

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
Police Chief Michael Allen
Kelly Walters, City Clerk
Jim Grant, Director of Building Safety
Rob Partridge, Business Owner
Brad Barbin, Resident

MINUTES

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday April 4, 2013

City Council Chambers

31 Wakefield Street, Rochester, NH

7:00 PM

1. Call to Order

Councilor Lachapelle called the Codes and Ordinances Committee meeting to order at 7:00 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 7:03 PM.

3. Approval of the Codes and Ordinances Committee Minutes

- **March 7, 2013**

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

4. Codification Proposals:

American Legal

General Code

Councilor Lachapelle amended the agenda by moving the Codification portion of the meeting ahead of the other items. He asked the committee if there was any objections to this. There were no objections.

Kelly Walters, City Clerk, was asked by the City Manager to get proposals on codification. She reviewed the Codification proposals with the Codes and Ordinances Committee. She stated there is an initial starting cost, approximately \$20,00.00, and then there would be an annual fee of \$1,000.00. These proposals can be found in the packet.

Councilor Lachapelle asked Ms. Walters about the updating and maintenance of the Codes. She explained that the Clerk would send updates to the agency. The agencies have a legal staff that would be looking at it as well.

Councilor Lauterborn asked why is this issue being brought up at this time. Ms. Waters explained that it came from an email sent from Councilor Savoie to City Manager Fitzpatrick who asked that it be looked into. Councilor Lauterborn explained that she did like this type of record keeping, correct and up to date.

Councilor Keans was opposed because of the financial aspect of it. She did not feel there are enough changes to the codes to justify this type of program and they had just done it about five years ago. Councilor Lauterborn thought these companies reviewed for inconsistencies.

Councilor Savoie questioned the legal process and he mentioned that he was under the impression the General Code checked with State law. The City might see a savings on the legal aspect.

Councilor Lachapelle liked the fact they would have a search feature. Councilor Varney asked if Concord was using this process. Ms. Walters stated that Merrimack is but she was not sure about Concord. Councilor Varney agreed it would be easy to search.

Councilor Keans was not sure about inconsistency, because if it is so accurate why is the State not using it. The Codes and Ordinances Committee discussed this further and asked where were the funds coming from to pay for this process. Ms. Walters explained that it had been added to the City Clerks budget, as an issues and options proposal.

Chief Allen explained to the committee that the Police Department is using a Power DMS software program to manage their policies and it is a software that they

manually populate. Chief Allen went on to explained that it is a searchable program and he thought where they have it maybe the Codification could piggyback with the software. Ms. Walters asked how the information was entered in to the system. Chief Allen stated the Police Department was manually entering the information. The committee discussed the probability of scanning it into the program. Councilor Lachapelle would like this looked into further.

Councilor Varney and Ms. Walters discussed the annual fee as it pertains to changes and adding new ordinances.

Councilor Lachapelle would like to get City Manager Fitzpatrick input on this with his experience on Codification. Councilor Savoie liked the professional support of the program and he stated that he would support it.

Councilor Lauterborn did not feel that this program would eliminate the need of Attorney Wensley from this process. Councilor Savoie believed that it is more about streamlining the process. Councilor Lachapelle suggested sending the matter to the full Council. Councilor Lauterborn stated it should be brought to the management team.

The Codes and Ordinances Committee felt they need more information regarding extra costs for changes as well as input from Attorney Wensley and City Manager Fitzpatrick and this could possibly be done at a budget meeting.

5. Pawn Shops

Councilor Lachapelle explained that Chief Allen was at the meeting to help answer some of their questions regarding Pawn Shops.

Councilor Varney asked how does the Police Department currently notify the businesses of stolen property. Chief Allen explained that they do not notify the businesses on every issue. He went on to address the holding period and brought up other communities in New Hampshire that have holding periods.

Councilor Keans asked if the Police Department could use the reverse 911 to notify these businesses. Chief Allen stated that they now have what is called "Code Red" and it is not used for this type of issue.

