

**Regular City Council Meeting
March 2, 2021
Council Chambers
31 Wakefield Street
Remotely via Microsoft Teams
6:30 PM**

COUNCILORS PRESENT

Councilor Abbott
Councilor Belken
Councilor Bogan
Councilor Gray
Councilor Hailey
Councilor Hamann
Councilor Hutchinson
Councilor Lachance
Councilor Lachapelle
Councilor Rice
Councilor Walker
Deputy Mayor Lauterborn
Mayor McCarley

OTHERS PRESENT

Blaine Cox, City Manager
Katie Ambrose, Deputy City Manager
Terence O'Rourke, City Attorney
Sherry Young, Attorney

Minutes

1. Call To Order

Mayor McCarley called the Regular City Council meeting to order at 6:30 PM and read the following preamble:

Good Evening, as Chairperson of the City Council, 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.) **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 (*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).*

In addition to the above listed public access information, the City Council will be allowing the public to enter Council Chambers and speak in person during the Public Input portion of this meeting. In an effort to adhere to CDC guidelines: enter only at the front Wakefield Street entrance and exit on the side closest to the police department and adhere to 6-foot social distancing while inside. Hand sanitizer and facemasks will be available at the Wakefield Street entrance. Participants will be admitted into Council Chambers one at a time to speak, and will exit directly thereafter. Please note; the seating in Council Chambers will not be available for the public during meetings.

At this time, I also welcome members of the public accessing this meeting by phone. The public can call-in to the below number using the conference code. This meeting will be set to allow the public to "listen-in" only, and there will be no public comment taken via conference line during the meeting.

Phone number: 857-444-0744

Conference code: 843095

b.) **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.)

2. Roll Call

Kelly Walters, City Clerk took the roll call. All Councilors were present and indicated that they were alone in the location from which they were connecting remotely except for Mayor McCarley who indicated that others might be passing through the room.

3. Opening Prayer

Mayor McCarley requested a moment of silence in memory of lives lost through the Covid-19 pandemic.

4. Pledge of Allegiance

Mayor McCarley led the City Council in the Pledge of Allegiance.

5. Acceptance of Minutes

5.1 Regular City Council Meeting: February 2, 2021 ***consideration for approval***

Councilor Lachapelle **MOVED** to **ACCEPT** the Regular City Council meeting minutes of February 2, 2021. Councilor Walker seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Hainey, Abbott, Belken, Hutchinson, Lachapelle, Gray, Walker, Bogan, Hamann, Rice, Lachance, Lauterborn, and Mayor McCarley voted in favor of the motion.

5.2 City Council Special Meeting: February 16, 2021 ***consideration for approval***

Councilor Lachapelle **MOVED** to **ACCEPT** the Special City Council meeting minutes of February 16, 2021. Councilor Walker seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Walker, Rice, Belken, Bogan, Lachapelle, Hamann, Lauterborn, Hainey, Abbott, Gray, Hutchinson, Lachance, and Mayor McCarley voted in favor of the motion.

6. Communications from the City Manager

6.1 City Manager's Report

City Manager Cox informed the City Council that his report is in the packet as outlined below.

City Manager Cox gave the City Council an update on the recent power outages due to the weather (winds) activity. He said that the power company [Eversource] is reporting that the majority of customers have had their power restored and that the remaining outages should be restored by midnight the following evening.

City Manager Cox said that the Willand Warming Center opened up last evening due to extreme cold weather and it will be open again this evening. He added that the shelter will open once again on Thursday through Sunday.

Mayor McCarley informed the public that the Willand Warming Center is seeking donations for the to-go-breakfast and snacks to be given away at the shelter to those in need. Mayor McCarley stated that sixteen folks were sheltered last evening and many more are expected this evening.

Contracts and Documents Executed (since last month):

- **Department of Public Works**
 - Exactitude Change Order – New DPW
 - Change Order, New DPW – Hutter Construction
 - Design Service Amendment, Attenuation Tank – Wright Pierce
 - Scope of Services Phase 1 Environmental Assessment – Hoyle Tanner
 - Permit Management Contract – Ransom Consulting
- **Economic Development**
 - CDBG Environmental Reviews – Waypoint NH Drop-In Center
 - CDBG Environmental Reviews – CAP Weatherization heating system replacement
 - CDBG – CAP Weatherization replacement heating system, flue, and roof jack replacements
- **Government Channel**
 - Contract – Connectivity Point
- **IT**
 - Scope of Service proposal – Tyler Services
 - Proposal, new Re CAMA Format – Tyler Tech
- **Planning**
 - Parking Study Contract – Stantec

Standard Reports:

- Monthly Overnight Travel Summary - none
- Permission & Permits Issued -none
- Personnel Action Report Summary

7. Communications from the Mayor

Mayor McCarley stated that the City Council discussed the Ambulance Service Contract at the City Council Regular meeting in February. She appointed Councilors Walker, Hainey, and Rice to serve as Council Members, on a Committee to take a closer look at this contract as the City moves forward over the next two years. Mayor McCarley requested that the City Manager appoint two staff members to serve on the Committee as well. Councilor Walker requested at least two more City Councilors be appointed to the Committee. Mayor McCarley explained that three City Councilors is enough for an Ad Hoc Committee; however, that suggestion could be revisited in the future, if necessary.

8. Presentation of Petitions and Council Correspondence

9. Nominations, Appointments, Resignations, and Elections

9.1 **Resignation: Robert (Bob) Brown, Recreation & Arena Commission** *consideration for approval*

Councilor Lachapelle **MOVED** to **ACCEPT** the resignation, with regret, for Robert Brown. Councilor Walker seconded the motion. Mayor McCarley said Mr. Brown has dedicated many years of service to this Commission. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Abbott, Walker, Hutchinson, Belken, Lachance, Hamann, Gray, Rice, Bogan, Hainey, Lachapelle, Lauterborn, and Mayor McCarley voted in favor of the motion.

10. Reports of Committees

10.1 Codes and Ordinances

10.1.1 **Committee Recommendation:** to accept the amendments to Chapter 80 (Outdoor Dining) of the City Ordinances as presented by City staff *consideration for approval*

Councilor Lachapelle said there are three action items. The first action item is regarding the Outdoor Dining Ordinance, which can be found as *Addendum A – Proposed Amendment, including the missed action outlined below.*

Councilor Lachapelle requested that one correction be included with the proposed Amendment, which is shown below:

§ 80-14 Requests for use of City property.

Requests for use of City property for outdoor dining providing food and alcohol service shall be made in writing to the City Manager on an annual basis by ~~February~~ **March** 1 with no expectation of continued year-to-year use of the City property on a continuing basis. Requests will only be accepted by businesses licensed to serve food to the public. In the event that a new business opens during the outdoor dining season and wishes to incorporate outdoor dining in its plans, an application will be allowed for the remainder of the dining season only. *(This change has since been made to Addendum A)*

Councilor Lachapelle reviewed the remaining amendments that are shown with Addendum A.

Councilor Lachapelle **MOVED** to **ADOPT** the Ordinance. Councilor Walker seconded the motion.

Councilor Lachance gave reasons why the first sentence of letter "F" is unnecessary and seems excessive. The City Council briefly discussed the matter. Councilor Lachance **MOVED** to **AMEND** the ordinance as follows:

§ 80-26 Site design standards ~~for establishments with alcohol service.~~

Outdoor dining establishments ~~with alcohol service~~ should meet the following site design standards:

*
*
*
*
*

- F. The enclosure system, tables and chairs shall be movable/nonpermanent. ~~The applicant shall affix and maintain rubber tips or equivalent to the legs of any table or chairs used on concrete, brick or granite surfaces.~~ It is the applicant's responsibility to ensure that all movable items within the outdoor dining area are secured against wind or theft. The City accepts no liability for lost, stolen or damaged property

Councilor Walker seconded the motion. The **MOTION CARRIED** to **AMEND** the Amendment by an 11 to 2 roll call vote as follows: Councilors Belken, Hamann, Rice, Lauterborn, Hainey, Hutchinson, Walker, Lachance,

Abbott, Bogan, and Mayor McCarley voted in favor of the motion. Councilors Gray and Lachapelle voted against the motion.

Councilor Walker had questions about meeting the NFPA 701 Standards in relation to the fabric on the tents. Adam Hughes, Deputy Fire Chief, stated that the compliance for such tents is printed on the labels of the tents. He added that there are further requirements implemented for use of larger tents.

Councilor Walker gave reasons why paragraph "K" seems unreasonable as it relates to all decorations being fire retardant and meeting the NFPA 701 Standards. Councilor Walker **MOVED** to **AMEND** the ordinance by striking the entire sentence.

Councilor Lachance seconded the motion. Councilor Lachapelle spoke against the motion, as this becomes a fire hazard/safety issue. Assistant Fire Chief Wilder clarified that restriction applies to the decorations inside a tent large enough to require an inspection and must follow these NFPA Standards. He said once a tent is large enough to require additional standards then so is everything within the tent for safety reasons. He added that this is not about the decorations used outside (not in a tent) because there are no regulations on those types of decorations. Councilor Walker said if a tent is large enough to require additional requirements then those additional requirements are set forth within the NFPA Standards. He reiterated that the sentence is not needed and it causes confusion. Mr. Wilder agreed that the sentence could be removed. The **MOTION CARRIED** by a 12 to 1 roll call vote. Councilors Bogan, Abbott, Belken, Lachapelle, Gray, Walker, Rice, Hamann, Hailey, Lachance, Lauterborn, and Mayor McCarley voted in favor of the motion. Councilor Hutchinson voted against the motion.

Councilor Lachance had concerns about paragraph "H" as it relates to canopies. He questioned if existing canopies would be removed if an outdoor dining permit had been sought. Councilor Lachapelle replied yes. He added that the Codes and Ordinances Committee discussed this issue at length. Councilor Lachapelle said that the umbrellas that meet the NFPA Standards would be allowed. Councilor Lachance asked if canopies and awning are considered the same. It was determined that they are different and existing awnings would not need to be removed under this ordinance.

Mayor McCarley called for a vote on the motion as amended above. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Hutchinson, Walker, Belken, Bogan, Lachapelle, Hamann, Lauterborn, Hailey, Abbott, Gray, Rice, Lachance, and Mayor McCarley voted in favor of the motion. *See Addendum B for final copy of the adopted ordinance as amended.*

10.1.2 Committee Recommendation: to accept the amendments to Chapter 80 (Food & Food Service) of the City Ordinances as presented by City staff consideration for approval

Councilor Lachapelle reviewed the few changes being proposed with this amendment. *See Addendum C - Proposed Amendment.*

Councilor Lachance **MOVED** to **ADOPT** the ordinance. Councilor Walker seconded the motion.

Councilor Lachance asked why the Committee recommended removing Class J. Food Establishment at Rochester Fair: sixty-five dollars (\$65). City Attorney O'Rourke clarified that the Fairgrounds were being charged an increased rate compared to all other vendors and now they will be charged the same rate as all other vendors. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Lachance, Walker, Hutchinson, Belken, Lachance, Abbott, Gray, Rice, Bogan, Hainey, Lachapelle, Lauterborn, and Mayor McCarley voted in favor of the motion. *See Addendum C - Adopted as proposed.*

10.1.3 Committee Recommendation: to accept the amendments to Chapter 11 (Adult-Oriented Establishments) of the City Ordinances as presented by City staff consideration for approval

Councilor Lachapelle said the Committee is recommending to delete this entire Chapter as the material is already covered under the current Zoning Ordinances. Councilor Lachapelle **MOVED** to **ADOPT** the ordinance. Councilor Walker seconded the motion. *See Addendum D.*

Councilor Belken asked for clarification if the exact same wording is duplicated within the Zoning Ordinances. City Attorney O'Rourke clarified that the verbiage is not an exact duplicate; however, all the definitions are included. He said this "stand alone" chapter is unnecessary and probably would not hold up in court because the proper place for these types of laws should be included with the Zoning Ordinances.

