

**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

**Thursday October 3, 2013**

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

Councilor James Gray

**Others Present**

Jim Grant, Director of Building Safety

Sheldon Perkins, Code Enforcement

Officer

Michael Allen, Police Chief

Laura Jones, State Representative

Jacqueline (Jackie) Raab, Resident

Brian LaBranche, City Councilor

Felicia LaBranche, Business Owner

Tracie Frisbee, Business Owner

Roland Hersey, Business Owner

George Frisbee, Business Owner

Dina Stanley, Business Owner

Will Murphy, Business Owner

Thomas Kaczynski, Resident

**MINUTES**

**1. Call to Order**

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

**2. Public Input**

Councilor Lachapelle explained that the public could speak during the discussion of the item which they have concerns with. He asked if anyone would like to address the Codes and Ordinances Committee at this time.

Jackie Raab, resident of 23 Grove Street, East Rochester, addressed the Codes and Ordinances Committee with her concerns regarding fireworks and she wanted them to look at this issue again. Ms. Raab stated that she had spoken to Chief Allen after the meeting on September 5, 2013. She briefed the committee that her discussion with Chief Allen was due to an incident of fireworks being set off on a Tuesday night, which is against the current ordinance. The fireworks started at 8:30 PM and went on through 1:30 AM, intensifying as it got later. She explained that Chief Allen informed her that she needed to call the Police Department when this issue arises.

Ms. Raab stated that on Labor Day she was out mowing and the issue arose again. She did call the “cops” because Chief Allen stated that was what she needed to do. She explained that an officer did come out to investigate, but could not find anyone. This is the reason she would like the issue addressed again.

Councilor Lachapelle asked what she would propose in regards to this ordinance. Ms. Raab felt that they should only be allowed on July 4<sup>th</sup> or ban them completely. Councilor Lachapelle asked Ms. Raab if she thought this would stop residents from setting them off. She stated that it probably would not. Councilor Lachapelle said that he felt as a committee they had taken drastic steps to address the issues that she is concerned with. He also stated that he felt the increase in fireworks was due to stores of this nature opening in this area.

Ms. Raab explained her concerns with calling the Police Department because she knows they are busy with more important calls with higher importance. She stated that she does not think the citizens of the City know the ordinance has been changed. It was briefly discussed that this type of call would be low priority. The Codes and Ordinances Committee discussed further.

Ms. Raab asked about the distance that they have to be from other structures. It was explained to her that they need to be fifty feet from nearby buildings, which almost bans them from the R1 and R2 zones. Ms. Raab asked if they could post the City ordinance in the shops that sell fireworks. Councilor Varney felt that they did need to educate the public more on this ordinance.

Councilor Lachapelle discussed with the committee that he is not sure if they will be meeting in November, but they could put the discussion of fireworks on the agenda for the December 5, 2013, meeting.

Laura Jones, State Representative for Wards 4 and 5, addressed the Codes and Ordinances Committee on legislation that the State is looking at in regards to pawn shops and secondhand dealers. She referred to this legislation as HB 343FN. Ms. Jones explained that the difference between the State law and our ordinance was the electronic filing due to some controversy on the issue; however they did make an improvement on the record keeping. Ms. Jones stated that they did hold a public hearing where several of these business owners did not want to see state regulations and, due to the controversy, they have retained the bill until they can do more research and get more information. She suggested that she will be speaking again during the Power Point presentation which will be later on the agenda.

### **3. Approval of the Codes and Ordinances Committee Minutes**

- **September 5, 2013**

Councilor Lauterborn **MOVED** to **APPROVE** the Committee minutes of September 5, 2013. Councilor Gray seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

#### **4. Proposed Ordinance on Property Maintenance – Grass Height**

Jim Grant, Director of Building Safety, introduced Sheldon Perkins, Code Compliance Officer, who will be addressing this proposed ordinance. Mr. Perkins explained that they used the International Property Maintenance Codes adopted by the City a few years ago. He explained that with this International Code they have left the heights blank for the cities and towns to fill in. He has researched other communities when trying to put an ordinance together and has found none in New Hampshire that has set a height limit. He has gone outside the state and found other states vary from six inches to sixteen inches.

Mr. Perkins explained that during his research he found that in 2000 the City had a height of ten inches in a proposed ordinance. He separated it by business and residential, which is not very practical. He explained that you would have to be running around the City trying to keep track of it. Mr. Perkins thought it should be looked at again.

