

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council
Thursday, August 7, 2014
City Council Chambers
31 Wakefield Street, Rochester, NH
7:00 PM

Committee Members Present

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Ray Varney
Councilor Sandra Keans

Others Present

Commissioner Nourse
Sheldon Perkins, Building, Zoning, and
Licensing Services
Councilor Bogan
Bob Goldstein, Resident

MINUTES

1. Call to Order

Councilor Lachapelle called the Codes and Ordinance Committee to order at 7:00 PM. All Committee members were present.

2. Public Input

No member of the public addressed the Codes and Ordinances Committee at this time.

3. Approval of the Codes and Ordinances Committee Minutes

- **June 5, 2014**

Councilor Lauterborn **MOVED** to **ACCEPT** the June 5, 2014, Codes and Ordinances Committee meeting minutes. Councilor Varney seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Amendment to Water Ordinance – Required System Connections

Commissioner Nourse addressed the Committee about the Amendment to the Ordinances Chapter 17 relative to Water Leakage Enforcement. He gave a detailed history of why this ordinance has been brought back to the Committee at this time. *This time-line can be found as an attachment to the Codes and Ordinances Committee packet and it will be included with the City Council packet of September 2, 2014.*

The first reading of the proposed Amendment to Ordinances Chapter 17 relative to Water Leakage Enforcement passed the City Council without much discussion; however, after the second reading, a few Councilors felt that this ordinance amendment should go back to the Committee for review. A few Councilors felt strongly that a water “customer” should not have their water shutoff as part

of the penalty process. At that point, the Public Works Committee drafted another version of the proposed amendment, which is dated as the June 19, 2014, version.

Commissioner Nourse stated that the Public Works Committee felt this final version of the amendment, as written, addresses the concerns of the situation and does not threaten to terminate the customer's use of the water. Councilor Varney **MOVED** to recommend this version, dated as June 16, 2014, of the proposed Amendment, to the City Council for adoption. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. Councilor Varney requested to have the marked up version included with the packet and the revised amendment is as follows:

Public Works June 19, 2014 Version

**AMENDMENTS TO CHAPTER 17 OF THE
GENERAL ORDINANCES OF THE CITY OF ROCHESTER
REGARDING WATER LEAKAGE PREVENTION AND
MITIGATION PROCEDURES AND RESPONSIBILITIES**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 17 of the General Ordinances of the City of Rochester, entitled "Water", as presently amended, be further amended as follows:

- I.** That Section 17.2 of the General Ordinances of the City of Rochester, as presently amended, and entitled "Definitions", be further amended, by adding to said Section 17.2, the following provision, to be known as Section 17.2 (g) of the General Ordinances of the City of Rochester, to wit:

17.2 Definitions.

"(q) Water Leakage. The loss of City water on the private property (or on other private property(s) over which the customer's water service must pass) of a City water customer due to a compromise of the customer's interior or exterior plumbing."

- II.** That Section 17.3 of the General Ordinances of the City of Rochester, as presently amended, and entitled "Definitions", be further amended, by adding to said Section 17.3, the following provision, to be known as Section 17.2 (q) of the General Ordinances of the City of Rochester, to wit:

17.3 Policy Statement.

"(g) Treated drinking water produced by City facilities and distributed through the City distribution system is a valuable public resource, funded by water rate payers. It is the obligation of all water customers to correct any leakages which occur on their property in a timely and effective manner. Customer failure to correct leakages on their property (or to have repaired leakage occurring on other private property(s) over which the customer's water service extends) is, after notification of the customer pursuant to the provisions of Section 17.20-A of this Chapter, for purposes of this Chapter, considered willful waste of water."

- III.** That Chapter 17 of the General Ordinances of the City of Rochester, entitled "Water", as presently amended, be further amended, by adding to said Chapter the following new provision, to be known as Section 17.20-A of the General Ordinances of the City of Rochester, to wit:

“17.20-A Prevention and Enforcement of Willful Water Waste.