Mayor McCarley called for a vote on the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Rice, Walker, Belken, Bogan, Lachapelle, Hamann, Lauterborn, Hainey, Abbott, Gray, Hutchinson, Lachance, and Mayor McCarley voted in favor of the motion. *See Addendum D - Adopted as proposed.*

Councilor Lachapelle thanked the Committee for their work on these

amendments. He said the next meeting would be held on March 4, 2021.

10.2 Community Development Committee

10.2.1 Resolution Adopting a FY 2022 Rochester CDBG "Action Plan For The City Of Rochester, N.H." and Approving And Appropriating the FY 2022 Community Development Budget For The City Of Rochester *first reading and refer to Public Hearing on March 16, 2021*

Councilor Lauterborn gave a brief overview of the presentation made at the Committee meeting from Easter Seals. She said they are proposing a project with about eighty senior housing units, which are affordable and supportive, at the Rochester Easter Seals property (formerly The Homemakers). She added that Easter Seals is also proposing to donate undeveloped, wooded land to the Champlain Forest lands as overseen by the Society for the Protection of NH Forests. Councilor Lauterborn indicated that there is a project overview, which can be found attached to the Community Development meeting minutes. She encouraged the City Council to read through the project overview.

Councilor Lauterborn **MOVED** to read the resolution for the first time by title only. Councilor Walker seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Lachapelle, Rice, Gray, Hainey, Abbott, Bogan, Hutchinson, Lachance, Hamann, Lauterborn, Walker, Belken, and Mayor McCarley voted in favor of the motion. Mayor McCarley read the resolution for the first time as follows:

RESOLUTION ADOPTING AN FY 2022 ROCHESTER CDBG "ACTION PLAN FOR THE CITY OF ROCHESTER, N.H." AND APPROVING AND APPROPRIATING THE FY 2022 COMMUNITY DEVELOPMENT BUDGET FOR THE CITY OF ROCHESTER

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER, AS FOLLOWS:

That the Mayor and City Council of the City of Rochester, by adoption of this Resolution, hereby adopt the one-year FY 2022 (July 1, 2021—June 30, 2022) "Action Plan for the Community Development Block Grant (CDBG) Program for the City of Rochester, N.H.," as prepared and presented to the Mayor and City Council by the City of Rochester Office of Economic and Community Development, in connection with the City's CDBG program,

including the goals, objectives, and concepts set forth therein;

Further, that a twelve (12) month Community Development Block Grant budget for the Office of Economic and Community Development for the City of Rochester in the total amount of Two Hundred Sixteen Thousand Three Hundred Dollars (\$216,300) be, and hereby is, approved and appropriated for fiscal year 2022 (July 1, 2021—June 30, 2022). Included in said approval and appropriation are expenditures set forth in the one-year action plan of the Office of Economic & Community Development for the City of Rochester for the Community Development Block Grant program, in the following categories and amounts:

Administration and Planning	\$43,260.00
Public Service Agencies	\$32,445.00
Housing/Public Facilities/Infrastructure	\$40,595.00
Total	\$ 216,300.00

Further, that One Hundred Forty Three Thousand Eight Hundred Sixty Five Dollars and Ninety Cents (\$143,865.90) in the Job Opportunity Benefit revolving loan fund loan fund, plus the principal and interest received monthly from existing loans' repayments, be appropriated for continued use in the FY 2022 Action Plan year in granting loans to qualified small businesses that commit to the creation and/or retention of jobs made available to low to moderate-income Rochester residents.

This budget and the one-year action plan for FY 2022 may be reconsidered if federal funding is changed or if it is inconsistent with the total FY 2022 budget adopted for the Office of Economic and Community Development.

The sums necessary to fund the above appropriation in the amount of Two Hundred Sixteen Thousand Three Hundred Dollars (\$216,300) shall be drawn in their entirety from the above- mentioned FY 2022 Community Development Block Grant from the federal government to the City of Rochester. The Finance Director is hereby authorized to create such line item accounts as shall be necessary to implement this Resolution.

Furthermore, in the event that federal funding for the above Community Development Block Grant budget is less than the total appropriation amount provided for in this Resolution, then, and in such event, the City Manager, or the City Manager's designee in the Office of Economic and Community Development, is authorized to adjust the amounts for the budgetary categories stated above, as well as for any planned grants and/or other expenditures made from within such budgetary categories.

Councilor Lauterborn **MOVED** to **AMEND** the resolution as follows:

Administration and Planning	\$53,779.60
Public Service Agencies	\$40,334.70
Housing/Public Facilities/Infrastructure	\$174,783.70
Total	\$ 268,898.00

Councilor Walker seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Hamann, Walker, Hutchinson, Belken, Lachance, Abbott, Gray, Rice, Bogan, Hainey, Lachapelle, Lauterborn, and Mayor McCarley voted in favor of the motion. The amended resolution is as follows:

**RESOLUTION ADOPTING AN FY 2022 ROCHESTER CDBG
"ACTION PLAN FOR THE CITY OF ROCHESTER, N.H." AND APPROVING
AND APPROPRIATING THE FY 2022 COMMUNITY DEVELOPMENT
BUDGET FOR THE CITY OF ROCHESTER**

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER, AS FOLLOWS:

That the Mayor and City Council of the City of Rochester, by adoption of this Resolution, hereby adopt the one-year FY 2022 (July 1, 2021—June 30, 2022) "Action Plan for the Community Development Block Grant (CDBG) Program for the City of Rochester, N.H.," as prepared and presented to the Mayor and City Council by the City of Rochester Office of Economic and Community Development, in connection with the City's CDBG program, including the goals, objectives, and concepts set forth therein;

Further, that a twelve (12) month Community Development Block Grant budget for the Office of Economic and Community Development for the City of Rochester in the total amount of Two Hundred Sixty Eight Thousand Eight Hundred Ninety Eight Dollars (\$268,898.00) be, and hereby is, approved and appropriated for fiscal year 2022 (July 1, 2021—June 30, 2022). Included in said approval and appropriation are expenditures set forth in the one-year action plan of the Office of Economic & Community Development for the City of Rochester for the Community Development Block Grant program, in the following categories and amounts:

Administration and Planning	\$53,779.60
Public Service Agencies	\$40,334.70

Housing/Public Facilities/Infrastructure	\$174,783.70
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Total	\$268,898.00
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Further, that One Hundred Forty Three Thousand Eight Hundred Sixty Five Dollars and Ninety Cents (\$143,865.90) in the Job Opportunity Benefit revolving loan fund loan fund, plus the principal and interest received monthly from existing loans' repayments, be appropriated for continued use in the FY 2022 Action Plan year in granting loans to qualified small businesses that commit to the creation and/or retention of jobs made available to low to moderate-income Rochester residents.

This budget and the one-year action plan for FY 2022 may be reconsidered if federal funding is changed or if it is inconsistent with the total FY 2022 budget adopted for the Office of Economic and Community Development.

The sums necessary to fund the above appropriation in the amount of Two Hundred Sixty Eight Thousand Eight Hundred Ninety Eight Dollars (\$268,898) shall be drawn in their entirety from the above- mentioned FY 2022 Community Development Block Grant from the federal government to the City of Rochester. The Finance Director is hereby authorized to create such line item accounts as shall be necessary to implement this Resolution.

Furthermore, in the event that federal funding for the above Community Development Block Grant budget is less than the total appropriation amount provided for in this Resolution, then, and in such event, the City Manager, or the City Manager's designee in the Office of Economic and Community Development, is authorized to adjust the amounts for the budgetary categories stated above, as well as for any planned grants and/or other expenditures made from within such budgetary categories.

Councilor Lauterborn **MOVED** to refer the matter to a Public Hearing to be held on March 16, 2021. Councilor Walker seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Belken, Gray, Hamann, Rice, Lauterborn, Hainey, Lachapelle, Hutchinson, Walker, Lachance, Abbott, Bogan, and Mayor McCarley voted in favor of the motion.

Councilor Lauterborn said the Committee minutes indicate that there would be no meeting until April 2021; however, that plan has changed. She said the estimated amounts for the Community Block Grant have been significantly adjusted and therefore, there will be a meeting held March 15, 2021. The time and location will be announced next week.

10.3 Fidelity Committee

Councilor Hutchinson said there are no action items this evening. He said the next meeting is scheduled for March 11, 2021, at 6:00 PM on Teams.

10.4 Finance Committee

10.4.1 **Committee Recommendation:** To increase the pay grade of the Human Resource Manager position from grade 14 to 15 *consideration for approval*

Councilor Hamann **MOVED** to **APPROVE** the pay grade increase for the Human Resource Manager Position from grade 14 to 15. Councilor Lachapelle seconded the motion.

Councilor Rice questioned how the cities/towns for this research had been selected and how these figures were derived. He gave the example of Nashua being a much larger City than the City of Rochester, with a much higher population and City personnel. Katie Ambrose, Deputy City Manager, replied that the data being presented as part of this grade adjustment was extracted from a recent non-union salary market survey, which had been conducted by Municipal Resource Inc. (MRI). There are a variety of factors that went into the selection of these comparison cities/towns. She said that initially there were 9 communities selected; however, that range was narrowed down to the six communities which can be found in the survey. The selection was based upon population, form of government, the size of the budget, etc. She said it was further taken into consideration how some of the other communities' larger departments were structured, such as the Police Department and/or IT Department(s). Councilor Rice questioned if this same communities would be chosen again in future months to propose another pay scale adjustment for a different City position. Ms. Ambrose said this data was extracted from the full survey (to be presented soon) because of the timing of the posting this position. She confirmed that the same six towns were utilized throughout the entire study. Councilor Lauterborn had similar concerns as Councilor Rice. She said the closer neighboring towns are not included in this survey, which is where recruitment might occur. She indicated that she is voting against this action this evening because of concerns of the cost of personnel continually increasing. She respects the merit raises; however, there were a number of reclassification of positions in last year's budget and changing of job titles. She said these are difficult choices for the Council to vote upon, especially since the employees are known to the City Council. Councilor Lauterborn said in this case, the City Council is being asked to increase the pay grade for an unknown hire before an interview takes place. She said the City Council is the only line of defense to the taxpayer and she

would be voting against this grade adjustment. Councilor Hainey asked what the rationalization was to adjust this pay grade. Mayor McCarley spoke in favor of the motion and gave a brief statement about the complexity of this position. Councilor Hutchinson questioned if the job description and responsibilities have increased. Ms. Ambrose stated that the Personnel Advisory Committee reviewed the job description for the position and no changes are being proposed. She briefed the City Council about the importance of making sure the salary is not below the market standard for this position to ensure that all qualified candidates are drawn to this position through the hiring process. Councilor Walker spoke against the motion and agreed with Councilor Lauterborn.

Mayor McCarley called for a vote on the motion. The **MOTION FAILED** by a 6 to 7 roll call vote. Councilors Hainey, Hutchinson, Lachapelle, Gray, Hamann, and Mayor McCarley voted in favor of the motion. Councilors Abbott, Belken, Walker, Bogan, Rice, Lachance, and Lauterborn voted against the motion.