Councilor Lauterborn asked where the 302.4 code under maintenance and weeds came from. Mr. Sheldon explained that it came from the International Property Maintenance Code manual and he just adjusted the heights. He said that if they went with ten inches across the board it would be a lot easier. Councilor Lachapelle agreed that they did not want to have two heights.

Councilor Lachapelle does not want to see the City in the business of mowing lawns. Mr. Sheldon did state that this is in the bottom half of the property maintenance code, but he does not want to get into that either. Mr. Grant proposed that they draft an ordinance based on Councilor Varney's suggestion. He mentioned that they need to add a height limit should they have to go before a judge to enforce it because they do not want to lose credibility.

Councilor Keans did not feel that the 302.4 code would work because hay is grass and there are a lot of farms in the area. Councilor Lachapelle agreed that they would need to differ these categories. Councilor Lauterborn explained that approved agricultural zones would not be included in this ordinance.

Mr. Sheldon passed out more literature on this issue and Mr. Grant stated that they could look at this more and bring something back to them. He went on to explain they could talk to the City Attorney to see if they could impose a fine before they ever have to go before a judge. He explained that he does not want to be in the business of mowing grass, but he has had a few residential complaints and he thinks this will increase with the amount of foreclosures in the area. Councilor Keans felt that their hands were tied with foreclosures because the banks are usually out of state. Mr. Grant agreed and gave the committee an example of a property that has recently been foreclosed on. The Codes and Ordinances Committee discussed the issue further.

Councilor Lauterborn stated that since they have just received this information they need to review it. She would like to table the issue to the next meeting. Councilor Lachapelle would like to hear from Ms. Raab, but keep it in committee at this time. Mr. Perkins did provide pictures of another property that they had a similar complaint on.

Ms. Raab explained since the last time she has come before the committee someone has moved into the property, but they have not mowed the lawn since the last time and the grass is starting to grow up again.

Ms. Raab stated that she has looked into other states where they send out notices when the lawns are not kept up, but these states do have ordinances and the property owners will be billed if they do not cut it. She found one state where they will apply this charge to the tax bill. The Codes and Ordinances Committee does not believe the state of New Hampshire will allow this.

Councilor Varney asked if someone had talked to the owner of the property. It is explained that Mr. Perkins talked to the property owner and it was taken care of. Mr. Perkins explained this further. Councilor Varney stated that if another issue such as this came up and it was taken care of then they do not need an ordinance, but when they do not have a cooperative owner how do they take care of the issue. The committee discussed that they had to have a court order when it came to a property on Portland Street and do they want to have to spend money on these issues. Councilor Varney explained that Portland Street was not a court order and they may be thinking of Magic Avenue. Mr. Grant explained that it was his belief that they had an agreement with the property owner on Portland Street where the City did the work and he paid the bill.

Ms. Raab explained that she does not want her issue to end as a Blaisdell property and she does not want the community to look like this and she explained why.

Councilor Gray did not want stock put into two complaints. He explained that there is a property next to one of the City schools that they have to address and at this time maybe citizens do not know who they contact yet on this issue to have it resolved. He will notify the principal of this school to contact Mr. Perkins so that he can check into this issue.

Ms. Raab wanted an ordinance with a height level addressed so that they could enforce it. Mr. Perkins agreed it would be easier if there was a height in the ordinance to address compliance, because when he would send them a notice of violation then there would be stipulation as to court action.

The Codes and Ordinances Committee discussed factoring in the height on the International Property Maintenance Code, which was already adopted, and could this affect farmlands. Mr. Grant explained that they are still going to need to address the agricultural area so it is hard to craft a uniform ordinance and he gave examples of why this is going to have to be addressed.

Ms. Raab explained that when she mows her property she does go over a little onto the other property so it does not make it so noticeable that the tall grass abuts her short grass.

Councilor Lachapelle explained that with the new information and discussion from this meeting he would like to keep it in committee at this time. Mr. Grant concurred; he would like more direction to what they are looking to draft. Councilor Lachapelle would like a draft that would be acceptable to state law. Mr. Grant stated that he will have a draft ready for the December 5, 2013 meeting to review with the committee.

## **5. Class 2 Fire Permits**

Councilor Lachapelle explained that the resident that wanted to address the committee on the Class 2 Fire Permit was not present. He explained that he received a complaint from a resident on Lincoln Street whose neighbor is burning within close proximity to his property and the smoke is coming into his home forcing him to close his windows. Councilor Lachapelle explained that he has spoken to the new deputy about this issue and the property owner is doing everything right by law. They, as a committee, can not do anything and he will reach out to this resident to explain this.

