

Codes and Ordinances Committee

Councilor Alex de Geofroy, Chair
Councilor Tim Fontneau, Vice Chair
Councilor Bryan Karolian
Councilor Patricia Turner
Councilor Dave Walker



Others Present

Terence O'Rourke, City Attorney
Phebe Miner, Legal Intern
Jim Grant, Director of Building and Licensing

CODES AND ORDINANCES COMMITTEE
Of the Rochester City Council
Thursday, February 15, 2024
Council Chambers
6:00 PM

Minutes

1. Call to Order

Chair de Geofroy called the Codes and Ordinances meeting to order at 6:00 PM.

2. Roll Call

Deputy City Clerk Cassie Givara took the roll call attendance. All Councilors were present as follows: Councilors de Geofroy, Fontneau, Karolian, Turner, and Walker.

3. Public Input

There was no one present for public input.

4. Acceptance of the Minutes

4.1 October 5, 2023 *motion to approve*

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

*Chair de Geofroy requested that there be an amendment to the agenda to move item #7, the discussion regarding the Waste Management Closure Fund, to the start of the agenda. There were

no objections to the agenda revision.

5. Discussion: Resolution Pursuant to RSA 34:1-a Establishing a Waste Management Closure Reserve Fund

Mark Sullivan, Finance Director, gave an overview of the history of this resolution through the Finance Committee and City Council and the edits which have been made thus far.

Councilor Fontneau recalled that the fund would be established with annual allocations being placed into the account in anticipation of the landfill closure. He inquired if City Council could opt to expend money from the account, or dissolve the fund, prior to the date stated in the resolution if certain criteria is met. Director Sullivan confirmed that there are certain conditions outlined in the resolution that would allow City Council to expend funds; upon ceasing of landfill operations and termination of host fee revenues, or if landfill capacity starts to decrease and there is a decline in said host fees. Director Sullivan gave further details on the specific parameters which would need to be met for expenditures from the fund. Additionally, he gave details on conditions under which the fund could be dissolved. He clarified that the intent of the fund is not for other large capital expenditures, and these types of purchases would not be allowable per the current verbiage of the ordinance.

Councilor Fontneau **MOVED** to recommend the approval of the Waste Management Closure Fund to the full Council. Councilor Turner seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

6. Review of the City Council Rules of Order

Councilor Walker spoke about prior experiences with Boards and Committees not having the quorum required to hold a meeting. He suggested that all Councilors could be appointed as alternates for Boards and Commissions. These alternate members would not be required to attend the meetings regularly but could be available for call-ins on a temporary basis for circumstances when a quorum is not present otherwise. Attorney O'Rourke stated that he would draft some verbiage for the following meeting relevant to this suggestion.

Councilor de Geofroy directed the Committee to section 1.5 "Remote Participation During Council and Board Meetings," section B) *Permissible Reasons for Remote Participation*. Reason number 3 is listed as "unexpected lack of childcare." He suggested that the word "unexpected" be omitted due to any lack of childcare being valid regardless of whether it is anticipated. Councilor de Geofroy **MOVED** to remove the word "Unexpected" from section 1.5(b) – 3. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor de Geofroy pointed out the inconsistencies in formatting on section 1.5(b). It was stated that these were minor clerical corrections which could be made without a vote.

Councilor de Geofroy directed the Committee to Section 1.5(c) "Procedure for Remote Participation," item number 6 in regard to the script read for remote participants. He stated that when the Mayor reads this script during Council meetings, there is a reference to RSA 91-A and questioned if this verbiage should be instilled in the script outlined in the Rules of Order. Councilor de Geofroy **MOVED** to modify the script in section 1.5(c)-6 to include the references

to RSA 91-A. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Karolian spoke about section 1.9 “Public Input,” which details the guidelines for public comment. He referenced the verbiage that requires decorum from elected officials, but questioned if there could be revisions requiring the same level of decorum from the public speaking at meetings. Councilor Walker clarified that the public is not bound by the City Council Rules of Order; however, it is the purview of the Chair to maintain the decorum of meetings. Councilor de Geofroy agreed that the Mayor or Chair has the authority to maintain order within the boundaries outlined in the Rules of Order. Attorney O’Rourke spoke about section 1.9 and the work that had gone into these guidelines during the prior Council term. He did not recommend making changes to the current verbiage and spoke about First Amendment considerations. Councilor Karolian clarified that he did not intend to censor or limit the speech of the public, however he stated that when members of the public stand at the podium and address the board in with certain demeanor or tone, sometimes their point gets lost within the manner in which it is delivered. Attorney O’Rourke pointed out that section 1.9 details the criteria under which a person could be reprimanded but posited that there could be wording added to suggest how the board could best be addressed to assist a speaker in conveying their point.

Councilor Turner referenced the paragraph in section 1.9 stating that a member could raise a “point of order” and asked if this could be utilized in situations where a public speaker is perceived to be off topic or falling outside of acceptable guidelines. Attorney O’Rourke confirmed that a board member can raise a “point of privilege” in these and other circumstances. The Committee discussed first amendment rights and censorship as well as the benefit of speakers delivering a message or request in a manner which will be best received. Councilor Fontneau suggested that Matt Wyatt, Public Information Manager, include this topic in his next Civics 101 event. Councilor Karolian acknowledged a better understanding of the process and members’ ability to raise a point of order if needed.

Chair de Geofroy stated that this item will be kept in Committee while the City Attorney drafts language for the amendments suggested.

7. Review of the Code of Ethics and Conduct for Elected and Appointed Officials

Attorney O’Rourke introduced Phebe Miner, legal intern, and explained that Ms. Miner had been tasked with taking an academic, neutral approach to a review of the Code of Ethics as well as the Board of Ethics ordinance adopted in January.

