

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday December 3, 2015

City Council Chambers

31 Wakefield Street, Rochester, NH

7:00 PM

Committee Members Present

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

Others Present

Kelly Walters, City Clerk
Terence O'Rourke, City Attorney
Councilor Gray
Councilor Keans
Chief Allen
Steve Beaudoin, Landlord
Carl W. Potvin, Attorney – Representing
Lambert's Auto & Truck Recyclers, Inc.
Bruce Crawford, Executive Director of
Auto and Truck Recyclers
Association of NH
Charles Haas, Majestic Motors,
Merrimack, NH
Tracey Frisbee, Quick Cash
Marilyn Tucker, Trinity Anglican
Church Thrift Shop
Scott Douglas, American Used Auto
Parts
Felicia LaBranche, Trinkets &
Treasures
Brian LaBranche, Trinkets &
Treasures
Mark Saxby, Collec-Tiques
Nancy Ricard, Four Corner Antiques

MINUTES

1. Call to Order

Councilor Lachapelle called the Codes and Ordinance Committee meeting to order at 7:00 PM. Kelly Walters, City Clerk, took a silent roll call. All Committee members were present.

2. Public Input

Steve Beaudoin, resident and landlord, addressed the Committee about adopting a more stringent ordinance as outlined in Title III, Towns, Cities, Villages, and Unincorporated Places, Chapter 31 Powers and Duties of Towns – Powers to Make Bylaws - Section 31:39-d. He distributed copies of Section 31:39-d and photographs of his neighbor’s [landlord] property. He said the photographs of the trash surrounding the property show how an entire neighborhood can decrease in value because of the actions of one property owner. This landlord had been served with a citation for lack of upkeep to the property last year. The property was cleaned up for a few months; however, it has been a year since that citation and now the property looks the same, if not worse.

Mr. Beaudoin said new legislation, which will take effect on January 1, 2016, would allow a landlord to remove “junk” from a tenant’s yard, which the tenant has not removed themselves, after seven days. It also allows the landlord to send a bill to the tenant for the cost of removing the junk. He encouraged the City to adopt Section 31:39-d. It would allow the Building, Zoning, and Licensing Services to create a fee schedule and issue citations through the mail. Councilor Lachapelle thanked Mr. Beaudoin for bringing the matter to their attention.

Councilor Gray said the photographs presented to the Committee by Mr. Beaudoin have been given to the Building, Zoning, and Licensing Service Department.

Councilor Lachapelle closed public input at 7:10 PM.

3. Approval of the Codes and Ordinances Committee Minutes

- **October 1, 2015**

Councilor Lauterborn **MOVED** to **APPROVE** the October 1, 2015, Codes and Ordinances Committee minutes. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Pawnbrokers/Second Hand Dealers Ordinance Amendments

Attorney O’Rourke briefed the Committee as to why this ordinance amendment is being presented again. He said currently there is no holding period requirement for secondhand dealers or pawnbrokers, which means no protection for the victims of crime theft. He distributed a list of twenty communities with holding periods. Currently, the City of Rochester’s General Ordinances does not

require a holding period. Attorney O'Rourke and Chief Allen have met with some of the secondhand dealers and pawnbrokers in the City in an effort to reach a reasonable compromise. *The proposed Amendment can be found as an attachment to this set of minutes.* The following compromises have been proposed:

- The thirty-day holding period has been reduced to a seven-days
- The City would potentially absorb the cost of the software record keeping for at least the first year of implementation
- Provisions that would require tracking customers who purchased items has been removed
- The holding period would have some exceptions to certain items such as video games.

Councilor Lachapelle agreed that a holding period could potentially assist in recovering valuable items that otherwise would be lost forever. He said it seems unrealistic to require a junk dealer to follow the same type of holding period and record keeping as the secondhand dealers and pawnbrokers. Councilor Lachapelle said Londonderry, New Hampshire has this type of ordinance in place. He called a scrap metal dealer in Londonderry to find out if these types of requirements have a negative impact on the business. Unfortunately, the return call has not yet been received. Councilor Lauterborn said the list of twenty of New Hampshire's cities/towns with holding periods does not include any city or town located in Strafford County. Attorney O'Rourke said Rochester is unique in the fact that it has twenty-eight registered secondhand dealer/pawnbrokers and a high crime theft rate.

