

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Steve Beaudoin
Councilor Skip Gilman
Councilor Ashley Desrochers
Councilor Tim Fontneau



CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, March 2, 2023

31 Wakefield Street, Rochester, NH

Council Chambers

6:00 PM

Agenda

- 1. Call to Order**
- 2. Public Input**
- 3. Acceptance of the Minutes**
 - 3.1 January 5, 2023 *motion to approve* P. 3**
- 4. Rules of Order Section 1.6 – Guidelines for Public Input P. 13**
- 5. Amendment to Section 4.21 of the Rules of Order “Inaugural Meeting, Order P. 15 Exercises”**
- 6. Other**
- 7. Adjournment**

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City Clerk's Office

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Councilor Steve Beaudoin, Vice Chair
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Of the Rochester City Council
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Council Chambers
6:00 PM

Minutes

1. Call to Order

Chair Lachapelle called the meeting to order at 6:00 PM. Deputy City Clerk Cassie Givara took a silent attendance. All Councilors were present. Mayor Callaghan was also present.

2. Public Input

Gregg DeNobile, resident, inquired if there would be a public hearing on any of the proposed actions included on the agenda. Mr. DeNobile questioned portions of the Code of Ethics as well as the guidelines for public input.

Susan Rice, resident, spoke about the process the Code of Ethics has gone through in Committee and how it will move forward to potentially be adopted.

Carol and Kathy, Tangles Salon, said that they are requesting two additional two-hour parking spaces in front of their business on Summer Street (agenda item 5).

3. Acceptance of the Minutes – no December minutes to accept

Chair Lachapelle **MOVED** to **AMEND** the agenda to include the acceptance of the minutes of the November 3, 2022 Codes and Ordinances Committee meeting. He explained that due to lack of quorum in December, there had been no meeting held and therefore the November meeting minutes had not been accepted. Councilor Desrochers seconded the motion. The **MOTION CARRIED** to accept the November 3, 2022 Codes and Ordinances minutes by a unanimous voice vote.

5. Constituent Item: 15 Summer Street Parking

Chair Lachapelle stated that if there were no objections, he would move agenda item #5 to the start of the agenda. He explained that the owner of Tangles Hair Salon had sent an email explaining the difficulty they are experiencing with lack of customer parking due to vehicles being parked long-term in the nearby spaces. This poses an issue for elderly clientele who are not able to walk the distance for their appointments. Councilor Fontneau confirmed that the two spaces directly in front of the business are two-hour spaces, and the owner is requesting that two additional spaces directly across the street be designated as two-hour spaces. Carol Fabian, owner, confirmed this is the case. Councilor Fontneau reported that the Parking Review Group has been looking at the possibility of adding additional two-hour spaces throughout the City in areas where this is an issue. Ms. Fabian recalled that there had been a vehicle parked in one of the spaces adjacent to her business for one month and another vehicle that was in a spot for six months with out-of-state plates. Ms. Fabian stated that she had contacted parking enforcement and was told that no laws were being broken and there were no regulations to prevent someone from parking long-term in these spaces.

Councilor Beaudoin suggested that the proposed signs state that the two-hour limit is during a designated period, such as 8:00 AM to 8:00 PM, to allow nearby residents the opportunity to use the spaces for parking when the business is closed. Ms. Fabian said that Tangles is typically open between 8/9:00 AM – 6:00 PM. Councilor Fontneau **MOVED** to recommend to full Council the installation of signs stating “two-hour parking between 8:00 AM – 8:00 PM, Monday through Saturday” in the two spaces across Summer Street from Tangles Salon. Councilor Beaudoin seconded the motion. Mayor Callaghan referenced City Ordinance Chapter 254-17(c) that speaks about exceptions to time limits in designated spaces. It states, “The Chief of Police may permit plumbers, electricians or other contractors to park or leave standing vehicles in front of buildings for a longer period of time than is provided for in this chapter provided it is essential for the work being carried on in said building.” Councilor Beaudoin agreed and said that customarily, if a contractor or other service provider is working in the area, they are able to park in these spaces as long as a sign is placed in their window stating their purpose for parking beyond the two-hour limit. The **MOTION CARRIED** by a unanimous voice vote.

