressing invasive plant species
- Addressing general street lighting requirements
- Private construction on Class VI roads

All proposed changes are supported by Revised Statutes Annotated.

There is no tracked-changed version of the current ordinance as a reference of changes since the proposed version is a near complete overhaul, and because the electronic file of the current ordinance was unstable and did not track well. **The attached Registry of Proposed Changes provides the Council a concordance of proposed changes and their reasoning. This document provides an expedited overview of the proposed changes.**

Enclosures:

1. Registry of Proposed Changes; Updates to Chapter 223 Streets and Sidewalks
2. Chapter 223 Highways and Sidewalks (revised ordinance)
3. Current Chapter 223 Streets and Sidewalks (for reference)

Updates to Chapter 223 Streets and Sidewalks

Registry of Proposed Changes

v. 02NOV 23

Proposed Title Change:

Chapter 223 Highways and Sidewalks

Any reference to “street” or “road(way)” in the current ordinance to include its title has been revised to reference of “highway”. Term “highway” is the proper legal definition of public rights of way.

223-1. Definitions:

Added several new definitions to support recommended changes to the ordinance.

223-2 **Repair of highway, bridge or sidewalk**, is replaced here with 223-2 Regulations of Use of Highways. This new section provides the overarching regulating authority of the City Council per RSA 47:17. 223-2 **Repair of highway, bridge or sidewalk** is proposed to be shifted to 223-18 (see 223-18 below).

223-3 **Prohibiting use of highways** is replaced with 223-3 Standard of Care. This new section makes clear the City’s limits of liability for damages. It cites authorities of RSA 231:90, 231-91, 231:92, and 231: 92-a. **Prohibiting use of highways** is proposed to be covered under new sections 223-4, 5, 6. See below.

223-4 **Elevation** is removed. Modern techniques are well established in highway work and reference here is unnecessary. Elevation is replaced with 223-4 Prohibiting Use of Highways. This new section cites the Department’s use of rules and regulations to limit damage to highways by certain vehicles and cites authority of RSA 231:190, 231:191.

223-5 **Permit for excavation upon highway or sidewalk** is replaced with 223-5 Oversized and Overweight Loads on Public Highways which builds on the previous new section 223-4, Prohibiting use of highways and RSA references 41:11 and 266:18. Revised contents of **Permit for excavation upon highway or sidewalk** are included in the new section 223-11 Excavation on Highways, Right of Ways and Pavement Disturbance Moratorium.

223-6 **Fire Chief to be notified** is replaced with 223-6 No Through Trucks Zones. . This new section cites City authority to restrict the travel of certain truck classes per RSA 41:11. 223-6 **Fire Chief to be notified** is proposed to be addressed under 223-22 Emergency Services Dispatch to be Notified.

223-7 **Moving of buildings through streets** is replaced with **223-7 Highway Damage and Obstructions**. This new section introduces a new permit for obstructions to highways, sidewalks and public parking areas. Cited is authority per several RSAs. Recommended based on recent events where large private projects have taken public parking spaces without prior detailed City review. Proposed included is snow and ice. **Moving of buildings through streets** has been revised with **Moving of Buildings Along Highways and Erection of Scaffolding** which is proposed to be new section 223-23.

223-8 **Conduct on public streets** is proposed to be shifted to **223-25 Conduct on Public Highways**, (see 223-25 below). New section at 223-8 is **223-8 Obstruction of Sidewalks**. This new section is a revision of the current **223-13 Obstruction of Sidewalks**. The revision specifically addresses sidewalk obstructions including ice and snow, unlawful use or altering of sidewalks and is recommended based on experience.

223-9 **Proposal for new street or highway or public improvements; sewer and water assessments** has been replaced with **223-9 Authorized Seasonal Periods of Work Within Right of Way**. This is a new section which specifies work during authorized seasonal periods. The period mirrors the stipulated period of the water ordinance. **Proposal for new street or highway or public improvements; sewer and water assessments** is replaced with revised new section, **223-33 Acceptance of Privately Constructed Highways as Public Highways**.

223-10 **Naming of public streets and rights of way** has been replaced with **223-10 Reserved**. **Naming of public streets and right of ways** is proposed to be revised to **223-34 Naming of Public Highways**.

223-11 **Address numbers on streets, highways and right of ways** is replaced with **223-11 Excavation on Highways, Right of Ways and Pavement Disturbance Moratorium**. Revised language for this section is improved. Pavement moratorium language is clearer than current language of 223-5 **Permit for excavation upon any highway or sidewalk**, and directly indicates intent of City Council authority to issue waivers to the moratorium as is per long-standing practice. Also includes statutory requirements for Dig-Safe, clarification on who the permittee is, inspections, temporary pavement restoration maintenance, posting of security, and the ability of the Department to deny permits or require surety of entities who have a poor performance history. **Address numbers on streets, highways and right of ways** has been revised and shifted to **223-35 Address Numbers on Highways and Right-of-Ways**.

223-12 **Construction of sidewalks** has been replaced with **223-12 Drainage**. This new section cites the limitations of the City's obligations regarding drainage from the right of way onto an abutting property. It is supported by RSA 231:75 which is cited. This inclusion is based on multiple

experiences with abutting private property. **Construction of sidewalks** is revised and shifted to **223-36. Construction of Sidewalks.**

223-13 **Obstruction of Sidewalks** has been replaced with **223-13 Winter Storm Management.** This new section cites the City's maintenance of a winter storm policy and the limits of liability afforded by law, citing RSA 231:92-a. 223-13 **Obstruction of Sidewalks** is proposed to be reviewed by **223-8 Obstruction of Sidewalks.**

223-14 **Streetlighting** is replaced with **223-14 Off Highway Recreational Vehicles and Snowmobile Use of Public Highways.** Although not known to be an issue, its presence and that of the supporting RSA's here is proposed for consistency. **Streetlighting** is revised and shifted to section **223-37 Highway Lighting.**

223-15 **Prohibited use of poles** is replaced by **223-15 Public Highway Maintenance.** This new section sets forth the Department's standard of practice per authority granted by RSA 231:75 and 231:92. Cited is the capital improvements program. Included is the prohibition of highways traversing watersheds per RSA 485:9. **Prohibited use of poles** is proposed to be covered and improved under **223-20 Utilities.**

223-16 **"Adopt a Spot" areas** is replaced with **223-16 Highway Roadside Clearing.** This new section addresses the City's obligation to maintain highway site clearances and the statutory obligations of the City to inform abutters when tree removal is deemed necessary. Included based on experience. RSA's 231:145, 231:146 and 231:150 cited. **Adopt-A-Spot Areas** is shifted to 223-39.

223-17 **Bonds** is replaced with new section **223-17 Invasive Plant Species.** This new section is a natural follow-on to the proposed **223-16 Highway Roadside Clearing.** This cites the City's authority to remove such species to maintain a safe highway. Cited are RSA's 430:53 and 430:51-57. Included based on experience. **Bonds** is proposed to be shifted to and addressed under new section **223-39 Security.**

223-18 **Violations and penalties** is replaced with **223-18 Repair of Public Highway, Bridge or Sidewalk.** This section is the current section, 223-2, moved to 223-18. **Violations and penalties** is proposed to be shifted to new section 223-40 with revised language.

223-19 **Purpose (Article II Newsracks and Public Way Obstructions)** is replaced with **223-19 Public Highway Access – Driveways.** This new section addresses private highways and driveways and the City's jurisdiction to regulate such connections to public highways. It also stipulates the

maintenance requirements that are born by abutters to the public highway. Supporting RSA's are cited: 236:13, 236:19. **Purpose (Article II Newsracks and Public Way Obstructions)** is proposed to be struck from the ordinance as it deals exclusively with newsracks.

223-20 Definitions (Article II Newsracks and Public Way Obstructions) is replaced with **223-20 Utilities.** This new section covers the obligations of utility providers to obtain City permits for work and includes prohibitions on the operation of City utilities. It also supports the water and sewer ordinances' requirements for City-licensed persons only to work on City utilities. Cited RSA's 231:160, 231: 172, 2321:75.

223-21 Prohibited Acts is replaced with **223-21 Revocation or Suspension of Permits.** This new section states the authority of the City to suspend or revoke permits for violations including towards health and safety. Supporting RSA cited: 236:32. **Prohibited Acts** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-22 Permit required; application for permit is replaced with **223-22 Emergency Services Dispatch to be Notified.** This is a similar section to the current 223-6 Fire Chief to be notified but with modern references. **Permit required; application for permit** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-23 Standards for installation, maintenance and operation is replaced with **223-23 Moving of Buildings Along Highways and Erection of Scaffolding.** This section is a re-titled version of current 223-7, **Moving buildings through streets**, for which scaffolding has been added. Proposed change is that the Department of Public Works will regulate such operations vs. Department of Building and Licensing. This proposal per mutual department agreement. Excavation and encumbering of highways and sidewalks have been removed from the current section as excavation/encumbering and their permitting are proposed under new sections 223-11 and 223-7, respectively. **Standards for installation, maintenance and operation** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-24 Identification required is replaced with **223-24 Traffic Calming Controls.** This new section addresses various traffic calming measures that the City may employ and the general Departmental guidelines for implementation. Specific processes can be handled outside of the ordinance with City policies. **Identification required** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-25 Hold harmless agreement; insurance is replaced with **223-25 Conduct on Public Highways.** This section is actually in the current ordinance as 223-8. It has been shifted to 223-25. Existing language remains. **Hold harmless agreement; insurance** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-26 **Removal of newsrack or public way obstruction** is replaced with 223-6 Outdoor Dining. This new section references recent revisions to Chapter 80 and stipulates that the Department shall review all such request to assess potential damages and impacts to drainage or traffic operations. **Removal of newsrack or public way obstruction** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-27 **Severability** is replaced with 223-27 Public Highway Construction Standards. This new section outlines the basic construction standards for highways and sidewalks with technical references. Further details are available in the City's construction standards. **Severability** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-28 **Injunction** is replaced with 223-28 Class VI Highways. This new section addresses the City's regulation of these highways and how they may change classification. Cited are RSA's 231:21-a, 236:9-11, 231:191, 231:222-a. **Injunction** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-29 **Damage to newsracks and public way obstructions** is replaced with 223-29 Reserved. **Damage to newsracks and public way obstructions** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-30 **Violations and penalties** is replaced with 223-30 Discontinuance of Public Highways is a new section that outlines the Council's authority to discontinue highways per RSA 231:43. **Violations and penalties** currently falls under ARTICLE II which is proposed to be struck from the ordinance.

223-31 is a new section, 223-31 Private Highways. Private Highways cites the limitations of the City's liability for adequacy or safety on a private highway. Also addressed is that the City shall not furnish rubbish removal on private highways. Case law indicates that although not public, private highways may be required to accommodate public emergency and service vehicles. Also included is Council's authority to change the name of a private highway and the abutters' obligations under RSA 231:81-a to contribute equally to reasonable costs of maintaining the highway.

223-32 is a new section, 223-32 Private Construction on a Class VI or Private Highway. This new section notes Chapter 275 Zoning authority and the procedure for construction on a Class VI highway. Referenced is RSA 674:41.

223-33 **Acceptance of Privately Constructed Highways as Public Highways.** This new section cites the requirements for any such highway to be subject to review and approval by the Planning Board, recommended acceptance by the Department and approved by the Council. Cited is RSA 674:36. The acceptance procedure here enhances current practice and proposes to replace the convoluted procedure currently under current section 223-9. **Proposal for new street or highway or public improvements; sewer and water assessments.** The requirements are enhanced by prohibiting the acceptance of highways or segments that would be subsequently used by developers to further build out highways and infrastructure that may be considered for acceptance as City highways or facilities. Included also is a security from the developer of 2% of the infrastructure value to be in force for 3 years following acceptance. Also included as a qualification for petition of acceptance is 75% build-out of dwelling units or structures.

223-34 **Naming of Public Highways and Rights of Way.** This is currently under 223-10, **Naming of public streets and rights of way**, and proposed to be shifted to 223-34. Proposed language reflects the processes recently adopted by the City E911 Committee and Planning Department.