Carl W. Potvin, Attorney, representing Lambert's Auto & Truck Recyclers, Inc., addressed the Committee. He sent a letter to the Committee members a few days prior to this meeting. Lambert's Auto & Truck Recyclers have been operating and located in Rochester since about 1930. He said this ordinance is treating the junk dealers the same as the secondhand dealers and pawnbrokers. He said they are significantly different and he distributed a photograph of the junk dealer's yard. This ordinance would require photographs to be taken and serial numbers recorded for items that may be valuable. He said the ordinance has no clear definition of valuable. This type of record keeping would require more manpower, placing an unnecessary burden on the junk dealers and the Police Department.

Mr. Potvin questioned if Waste Management is required to obtain a Junk Dealer's License. He added this would be another location in which stolen items could be dropped off. It was later determined that Waste Management is not required to obtain a Junk Dealer's License.

Mr. Potvin said the State is working on legislation regarding the proposed ordinance. He said this type of ordinance has been problematic in other communities such as Manchester, where a case is pending in the Supreme Court. He encouraged the Committee not to recommend this amendment to the full City Council.

Attorney O'Rourke read part of the amended ordinance noting that a junk dealer could group multiple items together in the reporting. He said the same would be true for a pile of scrap metal. He added that in *Prolerized New England Company v. City of Manchester Case # 166 NH 617*, the Supreme Court of NH upheld the City of Manchester's General Ordinance requiring the type of record keeping being proposed in Rochester.

Councilor Lachapelle recalled that the Committee reviewed amending this ordinance about a year ago. At that time, the State legislators were working on formulating some type of requirements for secondhand dealers/pawnbrokers. It was determined that the Committee would wait for further information from the State prior to amending Chapter 34. Councilor Varney said the reason this ordinance is before the City Council at this time is because of the lack of movement on the issue at the State level.

Bruce Crawford, Executive Director of Auto and Truck Recyclers Association of NH, addressed the Committee. He said there are three members of their association who may be affected by this new ordinance as follows: American Used Auto Parts, Colony Used Auto Parts, and Lambert's Auto and Truck Recyclers.

Mr. Crawford read a letter he submitted to the Committee, which can be found as an attachment to this set of minutes. Mr. Crawford pointed out reasons why the junk dealers differ from secondhand dealers/pawnbrokers and gave suggestions of other free software regarding theft alerts. Mr. Crawford serves on the Commission to study the *Regulations of Pawnbrokers, Secondhand Dealers and Junk or Scrap Metal Dealers*, which was authorized by the passage of House Bill 510 during the 2015 legislative Session.

Charles Haas, Majestic Motors Used Auto Parts, Merrimack, NH, and the President of the Auto and Truck Recyclers Association of NH addressed the Committee. Mr. Haas has been a victim of crime theft himself. He supports the idea of having theft alerts, which assisted him in having stolen items returned. He said the salvage yards should not have the same requirements as the pawnbrokers.

Tracey Frisbee, Quick Cash, addressed the Committee. He distributed a list of people who oppose the Ordinance and most are in attendance this evening. He asked for evidence about the crime theft here in Rochester. He opposed the holding period and the proposed software.

Marilyn Tucker, Trinity Anglican Church Thrift Shop, addressed the Committee. She questioned if this non-profit agency would be exempt from this ordinance. It was determined that the thrift shop is a non-profit agency and does have a Secondhand Dealer's License, however, they are exempt from paying the fee to obtain the license. Attorney O'Rourke stated that language would have to be added to exempt a non-profit agency from the requirements of the ordinance.

Scott Douglas, American Used Auto Parts, addressed the Committee. He disagreed that a Non-Profit Agency should be exempt from the requirements of the ordinance.