4. Rules of Order Section 1.6 – Guidelines for Public Input (*addendum A*)

Mayor Callaghan said that this topic had been initiated several months prior through a desire to inform both the Council and members of the public what the guidelines are for public comment as well as what type of speech is protected.

Councilor Fontneau referred to the sentence in the first paragraph referenced by Mr. DeNobile during public input, which states, “....it must be clear that these meetings belong to the City Council.” He questioned if the word “belongs” was the most appropriate word to use. Attorney O’Rourke answered that this phrasing is fairly standard, and that the intent is to state that these are business meetings of the Council for the purpose of carrying out work, not public forums. Councilor Desrochers asked where this phrasing originated and gave her interpretation of the meaning behind the current verbiage. Mayor Callaghan said that the verbiage is based on Supreme Court decisions and common language used in statutes, and it is intended to indicate that these are business meetings. Attorney O’Rourke suggested changing the sentence as follows:

“....it must be clear that these **are business** meetings ~~belong to~~ **of** the City Council.”

Councilor Beaudoin read the excerpt: “This is the opportunity for members of the public to inform the City Council of their views and offer unique insights regarding topics the City Council is discussing.” Councilor Beaudoin stated that matters discussed and voted on at a Regular Council meeting could only be addressed by the public at the following workshop meeting; however, the topic will likely not be listed on that agenda. The way the sentence is currently written seems to prohibit the public from discussing items that do not appear on the agenda. He acknowledged that the public could write emails to elected officials sharing their opinion, but felt the current verbiage was stifling free speech and the public’s ability to respond to City business. Mayor Callaghan responded that the public has opportunity to speak at Committee meetings, through email, as well as at workshop meetings. He clarified that the public can, in fact, speak about *any* topic at a workshop meeting and it is not limited to items on the agenda. However, at a public hearing the speech is limited to items contained on the agenda.

Councilor Desrochers said that, in addition to emailing Councilors directly, there is an option on the City website to send email specifically for public input and at some Committee meetings, these emails will be read aloud.

Councilor Beaudoin reiterated that the verbiage, as written, indicates that the public can only speak about items that appear on the agenda. Chair Lachapelle suggested changing the verbiage to include items “...that Council is discussing *or has discussed*.” There was discussion of adding wording to include future agenda items for discussion as well. Councilor Fontneau clarified that public speech at workshop meetings is not limited to items that Council has discussed; it could cover anything a constituent desires. Attorney O’Rourke suggested the following edit:

“This is ~~the~~ *an* opportunity for members of the public to inform the City Council of their views and offer unique insights regarding topics *within* the City Council’s *purview* ~~is discussing~~.”

Councilor Beaudoin agreed that this language was less exclusionary and worked well. He read the final sentence, which states, “*Public input and comment are, therefore, limited to the purposes for which the City Council has requested the same.*” Councilor Beaudoin said that, given the changes that were made earlier in the paragraph, this sentence would also need to be amended to reflect the same intent. Councilor Fontneau reiterated that the public can speak about any topic during a workshop meeting, not only items on which the City Council has requested input. Mayor Callaghan agreed and stated that the sentence seemed to refer to public hearings as opposed to public input at a workshop meeting. The Mayor clarified that Public Hearing guidelines are already detailed in the Rules of Order, and suggested this sentence be struck in its entirety or changed to reflect that it refers only to public hearing comments. Attorney O’Rourke suggested changing the sentence to read, “Public input ~~and comments~~ *at a public hearing* are, therefore, limited to the purposes for which the City Council has requested the same.” Councilor Fontneau said there are two separate issues; input at a public hearing regarding a specific agenda item, and public input during a workshop meeting at which the public is not limited by topics on the agenda. Attorney O’Rourke agreed and suggested striking the sentence in its entirety: “~~Public input and comment are, therefore, limited to the purposes for which the City Council has requested the same.~~”