Councilor Lachapelle stated that he could file a complaint with the EPA or DEP who would come out and test and do air quality monitoring of the air that they are breathing in. Mr. Grant believes that they could go for a civil suit, but there is nothing the City can do. Councilor Varney asked if they could be denied the permit.

The Codes and Ordinances Committee discussed the matter of citizens burning material that was unacceptable. Chief Allen explained that it is a quality of life issue. The committee discussed this issue further.

Councilor Lachapelle would like to reach out to the Fire Department to have a representative at the next meeting. Councilor Varney also asked to have the Fire Warden asked if there is state knowledge on this matter. Councilor Lachapelle will keep this in committee until the December 5, 2013, meeting. Councilor Keans would like the resident who made the complaint at the next meeting. Councilor Lachapelle will contact him.

Councilor Varney wanted the chief statistician to provide them with complaints of this nature from the last year. Chief Allen will provide this information for the last year at the next meeting.

## **6. Pawn Shop, Second Hand Dealer Discussion**

- **Proposed Ordinance**
- **RAPID Software**

Laura Jones and Felicia LaBranche gave a Power Point presentation on HB 343FN which is the bill that the State is looking at in regards to pawn shops and second hand

dealers. After the presentation she expressed her concerns with the holding period and other areas of where our proposed ordinance varied from the State bill.

Councilor Varney asked Ms. Jones where the Power Point came from. She stated that it was hers and she had also used it during committee.

Felicia LaBranche, co-owner of Trinkets and Treasures, which she stated is a second hand dealer, addressed the Codes and Ordinances Committee. She stated that she is having a hard time understanding why this committee would sign off on this ordinance. She is concerned with public safety, but is baffled as to how they have gotten to this point.

Ms. LaBranche has spent a lot of time researching this issue, both at the State and local level. She cited that she has read through committee minutes starting in March of 2012, when it was first brought forward by Chief Dubois. These minutes made it clear that the Police Department was not to lead this issue, that it was a legislative balancing act, and any ordinance created to protect the victims would have a negative impact on these businesses. Chief Dubois also stated that the Police Department has a good relationship with the businesses in the City. They are helpful and comply with investigations. She went on to state from the minutes that Chief Dubois was hesitant to give any recommendations on this matter because he would be looking at it from a criminal standpoint.

Ms. LaBranche went on to review the minutes from April of 2012, in which Councilor Varney recommended no holding period and a month later, in the May minutes, Councilor Lachapelle was asking the Police Department to create a proposed ordinance with a holding period and Deputy Dumas affirmed. She went on to state that the minutes reflect the discussion on how the businesses would be affected by a tougher ordinance. With her review of the minutes, she stated that after May there was no follow up on this topic until the November, 2012 meeting when Councilor Lachapelle stated that the City Attorney had not provided a draft ordinance as of that time.

Ms. LaBranche was concerned with where the work and study on this issue occurred and that is why they are here now. She explained that they did not see a draft of this ordinance until September, 2013, and how did the holding period go from no hold, to a three day hold, to a ten day hold, and now it is at a fourteen business day holding period. She stated this current draft goes further then any other local ordinance and clearly does not define the cost to the business. She explained to the committee that Item C in the draft ordinance contradicts the general ordinance 34.9.

Ms. LaBranche explained that at the September 3, 2013, City Council meeting, Chief Allen presented statistics on crime relative to this issue. She reviewed the statistics with the Codes and Ordinances Committee and commented that Chief Allen did not state that twenty-four percent of those crimes were shoplifting-related and her cliental is not coming to her to sell new items. She went on to break down the percentages that Chief Allen had presented at that meeting and the way they were broken down would sound troublesome and biased. These statistics were posted on the Police Department's Facebook page, which caused some controversy based on the comments that were posted; however, the numbers can be

misleading. The post created a public misconception that this is only relative to pawn shops. She would like further clarification from Chief Allen as to what stores the stolen items were found in out of the current twenty-eight dealers. She stated the numbers relative to pawn shops and second hand dealers.

Ms. LaBranche commented on the RAPID software being a good tool for catching sex offenders and convicts; how did they arrive here and what is the obligation to the second hand dealer in regards to this. She cited she did not think this was the thought or intention of Chief Dubois. She referred to privacy issues, which the state regulates, and if her computer is hacked or stolen, her information is compromised, and her customer's personal information is compromised.