Felicia LaBranche, Trinkets & Treasures, addressed the Committee. She said there is a problem with a "blanket" ordinance covering thrift stores, antique shops, secondhand dealers, pawnbrokers, and salvage/junk yards. They are all different. She recalled that the Committee agreed a year ago to wait for the State to enact legislation on the matter. She requested statistics that show there is a problem. She met with the Attorney and Police Chief regarding the proposed amendment. She said the Police Department does not have the resources to properly investigate all crimes. She felt this proposed ordinance would take away her ability to earn money to her maximum potential.

Michael Allen, Police Chief, addressed the Committee. He said the crime analyst researched the theft of items over the past three years. There has been over \$1,300,000 worth of property stolen in this area and only eleven percent has been recovered. Councilor Walker asked if this dollar amount included car theft. Chief Allen replied that there is not much car theft in Rochester, but it is included.

Chief Allen gave an account of how many incidents occurred in the past three years: in 2012 there were 1,137 incidents; 2013 had 1,297 incidents; 2014 had 1,194 incidents; and up until August, 2015 there were 485 incidents.

Todd Berios, Skeletone Records, addressed the Committee. He questioned how the statics provided could be linked to secondhand dealers/pawnbrokers. He urged the Committee to focus more on the real issue; theft and misuse of drugs.

Brian LaBranche, Trinkets & Treasures, addressed the Committee. He informed the Committee that some of the secondhand dealers/pawnbrokers met

with the City Attorney and Police Chief to discuss the proposed amendment; however, it seems the amendment is still too stringent. One of the major problems is that the entire ordinance is grouping all types of such businesses together, which are obviously different, such as thrift stores, antique shops, secondhand dealers, pawnbrokers, and salvage/junk yards. He added that he rarely sees the Police Department checking his store for stolen items.

The Committee discussed some of the compromises and reasons why they have not come to an agreement.

Scott Douglas, American Used Auto Parts, addressed the Committee for the second time. His business deals with vehicles and does not have the facilities to hold on to large items for seven days. Their space is limited now without a holding period.

Mark Saxby, Collec-Tiques, addressed the Committee. He is not totally against requiring a holding period for certain items; however, the proposed amendment as written is too vague. It also needs to separate the different types of “dealers” into more specific categories. He does not feel the amendment is ready to be adopted at this time.

Nancy Ricard, Four Corner Antiques, addressed the Committee. She said most of the dealers here this evening keep records of items purchased/sold. She suggested it might be easier to simply notify the thirty shops in the City of items which have been stolen rather than have this extensive record keeping software with thousands of items for the police to view each day. She urged the tri-city area to work together. She did not agree with the purchase of the software for several reasons. She added that it seems that if a customer gets their items returned everyone is happy; however, the shop owner is now a victim too. The criminal should be required to pay back the shop owner. She added that most shop owners work all day, seven days a week, and clean the shop at closing; and now they would be required to work longer hours for the software programming.

Councilor Gray stated that the Commission to study the Regulations of Pawnbrokers, Secondhand Dealers and Junk or Scrap Metal Dealers, created as a result of House Bill 510 has met three times since September, 2015. One notable change came out of last year’s legislation House Bill 358, which was to allow the shop owners the right to retain the photo identification of the person who sold items to the shop. He said House Bill 510 Report is not due until November of 2016. Councilor Keans said the mission of the Commission is clear: to study issues surrounding record keeping, reporting, and retention periods, including privacy and constitutional questions; to study the change in recovery rate in municipalities that

mandate record keeping, reporting, and retention periods, and assess the effectiveness of such ordinances.

Councilor Bogan suggested not holding the junk dealers to the same stringent requirements. She agreed with the seven-day holding period. Councilor Lachapelle agreed too; however, the holding period should also be dependent upon what type of item or dealer shop it is.

Councilor Gates expressed disappointment that a compromise between the “dealers” and the City had not yet been reached; however, he encouraged both sides to continue to compromise on the proposed amendment. He **MOVED** that the Codes and Ordinance Committee take no action on this matter at this time. Councilor Bogan seconded the motion. Councilor Gates restated his motion as follows: to retain the matter in Committee. Councilor Bogan seconded the motion. After more discussion, Councilor Gates **WITHDREW** his **MOTION**, and Councilor Bogan **WITHDREW** her second to the motion.