Councilor Beaudoin stated that he felt the current wording of this proposed addition is

intending to restrict speech by prohibiting “defamation, fighting words, or a criminal threat...” He acknowledged the value of curtailing fighting words or criminal threats, which are illegal, but felt that defamation was a free speech issue. He stated that if a Member is libeled or slandered by a speaker, it would be their right to pursue legal action for said libel/slander. He felt that the Council should not be held to a higher standard where they are above slander and the right to legal recourse for such. Councilor Beaudoin said that the current wording allowed the Chair to cut off a speaker if they made a claim “without evidence,” however, the City Council is not a court of law, which this may imply. Councilor Beaudoin read an excerpt from the NH Municipal Association (NHMA) regarding discriminatory speech and which cautioned against allowing a speaker to give praise but not allowing criticism. Mayor Callaghan acknowledged the need for equity in speech and not allowing praise while disallowing criticism. The Mayor stated that the law needs to be followed regardless of the content of the speech; during a public hearing the speaker needs to keep their remarks germane to the agenda items and refrain from making extraneous remarks regardless of whether they are positive or negative. It was clarified that during the public input portion of a workshop meeting, a speaker is able to offer either praise or criticism. Councilor Beaudoin pointed out the title of the proposed addition, which indicates the guidelines are for public input “including” during public hearings. He suggested the title be reworded to clarify that the guidelines are for public comment specifically at public hearings. Mayor Callaghan responded that the wording is relevant for both public hearings and public comment period during workshops; purposely defaming an individual is not allowed at either and he gave case law to support this. Councilor Beaudoin read additional excerpts from the NHMA article citing court opinions cautioning against the prohibition of defamatory or offensive speech and not allowing both critical and positive comment. Attorney O’Rourke explained that the court opinions cited in the NHMA article referenced by Councilor Beaudoin did not stand for what they purported to support. He gave details on the cases cited, which were not relevant to public input during meetings.

Attorney O’Rourke reiterated that these are just general guidelines. They do not say that a speaker will be removed or arrested, they just offer guidelines to which the speakers should adhere and the manner in which the Chair can respond if needed. Attorney O’Rourke did clarify that criminal threatening and defamation are unlawful and these guidelines do not prohibit a Councilor from pursuing legal action if desired.

Councilor Beaudoin reiterated that he felt the title should be changed to “Public input during public hearings;” otherwise, it infers that it relates to public comment during a workshop as well. Attorney O’Rourke stated that the intent is for the guidelines to apply to both public hearings and public input. Councilor Fontneau reiterated the need to distinguish between public hearings and public comment during a workshop; he pointed out that some of the changes made are specific to one circumstance or the other, but not both. He suggested there be two separate sections. Attorney O’Rourke stated that there is already a section in the Rules of Order specific to Public Hearings that details the guidelines discussed this evening; he stated that this section simply amplifies the verbiage already in place.

Councilor Beaudoin **MOVED** to keep section 1.6 of the Rules of Order regarding “Guidelines for Public Input” in Committee and to direct Attorney O’Rourke to make the changes suggested before bringing it back to Codes and Ordinances for a final review. Councilor Fontneau seconded the motion. Mayor Callaghan stated that the intent is simply to keep speakers on topic at public

hearings and to prohibit a speaker from defaming individuals during public comment. He suggested that the City Attorney could make the suggested corrections and edits without the need for the item to come back to Committee. The **MOTION CARRIED** to keep the item in Committee by a 4 to 2 hand count vote.

The Guidelines for Public Input was kept in Committee.

Councilor Desrochers directed the City Attorney to a couple more grammatical errors in the document that needed updating.

7. Discussion: Revision to City Building Permits adding option for EPA “Renovation, Repair, & Painting” certification number

Chair Lachapelle said, if there were no objections, that he would move item #7 on the agenda to occur before the Code of Ethics discussion so City Staff present for the discussion would not need to wait.

Councilor Desrochers restated that the purpose of this item is to raise awareness and to try to ensure that individuals are adhering to guidelines and laws that already exist. She explained that when a renovation is being done, this would alert those doing the work that there is a certification for the work being performed, and she emphasized the need for proper lead abatement in the City.

Councilor Desrochers explained that one of the concerns with this proposal had been if a certification number is requested on the building permit application, the City could potentially be held liable if the contractor does not supply or hold that certification. Bob Veno, Rochester Health Inspector, stated that there is a variety of wording related to this type of certification on applications throughout the State. He gave details on what verbiage could be used; Inspector Veno stated that the application could ask for the certification number, and if not provided, it would be a trigger to refer the applicant to the requirements.

