

**City Council Regular Meeting
December 7, 2021
Council Chambers
31 Wakefield Street
6:30 PM**

COUNCILORS PRESENT

Councilor Abbott
Councilor Beaudoin
Councilor Bogan
Councilor Fontneau
Councilor Gray
Councilor Hailey
Councilor Hamann
Councilor Hunt-Hawkins
Councilor Lachapelle
Councilor Rice
Deputy Mayor Walker
Mayor Lauterborn

OTHERS PRESENT

Blaine Cox, City Manager
Katie Ambrose, Deputy City Manager
Terence O'Rourke, City Attorney

COUNCILORS ABSENT

Councilor Hutchinson

Minutes

1. Call to Order

Mayor Lauterborn called the meeting to order at 6:30 PM. She indicated that Councilor Lachapelle requested to attend the meeting remotely. She asked Councilor Lachapelle if it was reasonably impractical for him to be physically present at this meeting. Councilor Lachapelle confirmed that it was reasonably impractical for him to attend the meeting in person. Mayor Lauterborn stated that it is required that all votes be taken by means of roll call whenever one or more members are participating remotely.

2. Opening Prayer

Mayor Lauterborn requested a moment of silence.

3. Pledge of Allegiance

Mayor Lauterborn led the Pledge of Allegiance.

4. Roll Call

Kelly Walters, City Clerk, called the roll. All City Councilors were present except for Councilor Hutchinson who was absent. Councilor Lachapelle indicated that he was attending the meeting remotely and was alone in the room where he is located.

5. Acceptance of Minutes

5.1 Regular City Council Meeting: November 3, 2021 *consideration for approval*

Councilor Rice **MOVED** to **ACCEPT** the Regular City Council meeting minutes of November 3, 2021. Councilor Hamann seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote of 11 to 0. Councilors Rice, Walker, Hunt-Hawkins, Bogan, Lachapelle, Hamann, Hainey, Abbott, Gray, Fontneau, and Mayor Lauterborn voted in favor of the motion. Councilor Beaudoin wished to abstain from the vote since he was not present at the meeting in question.

5.2 City Council Special Meeting: November 16, 2021 *consideration for approval*

Councilor Walker **MOVED** to **ACCEPT** the Special City Council meeting minutes of November 16, 2021. Councilor Rice second the motion. The **MOTION CARRIED** by a roll call vote of 12 – 0. Councilors Hainey, Beaudoin, Rice, Walker, Bogan, Lachapelle, Fontneau, Abbott, Hunt-Hawkins, Hamann, Gray, and Mayor Lauterborn voted in favor of the motion.

6. Communications from the City Manager

6.1 City Manager's Report

The City Manager's Report is as follows:

Contracts and documents executed since last month:

Department of Public Works

- Construction Easement – 158 N Main Street
- 2021 NHDOT Road Safety Audit Application
- Recommendation to sign bid agreement- Colonial Pines sewer
- Administrative order of consent, NPDES Permit

- Construction contract – Carbon storage facility
- Construction Change order, New DPW – Hutter Construction
- Agreement of rental – J&D Power Equipment
- Purchasing Waiver , exception to bidding threshold – J&D Power
- Engineering Services Task order - 2021 pavement condition assessment
- Recommendation to Award Bid, Rt 202A Water Main Extension – D&C Construction
- Construction change order – Strafford Square Intersection
- Scope of Service, Rt 202A Water Main Ext Tank Site – SUR
- Non-Disturbance & Access Agreement – DPW Facility Solar array
- Engineering Services Task Order – Underwood Engineers

Economic Development

- FY22 CDBG Environmental Review – CAP Weatherization 11-19
- FY22 CDBG Environmental Review – CAP Weatherization 11-19 #2
- FY22 CDBG Environmental Review – CAP Weatherization 11-29
- FY22 CDBG Environmental Review – CAP Weatherization 11-30

IT Department

- Broadband service contract – Atlantic Broadband

The following standard reports have been enclosed:

- Personnel Action Report Summary

City Manager Cox said there is an update on the Willand low-barrier Seasonal Shelter. He said the shelter began operations on November 29, 2021. He said data has been collected and provided by Betsey Andrews Parker, MPH, Community Action Partnership as follows:

(Data Collected for the Willand Low Barrier Seasonal Shelters - November 29, 2021 through December 5, 2021)

24 Female
36 Male
60 Total Served

City Manager Cox added that the total number of bed nights were 197. He said no veterans were in need of service during this first report; however, nine of the residents serviced did have a disability. He indicated that the lowest number of bed nights was 21 and the highest was 38, which equates to an overall average of 28 clients each night. He reported the following totals per City:

Dover	23
Rochester	15
Somersworth	9
Portsmouth	6
Farmington	2
Hampton	1
Middleton	1
Nashua	1
New Market	1
Rollinsford	1
Total:	60

City Manager Cox stated that the City Council Rules of Order establishes the order of the agenda for the Inauguration; however, he requested to adjust this year's Inauguration Agenda by moving the "Election of Deputy Mayor" under Agenda item # 6. He distributed a proposed Agenda for the Inauguration and gave details of the process. The City Council briefly discussed the matter and the City Attorney concluded that the City Clerk handles that particular agenda and stated that no vote is required to make the change.

7. Communications from the Mayor

7.1 Reading from Rochester Poet Laureate Ed Pacht

Mayor Lauterborn proudly announced that Ed Pacht is the newly appointed Poet Laureate for the City of Rochester. She said he is the third Poet Laureate selected since the program began. She said the selection is made by the Arts & Culture Commission in conjunction with the Director of the Rochester Public Library.

Matt Wyatt, Chair of the Arts & Culture Commission, addressed the City Council to introduce Ed Pacht. Mr. Wyatt gave a brief history of how Ed's love of the Arts in Rochester earned him the title of Poet Laureate.

Ed Pacht said he has been taken by surprise by his appointment as Poet Laureate and never sought any type of position; however, he is honored to serve the City in this manner. He gave a brief history of his life in or near Rochester since 1980. He chose two poems to read, *the latter of which was requested by Mayor Lauterborn*:

Caught & Crowned by Ed Pacht
With no Mills by Ed Pacht

Mr. Wyatt presented Mr. Pacht with a Poet Laureate Crown and a gift from a local artist. Mayor Lauterborn expressed appreciation for both poems and said the poem entitled "With No Mills" was first recited by Mr. Pacht at the Arts & Culture Award Ceremony this fall. Mr. Wyatt thanked Mayor Lauterborn for all her work over many years with the Arts & Culture Commission.

8. Presentation of Petitions and Council Correspondence

No discussion.

9. Nominations, Appointments, Resignations, and Elections

9.1 Resignation: Terry Garland, Zoning Board of Adjustments, alternate member *consideration for approval*

Councilor Walker **MOVED** to **ACCEPT** the resignation from Terry Garland, Zoning Board of Adjustment, with regret. Councilor Hamann seconded the motion. The **MOTION CARRIED** by a 12 – 0 roll call vote. Councilors Lachapelle, Rice, Gray, Hainey, Abbott, Bogan, Fontneau, Hamann, Beaudoin, Walker, Hunt-Hawkins, and Mayor Lauterborn voting in favor of the motion.