10.5 Planning Board

Councilor Walker said the Planning Board met last evening; however, there are no action items. He briefed the City Council about a Preliminary Subdivision being proposed at Sofield Apartments, which is located near the Skyhaven Airport. He said it would be an expansion for single family housing units; however, it is located within the Airport Runway Protection Zone RPZ. He said more discussion and negotiations would need to occur before anything can be decided.

Councilor Walker said the Planning Board would be discussing proposed changes to the Impact Fees at the next Planning Board Workshop meeting. He added that the Impact Fees are being applied to single family homes and at some point the City Council will need to have a discussion about whether or not to continue to pursue such fees. He said the implementation of Impact Fees were intended for large developments but not for single-family homeowners. He suggested that this discussion should be held by the City Council in a Workshop session rather soon.

10.6 Public Safety

Councilor Lachapelle reviewed the Committee minutes with the City Council. He said there was a discussion about "speeding" on Nottingham Lane and a street light request; however, both items have been kept in Committee at this time.

10.7 Public Works

Councilor Walker said the Committee met on February 18, 2021. He said the Department of Health and Human Services (DHHS) is requesting a lease extension at the Community Center. Councilor Walker recalled that the previous City Council intended to allow the lease to expire. He said since there are essentially new City Councilors on board, the topic needs to be addressed again. Mayor McCarley indicated that some of the discussions would be taking place between the State and the City through a non-public session. Councilor Lachapelle voiced his opinion that he is not against extending the lease for two more years; however, he is not in support of spending any funds on upgrades to their current space. Councilor Walker stated that is the problem at hand, if the City extends the lease, the lessee is expecting major upgrades to the amount of \$500,000. He added that is why the previous City Council has not extended the lease.

City Manager Cox confirmed that DHHS has withdrawn the request for expansion (extended lease) and is not seeking any upgrades at this time.

Director Peter Nourse gave a brief history of the lease between the City of Rochester and DHHS. He said the current lease is due to expire in 2022; however, they have requested an extension to that agreement to 2024. He said DHHS was previously seeking to expand their number of employees and space needs drastically; however, because of the pandemic, they will just need more time in the current space to make that determination of what the next step should be taken. He reiterated that no upgrades are being sought with this extension of the current lease.

Councilor Lachance and Lauterborn both voiced their support for the extension of the lease to DHHS. Councilor Hamann agreed as long as the City is not intending to spend the funds to renovate the space. Mayor McCarley said this would be discussed further in a non-public session.

11. Old Business

11.1 Amendments to Chapter 275 of the General Ordinances of the City of Rochester regarding Murals *second reading and consideration for adoption*

Councilor Lachapelle **MOVED** to read the Amendment to Chapter 275 of the General Ordinances by title only for a second time. Councilor Lachance seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Abbott, Walker, Hutchinson, Belken, Lachance, Hamann, Gray, Rice, Bogan, Hainey, Lachapelle, Lauterborn, and Mayor McCarley voted in

favor of the motion. Mayor McCarley read the Amendment for a second time.
See Addendum E.

Councilor Lachapelle **MOVED** to **ADOPT** the motion. Councilor Walker seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Gray, Belken, Hamann, Rice, Lauterborn, Hainey, Lachapelle, Hutchinson, Walker, Lachance, Abbott, Bogan, and Mayor McCarley voted in favor of the motion. *See Addendum E Adopted as Proposed*

12. Consent Calendar

No discussion.

13. New Business

13.1 Resolution Authorizing Approval to Submit a Notice of Intent to Obtain Coverage Under the Great Bay Total Nitrogen Permit *first reading and consideration for adoption*

Councilor Lachapelle **MOVED** to read the resolution by title only. Councilor Walker seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Bogan, Abbott, Belken, Hutchinson, Lachapelle, Gray, Walker, Rice, Hamann, Hainey, Lachance, Lauterborn, and Mayor McCarley voted in favor of the motion. Mayor McCarley read the resolution by title only as follows:

Resolution Authorizing Entry Into Intermunicipal Agreement For Development of an Adaptive Water Quality Management Plan for Great Bay Estuary

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER:

That the City of Rochester hereby agrees to enter into the Intermunicipal Agreement
For Development of an Adaptive Water Quality Management Plan for Great Bay Estuary attached as **Exhibit A** of this Resolution. (*See Addendum F – Exhibit A*)

Further, the Mayor and City Council authorize the City Manager or his/her designee to execute any and all documents to effectuate the purpose of this

Resolution including, but not limited to, **Exhibit A**. (*See Addendum F – Exhibit A*)

Councilor Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Walker seconded the motion. A discussion ensued about the process of first and second readings.

Attorney O'Rourke stated that Attorney Sherry Young is available to give the City Council a brief overview of the resolution and to answer any questions. He said that not only is the City opting into the Great Bay Total Nitrogen General Permit but the City is also accepting the Administrative Order on consent as well.

Attorney Young stated that there has been a final Administrative Order on consent that had been negotiated with the EPA. She gave details about why the results of the negotiations are favorable to the City of Rochester. Ms. Young reviewed the rest of Exhibit A and offered to answer any questions.

Mayor McCarley called for a vote on the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Hutchinson, Walker, Belken, Bogan, Lachapelle, Hamann, Lauterborn, Hainey, Abbott, Gray, Rice, Lachance, and Mayor McCarley voted in favor of the motion.

Attorney Young thanked the City Council for its corporation in making this one of her best experiences negotiating with the EPA. Mayor McCarley thanked Attorney Young and the City staff who worked on this process.

13.2 Resolution Deauthorizing \$3,650.45 from the Rochester Police Department Ballistic Vest Grant *first reading and consideration for adoption*

Councilor Lachapelle **MOVED** to read the resolution for a first time by title only and to **ADOPT** the resolution. Councilor Walker seconded the motion.

Councilor Rice questioned how much a ballistic vest cost through this grant. Chief Toussaint replied that the City pays about \$800 to \$850 per vest and half of that amount qualifies for reimbursement through this grant. Councilor Rice asked if the remaining funds for this grant needed to be deauthorized by a certain date. Chief Toussaint replied yes, this is a reoccurring grant and the funds must be deauthorized before another grant is accepted. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Lachance, Walker, Hutchinson, Belken, Hamann, Lachapelle, Abbott, Gray, Rice, Bogan, Hainey, Lauterborn, and Mayor McCarley voted in favor of the

motion. Mayor McCarley read the resolution as follows:

**Resolution Deauthorizing \$3,650.45 from the Rochester Police
Department Ballistic Vest Grant**

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ROCHESTER:

That Three Thousand Six Hundred Fifty and 45/100 Dollars (\$3,650.45) of funds previously appropriated to the Rochester Police Department as part of a Ballistic Vest Grant is hereby deauthorized. The City will reduce its reimbursement request to the Department of Justice under Ballistic Vest Grant by the amount deauthorized herein.

To the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to establish and/or designate such accounts and or account numbers as are necessary to implement the transactions contemplated in this Resolution.

**13.3 Amendment to the Granite Ridge Development District
(GRDD) Tax Increment Development Program &
Financing Plan ("TIF Plan") Pursuant to RSA 162-K:9, IV
*first reading and refer to public hearing March 16, 2021***

Councilor Lachapelle **MOVED** to read the resolution by title only for a first time and to refer the matter to a Public Hearing to be held on March 16, 2021. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote. Councilors Rice, Walker, Belken, Bogan, Lachapelle, Hamann, Lauterborn, Hainey, Abbott, Gray, Hutchinson, Lachance, and Mayor McCarley voted in favor of the motion. Mayor McCarley read the resolution by title only for a first time as follows:

**Amendment to the Granite Ridge Development District (GRDD) Tax
Increment Development Program & Financing Plan ("TIF Plan")
Pursuant to RSA 162-K:9, IV**

THE CITY OF ROCHESTER ORDAINS:

WHEREAS, the 2014 Adopted GRDD TIF Plan was crafted to rely on retail and office space development to generate tax increment for the GRDD;

WHEREAS, the original GRDD TIF concept planned for the development of retail and office space as the main drivers for incremental assessment within

the TIF, but market trends over the last several years has seen the demand for office and retail rental space decline at an accelerated rate;

WHEREAS, these economic shifts, amid other more recent influences, are reshaping the traditional approach to retail and office space development; and

WHEREAS, it is acknowledged that increasing diversity is necessary to assure tax incremental revenues remain at adequate levels in order to carry out the development plans of the GRDD.

THEREFORE, the Mayor and City Council of Rochester ordain that mixed use commercial and residential developments, and associated public parks, parking lots, open spaces, and recreational opportunities is recognized as allowable development activities within the GRDD TIF Plan and the GRDD TIF Plan is hereby amended to allow the same.

The effective date of these amendments shall be upon passage.

13.4 Amendment to Chapter 275 of the General Ordinances of the City of Rochester Regarding the Location and Boundaries of Zoning Districts *first reading and refer to public hearing March 16, 2021*

Councilor Lachapelle **MOVED** to read the resolution by title only for a first time and to refer the matter to a Public Hearing to be held on March 16, 2021. Councilor Walker seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Lachapelle, Rice, Gray, Hainey, Abbott, Bogan, Hutchinson, Lachance, Hamann, Lauterborn, Walker, Belken, and Mayor McCarley voted in favor of the motion. Mayor McCarley read the Amendment by title only for a first time by title only as follows:

Amendment to Chapter 275 of the General Ordinances of the City of Rochester Regarding the Location and Boundaries of Zoning Districts

THE CITY OF ROCHESTER ORDAINS:

WHEREAS, Chapter 275-1.10 establishes that the location and boundaries of zoning districts within the City of Rochester are established as shown on a map titled, "City of Rochester Zoning Map."

WHEREAS, Chapter 275-1.10 further declares that the City of Rochester Zoning Map is incorporated by reference as party of Chapter 275 of the General Ordinances of Rochester regarding zoning.

WHEREAS, the Mayor and City Council of Rochester desire to amend the City of Rochester Zoning Map to convert the property located at 13 Sawyer Avenue to the Downtown Commercial Zone.

THEREFORE, the Mayor and City Council of Rochester ordain that the property located at 13 Sawyer Avenue shall be converted to Downtown Commercial Zone in accordance with the Attached Exhibit. (Exhibit A).

The effective date of these amendments shall be upon passage.

13.5 Discussion: Past Council practice relative to School budget (School Building Capital Reserve Fund)

Mayor McCarley said the School Board is in the process of submitting their budget to the City by the end of March. She mentioned over the past few years there has been an increase to the Waste Management Host Fees and as a result, the City Council has made the decision to share some of those increased revenues with the School Department (revenues side) in terms of balancing their operating budget. Mayor McCarley said she is seeking a sense of council about this past Council practice relative to the School Department's Budget and if the City Council might be interested in continuing that practice. Councilor Walker said it really depends because the City could face a shortfall in its own budget. Councilor Gray said he has been an advocate in sharing of such fees (revenues) with the School Department and sees no reason not to continue in that practice. He indicated that another issue is that each year the School Department is obligated to return any/all surplus; however, often times, they request these funds back through the process of a supplemental appropriation, which he is not supporting. Mayor McCarley indicated that it was Councilor Gray's suggestion to bring this matter to the City Council to review this past practice. She said on the other point about a surplus, it seems there is currently about \$800,000 in the School Department's Capital Reserve Fund, which the City must allow them to spend; however, there is no evidence of a surplus for this year, nor have they received a supplemental appropriation this year.

