



03/25/2021

**City of Rochester, NH
Preamble for April 1, 2021
Codes & Ordinances Committee Meeting
6:00 PM**

Good Evening, as Chairperson of the Codes and Ordinances Committee, I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of City government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

a.) **Public Input:** Due to the ongoing situation with COVID-19, the City of Rochester will be taking extra steps to allow for public input, while still ensuring participant safety and social distancing. In lieu of attending the meeting, those wishing to share comments, when permitted, with the City Council (Public Hearing and/or Workshop settings) are encouraged to do so by the following methods:

- **Mail:** City Clerk/Public Input, 31 Wakefield Street, Rochester, NH 03867 (*must be received at least three full days prior to the anticipated meeting date*)
- **email** PublicInput@rochesternh.net (*must be received no later than 4:00 pm of meeting date*)
- **Voicemail** 603-330-7107 (*must be received no later than 12:00 pm on said meeting date in order to be transcribed*)

Please include with your correspondence the intended meeting date for which you are submitting. *All correspondence will be included with the corresponding meeting packet (Addendum).*

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

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

Phone number: 857-444-0744

Conference code: 843095

b.) **Roll Call:** Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Let's start the meeting by taking a Roll Call attendance. When each member states their name (and/or ward), also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. (Additionally, Council members are required to state their name and ward each time they wish to speak.)

*Intentionally
left blank...*

City Clerk's Office

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Tom Abbott
Councilor Laura Hainey
Councilor Christopher Rice



03/25/2021

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, April 1, 2021

31 Wakefield Street, Rochester, NH

Meeting Conducted Remotely

6:00 PM

Agenda

1. **Call to Order**
2. **Public Input**
3. **Acceptance of the Minutes**
 - 3.1 **March 4, 2021 *motion to approve* P. 5**
4. **Code of Ordinances Review**
 - 4.1 **Building and Licensing Services**
 - 4.1.1 **Chapter 135: Mobile Home Parks P. 27**
 - 4.1.2 **Chapters 40: Building Construction & Property Maintenance, cont'd discussion**
 - 4.2 **Planning**
 - 4.2.1 **Chapter 135: Mobile Home Parks P. 27**
 - 4.2.2 **Chapter 176: Planning Board P. 39**
5. **Discussion: Ethics Committee & Code P. 43**
6. **Discussion: Amendment to the General Ordinances of the City of Rochester Creating Chapter 41, Disorderly Residence**
7. **Other**
8. **Adjournment**

*Intentionally
left blank...*

City Clerk's Office

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Tom Abbott
Councilor Chris Rice
Councilor Laura Hainey



Others Present

Terence O'Rourke, City Attorney
Jim Grant, Director BZLS

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, March 4, 2021

31 Wakefield Street, Rochester, NH

Meeting conducted remotely

6:00 PM

Minutes

1. Call to Order

Vice Chair Lauterborn called the Codes & Ordinances meeting to order at 6:00 PM and read the following preamble:

Good Evening, as Chairperson of the Codes & Ordinances Committee I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of City government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

a.) **Providing public access to the meeting by telephone:** At this time, I also welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in a unique manner under unusual circumstances, the usual rules of conduct and decorum apply. Any person found to be disrupting this meeting will be asked to cease the disruption. Should the disruptive behavior continue thereafter, that person will be removed from this meeting. The public can call-in to the below number using the conference code. Some meetings will allow live public input, however you must have pre-registered online, otherwise, the meeting will be set to allow the public to "listen-in" only, and there will be no public comment taken during the meeting. [Public Input Registration](#) (Please note: In order to notify the meeting host that you would like to speak, press 5* to be recognized and unmuted)

Phone number: 857-444-0744 Conference code: 843095

b.) **Public Access Troubleshooting:** If any member of the public has difficulty accessing the meeting by phone, please email PublicInput@RochesterNH.net or call 603-332-1167.

c.) **Public Input:** Due to the ongoing situation with COVID-19, the City of Rochester will be taking extra steps to allow for public input, while still ensuring participant safety and social distancing. In lieu of attending the meeting, those wishing to share comments, when permitted, with the City Council (Public Hearing and/or Workshop settings) are encouraged to do so by the following methods:

- **Mail:** City Clerk/Public Input, 31 Wakefield Street, Rochester, NH 03867 (*must be received at least three full days prior to the anticipated meeting date*)
- **email** PublicInput@rochesternh.net (*must be received no later than 4:00 pm of meeting date*)
- **Voicemail** 603-330-7107 (*must be received no later than 12:00 pm on said meeting date in order to be transcribed*)

Please include with your correspondence the intended meeting date for which you are submitting. *All correspondence will be included with the corresponding meeting packet (Addendum).*

d.) **Roll Call:** Please note that all votes that are taken during this meeting shall be done by Roll Call vote. Let's start the meeting by taking a Roll Call attendance. When each member states their name (and/or ward), also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. (Additionally, Council members are required to state their name and ward each time they wish to speak.)

Deputy City Clerk Cassie Givara took the roll call. The following councilors were present and indicated that they were alone in the location from which they were connecting remotely: Councilors Abbott, Hainey, and Lauterborn. Councilors Lachapelle and Rice were both excused.

2. Public Input

There was no email or voicemail correspondence received for the meeting, nor was there anyone present at City Hall to speak.

3. Acceptance of the Minutes

3.1 February 4, 2021 *motion to approve*

Councilor Hainey **MOVED** to **APPROVE** the minutes of the February 4, 2021 Codes & Ordinances meeting. Councilor Abbott seconded the motion. The **MOTION CARRIED** by a 3-0 roll call vote with Councilors Hainey, Lauterborn, and Abbott all voting in favor.

4. Code of Ordinances Review

4.1 Building, Zoning, and Licensing Services

4.1.1 Chapter 22: Amusements & Entertainment (*Addendum A*)

Terence O'Rourke, City Attorney, referred the committee to section 22-1 and indicated that the majority of the section and its references were outdated. It is being suggested to strike the subsection in its entirety.

Attorney O'Rourke referenced section 22-2 in regards to boxing and wrestling exhibitions. He clarified that these are required by the State to license for these events, so the ordinance cannot currently be changed.

In section 22-3, the \$2 fee for public dances and parades is suggested to be removed since that fee has never been collected

Section 22-4 regarding licensing for Bowling Alleys and Billiards Tables, as well as section 22-5 regarding Pinball and Video Games & Machines, are suggested to be stricken in their entirety. Attorney O'Rourke stated that these subsections and the related subsections following may have originated from concern over gambling associated with these types of establishments. He said there are State statutes which regulate gambling and the concerns have since been alleviated. This ordinance as it stands is forcing establishments to pay money to have video games. Attorney O'Rourke stated that upon review, the ordinance did not make sense for modern day use and the suggestion is to strike out articles 22-4 through 22-17 in their entirety.

Sections 22-18 and 22-19 have been updated to change the terminology from "article" to the correct term which is "Chapter."

Councilor Lauterborn referred to the beginning of Chapter 22 under "General References" which has a reference to "Chapter 11: Adult-Oriented Establishments" which was removed in its entirety at a prior meeting and thus should have this referenced removed.

Councilor Hainey inquired if local dance studios would be able to still hold performances at outdoor events under Chapter 22-3. Attorney O'Rourke stated that it was just the fee which had been waived, but the performances are permissible; the City does not require individual acts performing at an event to apply for licensing.

Councilor Abbott **MOVED** to send the recommended amendments to Chapter 22 as presented by City Staff to full Council. Councilor Hainey seconded the motion. The **MOTION CARRIED** by a 3 – 0 roll call vote with Councilors Lauterborn, Abbott, and Hainey voting in favor.

4.1.2 Chapter 110: Junk & Secondhand Dealers (*Addendum B*)

Attorney O'Rourke directed the committee to section 110-3 where wording has been added to require applicants to submit an up-to-date criminal history to the licensing officer. He stated that the police department had indicated that the licensing agreement between the police department and the FBI does not allow the City to run criminal history checks, which was past practice. This

wording change will require the applicant to have their own criminal history check performed and to provide this information to the City.

Councilor Abbott **MOVED** to send the recommended amendments to Chapter 110: Junk & Secondhand Dealers as presented by City Staff to full Council. Councilor Hainey seconded the motion. The **MOTION CARRIED** by a 3 – 0 roll call vote with Councilors Hainey, Abbott, and Lauterborn voting in favor.

4.1.3 Chapter 162: Pawnbrokers (Addendum C)

Attorney O'Rourke stated that the rules and regulations which govern pawnbrokers are set forth in NH RSA 398 and the city ordinance states that. However, although the City has always collected fees and issues licenses for pawnbrokers, the process had not been previously laid out in the ordinance.

Councilor Abbott **MOVED** to send the recommended amendments to Chapter 162: Pawnbrokers as presented by City Staff to full Council. Councilor Hainey seconded the motion. The **MOTION CARRIED** by a 3 – 0 roll call vote with Councilors Abbott, Lauterborn, and Hainey all voting in favor.

4.1.4 Chapters 40: Building Construction & Property Maintenance (Addendum D)

Jim Grant, Director of Building, Zoning and Licensing, directed the committee to section 40-5 and explained that the suggested changes were just to update the references to the 2006 International Property Maintenance Code to the 2015 version. There was also an update within the section to reference the correct state RSA for the building code.

Director Grant explained the suggested strikeout of the entirety of section 40-13 "Fire Limits Established" which no longer apply to modern day fire safety and building practices.

Director Grant referenced the addition of 40-15 (1) e, which added window replacement as an item which would be charged the minimum permit fee of \$10 along with a \$10 application fee. Mr. Grant clarified that the permit is already required by the building code, the addition of this wording to the ordinance serves to reduce the price for these permits and charge a flat fee. Mr. detailed the reasons that these permits are necessary. Councilor Hainey reported concerns from constituents with the delay they have experienced in having inspections completed. Mr. Grant stated that there have not been large delays and, in fact, with COVID most inspections are done online.

Councilor Abbott inquired if the adoption of the 2015 Property Maintenance Code under the building code would require a public hearing. Director Grant stated that the property maintenance code could be adopted by reference to the State RSA 48(a). Councilor Abbott stated that the reference in the ordinance is to RSA 47:22 which leads back to the building code; he stated that he believes a public hearing would be required in this circumstance, but he suggested the City could look into adopting the code under RSA 48-A which could not require a public hearing. Mr. Grant and Attorney O'Rourke stated that they would have to look into this further to determine if it could

be adopted in this manner without a public hearing process. Councilor Abbott suggested doing a thorough review to ensure that it fits for Rochester; as it stands, he stated some of the verbiage conflicts with State statutes and the City's zoning ordinance. Attorney O'Rourke said that 48-A and 47-17 can be added as the granting authority to avoid the need for public hearing.

It was decided that the remainder of the changes to Chapter 40 would be discussed a future meeting after the suggested changes to RSA references had been made and the appropriately referenced set of standards are being enforced within the ordinances. Amendments to Chapter 40 were held in committee.

**5. Discussion: Amendment to the General Ordinances of the City of Rochester
Creating Chapter 41, Disorderly Residence**

Councilor Hainey stated that she did not have anything new to report, but she is still working on this with the police department staff and would like to carry the item over as a discussion for the April Codes meeting.

6. Other

No discussion.

7. Adjournment

Vice Chair Lauterborn **ADJOURNED** the meeting at 6:40 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk

03/25/2021

Amendments to Chapter 22 of the General Ordinances of the City of Rochester

THE CITY OF ROCHESTER ORDAINS:

That Chapter 22 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

Chapter 22

Amusements and Entertainment

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

GENERAL REFERENCES

~~Adult-oriented establishments — See Ch. 11.~~

Parks, recreation and arena — See Ch. 158.

~~Article I~~ **Theaters**

~~[Adopted 6-6-1995 as § 26.2 of the 1995 Code]~~

~~§ 22-1 **Blanket licenses; fees.**~~

~~The Licensing Board may grant blanket licenses to theaters and in such case the licensee shall pay in advance the following fees:~~

~~A. For the public showing of moving pictures, fifty dollars (\$50.) for the first three months and twenty dollars (\$20.) for every three months thereafter.~~

~~B. For exhibitions, vaudeville, entertainment, and presentations other than moving pictures or in addition to moving pictures, one hundred dollars (\$100.) for the first three months and seventy-five dollars (\$75.) for every three months thereafter; provided, however, that if a licensee has paid a fee for a license for a motion picture, the fee for occasional exhibitions, vaudeville, entertainment and presentations shall only be such sum in addition to a motion picture fee as the Board may deem just and reasonable, but the fee for a license to exhibit in any hall shall not exceed fifty dollars (\$50.).~~

Article II **Boxing and Wrestling Exhibitions**

[Adopted 6-6-1995 as § 26.5 of the 1995 Code]

§ 22-2 Exhibitions authorized.

[Amended 3-5-2019]

The holding of boxing and/or wrestling exhibitions or bouts within the City of Rochester, under license issued by the New Hampshire Boxing and Wrestling Commission and permit issued by the Licensing Board of the City of Rochester, is hereby permitted and authorized, subject to the provisions of the statutes of the State of New Hampshire relating to athletic exhibitions. No permit for the holding of boxing and/or wrestling

03/25/2021

exhibitions or bouts within the City of Rochester shall be issued by the Licensing Board unless the place for holding such exhibition or bout shall have been approved by majority vote of the City Council. After issuance by the Licensing Board, the City Council may revoke or suspend said permit after hearing for any cause which the Council may deem sufficient. The fee for such permit shall be twenty-five dollars (\$25.) per day.