Chief Allen explained that it is his belief that if these businesses could turn in a spreadsheet on a daily basis of what they take in to the Police Department, it would be very helpful. He stated that this would make it a community effort to help reduce crime. The dealers are already required to keep logs of what is received, so they would just need to get the log to the Police Department either by email or fax. Chief Allen briefly discussed this further with the committee.

Councilor Lachapelle wanted this to be done uniformly. Councilor Keans asked if the law requires them to keep a log, why does it not require them to get the information

to the Police Department. The Codes and Ordinances Committee briefly discussed this issue.

Chief Allen explained to the committee that other communities have made their holding period a 30-day hold to make it more effective. He went on to explain that he had drafted a spreadsheet with the information that would be required.

Councilor Savoie asked if the Police Department had any statistics on arrests by using this method. Chief Allen said that he has been in communication with Manchester, but he had no statistics at this time; however, they have seen improvements in this type of crime. The Codes and Ordinances Committee discussed using the method further.

Councilor Lachapelle stated the holding period will be an issue, but he would like to see a uniform procedure. Councilor Varney stated that one complaint would be that the business does not have a computer, they will not be able to email the log. Councilor Keans argued that they have the capability of getting a computer.

Councilor LaBranche handed out a chart showing a three-day trend on gold prices. He explained that with the holding period based on that chart he would have lost money. Chief Allen said that he understood, but they need to take into consideration the victims of these crimes. Retail crime is a huge business and it is difficult to catch the criminals without a system in place.

Brad Barbin, resident, asked Councilor LaBranche if he had ever been a victim of a break-in. Councilor LaBranche stated that he had been. Mr. Barbin had also been victim to this type of crime and felt that Councilor LaBranche should have brought a longer time frame of data with his statistic. Mr. Barbin stated his concerns and felt that a thirty-day hold would be acceptable.

Councilor Savoie asked how many stolen items are turned up in these shops. Chief Allen stated there is no way to track it at this time, but he will work on getting them statistics. Chief Allen explained that the victims are their own advocates and some of the arrests are a credit to this. Councilor LaBranche discussed that he was coming from a business point view, but understands the public needs to be protected. By law, they need to keep track of what is taken in, so at this point they should get it to the Police Department on a daily basis.

Councilor Varney asked if they should implement a reporting system before they start with a holding period. The Codes and Ordinances Committee continued to discuss this further with Mr. Barbin. He felt that they need to start somewhere, so a holding period might be the way to go.

Councilor Lachapelle asked Chief Allen to get some statistical information for the committee to review. He then went on to explain the communication needs to be there for the Police Department and the businesses. Chief Allen added that it should be a

community effort and it is somewhat unreasonable to put it solely on the Police Department.

Councilor LaBranche and the Codes and Ordinances Committee discussed this further in regards to a standard form sent from Police Department to the Pawn Shops. Councilor Lachapelle wanted the Police Department to provide the City Clerk's office with a template form so that it can be added to the packet for the May 2, 2013, meeting. He informed the members that this issue would stay in committee at this time.

6. Panhandling

Councilor Lachapelle informed the members of the Codes and Ordinances Committee that Chief Allen was in attendance to address the City's panhandling issues.

Chief Allen read the Newington, NH, ordinance to the members of the committee, which had recently been put into effect. The committee discussed that this ordinance had a seventy-five foot buffer from roadways. He also went on to say that if panhandlers violate the ordinance, they would receive a summons for the first offense and they would be arrested for the second offense. This violation carries a \$1000.00 fine. Chief Allen stated that he did not know if this ordinance would hold up legally and Councilor Keans referenced a Dover, NH case. A Dover, NH violator was arrested sixteen times and won every case. The Codes and Ordinances Committee went on to discuss what other communities are doing regarding this issue.

Councilor LaBranche stated that they need an ordinance with some teeth to deter this activity. He asked Chief Allen for his input. The Codes and Ordinances Committee discussed this further in regards to the constitutional aspects. Chief Allen explained that the Police Department has put a proposed ordinance together for their review. This ordinance protects the public, as well as addressing aggressive panhandling activity.

