

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday October 1, 2015

City Council Chambers

31 Wakefield Street, Rochester, NH

7:00 PM

Committee Members Present

Councilor Elaine Lauterborn, Vice Chair
Councilor Donna Bogan
Councilor Robert Gates
Councilor Ray Varney

Committee Members Excused

Councilor Peter Lachapelle, Chair

Others Present

Terence O'Rourke, City Attorney
Councilor Gray
Councilor Keans
Brian LaBranche, Trinkets &
Treasures
Felicia LaBranche, Trinkets &
Treasures
Michael Provost, Executive
Director Main Street
Tom Velardi, Strafford County
Attorney
Roland Hersey, Gold & Things
Marc Saxby, Collec-tiques
Jeff Walters, Seacoast Gun & Pawn
Stacey Marchionni, Revolution
Taproom and Grill
Chris Bowlen, Director of
Recreation and Arena
David Anctil, Chair of Arena
Advisory Commission

MINUTES

1. Call to Order

Councilor Lauterborn called the Codes and Ordinance Committee meeting to order at 7:00 PM. Nancy Carignan, Assistant City Clerk, took a silent roll call. All committee members were present, with the exception of Councilor Lachapelle, who was excused.

2. Public Input

Councilor Lauterborn explained to members of the public that they would be allowed time to speak during the meeting as it pertained to their concerns on any of the agenda items. She asked if any member from the audience wanted to address the Codes and Ordinances Committee in regards to any other item that was not on the agenda. There was no discussion at that time.

3. Approval of the Codes and Ordinances Committee Minutes

- **August 6, 2015**

Councilor Bogan **MOVED** to **ACCEPT** the Codes and Ordinances Committee meeting minutes of June 4, 2015. Councilor Varney seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Pawnbrokers/Second Hand Dealers Ordinance Amendments

Councilor Lauterborn asked Terence O'Rourke, City Attorney, to address the amendments to the Pawnbrokers/Second Hand dealers ordinance that he is recommending. Mr. O'Rourke explained that prior to working for the City of Rochester he worked with other County Attorney offices within the state and with this experience there had been issues pertaining to these businesses within the City of Rochester. Mr. O'Rourke stated that there had been suspicious record keeping in the past. He explained that he saw that the Codes and Ordinances Committee tried to make this ordinance stricter in 2013 by adding a holding period and suggesting an electronic filing process; however, those amendments were not passed. The committee cited that they were going to wait and see if the State was going to take any action on the issue.

Mr. O'Rourke made reference to the City of Manchester's ordinance, which had been overturned through the courts. He reviewed the Manchester ordinance and the Rochester ordinance to find comparisons. He explained that it has been two years since this was brought to committee and the State has done nothing, thus the victims have no way to recover their items.

Mr. O'Rourke explained that he also worked closely with the Strafford County Attorney, Tom Velardi, who was present in the audience, to make the suggested amendments. Mr. O'Rourke would like community support on this. He felt that the proposed amendments needed to go to the full City Council at this time.

Brian LaBranche, owner of Trinkets & Treasures, thanked Mr. O'Rourke for his input; however, he questioned the holding and reporting process that his business would have to abide by. Mr. LaBranche said that he felt his business was doing things the right way and explained his process of taking in merchandise.

Mr. LaBranche stated that the shop owners were not notified that the City was looking at amending the ordinance. He addressed the Codes and Ordinances Committee minutes from their August, 2013 meeting, which indicated that the City was going to wait for information from the State. It was his understanding that there had been a committee formed at the State level and this committee was going to be reporting back to the State in 2016.

Mr. LaBranche commented on the increase of the licensing fees and asked how the City could mandate who he does business with, plus add on transaction fees. He also felt the thirty day holding period was unreasonable and where the market fluctuates this would affect his cash flow. Mr. LaBranche stated that the hold period would make him more vulnerable to thefts, because he would be carrying a large inventory.

Mr. LaBranche considered himself an antique dealer. He was unclear of the definition of such a dealer, because if he fell into that category he would be exempt from this ordinance. He asked that the committee keep the current status of this as the minutes from 2013 addressed, and wait for the State of New Hampshire to make a decision.

Roland Hersey, owner of Gold & Things, expressed his concerns that the shop owners had no notice that this ordinance was back on the table. He also felt that the holding period would not work for the businesses.

Mr. Hersey asked why was the Police Department not coming to see them if there were issues, and he felt that his business works closely with the Police Department. He mentioned that he keeps good records and complies with the Police Department's random spot checks. Mr. Hersey said that his inventory is computerized, which helps.

