

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Tom Abbott
Councilor Donna Bogan
Councilor Robert Gates



CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, August 1, 2019

31 Wakefield Street, Rochester, NH

City Council Chambers

6:00 PM

Agenda

1. **Call to Order**
2. **Public Input**
3. **Acceptance of the Minutes: June 6, 2019 P. 3**
4. **Ward 2 Polling Location**
5. **Fireworks Ordinance discussion P. 11**
6. **Rental Inspection Program**
7. **Ordinance Enrollment: Chapter 275 *forthcoming***
8. **Other**
9. **Adjournment**

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City Clerk's Office

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, June 6, 2019**31 Wakefield Street, Rochester, NH**~~City Council Chambers~~**City Hall Annex****6:00 PM****Codes and Ordinances Committee**

Councilor Peter Lachapelle, Chair

Councilor Elaine Lauterborn, Vice Chair

Councilor Tom Abbott

Councilor Donna Bogan

Councilor Robert Gates

Other Council Members Present:

Councilor Varney

Others Present

Terence O'Rourke, City Attorney

Tim Wilder, Assistant Fire Chief

Jim Grant, Director of Building, Zoning, and Licensing Department

Joe Devine, Compliance Officer

Nel Sylvain, Resident

Minutes**1. Call to Order**

Councilor Lachapelle called the Codes and Ordinances Committee meeting to order at 6:00 PM. Kelly Walters, City Clerk, took a silent roll call. All Committee members were present.

2. Public Input

Councilor Lachapelle invited the public to come forward to address the Committee.

Nel Sylvain, resident, addressed the Committee. He spoke about the requirement to obtain a building permit in order to replace existing shingles on a roof. He said there is fee charged for such a building permit; however, there is no follow through of an inspection of the work completed. Jim Grant, Director of the Building, Zoning, and Licensing Services Department stated that this particular building permit requirement has been in place since about 2001. Councilor Abbott added that it had not been heavily enforced when this requirement first started; however it being enforced now. Mr. Abbott stated that the City could opt to offer the residents of Rochester some exceptions to obtaining a building permit for items such as a roof replacement (shingles), window replacement, and replacement of siding on a property owner's house; however, this would require an amendment to the City's ordinances in order to allow for those specific exemptions listed in the International Residential Code.

Councilor Gates questioned if the Assessing Department is notified of all building permits. Mr. Grant replied yes.

Mr. Grant said Mr. Sylvain could submit a proposed change to the City's ordinances for the Committee to consider.

Councilor Lachapelle said since the location of the meeting had been changed that he would keep public input open for members of the public who may show up late to the meeting.

3. **Acceptance of the Minutes: March 7, 2019**

Councilor Lauterborn **MOVED** to **ACCEPT** the minutes of May 2, 2019. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. **Placement of "Donation Bins"**

Terence O'Rourke, City Attorney, referred to the donation bin locations which have recently been problematic. He said that the owner of the former Ben Franklin Crafts building had not been aware that donations bins had been placed on his property. The owner of the building was informed of the issue and that there were two options to be taken: to clean up the area himself or the City would clean up the area and send the owner the bill. The owner requested that the City clean up the area and he would pay for the bill. The owner contacted Planet Aid to have the donation bin removed from his property.

Mr. O'Rourke stated that the Committee could propose a permitting system or amendment to the ordinances.

The Committee discussed the recent issues involved with dumping near the donation bins and various areas of the City where such bins are being placed. Councilor Abbott said it seems once the owner is informed of the issue that the issue is resolved.

City Attorney O'Rourke said the quickest way to resolve the issue is by amending the ordinance to define what is meant by a "donation bin" and to restrict where they can be placed throughout the City. Councilor Lauterborn said this should be kept simple. She added that there should be no fee and simply keep the owner of the property accountable. There should be something in place that allows the City to take action if necessary. It was determined that City staff would work on a proposed amendment to the ordinances for the next Codes and Ordinances Committee meeting.

5. **Presentation: Rental Inspection Program**

Joseph Devine, Compliance Officer, gave a presentation of the Rental Inspection Program. He said basically the presentation is being given to find out if the Council is interested in proceeding with this program.

Councilor Lachapelle asked what policy is in place currently. Could a City staff member enter a rental property to do an inspection? Mr. Devine replied that City staff may request to enter a rental property to conduct an inspection; however, City staff is unlikely to be invited into said rental unit.

Councilor Lachapelle asked if there is an RSA in place which would allow City staff to enter into

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the building. Mr. Grant replied no, other than seeking an Administrative Search Warrant which would require a judge to sign-off in court.

Councilor Lachapelle inquired how the Building, Zoning, and Licensing Services is notified that there is a potential issue at a rental unit. Mr. Grant replied that the City has a “complaint driven” policy which pits neighbor against neighbor. He suggested a pro-active approach because most resident do not want to start trouble with their problematic neighbors.

