

**Codes and Ordinances Committee**

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



**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

**Thursday, May 2, 2024**

**31 Wakefield Street, Rochester, NH**

Council Chambers

**6:00 PM**

**Agenda**

- 1. Call to Order**
- 2. Roll Call**
- 3. Public Input**
- 4. Acceptance of the Minutes**
  - 4.1 March 7, 2024 *motion to approve* P. 3**
- 5. Continued Review of the Code of Ethics and Conduct for Elected and Appointed Officials P. 15**
  - Chapter 7-83 – Board of Ethics P. 23**
- 6. Continued Review of Amendment to Chapter 40 of the General Ordinances of the City of Rochester Regarding Council Designated Area Periodic Inspections P. 25**
- 7. Amendment to Chapter 171 of the General Ordinances of the City of Rochester Regarding Hawkers, Peddlers, and Itinerant Vendors P. 27**
- 8. Amendment to Chapter 223 of the General Ordinances of the City of Rochester Regarding Acceptance of Roadways with Private Utilities P. 29**
- 9. Building and Licensing Services - Compliance Updates and Data Review**
- 10. Other**
- 11. Adjournment**

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**Codes and Ordinances Committee**

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

**Others Present**

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

**CODES AND ORDINANCES COMMITTEE**  
 Of the Rochester City Council  
**Thursday, March 7, 2024**  
 Council Chambers  
 6:00 PM

**Minutes****1. Call to Order**

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

**2. Roll Call**

Deputy City Clerk Cassie Givara took the roll call attendance. Councilors de Geofroy, Fontneau, Turner, Walker, and ex officio member Mayor Callaghan were present. Councilor Karolian was excused.

**3. Public Input**

Chris Rice, resident, addressed the Committee regarding the proposed amendment to Chapter 40 appearing on the agenda and gave suggestions on edits which could be made prior to full council approval.

**4. Acceptance of the Minutes****4.1 February 15, 2024 *motion to approve***

Councilor Walker **MOVED** to **ACCEPT** the February 15, 2024 Codes and Ordinances Committee meeting minutes. Councilor Fontneau seconded the motion. The **MOTION CARRIED**

by a unanimous voice vote.

## 5. Continued Review of the City Council Rules of Order

- **Amendment to Section 1.5-C:6 “Procedures for Remote Participation”**  
**(addendum a)**

Chair de Geofroy explained that the suggested change is to add references to RSA 91-A into the script included in the Rules of Order. This RSA citation is already being verbally stated when the script is read at meetings; this amendment would just make the Rules of Order consistent with current practice.

Councilor Fontneau **MOVED** to recommend the amendment to Section 1.5-C(6) of the Rules of Order, “Procedures for Remote Participation” to full City Council. Councilor Turner seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

- **Amendment to Section 4.4 “Standing Committees” (addendum b)**

Councilor Walker stated that the verbiage suggested by the City Attorney was not the same as what he had suggested at the prior meeting and asked the City Attorney how he arrived at the suggested wording included in the packet. Attorney O’Rourke explained that he had concerns that if all City Councilors were made alternates for all subcommittees and compelled to attend the meetings, it would violate the provision that members cannot service on more than 3 standing committees. As written in the suggested amendment, alternates would not need to regularly attend but would be available on call if needed. The Committee discussed the procedure if this amendment is passed, with the Mayor or Chair of a committee calling on an alternate to attend if a quorum is not available. Councilor Walker explained that his original idea had been to not name specific councilors as alternates, but to have all Councilors as alternates. In this instance, if a Councilor was present for a meeting of which they were not a regular member, they could be appointed as the alternate if needed negating the need for a specific call-in. Attorney O’Rourke explained that this procedure would violate the Mayor’s authority to appoint. Councilor Walker **MOVED** to recommend the amendment to Section 4.4 of the City Council Rules of Order to full Council. Councilor Fontneau seconded the motion.

Mayor Callaghan acknowledged that it would make sense for an alternate to be able to serve on a board/committee if they are present at a meeting instead of a call being made to a specific alternate. He questioned how the proposed wording would ensure a quorum. Councilor Fontneau referenced Councilor Walker’s prior suggestion that all Councilors not appointed to a subcommittee automatically become alternates to all other committees. Attorney O’Rourke suggested the following: “**The Mayor shall appoint ~~two~~ (2) alternate members to each standing committee.**” This would serve the same purpose of ensuring alternates are available without requiring specific Councilors or specific numbers to be named as alternates for committees. Attorney O’Rourke explained that the Mayor would still appoint specific Councilors as alternates, whether it is several members or the entire body. This would allow any available Councilors to serve as alternates when available without violating the Mayor’s authority to appoint. Councilor Walker **MOVED** to **AMEND** section 4.4 by striking out the word “two” as detailed by Attorney O’Rourke. Councilor Fontneau seconded the amendment. The **MOTION CARRIED** to amend the section as stated above by a unanimous voice vote. Chair de Geofroy called for a vote on the original motion as amended.

The MOTION CARRIED, as amended, by a unanimous voice vote.

## **6. Continued Review of the Code of Ethics and Conduct for Elected and Appointed Officials**

Phebe Miner, legal intern, referenced discussion from the prior meeting regarding the sufficiency review portion of the “Board of Ethics” ordinance. The Committee had questioned whether this review of sufficiency should be conducted by City officials/staff or should be entirely members outside the city organization. The current ordinance lists City officials carrying out the sufficiency review to determine whether there is enough evidence to support a violation of the code; the process is then handed over to the “Ethics Investigation Officer” (EIO), who would be a hired independent party outside of the City administration.

Ms. Miner stated that she had reviewed the processes of neighboring towns and cities related to their ethics codes, and she summarized her findings. The City of Dover is closest to the suggestion from Councilor Walker that the entirety of the sufficiency review be conducted by outside parties not elected or employed by the City; with Dover’s 5-member sufficiency review being comprised of one former school board or City Council member along with four other residents of the City. In their process, if the complaint is deemed sufficient, it is then handed over to the City Council. The Dover ordinance states that the board members receive training, although they are not compensated monetarily.