Mr. Hersey compared the holding period to holding someone's paycheck for thirty days. He mentioned that after speaking previously with Chief Allen he was under the impression that things within the City were working.

Jeff Walters, owner of Seacoast Gun & Pawn, addressed the Codes and Ordinances Committee with his concerns on the transaction fees. He gave the committee a few statistics where he could see a cost to his business for the sum of \$2,600 on a given year. He, as well, referenced the minutes from the Codes and Ordinances August 2013 meeting.

Mr. Walters felt that he had a good reputation with the Police Department. He asked if other communities, which use this system currently, have shown a reduction in thefts.

Felicia LaBranche, owner of Trinkets and Treasures, asked Attorney O'Rourke why the City was bringing this ordinance back to the table.

Ms. LaBranche also stated that pawn shops and second hand dealers are two separate types of businesses. She also was under the impression that this ordinance was not coming back to committee until the State of New Hampshire addressed the issue.

Ms. LaBranche cited that antique dealers are not defined by the City and that she felt that the State of New Hampshire did not have a definition for them either.

Ms. LaBranche briefly voiced her thoughts of what is motivating these thefts. She asked how is the Police Department contributing to help where other area Police Departments call or email them.

Michael Provost, Executive Director of Main Street Program, had received several calls regarding this ordinance after some of the local businesses were made aware of the amendments. He felt that this ordinance needs a lot of work and the committee should wait until the State takes action.

Mr. Provost addressed the fees and cited that Rochester is not the only place in the Seacoast that is having this issue.

Mr. Hersey commented that the theft numbers are down. He mentioned that there was a questionable shop and that shop has now been shut down. Mr. Hersey added that maybe the ordinance should have terminology for repeat offenders.

Tom Velardi, Strafford County Attorney, addressed the Codes and Ordinances Committee, keeping to the content at hand. Mr. Velardi expressed that the area does have an opiate addiction problem and a lot of

these types of thefts are due to that issue. He explained that the items being pawned are considered liquid items. These are small items that may not be as noticeable as a large item.

Mr. Velardi did mention that Mr. Hersey had good records, but there are other businesses that do not. He explained that some of these businesses just record weight totals for what precious metals they take in. These items could be gone within forty-eight hours and a small item might not be noticed in that time frame.

Mr. Velardi agreed with some of the previous speakers and urged the City Council to continue to work on this issue within the City.

Councilor Keans asked Mr. Velardi if he had been to other communities. He said that he had. Councilor Keans asked him how he thought it would work. Mr. Velardi mentioned within the Tri-City area.

Marc Saxby, owner of Collec-tiques, saw the ordinance as an attack on the businesses and not helping the victims. He explained that the businesses that were present all keep in communication with each other. If there is a problem they notify each other. Mr. Saxby questioned if the City really has a problem.

Mr. Saxby asked if this ordinance might hurt more than it will protect. He asked that the City find the problem businesses and leave businesses that are doing the right thing alone. He addressed Mr. O'Rourke on the issue and they debated the various avenues of record keeping. Mr. O'Rourke mentioned that a company know as "Leads Online" is one such company. Mr. Saxby questioned if this ordinance would apply to yard sales. He mentioned that there was a shop already shut down so he felt that the current system works.

Councilor Lauterborn asked if anyone had talked to a Manchester shop owner. Mr. Saxby said that he had spoken with a small "Mom and Pop" business and they had to move out of the City of Manchester due to the cost. He added that some businesses might move out of Rochester. He asked if they could help the victim without hurting the businesses and wait for the State to make a decision.

Councilor Lauterborn asked Chief Allen if he would like to comment on the amendments to this ordinance.

Chief Michael Allen wanted to correct some of the inaccuracies that have been made. He stated that the Police Department does follow-up; however, not on every case. This happens to be very demanding on the detective division where they are also responsible for doing compliance checks on these businesses. At times the workload is overwhelming.

Chief Allen said that the comment regarding the shop mentioned, which was closed, is also inaccurate. He explained that when the amendments to this ordinance first came about it was two years prior to this shop closing.

Chief Allen also added that this issue is part of the drug problem within the City. He said that it is one hundred percent accurate that the property crime is down in the City, which he is very proud of. He did contribute some of this to the drug arrests being made.

Chief Allen stated that it is his job is to protect the community. He felt that the City does need a holding period or electronic record keeping.

Chief Allen gave statistics from the state of Maryland, which has the electronic filing, and has seen a significant impact in the recovery of stolen items. He said that the system works.

Chief Allen said that he did not want hurt business he wanted to help his Police Department recover property for the victims. He mentioned that he had sat on the committee at the State level and he is hoping for a statewide implementation; however, he thought maybe the State wanted to keep it within the local communities.