14. Other

Councilor Hutchinson spoke about the City Charter regarding the power

of the City Council to remove a City Official from Office/Position due to ethics violations. He said although the language supports that action to be taken, the Charter itself is silent about the fair and equitable process of such an action. The Charter does not give direction to any action on holding public officials accountable for committing unethical actions, which occurred in the past, while serving in office or not. The City Charter fails to provide a fair mechanism to address complaints against its public officials. He briefly shared the recent ethic concerns about the Rochester School Board and other complaints that the City Council has not yet been made aware of have shown that obvious vulnerabilities exists. This is an opportunity for the City Council to adopt a fair and transparent system to review such complaints made against public officials. He is seeking to establish an Ethics Commission and gave some details of what should be included with such a Commission. He **MOVED** to establish an Ethics Commission for the City of Rochester. *This motion did not receive the required "second".*

Mayor McCarley had been unaware that Councilor Hutchinson would be making a formal motion this evening and informed him of the process of bringing an amendment to the Agenda by a two-thirds City Council vote prior to any vote being taken.

Councilor Hutchinson **MOVED** to suspend the Rules to bring the Ethics Commission question to the agenda for a vote. *This motion did not receive the required "second".* Mayor McCarley clarified that the topic could still be discussed; however, no motion could be acted upon without the required two-thirds vote.

Councilor Walker said at the last Council meeting, he had requested a second legal opinion on Section 70 of the City Charter as it dictates the right to remove any City Official from Office. He believed the original intent of the Charter was to remove "any" City Official from Office; however, clarification must be sought out prior to creating an Ethic's Commission.

Councilor Hailey said that Councilor Hutchinson mentioned five articles that would govern the proposed Commission. She questioned the fifth article that he mentioned. Councilor Hutchinson said it was as follows: "The promotion of the integrity of City government". Councilor Hailey said it would be a long process to change the City Charter; however, in the meantime, there may be some concerns that should be looked into sooner. She cautioned the City Council not to rush the process and to set up the Commission properly and training should be made available as well. Councilor Hutchinson agreed that this was a complicated process with complicated issues. He indicated that the neighboring communities all have some type of Ethics Commission/Policy. In such communities, citizens have a safe and transparent mechanism to file

complaints.

Councilor Hutchinson agreed with legal counsel's interpretation of the City Charter; however, he felt the Charter could be better supported by having an Ethics Commission established.

Councilor Rice thanked Councilor Hutchinson for bringing this matter to the City Council and for all research completed. He asked what the basis is for the essentially five articles he is seeking to have incorporated with such a commission. Councilor Hutchinson said these articles have been taken/copied by the various similar commissions in the nearby surrounding communities. Councilor Rice gave reasons why he did not feel this type of Commission should be dealing with past indiscretions. He supported such a Commission to deal with complaints received about unethical behavior for current situations for current Offices.

The City Council talked further about the surrounding communities and their Ethic Commissions. The City Council debated whether or not the City Council could investigate unethical behavior of its own City Council membership. Mayor McCarley suggested that the City Council could add language about ethics to its own Rules of Order, which are reviewed by the City Council every two years.

Councilor Hutchinson said it is important for the City Council to appoint member to the Ethics Commission; however, membership should not include any City Council members for such a Commission to work effectively without bias. He gave details about how a Commission might operate for final determination of any such accusation.

Councilor Lachapelle said this would require a Charter Amendment and recommended that the City Attorney work on such an Amendment to the City Charter. Mayor McCarley requested that the City Attorney start the process by collecting information and giving his legal opinion about the first step in this process. Mayor McCarley did not fully support outlining the entire process for an Ethics Commission in the City Charter itself because the City General Ordinances or Rules of Order would be a better fit for something of this magnitude. She added that Section 70 of the City Charter is in need of an Amendment. Councilor Hamann suggested that the Codes and Ordinances Committee could review this section of the City Charter soon.

Councilor Lachance asked about the Joint Building Committee for the CTE project. Mayor McCarley replied that the Committee made its final recommendation for the remaining funds and now the Committee is finished meeting all together. She gave a brief overview of some of the housekeeping

items (de-authorizations) that will be taken care of during future Council meetings.

15. Non - Public

15.1. Non-Public Session – Land, RSA 91-A:3, II (d)

15.2. Non-Public Session – Legal RSA 91-A:3, II (I)

Councilor Lauterborn **MOVED** to enter into two Non-Public Sessions as follows as stated above at 9:16 PM. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Hainey, Abbott, Belken, Hutchinson, Lachapelle, Gray, Walker, Bogan, Hamann, Rice, Lachance, Lauterborn, and Mayor McCarley voted in favor of the motion.

Councilor Lachapelle **MOVED** to exit the Non-Public Sessions at 10:28 PM. Councilor Walker seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Walker, Hamann, Lachance, Rice, Belken, Bogan, Lachapelle, Hamann, Lauterborn, Hainey, Abbott, Gray, Hutchinson, and Mayor McCarley voted in favor of the motion.

Councilor Lauterborn **MOVED** to seal the minutes for the Non-Public Session under Land, RSA 91-A:3, II (d) because disclosure could render the proposed action ineffective and to seal the Non-Public Session minutes under Legal, RSA 91-A:3, II (I) because disclosure could adversely affect the reputation of a person other than a member of this board. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by a 13 to 0 roll call vote. Councilors Abbott, Walker, Hutchinson, Belken, Lachance, Hamann, Gray, Rice, Bogan, Hainey, Lachapelle, Lauterborn, and Mayor McCarley voted in favor of the motion.

16. Adjournment

Mayor McCarley **ADJOURNED** the Regular City Council Meeting at 10:32 PM.

Respectfully Submitted,

Kelly Walters
City Clerk

Addendum A – Proposed Amendment including the missed correction in 80.14

Amendments to Chapter 80 of the General Ordinances of the City of Rochester Regarding Outdoor Dining

THE CITY OF ROCHESTER ORDAINS:

That Chapter 80 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

Article II Outdoor Dining Establishments

[Adopted 1-12-2016 (§ 26.10 of the 1995 Code)]

§ 80-14 Requests for use of City property.

Requests for use of City property for outdoor dining providing food and alcohol service shall be made in writing to the City Manager on an annual basis by ~~February~~ **March** 1 with no expectation of continued year-to-year use of the City property on a continuing basis. Requests will only be accepted by businesses licensed to serve food to the public. In the event that a new business opens during the outdoor dining season and wishes to incorporate outdoor dining in its plans, an application will be allowed for the remainder of the dining season only.

§ 80-15 Site plans required.

Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curblines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for outdoor dining, **lighting**, dimensioned routes of travel within the outdoor dining area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like. These plans will be reviewed by the Technical Review Group and suggestions forwarded to the City Manager. **Once Site Plans are approved, no changes shall be allowed without the approval of the City Manager.**

§ 80-16 Area service agreement; season.

[Amended 3-1-2016]

The terms and conditions of any such requests that are approved by the City Manager in any given year shall be described in an annual area service agreement, which includes a clear depiction of the area approved for outdoor dining use and the time period of approved use ("season"), with said area service agreement to be signed by the City Manager and the party or parties making the request. The season shall run from April 1 through October 31.

- A. Area service agreements shall not be assignable to other parties.
- B. Use of the area subject to the area service agreement (the "area") may be precluded, modified or made subject to any such terms and conditions as may be determined by the City Manager at any time during the season in order to accommodate special municipal events.

§ 80-17 Fee.

A minimum fee for the season of twenty-five dollars (\$25.) shall be required even if the size of the area subject to the agreement is less than 100 square feet. A fee of one dollar (\$1.) per square foot will be charged for the area subject to the agreement for all square feet above 100 square feet. The fee shall be due and payable to the City of Rochester prior to authorization to use the area.

§ 80-18 Restoration of area.

[Amended 3-1-2016]

The area specified for outdoor dining use in the area service agreement shall be restored upon termination of the area service agreement at season's end. Specifically, at season's end, the enclosure system, tables, chairs and all other materials in their entirety shall be removed from the City-owned area with the area left in an unobstructed, undamaged, clean and sanitary condition at no cost to the City. Semi-permanent objects may remain in the area at season's end at the discretion of the City Manager.

§ 80-19 Indemnification; insurance.

Outdoor dining establishments on City property shall indemnify and hold harmless the City of Rochester and shall maintain and provide insurance of the types and amounts specified by the City's Legal Department and shall list the City as additional insured. A certificate of insurance documenting said types and amounts of insurance is to be submitted to the City's Legal Department before the start of the season.

§ 80-20 Damaging or obstructing public facilities.

Outdoor dining establishments shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, or make the same inaccessible for public use (other than within the approved area) or maintenance purposes.

§ 80-21 Hours of operation.

Outdoor dining establishments may utilize the area for outdoor dining during their normal business hours, except that all tables within the area shall be cleared of all food and alcoholic beverages by 1:00 am Monday through Sunday with no alcohol served within the area subsequent to 1/2 hour before the foregoing closure times.

§ 80-22 Alcoholic beverages.

A. Outdoor dining establishments shall agree at all times to comply with all laws, rules and regulations of the New Hampshire State Liquor Commission and all other local, state and federal laws. Approval of the area service agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission and the City Manager. See RSA 178:24 and 179:27.

B. Outdoor dining establishments shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering food with service at tables conducted by wait staff only.

§ 80-23 Accessibility.

Outdoor dining establishments will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act (ADA).

§ 80-24 Suspension of area service agreement.

The area service agreement may be suspended at the sole discretion of the City on an administrative basis.

§ 80-25 Revocation of area service agreement.

The area service agreement may be revoked in its entirety, excepting for indemnity provisions, by the City Manager at any time.

§ 80-26 Site design standards ~~for establishments with alcohol service.~~

Outdoor dining establishments ~~with alcohol service~~ should meet the following site design standards:

- A. Outdoor dining establishments shall be separated from the public pedestrian space on the adjacent municipal sidewalk by an enclosure system ~~consisting of heavy duty black decorative metal materials or equivalent~~ as approved by the City Manager or his/her designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and ensure public safety; the minimum height of the enclosure system shall be 30 inches and the maximum height shall be 36 inches, **measured from the lowest point of the public space being utilized.**
- B. Outdoor dining establishments shall not have live entertainment of any type located outside **unless the establishment has applied for and received a Special Event permit pursuant to RSA 286 and Chapter 123 of this Code.**, ~~and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed toward patrons in the outdoor dining area.~~
- C. Seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the area approved by the City Manager. Exceptions to this provision will be allowed consistent with New Hampshire State Liquor Commission approval for particular licensees.
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]
- D. The internal dimensions and table/chair layout of the outdoor dining area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.
- E. Outdoor dining establishments must provide a five-foot radius clearance from the center of restaurant doorways (exterior), and doorways shall be kept clear at all times and a five-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.
- F. The enclosure system, tables and chairs shall be movable/nonpermanent. **The applicant shall affix and maintain rubber tips or equivalent to the legs of any table or chairs used on concrete, brick or granite surfaces. It is the applicant's responsibility to ensure that all movable items within the outdoor dining area are secured against wind or theft. The City accepts no liability for lost, stolen or damaged property**
- G. In all areas where outdoor dining establishments are allowed the width for the pedestrianway adjacent to the area shall, at a minimum, be three feet and, in any event, meet ADA requirements, but will depend on site conditions. The pedestrianway in both instances shall allow for and provide clear unimpeded passage and access along the area. The pedestrianway shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the area interfere with accessibility or public safety, including safe lines of sight for motor vehicles.
- H. Canopies over the outdoor dining areas shall not be allowed. ~~unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the outdoor dining.~~ **Umbrellas, porticos, structures or tents shall be allowed if they meet NFPA codes. They must be securely fastened or anchored in a manner approved by the City Manager and must not extend beyond the area approved for outdoor dining. It is recommended that applicants contact the appropriate City department before purchasing said items to ensure the product is allowed.**

~~Table umbrellas are allowed, but must not extend beyond the area~~ **and must be anchored.**

- I. No object strictly related to advertising shall be allowed in the area **except in accordance with Chapter 275, Article 29 of this Code.**
- J. No improvements or personal property located within the area shall extend on or over any City property located outside the area.
- K. Decorations must be fire retardant and meet NFPA 701 Standards.**

§ 80-27 Rules and regulations.