Article III Public Dances, Circuses and Parades

[Adopted 6-6-1995 as § 26.6 of the 1995 Code]

**§ 22-3 License required.
[Amended 3-5-2019]**

Unless a license therefor shall first have been obtained from the Licensing Board, no person shall conduct a public dance, circus or carnival, theatrical or dramatic representation, parade or procession upon any public street or way, and no open air public meeting upon any ground abutting a public street or way or any party or gathering on private property which party or gathering is open to the general public. ~~The fee for such license shall be two dollars (\$2.).~~

~~Article IV Bowling Alleys and Billiard Tables~~

~~**[Adopted 6-6-1995 as § 26.8 of the 1995 Code]**~~

~~**§ 22-4 Licensing.**~~

~~Bowling alleys, billiard tables and pool tables shall be licensed by the Licensing Board in accordance with the procedures and fees established in RSA 286 as it is now constituted and as it may from time to time be amended.~~

~~Article V Pinball and Video Games and Machines~~

~~**[Adopted 6-6-1995 as Ch. 27 of the 1995 Code]**~~

~~**§ 22-5 Definitions.**~~

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

~~**MECHANICAL AMUSEMENT DEVICE**~~

~~Any machine which, upon insertion of a coin, slug, token, plate or disc, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score, but shall not include jukeboxes. It shall include, but not be limited to, such devices as marble machines, pinball machines, video games, skill ball, mechanical grab machines, and all games, operations, and transactions similar thereto under whatever name they may be indicated.~~

~~**[Amended 3-5-2019]**~~

~~**PERSON, FIRM, CORPORATION or ASSOCIATION**~~

~~Includes the following: any person, firm, corporation, or association in whose place of business any such machine is placed for use by the public, and the person, firm, corporation, or association having control over such machine.~~

~~§ 22-6 Gambling devices not permitted.~~

~~Nothing in this article shall in any way be construed to authorize or license or permit any gambling devices whatsoever, or any mechanism that has been judicially determined to be a gambling device, or in any way contrary to law.~~

~~§ 22-7 License required.~~

~~[Amended 3-5-2019]~~

~~Any person, firm, corporation, or association displaying for public patronage any mechanical amusement device shall obtain a license for each such mechanical amusement device from the Licensing Board of the City of Rochester. Application for such license shall be made upon a form to be supplied by the Licensing Board for that purpose. No license shall be issued to any applicant unless he/she shall be 18 years of age and a citizen of the United States and of good moral character. No license shall be issued to any applicant until after the Chief of Police has approved the application.~~

~~§ 22-8 Application for license.~~

~~The application for such license shall contain the following information:~~

- ~~A. Name and address of the applicant and his/her age, date and place of birth. If the applicant is a naturalized citizen, he/she shall also give satisfactory proof of naturalization.~~
- ~~B. Prior criminal convictions of applicant, if any.~~
- ~~C. Place where machine or device is to be displayed or operated and the business conducted at that place.~~
- ~~D. Description of machine to be covered by license, mechanical features, name of manufacturer, and serial number.~~
- ~~E. 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 check.~~

~~§ 22-9 Inspection.~~

~~The Chief of Police shall investigate wherein it is proposed to operate such machine and ascertain if the applicant is a person of good moral character.~~

~~§ 22-10 License fees.~~

~~[Amended 12-3-1997]~~

~~Every applicant before being granted a license shall pay an annual nonrefundable application fee of ten dollars (\$10.) per machine for which a license is sought. Upon approval of an application, every applicant shall pay an annual license fee of fifty dollars (\$50.) per machine for the privilege of operation, or maintaining for operation, a mechanical amusement device as defined in § 22-5 above; provided, however, that with respect to any machine for which a license is sought under the provisions of this section on or after July 1 of any calendar year and for which machine no license has been issued under the provisions of this article since January 1 of the preceding calendar year, the license fee for such machine for the balance of such year shall be twenty five dollars (\$25.). Each license shall expire at 12:00 midnight, December 31, of the year in which such license is issued.~~

~~§ 22-11 Display of license.~~

~~The license or licenses herein provided for shall be posted permanently and conspicuously at the location of~~

the machine in the premises wherein the device is to be operated or maintained to be operated.

~~§ 22-12 Transfer of license.~~

- A. ~~Such license may be transferred from one machine or device to another similar machine, in the same place of business, upon application to the Chief of Police to such effect and the giving of a description and the serial number of the new machine or device as described in § 22-8D. Not more than one machine shall be operated under one license, and the applicant or licensee shall be required to secure a license for each and every machine displayed or operated.~~
- B. ~~If the licensee shall move his/her place of business to another location within the City of Rochester, the license may be transferred to such new location upon application to the Chief of Police, giving the street and number of the new location. The new location shall be approved by the Chief of Police in the same manner as provided in § 22-9 of this article.~~
- C. ~~A license shall not be transferable from person to person and shall be usable only at the place and by the person designated in the license except as designated in Subsections A and B of this section.~~

~~§ 22-13 Hours of operation by minors.~~

~~{Amended 3-5-2019}~~

~~No person, firm, corporation, or association holding a license under this article shall permit any person under 18 years of age and over five years of age to play or operate any mechanical amusement device as defined in § 22-5 of this article during normal school hours on any day in which the Rochester public schools are in session, or permit any minor under the age of 16 years to play or operate any such mechanical amusement device after 9:00 p.m. unless accompanied by a parent, guardian or other suitable person.~~

~~§ 22-14 False representation of age.~~

~~A minor who falsely represents his/her age for the purpose of operating such mechanical amusement device as defined in § 22-5 of this article shall be fined not more than one hundred dollars (\$100.). The owner shall have the right to request said minor to exhibit his birth certificate or other proof of age.~~

~~§ 22-15 Revocation of license.~~

~~{Amended 3-5-2019}~~

~~Every license issued hereunder may be revoked in the event the licensee, directly or indirectly, permits the operation of any mechanical amusement device contrary to the provisions of this article or other ordinances of the City of Rochester or the laws of the State of New Hampshire. The license may be revoked by the Licensing Board by a written notice to the licensee, which notice shall specify the ordinances or law violations with which the licensee is charged.~~

~~§ 22-16 Appeals.~~

~~Any licensee may, by written notice filed with the City Clerk within seven days of the refusal of the Licensing Board to grant him/her a license or of the revocation of a license, appeal to the City Council at which appeal hearing the licensee may present witnesses and submit evidence on his/her own behalf.~~

~~§ 22-17 Seizure and destruction of machine.~~

~~{Amended 3-5-2019}~~

~~If the Chief of Police shall have reason to believe any mechanical amusement device is used as a gambling device, such machine may be seized by the police and impounded, and if, upon trial of the exhibitor for allowing it to be used as a gambling device, said exhibitor is found guilty, such machine shall be destroyed by the police.~~

§ 22-18 Violations and penalties.

Any person, firm, corporation, or association violating any of the provisions of this ~~article~~ **Chapter**, in addition to the revocation of his/her license, shall be liable to a fine or penalty of not more than one hundred dollars (\$100.) for each offense.

§ 22-19 Severability.

Each provision of this ~~article~~ **Chapter** shall be deemed independent of all other provisions therein, and if any provision of this ~~article~~ **Chapter** be declared invalid, all other provisions thereof shall remain valid and enforceable.

Amendments effective upon passage.

Deletions are show as ~~strikethroughs~~ and Additions are in **red**

Chapter 110

Junk and Secondhand Dealers

[HISTORY: Adopted by the City of Rochester 6-6-1995 as § 26.4 and Ch. 34 of the 1995 Code; amended 5-1-2007. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Pawnbrokers — See Ch. **162**.

Peddling and soliciting — See Ch. **171**.

Zoning — See Ch. **275**.

§ 110-1 Definitions.

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

JUNK DEALER

A person, firm or corporation engaged in the purchase, sale or barter of old iron, steel, chain, aluminum, brass, copper, tin, lead or other base metals, belting, wastepaper, old rope, old bags, bagging barrels, piping, rubber, glass, empty bottles and jugs of all kinds and quantities of less than one gross, and all other articles discarded or no longer used as manufactured articles composed of any one or more of the materials hereinbefore mentioned.

SECONDHAND DEALER

A person, firm or corporation engaged in the business of selling, exchanging, dealing in or dealing with secondhand articles, including but not limited to firearms, opera glasses, telescopes, watches, clocks, diamonds or other precious metals, jewelry, furs, fur coats, or other kinds of wearing apparel, antique furniture, furnishings, glass and dishes, musical instruments, radios, automobile accessories, office and store fixtures and equipment, gas and water meters, and all classes of fixtures and their connections. For purposes of this definition, yard sales, flea markets, garage sales, attic sales or a similar commercial activity established as a business for the sale of other people's property as described in this chapter or such a sale that exceeds three days' duration or is held more than three times a year shall be considered a secondhand dealer. In the event any such articles are taken in trade for another or similar article by a retail or wholesale establishment, such transactions shall not be considered as coming within the requirements of this chapter.

§ 110-2 License required.

[Amended 10-15-2013]

No person, firm or corporation shall engage in the business of junk dealer or secondhand dealer as herein defined unless licensed therefor by the Licensing Officer who shall be the Director of Building, Zoning, and Licensing Services.

§ 110-3 Procedure for issuance of license.

[Amended 2-3-2015; 6-2-2015]

A. Formal application required. Applications for licenses shall be made to the Licensing Officer. The

application shall:

- (1) Form of application. Be a written statement upon forms provided by the Licensing Officer; such forms shall include such affidavits to be sworn to by the applicant before a notary public or justice of the peace of this state as the Licensing Officer shall deem necessary.
 - (2) Contents of application. Require the disclosure of any information which the Licensing Officer shall find to be reasonably necessary to the fair administration of this chapter. **This shall always include the requirement of providing an up-to-date Criminal History to the Licensing Officer.**
 - (3) Payment of fees. The application shall be accompanied by the full amount of fees chargeable for such license. The fee for a junk dealer's license or secondhand dealer's license or any renewal thereof granted under the provisions of RSA 322 shall be fifty dollars (\$50.) a year, payable in advance. **[Amended 3-5-2019]**
- B. Renewal of license procedure. The applicant for renewal of a license shall submit an application to the Licensing Officer. The application shall:
- (1) Form of application. Be a written statement upon forms provided by the Licensing Officer; such forms shall include such affidavits to be sworn to by the applicant before a notary public or justice of the peace of this state as the Licensing Officer shall deem necessary.
 - (2) Contents of application. Require the disclosure of any information which the Licensing Officer shall find to be reasonably necessary to the fair administration of this chapter and the disclosure of such information concerning the applicant's conduct and operation of the licensed activity during the preceding licensed period as is reasonably necessary to the determination by the Licensing Officer of the applicant's eligibility for a renewal license. **This shall always include the requirement of providing an up-to-date Criminal History to the Licensing Officer.**
- C. Fitness investigation. Upon receipt of any license application or application for license renewal, the Licensing Officer shall forward said application to the Chief of Police who shall cause an investigation to be made of the fitness of the applicant to engage in the business of a junk dealer or secondhand dealer and report his/her findings to the Licensing Officer prior to the Licensing Officer's acting upon said application.
- D. Notice. The Licensing Officer shall notify any applicant of the acceptance or rejection of his/her application and shall, upon his/her refusal of any license, state in writing the reasons therefor and deliver them to the applicant.
- E. Non-approval of license. The Licensing Officer shall, upon disapproving any application submitted under the provisions of this chapter, refund to the applicant all fees paid in advance, provided the applicant is not otherwise indebted to the City.
- F. Compliance pending legal action. When the issuance of a license is denied and any action is instituted by the applicant to compel its issuance, such applicant shall not engage in the activity for which the license was refused unless a license is issued to him/her pursuant to a judgment ordering the same.

§ 110-4 Right of appeal.
[Amended 2-3-2015; 6-2-2015]

Any person aggrieved by any decision of the Licensing Officer shall have the right to appeal to the Licensing Board by filing a written appeal with the City Manager within three business days following the effective date of the action or decision complained of.

- A. Contents of appeal. The appeal shall set out a copy of the order or decision appealed from and shall include a statement of facts relied upon to void such order together with any defenses, legal objections or explanations which the appellant wishes the Board to consider. **[Amended 3-5-2019]**
- B. Notification of Licensing Officer. At the time of filing the appeal, a copy thereof shall be filed by the appellant with the Licensing Officer.
- C. Hearing. The City Manager shall fix a time and place for hearing the appeal and shall serve a written notice upon the appellant informing him/her thereof. The City Manager shall also give such notice to the Licensing Officer and the officer shall be entitled to appear to defend such order.
- D. Effect of decision. The findings of the Licensing Board shall be served upon the appellant as required herein.

§ 110-5 License expiration and revocation.

Such license shall expire on April 1 of each year, unless sooner revoked, and shall not be assigned or transferred, but it may be revoked at any time by the Licensing Board after notice and hearing for just cause.

§ 110-6 Purchases from minors.

