

Codes and Ordinances Committee

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



CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, March 3, 2022

31 Wakefield Street, Rochester, NH

Council Chambers

6:00 PM

Agenda

1. Call to Order
2. Public Input
3. Acceptance of the Minutes
 - 3.1 February 3, 2022 *motion to approve* P. 3
4. **Discussion:** Chapter 80 – Outdoor Dining ordinance P. 37
5. Proposed Amendments to Chapter 7-58 “Audit of City Accounts” and Chapter 7-80 “Bonds Required” ***Updated 2/28/22** P. 41
6. Proposed Amendments to Chapter 7-63 of the General Ordinances of the City of Rochester “Economic Development Special Reserve Fund” P. 43
7. Proposed Amendments to Chapter 7-64 of the General Ordinances of the City of Rochester “Conservation Fund” P. 45
8. Other
9. Adjournment

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City Clerk's Office

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Skip Gilman
Councilor Ashley Desrochers
Councilor Steve Beaudoin
Councilor Tim Fontneau (excused)



Others Present

Mayor Paul Callaghan
Terence O'Rourke, City Attorney
City Councilor Chris Rice
City Councilor John Larochele
City Councilor Don Hamann
Jenn Marsh, Asst. Director of Economic Development
Robert Benoit, Mitchell Hill BBQ
Marc Saxby, Collectiques

CODES AND ORDINANCES COMMITTEE
Of the Rochester City Council
Thursday, February 3, 2022
Council Chambers
6:00 PM

Minutes

1. Call to Order

Chair Lachapelle called the Codes & Ordinances meeting to order at 6:00 PM. Deputy City Clerk Cassie Givara took a silent roll call. All Councilors were present except for Councilor Fontneau, who was excused. Additionally, Mayor Callaghan, Councilor Larochele, and Councilor Rice were present.

2. Public Input

Robert Benoit, owner of Mitchell Hill BBQ, addressed the Committee in regards to outdoor dining. Mr. Benoit spoke about the amount of money his business spent in order to accommodate comfortable and safe outdoor dining for patrons. He spoke in support of extending or making permanent the provisions which had been put into place by the City to allow outdoor dining in front of establishments.

Marc Saxby, owner of Collectiques, spoke in support of the permanent establishment of outdoor dining. He suggested that the removal of the trees lining the street downtown would allow plenty of room for sidewalk dining in addition to room for pedestrians and ADA

compliance.

Chair Lachapelle stated that he supported outdoor dining downtown and outlined the process which could be taken with the suggestions made this evening.

Councilor Rice spoke about the countless hours of work and discussion which had gone into the outdoor dining ordinance; both by City Staff and and the Codes & Ordinances Committee over the past couple years. He agreed that outdoor dining brings charm and vibrancy to the downtown area and emphasized the need to continue the discussion on the issue.

3. Acceptance of the Minutes

3.1 December 2, 2021 *motion to approve*

Councilor Beaudoin **MOVED** to accept the minutes of the December 2, 2022 Codes & Ordinances Committee meeting. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. **Discussion:** Chapter 80 – Outdoor Dining ordinance

Jenn Marsh, Assistance Director of Economic Development, stated that she had reached out to the downtown businesses to get an idea of their outlook on outdoor dining and to inform them that it would be discussed at this meeting. Ms. Marsh gave an overview of the work that had taken place over the past several years in regards to outdoor dining. She stated that the majority of businesses wanted to continue with outdoor dining; however, some businesses had felt that outdoor dining utilizing the areas originally intended for parking spaces had been a lot of work and instead wanted to try using the sidewalks if possible. She stated that the dining within the parking spaces was something new that had come about due to COVID, however, there is nothing prohibiting its continuation. She reported that 28 restaurants, both those using public and private property, had taken part in outdoor dining since it began. Ms. Marsh clarified that private properties do not fall under this ordinance and they would instead need to submit project narratives and go through the process of a site review or City approval. She stated that the majority of other non-food related businesses downtown had been supportive of outdoor dining; although several had expressed concerns with patrons needing to walk longer distances to reach their establishments due to the dining areas taking up parking spaces.

Ms. Marsh stated that applications for outdoor dining are due by March 1st for staff review before going to the City Manager for approval.

Chair Lachapelle asked if any changes would be needed to the Outdoor Dining ordinance in order to allow a restaurant to place tables on the sidewalks. Ms. Marsh indicated that there would be no changes necessary to the ordinance to allow for this use. She did report, however, that the liquor commission would be doing inspections this year in addition to the existing City inspections.

Ms. Marsh summarized a couple things that could potentially be changed within the ordinance: She suggested that the definition of “barrier” be included. She also suggested that

there be clarification on the height restrictions of barriers. Currently in the ordinance, there is a minimum of 30” and a maximum of 36”; however, it could be clarified whether this height is for the barrier alone or if it could include decorative elements or planters along the top of said barriers. Ms. Marsh stated that City staff wanted to include a requirement for a special events permit for not only outdoor entertainment, but also for outdoor games in order for staff to be able to review these activities. She also stated that the Fire Department had given input that if there is outdoor dining on the sidewalks, there should not be allowance for open flames or heaters due to the limited space. Mayor Callaghan asked if it would be suggested that a business receive a special events permit each time they wanted to offer a game, such as corn hole, or if it would be a one-time application. Assistant Director Marsh said that with the outdoor entertainment, it had been suggested that the permit be applied for and issued monthly, and she said the outdoor games permit was envisioned in the same way. She stated that the special events permit application has no associated fees and is very simple to complete.

Chair Lachapelle asked Assistant Director Marsh if she would be able to bring recommendations back to the committee in regards to height requirements. He agreed with Mr. Saxby’s comments during public input that there could be a special committee formed to evaluate the downtown for opportunity for improvements.

Councilor Beaudoin inquired about the requirement in the ordinance for a 5-foot radius of clear space in front of a restaurants front door as well as a 36” sidewalk width, and questioned if that would prohibit the placements of tables in front of establishments due to limited space. Ms. Marsh stated that her understanding of this stipulation was that it was a requirement in case of emergencies for entering and exiting the establishment unobstructed, as well as for handicap access; however, outside that radius, tables could be placed on the sidewalk. Councilor Beaudoin asked if “barriers” were defined within the document. Ms. Marsh said that there is mention of “enclosure systems” but they are not defined which should be rectified.

Councilor Desrochers spoke in support of accommodating the future of outdoor dining in Rochester and expressed interest in serving on the aforementioned committee.

Chair Lachapelle asked for clarification on the sidewalk width requirement and whether it was 36” as stated earlier, or if the law required 48”. City Attorney O’Rourke indicated that the ordinance references the ADA requirements as opposed to a specific height, so that is the information which would be deferred to as needed. Councilor Rice read the ADA specifications for sidewalk dimensions.

Councilor Beaudoin referenced the 36” minimum height which had been discussed by Mr. Benoit during public input. He stated that in the City ordinances it requires a 36” *maximum* height. He suggested this be revised for clarity. Councilor Rice stated that the State liquor commission has requirements for enclosures and space surrounding outdoor dining areas, and these requirements would need to be written into the ordinance. Ms. Marsh reported that the ordinance does already include requirements to comply with State liquor licensing and food licensing. Councilor Rice reiterated that the City should ensure the correct measurements are listed within the ordinance to prevent any future issues.

5. Review of the City Council Rules of Order

City Attorney O'Rourke directed the Committee to the portion of the Rules of Order regarding remote participation. He stated that in the current format, there is quite a bit of technical language, but City staff had felt that there should be more practical direction for those needing to connect remotely. He stated that the portions which were suggested to be removed referenced entire sections of the State RSA, which would be followed without question because it is already the law and it is not necessary to state this within the Rules of Order.

Councilor Beaudoin directed the Committee to page 2, section C, subsection 1, which starts "with the exception of an emergency..." in regards to why a member may need to connect remotely and the time requirement for said member to notify the Chair. He stated that the term "emergency" is not defined and, the reasons given for connecting remotely, if considered emergencies, could be too broad. There was a discussion of the wording and it was clarified that members would need to notify the Committee Chair of an absence at least two days prior *except* in the case of an emergency. Attorney O'Rourke said that, if needed, the Chair could suspend the rules to allow any other exceptions.

Councilor Hamann asked if there was a limit to the number of members who would be able to connect remotely for any one meeting. Attorney O'Rourke stated that in the absence of a declared emergency, there would just need to be a quorum physically present; depending on the board or committee, there could be multiple members permitted to connect remotely.

Councilor Beaudoin referenced the use of the word "impractical" as used in subsection 6 and felt that it should be changed to "impracticable." Attorney O'Rourke stated that the State RSA uses the word "impractical" which is why it was used in the Rules of Order.

Councilor Desrochers suggested that there be a ninth permissible reason added to the list for remote connections, which would state "At the discretion of the Chair." Attorney O'Rourke said that using the verbiage "As determined by the Chair" would be keeping with the RSA and could be added as an additional reason if the Committee desires.

Chair Lachapelle asked for a motion to accept the changes and deletions of section 1.4 "Remote Participation during Council and Board Meetings." Councilor Desrochers **MOVED** to recommend the changes in section 1.4, as discussed above, to full Council. Councilor Beaudoin seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Attorney O'Rourke directed the Committee to section 1.5 "Order of Business." He stated that in review of many other NH communities' order of business, there was not an agenda item for "other" and it does not seem to be defined anywhere to give direction on which items should be covered under this section. He suggested removing "other" from the order of business to eliminate the Chair of a committee needing to determine, without notice, the terms of what should be discussed under "other." He clarified that there is already a process in place for Committee member to add items to the agenda. This process should be followed for the sake of transparency and to avoid something substantive from being brought up without prior notice to allow other members and the public to attend and respond. Attorney O'Rourke said the more minor items such as school fundraisers and similar announcements, which occasionally occur under "other", could be brought up under "Communications from the City Manager" or

“Communications from the Mayor.” Chair Lachapelle pointed out that if the item qualifies, it can also be submitted ahead of time to be placed under “Presentation of Petitions and Council Correspondence.”