Outdoor dining establishments shall agree at all times to comply with all local laws, rules, regulations and orders, including but not limited to the following:

- A. The Health Department shall approve outdoor food service operations and cleaning operations, with the area to be left in a clean and sanitary condition at all times, and no outdoor garbage containers will be permitted. The area shall be left in clean condition at close of business with all garbage removed in its entirety from the area, and any ground debris swept up, at close of daily business. No food prep, grilling, **cooking, appliances, service windows, service counters, wait stations,** or bus buckets shall be allowed in the area and no condiments, paper products or the like shall be stored on the tables in the area. The Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
- B. The Director of Buildings, Zoning, and Licensing Services shall review/approve that bathroom facilities are sufficient to support outdoor dining seating. **Outdoor dining capacity must be in compliance with State law and the Food Code to ensure that each restaurant is approved for additional seating.**
- ~~C. Only decorative lighting shall be permitted.~~
- C. The permittee is responsible for removing trash and regularly cleaning the areas being used for outdoor dining (including the areas where servers traverse between the restaurant and extended tables and chairs). Restaurant patron trash shall only be disposed of in the restaurant's commercial trash containers and not in the sidewalk trash receptacles.**
- D. A place of assembly inspection and updated place of assembly permit shall be required from the Fire Department, and the Fire Department shall review/approve means of egress as part of the Technical Review Group process.

§ 80-28 Approval of agreement.

No area service agreement should be approved by the City Manager except in conformance with the foregoing.

§ 80-29 Other terms and conditions.

The above are policy guidelines that will serve as the basis for area service agreements, which may include other terms and conditions deemed by the City Manager to be in the public interest.

§ 80-30 Number and location of establishments.

The number and location of outdoor dining establishments on City property shall be at the sole unfettered discretion of the City Manager acting in the public interest, and no entitlement is created by this policy for any party to have outdoor dining at any location.

Effective immediately upon passage.

Addendum B – Adopted with two further Amendments, which have been highlighted below:

Amendments to Chapter 80 of the General Ordinances of the City of Rochester Regarding Outdoor Dining

THE CITY OF ROCHESTER ORDAINS:

That Chapter 80 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

**Article II
Outdoor Dining Establishments**

[Adopted 1-12-2016 (§ 26.10 of the 1995 Code)]

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§ 80-15 Site plans required.

Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curblines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for outdoor dining, **lighting**, dimensioned routes of travel within the outdoor dining area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like. These plans will be reviewed by the Technical Review Group and suggestions forwarded to the City Manager. **Once Site Plans are approved, no changes shall be allowed without the approval of the City Manager.**

§ 80-16 Area service agreement; season.

[Amended 3-1-2016]

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- A. Area service agreements shall not be assignable to other parties.
- B. Use of the area subject to the area service agreement (the "area") may be precluded, modified or made subject to any such terms and conditions as may be determined by the City Manager at any time during the season in order to accommodate special municipal events.

§ 80-17 Fee.

A minimum fee for the season of twenty-five dollars (\$25.) shall be required even if the size of the area subject to the agreement is less than 100 square feet. A fee of one dollar (\$1.) per square foot will be charged for the area subject to the agreement for all square feet above 100 square feet. The fee shall be due and payable to the City of Rochester prior to authorization to use the area.

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[Amended 3-1-2016]

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§ 80-19 Indemnification; insurance.

Outdoor dining establishments on City property shall indemnify and hold harmless the City of Rochester and shall maintain and provide insurance of the types and amounts specified by the City's Legal Department and shall list the City as additional insured. A certificate of insurance documenting said types and amounts of insurance is to be submitted to the City's Legal Department before the start of the season.

§ 80-20 Damaging or obstructing public facilities.

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B. Outdoor dining establishments shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering food with service at tables conducted by wait staff only.

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Outdoor dining establishments will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act (ADA).

§ 80-24 Suspension of area service agreement.

The area service agreement may be suspended at the sole discretion of the City on an administrative basis.

§ 80-25 Revocation of area service agreement.

The area service agreement may be revoked in its entirety, excepting for indemnity provisions, by the City Manager at any time.

§ 80-26 ~~Site design standards for establishments with alcohol service.~~

Outdoor dining establishments ~~with alcohol service~~ should meet the following site design standards:

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- B. Outdoor dining establishments shall not have live entertainment of any type located outside **unless the establishment has applied for and received a Special Event permit pursuant to RSA 286 and Chapter 123 of this Code.**, ~~and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed toward patrons in the outdoor dining area.~~
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[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]
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- F. The enclosure system, tables and chairs shall be movable/nonpermanent. **The applicant shall affix and maintain rubber tips or equivalent to the legs of any table or chairs used on concrete, brick or granite surfaces.** ~~It is the applicant's responsibility to ensure that all movable items within the outdoor dining area are secured against wind or theft. The City accepts no liability for lost, stolen or damaged property~~
- G. In all areas where outdoor dining establishments are allowed the width for the pedestrianway adjacent to the area shall, at a minimum, be three feet and, in any event, meet ADA requirements, but will depend on site conditions. The pedestrianway in both instances shall allow for and provide clear unimpeded passage and access along the area. The pedestrianway shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the area interfere with accessibility or public safety, including safe lines of sight for motor vehicles.
- H. Canopies over the outdoor dining areas shall not be allowed. ~~unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the outdoor dining.~~ **Umbrellas, porticos, structures or tents shall be allowed if they meet NFPA codes. They must be securely fastened or anchored in a manner approved by the City Manager and must not extend beyond the area approved for outdoor dining. It is recommended that applicants contact the appropriate City department before purchasing said items to ensure the product is allowed.**

~~Table umbrellas are allowed, but must not extend beyond the area and must be anchored.~~

- I. No object strictly related to advertising shall be allowed in the area **except in accordance with Chapter 275, Article 29 of this Code.**
- J. No improvements or personal property located within the area shall extend on or over any City property located outside the area.

~~K. Decorations must be fire retardant and meet NFPA 701 Standards.~~

§ 80-27 Rules and regulations.

Outdoor dining establishments shall agree at all times to comply with all local laws, rules, regulations and orders, including but not limited to the following:

- A. The Health Department shall approve outdoor food service operations and cleaning operations, with the area to be left in a clean and sanitary condition at all times, and no outdoor garbage containers will be permitted. The area shall be left in clean condition at close of business with all garbage removed in its entirety from the area, and any ground debris swept up, at close of daily business. No food prep, grilling, **cooking, appliances, service windows, service counters, wait stations,** or bus buckets shall be allowed in the area and no condiments, paper products or the like shall be stored on the tables in the area. The Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
- B. The Director of Buildings, Zoning, and Licensing Services shall review/approve that bathroom facilities are sufficient to support outdoor dining seating. **Outdoor dining capacity must be in compliance with State law and the Food Code to ensure that each restaurant is approved for additional seating.**
- C. ~~Only decorative lighting shall be permitted.~~
- C. **The permittee is responsible for removing trash and regularly cleaning the areas being used for outdoor dining (including the areas where servers traverse between the restaurant and extended tables and chairs). Restaurant patron trash shall only be disposed of in the restaurant's commercial trash containers and not in the sidewalk trash receptacles.**
- D. A place of assembly inspection and updated place of assembly permit shall be required from the Fire Department, and the Fire Department shall review/approve means of egress as part of the Technical Review Group process.

§ 80-28 Approval of agreement.

No area service agreement should be approved by the City Manager except in conformance with the foregoing.

§ 80-29 Other terms and conditions.

The above are policy guidelines that will serve as the basis for area service agreements, which may include other terms and conditions deemed by the City Manager to be in the public interest.

§ 80-30 Number and location of establishments.

The number and location of outdoor dining establishments on City property shall be at the sole unfettered discretion of the City Manager acting in the public interest, and no entitlement is created by this policy for any party to have outdoor dining at any location.

Effective immediately upon passage.

Addendum C – Proposed Amendment – Adopted as Proposed

Amendments to Chapter 80 of the General Ordinances of the City of Rochester

THE CITY OF ROCHESTER ORDAINS:

That Chapter 80 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

Chapter 80 Food and Food Service

[HISTORY: Adopted by the City of Rochester as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Health and sanitation — See Ch. 94.

Article I

Food Service Establishments

[Adopted 6-6-1995 as Ch. 25, Art. 3, of the 1995 Code; amended 8-4-1998; 6-15-2004; 5-1-2007]

§ 80-1 Food Code adopted.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

The City of Rochester hereby adopts the provisions of the Food Code of the State of New Hampshire, Department of Health and Human Services, Division of Public Health Services, as presently enacted and as may be amended from time to time.

§ 80-2 Definitions.

As used in this article, the following terms shall have the meanings indicated:

BOARD

The Board of Health of the City of Rochester.

FOOD CODE

The State of New Hampshire, State Department of Health and Human Services, Food Code as adopted by § 80-1 above, and as the same shall be amended from time to time by the Department of Health and Human Services.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

FOOD SERVICE ESTABLISHMENT

Any fixed or mobile restaurant, temporary food service establishment, cafeteria, coffee shop, cocktail lounge, catering kitchen, sidewalk cafe, commissary, grill, luncheonette, short-order cafe, sandwich shop, soda fountain, ice cream shop, mobile ice cream truck, mobile lunch truck, tearoom, drive-in

theater, mobile theater, drive-in restaurant, nightclub, roadside stand, grocery store, meat market, bakery, warehouse, juice bar, industrial feeding establishment, food vending operation **with TCS* foods** (whether attended or unattended), private, public or nonprofit organization or institution serving the public, or similar place in which food is prepared for sale or consumption or any establishment where food is stored, manufactured and/or processed or packaged or any other eating or drinking establishment where food or drink is served or provided for the public with or without charge.

HEALTH OFFICER

The Health Officer of the City of Rochester or his/her designee.

SEASONAL FOOD SERVICE ESTABLISHMENT

Any food service establishment as defined above, fixed or mobile, which operates within the City of Rochester for a period of time longer than 14 days but no longer than six months during any fiscal year, and provided, further, that the applicant seeking a license for a seasonal food service establishment shall be required to designate in writing, at the time of filing an annual application for such license, the six months in which such seasonal food service establishment shall be operated, and such months shall be noted on the license issued to such applicant.

TEMPORARY FOOD SERVICE ESTABLISHMENT

Any food service establishment as defined above which operates at a fixed location for a temporary period of time, not to exceed 14 days, in connection with a fair, carnival, circus, public exhibition, or similar transitory gathering.