No junk dealer or secondhand dealer shall, directly or indirectly, either purchase or receive, by way of barter or exchange, any of the articles aforesaid of a minor under the age of 18 years, knowing or having reason to believe him/her to be such, except when said minor shall be accompanied by a parent or legal guardian who shall sign the transaction record in person before said dealer.

§ 110-7 Records.
[Amended 10-15-2013]

- A. Secondhand dealers. Every secondhand dealer, upon acquisition of any article, either by purchase or exchange, enumerated in the definition of "secondhand dealer" in § **110-1** hereof, shall prepare and keep a written record of the transaction stating the full name, address, month, day and year when the transaction took place, and a full, accurate, and detailed description of each article so purchased or exchanged, with the price paid therefor, and cause said record to be signed by the seller in person. A copy of said record shall be available for inspection by any Rochester police officer or the Rochester Director of the Building, Zoning, and Licensing Services Department at any and all times.
- B. Junk dealers. Every junk dealer, upon the acquisition of any items enumerated in the definition of "junk dealer" in § **110-1** hereof, shall keep a permanent record of such transactions which shall include a full, accurate, and detailed description of the item with the full name and address of the seller, together with the registration number of any vehicle used by said seller in delivery of said items and the month, day and year of said transaction. A copy of said record shall be available for inspection by any Rochester police officer or the Rochester Director of the Building, Zoning, and Licensing Services Department at any and all times.

§ 110-8 Exclusions.

Specifically excluded from the provisions of this chapter are the following:

- A. Antique dealers.
- B. Purchases from private residences.
- C. Wearing apparel stores.

§ 110-9 Violations and penalties.

Any person, firm, corporation or association violating any of the provisions of this chapter, in addition to the revocation of his/her or its license, shall be liable to a fine or penalty of not more than one hundred dollars (\$100.) for each offense.

§ 110-10 Severability.

Each provision of this chapter shall be deemed independent of all other provisions herein, and if any provision of this chapter is declared invalid, all other provisions thereof shall remain valid and enforceable.

Deletions are show as ~~strikethroughs~~ and Additions are in red

Chapter 162

Pawnbrokers

[HISTORY: Adopted by the City of Rochester 6-6-1995 as § 26.3 of the 1995 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Junk and secondhand dealers — See Ch. 110.

§ 162-1 Pawnbroker's license.

The provisions of RSA 398 relative to pawnbrokers are hereby accepted. A pawnbroker's license shall designate the place where the licensee may carry on his/her business and the licensee shall not carry on said business at any other location within the City. The fee for a pawnbroker's license or any renewal thereof shall be fifty dollars (\$50.) a year, payable in advance. **License applications shall be processed in accordance with the procedures established for the issuance of Junk and Second Hand Dealer Licenses established in Chapter 110 of this Code.**

Amendments to Chapter 40 of the General Ordinances of the City of Rochester

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**):

Chapter 40

Building Construction and Property Maintenance

[HISTORY: Adopted by the City of Rochester 6-6-1995 as Ch. 40 of the 1995 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Fires and fire safety — See Ch. 75.

Health and sanitation — See Ch. 94.

Nuisances — See Ch. 149.

Sewers — See Ch. 200.

Stormwater management and erosion control — See Ch. 218.

Water — See Ch. 260.

Zoning — See Ch. 275.

§ 40-1 Statutory authority.

The provisions of New Hampshire Revised Statutes Annotated Chapter 673, as amended, pertaining to an inspector of buildings, building plans, regulations, and appeal are hereby adopted.

§ 40-2 Building Code Board of Appeals.

The power of a Building Code Board of Appeals in Chapter 673 of the New Hampshire Revised Statutes Annotated shall be vested in the Rochester Zoning Board of Adjustment.

§ 40-3 Recognition and adoption of State Building Code and State Fire Code.

[Amended 4-19-2005]

The City of Rochester hereby recognizes that the State Building Code under RSA 155-A and the State Fire Code under RSA 153 are applicable within the City of Rochester and for enforcement purposes adopts the provisions of the same.

§ 40-4 Department of Building, Zoning, and Licensing Services.

[Amended 4-19-2005; 10-15-2013]

For enforcement purposes by the City of Rochester, all references in the State Building Code under RSA 155-A, or in any applicable successor code, to the "department of building safety" shall be deemed to refer to the Department of Building, Zoning, and Licensing Services for the City of Rochester, and all duties as defined therein, including those imposed upon the "Building Official," shall be assumed by said Director of the Building, Zoning, and Licensing Services Department, along with the right to enforce the same.

§ 40-5 Adoption of other codes.

[Amended 4-19-2005; 9-4-2007; 5-18-2010; 10-15-2013]

- A. Pursuant to the provisions of RSA 47:22, 674:51 and 674:51-a, there are hereby adopted by the City of Rochester for the purpose of establishing rules and regulations, including the issuance of permits for the construction, alteration, removal, demolition, equipment, location, maintenance, use and occupancy of buildings and structures, installation of plumbing, use of concrete, masonry, metal, iron and wood, and other building material, the installation of electric wiring, and fire protection incident thereto and for the prevention of fires, the following codes:
- (1) International Property Maintenance Code (~~2006~~ 2015 edition), published by the International Code Council, Inc., Copyright ~~2006~~ 2015.
 - (2) International Existing Building Code, as codified at RSA ~~453~~ 155-A. **[Amended 8-6-2019]**
- B. Three copies of each of the aforesaid codes have been and are now on file in the office of the City Clerk of the City of Rochester and three copies of such codes are filed with the Department of Building, Zoning, and Licensing Services for the City of Rochester. Such codes are hereby adopted and incorporated as fully as if set out at length herein, and from the date on which this section shall take effect, the provisions thereof shall be controlling on the construction of all buildings and other structures within the corporate limits of the City of Rochester. There are annexed to such of the aforesaid codes, as filed in the office of the City Clerk and the Department of Building, Zoning, and Licensing Services, as set forth below, the following exhibits setting forth the insertions in, deletions from, exceptions to and/or changes in such codes, which insertions, deletions, exceptions and/or changes are adopted as part of the aforementioned codes:
- (1) ~~Exhibit A, Statement dated September 4, 2007, of insertions in, deletions from, exceptions to and changes in the International Property Maintenance Code (2006 edition) by the City of Rochester, New Hampshire.~~
 - (2) Exhibit A, Statement dated January 4, 2011, of insertions in, deletions from, exceptions to and changes in the International Existing Building Code (2009 edition) by the City of Rochester, New Hampshire.

§ 40-6 Life Safety Code.

[Amended 4-19-2005; 8-6-2019]

The duties defined in and the enforcement of the Life Safety Code, as codified at RSA 153 or any applicable successor code, shall be assumed by the Fire Chief of the City of Rochester or his/her authorized representative.

§ 40-7 Electrical Code and Property Maintenance Code.

[Amended 4-19-2005; 9-4-2007; 10-15-2013; 8-6-2019]

The duties defined in and the enforcement of the NEC 2005, National Electrical Code, as codified by RSA 155-A, and the International Property Maintenance Code (~~2006~~ 2015 edition), or any applicable successor codes, shall be assumed by the Director of Building, Zoning, and Licensing Services or his/her authorized representative.

§ 40-8 Plumbing Code.

[Amended 4-19-2005; 9-4-2007; 10-15-2013; 3-5-2019; 8-6-2019]

The duties defined in and the enforcement of the International Plumbing Code, as codified at RSA 155-A, or any applicable successor code, shall be assumed by the Director of Building, Zoning, and Licensing Services, or his/her authorized representative, except as otherwise provided in Chapter **200**, Sewers, of the Code of the City of Rochester where the same are defined as the duties of the Commissioner of Public Works, with inspections to be done by the Director of Building, Zoning, and Licensing Services or an authorized member of the Division of Water Supply Works or Division of Sewage and Waste Treatment Works.

§ 40-9 Regulation of construction storage yards.

Any individual or entity engaged in excavation, development, construction, building, and/or similar project within the City and involving the outside storage of construction and/or related equipment and/or materials shall forthwith cease to store such equipment and/or materials upon the premises involving such excavation, development, construction, building and/or similar project upon the expiration of the building permit or other similar authorization for such project, or upon the written notification by the City Engineer that such project has been completed, whichever event shall first occur. Upon removal of such equipment and/or material upon the completion of a project, the land disturbed by such storage shall be returned to its original state.

§ 40-10 Right of entry.

[Amended 10-15-2013]

The Director of Building, Zoning, and Licensing Services, the Fire Chief, or their authorized representatives in the discharge of their official duties and upon proper identification shall have authority to enter any building, structures, or premises at any reasonable hour.

§ 40-11 Definitions.

Where the word "municipality" is used in any code adopted herein, it shall be deemed to mean the City of Rochester. Where the words "corporate counsel" or "legal representative" are used in any code adopted herein, they shall be deemed to refer to the Rochester City Solicitor.

§ 40-12 Violations and penalties.

- A. Any person who shall violate any provisions of any code adopted herein, or fail to comply therewith or with any requirements thereof, or who shall erect, construct, alter, or repair or has erected, constructed, altered, or repaired a building or structure or portion thereof in violation of a detailed statement or plan submitted and approved thereunder, or of a permit or certificate issued thereunder, shall be punishable by a civil penalty of two hundred seventy-five dollars (\$275.) for the first offense and five hundred fifty dollars (\$550.) for subsequent offenses, for each day that such violation is found by a court to continue after the conviction date or after the date on which the violator receives written notice from the City that he/she is in violation thereof, whichever date is earlier. Each day that a violation continues shall be a separate offense. The owner of a building or structure or portion thereof or of the premises where anything in violation of any code adopted herein shall be placed or shall exist, and an architect, building contractor, agent, person or corporation employed in connection therewith and who may have assisted in the commission of such violation, shall be guilty of a separate offense and upon conviction thereof shall be punishable by a civil penalty of two hundred seventy-five dollars (\$275.) for the first offense and five hundred fifty dollars (\$550.) for subsequent offenses, for each day that such violation is found by a court to continue after the conviction date or after the date on which the violator receives written notice from the City that he/she is in violation thereof, whichever date is earlier. Each day that a violation continues shall be a separate offense. **[Amended 4-5-2016; 3-5-2019]**
- B. The imposition of the penalties herein prescribed shall not preclude the City Solicitor from instituting an appropriate action or procedure to prevent any unlawful erection, construction, reconstruction,

alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation or to prevent the occupancy of a building, structure, or premises, or portion thereof, or of the premises, or to prevent an illegal act, conduct, business or use in or about the premises.

~~§ 40-13 Fire limits established.
[Amended 3-5-2019]~~

~~The fire limits for the City of Rochester are hereby established as those areas classified as Downtown Commercial, Office Commercial and Highway Commercial Districts and adjacent to North and South Main Streets in Rochester proper and Main Streets in Gonic and East Rochester, so called, as shown on the Zoning Maps, as an overlay, adopted as part of the Zoning Ordinance, adopted on March 4, 1986, which are incorporated herein by specific reference thereto.~~

§ 40-14 **More restrictive provisions to apply.**

When the provisions of any codes adopted herein cover essentially the same subject matter, the more restrictive provisions shall apply.

§ 40-15 **Permits.**

- A. Permits shall be obtained from the Director of Building, Zoning, and Licensing Services for the construction, alteration, removal, demolition, or repair of any foundation, footing, building or structure or for the installation of plumbing, use of concrete, masonry, metal, iron and wood, and other building material, the installation of electric wiring, and fire protection incident thereto for the prevention of fires, including but not limited to swimming pools, signs, and fences, except that no permit shall be required for painting, papering, laying floors, or upkeep in maintenance of any structure. Separate permits shall be required for building, electrical, plumbing, mechanical, fire protection, and demolition. Prior to the issuance of a foundation or building permit by the Director of Building, Zoning, and Licensing Services, the applicant for such permit shall file with the Department of the Building, Zoning, and Licensing Services a foundation certification plan bearing the stamp of a New Hampshire licensed land surveyor and containing a statement from such surveyor to the effect that the proposed building or structure complies with all applicable building or structure setback requirements and that no portion of the new building or structure is located within any of the setback areas required by law. The requirement for a foundation certification plan may be waived, in writing, by the Director of Building, Zoning, and Licensing Services if, in the discretion of the Director of Building, Zoning, and Licensing Services there are reasonable grounds to conclude that the preparation and submission of a foundation certification plan is unnecessary to ensure that the new building or structure does not violate any required setback. **[Amended 6-15-1999; 6-15-2004; 10-15-2013]**

- (1) The following fees shall be charged for said permits, based upon the estimated cost of construction as presented to the Director of Building, Zoning, and Licensing Services upon application forms provided by him/her: on proposed work, the fee of nine dollars (\$9.) per one thousand dollars (\$1,000.) of estimated cost of work, or any portion thereof, with a minimum fee of ten dollars (\$10.), in addition to an application fee of ten dollars (\$10.) for each permit. The following permits shall be a charged only the minimum permit fee of ten dollars (\$10.), in addition to an application fee of ten dollars (\$10.) for each permit: **[Amended 10-1-2019]**
- (a) Fences.
- (b) Roofing (re-shingling only).

Commented [1]: Editor's Note: See Ch. 275, Zoning. Original § 40.14, Access to basements, which immediately followed this section, was repealed 9-6-2011.

(c) Siding.

(d) Sheds under 200 square feet.

(e) Window Replacements.

