

**Regular City Council Meeting
December 5, 2023
Council Chambers
6:12 PM**

COUNCILORS PRESENT

Councilor Beaudoin
Councilor de Geofroy
Councilor Desrochers
Councilor Fontneau
Councilor Gilman
Councilor Gray
Councilor Hailey
Councilor Hamann
Councilor Malone
Councilor Larochelle
Deputy Mayor Lachapelle
Mayor Callaghan

OTHERS PRESENT

Katie Ambrose Cox, City Manager
Mark Sullivan, Finance Director
Terence O'Rourke, City Attorney
Peter Nourse, Director of City Services

COUNCILORS ABSENT

*Councilor Berlin

Minutes

1. Call to Order

Mayor Callaghan called the meeting to order at 6:12 PM. *The Mayor, City Manager, City Clerk, and several City Councilors attended the Rochester Christmas Tree Lighting Ceremony at 5:30. The Mayor and Councilor de Geofroy's family assisted with the initial tree lighting.*

2. Opening Prayer

Mayor Callaghan called for a moment of silence.

3. Pledge of Allegiance

Mayor Callaghan led the Pledge of Allegiance.

4. Roll Call

Kelly Walters, City Clerk, called the roll. All City Councilors were present, except for *Councilor Berlin, who recently submitted a letter of resignation. (See *Agenda Item 9.1*)

5. Acceptance of Minutes

5.1 Regular City Council Meeting: November 8, 2023 ***consideration for approval***

Councilor Lachapelle **MOVED** to **ACCEPT** the November 8, 2023, Regular City Council meeting minutes. Councilor Hamann seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

6. Communications from the City Manager

Katie Ambrose, City Manager, announced that the Inauguration for the Mayor, City Council, School Board, Police Commission, and Election Officials, shall take place on January 2, 2024, at 6:00 PM in the Rochester Opera House.

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**
 - Change Order, Strafford Square Roundabout – S.U.R.
 - ARPA Grant Agreement - Water Treatment Facility
 - Change Order, City Hall/Opera House Egress – Careno
- **Economic Development**
 - FY23-24 CAP Weatherization – Elizabeth St
 - FY23-24 CAP Weatherization – S. Elderberry
 - FY23-24 CAP Weatherization – Whispering Winds
 - FY23-24 CAP Weatherization – Nola Ave
 - FY23-24 CAP Weatherization – Joshua St
 - FY23-24 CAP Weatherization – Reagan Dr
 - FY23-24 CAP Weatherization – Cattail

The following Standard Report has been enclosed:

- Personnel Action Report Summary

7. Communications from the Mayor

Mayor Callaghan congratulated Judge Melissa Countway, who is currently a Rochester Circuit Court Judge, on her nomination to be appointed as a Supreme Court Judge.

Mayor Callaghan thanked the Greater Rochester Chamber of Commerce, City of Rochester, and volunteers who worked on the Christmas Holiday Parade.

Mayor Callaghan thanked the Menzel family for the large Christmas Tree, which they planted back in 1984. The tree is over 30 feet tall.

Councilor Fontneau addressed the City Council about the need for a new Strafford County nursing home facility. He announced that there is a public hearing on the matter on December 7, 2023. He encouraged City Councilors and residents to contact the State Legislators about this important project. He spoke briefly about the poor condition of the current facility and how the County Administrator proposes to pay for the new facility.

8. Presentation of Petitions and Council Correspondence

No discussion.

9. Nominations, Appointments, Resignations, and Elections

9.1. Resignation: Dana Berlin, City Council Ward 6, Seat A ***consideration for approval***

Councilor Lachapelle **MOVED** to **ACCEPT** the resignation of Dana Berlin, City Council -Ward 6 -Seat A, with regret. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

9.2. Resignation: Michael Scala, Ward 6 Selectman ***consideration for approval***

Councilor Lachapelle **MOVED** to **ACCEPT** the resignation of Michael Scala, Selectman, Ward 6, with regret. Councilor Hamann seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Gray **MOVED** to **AMEND** the Agenda to address the following Agenda Item:

13.3 Item Councilor Gray Agenda Item: City Council Ward 6, Seat A vacancy *discussion*

Councilor Gray said this agenda item impacts the representation of

the citizens living in Ward 6. Councilor Hainey second the motion. Mayor Callaghan called for a vote on the motion. The **MOTION FAILED** by a roll call vote of 5 to 7. Councilors Beaudoin, Hainey, Gray, Gilman, and Fontneau voted in favor of the motion. Councilors de Geofroy, Hamann, Desrochers, Lachapelle, Malone, Larochelle, and Mayor Callaghan voted against the motion.

Councilor Gray requested/**motioned** to discuss another matter that he felt is related to resignations and elections. He said the City Councilors received an email from the City Attorney, regarding communications he received questioning the qualification/eligibility of a current City Councilor. Councilor Gray felt the discussion fits under the current agenda item (nominations, appointments, resignations, and elections). Councilor Beaudoin offered a second to the motion. Mayor Callaghan called for a roll call vote. Councilor Larochelle asked for clarification on the motion. Councilor Gray **clarified the motion** is to gather more information regarding the details behind an email communication sent to the City Council this afternoon from the City Attorney regarding the eligibility of one of the current City Council members. He gave reasons why he felt this was an appropriate matter to discuss under this portion of the agenda. Councilor Desrochers requested a point of order due to the topic being discussed not appearing as an agenda item.

Councilor Lachapelle stated that he had not checked his email this afternoon; however, he felt it seemed more appropriate to discuss this matter in a non-public session. He believed this topic would fall under "other," which is not on the agenda.

Councilor Gray disagreed and requested more information about the incident, which the City Attorney had already deemed unfounded (*no violation of the City Charter*). Councilor Gray admitted that he does not always agree with the City Attorney's opinions and said there is no protection under RSA 91-A for this discussion to take place under an executive session.

Councilor de Geofroy gave reasons why this motion could only be made to "amend" the agenda. Councilor Desrochers agreed.

Mayor Callaghan explained the situation to the City Attorney, who was not in the Chambers during the start of the discussion. Attorney O'Rourke explained that the correspondence falls under Attorney/Client privileged information and that it will not be discussed in a public session. Councilor Gray reiterated to the City Attorney reasons he felt this was an appropriate discussion to take place under the current agenda item.

Councilor Hainey called for a point of order. She said it seems a motion has been made by Councilor Gray and seconded by Councilor Beaudoin and a vote must be taken at this point. She said the motion was to discuss the email and to place it on the agenda. Councilor de Geofroy stated that the motion did not include adding this email correspondence to the agenda, but rather to argue that the discussion “fits” under this portion of the current agenda.

Councilor Gray withdrew his previous motion. Councilor Beaudoin withdrew his second to the motion. Councilor Gray **MOVED** to **AMEND** the agenda to include a discussion of the email correspondence related to the qualifications of a current member to be eligible to continue to serve on the City Council. Councilor Beaudoin seconded the motion. The City Council briefly debated the matter.

Mayor Callaghan called for a vote on the motion to amend the agenda. The **MOTION FAILED** by a roll call vote of 4 to 8. Councilors Hainey, Gray, Gilman, and Beaudoin voted in favor of the motion. Councilors Malone, Fontneau, Larochelle, de Geofroy, Desrochers, Hamann, Lachapelle, and Mayor Callaghan voted against the motion.