Ms. Miner explained that in Somersworth, the ordinance states that the sufficiency review is comprised of 5 members; however, there are currently only three members serving. She speculated that this could potentially be due to the time commitment or difficulty in finding members to serve on such a board. This would need to be taken into consideration if Rochester were to explore a completely external sufficiency review board; keeping in mind that any complaints received are required to be reviewed within 30 days of receipt.

Councilor Walker reiterated his suggestion that a sufficiency review board could be comprised of HR officials from local businesses, who already have adequate training for dealing with ethics issues. Ms. Miner asked for clarification on the suggestion and whether these HR employees of local businesses could serve on said board regardless of their town of residence. Councilor Walker equated his proposal to members of the REDC, who are not required to reside in the city to serve on the board as long as they have business ties to the City. Ms. Miner inquired how board members could be compelled to serve if they were not City officials being appointed. Councilor Walker speculated that the City could contact local organizations to see if they would be amenable to having staff serve on the board; however membership would be voluntary. Ms. Miner reported that there is no precedent in the region for having an ethics board which is not comprised of residents of the town or city. The Committee discussed the requirement for members serving on the board to be Rochester residents or to have relevant HR experience. The potential difficulty of being able to assemble a quorum in a timely manner with a board comprised of local business staff was discussed.

Chair de Geofroy inquired how long the codes of ethics Ms. Miner had reviewed had been in effect. Ms. Miner stated that many of them had been established more than 10 years prior and already recertified; with Portsmouth’s Code of Ethics in place since the late 1980s. Chair de Geofroy requested that the process and background of these well-established codes be reviewed to determine what is working and how the Rochester process could be built. Ms. Miner committed to returning the following month with recommendations based on this review. Mayor Callaghan requested

guidance on how these board members would be appointed, whether city officials, residents, or local business staff. There was a brief discussion regarding whether these members would be City Manager, Mayor, or Council appointees.

Chair de Geofroy asserted that he did not identify any issues with having a sufficiency review made up of internal candidates, who would simply determine whether sufficient evidence of a violation exists to warrant elevating to an investigation. He speculated that there could always be perception of bias to some extent, regardless of how the board is comprised or appointed.

The review of the Code of Ethics was kept in Committee.

## **7. Amendment to Chapter 40 of the General Ordinances of the City of Rochester Regarding Council Designated Area Periodic Inspections**

Attorney O'Rourke explained that this this amendment proposes a new approach to enforcing the property maintenance codes which are already adopted as part of the City ordinances.

In developing this approach, data was gathered regarding locations of non-owner-occupied multi-family rental properties, locations of code complaints regarding multi-family properties, and locations of property crimes in the City. This data was compiled into maps to illustrate the areas of the City where these criteria were most prevalent. Attorney O'Rourke explained that he had reviewed approaches to property maintenance code enforcement throughout the country and had developed this amendment with the Director of Building and Licensing Services (BLS).

Attorney O'Rourke summarized the approach, which would have the City Council designate areas of the City for periodic inspection based on the above-mentioned data. Code Enforcement officers would still be responding to complaints and carrying out their regular duties; this amendment would ensure inspections of certain properties in these designated areas on a routine basis. Attorney O'Rourke clarified that residents of multi-family rental properties are the least likely to complain about code issues due to fear of potential eviction or retaliation. This approach would remove the "neighbor against neighbor" complaint-based approach and potential adverse results for tenants. It would put the proactive responsibility on the City. He stated that the goal is that the numbers of property crimes and code complaints will gradually reduce once these periodic inspections become commonplace and improvements are made.

Jim Grant, Director of Building and Licensing Services, acknowledged that there are often right-to-know requests following code complaints to determine where the complaint had originated, pitting neighbor against neighbor. He clarified that he is tasked with carrying out the International Property Maintenance Codes (IPMC), however there needs to be a better mechanism to enforce these codes than the complaint-based approach being used currently. Director Grant responded to a comment made at public input, which he interpreted to imply that affordable dwelling units should not be as safe as higher priced rentals. Director Grant acknowledged that bringing properties up to code does cost money; however, the tenants of these units deserve safe accommodations and should not be faced with potential loss of housing due to the cost of these necessary improvements being completed by property owners.

Councilor Fontneau clarified that the IPMC applies to all properties, not only rental units as covered in the proposed amendment. He expressed concern that the maps included with the

amendment appear to target only certain types of properties; non-owner-occupied multi-family units. The maps seem to focus primarily on the downtown area, which has the most multi-family units as well as the oldest housing stock in the City. Councilor Fontneau stated that landlords may feel singled out based on the location of their property while there are similar properties that fall outside of the designated areas and are not subject to the same scrutiny. He requested that the stakeholders, owners of non-owner-occupied multi-family units, be invited to weigh in on this amendment.

Councilor Walker inquired why property crime statistics were used in the development of the maps included to support the inspection approach. Attorney O'Rourke responded that tenants of properties that are not up to code are more likely to be victims of property crimes.

Councilor Walker speculated that the current verbiage of the amendment "targeting" non-owner-occupied multi-family units could open the City up to discrimination lawsuits. Attorney O'Rourke clarified that owners of such properties are not a protected class and could not fall under the classification for such discrimination litigation. Attorney O'Rourke explained that BLS staff would not be conducting inspections *only* of multi-family rental units; they would still be conducting their regular tasks and inspections of all types of properties. This amendment would simply ensure that the areas identified as being in most dire need are designated as being inspected periodically without complaints needed to initiate the inspections. Councilor Walker agreed with Councilor Fontneau that affected property owners should have an opportunity to speak on the matter at a public hearing.