Councilor Lauterborn agreed that this amendment is not ready as written. She agreed with implementing a seven-day holding period for some items; however, she is not comfortable with supporting the software tracking program at this time.

Attorney O’Rourke disagreed with waiting for the State to enact legislation. He felt the victims of crime should be protected now. He agreed that the Junk Yard Dealers requirement could be revisited; however, the Secondhand Dealers/Pawnbrokers amendment should not be delayed much longer.

Councilor Keans said some of these shops have extensive record keeping. She encouraged other members of the Committee to visit these shops. She said the first step should be for the Rochester Police Department to inform these shops of stolen items like other communities are already doing. She said it is unlikely that the City would pay for the program after the first year.

Councilor Lachapelle expressed his objection to this Amendment as it is written. He informed the public that there would not be a Committee meeting for the Codes and Ordinances in January 2016, since there will be a new City Council and Committee assignments would not be made until mid-January, 2016. The matter is retained in Committee.

5. Outdoor Dining Ordinance Proposed 26.10

Attorney O'Rourke reviewed the changes made to the Outdoor Dining Ordinance. The major change was made to 26.10 16 (c) regarding serving alcohol outside. He noted that each business plan is presented to the City Manager for approval and who would have some discretion within the general boundaries of the ordinance. The revised version is as follows:

Chapter 26 Public License

26.10 Use of City Property for Outdoor Dining

(1) Requests for use of City property for outdoor dining providing food and alcohol service shall be made in writing to the City Manager on an annual basis by February 1st with no expectation of continued year-to-year use of the City property on a continuing basis. Requests will only be accepted by businesses licensed to serve food to the public. In the event that a new business opens during the outdoor dining season and wishes to incorporate outdoor dining in its plans, an application will be allowed for the remainder of the dining season only.

(2) Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curb lines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for outdoor dining dimensioned routes of travel within the outdoor dining area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like. These plans will be reviewed by the TRG and suggestions forwarded to the City Manager.

(3) The terms and conditions of any such requests that are approved by the City Manager in any given year shall be described in an annual Area Service Agreement, which includes a clear depiction of the area approved for outdoor dining use and the time period of approved use ("Season"), with said Area Service Agreement to be signed by the City Manager and the party or parties making the request. The Season shall run from May 1st through the day after Columbus Day.

(4) Area Service Agreements shall not be assignable to other parties.

(5) Use of the Area subject to the Area Service Agreement (the "Area") may be precluded, modified or made subject to any such terms and conditions as may be determined by the City Manager in order to accommodate special municipal events.

(6) A \$ per square foot fee will be charged for the Area subject to the Area Service Agreement and the fee shall be for the Season with no proration of the fee. The minimum fee for the season shall be \$ even if the size of the Area subject to the Agreement is less than 100 square feet. The fee shall be due and payable to the City of Rochester prior to authorization to use the Area.

(7) The Area specified for outdoor dining use in the Area Service Agreement shall be restored upon termination of the Area Service Agreement at season's end. Specifically, at season's end, the enclosure system, tables, chairs and all other materials in their entirety shall be removed from the City-owned area with the area left in an unobstructed, undamaged, clean and sanitary condition at no cost to the City.

(8) Outdoor dining establishments on City property shall indemnify and hold harmless the City of Rochester and shall maintain and provide insurance of the types and amounts specified by the City's Legal Department and shall list the City as additional insured.

(9) Outdoor dining establishments shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, or make same inaccessible for public use (other than within the approved Area) or maintenance purposes.

(10) Outdoor dining establishments may utilize the Area for Outdoor Dining during their normal business hours, except that all tables within the Area shall be cleared of all food and alcoholic beverages by 11:00 p.m. Monday through Saturday and by 10:00 p.m. on Sunday with no alcohol served within the Area subsequent to one-half hour before the foregoing closure times.

(11) Outdoor dining establishments shall agree at all times to comply with all laws, rules and regulations of the NH State Liquor Commission and all other local, state and federal laws. Approval of the Area Service Agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission and the City Manager. See RSA 178:24 and RSA 179:27.