10. Reports of Committees

10.1 Appointments Committee

10.1.1 New Appointment: Jeremiah Minihan – Historic District Commission, *Alternate Regular member term to expire 1/02/2023*

consideration for approval

- 10.1.2 New Appointment:** Craig Brady – Recreation & Arena Commission, Alternate member *term to expire 1/02/2024*
consideration for approval
- 10.1.3 New Appointment:** Palana Hunt-Hawkins – Arts & Culture Commission, Regular member *term to expire 7/01/2023*
consideration for approval
- 10.1.4 Reappointment:** Shawn Libby – Utility Advisory Board Regular member *term to expire 1/02/2024* ***consideration for approval***

Councilor Bogan requested to group the above appointments into one motion. There were no objections. She **MOVED** to **APPROVE** all appointments and reappointments as stated above. Councilor Walker seconded the motion and made one correction. He said the Alternate member for the Historic Commission should actually be titled a Regular member. Councilor Bogan concurred. The **MOTION CARRIED** by a 12 – 0 roll call vote. Councilors Hamann, Walker, Hunt-Hawkins, Fontneau, Abbott, Gray, Rice, Bogan, Hailey, Lachapelle, Beaudoin, and Mayor Lauterborn voted in favor of the motion.

Councilor Bogan stated that the Committee is attempting to meet later this month; however, no meeting date has been set at this time. Councilor Walker stated that the Planning Board has a number of positions open at this time. He requested that the Appointments Committee meet and make those recommendations. He suggested that there could be a Special Meeting added to the Workshop Agenda in December. He cautioned that there may not be enough members on the Planning Board for a quorum in January and that the Planning Board is scheduled to meet prior to the Regular City Council meeting in January.

10.2 Codes & Ordinances Committee

- 10.2.1 Code of Ethics** ***motion to accept - Addendum A***

Councilor Lachapelle **MOVED** to **ACCEPT** the Codes of Ethics Policy. Councilor Walker seconded the motion. Councilor Lachapelle thanked the Police Commission and School Board for their input with creating this document. He hoped this policy, if adopted, would be reviewed every two years along with the City Council Rules of Order.

Councilor Gray spoke against the motion to accept the Code of Ethics. He stated that much of the material is already covered in other areas of city or state government policies. He said the way in which it is written would require that each Councilor keeps an eye on other Councilors and report any potential wrong-doings, including but not limited to more minor violations such as speeding, noise violations, or even shoveling snow on to a side-walk. He referenced the signature requirement from each City Councilor that is essentially a promissory note stipulating that they will abide to the policy and report malfeasance, as stated prior. He said the policy requires reporting according to the "spirit of" or "letter of the law". He felt that the policy went too far down the wrong path and suggested it would be best to make the following amendments to the policy: changing the word "require" to "guidelines", removing the signature requirement, and making a few other small adjustments. Councilor Lachapelle said the Code is written with common sense and it depicts the behavior that any elected official should already be displaying. He said as an elected official behavior, as seen by the public, is held to a higher standard. He said a lot of work has gone into the creation of this policy. He hoped to see this policy take effect in January, 2022, ready for the on-set of the newly elected City Council.

Mayor Lauterborn requested a vote on the motion. The **MOTION FAILED** by a roll call vote of 4 to 8. Councilors Rice, Hainey, Lachapelle, and Hunt-Hawkins voted in favor of the policy. Councilors Walker, Gray, Hamann, Beaudoin, Fontneau, Abbott, Bogan, and Mayor Lauterborn voted against the motion.

Mayor Lauterborn said the topic should stay in Committee in order to make adjustments.

Councilor Walker said the Codes and Ordinances Committee discussed another Amendment last Thursday, which was an Amendment to Chapter 254 of the General Ordinances regarding Storage of RV's; however, the proposed Amendment is not on this agenda, as it was not recommended to the full City Council. He said only the Committee members turned this proposed ordinance down and it should be presented to the full City Council for a vote. Councilor Hamann seconded

the motion. Councilor Rice said the Committee had a quorum at the meeting and Chapter 254 was defeated at the Committee level. He said a vote must be taken to suspend the rules of order to add anything additional to the agenda at this point. Councilor Walker reiterated that the item should have been included on the agenda. The City Council debated the issue. City Attorney O'Rourke confirmed that a vote to suspend the rules is in order to amend the agenda. Councilor Walker **MOVED** to Suspend the Rules of Order to **AMEND** the Agenda to include Chapter 254. Councilor Hamann seconded the motion. The **MOTION FAILED** by a roll call vote of 7 to 6. Councilors Abbott, Bogan, Beaudoin, Hamann, Walker, and Mayor Lauterborn voted in favor of the motion. Councilors Rice, Fontneau, Lachapelle, Hunt-Hawkins, Gray, and Councilor Hainey voted against the motion. *The motion failed to receive the required two-third majority of the votes.*

10.3 Fidelity Committee

No discussion.

10.4 Planning Board

Councilor Walker said the Committee had a discussion about a proposed expansion project for Eversource Utilities, and that there were members from the public who attended the meeting and stated their opposition to the project. The Planning Board decided to schedule a Site-Walk meeting on December 18, 2021 to review the proposed plans for expansion. The expansion project would include installing a tall storage unit for four of their large utility trucks.

10.5 Public Safety

10.5.1 Committee Recommendation: To install a streetlight at the intersection of Blackwater Road and Tebbetts Road *consideration for approval*

Councilor Hamann **MOVED** to **APPROVE** the Committee's recommendation to install a streetlight at the Intersection of Blackwater Road and Tebbetts Road. Councilor Gray seconded the motion. The **MOTION CARRIED** by a 12 – 0 roll call vote. Councilors Bogan, Abbott, Hainey, Walker, Lachapelle, Rice, Gray, Hunt-Hawkins, Fontneau, Beaudoin, Hamann, and Mayor Lauterborn voted in favor of the motion.

Councilor Hamann announced that the next meeting would take

place on December 15, 2021, at 6:00 PM.

10.6 Public Works

Councilor Walker stated that there are no action items at this time.

11. Old Business

11.1 Amendment to Chapter 275 of the General Ordinances of the City of Rochester regarding Impact Fees *second reading and consideration for adoption*

Councilor Walker **MOVED** to read the Amendment to Chapter 275 regarding Impact Fees for a second time. Councilor Hamann seconded the motion. Councilor Walker explained that this amendment would rescind the Impact Fee ordinance, which would result in a refund to all single-family homeowners and developers charged thus far. The total amount collected has been \$99,812. The **MOTION CARRIED** by a 12 to 0 vote. Councilors Hunt-Hawkins, Gray, Hamann, Rice, Beaudoin, Walker, Lachapelle, Hainey, Fontneau, Abbott, Bogan, and Mayor Lauterborn voted in favor of the motion. Mayor Lauterborn read the Amendment to the Ordinances for the second time as follows:

REPEAL THIS ENTIRE SECTION:

§ 275-27.3

Impact fees.

A. Purpose. This section is enacted pursuant to RSA 674:16 and 674:21: [Amended 1-7-2020]

(1) To assess new development for its proportionate share of the public capital facility costs.

B. Authority. [Amended 1-7-2020]

(1) Impact fees may be assessed to new development to compensate the City of Rochester and the School Department for a proportionate share of the cost of the capital facility needs occasioned by new development. Any person who seeks a building permit for new development may be required to pay an impact fee in the manner set forth herein.

(2) The Planning Board may, as a condition of approval of any subdivision or site plan, and when consistent with applicable Board

regulations, require an applicant to pay an impact fee for the applicant's proportional share of public facilities affected by the development.

- (3) Nothing in this section shall be construed to limit the authority of the Planning Board or the City to require exactions for off-site improvements, other conditions of approval, or to assess other fees governed by other statutes, ordinances, or regulations.
- C. Definitions. For the purposes of this section, the following terms shall have the meanings indicated:

IMPACT FEE

A fee or assessment imposed upon development, including subdivision or building construction, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the City of Rochester or the Rochester School Department, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; stormwater, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space. [Amended 1-7- 2020]

NEW DEVELOPMENT

- (1) An activity that results in any one of the following:
 - (a) The creation of a new dwelling unit or units;
 - (b) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units;
 - (c) Construction resulting in a new nonresidential building or a net increase in the floor area of any nonresidential building; or
 - (d) The conversion of an existing use to another use if such change results in an increase in the demand on public capital facilities that are the subject of impact fee assessments. [Amended 1-7- 2020]
- (2) New development shall not include the replacement of an existing manufactured home or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in size, density, type of use, and where there is no net increase in demand on public capital facilities.