223-35 **Address Numbers on Highways and Right of Ways.** This is currently under 223-11, **Address numbers on streets, highways and rights of way**. Shifted to 223-35, new proposed language reflects the processes recently adopted by the City E911 Committee and Planning Department.

223-36 **Construction of Sidewalks.** Most of this language is under the current section, 223-12, Construction of Sidewalks. Added language is that the Council shall approve where new sidewalks are to be installed, to reflect current practice. Also added is that the City will not maintain “floating” sidewalks which are limited in practical size, contiguous only to a singular frontage and are not served by adjacent sidewalks.

223-37 **Highway Lighting.** This is a new section that is based off of an internal Department policy and years of its practice. It sets the basic criteria to qualify the installation of new public street lighting.

223-38 **Prohibited Use of Poles.** This has been deleted and covered under **223-20 Utilities.** It is replaced with 223-38 **Adopt-A-Spot Areas.** This is the current section 223-16. Current language remains.

223-39 **Security.** This new section replaces the current section 223-17, **Bonds.** Proposed is to enable the City to required cash, letter of credit (LOC). Bonds can be difficult to call therefore cash or LOC is preferred. However, by State law, options for at least 2 forms must be given.

223-40 Violations and Penalties. This is current section 223-18. Current language states \$100 fines not to be exceeded. Proposed language replaces this with the reference of RSA 47:17 and fines cited in City Code Chapter 54-3. RSA 47:17 is independent of Chapter 54-3 and allows the City to levy greater penalties.

ARTICLE II Newsracks and Public Way Obstructions: Proposed is to remove this article. Newsracks are outdated in this media age and obstructions are proposed to be covered in the recommended changes above.

XX

ARTICLE I
General Regulations

§ 223-1. Definitions.

The following definitions shall be applicable for the purpose of this article:

BEST MANAGEMENT PRACTICE- (BMP): A device, practice, or method used to manage stormwater runoff by controlling peak runoff rate, improving water quality and managing runoff volume.

CLASS, CLASSIFICATION (Highway) – The legislative classification of highways per State statute, RSA 229:5.

DEPARTMENT OF PUBLIC WORKS - (Department). The City department which has the direct responsibility to operate, maintain and improve the public highway and sidewalk and related infrastructure of the City.

DEPARTMENT STANDARDS – The technical standards promulgated by the Department which prescribe the materials, devices, construction methods, trade coordination , appurtenances and operations of highway, sidewalk and related infrastructure.

E911 COMMITTEE – The Enhanced 911 (E911) Addressing Committee of the City of Rochester. A body with the purpose of ensuring the City adopts and maintains the state standards of addressing. This provides for a comprehensive and uniform system of naming and addressing throughout the City. Such body shall liaise with the State E911 Unit within the Division of Emergency Services and Communications.

FEDERAL HIGHWAY ADMINISTRATION – A division of the United States Department of Transportation that specializes in highway transportation. The agency supports state and local governments in the design, construction, and maintenance of the nation's highway system.

HIGHWAY (PUBLIC) – The term used herein in reference to streets, roads and roadways and the term that is used to classify roads in accordance with RSA 229:5. . As defined in RSA 229:1. City public highways are highways laid out in the mode prescribed per state statute, or roads which have been constructed for public travel over land which has been dedicated to public use and accepted by the City, or roads which have been used for public travel, other than travel to and from a toll bridge or ferry, for 20 years prior to January 1, 1968. Including the bridges thereon. Highway shall include pavement and drainage features and may include sidewalks and pedestrian facilities.

HIGHWAY (Class IV) – As defined in RSA 229:5, Class IV highways shall consist of all public highways within the compact sections of the City and are portions of State highways for which the City is responsible to maintain.

HIGHWAY (Class V) – As defined in RSA 229:5, Class V highways consist of public highways other than Class IV and Class VI which the City has a duty to maintain. Most public highways in the City are Class V.

HIGHWAY (Class VI) - A public highway in which the City has no statutory authority to maintain but does have statutory authority to regulate travel, excavation, disturbance, abutting property improvements,

driveways and wight limits thereon. Class VI highways are created through a layout, a discontinuance subject to gates and bars, or by the City's failure to maintain and repair such highway in suitable condition for travel thereon for five successive years or more. (RSA 229:5, 231:21, 231:21-a, 231: 45, 231:93, 231:191, 236:9-11, 236:13, RSA 674:41).

HIGHWAY (Private) - A highway that is not a public way and may consist of driveways or easements on private property. The City shall regulate the portions of such highways within the public right of way but has no responsibility to maintain such a highway unless such a highway is declared an Emergency Lane per RSA 231:59-a. The City may require certain construction features of such highway to be maintained by its private owner(s) for emergency services.

INSTITUTE OF TRANSPORTATION ENGINEERS – A trade association of transportation professionals including, transportation engineers, transportation planners, consultants, educators, technologists, and researchers which provides technical guidance to the Federal Highway Administration and communities.

INSUFFECIENCY- For a highway or sidewalk is defined per RSA 231:90, as a case where it is not passable in any safe manner by those persons or vehicles permitted on such highway or sidewalk by state law or by any more stringent local ordinance or regulation: or there exists a safety hazard or impassibility which is not reasonably discoverable by a person who is traveling upon such highway at posted speeds or upon such sidewalk and in a manner which is reasonable and prudent as determined by the condition and stat or repair of the highway or sidewalk. An insufficiency shall not be the result of the City's failure to construct , maintain or repair it to the same standard as another highway or sidewalk, or to a level of service commensurate with its current level of public use.

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) – Issued by the Federal Highway Administration, the purpose of the MUTCD is to set minimum standards for all Traffic Control Devices used on U.S. roads and highways. Traffic Control Devices (TCD) include all road signs, highway markings, electronic traffic signals, railroad crossings, and road-way construction zone areas.

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES – The primacy agency for the state which administers environmental regulation.

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION – The State agency with statutory authority to plan, develop and maintain State highway and related infrastructure.

OFF HIGHWAY RECRETIONAL VEHICLE (OHRV) Use of public Highways. As defined in RSA 215-A-1 VI as any mechanically propelled vehicle used for pleasure of recreational purposes running on rubber tires, tracks, or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ices or snow or not, where the operator sits in or on the vehicle. OHRV's do not include snowmobiles.

REVISED STATUTES ANNOTATED (RSAs cited herein generally are from XX Transportations: Title 231 Cities, Towns and Village District Highways, and Title 236 Highway Regulation, Protection and Control Regulations.

RIGHT OF WAY – A public easement for travel placed across property which may be owned by a

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municipality or privately, for which usually contains a public highway. The easement is held in trust by the government for the use of the public.

SNOWMOBILE – As defined by RSA 215-C as any vehicles propelled by mechanical power that is designed to travel over ice or snow supported in part by skis, tracks or cleats. Such vehicles may be no more than 54” in width and no more than 1200 pounds in weight.

§ 223-2. Regulations of Use of Highways.

The City Council shall regulate the use of all public highways, sidewalks and commons in the City and may exercise all the powers conferred (RSA 47:17).

§ 223-3. Standard of Care.

The City's liability for damages in an action to recover for personal injury or property damage arising out of its construction, maintenance, or repair of a public highway or sidewalks shall only be considered if an such injury or damage was the result of an insufficiency (RSA 231:91, 231:92, 231: 92-a). The City is not responsible to implement corrective actions to improve pedestrian and motor vehicle travel or safety on highways and access between highways and abutting private property where prudent attention of the travelling public is otherwise required for safe travel or footing (RSA 231:90).

§ 223-4. Prohibiting Use of Highways.

The Department may make rules and regulations prohibiting the use of any or all highways to such vehicles as he/she may prescribe in order to prevent the use of said highways when said highways are unsuitable for travel thereon, or when such highways may be damaged under certain circumstances regarding condition and/or types of vehicles which may travel thereupon. Such rules and regulations shall be posted on each highway so regulated and at two other public places in the City. Any person violating the provisions of such posted rules and regulations shall be subject to a fine not more than five hundred dollars (\$500.) and shall be liable for all damage occasioned thereby (RSA231:190; 231:191).

§ 223-5. Oversized and Overweight Loads on Public Highways.

In general oversized and overweight loads on City highways shall be regulated by and routed by the New Hampshire Department of Transportation in accordance with RSA 41:11. Oversized and/or overweight carriers shall prescribe to all such regulation, routing and requirements. Restrictions may include "No Through Truck" zones. Heavy vehicles shall comply with the weight restrictions of RSA 266:18. The Department may require special permits for oversized and overweight loads that may not be regulated by the New Hampshire Department of Transportation.

§ 223-6. No Through Trucks Zones.

The City may restrict travel of trucks, classes 5 and above as defined by the Federal Highway Administration from segments of any public highway. Such restrictions shall not apply to terminal sources and destinations such as retrieval and delivery points. Non-compliance violations may be issued (RSA 41:11).

§ 223-7. Highway Damage and Obstructions.

Parking or loading, vending or servicing of vehicles shall not take place in the public right of way. Items including but not limited to permanent or portable buildings, signs, lights, basketball hoops, hockey goals, blinds or other sports structures, signs, lights, displays, fuel tanks or septic systems shall not be permitted on, over, or under public highways to include any Class IV or Class VI highways.

Temporary obstructions on highways, sidewalks or in public parking areas for purposes not limited to building construction, rehabilitation or utility maintenance shall only be approved through a permit issued by the Department. All measures required to protect public safety shall be at applicant's expense. Such permits will be issued if such requested conditions are deemed not to be adverse to public travel. Any damage sustained shall be repaired at the offender's expense and the Department shall have the right to require adequate surety for restoration purposes.

No obstructions shall be placed onto the highway or sidewalks which may cause any defect, insufficiency or want of repair which renders it unsuitable for public travel or affects its integrity or operation or affects the vision of the travelling public as determined by the Department. No person shall cover a fire hydrant with snow, ice or any debris. Violators are subject to misdemeanor (RSA 236:21).

The Department shall have full authority to remove obstructions. Persons placing obstructions onto the highway or sidewalks or damaging guardrails, signs, traffic controls, bridge or markers shall be guilty of a violation or misdemeanor. Such person shall be liable for injuries sustained and damages made (RSA 236:39, 236:38, 236:32, 236:29, 236:28, 236:8).

Any person erecting or continuing any building, structure or fence which interferes with, hinders or obstructs public travel shall be guilty of a violation (RSA 236:16).

Any non-public access or private frontage to a public highway that becomes or may become a potential threat to the integrity of the highway or its surface, ditches, embankments, bridges, or other structures, or a hazard to the safety of the traveling public, by reason of siltation, flooding, erosion, frost, vegetative growth, improper grade or the failure of any culvert, traffic control device, drainage structure, or any other feature, shall have issued to its owner a notice of correction by the Department. If such order does not result in a cure of the situation, the Department may implement corrective action and owner shall be civilly liable for costs in such corrective action (RSA 236:39, 236:38, 236:32, 236:29, 236:19).

Abutters to public highways shall not alter the ground along their frontage within the right of way to include addition of pavement, plantings or ditches. Driveway aprons may be installed or modified per the conditions of §223-19.

§223-8. Obstruction of sidewalks.

No person shall unnecessarily place any obstruction on any foot pavements or sidewalks. No person shall be permitted to construct a ramp up to and across the sidewalk adjacent to his/her property or place any other obstructions thereon without first securing a permit from the Department to do so. Snow and ice shall not be placed onto sidewalks. No person shall traverse sidewalks with motorized vehicles. Any modifications to sidewalks to accommodate ingress

and/or egress by motorized vehicles shall be restored by the responsible party to the satisfaction of the Department.

§ 223-9. Authorized Seasonal Periods of Work Within Right of Way.

Construction, maintenance and repair work of highways, sidewalks and appurtenant infrastructure within the right of way will normally be conducted by the City from April 1 – November 31 unless deemed an emergent need as determined by the Department. The same period shall apply for similar work on private infrastructure that may in the future be considered for acceptance by the City.

§ 223-10. Reserved.

§ 223-11. Excavation on Highways, Right of Ways and Pavement Disturbance Moratorium.

