

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, May 3, 2018

31 Wakefield Street, Rochester, NH

City Council Chambers

6:00 PM

Agenda

1. **Call to Order**
2. **Public Input**
3. **Acceptance of the Minutes: March 1, 2018 P. 3**
4. **Remote Participation During Council and Board Meetings**
 - **NH RSA Chapter 91-A**
5. **Chapter 22 Fire Department Organization**
6. **Other**
7. **Adjournment**

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City Clerk's Office

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Thursday, March 1, 2018

31 Wakefield Street, Rochester, NH

City Council Chambers

7:00 PM

Agenda

1. Call to Order

Councilor Lachapelle called the Codes and Ordinances Committee to order at 7:00 pm. Susan Morris, City Clerk Typist, took a silent roll call, All Committee members were present except for Councilor Bogan, who was excused. Also present were Councilor Walker and City Attorney, Terence O'Rourke.

2. Public Input

Councilor Lachapelle opened Public Input at 7:02 pm.

Kris Kozlowski of Academy Street and David Clark of Academy Street were both recognized. Councilor Lachapelle said they would be permitted to speak during the Committee discussion of Chapter 19.8.

Councilor Lachapelle closed Public Input at 7:05 pm.

3. Acceptance of the Minutes: February 1, 2018

Councilor Abbot **MOVED** to **ACCEPT** the minutes of the February 1, 2018 Codes and Ordinances Committee meeting. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Amendment to Chapter 19.8 Storage of Containers/Dumpsters

Councilor Lachapelle stated that tonight's discussion was more on the policing of Chapter 19 and the esthetics of the toters on a one-way street. He went on to say that there is no one solution which fits the entire City. It would be difficult to specialize it for different areas of the City. It could be done, however, the City is unlikely to pay extra to have special equipment for

individual streets. Councilor Lachapelle said it is more of a policing issue; however, the City does not have the resources to enforce the ordinance for each street, it has to be complaint driven.

Kris Kozlowski, resident, spoke of several issues with landlords or tenants vacating property and leaving trash and items behind on the public way. Attorney O'Rourke stated that if it is the public way, that would be considered dumping and it would therefore have to be determined who dumped the items there in order to go after that person. Dumping on public property is a crime. Mr. Kozlowski brought up another issue of homeless people who are allowed by the landlords to walk in and sleep at their properties. He believes this contributes to the garbage as well. He stated he had sent pictures of this to Code Enforcement this past Tuesday and left a complaint with the secretary. Councilor Lachapelle said that we would follow up on this complaint with codes. Mr. Kozlowski also spoke about a drainage issue on Academy Street. Councilor Lachapelle said they would bring this issue up at the next Council Meeting to address Public Works.

David Clark, resident, requested some coaching on who should be contacted in regards to these situations, such as trash in the street, illegal dumping, etc. Councilor Lachapelle, Councilor Abbot, and City Attorney O'Rourke spoke about the different scenarios and who should be contacted for each.

5. Amendment to Section 4.12 Ordinances and Resolutions P. 33

City Attorney O'Rourke presented the amendment to Section 4.12 Ordinances and Resolutions. Discussion was held. Councilor Abbott **MOVED** to send the following amendment to the full council for approval.

SECTION 4.12 ORDINANCES AND RESOLUTIONS

Every ordinance, and all resolutions imposing penalties or authorizing the expenditure of money when introduced, **except those placed on the Agenda by the Mayor which have already been examined and approved in form by the City Manger, City Attorney, City Clerk, and Finance Director,** shall be written and shall pass through the following stages before they shall be considered as having received the final action of the Council, to wit: First reading for information, and if not rejected or otherwise disposed of, the City Attorney and City Clerk, shall carefully examine them to see that they are in technical form and that their provisions are not repugnant to the Laws and Constitution of the State of New Hampshire or to the Charter and Ordinances of the City of Rochester: They shall then be referred by the chair to the appropriate Council committee for review, public hearing (if required) and discussion. All committees shall make a report for final action to the Council. After such report, the question shall be, "Shall they be read a second time?" If not then rejected, the question shall be on the passage of the same to be enrolled. Upon an affirmative vote, the chair shall refer such ordinance or resolution to the Codes and Ordinances Committee for review as set forth in Section 4.13. and make a report of them to the Council, at which time they shall be deemed to be enrolled. No ordinance or resolution as above referred shall be amended except on its second reading. All other resolutions shall have one reading before they shall finally be passed by the Council.