Ms. Miner explained that she would be continuing this review through April and would report back at upcoming Codes and Ordinances meetings. She requested that committee members reach out to her with suggestions, amendments and concerns and she would review in anticipation of her final report in April. Ms. Miner stated that she could give a presentation if requested and would be reviewing established ethics codes from neighboring communities in comparison to Rochester’s code.

Councilor Walker inquired about the sufficiency review outlined in the chapter 7-83 “Board of Ethics.” He felt that the three-member board detailed in the ordinances should not consist of elected officials and City staff, but should consist of neutral third-party officials, such as a law

firm kept on retainer. Councilor Karolian agreed that this sufficiency review should be done by an independent body. Attorney O'Rourke clarified that the "Ethics Investigations Officer" (EIO) listed in section 7-84 is an independent party separate from the City. The initial review of sufficiency referenced by Councilor Walker is done by the officials detailed in the ordinance for the purpose of determining whether a complaint is sufficient to constitute an ethics violation and whether it should then be elevated to the EIO. If the complaint is not determined to be an ethics violation, this would prevent the City having to pay for outside counsel/consultation unnecessarily. Councilor de Geofroy acknowledged that there is a mechanism in place for the involvement of outside counsel but agreed that this should not be the first step in the process prior to an internal sufficiency review. The Committee discussed the potential of baseless claims that could arise and the importance of reviewing these complaints internally prior to involving outside sources. Councilor Karolian speculated that there is the potential for investigations to be more expensive if outside counsel is not utilized early in the process; there could be pushback or perception of bias, resulting in more man hours and time spent on investigation.

Councilor Fontneau stated that because the members of boards and commissions are elected officials, he felt it was not a conflict of interest to have the referenced officials serving on a sufficiency review board (Mayor, superintendent, police chief). He explained that in his experience, the members of ethics boards typically consisted of industry peers. Councilor Walker suggested potential members of an external sufficiency board, such as HR staff from local businesses, who could be convened as the need arises. The Committee continued to discuss possible variations of a sufficiency board, whether internal or external. Attorney O'Rourke clarified the current makeup and variability of the sufficiency review board as outlined in the ordinance.

Councilor de Geofroy requested that Ms. Miner pay special attention to the sufficiency review portion of the process and how it is handled in cities with established and tested ethics codes.

8. Overview of Building and Licensing Services/ Compliance Updates – Director Jim Grant

Chair de Geofroy explained that he had requested that the Director of Building and Licensing Services, or a delegate thereof, regularly attend the Codes and Ordinance meetings to weigh in on the discussions where relevant.

Jim Grant, Director of Building and Licensing Services, summarized his department's organizational structure and staff member workload and gave an overview of data related to building permits issued and the revenue generated therefrom. He gave a broad overview of the issues regularly encountered by his department.

Director Grant explained that there are two methods of code compliance enforcement; either blanket compliance where BLS staff is out looking for violations and enforcing as they encounter issues or investigating and enforcing on a per complaint basis. The department is currently enforcing on a complaint-by-complaint basis. He explained that this method can be problematic as it sometimes pits neighbors against each other and causes retaliatory complaints resulting from the original complaint. It also causes those targeted residents to question why the City is not investigating other similar issues nearby, which leads to request for more complaints to be filed

in order to investigate further.

Director Grant spoke about unsafe living conditions discovered throughout the City following complaints, unpermitted boarding houses, unauthorized Air BnBs (home occupations), and ongoing issues not discovered until new ownership.

Councilor Hamann inquired if the department had to wait for complaints prior to enforcing code compliance. Director Grant explained that it had been the department's policy, based on guidance from past City Councils, to wait for complaints. He acknowledged that the department could take more general, equitable approach to enforcement, but he anticipated it would cause multiple complaints to the City.

Councilor Fontneau referenced the presence of unauthorized AirBnBs that Director Grant had discussed and spoke about other communities who have had similar issues. He asked if these types of establishments would not be allowed in Rochester due to them being considered an in-home business and suggested the Codes and Ordinances committee take a look at the relevant codes and consider making amendments to allow these businesses in the City. Director Grant acknowledged that this could be a topic the Codes Committee and BLS could review and the potential of regulating the industry within the City.

Councilor Walker referenced the "neighborhood compliance program" that had been utilized several years prior in which the Codes department had gone out into the community looking for violations instead of investigating on a per complaint basis. He suggested a balanced approach where staff is not out looking for violations; however, if they are on a call and see other violations, they are able to address them at their discretion. Director Grant stated that if this is the approach taken, the property management codes followed by the department may need to be revised. He clarified that although the neighborhood compliance program had not been well-received, it had resulted in better compliance and increases in permits for repairs.

Councilor Karolian addressed the importance of following the law/code as it is written, but asked if it would be beneficial for BLS to be able to use their discretion when determining need and severity of violations. Director Grant stated that although being able to use discretion can be beneficial, it can also lead to problems when the codes are not being enforced with consistency and there is a perception that the process is not equitable. He cautioned against selective enforcement.

Councilor de Geofroy stated that with the growth of the City, especially in the downtown area, enforcement on a complaint by complaint basis may not be enough. He asked what the capacity was for increased enforcement with current department staffing, Director Grant stated that with the two part-time compliance officers currently on board, they would have the ability to increase enforcement.

Chair de Geofroy asked Director Grant to return to the March meeting with a more in-depth presentation with suggestions and recommendations for the Committee. He advised that there should be a regular agenda item moving forward of BLS data and statistics to inform the methods of approach that could be taken and to potentially identify amendments that could be made to the ordinances related to code compliance.

9. Other

There was no discussion under “other.”

10. Adjournment

Councilor Walker **MOVED** to **ADJOURN** the Codes and Ordinances Committee meeting at 7:09 PM. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk