

**Codes and Ordinances Committee**

Councilor Peter Lachapelle, Chair  
Councilor Elaine Lauterborn, Vice Chair  
Councilor Tom Abbott  
Councilor Chris Rice  
Councilor Laura Hainey



**Others Present**

Terence O'Rourke, City Attorney  
Jennifer Marsh, Economic Development  
Donald Hamann, City Councilor

**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

**Thursday, January 7, 2021**

**31 Wakefield Street, Rochester, NH**

Meeting conducted remotely

**6:00 PM**

**Minutes**

**1. Call to Order**

Councilor Lachapelle called the Codes & Ordinances meeting to order at 6:00 PM and read the following preamble:

Good Evening, as Chairperson of the Codes & Ordinances Committee I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of City government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

a.) **Providing public access to the meeting by telephone:** At this time, I also welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in a unique manner under unusual circumstances, the usual rules of conduct and decorum apply. Any person found to be disrupting this meeting will be asked to cease the disruption. Should the disruptive behavior continue thereafter, that person will be removed from this meeting. The public can call-in to the below number using the conference code. Some meetings will allow live public input, however you must have pre-registered online, otherwise, the meeting will be set to allow the public to "listen-in" only, and there will be no public comment taken during the meeting. [Public Input Registration](#) (Please note: In order to notify the meeting host that you would like to speak, press 5\* to be recognized and unmuted)

Phone number: 857-444-0744      Conference code: 843095

b.) **Public Access Troubleshooting:** If any member of the public has difficulty accessing the meeting by phone, please email [PublicInput@RochesterNH.net](mailto:PublicInput@RochesterNH.net) or call 603-332-1167.

c.) **Public Input:** Due to the ongoing situation with COVID-19, the City of Rochester will be taking extra steps to allow for public input, while still ensuring participant safety and social distancing. In lieu of attending the meeting, those wishing to share comments, when permitted, with the City Council (Public Hearing and/or Workshop settings) are encouraged to do so by the following methods:

- **Mail:** City Clerk/Public Input, 31 Wakefield Street, Rochester, NH 03867 (*must be received at least three full days prior to the anticipated meeting date*)
- **email** [PublicInput@rochesternh.net](mailto:PublicInput@rochesternh.net) (*must be received no later than 4:00 pm of meeting date*)
- **Voicemail** 603-330-7107 (*must be received no later than 12:00 pm on said meeting date in order to be transcribed*)

Please include with your correspondence the intended meeting date for which you are submitting. *All correspondence will be included with the corresponding meeting packet (Addendum).*

d.) **Roll Call:** Please note that all votes that are taken during this meeting shall be done by Roll Call vote. Let's start the meeting by taking a Roll Call attendance. When each member states their name (and/or ward), also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. (Additionally, Council members are required to state their name and ward each time they wish to speak.)

Deputy City Clerk Cassie Givara took the roll call. The following councilors were present and indicated that they were alone in the location from which they were connecting remotely: Councilors Abbott, Hainey, Lachapelle, Rice and Lauterborn.

## 2. Public Input

Councilor Lachapelle read correspondence from Steve Beaudoin, resident, in regards to agenda item 4.1 – Chapter 41, Disorderly Residences.

Cassie Givara, Deputy City Clerk, read correspondence from Tim Fontneau, Penny Boucher, Gerry Hanscom, and Nick Norman, all in regards to Chapter 41.

*All correspondence submitted for public input will be included as an addendum to the online Codes & Ordinances packet.*

## 3. Acceptance of the Minutes

### 3.1 December 3, 2020 *motion to approve*

Councilor Lauterborn **MOVED** to **APPROVE** the minutes of the December 3, 2020 Codes

& Ordinances meeting. Councilor Rice seconded the motion. The **MOTION CARRIED** by a unanimous voice vote with Councilors Hainey, Rice, Lauterborn, Lachapelle, and Abbott all voting in favor.

#### 4. Code of Ordinances Review

##### 4.1 Amendment to the General Ordinances of the City of Rochester Creating Chapter 41, Disorderly Residence

Councilor Lauterborn inquired if the City of Franklin, where the wording for this ordinance originated, had been enforcing this ordinance and how it had been working in that City. Councilor Lachapelle stated that in 2018 when the Committee had last discussed this ordinance, the City of Franklin had not experienced any issues at that point. Attorney O'Rourke stated that he didn't have any current information from Franklin, but would look into it.

Councilor Lauterborn acknowledged that there is an actual problem which resulted in this ordinance being proposed and expressed sympathy for the landlords involved; however she stated that she hoped there would be an alternative solution to help out the neighborhoods and residents dealing with these disorderly residences. Councilor Lachapelle recalled that when this issue had been discussed in 2018, the police commission and police staff had intended to work with local landlords to develop policies and procedures.

Councilor Hainey felt that the committee should discuss and develop a process and procedure moving forward to help affected residents. She spoke about the residents in her neighborhood who have approached her about long-term, ongoing problems requiring police presence. Councilor Hainey said it is not only her neighborhood where these issues take place habitually, and she felt that something needed to be done before it was too late. She requested the report of information generated from the police commission in 2018 after the last time this was discussed.