For a period of five years, beginning with the date of completion of the final paving of a public highway relating to the construction, maintenance overlay or reconstruction of said highway, no person, firm or corporation of any agent or thereof shall excavate or disturb the paved or traveled portion of the highway in the City of Rochester at any time, except for emergencies as may be deemed necessary solely by the Department then only upon the posting by such entity of sufficient security, as determined by the Department and the agreement of such entity, to pay the cost of restoring such highway of way to its original condition. Such period shall be the pavement disturbance moratorium.

Excavations to the highway within the period of the pavement disturbance moratorium shall require majority vote of the City Council approval. Such requests shall be furnished to the Department through the permit application process. The Department shall review and either recommend approval or disapproval to the City Council.

An excavation permit shall be required for all earth disturbances within the right of way including to pavement, sidewalks and any transportation facilities. The permittee shall detail all aspects of the work including safety and traffic control measures.

The permittee shall be the contractor of record executing the work.

Permits will not normally be issued between December 1st and March 31st unless determined solely by the Department to be an urgent need.

Permits that have been authorized but where work has not commenced shall expire on December 31st of the year issued. In such cases a new permit and application fee shall be required for the original proposed work.

Excavation activities shall not occur on Fridays, weekends or designated holidays without the prior written approval of the Department. A 48-hour notice shall be required by the permittee to the Department prior to the start of work and any key activities that warrant Department review.

The Department may require sufficient restoration security for excavations prior to permit approval. A restoration security of \$5,000 shall be required to be posted for any excavation approved that may impact the pavement of a highway which receives a pavement disturbance moratorium waiver.

Excavations shall be suitably covered during operations to prevent injury or impact to travel. Anyone performing excavation within one hundred feet of an underground facility shall participate in and comply with the State of New Hampshire's damage prevention system, commonly referred to as Dig-Safe, in accordance with Title XXXIV, Chapter 374 General Regulations, Underground Facility Damage Prevention System.

Pavement restoration shall be completed in accordance with this ordinance and the Department's standards. Native materials shall be used as backfill and may be supplemented with approved processed materials if native quantities or quality are not adequate as determined by the Department.

All open trenches shall be stabilized with pavement no later than the Friday of the week of the work. Application of proper binder course pavement as specified herein shall be completed within 5 days of the completion of utility work. Application of wear course pavement may occur any time following application of binder course but prior to final approval.

When an excavation disturbance impacts a concrete sidewalk, minimum restoration shall consist of all impacted panels in whole and any curbing.

Compaction tests may be required by the Department when it has reason to doubt suitable compaction standards have been achieved. Such tests may be required to be executed following pavement restoration by an independent testing agency if the Department believes adequate compaction was not achieved during the work. Such costs including pavement disturbance, testing and adequate restoration shall be borne by the permittee.

The Department may inspect utility work in progress. The Department may require the permittee to furnish photographic evidence of key aspects of the work. Permittee shall notify the Department immediately following pavement restoration activities so that the Department may perform the initial inspection.

The Department will inspect the restoration again between 6 months and 1 year following immediate restoration to determine if defects such as settlement, pavement damage or impacts to other infrastructure have occurred over time. Defective work that is noted at the second inspection shall be corrected by the permittee within 10 working days. Permit shall be closed when acceptable restoration is verified.

Defective work noted by the Department during the interim time between initial inspection and second inspection shall be corrected by the permittee at their cost within 5 working days of notice or the implementation of an approved restoration plan. Correction of interim defects shall not relieve the contractor from the requirements of the second inspection and any corrective work required at that time to close the permit.

Any work that is not corrected by the permittee may be executed by the Department and billed to the permittee at full cost which shall be uncontestable.

Permittees which have a history of defective work may be denied future permits. Such future permits may be considered solely by the Department if adequate security is furnished by the permittee. Permittees which have a history of defective work may have their City utility license(s) revoked.

Nothing in this section limits the authority of the Director Planning from their authority per Chapter 275, Zoning, Article 22 regarding abandoned excavation sites.

Any other provision of this article notwithstanding, any person, firm or corporation or any agent thereof that shall violate the provisions of this section shall be subject to a fine of not more than five hundred dollars (\$500.) and full restoration costs.

§ 223-12 Drainage.

Stormwater quality and control shall for private development be per the administration and requirements of Chapter 218 of the City Ordinances. The City is its own compliance agency and shall meet the requirements of permits issued by the New Hampshire Department of Environmental services and/or the U.S. Environmental Protection Agency.

The City has the right and legal duty to ensure that the impact of flowage to the highway from areas outside of the right of way is minimized. This may be accomplished by the installation and maintenance of ditches, culverts, bridges and other facilities.

Drainage flowage from private properties shall be directed such that such flowage does not adversely impact the right of way. Such impacts shall be corrected by the property owner at their expense.

Unless City work occasions additional flowage from the highway onto an abutting property for which a degradation in property use can be verified, the City shall not be responsible for flowage onto an abutting property which is due to that property's elevation in relation to the highway. The City shall use a reasonable standard of care in their highway work to minimize flowage onto abutting properties. Nothing herein shall relieve the City from its requirements under RSA 231:75.

Drainage easements for the City to access private property shall be required as necessary for the City to operate and maintain drainage features which are appurtenant to flowage from right of ways or City infrastructure.

§ 223-13 Winter Storm Management.

Snow and ice shall not be placed into the highway or upon sidewalks or in a manner which impacts accessibility of a hydrant unless such placement is temporary and immediately appurtenant to the removal efforts of the abutter. Snow or ice that remains on the highway or sidewalk that does not comply with this section shall subject the abutter or responsible party to a violation (RSA 236:21).

The Department shall implement and maintain a winter storm maintenance policy for City public

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highways and sidewalks which describes to the public the intended priorities and actions of ice and snow removal and processing. The Department shall not be held liable for damages arising from insufficiencies or hazards on public highways, bridges or sidewalks when Department operations in accordance with such policy are effectuated (RSA 231:92-a).

The Department is not obligated to replace mailboxes that are damaged by City winter storm management operations. The Department may replace damaged mailboxes using economical replacement materials and following storms when operations allow.

§223-14 Off Highway Recreational Vehicle and Snowmobile Use of Public Highways.

Off highway recreational vehicles shall be prohibited on all public highways and sidewalks with the exception of bridges per RSA 215-A:8. Snowmobiles may be allowed on highways and may cross bridges per RSA 215-A:8, however cannot operate in the travelled portion of the highway. On public ways snowmobiles shall travel in the extreme right and travel at 20 miles per hour or less. Licensure shall be obtained and operation shall comply with the requirements of RSAs 215-C:6, II, 215-C:1 XIX, 482:A-3 VIII, 215-C:8 III(b)(2), 215-C:8 IX and 215-C:8 X.

§ 223-15. Public Highway Maintenance.

Public highways shall be maintained by the Department at their discretion on frequency and using practices commonly used by similar municipalities and those endorsed by associated maintenance and engineering trade organizations. For work within the right of way, that consists of maintenance grading or cleaning or repairing of existing ditches or culverts without affecting their size or positioning, the Department will not normally notify abutters (RSA 231:75, 231:92).

The City Council shall annually approve a capital improvements plan for public highways as recommended by the Department. (RSA 231:92, 674:5)

Abutters to highways are responsible for their access and any grades, culverts or other structures pertaining to such access whether or not located in the public right of way. (RSA 236:13).

No public highway, access highways or private highways shall be constructed so as to traverse any watershed tributary to a lake, pond or reservoir used for the storage of public drinking water without obtaining the approval of the Department of Environmental Services (RSA 485:9).

§ 223-16. Highway Roadside Clearing.

The City shall maintain a regular program of roadside clearing within the right of way to reduce safety hazards or otherwise damage to the highway. Any tree with a circumference of 15 inches or more at a point four feet from the ground will not be removed by the City without due notification to the owner unless such tree presents an immanent threat to safety or property. Notification shall follow the procedures set forth in RSA 231:145 and 231:146. The City may require utilities which may have lines in such trees to assist in removal at their expense. Such rights of the City extend to Class VI highways (RSA 231:145, 231:150).

§ 223-17. Invasive Plant Species.

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Invasive plant species are alien plant species whose introduction causes or is likely to cause a variety of harm to the public. They constitute trees, vines, shrubs and grasses. The Department will remove invasive species from the right-of-way when found and upon request when such presence may inhibit safe travel or otherwise be harmful to the physical highway (RSA 430:53) and will have no duty of care to replace such plantings with non-invasive species. The Department shall restore grounds beneath removed plantings in a reasonable manner. Invasive plant species are unlawful to plant or transport (RSA 430:51-57).

§ 223-18. Repair of Public Highway, Bridge or Sidewalk.

Whenever any public highway, bridge, or sidewalk shall, from want of necessary repair, or because of any repairs or construction being made therein by the Department become unsafe for travel, the Department shall have erected a suitable fence or railing to exclude all travelers from passing over the same and shall require the maintenance at night such lights as may be necessary to warn the traveler of the hazard. If said repairs or construction is being made by any other department or person, the head of such other department or person shall erect and maintain the same guard fence, rails and lights.

§ 223-19. Public Highway Access - Driveways.

The Department shall retain continuing jurisdiction over the adequacy and safety of every existing driveway, entrance, exit and approach to a public highway or right of way, whether or not such access was constructed or installed pursuant to a permit (RSA 236:13). Private highways where they intersect with public highways shall be considered driveways and subject to the requirements of this section and ordinance.

All new driveways including private highways and driveways intersecting Class IV, V and VI shall be subject to approval by the Department through a permit process. Applicants shall provide details on locations, approaches, grades, construction materials, any traffic control and drainage features. Applicants shall adhere to any City regulations regarding setbacks.

The Department shall approve through a permit process proposed changes to existing driveways in grade, approach angle, location and size and drainage. Requirements and process shall follow those outlined in RSA 236:13.

Stormwater permits may be required in cases of proposed driveways which service commercial, multi-family, industrial or institutional facilities, or for single family homes in which unique characteristics of driveway and highway grades or drainage appurtenances may require stormwater management for the benefit of the public highway.

The owners of property abutting a public highway shall be responsible for the adequacy of the access to the public highway, and any grades, culverts, or other structures pertaining to such access, whether or not located in the right of way. If any such access is or becomes a potential threat to the integrity or operation of the highway or becomes a hazard to the travelling public, the Department may issue an order to the owner or other party responsible for such access to repair or remove the condition of hazard and obtain all required permits. Such order shall be

enforceable to the same extent as a permit. If the order is not complied with within the time prescribed, the Department may cause to be taken whatever action is necessary to correct the deficiency and the owner or responsible party shall be civilly liable to the City for its cost in taking such action. (RSA 236:13 and RSA 236:19). In addition the City may issue a violation.

Setbacks of driveways from property lines shall be in accordance with 275-26.

§ 223-20. Utilities.

Work on City owned utilities such as water and sewer shall be done only by entities that are licensed by the City to perform such work. Licensure requirements for sewer and water are set forth in Chapters 200 and 260 of the City Ordinances, respectively. Gas and electrical utility work shall be done by persons licensed by their respective trades and appropriate State agency.

No person shall erect, construct, put up or maintain any poles, wire, terminal, underground conduits and cables, structures or other electrical appurtenances for television, telephonic, telegraphic, electric power or electric lighting, or any water, sewer, drainage or gas lines along, across, under or over any public highway, sidewalk, in any right of way or City property without obtaining a City license.

In-ground utility work shall require an excavation permit from the Department for installation, relocation, augmentation or alteration of in-ground utilities.

Easements for underground utilities when outside of the public right of way shall be at least 30 feet in width.

Only City employees shall operate fire hydrants, valves or any other operable element of the City's water, wastewater or drainage utilities.

Utility companies shall have authority to install or erect their utilities in the City's right of ways as licensees of the City (RSA 231:160).

Aerial utility companies shall obtain a license from the City for the erection, augmentation or relocation of poles. Utilities shall be responsible for owner consent regarding tree cutting or pruning per RSA 231:172.

No person shall use said poles for the posting of bills or other advertising purposes or for any other purpose except that for which permission is given by the Department.