Councilor Lachapelle asked if renters could request an inspection. Councilor Abbott replied yes and that it is beneficial for a landlord to request an inspection because that documentation could be used in court as evidence of what the condition of the property was at a certain time.

Councilor Gates questioned how many complaints are received on a monthly basis. Mr. Devine replied between 10 and 15 complaints a month.

Councilor Bogan questioned how this program would impact the need for more rental units in the downtown area. Mr. Devine said it gives the renter a clear picture of what condition the property is prior to entering into a lease agreement. Mr. Devine said there is a scoring system that would take place for such inspections. A landlord that receives a high score would not have to re-inspect for five years. The lower scores would trigger a re-inspection much sooner.

Attorney O’Rourke said there is currently a similar program in Durham, NH. It helps the landlord because it gives evidence of all the work that has been completed on such rental properties. This is an inspection with a date stamp by the City and it holds up very well in court if the landlord should have issues with a tenant.

Councilor Bogan asked who would complete these inspections. Mr. Devine replied that he would be responsible for conducting such inspections. He suggested that in order to start this process it could be achieved by making a ward-based schedule to space out the inspections. Councilor Bogan suggested that if the inspections were to be approved, they could be staggered out for a three-year period. She added that this would give the City Council an idea if the program is effective or not.

Mr. Grant said that the Fire Department conducts Life Safety Inspections. Tim Wilder, Assistant Fire Chief/Fire Marshal, gave details about the Life Safety Inspections.

Councilor Varney stated that the complaints received by the BZLS Department must always remain a priority.

The Committee discussed some problematic rental property areas of the City.

Councilor Abbott expressed concern for the landlords. He said once a property is leased the landlord has little control over the interior of that building. The Committee discussed the fact that once a lease has expired there is no requirement of the person renting to renew that lease.

Councilor Abbott stated if such a program is to be adopted by the City Council that it be a free service offered to tenants. Councilor Bogan suggested that holding a public forum would be one way of getting the message out. The Committee discussed other ways to inform the public if such a program were to be adopted by the City Council. Councilor Gates suggested that the City would also want to keep this as a service to landlords as well. Councilor Abbott said once a program like this is in place the program would be quickly spread by word of mouth.

The Committee discussed that there should be a way to build a program that would focus on the most needy cases first. It was suggested that the Re-development Zone of the City would be a good place to start. This item has been kept in Committee. The City Attorney will work with BZLS to work on a proposed amendment to the Re-development Zone that could potentially tie into a Rental Inspection Program for the Committee to review.

6. **Discussion: Amendment to Ordinances (proposed changes)**

Councilor Abbott gave a brief overview of the General Ordinance which deals with Overcrowded Housing. He **MOVED** to propose the following Amendment to the full City Council in July:

§ 94-1. Overcrowded housing.

No owner, lessee, or keeper of any tenement house, lodging house, or boardinghouse shall cause or allow any such house to be overcrowded or allow so great a number of persons to dwell or sleep in such house or houses or any portion thereof so as to cause danger to health, and no such place or room shall be so overcrowded that there shall be less than 500 cubic feet of air or a floor space of less than 50 square feet to each occupant of such place, building or room. ~~No room as a living or sleeping room shall hereafter be built without direct opening to the outdoor air.~~

Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Abbott had reconsidered a proposed amendment to the ordinance which he himself brought to the May 2, 2019 Codes and Ordinances Committee meeting regarding Manufacturing Housing. Councilor Abbott **MOVED** to **RECONSIDER** the action taken at the last meeting in order to stop the amendment from being sent to the City Council for adoption. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

7. **Other**

Councilor Lauterborn questioned why the amendments of the May 2, 2019, had not been presented to the full City Council as the Committee voted to at that meeting. City Attorney O'Rourke explained that the codification project is being finalized and it will be a smoother process to allow those changes to be enrolled first. The following amendments will be presented to the full City Council in July:

§ 210 Solid Waste

§ 40 Building Construction & Property Maintenance (*References to RSA 155-A*)

§ 75 Fires and Fire Safety (*Means of Escape*)

§ 94-1. Overcrowded housing.

8. **Ordinance Enrollment**

Kelly Walters, City Clerk, referred to the codification “proof” provided by General Code which has been included in the City Council packet material. Ms. Walters said that the Deputy City Clerk and herself have reviewed all the items which should have been included form Schedule A. There have been about 10 corrections that were missed and shall be fixed prior to posting online. She requested a vote to enroll all of the amendments for the codification project. Councilor Lauterborn **MOVED** to enroll the amendment associated with the codification project. Councilor Bogan seconded the motion.

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The **MOTION CARRIED** by a unanimous voice vote.