Councilor Beaudoin questioned the submission date for meeting materials, which is being moved from 7 days prior to a meeting to 11 days prior to the meeting, which would potentially make items being submitted for the agenda (which would have previously fallen under “other”) more onerous. He felt it was a disservice to constituents, whose concerns voiced to a Councilor past the submission date, would need to wait until the next months’ meeting to be addressed on the agenda. He also stated that in order to call for a Special Meeting and receive a 2/3 vote of Council, the time to do so would be under “other.” Chair Lachapelle clarified that to call for a Special Meeting, the request would need to be submitted in writing to the City Clerk’s office with signatures by a 2/3 majority of Council.

Chair Lachapelle stated that he felt that submitting items for the agenda instead of utilizing “other” would allow more adequate time to research the issue, confer with department heads, and potentially refer the item to an appropriate committee for review prior to coming to City Council. Councilor Beaudoin acknowledged that for motions requiring Council action, items could be raised under “New Business,” however for discussion items there would not be opportunity if “other” were removed.

Attorney O’Rourke referenced section 4.1 “Agenda Preparation” which stipulates when submission would need to be received to appear on the agenda. He explained how other communities formatted their agendas to allow discussion items and action to be placed under the name of the Council member submitting the issue. This would allow supporting documentation to be disseminated for review prior to a meeting, which is not currently the case with items brought up without notice under “other.”

Councilor Larochelle acknowledged that “other” is potentially used to air grievances and bring up items that could be addressed in a more efficient manner. He suggested that Councilors bring these discussions to the appropriate Committee meetings where there can be a more open dialogue, and at which time recommendations can be made to full Council. Mayor Callaghan stated that if there were last minute concerns or announcements, if he is notified prior to the meeting he would allow these items to be discussed under “Communications from the Mayor.”

Councilor Rice stated that his understanding of “Council correspondence” is communications coming to Council from constituents or outside sources, not correspondence being conveyed by a Councilor. He suggested that item 8 in the order of business could be changed to “Presentation of Petition ~~and~~; Council Correspondence, *and Announcements.*”

Councilor Hamann asked if the removal of “other” would be for subcommittees as well as City Council. Attorney O’Rourke indicated that subcommittees typically follow the Council Rules of Order. Councilor Hamann stated that at the Committee level, “Other” is utilized much more regularly, giving each member an opportunity to bring up items that may have been received from constituents and to open discussions. Attorney O’Rourke stated that each board and commission would have the ability to vote on their own order of business and maintain “other” if desired. Councilor Larochelle stated that the City Council would still be able to utilize

“other” if the rules were suspended and it received a 2/3 majority vote.

Councilor Beaudoin **MOVED** to recommend to full Council the removal of #14 “Other” under section 1.5 “Order of Business.” Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Rice reiterated the potential of adding “Announcements” to order of business #8, “Presentation of Petition and Council Correspondence.” It was clarified that, as proposed, any announcements could be approved by the mayor or city manager prior to the meeting and stated under their communications on the agenda.

Councilor Beaudoin referenced the fact that the agenda is being created 11 days prior to the meeting and asked, if he had an item which came up after the creation of the agenda, if it could be submitted to the Mayor to be handled under “Communications.” Attorney O’Rourke said if the item required Council action, it would require a 2/3 majority vote to be added to the agenda. Otherwise, discussion items and announcements could be brought up by the Mayor or City Manager.

Attorney O’Rourke directed the Committee to section 4.1 “Agenda Preparation” and the change, referenced by Councilor Beaudoin earlier in the meeting, which will require agenda items to be submitted eleven days prior to the meeting as opposed to 7 days. It was explained that this proposed change was due to scheduling conflicts with members of the agenda settings committee. Councilor Rice suggested a change to have the agenda and packet distributed to Councilors seven days prior to the meeting as opposed to five days. He said that this would allow Councilors picking up paper versions of the packet from City Hall more time to obtain the packet and review. Chair Lachapelle and the City Attorney stated that the City Clerk’s office is often waiting on department reports and other backup in order to complete and post the packet; it would likely not be plausible to complete the process any sooner. Councilor Rice stated that the City Manager could enforce these submission guidelines in order to rectify these delays. Mayor Callaghan stated that the City Manager is implementing a new uniform report format for some of the department’s reports, and this may alleviate some of these delays. Attorney O’Rourke advised that, rather than voting changes into the Rules of Order regarding deadlines for submissions, this should be addressed by the Mayor and City Manager with City staff. If the policy is changed by the City Manager, these changes for the Rules of Order could potentially be voted on in the future. Councilor Rice questioned the requirement for Councilors to submit items 11 days prior to a meeting if they do not receive the packet until 5 days prior.

Councilor Desrochers referenced edits to the Rules of Order which had been submitted by a constituent, one of which asked for clarity on whether number of days when an item is due are calendar days or business days. Attorney O’Rourke stated that the way the law is written, “days” are presumed to be calendar days unless otherwise specified. Councilor Beaudoin **MOVED** to change the wording to “calendar days” in two sentences in section 4.1 “Agenda Preparation” and to change the meeting submission deadline from seven days to eleven days. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Attorney O’Rourke directed the Committee to section 4.12 “Ordinances and Resolutions.”

He explained that the practice of the Council is to read resolutions by title only; rarely are they read in their entirety. The recommendation being made is that, in order for a resolution to be read in its entirety, there would need to be a motion and a 2/3 vote in order to do so. Otherwise the presumption would be that it is being read by title only. With this process, the Mayor would read the resolution title as it appears consecutively on the agenda without a motion to do so by Council. It would then be seconded by a Councilor and voted upon. Councilor Desrochers **MOVED** to recommend the addition of the paragraph to section 4.12 as detailed by the City Attorney above. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Attorney O'Rourke recommended that section 4.13 "Codes and Ordinances Committee, Ordinance Enrollment" be removed in its entirety. He reported that this is not a process that has taken place for many years and detailed why it is no longer necessary to retain this verbiage. It was discussed how, with many of these changes, there would need to be revisions made to numbering and format. Councilor Desrochers **MOVED** to delete section 4.13 "Codes and Ordinances Committee, Ordinance Enrollment" in its entirety. Councilor Beaudoin seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Chair Lachapelle directed the Committee to section 1.1 "Regular Meetings." He made a recommendation that the start time of the meetings be moved from 6:30 PM to 6:00 PM. He said that although there had been a request from a Councilor to move the start time later, to 7:00 PM, he felt that it would be more beneficial for City Staff facilitating and working at the meetings to have an earlier start after the end of their work day. Councilor Rice agreed that a 6:00 PM start was likely better for City staff and it could potentially alleviate late adjournments after longer meetings. Chair Lachapelle **MOVED** to recommend the revision to section 1.1 "Regular Meetings" to change the start time of meetings from 6:30 PM to 6:00 PM. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Beaudoin said that it was beneficial for Councilors to receive backup documentation for the non-public sessions; however, it would be better to receive these materials at the same time the Council receives the public meeting packet, 5 days prior to the meeting, in order to have adequate time to review and research. He read the following suggested verbiage for addition:

"Non-public sessions shall be held in strict adherence to the requirements of NHRSA 91-A:3. Items being considered for action in a non-public session shall be submitted and dealt with in accordance with Council Rules of Order sections 4.1, 4.2, and 4.3. Therefore, any supporting documentation, contracts, or proposals being considered during non-public session shall be submitted to council members at least five days in advance of consideration. Such documentation shall be placed in a sealed envelope separate from the normal agenda and clearly marked "confidential material not for public disclosure." This requirement shall not apply to non-public session held for emergency actions pursuant to NH RSA 91-A:3, I (i)

It was discussed that the above section may need some additional editing, as the portions referencing the RSA are unnecessary because these laws are already followed. Additionally, it was stated that the verbiage should specify "calendar days" in this section as well. Attorney

O'Rourke suggested that this verbiage could be interspersed as the new section 1.3 "Non Public Session." Councilor Hamann stated that often times, non-public sessions are held to handle items requiring immediate action and may have only come up within a day or two prior to the meeting; therefore, there would be no way to distribute the materials 5 days in advance. Chair Lachapelle stated that, when needed, the Council could suspend the rules for these situations. Councilor Beaudoin **MOVED** to recommend the addition of a new section 1.3 as listed above. Councilor Desrochers seconded the motion. Councilor Larochelle expressed concern that if this requirement is put into place, the Council could potentially receive *less* information if City staff is rushing to gather materials to meet the deadline. Chair Lachapelle reiterated that there could be a suspension of the rules for urgent matters that need to be added past the submission deadline. Otherwise, if there is a known item for non-public session planned for the agenda, staff could adhere to these submission deadlines.

Councilor Beaudoin requested that the Deputy City Clerk re-read the passage so revisions and additions could be made to potentially rectify the concerns raised by Councilor Larochelle. Ms. Givara re-read the previously cited passage. Councilor Beaudoin suggested the following change: "Therefore, ~~any~~ **all** supporting documentation..." Councilor Larochelle asked if this change would preclude the Council from receiving a PDF version of the packet. Attorney O'Rourke stated that in use of the term "confidential," the definitions would apply regardless of the format of the packet. He further explained how the materials could be appropriately redacted if there were RSA 91:A requests for the associated matters. Councilor Larochelle suggested adding the verbiage "in a confidential manner" to the paragraph. Councilor Rice recommended the following revision: Such documentation shall be ~~placed in a sealed envelope separate from the normal agenda and~~ clearly marked "confidential ~~communications~~ material not for public disclosure." The complete changes appear below:

~~"Non public sessions shall be held in strict adherence to the requirements of NH RSA 91-A:3. Items being considered for action in a non-public session shall be submitted and dealt with in accordance with Council Rules of Order sections 4.1, 4.2, and 4.3. Therefore, **all** ~~any~~ supporting documentation, contracts, or proposals being considered during non-public session shall be submitted to council members at least five **calendar** days in advance of consideration. Such documentation shall be ~~placed in a sealed envelope separate from the normal agenda and clearly marked~~ distributed **in a confidential manner** material not for public disclosure." This requirement shall not apply to non-public session held for emergency actions pursuant to NH RSA 91-A:3, I (i)~~

The **MOTION CARRIED** by a unanimous voice vote.