OFF-SITE IMPROVEMENTS

Highway, drainage, sewer, or water upgrades or improvements that are

necessitated by a development but which are located outside the boundaries of the property, as determined by the Planning Board during the course of subdivision or site plan approval. [Added 1-7-2020]

D. Assessment methodology.

- (1) Proportionality. The amount of the impact fee shall be calculated by the Planning Board to be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. The Planning Board may prepare, adopt, or amend studies or reports that are consistent with the above standards, and which define a methodology for impact fee assessment for public capital facilities, and impact fee assessment schedules therefor.
- (2) Existing deficiencies. Upgrading of existing facilities and infrastructure, the need for which is not created by new development, shall not be paid for by impact fees.

E. Administration.

- (1) Accounting. In accord with RSA 673:16, II, and 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the City's general fund, may be spent upon order of the City Council, and shall be used solely for the capital improvements for which they were collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fees were collected to meet. In the event that bonds or similar debt instruments have been or will be issued by the City of Rochester or the Rochester School District for the funding of capital improvements that are the subject of impact fee assessment, impact fees from the appropriate related capital facility impact fee accounts may be applied to pay debt service on such bonds or similar debt instruments.
- (2) Assessment. All impact fees imposed pursuant to this section shall be assessed at the time of Planning Board approval of a subdivision plan or site plan. When Planning Board approval is not required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development, as determined by the Building Inspector. Impact fees shall be intended to reflect the effect of development upon municipal and/or school facilities at the time of the issuance of the building permit. [Amended 1-7-2020]

- (3) Security. In the interim between assessment and collection, the Building Inspector may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of assessed impact fees.
- (4) Collection. Impact fees shall be collected as a condition for the issuance of a certificate of occupancy. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. Nothing in this section shall prevent the Building Inspector, with the approval of the Planning Board, and the assessed party from establishing an alternate, mutually acceptable schedule of payment. [Amended 1-7-2020]
- (5) Refund of fees paid. The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest, under the following circumstances:
 - (a) When either the full or partial portion of the impact fee, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six years from the date of the full and final payment of the fee; or
 - (b) When the City of Rochester or, in the case of school impact fees, the Rochester School District has failed, within the period of six years from the date of the full and final payment of such fee, to appropriate its proportionate non-impact fee share of related capital improvement costs.
- F. Appeals.
 - (1) A party aggrieved by a decision made by the Building Inspector regarding the assessment or collection of impact fees authorized by this section may appeal such decision to the Planning Board.
 - (2) In accord with RSA 676:5, III, appeals of the decision of the Planning Board in administering this section may be made to Superior Court, as provided in RSA 676:5, III, and 677:15.
- G. Waivers. The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed:

- (1) An applicant may request a full or partial waiver of school impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 55 or over in a development that is also maintained in compliance with the provisions of RSA 354-A:15, Housing for Older Persons. The Planning Board may waive school impact fee assessments on such age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy by senior citizens age 62 or over for a period of at least 20 years. [Amended 1-7-2020]
- (2) A person may request a full or partial waiver of impact fees for construction within a subdivision or site plan approved by the Planning Board prior to the effective date of this section. Prior to granting such a waiver, the Planning Board must find that the proposed construction is entitled to the five-year exemption provided by RSA 674:39, pursuant to that statute. This waiver shall not be applicable to phases of a phased development project where active and substantial development, building and construction has not yet occurred in the phase in which construction is proposed. [Amended 3-5-2019]
- (3) The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the City Council for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind and may not be credited to other categories of impact fee assessment. The applicant shall pay all costs incurred by the City for the review of such proposal, including consultant and counsel fees.
- (4) The Planning Board shall waive all of an impact fee assessment for properties located in the Downtown Commercial District, with the district boundaries defined as the boundaries that exist at the time of the approval of this amendment. [Amended 1-7-2020]
- (5) The impact fee assessment for accessory dwelling units shall be waived with the stipulation that this waiver is reviewed every two years. [Added 1-7-2020]

Councilor Walker **MOVED** to **ADOPT** the Amendment. Councilor Hamann seconded the motion. Councilor Hailey requested the accurate

numbers associated with Impact Fees. She referred to Councilor Elect Berlin's testimony spoken at the most recent Workshop, which conflicted with Councilor Walker's figures.

Councilor Walker said there were 6 to 8 single-family homes, plus two lot divisions which had been required to pay the Impact Fees prior to the Planning Board setting the fee at \$0. He said all the larger developments had been granted waivers. The Planning Board was in agreement that if single-family homeowners were to be charged Impact Fees, they should simply stop charging fees all together until a solution could be sought. Councilor Walker said approximately \$100,000 has been collected from single-family homeowners and that money could be returned if this motion passes. Councilor Hainey asked how long the City has been collecting Impact Fees. Councilor Hamann confirmed that the Planning Board starting collected such fees in January, 2020.

Councilor Hainey stated that she understood that Impact Fees assist with off-setting the Tax Rate for new development. She questioned if eliminating the Impact Fees would have a negative impact on the tax rate.

Councilor Gray said as long as the Planning Board has the Impact Fees set at zero, rescinding the ordinance will not have a great affect; however if the ordinance is rescinded, it might take longer to re-instate the Impact Fees without the ordinance on the books. Councilor Gray said he has always been opposed to impact fees and felt that the City of Rochester should never have assessed an Impact Fee for the Schools due to the declining school population. He gave a brief overview of why Impact Fees exist and how the declining School population is cause for concern regarding the charging of Impact Fees. He reiterated that a vote on this matter makes no real difference if the fees are currently set at zero. Councilor Fontneau retorted that this vote does make a difference to the single-family homeowners anticipating a refund if this motion passes. He said that rescinding this ordinance would allow the Planning Board to refund the homeowners of these fees collected since January 2020. He stated that the ordinance regarding Impact Fees has been on the books for many years; however, in January 2020 the Planning Board first decided to set a fee. He spoke about a scenario in which a single-family homeowner currently living in the City of Rochester who moved within the City onto an existing lot and were, in turn, charged Impact Fees. The intent of Impact Fees is to collect fees from larger developments; however, the City Attorney has confirmed that no exceptions could be made regarding who pays Impact Fees and the collection off fees needs to be equitable. Furthermore, the larger developments were often grandfathered and/or received waivers against paying any of the fees. As a result, it was the single-family homeowners most effected by the Impact Fees.

Councilor Fontneau understood if this motion fails then the ordinance stays in place and it means the Planning Board must wait seven years prior to granting any reimbursements.

Councilor Rice asked if the City Council could keep the ordinance in place and take a vote to reimburse the fees collected dating back to January, 2020.

Deputy City Manager Ambrose clarified that the Finance Committee reviewed the process of reimbursing the Impact Fees and what happens if the ordinance is rescinded. She said the decision would be vetted through the Finance Committee/City Council to expend the funds or reimburse those home owners.

Councilor Rice asked if the City Council could vote to retain the ordinance but refund the Impact Fees to the homeowners. City Attorney O'Rourke said refunding Impact Fees is already covered under the ordinance; however, simply refunding fees based on the reasons discussed this evening is not considered under the current ordinance.

Councilor Rice voiced his concerns about some of the types of homes which were charged Impact Fees such as mobile and modular homes and if that money would be given to LLC's rather than the individual homeowners. He questioned who would receive the reimbursement the homeowner or the LLC? City Attorney O'Rourke said all collected Impact Fees can only be reimbursed to the current owner of the property.