The City shall be indemnified against all damages, costs and expenses to which it may be subjected due to the location, construction, maintenance of any pole, structure, conduit, cable, wire or other apparatus of the utility and the utility shall indemnify the City against all damages, and expenses to which it may be subjected to by reason of any insufficiency or defect in the highway occasioned by the presents of wires and supports (RSA 231:168, 231:175).

§ 223-21. Revocation or Suspension of Permits.

If the terms or conditions of a permit are violated by a permit holder and the Department finds that the violation does not constitute an immediate hazard to public health, safety or welfare, the Department shall give written notice to the permit holder in writing by email of an intention to suspend or revoke the permit, and a statement of the facts or conduct upon which the Department intends to base its action. If corrective action is not implemented to the Department's satisfaction in a reasonable time, the Department may implement corrective action it deems necessary within the right of way to restore the right of way and charge such costs to the permittee. The City may use any security posted to implement corrective action. (RSA 236:32).

If terms or conditions of a permit are violated by the permit holder and constitute a danger to public health, welfare or safety, the Department shall immediately suspend the permit and all work by the permittee shall be ceased and corrective measures implemented by the permittee to the satisfaction of the Department. Notice of suspension shall be issued in writing by email and communicated by telephone. If corrective action is not implemented to the Department's satisfaction in a reasonable time, the Department may implement corrective action it deems necessary within the right of way to restore the right of way and charge such costs to the permittee. (RSA 236:32, 236:39).

§ 223-22. Emergency Services Dispatch to be Notified.

Any person or private or public entity or department of the City, before digging up, obstructing or encumbering and/or redirecting common or convenient traffic patterns in any way any highway, lane, alley, sidewalk, or other public place in the City, shall, before beginning such work, notify the City's Emergency Services Dispatch Center as to where such work is to be done and shall, immediately upon the completion of such work and the restoration of the place to its normal condition, notify same. A permit shall be required from the Department prior to any such disruption or encumbrance.

§ 223-23. Moving of Buildings Along Highways and Erection of Scaffolding.

No person shall move, or assist in moving, any house, shop or other building through any highway, lane, or alley or erect scaffolding without first obtaining a written license from the Department. Whenever the Department shall as aforesaid grant permission to any person to encumber any highway, sidewalk, or public square for the purpose of erecting, altering or moving buildings or scaffolding, it may, as a condition to granting such permission, require the party obtaining the same to furnish a surety of indemnity in a form acceptable to the Department, in such

sum and with such securities as the Department may deem proper. Applicant is responsible for all safety and traffic control measures. The Department of Public Works may require an obstruction permit for such work.

§ 223-24. Traffic Calming Controls.

Traffic calming controls may be implemented by the Department on public highways as approved by the City Council. Implementation may be through the capital process or by request.

In its implementation the Department will employ engineering judgement as guided by the Institute of Transportation Engineers, FHWA Manual on Uniform Traffic Control Devices and any other applicable transportation technical trade or agency organizations. Traffic calming practices may include the installation of speed tables, raised crosswalks, speed humps, bump outs, pedestrian refuges, speed cushions, roundabouts, or other crosswalk safety enhancements. Roundabout consideration shall require engineering study.

§ 223-25. Conduct on Public Highways.

The following conduct with respect to the use of the City highways and highways shall be regulated as more fully set forth below:

- A. No person shall place, establish, or maintain any sign, awning or shade before his/ her place of business, dwelling house or tenement, over any part of any highway or sidewalk, unless the same is safely fixed and supported so as in no way to endanger persons passing upon such highway or sidewalk, and so that the lowest part of such sign, awning or shade shall be at least seven feet above the sidewalk; nor shall any person hang, affix, fasten, place or allow to remain upon the outer edge of any sidewalk any sign or showcase whatever, or there display any goods, merchandise, or samples of any business calling, trade, art or craft, so as to obstruct the free passage and view to and from the highway and sidewalk.
- B. No person shall sell at auction or otherwise upon any highway or public square in the City any furniture, goods, wares or merchandise whatever, or place or in any manner encumber such highway or square therewith, without first obtaining a permit from the Department and obtaining a secondhand dealer's/hawker's license from the Building and Licensing Services Department.
- C. No person shall draw or cause to be drawn, move or cause to be moved, upon any public highway or highway, any equipment or instrument or implement liable to cause damage to the surface of said public highway or highway, unless the same is being transported upon a vehicle or other conveyance. Any damage resulting from such action shall be remedied by such person to the satisfaction of the Department, or the Department will effect corrections and charge the such person for the cost of corrections.
- D. No theatrical or dramatic representation shall be performed or exhibited, and no parade or procession upon any public highway or way, unless a special license shall first be obtained from the Building and Licensing Services Department. (See Chapter 22, Amusements and Entertainment, Article III, Public Dances, Circuses and Parades.).
- E. Dumping on highway, highway, lane, alley, sidewalk, or other public place within the City limits of Rochester is prohibited.

§ 223-26. Outdoor Dining.

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Outdoor dining on City property or appurtenant to public highways and sidewalks shall comply with Chapter 80, Article II of the City Ordinances. The Department in its review of such requests for outdoor dining shall consider the effects on existing drainage, potential damage to highways and sidewalks and any impacts to multi-modal traffic operations. The Department may issue directives to the requestor to ensure infrastructure operation, safe, effective travel and restorative actions. The Department may require an obstruction permit.

§ 223-27. Public Highway Construction Standards.

The City Council shall have full authority over the construction, maintenance and repair standards of the City which shall be at least as stringent as those of the State (RSA 231:92).

City public highways shall have the following basic minimum design elements:

Highways:

Wearing course:	Hot Mix Pavement; one and one half inch (NHDOT Items 401, 403); ½" aggregate
Binder course:	Hot Mix Pavement; two and one half inch (NHDOT Items 401, 403); ¾" aggregate
Base:	Crushed gravel: six inches (NHDOT Item 304.3)
Subbase:	Bank run gravel: twelve inches (NHDOT Item 304.2)
Compaction:	95% (NHDOT Item 304; 3.6 and 3.7)
Curbing:	Granite. At least 18 inches depth and at least 5 inches wide set in concrete over ¾ inch crushed stone; vertical or sloped (NHDOT Item 609)

Sidewalks::

Portland cement concrete – Class AA; 4,000 psi; 4 inches thick; 6 inches thick at tip downs; fiber or steel mesh (NHDOT Item 520 and 608), reinforcement (NHDOT Item 544.2), Base: crushed gravel: nine inches (NHDOT Item 304.3), protective coating silane or siloxane (NHDOT Item 534.2.); maximum running slope 12:1; cross slope 2%; or

Hot Mix Pavement; (NHDOT Item 401 and 608 (2.5), 1 1/2 inch finish thickness; 1 ½ inch binder thickness; base 10 inches crushed gravel (NHDOT Item 304.3)

All features compliant with the Americans with Disabilities Act.

Other features shall be per the City's technical standards and/or Subdivision Regulations and Site Regulations

Driveways and private highways which intersect public highways:

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Shall be evaluated for approval referencing the geometric requirements of the New Hampshire Department of Transportation Policy Relating to Driveways and Access to State Highway System or its successor document(s).

§ 223-28. Class VI Highways.

Class VI highways are public highways for which the City has no duty of care, however has full authority to regulate use, excavation or disturbance or driveways and to regulate weight limits (RSA 231:21-a, 231:93, 236:9-11, 236:13, 231:191).

Class V highways which became Class VI highways due to a five or more year lapse in maintenance by the City, but which subsequently has been regularly maintained and repaired by the City on more than a seasonal basis and in suitable condition for year round travel thereon for at least five successive years shall become a Class V highway upon vote of the City Council (RSA 231:45-a).

Class VI highways may be reclassified by the City Council as a Class V highway per RSA 231:22-a. Petitions for the layout of a Class V highway over a Class VI highway shall follow the betterment assessment procedures of RSA 231:28-33.

Emergency Lanes may be created out of the improvement of a Class VI highway. (RSA 231-59-a).

§ 223-29. Reserved.

§ 223-30. Discontinuance of Public Highways.

The City Council has full authority to discontinue any Class IV, V and VI highways (RSA 231:43).

§ 223-31. Private Highways.

Unless existing as of the effective date of this paragraph, private highways are prohibited from these requirements unless part of a plan approved by the Planning Board and noted as such.

The City shall have no requirement for care nor liability for adequacy or safety thereupon a private highway. The City may require certain geometric features and construction materials and methods for private highways to aid emergency vehicle access.

The City will not collect rubbish on a private highway. Until a highway is officially accepted as a City highway, the owner of the highway has the sole responsibility to collect rubbish, themselves, or other private agreement. No rubbish shall be placed on a public highway or right-

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of-way without approval from the Department.

Safe passage shall be maintained for all vehicles once a certificate of occupancy is issued on a private highway. The highway shall be accessible for residences, emergency vehicles, and service vehicles as determined by the Department of Public Works and the Fire Department. Safe passage shall include winter maintenance, general highway surface repair, and maintenance of all infrastructure such as lighting, fire hydrants, and sidewalks.

The City Council may change the name or address assignment of any private highway when necessary to conform to the requirements of the enhanced 911 telecommunications system (RSA F231:133, 231:133-a).

Residential owners of property which derive enjoyment from a highway not maintained by the City shall contribute equally to the reasonable cost of maintaining the private road and damaged occasioned to the highway by an abutter shall be corrected at that abutter's expense (RSA 231:81-a).

§ 223-32. Private Construction on a Class VI or Private Highway:

Private construction on Class VI highways shall be restricted to the approved uses per Chapter 275 Zoning and City process procedures.

The procedure for construction on a Class VI or private highway shall be:

The developer or its agent shall submit a Site Plan or Subdivision application to the Planning Department to request the authorization of Building Permits on a Class VI or private highway. The application shall address all requirements of Site Plan or Subdivision Regulations.

The application shall also include:

Draft language to be recorded which clearly states the municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof in accordance with RSA 674:41.

After review and comment by the Planning Board, City Council shall vote to authorize Building Permits.

Prior to the issuance of a Building Permit, the applicant shall file with the Registry of Deeds a notice of the limits of municipal responsibility and liability in accordance with RSA 674:41.

§ 223-33. Acceptance of Privately Constructed Highways as Public Highways.

No proposed new public highway with or without new public sewer or water, public improvements, developer contributions, or any combination of the above, shall be laid out, accepted or constructed which is not subject to review and approval by the Planning Board,

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recommend for acceptance by the Department of Public Works and approved by the City Council (RSA 674:36).

A private highway shall not be considered for acceptance until a minimum of 75% of dwelling units or structures have obtained certificate of occupancy and any infrastructure required to support full function of at least such number of units is completed and functioning adequately as determined solely by the Department. Notwithstanding this section, the City shall release surety partially as appropriate to reflect achievement of progress goals towards completion of the infrastructure in accordance with approved plans and City construction standards.

All private highway construction which may be intended for acceptance as City highways shall be subject to surveillance by the City. Developers shall accommodate all such inspections and execute any corrective action required by the City to comply with City Standards.

The City will not normally accept highways or segments of highways for acceptance that would be subsequently used to support construction activities related to further build out of private highways and infrastructure that may be considered for acceptance.

Developers are responsible for all maintenance and services to highways intended to be petitioned for acceptance until such acceptance is final. Such services include but are not limited to trash pickup and snow and ice removal.

The degradation of a highway intended to be petitioned for acceptance shall not be considered for acceptance until it has been rebuilt or restored to the Department's standards.

The procedure for public highway acceptance shall be:

- A. The developer or its agent shall submit a written petition to the City Clerk on behalf of the City Council for acceptance of a private highway as a City highway. The developer or its agent shall provide three copies of the letter each for the Planning Department, Public Works Department and Legal Department.
- B. The letter shall include:
 - a. Construction reports of materials testing data, certified by an independent, qualified source in paper and electronic format.
 - b. All inspection reports and photos.
 - c. Technical literature and data for all elements of the infrastructure including pavement design, pavement bases, utility pipes, water test results of pressure, disinfection, sewer manhole vacuum, sewer mandrel, video of water and sewer pipe interiors, pump stations and appurtenances in paper and electronic format.
 - d. Drainage maintenance agreement signed by the owner.