Councilor Beaudoin stated that Council does not formally accept their non-public meeting minutes. He requested a change to allow Council to review these minutes prior to a vote to release them to the public to ensure accuracy. Attorney O'Rourke summarized why certain meeting minutes are sealed and in which circumstances they may be released. He clarified that this is dictated by State RSA and stated that all the City's non-public meetings which are eligible to be unsealed have been unsealed. Attorney O'Rourke detailed the current process in place for Councilors to review the minutes prior to the vote to unseal.

Chair Lachapelle referenced recommended changes submitted by Councilor Gray, the first

of which is section 1.1 to change the meeting start time from 6:30 PM to 7:00 PM. It was determined that this had already been discussed earlier in the meeting and an alternate recommendation was made. Councilor Gray's second suggestion had been a rewrite of the remote meeting procedures, which had also been covered earlier in the meeting with recommendations from the City Attorney. Councilor Gray's final suggestion was a change to section 2.1 to "define decorum and include word about personal attacks being prohibited." Chair Lachapelle stated that there was a great deal of verbiage regarding definition of decorum in the Code of Ethics, which had been voted down by the previous Council. He cautioned against defining each individual aspect within the Rules of Order and stated that some of these terms are subjective, differing from member to member. Attorney O'Rourke agreed that this information was already included within the Code of Ethics which Committee members and City staff had worked on diligently. He stated that he would distribute a copy of the Code of Ethics to the current Codes and Ordinance Committee and City Council for review and potential recommendations for a future meeting. Councilor Beaudoin reiterated that "decorum" could be a subjective term and Robert's Rules allows for the Chair's discretion in determining and enforcing decorum.

Councilor Rice directed the Committee to section 4.19 "Functions of the Public Safety Committee" which currently reads "Functions shall include: Police, Fire, Parking, Traffic, Street Signs, Animal Control, and Public Health Services." He stated that he would like to add "and Ambulance Services" to the end of the sentence now that there is a contract with Frisbie and the City is receiving a quarterly report from them. He indicated that, as Public Safety Chair, he intends to review this report with the Committee and believes that review of ambulance services should be contained within the Rules of Order. Councilor Beaudoin agreed that having this verbiage in the Rules of Order would allow an appropriate committee for review if the City does opt to look into changing ambulance service in the future. Councilor Beaudoin **MOVED** to recommend the change outlined by Councilor Rice as follows: "Functions shall include: Police, Fire, Parking, Traffic, Street Signs, Animal Control, Public Health Services, and Ambulance Services." Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Chair Lachapelle referred the Committee to the document of edits which a constituent named Bill Elwell had submitted. He stated that the large majority of the edits were formatting and grammatical changes which did not need to be reviewed individually. Mr. Elwell had questioned the portion of section 1.2 regarding when the Mayor should be seated and call to order a Special meeting. Mr. Elwell felt this should be the same for a Regular meeting. Attorney O'Rourke clarified that there are potentially non-meetings or subcommittee meetings prior to a Regular meeting, and the Chair may not be able to be seated and call to order at an exact time.

Chair Lachapelle directed the Committee to Mr. Elwell's suggestion on section 1.6 "Public Hearings" subsection 4, regarding adding a five-minute time limitations on public speakers. There was a discussion in Committee regarding the legality of imposing a time limit on speakers. Councilor Laroche recalled that he had formerly enacted the 5-minute limit during public input of workshops; however, he thought that there could not be limitations within a public hearing setting. Attorney O'Rourke stated that there is no such stipulation in the law that says someone addressing a committee can speak indefinitely; however, the consensus of the Committee was that there should not be time limits imposed on speakers at a public hearing,

regardless of how long they wished to speak and on how many items.

Attorney O'Rourke stated that if the Committee felt it was appropriate, the City Clerk's office could be given the authority to go through the document and make all grammatical and formatting issues within the document so the Committee will not have to spend time going over non-substantive changes. The Committee agreed.

Councilor Rice referenced a suggestion that had previously been raised which would allow a Committee Chair, in the absence of a quorum, to appoint a Council member who may be present at the meeting to sit in as a temporary voting member of said Committee. Chair Lachapelle said that he had initially agreed with that suggestion; however upon further thought he felt that it left room for malfeasance if a member or members potentially did not want to attend a meeting, or preferred a different board or committee to the one they had been appointed. He emphasized the importance for elected officials to perform their due diligence and give their best effort in attendance to serve the constituents who voted for them. Councilor Hamann agreed that allowing non-members to serve temporarily could cause unintended problems.

Councilor Larochelle questioned if the presence of the Mayor, as an ex officio voting member of a committee, would affect the number needed for a quorum; he questioned if the quorum would remain the same number even though the Mayor's presence increases the membership by one, thus potentially increasing the number needed for a quorum.

Councilor Beaudoin inquired if, in the instance of repeated absences from appointed boards/committees, if the Mayor would have the authority to remove and replace a member. Councilor Rice stated that according to Robert's Rules there would need to be a 2/3 majority vote to remove a member in a case of dereliction of duty. The Mayor has the authority to appoint, but not to remove.

6. Other

Chair Lachapelle asked for a sense of Committee on whether "other" should be retained on the Codes and Ordinances Committee agendas. Councilor Beaudoin **MOVED** to keep "other" in the Codes and Ordinances order of business moving forward. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

7. Adjournment

Councilor Beaudoin **MOVED** to **ADJOURN** the Codes and Ordinances Committee meeting at 7:50 PM. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk

**ROCHESTER
NEW HAMPSHIRE**



20220

**CITY COUNCIL
RULES OF ORDER**

**RULES OF ORDER
OF THE CITY COUNCIL
CITY OF ROCHESTER, NEW HAMPSHIRE**

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**RULES OF ORDER OF THE
CITY COUNCIL
CITY OF ROCHESTER, NEW HAMPSHIRE**

**ARTICLE 1
CITY COUNCIL MEETINGS**

SECTION 1.1 REGULAR MEETINGS

Regular meetings of the City Council shall be held in the Council Chamber in City Hall on the first Tuesday of each month, at ~~6:30~~6:00 o'clock PM, except when a state general election or a regular municipal election is held on said first Tuesday of the month of November. The November meeting date in the year in which a regular municipal election is conducted shall be the Wednesday following said municipal election, in accordance with Section 52 of the City Charter. The November meeting date in the year in which a state general election is conducted shall be the second Tuesday of that month, unless the City Council shall otherwise direct. The inaugural meeting date following the regular municipal election shall be the first Tuesday after January 1. If any such date shall fall upon a legal holiday or upon the day on which a special state or municipal election is conducted the City Council shall vote to conduct said meeting on the day following or on the Tuesday following that holiday or Election Day.

SECTION 1.2 SPECIAL MEETINGS

The City Clerk shall call a special meeting of the City Council at the written request of the City Manager, the Mayor, or at the written request of a majority of City Council. Special meetings of the City Council shall be held upon written notice being delivered by the City Clerk to each City Councilor at least forty-eight (48) hours prior to said meeting, said notice stating the purpose for which the meeting is called. The Mayor shall take the chair precisely at the hour appointed for the meeting and call the members to order, and within ten minutes or sooner if a quorum be present, shall cause the roll to be called, and the names of the members present to be recorded. The Clerk shall also record the names of the members coming in after the calling of the roll.

SECTION 1.3 NON-PUBLIC SESSIONS

Items being considered for action in a non-public session shall be submitted and dealt with in accordance with Council Rules of Order sections 4.1, 4.2, and 4.3. Therefore, all supporting documentation, contracts, or proposals being considered during non-public session shall be submitted to council members at least five calendar days in advance of consideration. Such documentation shall be distributed in a confidential manner.

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SECTION 1.3-4 ABSENCE OR DISABILITY OF MAYOR, DEPUTY MAYOR

In the absence or disability of the Mayor, the Deputy Mayor shall take the chair and preside over the meeting and shall act as Mayor during such absence or disability. In the absence or disability of both Mayor and Deputy Mayor, the Clerk shall call the Council to order and shall preside until a chairperson shall be chosen by a roll call vote and plurality of votes, who shall preside and act as Mayor during such absence or disability.

SECTION 1.4-5 REMOTE PARTICIPATION DURING COUNCIL AND BOARD MEETINGS

a) INTRODUCTION / PURPOSE

The City Council strongly encourages board members to be physically present for all board and committee meetings. The Council recognizes, however, that extenuating circumstances may occasionally prevent a member from being physically present at a meeting. Therefore, to promote full participation of board members while ensuring access and transparency for the public as required by NH RSA 91-A:2 Access to Governmental Records and Meetings, the Council authorizes remote participation in board meetings subject to the following procedures and requirements.

b) PERMISSIBLE REASONS FOR REMOTE PARTICIPATION

Remote participation is not to be used solely for a board member's convenience or to avoid attending a particular meeting in person. Any Board member who is unable to physically attend a meeting of the board may make arrangements to remotely participate in the meeting under the following conditions:

1. Personal illness or disability;
2. Out-of-town travel;
3. Unexpected lack of child-care;
4. Family member illness or emergency;
5. Weather conditions;
6. Military service;
7. Employment obligations; or
8. A scheduling conflict.
9. [As determined by the Chair](#)

c) PROCEDURE FOR REMOTE PARTICIPATION

1. **With the exception of an emergency**, a member of the board requesting to participate in a meeting remotely shall notify the board chair (the "Chair") as soon as practicable, but in no case less than 2 business days prior to the scheduled meeting.