The Committee discussed building permits and which permits could possibly be exempt. Councilor Varney stated that he is not in favor of ridding the ordinances of building permits for certain items; however, if there is no follow up with an inspection, there should be no fee attached.

Councilor Abbott gave another example regarding permit fees. The cost of a building permit for a fence is based upon the quality of the fence structure. He did not believe that someone that is spending more money on a quality and good looking fence should be penalized and be required to pay more for such building permit fees.

Mr. Grant agreed with reviewing the higher permit fees and removing the fees for such items that do not require an inspection. Councilor Lachapelle requested that the Director of Building, Zoning, and Licensing Services, bring back a proposal for the Committee to review.

Councilor Abbott said a list of the possible exemptions listed in the International Residential Code should be attached to this set of minutes for review.

9. Adjournment

Councilor Gates **MOVED** to **ADJOURN** the Committee meeting at 7:07 PM. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully Submitted,

Kelly Walters, CMC
City Clerk

What can I do without getting a Building Permit?

Application or notice to the code official is not required for ordinary repairs to structures. Ordinary repairs are defined as work which is associated with the normal maintenance of a property and which effects only the surface or finish characteristic of a structure. Always check with the Department of Building, Zoning, and Licensing Services to make sure, but examples of the types of work where you don't need a permit are:

Building:

1. Retaining walls that are not over 4 feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.
2. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed 2 to 1.
3. Walkways
4. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
5. Prefabricated swimming pools that are less than 24 inches deep.
6. Swings and other playground equipment.
7. Window awnings supported by an exterior wall which do not project more than 54 inches from the exterior wall and do not require additional support.

Electrical:

1. Listed cord-and-plug connected temporary decorative lighting.
2. Reinstallation of attachment plug receptacles but not the outlets therefore.
3. Replacement of branch circuit overcurrent devices of the required capacity in the same location.
4. Electrical wiring, devices, appliances, apparatus or equipment operating at less than 25 volts and not capable of supplying more than 50 watts of energy.
5. Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

Gas:

1. Portable: heating, cooking or clothes drying appliances.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.
3. Portable-fuel-cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

Mechanical:

1. Portable heating appliances.
2. Portable ventilation appliances.

3. Portable cooling units.
4. Steam, hot- or chilled-water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.
6. Portable evaporative coolers.
7. Self-contained refrigeration systems containing 10 pounds or less of refrigerant or that are actuated by motors of 1 horsepower or less.
8. Portable-fuel-cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

In general, for a work element to be considered a repair or replacement, the item which is being repaired must already exist. The above items are intended to represent individual replacement or repair work. When one or more of the above items are included in general renovations to structures, then all such items will be included in the construction cost.

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§ 75-16. Fireworks. [Added 3-4-2008; amended 11-9-2010; 4-2-2013]

A. In accordance with the provisions of RSA 160-C, it shall be illegal for any person, firm, partnership or corporation to offer for sale, expose for sale, sell at retail, purchase, possess, use, explode or display any permissible fireworks within the City of Rochester, except as specifically provided for in this section.

B. As used in this section, the following terms shall have the meanings indicated:

DISPLAY — The use, explosion, activation, ignition, discharge, firing or any other activity which is intended to cause or which causes a firework to do what it was manufactured to do.

FIRE CHIEF — The Fire Chief of the City of Rochester or his/her designee.

PERMISSIBLE FIREWORKS — Those consumer firework devices defined as "permissible fireworks" in RSA 160-C, as the same currently exists or as, from time to time, hereinafter amended.

POLICE CHIEF — The Police Chief of the City of Rochester or his/her designee.

C. Permit required. No person shall use, discharge or explode any permissible fireworks without a permit issued by the City of Rochester. **[Added 2-14-2017]**

(1) Any person wishing to obtain a permissible fireworks display permit shall apply to the Licensing Board at least 15 days prior to the display. The time frame may be waived at the discretion of the Police and Fire Chiefs. **[Amended 5-2-2017]**

(2) The applicant shall provide the following information:

(a) Date of application.

(b) Name, address, and telephone number of applicant.

(c) Address of location where the display will be held.

(d) Diagram of the display location, showing the location of all nearby property lines, nearby buildings, public ways, nearby trees, electrical and telephone lines or other overhead obstructions, and the location of any nearby storage of flammable or combustible liquids or gases.