Councilor Fontneau inquired about the possibility of adding the lead hazard control program fact sheet to the website or having it attached as part of the application process. Inspector Veno acknowledged that the Building and Licensing department already has similar brochures available next to the applications and said there are a variety of lead poisoning information links currently available on the “Health” page of the Building and Licensing website.

Councilor Desrochers inquired if having a field for the certification number on the applications would be beneficial. Inspector Veno said this option could be added. He stated that the City already asks for license numbers for electricians and plumbers, and this would be no different. Mr. Veno agreed that lead paint in the City of Rochester is a serious issue that affects both the health of our children and impacts the tax payers as well.

Councilor Beaudoin questioned if the City would be responsible for verifying the validity of the certification number being provided and questioned the liability to the City if an applicant falsified their information. He felt that leaving the certification number field as an option as opposed to mandatory would be best. Councilor Desrochers clarified that the intent was to keep this optional, not as a requirement. Mr. Veno said he would defer to the City Attorney to answer

questions regarding liability, but he suggested adding a field for the applicant to enter their certification number; if the number is not supplied, the City would provide the information for the applicant to obtain said certification.

Councilor Fontneau asked what the City's role in enforcement would be with this portion of the application. He inquired if the application would be denied if the certification number was not provided, as it would be for an electrician not providing their license number. He said there may be liability if the number is not provided on the application and the permit is still issued. Attorney O'Rourke suggested the Committee vote to send this item to full City Council in order to direct the City Manager to draft a policy along with the Director of Building and Licensing before coming back to full Council for consideration. Chair Lachapelle **MOVED** to send the item to full Council as detailed by the City Attorney. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

6. Code of Ethics and Conduct

Chair Lachapelle gave an overview of the history of the Code of Ethics, which has been in Committee and to full Council in some form or another for over a year. He stated it is now at a place to return to full Council for a vote. Chair Lachapelle **MOVED** to send the Code of Ethics, as amended, to the full City Council on February 7, 2023. Councilor Desrochers seconded the motion. Councilor Beaudoin stated he had a number of additional edits to the Code; however, he did not have these edits immediately accessible. Chair Lachapelle reiterated that this is a living document and there can be amendments made over time, even after adoption.

Councilor Beaudoin explained that at the State-level, new representatives are given ethics rules directly after being sworn in, and these rules are voted on at the very first session. He said that when Rochester officials are elected, they may be "completely unaware of these ethics which they need to abide by." He asked if each new Council would vote on the Code of Ethics before the rules become effective. Attorney O'Rourke responded that the adopted Rules of Order carry over into each new Council; however, every two years when a new Council is sworn in, the Codes and Ordinances Committee reviews the Rules of Order and makes amendments as needed at their first meeting. This Code of Ethics will be reviewed on the same schedule.

Mayor Callaghan suggested that the Code of Ethics be handed out to candidates filing for municipal office when they receive their copy of the City sign ordinance. Councilor Beaudoin agreed and felt that the Code of Ethics should not be distributed after a candidate has already won their seat, because the elected official may find that they do not agree with the rules laid out in this code of ethics and they may not want to follow the guidelines. Chair Lachapelle stated that he felt if that situation is encountered, the candidate should not be serving on Council in the first place. Councilor Fontneau pointed out that this Code affects both elected and appointed officials; those filing statements of interest for boards and commissions should also receive the Code of Ethics for review.

Chair Lachapelle restated his motion to clarify that, if adopted, the Code of Ethics will be reviewed every two years along with the Rules of Order and will be distributed to any candidate filing for office or for a position on a City Board or Commission. Attorney O'Rourke referenced the paragraph on the final page of the Code of Ethics, which reads. "...this document shall be

included in the regular orientations for candidates for City Council, applicants to Board, Committee and Commissions, and newly elected and appointed officials.” The document already directs the Code of Ethics to be distributed in these situations.

Councilor Desrochers stated that elected officials have a commitment to excellence, which is agreed upon when entering office and these are values that should be maintained by all members. Councilor Beaudoin inquired, if a candidate filing for office is given the Code of Ethics and does not agree with the content and does not want to abide by these “arbitrary” rules, if the City will deny them their right to run for election. Chair Lachapelle said this could be discussed at full Council. The **MOTION CARRIED** by a 5 to 1 hand count vote.