2. The Chair will contact the board staff liaison as soon as possible and state they have allowed board member to participate remotely (state meeting date) based on criteria laid out in this document.

3. The staff liaison will contact the Government Channel Coordinator or designee to arrange technical logistics, based on currently available technology.

4 Staff liaison, the requesting board member, and the Government Channel Coordinator will arrange for a test prior to said meeting. While technological issues may arise that may be beyond staff control, this will ensure the best possible experience.

5. The remote participant(s) shall join the remote meeting 15 minutes prior to scheduled meeting time.

6. The Chair shall announce the remote participant *prior* to the Call to Order and follow this suggested script: "Board member (name) is participating in this meeting remotely. (name) are you there? (participant– "yes I am here") (name) was it reasonably impractical for you to be physically present at this meeting? (participant) – yes, it was impractical for me to be physically present.)"

7. The Chair may decide how to address technical difficulties that arise when utilizing remote participation, but whenever possible, the Chair should suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear, or be heard clearly by all persons present at the meeting location.

8. A member participating remotely shall notify the chair if leaving the meeting before it is adjourned or rejoining the meeting after a period of absence.

9. All votes taken during such a meeting shall be by roll call.

10. Participation by remote communication will be noted in the official board minutes. Any interruption to or discontinuation of the member's participation will also be noted in the minutes.

e) CONDITIONS / Authority

(State NH RSA 91-A:2):

~~—III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph—~~

~~—(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting—~~

~~— (b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.~~

~~— (c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.~~

~~— (d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.~~

~~— (e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.~~

d) Additional Conditions

~~A board member considered present through remote participation will be permitted to vote on any action item at the meeting except:~~

~~— Any item for which the member was not participating remotely during the entire discussion and deliberation of the matter preceding the vote; and~~

~~Any item that was being discussed when an interruption to the electronic communication occurred, if the board's discussion was not suspended during the interruption. A brief loss of simultaneous communication, such as a few seconds, will not disqualify the member from voting on the matter under discussion.~~

~~Per RSA 91-A:1 All votes taken during such a meeting shall be by roll call vote.~~

~~A board member may participate remotely in a closed session of the board provided the member provides assurance to the board that no other person is able to hear, see, or otherwise participate in the closed session from the remote location.~~

~~The City of Rochester staff will not be held liable for failed technology or things beyond our control that would interfere with the remote communication.~~

~~Board member wishing to engage in remote participation shall adhere to following procedures: section (d).~~

e) PROCEDURE FOR REMOTE PARTICIPATION

~~1. With the exception of an emergency, a member of the board who desires to participate in a meeting remotely shall notify the board chair at least one week in advance of the meeting.~~

~~2. At the time of this writing, because current mode of phone call in only allows one member at a time, remote participation will be on first come first serve basis, when criteria is met.~~

~~3. Meeting Chair will contact the City Manager's office as soon as possible and state they have allowed board member to participate remotely (state meeting date) based on criteria laid out in this document.~~

~~4. City Manager's office will send participant call in phone number along with a copy of this policy / procedure document and arrange tentative "test date" for phone call. City Manager's office shall notify Government Channel Coordinator.~~

~~5. Previous to the meeting, the Chair will inform board members of the request and intention to allow remote participation of such board member.~~

~~6. A test a few days prior to the meeting should be performed to ensure that the caller's device will suffice, and that they can hear on their device at their remote location. While not always possible, it is recommended a land line phone be used with external speaker.~~

~~7. The participant shall initiate the phone call in to designated phone number at 6:45pm eastern standard time or 15 minutes prior to the meeting start. Caller should be aware of not to be near televised or live streaming audio during the meeting.~~

~~8. The chair shall announce the remote participant after the Call to Order and follow suggested script: "Board member (name) is participating in this meeting by telephone. (name) are you there? (participant—"yes I am here") (name) was it reasonably impractical for you to be physically present at this meeting? (participant)—yes, it was impractical for me to be physically present)."~~

~~9. The meeting chair may decide how to address technical difficulties that arise when utilizing remote participation, but whenever possible, the chair should suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If, however, the technical difficulties distract from or impede the orderly progress of the meeting, a majority of the members physically present may vote to end the remote participation.~~

~~9. A member participating remotely shall notify the chair if leaving the meeting before it is adjourned or rejoining the meeting after a period of absence.~~

~~10. All votes taken during such a meeting shall be by roll call.~~

~~11. Remote participant may partake in non-public and non-meetings sessions, but in most cases will require participant to end the call to Council Chambers, call into Council conference room, and call back into Council Chambers, if required to do so per voting reasons of Council rules of Order.~~

~~12. Participation by remote communication will be noted in the official board minutes. Any interruption to or discontinuation of the member's participation will also be noted in the minutes.~~

~~13. Any telephone costs associated with remote participation shall be borne by the remote participant.~~

SECTION 1.5-6 ORDER OF BUSINESS

(a) The order of business for ~~regular~~-Regular meetings of the City Council shall be as follows:

1. Call to order
2. Pledge of Allegiance
3. Prayer
4. Roll Call
5. Approval of the minutes of the previous meeting(s)
6. Communications from the City Manager
7. Communications from the Mayor
8. Presentation of Petitions and Council Correspondence [and Disposal thereof by Reference or Otherwise]
9. Nominations, Appointments and Elections
10. Report of Committees
11. Old Business [Items Remaining from Prior Meetings]
12. Consent Calendar
13. New Business
- ~~14. Other~~
14. Adjournment

(b) New Business: Items requiring Council action may be introduced by any member of the City Council, but may not be acted upon at the meeting in which they are introduced unless the items are properly filed in accordance with Article 4, Section 4.1 herein. The Council may act upon said items if they have not been filed in advance by suspending Council Rules by a two-third (2/3) vote of the City Council.

SECTION 1.6-7 PUBLIC HEARINGS

Public Hearings: To receive citizen input and feedback on certain specific matters that

have been placed on the meeting agenda for consideration and action by the City Council, Public Hearings will be scheduled and held as required by law and/or whenever referred for a public hearing by simple majority vote of Council Members present. Upon being referred by Council vote, Public Hearings will be noticed for and held during a subsequent Regular and/or Special Meeting or Committee Meeting. At the request of the presiding officer, Ordinances or Resolutions scheduled on an agenda for public hearing will be briefly introduced with appropriate explanations by staff. Citizens will then have the opportunity to address the Council speaking to the specific item(s) subject to public hearing, subject to the following guidelines: [6/4/2013]

- 1. 1. All speakers shall be residents of the City of Rochester, property owners in the City of Rochester, and/or designated representatives of recognized civic organizations or businesses located and/or operating in the City of Rochester;
- 2. All speakers shall address their comments to the presiding officer and the Council as a body and not to any individual member;
- 3. Speakers shall first recite their name and address for the record, and, if applicable, the name and address of the civic organization and/or business they have been designated to represent;
- 4. For each public hearing item, a speaker shall be provided a single opportunity for comment;
- 5. Public Hearings are not intended to be utilized for a two-way dialogue between speaker(s), Council Member(s), and/or the City Manager, or administrative staff; and
- 6. The presiding officer shall preserve strict order and decorum for and by all speakers appearing before the Council.

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ARTICLE 2 DUTIES AND POWERS OF PRESIDING OFFICER

SECTION 2.1 — PRESIDING OFFICER - DECORUM AND ORDER

The presiding officer shall preserve decorum and order, may speak to points of order in preference to the members, and shall decide all questions of order, subject to an appeal to the Council on motion of any member, and no other business shall be in order until the questions on the appeal shall have been decided.

SECTION 2.2 PRESIDING OFFICER - DECLARING VOTES

The presiding officer shall declare all votes, but if any member doubts the vote, the presiding officer, without further debate upon the question, shall require a division and shall declare the results.

SECTION 2.3 PRESIDING OFFICER - ROLL CALL VOTES

When any member shall require a question to be put in the roll call vote, the presiding officer shall so order if the request is seconded.

SECTION 2.4 PRESIDING OFFICER - ORDER OF QUESTIONS

The presiding officer shall propound all questions in the order in which they are moved, unless the subsequent motion shall be previous in its nature.

SECTION 2.5 DISPOSAL OF MOTIONS

After a motion is made and seconded, it shall be considered, and, after it is stated by the presiding officer, it shall be disposed of by vote of the City Council, unless the mover withdraws it before a decision or amendment and the second agrees to withdrawal of the motion.

SECTION 2.6 MOTION FOR ADJOURNMENT

The presiding officer shall consider a motion to adjourn as always in order, the time of the next meeting having been agreed upon, unless a member has possession of the floor, or any question has been put and not decided. The motion to adjourn, or to lay on the table, or to take from the table, if seconded, shall be decided without debate.

SECTION 2.7 PRESIDING OFFICER - RECOGNIZING MEMBERS

When two or more members ask to be recognized at the same time, the presiding officer shall name the member who shall speak first.

SECTION 2.8 COMMITTEE APPOINTMENTS

All Council committees shall be appointed and announced by the presiding officer, who shall designate the chairperson and vice-chairperson thereof. The Mayor shall be Chair of the Finance Committee and an Ex-Officio voting member of all other committees of the Council.

SECTION 2.9 ROBERT'S RULES OF ORDER

When no other provision is herein made, questions of parliamentary law shall be decided as prescribed in the most recent edition of Robert's Rules of Order.

ARTICLE 3 RIGHTS AND DUTIES OF MEMBERS

SECTION 3.1 COUNCIL MEMBER SPEAKING

When any member is about to speak in debate, or deliver any matter to the Council, the member shall use a raised hand to be recognized, shall remain seated, respectfully address the presiding officer, shall be confined to the question under debate, and shall avoid personalities. The presiding officer shall attempt to allow a particular stream of discussion to be completed prior to allowing a member to change the direction of the debate at hand.