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

6. Other

No discussion.

7. Adjournment

Councilor Abbott **MOVED** to **ADJOURN** the committee meeting at 7:28 PM. Councilor Gates seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

Respectively Submitted,

Susan Morris
Clerk Typist II

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City Clerk's Office

(Working Title)**(REMOTE PARTICIPATION DURING COUNCIL AND BOARD MEETINGS)****1) INTRODUCTION / PURPOSE**

The (City Council) strongly encourages its members to be physically present for all board meetings. The (Council) recognizes, however, that extenuating circumstances may occasionally prevent a member from being physically present at a meeting. Therefore, to promote full participation of board members while ensuring access and transparency for the public as required by NH RSA 91-A:2 Access to Governmental Records and Meetings, the (Council) authorizes remote participation in board meetings subject to the following procedures and requirements.

2) PERMISSIBLE REASONS FOR REMOTE PARTICIPATION

Remote participation is not to be used solely for a board member's convenience or to avoid attending a particular meeting in person. Any Board member who is unable to physically attend a meeting of the board may make arrangements to remotely participate in the meeting under the following conditions:

- a. personal illness or disability;
- b. out-of-town travel;
- c. unexpected lack of child-care;
- d. family member illness or emergency;
- e. weather conditions;
- f. military service;
- g. employment obligations; or
- h. a scheduling conflict.

No board member may participate remotely more than three times during a calendar year; *(however, in justifiable circumstances, the board may, by two-thirds vote, agree to waive this limitation)*

3) CONDITIONS per (state NH RSA 91-A:2) / Authority

(State NH RSA 91-A:2):

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

4) City Council policies for Remote participation *"Furthermore" ? "Other policies" WHAT do we do with this? (typically in other examples, but not in NH RSA):*

A board member considered present through remote participation will be permitted to vote on any action item at the meeting except:

Any item for which the member was not participating remotely during the entire discussion and deliberation of the matter preceding the vote; and

Any item that was being discussed when an interruption to the electronic communication occurred, if the board's discussion was not suspended during the interruption. A brief loss of simultaneous communication, such as a few seconds, will not disqualify the member from voting on the matter under discussion.

Per RSA 91-A:1 All votes taken during such a meeting shall be by roll call vote.

A board member may participate remotely in a closed session of the board provided the member provides assurance to the board that no other person is able to hear, see, or otherwise participate in the closed session from the remote location.

Board member wishing to engage in remote participation shall adhere to following procedures: section 4.

5) PROCEDURE FOR REMOTE PARTICIPATION

1. a. *With the exception of an emergency*, a member of the board who desires to participate in a meeting remotely shall notify the board chair and the (city manager's office?) at least one week in advance of the meeting.

b. Emergency would include (how to word, reference items from section 2?)

2. At the time of this writing, because current mode of phone call in only allows one member at a time, remote participation will be on first come first serve basis, when criteria is met.

3. Chair will contact designated city staff as soon as possible and state they have allowed board member to participate remotely (state meeting date) based on criteria laid out in this document. *(do we leave the responsibility on the Chair of the meeting)*

4. Previous to the meeting, the Chair will inform board members of the request and intention to allow remote participation of such board member.

5. A test a few days prior to the meeting should be performed to ensure that the caller's device will suffice, and that they can hear on their device at their remote location. While not always possible, it is recommended a land phone be used with external speaker.

6. The participant shall initiate the phone call in to designated phone number at 6:45pm eastern standard time or 15 minutes prior to the meeting start. Caller should be aware of not to be near televised or live streaming audio during the meeting.

7. The chair shall announce the remote participant and the means of remote participation (his/her physical location, and the reason for his/her inability to be physically present at the meeting.) at the beginning of the meeting.