Brad Barbin, resident, commented that he and his co-workers thought panhandling should only be allowed in certain areas where you can not ban it, but he knows in Maine it can be restricted. He also stated that if maybe fining the citizens that give money to the panhandlers might curb the issue.

Councilor Savoie asked Chief Allen if there was a law already in place for such things as aggressive panhandling. Chief Allen explained that there are some State Statutes in place.

The Codes and Ordinances Committee discussed the aspect of disorderly conduct. Councilor Savoie referred to an individual being intimidated. Chief Allen said an the ordinance should protect an individuals personal space. Councilor Lauterborn discussed the legality of it further with the committee. Councilor LaBranche mentioned a possible panhandling fee.

Councilor Lachapelle informed the committee that this topic would be staying in committee at this time. He also will have Nancy Carignan with the City Clerk's office email committee members the proposed ordinance and he will forward it to Attorney Wensley.

7. Chapter 25.17 Of the City Ordinances – Issuance of License and Fees

Councilor Lachapelle informed the committee that Jim Grant, Director of Code Enforcement was present to speak on Chapter 25.17, due to the owner of Goodfella's Pizzeria being reclassified. Mr. Grant had handed out a draft that he proposed for new licensing. He explained that in January of this year it was noticed that there was a sentence in the current ordinance that referred to restaurants with liquor lounges. He explained that he looked into what is classified as a lounge and he explained this to the committee members. Mr. Grant said that they did reclassify five or six restaurants in the City due to this. Mr. Grant provided the members with a new proposed ordinance, which models the States licensing form. He explained the liquor lounge and referenced the State license and why the classification was changed. He said if we were not a self-inspecting town, the state would have a \$350.00 fee associated with the license. Councilor Lauterborn explained to the committee how she thought the owner was interpreting the ordinance. The committee discussed this further with Mr. Grant and he explained it was the bar that triggered the license, not the amount of seats.

Rob Partridge, owner of Goodfella's Pizzeria, cited the different licenses. 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. Councilor Lauterborn stated if he stopped serving food and only liquor, he would not have to get a license from the City. Mr. Grant concurred that he would just need to be licensed with the State. Mr. Partridge explained that there are two establishments like this in the City currently and he explained that one was a cigar shop and the other was a billiards hall.

Mr. Partridge explained the various liquor licenses to the committee members. He went on to state that he knows the State has different fees, but that is not what he is addressing the committee about. However, when you do look at the State's application, they do take occupancy into consideration, or a separate lounge area. Mr. Partridge said that two and half years ago he had to go through the Planning Board and ZBA to get variances for his business. He stated that he can not expand his business because of the parking area and his seating is dictated by his parking and his occupancy is under one hundred. Mr. Partridge stated that the City wants to classify him the way they would classify an establishment that can hold two to three hundred individuals.

Mr. Partridge asked about a business in town that he believes is operating multiple establishments under one license. He did not think he should be paying the same as this business.

Councilor Varney pointed out that at the last meeting Councilor Lauterborn stated there was a semicolon within the sentence indicating a change of thought. Mr. Partridge argued that thought stating if he only had a dining room and no physical bar, but a full liquor license, how would he be classified. Mr. Grant stated if they were just a dining room they would be classified II. Mr. Partridge concurred. Councilor Lauterborn stated that she had thought they established that any business that served liquor should be a Class I, with the exception of service clubs. Mr. Grant explained that the liquor lounge is referred to as a bar. Councilor Lauterborn cited if he is serving liquor at his establishment,, how could it have fallen under Class II. Mr. Grant explained to Councilor Lauterborn his interpretation and they discussed some slight contradictions.

Mr. Grant stated that they need to revisit the current ordinance and make updates because they have not been updated in some time. Councilor Lauterborn stated that is unclear and open to interpretation. She said that it needs to be cleaned up and more consistent. Councilor Keans cited that the City cannot have their own statutes and the State have their own. We need to follow the State as a guideline.

Councilor Varney brought up the fact that we a self-inspecting city. Mr. Partridge stated that there are twelve towns in the state that are self-inspecting. Councilor Keans told him that they still need to follow the State statutes.