(2) Each building permit shall expire 12 months from the date of issuance unless renewed by the Director of Building, Zoning, and Licensing Services prior to the expiration date. Any renewal shall require reapplication and payment of required fees based on the remaining work to be done. The Director of Building, Zoning, and Licensing Services may issue no building permit until such other permits or approvals as may be required by any code, other ordinances, or state statutes have been acquired.

~~(3) A separate permit shall be required for staging, scaffolding, platforms, or other similar equipment to be erected on private property that is to be erected for a period exceeding 30 days. Said permit shall expire 12 months from the date of issue and all equipment shall be removed upon said expiration or upon completion of the work, whichever comes first. The fee for said permit shall be five dollars (\$5.). The City reserves the right to revoke, deny, or not reissue said permit if work required is not being actively pursued in a timely or otherwise reasonable manner.~~

(4) Fees for building permits shall be waived for an honorably discharged veteran or an active duty, National Guard or reserve member of the United States Armed Forces who plans to construct or have constructed for himself/herself a home or appurtenance to a home already owned by him/her for exclusive occupancy by himself/herself and his/her immediate family. **[Amended 1-12-2016]**

(5) Permits issued to or for the City of Rochester are exempt from the above fees.

B. The estimated cost of construction for purposes of Subsection A of this section shall be calculated on the following basis: **[Amended 9-4-2007; 1-4-2011]**

(1) For contract work, new buildings and newly constructed additions, the building permit fee shall be based on the greater of all contract/construction costs associated with the total construction project or the cost of construction as determined using the latest "Building Valuation Data" as published periodically by the International Code Council. When construction costs are determined using the "Building Valuation Data" as published by the International Code Council, such costs shall be multiplied by a modification factor of 0.60. Construction costs shall include, but not be limited to, pile driving, foundations, structural and nonstructural framing, interior finish (as regulated by this chapter), fire protection systems and any other work which would render the building complete and ready for occupancy. **[Amended 3-5-2019]**

(2) For non-contract work, not covered under Subsection B(1), such as when a homeowner furnishes his/her own or has furnished free labor but purchases the materials, the fee shall be based on the actual cost of all materials with a multiplier of two applied. For example, total materials of five thousand dollars (\$5,000.): $\$5,000 \times 2 = \$10,000$. The permit fee would therefore be ninety dollars (\$90.) (or $10.0 \times \$9$). If, in the opinion of the Building Official, the cost of construction is underestimated on the application, the permit shall be denied, unless the applicant can show detailed documentation to meet the approval of the Building Official. Final building permit cost of construction shall be approved by the Building Official.

- (3) Any person who is found to have demolished, constructed, altered, removed, or changed the use of a building or structure without the benefit of a building, electrical, plumbing, mechanical, fire protection or demolition permit shall, ~~upon application for said permit(s),~~ **before issuing the permits,** be assessed a permit fee of twice the normal rate outlined in Subsection A of this section or twenty-five dollars (\$25.), whichever is greater. Example: Cost of materials = \$15,392; Labor = Self; Permit Fee = 16.0 x \$9 x 2 (self labor) x 2 (added fee) = \$576.
- (4) In the case of a revocation of a permit or abandonment or discontinuance of a building project, the portion of the work actually completed shall be computed and any excess fee for the uncompleted work shall be returned to the permit holder upon written request. All plan examination and permit processing fees and all penalties that have been imposed on the permit holder under the requirements of this chapter shall first be collected. The permit processing fee shall be 10% of the building permit application fee with a minimum fee of ten dollars (\$10.). **[Amended 3-5-2019]**

§ 40-16 Prospective application.

Nothing in this chapter or in the codes hereby adopted shall be construed to affect any suit or proceeding now pending in any court or any rights acquired or liability incurred, nor any causes of action accrued or existing, under any act or ordinance repealed hereby, nor shall any right or remedy of any character be lost, impaired, or affected by this chapter. This chapter shall have prospective application only.

§ 40-17 Severability.

The invalidity of any section or provision of this chapter or of the codes hereby adopted shall not invalidate any other sections or provisions thereof.

§ 40-18 Cleanup of construction sites.

[Amended 2-4-1997; 10-15-2013]

Within 30 days of the issuance of a certificate of occupancy or, in the case of a project which is terminated or delayed indefinitely, within 30 days of appropriate notification by the Director of Building, Zoning, and Licensing Services, the land at any construction site must be reclaimed. Such reclamation includes removal of all vehicles, equipment, materials, and temporary structures related to the construction project and restoration of any disturbed land to a grassed, planted, or otherwise erosion-free condition.

Amendments effective upon passage.

*Intentionally
left blank...*

City Clerk's Office

Amendments to Chapter 135 of the General Ordinances of the City of Rochester

THE CITY OF ROCHESTER ORDAINS:

That Chapter 135 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

Chapter 135

Mobile Home Parks

[HISTORY: Adopted by the City of Rochester 6-6-1995 as Ch. 43 of the 1995 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 275.

§ 135-1 Purpose and intent.
[Amended 2-3-2015]

The purpose of this chapter is to establish minimum standards for the construction in and maintenance of mobile home parks existing (as of April 22, 2014) in the City of Rochester. The intent of this chapter is that mobile home parks existing (as of April 22, 2014) shall provide a healthful, safe, pleasant, and attractive residential atmosphere for their occupants, while at the same time being compatible with existing and anticipated future development in the surrounding areas.

§ 135-2 Authority.

This chapter is adopted by the Rochester City Council in accordance with the provisions of New Hampshire RSA 47:17.

§ 135-3 Definitions.

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

ACCESSORY BUILDING OR STRUCTURE

A subordinate building or structure which is an addition to or supplements the facilities provided by a mobile home, such as an awning, cabana, storage structure, carport, porch, fence, skirting, windbreak, or screened room.

BUILDING

A roofed structure erected for permanent use.

COMMON AREA

An area or space designed for joint use by residents of a mobile home park, principally for recreation purposes.

DENSITY

The number of mobile home lots per acre of gross land area in a mobile home park.

GARAGE

A building for the shelter of automotive vehicles.

GROSS LAND AREA

The total land area included within the perimeter boundaries of a mobile home park.

LIVING UNIT

A residential unit providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking and sanitation.

LOT AREA

The total horizontal land area within the boundaries of a lot, exclusive of any land area designated for street purposes, and reserved for exclusive use of the occupants of a mobile home.

LOT LINE

The line identifying a lot boundary.

MANUFACTURED HOUSING

Any structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein (in conformance with the definition in RSA 674:31, as amended).

[Amended 2-3-2015; at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]

MOBILE HOME

A form of manufactured housing which conforms with the definition of "manufactured housing" above.

MOBILE HOME LOT

A parcel of land for the placement of a mobile home and for the exclusive use of its occupants.

MOBILE HOME PARK

Any parcel of land under single or common ownership or control which contains, or is designed, laid out, or adapted to accommodate, two or more mobile homes. The term "mobile home park" shall not be construed to apply to premises used solely for storage or display of mobile homes.

MOBILE HOME SUBDIVISION

An approved subdivision of two or more lots designed to be occupied by mobile homes only and where the lots will be sold rather than rented or leased.

PARK ROAD

A private road within the boundaries of a mobile home park which is owned and maintained by the mobile home park owner, and which provides vehicular access to mobile home lots.

PERMANENT BUILDING

Any building except a mobile home or a mobile home accessory building or structure.

PUBLIC SYSTEM

A water or sewage system which is owned and operated by a local government authority or by an established public utility which is adequately controlled by a governmental authority.

STORAGE BUILDING

A building located on a mobile home lot which is designed and used solely for the storage and use of personal equipment and possessions of the occupants of the mobile home on that lot.

STREET

A public highway as defined in RSA 229:1, except a Class VI or discontinued highway, or a private road within a subdivision as platted and recorded in the Strafford County Registry of Deeds, including the full width of the right-of-way.

YARD

An unoccupied space open to the sky on a mobile home lot.

§ 135-4 General requirements.**A. Location and access.**

- (1) Mobile home parks shall be permitted only within the area defined as an Agricultural Zone by Chapter 275, Zoning, of the City Code.
- (2) Mobile home parks shall be located with access onto a publicly maintained Class V or better street.
- (3) Since mobile home parks are a relatively intensive form of residential development, the soil characteristics of a site proposed for mobile home park development shall be adequate to support that development.

B. Density. The number of mobile home lots in a mobile home park shall not exceed 2.9 per acre of gross land area contained within the mobile home park.**C. Setbacks.**

- (1) The minimum distance between any mobile home and mobile home park boundary line shall be 50 feet.
- (2) Minimum setbacks on mobile home lots shall be: front yard, 20 feet; side and rear yards, 15 feet.
- (3) There shall be a minimum of 30 feet clearance between mobile homes on adjoining lots. No mobile home shall be located closer than 30 feet to any community building within the park.

D. Screening and landscaping.

- (1) A twenty-foot buffer strip shall be maintained along all public streets and along all mobile home park boundaries which abut a residential area. No part of this buffer strip shall be included within the boundaries of individual mobile home lots or within common areas. Within this twenty-foot buffer strip, a dense visual screen of shrubs or trees shall be planted, at least four feet high at the time of planting, of a type that will form a year-round screen at least six feet high within three years. Where existing natural growth or topography can provide the required screening, it may be utilized to fulfill all or part of this

requirement.

- (2) Lawn and ground cover shall be provided where needed to prevent erosion of slopes and on other areas to obtain usable yards.
- (a) Trees, shrubs, and vines shall be required to the extent needed to provide for:
 - [1] Screening of objectionable views;
 - [2] Adequate shade; and
 - [3] A suitable setting for mobile homes and other facilities.
- (b) During the development of any mobile home park, that portion of said park used, occupied, and/or made available for use and occupation of mobile homes shall be subject to these standards.

E. Construction.

- (1) The provisions of this chapter and of the building regulations of the City of Rochester shall apply to all construction, alterations, repairs and additions to mobile homes and structures within a mobile home park unless otherwise modified herein.
- (2) The skirting of mobile homes is permitted to achieve better heating, but skirting shall not provide a harborage for rodents, nor create a fire hazard. Skirting, cabanas, awnings, porches, or other additions shall not be attached to a mobile home unless they are approved by the Director of Building, Zoning, and Licensing Services.
- (3) All piping from outside fuel storage tanks or liquefied petroleum gas cylinders to a mobile home shall be copper or other acceptable metallic tubing mechanically connected and shall be permanently installed and securely fastened in place. All liquefied petroleum gas cylinders shall be securely fastened in place and shall not be located inside or beneath a mobile home or within five feet of a mobile home exit. Racks to hold liquefied petroleum gas cylinders shall be of a design which will prevent tipping or accidental overturning. All oil tanks shall not be located inside or beneath a mobile home. If a mobile home is provided with a full basement, fuel storage tanks may be located within the basement. All outside installed oil tanks shall have a foundation made of concrete or masonry. Tank foundations shall be designed to minimize the possibility of uneven settling of the tank and to minimize corrosion in any part of the tank resting on the foundation. Oil tanks shall be screened by adequate shrubs or fencing.
- (4) Liquefied petroleum gas for cooking purposes shall not be used on individual mobile home lots unless the containers are properly connected. Liquefied petroleum gas cylinders shall be securely fastened in place and shall be adequately protected from the weather.
- (5) The storage of firewood, coal, coke, other fuels and/or equipment shall be done in a manner so as not to constitute a fire hazard.
- (6) Only one single-story storage building may be installed on any one mobile home lot. The maximum size shall not exceed 12 feet by 14 feet by 10 feet wall height. Roofs shall be either pre-finished metal,

Commented [1]: Editor's Note: Throughout this chapter, references to the Code Enforcement Department were amended to the Building, Zoning, and Licensing Services Department 10-15-2013.

fiberglass, or shingles. The exterior shall be of a permanent building material. Plans must be approved by the Director of Building, Zoning, and Licensing Services and a building permit obtained prior to erection on the mobile home lot.

- F. Board of Health requirements. All mobile home parks shall be located in areas free from marshes, swamps, stagnant pools, or other potential breeding places for insects or rodents.
- G. Fire protection.
 - (1) The mobile home park area shall be subject to the rules and regulations of the City of Rochester Fire Department.
 - (2) Mobile home park areas shall be kept free of litter, residential solid waste, and other flammable materials. **[3-5-2019]**
 - (3) Where a municipal water system is available to a mobile home park, standard City fire hydrants shall be spaced not more than 500 feet apart within the boundaries of the park. **[Amended 3-7-2000]**
 - (4) Fires shall be made only in stoves and other equipment intended for such purposes. No open fires shall be permitted except in specified areas approved by the Rochester Fire Department.
 - (5) The City of Rochester Fire Department may take whatever additional measures for adequate fire and safety conditions as it feels are necessary for each mobile home park.
- H. Refuse disposal.
 - (1) The storage, collection, and disposal of refuse in mobile home parks shall be managed so as to create no health hazards, rodent harborage, insect breeding areas, accident hazards, or air pollution.
 - (2) Racks or holders shall be provided for all refuse containers. Such container racks or holders shall be so designed as to prevent containers from being tipped, to minimize spillage and container deterioration, and to facilitate cleaning around them.
 - (3) All garbage and residential solid waste shall be collected at least once weekly only from a location(s) designated by the Health Officer. Mobile home park owners shall be responsible for seeing that garbage and residential solid waste are deposited at the collection location(s). **[3-5-2019]**
- I. Pets. No owner or person in charge of a dog, cat, or other pet animal shall permit it to run at large or to commit any nuisance within the limits of any mobile home park (pursuant to RSA 466:30-a).
- J. Management.
 - (1) Any person responsible for the operation of a mobile home park shall maintain a current register of all mobile homes located within the mobile home park and their owners. Such register shall be available for inspection to/by City officials.
 - (2) Said register shall contain pertinent information to properly identify the mobile home, location, and owners of each mobile home in the mobile home park, including the dates of arrival and the dates of

departure of any mobile home which has arrived or departed within the past year.