Treated drinking water produced by City facilities and distributed through the City distribution system is a valuable public resource, funded by water rate payers. It is the obligation of all water customers to correct any leakages which occur on their property (or to have repaired leakage occurring on private property(s) over which the customer’s water service extends) in a timely and effective manner. Customer failure to correct leakages on such property is, for purposes of this Chapter, considered willful waste of water. The Department of Public Works shall utilize the following procedures to alert customers experiencing atypical variation increases in water consumption to alert customers to the possibility of leakage in their (or a master reader’s) water service.

- (a) **Mobile/Manufactured Home Parks and other similar accounts, with Individual Unit Meters and a Master Meter(s).** Such accounts will have summed, by the Department of Public Works, or by its agent(s), the total consumption value of individual unit meters for each regular billing cycle. This summed value will be compared to the master meter consumption value, or in the event of multiple master meters, the sum value of the master meters. A variation of 10% or more between the sum value of the individual unit meter readings and the master meter value, or sum value of multiple master meter readings, will create/establish the obligation of the customer to investigate and, if necessary, report and correct, at customer’s expense, water leakage on their property (or on other private property(s) over which their water service extends). Such variations when identified will be documented by the Department of Public Works and a written notice shall be sent by certified mail, return receipt requested, to customer. Upon receipt of notification, customer will have 90 days to correct any water leakage and report completion of such repairs back to the Department of Public Works. In cases where no leakage is determined to exist, or to have existed, but increased consumption does occur, or is occurring, the customer has the obligation to communicate a credible explanation for the increased consumption to the Department, and to assume responsibility, in writing if requested by the Department of Public Works, for payment responsibility for such increased consumption. Failure of the customer to respond to such notice by communicating to the Department of Public Works the actions needed, and being taken to correct water leakage, and credible explanation for the increased consumption to the Department the time reasonably required to implement repairs, or by communicating a credible explanation for the increased consumption to the Department and indicating the customer’s assumption of responsibility for payment responsibility for such increased consumption **may will constitute a violation grounds for termination of water service** following the expiration of the 90 day repair period, until such leakage is corrected or explanation received. In such cases, an appeal to the Utility Advisory Board for abatement of fees during the 90 day period will not be heard.
- (b) **Accounts of Individual Unit Meters without Master Meters.** The Department of Public Works monitors average quarterly water consumption reflected by customer’s account(s), and such consumption is communicated to the customer in its monthly, quarterly or other regular bill. When monitoring, if above **average –normal** consumption, or a situation indicating a potential leakage of water on the customer’s property (or on other private property over which the customer’s water service extends) is identified, the Department will issue a written advisory to the customer.

The Department of Public Works may, at its discretion, require a response and credible explanation of the increased usage within 90 days of notification. If determined to be a leakage the customer may be required to respond with a plan to repair said leakage within 90 days or as otherwise agreed to by DPW.

Failure of the customer to respond to such notice by communicating to the Department of Public Works the actions needed, and being taken to correct water leakage, and credible explanation for the increased consumption to the Department the time reasonably required to implement repairs, or by communicating a credible explanation for the increased consumption to the Department and indicating the customer's assumption of responsibility for payment responsibility for such increased consumption may constitute a violation following the expiration of the 90 day repair period, until such leakage is corrected or explanation received. In such cases, an appeal to the Utility Advisory Board for abatement of fees during the 90 day period will not be heard.

~~(c) **Water Leaks on Customer Property (or other Private Property over which a Customer's Water Service Extends) Known to Exist by Department of Public Works.** In such cases where it is apparent from the street, or the Department of Public Works otherwise knows of water leakage on the customer's property (or on other private property over which the customer's water service extends), the Department will advise the customer in writing of their obligation to investigate and respond to such leakage at their expense. Failure of the customer to respond to such leakages and inform the Department of their response within 7 days of receipt will constitute grounds for termination of water service until such leakage is addressed by response. In the event of a known leak of significant volume on customer property (or on other private property over which the customer's water service extends) which cannot be isolated on the property, the Department of Public Works will immediately terminate service to the property. Customer shall be responsible for repairs to the leakage prior to resumption of City water service."~~

Penalty Any person who, in any manner, directly or indirectly violates the provisions of this ordinance shall be guilty of a violation. Violations of this ordinance /may be punishable by a fine of One Hundred Dollars (\$100.0) per day of offense.

