

Committee Members Present

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn , Vice Chair
Councilor Ray Varney
Councilor Julien Savoie
Councilor Sandra Keans



Others Present

Councilor Brian LaBranche
Rob Partridge, Business Owner

MINUTES

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday March 7, 2013

City Council Chambers

31 Wakefield Street, Rochester, NH

Immediately Following the Public Hearing

1. Call to Order

Councilor Lachapelle called the Codes and Ordinances Committee meeting to order at 7:03 PM. All Councilors were present.

2. Public Input

Councilor Lachapelle advised the residents in Council Chambers that they could address the committee at any time during the discussions of the topics at hand and closed this portion of public input at 7:05 PM.

3. Approval of the Codes and Ordinances Committee Minutes

- **February 7, 2013**

Councilor Savoie **MOVED** to **APPROVE** the Committee minutes of February 7, 2013. Councilor Varney seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Pawn Shops

Councilor Lachapelle asked Councilor LaBranche for his input on the proposed changes to the Pawn Shop ordinance. Councilor LaBranche stated that he did have concerns with this ordinance, especially with the holding period. Councilor Lachapelle explained that it was left in committee because when they received the proposed amendment back from the City Attorney it had stated a three day hold on everything and the committee was just looking at a three day hold on precious metals. Councilor Lachapelle explained that at this time they will be making changes and sending it back to the City Attorney.

Councilor Varney wanted to know how the police were notifying the pawn shops in regards to getting the information out there. He explained that if it takes five days for them to get out to these dealers, the three-day hold does not make sense. Councilor Varney wanted someone from the Police Department to explain. Councilor LaBranche concurred with Councilor Varney.

Councilor LaBranche explained that he had four detectives come to his place of business and he was not sure why they were there. The Codes and Ordinances Committee discussed this further with Councilor Keans, speculating that there could have been a robbery in the City. Councilor LaBranche stated that they had not mentioned anything in regards to that. He reiterated that he did not like the three-day hold but he can live with it. He explained why this hold would affect his business, citing the prices of gold change daily and this would have a negative bearing on his cash flow.

Councilor LaBranche stated that after speaking with the detectives, he believes there is other property that should be on a holding period, such as electronics. Councilor Lachapelle agreed with a holding period on electronics.

The Codes and Ordinances Committee discussed the type of communication they would like to see the Police Department use. Councilor LaBranche felt that he would like to see the Police Department taking an active roll, as well as the dealers, regarding this matter and that the dealers should not be doing their job for them. Councilor Keans thought a mandatory email address should be required on the permit.

Councilor LaBranche stated that if the police know who they are looking for maybe they could give the shops a list of these names. He also explained that maybe they should only be dealing with one contact person from the Police Department.

Councilor Savoie discussed further with the Codes and Ordinances Committee how he believed the price of gold fluctuating does affect the profit for these dealers. Councilor Varney would also like to see the police reminding citizens to record the serial numbers to their electronics. Councilor LaBranche stated that the police like to see the dealers logging the serial numbers, as well.

Councilor Lachapelle wanted someone from the Police Department to attend the next meeting on April 4, 2013, to discuss this topic and, at the same time, the committee can discuss and review the panhandling issue with the police representative. Councilor

Lachapelle said the pawn shops will be staying in committee until they can find a fine balance.

The Codes and Ordinances Committee discussed some editing to the proposed amendment. They also wanted to compare it to the current ordinance; they asked if this could be sent electronically to them. Nancy Carignan with the City Clerk's office confirmed they would be receiving this information.

5. Rules of Order

Councilor Lachapelle handed out a document he prepared regarding Rules of Order to the committee members with his suggested changes. He was making these changes due to the Charter changes.

The Codes and Ordinances Committee discussed section 1.3 of the Rules of Order with regards to removing the word "ballot" in the first sentence and replacing with "*roll call vote*" or "*show of hands*". Further discussion ensued and Councilor Lachapelle asked for a motion. Councilor Lauterborn **MOVED** to replace "ballot" with "roll call vote." Councilor Savoie seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Councilor Lachapelle stated they will be bringing this to the council for approval.

Councilor Lachapelle reviewed his suggestion regarding section 1.5 - Public Hearings. Councilor Keans was under the impression that this is a State Statute. Councilor Varney concurred. The Codes and Ordinances Committee discussed this further with regards to adding sections to 1.5 pertaining to Public Input and decided that it should be reviewed by the City Attorney. Councilor Lachapelle stated this will stay in committee.