10. Reports of Committees

10.1. Finance Committee

10.1.1 Resolution Authorizing Supplemental Appropriation of \$45,000 to the Recreation Special Events Fund – Lilac Family Fun Festival *first reading and refer to public hearing 12/19*

Mayor Callaghan read the resolution by title only as follows and referred the matter to a Public Hearing to be held on December 19, 2023:

Resolution Authorizing Supplemental Appropriation of \$45,000 to the Recreation Special Events Fund-Lilac Family Fun Festival

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

That the sum of Forty-Five Thousand Dollars (\$45,000.00) is hereby appropriated to the Recreation Special Events Fund for the purpose of

paying costs associated with the annual Lilac Family Fun Festival. Advanced appropriation is needed in order to prepay costs associated with the event. The entirety of the supplemental appropriation shall be derived from the General Fund Unassigned Fund Balance.

The City of Rochester Recreation Department shall manage the use of funds under the City's established purchasing policies. Funds shall be expended solely on the annual Lilac Family Fun Festival event. Eligible uses of funds shall be for fireworks, various entertainment activities, and other miscellaneous expense pertinent to assuring a safe and successful community event.

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

10.1.2 Resolution Authorizing the Repurposing of One Million Five Hundred Thousand Dollars (\$1,500,000.00) of ARPA Funds *first reading and consideration for adoption*

Mayor Callaghan read the resolution by title only as follows:

Resolution Authorizing the Repurposing of One Million Five Hundred Thousand Dollars (\$1,500,000.00) of ARPA Funds

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

The City hereby repurposes One Million Five Hundred Thousand Dollars (\$1,500,000.00) of ARPA funds appropriated for the Water Transmission Main Relining Project to the Salmon Falls Booster Pump Station Rehabilitation Project.

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 Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Fontneau seconded the motion.

Mayor Callaghan requested that Peter Nourse, Director of City Services, give a brief statement regarding how that money would be repurposed.

Mr. Nourse explained that DPW received \$2,000,000 of American Rescue Plan Act (ARPA) Funds back in 2021 to be used for a specific water related project. He gave details of the initial pre-work completed on the project; however, it was discovered that the water pipeline is in good condition and does not need to be re-lined. He said the project is near completion and there will be approximately \$1,500,000 of remaining ARPA Funds. He explained that the request is to repurpose those funds to support a different water project, the Salmon Falls Booster Pump Station Rehabilitation Project and gave details of the need to rehabilitate that pump station. He said utilizing the ARPA Funds would contribute to the completion of that project.

Mayor Callaghan called for a vote on the motion. The **MOTION CARRIED** by a unanimous voice vote.

10.2 Planning Board

No discussion.

10.3 Public Works

10.3.1 Committee Recommendation: To approve the FY24 proposed paving list consideration for approval

Councilor Hamann **MOVED** to **APPROVE** the Committee's recommendation to approve the FY 24 proposed paving list. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

11. Old Business

11.1. Amendment to Chapter 7-83 of the General Ordinances of the City of Rochester Regarding the

Code of Ethics and Conduct for Elected and Appointed Officials – Board of Ethics *second reading and consideration for adoption*

Mayor Callaghan read the resolution by title only for a second time. The Amendment as further amended (highlighted in yellow) is as follows:

Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Code of Ethics and Conduct for Elected and Appointed Officials

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

ARTICLE XI

Code of Ethics and Conduct for Elected and Appointed Officials

§ 7-83 Board of Ethics.

- A. A Board of Ethics ("BOE") is hereby created. This BOE shall consist of three (3) persons: one member shall be appointed by the Mayor from the City Council, one member shall be appointed by the Chair of the School Board from the School Board, and one member shall be appointed by the Chair of the Police Commission from the Police Commission.
- B. Each BOE Member selected is required to serve unless the BOE Member is the subject of the Complaint, has a conflict of interest, or is excused due to unavailability or exceptional causes (such as a health issue).
- C. The BOE Members shall elect a chairperson and the BOE may adopt such rules for the conduct of its business as it sees fit. The BOE shall have the power to draw upon City departments for reports and information and stenographic and clerical help.

§ 7-84 Ethics Investigation Officer.

- A. The position of Ethics Investigation Officer ("EIO") is hereby

created. The City Manager shall have the power to identify and retain an EIO, with approval from the BOE, to assist with the investigation and prosecution of any Complaint which has been referred for investigation. The EIO, with approval of the BOE, shall have sufficient experience and training to conduct the investigation.

§ 7-85 **Complaints, Investigations, and Hearing.**

A. Complaint Requirements. Any City official may submit a written complaint alleging one or more violations of the Code of Ethics and Conduct for Elected and Appointed Officials ("Ethics Code"). Such complaint must be based on personal knowledge, and set forth facts with enough specificity and detail for a determination of sufficiency for investigation. The Written Complaint must be signed under oath. The Complaint shall be delivered to the City Attorney with a copy to the Mayor and City Clerk. The City Attorney shall promptly provide a copy of the Complaint to the Charged Party.

B. Review for Sufficiency.

1. A Review for Sufficiency of the Complaint will be completed within thirty (30) days of receipt. This review will be based on the allegations contained in the Complaint and the immediately available public meetings or records referenced in the Complaint.

2. ~~The City Attorney, Mayor, and City Manager in the case of a City Board, the City Attorney, Mayor, and Superintendent in the case of the School Board, or the City Attorney, Mayor, and Police Chief in the case of the Police Commission shall conduct the Review of Sufficiency, except in cases in which the Mayor is the subject of the Complaint.~~ **The City Attorney, Mayor, and Superintendent in the case of a City Board, the City Attorney, Mayor, and Police Chief in the case of the School Board, or the City Attorney, Mayor, and City Manager in the case of the Police Commission shall conduct the Review of Sufficiency.** Complaints against the Mayor, School Board Chair, or Police Commission Chair shall be reviewed by the City Attorney and the Deputy Mayor, School Board Vice Chair, or Police Commission Vice Chair, respectively.

3. If the Complaint is deemed insufficient, the Complainant will be notified in writing of that decision with a copy provided to the Charged Party. A Complaint will be deemed sufficient if it is determined that the Complaint establishes on its own that it is

more probable than not that a violation of the Ethics Code may have occurred.

4. If the Complaint is deemed sufficient for further investigation, it shall be referred to the EIO for further action and all parties will be notified of this step through communication in writing.

- C. Investigation Phase. The EIO shall be provided the full cooperation of the City government to conduct such investigation as may be necessary to determine whether any violation may have occurred and next steps. The Charged Party shall have an opportunity to provide a response to the Complaint.

The EIO's investigation shall be completed within forty-five (45) days of the date of referral unless the Charged party and the Chair of the BOE mutually agree to a longer period.

The EIO shall provide a written report with the conclusions reached in the completed investigation to the BOE. The EIO shall provide a non-binding recommendation as to the disposition of the Complaint to the BOE. Thereafter, all action with regard to the Complaint shall be taken by the BOE.

- D. Board of Ethics Hearing.

1. The BOE shall take no further evidence on any Complaint, but shall make its determination based upon the report received by the EIO. However, the BOE shall hold at least one (1) public hearing at which the EIO, the Complainant, and the Charged Party shall be afforded an opportunity to present oral and written argument to the BOE. The BOE may hear from such other and further parties as it determines appropriate.

