

CITY COUNCIL WORKSHOP
August 18, 2015
COUNCIL CHAMBERS
7:00 PM

COUNCILORS PRESENT

Councilor Bogan
Councilor Collins
Councilor Gates
Councilor Gray
Councilor Hamann
Councilor Keans
Councilor Lachapelle
Councilor Larochelle
Councilor Lauterborn
Councilor Torr
Councilor Varney
Councilor Walker
Mayor Jean

OTHERS PRESENT

Deputy City Manager Blaine Cox
Terence O'Rourke, City Attorney
Ray Barnett, Resident

MINUTES

1. Call to Order

Mayor Jean called the meeting to order at 7:00 PM. Deputy City Clerk Marcia Roddy took a silent roll call. All councilors were present.

2. Non-Public, Labor Negotiations, RSA 91-A:3 II(a)

Councilor Lachapelle **MOVED** to enter a Non-Public Session under RSA 91-A:3 II(a), Labor Negotiations, at 7:01 PM. Councilor Walker seconded the motion. The **MOTION CARRIED** by unanimous voice vote. Councilors Gray, Larochelle, Lauterborn, Keans, Bogan, Varney, Hamann, Torr, Collins, Lachapelle, Gates, Walker, and Mayor Jean all voted yes.

Councilor Lachapelle **MOVED** to exit Non-Public Session at 7:17 PM and to seal the minutes indefinitely. Councilor Walker seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

3. Public Input

Mayor Jean invited members of the community who wished to speak on City issues to come forward.

Ray Barnett, resident, spoke on the union contracts recently signed for City employees. He took issue with certain benefits that City employees get, including, but not limited to, longevity pay, personal days, a half hour paid lunch that the Public Works employees get, among others. He came up with a total of \$313,676 in benefits that he believes the City is "giving away" to the employees.

Mayor Jean closed Public Input at 7:25 PM.

4. Communications from the City Manager

There was no discussion.

5. Communications from the Mayor

Mayor Jean presented the Rivalry Cup to the winning team from Gonic for the softball game held on August 8, 2015. He congratulated Councilor Lachapelle for his team's win.

6. Discussion: AB24 Amendment to the General Ordinances Relative to Chapter 60.20, The Passing of Items to or From the Occupant of a Motor Vehicle on a Roadway.

62.20 The Passing of Items to or from the Occupant of a Motor Vehicle on a Roadway.

(a) Definitions. For the purpose of this Section, the following definitions apply:

(1) **Pass/Passing.** Distributing any item to, receiving any item from, or exchanging any item with the occupant of a motor vehicle that is located in the roadway.

(2) **Roadway.** All public roads open to motorized vehicles within the City. This definition excludes private roads and private property as well as areas in which parking is permitted in the City.

(3) **Item.** Any physical object.

(b) Prohibitions on Roadways. It shall be unlawful to violate any of the prohibitions set forth below in the City.

(1) No person shall knowingly distribute any item to, receive any item from, or exchange any item with the occupant of any motor vehicle when the vehicle is located in the roadway.

(2) This Section shall not apply to the distribution, receipt or exchange of any item with the occupant of a motor vehicle on private property or in a permitted parking area.

(3) This Section shall not apply to any law enforcement officer acting in the scope of his official duty.

(4) This Section shall not apply to the distribution, receipt or exchange of any item with the occupant of a motor vehicle located in the roadway in order to assist the occupant after a motor vehicle accident, with a disabled motor vehicle or where the occupant is experiencing a medical emergency.

(c) Penalty. A person found in violation of this Section shall be fined as follows:

(1) 1st Offense: Not less than \$500.00.

(2) 2nd Offense: Not less than \$750.00.

(3) 3rd and subsequent Offenses: Not less than \$1,000.00.

(d) Severability. If any provision of this section is declared invalid or unconstitutional by any Court of competent jurisdiction, the remaining provisions shall be severable and shall continue in full force and effect.

Mayor Jean invited City Attorney Terrence O'Rourke to come forward and give an overview of the proposed Amendment.