Councilor Lachapelle brought up adding section 1.6 after speaking with Kelly Walters, City Clerk, regarding no procedure being in place pertaining to the cancellation or postponement of meetings.

Councilor Keans had a problem with the way this procedure is worded and felt that it would have unintended consequences. Councilor Varney was under the impression that they could not cancel scheduled meetings. Councilor Keans did not believe this should be in the Rules of Order; it should be in the procedure manual with the City Manager's Office. Councilor Lachapelle explained he would scrap this for now.

Councilor Lachapelle reviewed moving section 1.7 to 1.6. This section would be public input at a Workshop or Committee Meeting. Councilor Lauterborn thinks it is already in there and explained it is listed under 4.7 of the Rules of Order, and that maybe it just needs some rewording. Councilor Lachapelle stated he would look at it further to strengthen it up. He also mentioned that he would look into the override rule.

Councilor Lachapelle also discussed adding section 4.25 - Voting on Elected Official Vacancies. The Codes and Ordinances Committee discussed this, but it was determined that this topic is addressed in the Charter. They will be keeping this in committee.

6. Other

Councilor Lachapelle invited a member of the public to come up and introduce himself and address the issues he is having with the City.

Rob Partridge, owner of Goodfellas Pizzeria, wanted to address the Codes and Ordinances Committee on an issue he is having with the reclassification of his business license. He read the letter he received from the Code Enforcement Department stating that he was being reclassified from Class II to a Class I due to the fact they are classifying his establishment as having a liquor lounge with a \$300.00 fee associated with it. Mr. Partridge is concerned with the definition of a lounge because when he thinks of a lounge he thinks of an area that is separate from the dining room separated by a wall or a room. He explained that his establishment is a pub style neighborhood eatery/neighborhood bar. Mr. Partridge stated that for the last three years the precedence had been based on occupancy and in that regards he stated in the Class II it is more than 25 and under 100 for occupancy. He would like his business to remain the same classification or he would like to see the code written correctly.

Mr. Partridge stated that it came to his attention that there are about another four to five businesses in the City that are classified incorrectly and in his opinion they should be classified as a Class I. He feels that there is one other establishment besides his that should remain Class II because of occupancy and a segregated lounge.

Councilor Varney wanted some clarification on how his business is classified now. Mr. Partridge explained that he has received three Class II licenses, but he has only been in business for two and a half years and he explained why. Councilor Varney asked what changed. Mr. Partridge said that nothing changed. Councilor Varney stated something had to have changed. Mr. Partridge read the letter again because he did not want to misquote the information. Councilor Lauterborn asked if the letter came from the City. He stated that it had come from the City. Councilor Varney asked what exactly does the reclassification mean besides an increased fee, saying he had been on the Planning Board when Mr. Partridge's establishment got approved and there had been a long discussion about having a lounge there. Mr. Partridge stated that he did not own the establishment then. Councilor Varney stated that it is the same facility. Mr. Partridge explained some issues with the previous owner Spaneli and how he had run the business with a separate dining area and an open kitchen. He then opened up a separate area as a lounge. He explained that his liquor license was a lounge license because the State said it was a separate area. He later was penalized because he never notified the State that he had changed the floor plan and this prior to his owning the business. He explained that he understands what is going on here because he is well versed with the food and liquor licenses. When he had bought the business there was no dining room. It had been opened

up to have one big area as a pub style feel, which is a bar that serves food. He admits at that time it was misclassified and should have been a Class I.

Mr. Partridge goes on to explain that the establishment originally was Class II because it had no bar or lounge. He gave an example that if he had a full liquor license with just a dining room with tables and chairs and serving drinks, he would be a Class II as the way the ordinance is written now. He asked that it be defined as to what a lounge is and wanted the committee to look into this due to the fact that his occupancy is well under one hundred and his establishment has no separations. Councilor Varney stated their hands are tied with the way the code is outlined and the committee discussed the way the code is interpreted. Mr. Partridge would like it clarified because for the last three years he was told that he was under one hundred for occupancy, a Class II, and now that he is a liquor lounge he is a Class I, but nothing has changed at his establishment.

Councilor Varney asked if this was a City ordinance. Mr. Partridge stated it was and is listed under 25.17 of the City Code book. Councilor Lachapelle read the ordinance to the committee members and the occupancy is defined in the ordinance. After further discussion he explained his floor plan as different from the old floor plan of the previous owner. Mr. Partridge explained that the Fire Chief gave him occupancy of seventy-two, but zoning only gave him occupancy of thirty-four due to parking and square footage. He went on to explain that when he took over he made sure to get a variance so that he was in compliance.