Ms. LaBranche felt that this is a police matter and if they can not address it with the means that they have to be effective, then it is time to look to the leaders and management.

Ms. LaBranche expressed that her biggest concern is the fourteen day holding period because it will affect her financials. She explained how this works for a small business such as hers and she gave them examples of the model that they use to handle product. The fourteen day hold would make them ineffective and their business would then be threatened. She explained to the committee if she ever wanted to sell her business a few years from now, the potential buyer would be looking at their financials which will be affected by the holding period. After all the variables, she does not understand how this committee could accept the fourteen day holding period that would affect small businesses and their families.

Ms. LaBranche felt the Police Department should spend more time on the drug problem in the City versus spending time on this ordinance because drugs are the motivation for these types of crimes, causing desperate people to steal. These individuals do not care about a fourteen day holding period or the reporting record; they care about getting money for their next fix.

Ms. LaBranche said that, in fact, they may be targeted for theft with this proposed ordinance, because the thieves would know they have to store these items now. She trusts that the committee will see the ordinance is ill-conceived and not the solution. The State is taking steps under HB 343FN and their decision may supersede and City ordinance. She asked them to table this item and let the State do the work.

Ms. LaBranche thanked the Codes and Ordinances Committee for their time. Councilor Lachapelle wanted to clarify for the public the reason for tracking sex offenders. He stated that they would only be an issue if they were unregistered, because it is State law that they register.

Tracy Frisbee, from Quick Cash, addressed the committee regarding the electronic filing. He stated that they are already recording the items that they are taking in as they are required to do, and maybe they should be looking at a photo ID requirement. He felt that electronic filing was harassment and a privacy issue. Mr. Frisbee explained that he would have to hire a part-time employee to log everything into the computer and is concerned with

the cost associated with upgrades to his computer that he might have to incur. He stated that he does keep good records and that it is not so much the \$250.00 they may have to pay. He also stated that he understood that gold could be an issue. Mr. Frisbee thanked the Codes and Ordinances Committee for their time.

Roland Hersey, owner of Gold and Things, which has been in business for twenty-five years, stated that he bends over backwards to help the Police Department. He passed around a letter that he received from the Police Department regarding items they were looking for from a theft. He explained the letter is lacking serial numbers, so how can he tell it is an item that they have. The Police Department could they come to his shop and take an item because it might be what they are looking for. Councilor Lachapelle explained there are a lot of “ifs” in that situation. They went on to discuss this further in regards to items not having serial numbers.

Mr. Hersey said the fourteen day holding period will affect his gold sales because the prices change quickly. He explained that he uses a site called KITCO.COM to get prices and they can check into it to see how prices vary.

Mr. Hersey stated some individuals need help especially, when it comes to the pawns when they are having financial difficulties. They provide a service for these individuals. He reiterated he does everything he can to help assist the Police Department.

Will Murphy, co-owner of We Buy Stuff and Antique Collectables, explained that sixty percent of his business was out-of-store and out-of-state. A majority of the product he sells is sold through his website. He does understand when it comes to gold and electronics it can be a problem.

Mr. Murphy said that he has a reporting form, which states at the bottom that he can report the items to the Rochester Police Department at any time and the customer will be liable if the item is stolen.

Mr. Murphy explained that he works with the surrounding police departments when they need help. Recently he purchased a dirt bike that he later found out was stolen. He worked with the Rollinsford Police Department so the owner will get his dirt bike back and hopefully they will get restitution after the thief is prosecuted.

Mr. Murphy is concerned with the fourteen day holding period and what is actually going to be held. He suggested maybe walk-ins should be on a hold. He thanked the Codes and Ordinances Committee for their time.

Dina Stanley, owner of Lucky Find Antiques, does not agree with the fourteen day holding period. She explained that they need to flip product quick. She is in favor of better record keeping, but did not like the idea of having to use the software. She added that she does have her customers sign when they sell to her.

Ms. Stanley felt that all shops need to comply with the rules and maybe put a hold only on certain items, such as jewelry and high ticket products.

George Frisbee, from Quick Cash, wanted the Codes and Ordinances Committee to wait to see what happens at the State level.

Councilor LaBranche expressed his concerns for the safety of his business in regards to the fourteen day holding period. He explained that he has been broken into before and took a loss.