Councilor Keans mentioned that two years ago some of the shop owners were receiving emails from other communities on stolen property and why is Rochester not doing this. Chief Allen reiterated his previous answer, which had answered that question. He explained that he would have to dedicate one officer to handle the notifications. Councilor Keans felt that sending out an email would be more manageable then sending out an officer to the shops.

Councilor Keans asked Chief Allen for more statistics from other communities who have seen an improvement in the recovery of stolen property. She stated that he gave them dollar amounts recovered, but not the dollar amount of what was stolen. He said he will work on that.

Councilor Varney questioned the software that was looked at in 2013 and would it help the Police Department. He asked about the fee schedule and transaction schedule. Mr. O'Rourke said that they have the option of a flat fee or per transaction fee. He explained there was a typo. The fees would be decided by the City Council. Councilor Lauterborn also questioned the annual fee versus the transaction fee. She mentioned that a scrap dealer has a \$.50 transaction fee, where a pawn shop would have a \$1 transaction fee. Mr. O'Rourke explained the difference for the two amounts.

Councilor Varney said that if you do not have the holding period and just the electronic tracking then you are not going to recover items. Chief Allen agreed that they would need the holding period.

Councilor Gates asked the business owners if they had ideas to help achieve the objective of returning stolen goods to the victims.

Ms. LaBranche reiterated that she does not know where the issues are. There are different types of shops doing business different ways, why can't the City impose consequences for those shops not doing business properly.

Mr. Saxby agreed that the shop owners should put in writing what they would like to see in the new ordinance. He also believed in creating a group to discuss these issues. Councilor Gates suggested that the shops meet with Chief Allen and Mr. O'Rourke to come up with a solution. Mr. Hersey agreed and suggested the Police Department possibly come up with a red list for individuals who might be possibly involved in theft crime. Mr. LaBranche also agreed, but thought they should have more communication with the Police Department. Councilor Gates reiterated that they should open a dialog to work together.

Mr. LaBranche said that he would rather give \$300 to helping the addiction problem versus paying the fee for the electronic system.

Councilor Lauterborn stated that these amendments would not be decided tonight.

Councilor Gray questioned the study by the County Attorney. He agreed that there should be a system, but the businesses will incur costs. He gave some examples of how to improve the system. He addressed the waiting period and the definitions of the dealers. He felt that if the City had an electronic system there would be a shorter waiting period. Councilor Gray mentioned that they should not have a waiting period on a piece of one

hundred year old furniture. He would be willing to help them address this ordinance if that is their desire.

Councilor Keans would recommend to the Mayor that he put a committee together for this issue. Councilor Lauterborn agreed. The Codes and Ordinances Committee made suggestions on the members that should be on this committee. Councilor Varney mentioned if there is no willingness to have a holding period then they might not accomplish the goal at hand.

Mr. O'Rourke advised the committee that antique dealers are defined in Chapter 42 of the Zoning Ordinance. He read the section of the ordinance to the committee. He stated that he was not against discussing the ordinance further; however, it is not an unusual ordinance, and this type of ordinance is used across the country. He mentioned that when it comes to heirlooms and precious metals, once they are gone, they are gone. He was looking to help victims while trying to slow down the drug issues. Mr. O'Rourke said that nothing has happened to this ordinance since 2013 and he really felt that it should go to the City Council. He understood it was not perfect, but it was in good shape.

Councilor Keans did not feel it was right for a business in Rochester to have to pay a third party to do business in the City. Mr. O'Rourke disagreed.

Councilor Varney explained that this ordinance needs to stay in committee. A system like this could be very technical. He said that there could be training associated with the electronic system. If that is so, then the IT department would have to be involved and they are overwhelmed now. He would like a few more answers.

Councilor Varney **MOVED** to keep the Pawnbroker and Second Hand Dealer amendments in committee. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Varney wanted written feedback, not just complaints, from the business owners. Councilor Gates agreed that they need to have positive suggestions. Councilor Lauterborn advised them that they can submit their letters to the City Manager's Office, directed to the Codes and Ordinances Committee.

5. Outdoor Dining Ordinance - Proposed

Michael Provost, Executive Director of Main Street Program, addressed the Codes and Ordinances Committee on behalf of the Board of Directors. He

explained that this was a recommendation that came from their August 2015 meeting. He cited that this was a fair and equitable ordinance in the downtown district where there is no ordinance in place at this time. The City has had various situations where some businesses were allowed to have outdoor dining and some were not.

He stated some of the benefits of having outdoor dining in the City. He explained that it could bring more vibrancy and foot traffic to the downtown.