2. Any party may be represented by legal counsel at his or her own expense at any stage of proceedings related to the Ethics Code.

3. The BOE shall issue a written decision within thirty (30) days of the final public hearing with findings and a disposition, dismissal, or referral for further action if a violation found. If a violation has been found, the BOE shall recommend a sanction or penalty and refer the matter to the City Council, School Board, or Police Commission for disposition, sanction, or other action as set forth in the Ethics Code.

§ 7-86 **Conflict Between Ethics Code and this Article.** To the extent a conflict arises between the Ethics Code and this Article, this Article shall prevail.

Amendments are effective on January 1, 2024.

Councilor Lachapelle **MOVED** to **ADOPT** the amendment. Councilor Desrochers seconded the motion. The City Council debated whether to vote on this amendment due to this being the last Regular City Council meeting of the current City Council (term ends January 1, 2024). It was stated that the substance of the amendment would greatly impact the newly elected City Councilors.

Councilor Gray **MOVED** to **TABLE** the motion to a time certain (*January Regular City Council meeting*). The City Council debated the validity of the motion based on the understanding that this is the last Regular meeting of the current City Council's term of Office. The **MOTION FAILED** by a roll call vote of 5 to 7.

Councilor Lachapelle **MOVED** to **AMEND** the motion as follows:

- 2 ~~The City Attorney, Mayor, and City Manager in the case of a City Board, the City Attorney, Mayor, and Superintendent in the case of the School Board, or the City Attorney, Mayor, and Police Chief in the case of the Police Commission shall conduct the Review of Sufficiency, except in cases in which the Mayor is the subject of the Complaint.~~ **The City Attorney, Mayor, and Superintendent in the case of a City Board, the City Attorney, Mayor, and Police Chief in the case of the School Board, or the City Attorney, Mayor, and City Manager in the case of the Police Commission shall conduct the Review of Sufficiency.** Complaints against the Mayor, School Board Chair, or Police Commission Chair shall be reviewed by the City Attorney and the Deputy Mayor, School Board Vice Chair, or Police Commission Vice Chair, respectively.

Councilor Desrochers seconded the motion. There was confusion on how the motion would appear in writing because of the verbal communication, which did not clarify the second sentence of the paragraph. The City Attorney clarified the motion. Councilor Lachapelle **restated the motion** as follows: Under § 7-85 B 2 to replace the first sentence (*as shown correctly above*) and to leave the second sentence of the paragraph as it original appears, *which is also shown correctly above*. Councilor Gray requested to see the amendment in writing. See

Addendum A (*The City Clerk restated the amendment aloud. The City Clerk added the words "first sentence" to further clarify the motion.*) The **MOTION** to **AMEND** the Amendment **CARRIED** by a roll call vote of 7 to 5. Councilors de Geofroy, Larochele, Lachapelle, Hamann, Desrochers, Malone, and Mayor Callaghan voted in favor of the motion. Councilors Gilman, Gray, Hailey, Fontneau, and Beaudoin voted against the motion.

The City Council continued to debate the motion. Mayor Callaghan called for a vote on the motion. The **MOTION CARRIED** by a roll call vote of 7 to 5. Councilors Hamann, Desrochers, Malone, Larochele, de Geofroy, Lachapelle, and Mayor Callaghan voted in favor of the motion. Councilors Gilman, Fontneau, Gray, Hailey, and Beaudoin voted against the motion.

11.2. Amendments to Chapter 223 of the General Ordinances of the City of Rochester regarding Streets and Sidewalks *second reading and consideration for adoption*

Mayor Callaghan read the Amendment by title only for a second time (*See Addendum B*)

Councilor Lachapelle **MOVED** to **ADOPT** the Amendment. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

12. Consent Calendar

No discussion.

13. New Business

13.1. Resolution Deauthorizing \$1,305.59 of the Rochester Police Department Highway Safety Mobilization Grant *first reading and consideration for adoption*

Mayor Callaghan read the resolution for a first time by title only:

Resolution Deauthorizing \$1,305.59 of the Rochester Police Department Highway Safety Mobilization Grant

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

That One Thousand Three Hundred Five and 59/100 Dollars (\$1,305.59) of funds previously appropriated to the Rochester Police Department as part of the Highway Safety Mobilization Grant are hereby deauthorized.

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.

Councilor Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Hamann seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

**13.2. Amendment to Chapter 7 of the General Ordinances
of the City of Rochester Regarding the Capital
Improvements Program Committee *first reading and
consideration for adoption***

Mayor Callaghan read the Amendment by title only as follows:

**Amendment to Chapter 7 of the General Ordinances of the City of
Rochester Regarding the Capital Improvements Program
Committee**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

§ 7-38. Capital Improvements Program Committee.

A. Purpose. This section is established by the Rochester City Council pursuant to RSA 674:5. The purpose of the Capital Improvements Program Committee (or "the Committee") is to aid the City Council and City Manager in their consideration of the annual budget.

B. Functions of the Committee. The Capital Improvements Program Committee is charged to review submittals to the City's Capital Improvements Program in relation to the City's Master Plan and growth goals. The Committee's review is subject to the following procedure:

- (1) At such time the City Manager requests, each officer or Director of a Department shall submit an itemized request for capital projects for the departments or activities under its control.
- (2) Each capital request shall be for an item \$10,000 or greater in value and with at least a 10 year lifespan.
- (3) Each capital request shall be submitted using the Capital Projects Request form and explain how the project meets the evaluation criteria established by the Committee.
- (4) The Capital Improvements Program Committee shall score the proposals based upon the evaluation criteria. All scoring is submitted to the Planning Department to tabulate the ranking.
- (5) At the Committee's meeting to review and discuss the ranking the Committee as a whole may make changes to the ranking for reason stated in the final report to the Planning Board. The Committee may not rescore, only amend the ranking.
- (6) The Committee's Final Ranking Report shall be submitted to the Planning Board. The Planning Board may review scoring and change rankings based on knowledge of development patterns and the Master Plan. The Planning Board may not rescore, only amend the ranking.
- (7) A Final Ranked Project report of projects is submitted to the City Manager for recommendation to inform the proposed budget to the City Council.

C. Structure of the Committee.

- (1) Composition. The Capital Improvements Program Committee shall consist of eight members, all of whom shall be regular voting members. The composition of the Committee shall be as follows:
 - (a) Three members from the Planning Board
 - (b) Three members from City Council
 - (c) Two members at large – appointed by the City Manager with the approval of the City Council
- (2) Appointments. The members of the Committee shall be appointed pursuant to Section 74 of the City Charter for terms of two years.

D. Administration.

- (1) Meetings and activities. The Committee shall meet as needed and shall prepare a report and recommendation to the City Manager in accordance with the specified budget preparation process and schedule.

- (2) Bylaws. The Committee may adopt bylaws to govern its operation.
- (3) City and state law. The Committee shall be regulated by all applicable City and state laws.
- (4) Staffing and resources. The City of Rochester will provide staffing and other support to the Capital Improvements Program Committee, as appropriate, subject to availability of staff resources.

Amendments are effective upon passage.

Councilor Lachapelle **MOVED** to **ADOPT** the resolution. Councilor Desrochers seconded the motion.

Shanna Saunders, Director of Planning and Development, gave an overview of the proposed Amendment to the City of Rochester General Ordinances related to creation of the Capital Improvements Program Committee and its bylaws.