Councilor Walker inquired how the process would be carried out and if interior inspections would be noticed prior to occurring. Director Grant clarified that no interior inspections would be carried out under this proposal; all inspections are external to identify code deficiencies.

Mayor Callaghan requested that there be a definition of "inspection" included in the amendment because it is not clear based on the current language. Director Grant directed the Committee to the IPMC and the definition of inspections. He stated staff will not be entering properties unless there are egregious visible violations, at which point proper authorizing documentation to enter the property would be secured.

Mayor Callaghan acknowledged the correlation between property crimes and property code violations. He stated that his interpretation of the amendment did not limit inspections to multi-family rentals with the phrase "...inspections of residential rental buildings or structures..." Attorney O'Rourke agreed that inspections are not limited to rental properties. Mayor Callaghan stated that this proactive approach to code enforcement will likely result in improvement of property values and quality of life for residents.

Mayor Callaghan spoke about the potential of fines collected being placed into a fund to assist residents with property improvements in order to get their properties up to code. He spoke about several other potential financing options the City could review to assist residents with improvements. Attorney O'Rourke spoke about the previous "Neighborhood Compliance Program" and the process the City had followed. Instead of fining property owners, fees were waived under the stipulation that funds would instead be reinvested into property improvements. The goal had not been for the City to make money, but rather to have these properties brought up to code and for the neighborhoods to be improved for residents. He said the City had experienced great success with this approach.

Councilor Walker inquired how BLS staff would proceed if an owner refused access to their property. Director Grant indicated that the inspections are primarily front, exterior visual inspections; staff are not digging for problems and will not investigate further unless an obvious violation is identified.

Councilor Fontneau reiterated the inference that only non-owner-occupied rental properties would be addressed. Attorney O'Rourke clarified that this particular proposal identifies non-owner-occupied rentals in particular areas of the City, because these properties are currently what the City has data detailing; however, Code Enforcement would still be carried out for all types of properties in the City per the IPMC.

Councilor Fontneau cautioned against the perception of certain properties being targeted and the possible resulting effect of rent increases and unaffordability due to the cost of these improvements being made upon code enforcement. He suggested there could be a middle ground between the complaint-based approach and the designated area inspection approach. Chair de Geofroy agreed that there could be further review and revisions to the proposal to avoid the perception of targeting or bias.

Mayor Callaghan specified that the City employs building inspectors and code enforcement officers; their job is to enforce these adopted code laws and they should be given the ability to do so. Chair de Geofroy agreed and cautioned against the perception of the City advocating for not enforcing these property codes; but he acknowledged there needs to be an approach that is perceived as more equitable and fair.

Chair de Geofroy suggested that Director Grant report back to the committee with a comprehensive detailing of BLS' approach and to and process for code enforcement to help the committee understand current practice and how it can be improved or changed. Director Grant stated there needs to be a determination whether it is the City's approach to code enforcement that is the issue, or if it is the codes themselves that are objectionable. If it is the latter, the City needs to look into changing the codes if they are not supportive of enforcing them.

Director Grant spoke about the codes he is tasked with enforcing and the department's current approach. He summarized a courtesy letter submitted to violating properties and the potential of softening the language included in this notice if requested.

Mayor Callaghan suggested the following amendment: **"The City hereby requires periodic inspections of residential rental buildings or structures as part of a targeted effort within geographic areas specified by the City Council...."** Attorney O'Rourke explained that there are laws in the State of NH that recognize the difference between single-family residences and multi-family dwellings, which are considered businesses and held to different standards. However, striking out the words "residential rental" would still allow for periodic inspections in these designated areas. Mayor Callaghan **MOVED** to amend the proposal by striking the words "residential rental" as shown above. Councilor Fontneau seconded the motion. The amendment to the **MOTION CARRIED** by a majority voice vote.

Chair de Geofroy proposed that this item be kept in committee to allow further review and work and reiterated the request to Director Grant for a more comprehensive detailing of how this process

would be approached and carried out in these designated areas. Councilor Walker reiterated that there should be a public hearing held on the matter to allow stakeholders to share their thoughts prior to consideration for adoption.

## **8. Amendment to Chapter 94 of the General Ordinances of the City of Rochester Regarding Lead Paint Poisoning and Prevention Control**

Attorney O'Rourke gave an overview of a new State law going into effect on July 1, 2024; RSA 130-A Regarding Lead Poisoning Prevention and Control. If adopted by the City, this would allow City officials to enforce the provisions of this law. If not adopted, the only party able to enforce the provisions would be DHHS; with limited inspectors throughout the State and the requirement to file a request for service, this could be prohibitive. Attorney O'Rourke clarified that this is not creating a new law, but rather allowing the City to enforce a law already in effect without the involvement of a State agency.

Councilor Walker inquired how this law would be enforced; if it is complaint-driven or would it involve periodic inspections. Director Grant stated that the trigger for this enforcement would be a question on the City's building permits regarding any renovations or projects on pre-1978 properties. He explained that effective July 1, the City would be requiring a certificate of lead safety prior to a certificate of occupancy being issued. Director Grant briefly summarized the difference between lead-free and lead safe.

Councilor Walker inquired if the City is currently undertaking lead testing for children in Rochester schools. Mayor Callaghan responded that there is no in-school testing occurring; there had been legislation proposed at the State level which would enact this testing, but it did not pass. Councilor Walker suggested that elevated levels on a child's lead test could be a trigger for testing of the property where the child lives.

Councilor Fontneau cautioned that requiring properties to be lead safe would come at an increased cost for improvements and in turn, an increased cost for rents. He stated that the system unfairly places elevated lead levels on landlords, suggesting that the onus should be on parents to ensure that their children are tested on the recommended schedule to identify exposures. He surmised that there are multiple sources of lead exposure for children besides rental properties. Additionally, Councilor Fontneau questioned if there would be liability for the City if a property is certified as lead safe and a child later tests positive at this location. Attorney O'Rourke stated that the City would not be liable in a circumstance as explained; the liability would fall on the property owner.

