

CITY COUNCIL SPECIAL MEETING
February 18, 2014
COUNCIL CHAMBERS
7:15 PM

MEMBERS PRESENT

Councilor Collins
Councilor Gates
Councilor Gray
Councilor Hamann
Councilor Kittredge
Councilor Lachapelle*
Councilor Larochele
Councilor Varney
Councilor Walker
Mayor Jean

OTHERS PRESENT

City Manager Dan Fitzpatrick
Deputy City Manager Blaine Cox
Deputy City Manager Pollard
Attorney Dan Wensley

MEMBERS EXCUSED

Councilor Keans
Councilor Lauterborn
Councilor Torr

* *Councilor Lachapelle arrived at 7:25 PM*

MINUTES

1. Call to Order

Mayor Jean called the City Council Special Meeting to order at 7:15 PM. Deputy City Clerk Marcia Roddy took a silent roll call. All councilors were present with the exception of Councilors Keans, Lauterborn, and Torr, who had been excused. *Councilor Lachapelle arrived at 7:25 PM.*

Mayor Jean asked if there was no objection he would like to amend the agenda to add a Non-Meeting session for consultation with legal counsel under RSA 91-A:2,1(b).

Councilor Walker **MOVED** to enter a Non-Meeting Session under RSA 91-A:2,1(b) at 7:16 PM. Councilor Hamann seconded the motion. The **MOTION CARRIED** by unanimous roll call vote. Councilors Gray, Larochele, Kittredge, Varney, Hamann, Collins, Gates, Walker, and Mayor Jean all voted yes.

Councilor Walker **MOVED** to exit the Non-Meeting Session at 7:50 PM. Councilor Gates seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

2. Panhandling:

2.1 Chapter 31 of the General Ordinances of the City of Rochester, entitled "Panhandling" Ordinance

Councilor Lachapelle **MOVED** To repeal Chapter 31 of the General Ordinances as follows:

PANHANDLING ORDINANCE

CHAPTER 31

PANHANDLING

31.1 Intent of Ordinance.

This ordinance is adopted in order to, and for the purpose of: (a) protecting persons from threatening, intimidating or harassing behavior; (b) keeping public places safe for use by all members of the community; and (c) maintaining and preserving public places where all of the community can interact in a peaceful manner.

This ordinance is also intended and adopted for the purpose of providing for the free flow of pedestrian and vehicular traffic on streets and sidewalks in the City.

This ordinance is intended to promote the health, safety and welfare of all those that live, work or visit the City.

31.2 Definitions.

The following definitions shall apply in the interpretation and enforcement of this ordinance:

a) Solicit/Solicitation - The spoken, written, or printed word and/or such other act(s) or bodily gesture(s) as are undertaken and/or engaged in, in furtherance of the purpose of immediately obtaining money or any other object of value from another person without the exchange of corresponding equivalent compensation therefor.

b) Aggressive Manner –

(1) Knowingly or recklessly making any physical contact with, or engaging in the touching of, another person, or any approaching within an arm's length of such other person, except with such other person's consent; in the course of a solicitation;

(2) Knowingly or recklessly follows a person being solicited if such conduct is:

i) likely to cause any reasonable person to fear imminent bodily harm or the commission of a criminal act upon the person being solicited and/or followed, or to a person in the company of the person being solicited and/or followed, or upon and/or with regard to property in the person's possession or that of a person in the company of such person; or

ii) likely to intimidate the person being solicited and/or followed, or to a person in the company of the person being solicited and/or followed, into responding affirmatively to the solicitation.

(3) Knowingly or recklessly continuing to solicit within five feet of the person being solicited after the person has made a negative response to such solicitation, if continuing the solicitation is:

i) likely to cause any reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or

ii) likely to intimidate the person being solicited and/or followed the person being solicited and/or followed, or any person in the company of the person being solicited and/or followed into responding affirmatively to the solicitation;

(4) Knowingly or recklessly blocks the safe or free passage of the person being solicited and/or followed, or requires the driver of a vehicle, to take evasive action (including stopping, slowing down, or not accelerating) to avoid physical contact with the person making the solicitation;

(5) Knowingly or recklessly using words:

i) likely to cause any reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or

ii) likely to intimidate the person into responding affirmatively to the solicitation; or

(6) Knowingly or recklessly approaches the person being solicited in a manner that is:

i) likely to cause any reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or

ii) likely to intimidate the person being solicited and/or followed into responding affirmatively to the solicitation.

(7) Knowingly or recklessly makes any physical contact with or touches another person's property including but not limited to their vehicle, or approaches within an arm's length of the person's property, except with the person's consent; in the course of the solicitation.

c) Automated Teller Machine - A device, linked to a financial institution's account records, which is able to carry out any of the following transactions, such as but not limited, to account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

d) Automated Teller Machine Facility - The area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

e) Banking Organization - Any bank, trust company, private banker, savings bank, industrial bank, safe deposit company, savings and loan association, mutual and guaranty savings bank; cooperative bank; building and loan association; credit union; other financial institution organized and operating under the banking laws of the State of New Hampshire; small loan company; first mortgage banker or broker; second mortgage home loan lender; motor vehicle sales finance company; retail sellers of motor vehicles; debt adjusters; and mortgage servicer and investment company as defined in the Rules of the New Hampshire Banking Department.

f) Private Place - Any area owned by a private individual(s), business, or organization including any structure and all property surrounding.

g) Roadway - Any area that is, or can be, traveled on or by a motor vehicle, including but not limited to paved and non-paved roads, parking spaces, and shoulder of roads.

h) Deception - Any spoken, written or gestured non-truthful statement.