- (3) According to the provisions of RSA 73:16-a, the owner of a mobile home park shall be responsible for filing with the City Assessor's office an inventory (description) of all mobile homes which locate in a park within 15 days of their arrival. Also under the provisions of RSA 73:16-a, the owner of a mobile home park may be held responsible for the payment of taxes due on individual mobile homes located within the park which have not been paid by their owners.
- (4) The management of a mobile home park shall assume responsibility for maintaining in good repair all buildings, streets, walks, sanitary facilities and utilities within the park and shall take such action as is necessary to eject from the grounds any person who willfully or maliciously fails to comply with these and other applicable regulations.

§ 135-5 Design standards.
[Amended 2-3-2015; 3-5-2019]

During the development of any mobile home park, that portion of said park which is used, occupied, and/or made available for use and occupation of mobile homes shall be subject to these standards, and to the applicable standards of the New Hampshire Department of Environmental Services and the Sanitary Laws and Regulations of the New Hampshire Division of Public Health Services.

A. Mobile home lots.

- (1) Each mobile home lot shall contain a minimum of 10,000 square feet in area and shall have minimum frontage of 75 feet on a park road.
- (2) No mobile home with accessory buildings, garage, structures, storage building and paved parking spaces shall occupy in excess of 35% of a mobile home lot.

B. Park roads.

- (1) Mobile home park roads shall provide safe and convenient vehicular access from abutting public streets to all mobile home lots and community facilities. Driveway access to all mobile home lots shall be only from park roads, with no driveway access permitted directly from City streets.
- (2) Roads shall be adapted to topography, shall have suitable alignment and gradient for traffic safety, and shall have a properly designed storm drainage system. Except as herein modified, the design standards for minor streets in the Agricultural Zone contained in the Rochester Subdivision Regulations shall apply to the design of mobile home park roads.
- (3) Roads shall have a minimum right-of-way width of 40 feet and a minimum paved width of 22 feet. Roadway pavement shall be in accordance with the standards for minor streets in the Agricultural Zone contained in the Rochester Subdivision Regulations.
- (4) Road systems shall be developed with consideration given to the reasonable movement and placement of mobile homes on individual lots.
- (5) All mobile home parks shall be graded to ensure proper drainage. The drainage system shall take into consideration not only proper channelizing of stormwater within the mobile home park but minimization

of adverse effects on surrounding property and public streets.

C. Parking.

- (1) Two off-street parking spaces shall be provided for each mobile home lot. Each parking space shall be paved and graded to provide drainage away from the mobile home in conformance with the overall drainage plan for the mobile home park.
- (2) Each off-street parking space shall have a minimum width of nine feet and a minimum length of 18 feet.
- (3) Garages shall be permitted, provided that they are either directly attached to a mobile home or separated by a distance of at least 10 feet. Garages shall also conform to the setback provisions in § **135-4C(2)**.

D. Common area.

- (1) At least 7% of the gross land area in a mobile home park shall be reserved as a common area for recreation and other open space purposes.
- (2) Each mobile home park shall provide at least one common area restricted to the use and enjoyment of the residents of the park. No single common area shall contain less than 15,000 square feet. Where more than one area is provided, the areas shall be spaced and located in the mobile home park in such a manner that will provide maximum usefulness for park residents.
- (3) All equipment contained in recreational areas within common areas shall be kept in good repair. Common areas shall be kept free of all debris.
- (4) The land included within common areas shall be of such character that it is capable of supporting recreational use and shall not include land with poor drainage, excessive slope, or land which is subject to flooding.
- (5) Common areas shall be separated from park roadways, City streets, and parking spaces by an adequate fence.

E. Water supply.

- (1) A water supply meeting current New Hampshire Department of Environmental Services drinking water standards shall be provided to each mobile home lot in a mobile home park.
- (2) The design and construction (including materials) of the water supply system, whether public or private, for a mobile home park shall comply with the New Hampshire Department of Environmental Services Design Standards for Small Public Water Systems and with all requirements and regulations of the City of Rochester.
- (3) Where a public water system exists within 200 feet of any boundary of a mobile home park, all lots within the park shall be connected to the public system, unless such connection is specifically denied by the City. Where a public water system is not available, any other source of water must be approved by the New Hampshire Department of Environmental Services.

- (4) All water piping shall be constructed and maintained in accordance with state and local law; the water piping system shall not be connected with nonpotable or questionable water supplies.
- (5) Individual water service connections which are provided for direct use by mobile homes shall be so constructed that they will not be damaged by the parking of mobile homes.
- (6) A mobile home park water system shall be adequate to provide 20 pounds per square inch of pressure at all mobile home lots.

F. Sewage disposal.

- (1) Where a public sewage system exists within 200 feet of any boundary of a mobile home park, all lots within the park shall be connected to the public system, unless such connection is specifically denied by the City.
- (2) Where a public sewage system is not available, the sewage disposal system for all mobile home lots in the mobile home park shall be approved by the New Hampshire Department of Environmental Services.
- (3) Each mobile home shall be provided with sewer connections which comply with all statutory requirements and regulations of the State of New Hampshire and appropriate agencies of the State of New Hampshire and the City of Rochester.
- (4) The design and construction (including materials) of the sewage disposal system, whether public or private, for a mobile home park shall comply with all statutory requirements and regulations of the New Hampshire Department of Environmental Services and the City of Rochester.

G. Electricity.

- (1) A secured electrical outlet supplying 220 volts shall be provided for each mobile home lot. This installation shall comply with all applicable state and local electrical codes and ordinances. Such electrical outlets shall be weatherproof.
- (2) All power lines within a mobile home park shall be underground and shall be laid with sufficient cover to prevent damage from traffic.

H. Telephone system. Where telephone service to mobile home lots is provided, the distribution system shall be underground and shall be in general conformance with the placement of the electrical distribution system.

I. Cable television system. Where cable television service to mobile home lots is provided, the distribution system shall be underground and shall be in general conformance with the placement of the electrical system.

~~§ 135-6 Application for approval.~~

~~A. Procedure.~~

- ~~(1) Before formal submission of a plan for a new mobile home park, a developer proposing construction of a mobile home park may first meet with the Planning Board to informally discuss the project.~~

- ~~(2) A formal application for construction of a new mobile home park shall be submitted to the Rochester Planning Board. In reviewing the application, the Board shall follow the procedures and standards for the review of a major subdivision as spelled out in Section 2.3 of the Rochester Subdivision Regulations.~~
- ~~(3) The Board shall submit the application to the Commissioner of the Rochester Department of Public Works for review of all road and utility plans which are a part of the proposed mobile home park.~~
- ~~B. Submission requirements. The application for approval of a mobile home park plan shall be prepared in accordance with the standards and requirements contained in Section 4 of the Rochester Subdivision Regulations. The application shall include all those items listed in said Section 4.~~

§ 135-7 Licensing.

A. General provisions.

- (1) It shall be unlawful for any person to operate or maintain a mobile home park within the limits of the City of Rochester unless he/she holds a valid license issued by the Director of Building, Zoning, and Licensing Services in the name of such person for the specific mobile home park.
- (2) Licenses shall be issued annually, and each license shall be in effect for a period of one year beginning January 1 of each year.
- (3) An application for an initial mobile home park license shall be filed with the Director of the Building, Zoning, and Licensing Services Department. The application shall be in writing, signed by the applicant, and shall include the following:
 - (a) The name and address of the person making the application.
 - (b) The location and legal description of the mobile home park.
 - (c) Plans and specifications of all improvements, buildings, streets, recreational areas, walks, sewer, water, and other facilities constructed or to be constructed within the park.
 - (d) The area and dimensions of the tract of land whereon the park is located.
 - (e) Written approval of the following City of Rochester officials indicating that the mobile home park complies with the requirements of this chapter:
 - [1] Planning Board.
 - [2] Commissioner of Public Works.
 - [3] Fire Chief.
 - [4] Health Officer.
 - [5] Police Chief.

[6] Zoning Administrator. **[Amended 3-5-2019]**

[7] City Manager.

- (f) Such further information as may be requested by the Director of the Building, Zoning, and Licensing Services Department to enable him/her to determine if the park complies with the provisions of this chapter and all other applicable legal requirements.
- (4) The application and five copies of all accompanying plans and specifications shall be filed with the Director of the Building, Zoning, and Licensing Services Department; two of said copies shall be filed with the Planning Office.

B. Issuance of license.

- (1) The Director of the Building, Zoning, and Licensing Services Department shall inspect the application and plans and specifications.
- (2) If the mobile home park is in compliance with all of the provisions of this chapter and all other applicable ordinances, statutes, and regulations, the Director of the Building, Zoning, and Licensing Services Department shall approve the application; provided, however, that if the Director of the Building, Zoning, and Licensing Services Department does not act to approve or deny within 90 days of receipt of the application, the application shall be automatically approved.

C. Renewal of license.

- (1) Application for the renewal of a license shall be made in writing on or before the first day of November of each year to the Director of the Building, Zoning, and Licensing Services Department by the holder of the license and shall contain the following:
 - (a) Any change in the information submitted since the time the original license was issued or the latest renewal granted.
 - (b) Copies of as-built plans for any and all sections of a mobile home park developed during the year in which application for renewal is made.
 - (c) Such other information as the Director of the Building, Zoning, and Licensing Services Department may require.
- (2) All mobile home parks in existence upon the effective date of this chapter shall within six months thereafter comply with the requirements of this chapter, except that the Director of the Building, Zoning, and Licensing Services Department, upon application of a park operator, may waive such requirements that require prohibitive reconstruction costs if such waiver does not alter the health and sanitation requirements herein provided.
- (3) At his/her discretion, the Director of the Building, Zoning, and Licensing Services Department may issue a conditional license renewal, subject to the license holder complying with certain conditions as determined by the Director of the Building, Zoning, and Licensing Services Department. In such a case,

the Director of the Building, Zoning, and Licensing Services Department shall list the specific conditions upon which the renewal is based and set a time for compliance with these conditions. Costs associated with enforcement of owner compliance with said specific conditions requiring correction shall be assessed by the Director of the Building, Zoning, and Licensing Services Department. If not in compliance, twenty-five dollars (\$25.) per inspection shall be assessed; said charge shall be in addition to any other penalty.

- (4) If the Director of the Building, Zoning, and Licensing Services Department does not act on an application for the renewal of a license by December 31, it shall automatically be approved.
- (5) Not more than four annual license renewals shall be issued for an approved mobile home park in which no substantial development has taken place.

D. Responsibility of the license holder.

- (1) The license certificate shall be conspicuously posted in the office of, or on the premises of, the mobile home park at all times.
- (2) A license shall be transferable after the holder of a valid license gives notice in writing to the Director of the Building, Zoning, and Licensing Services Department 15 days prior to any proposed sale, transfer, gift, or other disposition of interest or control of any mobile home park. Such notice shall include the name and address of the person succeeding to the ownership or control of such mobile home park.

§ 135-8 **Administration and enforcement.**

- A. Enforcement. Upon determination by the Director of the Building, Zoning, and Licensing Services Department that a violation of this chapter has occurred, he/she shall initiate enforcement procedures. If necessary, the Director of the Building, Zoning, and Licensing Services Department shall refer the matter to the City Solicitor for appropriate legal action.
- B. Inspection. The Director of the Building, Zoning, and Licensing Services Department, Police Chief, Health Officer, Fire Chief, Commissioner of Public Works, the Zoning Administrator, and other agents of the City as certified by the City Manager are hereby authorized to make periodic and reasonable inspections to determine the condition of mobile home parks within the City of Rochester and to determine if the requirements of this chapter are being observed. **[Amended 3-5-2019]**
- C. Violations and penalties; revocation of license.
 - (1) A violation of, or violation from, the terms and conditions of this chapter and/or the conditions of the license to operate or maintain a mobile home park by the holder thereof or his/her agent shall be cause for the revocation of said license. Such revocation shall be made at the discretion of the Director of the Building, Zoning, and Licensing Services Department.
 - (2) After revocation of the license has been ordered by the Director of the Building, Zoning, and Licensing Services Department, additional violations shall result in a fine not exceeding one thousand dollars (\$1,000.) in accordance with the provisions of RSA 47:17. This provision shall be in effect even should an appeal be taken from the Director's revocation order. **[Amended 3-5-2019]**

D. Appeals.

- (1) Any party whose application for approval of a mobile home park plan has been denied may appeal the decision of the Planning Board to the Superior Court in accordance with the provisions of RSA 677:15.
- (2) Any party whose application for a license has been denied or whose license has been revoked may appeal the decision of the Director of the Building, Zoning, and Licensing Services Department to the Zoning Board of Adjustment in accordance with the provisions of RSA 674:33.