Councilor Walker asked how the City would be carrying out lead testing. Director Grant explained that City staff will not enter properties to perform lead testing; the change in law being discussed is the requirement of specific certification for lead safety which will now be enforced by the City. The Committee discussed various methods of testing for lead. Director Grant indicated he would invite the Health Inspector, who is lead certified, to attend an upcoming Codes and Ordinances meeting and explain the process in greater detail.

Mayor Callaghan asked if this proposal would initiate the addition of a checkmark on building permits for the involvement of a lead abatement contractor for all properties pre-dating 1978. Chair de Geofroy summarized that the State law is already in place requiring this process be followed; the proposal for the City is to take on the responsibility of ensuring the follow through is occurring

without having to rely on the State. Director Grant confirmed this would be a field built into the permitting software. Certain criteria would be flagged, such as year the property was built, requiring a certification number to be entered. It was further clarified that the proposal is an administrative function to ensure that the law has been followed.

Mayor Callaghan clarified that the City would not be inspecting for the presence of lead paint; these inspections would be done by certified abatement contractors and the City would be requiring their certification number. Director Grant confirmed this that the Board of Health had already directed BLS to add this field to building permits; the proposal before the committee is the enforcement portion of the process.

Mayor Callaghan **MOVED** to recommend to the full City Council the Amendment to Chapter 94 regarding lead paint poisoning and prevention control. Chair de Geofroy seconded the motion. Chair de Geofroy referenced a vote taken by Council the prior year regarding these checkboxes for lead certification numbers to be added to building permits. Attorney O'Rourke confirmed that Council had voted to add this field to building permits; with this new law going into effect, staff felt it would be propitious to combine both the city enforcement aspect along with the change to the building permits. Councilor Fontneau expressed support for the addition of certification numbers to the building permits but spoke against City staff involvement in lead abatement and the potential related liability. Mayor Callaghan emphasized the adverse effects lead exposure can have on a child's brain development, and the priority this should take over renovation costs. Chair de Geofroy agreed and stated that the costs of any lead abatement and improvement should be borne by property owners. The **MOTION CARRIED** by a majority voice vote.

## 9. Building and Licensing Services - Compliance Updates and Review

Director Grant explained that currently, the City's Zoning Board of Adjustments serves as the board of appeals for compliance of the IPMC. He suggested that the City could explore the option of creating their own board of appeals specifically to handle the Council Designated Area process, which would be comprised of individuals with expertise in this area, such as landlords and developers and those familiar with IPMC. This board could be viewed as more fair and unbiased. Director Grant spoke of the potential of using a score card for inspections. He requested direction and guidance from the Committee in order to know how to proceed and which methods and approaches the City would like explored. He reiterated that if there are codes the City does not believe should be enforced, these codes should be reviewed and potentially removed. Director Grant cautioned against the possibility of a great deal of time and effort being placed into the Council Designated Area proposal just to have it voted down by City Council. He suggested that guidance could be given prior to staff spending time developing programs which are not structured in a way the City wants.

Chair de Geofroy requested more data to be brought forward in regards to code compliance processes; numbers might be helpful in determining what is being done well and what could be changed. Director Grant reiterated that these numbers are currently complaint-driven and relatively low. There was discussion regarding the committee receiving a more detailed explanation of the current BLS approach and how the proposed designated area approach would work.

## 10. Other

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City of Rochester

Codes and Ordinances Committee  
March 7, 2024

There was no discussion under “other.”

## 11. Adjournment

Councilor Walker **MOVED** to **ADJOURN** the Codes and Ordinances Committee meeting at 8:03 PM. Councilor Turner seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully Submitted,

Cassie Givara  
Deputy City Clerk

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”) In accordance with RSA 91-A:2, III (a) (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), (Chair), I find that it is not reasonably practical for (participant) to be physically present for this meeting. (Name), can you identify all other persons physically present in your current location? (participant names others).”

## **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.
- C. The Mayor shall appoint ~~two (2)~~ alternate members to each standing committee. Alternates are not required to attend regularly scheduled meetings, but may be called upon by a Chairperson to attend a meeting in order to form a quorum in the absence of appointed regular members.

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**City of Rochester, NH**

**Code of Ethics and Conduct  
For  
Elected and Appointed Officials**

Adopted March 7, 2023

## A. ETHICS

The citizens and businesses of the City of Rochester are entitled to have fair, ethical and accountable local government. To this end, the public should have full confidence that their elected and appointed officials:

- Comply with both the letter and spirit of the laws and policies affecting the operations of government.
- Are independent, impartial, and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless required by law to be confidential, in an atmosphere of respect and civility.

Therefore, members of the City Council, all Boards, and Committees and Commissions shall conduct themselves in accordance with the following ethical standards:

1. **Act in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Rochester and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before them.
2. **Comply with both the spirit and the letter of the Law and City Policy.** Members shall comply with the laws of the nation, the State of New Hampshire, and the City of Rochester in the performance of their public duties.
3. **Conduct of Members.** The professional and personal conduct of members while exercising their office must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, Boards, Committees and Commissions, the staff or public.
4. **Respect for Process.** Members shall perform their duties in accordance with the processes and rules of order established by the City Council.
5. **Conduct at Public Meetings.** Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand.
6. **Decisions Based on Merit.** Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations. When making adjudicative decisions (those decisions where the member is called upon to determine and apply facts particular to an individual case), members shall maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and on the personal knowledge of a Member on the issue presented to the rest of the City Council at said hearing.
7. **Communication.** Council Members shall avoid posting to social media in regards to any adjudicative matters pending before the body. Outside of adjudicative matters pending before the body, members of the Council/Commission/Board/Committee are advised not to participate in discrimination or harassment, even if the identified behaviors are not targeting a protected class, consisting of unwelcome conduct, sexual or otherwise, whether verbal, physical, or visual. Harassing conduct includes, but is not limited to: slurs or negative stereotyping; bullying, threatening, intimidating or other hostile acts; degrading jokes and displays or circulation of graphic material that degrades or shows hostility; and physical touching. Members are also advised to never demean or personally attack an employee regarding the employee's job performance in public.