Attorney O'Rourke said that Rochester is not the only municipality facing issues in dealing with the matter of so-called "panhandling." He said that Concord's ordinance that was passed is being used by other communities as a guideline. He added that he did not agree with the amounts of the set fines. He believes in graduated punishments so as to take away from any leeway fines assessed by a judge.

Councilor Keans asked if these fines would be assessed to both parties involved. Attorney O'Rourke said that was correct.

Councilor Walker asked if this ordinance would apply to certain events such as the Fire Department's "Boot Drive." Attorney O'Rourke said yes. Councilor Walker asked if that would also apply to the "Relay for Life" and other similar events that occur in the City square. Attorney O'Rourke said yes, it precludes people from approaching any vehicle in the roadway for the purposes of asking for money.

Councilor Larochelle commented that sometimes a police officer may stop someone and issue a warning rather than a ticket. He wanted to know if that type of action could apply here. Attorney O'Rourke said yes, the police always have the discretion to issue a warning rather than a ticket.

Councilor Gray asked if parking lots are excluded and could a vehicle pull into a parking lot, give a donation, and pull out of the parking lot without being in violation of the ordinance. Attorney O'Rourke said yes.

Councilor Varney said he recalls a police officer saying at one of the Codes and Ordinances meetings saying that parking lots open to the public during business hours are considered a roadway. He asked if that applies here. Attorney O'Rourke said that, for example, an arrest for DWI could be made in a parking lot as it would be considered a public way.

Councilor Varney asked how to address the matter of a vehicle being out of the public roadway, but being in the entrance to a shopping parking lot, such as Home Depot or Hannaford's. Attorney O'Rourke said a vehicle being at the stop light in the roadway exiting the parking lot is considered to be in the public roadway. He explained that there is no parking allowed in that roadway, thus making it a roadway.

Councilor Gray said that once passing the City's right-of-way into the parking lot then it becomes private property. Attorney O'Rourke said that is something that needs to be looked at for further clarification.

Mayor Jean said he does not think this issue should go back to the Codes and Ordinances Committee again and that this committee of the whole should continue the discussion.

Councilor Gates brought up the fact that the Codes and Ordinances Committee had discussed use of signage to address this matter. Councilor Lachapelle said that Councilor Varney had come up with examples of signage that has been used in various communities across the country. He added that drivers from out of state who are not familiar with this matter could possibly open their window and pass money to a person standing in the roadway looking for a donation. He added that he is opposed to spending a lot of money on signage, but that it could be helpful to have some signs throughout the City. He said, at this time, he would like further clarification on the definition of a public roadway at a parking lot.

Councilor Keans questioned whether or not people would feel they could not be asked for money when walking down the street as the signage is not clear about that. She thinks putting up signs is fine, but they should go on private property.

Councilor Lachapelle agrees with Councilor Keans and added that he was walking down the street and someone walked right to him and asked for money. He said this can happen everywhere and can't be regulated everywhere. He said that store owners have to be proactive in getting panhandlers off their property.

Councilor Varney asked that clarification be gotten for Councilor Lachapelle's use at the next Codes and Ordinances Committee meeting. He also asked that the fines for violating the ordinance be changed from \$500/\$750/\$1,000 to \$250/\$500/\$1,000. He thinks that \$500 is a big step and those who are violating probably will not pay the fine anyway.

Councilor Varney thinks that the signage program is separate from the ordinance and should get started as soon as possible. He said that a lot of money does not need to be spent on the program and that store owners would most likely help by posting signs in their store windows. Attorney O'Rourke agreed. He said that the City Manager has suggested using the "City Manager's Corner" broadcast on the Government Channel as another means of getting the message out to the public.

Councilor Gates suggested putting a public service announcement on the Government Channel to be broadcast a few minutes prior to the City Council meeting broadcasts, as well as other various times.

Mayor Jean agreed that more work needs to be done on the issue, especially concerning rights-of-way and parking lots. He thinks there should be something on the books for the Police Department to identify chronic cases.

Councilor Gates thought it might be a good idea for the City to produce a map that delineates the boundaries of the city property and the private or store-owned properties.

Councilor Gray brought up a past discussion in which a scenario of a family member passing money to another family member in their car in front of their house for the purpose of running an errand, etc.. Councilor Lachapelle said that obviously the ordinance is designed to curtail aggressive panhandling and not the family sending someone off to buy milk and bread.