Councilor Rice spoke against the motion to rescind the Impact Fee ordinances.

Councilor Hamann asked if the motion fails to rescind the Impact Fee ordinance if the City Council could still act to reimburse the funds. City Attorney O'Rourke outlined the legalities of the issue; however, if the City does not expend the funds, he believed a reimbursement could be accomplished. The City Council debated the matter further. Several Councilors supported leaving the ordinance in place if the money could be refunded to the homeowners. Several Councilors disclosed they own single-family land lots, which could be developed. *The situation described by Councilor Gray and others werenot deemed to be a conflict of interest.*

Councilor Rice **MOVED** to **AMEND** the motion to the General Ordinances § 275-27.3 by striking out the first sentence as follows: ~~REPEAL THIS ENTIRE SECTION~~ § of 275-27.3, which would essentially keep the ordinance in place. He further amended the motion to include a

reimbursement in the amount of \$99,812.27 of Impact Fees collected to be paid to the current homeowners. Councilor Hamann seconded the motion. The **MOTION** to **CARRIED** to **AMEND** the motion by a 12 – 0 roll call vote. Councilors Gray, Abbott, Hainey, Walker, Lachapelle, Rice, Bogan, Fontneau, Beaudoin, Hunt-Hawkins, Hamann, and Mayor Lauterborn voted in favor of the motion.

Mayor Lauterborn called for a vote on the motion as amended. The **MOTION CARRIED** by a 12 – 0 roll call vote. Councilors Hamann, Hainey, Walker, Gray, Lachapelle, Rice, Bogan, Fontneau, Beaudoin, Hunt-Hawkins, Abbott, and Mayor Lauterborn voted in favor of the motion.

11.2 Resolution Approving certain renumbering on Tebbetts Road *first reading and consideration for adoption*

Councilor Walker **MOVED** to read the Resolution for a first time by title only. Councilor Hamann seconded the motion. The **MOTION CARRIED** by a 12 – 0 roll call vote with Councilors Fontneau, Abbott, Hainey, Walker, Gray, Hunt-Hawkins, Rice, Bogan, Beaudoin, Lachapelle, Hamann, and Mayor Lauterborn voting in favor of the motion. Mayor Lauterborn read the resolution by title only for a first time as follows:

Resolution Authorizing Certain Renumbering on Tebbetts Road

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

That the following addresses on Tebbetts Road will be renumbered as follows:

- 284 Pickering Road becomes 5 Tebbetts Road
- 5 Tebbetts Road becomes 11 Tebbetts Road
- Tebbetts Road becomes 26 Tebbetts Road
- Tebbetts Road becomes 28 Tebbetts Road
- 14 Tebbetts Road becomes 40 Tebbetts Road
- 36 Tebbetts Road becomes 94 Tebbetts Road
- 50 Tebbetts Road becomes 0 Tebbetts Road
- 42 Tebbetts Road becomes 112 Tebbetts Road
- 47 Tebbetts Road becomes 115 Tebbetts Road
- 44 Tebbetts Road becomes 116 Tebbetts Road
- 57 Tebbetts Road becomes 121 Tebbetts Road
- 53 Tebbetts Road becomes 125 Tebbetts Road
- 59 Tebbetts Road becomes 133 Tebbetts Road

- 70 Tebbetts Road becomes 152 Tebbetts Road
- 74 Tebbetts Road becomes 158 Tebbetts Road
- 76 Tebbetts Road becomes 164 Tebbetts Road
- 78 Tebbetts Road becomes 170 Tebbetts Road
- 81 Tebbetts Road becomes 179 Tebbetts Road
- 85 Tebbetts Road becomes 183 Tebbetts Road
- 86 Tebbetts Road becomes 188 Tebbetts Road
- 88 Tebbetts Road becomes 190 Tebbetts Road
- 87 Tebbetts Road becomes 191 Tebbetts Road
- 91 Tebbetts Road becomes 199 Tebbetts Road
- 94 Tebbetts Road becomes 200 Tebbetts Road
- 95 Tebbetts Road becomes 203 Tebbetts Road
- 97 Tebbetts Road becomes 211 Tebbetts Road
- 100 Tebbetts Road becomes 216 Tebbetts Road
- 106 Tebbetts Road becomes 234 Tebbetts Road
- 122 Tebbetts Road becomes 251 Tebbetts Road
- 125 Tebbetts Road becomes 261 Tebbetts Road
- 127 Tebbetts Road becomes 267 Tebbetts Road
- 131 Tebbetts Road becomes 275 Tebbetts Road
- 130 Tebbetts Road (Ranch) becomes 274 Tebbetts Road
- 130 Tebbetts Road (New Englander) becomes 280 Tebbetts Road
- 133 Tebbetts Road becomes 287 Tebbetts Road
- 142 Tebbetts Road becomes 290 Tebbetts Road
- 141 Tebbetts Road becomes 309 Tebbetts Road
- 143 Tebbetts Road becomes 319 Tebbetts Road
- 145 Tebbetts Road becomes 345 Tebbetts Road
- 178 Tebbetts Road becomes 358 Tebbetts Road
- 197 Tebbetts Road becomes 379 Tebbetts Road
- Lot 0244-0005-0006 becomes 294 Tebbetts Road
- Lot 0244-0005-0005 becomes 302 Tebbetts Road
- Lot 0243-0005-0004 becomes 308 Tebbetts Road
- Lot 0244-0005-0003 becomes 314 Tebbetts Road

These changes are made in order to be in compliance with the standards articulated by the National Emergency Number Association and RSA 231:133 and 133-a.

Councilor Walker **MOVED** to **ADOPT** the resolution. Councilor Hamann seconded the motion.

Councilor Walker said there were three different options discussed at the last Workshop. He understood that the option that is being voted upon this evening would essentially renumber every single lot or house. Councilor Rice concurred and said that was the option presented at the Public Hearing.

Councilor Gray spoke against the motion. He said City staff gave the Council unacceptable solutions the first time this was presented, which resulted in the proposal coming back to Council; and the proposal was found not to be in accordance with the State guidelines. He said the option in front of Council this evening is not in accordance with the City Ordinance which he said stated that the lowest number shall start at the side of the street closest to the statue of Parson Main. He said only three to five house numbers really need to be changed. He added that other communities have invested in house number signs to resolve some of their e-911 issues and that Rochester should do the same for this road. He gave details about other options available. Councilor Gray stated that he would vote against the motion. Councilors Beaudoin, Fontneau and Rice gave reasons why they would vote against the motion as well.

Mayor Lauterborn called for a vote on the motion. The **MOTION FAILED** by a 3 to 9 roll call vote with Councilors Hainey, Hamann, and Lachapelle voting in favor of the motion. Councilors Abbott, Beaudoin, Bogan, Fontneau, Gray, Hunt-Hawkins, Rice, Walker, and Mayor Lauterborn voting against the motion.

12. Consent Calendar

No discussion.

13. New Business

13.1 RSA 79-E Extension for 22 South Main Street *consideration for approval*

Councilor Walker **MOVED** to **APPROVE** the request for an Extension for the 22 South Main Street project. Councilor Hamann seconded the motion.

Councilor Beaudoin stated that he supported both of the RSA 79-E extension request on the Agenda this evening. They both make compelling statements, which he agrees are factual about cost of lumber over the last year. He added that he would not likely support such extensions if they are presented to the City Council next year. Councilor Rice agreed and suggested that in the future, the developer be requested to submit a memorandum to the City Council explaining their specific situation and maybe a sketch of what the project shall look like once finished. The **MOTION CARRIED** by a 12 – 0 roll call vote with Councilors Rice, Walker, Hunt-Hawkins, Bogan, Lachapelle, Hamann, Beaudoin, Hainey, Abbott, Gray, Fontneau, and Mayor

Lauterborn voted in favor of the motion.