8. **Conflict of Interest.** See Rochester City Charter, Section 72
9. **Gifts and Favors.** Members shall not engage in quid pro quo by taking any special advantage of services or opportunities for personal gain, by virtue of their public office that is not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.
10. **Confidential Information.** Members must maintain the confidentiality of all written materials and verbal information provided to members which is confidential or privileged. Members shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial, or other private interests.
11. **Use of Public Resources.** Members shall not use public resources which are not available to the public in general (e.g., City staff time, equipment, supplies or facilities) for private gain or for personal purposes not otherwise authorized by law.
12. **Representation of Private Interests.** In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any Board, Committee, Commission or proceeding of the City, nor shall members of Boards, Committees and Commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.
13. **Advocacy.** Members shall represent the official policies or positions of the City Council, Board, Committee or Commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Rochester, nor will they allow the inference that they do. Councilmembers and Board, Committee and Commission members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention or display endorsements during Council meetings, or Board, Committee and Commission meetings, or other official City meetings.
14. **Policy Role of Members.** Members shall respect and adhere to the council-manager structure of the Rochester City government. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by City staff, Boards, Committees and Commissions, and the public. Except as provided by the City Charter and Code, members shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.
15. **Independence of Boards, Committees and Commissions.** Because of the value of the independent advice of Boards, Committees and Commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of Board, Committee and Commission proceedings.
16. **Positive Workplace Environment.** Members shall support the maintenance of a positive and constructive workplace environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

## **B. CONDUCT GUIDELINES**

The Conduct Guidelines are designed to describe the manner in which elected and appointed officials should

treat one another, City staff, constituents, and others they come into contact with while representing the City of Rochester.

## **1. Elected and Appointed Officials' Conduct with Each Other in Public Meetings**

Elected and appointed officials are individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even though individuals may not agree on every issue.

### *a) Honor the role of the chair in maintaining order*

It is the responsibility of the Mayor, as chair to keep the comments of members on track during public meetings. Members should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

### *b) Practice civility and decorum in discussions and debate*

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of debate by a free democracy in action. Free debate does not require nor justify, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.

### *c) Avoid personal comments that could offend other members*

If a member is personally offended by the remarks of another member, the offended member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The chair will maintain control of this discussion.

### *d) Demonstrate effective problem-solving approaches*

Members have a public stage and have the responsibility to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

## **2. Elected and Appointed Officials' Conduct with the Public in Public Meetings**

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

### *a) Be welcoming to speakers and treat them with care and gentleness.*

While questions of clarification may be asked, the official's primary role during public testimony is to listen.

### *b) Be fair and equitable in allocating public hearing time to individual speakers.*

The chair will determine and announce limits on speakers at the start of the public hearing process.

### *c) Practice active listening*

It is disconcerting to speakers to have members not look at them when they are speaking. It is fine to look down at documents or to make notes but reading for a long period of time or gazing around the room gives the appearance of disinterest. While you cannot be required to listen to public speakers in a certain way, it is advised that all members remain conscious of their actions during such time as member of the public might be speaking. To the best of your ability, remain focused on the speaker and avoid noise and

distractions.

Members shall be cognizant of non-verbal body language and facial expressions that could be interpreted as disbelief, anger, or boredom.

Members shall make attempts to listen actively and respectfully to City staff, members of the public and other Members whenever possible.

- d) *Maintain an open mind*  
Members of the public deserve an opportunity to influence the thinking of elected and appointed officials.
- e) *Ask for clarification, but avoid debate and argument with the public*  
Only the chair – not individual members – can interrupt a speaker during a presentation. However, a member can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

### 3. Elected and Appointed Officials' Conduct with City Staff

Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected, and City staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by everyone for the good of the community. The council is committed to providing an environment that is free from discrimination and harassment, even if the identified behavior is not targeting a protected class.

*Harassment consists of unwelcome conduct, sexual or otherwise, whether verbal, physical, or visual. Harassing conduct includes, but is not limited to slurs or negative stereotyping; bullying, threatening, intimidating or other hostile acts; degrading jokes and display or circulation of graphic material that degrades or shows hostility; and physical touching*

- a) *Treat all staff as professionals*  
Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.
- b) *Do not disrupt City staff from their jobs*  
Elected and appointed officials should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Do not attend City staff meetings unless requested by staff – even if the elected or appointed official does not say anything, his or her presence implies support, shows partiality, may intimidate staff, and hampers staff's ability to do their job objectively.
- c) *Never publicly criticize an individual employee*  
Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Appointed officials should make their comments regarding staff to the City Manager or the Mayor.
- d) *Do not get involved in administrative functions*  
Elected and appointed officials acting in their individual capacity must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

e) *Do not solicit political support from staff*

Elected and appointed officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

f) *No Attorney-Client Relationship*

Members shall not seek to establish an attorney-client relationship with the City Attorney, including his or her staff and attorneys contracted to work on behalf of the City. The City Attorney represents the City and not individual members. Members who consult with the City Attorney cannot enjoy or establish an attorney-client relationship with the attorney.