(12) Outdoor dining establishments shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering food with service at tables conducted by wait staff only.

(13) Outdoor dining establishments will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act.

(14) The Area Service Agreement may be suspended at the sole discretion of the City on an administrative basis.

(15) The Area Service Agreement may be revoked in its entirety, excepting for

indemnity provisions, by the City Manager at any time.

(16) Outdoor dining establishments with alcohol service should meet the following site design standards:

a) Be separated from the public pedestrian space on the adjacent municipal sidewalk by an enclosure system consisting of heavy duty black decorative metal materials or equivalent as approved by the City Manager or his designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and insure public safety; the minimum height of the enclosure system shall be 30 inches and the maximum height shall be 36 inches.

b) Outdoor dining establishments shall not have live entertainment of any type located outside, and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed toward patrons in the outdoor dining area.

c) For those outdoor dining establishments serving alcohol, seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the Area approved by the City Manager. Exceptions to this provision will be allowed consistent with NH State Liquor Commission approval for particular licensees.

d) The internal dimensions and table/chair layout of the outdoor dining Area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.

e) Outdoor dining establishments must provide a 5-foot radius clearance from the center of restaurant doorways (exterior) and doorways shall be kept clear at all times and a 5-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.

f) The enclosure system, tables and chairs shall be movable/non-permanent.

g) In all areas where outdoor dining establishments are allowed the width for the pedestrian way adjacent to the Area shall, at a minimum, be 3-feet and, in any event, meet ADA requirements, but will depend on site conditions. The pedestrian way in both instances shall allow for and provide clear unimpeded passage and access along the Area. The pedestrian way shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the Area interfere with accessibility or public safety, including safe lines of sight for drivers.

h) Canopies over the outdoor dining areas shall not be allowed unless they are completely supported by hardware on the building structure, that is,

there shall be no vertical supports in or around the outdoor dining. Table umbrellas are allowed, but must not extend beyond the Area.

i) No object strictly related to advertising shall be allowed in the Area.

j) No improvements or personal property located within the Area shall extend on or over any City property located outside the Area.

(17) Outdoor dining establishments shall agree at all times to comply with all local laws, rules regulations and orders including, but not limited to the following:

a) Health Department to approve outdoor food service operations and cleaning operations, with the Area to be left in a clean and sanitary condition at all times and no outdoor garbage containers will be permitted. The Area shall be left in clean condition at close of business with all garbage removed in its entirety from the Area, and any ground debris swept up, at close of daily business. No food prep, grilling, service windows, service counters, wait stations, or bus buckets shall be allowed in the Area and no condiments, paper products or the like shall be stored on the tables in the Area. Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.

(b) The Director of Buildings, Zoning and Licensing shall review/approve that bathroom facilities are sufficient to support outdoor dining seating.

(c) Only decorative lighting shall be permitted.

(d) A Place of Assembly inspection and updated Place of Assembly permit shall be required from the Fire Department and the Fire Department shall review/approve means of egress as part of the TRG process.

(18) No Area Service Agreement should be approved by the City Manager except in conformance with the foregoing.

(19)The above are policy guidelines that will serve as the basis for Area Service Agreements, which may include other terms and conditions deemed by the City Manager to be in the public interest.

(20)The number and location of outdoor dining establishments on City property shall be at the sole unfettered discretion of the City Manger acting in the public interest and no entitlement is created by this policy for any party to have a outdoor dining at any location.

This Ordinance shall take effect upon the passage by the City Council.

Attorney O'Rourke said the Committee or City Council would need to establish some type of rental fee. The Committee debated how much to charge for a seasonal rental fee.

Councilor Varney **MOVED** to charge a minimum fee of \$25.00 for up to 100 square feet and \$1.00 per square foot thereafter. This would be an annual fee for the season. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Councilor Keans questioned if the ordinance would require such rental spaces be cleaned up at the end of each evening. Attorney O'Rourke replied yes, under **Chapter 26.10 17 (a)**.