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- e. Descriptive deed, which details any fee title property and infrastructure that will be owned by the City and that which will be owned and maintained by a Homeowner's Association, if applicable, in paper and electronic format
 - f. Copy of drainage/utility and/or other easements in descriptive language in paper and electronic format
 - g. Recordable as-built plans in paper and electronic format
 - h. Full set of record drawings to include final survey plan showing all project improvements in paper and electronic format
 - i. A security in the form of an irrevocable letter of credit or passbook to guaranty that all site work was properly done to be posted by the applicant with the Department, which shall place the security with the City Treasurer. Such maintenance guaranty shall be in an amount of 2% of the value of the infrastructure intended to be conveyed to the City established in the City's schedule of values for such improvements and such values as are updated to reflect current values at the time of the petition. Elements shall include full cost of replacement for all street trees and other landscaping required, roadway, drainage and pedestrian facilities, and in force for three years after the date of City acceptance. If such repairs are required of the City following acceptance due to improper installation by the developer, such guaranty shall be used to implement corrective actions.
- C. The Department of Public Works will make a recommendation to the City Council for public highway acceptance when the following have been met:
- a. Resolution of any construction quality issues to the satisfaction of the Department to include restoration of damaged pavement even if such damage is due to age, consistent with sound trade practice.
 - b. All on or off-site improvements or contributions required by the Planning Board and Department of Public Works are complete and functioning as determined by the Department.
 - c. Final wear surface of asphalt pavement installed on all highways and sidewalks and all associated striping and signage.
 - d. All final grades, elevations and final vegetation within the right of way are complete, established and functioning as determined by the Department of Public Works
 - e. Drainage ditches have been stabilized; where grass is the stabilizer, a minimum of 90% growth has occurred as determined by the Department.
 - f. All stormwater, drinking water and wastewater facilities are complete and functioning as determined by the Department of Public Works
 - g. All on-site amenities such as highway trees, walking paths, gazebos, highway furniture, other structures, and landscaping required by the Planning Board are complete and functional as determined by the Department of Public Works
 - h. Adequate surety remains to complete the balance of the work as approved by the Planning Board

- i. A minimum of 75% of dwelling units or structures have obtained certificate of occupancy and all infrastructure required to support full function of at least such number of units is completed and functioning as determined by the Department of Public Works
- D. The City Council shall hold a public hearing on the proposed acceptance with public notice furnished by the City by certified mail (RSA 231:10). Upon acceptance by the City Council as a City highway, the following shall be submitted to the City Clerk with copies to the Planning Department, Legal Department and Department of Public Works within 30 days:
 - a. Signed warranty deed(s), easements, Home Owner Association covenants, stormwater management plans, if applicable and stamped recordable plan(s) for recording by the City Clerk
- E. The acceptance of a private highway as a public highway shall not be construed to confer upon the municipality any notice of, or liability for, insufficiencies or defects which arose or were created prior to such acceptance (RSA 231:92).

§ 223-34. Naming of Public Highways.

- A. Proposed highway names shall be approved by the City Council. Proposed names shall be submitted to the Planning and Development Department by application of private owner, developer or dedicator. The proposed name shall be reviewed by the E911 Committee. Following review the name and such name shall be presented to the City Council for approval. Naming assignments shall be issued by letter to the applicant with copies to City departments and the State E911 Unit within the Division of Emergency Services and Communications (RSA 231:133).
- B. The City shall not be bound by any name previously assigned to the highway, highway or right-of-way by the private owner, developer or dedicator. No name for a highway, highway, or right-of-way shall be selected which is already in use, or which is confusingly similar to any other existing name, or which otherwise might delay the locating of any highway in an emergency. Names of highways shall not duplicate or bear phonetic resemblance to the name of existing highways within the City (RSA 231:133)
- C. The City Council may change an existing name on any public or private highway at any time when in its judgment there is occasion for so doing such as in adherence to the requirements of the enhanced 911 telecommunications system (RSA 231:133)..
- D. Whenever a change in name is proposed to any highway or right of way, the E911 Committee shall make a recommendation to the City Council. Once approved, the E911 Committee shall make a record of a new name or name change and shall forward a copy of such record to the Department of Transportation, in accordance with the requirements of RSA 231:133, as presently enacted or in accordance with the corresponding provisions of any recodification or amendment thereof. In the process of assigning names to highways, highways and right-of-way, the E911 Committee shall follow the New Hampshire Addressing Standards Guide, to the extent possible:

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- (1) No name shall be assigned to a highway, highway or right-of-way which shall duplicate the name of any other proposed or existing highway, regardless of the use of the suffix "highway," "avenue," "boulevard," "drive" or the like.
 - (2) The extension of an existing highway shall have the same name as the existing highway.
 - (3) Before a new highway name is assigned to an existing highway, the proposed name of such highway shall be reviewed by the E911 Committee. The Committee shall submit their comments, if any, with regard to the proposed name to the City Council.
- E. The Planning and Development Department shall have the authority to assign a provisional name to all highways, highways and/or rights-of-way shown upon subdivision or site review plans being considered for approval by the Planning Board; provided, however, that no such provisional name shall be assigned to such highway unless it has been approved by the E911 Committee.

§ 223-35. Address Numbers on Highways and Right-of-Ways.

- A. Pursuant to the provisions of RSA 231:133-a, the Planning and Development Department shall have the authority to assign numbers to vacant lots and all existing residential and/or commercial structures.
- B. Assignment of addresses for new construction shall be initiated through the driveway permit application process. Applicant shall provide with the application a plan or map showing road stationing and the proposed tax map and lot numbers.
- C. Driveway permit applications, plans or maps shall be reviewed by the Planning and Development Department to determine addressing. Driveway permits shall not be issued until addressing is assigned. Addressing assignments shall be issued by letter to the applicant with copies to relevant City departments, the E911 Committee, the State E911 Unit within the Division of Emergency Services and Communications, and the US Post Office. The Planning and Development Department may issue temporary addresses until final assignments are determined.
- D. Existing address assignments may be altered when they no longer conform with addressing standards.
 - (1) When a proposed change would not impact any surrounding properties, the E911 Committee may propose an address reassignment. The property owner is issued a letter that provides the new proposed address and includes the reason for the address reassignment.
 - i. If the property owner agrees and signs a consent to the proposed change, the address reassignment process continues.
 - ii. If the property owner does not agree with the proposed change, they may submit an appeal to the E911 Committee for reconsideration. The Committee may decide to grant the appeal or confirm their original

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decision, at which the property owner may take the matter to City Council for a public hearing and final determination of the addressing concern.

- (2) When a proposed change impacts abutting properties or property owners do not provide consent, a public hearing shall be scheduled. In such cases, the City shall notify abutting property owners and hold a public hearing for which 10 days' notice has been given in accordance with RSA 231:133-a. Full authority and discretion to re-assign addressing shall rest with the City Council.

E. In assigning numbers to vacant lots and residential and/or commercial structures, the Planning and Development Department shall employ the following criteria:

- (1) For every 10 feet of right-of-way frontage within the Special Downtown District of the City of Rochester, as defined in Chapter 275, Zoning, of the Code of the City of Rochester, there shall be an individual number assigned.
- (2) For every 50 feet of right-of-way frontage outside of the Special Downtown District of the City of Rochester, as defined in Chapter 275, Zoning, of the Code of the City of Rochester, there shall be an individual number assigned.
- (3) Highways shall be numbered so that even numbers are located on the left side of the right-of-way and odd numbers are located on the right side of the right-of-way. The right and left sides of the right-of-way shall be determined by the relationship of the right-of-way to a person facing away from the center of the City of Rochester at the statue of Parson Main.
- (4) The numbering for cul-de-sac shall begin at the intersection of the cul-de-sac and the collector right-of-way and shall proceed from the right-hand side of the collector right-of-way from right to left around the cul-de-sac.
- (5) Mobile home parks and condominium and apartment complexes shall, to the extent possible, name their private highways and number each unit consistent with the E-911 standards set forth in this section.
- (6) Each apartment building shall be given one highway number and each apartment unit within such building shall be assigned that highway number and unit number.
- (7) Existing numbering patterns for existing highways, highways and rights-of-way which do not allow for the assignment of additional numbers for future development may be assigned new numbers by the Planning and Development Department.
- (8) The beginning of a highway shall be that end which intersects with a collector highway and, so far as possible, shall be that end closest in distance to the statue of Parson Main.

F. Any building or structure for which a number has been designated shall have such number affixed thereto in such manner as to be plainly visible from the highway,

which abuts the main entrance to the property. Such numbers shall be a minimum of 4 inches in height with minimum stroke width of ½” in accordance with the Fire Code as adopted by the State of New Hampshire.

- G. Failure to display an assigned number in the manner set forth above shall be grounds for denial of a certificate of occupancy. Any violation of the provisions of this article or any order of the Director or the Code Compliance Officer related thereto are subject to citation and the civil penalties set forth in RSA 47:17 and Code § 54-3.

§ 223-36. Construction of Sidewalks.

Sidewalks built by the City of Rochester for the use of the travelling public shall be in locations approved by the City Council. Sidewalks shall be constructed under the supervision of the Department. The Department will not maintain non-contiguous sidewalks which are of such limited in practical size such as sidewalks along a singular property frontage which are not served by adjacent sidewalks.

Residents who wish to have new sidewalks built for their highway may by petition of abutters who by written application shall agree to pay a portion of the cost of construction of said sidewalk, said portion not exceeding 1/2 of the said cost, payment to be made over a period not to exceed 10 years. The portion of the cost to be borne by the petitioner shall be both reasonable and proportional to the benefits according to the land upon which such assessment is made (RSA 231:112).

§ 223-37. Highway Lighting.

The Department shall have supervision of all municipal lighting and location of electric light and utility poles within the City limits and is authorized to prescribe rules and regulations for any modifications of any poles, crossarms or supporting fixtures which are located within the public highway. Improvements made for private purposes to said poles, crossarms, or supporting fixtures shall require a permit from the Department and be made at the requestor's expense.

Highway lighting for new residential or commercial construction or highway layout shall be guided by the City's Subdivision or Site Plan regulations and the professional judgement of City staff.

Requests for new or enhanced highway lighting on public highways not appurtenant to new construction or highway layout construction shall be considered by the City Council. In general, the following areas may be considered:

The termination area of dead end or no outlet highways.

Intersections of public highways.

Highway areas where multi-modal safety or general public safety can be enhanced.

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Crosswalks.

Highway lighting shall be for the benefit of the traveling public and shall not be considered for the sole benefit of the property of abutters.

It is unlawful to place any light along a highway so positioned to impact the vision of the travelling public (RSA 236:55).

§ 223-38. “Adopt-A-Spot” Areas

The City Manager, in the exercise of duties relative to the oversight of all real and personal property owned by the City of Rochester, as specified in Section 14 of the Rochester City Charter, from time to time, designates certain areas of the City, primarily areas included within or closely related to the highways servicing the City of Rochester, as “Adopt-A Spot” areas. “Adopt-A-Spot” areas are maintained, landscaped and/or otherwise beautified by designated individuals and/or entities that volunteer to preform such functions for the purpose of improving the appearance of the “Adopt-A-Spot” areas, as well as the appearance of the City of Rochester as a whole. The City Manager shall annually, on or about May 1 of each year, establish a list of "Adopt-A-Spot" areas for the ensuing calendar year beginning on such May 1 and ending on the following April 30. A copy of such list shall be maintained in the City Manager's office and in the office of the City Clerk. In the event that the City Manager fails to update the "Adopt-A-Spot" list on or about May 1 of a given year, the "Adopt-A-Spot" list then on file in the office of the City Manager shall be controlling for the purposes of this section. No person shall, within any "Adopt-A-Spot" area, erect or maintain any sign or other advertising material whether for political purposes or otherwise, except for such advertising material and/ or device as has been previously authorized in writing by the City Manager or his/her designee. Any person failing to comply with the provisions of this section shall be guilty of a violation.

§ 223-39. Security.

The Department may require any person seeking to perform any work affecting any highway, bridge, sidewalk or other public property to furnish surety in the form of a cash, or letter of credit to indemnity to the City of Rochester in such sum and with sureties as the Department may deem proper. Bonds will generally not be acceptable forms of security.