#### 4. **Council Conduct with Boards, Committees and Commissions**

The City has established several Boards, Committees and Commissions as a means of gathering more community input. Citizens who serve on Boards, Committees and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

a) *If attending a Board, Committee or Commission meeting, be careful to only express personal opinions*

Councilmembers may attend any Board, Committee or Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a Councilmember at a Board, Committee or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

b) *Limit contact with Board, Committee and Commission members to questions of clarification*

It is inappropriate for a Councilmember to contact a Board, Committee or Commission member to lobby on behalf of an individual, business, or developer, and vice versa. It is acceptable for Councilmembers to contact Board, Committee or Commission members in order to clarify a position taken by the Board, Committee or Commission.

c) *Respect that Boards, Committees and Commissions serve the community, not individual Councilmembers*

The City Council appoints individuals to serve on Boards, Committees and Commissions, and it is the responsibility of Boards, Committees and Commissions to follow policy established by the Council. But Board, Committee and Commission members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to threaten Board, Committee and Commission members with removal if they disagree about an issue.

Appointment and re-appointment to a Board, Committee or Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Board, Committee or Commission appointment should not be used as a political "reward."

d) *Be respectful of diverse opinions*

A primary role of Boards, Committees and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Boards, Committees and Commissions, but must be fair and respectful of all citizens serving on Boards, Committees and Commissions.

e) *Keep political support away from public forums*

Board, Committee and Commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support Board, Committee and Commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

### C. SANCTIONS

a) **Acknowledgement of Code of Ethics and Conduct**

Councilmembers who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct shall not be assigned intergovernmental assignments or Council subcommittees by the Mayor. Members of committees appointed by the Mayor and/or the City Council who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct are not eligible to hold appointed positions.<sup>1</sup>

b) *Ethics Training for Local Officials*

Councilmembers, Board, Committee and Commission Members who are out of compliance with State or City mandated requirements for ethics training as determined by City Council shall not represent the City on intergovernmental assignments or Council subcommittees, and may be subject to sanctions.

c) *Behavior and Conduct*

The City of Rochester's Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the City of Rochester Council, Boards, Committees and Commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. The chairs of Boards, Committees and Commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention.

d) *Councilmembers*

Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded by the Mayor or formally censured by the Council, lose committee assignments (both within the City of Rochester and with intergovernmental agencies) or other privileges afforded by the Council.

Further, any Councilmember found in violation of this Code or any other misconduct in office may also be subject to the following sanctions imposed by the Council:

1. Required to attend and successfully complete training related to the nature of the violation.
2. Required to issue a formal, sincere apology.
3. Removed from office in accordance with Section 70 of the City Charter.

Failure to comply with any sanctions imposed by the Council will be considered a violation of this Code and an act of misconduct in office.

Individual Councilmembers should point out to the offending Councilmember perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being questioned, then the matter should be referred to the Deputy Mayor. It is the responsibility of the Mayor (Deputy Mayor) to initiate action if a Councilmember's behavior may warrant sanction. If no action is taken by the Mayor (or Deputy Mayor), then the alleged violation(s) can be brought up with the full Council.

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<sup>1</sup> This section does not apply to Council members or Committee members currently serving at the time of adoption.

e) *Board, Committee and Commission Members:*

Counseling, verbal reprimands and written warnings may be administered by the Mayor to Board, Committee and Commission members failing to comply with City policy. These lower levels of sanctions shall be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor shall be distributed in memo format to the chair of the respective Board, Committee or Commission, the City Clerk, the City Attorney, the City Manager, and the City Council.

The City Council may impose sanctions on Board, Committee and Commission members whose conduct does not comply with the City’s policies, up to and including removal from office. Any form of discipline, short of removal imposed by Council shall be determined by a majority vote of elected members of the Council at a noticed public meeting and such action shall be preceded by a Report to Council with supporting documentation.

When deemed warranted, the Mayor or majority of Council may call for an investigation of Board, Committee or Commission member conduct. Also, should the City Manager or City Attorney believe an investigation is warranted, they shall confer with the Mayor or Council. The Mayor or Council shall ask the City Manager or the City Attorney to investigate the allegation and report the findings.

These sanctions are in addition to any other remedy that might otherwise be available to remedy conduct that violates this code or state or federal law. In order to protect and preserve good government, any individual including the City Manager and the City Attorney after complying with the State of New Hampshire Bar Rules of Professional Conduct, who knows or reasonably believes a member acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, may report the violation to the appropriate governmental authorities.

**D. IMPLEMENTATION**

The Code of Ethics and Conduct is intended to be self-enforcing and is an expression of the standards of conduct for members expected by the City. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, this document shall be included in the regular orientations for candidates for City Council, applicants to Board, Committee and Commissions, and newly elected and appointed officials. Members entering office shall sign the below acknowledging they have read and understand the Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct shall be periodically reviewed by the City Council, Boards, Committees and Commissions, and updated it, as necessary.

***I affirm that I have read and understand the City of Rochester Code of Ethics and Conduct for Elected and Appointed Officials***

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Code of Ethics and Conduct for Elected and Appointed Officials**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

**ARTICLE XI**

**Code of Ethics and Conduct for Elected and Appointed Officials**

**§ 7-83 Board of Ethics.**

- A. A Board of Ethics (“BOE”) is hereby created. This BOE shall consist of three (3) persons: one member shall be appointed by the Mayor from the City Council, one member shall be appointed by the Chair of the School Board from the School Board, and one member shall be appointed by the Chair of the Police Commission from the Police Commission.
- B. Each BOE Member selected is required to serve unless the BOE Member is the subject of the Complaint, has a conflict of interest, or is excused due to unavailability or exceptional causes (such as a health issue).
- C. The BOE Members shall elect a chairperson and the BOE may adopt such rules for the conduct of its business as it sees fit. The BOE shall have the power to draw upon City departments for reports and information and stenographic and clerical help.

**§ 7-84 Ethics Investigation Officer.**

- A. The position of Ethics Investigation Officer (“EIO”) is hereby created. The City Manager shall have the power to identify and retain an EIO, with approval from the BOE, to assist with the investigation and prosecution of any Complaint which has been referred for investigation. The EIO, with approval of the BOE, shall have sufficient experience and training to conduct the investigation.