E. Conflict with other ordinances. In any case where a portion of this chapter is found to be in conflict with the provisions of any zoning, building, fire, safety, or health ordinance or code of the State of New Hampshire or City of Rochester existing on the effective date of this chapter, the provisions which, in the judgment of the Planning Board, establish the higher standard for the promotion and protection of the health and safety of the people shall prevail.

F. Saving clause. If any section, subsection, paragraph, sentence, clause or phrase of this chapter should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this chapter, which shall remain in full force and effect, and to this end the provisions of this chapter are hereby declared to be severable.

THE CITY OF ROCHESTER ORDAINS:

That Chapter 176 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

Chapter 176

Planning Board

[HISTORY: Adopted by the City of Rochester 6-6-1995 as Ch. 41 of the 1995 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 275.

§ 176-1 **Creation and composition.**

That there be created hereby a City Planning Board, to consist of nine members and up to five alternates appointed in accordance with the provisions of § 7-28 of the Code of the City of Rochester.

§ 176-2 **Compensation; holding other municipal offices.**

All members of the Planning Board shall serve without compensation. Appointed members shall not hold any other municipal office except that:

- A. One such appointed member may be a member of the Zoning Board of Adjustment.
- B. Either one appointed or one ex officio member may be a member of the Conservation Commission, if one exists in the City, in accord with RSA 36-A:3.
- C. Either one appointed or one ex officio member may be a member of the Historic District Commission, if one exists in the City, in accord with RSA 674:46-a. **[Amended 3-5-2019]**

§ 176-3 **Terms of office.**

The terms of ex officio members shall correspond to their respective official tenures, except that the term of the administrative official selected by the City Manager shall terminate with the term of the City Manager selecting him/her. The term of each appointed member shall be three years, except that the respective terms of the members first appointed shall be staggered.

§ 176-4 **Removal of members.**

Members of the Planning Board selected by the Council may, after a public hearing, be removed by the Council for inefficiency, neglect of duty or misfeasance in office. The City Manager may remove the administrative official and/or designee appointed by him/her without cause. The Council shall file with the City Clerk a written statement of reasons for such removal.

§ 176-5 **Vacancies.**

Vacancies in the membership of the Planning Board occurring otherwise than through the expiration of term shall be filled for the duration of the unexpired term by the Mayor and Council in accordance with the provisions of Section 74 of the Rochester City Charter in the case of members selected or appointed by them, and by the Council in the case of the Councilor member.

§ 176-6 Organization.

The Planning Board shall elect its Chairperson from amongst the appointed members and create and fill such other offices as it may deem necessary for its work. The term of the Chairperson shall be one year, with eligibility for reelection. The Planning Board shall hold at least one regular meeting in each month and shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be public.

§ 176-7 Staff and finances.

The Planning Board may appoint such employees as it may deem necessary for its work, whose appointment, promotion, demotion and removal shall be subject to the same provisions of law as govern other corresponding civil employees of the City. The Planning Board may also contract with the City planners, engineers, architects and other consultants for such services as it may require. The expenditures of the Planning Board, exclusive of gifts, shall be within the amounts appropriated for the purpose by the Council.

§ 176-8 Master Plan.

It shall be the function and duty of the Planning Board to make and to perfect from time to time, so far as funds appropriated by the Council for such purpose will permit, a Master Plan for the development of the City. Such Master Plan, with the accompanying necessary maps, plats, charts and descriptive matter, shall be designed with the intention of showing as fully as is possible and practicable the Planning Board's recommendations for the desirable development of the territory legally and logically within the scope of its planning jurisdiction, including, on that basis, among other things, the general location, character and extent of streets, bridges, waterways, waterfronts, boulevards, parkways, roadways in streets and parks, playgrounds, squares, aviation fields, and other public ways, places, grounds and open spaces; sites for public buildings and other public property; routes of railroads, omnibuses and other forms of public transportation; and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, heat, sanitation, transportation, communication, power and other purposes; also the acceptance, removal, relocation, widening, narrowing, vacating, abandonment, change of use of, or extension of any of the foregoing ways, grounds, places, open spaces, buildings, properties, utilities or terminals and other planning features, as well as a zoning plan for the control of the height, area, bulk, location and use of private and public structures, buildings and premises and population density; the general character, layout and extent of any community center; and any other matter permitted by RSA 36 of the laws of the State of New Hampshire.

- A. Preparation of Master Plan. In the course of the preparation of such Master Plan, the Planning Board may make careful and comprehensive surveys and studies of existing conditions and of data and information relative to the probable future growth of the City. The Master Plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the City, which will, in accordance with existing and probable future needs, best promote health, safety, morals, order, convenience, prosperity, or the general welfare as well as efficiency and economy in the process of development, including, among other things, adequate provisions for traffic, the promotion of safety from fire and other damages, adequate provision for light and air, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.
- B. Adoption and amendment. The Planning Board may adopt the Master Plan as a whole by a single resolution or may, by successive resolutions, adopt successive parts of the plan, said parts corresponding with major geographical sections or divisions of the City, or with functional subdivisions of the subject matter of the plan, and may adopt any amendment or extension thereof or addition thereto. Such Master

Plan shall be a public record, but its purpose and effect shall be solely to aid the Planning Board in the performance of its duties. The adoption of the Master Plan or any amendment thereto shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the Planning Board. The resolution shall refer expressly to the maps, descriptive matter and other matters intended by the Planning Board to form the whole or part of the plan, and the action taken shall be recorded on the adopted plan or part thereof adopted, by the identifying signature of the Chairperson or Secretary of the Planning Board, and a copy of the plan or part thereof shall be certified to the Council.

§ 176-9 Miscellaneous duties.

- A. The Planning Board shall have power to promote public interest in, and understanding of, the Master Plan and of any Official Map of the City which may hereafter be established by the Council, and to that end may publish and distribute copies of the Master Plan, or of such Official Map, or of any report, and may employ such other means of publicity and education as it may deem advisable.
- B. Members of the Planning Board, when duly authorized by said Planning Board, may attend city planning conferences or meetings of city planning institutes or hearings upon pending city planning legislation, and the Planning Board may, by resolution, spread upon its minutes, pay the reasonable traveling expenses incident to such attendance.
- C. The Planning Board shall have authority to make such investigations, maps and reports and recommendations in connection therewith, relating to the planning and development of the City, as seems desirable to do.
- D. The Planning Board may, from time to time, report and recommend to the appropriate public officials and public agencies programs for the development of the City, for the erection of public structures and improvements and for the financing thereof. It shall be part of the Planning Board's duties to consult and advise with public officials and agencies, public utility companies, civic, educational, professional, research and other organizations, and with citizens with relation to the protecting or carrying out of the Master Plan, and to make recommendations relating to the development of the City.
- ~~E. The Planning Board shall have the right to accept and use gifts for the exercise of its functions.~~
- F. All public officials shall, upon request, furnish to the Planning Board, within a reasonable period of time, such available information as it may properly require for its work.
- G. The Planning Board, its members, officers, and employees, in the performance of their functions, are authorized to enter upon any land and make such examinations and surveys as are reasonably necessary and place and maintain necessary monuments and marks thereon.
- H. In general, the Planning Board shall have such powers as may be necessary to enable it to fulfill its functions, promote municipal planning, or carry out the purposes hereof, provided the total expenditures of said Board shall not exceed the appropriation for its expenses.

§ 176-10 Zoning Commission.

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

The Planning Board shall act as a Zoning Commission, to recommend to the Council the boundaries of the various original districts provided for in RSA 674, and appropriate regulations to be enforced therein. The

03/25/2021
Planning Board shall make a preliminary report and hold public hearings thereon before submitting its final report to the Council.



City of Rochester Formal Council Meeting

AGENDA BILL

NOTE: Agenda Bills are due by 10 AM on the Monday the week before the City Council Meeting.

AGENDA SUBJECT

Proposed Ethics Code and Committee

COUNCIL ACTION ITEM ☐
INFORMATION ONLY ☒

FUNDING REQUIRED? YES ☐ NO ☒

* IF YES ATTACH A FUNDING RESOLUTION FORM

RESOLUTION REQUIRED? YES ☐ NO ☐

FUNDING RESOLUTION FORM? YES ☐ NO ☒

AGENDA DATE	March 16, 2021	
DEPT. HEAD SIGNATURE	Terence O'Rourke, City Attorney	
DATE SUBMITTED	March 10, 2021	
ATTACHMENTS YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	* IF YES, ENTER THE TOTAL NUMBER OF PAGES ATTACHED	15

COMMITTEE SIGN-OFF

COMMITTEE	Rochester Economic Development Council
CHAIR PERSON	

DEPARTMENT APPROVALS

DEPUTY CITY MANAGER	
CITY MANAGER	

FINANCE & BUDGET INFORMATION

DIRECTOR OF FINANCE APPROVAL	
SOURCE OF FUNDS	
ACCOUNT NUMBER	
AMOUNT	
APPROPRIATION REQUIRED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	

LEGAL AUTHORITY

N/A

SUMMARY STATEMENT

On March 2, 2021, City Councilor Hutchinson suggested that the City create an Ethics Committee. In order to aid the Council in this discussion, I have included the ethics provisions from the Ordinances/Charters of our sister cities Portsmouth, Dover, and Somersworth

RECOMMENDED ACTION

Discussion only

Portsmouth

ARTICLE VIII: CODE OF ETHICS

Section 1.801: DEFINITIONS

For purpose of this Article, the following terms shall be defined in the following manner:

- A. **Officer:** The term "Officer" shall be defined to include every member of the City Council, School Board, Police Commission, Fire Commission, each member of every land use regulatory board, i.e. the Board of Adjustment, Planning Board, Historic District Commission, Conservation Commission, Technical Advisory Committee, Traffic Safety Committee, Building Code Board of Appeals, Recreation Board, Planning and Development Council, and Economic Development Commission, every department head as that term is used in the Administrative Code, Chief of Police, Fire Chief, Superintendent of Schools, the Trustees of the Trust Funds and members of the Housing Authority.
- B. **Employee:** The term "Employee" shall include all employees of the City including the Police, School and Fire Departments whose salary is paid in whole or in part from the City Treasury.
- C. **Governing Body:** The term "Governing Body" shall mean the City Council, School Board, Police Commission, and Fire Commission.
- D. **Official Duties:** The term "Official Duties" shall mean the following:
 - 1. In the case of members of the City Council, School Board, Fire Commission, Police Commission and the City Manager, those duties and responsibilities set forth in the City Charter and/or established by State law.
 - 2. In the case of members of Land Use Regulatory Boards, the Trustees of the Trust Fund and the Portsmouth Housing Authority, those duties and responsibilities set forth in the legislation that established each board and/or outlines the duties and responsibilities of each board.
 - 3. In the case of the Chief of Police, the Superintendent of Schools, the Fire Chief, and all employees, those duties and responsibilities set forth in the respective job description for each party or employee.

Section 1.802: CONFLICTS OF INTEREST

- A. No Officer or employee shall engage in any business or transaction or shall have a financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his/or her official duties.

- B. **Representing Private Interests Before City Agencies:** No Officer or employee shall appear in behalf of private interests before any governing body or land use regulatory board of which the officer or employee is a member or membership on which is subject to approval by the officer or employee.
Officers and employees, however, may appear without compensation in behalf of constituents or in the performance of public or civic obligations. This section shall not prohibit appearances upon matters only incidentally requiring official action which do not develop into a substantial part of the employment, provided, that the retainer is not for the purpose of appearing before the governing body or land use regulatory board.
- C. **Representing Private Interests Before Courts:** No officer or employee shall represent private interests in any action or proceeding against the interests of the land use regulatory board or governing body of which the officer or employee is a member, or membership on which is subject to approval by the officer or employee in any litigation to which the City is a party.
- D. **Disclosures of Interest in Legislation:** A Councilor who has a direct or indirect financial or other private interest in any proposed legislation shall publicly disclose, on the official records of the Council, the nature and extent of such interest.
- E. **Disclosures by Officer or Employee of Interest in Legislation:** An officer or employee who has a direct or indirect financial interest or other private interest in any legislation and who participates in discussion before or gives official opinion to the Council, shall publicly disclose on the official record the nature and extent of such interest.
- F. **Gifts and Favors:** No officer or employee shall accept any gift, over \$100.00, whether in the form of service, loan, thing or promise, any other form from any person, firm or corporation which to his/or her knowledge is interested directly or indirectly in any manner whatsoever, in business dealings with the City. This provision shall not apply to campaign contributions of \$100.00 or less.
- G. **Disclosures of Confidential Information:** No officer or employee, who holds any investment direct or indirect in any financial, business, commercial or other private entity which creates a conflict with his/her official duties shall publicly disclose on the official record the nature and extent of such interest.
- H. **Investments in Conflict with Official Duties:** Any officer or employee, who holds any investment direct or indirect in any financial, business, commercial or other private entity which creates a conflict with his/her official duties shall publicly disclose on the official record the nature and extent of such interest.
- I. **Incompatible Employment:** No officer or employee shall engage in or accept private employment or render or seek services or goods for private interests when such employment or service creates a conflict with his/her official duties.

Section 1.803

Any violation of any provisions of this ordinance shall constitute cause for fine, suspension or removal from office or employment.