8. The meeting chair may decide how to address technical difficulties that arise when utilizing remote participation, but whenever possible, the chair should suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If, however, the technical difficulties distract from or impede the orderly progress of the meeting, a majority of the members physically present may vote to end the remote participation.

(do I need to include here that the city of Rochester staff will not be held liable for failed technology or things beyond our control that would interfere with the remote communication)

9. A member participating remotely shall notify the chair if leaving the meeting before it is adjourned or rejoining the meeting after a period of absence.

10. All votes taken will be by voice vote. *(NH RSA)

11. Remote participant may partake in non-public and non-meetings sessions, but in most cases will require participant to end the call to Council Chambers, call into Council conference room, and call back into Council Chambers, if required to do so per voting reasons of Council rules of Order.

12. Participation by remote communication will be noted in the official board minutes. Any interruption to or discontinuation of the member's participation will also be noted in the minutes. (RSA??)

13. Any telephone costs associated with remote participation shall be borne by the remote participant.

OTHER points to consider, or questions for Council -

One example of non-public participation:

Since the privacy, confidentiality, and security of remote communications and participation by a Board member utilizing electronic means cannot be assured with currently available technology, remote participation by board members in executive sessions are NOT permitted.

Do they want the option to vote on whether to allow the remote participation during the open of the meeting? (after test is done for audible clarity?)

Limit number of times during the fiscal year a member may participate remotely?

City Council recognizes that the physical presence of a board member at meetings greatly enhances the deliberations of the board, board members may only participate by remote three times a year.

TITLE VI

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A

ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:2

91-A:2 Meetings Open to Public. –

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

- (a) Strategy or negotiations with respect to collective bargaining;
- (b) Consultation with legal counsel;
- (c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2; or
- (d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or

town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

[Paragraph II-a effective January 1, 2018.]

II-a. If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

[Paragraph II-b effective January 1, 2018.]

II-b. (a) If a public body maintains an Internet website or contracts with a third party to maintain an Internet website on its behalf, it shall either post its approved minutes in a consistent and reasonably accessible location on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested.

(b) If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

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(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

Source. 1967, 251:1. 1969, 482:1. 1971, 327:2. 1975, 383:1. 1977, 540:3. 1983, 279:1. 1986, 83:3. 1991, 217:2. 2003, 287:7. 2007, 59:2. 2008, 278:2, eff. July 1, 2008 at 12:01 a.m.; 303:4, eff. July 1, 2008. 2016, 29:1, eff. Jan. 1, 2017. 2017, 165:1, eff. Jan. 1, 2018; 234:1, eff. Jan. 1, 2018.

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City Clerk's Office



04/27/2018

City of Rochester Formal Council Meeting

AGENDA BILL

NOTE: Agenda Bills are due by 10 AM on the Monday the week before the City Council Meeting.

AGENDA SUBJECT

Review of General Ordinance Chapter 22, Fire Department Organization

COUNCIL ACTION ITEM ☒
INFORMATION ONLY ☒

FUNDING REQUIRED? YES ☐ NO ☒
* IF YES ATTACH A FUNDING RESOLUTION FORM

RESOLUTION REQUIRED? YES ☐ NO ☒

FUNDING RESOLUTION FORM? YES ☐ NO ☒

AGENDA DATE	April 3, 2018	
DEPT. HEAD SIGNATURE	Mark Klose, Fire Chief	
DATE SUBMITTED	3/27/2018	
ATTACHMENTS YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	* IF YES, ENTER THE TOTAL NUMBER OF PAGES ATTACHED	

COMMITTEE SIGN-OFF

COMMITTEE	
CHAIR PERSON	

DEPARTMENT APPROVALS

DEPUTY CITY MANAGER	Signature on file
CITY MANAGER	Signature on file

FINANCE & BUDGET INFORMATION

FINANCE OFFICE APPROVAL	N/A
SOURCE OF FUNDS	
ACCOUNT NUMBER	
AMOUNT	
APPROPRIATION REQUIRED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

LEGAL AUTHORITY

SUMMARY STATEMENT

Request that the Code and Ordinance Committee review Chapter 22 Fire Department Organization

RECOMMENDED ACTION

Send to Code and Ordinance Committee for review