**§ 7-85 Complaints, Investigations, and Hearing.**

- A. Complaint Requirements. Any City official may submit a written complaint alleging one or more violations of the Code of Ethics and Conduct for Elected and Appointed Officials (“Ethics Code”). Such complaint must be based on personal knowledge, and set forth facts with enough specificity and detail for a determination of sufficiency for investigation. The Written Complaint must be signed under oath. The Complaint shall be delivered to the City Attorney with a copy to the Mayor and City Clerk. The City Attorney shall promptly provide a copy of the Complaint to the Charged Party.
- B. Review for Sufficiency.
  1. A Review for Sufficiency of the Complaint will be completed within thirty (30) days of receipt. This review will be based on the allegations contained in the Complaint and the immediately available public meetings or records referenced in the Complaint.

2. The City Attorney, Mayor, and Superintendent in the case of a City Board, the City Attorney, Mayor, and Police Chief in the case of the School Board, or the City Attorney, Mayor, and City Manager in the case of the Police Commission shall conduct the Review of Sufficiency. Complaints

Adopted on 12/5/2023

against the Mayor, School Board Chair, or Police Commission Chair shall be reviewed by the City Attorney and the Deputy Mayor, School Board Vice Chair, or Police Commission Vice Chair, respectively.

3. If the Complaint is deemed insufficient, the Complainant will be notified in writing of that decision with a copy provided to the Charged Party. A Complaint will be deemed sufficient if it is determined that the Complaint establishes on its own that it is more probable than not that a violation of the Ethics Code may have occurred.

4. If the Complaint is deemed sufficient for further investigation, it shall be referred to the EIO for further action and all parties will be notified of this step through communication in writing.

- C. Investigation Phase. The EIO shall be provided the full cooperation of the City government to conduct such investigation as may be necessary to determine whether any violation may have occurred and next steps. The Charged Party shall have an opportunity to provide a response to the Complaint.

The EIO's investigation shall be completed within forty-five (45) days of the date of referral unless the Charged party and the Chair of the BOE mutually agree to a longer period.

The EIO shall provide a written report with the conclusions reached in the completed investigation to the BOE. The EIO shall provide a non-binding recommendation as to the disposition of the Complaint to the BOE. Thereafter, all action with regard to the Complaint shall be taken by the BOE.

- D. Board of Ethics Hearing.

1. The BOE shall take no further evidence on any Complaint, but shall make its determination based upon the report received by the EIO. However, the BOE shall hold at least one (1) public hearing at which the EIO, the Complainant, and the Charged Party shall be afforded an opportunity to present oral and written argument to the BOE. The BOE may hear from such other and further parties as it determines appropriate.

2. Any party may be represented by legal counsel at his or her own expense at any stage of proceedings related to the Ethics Code.

3. The BOE shall issue a written decision within thirty (30) days of the final public hearing with findings and a disposition, dismissal, or referral for further action if a violation found. If a violation has been found, the BOE shall recommend a sanction or penalty and refer the matter to the City Council, School Board, or Police Commission for disposition, sanction, or other action as set forth in the Ethics Code.

**§ 7-86 Conflict Between Ethics Code and this Article.** To the extent a conflict arises between the Ethics Code and this Article, this Article shall prevail.

**Amendments are effective on January 1, 2024.**

**Amendments to Chapter 40 of the General Ordinances of the City of Rochester Regarding Council  
Designated Area Periodic Inspections**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 40 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

**§ 40-19 Council Designated Area Periodic Inspections.**

- a. The City hereby requires periodic inspections of residential rental buildings or structures as part of a targeted effort within geographic areas specified by the City Council. The map of said geographic areas shall be maintained by the Department of Building and Licensing Services.
- b. The City Manager, in consultation with the Director of Building and Licensing Services, shall establish a program that implements this section.

**Amendments effective upon passage.**

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left blank...*

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City Clerk's Office

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**Amendment to Chapter 171 of the General Ordinances of the City of Rochester Regarding Hawkers,  
Peddlers, and Itinerant Vendors**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

**Article I  
Hawkers, Peddlers and Itinerant Vendors**

**§ 171-1 Authority.**

The provisions of this article are adopted pursuant to the authority granted by RSA 31:102-a ~~and are in addition to any requirements imposed by the State of New Hampshire under either RSA 320 or 321.~~

**§ 171-2 License required.**

It shall be unlawful for any person to engage in the business of hawker, peddler, or itinerant vendor as ~~defined in RSA 320:1 and 321:1~~ in the City of Rochester without first obtaining a license as provided herein.

**§ 171-3 Definitions.**

The words "hawker," "peddler," or "itinerant vendor" as used herein ~~shall be defined as in RSA 320:1 and 321:1~~ and shall include any hawker, peddler, itinerant vendor, trader, farmer, merchant, or other person who sells, offers to sell, or takes orders for merchandise from temporary or transient sales locations within the City or who goes from town to town or place to place within the City for such purposes.

**§ 171-4 Application for license.  
[Amended 10-15-2013]**

- A. Applicants for a license under this article must file with the Director of Building, Zoning, and Licensing Services a sworn application in writing (in duplicate) on a form to be furnished by the Director of Building, Zoning, and Licensing Services, which shall be filed with the Building, Zoning, and Licensing Services Department no later than seven days before the requested effective date of the license and shall give the following information:
- (1) Name and description of the applicant.
  - (2) Address (legal and local).
  - (3) A brief description of the nature of the business and the goods to be sold and, in the case of products of farm or orchard, whether produced or grown by the applicant.
  - (4) If the applicant is employed by another, the name and address of the employer, together with credentials establishing the exact relationship between them.
  - (5) The requested effective date of the license and the length of time for which the right to do business is desired.
  - (6) If a vehicle is to be used, a description of the same, together with license number or other means of identification.
  - (7) ~~A copy of the state license issued to the applicant pursuant to the provisions of RSA 320:8 or a signed statement claiming exemption therefrom under the provisions of RSA 320:3.~~
  - (8) If a specific stationary location is to be used, the written permission of the property owner.