Mr. Partridge explained that his establishment has about thirty patrons on a busy night and he does have limited seating due to various codes. He felt that Goodfella's Pizzeria was the only one of its kind in town. They are a neighborhood eatery/neighborhood bar; his patrons either sit at the bar or at a table and some play pool. Mr. Partridge stated that the size of his establishment would never change and his capacity will never change because he is locked with his parking. Mr. Partridge said up until now, his food license had been dictated by occupancy, but now a secretary in the Codes Department interpreted it differently and this is why he is here. He argued his occupancy is under one hundred. He would like his business to remain the same classification, because that is not unreasonable.

The Codes and Ordinances Committee discussed this further in regards to interpretation. Councilor Lauterborn reiterated that it is just too unclear. Councilor Lachapelle stated this issue would stay in committee. He asked that Mr. Grant draft a new proposed ordinance and bring it back to the Codes and Ordinances Committee on May 2, 2013, which would be the next time they meet. Mr. Grant stated that he would do this and he was going to make it in line with the State. Mr. Grant cited codes have been revamped and they are trying to become more efficient. The Codes and Ordinances Committee discussed this issue further.

Mr. Partridge wanted an explanation as to how after two and a half years of being classified as Class II how can they arbitrarily change him to Class I without going through codes. The Codes and Ordinances Committee explained to him they could not enforce the rules. Mr. Grant stated that they are starting to review the codes to become more efficient.

Councilor Keans asked Mr. Grant about the notification and Mr. Grant proceeded to read the letter that Mr. Partridge received to the Codes and Ordinances Committee. It discussed that the new fees are not due until June, 2013.

Councilor Savoie commented on the issue that Mr. Partridge is having with being reclassified. He stated that he is trying to run his business the way he is licensed and after a few years he is being reclassified.

Councilor Lachapelle explained to Mr. Partridge that this issue would be staying in committee. Councilor Lauterborn wanted address the issue of occupancy in regards to the State statute and does the State differentiate between capacity when it comes to bars. It is explained that the State does differentiate between the sizes. She wanted to see this considered with the new proposal.

Mr. Partridge stated that Rochester and the State are not far off when it comes to the licensing. He cited that it did have to do with the interpretation from where the State license has different verbiage and it is the way the City interpreted it. Mr. Partridge gave the committee members some examples of what he was referring to. He then explained that the State goes by occupancy and he cited that Portsmouth, NH has several establishments like his and they are Class II because of occupancy.

Mr. Grant tried to explain the categories on the State license where there is a category for a bar with food prep area and then another serves liquor, but has no food prep area. He explained that he used the State's form as his template and he noted that there are a few establishments in the City that have occupancy of two hundred. Councilor asked Mr. Grant to get him a copy of the State's RSA regarding the licensing for the next meeting.

The Codes and Ordinances Committee carried on a brief discussion regarding other businesses such as grocery stores.

8. Rules of Order

Councilor Lachapelle explained to the Codes and Ordinances Committee that he is still reviewing these, so at this time the Rules of Order will stay in committee.

9. Other

Councilor Keans wanted to discuss the terms of the Utility Advisory Board. The term for this board is five years and she feels that this is keeping some from not showing an interest in it. Councilor Lauterborn wanted to know if anyone could explain why this is such a long term.

Councilor Varney explained that quite a while back they changed the UAB from three years to five due to a water-billing situation. It was a very stressful time and the

UAB felt they should have the same members in place so that everyone would know what was going on. The Codes and Ordinances Committee discussed this further in brief.

Councilor Lauterborn **MOVED** to change the terms of the UAB from five years to three years. Councilor Keans seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Lachapelle wanted to address the water connection ordinance. He explained that the committee has never received anything back from the UAB on the word “fails” as it pertains to a well failure. They would like to reach out the UAB again to see if they can come up with a definition for this terminology.

10. Adjournment

Councilor Savoie **MOVED** to **ADJOURN** the Committee meeting at 8:33 PM. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Nancy Carignan
Assistant City Clerk