31.3 Aggressive Panhandling Prohibited.

a) No person shall knowingly or recklessly solicit in an aggressive manner in a public place.

- b) No person shall knowingly or recklessly solicit within 50 feet of an automated teller machine or an entrance or exit of an automated teller machine facility.
- c) No person shall knowingly or recklessly solicit within 50 feet of any entrance or exit of a banking organization or a licensed casher of checks during its business hours.
- d) No person shall knowingly or recklessly solicit when either the person soliciting or the person being solicited is in a bus shelter or at a bus stop.
- e) No person shall knowingly or recklessly solicit within 50 feet of any entrance or exit of any business or organization during its business hours.
- f) No person shall knowingly or recklessly solicit from the median of any public road.
- g) No person shall solicit on private property, even if the property is open to the public, without the owner's written consent.
- h) No person shall step into the roadway to collect any money or other object of value resulting from solicitation.
- i) No person shall solicit through deception.

Councilor Gates seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

2.2 Proposed Amendment to the General Ordinances of the City of Rochester Pertaining to Distribution of Items To and From Motor Vehicles to be known as Chapter 68 "Distribution of Items To and From Motor Vehicles

Councilor Walker **MOVED** to read the proposed amendment by title only for the first time and refer it to the Codes and Ordinances Committee. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by unanimous voice vote. Mayor Jean read the Amendment for the first time as follows:

AMENDMENT TO ORDINANCES
ADOPTING A NEW CHAPTER OF THE
GENERAL ORDINANCES OF THE CITY OF ROCHESTER
TO BE KNOWN AS CHAPTER 68 OF THE
GENERAL ORDINANCES OF THE CITY OF ROCHESTER

THE CITY OF ROCHESTER ORDAINS:

I. That the General Ordinances of the City of Rochester, as presently amended, be further amended, by adding a new Chapter to Title IV – Traffic Code thereof, said Chapter to be known as Chapter 68 of the General Ordinances of the City of Rochester and entitled “Distribution of Items To and From Motor Vehicles,” said Chapter 68 to provide as follows:

CHAPTER 68

DISTRIBUTION OF ITEMS TO AND FROM MOTOR VEHICLES

68.1 Intent of Ordinances.

This Ordinance is intended to provide for the free flow of motor vehicle traffic on roadways in the City. The City Council finds that persons who distribute any item to, receive any item from, or exchange any item with, the occupant of a motor vehicle upon a Roadway present a threat to the free and safe flow of motor vehicle traffic. By this Ordinance, the City Council intends to promote the health, safety and welfare of the citizens traveling by vehicle in the City.

68.2 Definitions.

For purposes of this Chapter, the following definitions apply:

(a) 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.

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

(c) Item. Any physical object.

68.3 Prohibition of Roadway.

It shall be unlawful to violate any of the prohibitions set forth below in the City.

(a) 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.

(b) This Ordinance 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.

(c) This Ordinance shall not apply to any law enforcement officer acting in the scope of his/her official duties.

68.4 Penalty.

A person found in violation of this section shall be guilty of a violation and may be fined not more than \$500.00.

68.5 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.”

II. This ordinance shall take effect upon its passage.

3. Resolution Authorizing E-911 Committee the Renaming and/or Renumbering Portions of Calef Highway, Rte 125, Gonic Road, Charles Street, Hancock Street, Columbus Avenue, Columbus Avenue Ext., Old Dover Road, Anctil Court, Gear Road, Main Street, Hanson Street, and Rochester Neck Road

Councilor Lachapelle **MOVED** to read the resolution for the first time and refer it to a public hearing. Councilor Walker seconded the motion. The **MOTION CARRIED** by unanimous voice vote. Mayor Jean read the resolution for the first time as follows:

**RESOLUTION REGARDING THE
RENAMING AND/OR RENUMBERING PORTIONS OF
CALEF HIGHWAY, NH RTE 125, GONIC RD., CHARLES ST., HANCOCK ST.,
COLUMBUS AVE., COLUMBUS AVE. EXT., OLD DOVER RD., ANCTIL CT.,
GEAR RD., MAIN ST., HANSON ST., AND ROCHESTER NECK RD.**

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

That the so-called Rochester E-911 Committee, acting in conjunction with such other City Boards, Agencies and/or Entities, as it may deem necessary to carry out the intent of this Resolution, is hereby authorized to take any, and all, steps necessary, and/or required, by the provisions of NH RSA 231:133 and/or NH RSA 231:133-a and by Sections 15.9, 15.9-a and/or 15.9-b of the General Ordinances of the City of Rochester to effectuate the renaming, renumbering or such other actions permitted by such Statutes/Ordinances as the said Rochester E-911 Committee deems necessary and or appropriate and in the best interests of the City of Rochester and/or its residents and/or property owners.

Mayor Jean said the public hearing will be held prior to the March 4, 2014, regular City Council meeting.

4. Merit Plan Position Classifications for City Attorney and Evidence Technician

Mayor Jean said that the City Manager has put forth, with the advice and consultation with the Personnel Advisory Board, two positions: one for City Attorney and one for Evidence Technician.

Councilor Walker **MOVED** to approve both positions for the Merit Plan. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

5. Adjournment

Councilor Walker **MOVED** to **ADJOURN** the Special Meeting at 7:55 PM. Councilor Lachapelle seconded the motion. The **MOTION CARRIED** by unanimous voice vote.

Respectfully submitted,

Marcia H. Roddy

Deputy City Clerk