- (9) A signed "release of information authorization" form authorizing the Rochester Police Department to conduct a criminal record check of the applicant and authorizing individuals to supply information to the Rochester Police Department in connection with such record.
- B. At the time of filing the application, a fee of twenty-five dollars (\$25.) per week or one hundred dollars (\$100.) per year shall be paid to the Director of Building, Zoning, and Licensing Services to cover the cost of processing the license.

**Amendments shall be effective upon passage.**

**§ 223-31. Acceptance of privately constructed highways as public highways.**

- A. No proposed new public highway with or without new public sewer or water, public improvements, developer contributions, or any combination of the above, shall be laid out, accepted or constructed which is not subject to review and approval by the Planning Board, recommend for acceptance by the Department of Public Works and approved by the City Council (RSA 674:36).
- B. A private highway shall not be considered for acceptance until a minimum of 75% of dwelling units or structures have obtained certificate of occupancy and any infrastructure required to support full function of at least such number of units is completed and functioning adequately as determined solely by the Department. Notwithstanding this section, the City shall release surety partially as appropriate to reflect achievement of progress goals towards completion of the infrastructure in accordance with approved plans and City construction standards.
- C. All private highway construction which may be intended for acceptance as City highways shall be subject to surveillance by the City. Developers shall accommodate all such inspections and execute any corrective action required by the City to comply with City standards.
- D. The City will not normally accept highways or segments of highways for acceptance that would be subsequently used to support construction activities related to further buildout of private highways and infrastructure that may be considered for acceptance.
- E. **Highways with private utilities which are not intended to be conveyed to the City such as but not limited to water, sewer or drainage beneath, alongside or otherwise within the right of way will not be accepted by the City.**
- F. Developers are responsible for all maintenance and services to highways intended to be petitioned for acceptance until such acceptance is final. Such services include but are not limited to trash pickup and snow and ice removal.
- G. The degradation of a highway intended to be petitioned for acceptance shall not be considered for acceptance until it has been rebuilt or restored to the Department's standards.
- H. The procedure for public highway acceptance shall be:
  - (1) The developer or its agent shall submit a written petition to the City Clerk on behalf of the City Council for acceptance of a private highway as a City highway. The developer or its agent shall provide three copies of the letter each for the Planning Department, Public Works Department and Legal Department.
  - (2) The letter shall include:
    - (a) Construction reports of materials testing data, certified by an independent, qualified source in paper and electronic format.
    - (b) All inspection reports and photos.
    - (c) Technical literature and data for all elements of the infrastructure including pavement design, pavement bases, utility pipes, water test results of pressure, disinfection, sewer manhole vacuum, sewer mandrel, video of water and sewer pipe interiors, pump stations and appurtenances in paper and electronic format.

- (d) Drainage maintenance agreement signed by the owner.
  - (e) Descriptive deed, which details any fee title property and infrastructure that will be owned by the City and that which will be owned and maintained by a homeowners' association, if applicable, in paper and electronic format.
  - (f) Copy of drainage/utility and/or other easements in descriptive language in paper and electronic format.
  - (g) Recordable as-built plans in paper and electronic format.
  - (h) Full set of record drawings to include final survey plan showing all project improvements in paper and electronic format.
  - (i) A security in the form of an irrevocable letter of credit or passbook to guaranty that all site work was properly done to be posted by the applicant with the Department, which shall place the security with the City Treasurer. Such maintenance guaranty shall be in an amount of 2% of the value of the infrastructure intended to be conveyed to the City established in the City's schedule of values for such improvements and such values as are updated to reflect current values at the time of the petition. Elements shall include full cost of replacement for all street trees and other landscaping required, roadway, drainage and pedestrian facilities, and be in force for three years after the date of City acceptance. If such repairs are required of the City following acceptance due to improper installation by the developer, such guaranty shall be used to implement corrective actions.
- (3) The Department of Public Works will make a recommendation to the City Council for public highway acceptance when the following have been met:
- (a) Resolution of any construction quality issues to the satisfaction of the Department to include restoration of damaged pavement even if such damage is due to age, consistent with sound trade practice.
  - (b) All on- or off-site improvements or contributions required by the Planning Board and Department of Public Works are complete and functioning as determined by the Department.
  - (c) Final wear surface of asphalt pavement installed on all highways and sidewalks and all associated striping and signage.
  - (d) All final grades, elevations and final vegetation within the right-of-way are complete, established and functioning as determined by the Department of Public Works.
  - (e) Drainage ditches have been stabilized; where grass is the stabilizer, a minimum of 90% growth has occurred as determined by the Department.
  - (f) All stormwater, drinking water and wastewater facilities are complete and functioning as determined by the Department of Public Works.
  - (g) All on-site amenities such as highway trees, walking paths, gazebos, highway

furniture, other structures, and landscaping required by the Planning Board are complete and functional as determined by the Department of Public Works.

- (h) Adequate surety remains to complete the balance of the work as approved by the Planning Board.
  - (i) A minimum of 75% of dwelling units or structures have obtained certificate of occupancy and all infrastructure required to support full function of at least such number of units is completed and functioning as determined by the Department of Public Works.
- (4) The City Council shall hold a public hearing on the proposed acceptance with public notice furnished by the City by certified mail (RSA 231:10). Upon acceptance by the City Council as a City highway, the following shall be submitted to the City Clerk with copies to the Planning Department, Legal Department and Department of Public Works within 30 days:
- (a) Signed warranty deed(s), easements, Home Owner Association covenants, stormwater management plans, if applicable and stamped recordable plan(s) for recording by the City Clerk.
- (5) The acceptance of a private highway as a public highway shall not be construed to confer upon the municipality any notice of, or liability for, insufficiencies or defects which arose or were created prior to such acceptance (RSA 231:92).