§ 223-40. Violations and Penalties.

Any violation of the provisions of this article or any order of the Director or the Code Compliance Officer related thereto are subject to citation and the civil penalties set forth in RSA 47:17 and Code § 54-3.

ARTICLE II

~~Newsracks and Public Way Obstructions~~ ~~[Adopted 6-6-1995 as Ch. 35 of the 1995 Code]~~

~~§ 223-19. Purpose.~~

Commented [R01]: Much of this seems no longer applicable. We could pull together a sidewalk obstruction / encumbrance section that outlines our current needs like addressing: outdoor seating, "sandwich boards", other marketing tools, and scaffolding or construction needs?

The purpose of this article is to promote the public health and safety through the regulation of the placement of newsracks and public way obstructions.

§ 223-20. Definitions.

As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

CITY — The City of Rochester.

NEWSPAPER or NEWS PERIODICAL — A daily or weekly publication containing all of the following: current news, editorials, feature articles and advertising. **[Amended 3-5-2019]**

NEWSRACK — Any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or news periodicals.

PARKWAY — That area between the sidewalk and the curb of any highway, and where there is no sidewalk, that area between the edge of the highway and the property line adjacent thereto. "Parkway" shall also include any area within a highway which is not open to vehicular travel.

PUBLIC WAY OBSTRUCTION — Any object other than a newsrack which obstructs the free passage of pedestrians or vehicles on the highways, sidewalks, parkways or highways. The term "public way obstruction" shall include, but not be limited to, signs and planters.

HIGHWAY — That portion of a highway improved, designed, or ordinarily used for vehicular travel.

SIDEWALK — Any surface provided for the exclusive use of pedestrians on any public right-of-way under the jurisdiction of the City.

HIGHWAY — All that area dedicated to public use or public highway purposes and shall include, but not be limited to, highways, parkways, alleys, sidewalks, garages, parking lots, parks and playgrounds. **[Amended 3-5-2019]**

Public Way Obstructions

- A. No person shall obstruct a public road or sidewalk, except with a permit issued by the Department of Public Works.
- B. No person shall, place, install, or locate any structure, fixture, object, or other encroachment within the limits of a public road or sidewalk, except as follows:
 - a. Pursuant to a license issued by the department of public works
 - b. A sign or fence permitted in accordance with the City's Zoning Ordinance, or

Commented [R02]: Draft language which could include all types of encumbrances. This would require the creation of an Obstruction Permit.

- e. ~~For all other types of structures, fixtures, objects or other encroachments, pursuant to a revocable license from the Department of Public Works, which the Director may issue for good cause for non-intrusive structures, fixtures, objects, or other encroachments on such terms as the Director may determine and require.~~

~~§ 223-21. Prohibited acts.~~

- A. ~~No person shall install, use, attach or maintain any newsrack or public way obstruction which projects onto, into or over any part of the highway of any public highway or which rests, wholly or in part, upon, along or over any portion of the highway of any public highway.~~
- B. ~~No person shall install, use, attach or maintain any newsrack or public way obstruction which in whole or in part rests upon, in or over any public sidewalk or parkway when such installation, use or maintenance endangers the safety of persons~~

~~or property, or when such site or location is used for public utility purposes, public transportation purposes or other uses, or when such newsrack or public way obstruction unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, the ingress or egress for any residence or place of business, or the use of poles, posts, travel signs or insignias, hydrants, mailboxes or other objects permitted at or near said location.~~

- ~~C. Within 60 days of the passage of this article every person or other entity shall comply with the provisions of this article with respect to each newsrack and/or public way obstruction owned by it within the City. [Amended 3-5-2019]~~

§ 223-22. Permit required; ~~application for permit.~~

- ~~A. No person shall install or maintain any newsrack or public way obstruction which in whole or in part rests upon, in or over any public sidewalk or parkway without further applying for and being granted a permit from the Licensing Board. The permit application shall include the following:~~

- ~~(1) The physical dimensions of each newsrack or public way obstruction to be installed or maintained in the City by the person;~~
- ~~(2) The name, address, and telephone number of the person or entity to whom or to which the permit is to be issued; and~~
- ~~(3) A diagram showing the location of the newsrack or public way obstruction and the dimensions of the sidewalk, if any, upon which it is to be located.~~

- ~~B. Newsracks shall require the submission of a permit application, but the permit shall be granted by the Licensing Board on a ministerial basis provided that the proposed newsrack as installed will not violate the provisions of § 223-21 above.~~

§ 223-23. Standards for installation, maintenance and operation.

~~Any newsrack or public way obstruction which in whole or in part rests upon, in, or over any public sidewalk or parkway shall comply with the following standards:~~

- ~~A. All newsracks and public way obstructions must be individually permitted by location.~~
- ~~B. No newsrack or public way obstruction shall be chained, bolted or otherwise attached to any public property, or to any private property, without the written permission of the City, the owner, or the person in possession of the property to which the attachment is to be made.~~
- ~~C. Newsracks and public way obstructions shall not be chained or otherwise attached to one another.~~
- ~~D. The City shall issue a proof of permit in the form of a sticker or decal which shall be attached to the newsrack or public way obstruction at all times.~~
- ~~E. All permits must be renewed annually prior to July 1.~~
- ~~F. Unlicensed newsracks or public way obstructions will be considered abandoned and~~

Commented [R03]: I wasn't able to locate this permit. I'm not sure its still applicable.

~~subject to removal without notice.~~

G. ~~All permits are nontransferable.~~

H. ~~The annual fee for each permit shall be fifty dollars (\$50.), regardless of when during a year such permit is issued.~~

I. ~~Any permit may be revoked at any time, by action of the Licensing Board; provided, however, that any revocation initiated by the Licensing Board shall entitle the owner of the newsrack and/or public way obstruction to a pro rata refund of the annual permit fee paid pursuant to the preceding Subsection H of this section.~~

Commented [R04]: I don't believe we do this.

§ 223-24. Identification required.

~~Within 30 days after this article becomes effective, every person or other entity which places or maintains a newsrack or public way obstruction on the highways of the City shall have his/her/its name, address and telephone number affixed thereto in a place where such information can be easily seen.~~

§ 223-25. Hold harmless agreement; insurance. [Amended 3-5-2019]

~~Every person or other entity which places or maintains a newsrack or public way obstruction on a public sidewalk, parkway, highway or highway in the City shall file a written statement with the Licensing Board, satisfactory to the City Attorney, whereby he/she/it agrees to indemnify and hold harmless the City, its officers, City Council members and employees from any loss or liability or damage, including expense and costs for bodily injury or damage to private or public property sustained by any person as a result of the installation, use or maintenance of a newsrack or public obstruction within the City. A certificate of insurance in a form approved by the City Attorney indicating no less than one million dollars (\$1,000,000.) in general liability insurance coverage and naming the City as an additional insured shall be maintained on file with the Licensing Board by each such person or entity.~~

Commented [R05]: I don't think we have a mechanism for enforcement or follow-up for this section

§ 223-26. Removal of newsrack or public way obstruction.

~~The City Manager or his/her designee shall remove any newsrack or public way obstruction placed on any highway, sidewalk, parkway or highway in violation of this article.~~

§ 223-27. Severability.

~~The provisions of this article are severable. If any provision of this article or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article without the invalid provisions or applications.~~

§ 223-28. Injunction.

~~Any violation of this article is hereby declared to be a nuisance. In addition to any other relief provided by this article, the City Attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article. Such application for relief may include the seeking of a temporary restraining order,~~

~~preliminary injunction and/or permanent injunction.~~

~~§ 223-29. Damage to newsracks and public way obstructions.~~

~~Any damage to newsracks or public way obstructions, whether or not properly licensed, by any cause whatsoever, including snowplowing and removal, shall be at the sole expense of the owner.~~

~~§ 223-30. Violations and penalties.~~

~~Any violation of the provisions of this article or any order of the Director or the Code Compliance Officer related thereto are subject to citation and the civil penalties set forth in RSA 47:17 and Code § 543.~~

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

Chapter 223

Streets and Sidewalks

[HISTORY: Adopted by the City of Rochester as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Parades — See Ch. 22, Art. III.

Peddling and soliciting — See Ch. 171.

Vehicles and traffic — See Ch. 254.

Article I

General Regulations

[Adopted 6-6-1995 as Ch. 15 and § 26.7 of the 1995 Code]

§ 223-1 **Definitions.**

[Amended 3-5-2019]

The following definitions shall be applicable for the purpose of this article:

COMMISSIONER

The Commissioner of Public Works or his/her designee. See § 7-18A of the City Code.

COMMITTEE

The subcommittee of the City Council (Public Works and Building Committee) having responsibility for overseeing expenditures, maintenance and control of public buildings, streetlights, public parks, sewerage, streets and highways and residential solid waste/recycle disposal. The Committee members shall be designated by the Mayor and shall enjoy membership according to rules and regulations as established by the City Council. The responsibilities of this Committee shall be enumerated by the City Council and shall further be as set forth within this article, and this Committee shall be referred to throughout this article as "Committee."

§ 223-2 **Repair of highway, bridge or sidewalk.**

[Amended 3-2-2004]

Whenever any highway, bridge, or sidewalk shall, from want of necessary repair, or because of any repairs or construction being made therein by the Highway Division of the Department of Public Works, become unsafe for travel, the Commissioner, upon instruction of the City Manager, shall erect a suitable fence or railing to exclude all travelers from passing over the same and shall maintain at night such lights as may be necessary to warn the traveler of the hazard. If said repairs or construction is being made by any other department or person, the head of such other department or person shall erect and maintain the same guard fence, rails and lights.

§ 223-3 Prohibiting use of highways.

The Commissioner may make rules and regulations prohibiting the use of any or all highways to such vehicles as he/she may prescribe in order to prevent the use of said highways when said highways are unsuitable for travel thereon. Such rules and regulations shall be posted on each highway so regulated and at two other public places in the City. Any person violating the provisions of such posted rules and regulations shall be fined not more than one hundred dollars (\$100.) and shall be liable for all damage occasioned thereby.

§ 223-4 Elevation.

The datum from which all elevations for street and other City work shall be calculated shall be that of the U.S. Geodetic Survey, as given on the standard discs of the survey.

§ 223-5 Permit for excavation upon highway or sidewalk.

- A. No person shall break or dig up the ground, stone or concrete in any street, lane or alley, or in any sidewalk or common in the City, or erect any staging for building, or fence off any portion of said street or sidewalk, or place or deposit any stone, brick, timber, or other building material thereon, without first obtaining a written permit from the Commissioner and complying in all respects with conditions said Commissioner may impose. Whenever any street, lane, alley, sidewalk, or other public place in the City shall, under any permit granted, be dug up, obstructed or encumbered, and thereby rendered unsafe or inconvenient for travelers, the person so digging up, obstructing or encumbering shall put, and at all times keep up, a suitable railing or fence around the section or parts of any street, lane, alley, or sidewalk or other public place so dug up, obstructed or encumbered, so long as the same shall be, or remain, unsafe or inconvenient as aforesaid, and shall also keep such fence adequately illuminated every night from dusk until dawn so long as such railing or fence shall be kept standing. He/she shall also, at his/her expense, to the acceptance of the Commissioner, and within such reasonable time as the Commissioner shall direct, repair such street, lane, alley, sidewalk or public place. **[Amended 3-5-2019]**
- B. For a period of five years, beginning with the date of completion of the final paving of a public street or way relating to the construction or reconstruction of said street or way, no person, firm or corporation or any agent or servant thereof shall excavate, construct or in any way encumber the paved or traveled portion of the street or way in the City of Rochester at any time, except for emergencies as may be deemed necessary by the Commissioner of Public Works and then only upon the posting by such entity of sufficient security, as determined by the Commissioner of Public Works and the agreement of such entity, to pay the cost of restoring such street or way to its original condition or with the approval by majority vote of the City Council. For one year after being notified of the completion of such restoration by such entity, the Commissioner may reduce the amount of the security posted by such entity; however, the Commissioner shall retain sufficient security to ensure that such restoration has been performed in a manner that will ensure that said street or way has been restored to its original condition. One year after being notified of the completion of such restoration, the Commissioner shall inspect the area restored and shall release such security if, in the judgment of the Commissioner, such restoration is satisfactory. **[Amended 3-2-2004; 4-7-2015; 4-5-2016]**
- C. Any other provision of this article notwithstanding, any person, firm or corporation or any agent or servant thereof that shall violate the provisions of this section shall be subject to a fine of not more than five hundred dollars (\$500.).