13.2 RSA 79-E Extension for 73-77 North Main Street *consideration for approval*

Councilor Walker **MOVED** to **APPROVE** the request for an Extension for the 22 South Main Street project. Councilor Rice seconded the motion. The **MOTION CARRIED** by a 12 – 0 roll call vote with Councilors Hainey, Beaudoin, Rice, Walker, Bogan, Lachapelle, Fontneau, Abbott, Hunt-Hawkins, Hamann, Gray and Mayor Lauterborn voted in favor of the motion.

13.3 Resolution in Support of New Hampshire Department of Transportation (NHDOT) Exit 10 Feasibility Study *first reading and consideration for adoption*

Councilor Walker **MOVED** to read the resolution for the first time by title only. Councilor Rice seconded the motion. The **MOTION CARRIED** by 12 – 0 roll call vote with Councilors Beaudoin, Abbott, Hunt-Hawkins, Lachapelle, Gray, Walker, Bogan, Hamann, Hainey, Fontneau, Rice, and Mayor Lauterborn voted in favor of the motion. Mayor Lauterborn read the resolution for the first time by title only as follows:

Resolution in Support of New Hampshire Department of Transportation (NHDOT) Exit 10 Feasibility Study

WHEREAS: The NHDOT 2023-2032 Ten Year Transportation Improvement Plan includes an update to the Exit 10 Feasibility Study for preliminary engineering;

WHEREAS: The Rochester City Council continues to support the opportunity for a new exit off the Spaulding Turnpike that would improve transportation access to our community, compliment land development, and contribute to economic development for Rochester and the Region; and

WHEREAS: The City of Rochester stands ready to support officials of NHDOT in partnership to move this important transportation project to implementation;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF ROCHESTER THAT:

The City of Rochester urges the Governor, Executive Council, and Legislature to approve the update to the NHDOT 2023-2032 Ten Year

Transportation Improvement Plan regarding the Exit 10 Feasibility Study and further urge that the creation of Exit 10 be move expeditiously.

Councilor Walker **MOVED** to **ADOPT** the resolution. Councilor Hamann seconded the motion

Councilor Rice questioned if this feasibility study would focus on the area between the toll booth and Exit 9. Councilor Walker replied yes. Councilor Rice said it seems that this study has already occurred a few times in the past and questioned how many residents would be displaced if the final plan passed. Councilor Walker replied that this is only the study and that information is not yet available. Councilor Rice said he would not support another study for this area and would vote no.

Councilor Gray gave an overview of other documents which are provided in the City Council packet. He said the residents in this area were vocal about their feelings on Exit 10 more than a few years ago. He said the Planning Board has since approved projects located in direct line of the corridor referenced in the study. He said a better place for that particular exit would be across from the old land-fill on Old Dover Road (Route 16-B). He said there are other important projects that should take precedence over this one. He named Route 11 and/or Route 125 as areas in need of improvement or an extension of the highway sound-barriers. He said he would only support this project if it was low on the priority list of projects for DOT funding.

Mayor Lauterborn called for a vote upon the motion. The **MOTION FAILED** by a 5 to 7 roll call vote. Councilors Lachapelle, Hainey, Abbott, Hunt-Hawkins, and Mayor Lauterborn voted in favor of the motion. Councilor Rice, Gray, Bogan, Fontneau, Hamann, Beaudoin, and Councilor Walker voted against the motion.

13.4 Resolution Authorizing the Acceptance of a \$17,500.00 United States Department of Justice (USDOJ) Vest Grant by the City of Rochester and Supplemental Appropriation in Connection Therewith
first reading and consideration for adoption

Councilor Walker **MOVED** to read the resolution for a first time by title only. Councilor Rice seconded the motion. The **MOTION CARRIED**

by a 12 – 0 roll call vote with Councilors Hamann, Walker, Hunt-Hawkins, Fontneau, Abbott, Gray, Rice, Bogan, Hainey, Lachapelle, Beaudoin, and Mayor Lauterborn voting in favor of the motion. Mayor Lauterborn read the resolution by title only for a first time as follows:

Resolution Authorizing the Acceptance of a \$17,500.00 United States Department of Justice (USDJ) Vest Grant by the City of Rochester and Supplemental Appropriation in Connection Therewith

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

That a Seventeen Thousand Five Hundred Dollar (\$17,500.00) USDJ Vest Grant is hereby accepted by the City.

Further, the City Council authorizes a supplemental appropriation to the Police Department in the amount of Seventeen Thousand Five Hundred Dollar (\$17,500.00) with the entirety of the supplemental appropriation being derived from said Grant.

To the extent not otherwise provided for in this Resolution, the Finance Director is hereby authorized to establish and/or designate such accounts and or account numbers as are necessary to implement the transactions contemplated in this Resolution and to establish special revenue, non-lapsing, multi-year fund accounts(s) as necessary to which said sums shall be recorded.

Councilor Walker **MOVED** to **ADOPT** the resolution. Councilor Rice seconded the motion. The **MOTION CARRIED** by a 12 – 0 roll call vote with Councilors Walker, Gray, Hamann, Rice, Beaudoin, Hainey, Lachapelle, Hunt-Hawkins, Fontneau, Abbott, Bogan and Mayor Lauterborn voting in favor of the motion.

13.5 Unsealing of Non-public minutes. *Motion to unseal the following* :

Councilor Walker **MOVED** to **UNSEAL** the Non-Meeting minutes of the list provided below:

13.5.1 August 21, 2021, RSA 91-A:3, II(d) Land

13.5.2 September 18, 2018, RSA 91-A:3, II(d) Land

- 13.5.3 *October 16, 2018, RSA 91-A:3, II(a) Personnel and II(d) Land***
- 13.5.4 *November 13, 2018, RSA 91-A:3, II(d) Land***
- 13.5.5 *December 4, 2018, RSA 91-A:3, II(d) Land***
- 13.5.6 *January 15, 2019, RSA 91-A:3, II(a) Personnel***
- 13.5.7 *April 16, 2019, RSA 91-A:3, II(a) Personnel***
- 13.5.8 *May 21, 2019, RSA 91-A:3, II(a) Personnel***
- 13.5.9 *June 18, 2019, RSA 91-A:3, II(a) Personnel***
- 13.5.10 *June 18, 2019, RSA 91-A:3, II(d) Land***
- 13.5.11 *July 2 ,2019, RSA 91-A:3, II(d) Land***
- 13.5.12 *July 16, 2019, RSA 91-A:3, II(d) Land***
- 13.5.13 *August 20, 2019, RSA 91-A:3, II(d) Land***
- 13.5.14 *September 3, 2019, RSA 91-A:3, II(d) Land***
- 13.5.15 *September 17, 2019, RSA 91-A:3, II(d) Land***
- 13.5.16 *October 15, 2019, RSA 91-A:3, II(d) Land***
- 13.5.17 *January 7, 2020, RSA 91-A:3, II(d) Land, 294 Rochester Hill***
- 13.5.18 *January 7, 2020, RSA 91-A:3, II(d) Land, Scenic/Salinger***
- 13.5.19 *February 4, 2020, RSA 91-A:3, II(d) Land***
- 13.5.20 *February 18, 2020, RSA 91-A:3, II(d) Land***
- 13.5.21 *March 3, 2020, RSA 91-A:3, II(d) Land***
- 13.5.22 *April 7, 2020, RSA 91-A:3, II(d) Land***

- 13.5.23 April 21, 2020, RSA 91-A:3, II(d) Land**
- 13.5.24 May 12, 2020, RSA 91-A:3, II(d) Land**
- 13.5.25 September 1, 2020, RSA 91-A:3, II(d) Land and
II (a) Personnel**
- 13.5.26 October 4, 2020, RSA 91-A:3, II(d) Land**
- 13.5.27 January 19, 2021, RSA 91-A:3, II (j)
Consideration of exempt Confidential,
Commercial, and Financial information**

Councilor Rice seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote of 12 – 0 with Councilors Abbott, Bogan, Beaudoin, Rice, Fontneau, Hamann, Lachapelle, Hunt-Hawkins, Walker, Gray, Hainey, and Mayor Lauterborn voting in favor of the motion.