TCS

Time/Temperature Control for Food Safety

§ 80-3 License required.

It shall be unlawful for any person to operate a food service establishment within the City of Rochester who does not possess a valid license for that purpose issued to him/her by the Board. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a license. Licenses shall not be transferable from one person to another person or another place. A valid license shall be conspicuously posted in every food service establishment. Licenses for temporary food service establishments shall be issued for a period of time not to exceed 14 days.

§ 80-4 Issuance of license; fees. [Amended 9-3-2013; 3-5-2019]

Every applicant for a license to operate a food service establishment shall make written application therefor on forms provided by the Board. Upon receipt of an application and the designated license fee, and after inspection to ensure compliance with the Sanitary Food Code, a license shall be issued to the applicant by the Board if the requirements of this article have been met. All licenses issued hereunder shall expire on the first day of July in each year.

A. Fees. Based upon highest classification.

- (1) Class A. Food service establishments having a seating capacity of 200 persons or more; retail food store with four or more food preparation areas: three hundred dollars (\$300.).

- (2) Class B. Food service establishments having a seating capacity of 100 through 199 persons; retail food store with two to three food preparation areas: two hundred dollars (\$200.).
 - (3) Class C. Food service establishments having a seating capacity of more than 25 but fewer than 100 persons; retail food store with one food preparation area; caterers; bar or lounge that serves food; service/fraternal clubs with bar/liquor lounges; nursing homes: one hundred fifty dollars (\$150.).
 - (4) Class D. Food service establishments with a seating capacity of 25 or fewer (including but not limited to bakeries); food service establishments with take-out service and no seating; drive-in movie theaters; service/fraternities and sororities; group day-care facilities; shared homes; rest homes; sheltered homes; boarding homes; home food manufacturers; and mobile food operators: one hundred dollars (\$100.).
 - (5) Class E. Bed-and-breakfast; ice cream vendors - scooping; lodging facilities serving continental breakfast: eighty-five dollars (\$85.).
 - (6) Class F. Retail food store - no preparation areas; wholesalers/distributors of ~~TSC~~ **TCS*** food; vending machines serving ~~TSC~~ **TCS*** foods; bakeries which do not serve ~~TSC~~ **TCS*** food or have seating; food service establishments selling only pre-packaged products: seventy-five dollars (\$75.). (~~TSC~~ **TCS*** - Time/Temperature Control for Food Safety)
 - (7) Class G. Bar or lounge with no food preparation area that serves alcohol; arena/theater concessions serving non-~~TSC~~ **TCS*** food; retail food stores serving pre-packaged ice cream only; institutions; private schools; senior meal sites; sellers of pre-packaged frozen USDA meat or poultry; temporary food establishments; ~~vending machine operators per location that do not dispense TSC* food~~; social clubs; residential day-care facilities: fifty dollars (\$50.). (~~TSC~~ **TCS*** - Time/Temperature Control for Food Safety)
 - (8) Class H. Nonprofit charitable organizations not holding a liquor license and not serving meals on a daily basis; public and private schools; government facilities: no fee.
 - (9) Class I. Seasonal food service establishments (open less than six months of the year): fee is 1/2 the annual fee for corresponding nonseasonal Class A through Class H establishments set forth above.
 - ~~(10) Class J. Food establishments at Rochester Fair: sixty five dollars (\$65.).~~
- B. All applications for food service establishment licenses shall be filed with the Board on or before June ~~20~~ **1st** of each year. In addition to the fees provided for in this section, there shall be a late fee of ten dollars (\$10.) for any renewal application received after June ~~20~~ **1st** of any year.

§ 80-5 Suspension of license.

- A. If in the judgment of the Health Officer a licensee has failed to comply with any provision of this article, the licensee shall be notified in writing by the Health Officer of such failure of compliance and the licensee shall thereafter immediately bring his/her food service establishment into compliance with this article. If the licensee fails to bring his/her food service establishment into compliance with this article, the Health Officer may petition the Board in writing that the license be suspended and the Board shall give the licensee at least seven days' notice of the scheduling of the hearing on said petition. As a result of said hearing, the Board may suspend the license during such a period of time as the failure of

compliance exists.

- B. Notwithstanding any other provision of this article, whenever the Health Officer or Board finds unsanitary or other conditions in the operation of a food service establishment which, in his/her or its judgment, constitute a substantial and immediate hazard to the public health, the Health Officer or any member of the Board may issue a written notice to the licensee citing such condition and the corrective action to be taken and specifying the time period within which such action shall be taken. Any person to whom such order is issued shall immediately comply therewith but upon written petition to the Board shall be afforded a hearing as soon as possible and not later than seven days from submission of such petition. Pending a hearing on such petition, if the Health Officer finds an immediate and substantial hazard to public health, he/she may order that the license be immediately suspended and all food service operations immediately discontinued.

§ 80-6 Reinstatement of suspended license.

Any person whose license has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the license. Within five days following receipt of a written request, including a statement signed by the applicant that in his/her opinion the conditions causing suspension of the license have been corrected, the Health Officer shall make a reinspection. If the Health Officer shall find that the food service establishment is in compliance with the requirements of this article, he/she shall so certify in writing to the Board and the license shall be reinstated forthwith.

§ 80-7 Revocation of license.

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

For serious or repeated violations of any of the requirements of this article or for interference with the Health Officer in the performance of his/her duties, the license may be permanently revoked after opportunity for hearing has been provided by the Board. Prior to such action, the Board of Health shall notify the licensee in writing, stating the reasons for which the license is subject to revocation and advising that the license shall be permanently revoked at the end of five business days following the service of such notice, unless a request for hearing is filed with the Board by the licensee within such five-day period. A license may be suspended for cause pending its revocation or hearing relative therein.

§ 80-8 Hearing.

The hearings provided for in this article shall be conducted by the Board at the time and place designated by it. The Board need not make a record of such hearing beyond that required by the Right To Know Law. The Board shall make its finding based upon the evidence and testimony presented at the hearing and shall sustain, modify or rescind any official notice or order in issue at the hearing. The Board may make any further findings, orders or rulings it shall deem necessary and appropriate as a result of such hearing. A written report of the hearing decision shall be furnished to the licensee by the Board.

Commented [1]: Editor's Note: See RSA 91-A.

§ 80-9 Inspection of food service establishments.

At least annually the Health Officer shall inspect each food service establishment located in the City of Rochester and shall make as many additional inspections and reinspections as are necessary for the enforcement of this article.

§ 80-10 Access to establishments.

The Health Officer, after proper identification, shall be permitted to enter at any reasonable time any food service establishment for the purpose of making inspections to determine compliance with this article. He/she shall be permitted to examine the records of the establishment and to obtain pertinent information pertaining to food and supplies purchased, received, or used, and persons employed.

§ 80-11 Service of notices.

Notices provided for under this article shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the licensee or person in charge of the food service establishment or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the licensee. A copy of such notice and return receipt shall be filed with the records of the Health Officer.

§ 80-12 Food from food service establishments outside City.

Food from food service establishments from outside the City of Rochester may be sold within the City of Rochester if such food service establishment conforms to the provisions of this article or to substantially equivalent provisions. To determine the extent of compliance to such provisions the Health Officer may accept reports from responsible authorities in other jurisdictions where such food service establishments are located.

§ 80-13 Review of future construction.

When a food service establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a food service establishment, plans and specifications for such construction, remodeling or alteration, showing layout, arrangement and construction materials or work areas and the location, size and type of fixed equipment and facilities, shall be submitted to the Health Officer for approval with respect to compliance with this article before such work is begun. No building permit shall be issued until such approval has been given by the Health Officer.

Amendments effective upon passage.

Addendum D – Proposed Amendment – Adopted as Proposed

Amendments to Chapter 11 of the General Ordinances of the City of Rochester

THE CITY OF ROCHESTER ORDAINS:

That Chapter 11 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struckout~~ additions in RED):

~~Chapter 11~~ ~~Adult-Oriented Establishments~~

~~[HISTORY: Adopted by the City of Rochester 6-6-1995 as Ch. 25, Art. 4, of the 1995 Code.
Amendments noted where applicable.]~~

GENERAL REFERENCES

~~Amusements and entertainment— See Ch. 22.~~

~~Health and sanitation— See Ch. 94.~~

~~Nuisances— See Ch. 149.~~

~~Peace and good order— See Ch. 167.~~

~~Zoning— See Ch. 275.~~

~~§ 11-1 Legislative findings and purpose.~~

~~It is hereby found:~~

- ~~A. That there are a number of types of adult-oriented establishments which when established require special supervision from the City's public safety agencies in order to protect and preserve the health and welfare of the patrons of such establishments, as well as the health, safety and welfare of the citizens of the City.~~
- ~~B. Statistics and studies performed by a substantial number of cities and towns in the United States indicate that:~~
- ~~(1) Large numbers of persons, primarily male, frequent such adult-oriented establishments, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called "adult" motion pictures and/or videotapes and/or live entertainment;~~
 - ~~(2) Such closed booths, cubicles, studios and rooms have been used by patrons, clients or customers of such adult-oriented establishments for the purpose of engaging in certain sexual acts;~~
 - ~~(3) Male and female **P**rostitutes have been known to frequent such establishments in order to provide sex for hire to the patrons, clients or customers of such establishments within such booths, cubicles and rooms;~~
 - ~~(4) Doors, curtains, blinds and/or other closures installed in or on the entrances and/or exits of such booths,~~

~~cubicles, studios and rooms which are closed while such booths, cubicles, studios and rooms are in use encourage patrons using such booths, cubicles, studios and rooms to engage in sexual acts therein with prostitutes and/or with other members of the same sex, thereby promoting and encouraging prostitution and the commission of sexual acts which cause blood, semen and urine to be deposited on the floors and/or walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits; and~~

~~(5) The reasonable regulation and supervision of such adult oriented establishments tends to discourage such sexual acts and prostitution, and thereby promotes the health, safety and welfare of the patrons, clients and customers of such establishments.~~

~~C. The continued unregulated operation of adult oriented establishments, including, without limitation, those specifically cited in Subsection A of this section, is and would be detrimental to the general welfare, health and safety of the citizens of Rochester.~~

~~D. It is not the intent of the City, in enacting this chapter, to deny to any person rights to speech protected by the United States and/or State Constitutions, nor is it the intent of the City to impose any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, videotapes, books and/or other materials. Further, by enacting this chapter, the City does not intend to deny or restrict the rights of any adult to obtain and/or view any sexually oriented materials protected by the United States and/or State Constitutions, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of such sexually oriented materials may have to sell, distribute or exhibit such materials.~~

~~§ 11-2 Definitions.~~

~~For the purposes of this chapter, the following words and phrases used therein shall have the following meanings ascribed to them:~~

~~ADULT BOOKSTORE~~

~~An establishment having a substantial or significant **primary** portion of its stock and trade in books, films, videocassettes, or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below, and in conjunction therewith has facilities for the presentation of adult entertainment, as defined below, and including adult oriented films, movies or live entertainment, for observation by patrons therein.~~

~~ADULT ENTERTAINMENT~~

~~Any exhibition of any adult oriented motion pictures, live performance, display or dance or any type performance which has as a substantial or significant **primary** portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal services offered customers.~~

~~[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]~~

~~ADULT MINI MOTION PICTURE THEATER~~

~~An enclosed building with a capacity of fewer than 50 persons regularly used for presenting material~~