Councilor Beaudoin wished to clarify that all proposed CIP requests would remain on the list for the City Council to review regardless of how the projects are prioritized by the CIP Committee. Ms. Saunders replied that is correct.

Councilor Beaudoin asked if the Department Heads would still take questions from the full City Council during the budget cycle regarding various CIP Items. Ms. Saunders said the bulk of questions should be vetted through this new CIP Committee process, which will be broadcast; however, the Department Heads would still take questions during the City Council review of CIP items.

Katie Ambrose, City Manager, said the Finance Committee started discussing the CIP process last year for reasons resulting from the previous budget cycle. She said the Planning Board has been discussing this idea and how to formulate this change in process moving forward. The goal is to incorporate the City's Master Plan into the CIP Program. She said the Committee would give the report to the City Manager. The City Manager would then have more information regarding which CIP projects to present to the City Council in her proposed budget. She said the presentation of CIP projects would largely occur during the CIP Committee meetings.

Councilor de Geofroy asked if the reports including the individual reports/ranking scores would be available to the City Council with budget materials. Ms. Saunders recalled that the individual scores would be confidential; however, the final report of scores would be available. She

explained the complexity of ranking some of the CIP projects based on the City's Master Plan criteria; however, the Committee does have the ability to re-prioritize overall City Projects regardless of scores.

Councilor Gray gave reasons why he believed that the individual ranking sheets should be discoverable under RSA 91-A. Ms. Saunders agreed to look into the legal aspects of RSA 91-A as it relates to disclosure of the individual ranking sheets.

Councilor Gray said it will be challenging to have members serve on the Committee with the required time commitment. Ms. Saunders replied that three Planning Board members have already stated their interest in serving on the CIP Committee. She said the proposed weekly meeting schedule starts on January 11, 2024, and ends on February 29, 2024. Once the ranking/prioritizing of CIP Projects is completed, the Committee would disband until the next budget cycle.

Councilor Beaudoin asked for clarification on the process. City Manager Ambrose explained that the confusion is between the separation from the CIP Program and the CIP Budget, to which there is some overlap. The Committee is tasked with ranking the criteria for the individual projects and the prioritizing of such projects to be funded; however, the Committee is not crafting the CIP Budget. She said the Committee is generating recommendations on the CIP Program for the City Manager to review.

Councilor Gray stated that he interprets the State Law differently. He explained that the State Law gives the Planning Board certain rights to be able to comment on the CIP Process/projects. He gave a brief history of the changes in Rochester and of how much input the Planning Board should contribute to the City Council. He said State Law mandates that the City Council make all final decisions on the CIP Budget.

Mayor Callaghan called for a vote on the motion. The **MOTION CARRIED** by a majority voice vote.

13.3. Councilor Gray Agenda Item: City Council Ward 6, Seat A vacancy *discussion*

Councilor Gray stated that two current City Councilors were seated early during the current City Council term, which term ends on January 2, 2024. He gave a brief history of other related vacancies and how they were filled. He reiterated that the topic should have been discussed earlier in the meeting when he previously proposed a motion.

Councilor Desrochers questioned how many meetings this Councilor-Elect would be serving and questioned if they would be ready to serve. Mayor Callaghan replied that the City Councilor-Elect would be serving at the next City Council Workshop on December 19.

Councilor Lachapelle outlined the process for declaring a City Council Seat vacant and the process of the election thereof. He said this is a unique situation because the resignation for the vacant seat was received after the Municipal Election. He said there is not enough time to declare a seat vacant and elect a replacement. City Attorney O'Rourke agreed.

City Clerk Walters gave an opinion as follows: The City Charter is set up to fill a vacancy during the term of office until the Municipal Election and the second part of the process happens after the Municipal Election, when the City Councilor-Elect fills the seat for the remainder of the unexpired term.

Councilor Beaudoin gave reasons he felt the City Councilor-Elect should be sworn into office immediately. Councilor Fontneau agreed and said if there is no violation of the City Charter in doing so, he would make a motion to seat the Councilor-Elect at this time.

Councilor Desrochers stated that there is a clear gap in the City Charter and that the next City Council should be tasked with proposing a correction moving forward. She said there is not enough time to proceed through the appointment process currently in place.

Councilor de Geofroy said the situation seems trivial with only one meeting left; however, if the City Charter does not prevent the City Council action of appointing the City Councilor-Elect, he felt it would be okay to proceed.

Mayor Callaghan agreed and suggested that Councilor-Elect Matthew Richardson should be sworn into office without a vote of the City Council because the Municipal Election declared him the winner. City Attorney O'Rourke gave reasons why he disagreed. The City Council continued to debate the matter.

Councilor Fontneau **MOVED** to **REAFFIRM** the appointment of City Councilor-Elect Matthew Richardson to fill the unexpired term of the Ward 6 Seat A seat, which expires January 2, 2024. The **MOTION CARRIED** by a roll call vote of 11 to 1. Councilors Desrochers, Gray, Hamann, de Geofroy, Beaudoin, Hainey, Gilman, Malone, Fontneau, Larochelle, and

Mayor Callaghan voted in favor of the motion. Councilor Lachapelle voted against the motion. It was determined that Matthew Richardson would be sworn into office at the City Clerk's Office.

14. Non-Meeting/Non-Public Session

15. Adjournment

Mayor Callaghan **ADJOURNED** the Regular City Council Meeting at 7:23 PM.

Respectfully Submitted,

Kelly Walters, CMC
City Clerk

PLEASE MAKE A MOTION TO AMEND TO REPLACE §7-85. B. 2 WITH THE FOLLOWING:

2. The City Attorney, Mayor, and Superintendent in the case of a City Board, the City Attorney, Mayor, and Police Chief in the case of the School Board, or the City Attorney, Mayor, and City Manager in the case of the Police Commission shall conduct the Review for Sufficiency.

Please note: The City Clerk was asked to restate the motion by adding the words "first sentence," for a motion which reads as follows: MAKE A MOTION TO AMEND TO REPLACE THE FIRST SENTENCE OF 7-85.B.2 WITH THE FOLLOWING (followed by the above listed verbiage)

Addendum B

§ 223-1

§ 223-5

ARTICLE I General Regulations

§ 223-1. Definitions.

The following definitions shall be applicable for the purpose of this article:

BEST MANAGEMENT PRACTICE- (BMP): A device, practice, or method used to manage stormwater runoff by controlling peak runoff rate, improving water quality and managing runoff volume.

CLASS, CLASSIFICATION (Highway) – The legislative classification of highways per State statute, RSA 229:5.

DEPARTMENT OF PUBLIC WORKS - (Department). The City department which has the direct responsibility to operate, maintain and improve the public highway and sidewalk and related infrastructure of the City.

DEPARTMENT STANDARDS – The technical standards promulgated by the Department which prescribe the materials, devices, construction methods, trade coordination , appurtenances and operations of highway, sidewalk and related infrastructure.

E911 COMMITTEE – The Enhanced 911 (E911) Addressing Committee of the City of Rochester. A body with the purpose of ensuring the City adopts and maintains the state standards of addressing. This provides for a comprehensive and uniform system of naming and addressing throughout the City. Such body shall liaise with the State E911 Unit within the Division of Emergency Services and Communications.