Councilor LaBranche cited some of the issues that he had concerns with have already been addressed. He does not know how they came to the fourteen day holding period and he does not agree with it. He is concerned with the items that will be on hold due to the proposed ordinance stating they need to report everything they buy, whether they buy from yard sales, auctions, or estate sales. How is that going to work and how are they going to protect the businesses?

Councilor LaBranche explained that when it comes to economic development, this ordinance will have a negative impact. He does not feel that Chief Allen supplied enough information on a holding period or if the reporting system will help resolve these crimes. Some of the data that was supplied included shoplifting along with personal property theft. He questioned if it was legal to require the RAPID reporting software where it is a third party. He explained that Manchester is dealing with a similar situation currently. He does not understand how the City can tell them who they can do business with and have they looked into an in house software. He would like them to explore different options, maybe something less costly while still providing protection.

Councilor LaBranche explained that the letter Mr. Hersey passed around from the Police Department is something he has never seen. He likes the idea and he would like his business to start receiving them and he would appreciate the information.

Councilor LaBranche did not want to paraphrase the issue, but it has been in committee long enough; however, it needs to be done right, because this will affect the way he makes a living. He recommended they table the issue until they hear what happens at the State level.

Councilor Lachapelle closed Public Input and opened up further discussion from the committee members.

Councilor Lauterborn motioned to take no action on this issue. Councilor Keans asked what effects will this have. It is explained that it will die in committee.

Councilor Keans and Councilor LaBranche discussed the procedure he follows when taking in an item at his store.

Councilor Varney wanted to keep it in committee. He explained if something happens at the state level then they have something in place. He said originally the reporting system was to be something as simple as a spreadsheet to see if that would improve things before they implemented a holding period. He added that he thought the communication between the businesses and the Police Department is not what it should be and he gave examples why. He would like them to start with a simple reporting system; they should walk before they run and wait to see how the State votes at the end of October.

Councilor Keans was in favor of doing something and if the shops are required by law to keep records, she thought the Police Department could send out a blast email of items they are looking for. It would be faster than the mail and most businesses have a computer. She also cited the letter that Mr. Hersey showed them did not have a date on it, so who knows how long these items have been reported missing. She debated this further with the committee members.

Councilor LaBranche wanted to concur with Councilor Varney and Councilor Keans, but some shops do not have a computer and that may be a costly endeavor for the smaller businesses.

Councilor Gray stated that there are areas that they may not object to, such as walk-ins who are mostly the problem. He thought they may need to add memorabilia as an item for the holding period. He added that they need to look at areas of compromise and maybe waiting to see where the State is at.

Councilor Gray explained that some of the business owners may benefit from the RAPID software, but does not feel the Police Department budget should have to pay to implement it and they should not make it mandatory on the shop owners if they already have something such as a spreadsheet implemented. He discussed this further.

Councilor Lachapelle wanted a balance and wanted to keep it in committee. He expressed this further.

Councilor Lauterborn **MOVED** to kill the proposed ordinance. Councilor Keans seconded the motion. The **MOTION CARRIED** by a majority show of hands by three to two

Councilor Keans asked if the current ordinance was still in effect. It was explained that it was.

Councilor Lachapelle thought they should be taking baby steps and for the record he felt that the RAPID software is a great tool and he explained why.

Councilor Keans asked how effective would the software be in regards to catching thefts. Councilor Lachapelle explained how this would work, but there are still variables they would have to take into consideration.

Councilor Lachapelle explained to the shop owners present in chambers that this proposed ordinance is killed for now until they hear further from the State level and then they will take action.

Councilor Lauterborn asked if the Police Department needed an ordinance for them to use RAPID.

Councilor Keans did not feel they are allowed by state law. The Codes and Ordinances Committee debated further. Councilor Gray has no problem with the Police Department using RAPID for the input of stolen items because other communities that are using the software could get a hit from items that are stolen in our City. They could offer it to businesses in the City without the requirement to do it at this time. Councilor Gray discussed further.

Councilor Keans and Councilor Gray debated that the Police Department would need to input the data of stolen items into a system.

## **7. Other**

Councilor Gray commented he had received several complaints about vegetation overhanging the sidewalks causing pedestrians not to pass. In one case the Department of Public Works had to take care of the situation. He stated that homeowners need to be aware that they need to maintain overhanging vegetation on their property.

## **8. Adjournment**

Councilor Gray **MOVED** to **ADJOURN** the Committee meeting at 9:02 PM. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Nancy Carignan  
Assistant City Clerk