Chapter 17.4 Water Service Connection Required

Commission Nourse addressed the Committee about Chapter 17.4 Water Service Connection Required. He said at one point, the City Council believed that the City's water ordinance should mirror the City's sewer ordinance. However, it has come to his attention that there is no existing RSA which regulates "wells". He said the State of New Hampshire does not have regulations pertaining to wells. He said he does not believe the City can place a regulation on a property owner relative to water hook ups. He noted that the State of New Hampshire has RSA regulates the sewer hook ups but not water hook ups. He said it is the right of the property owner to choose a well vs. City water.

Commissioner Nourse gave a brief history about how this ordinance amendment was adopted earlier this year; however, it has now come to his attention that the City cannot enforce such an ordinance. He read from RSA 362:4, IV and V, "*DES has no authority to require that a lot connect to a public water system if the property owner can adhere to the requirements described in this document....*"

Commissioner Nourse continued to read documentation to back up his theory and informed the Committee that Attorney Wensley agreed that this ordinance could not legally be enforced. He recommended that the language be removed. Councilor Gray asked if language could be written to encourage people to hook up to the City's water supply.

The Committee briefly discussed if the Planning Board had the authority to require a property owner to hook up to the City's water supply at the time of the Notice of Decision. Councilor Gates stated that the developer is the property owner and the State RSA specifically states that "No property owner shall be required to connect to a municipal corporation furnishing water, provided that such property owner can demonstrate the ability to comply with the requirements of RSA 485-A:29 and RSA 485-A:30 b."

Councilor Gray stated that there is still a problem to be addressed. If a water customer has water and sewer hook ups and stops using the water, somehow the customer should at least have to continue to pay for the sewage. The Committee briefly discussed the residential backflow prevention legislation.

Councilor Lauterborn questioned how many property owners currently have sewer service but not water service. Commissioner Nourse replied the City has three such customers and they are charged a flat rate for the sewer service, which is estimated at about \$200 each quarterly billing cycle. Councilor Lauterborn **MOVED** to recommend to the full City Council that Chapter 17.4 be "removed." Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. It was recommended that the section be as follows, to alleviate renumbering the entire ordinance:

Chapter 17.4 Water Service Connection Required – REPEALED

5. Proposed Rental Housing Ordinance

Sheldon Perkins, Building, Zoning, and Licensing Services, addressed the Committee regarding the following Amendment:

CHAPTER 44 HOUSING STANDARDS

- 44.1. Enforcement Authority**
- 44.2. Powers of Enforcement Authority**
- 44.3. Minimum Standards**
- 44.4. Inspections**
- 44.5. Enforcement Process**
- 44.6. Appeal**
- 44.7. Court Action**
- 44.8. Liens**
- 44.9. Effective Date**

HOUSING STANDARDS

This Ordinance establishes a housing standards ordinance designed to protect the health and safety of occupants of residential rental properties within the City of Rochester. This would occur when an inspection reveals such a need or by a complaint from a citizen including those set forth in RSA 48-A:7.

44.1 Enforcement Authority

The Director of the Department of Building, Zoning and Licensing Services. Although the day to day operation of the program can be delegated to staff, the Director is ultimately responsible for the administration of the program.

44.2 Powers of Enforcement Authority

The program allows the City, under the direction of the Director of the Department of Building, Zoning and Licensing Services, to pursue increasing safety of rental properties through inspections and enforcement as permitted per state statute 48-A:14. Fines may also be levied through Court action in cases where rental property owners fail to show good faith effort to meet the State minimum standards.