8. Other

Chair Lachapelle announced that the next Codes and Ordinances meeting would take place on Thursday, February 2, 2023.

9. Adjournment

Chair Lachapelle **ADJOURNED** the Codes and Ordinances meeting at 7:03 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk

Section 1.96 PUBLIC INPUT (Including during Public Hearings) – Guidelines for Public Comment.

The City Council hereby acknowledges and affirms the value of and need for public input as it conducts the City's business. Public input and comment periods during City Council and subcommittee meetings is an essential part of local government meetings. This is ~~an~~ the opportunity for members of the public to inform the City Council of their views and offer unique insights regarding topics ~~within~~ the ~~the~~ City Council's ~~purview. is discussing.~~ However, it must be clear that ~~these are business~~ meetings ~~of~~ belong to the City Council. The public does not participate in the decision-making process. The public's role is to provide input for the City Council's consideration in making its decisions. ~~Public input and comment are, therefore, limited to the purposes for which the City Council has requested the same~~

The receipt of constructive input must be balanced with the City Council's need to conduct its business in an orderly and fair manner. The meeting Chair must have discretion to curtail and even cut off public input which he/ she reasonably perceives to be irrelevant to the City Council's particular purposes or public input that constitutes defamation¹, fighting words², or a criminal threat³. Determining relevancy, although sometimes challenging, is fairly clear. Determining what constitutes appropriate criticism of elected and appointed officials versus unprotected speech is more challenging.

Although the Chair has the primary responsibility to enforce the rules, all members of the City Council and subcommittees have a responsibility to raise a Point of Order when appropriate. When that happens, the Chair determines whether the rules have violated and whether a speaker is allowed to continue. Any two Councilors can challenge the Chair's decision. In that event, by majority vote, the Council/ committee will decide whether the speaker is allowed to continue.

Citizens have a right to complain about elected officials as well as appointed officials, including City employees. These complaints are protected speech per the First Amendment to the U.S. Constitution. However, the City Council will not

¹ Defamatory statements are those that a speaker (a) knows to be false and defames the object of the statements; (b) makes with a reckless disregard for whether the statements are true or false; or (c) negligently fails to ascertain whether the statements are true. *McCarthy v. Manchester Police Dep't*, 168 N.H. 202, 210 (2015).

² "[F]ace-to-face words plainly likely to cause a breach of the peace by the" recipient. *State v. Oliveira*, 115 N.H. 559, 561 (1975).

³ RSA 631:4; *State v. Hanes*, 171 N.H. 173, 179 (2018).

allow defamation, fighting words, or criminal threats. These types of utterances are not protected by the First Amendment.

Comments identifying a specific action or a specific issue of concern are appropriate. However, accusations of wrongdoing or illegal acts without evidence are is defamatory and will be not allowed.

Example of protected speech: The City Manager was wrong to eliminate parking in downtown Gonic. He failed to consider the needs of the residents who live there in the downtown that need the parking in close proximity. ./ He incorrectly determined that the parking obstructed the view of northbound motorists.

Example of an unprotected utterance: The City Manager was wrong to eliminate parking in downtown Gonic. He did this because he took a bribe from the landowner adjacent to the parking.

Citizens who wish to submit a criticism regarding elected and/ or appointed officials are encouraged to do so in writing or to meet with appropriate officials in a non-public setting to convey their input. However, if a citizen wishes to make a public criticism, the City Council recognizes the right to do so if it is conveyed in a manner that is -legitimate speech.

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SECTION 4.21 INAUGURAL MEETING. ORDER EXERCISES

The order of exercises at the meeting held on the first Tuesday after January 1, or Wednesday, January 2, following the regular municipal election shall be as follows:

1. Call to Order
2. Pledge of Allegiance
3. Prayer
4. Roll Call of Councilors-Elect
5. Mayor takes Oath of Office
6. Councilors-Elect take Oath of Office
7. Roll Call of School Board Members-Elect
8. School Board Members-Elect take Oath of Office
9. Roll Call of Police Commissioners-Elect
10. Police Commissioner-Elect takes Oath of Office
11. Election of Deputy Mayor
12. Inaugural Address
13. Recess to Time Certain
14. Committee of the Whole: Review of Code of Ethics and Conduct
15. Old and/or New Business