Mr. Provost mentioned that the Board of Directors recommended bump outs for those businesses who may not have enough sidewalk area; this would be at their cost and would need to be removed at the end of the season. He is looking for a partnership between the City and the downtown businesses. He was asking for the City to keep the fees low at this time.

Mr. Provost endorsed this ordinance and felt that it was a good start. Councilor Lauterborn discussed this further with Mr. Provost and the committee. Councilor Lauterborn thought the ordinance was fair.

Stacey Marchionni, owner of the Revolution Taproom and Grill, is pleased to see such an ordinance. She asked to address her concerns with the ordinance as it pertains to various terminology and guidelines. She felt that the businesses wanted reasonable expectations.

Ms. Marchionni said that she felt that the City needed to allow the businesses to keep their outdoor space every season, which she felt was too short of a season and asked if that could be changed. She understood that she would have to reapply for the license every year; however, if they invest money to accommodate the space for dining she would hope that City allow them to continue to use the space year after year.

Ms. Marchionni expressed her concern that the City can, at their request, use the space for a special municipal event. Her thought was that the City only should be allowed to use the space for emergencies. She questioned the square foot price of \$10. Mr. O'Rourke explained that the price was not set in stone and it would be up to the City Council. Councilor Varney suggested a flat rate. Mr. O'Rourke explained that the sizes allotted would vary. He felt where it was City property it would need to be at fair market value. After further discussion the committee concluded that the price varies from community to community.

Ms. Marchionni said that some of the technical language needed to be re-written and she wanted more defined authorized uses. She explained that with the various liquor licenses that the State issues the City should not include that they have to serve food in the ordinance.

Ms. Marchionni added that the ordinance was vague when it came to allowing the City to shutdown an outside dining area at will. She felt that this should be addressed.

Ms. Marchionni questioned the specific types of enclosures for these dining areas. Councilor Varney believed that they were looking at consistency in the downtown. She also questioned outside entertainment.

Ms. Marchionni had concerns with the primary advertising not being allowed. Mr. O'Rourke explained that indirect advertising would be allowed.

Councilor Lauterborn asked Ms. Marchionni to provide Mr. O'Rourke a written copy of her suggestions for revisions. Ms. Marchionni stated that she would provide this to him.

Mr. O'Rourke addressed her concerns with the Codes and Ordinances Committee and discussed the liquor licenses with Ms. Marchionni and Mr. Provost. Mr. O'Rourke will look into the licenses further. He did want the committee to look at this as city property and would having a bar on the sidewalk be appropriate. He said it would be up to the City Council.

Councilor Gate **MOVED** to keep the proposed Outdoor Dining Ordinance in committee until they receive a revised copy. Councilor Varney seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

6. Recreation, Parks and Youth Services, Arena Ordinance Amendment

Chris Bowlen, Director of Recreation and Arena, gave the committee a little background in regards to why they are looking to amend these ordinances. He referred to his "Master Plan" from 2010-2011. Where they work close together it only makes sense to make them a singular advisory board.

Mr. Bowlen explained that they have been working on this for month and it is now at the formality stage. He explained that the board has been

working with the City Attorney on this and the commission now wanted to see the merge move forward.

Councilor Lauterborn asked why the committee has fourteen members. She thought that was too many. Mr. Bowlen felt that they needed that amount, but understood her wanting the reduction. He referred to the recommendation from their consultant, which suggested ten members. Councilor Lauterborn felt that they should have an odd number of members. Mr. Bowlen explained that they are a non-voting committee and are just an advisory committee.

Councilor Lauterborn mentioned that they currently have a vacancy, and if they do not fill that position it would at least reduce the committee by one. Mr. Bowlen agreed.

Councilor Lauterborn and the committee discussed non-residents on the commission. David Ancil, Chair of the Arena Advisory Commission, addressed this issue for the committee. He said that the non-residents are very valuable and they have done a lot for the commission. They also have been involved with the arena through the years with other organizations, some that contracted the arena for their services.

Mr. O'Rourke said the commission was at fourteen with staggered terms. He advised the Codes and Ordinances Committee of input from the members currently on the commissions, and they all seem to be in agreement with the terms and the number of members.

The Codes and Ordinances Committee discussed with Mr. Bowlen the two non-recreation members. He explained that these are in place for such organizations like the "Big Buddy Program" and similar organizations.

Councilor Lauterborn wanted more clarification on the two non-resident members. She felt that the wording in the ordinance should be changed from "shall be" to "maybe." Councilor Varney said if those two members are dropped then that would lower the number on the commission. Mr. Bowlen reiterated that those two members are very high functioning and have value to the commission. The committee further discussed changing the non-resident members.