14. Other

Mayor Lauterborn presented the following City Councilors, who are not continuing on the City Council at this time, with Certificates of Service:

- Palana Hunt-Hawkins (2 Years of Service)
- Jeremy Hutchinson (4 Years of Service)
- Thomas Abbott (6 Years of Service)
- Donna Bogan (8 Years of Service)

Mayor Lauterborn invited any of these individuals to speak or share about their experience.

Councilor Bogan wished to thank everyone for giving her an opportunity to serve the City of Rochester in this manner. She expressed gratitude at meeting new people and learning so much about the City. She wished the new City Councilors good luck with serving the City over the next two years. Councilor Abbott “dittoed” her remarks.

Councilor Lachapelle asked if there was a Finance Committee and/or Workshop meeting in December. Mayor Lauterborn confirmed that the Finance Committee has been canceled; however, no decision has been made on holding the Workshop or adding a Special to that meeting.

Mayor Lauterborn proudly presented Deputy Mayor Walker with an engraved clock for his service (over twenty years). Deputy Mayor Walker said it has been an honor to serve with fellow members of the City Council. He thanked the citizens of Rochester and particularly those living in Ward 4 who elected him to serve for so many terms. He thanked the City Manager and congratulated him on the best City staff that he was privileged to serve with. He thanked the City staff for their service.

Deputy Mayor Walker proudly presented Mayor Lauterborn with an engraved clock for her service as Mayor. He congratulated her on a job well done over the last six months. He also presented Mayor Lauterborn with an engraved clock for her service as a Councilor (over 20 years). He shared that Mayor Lauterborn was always studious and thoughtful. He said she will be sorely missed. Mayor Lauterborn said it has been a great run and thanked her constituents of Ward 2, who have always been so kind to her; especially over the last six months as she served as Mayor for the City of Rochester. She said there are many intrinsic rewards in serving your community, which she has enjoyed dearly, with new found friendships. She said for those continuing to serve on the City Council "God Bless you and thank you".

15. Adjournment

Mayor Lauterborn Adjourned the Regular City Council meeting at 7:48 PM.

Respectfully submitted,

Kelly Walters, CMC
City Clerk

City of Rochester

Code of Ethics and Conduct

For ease of reference in the Code of Ethics and Conduct, the term "member" refers to any member of the Rochester City Council, Police Commission, School Board, or the City's board and commissions established by the City Charter, City Ordinance or Council policy, "City Council" shall refer to the Rochester City Council, Police Commission, School Board, or the City's board and commissions established by the City Charter, City Ordinance or Council policy, and "City Manager" shall refer to the Superintendent of Schools and the Chief of Police when appropriate.

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Policy Purpose

The Rochester City Council has adopted a Code of Ethics and Conduct for members of the City Council and City's boards and commissions to assure public confidence in the integrity of local government and its effective and fair operation.

A. ETHICS

The citizens and businesses of Rochester are entitled to have fair, ethical and accountable local government which has earned the public's full confidence for integrity. In keeping with the City of Rochester Commitment to Excellence, the effective functioning of democratic government therefore requires that:

- public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government;
- public officials be independent, impartial and fair in their judgment and actions;
- public office be used for the public good, not for the personal gain; and
- public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Rochester City Council, Police Commission, and School Board have jointly adopted a Code of Ethics and Conduct for members of the City Council, Police Commission, School Board, and of the City's boards and commissions to assure public confidence in the integrity of local government and its effective and fair operation. The Ethics section of the City's Code of Ethics and Conduct provides guidance on ethical issues and questions of right and wrong.

1. Act in the Public Interest. Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Rochester and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before them.
2. Comply with both the spirit and the letter of the Law and City Policy. Members shall comply with the laws of the nation, the State of New Hampshire and the City of Rochester. These laws include, but are not limited to: the United States and New Hampshire constitutions; the Rochester City Charter; laws pertaining to conflicts of interest, election

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campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. **Conduct of Members.** The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, boards and commissions, the staff or public.
4. **Respect for Process.** Members shall perform their duties in accordance with the processes and rules of order established by each body governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions by City staff.
5. **Conduct of Public Meetings.** Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.
6. **Decisions Based on Merit.** Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.
7. **Communication.** Members shall publicly disclose substantive information that is relevant to a matter under consideration by the Council or boards and commissions, which they may have received from sources outside of the public decision-making process.
8. **Conflict of Interest.** In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship which may give the appearance of a conflict of interest. In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and they shall abstain from participating in deliberations and decision-making where conflicts may exist.
9. **Gifts and Favors.** Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, that are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits

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which might compromise their independence of judgement or action or give the appearance of being compromised.

10. Confidential Information. Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.
11. Use of Public Resources. Members shall not use public resources not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.
12. Representation of Private Interests. In keeping with their role as stewards of the public interest, members shall not appear as a paid or retained representative on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City, nor shall members of boards and commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.
13. Advocacy. Members shall represent the official policies or positions of the City Council, board or commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Rochester, nor will they allow the inference that they do. Council members and board and commission members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention or display endorsements during Council meetings, board/commission meetings, or other official City meetings.
14. Non-Interference of Members. Members shall respect and adhere to the council-manager structure of Rochester City government as outlined by the Rochester City Charter. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and City staff. Except as provided by the City Charter, members therefore shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.

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15. Independence of boards and commissions. Because of the value of the independent advice of boards and commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of board and commission proceedings.
16. Positive Work Place Environment. Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

B. Conduct

The Conduct section of the City's Code of Ethics and Conduct is designed to describe the manner in which members should treat one another, City staff, constituents, and others they come into contact with in representing the City of Rochester.

The constant and consistent theme through all of the conduct guidelines is "respect." Members experience huge workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, elected and appointed officials are called upon to exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help guide members to do the right thing in even the most difficult situations.

1. Elected and Appointed Officials' Conduct with One Another

Elected and appointed officials are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even though individuals may "agree to disagree" on contentious issues.

1a. In Public Meetings

Use formal titles

Elected and appointed official should refer to one another formally during public meetings, such as Mayor, Deputy Mayor, Chair, Commissioner or Councilor followed by the individual's last name.

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Practice civility and decorum in discussion and debate

Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting or physical actions that could be construed as threatening will be tolerated.

Honor the role of the chair in maintaining order

It is the responsibility of the chair to keep the comments of members on track during public meetings. Members should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.

Avoid personal comments that could offend other members

If a member is personally offended by the remarks of another member, the offended member should make notes of the actual words used and call for a "point of personal privilege" that challenged the other member to justify or apologize for the language used. The chair will maintain control of this discussion.

Demonstrate effective problem-solving approaches

Members have a public stage to show how individuals with disparate points of view can find common ground and seek compromise that benefits the community as a whole.