Councilor Lauterborn said that the Council cannot pass this ordinance with the idea of selective enforcement. She asked if the ordinance can or will be waived for certain events, such as the Boot Drive. Councilor Gates agreed that the Police Department needs to have some discretion in the enforcement of the ordinance.

Mayor Jean said the discussion will be left for now and more clarification is needed regarding roadways and property lines, for example. He suggested that the City Council resume the discussion as the September Regular City Council meeting. He thanked Attorney O'Rourke for his input.

7. Department Reports

Councilor Larochelle questioned the report from the Building, Zoning, and Licensing Services Department under the Code Compliance Deficiencies report. The report indicated that non-compliance violations would be turned over to Attorney Grossman. He asked if the new City Attorney would be handling this now. Deputy City Manager Cox said that was most likely a form letter that had not been corrected, but that the newly formed Legal Department would be handing those violations.

Councilor Varney questioned the minutes from the Economic Development Commission in which 8 or 10 goals were mentioned for 2015, but he did not see the goals written down anywhere.

Councilor Varney also questioned the Conference Center report and what is the status of that. Councilor Keans said she had heard from Jenn Marsh that the report has come back and that the Department is doing an analysis and compilation of it.

Councilor Varney asked about the roll-out for the sign ordinance and would that be coming out soon. Deputy City Manager said yes, it would be coming out soon.

Councilor Lauterborn asked about the report regarding the Water/Sewer/Arena year-to-date expenditure summary. She did not think the figures could be as reported. Deputy City Manager Cox said he will have that corrected and report back to the Council.

Councilor Gates said he had received something through e-mail called, "Courts Free Speech Expansion has Far-reaching Consequences." He said he asked Attorney O'Rourke if he would broaden their understanding of that relative to the ordinances in the City.

Attorney O'Rourke gave an explanation, but would also write up a detailed explanation and e-mail it to the Council. In essence, he said that the Supreme Court said that all content-based government regulations of speech will now face strict scrutiny, which is the highest level of scrutiny and would have to be narrowly tailored for a compelling government interest, which would then put the burden on the government to prove why it is so important in the least restrictive manner. This is a change in how the law was before when the time, place, and manner regulations, depending on where you were and what type of forum it was, would not always be strict scrutiny. There will now be strict scrutiny across the board. He said he will prepare a better summary for the Council.

Councilor Gates said that he feels that this could possibly have an effect on all of the City's ordinances and how they are worded. He said that depending on how this is interpreted some of the ordinances would have to be re-worded in order to more correctly define them. Attorney O'Rourke said that would depend on how far people would like to stretch this.

8. Other

Councilor Varney commented on the e-mail regarding an Alternate Treatment Center and whether or not there will be a public discussion regarding it. Mayor Jean said he would support that and it should be televised in order to educate the public on what is happening.

Attorney O'Rourke said that Rochester will not be a distribution center, but rather a cultivation location. He said that the State has approved certain dispensing centers and Rochester is not one of them. He added that the State will be holding an information meeting for the Police Department, Department Heads, City Council, and the public.

Councilor Gates said he believes that the local governing authority has to approve or disapprove having a marijuana dispensary. Attorney O'Rourke said yes, but at this time he has only been looking at the cultivation aspect. He will look into it further.

Councilor Varney brought up the bonding of the East Rochester School and he is concerned that there could be a path that will cost the City an additional half million dollars over the term of the loan. He said Deputy City Manager Cox will be discussing this with the School Department to determine why this is happening. Councilor Varney said this is not what was agreed to when the resolution was passed to approve the school. He suggested that this matter be put on the agenda for the next Finance Committee meeting; Mayor Jean agreed.

Councilor Collins told a story about how in August of 1945 all of the sirens and horns in the City were blowing and people were gathering in the center of the City to celebrate the end of World War II. He likened the celebration to a small version of Times Square. He said it was something he will never forget.

9. Adjournment

Councilor Lachapelle **MOVED** to **ADJOURN** the Workshop Meeting at 8:00 PM. Councilor Walker seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

Respectfully submitted,

Marcia H. Roddy
Deputy City Clerk