FEDERAL HIGHWAY ADMINISTRATION – A division of the United States Department of Transportation that specializes in highway transportation. The agency supports state and local governments in the design, construction, and maintenance of the nation's highway system.

HIGHWAY (PUBLIC) – The term used herein in reference to streets, roads and roadways and the term that is used to classify roads in accordance with RSA 229:5. . As defined in RSA 229:1. City public highways are highways laid out in the mode prescribed per state statute, or roads which have been constructed for public travel over land which has been dedicated to public use and accepted by the City, or roads which have been used for public travel, other than travel to and from a toll bridge or ferry, for 20 years prior to January 1, 1968. Including the bridges thereon. Highway shall include pavement and drainage features and may include sidewalks and pedestrian facilities.

HIGHWAY (Class IV) – As defined in RSA 229:5, Class IV highways shall consist of all public highways within the compact sections of the City and are portions of State highways for which the City is responsible to maintain.

HIGHWAY (Class V) – As defined in RSA 229:5, Class V highways consist of public highways other than Class IV and Class VI which the City has a duty to maintain. Most public highways in the City are Class V.

HIGHWAY (Class VI) - A public highway in which the City has no statutory authority to maintain but does have statutory authority to regulate travel, excavation, disturbance, abutting property improvements,

driveways and wight limits thereon. Class VI highways are created through a layout, a discontinuance subject to gates and bars, or by the City's failure to maintain and repair such highway in suitable condition for travel thereon for five successive years or more. (RSA 229:5, 231:21, 231:21-a, 231: 45, 231:93, 231:191, 236:9-11, 236:13, RSA 674:41).

HIGHWAY (Private) - A highway that is not a public way and may consist of driveways or easements on private property. The City shall regulate the portions of such highways within the public right of way but has no responsibility to maintain such a highway unless such a highway is declared an Emergency Lane per RSA 231:59-a. The City may require certain construction features of such highway to be maintained by its private owner(s) for emergency services.

INSTITUTE OF TRANSPORTATION ENGINEERS – A trade association of transportation professionals including, transportation engineers, transportation planners, consultants, educators, technologists, and researchers which provides technical guidance to the Federal Highway Administration and communities.

INSUFFECIENCY- For a highway or sidewalk is defined per RSA 231:90, as a case where it is not passable in any safe manner by those persons or vehicles permitted on such highway or sidewalk by state law or by any more stringent local ordinance or regulation: or there exists a safety hazard or impassibility which is not reasonably discoverable by a person who is traveling upon such highway at posted speeds or upon such sidewalk and in a manner which is reasonable and prudent as determined by the condition and stat or repair of the highway or sidewalk. An insufficiency shall not be the result of the City's failure to construct , maintain or repair it to the same standard as another highway or sidewalk, or to a level of service commensurate with its current level of public use.

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) – Issued by the Federal Highway Administration, the purpose of the MUTCD is to set minimum standards for all Traffic Control Devices used on U.S. roads and highways. Traffic Control Devices (TCD) include all road signs, highway markings, electronic traffic signals, railroad crossings, and road-way construction zone areas.

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES – The primacy agency for the state which administers environmental regulation.

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION – The State agency with statutory authority to plan, develop and maintain State highway and related infrastructure.

OFF HIGHWAY RECRETIONAL VEHICLE (OHRV) Use of public Highways. As defined in RSA 215-A-1 VI as any mechanically propelled vehicle used for pleasure of recreational purposes running on rubber tires, tracks, or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ices or snow or not, where the operator sits in or on the vehicle. OHRV's do not include snowmobiles.

REVISED STATUTES ANNOTATED (RSAs cited herein generally are from XX Transportations: Title 231 Cities, Towns and Village District Highways, and Title 236 Highway Regulation, Protection and Control Regulations.

RIGHT OF WAY – A public easement for travel placed across property which may be owned by a

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municipality or privately, for which usually contains a public highway. The easement is held in trust by the government for the use of the public.

SNOWMOBILE – As defined by RSA 215-C as any vehicles propelled by mechanical power that is designed to travel over ice or snow supported in part by skis, tracks or cleats. Such vehicles may be no more than 54” in width and no more than 1200 pounds in weight.

§ 223-2. Regulations of Use of Highways.

The City Council shall regulate the use of all public highways, sidewalks and commons in the City and may exercise all the powers conferred (RSA 47:17).

§ 223-3. Standard of Care.

The City's liability for damages in an action to recover for personal injury or property damage arising out of its construction, maintenance, or repair of a public highway or sidewalks shall only be considered if an such injury or damage was the result of an insufficiency (RSA 231:91, 231:92, 231: 92-a). The City is not responsible to implement corrective actions to improve pedestrian and motor vehicle travel or safety on highways and access between highways and abutting private property where prudent attention of the travelling public is otherwise required for safe travel or footing (RSA 231:90).

§ 223-4. Prohibiting Use of Highways.

The Department may make rules and regulations prohibiting the use of any or all highways to such vehicles as he/she may prescribe in order to prevent the use of said highways when said highways are unsuitable for travel thereon, or when such highways may be damaged under certain circumstances regarding condition and/or types of vehicles which may travel thereupon. Such rules and regulations shall be posted on each highway so regulated and at two other public places in the City. Any person violating the provisions of such posted rules and regulations shall be subject to a fine not more than five hundred dollars (\$500.) and shall be liable for all damage occasioned thereby (RSA231:190; 231:191).

§ 223-5. Oversized and Overweight Loads on Public Highways.

In general oversized and overweight loads on City highways shall be regulated by and routed by the New Hampshire Department of Transportation in accordance with RSA 41:11. Oversized and/or overweight carriers shall prescribe to all such regulation, routing and requirements. Restrictions may include "No Through Truck" zones. Heavy vehicles shall comply with the weight restrictions of RSA 266:18. The Department may require special permits for oversized and overweight loads that may not be regulated by the New Hampshire Department of Transportation.

§ 223-6. No Through Trucks Zones.

The City may restrict travel of trucks, classes 5 and above as defined by the Federal Highway Administration from segments of any public highway. Such restrictions shall not apply to terminal sources and destinations such as retrieval and delivery points. Non-compliance violations may be issued (RSA 41:11).

§ 223-7. Highway Damage and Obstructions.

Parking or loading, vending or servicing of vehicles shall not take place in the public right of way. Items including but not limited to permanent or portable buildings, signs, lights, basketball hoops, hockey goals, blinds or other sports structures, signs, lights, displays, fuel tanks or septic systems shall not be permitted on, over, or under public highways to include any Class IV or Class VI highways.

Temporary obstructions on highways, sidewalks or in public parking areas for purposes not limited to building construction, rehabilitation or utility maintenance shall only be approved through a permit issued by the Department. All measures required to protect public safety shall be at applicant's expense. Such permits will be issued if such requested conditions are deemed not to be adverse to public travel. Any damage sustained shall be repaired at the offender's expense and the Department shall have the right to require adequate surety for restoration purposes.

No obstructions shall be placed onto the highway or sidewalks which may cause any defect, insufficiency or want of repair which renders it unsuitable for public travel or affects its integrity or operation or affects the vision of the travelling public as determined by the Department. No person shall cover a fire hydrant with snow, ice or any debris. Violators are subject to misdemeanor (RSA 236:21).