Outside of official board or commission meetings, individual board and commission members are not authorized to represent the City or their board or commission unless specifically designated by the Council or the board or commission to do so for a particular purpose. In private settings, board and commission members may communicate at any time and on any subject with individual members of the City Council, and may express to them individual viewpoints and opinions. In public, however, all members shall represent the official policies or positions of their board or commission, with the following exception. During a council public hearing on any item addressed by the board or commission, any member may speak under standard time limits, but shall indicate whether their testimony represents an official position (majority opinion) or a minority opinion of the board/commission to which they belong. The chair shall represent the majority view of the board or commission, but may report on any minority views as well, including his or her own. When an official board or commission position differs from staff's recommendation on a particular policy issue, then at the Mayor's discretion additional time may be provided to the chair of the board or commission (or his/her

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designee) to explain the position of the board/commission or to rebut statements made by staff or the public. If new information is brought to light during a public hearing which was not shared previously with the board or commission, the Mayor may allow the board or commission chair to respond. If the Council deems the new information sufficient to warrant additional study, then by majority vote Council may remand the issue back to the board or commission for further study prior to taking other action itself.

Individual opinions and positions may be expressed by board and commission members regarding items that have not come before the particular board/commission to which they belong. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Rochester, nor will they allow the inference that they do.

Although a board or commission may disagree with the final decision the Council makes, the board or commission shall not act in any manner contrary to the established policy adopted by the Council.

1(b). In Private Encounters

Continue respectful behavior in private

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

Be aware of the insecurity of written notes, voicemail messages, and E-mail

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note faxed to other? How would you feel if this voicemail message were played on a speaker phone in a full office? What would happen if the E-mail message were forwarded to others? Written notes, voicemail messages and E-mail should be treated as potentially “public” communication.

Even private conversations can have a public presence

Elected and appointed officials are always on display – their actions, mannerisms, and language are monitored by people around them that they may not know. Lunch table conversations will be eavesdropped upon, parking lot debates will be watched, and casual comments between individuals before and after meetings noted.

2. Elected and Appointed Officials’ Conduct with City Staff

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Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected, and City staff who implements and administers the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.

Treat all staff as professionals

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

Member questions/inquiries to City staff

1. General. Council and board/commission communications with City staff should be limited to normal City business hours unless the circumstances warrant otherwise. Responses to Council questions posed outside of normal business hours should be expected no earlier than the next business day.
2. Routine Requests for Information and Inquires. Members may contact staff directly for information made readily available to the general public on a regular basis (e.g., "What are the library hours of operation?") Under these circumstances staff shall treat the member no differently than they would the general public, and the member shall not use their elected status to secure preferential treatment. The city manager does not need to be advised of such contacts.
3. Non-Routine Requests for Readily Available Information. Members may also contact staff directly for easily retrievable information not routinely requested by the general public so long as it does not require staff to discuss the issue or express an opinion (e.g., "How many traffic lights are there in the City?" or "Under what circumstances does the City lower its flags to half mast?").
4. Non-Routine Requests Requiring Special Effort. Any member request or inquiry that requires staff to compile information that is not readily available or easily retrievable and/or that requests staff to express an opinion (legal or otherwise) must be directed to the city manager¹ (e.g., "How many Study Issues completed over the past five years have required 500 or more hours of staff time?", or "What is the logic behind the City's sign ordinances affecting businesses along Route 11?"). The city manager shall be responsible for distributing

¹ In the case of the Police Commission directed to the Chief of Police and in the case of the School Board to the Superintendent.

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such requests to his/her staff for follow-up. Responses to such requests shall be copied to all Council members (if originating from a Council member), relevant board or commission members (if originating from a board or commission member), the city manager, and affected department directors.

5. Meeting Requests. Any member request for a meeting with staff must be directed to the city manager.

Do not disrupt City staff from their jobs

Elected and appointed officials should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Do not attend City staff meetings unless requested by staff – even if the elected or appointed official does not say anything, his or her presence implies support, shows partiality, intimidates staff, and hampers staff's ability to do their job objectively.

Never publicly criticize an individual employee

Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the city manager through private correspondence or conversation. Appointed officials should make their comments regarding staff to the city manager or the Mayor.

Do not get involved in administrative functions

Elected and appointed officials must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

Check with City staff on correspondence before taking actions

Before sending correspondence, Council members should check with City staff to see if an official City response has already been sent or is in progress.

Limit requests for staff support

Routine secretarial support will be provided to all Council members.

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Requests for additional support staff – even in high priority or emergency situations – should be made to the city manager who is responsible for allocating City resources in order to maintain a professional, well-run City government.

Do no solicit political support from staff

Elected and appointed officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

3. Elected and Appointed Officials' Conduct with the Public

3(a). In Public Meetings

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evidence on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

Be welcoming to speakers and treat them with care and gentleness. While questions of clarification may be asked, the official's primary role during public testimony is to listen. No qualified speaker will be turned away unless he or she exhibits inappropriate behavior.

Be fair and equitable in allocating public hearing time to individual speakers.

The chair will determine and announce limits on speakers at the start of the public hearing process. Questions should not be asked for the express purpose of allowing one speaker to evade the time limit imposed on all others (e.g., "Was there something else you wanted to say?").

Be an Active Listener

It is disconcerting to speakers to have members not look at them when they are speaking. It is fine to look down at documents or to make notes, but reading for a long period of time or gazing around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as "smirking," disbelief, anger or boredom.

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Maintain an open mind

Members of the public deserve an opportunity to influence the thinking of elected and appointed officials. To express an opinion or pass judgment prior to the close of a public hearing casts doubt on a member's ability to conduct a fair review of the issue. This is particularly important when officials are serving in a quasi-judicial capacity.

Ask for clarification, but avoid debate and argument with the public

Only the chair – not individual members – can interrupt a speaker during a presentation. However, a member can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

If speakers become flustered or defensive by questions, it is the responsibility of the chair to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by members to the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker. Members' personal opinions or inclinations about upcoming votes should not be revealed until after the public hearing is closed.

No personal attacks of any kind, under the circumstances

Members should be aware that their body language and tone of voice, as well as words they use, can appear to be intimidating or aggressive.

Follow parliamentary procedure in conducting public meetings

The city attorney serves as advisory parliamentarian for the City and is available to answer questions or interpret situations according to parliamentary procedures. The chair, subject to the appeal of the full Council or board/commission makes final rulings on parliamentary procedure.

3(b). In Unofficial Settings

Make no promises on behalf of the Council, board/commission, or City

Members will frequently be asked to explain a Council or board/commission action or to give their opinion about an issue as they meet and talk with constituents in the community. It is appropriate to give a brief overview of City policy and to refer to City staff for further information. It is inappropriate to overtly or implicitly promise Council or board/commission action, or to promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

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Make no personal comments about other members

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other members, their opinions and actions.

Remember that despite its impressive population figures, Rochester is a small town at heart

Members are constantly being observed by the community every day that they serve in office. Their behaviors and comments serve as models for proper deportment in the City of Rochester. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by members, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

4. Council Conduct with Other Public Agencies

Be clear about representing the City or personal interests

When representing the City, the Council members must support and advocate the official City position on an issue, not a personal viewpoint. Outside of official board or commission meetings, board and commission members are not authorized to represent the City or their board or commission unless specifically designated by the Council or the board commission to do so for a particular purpose.

When representing another organization whose position is different from the City, the Council members should withdraw from voting on the issue if it significantly impacts or is detrimental to the City's interest. Council members should be clear about which organizations they represent and inform the Mayor and Council of their involvement.

Correspondence also should be equally clear about representation

City letterhead may be used when the Council member is representing the City and the City's official position. A copy of official correspondence should be given to the City Manager to be filed with the Clerk's Office as part of the permanent public record.

City letterhead should not be used for non-City business nor for correspondence representing a dissenting point of view from an official Council position.

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5. Council Conduct with Boards and Commission

The City has established several boards and commissions as a means of gathering more community input. Citizens who serve on boards and commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

If attending a board or commission meeting, be careful to only express personal opinions

Council members may attend any board or commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation especially if it is on behalf of an individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a Council member at a board or commission meeting should be clearly made as an individual opinion and not a representation of the feelings of the entire City Council.