~~distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by patrons therein.~~

~~ADULT MOTION PICTURE THEATER~~

~~An enclosed building with a capacity of 50 or more persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by patrons therein.~~

~~ADULT ORIENTED ESTABLISHMENT~~

~~Includes, without limitation, adult bookstores, adult motion picture theaters, and adult mini motion picture theaters and further means any premises to which the public, patrons, or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, studios, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An adult oriented establishment further includes, without limitation, any adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio, or any other term of like import.~~

~~EMPLOYEE~~

~~Any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult oriented establishment.~~

~~ENTERTAINER~~

~~Any person who provides entertainment within an adult oriented establishment.~~

~~MINOR~~

~~Shall be deemed to be a person under the age of 18 years.~~

~~OPERATOR~~

~~Any person, partnership or corporation operating, conducting or maintaining an adult oriented establishment.~~

~~SPECIFIED ANATOMICAL AREAS~~

~~A. —Less than completely and opaquely covered:~~

- ~~(1) —Human genitals or pubic region;~~
- ~~(2) —Buttocks; or~~
- ~~(3) —Female breasts below a point immediately above the top of the areola; and~~

~~B. —Human male genitals in a discernibly turgid state, even if completely opaquely covered.~~

~~SPECIFIED SEXUAL ACTIVITIES~~

- A. ~~Human genitals in a state of sexual stimulation or arousal.~~
- B. ~~Acts of human masturbation, sexual intercourse or sodomy.~~
- C. ~~Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.~~
- D. ~~"Sexual activities" as used in this chapter, is not intended to include any medical publications or films or bona fide educational publications or films, nor does it include any art or photography publications which devote at least 25% of the lineage of each issue to articles and advertisements dealing with subjects of art or photography. Nor does this definition apply to any news periodical which reports or describes current events and which from time to time publishes photographs of nude or semi-nude persons in connection with the dissemination of the news. Nor does this definition apply to publications or films which describe and report different cultures and which, from time to time, publish or show photographs or depictions of nude or semi-nude persons when describing cultures in which nudity or semi-nudity is indigenous to the population.~~

~~§ 11-3 Requirements for adult-oriented establishments.~~

- A. ~~No operator or employee of an adult-oriented establishment shall allow or permit any minor to loiter in any part of such establishment, including parking lots immediately adjacent to such establishment used by patrons of such adult-oriented establishment.~~
- B. ~~Every adult-oriented establishment doing business in the City shall be well lighted at all times and be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be clearly visible from the common areas of the premises. Visibility into such booths, cubicles, rooms or stalls shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. It shall be unlawful to install enclosed booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purposes, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures, or other types of adult-oriented entertainment.~~
- C. ~~Each adult-oriented establishment shall be responsible for and shall provide that any room or other area used for the purpose of viewing adult-oriented motion pictures or other types of live entertainment shall be well lighted and readily accessible at all times and shall be continuously open to view in its entirety. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1.0 footcandle as measured at the floor level. It shall be the duty of the operator and its agents to ensure that the illumination described above is maintained at all times that any patron is present in the premises.~~
- D. ~~No apertures or openings of any kind shall be allowed to exist between any two booths, cubicles, rooms or stalls used for the purpose of viewing adult-oriented motion pictures or other types of adult entertainment.~~
- E. ~~Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.~~

~~F.—An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be subject to the penalties imposed by this chapter.~~

~~G.—All adult-oriented establishments shall be open to inspection at all reasonable times by the Rochester Police Department and/or employees of the Building, Zoning, and Licensing Services Department of the City. [Amended 10-15-2013]~~

~~§ 11-4 Violations and penalties.~~

~~A.—Any person, partnership or corporation who or which is found to have violated this chapter shall be fined a sum not exceeding one thousand dollars (\$1,000.) for each such violation.~~

~~B.—Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one hour of time shall be considered a separate offense for each hour of violation.~~

~~§ 11-5 Severability.~~

~~Should any court of competent jurisdiction declare any section, clause or provision of this chapter to be unconstitutional, such decision shall affect only such section, clause or provision so declared unconstitutional and shall not affect any other section, clause or provision of this chapter.~~

Amendments effective upon passage.

Addendum E – Proposed and Final Adoption

Amendments to Chapter 275 of the General Ordinances of the City of Rochester regarding Murals

THE CITY OF ROCHESTER ORDAINS:

That Chapter 275 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows

Purpose:

The City of Rochester understands the importance of adopting regulations for murals on private property and public property. The regulations for murals were formulated as a means to continue visual aesthetic while allowing for creative expression in appropriate locations and with sensitivity to the Historic Downtown nature of permitted areas. The established review criteria provide guidance concerning the compatibility and appropriateness of theme, location, design, placement, massing, scale, and materials of mural art with no intrusion into the artistic expression or the content of work.

Definitions

Vandalism: Any unpermitted writings, drawings, or other material posted on a public or private property. Typically this is unlawfully placed on property not owned by the person posting the material.

Mural: Any permitted art painted or applied directly on a building, structure, fence, or object within the public view that is located on public or private property.

Historic Wall Graphics: includes any graphic shown to be at least 60 years old that is recognized as distinctly important in the social science of history that records, studies, and explains the character and significance of past human activities in Rochester.

Sign: For definitions of numerous sign types see Article 29, Signage.

Zones where Murals are Permitted:

Murals are permitted by Conditional Use Permit in the following districts: Neighborhood Mixed Use, Downtown Commercial District, Office Commercial, Highway Commercial, and Granite Ridge Development District.

Approval for Murals:

A) General Requirements

The City of Rochester exempts public art, including murals, that are located outside the Historic Overlay District from Article 29: Sign Ordinance. However murals must be permitted and approved, per the process below.

Murals that include trademarks service marks, or other markings, colors, or patterns identifying or associated with business, profession, trade, occupation, may be permitted if it is shown that they are historic wall graphics on private property. Otherwise such will be considered commercial applications and shall be considered signs.

All applications shall include the property owner's signature indicating their approval of the submission of the application and of the mural.

All applications shall include a description of the artist's qualifications.

All application shall include a long-term maintenance plan.

Any mural without approval may be considered vandalism or a sign and enforced accordingly.

Rotating murals in which an applicant plans to apply more than one mural to the same wall within a year period require approval for each submission.

B) Murals on Public Property

Applicants shall submit a Public Art Install Application for review and approval by the City Council.

C) Murals on Private Property that is visible from the Public Right-of-Way:

- 1) Applicants shall submit a Public Art Install Application for review and approval by Arts and Culture Commission.
- 2) Once the Arts and Culture Commission has approved the install the applicant must check if they are in the Historic Overlay District. Any mural located within the Historic Overlay District that is visible from the public right-of-way shall be reviewed by the Historic District Commission and must comply with the Department of Secretary Interiors Standards for treatment for historic masonry buildings.
- 3) Once HDC approval is obtained the applicant shall apply for a Permit from the Planning Board.

Review Criteria:

A) Location

1. The mural complements and enhances the building.
2. The mural does not cover or detract from significant or character defining architectural features.
3. The mural enhances and complements the surround neighborhood.
4. The treatment and application of murals located on properties within the Historic District Overlay follows the National Parks Services Department of Secretary Interiors Standards for Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating,

Restoring and Reconstructing Historic Buildings Technical Preservation Services. The mural enhances the building or wall and is incorporated architecturally into the character of the Historic District.

5. Murals that are mounted onto buildings are done so in a way that prevents damage from moisture and condensation behind the attached panel. The hanging or anchoring of murals should be reversible.
6. The mural does not cover over the exterior surfaces of any building opening such as windows, doors and vents. This excludes any City sanctioned event that may involve temporary window paintings.

B) Design

1. Preparation to substrate must be identified and condition must also be addressed including surface conditions, fragility, permeability, and porosity.
2. The scale of the mural is appropriate for the building. Murals located on the primary street façade shall not exceed more than 25% of the area of façade of which the mural is located.
3. The mural enhances the surrounding neighborhood.
4. The mural is an original design.
5. The name, logo, or other indicator of the sponsor of the mural or the mural artist shall be discreetly displayed and shall not exceed 5% of the overall design.
6. Materials are of superior quality and intended for exterior use.
7. Use of reflective, neon, or fluorescent paints is limited.
8. Permanent installations have a weatherproof and vandalism resistant coating.
9. The mural contains no defamation, incitement, obscenity, illegal content, or images of child pornography. Obscene matter is that which the average resident of the City, applying community standards, would find, taken as a whole, appeals to a prurient interest and lacks serious literary, artistic, political, or scientific value.

Maintenance:

1. The maintenance of the mural is the responsibility of the property owner. In the case of murals on public property, maintenance shall be the responsibility of the organization that commissioned the mural.
2. The long-term maintenance plan must be prepared and include a plan for periodic touch up or repainting condition of the surface must be inspected.
3. The mural must be properly maintained to ensure that material failure, such as peeling paint, is corrected and vandalism is removed promptly in accordance with the Property Maintenance Code.
4. A long term maintenance plan for periodic touch up or repainting is required with submission.
5. Rotating murals (in which an applicant plans to apply more than one mural to the same wall within a year period) requires approval for each submission.

Enforcement

1. When an official interpretation is deemed necessary, the Zoning Administrator will determine if a proposal is a mural or sign. This decision may be appealed by the Zoning Board of Adjustment.

Amendments effective upon passage.

EXHIBIT A

INTERMUNICIPAL AGREEMENT **FOR DEVELOPMENT OF AN ADAPTIVE WATER QUALITY MANAGEMENT PLAN** **FOR GREAT BAY ESTUARY**

The parties to this Intermunicipal Agreement are the City of Rochester, the City of Dover and the City of Portsmouth and those additional municipalities and towns that have executed this Agreement in accord with its provisions below.

WHEREAS, the U.S. Environmental Protection Agency Region I (“EPA”) issued the Great Bay Total Nitrogen General Permit (NPDES Permit No. NHG58A000) on November 24, 2020 (the “General Permit”);

WHEREAS, municipalities and towns that own or operate any of 13 certain municipal wastewater treatment facilities covered by the General Permit may choose to Opt-In to the General Permit by April 2, 2021 and become permittees (the “Permittees”);

WHEREAS, the Cities of Rochester, Dover and Portsmouth operate wastewater treatment facilities in the Great Bay Estuary plan to Opt-In to the General Permit;

WHEREAS, the Cities of Rochester, Dover and Portsmouth are seeking to collaborate with each other, with other Permittees, with other communities in the watershed as well as with all involved regulators and stakeholders in an adaptive management framework addressing water quality and overall TN source reductions to the Great Bay estuary as described in Part 3 of the General Permit;

WHEREAS, the General Permit envisions the elements of an adaptive management framework for the Great Bay estuary as including (1) ambient water quality monitoring (2) pollution tracking (3) pollution reduction planning and implementation, and (4) review of significant scientific, methodological, and protective target nitrogen load issues of importance to the Permittees;

WHEREAS, the General Permit describes adaptive management implementation as including collaboration between Permittees and EPA, the State of New Hampshire through its Department of Environmental Services, (“NHDES”), and public, private, commercial, and other stakeholders including the Conservation Law Foundation (“CLF”);

WHEREAS, Permittees are required by the General Permit to submit a detailed proposal on or before July 31, 2021; and

WHEREAS, through this Intermunicipal Agreement, the Permittees seek to implement the Intermunicipal Plan For Adaptive Water Quality Management In the Great Bay Estuary dated December 14, 2020 (“Plan”) and included as Attachment 1.