Councilor Lauterborn **MOVED** to recommend the City Council approve Chapter 26 of the Rochester General Ordinances to the full City Council, as amended, to the January, 2016, Regular City Council meeting. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

7. Polling Locations - Ward 1 - Ward 3 - Ward 4

Kelly Walters, City Clerk, had asked the National Guard Armory if the City of Rochester could use the facility for all City Elections. Helen Champa, Adjutant General's Department, State of New Hampshire, sent an email stating that the National Armory could not be used for such an event because it was too much like any other political events. Councilor Varney requested that the City Manager or Mayor Jean contact the Governor to get a final answer on holding elections at the National Guard.

City Clerk Walters reported that there does not seem to be any other locations in the three wards to use as a polling location. She encouraged any members of the Committee/Council to email with her any polling location suggestions. Councilor Varney requested that the East Rochester School be a potential polling location for Ward One. This will stay in Committee for now.

Councilor Varney stated that if Tara Estates is to be used for any more elections then the "trip" hazard at the entrance to the building must be addressed and lighting would need to be provided. He added that it would be difficult to change polling locations in the middle of three close elections.

8. Permits - Chapter 40.16 Amendments

Attorney O'Rourke stated that the proposed language has been added to Chapter 40.16 (a) 4, in order to be more consistent with what is already happening at the Building, Zoning, and Licensing Service Department.

Councilor Varney **MOVED** to send the Amendment to Chapter 40.16 (a) 4 of the General Ordinance to the full City Council for approval. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Attorney O'Rourke said the following recommendation had been suggested by the Finance Department: (c) The Director of Building, Zoning, and Licensing Services shall issue no building permit, certificate of occupancy, and or/other construction permit for improvement or changes in real property for any real property for which there are delinquent municipal taxes, sewer user charges, assessments, penalties and/or fines.

Council debated the matter. Councilor Varney **MOVED** to send Section (c) as stated above to the full City Council for approval. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

The Amendment(s) are as follows:

**AMENDMENT TO CHAPTER 40 OF THE GENERAL ORDINANCES OF
THE CITY OF ROCHESTER REGARDING PERMITS**

THE CITY OF ROCHESTER ORDAINS:

That subsections 40.16 of Chapter 40 of the General Ordinances of the City of Rochester regarding Permits and currently before the Rochester City Council, be amended as follows:

40.16 Permits.

(a)

(4) Fees for building permits shall be waived for a honorably discharged veteran or an active duty, National Guard or reserve member of the United States Armed Forces, who plans to construct or have constructed for himself a home or appurtenance to a home already owned by him for exclusive occupancy by himself and his immediate family.

(c) The Director of Building, Zoning, and Licensing Services shall issue no building permit, certificate of occupancy, and or/other construction permit for improvement or changes in real property for any real property for which there are delinquent municipal taxes, sewer user charges, assessments, penalties and/or fines.

The effective date of these amendments shall be upon passage.

6. Signage Ordinance Chapter 42

Councilor Walker supplied the Committee with a copy of the existing sign ordinance [political signs.] He believed the lack of political signage was directly attributed to the low voter turnout here in Rochester. He encouraged the Committee to amend the ordinance in order to allow the political signs to be posted in the City's right a way once again.

Councilor Keans attended the NHMA Conference and said one of the seminars she attended focused on posting signs on public property. It seems if you allow any signs on public property than all signs must be accepted. Attorney O'Rourke attended the same seminar and agreed. He said if you do allow any signs on public property than the sign must be accompanied with a name, address, and a permit. This would include a fee and tracking system to find out how long signs have been posted. This would open it up for any kind of signs to be posted. Councilor Gray stated that he has been involved with addressing the matter of posting political signs with the state legislation. The Committee briefly discussed the matter but took no action.

9. Other

Councilor Varney recommended addressing the concerns brought to the Committee by Mr. Beaudoin. Council briefly debated the matter. Attorney O'Rourke agreed to gather more information for the Committee.

10. Adjournment

Councilor Bogan **MOVED** to **ADJOURN** the Codes and Ordinances Committee at 8:58 PM. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Kelly Walters,

City Clerk

26.3 Pawnbroker's License.

(a) - - -

(b) All pawnbrokers shall be subject to the holding period restrictions and requirements set forth in Section 34.7 of the General Ordinance of the City of Rochester.