SECTION 3.2 COUNCIL MEMBER IN DEBATE

Members in debate shall address each other as Councilor or may use a description by the ward represented, or such other designation as may be intelligible and respectful.

SECTION 3.3 INTERRUPTION OF COUNCIL MEMBER

No member speaking shall be interrupted by another, except to call to order or to correct a mistake. But if any member, in speaking or otherwise, transgresses the Rules of the Council, the member so called to order shall immediately cease speaking unless permitted to explain, and the ~~chair~~-Chair shall decide the question of order. The City Council, if appealed to, shall decide the question with limited debate.

SECTION 3.4 COUNCIL MEMBER SPEAKING, LIMITATIONS

Upon a motion and 2/3 vote by the council to limit debate, the ~~chair~~-Chair shall limit discussions on any motion before the council. After such vote and if no time limit is set as part of the motion, no member shall speak more than twice on the same question, or more than five minutes at one time, nor more than once, until all other members choosing to speak shall have spoken.

SECTION 3.5 PRECEDENCE OF MOTIONS

The following motions shall have precedence in the order in which they are arranged:

1. **TO ADJOURN:** A privileged motion to be voted on at once if seconded; not debatable.
2. **TO LAY ON THE TABLE/TO TAKE FROM THE TABLE:**
Requires a second, not debatable.
3. **TO CALL FOR THE PREVIOUS QUESTION/TO MOVE THE QUESTION (TO CLOSE DEBATE):**
Requires a second, not debatable.
4. **TO POSTPONE TO A TIME CERTAIN:**
Requires a second, debatable.

5. **TO REFER:** Requires a second; debatable.
6. **TO AMEND:** Requires a second; debatable.
7. **TO POSTPONE INDEFINITELY:** Requires a second; debatable.
8. **MAIN MOTION:** Requires a second; debatable.

SECTION 3.6 MOTION REDUCED TO WRITING

Every motion shall be reduced to writing, if the presiding officer directs, or if a member of the Council requests it.

SECTION 3.7 VOTING ON MOTIONS, ABSTENTIONS

Every member who shall be in the Council Chamber when a question is put shall vote, except that no member may vote on any question in which the member has a direct interest to a degree that may significantly impair the independent and impartial exercise of that member's judgment as a Councilor. If a member takes this rule for purposes of not voting, the member shall inform the City Council before a vote be taken on the motion under consideration.

SECTION 3.8 MAYORAL VETO - EXERCISE AND VOTE TO OVERRIDE

To be effective, the right of veto accorded to the Mayor under the provisions of Section 10-A of the Rochester City Charter, must be exercised, and notice of such exercise must be communicated in writing to the City Clerk, within one hundred forty-four (144) hours after action by the Council. As soon as practicable after receipt of the Mayor's written notice of exercise of the veto power, and in no event later than seventy-two (72) hours after receipt of such notice, the City Clerk shall inform the Council in writing of the Mayor's exercise of such veto. The Council may override said veto by a two-thirds (2/3) vote of all Councilors (Mayor excluded) serving in office, as provided for in Section 10-A of the Rochester City Charter, no later than the close of the next ~~regular~~ [Regular](#) meeting of Council.

SECTION 3.9 DIVISION OF A QUESTION

The division of a question may be called for when the sense will admit it.

SECTION 3.10 READING OF A PAPER, OBJECTIONS

When the reading of a paper is called for, and the same is objected to by any Member, it shall be determined by a vote of the Council.

SECTION 3.11 SUSPENSION, AMENDMENT, AND REPEAL OF RULES

No standing Rule of Order of the Council shall be suspended unless two-thirds (2/3) of the members present shall consent thereto. Nor shall any Rule of Order be

repealed or amended without a motion therefore, made at a previous meeting, nor unless a majority of the whole City Council concur therein. The Rules of Order of the City Council shall be reaffirmed by the new Council following each municipal election. The Rules of the former Council shall not be binding.

SECTION 3.12 ATTENDANCE OF MEMBERS

Every member shall take notice of the day and hour to which the Council may stand adjourned, and shall give his punctual attendance accordingly.

ARTICLE 4 AGENDAS, COMMUNICATIONS, COMMITTEES, REPORTS, RESOLUTIONS
--

SECTION 4.1 AGENDA PREPARATION

The agenda for each Council meeting shall be prepared by the Mayor, the Deputy Mayor and the City Manager in conjunction with the City Clerk. Any Councilor may place an item on the agenda provided that the items be submitted in writing or email to the City Clerk, the Mayor, the Deputy Mayor or the City Manager ~~eleven seven (117)~~ calendar days prior to the meeting of Council. The City Clerk shall provide Council members with copies of the agenda at least five (5) calendar days prior to the meeting of the Council.

SECTION 4.2 MEMORIALS AND DOCUMENTS, PRESENTATION

All memorials and other documents addressed to the City Council shall be presented by the presiding officer or by a member in the presiding officer's place, who shall explain the subject thereof; and they shall lie on the table to be taken up in order in which they are presented, unless the Council shall otherwise direct.

SECTION 4.3 REPORTS AND PAPERS, LEGIBLY WRITTEN OR TYPED

All reports and other papers submitted to the City Council shall be written in fair hand or typewritten. The Clerk shall make copies on any papers to be reported by the committees, at the request of the chairs thereof. At the request of any councilor a digital copy may be provided in place of printed page.

SECTION 4.4 STANDING COMMITTEES

At the commencement of the new year following the regular municipal election, the following committees shall be appointed by the Mayor:

Finance:

Shall consist of seven (7) members including the Mayor who shall serve as chair.

Public Works and Buildings:

Shall consist of five (5) members.

Public Safety:

Shall consist of five (5) members.

Codes and Ordinances:

Shall consist of five (5) members.

Community Development:

Shall consist of five (5) members.

Appointments Review Committee:

Shall consist of five (5) members.

- A. No Council Member shall serve on more than three (3) standing committees, excluding the Finance Committee.
- B. All vacancies occurring in any standing committee shall be filled by the Mayor.

SECTION 4.5 SPECIAL COMMITTEES

Special committees shall consist of three (3) members unless a different number be ordered by the Mayor.

SECTION 4.6 REMOVAL OF A COMMITTEE MEMBER

A member of any committee may be removed by a two-thirds (2/3) vote of the entire Council.

SECTION 4.7 PUBLIC INPUT AT WORKSHOP OR COMMITTEE MEETINGS

The chair shall call the committee together and no committee shall act by separate consultations, and no report shall be received from any committee unless agreed to in committee actually assembled, and voted upon by a majority of the members thereof.

Public input on any subject appropriate to be brought before the Council shall be allowed at the beginning of every committee meeting or council workshop and shall be placed as the first item of business on the agenda of said meeting. When possible, the chair shall allow for reasonable input from the public during the meeting, to allow citizens to comment on any item appearing on the agenda, except for any items discussed in any non-public session. The chair may limit any public input to insure that the committee is able to complete its work and to provide for the decorum of the meeting.

- i.1. Speakers shall be residents of the City of Rochester, property owners in the City of Rochester, and/or designated representatives of recognized civic organizations or businesses located and/or operating in the City of Rochester;
- ii.2. Speakers shall address their comments to the presiding officer and the Council as a body and not to any individual member;
- iii.3. Speakers shall first recite their name and address for the record, and, if

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applicable, the name and address of the civic organization and/or business the have been designated to represent;

~~iv.~~ 4. Each speaker shall be provided a single opportunity for comment, limited to five (5) minutes with the five (5) minutes beginning after the obligatory statement of named and address by the speaker;

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~~v.~~ 5. Public Input shall not be a two-way dialogue between speaker(s), Council Member(s), and/or the City Manager, or administrative staff; with the exception of Committee meetings when allowed by the Chair; and

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~~vi.~~ 6. The presiding officer shall preserve strict order and decorum for and by all speakers appearing before the Council.

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SECTION 4.8 SITTING OF COMMITTEE DURING COUNCIL MEETINGS

No committee shall sit during the meetings of the City Council without special leave.

SECTION 4.9 COMMITTEE REPORTS

It shall be the duty of every committee of the Council to which any subject may be specially referred to report thereon at the next meeting of the City Council, or to ask for further time.

SECTION 4.10 COMMITTEE OF THE WHOLE. COUNCIL RULES

The rules of proceedings in Council shall be observed in a committee of the whole so far as they may be applicable, excepting the rules limiting the time speaking.

SECTION 4.11 AUTHORIZATION OF EXPENDITURES. CITY DEBT

After the annual appropriations shall have been passed, no subsequent expenditure shall be authorized for any object, unless provisions for the same shall be made by a specific transfer from some of the annual appropriations or money in the treasury unappropriated or by expressly creating therefore a City debt; and no City debt shall be created except by a majority vote of the Council in the affirmative.

SECTION 4.12 ORDINANCES AND RESOLUTIONS

Every Resolution, including those which propose to change the Ordinance, shall be placed on the City Council Agenda in accordance with [Rule-Section 4.1](#). Any Resolution shall receive a First Reading during the first meeting in which it appears on the Agenda. Following the First Reading, the Council shall take one of the following actions:

1. Vote to disapprove the Resolution.
2. Refer to a Public Hearing if required by law.
3. Refer to an appropriate standing committee, or to the City Council sitting as a Committee of the Whole, for further review. Any Resolution proposing a change to the Ordinance, which did not originate in the Codes and Ordinances Committee, must be referred to said committee prior to a vote of approval. Resolutions referred to Public Hearing per

action #2 may also be referred to committee.