Councilor Lauterborn commented on her understanding of the ordinance. It is her belief that when reading the ordinance it states “one hundred or more” or “a restaurant with a liquor lounge”. She indicated that the semi-colon in the sentence indicates another thought to the ordinance, so then it does not have to do with capacity, but rather any restaurant with a liquor lounge. Councilor Lauterborn discussed Class II with the committee in regards to the types of establishments that serve liquor, such as a fraternal organization.

Councilor Varney asked Mr. Partridge if he had a liquor lounge. He stated that he does not. Councilor Varney asked what is he serving. Mr. Partridge went on to explain that when looking in the dictionary, a lounge is a separate segregated defined area and he gave examples of other establishments in the City which would fall in this category. Mr. Partridge explained how the State regulated this at one time. He stated that you had to have the lounge separated from the dining room and patrons from the dining room would not have to pass through the lounge to get to the rest rooms, but this has changed in the past couple of years. The way it is written overlaps a little and he is making the assumption when he said this, but it seems like it would be the only way it makes sense. He gave them more examples of larger establishments to make his point; he only has a capacity to hold thirty-four people and it does not make sense that he would be classified the same. He goes on to explain that his business has not increased or changed in any way, shape, or form, so it makes no sense for him to be reclassified.

Councilor Keans asked if he is a restaurant that serves liquor. Mr. Partridge stated that in the beginning that is the way it started, but now he is a bar that sells food. He explained that they are a well-rounded pub. Councilor Keans stated that "Pub" is not in the State Statute so now the question they have is to figure out a way to make the establishment fit the Statute. The Codes and Ordinances Committee discussed this further.

Councilor Keans stated that it was her impression that to have a liquor license, your revenue had to be fifty percent in food sales. Mr. Partridge explained to the committee some of the different types of liquor licenses you can have and gave a few examples. He went on to explain there are twelve communities in the state that are self-licensed and Rochester is one of them. Mr. Partridge explained the typical format is based on occupancy and that all he is looking for is that it stays the way it has been.

Councilor Keans asked why he had an issue with the change of classification. Was it due to money or possible restrictions? Mr. Partridge stated it was partly due to the way it was worded and he does not agree with the way the ordinance is written. He also stated the fee for this classification doubles.

Councilor Lachapelle stated that they would keep this issue in committee to see if it needs changes because there is no urgency on this yet. Mr. Partridge stated his license is due in June and he understood it is a process to make changes. While it is in committee, he would like his classification to stay as is. Councilor Lachapelle stated that they would have to look into this further. Mr. Partridge asked the committee to check other communities' ordinances on this subject. Councilor Varney explained that it might be just an interpretation issue because the ordinance has not changed. Mr. Partridge stated that five other establishments are being reclassified and his speculation is that they do have a separate area for a bar within the restaurant and the occupancy is over one hundred. He understands why they are being reclassified. His and one other establishment in the City have the same style floor plan. He went on to explain the comparison is apples to oranges.

Mr. Partridge felt that possibly when someone from the Code Enforcement Department came out to do an inspection they might have reclassified based on the bar because of the way the code is written. It was explained to him that whether you have a bar or a lounge it is all the same thing and this does not make sense to him. The committee discussed this further with Mr. Partridge.

Councilor Lachapelle stated that he wanted Jim Grant, Director of Code Enforcement, to be invited to the next Codes and Ordinances Committee meeting on April 4, 2013 for his guidance on this code.

Mr. Partridge asked again if there was a way that as long as it is in committee, nothing be changed to his license. It was explained to him that the committee does not have the authority to do that; they cannot tell the Code Enforcement Department to

change what they are doing while the issue is in committee. Mr. Partridge stated that they have already changed it.

Councilor Varney asked if he had contacted the Codes Department. Mr. Partridge stated that he had and he met with Jim Grant and Karen Pollard. They said that they need to follow the lines of the ordinance. Councilor Varney advised him that he could issue a complaint with the City Managers Office. Mr. Partridge stated that he had thought of doing so, but at this time he had not.

Councilor Lachapelle asked Nancy Carignan, Assistant City Clerk, to get a copy of the minutes to Jim Grant, Director of Code Enforcement, as soon as possible so that he can address the Codes and Ordinances Committee.

8. Adjournment

Councilor Savoie **MOVED** to **ADJOURN** the Committee meeting at 8:02 PM. Councilor Varney seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Nancy Carignan
Assistant City Clerk