The Department shall have full authority to remove obstructions. Persons placing obstructions onto the highway or sidewalks or damaging guardrails, signs, traffic controls, bridge or markers shall be guilty of a violation or misdemeanor. Such person shall be liable for injuries sustained and damages made (RSA 236:39, 236:38, 236:32, 236:29, 236:28, 236:8).

Any person erecting or continuing any building, structure or fence which interferes with, hinders or obstructs public travel shall be guilty of a violation (RSA 236:16).

Any non-public access or private frontage to a public highway that becomes or may become a potential threat to the integrity of the highway or its surface, ditches, embankments, bridges, or other structures, or a hazard to the safety of the traveling public, by reason of siltation, flooding, erosion, frost, vegetative growth, improper grade or the failure of any culvert, traffic control device, drainage structure, or any other feature, shall have issued to its owner a notice of correction by the Department. If such order does not result in a cure of the situation, the Department may implement corrective action and owner shall be civilly liable for costs in such corrective action (RSA 236:39, 236:38, 236:32, 236:29, 236:19).

Abutters to public highways shall not alter the ground along their frontage within the right of way to include addition of pavement, plantings or ditches. Driveway aprons may be installed or modified per the conditions of §223-19.

§223-8. Obstruction of sidewalks.

No person shall unnecessarily place any obstruction on any foot pavements or sidewalks. No person shall be permitted to construct a ramp up to and across the sidewalk adjacent to his/her property or place any other obstructions thereon without first securing a permit from the Department to do so. Snow and ice shall not be placed onto sidewalks. No person shall traverse sidewalks with motorized vehicles. Any modifications to sidewalks to accommodate ingress

and/or egress by motorized vehicles shall be restored by the responsible party to the satisfaction of the Department.

§ 223-9. Authorized Seasonal Periods of Work Within Right of Way.

Construction, maintenance and repair work of highways, sidewalks and appurtenant infrastructure within the right of way will normally be conducted by the City from April 1 – November 30 unless deemed an emergent need as determined by the Department. The same period shall apply for similar work on private infrastructure that may in the future be considered for acceptance by the City.

§ 223-10. Reserved.

§ 223-11. Excavation on Highways, Right of Ways and Pavement Disturbance Moratorium.

For a period of five years, beginning with the date of completion of the final paving of a public highway relating to the construction, maintenance overlay or reconstruction of said highway, no person, firm or corporation of any agent or thereof shall excavate or disturb the paved or traveled portion of the highway in the City of Rochester at any time, except for emergencies as may be deemed necessary solely by the Department then only upon the posting by such entity of sufficient security, as determined by the Department and the agreement of such entity, to pay the cost of restoring such highway of way to its original condition. Such period shall be the pavement disturbance moratorium.

Excavations to the highway within the period of the pavement disturbance moratorium shall require majority vote of the City Council approval. Such requests shall be furnished to the Department through the permit application process. The Department shall review and either recommend approval or disapproval to the City Council.

An excavation permit shall be required for all earth disturbances within the right of way including to pavement, sidewalks and any transportation facilities. The permittee shall detail all aspects of the work including safety and traffic control measures.

The permittee shall be the contractor of record executing the work.

Permits will not normally be issued between December 1st and March 31st unless determined solely by the Department to be an urgent need.

Permits that have been authorized but where work has not commenced shall expire on December 31st of the year issued. In such cases a new permit and application fee shall be required for the original proposed work.

Excavation activities shall not occur on Fridays, weekends or designated holidays without the prior written approval of the Department. A 48-hour notice shall be required by the permittee to the Department prior to the start of work and any key activities that warrant Department review.

The Department may require sufficient restoration security for excavations prior to permit approval. A restoration security of \$5,000 shall be required to be posted for any excavation approved that may impact the pavement of a highway which receives a pavement disturbance moratorium waiver.

Excavations shall be suitably covered during operations to prevent injury or impact to travel. Anyone performing excavation within one hundred feet of an underground facility shall participate in and comply with the State of New Hampshire's damage prevention system, commonly referred to as Dig-Safe, in accordance with Title XXXIV, Chapter 374 General Regulations, Underground Facility Damage Prevention System.

Pavement restoration shall be completed in accordance with this ordinance and the Department's standards. Native materials shall be used as backfill and may be supplemented with approved processed materials if native quantities or quality are not adequate as determined by the Department.

All open trenches shall be stabilized with pavement no later than the Friday of the week of the work. Application of proper binder course pavement as specified herein shall be completed within 5 days of the completion of utility work. Application of wear course pavement may occur any time following application of binder course but prior to final approval.

When an excavation disturbance impacts a concrete sidewalk, minimum restoration shall consist of all impacted panels in whole and any curbing.

Compaction tests may be required by the Department when it has reason to doubt suitable compaction standards have been achieved. Such tests may be required to be executed following pavement restoration by an independent testing agency if the Department believes adequate compaction was not achieved during the work. Such costs including pavement disturbance, testing and adequate restoration shall be borne by the permittee.

The Department may inspect utility work in progress. The Department may require the permittee to furnish photographic evidence of key aspects of the work. Permittee shall notify the Department immediately following pavement restoration activities so that the Department may perform the initial inspection.

The Department will inspect the restoration again between 6 months and 1 year following immediate restoration to determine if defects such as settlement, pavement damage or impacts to other infrastructure have occurred over time. Defective work that is noted at the second inspection shall be corrected by the permittee within 10 working days. Permit shall be closed when acceptable restoration is verified.

Defective work noted by the Department during the interim time between initial inspection and second inspection shall be corrected by the permittee at their cost within 5 working days of notice or the implementation of an approved restoration plan. Correction of interim defects shall not relieve the contractor from the requirements of the second inspection and any corrective work required at that time to close the permit.

Any work that is not corrected by the permittee may be executed by the Department and billed to the permittee at full cost which shall be uncontestable.

Permittees which have a history of defective work may be denied future permits. Such future permits may be considered solely by the Department if adequate security is furnished by the permittee. Permittees which have a history of defective work may have their City utility license(s) revoked.

Nothing in this section limits the authority of the Director Planning from their authority per Chapter 275, Zoning, Article 22 regarding abandoned excavation sites.

Any other provision of this article notwithstanding, any person, firm or corporation or any agent thereof that shall violate the provisions of this section shall be subject to a fine of not more than five hundred dollars (\$500.) and full restoration costs.

§ 223-12 Drainage.

Stormwater quality and control shall for private development be per the administration and requirements of Chapter 218 of the City Ordinances. The City is its own compliance agency and shall meet the requirements of permits issued by the New Hampshire Department of Environmental services and/or the U.S. Environmental Protection Agency.

The City has the right and legal duty to ensure that the impact of flowage to the highway from areas outside of the right of way is minimized. This may be accomplished by the installation and maintenance of ditches, culverts, bridges and other facilities.

Drainage flowage from private properties shall be directed such that such flowage does not adversely impact the right of way. Such impacts shall be corrected by the property owner at their expense.

Unless City work occasions additional flowage from the highway onto an abutting property for which a degradation in property use can be verified, the City shall not be responsible for flowage onto an abutting property which is due to that property's elevation in relation to the highway. The City shall use a reasonable standard of care in their highway work to minimize flowage onto abutting properties. Nothing herein shall relieve the City from its requirements under RSA 231:75.

Drainage easements for the City to access private property shall be required as necessary for the City to operate and maintain drainage features which are appurtenant to flowage from right of ways or City infrastructure.