4. If actions #2 and #3 do not apply to the Resolution, the Council may proceed to a vote of approval.

For a Resolution which is not subject to action #1 or #4, it shall receive a Second Reading at the next meeting during which it appears on the City Council Agenda. Following the Second Reading, for any Resolution referred to a standing committee, the chairperson of said committee shall deliver a report detailing the review of the Resolution. After the committee report is delivered, the City Council shall entertain any motions to amend. Following disposition of the motions to amend, the City Council shall vote on final approval or disapproval of the Resolution.

All Resolutions shall be read by title only for the First and Second Reading. Any Councilor desiring a Resolution to be read in its entirety shall Motion as such and said Motion shall require a second. In order to be successful, said Motion must receive a 2/3 vote of approval from the entire City Council.

SECTION 4.13 CODES AND ORDINANCES COMMITTEE. ORDINANCE ENROLLMENT

~~It shall be the duty of the Codes and Ordinances Committee to examine every ordinance that shall have passed the several readings required, and if found correctly enrolled, officially made part of the general ordinances of the City of Rochester and/or the official record of the City Council and to report the same to the Council.~~

SECTION 4.14-13 ELECTIONS BY BALLOT

In all elections by ballot on the part of the City Council, blank ballots and all ballots for persons not eligible shall be reported to the Council. To be elected any person seeking election must receive a majority of the votes of those members present and voting. Tally of the ballots shall be reported to the Council and recorded in the minutes. Unless otherwise directed by the Council all ballots shall be destroyed after being reported.

A. Boards and Commissions appointments shall be elected by ballot of the City Council with the exception of a single candidate. Single candidates upon nominations ceasing will be elected by City Council voice vote that the City Clerk cast one ballot for that candidate.

SECTION 4.15-14 RECORD OF VOTES AND PROCEEDINGS

The Clerk shall keep a record of the votes and proceedings of the City Council, entering thereon all orders and resolutions, except such as it is necessary to engross; reports, memorials, and other papers submitted to the Council shall be noted only by their titles or a brief description of their purpose, but any accepted reports may be entered at length on said record.

SECTION 4.16-15 FUNCTIONS OF FINANCE COMMITTEE

Functions shall include: Purchasing, Trust Funds, Operating Budget, Final Capital Budget, Taxes, City Reports, Legal Affairs, Insurance, Audits, Claims, Accounts, Bids, Review of Expenditures, Receipts, Contract Change Orders, Welfare and Grants. The Finance Committee shall present a monthly report of the City accounts to the Council.

SECTION 4.17-16 FUNCTIONS OF CODES AND ORDINANCES COMMITTEE

Functions shall include: Municipal Elections and Returns, Charter and Ordinances, Council By-Laws, Enrolled Bills, Planning, Zoning, and such other matters as may be directed by the City Council.

SECTION 4.18-17 FUNCTIONS OF PUBLIC WORKS AND BUILDING COMMITTEE

Functions shall include: Roads, Sewer Systems, Water Systems, Engineering, Public Buildings, Recycling and Solid Waste, Pollution, Water Resources, Space Allocations.

SECTION 4.19-18 FUNCTIONS OF PUBLIC SAFETY COMMITTEE

Functions shall include: Police, Fire, Parking, Traffic, Street Signs, Street Lights, Animal Control, and Public Health Services.

SECTION 4.20-19 FUNCTIONS OF COMMUNITY DEVELOPMENT COMMITTEE

Functions shall include: Economic Development, Industrial Development, Land Use Policy, Technology Issues, Chamber of Commerce, Rochester Main Street, Arts and Cultural, Recreation, Parks, Adult & Youth Services, Promotional Activities and Festivals, Public Relations, COAST, CDBG and Human Services Agencies.

SECTION 4.21-20 FUNCTIONS OF THE APPOINTMENTS REVIEW COMMITTEE

Functions shall include: Interviewing of candidates for Council appointed positions on various boards of the City, including but not exclusive of Planning Board, Zoning Board of Adjustment, Trustees of the Trust Fund, Library Trustees, Arena Commission, Recreation, Parks and Youth Services, Welfare Appeals Board, Utility Advisory Board.

Incumbents of any Committee who have submitted Statements of Interest for reappointment and are running unopposed: the Appointments Committee reserves the right to waive the presence of the candidate.

SECTION 4.22-21 INAUGURAL MEETING, ORDER EXERCISES

The order of exercises at the meeting held on the first Tuesday after January 1, or

Wednesday, January 2, following the regular municipal election shall be as follows:

1. Call to Order
2. Pledge of Allegiance
3. Prayer
4. Roll Call of Councilors-Elect
5. Mayor takes Oath of Office
6. Councilors-Elect take Oath of Office
7. Roll Call of School Board Members-Elect
8. School Board Members-Elect take Oath of Office
9. Roll Call of Police Commissioners-Elect
10. Police Commissioner-Elect takes Oath of Office
11. Election of Deputy Mayor
12. Inaugural Address
13. Old and/or New Business

SECTION 4.23-22 COUNCIL COMMUNICATIONS

- (a) No member shall cause to be mailed, electronically transferred, delivered, or left at City Hall any documents or correspondence for any other member or the City Manager which does not clearly identify the name of the member sending such information and, if possible, the source of such information.
- (b) No anonymous correspondence shall be placed in any member's Council mailbox. All mail, electronic media or other correspondence shall clearly identify the sender, source and date it was received.

SECTION 4.24-23 MINUTES

All meetings of the City Council including all standing and special committees of the Council shall take roll call at all committee meetings and record their proceedings and provide minutes of any meeting to the City Clerk's Office in a manner prescribed under NH RSA 91-A (NH Right To Know Law).

SECTION 4.25-24 CANCELLATION OR POSTPONEMENT OF MEETING(S)

- (a) The Mayor, Deputy Mayor, and City Manager shall confer and determine if insufficient business or other non-urgent matter warrants postponement or cancellation of a scheduled Council meeting.

- (b) The Mayor, Deputy Mayor, and City Manager shall confer and determine if inclement weather or other emergency warrants postponement or cancellation of a scheduled Council meeting.
- (c) All such decisions regarding postponement or cancellation shall be made no later than 3:00 PM on the date of the scheduled meeting.
- (d) The City Clerk will notify Council members by both email and telephone upon determination of a meeting cancellation or postponement.
- (e) The City Clerk shall ensure that notification of any such cancellation or postponement shall immediately post on the City's website and Face book page.

APPENDIX

REVISED AND ADOPTED BY CITY COUNCIL FEBRUARY 6, 1990 [1]
 AMENDED AND REAFFIRMED BY CITY COUNCIL JANUARY 14, 1992 [2]
 REAFFIRMED BY CITY COUNCIL JANUARY 11, 1994 [3]
 AMENDED BY CITY COUNCIL MARCH 1, 1994 [4]
 AMENDED AND REAFFIRMED BY CITY COUNCIL JANUARY 9, 1996 [5]
 AMENDED AND ADOPTED BY CITY COUNCIL FEBRUARY 3, 1998 [6]
 AMENDED AND ADOPTED BY CITY COUNCIL FEBRUARY 5, 2002 [7]
 AMENDED AND ADOPTED BY CITY COUNCIL MARCH 5, 2002 [8]
 AMENDED AND ADOPTED BY CITY COUNCIL FEBRUARY 3, 2004 [9]
 AMENDED AND ADOPTED BY CITY COUNCIL JANUARY 10, 2006 [1 0]
 AMENDED AND ADOPTED BY CITY COUNCIL JANUARY 15, 2008 [1 1]
 AMENDED AND ADOPTED BY CITY COUNCIL February 2, 2010 [12]
 AMENDED AND ADOPTED BY CITY COUNCIL February 7, 2012 (1.4) (3.1) (3.5) and (4.1) [13]
 AMENDED AND ADOPTED BY CITY COUNCIL June 4, 2013 (1.3) (1.5) and (4.7) [14]
 AMENDED AND ADOPTED BY CITY COUNCIL March 4, 2014 (4.21) and (4.14) [15]
 AMENDED AND ADOPTED BY CITY COUNCIL March 1, 2016 (1.4) (3.8) (4.1) and (4.7) [16]
 AMENDED AND ADOPTED BY CITY COUNCIL March 6, 2018 (1.4 12&13), (4.25) [17]
 AMENDED AND ADOPTED BY CITY COUNCIL October 2, 2018 (Added 1.4, which moved the order of 1.5 & 1.6) [18]
 AMENDED AND ADOPTED BY CITY COUNCIL: April 7, 2020 (Amended 1.1 7pm to 6:30pm) (Replaced Section 4.12)

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City Clerk's Office

Article II Outdoor Dining Establishments

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

**§ 80-14 Requests for use of City property.
[Amended 3-2-2021]**

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 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.
[Amended 3-2-2021]**

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 11:00 p.m. Monday through Saturday and by 10:00 p.m. on 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 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. ^{02/28/2022} **[amended 3-2-2021]**

- 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. **[Amended 3-2-2021]**
- 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 3-5-2019]**
- 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. 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 **[Amended 3-2-2021]**
- 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. 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. **[Amended 3-2-2021]**
- I. No object strictly related to advertising shall be allowed in the area except in accordance with Chapter 275, Article 29 of this Code.. **[Amended 3-2-2021]**
- J. No improvements or personal property located within the area shall extend on or over any City property located outside the area.

§ 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 counters, 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. **[Amended 3-2-2021]**
- 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. **[Amended 3-2-2021]**
- 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. **[Amended 3-2-2021]**
- 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.

§ 80-31 Use of property other than sidewalks.

[Added 4-5-2016]

Use of City property, other than sidewalks, for outdoor dining as defined in this article and the terms of said use must be separately negotiated with the City outside of the above-delineated permitting process.

§ 7-58 **Audit of City accounts.**

An independent audit of all accounts of the City shall be made annually by certified public accountants selected by the City Council upon recommendation by the City Manager and experienced in municipal accounting in accordance with the provisions of Section 46 of the Rochester City Charter.