- (e) Name of the owner of the property where the display will be held.
 - (f) Intended date and time of display, including a possible rain date.
 - (g) Written authorization of the property owner, if different from the applicant.
 - (h) Signature of the applicant.
- (3) Permit fee. The fee for a permissible fireworks display shall be five dollars (\$5.) per event. The fee shall be paid at the time of application and is nonrefundable.
- (4) Site inspections.
- (a) Prior to issuing a permit, the Police Chief or the Fire Chief may conduct an inspection of the display site to determine whether a permissible fireworks display can be held in a safe manner.
 - (b) If, in the opinion of the Licensing Board, the proposed site is not suitable for the safe display of permissible fireworks, the application for a permit shall be denied. **[Amended 5-2-2017]**
- D. Subject to and in accordance with the provisions of Chapter 160-C of the New Hampshire Revised Statutes Annotated it shall be lawful to possess and/or display permissible fireworks upon compliance with the following requirements:
- (1) A person who is 21 years of age or older may display permissible fireworks on private property with the written consent of the owner or in the owner's presence, subject to the provisions of this section and RSA 160-C and any other applicable ordinance, regulation or statute.
 - (2) No display of permissible fireworks shall be permitted within the City except between the hours of 6:00 p.m. and 11:00 p.m. on the following holiday: Fourth of July (including the evening of July 3 beginning at 6:00 p.m., including from such time until 12:00 midnight on any rain date established for the annual City-wide fireworks display held at the Rochester Fairgrounds), after obtaining a permit. **[Amended 6-6-2013; 2-14-2017]**
 - (3) The display of permissible fireworks shall be of such a character, and so located and conducted, that it shall not be

hazardous to property or endanger any person. In accordance with the provisions of RSA 160-C, permissible fireworks shall not be permitted on public property and must be at least 50 feet from nearby buildings, nearby trees, electrical and telephone lines or other overhead obstructions, and the location of any nearby storage of flammable or combustible liquids or gases.

- (4) No permissible fireworks may be used, discharged, exploded, or displayed during periods of very high or extreme fire danger as determined by the Fire Chief or the New Hampshire Division of Forests and Lands.
 - (5) Permissible fireworks may be used, discharged, exploded, or displayed in a manner such that any and all discharge debris shall remain within the property lines of the lot on which the display originates.
 - (6) Anyone using permissible fireworks shall be responsible for removing any debris accumulated due to the discharge of fireworks that fall onto the public way, public property, and any private property within 24 hours. Anyone failing to remove such debris shall be financially responsible for its cleanup. **[Amended 3-5-2019]**
 - (7) Display of permissible fireworks shall be permitted on public property the evening of July 3 beginning at 6:00 p.m., including from such time until 12:00 midnight on any rain date established for the annual City-wide fireworks display held at the Rochester Fairgrounds, provided that such display shall be authorized in a duly issued block party application/permit from the City's Licensing Board covering the public property on which the display is to occur. **[Added 6-4-2013]**
- E. A violation of this section shall be subject to the penalties provided for in § 75-14 of this article.
- F. This section shall be construed consistently with New Hampshire Code of Administrative Rules Chapter Saf-C 2600, as made applicable by state statute and as adopted by reference in § 75-4 of this article, and is not meant to repeal any section thereof. Nothing in this section shall be interpreted so as to conflict with the provisions of Chapter 160-B or 160-C of the New Hampshire Revised Statutes Annotated, as currently written, or as from time to time hereafter amended. If any subsection, sentence, clause, phrase or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such

provision shall be deemed a separate, distinct, independent provision and such holding shall not affect the validity of the remaining portions thereof.

- G. The Police Chief or Fire Chief may suspend the use of permissible fireworks for any of the following reasons:
- (1) Unfavorable weather conditions, including but not limited to lightning storms or high wind conditions exceeding 20 miles per hour or higher.
 - (2) If any person under the age of 21 possesses, uses, discharges or explodes or used, discharged or exploded any permissible firework device.
 - (3) If any person who is using, discharging, exploding, or displaying the permissible fireworks appears to be under the influence of alcohol or drugs.
 - (4) If, in the opinion of the Police Chief or Fire Chief, the use, discharge, exploding, or display of permissible fireworks would create a threat to public safety.
- H. The Police Chief and/or Fire Chief is authorized to seize, take, remove or cause to be removed, at the expense of the owner, all firework devices that are being discharged in violation of this section.
- I. The City Manager, Mayor, and/or the City Council may declare a special event of cultural or civic significance and authorize the display of fireworks on the same terms as Subsection D(2) on particular days to celebrate those special events. **[Added 2-14-2017]**



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Per the Department of Building, Zoning and Licensing, there were 14 fireworks permits issued in the City of Rochester from June through July 2019

Statistics obtained from the PD 2019:

We searched from June 1st to now, and here are the results:

- 61 fireworks calls
- No injuries noted from fireworks
- 7 warnings issued, no summonses—the vast majority of these calls were not immediately responded to due to higher priority calls and our staffing—therefore most were “negative contact” when we got to them
- 1 arrest on a fireworks call (on an charge unrelated to fireworks)

Statistics obtained from the Fire Department 2019:

- There were no fires reported due to fireworks this year.
- No fireworks issues that the fire department responded to
- No injuries reported due to fireworks