§ 223-13 Winter Storm Management.

Snow and ice shall not be placed into the highway or upon sidewalks or in a manner which impacts accessibility of a hydrant unless such placement is temporary and immediately appurtenant to the removal efforts of the abutter. Snow or ice that remains on the highway or sidewalk that does not comply with this section shall subject the abutter or responsible party to a violation (RSA 236:21).

The Department shall implement and maintain a winter storm maintenance policy for City public

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highways and sidewalks which describes to the public the intended priorities and actions of ice and snow removal and processing. The Department shall not be held liable for damages arising from insufficiencies or hazards on public highways, bridges or sidewalks when Department operations in accordance with such policy are effectuated (RSA 231:92-a).

The Department is not obligated to replace mailboxes that are damaged by City winter storm management operations. The Department may replace damaged mailboxes using economical replacement materials and following storms when operations allow.

§223-14 Off Highway Recreational Vehicle and Snowmobile Use of Public Highways.

Off highway recreational vehicles shall be prohibited on all public highways and sidewalks with the exception of bridges per RSA 215-A:8. Snowmobiles may be allowed on highways and may cross bridges per RSA 215-A:8, however cannot operate in the travelled portion of the highway. On public ways snowmobiles shall travel in the extreme right and travel at 20 miles per hour or less. Licensure shall be obtained and operation shall comply with the requirements of RSAs 215-C:6, II, 215-C:1 XIX, 482:A-3 VIII, 215-C:8 III(b)(2), 215-C:8 IX and 215-C:8 X.

§ 223-15. Public Highway Maintenance.

Public highways shall be maintained by the Department at their discretion on frequency and using practices commonly used by similar municipalities and those endorsed by associated maintenance and engineering trade organizations. For work within the right of way, that consists of maintenance grading or cleaning or repairing of existing ditches or culverts without affecting their size or positioning, the Department will not normally notify abutters (RSA 231:75, 231:92).

The City Council shall annually approve a capital improvements plan for public highways as recommended by the Department. (RSA 231:92, 674:5)

Abutters to highways are responsible for their access and any grades, culverts or other structures pertaining to such access whether or not located in the public right of way. (RSA 236:13).

No public highway, access highways or private highways shall be constructed so as to traverse any watershed tributary to a lake, pond or reservoir used for the storage of public drinking water without obtaining the approval of the Department of Environmental Services (RSA 485:9).

§ 223-16. Highway Roadside Clearing.

The City shall maintain a regular program of roadside clearing within the right of way to reduce safety hazards or otherwise damage to the highway. Any tree with a circumference of 15 inches or more at a point four feet from the ground will not be removed by the City without due notification to the owner unless such tree presents an immanent threat to safety or property. Notification shall follow the procedures set forth in RSA 231:145 and 231:146. The City may require utilities which may have lines in such trees to assist in removal at their expense. Such rights of the City extend to Class VI highways (RSA 231:145, 231:150).

§ 223-17. Invasive Plant Species.

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Invasive plant species are alien plant species whose introduction causes or is likely to cause a variety of harm to the public. They constitute trees, vines, shrubs and grasses. The Department will remove invasive species from the right-of-way when found and upon request when such presence may inhibit safe travel or otherwise be harmful to the physical highway (RSA 430:53) and will have no duty of care to replace such plantings with non-invasive species. The Department shall restore grounds beneath removed plantings in a reasonable manner. Invasive plant species are unlawful to plant or transport (RSA 430:51-57).

§ 223-18. Repair of Public Highway, Bridge or Sidewalk.

Whenever any public highway, bridge, or sidewalk shall, from want of necessary repair, or because of any repairs or construction being made therein by the Department become unsafe for travel, the Department shall have erected a suitable fence or railing to exclude all travelers from passing over the same and shall require the maintenance at night such lights as may be necessary to warn the traveler of the hazard. If said repairs or construction is being made by any other department or person, the head of such other department or person shall erect and maintain the same guard fence, rails and lights.

§ 223-19. Public Highway Access - Driveways.

The Department shall retain continuing jurisdiction over the adequacy and safety of every existing driveway, entrance, exit and approach to a public highway or right of way, whether or not such access was constructed or installed pursuant to a permit (RSA 236:13). Private highways where they intersect with public highways shall be considered driveways and subject to the requirements of this section and ordinance.

All new driveways including private highways and driveways intersecting Class IV, V and VI shall be subject to approval by the Department through a permit process. Applicants shall provide details on locations, approaches, grades, construction materials, any traffic control and drainage features. Applicants shall adhere to any City regulations regarding setbacks.

The Department shall approve through a permit process proposed changes to existing driveways in grade, approach angle, location and size and drainage. Requirements and process shall follow those outlined in RSA 236:13.

Stormwater permits may be required in cases of proposed driveways which service commercial, multi-family, industrial or institutional facilities, or for single family homes in which unique characteristics of driveway and highway grades or drainage appurtenances may require stormwater management for the benefit of the public highway.

The owners of property abutting a public highway shall be responsible for the adequacy of the access to the public highway, and any grades, culverts, or other structures pertaining to such access, whether or not located in the right of way. If any such access is or becomes a potential threat to the integrity or operation of the highway or becomes a hazard to the travelling public, the Department may issue an order to the owner or other party responsible for such access to repair or remove the condition of hazard and obtain all required permits. Such order shall be

enforceable to the same extent as a permit. If the order is not complied with within the time prescribed, the Department may cause to be taken whatever action is necessary to correct the deficiency and the owner or responsible party shall be civilly liable to the City for its cost in taking such action. (RSA 236:13 and RSA 236:19). In addition the City may issue a violation.

Setbacks of driveways from property lines shall be in accordance with 275-26.

§ 223-20. Utilities.

Work on City owned utilities such as water and sewer shall be done only by entities that are licensed by the City to perform such work. Licensure requirements for sewer and water are set forth in Chapters 200 and 260 of the City Ordinances, respectively. Gas and electrical utility work shall be done by persons licensed by their respective trades and appropriate State agency.

No person shall erect, construct, put up or maintain any poles, wire, terminal, underground conduits and cables, structures or other electrical appurtenances for television, telephonic, telegraphic, electric power or electric lighting, or any water, sewer, drainage or gas lines along, across, under or over any public highway, sidewalk, in any right of way or City property without obtaining a City license.

In-ground utility work shall require an excavation permit from the Department for installation, relocation, augmentation or alteration of in-ground utilities.

Easements for underground utilities when outside of the public right of way shall be at least 30 feet in width.

Only City employees shall operate fire hydrants, valves or any other operable element of the City's water, wastewater or drainage utilities.

Utility companies shall have authority to install or erect their utilities in the City's right of ways as licensees of the City (RSA 231:160).

Aerial utility companies shall obtain a license from the City for the erection, augmentation or relocation of poles. Utilities shall be responsible for owner consent regarding tree cutting or pruning per RSA 231:172.

No person shall use said poles for the posting of bills or other advertising purposes or for any other purpose except that for which permission is given by the Department.

The City shall be indemnified against all damages, costs and expenses to which it may be subjected due to the location, construction, maintenance of any pole, structure, conduit, cable, wire or other apparatus of the utility and the utility shall indemnify the City against all damages, and expenses to which it may be subjected to by reason of any insufficiency or defect in the highway occasioned by the presents of wires and supports (RSA 231:168, 231:175).