34.2 Second-Hand Dealer Defined.

A "second-hand dealer", within the provisions of this Ordinance, shall be a person, firm or corporation engaged in the business of selling, exchanging, dealing in or dealing with second- hand articles, including, but not limited to, firearms, opera glasses, telescopes, watches, clocks, diamonds or other precious metals, jewelry, furs, fur coats, or other kinds of wearing apparel, antique furniture, furnishings, glass and dishes, musical instruments, radios, electronics, automobile accessories, office and store fixtures and equipment, gas and water meters, antique and collectibles as those terms are defined in Ordinance 42.2.b.219 (A), and all classes of fixture and their connections. For purposes of this definition, yard sales, flea markets, garage sales, attic sales or similar commercial activity established as business for the sale of other people's property as described in this Ordinance or such a sale that exceeds three days duration or is held more than three times a year shall be considered a second-hand dealer.

34.7 Second-Hand Dealers' Records and Inspection.

(A) Every pawnbroker or secondhand dealer, upon acquisition of any article enumerated in Section 34.2 of the Ordinance, shall prepare transaction records electronically as directed by the Chief of Police or his designee, and submit said form electronically, detailing the proven identity of the seller including his name, date of birth, address, type of identification and identification number if there is one. A digital photograph of said person shall accompany the electronic filing of the transaction. Only government issued forms of identification will be accepted. No transaction shall occur if the identity of the seller cannot be proven. The record of the transaction shall also contain the month, day, and year when the transaction occurred as well as full, accurate, and detailed description of each article purchased brand name and serial number, if any, with the price paid therefor, and cause the record to be signed by the seller in person along with a digital color photograph of the property pursuant to the following requirements:

(1) *Individually identifiable articles.* Articles that are individually identifiable by a serial number or other applied numbers, letters, characters or markings or other unique features that serve to distinguish it from any other similar article and can be used to establish ownership.

a. Each individually identifiable article brought in to a pawnbroker or secondhand dealer for sale, barter, trade, pledge or pawn during a single transaction shall be itemized separately. Articles shall not be grouped together (i.e. five gold monogrammed rings), but must provide a complete and thorough description of each item to include the following:

1. Type of article;
2. Brand name/make/manufacturer (if applicable);
3. Model number (if applicable);
4. Serial number (if applicable):
5. Color/finish; and
6. Any other identifying marks, writing, engraving, etc.

b. A digital photograph(s) shall be taken of each individually identifiable article, sufficiently detailed to allow reasonable identification of the

article. The digital photograph(s) shall capture any identifying numbers, marks, writing, engraving, etc., or any other distinguishing characteristics.

(2) *Non-individually identifiable articles.* Articles that cannot be distinguished from any other similar article may be described in groups of similar types of articles, but only within the same transaction.

a. Non-individually identifiable articles brought into a pawnbroker or secondhand dealer for sale, barter, trade, pledge or pawn during a single transaction may be grouped and shall include reasonable descriptions of the number and types of items within each group to enable the Police Department to determine if they may have been stolen during a particular crime. (For example, the licensee receives a video game controller, five video game discs, and numerous items of jewelry. The licensee would have to individually itemize and photograph the video game controller as outlined in (A)(1) above, as it would have a serial number. The remaining items shall not be listed as "miscellaneous video games and jewelry." Instead, the licensee shall describe them as follows: "five video game discs to include the following titles..." and "miscellaneous jewelry to include two yellow gold necklaces, one silver necklace, two pairs of silver earrings, one women's yellow gold ring, one women's white gold diamond ring and two silver bracelets.")

b. A colored digital photograph(s) shall be taken of each group of similar types of articles within the same transaction. The articles may be photographed together as a group but each individual article shall be visible in the photograph. (For example, given the circumstances outlined in (A)(2)(a) above, the five video game discs would be photographed together as a group, side-by-side, and the jewelry items would be photographed together as a group with each item laid out so to be individually viewable.)