Councilor Lachapelle said that he felt this was more of a State issue. He felt that landlords should have more power to take action within the State statute and that there is only so much which could be done at the City level. He suggested approaching local representatives to have it brought up at the State level and addressed. Councilor Hainey said it is a local issue as it concerns the police. She stated that the police are in the same neighborhood weekly, multiple times a weekend, and they are not able to make arrests or stop the issues from reoccurring.

Councilor Rice acknowledged that something did need to be done but questioned whether this ordinance was the way to go about making the change. He inquired if there was a way to mandate that landlords register their rental properties with the City. Councilor Lachapelle said that he had been informed there was a state RSA requiring landlords to register their information with the local City Clerk's Office. Councilor Rice suggested that the committee could reach out to police department representation for rental property owners. Concerned citizens from each ward could be invited to these police commission meetings to have their issues heard. He suggested reaching out

to local representatives as well as the Strafford County sheriff for guidance on how to proceed with evictions. Attorney O'Rourke agreed that this would be a good item to be added to the Police Commission agenda. He stated that prior to COVID, BZLS and police staff had started meeting with landlords, but that outreach and discussion had been put on hold. Councilor Lachapelle suggested bringing the item back to the Codes & Ordinances committee because ultimately they would be the ones making recommendation to full Council.

Attorney O'Rourke stated that part of the issue is education. There are some less experienced landlords or those with fewer properties who may not know their rights and may not know how to move forward in these situations.

Donald Hamann, councilor, spoke about his experiences as a landlord and agreed that the state laws needed to give more power to the landlords to take care of these issues with problem tenants. Councilor Abbott agreed that the focus should not be on the landlords but rather on those creating the problem and if an ordinance is going to be proposed, it should hold those responsible who are causing these issues. There was a brief discussion on absentee landlords and out of state landlords and how this affects the issue.

Councilor Hainey agreed that the focus should not be on the landlords but rather on those tenants causing the problems. She stated that discussion could spur outreach to the police commission and landlords to start taking a closer look at the ordinance to see what can be done and start making some positive changes.

Councilor Rice spoke about reviewing other ordinances which could potentially address the problems being highlighted in the disorderly residence chapter; the noise ordinance could be reviewed and possibly amended due to noise complaints being a large part of the issue. Councilor Hainey had referenced gunfire in her neighborhood. It was discussed that this incident would be governed by State RSA.

Councilor Rice suggested having a list of rental properties along with the legal tenants occupying these properties. This would allow police to penalize the appropriate parties if there were complaints involving multiple people at one call. Council Lachapelle clarified that he did not believe it was legal for the City to keep a registry of individual tenants at each property; however there is a registry of the landlords owning these properties in the city Clerk's office. Councilor Rice suggested that the confidential nature of this tenant registry could be maintained by only allowing access to the police, legal staff and City Clerks.

Councilor Lachapelle suggested inviting members of the police department staff to the next Codes meeting to further discuss this item and possibly drafting an ordinance which would work better for the City. Councilor Lauterborn stated that she felt that this was a State issue which would require a change to the statute, which is not a quick process.

## **5. Update: Chapter 80 – Outdoor Dining**

Jenn Marsh, Economic Development, gave a brief summary of what has occurred with the outdoor dining ordinance up until now and the process it has gone through. She outlined the additional proposed changes which have been suggested since the last time the ordinance was reviewed by the committee. Attorney O'Rourke stated that the goal had been to make the ordinance much easier in function and with increased clarity for the restaurant owners. Attorney O'Rourke said that the use of Jersey barriers to cordon off the outdoor seating areas would be in use again this upcoming season. He stated that the process as laid out will give the restaurants the ability to write their site plan and make the approval process through the Technical Review Group and final approval through the City Manager more complete and easy.

Councilor Rice asked about the requirement for rubber tips on the legs of chairs and tables to be used on concrete surfaces which had been written into the ordinance. Attorney O'Rourke stated that the surfaces on which the furniture is being placed are owned by the City and this in an attempt to protect those surfaces from damage and wear and tear as the furniture is used. Councilor Rice suggested adding to the ordinance that these protective tips should be required on pavement surfaces as well, because many of the outdoor dining locations are located on this type of surface. He questioned whether they would be necessary at the locations which have built raised wooden platforms for dining. Attorney O'Rourke stated that these details would be ironed out in the site plans submitted by each business prior to the plans going before the appropriate Board or Commission for approval.