Article X
Bonds of City Officials

§ 7-80 **Bonds required; amount-**

~~All City officials as are required by the New Hampshire Department of Revenue Administration or other obligee shall be bonded under coverage provided by the City's risk management provider. All City officials as are required to give bonds for the faithful discharge of their duties shall file the same with the City Clerk within 30 days after their election or appointment, in the amounts following:~~

- ~~A. Tax Collector: amount required by New Hampshire Department of Revenue Administration.~~
- ~~B. City Treasurer: twenty thousand dollars (\$20,000.).~~
- ~~C. City Clerk: twenty thousand dollars (\$20,000.).~~
- ~~D. Chief of Police: five hundred dollars (\$500.).~~
- ~~E. Deputy Chief of Police: three hundred dollars (\$300.).~~

~~§ 7-81 City Council may require bond-~~

~~Other officers may be required to give bond as the City Council may determine.~~

~~§ 7-82 Form of bonds-~~

~~All bonds shall be drawn by the City Solicitor or approved by him/her as to legal form and proper execution before the same are presented to the City Council for approval and shall conform as near as possible to the following form:~~

~~KNOW ALL MEN BY THESE PRESENTS:~~

~~That we of Rochester, County of Strafford and State of New Hampshire, as principal, and _____ as surety, are holden and stand firmly bound and obliged unto the City of Rochester, a municipal corporation in said county and state, in the sum of _____ dollars, to be paid to the City of Rochester, its successors or assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.~~

~~Scaled with our seals and dated this _____ day of _____ A.D. 20____~~

~~The condition of the above obligation is such that whereas said _____ has been duly elected the _____ of such City of Rochester for the year 20____ now, therefore, if the said _____ shall faithfully perform all the duties incumbent upon him/her as _____ and shall serve all processes lawfully directed to him/her and perform all other things whatever which a _____ may or ought by law to do and shall really and truly account to said City for all money coming into his/her hands as said _____ then this instrument shall be null and void, otherwise to remain in full force and effect.~~

~~Signed, sealed and delivered _____ In the presence of us,~~

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City Clerk's Office

§ 7-63. Economic Development Special Reserve Fund. [Added 9-6-2016]

A. Statement of purpose.

- (1) The City of Rochester currently serves as the "Host Community" for the Turnkey Recycling and Environmental Enterprises Waste Disposal Facility (TREE) currently operated by Waste Management of New Hampshire, Inc., and located on the Rochester Neck Road. By virtue of its status as Host Community for TREE, the City of Rochester, in addition to incurring significant expenses in connection with such facility, receives significant financial benefits in the form of real property taxes, user fees (in the form of so-called "host community fees") and various other benefits relative to the cost to the City and its inhabitants of the disposal and/or recycling of various solid waste, including reduced and/or eliminated fees for the disposal and/or recycling of solid waste generated within the City of Rochester. It is currently estimated that the permitted capacity of the TREE Waste Disposal Facility (TLR-III) will be reached in approximately the year 2023. When such facility is filled to its permitted capacity, it is anticipated that the City will experience a loss in revenues, and the City and its inhabitants will experience increased costs associated with the disposal and/or recycling of solid waste, particularly in the form of reduced and/or lost user fees and reduced property tax revenues, as well as increased costs associated with the disposal and/or recycling of solid waste. Therefore, in an effort to offset the expected loss of revenues and increased costs occurring to the City as a result of the anticipated filling of the TREE Waste Disposal Facility to its permitted capacity and to promote the general fiscal strength and well-being of the City, it is necessary that economic development in the City of Rochester be promoted and/or maintained to ensure the existence and/or expansion of a vibrant economic base for the City and its inhabitants.
- (2) Therefore, the City Council of the City of Rochester, pursuant to the authority granted by RSA 47:1-b and 47:1-c, hereby establishes a special revenue reserve fund from the specific source identified in Subsection B of this section for capital expenditures or expenditures for capital projects, transfers to capital projects, transfers to capital reserve, or for any other appropriation of a nonrecurring nature in support of economic development as determined by the City Council. **Ineligible uses of Economic Development Special Reserve funds are administrative, marketing, conferences, or travel expenses.** The special reserve fund established in Subsection B of this section shall be known as the "City of Rochester Economic Development Special Reserve Fund." No expenditure from said City of Rochester Economic Development Special Reserve Fund shall be made without an appropriation of such funds having been adopted by the Rochester City Council, which appropriation shall provide that such appropriation is for economic development purposes and shall contain a statement and/or finding by the City Council indicating the manner in which it is anticipated that such appropriation is related to the economic development of the City of Rochester.

- B. There is hereby created a non-lapsing budgetary account within the City of Rochester, pursuant to the authority granted to the City by the provisions of RSA

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§ 7-63

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47:1-b, such special reserve fund to be known as the "City of Rochester Economic Development Special Reserve Fund." Such fund shall be funded on an annual basis by the appropriation by the City Council to such special reserve fund of an amount not less than one hundred thousand dollars (\$100,000.) from the funds annually payable to the City of Rochester by Waste Management of New Hampshire, Inc., from the so-called "host community fees" payable to the City pursuant to the provisions of the Host Agreement between the City and Waste Management of New Hampshire, Inc., or of any successor to such agreement. In addition to such minimum funding level, the City Manager may, during any fiscal year of the City, upon written notification to, and appropriation by, the City Council, transfer to said City of Rochester Economic Development Special Reserve Fund unappropriated host community fees in an amount not to exceed the difference between the total amount of host community fees received from Waste Management of New Hampshire, Inc., during such fiscal year and the amount of such host community fees previously appropriated by the Rochester City Council during such fiscal year (having in mind the minimum funding/appropriation requirement provided for herein and any other appropriation of such fiscal year's host community fees by the City Council during such fiscal year).

Further, the proceeds from any City owned land sales, with the exception of all TIF 162-K development zones, shall be allowed to be directly received into the Economic Development Special Reserve Fund unless City Council directs otherwise.

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Agenda Item Name: Updating Conservation Fund Ordinance- Administrative Code 7-64

Date Submitted: 10-6-21

Name of Person Submitting Item: Mark Sullivan Deputy Finance Director

E-mail Address: mark.sullivan@rochesternh.net

Meeting Date Requested: 10-12-21

Issue Summary Statement: The City's Conservation Fund ordinance 7-64 is written in a way that requires a lot of manual financial tracking and analysis. These manual calculations can increase risk of errors, and creates challenges when a request for Conservation Fund balance is requested. Current Use Taxation RSA 79-A, and RSA 79-A:25 provide allowances for a more efficient and streamlined process. Attached is documentation of the current process, future process (pros & cons), Current Use taxation revenues and expenses FY16 through FY22, as well as recommended language for an ordinance change.

Recommended Action: Endorse pursuing the change to 7-64.

CURRENT USE TAX PROCESS-CURRENT STATE**Annual Budget**

Current Use Revenues	\$35,000	General Fund Revenues
Transfer to Conservation Fund	\$10,000	Manual Transfer to Conservation Fund upon budget adoption
Net Gain GF	\$25,000	

Warrant Process

Assessor creates the CUT Warrants, with appropriate state filing documents.

Assessor sends warrants to Tax Collector Office.

Tax Collector send notice to property owner, and files state forms.

Tax Collector forwards CUT Warrants to Finance Office.

Finance Office records the CUT as Revenue & an Accounts Receivable (AR).

Tax Collector processes payments when received- Payment receipt batch bookkeeping relieves the AR, and debits cash account.

Fiscal Year End Analysis

At the end of each fiscal year Finance Office calculates the actual cash payments received during the fiscal year.

This calculation requires a look back to prior fiscal year Accounts Receivable that remained unpaid in prior year, but paid in current.

Finance recaps the payment activity and determines the amount collected in excess of the budgeted \$35,000.

Finance office prepares a supplemental resolution for Council to transfer the excess collections to Conservation Fund.

Once Council Adopts the supplemental resolution Finance performs multi-step bookkeeping to transfer the funds to Conservation Fund.

Issues

Too many bookkeeping steps, both automatic and manual, which increase risks for error, confusion.

Finance staff time to manage entire process and calculate the precise CUT for the supplemental resolution can be significant.

Current fund balance reporting is complicated, and an up to date fund balance number takes time to produce.

Tax Collector performing multiple steps in overall process.

Conservation Fund not realizing full revenue streams, takes longer to build fund balance.

CURRENT USE TAX PROCESS-PROPOSED FUTURE STATE

Warrants

Assessor creates the CUT Warrants, with appropriate state filing documents.

Assessor sends warrants to Tax Collector Office.

Tax Collector sends notice to property owner, and files state forms.

Tax Collector enters a special revenue recording batch to New Special Conservation Fund Reserve Account.

Tax Collector processes payments when received- Payment receipt batch bookkeeping relieves the AR, and debits cash account.

Use of Funds

100% of Current Use revenues recorded into the Current Use Fund.

Finance updates Council in July of each year on fund balance.

Council can deliberate on changing future revenue percentage directed to Conservation Fund.

Pros

Much more efficient and accurate process. Conservation Funds realizes 100% of revenue.

100% Revenue recognition is important to build fund balance, especially in soft collection years.

Con

General Fund does not receive the annual \$25k in revenue.