Councilor Varney discussed 21.1 (c) of the chapter as it pertained to members, which shall not be involved in non-recreation services. He felt that it should be removed from the definitions.

Councilor Varney **MOVED** to strike the last sentence of 21.1 (c). Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

The Codes and Ordinances Committee discussed this briefly and Mr. Bowlen stated that there was not a member on the commission that as non-recreation; however, it was listed in the current ordinance. The committee addressed that this commission does consist of one City Council member and one School Board member. The committee continued to discuss the non-residents and vacant position. Councilor Varney reiterated that these amendments are a combination of both commissions.

Councilor Lauterborn **MOVED** to change "shall consist of two non-residents" to "may consist of up to two non-residents." Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Varney wanted to see a commission consisting of ten members, excluding the City Council and School Board members. Councilor Gray felt that the School Board member should be included and explained that they are valuable to the interface should a problem arise. Councilor Lauterborn agreed, but wanted Mr. Bowlen to follow-up with the School Board so they have a member that will attend regularly. Mr. Bowlen did confirm that the City Council member attends regularly.

Councilor Lauterborn mentioned that if they are looking to reduce numbers maybe they should look at members whose terms are expiring. Mr. Anctil gave his reasons why these numbers should not be reduced by expiration. He explained that quite a few of the members whose terms are expiring are the original members with a lot of experience. Councilor Lauterborn asked if thirteen would be acceptable. Councilor Varney thought that the members should all have to reapply. Councilor Keans asked why should the City Council dictate the number of members.

Mr. Anctil wanted to reiterate that this commission is just an advisory board. The members discuss issues and come to an agreement to advise; they do not vote. Councilor Lauterborn wanted to see the number at thirteen. Mr. Bowlen did not have a problem with that as attendance varies. The committee and Mr. Bowlen agreed with that number he would need at least seven members present to have a quorum.

Councilor Lauterborn **MOVED** to change the number of members for the Recreation and Arena Commission from fourteen to thirteen. Councilor

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

Councilor Lauterborn asked Mr. Bowlen to check into the staggered terms. Mr. O'Rourke mentioned that with a new commission everyone would need to apply. Councilor Lauterborn believed that because of this they would need to have a resolution. Mr. O'Rourke agreed. The committee agreed that the City Council and School Board members would stay at their two year term because that was how they are elected. Committee members addressed whether the terms for all other members should be three or four, since each commission has a different term.

Councilor Gray described further as to how the appointments committee would address this. He thought there would be formal meetings for re-appointments.

Councilor Varney asked about the Arena Department supplying the City Council their fee schedule under 2.18 (b) paragraph five. He said it does not look like that is getting done. Mr. O'Rourke felt that they need to look at that and maybe it should be stricken. The Codes and Ordinances Committee discussed this further with Mr. Bowlen and Mr. Anctil. Mr. Bowlen said that they could have the fee schedule by May during the budget season. Councilor Varney reiterated that the City Council needs to check these fees to compare to the expenses.

Councilor Bogan **MOVED** to have Chapter 3 Boards and Commissions, and Chapter 21 Recreation and Arena, with revisions sent to the City Council on November 4, 2015, meeting. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

7. Aggressive Panhandling Discussion

After reviewing the aggressive panhandling as it pertained to the City with Mr. O'Rourke, which he informed them that this type of ordinance could be overturned. It was the consensus of the Codes and Ordinances Committee that no action be taken.

8. Other

Councilor Varney wanted to address casinos within the City and questioned what the definition of a casino was. Mr. O'Rourke had hand outs for H.B. 651 and H.B. 113, which pertained to this discussion. He will work on the definition as it would apply to the City.

Councilor Keans stated that if the State does not allow casinos, why are we addressing them. Councilor Varney said that he had spoken to Jim Grant and per zoning they are allowed in the City with the exceptions of R1 and R2. He was concerned with where these establishment could go if allowed. The Codes and Ordinances Committee debated this further. Councilor Gray added that the City already had a Charitable Casino License. Mr. O'Rourke explained that this would be a gaming license and he mentioned that in the 2015 H.B. the casino was dropped.

The committee had a further discussion on this where there is an establishment within the City that has gaming. Councilor Varney would like this followed up on. Councilor Gray and Councilor Keans reviewed the charitable casino license aspect.

Councilor Lauterborn stated that this topic will stay in committee until the November Codes and Ordinances Committee meeting.

9. Adjournment

Councilor Gates **MOVED** to **ADJOURN** the Codes and Ordinances Committee meeting at 9:48 PM. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Nancy Carignan
Assistant City Clerk