(B) When filed electronically, a copy of the record shall be forwarded to the Police Department or authorized data storage site as soon as possible, but no later than 24 hours after completion of the transaction. The dealer shall retain a copy of the record at his local place of business for one year from the date of transaction which, along with any article therein listed, may be inspected by any duly authorized police officer. No article so purchased shall be sold, changed, altered in its appearance or otherwise within 7 days after the purchase thereof, except with written consent of the Chief of Police or his designee. All items purchased or pawned shall remain on the premises during the waiting period with the exception of pawned items being redeemed by the owner. The record shall be available at the local place of business for inspection by any duly authorized police officer for one year from the date of transaction.

34.8 Junk Dealers' Records and Inspection.

(A) Every junk dealer, upon the acquisition of any item enumerated in Section 34.1 of the Ordinance, shall prepare transaction records electronically as directed by the Chief of Police or his designee. When filed electronically, a copy of the record shall be forwarded to the Police Department or authorized data storage site as soon as possible, but no later than 24 hours after completion of the transaction. The electronic record shall detail the proven identity of the seller including his name, date of birth, address, type of identification, and identification number if there is one. Only government issued forms of identification will be accepted. If the identity of the seller cannot be proven, no transaction may occur. Furthermore, a digital photograph of said person shall accompany the electronic filing of the transaction. The owner, corporation, or company shall maintain at his local place of business, a record of the transaction detailing the proven identity of the seller. The record shall include a full, accurate, and detailed description of the item, including brand name and serial number, if any, along with a color digital photograph of item(s) pursuant to the following photographing requirements:

(1) Articles that cannot be distinguished from any other similar articles may be described in groups of similar types of articles, but only within the same transaction by the same customer. Licensees/owners/employees shall provide reasonable descriptions of the number, weight and/or types of items within each group to enable the Police Department to determine if they may have been stolen during a particular crime.

(2) A colored digital photograph(s) shall be taken of each group of articles, provided however, that similar types of articles contained within some type of container does not have to be photographed individually. A color digital photograph of the container and a reasonable representation of its contents will be sufficient.

All electronic records submitted by junk dealers and/or scrap yards shall also include a complete and accurate description of any vehicle used by the seller, to include year, make, model, color, registration number and state, to be included with the electronic filing of the transaction. The record shall also include the day, month, and year when the transaction occurred. The record shall be available at the local place of business for inspection by any authorized police officer for one year from the date of transaction. No article so purchased shall be sold, changed, altered in its appearance or otherwise within 7 days after the purchase thereof, except with written consent of the Chief of Police or his designee.

34.9 Exclusions

(1) Any person, firm, partnership or corporation whose exclusive business is the retail buying, selling, buy-back, exchanging, dealing in or dealing with furs, fur coats, books, magazines, used furniture, used clothing, or used motor vehicles/motorcycles by legally recognized vehicle dealerships, shall be exempt from the requirements of Sections 34.7 and 34.8.

(2) Coins or stamps sold/purchased in bulk (meaning the purchase at one time, at a reduced price, of a large quantity of a coins or stamps) may be resold to individuals or wholesalers (meaning a person or company that sells things to businesses and not to individuals) without record, provided that the sale/purchase occurs after the 7-day hold period and the photographing requirements of Sections 34.7 and 34.8 have been met.

(3) Sales by persons not required to be licensed as secondhand dealers from private residences are exempt from the provisions of Chapter 34.

(4) An organization that purchases secondhand goods, whether directly or indirectly, from a not-for-profit organization and does not purchase any secondhand goods from the general public is exempt from the provision of Chapter 34.

(5) Sellers/buyers of used video games over two years old, used video gaming consoles (including hand-held devices) over 10 years old, collectable cards, games or toys.

34.12 Fees.

Every pawnbroker or secondhand dealer that purchases an item in which a transaction record must be prepared pursuant to Section 34.7 of the Ordinance shall pay to the City of Rochester a single annual licensing fee of \$50.00, regardless of whether they conduct business both as a pawnbroker and secondhand dealer.

The Effective Date of these changes shall be April 1, 2016.

City of Rochester
Committee
Draft

Codes and Ordinances

December 3, 2015