Councilor Rice spoke against the prohibition of tents, canopies and covers in the outdoor dining areas, and noted that table umbrellas are permitted without a stipulation that they need to be affixed. Councilor Lachapelle referenced the many outdoor dining areas along the seacoast beaches which regularly use umbrellas and stated that ideally it's common sense that if these umbrellas are used, they need to be secured in case of windy weather. He did not feel that every small possibility needed to be written into the ordinance. Councilor Rice stated that if this document is intended to be thorough and permanent, these types of clarifications should be included. Ms. Marsh stated that the fire department as well as City staff is against the use of canopies at outdoor dining establishments due to the potential safety issues and damage, even when anchored, which could be caused in certain weather. Ms. Marsh questioned if other types of coverings, such as custom build wooden coverings, could be used to protect diners against the sun and heat during the summer months. City Attorney O'Rourke stated that these types of structures would need to be included in the businesses' site plan because they would need to pass building and fire codes. Attorney O'Rourke suggested adding the verbiage that umbrellas "must be anchored" into the ordinance. Councilor Rice added that he felt the ordinance should allow both umbrellas and canopies as long as they were appropriately anchored into a structure of a certain size and weight requirement. Attorney O'Rourke clarified that the canopies being used do not meet any of the relevant building or fire codes and can be dangerous for use in a busy commercial setting; they are not approved for the uses being suggested. Councilor Rice stated that vendors at the farmer's market use this same style of tent and canopy on City property and questioned why it would not be allowed for restaurants downtown. Councilor Lachapelle stated that the farmer's market uses these canopies for a brief period of time one day a week and they are removed when the market ends.

Councilor Lauterborn referenced a section in the ordinance which indicated that there would not be live entertainment at outdoor dining establishments. She stated that her recollection is that this has been allowed when it was discussed last, and the establishments would work out a schedule

amongst themselves to avoid multiple performances overlapping. Attorney O'Rourke said that if the restaurants would like to have live entertainment, they need to file for a special events permit. Councilor Lauterborn suggested changing the wording to indicate that live entertainment is permissible upon application of a special events permit. Attorney O'Rourke said the section being referenced is in regards to the site plan, and that given the limited space and the need for ADA compliance, safety codes and other criteria, it doesn't make sense for restaurants to commit to a specific designated space for live entertainment; the special events permit can be applied for to use public spaces. Ms. Marsh stated that she agreed entertainment should be allowed in downtown; however due to the heavily trafficked area and safety concerns with wires and equipment, city staff would still need to review the area and the plan to determine if it would be appropriate on a case by case basis. She said that the special events permit is an easy process and can be applied for and approved quickly. Councilor Lauterborn reiterated that she felt they should add verbiage allowing live entertainment at outdoor dining establishments with the approval of a special events permit. Attorney O'Rourke said there are other portions of the ordinances which deal with special events permits; this particular section in regards to site plans is not the appropriate place to include a section for live entertainment. Alternately, he stated that the ordinance is in reference to City property. The city needs to be equal in the allowance of use of these public spaces; otherwise it is a violation of residents' rights. He said that the special events permit process would still be the route to take for occasional live entertainment.

Councilor Hainey echoed Councilor Rice's assertion that canopies, and tents should be permissible if appropriately secured and weighted down. She also asked if it had been considered that the outdoor dining season could start March 1 as opposed to April 1. Attorney O'Rourke stated that the full Council had voted on keeping the start of the season on April 1<sup>st</sup> due to the potential for winter storms well into March.

Mr. Hamann, recounted a story of a secured tent he had used on his deck which had been destroyed and mangled in wind. He gave examples of types of tenting which could be used to potentially avoid weather damage and safety concerns.

Ms. Marsh clarified that there is a difference between tents and canopies. Tents above a certain size can be inspected and reviewed by the fire department and potentially allowed with a permit. Attorney O'Rourke stated that these types of tents would have to be anchored by drilling into the ground. The locations in question are on City property and drilling or modification of the ground would not be permitted.

Councilor Rice suggested keeping the ordinance in committee for one more month so councilors could review and come back in February for further discussion and amendments. Attorney O'Rourke stated that applications are due in February from the restaurants, so staff was hoping to have the committee recommend the suggested amendments to the full Council so there could be a special meeting held on February 19<sup>th</sup> for a vote. Councilor Lachapelle suggested that the amendments to the ordinance could be approved "as is" and there could be further amendments made in the future to avoid holding up any permits.

Councilor Lauterborn **MOVED** to recommend to full Council the suggested amendments to Chapter 80 regarding outdoor dining. Councilor Abbott seconded the motion. The **MOTION CARRIED** by a 4 – 1 roll call vote with Councilors Lachapelle, Abbott, Hainey, and Lauterborn

voting in favor and councilor Rice voting opposed.

**6. Other**

Councilor Lachapelle asked which ordinances would be covered at the February 4 meeting. Attorney O'Rourke said that Building, Zoning and Licensing and Planning had a chapter which crosses over, so they are scheduled for this upcoming meeting together. Councilor Lachapelle suggested that at the February 4 meeting, they could handle the first 4 chapters of BZLS (chapter 11 Adult entertainment, Chapter 22 Amusement, Chapter 40, and Chapter 54 Citation, and Chapter 80: Food & Food Services) and do the remainder of the BZLS chapters as well as the Planning ordinance. There will also be a spot for further discussion of the disorderly residence ordinance.

**7. Adjournment**

Councilor Lachapelle **ADJOURNED** the meeting at 7:17 PM.

Respectfully Submitted,

Cassie Givara  
Deputy City Clerk