Section 1.804: BOARD OF ETHICS

- A. There is hereby created and established a method for appointing a Board of Ethics. This Board shall consist of five persons: one member each selected by lot from the City Council, School Board, Police Commission and Fire Commission and the City Attorney (ex officio) or such other legal counsel (ex officio) that the Board should decide. The Board member shall be drawn at the first meeting of the calendar year of each of the governing bodies.

The members of the Board shall elect a chairperson. They shall adopt such rules for the conduct of their business as they see fit and they shall have the power to draw upon the various City departments for reports and information and stenographic and clerical help. They shall have all subpoena powers as may be available to them under State law.

- B. Advisory Opinions: Upon the written request of the Officer or employee concerned, the Board shall render advisory opinions based upon the provisions of this Code. The Board shall file its advisory opinions with the City Clerk but may delete the name of the officer or employee involved.
- C. Hearings and Determinations: Any individual having information that an officer or employee as defined in Section 1:801, other than the City Manager or the City Attorney, is engaged in improper activities or has a conflict of interest may present his or her complaint to the City Attorney.
1. Said complaint shall be in writing, under oath, specific and to the point. The City Attorney shall review the written complaint with the Mayor and if either the Mayor or the City Attorney feels that the complaint is of substance, then the Mayor shall refer the matter to the Board.
 2. If both the Mayor and City Attorney believe that the complaint is without substance, the person making the complaint and the subject of the complaint shall be notified in writing of that fact.
 3. The Board shall hold a hearing which may be public or private at the discretion of the Board and at which the accused party shall be entitled to be represented by Counsel at his or her own expense to examine the party making the complaint, to summon witnesses and to present evidence on his or her behalf. If the Board finds that the individual is guilty as charged in the complaint, the whole matter shall be referred to the appropriate governing body for enforcement as set forth in Section 1:805.

4. Complaints against the City Manager and/or City Attorney for violations of this Ordinance shall be in writing, under oath, specific and to the point, and shall be referred directly to the Mayor or Assistant Mayor. If either the Mayor or Assistant Mayor believes that the complaint is of substance, then the complaint shall be referred to the Board for a hearing as set forth in paragraph C.3 above. If the City Attorney and the Assistant Mayor believe that the complaint is not of substance, then the person making the complaint and the Mayor shall be notified of that decision.
5. Complaints against the Mayor shall be filed with the City Attorney who shall review them with the Assistant Mayor. If either the City Attorney or the Assistant Mayor believes that the complaint is of substance, then the complaint shall be referred to the Board for a hearing as set forth in paragraph C.3 above. If the City Attorney and the Assistant Mayor believe that the complaint is not of substance then the person making the complaint and the Mayor shall be notified of that decision.
6. All members of the City Council (including the Mayor), School Board, Police Commission and Fire Commission are eligible to serve and must serve on the board when requested to do so except, however, that any person that has been charged in a complaint shall be barred from serving on that particular board.
7. All complaints shall be disposed of or forwarded to the Board by the City Attorney and/or the Mayor and/or the Assistant Mayor within thirty days after receipt.
8. The Board shall have thirty days to investigate and hold meetings and to report to the appropriate governing body as a whole if their findings warrant further action.
9. The statements of the findings of the Board shall be issued upon the request of any person charged.

Section 1.805: ENFORCEMENT

- A. Sanctions: In the event that the Board of Ethics determines that any officer or employee subject to its control, has engaged in any act prohibited by this ordinance or failed to make a mandated disclosure, the governing body shall take any one of the following steps:
 1. In the case of the Governing body members:
 - a. Vote for removal pursuant to the City Charter as amended
 - b. Vote to publicly censure the offending member
 - c. Vote to place the matter on file
 - d. Vote for innocence of any wrong doing

2. In the case of all officers and employees the governing body, consistent with the Merit System and any applicable bargaining agreements, shall:

- a. Vote for removal
- b. Vote for dismissal
- c. Vote for suspension for a definite period
- d. Vote for the censuring
- e. Vote to place the matter on file
- f. Vote for innocence of any wrongdoing.

B. Criminal Sanctions: In addition to the civil sanctions imposed by this ordinance, violation of any provision of this ordinance shall constitute a criminal offense and the City Council may authorize the City Attorney or any other attorney approved by it to prosecute such a violation in the Portsmouth District Court.

The penalty for violation of any provision of this Ordinance upon conviction in the Portsmouth District Court shall be \$1,000 for each offense.

(Adopted In Its Entirety 4/4/88)

Dover

City of Dover, NH
Wednesday, March 10, 2021

Chapter 21. Ethics, Code of

Article I. Ethical Standards

§ 21-1. Definitions.

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

APPOINTED OFFICER

Includes all positions appointed by the Mayor and Council or the City Manager, including appointment to the Housing Authority, but not employees.

COUNCILOR

A member of the Dover City Council.

ELECTED OFFICER

The Mayor, Deputy Mayor and all Councilors and the positions of ward election officials and Charter Commission members.

EMPLOYEE

Includes all City employees whose salary is paid in whole or in part from the City treasury and all positions over which the City Manager, department heads or the City Council has power of appointment.

FAMILY

Any person who is related to an elected or appointed officer or employee in one of the following ways: spouse, parent, grandparent, child, grandchild or sibling. The definition also includes all persons who are members of the same household as the elected or appointed officer or employee, regardless of whether they are related by blood or marriage.

§ 21-2. Conflicts of interest.

No elected or appointive officer or employee of the City shall take part in a decision concerning the business of this City or engage in any business or transaction in which he/she or a member of his/her family, directly or indirectly, has a financial interest, aside from his/her salary as such officer or employee, greater than any other citizen or taxpayer, nor shall he/she have any financial or other private interest, directly or indirectly, which is in conflict with the proper discharge of his/her official duties.

§ 21-3. Representation of private interests before City agencies.

[Amended 2-27-2019 by Ord. No. 2019.02.13-003]

No elected or appointed officer or employee shall appear on behalf of private interests before the City board, commission, committee, subcommittee or authority on which he/she serves. Councilors,

however, may appear without compensation on behalf of constituents or in the performance of public or civic obligations.

§ 21-4. Required disclosure by Council members; recusal.

- A. A Councilor or a Councilor with a family member who has a direct or indirect financial or other private interest in any proposed legislation or matter of official business before the City Council shall publicly disclose on the official records of the Council the nature and extent of such interest. Such disclosures shall be made orally prior to the legislation or matter being discussed as part of a Council meeting agenda, or a Councilor may elect to file a written specific conflict-of-interest disclosure statement with the City Clerk. The statement shall be read aloud into the record at all public meetings during which the legislation or matter is discussed. In the case of a nonpublic session, the statement shall be read aloud at the next public meeting.
- B. A Councilor with a conflict of interest shall recuse himself or herself from further participation in the matter. "Recusal" means to immediately remove from discussion and voting. "Recusal" shall also mean the Councilor is required to physically vacate his or her seat. During a nonpublic session, the Councilor shall remove himself or herself from the meeting room.

§ 21-5. Required disclosure by officers and employees; recusal.

- A. An appointed officer or employee who, whether paid or unpaid, has a direct or indirect financial interest or other private interest in any legislation or matter of official business in the City of Dover and who participates in discussion before or gives official opinion to the Council, or otherwise participates in the official business of the City of Dover, shall publicly disclose on the official record the nature and extent of such interest. Such disclosures shall be made orally prior to the legislation being discussed as part of a Council meeting agenda, or the officer or employee may elect to file a written specific conflict-of-interest disclosure statement with the City Clerk. The statement shall be read aloud into the record at a public meeting. In the case of a nonpublic session, the statement shall be read aloud at the next public meeting.
- B. Appointed officers and employees with a conflict of interest shall recuse themselves from further participation in the matter. "Recusal" means to immediately remove themselves from discussion and voting. "Recusal" shall also mean the officer or employee is required to physically vacate his or her seat. During a nonpublic session, the appointed officer or employee shall remove himself or herself from the meeting room.

§ 21-6. Gifts.

No Councilor or appointed officer or employee shall accept any gift of \$25 or more at one time, or \$100 in a calendar year from a single source, whether in the form of service, loan, thing or promise or any other form, from any person, firm or corporation interested, directly or indirectly, in any manner whatsoever in business dealings with the City. Campaign contributions received during the official election period shall not be considered gifts.

§ 21-7. Disclosure of confidential information.

No Councilor or appointed officer or employee shall intentionally disclose confidential or privileged information, or other information learned by virtue of official position as defined in RSA 42:1-a, or information obtained in sessions pursuant to RSA 91-A:2, I(b) or (c), concerning the property, government or affairs of the City.

§ 21-8. Investments in conflict with official duties.

No elected or appointed officer or employee shall invest or hold any investment, directly or indirectly, in any financial, business, commercial, or other private transaction which creates a conflict with his/her official duties.

§ 21-9. Incompatible employment.

No elected or appointed officer or employee shall engage in or accept private employment or render or sell services or goods from private interests, which such employment or service is incompatible with the proper discharge of his/her official duties.

§ 21-10. Future employment.

No elected or appointed officer or employee shall solicit, negotiate for or promise to accept employment by any person, firm or corporation with which he or she is or his or her agency is engaged on behalf of the City in the transaction of business or which is or may be affected by his or her official action. In connection with this prohibition, no elected officer shall assume employment with the City for 365 days after leaving office.

Article II. Ethics Commission; Complaint Procedure; Remedies

§ 21-11. Ethics Commission established; purposes.

A. There is hereby established an Ethics Commission consisting of five Commissioners who shall be Dover residents and appointed by the City Council. At least one Commissioner shall be a former City Councilor or former School Board member as provided in § C11-4 of the Dover City Charter. The purposes of the Ethics Commission are:

- (1) To provide a forum to hear and accept complaints of violations of ethical standards of behavior for elected and appointed officers under the jurisdiction of the Ethics Commission.
- (2) To encourage Dover elected and appointive officers and all members of boards, commissions, committees and subcommittees to act in the best interests of the City and perform their duties and responsibilities according to the ethical provisions of the City Charter and City ordinances.
- (3) To require the disclosure of financial interests or other interests in matters affecting City business where the interests constitute a conflict of interest.
- (4) To prohibit those holding public office and volunteer positions in our City from using their positions for personal gain and to foster the use of such positions only to advance public interests.
- (5) To promote the integrity of City government.

B. The Commissioners shall serve for three-year staggered terms. The initial Ethics Commission shall consist of five Commissioners with one Commissioner appointed for a one-year term, two Commissioners appointed for two-year terms, and two Commissioners appointed for three-year terms. Subsequent appointments shall be for three years unless the City Council determines otherwise.

serve out a term to fill a vacancy. The Appointments Committee shall solicit and screen the applicants. The Appointments Committee shall present a list of all the applicants who have applied for a position on the Ethics Commission to the City Council with the recommendations of the Appointments Committee. The City Council acting as a committee of the whole shall interview and select the applicants for appointment to the Ethics Commission either from the entire list of applicants or based on the recommendations of the Appointments Committee. The City Council may appoint three alternate Commissioners for one-year terms. Alternates shall be involved in the activities and decisions of the Ethics Commission only in the absence of a regular member or members.

- C. No Commissioner shall be a current City Councilor or School Board member or other elected official, or a member of any board, commission, committee or subcommittee of the City of Dover.
- D. The Commissioners of the Ethics Commission shall select a Chair and Vice Chair on an annual basis. No Commissioner shall serve more than two consecutive terms as the Chair.
- E. There shall be no compensation for the members of the Ethics Commission.

§ 21-12. Scope of duties and authority; training.

- A. The Ethics Commission shall operate in an advisory role to the City Council. The activities of all elected officers and members of all boards, commissions, committees and subcommittees whose members are appointed by the City Council shall be within the scope of authority of the Ethics Commission. The Ethics Commission members shall also be subject to the jurisdiction of the Ethics Commission. If a member of the Ethics Commission is the subject of an ethics complaint, the member shall be replaced in all proceedings by an alternate member. The Ethics Commission shall not have jurisdiction over the City Manager or other employees of the City of Dover.
- B. The Ethics Commission shall only receive written complaints signed under oath before a notary public.
- C. The Ethics Commission shall conduct activities in public, including the investigation of complaints, presiding over hearings, the taking of testimony, and deliberations, with the exception of the initial screening of complaints. The provisions of RSA 91-A shall apply to the activities of the Ethics Commission.
- D. The Ethics Commission shall apply the provisions of Article X of the City Charter and this chapter of the Code of the City of Dover.
- E. The Ethics Commission shall provide and require professional training for the Commissioners. It shall also provide information to the public, the City Council and members of all boards, commissions and committees of the City of Dover on the role and functioning of the Ethics Commission by providing taped reruns of the training sessions as well as other resources.
- F. The Ethics Commission shall have the power to promulgate its own rules of order subject to the approval of the City Council. All elected and appointed officers shall have an ethical duty to fully cooperate with the activities of the Ethics Commission, including but not limited to participation in discovery, appearances before the Ethics Commission, the answering of questions, specific responses to the allegations and the production of documents in a timely manner at the request of the Ethics Commission where the request for documents is reasonably required to investigate and resolve the allegations.
- G. The Ethics Commission shall not issue advisory opinions based on hypothetical situations. All opinions shall be rendered as decisions pursuant to the complaint procedure stated in § 21-13.