44.3 Minimum Standards

Violations of the International Property Maintenance Code and/or City Ordinances include, but are not limited to dangerous defects; lack of adequate ventilation, light, or sanitary facilities; uncleanliness; overcrowding or lack of ingress or egress; inadequate drainage; violations of health, fire, or safety regulations; insect or rodent infestation; falling plaster from walls or ceilings; dangerous holes in walls, floors, or ceilings; structurally unsound porches, stairs, or railings; excessive accumulation of garbage or rubbish; inadequate water supply or malfunctioning water heaters; gas leaks or defective pilot light ventilation or lack of proper heating or malfunctioning heating systems.

44.4 Inspections

A. Interior inspections may occur upon:

1. Written request by the property owner or tenant

Upon receipt of a written request by either the property owner or tenant a general inspection may be conducted. This would be a voluntary inspection. The landlord shall be notified in writing of an impending inspection no less than three (3) days prior to the inspection.

2. A written complaint by a tenant of the rental property regarding a violation of the International Property Maintenance Code and/or City Ordinances.

At the time a complaint is filed regarding alleged violations in rental dwelling units, the tenant shall be required to notify the property owner or management company of all alleged deficiencies via registered mail, with the Department of Building, Zoning and Licensing Services "carbon" copied. The notice from the tenant shall include a reasonable period of time (14 days) for the property owner or Management Company to make any required corrections.

Once the 14 day time frame has elapsed and the complainant notifies the department that there are still outstanding violations, the property owner will be given a three day notice of an impending inspection to be conducted by the compliance officer. Once a violation has been validated, enforcement shall be in accordance with The Guide to District Court Enforcement of Local Ordinances and Codes, as prepared by the New Hampshire Bar Association and updated March 2001 by The Municipal and Governmental Law Section Members. The complainant shall be notified as to the findings in writing and this notification shall be duly noted on the inspector's report.

No interior inspections will be initiated without the above criteria having been met.

3. Life safety or health issues

The tenant is still required to notify the property owner or management company; however the 14 day wait period shall be waived in cases where there is imminent danger to occupants or property. These complaints shall be processed and investigated immediately.

B. Exterior Inspections may occur upon:

1. Written request by any concerned party.

Exterior complaints of the Property Maintenance Code or General Ordinances of the City of Rochester may be made by any concerned party. An inspection may be conducted at any reasonable time.

44.5 Enforcement Process

An enforcement process is initiated by the Director of Building, Zoning and Licensing Services or designee, when an inspection of the property reveals such a need or by complaint from a citizen charging that a dwelling is substandard or unfit for human habitation. Service of the complaint would be made in person or by registered mail indicating a hearing before the Director of Building, Zoning, and Licensing Services within thirty days from the date of service. The Director will submit findings and ruling in writing to the owner and, if applicable, explain what must be done to comply with the requirements and provide a reasonable timeframe. Depending on the circumstances, the Director may order the building vacated, or if the costs of repair are unreasonable in relation to the value of the dwelling, may order the building removed or demolished in accordance with RSA 48-A:4.

44.6 Appeals

If aggrieved by the Director's decision, the owner may appeal to the Zoning Board of Adjustment. Appeals must be filed within thirty days of the Director's decision.

44.7 Court Action

If the owner fails to comply with the order, the Director or designee may file a petition/complaint with either the Rochester Circuit Court or the Strafford County Superior Court.

44.8 Liens

Liens against the real property may be levied whenever the City incurs costs associated with the repair, alteration, improvements, vacating, closing, or for removal or demolition of a dwelling pursuant to RSA 48-A:6.

44.9 Effective Date

This ordinance shall take effect upon adoption by the City Council.

Mr. Perkins noted that one important change is that the Department would enter the building in an emergency situation and then they would notify the landlord after the event occurred. He added that this draft ordinance was presented to the Landlords Association and there was no negative feedback.