WHEREAS, RSA 53-A:1 permits "...municipalities and counties to make the most efficient use of their powers by enabling them to cooperate with other municipalities and counties on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities";

THEREFORE, pursuant to RSA 53-A:3, the Permittees enter into this Agreement for the purposes described above as follows:

I. DEFINITIONS

- A. "Contribution Formula" that mechanism for allocating costs among the Members who are Permittees.
- B. "Executive Board" that administrative and management body charged with the responsibilities described in paragraph V.
- C. "Member" that municipality or town in the Great Bay estuary watershed, whether located in New Hampshire or Maine, that has indicated its intent to be a part of this Agreement by executing Attachment 2.
- D. "Recommended Annual Contribution for Monitoring" that amount recommended annually by the Executive Board and adopted by the Members for water quality monitoring and analysis.

II. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to implement the Plan to improve water quality in the Great Bay estuary and to take such other and further collaborative action which may be agreed upon to fulfill or assist Permittees' compliance with the General Permit. No separate corporate entity is being created as this instrument is intended to assist with joint administrative and executive functions associated with implementation of the Plan and to generate and coordinate funding recommendations necessary to implement the Plan.

III. DURATION OF AGREEMENT

The term of this Agreement runs from March 1, 2021 to February 28, 2026. This Agreement may be renewed for an additional term to be determined by vote of the majority of the Members.

IV. MEMBERS

- A. Membership. The initiating Members to this Agreement are: the City of Rochester acting through its City Manager; the City of Dover acting through its City Manager and the City of Portsmouth acting through its City Manager. Additional Members may be added to this Agreement by executing Attachment 2 and identifying the acting authority (such as Town Manager, Town Administrator, Sewer Commission) and providing an executed Attachment 2 to the Executive Board. Any municipality or town in the Great Bay estuary watershed, whether located in New Hampshire or Maine, is eligible to be a Member.

The Members for purposes of this Agreement shall be called the Municipal Alliance for Adaptive Management.

- B. Organizational Meeting There will be an initial meeting of Members after the Opt-in date of April 2, 2021 but before April 30, 2021 to be set by the City Manager of the City of Rochester. The purpose of the meeting will be to have the Members vote on appointing up to two At-Large Members to the Executive Board and setting the recommended 2021 Contribution Goal. The Executive Board is further defined in Section V. Meetings are discussed further in Section VI.

V. **EXECUTIVE BOARD**

- A. Purpose and Authority of Executive Board. The Executive Board has the authority to enter into contracts on behalf of the Municipal Alliance for Adaptive Management in order to implement the Plan, to receive and manage funds by way of the fiscal agent (defined below), to approve bills and disbursements, to make funding recommendations and to circulate documents necessary in order to keep Members informed, to set the annual meeting of the members, to participate in discussions with stakeholders, and to conduct such other activities as the Executive Board deems necessary and proper to carry out the purposes of this Agreement. The Executive Board does not otherwise have authority to acquire or hold items of personal or real property.
- B. Officers. Beginning with its first meeting and then annually thereafter, the Executive Board shall elect a Chair, Vice Chair and a Clerk from the members of the Executive Board.
- C. Membership of Executive Board. The Executive Board shall be composed of three Standing Members consisting of the city managers of the City of Rochester, the City of Dover, and the City of Portsmouth. The Members may select up to two additional At-Large Members of the Executive Board from other communities.

At-Large Members of the Executive Board members shall be nominated at the Members' Organizational Meeting and serve through the expiration of

the term of this Agreement. If this Agreement is renewed by the Members for an additional term, the Members will elect/re-elect At-Large Executive Board members at the meeting in which an extension of the term of this Agreement is made. At-Large Executive Board Members must be Permittees.

There are no term limits for Executive Board members. Executive Board members may appoint designees if that designee has decision-making authority.

In the event any vacancy occurs for At-Large Executive Board Members, the Executive Board shall within thirty (30) days of the vacancy call a meeting of the Members so that the Members may select a replacement.

In the event more than three Members are communities from Maine, those members from Maine may request that the Executive Board be expanded to include a Member from Maine, which request will be granted provided there is an agreement on a formula for contribution to the activities contemplated by this Agreement.

- D. No Personal Liability. Executive Board members and its officers shall not be personally liable for any debt, liability or obligation of the Municipal Alliance for Adaptive Management. All persons having any claim against the Municipal Alliance for Adaptive Management may look only to its funds for payment of any such contract or claim, or for the payment of any debt, damages, judgment or decrees, or of any money that may otherwise become due and payable to them from the Municipal Alliance for Adaptive Management.

VI. **MEETINGS**

- A. Annual meetings of the Members. After the initial Organizational Meeting a meeting of the Members shall be held at least annually in the last quarter of each calendar year. At the Annual Meeting the Members shall vote on the Recommended Contribution for the following calendar year.

Annual meetings of the Members shall be subject to the requirements of public meetings as required by NH RSA 91-A. Members shall have the ability to participate telephonically and by video conference as may be permitted under NH RSA 91-A.

Each Member is afforded one vote in all matters that require action. A majority vote of those Members present and voting shall be needed to act upon any business associated with this Agreement. One third of the total Membership shall constitute a quorum.

- B. Executive Board Meetings. The Executive Board shall meet at least biannually or more frequently at the call of the Chair at such times and places that are mutually convenient. The meetings of the Executive Board are not public meetings as that term is defined by NH RSA 91-A.

Voting. If there are three Executive Board Members, a quorum is two (2) Members. If there are five or more Executive Board members a quorum is three Members. All votes will pass by simple majority.

Attendance. Attendance for purposes of quorum and voting may be by telephone or video conference. A record of the actions taken by the Executive Board shall be distributed to the Members within ten (10) calendar days of any meeting. Distribution may be by e-mail.

VII. WORK AND COST -SHARING

- A. Initial Water Quality Work. The Cities of Rochester, Dover and Portsmouth identified an initial scope of work necessary to initiate the adaptive management opportunity identified in Part 3 of the General Permit. Water quality specialists within the engineering firm of Brown and Caldwell were solicited to submit a proposal to complete the scope of work. Due to the time constraints imposed by the Permit and the schedule of other stakeholders including PREP to develop a water quality monitoring plan for the upcoming sampling season, the three cities entered into a memorandum of agreement to share equally the costs of the work described. The Memorandum of Agreement and the Scope of Work is set forth at Attachment 3. This paragraph is for informational purposes only and will not form a part of a request for financial contribution from other Members.
- B. Participation in Water Quality Monitoring, Data Gathering and Analysis. Members are expected to participate in the planning and cost of ambient water quality monitoring, data gathering and water quality analysis along with other stakeholders ("Annual Contribution for Monitoring"). The recommended formula for such cost sharing for Members who are Permittees is set forth in Attachment 4 ("Contribution Formula"). The Contribution Formula may be amended by a majority vote of the Members who are also Permittees.
- C. Recommended Annual Contribution for Monitoring. The Annual Contribution for Monitoring, in the aggregate for all Members, shall be no less than \$200,000 and no more than \$500,000. The Executive Board shall develop a Recommended Annual Contribution for Monitoring to be presented to the Members at the Members Annual Meeting in the fall of each calendar year. The Members who are also Permittees shall vote on and set the Recommended Annual Contribution for Monitoring. Members shall make good faith efforts to budget and appropriate the funds in accord

with the Recommended Annual Contribution for Monitoring and Contribution Formula adopted at the Members Meeting.

- D. Other Work. The Executive Board may make such additional recommendations to the Members to finance other work consistent with the Plan. Such other work if voted upon by the Members shall be financed according to the Contribution Formula.
- E. Fiscal Agent. The Members agree that the City of Rochester ("City") will be the fiscal agent for Municipal Alliance for Adaptive Management, with the authority to collect, hold, invest, disperse and pay funds held on behalf of the Municipal Alliance for Adaptive Management at the direction of the Executive Board.
- F. Accounting for Funds. The Executive Board with assistance from the Fiscal Agent shall provide to the Members an annual accounting of monies received, spent, and obligated, and a final accounting upon the termination of the Agreement.
- G. Funds upon Termination. Upon termination of this Agreement, no individual employee or member of the Executive Board shall be entitled to a share in the distribution of any funds upon dissolution. Upon termination, the funds shall be distributed to each Member at the time of distribution in proportion to the percentage of its contribution relative to the total contribution of all the Members made in the year of distribution.

VIII **POLLUTION TRACKING**

The Executive Board anticipates making recommendations to Members to participate in certain pollutant tracking programs. Members agree to make good faith efforts to participate in such pollution tracking programs.

IX. **TERMINATION**

- A. Mutual Agreement. This Agreement may be terminated prior to the end of the term upon mutual agreement of the Members.
- B. Withdrawal of a Member at the Conclusion of the Term. A Member wishing to withdraw from the Agreement at the end of the term and not interested in renewal shall give written notice to the Executive Board at least three months before the expiration of the term. The Executive Board will notify the other Members of any Member's withdrawal through their authorized agents who have executed this Agreement.
- C. Withdrawal of Member Prior to Expiration of Term. A Member wishing to withdraw from the Agreement before the end of the term shall be responsible for its share of any outstanding Recommended Annual Contribution for Monitoring for the year in which the terminating Member

gives notice of termination . Notice of withdrawal shall be in writing from the Member to the Executive Board at least thirty (30) days prior to termination. The Executive Board will notify the other Members of any Member's withdrawal through their authorized agents who have executed this Agreement.

- D. Appeal of General Permit. This Agreement is being entered into prior to the expiration of the period of appeal of the General Permit. In the event of any appeal of the General Permit, any Member may withdraw from this Agreement without penalty as described in paragraph C..

X. ISSUANCE OF BONDS

The Members do not intend to issue bonds jointly as permitted by RSA 53-A:6. Should the Members decided to do so at a later time, an amendment to this Agreement shall be undertaken to specify those items required by RSA 53-A:6, II.

XI. OTHER

- A. Amendment. This Agreement may be amended only by written Agreement signed by two-thirds of the Members.
- B. Authority. All Members undersigned represent and agree that they have the authority to enter into this Agreement.
- C. Notices. Notices for each party shall be in writing and mailed to the individuals listed in Exhibit B which is attached and incorporated hereto.
- D. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- E. Governing Law. This Agreement shall be governed by and interpreted in accordance with the provisions of the laws of the State of New Hampshire.
- F. Separate Document. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- G. Compliance with RSA 53-A:
- Pursuant to RSA 53-A:3 IV, this Agreement does not relieve any of the Members of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance thereof by the Executive Board. Performance may be offered in satisfaction of the obligation or responsibility.

- Pursuant to RSA 53-A:3 V, this Agreement shall be submitted to the NH Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state.
- Pursuant to RSA 53-A:4, this Agreement shall be filed with the clerk of each municipality and with the NH Secretary of State.
- Pursuant to 53-A:5, this Agreement shall be submitted to the NH Department of Revenue Administration as a condition precedent to its entry into force.

This Submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the NH Attorney General.

Dated this _____ day of _____, 2021.

CITY OF ROCHESTER

By: _____
Blaine Cox, City Manager

Dated this _____ day of _____, 2021.

CITY OF DOVER

By: _____
J. Michael Joyal, Jr., City Manager

Dated this _____ day of _____, 2021.

CITY OF PORTSMOUTH

By: _____
Karen S. Conard, City Manager