§ 223-6 Fire Chief to be notified.

Any person or corporation or department of the City, before digging up, obstructing or encumbering in any

way any street, lane, alley, sidewalk, or other public place in the City, shall, before beginning such work, notify the Fire Chief as to where such work is to be done and shall, immediately upon the completion of such work and the restoration of the place to its normal condition, notify the Fire Chief.

§ 223-7 Moving of buildings through streets.
[Amended 3-5-2019]

- A. No person shall move, or assist in moving, any house, shop or other building through any street, lane, or alley without first obtaining a written license from the Licensing Board. Whenever the Licensing Board shall as aforesaid grant permission to any person to encumber any street, sidewalk, or public square for the purpose of erecting, altering or moving buildings or to dig up or encumber the same in any other manner, it may, as a condition to granting such permission, require the party obtaining the same to furnish a bond of indemnity to the City of Rochester, in such sum and with such securities as the Licensing Board may deem proper.
- B. The fee for such license shall be twenty-five dollars (\$25.).

§ 223-8 Conduct on public streets and highways.

The following conduct with respect to the use of the City streets and highways shall be regulated as more fully set forth below:

- A. No person shall place, establish, or maintain any sign, awning or shade before his/her place of business, dwelling house or tenement, over any part of any street or sidewalk, unless the same is safely fixed and supported so as in no way to endanger persons passing upon such street or sidewalk, and so that the lowest part of such sign, awning or shade shall be at least seven feet above the sidewalk; nor shall any person hang, affix, fasten, place or allow to remain upon the outer edge of any sidewalk any sign or showcase whatever, or there display any goods, merchandise, or samples of any business calling, trade, art or craft, so as to obstruct the free passage and view to and from the street and sidewalk.
- B. No person shall sell at auction or otherwise upon any street or public square in the City any furniture, goods, wares or merchandise whatever, or place or in any manner encumber such street or square therewith, without first obtaining a permit from the City Manager and obtaining a secondhand dealer's/hawker's license from the Department of Building, Zoning, and Licensing Services. **[Amended 5-1-2007; 10-15-2013]**
- C. No person shall draw or cause to be drawn, move or cause to be moved, upon any public highway or street in said Rochester, any harrow, plow, or other instrument or implement liable to cause injury to the surface of said public highway or street, unless the same is being carried or transported upon a drag, vehicle or other conveyance.
- D. No theatrical or dramatic representation shall be performed or exhibited, and no parade or procession upon any public street or way, unless a special license shall first be obtained from the Licensing Board. (See Chapter 22, Amusements and Entertainment, Article III, Public Dances, Circuses and Parades.) **[Amended 3-5-2019]**
- E. Dumping on highways. No person shall deposit or dump bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, old automobiles, automobile parts, or any other stones, snow, residential solid waste, dirt, ashes, lumber or any other thing either in or upon any highway, street, lane, alley, sidewalk,

or other public place within the City limits of Rochester. [Amended 12-5-1995; 3-5-2019]

§ 223-9 Proposal for new street or highway or public improvements; sewer and water assessments.

No proposed new street or highway or new public sewer, water, street surfacing, or other public improvements, or any combination of the above, shall be laid out, accepted or constructed on behalf of the City by the City Council which is not subject to review by the Planning Board under Rochester Subdivision Regulations until the following requirements have in all respects been complied with:

- A. The person or persons offering said street or highway layout or requesting new public sewer, water, street surfacing or other public improvements, or any combination of the above, shall proceed as follows:
 - (1) Make written petition to the Planning Board, which shall provide the following:
 - (a) A description of or reference to a map or plan, showing the starting points, courses, and termini of the street or highway, and requested sewer, water, street surfacing and other public improvements, as may be necessary.
 - (b) A description of the lands affected by said street and public improvements.
 - (c) The names of the owners of such lands.
 - (d) The estimated cost for the construction of said streets or highways and other necessary public improvements.
 - (e) A separate form of sewer or water agreement, providing that a person shall pay for the total cost of any sewer or water extensions, which said costs shall be determined by the Commissioner of Public Works, and each agreement shall further provide for the payment of the total cost of said sewer or water extensions plus full payment of interest on account of any debt to be incurred by the City in the construction of said sewer or water extensions. Each agreement shall further provide that the total cost of said sewer or water extensions and payment in full of the interest on any debt to be incurred by the City in the construction of said sewer or water extensions shall be paid by the person desiring such construction by means of a special sewer or water assessment and shall constitute a lien on all land of said person. Said lien shall be transferable upon the conveyance of said improved land, provided that all prior installments thereon have been paid. Each agreement shall further provide that said special sewer or water assessment shall be based upon the total cost of the construction plus the payment of interest on any debt incurred by the City, and may further provide that said cost and interest may be prorated over a period not exceeding 10 years. Each agreement shall further provide that in the event of a transfer or sale by the original petitioner of the property serviced by said extension, the balance then owing to the City for said extension shall be paid in full. Said agreement shall be recorded in the Strafford County Registry of Deeds, and said lien shall have the full force and effect of a tax lien and be collectable as such as provided by RSA 80:88 to 80:91 as presently enacted or the corresponding provisions of any recodification or amendment of these sections. Said agreement shall also be signed and shall be duly witnessed and acknowledged. Any agreement for sewer or water shall be limited to individual owners of residential homes only, who shall be reimbursed for any payment made as above provided in the event that Phase II of the Water Pollution Abatement Program of the City of Rochester is adopted. Any commercial, industrial or real estate development owners shall pay their pro rata share of such sewer

and water improvements in cash prior to construction. **[Amended 3-5-2019]**

- (2) Said street or highway shall be a minimum of 50 feet in width.
 - (3) Give a warranty or other satisfactory fiduciary deed of conveyance describing said property to the City of Rochester.
- B. The Planning Board shall review said petition and agreement and shall report in writing to the City Council and to the Commissioner of Public Works the following:
- (1) The need of such street or highway and any necessary public improvements.
 - (2) The character of the proposed street layout and necessary public improvements and their relationship to the future development of the City as a whole.
 - (3) The necessity, if any, for sewer, water, street surfacing and other public improvements.
- C. The Commissioner of Public Works shall report in writing to the City Council the following:
- (1) The estimated cost of final surfacing for any of said street or highway by the City.
 - (2) The estimated cost for any necessary sewer, water or other public improvements.
 - (3) The estimated period of time required to complete said street or highway surfacing and to construct said sewer, water and other necessary public improvements.
- D. The City Council shall proceed as follows:
- (1) Review the petition and agreement of the person or persons offering said street or highway and each person desiring necessary sewer, water or other public improvements; review the action and recommendations of the Planning Board; and examine the report of the Commissioner of Public Works. The petition of the person or persons, the action and recommendations of the Planning Board, if any, and the report of the Commissioner of Public Works shall be first accepted by the City Council by a majority vote of the entire membership of the Council.
 - (2) If the above petition, action and report are all accepted by a majority vote of the City Council, the City Council shall require each person to provide the City with a written agreement, signed and duly witnessed and acknowledged, in which each person agrees to pay his/her pro rata share of the special assessment hereinabove provided. No agreement and no deed shall be accepted by the City without a two-thirds roll call vote of the Council. Said two-thirds roll call vote shall be based upon the entire membership of the City Council.
- E. Any person who refuses to sign an agreement to pay his/her pro rata share of the special assessment for new construction of said sewer or water extension prior to said construction or any other person who shall refuse to sign such an agreement at a later date to pay his/her pro rata share of the special assessment shall be prohibited from joining in any new sewer or water extensions in the City of Rochester without paying his/her pro rata share of the special assessment, as the case may be, for the construction of said sewer or water extensions in the City of Rochester.

- F. The pro rata share of each person shall be determined by dividing the total cost of construction of said sewer or water extensions plus any necessary interest to be incurred in financing of said sewer or water construction by the number of lots as laid out on said plan or map in order to determine each person's pro rata share of the special assessment.
- G. The funds received from the collection of such special sewer or water assessments shall be kept as separate and distinct funds and shall be known by their respective names as the "Sewer Fund" or the "Water Fund" as the case may be. Any surplus in any such fund or funds may be used for the enlargement or replacement of said sewer or water extensions but shall not be used for the extension of said sewer or water to serve unsewered or unwatered areas or for any purpose other than for cost of construction and payment of interest on any said newly constructed sewer or water extensions.
- H. A copy of this amendment shall be recorded in the Strafford County Registry of Deeds under the title of "City of Rochester Sewer or Water Liens" and any other indexing as the Register of Deeds may deem appropriate.
- I. Any lien created by this amendment or by said original ordinance or other prior amendment thereto shall also be deemed to be in the form of a tax lien, and any default thereon shall also be collectable by an action in debt, or other appropriate action, and said lien shall also have the full force and effect of a real estate attachment, as well as a tax lien.
- J. This amendment shall take effect upon its passage and no petition shall be considered without complete compliance with said section and all amendments thereto.

§ 223-10 Naming of public streets and rights-of-way.

- A. Every highway, street or right-of-way under the control of the City and which is to receive, or has received, legal status by acceptance shall have a name which shall be given it by the City Council in accordance with the provisions of RSA 231:133, as presently enacted, or in accordance with the corresponding provisions of any recodification or amendment of such section. Said name shall be legibly marked on a suitable signboard or other marker and placed in at least two conspicuous places on said street. The City Council may change the name of any such street, highway or right-of-way at any time when in its judgment there is occasion for so doing.
- B. The naming of any new street, highway or right-of-way shall form a part of the return of the layout of the street or highway, or of the acceptance of any dedicated way. The City shall not be bound by any name previously assigned to the street, highway or right-of-way by any private owner, developer, or dedicator. No name for a highway, street, or right-of-way shall be selected which is already in use, or which is confusingly similar to any other existing name, or which otherwise might delay the locating of any street in an emergency.
- C. Whenever a name is assigned to any new street, highway or right-of-way, or a change is made in the name of any street, highway or right-of-way, the City Council shall make a return of the same to the City Clerk, who shall make a record of a new name or name change and shall forward a copy of such record to the Commissioner of Transportation, in accordance with the requirements of RSA 231:133, as presently enacted or in accordance with the corresponding provisions of any recodification or amendment thereof. In the process of assigning names to streets, highways and rights-of-way, the City Council shall follow the following guidelines, to the extent possible: **[Amended 6-5-2001]**

- (1) No name shall be assigned to a street, highway, or right-of-way which shall duplicate the name of any other proposed or existing street, regardless of the use of the suffix "street," "avenue," "boulevard," "drive" or the like.
 - (2) The extension of an existing street shall have the same name as the existing street.
 - (3) Before a new street name is assigned to a street, highway or right-of-way by the City Council, or an existing street is renamed by the City Council, the proposed name of such street shall be reviewed by a committee consisting of the City Clerk, Fire Chief, Police Chief, Planning and Development Director, or their respective designees, and the Rochester Postmaster, or his/her designee, who shall submit their comments, if any, with regard to the proposed name to the City Council. No proposed name which receives a negative review by a member of the aforementioned committee shall be utilized.
- D. The Planning Board shall have the authority to assign a provisional name to all streets, highways and/or rights-of-way shown upon subdivision or site review plans being considered for approval by the Planning Board; provided, however, that no such provisional name shall be assigned to such street unless and until such time as the Planning Board shall have followed the procedures set forth in Subsection C above with respect to such proposed street name.

