

Codes and Ordinances Committee

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



CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, March 2, 2023

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.

2. Public Input

There was no public input.

3. Acceptance of the Minutes: January 5, 2023

Councilor Desrochers **MOVED** to **ACCEPT** the minutes of the January 5, 2023 Codes and Ordinances Committee meeting. Councilor Beaudoin seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

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

Attorney O'Rourke directed the Committee to the Rules of Order, which have been revised based on the discussion at the last Codes and Ordinances Committee meeting.

Councilor Beaudoin pointed out the repetition of the word "the" in the first paragraph for correction. Councilor Fontneau made a similar minor correction as follows: "However, accusations of wrongdoing or illegal acts without evidence are defamatory and will ~~be~~ not ~~be~~ allowed"

Councilor Beaudoin asked if the footnotes citing case law would be included in the Rules of

Order or if they were just their for Committee reference during discussions. Attorney O'Rourke said that these footnotes would be included in the final Rules of Order. Councilor Beaudoin questioned the relevance of the court cases cited in footnotes one and two. Attorney O'Rourke explained that the references are to the definitions of "defamatory statements" and "Face to face words plainly likely to cause a breach of the peace..." appearing in these particular court cases; the facts of the cases themselves are immaterial.

Councilor Beaudoin asked where these suggested changes to the Rules of Order had originated. Attorney O'Rourke said that this item had been requested by Mayor Callaghan.

Councilor Desrochers **MOVED** to recommend the changes to section 1.6 of the Rules of Order to full Council. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

5. Amendment to Section 4.21 of the Rules of Order "Inaugural Meeting, Order Exercises" *(addendum B)*

Chair Lachapelle explained that this item is tied into the Code of Ethics, which will be going to Council for a vote the following week. This change would add a review of the Code of Ethics into the inaugural meeting agenda (following the recess to time certain). Council could then decide whether to review as a whole or refer the item to Codes and Ordinances Committee.

Councilor Fontneau asked for clarification on the timeline and whether this review would be done during the Inauguration. Attorney O'Rourke stated that this review would take place at the reconvened Council meeting following the Inauguration. Councilor Fontneau asked if the Codes Committee should be voting on this amendment at this time because Council has not yet approved the adoption of the Code of Ethics. Attorney O'Rourke said that he had added agenda item #13 "Recess to a time certain" to the Inaugural agenda, because that is what occurs in current practice. He clarified that this recommendation would not go to full Council for a vote until the April meeting; if Council does not approve the Code of Ethics, the recommendation from the Codes Committee to add a review of the Code of Ethics will not go to full Council for a vote. Attorney O'Rourke recommended leaving the addition of "recess to a time certain" as a committee recommendation regardless of whether or not the Code of Ethics passes.

Councilor Desrochers **MOVED** to recommend the changes to Section 4.21 of the Rules of Order to full Council. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

6. Other

Councilor Desrochers announced that the Board of Health would be meeting on March 7 in the City Hall Annex at 5:00 PM and there would be discussion on the agenda regarding lead paint.

7. Adjournment

Chair Lachapelle **ADJOURNED** the Codes and Ordinances Committee meeting at 6:13 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 not be 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.

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