Councilor Varney recommended amending the draft by removing the word “still” from Section 44.4 A:3. Councilor Lauterborn pointed out that Section 44.6 Appeals should be amended to remove an additional “dash” in after the word “be.” Councilor Varney **MOVED** to recommend the proposed ordinance to the full City Council with the corrections mentioned in the previous paragraph. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote. The draft amendment is as follows:

CHAPTER 44 HOUSING STANDARDS

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Services within thirty days from the date of service. The Director will submit findings and ruling in writing to the owner and, if applicable, explain what must be done to comply with the requirements and provide a reasonable timeframe. Depending on the circumstances, the Director may order the building vacated, or if the costs of repair are unreasonable in relation to the value of the dwelling, may order the building removed or demolished in accordance with RSA 48-A:4.

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Liens against the real property may be levied whenever the City incurs costs associated with the repair, alteration, improvements, vacating, closing, or for removal or demolition of a dwelling pursuant to RSA 48-A:6.

44.9 Effective Date

This ordinance shall take effect upon adoption by the City Council.

6. Chapter 42 Certification

Councilor Gates **MOVED** to **CERTIFY** Chapter 42, which was adopted on April 22, 2014, by the City Council, and the final version can be found in the City Clerk's office dated 8-8-2014. Councilor Varney seconded the motion. Councilor Varney requested that the older versions be removed from the City's website to avoid confusion.

Councilor Varney stated that he made minor revisions to the charts of Chapter 42 by following a systematic process of the actual adoption on April 22, 2014. He **MOVED** to **AMEND** the August 8, 2014, version of Chapter 42 by replacing the proposed charts with the corrected versions dated 8-7-2014. He said the charts should be further amended by rewording the "sections" opposed to "articles" and to correct the text on page 158 to match what was actually adopted on April 22, 2014 as follows:

42.23 Accessory Uses, b *Standards for Specific Accessory Uses*, 3 *Animals and Pets, Keeping of, F Chickens, Fowl and Other Small live stalk*, ii No roosters are allowed and the number *of chickens* is limited to less than ten in the Residential 1 and 2 Zones.

Councilor Gates seconded the motion. The **MOTION CARRIED** unanimously.

7. Other

Bob Goldstein, resident, addressed the Committee. He said most permits or licenses have to be removed after a certain timeframe; however, this is not true for home occupancy permits. He gave reasons why he felt the idea of requiring a renewal process of a home occupancy would be a good idea. He felt a

five-year renewal or review process could be beneficial to the City for businesses in Residential 1 or Residential 2 Zones. He gave the example of a small home business needing to seek a renewal after five years. The Committee discussed the matter with Mr. Goldstein. Councilor Varney requested that information be provided from the BZLS Department for the next Codes and Ordinances Committee meeting: how many home occupation permits are in the City; what the fee is for the permits; and to seek out information about if any other communities in New Hampshire have anything like this in place.

Councilor Lauterborn stated that the Committee received a letter from Mark Hourihane of Hourihane, Cormier, & Associates LLC, and it should be addressed by someone. It was determined that the BZLS Department should be asked why they do not enforce the off-premises sign ordinance and get back to the Committee in September about how to enforce the sign ordinance that is in place. Councilor Varney understood that the BZLS only responds if there is a complaint.

Councilor Lauterborn asked about the panhandling issue. The Committee decided to check to see if Concord's panhandling ordinance is being challenged by the ACLU or not. If not, the Committee should review that ordinance at the next meeting.

Councilor Gray addressed the Committee about loitering issues, particularly, people who wonder around in the evening checking for unlocked vehicles on their way by someone's home. The neighbors on Heaton Street and Winter Street can hear car-alarms and dogs barking all the way down the street until the noise is close to their own homes. This is an issue that should be addressed with the panhandling issue. The Committee agreed that testing car door handles is illegal; however, they recommended that Councilor Gray or the Recreation Commission bring back some recommendations to the next meeting for discussion.

8. Adjournment

Councilor Gates **MOVED** to **ADJOURN** the Committee meeting at 7:55 PM. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Kelly Walters
City Clerk