Limit contact with board and commission members to questions of clarification

It is inappropriate for a Council member to contact a board or commission member to lobby on behalf of an individual, business, or developer, and vice versa. It is acceptable for Council members to contact board or commission members in order to clarify a position taken by the board or commission.

Remember that boards and commission serve the community, not individual Council members

The City Council appoints individuals to serve on boards and commissions, and it is the responsibility of boards and commissions to follow policy established by the Council. But board and commission members do not report to individual Council members, nor should Council members feel they have the power or right to threaten board and commission members removal if they disagree about an issue. Appointment and re-appointment to a board or commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A board or commission appointment should not be used as a political "reward."

Be respectful of diverse opinions

A primary role of boards and commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council members may have a closer working relationship with some individuals serving on boards and commissions, but must be fair and respectful of all citizens serving on boards and commissions.

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Keep political support away from public forums

Board and commission members may offer political support to a Council member, but not in a public forum while conducting official duties. Conversely, Council members may support board and commission members who are running for office, but not in an official forum in their capacity as a Council member.

6. Conduct with the Media

Board and commission members are not authorized to represent the City outside of official board/commission meetings unless specifically authorized to do so.

Council members are frequently contacted by the media for background and quotes.

The best advice for dealing with the media is to never go “off the record”

Most members of the media represent the highest levels of journalistic integrity and ethics, and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

The Mayor is the official spokesperson for the City on City positions

The Mayor is the designated representative of the Council to present and speak on the official City position. If an individual Council member is contacted by the media, the Council member should be clear about whether their comments represent the official City position or a personal viewpoint.

Choose words carefully and cautiously

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

C. SANCTIONS

Reporting Staff Behavior

Council members should refer to the City Manager any City staff who do not follow proper conduct in their dealings with Council members, other City staff, or the public.

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Council members Behavior and Conduct

Compliance and Enforcement. The Rochester Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the Rochester City Council, boards and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. The chairs of boards and commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention.

City Council members who intentionally and repeatedly do not follow proper conduct may be reprimanded by the presiding officer or formally censured by the Council, or lose committee assignments.

Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by Council, in compliance with the New Hampshire Revised Statutes Annotated and the City Charter.

Council members should point out to the offending Council member infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor² ³in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Deputy Mayor.

It is the responsibility of the Mayor to initiate action if a Council member's behavior may warrant sanction. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

Board and Commission Members Behavior and Conduct

Counseling, verbal reprimands, and written warnings may be administered by the Mayor to board and commission members failing to comply with City policy. These lower levels of sanctions shall be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor shall be distributed in memo format to the chair of the respective board or commission, the city clerk, the city attorney, the city manager, and the City Council.

² In regards to the Police Commission and School Board, referrals must be made to the Chair of those respective bodies.

³ Any member may refer a violation to the City Attorney's Office if they feel a conflict exists with the Mayor, Deputy Mayor, Chair, or Vice Chair.

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Written reprimands administered by the Mayor shall not be included in packets for public meetings and shall not be publicized except as required under the Right to Know Law.

Any report addressing alleged misconduct by a board or commission member shall be routed through the Office of the City Attorney for review of whether any information is exempt from disclosure (subject to redaction) based on privacy interests authorized under the Right to Know Law.

When deemed warranted, the Mayor or majority of Council may call for an investigation of board or commission member conduct. Should the city manager or city attorney believe an investigation is warranted, they shall confer with the Mayor or Council. The Mayor or Council shall ask the city manager and/or the city attorney to investigate the allegation and report the findings.

The results of any such investigation shall be provided to the full Council in the form of a Report to Council, and shall be placed on the agenda of a noticed public meeting as "Information Only". Any such report shall be made public and distributed in accordance with normal procedures (i.e., hard copies to numerous public locations and posted online). Any report to Council addressing the investigation of board and commission members shall be routed through the Office of the City Attorney for review of whether any information is exempt from disclosure (subject to redaction) based on privacy interests authorized under the Right to Know Law.

It shall be the Mayor and/or the Council's responsibility to determine the next appropriate action. Any such action taken by Council (with the exception of "take no further action") shall be conducted at a noticed public hearing. These actions include, but are not limited to: discussing and counseling the individual on the violations; placing the matter on a future public hearing agenda to consider sanctions; forming a Council ad hoc subcommittee to review the allegation, the investigation and its findings, as well as to recommend sanction options for Council consideration.

D. ASPIRATIONAL PRINCIPLES OF PROPER CONDUCT

Proper conduct IS...

- Keeping promises
- Being dependable
- Building a solid reputation

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- Participating and being available
- Demonstrating patience
- Showing empathy
- Holding onto ethical principles under stress
- Listening attentively
- Studying thoroughly
- Keeping integrity intact
- Overcoming discouragement
- Going above and beyond, time and time again
- Modeling a professional manner

Proper conduct IS NOT...

- Showing antagonism or hostility
- Deliberately lying or misleading
- Speaking recklessly
- Spreading rumors
- Stirring up bad feelings, divisiveness
- Acting in a self-righteous manner

It all comes down to respect

Respect for one another as individuals...respect for the validity of different opinions...respect for the democratic process...respect for the community that we serve

E. CHECKLIST FOR MONITORING CONDUCT

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?
- Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?
- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
- Does my conduct give others reason to trust or distrust me?

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- Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

F. GLOSSARY OF TERMS

Attitude	The manner in which one shows one's dispositions, opinions, and feelings
Behavior	External appearance or action; manner of behaving; carriage of oneself
Censure	A formal statement of disapproval by a board administered to a Member
Civility	Politeness, consideration, courtesy
Conduct	The way one acts; personal behavior
Courtesy	Politeness connected with kindness
Decorum	Suitable; proper; good taste in behavior
Manners	A way of acting; a style, method, or form; the way in which things are done
Point of Order	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
Privilege	Fellow member considers offensive
Propriety	Conforming to acceptable standards of behavior
Protocol	The courtesies that are established as proper and correct
Reprimand	A public expression of disapproval administered to a Member by the presiding officer of a board
Respect	The act of noticing with attention; holding in esteem; courteous regard

G. IMPLEMENTATION

As an expression of the standards of conduct for members expected by the City, the Rochester Code of Ethics and Conduct is intended to be self-enforcing. It therefore becomes most effective

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when members are thoroughly familiar with it and embrace its provisions. For this reason, this document shall be included in the regular orientations for candidates for City Council, applicants to board and commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming they read and understood the City of Rochester Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct shall be annually reviewed by the City Council, boards and commissions, and the City Council shall consider recommendations from boards and commission and update if necessary.

(Adopted:)

Lead Department: Office of the City Manager

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APPENDIX A – Model of Excellence Member Statement

MODEL OF EXCELLENCE

Rochester City Council, Boards and Commissions

MEMBER STATEMENT

As a member of the Rochester City Council or of a Rochester board or commission, I agree to uphold the Code of Ethics and Conduct for Elected and Appointed Officials adopted by the City and conduct myself by the following model of excellence. I will:

- Recognize the worth of individual members and appreciate their individual talents, perspectives, and contributions;
- Help create an atmosphere of respect and civility where individual members, City staff, and the public are free to express their ideas and work to their full potential;
- Conduct my personal and public affairs with honesty, integrity, fairness, and respect for others;
- Respect the dignity and privacy of individuals and organizations;
- Keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit;
- Avoid and discourage conduct which is divisive or harmful to the best interest of Rochester;
- Treat all people with whom I come in contact in any way I wish to be treated;

I affirm that I have read and understood the City of Rochester Code of Ethics and Conduct for Elected and Appointed Officials.

Signature

Date

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Name

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