- A. All ethics complaints shall be in writing on a form approved by the City Attorney, supplied by, and available at, the office of the City Clerk. All complaints shall be signed under oath before a notary public provided free of charge by the City Clerk's office and shall be filed with the City Clerk. Complaints shall only be received from residents of Dover, property owners in Dover and vendors who engage in business with the City of Dover. Each complaint shall be confined to a single subject matter and shall state facts constituting an alleged violation of the ethics provisions of the City Charter or City Code. The complaint shall name a specific person or persons who are alleged to have violated an ethical provision. The complaint shall also state the specific applicable provision of the City Charter or Code on which the complainant relies in making the complaint.
- B. All complaints shall only allege facts involving alleged ethical violations occurring during the 180 calendar days prior to the filing of the ethics complaint, or the term of the present City Council, whichever is longer. In addition, all complaints shall require the complainant to certify under oath the following:
 - (1) The complainant has read the provisions of Article X of the Dover City Charter.
 - (2) The complainant has read the provisions of Chapter 21 of the Code of the City of Dover.
- C. The City Clerk shall seal each ethics complaint and forward the ethics complaint to the Chair of the Ethics Commission within two business days of the filing. The Ethics Commission shall meet in nonpublic session pursuant to RSA 91-A:3, II(c). The Ethics Commission shall examine the contents of the ethics complaint and conduct an initial screening of the ethics complaint within 20 business days after the filing of the ethics complaint with the City Clerk's office. The Ethics Commission shall take one of the following actions:
 - (1) Refer the matter and/or any suspected criminal activity directly to the Police Department for investigation and possible prosecution as a criminal matter without further involvement by the Ethics Commission. There shall be no public disclosure of the complaint by the Ethics Commission.
 - (2) Refer the matter to the City Council for investigation and action by the City Council as a matter involving the City Manager's actions or inactions without further involvement by the Ethics Commission.
 - (3) Refer the matter to the City Manager for investigation and action by the City Manager as a matter involving the actions or inactions of a City employee without further involvement by the Ethics Commission.
 - (4) Dismiss the complaint for stating facts that, if true, would not constitute a violation of the ethical provisions of the City Charter, City Code or state law.
 - (5) Dismiss the complaint for failure to state sufficient facts for establishing a reasonable basis to believe that an ethical violation may have occurred.
 - (6) Dismiss the complaint by stating the reason for the dismissal, in writing.
 - (7) Dismiss the complaint for failure to comply with the procedural requirements of § 21-13B.
 - (8) Accept the matter for hearing and decision by the Ethics Commission. Acceptance of the ethics complaint shall occur upon the determination by the Ethics Commission that there is a reasonable basis to believe the facts in the complaint may constitute an ethical violation. The acceptance of the complaint shall not be construed as a final determination that an ethical violation has occurred.
- D. The Ethics Commission shall notify the complainant and the person against whom the allegations were made of the determination of the initial Screening Committee unless the matter is referred to the Police Department. The notification shall be made to the complainant and the person against whom the allegations were made by the City Clerk.

receipt requested, or personal service of process. If accepted by the Ethics Commission, the initial notice shall also include a hearing date. A copy of the ethics complaint shall be included with the notice. All complaints, except those referred to the Police Department, shall be released to the public after the person against whom the complaint is made has been notified. A copy of all complaints released to the public shall be available in the Clerk's office.

- E. The Ethics Commission shall conduct a hearing for cases accepted by the Ethics Commission within 30 calendar days of the date of acceptance of the ethics complaint by the Ethics Commission. One continuance of not more than 30 calendar days may be granted, but no further continuances shall be granted.
- F. Fourteen calendar days' notice shall be provided to the parties for all hearings. The Ethics Commission may hold prehearing and other informal conferences prior to the evidentiary hearing to aid in the disposition of the proceeding. All hearings and informal conferences shall comply with the provisions of RSA 91-A.
- G. The hearing shall not be subject to the rules of evidence. All evidence that will reasonably assist the Ethics Commission shall be admissible, but evidence that is irrelevant or immaterial, unduly repetitious, insulting, or harassing shall be excluded. The Ethics Commission may require, with reasonable written notice, the appearance of any official, board member or employee to appear before it to provide testimony.
- H. The hearing shall provide an opportunity for all parties to be heard and to present evidence. Witnesses shall testify under oath. Parties may engage in a brief opening and closing statement. Written memoranda may be required by the Ethics Commission.
- I. An audio recording shall be made of the proceedings. All recordings and documents shall be stored with the City Clerk and maintained pursuant to state law.
- J. The Ethics Commission shall issue a written report within 30 calendar days of the hearing. The report shall include a determination whether the allegations contained in the complaint are actionable or not actionable. In addition, if the complaint is found to be actionable, the report shall include a recommendation on a remedy as provided in § 21-14 for the City Council to consider. The Ethics Commission shall forward a copy of the decision and recommendation with specific findings to the parties and to the City Council. A copy of all reports and recommendations shall be available to the public in the City Clerk's office.
- K. The complainant shall have the burden of proof. The standard of proof for the Ethics Commission to use for deciding matters before the Ethics Commission shall be clear and convincing evidence.
- L. Clear and convincing evidence is an intermediate standard of proof that calls for more proof than that based on more probable than not, but less proof than that based on beyond a reasonable doubt. "Clear and convincing evidence" is defined in New Hampshire law as that evidence that establishes a factual conclusion to be highly probable, rather than merely more probable than not. It requires that the party having the burden of proof place in the trier of fact an abiding conviction that the truths of his/her factual contentions are highly probable. Otherwise, he/she has failed to prove it and is not entitled to relief.
- M. Upon the establishment of the Ethics Commission, the Ethics Commission may receive and act on ethical complaints involving allegations occurring prior to the adoption of this article if the complaint alleges a violation of an ethical standard in effect on the date of the alleged violation. Current elected officials affected by ethical standards adopted pursuant to RSA 31:39-a shall be exempt for a period of 90 days after the adoption of this article. After the adoption of this article and the selection of the members of the initial Ethics Commission, no ethics complaint shall be accepted for filing by the City Clerk's office for 30 days after the swearing in of the last Commissioner.

§ 21-14. Remedies.

- A. All decisions of the Ethics Commission shall be advisory to the City Council. The City Council is not obligated to accept the decisions and recommendations of the Ethics Commission.
- B. The City Council shall have the following remedies available as per RSA 49C-13:
 - (1) Place on file without further action.
 - (2) Verbal warning.
 - (3) Written censure.
 - (4) The civil penalty provided in § **C10-9** or **C11-13** of the City Charter.
 - (5) Removal from office by a vote of the Council.

§ 21-15. Severability.

If any provision of this article is declared invalid or unenforceable by a court of law, the remaining portions shall remain in full force and effect.

Somersworth

ARTICLE VI – CODE OF CONDUCT FOR PUBLIC OFFICIALS AND EMPLOYEES

- 6.1. **PREAMBLE.** Public service is a public trust. It is the intent of this Charter to promote public confidence in representative government, uphold and expect the highest standards of ethics and conduct from all of its employees and officials, whether elected, appointed or hired. They shall maintain the highest standards of personal intent, integrity, honesty and fairness in discharging their public duties and never abuse their positions or powers for improper or personal gain. This is in the best interest of all citizens and serves to protect the integrity and reputations of city employees and residents dedicated to public service.
- 6.2. **PURPOSE.** The purpose of this code is to establish guidelines for the ethical standards of conduct for city government elective and appointive public servants and employees. They are expected to act in the best interest of the city and disclose any personal, financial or other interests in matters affecting the city that come before them for consideration and/or action. This code establishes a process for guidance regarding potential ethical issues and it establishes a course of action for resolving disputes in a manner that is fair and transparent to all parties involved.
- 6.3. **ELIGIBILITY FOR ELECTIVE AND APPOINTIVE SERVICE.** The following provisions shall govern eligibility to elective and appointive office:
- (A) In accordance with RSA 48:1 pertaining to city officers, no employee of the city shall serve as Mayor or City Councilor in the city government while they are in the employ of the city. No regular full time or regular part time employee of the city shall hold any appointive office in the city government while they are in the employ of the city. City employees are valued and may serve in a non-voting advisory capacity to the City Council, boards and commissions.
 - (B) In accordance with State RSA 671:18 pertaining to school district elections, no person employed on a salaried basis by the school administrative unit of the city shall serve as a School Board member.
 - (C) Except for the Mayor or City Councilor serving as an ex-officio member of the School Board, as provided by this Charter, no City Councilor or School Board member shall simultaneously serve on both bodies.
- 6.4. **CONFLICTS OF INTEREST.** No elective or appointive officer or employee of the city shall take part in a decision concerning the business of the city in which he/she or a member of their family and/or household directly has a financial interest, aside from his/her salary as such officer or employee, greater than any other citizen or taxpayer.
- (A) For the purpose of this Charter, family member shall be defined as grandparent, parent, spouse, child, grandchild or sibling, whether by blood or marriage.

(B) For the purpose of this Charter, household shall be defined as persons living in the same housing unit and common living space.

- 6.5. DISQUALIFICATION FROM DECISION MAKING PROCESS. No elective or appointive officer or employee of the city shall take part in a decision concerning the business of the city in which they or a member of their family and/or household directly has a financial interest, aside from his/her salary as such officer or employee, greater than any other citizen or taxpayer. In such an instance, the elective or appointive officer or employee shall recuse him/herself from discussion and decision-making. Officials, board members or employees who have been recused shall immediately leave the room or shall move to an area designated for members of the general public. When recused, he/she shall not participate in further discussions, unless clearly stating for the record that he/she is doing so only as a general member of the public.
- 6.6. PRIVATE USE OF CITY PROPERTY AND PERSONNEL. No elective or appointive officer or employee shall devote any city property or labor to private use except as may be provided by law or ordinance.
- 6.7. ACCEPTANCE OF GIFTS OR GRATUITIES. No elective or appointive officer or employee of the city shall solicit or accept any gift or gratuity which could, in any manner, be reasonably construed to affect or influence the performance of his/her official duties.
- 6.8. DISPOSITION OF FEES. No elective or appointive officer or employee of the city shall collect any fees, salaries or other payments in connection with his/her official duties for his/her own use except as provided by law or ordinance.
- 6.9. MISUSE OF INFORMATION. No elective or appointive officer or employee of the city shall utilize or dispense information gained through said office or employment for the personal profit of themselves or others, as opposed to the public good of the community.
- 6.10. FUTURE EMPLOYMENT. No elective or appointive officer or employee of the city shall solicit, negotiate for or promise to accept employment with any person, firm or corporation with which his/her department, body or agency is engaged on behalf of the city in the transaction of business which is or may be affected by his/her official action. No elective officer may become employed by the city within one (1) year after their term of office ends.
- 6.11. CIVIL PENALTY. Any elective or appointive officer or employee of the city found to have violated any of the provisions of this section shall be personally liable, to the fullest extent permitted by law, for any extent that the city suffers loss.
- 6.12. APPLICABILITY. This Article shall apply to all elective and appointive officers and employees of the city, including officers and employees of the school system.
- 6.13. ETHICS COMMISSION. The City Council shall appoint a five (5) member Ethics Commission for terms of three (3) years. It is recommended at least one member of the Commission be a former City Councilor or School Board member. The Commission will only investigate complaints filed against municipal elective and appointive officials.

- (A) Members shall be chosen for their independence, integrity, civic commitment, and high ethical standards.
 - (B) No person while a member shall hold nor seek any municipal public office, including boards and commissions, or be a paid representative and/or lobbyist who influences city legislation on behalf of a special interest.
 - (C) The Ethics Commission shall elect annually from among its members its own chair.
 - (D) The Ethics Commission will only review complaints based on alleged violations of this Article.
 - (E) Complaints must be filed in writing, by a resident of Somersworth, on a form approved by the City Attorney, supplied by, and available at, the office of the City Clerk, and must be filed no later than ninety (90) days from the alleged conflict of interest event.
 - (F) The complaint shall specify the provision of the code that the complainant believes was violated and must be signed before a Notary Public. When signing the complaint, the complainant shall certify that he/she has read the Code of Conduct and that they believe the matter within the complaint is a fair subject of inquiry.
 - (G) Any elected or appointed official against whom a written complaint is filed shall be given a copy of the complaint, and upon written request shall be afforded an opportunity to be heard and to present evidence to the Ethics Commission.
 - (H) Within thirty (30) days of concluding an investigation into a written complaint, the Ethics Commission shall issue a written statement setting forth its findings.
 - (I) If the Ethics Commission believes a complaint warrants further action, including recall or censor, it will forward its recommendation to the City Council or School Board for adjudication.
 - (J) The Ethics Commission shall not have the power to impose any monetary or other penalty.
 - (K) The City Council shall adopt, by ordinance, supplementary provisions to implement this Charter section that are consistent with the language and intent of this Article.
- 6.14. EDUCATION. At the time that an employee is hired, newly elected or appointed official takes the oath of office or attends his/her first meeting, he/she shall receive a copy of this code, and acknowledge in writing that they have received a copy of this code.
- 6.15. SCOPE. In the interpretation of this Article, bearing in mind the purpose as set forth in paragraph 6.2 above; whenever possible it shall be interpreted so as to be consistent with any statutory or regulatory provisions.