CURRENT USE REVENUE STREAMS-TRANSFERS TO CONSERVATION FUND

FISCAL YEAR	REVENUES RECOGNIZED	GENERAL FUND RETAINED	CASH TRANS TO CONSV FUND	FUND BALANCE CONSV FUND	CONSERVATION FUND USE OF FUNDS	USE OF FUNDS NOTES
FY16	\$68,580	\$25,000	\$57,400	\$106,486	\$13,660	Consulting Services-Guthier Farms
FY17	\$169,805	\$25,000	\$97,195	\$102,118	\$100,000	Contribution Guthier Farms Purchase- \$228k- (\$128k GF Unassigned)
FY18	\$123,800	\$25,000	\$77,290	\$118,408	\$0	
FY19	\$69,420	\$25,000	\$72,867	\$254,275	\$0	
FY20	\$51,000	\$25,000	\$10,000	\$264,275	\$4,600	Appraisal 104 Crow Hill Road property
FY21	\$118,314	\$25,000	\$38,053	\$115,728	\$182,000	Purchase 104 Crow Hill Road property
FY22	\$112,728	\$25,000	\$137,314	\$253,042	\$0	
TOTALS	\$713,647	\$175,000	\$490,119		\$300,260	

Note: FY17-Guthier Farms purchase Conservation Fund was inadequately funded, remaining balance originated from General Fund Unassigned Fund balance.

Section 79-A:24

79-A:24 Repealed by 1991, 163:43, XXXIII, eff. May 27, 1991. –

02/28/2022

Section 79-A:25**79-A:25 Disposition of Revenues. –**

- I. Except as provided in paragraph II, all money received by the tax collector pursuant to the provisions of this chapter shall be for the use of the town or city.
- II. The legislative body of the town or city may, by majority vote, elect to place the whole or a specified percentage, amount, or any combination of percentage and amount, of the revenues of all future payments collected pursuant to this chapter in a conservation fund in accordance with RSA 36-A:5, III. The whole or specified percentage or amount, or percentage and amount, of such revenues shall be deposited in the conservation fund at the time of collection.
- III. If adopted by a town or city, the provisions of RSA 79-A:25, II shall take effect in the tax year beginning on April 1 following the vote and shall remain in effect until altered or rescinded pursuant to RSA 79-A:25, IV.
- IV. In any town or city that has adopted the provisions of paragraph II, the legislative body may vote to rescind its action or change the percentage or amount, or percentage and amount, of revenues to be placed in the conservation fund. Any such action to rescind or change the percentage or amount, or percentage and amount, shall not take effect before the tax year beginning April 1 following the vote.

Source. 1973, 372:1. 1988, 120:2. 1991, 281:19, 20, eff. Aug. 17, 1991.

Section 79-A:25-a**79-A:25-a Land Use Change Tax Fund. –**

- I. Towns and cities may, pursuant to RSA 79-A:25-b, vote to account for all revenues collected pursuant to this chapter in a land use change tax fund separate from the general fund. After a vote pursuant to RSA 79-A:25-b, no land use change tax revenue collected under this chapter shall be recognized as general fund revenue for the fiscal year in which it is received, except to the extent that such revenue is appropriated pursuant to paragraph II of this section. Any land use change tax revenue collected pursuant to this chapter which is to be placed in a conservation fund in accordance with RSA 79-A:25, II, shall first be accounted for as revenue to the land use change tax fund before being transferred to the conservation fund at the time of collection.
- II. After any transfer to the conservation fund required under the provisions of RSA 79-A:25, II, the surplus remaining in the land use change tax fund shall not be deemed part of the general fund nor shall any surplus be expended for any purpose or transferred to any appropriation until such time as the legislative body shall have had the opportunity at an annual meeting to appropriate a specific amount from said fund for any purpose not prohibited by the laws or by the constitution of this state. At the end of an annual meeting, any unappropriated balance of land use change tax revenue received during the prior fiscal year shall be recognized as general fund revenue for the current fiscal year.

Source. 1991, 156:1. 1992, 122:1, eff. June 30, 1992.

Section 79-A:25-b**79-A:25-b Procedure for Adoption. –**

- I. Any town may adopt the provisions of RSA 79-A:25-a to account for all revenues received pursuant to this chapter in a land use change tax fund separate from the general fund in the following manner:
- (a) In a town, the question shall be placed on the warrant of a special or annual town meeting by the selectmen, or by petition under RSA 39:3, and shall be voted on by ballot. The question shall not be placed on the official ballot.
- (b) The selectmen shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality

associated with the disposal and/or recycling of solid waste. Therefore, in an effort to offset the expected loss of revenues and increased costs occurring to the City as a result of the anticipated filling of the TREE Waste Disposal Facility to its permitted capacity and to promote the general fiscal strength and well-being of the City, it is necessary that economic development in the City of Rochester be promoted and/or maintained to ensure the existence and/or expansion of a vibrant economic base for the City and its inhabitants.

- (2) Therefore, the City Council of the City of Rochester, pursuant to the authority granted by RSA 47:1-b and 47:1-c, hereby establishes a special revenue reserve fund from the specific source identified in Subsection **B** of this section for capital expenditures or expenditures for capital projects, transfers to capital projects, transfers to capital reserve, or for any other appropriation of a nonrecurring nature in support of economic development as determined by the City Council. The special reserve fund established in Subsection **B** of this section shall be known as the "City of Rochester Economic Development Special Reserve Fund." No expenditure from said City of Rochester Economic Development Special Reserve Fund shall be made without an appropriation of such funds having been adopted by the Rochester City Council, which appropriation shall provide that such appropriation is for economic development purposes and shall contain a statement and/or finding by the City Council indicating the manner in which it is anticipated that such appropriation is related to the economic development of the City of Rochester.
- B. There is hereby created a non-lapsing budgetary account within the City of Rochester, pursuant to the authority granted to the City by the provisions of RSA 47:1-b, such special reserve fund to be known as the "City of Rochester Economic Development Special Reserve Fund." Such fund shall be funded on an annual basis by the appropriation by the City Council to such special reserve fund of an amount not less than one hundred thousand dollars (\$100,000.) from the funds annually payable to the City of Rochester by Waste Management of New Hampshire, Inc., from the so-called "host community fees" payable to the City pursuant to the provisions of the Host Agreement between the City and Waste Management of New Hampshire, Inc., or of any successor to such agreement. In addition to such minimum funding level, the City Manager may, during any fiscal year of the City, upon written notification to, and appropriation by, the City Council, transfer to said City of Rochester Economic Development Special Reserve Fund unappropriated host community fees in an amount not to exceed the difference between the total amount of host community fees received from Waste Management of New Hampshire, Inc., during such fiscal year and the amount of such host community fees previously appropriated by the Rochester City Council during such fiscal year (having in mind the minimum funding/appropriation requirement provided for herein and any other appropriation of such fiscal year's host community fees by the City Council during such fiscal year).

§ 7-64 Conservation Fund.

- A. Purpose. The Rochester City Council recognizes that the proper utilization and protection of the City's natural resources and the protection of its watershed resources are important to the well-being of the City of Rochester and its inhabitants, and to that end the City has adopted the provisions of Chapter 36-A of the New Hampshire Revised Statutes Annotated providing for the establishment of a Conservation Commission. The Rochester City Council further recognizes that realizing the goals of properly utilizing and protecting its natural resources and protecting its watershed resources requires the development and implementation of a systematic program designed to maintain and care for such resources, which program implementation is enhanced when the Conservation Commission is provided with a regular

source of revenue. Therefore, it is the purpose of the Rochester City Council in adopting this section to establish a mechanism whereby the Conservation Commission is provided with a source of funding which can be utilized to aid in the accomplishment of the goals of properly utilizing and protecting the City of Rochester's natural resources and protecting its watershed resources. [Added 5-4-1999]

B. Establishment of Conservation Fund. Pursuant to the provisions of RSA 36-A:5, I, a Conservation Fund is established by the City of Rochester. Funds appropriated to said Conservation Fund by the Rochester City Council, and any gifts received pursuant to the provisions of RSA 36-A:4, shall be placed in said fund and allowed to accumulate from year to year. The City Treasurer shall have custody of all moneys in the Conservation Fund and shall pay out the same only upon the order of the Conservation Commission. Money may be expended from the Conservation Fund by the Conservation Commission for the purposes specified in Chapter 36-A of the New Hampshire Revised Statutes Annotated without further approval of the City Council. The disbursement of Conservation Fund moneys shall be authorized by a majority of the Conservation Commission. Prior to the use of such funds for the purchase of any interest in real property, the Conservation Commission shall hold a public hearing with notice in accordance with RSA 675:7.

~~C. Establishment of annual Conservation Fund budget. The City Manager shall include in the budget prepared and submitted to the City Council annually, pursuant to Section 40 of the Rochester City Charter, an appropriation to the Conservation Fund in an amount hereinafter provided for, the source of funds for which appropriation shall be specified as being drawn in their entirety from revenues received by the City during such budgetary period from the so-called "current use change tax" provided for in RSA 79-A:7, or the corresponding provision of any recodification of such statute. Said appropriation shall be in an amount equal to all revenues, in excess of twenty five thousand dollars (\$25,000.), projected in the budget to be received by the City during such budgetary period from the so-called "current use change tax." In the event that the funds received by the City from the so-called "current use change tax" shall exceed the amount projected in the budget to be received from such source during such budgetary period, the City Manager shall, prior to the close of the fiscal year in question, present a supplemental appropriation in the amount of the excess receipts funds so received and identifying such excess receipts as the source of funding for such supplemental appropriation. The City Council shall act on such supplemental appropriation in the ordinary course. [Amended 8-6-2002]~~

C. All revenues collected related to Current Use Tax Warrants provided by RSA 79-A:7 shall be recorded in the Conservation Fund pursuant to RSA 79-A:25-Disposition of Revenues. The Finance Department shall provide to City Council by July 31st of each year the fund balance, status of Conservation Fund, and prior fiscal year activity. City Council reserves the right to adjust percentages of future collected revenues placed in the Conservation Fund, or establish a not to exceed fund balance amount.

§ 7-65 Budget line items for merit salary increases or pay adjustments.

[Added 6-1-2004]

A. Purpose. The purpose of this section is to implement the authority of the Mayor and City Council to take proper care that no money shall be paid from the City treasury unless previously granted and appropriated, and to secure a just and prompt accounting for expenditures made pursuant to appropriations as provided for in RSA 47:6, as well as to promote the well-being of the City in