**§ 223-11 Address numbers on streets, highways and rights-of-way.
[Amended 6-15-1999; 6-5-2001]**

- A. Pursuant to the provisions of RSA 231:133-a, the Planning and Development Director of the City of Rochester, or his/her designee, shall have the authority to assign numbers to all existing residential and/or commercial structures and/or to vacant lots. In assigning numbers to residential and/or commercial structures and/or vacant lots, the Planning and Development Director, or his/her designee, shall employ the following criteria: **[Amended 10-15-2013; at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- (1) For every 10 feet of right-of-way frontage within the Special Downtown District of the City of Rochester, as defined in Chapter **275**, Zoning, of the Code of the City of Rochester, there shall be an individual number assigned.
 - (2) For every 50 feet of right-of-way frontage outside of the Special Downtown District of the City of Rochester, as defined in Chapter **275**, Zoning, of the Code of the City of Rochester, there shall be an individual number assigned.
 - (3) Streets shall be numbered so that even numbers are located on the left side of the right-of-way and odd numbers are located on the right side of the right-of-way. The right and left sides of the right-of-way shall be determined by the relationship of the right-of-way to a person facing away from the center of the City of Rochester at the statue of Parson Main.
 - (4) The numbering for culs-de-sac shall begin at the intersection of the cul-de-sac and the collector right-of-way and shall proceed from the right-hand side of the collector right-of-way from right to left around the cul-de-sac.
 - (5) Mobile home parks and condominium and apartment complexes shall, to the extent possible, as determined by the committee established in § **223-10C(3)** above, name their private streets and number

each unit consistent with the E-911 standards set forth in this section.

- (6) Each apartment building shall be given one street number and each apartment unit within such building shall be assigned that street number and unit number.
 - (7) Existing numbering patterns for existing streets, highways and rights-of-way which do not allow for the assignment of additional numbers for future development may be assigned new numbers by the Planning and Development Director or his/her designee.
 - (8) All new buildings and/or structures, as defined in Chapter **275**, Zoning, Article 2, of the Code of the City of Rochester, or additions to existing buildings and/or structures, shall be required to obtain and file with the Department of Building, Zoning, and Licensing Services a foundation certification plan in accordance with the requirements of Chapter **40**, Building Construction and Property Maintenance, § **40-15**.
 - (9) The beginning of a street shall be that end which intersects with a collector street and, so far as possible, shall be that end closest in distance to the statue of Parson Main.
 - (10) Any building or structure for which a number has been designated shall have such number affixed thereto in such manner as to be plainly visible from the street which abuts the main entrance to the property. Such numbers shall be a minimum height as to meet current Fire Code requirements.
 - (11) The owner of any building or structure who shall fail to affix an assigned number to his/her mail box and building or structure within 30 days of written notice from the Planning and Development Director shall be fined not more than twenty-five dollars (\$25.) for each day that such number is not affixed. Any number affixed in accordance with this subsection shall be visible from the street. With respect to new structures, failure to display an assigned number in the manner set forth above shall be grounds for denial of a certificate of occupancy.
- B. The assignation or alteration of numbers by the Planning and Development Director pursuant to the provisions of Subsection **A** above shall be provisional only until such time as such assignation or alteration of numbers shall be confirmed by the Planning and Development Director after the holding of a public hearing by the City Council in accordance with the provisions of RSA 231:133-a.

§ 223-12 **Construction of sidewalks.**

All sidewalks built by the City of Rochester shall be constructed under the supervision of the Commissioner. Preference in order of construction of cement sidewalk shall be given to petitioners who by written application shall agree to pay a portion of the cost of construction of said sidewalk, said portion not exceeding 1/2 of the said cost, payment to be made over a period not to exceed 10 years. The portion of the cost to be borne by the petitioner shall be both reasonable and proportional to the benefits according to the land upon which such assessment is made.

§ 223-13 **Obstruction of sidewalks.**

No person shall unnecessarily place any obstruction on any foot pavements or sidewalks. No person shall be permitted to construct a ramp up to and across the sidewalk adjacent to his/her property or place any other obstructions thereon without first securing a permit from the Commissioner to do so.

§ 223-14 **Streetlighting.**

[Amended 3-5-2019]

The Commissioner shall have supervision of all municipal lighting and location of electric light and utility poles within the City limits and is authorized to prescribe rules and regulations for the marking or painting of any poles, crossarms or supporting fixtures which are located within the public highway. All persons owning or using said poles, crossarms or supporting fixtures shall paint or mark at their own expense said poles, crossarms, or supporting fixtures in accordance with the rules, regulations and directions of said Commissioner.

§ 223-15 Prohibited use of poles.

No person shall use said poles for the posting of bills or other advertising purposes or for any other purpose except that for which permission is given by the Commissioner.

§ 223-16 "Adopt-A-Spot" areas.

[Amended 3-2-2004; 5-1-2007]

The City Manager, in the exercise of duties relative to the oversight of all real and personal property owned by the City of Rochester, as specified in Section 14 of the Rochester City Charter, from time to time, designates certain areas of the City, primarily areas included within or closely related to the highways servicing the City of Rochester, as "Adopt-A-Spot" areas. "Adopt-A-Spot" areas are maintained, landscaped and/or otherwise beautified by designated individuals and/or entities that volunteer to perform such functions for the purpose of improving the appearance of the "Adopt-A-Spot" areas, as well as the appearance of the City of Rochester as a whole. The City Manager shall annually, on or about May 1 of each year, establish a list of "Adopt-A-Spot" areas for the ensuing calendar year beginning on such May 1 and ending on the following April 30. A copy of such list shall be maintained in the City Manager's office and in the office of the City Clerk. In the event that the City Manager fails to update the "Adopt-A-Spot" list on or about May 1 of a given year, the "Adopt-A-Spot" list then on file in the office of the City Manager shall be controlling for the purposes of this section. No person shall, within any "Adopt-A-Spot" area, erect or maintain any sign or other advertising material whether for political purposes or otherwise, except for such advertising material and/or device as has been previously authorized in writing by the City Manager or his/her designee. Any person failing to comply with the provisions of this section shall be guilty of a violation.

§ 223-17 Bonds.

The Commissioner may require any person seeking to perform any work affecting any highway, bridge, sidewalk or other public property to furnish a bond of indemnity to the City of Rochester in such sum and with such sureties as the Commissioner may deem proper.

§ 223-18 Violations and penalties.

Except as otherwise provided herein, whoever is in violation of any of the provisions of this article shall be subject to a fine of not more than one hundred dollars (\$100.).

Article II Newsracks and Public Way Obstructions

[Adopted 6-6-1995 as Ch. 35 of the 1995 Code]

§ 223-19 Purpose.

The purpose of this article is to promote the public health and safety through the regulation of the placement of newsracks and public way obstructions.

§ 223-20 Definitions.

As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

CITY

The City of Rochester.

NEWSPAPER or NEWS PERIODICAL

A daily or weekly publication containing all of the following: current news, editorials, feature articles and advertising.

[Amended 3-5-2019]

NEWSRACK

Any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or news periodicals.

PARKWAY

That area between the sidewalk and the curb of any street, and where there is no sidewalk, that area between the edge of the roadway and the property line adjacent thereto. "Parkway" shall also include any area within a roadway which is not open to vehicular travel.

PUBLIC WAY OBSTRUCTION

Any object other than a newsrack which obstructs the free passage of pedestrians or vehicles on the streets, sidewalks, parkways or roadways. The term "public way obstruction" shall include, but not be limited to, signs and planters.

ROADWAY

That portion of a street improved, designed, or ordinarily used for vehicular travel.

SIDEWALK

Any surface provided for the exclusive use of pedestrians on any public right-of-way under the jurisdiction of the City.

STREET

All that area dedicated to public use or public street purposes and shall include, but not be limited to, roadways, parkways, alleys, sidewalks, garages, parking lots, parks and playgrounds.

[Amended 3-5-2019]

§ 223-21 Prohibited acts.

- A. No person shall install, use, attach or maintain any newsrack or public way obstruction which projects onto, into or over any part of the roadway of any public street or which rests, wholly or in part, upon, along or over any portion of the roadway of any public street.
- B. No person shall install, use, attach or maintain any newsrack or public way obstruction which in whole or in part rests upon, in or over any public sidewalk or parkway when such installation, use or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other uses, or when such newsrack or public way obstruction unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, the ingress or egress for any residence or place of business, or the use of poles, posts, travel signs or insignias, hydrants, mailboxes or other objects permitted at or near

said location.

- C. Within 60 days of the passage of this article every person or other entity shall comply with the provisions of this article with respect to each newsrack and/or public way obstruction owned by it within the City. **[Amended 3-5-2019]**

§ 223-22 Permit required; application for permit.

- A. No person shall install or maintain any newsrack or public way obstruction which in whole or in part rests upon, in or over any public sidewalk or parkway without further applying for and being granted a permit from the Licensing Board. The permit application shall include the following:
- (1) The physical dimensions of each newsrack or public way obstruction to be installed or maintained in the City by the person;
 - (2) The name, address, and telephone number of the person or entity to whom or to which the permit is to be issued; and
 - (3) A diagram showing the location of the newsrack or public way obstruction and the dimensions of the sidewalk, if any, upon which it is to be located.
- B. Newsracks shall require the submission of a permit application, but the permit shall be granted by the Licensing Board on a ministerial basis provided that the proposed newsrack as installed will not violate the provisions of § **223-21** above.

§ 223-23 Standards for installation, maintenance and operation.

Any newsrack or public way obstruction which in whole or in part rests upon, in, or over any public sidewalk or parkway shall comply with the following standards:

- A. All newsracks and public way obstructions must be individually permitted by location.
- B. No newsrack or public way obstruction shall be chained, bolted or otherwise attached to any public property, or to any private property, without the written permission of the City, the owner, or the person in possession of the property to which the attachment is to be made.
- C. Newsracks and public way obstructions shall not be chained or otherwise attached to one another.
- D. The City shall issue a proof of permit in the form of a sticker or decal which shall be attached to the newsrack or public way obstruction at all times.
- E. All permits must be renewed annually prior to July 1.
- F. Unlicensed newsracks or public way obstructions will be considered abandoned and subject to removal without notice.
- G. All permits are nontransferable.
- H. The annual fee for each permit shall be fifty dollars (\$50.), regardless of when during a year such permit is issued.

- I. Any permit may be revoked at any time, by action of the Licensing Board; provided, however, that any revocation initiated by the Licensing Board shall entitle the owner of the newsrack and/or public way obstruction to a pro rata refund of the annual permit fee paid pursuant to the preceding Subsection **H** of this section.

§ 223-24 Identification required.

Within 30 days after this article becomes effective, every person or other entity which places or maintains a newsrack or public way obstruction on the streets of the City shall have his/her/its name, address and telephone number affixed thereto in a place where such information can be easily seen.

§ 223-25 Hold harmless agreement; insurance.
[Amended 3-5-2019]

Every person or other entity which places or maintains a newsrack or public way obstruction on a public sidewalk, parkway, roadway or street in the City shall file a written statement with the Licensing Board, satisfactory to the City Attorney, whereby he/she/it agrees to indemnify and hold harmless the City, its officers, City Council members and employees from any loss or liability or damage, including expense and costs for bodily injury or damage to private or public property sustained by any person as a result of the installation, use or maintenance of a newsrack or public obstruction within the City. A certificate of insurance in a form approved by the City Attorney indicating no less than one million dollars (\$1,000,000.) in general liability insurance coverage and naming the City as an additional insured shall be maintained on file with the Licensing Board by each such person or entity.

§ 223-26 Removal of newsrack or public way obstruction.

The City Manager or his/her designee shall remove any newsrack or public way obstruction placed on any street, sidewalk, parkway or roadway in violation of this article.

§ 223-27 Severability.

The provisions of this article are severable. If any provision of this article or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article without the invalid provisions or applications.

§ 223-28 Injunction.

Any violation of this article is hereby declared to be a nuisance. In addition to any other relief provided by this article, the City Attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article. Such application for relief may include the seeking of a temporary restraining order, preliminary injunction and/or permanent injunction.

§ 223-29 Damage to newsracks and public way obstructions.

Any damage to newsracks or public way obstructions, whether or not properly licensed, by any cause whatsoever, including snowplowing and removal, shall be at the sole expense of the owner.

§ 223-30 Violations and penalties.

Any person, firm or corporation violating any provision of this article shall be fined one hundred dollars (\$100.) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues to occur.