§ 223-21. Revocation or Suspension of Permits.

If the terms or conditions of a permit are violated by a permit holder and the Department finds that the violation does not constitute an immediate hazard to public health, safety or welfare, the Department shall give written notice to the permit holder in writing by email of an intention to suspend or revoke the permit, and a statement of the facts or conduct upon which the Department intends to base its action. If corrective action is not implemented to the Department's satisfaction in a reasonable time, the Department may implement corrective action it deems necessary within the right of way to restore the right of way and charge such costs to the permittee. The City may use any security posted to implement corrective action. (RSA 236:32).

If terms or conditions of a permit are violated by the permit holder and constitute a danger to public health, welfare or safety, the Department shall immediately suspend the permit and all work by the permittee shall be ceased and corrective measures implemented by the permittee to the satisfaction of the Department. Notice of suspension shall be issued in writing by email and communicated by telephone. If corrective action is not implemented to the Department's satisfaction in a reasonable time, the Department may implement corrective action it deems necessary within the right of way to restore the right of way and charge such costs to the permittee. (RSA 236:32, 236:39).

§ 223-22. Emergency Services Dispatch to be Notified.

Any person or private or public entity or department of the City, before digging up, obstructing or encumbering and/or redirecting common or convenient traffic patterns in any way any highway, lane, alley, sidewalk, or other public place in the City, shall, before beginning such work, notify the City's Emergency Services Dispatch Center as to where such work is to be done and shall, immediately upon the completion of such work and the restoration of the place to its normal condition, notify same. A permit shall be required from the Department prior to any such disruption or encumbrance.

§ 223-23. Moving of Buildings Along Highways and Erection of Scaffolding.

No person shall move, or assist in moving, any house, shop or other building through any highway, lane, or alley or erect scaffolding without first obtaining a written license from the Department. Whenever the Department shall as aforesaid grant permission to any person to encumber any highway, sidewalk, or public square for the purpose of erecting, altering or moving buildings or scaffolding, it may, as a condition to granting such permission, require the party obtaining the same to furnish a surety of indemnity in a form acceptable to the Department, in such

sum and with such securities as the Department may deem proper. Applicant is responsible for all safety and traffic control measures. The Department of Public Works may require an obstruction permit for such work.

§ 223-24. Traffic Calming Controls.

Traffic calming controls may be implemented by the Department on public highways as approved by the City Council. Implementation may be through the capital process or by request.

In its implementation the Department will employ engineering judgement as guided by the Institute of Transportation Engineers, FHWA Manual on Uniform Traffic Control Devices and any other applicable transportation technical trade or agency organizations. Traffic calming practices may include the installation of speed tables, raised crosswalks, speed humps, bump outs, pedestrian refuges, speed cushions, roundabouts, or other crosswalk safety enhancements. Roundabout consideration shall require engineering study.

§ 223-25. Conduct on Public Highways.

The following conduct with respect to the use of the City highways and highways shall be regulated as more fully set forth below:

- A. No person shall place, establish, or maintain any sign, awning or shade before his/ her place of business, dwelling house or tenement, over any part of any highway or sidewalk, unless the same is safely fixed and supported so as in no way to endanger persons passing upon such highway or sidewalk, and so that the lowest part of such sign, awning or shade shall be at least seven feet above the sidewalk; nor shall any person hang, affix, fasten, place or allow to remain upon the outer edge of any sidewalk any sign or showcase whatever, or there display any goods, merchandise, or samples of any business calling, trade, art or craft, so as to obstruct the free passage and view to and from the highway and sidewalk.
- B. No person shall sell at auction or otherwise upon any highway or public square in the City any furniture, goods, wares or merchandise whatever, or place or in any manner encumber such highway or square therewith, without first obtaining a permit from the Department and obtaining a secondhand dealer's/hawker's license from the Building and Licensing Services Department.
- C. No person shall draw or cause to be drawn, move or cause to be moved, upon any public highway or highway, any equipment or instrument or implement liable to cause damage to the surface of said public highway or highway, unless the same is being transported upon a vehicle or other conveyance. Any damage resulting from such action shall be remedied by such person to the satisfaction of the Department, or the Department will effect corrections and charge the such person for the cost of corrections.
- D. No theatrical or dramatic representation shall be performed or exhibited, and no parade or procession upon any public highway or way, unless a special license shall first be obtained from the Building and Licensing Services Department. (See Chapter 22, Amusements and Entertainment, Article III, Public Dances, Circuses and Parades.).
- E. Dumping on highway, highway, lane, alley, sidewalk, or other public place within the City limits of Rochester is prohibited.

§ 223-26. Outdoor Dining.

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Outdoor dining on City property or appurtenant to public highways and sidewalks shall comply with Chapter 80, Article II of the City Ordinances. The Department in its review of such requests for outdoor dining shall consider the effects on existing drainage, potential damage to highways and sidewalks and any impacts to multi-modal traffic operations. The Department may issue directives to the requestor to ensure infrastructure operation, safe, effective travel and restorative actions. The Department may require an obstruction permit.

§ 223-27. Public Highway Construction Standards.

The City Council shall have full authority over the construction, maintenance and repair standards of the City which shall be at least as stringent as those of the State (RSA 231:92).

City public highways shall have the following basic minimum design elements:

Highways:

Wearing course:	Hot Mix Pavement; one and one half inch (NHDOT Items 401, 403); ½" aggregate
Binder course:	Hot Mix Pavement; two and one half inch (NHDOT Items 401, 403); ¾" aggregate
Base:	Crushed gravel: six inches (NHDOT Item 304.3)
Subbase:	Bank run gravel: twelve inches (NHDOT Item 304.2)
Compaction:	95% (NHDOT Item 304; 3.6 and 3.7)
Curbing:	Granite. At least 18 inches depth and at least 5 inches wide set in concrete over ¾ inch crushed stone; vertical or sloped (NHDOT Item 609)

Sidewalks::

Portland cement concrete – Class AA; 4,000 psi; 4 inches thick; 6 inches thick at tip downs; fiber or steel mesh (NHDOT Item 520 and 608), reinforcement (NHDOT Item 544.2), Base: crushed gravel: nine inches (NHDOT Item 304.3), protective coating silane or siloxane (NHDOT Item 534.2.); maximum running slope 12:1; cross slope 2%; or

Hot Mix Pavement; (NHDOT Item 401 and 608 (2.5), 1 1/2 inch finish thickness; 1 ½ inch binder thickness; base 10 inches crushed gravel (NHDOT Item 304.3)

All features compliant with the Americans with Disabilities Act.

Other features shall be per the City's technical standards and/or Subdivision Regulations and Site Regulations

Driveways and private highways which intersect public highways:

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Shall be evaluated for approval referencing the geometric requirements of the New Hampshire Department of Transportation Policy Relating to Driveways and Access to State Highway System or its successor document(s).

§ 223-28. Class VI Highways.

Class VI highways are public highways for which the City has no duty of care, however has full authority to regulate use, excavation or disturbance or driveways and to regulate weight limits (RSA 231:21-a, 231:93, 236:9-11, 236:13, 231:191).

Class V highways which became Class VI highways due to a five or more year lapse in maintenance by the City, but which subsequently has been regularly maintained and repaired by the City on more than a seasonal basis and in suitable condition for year round travel thereon for at least five successive years shall become a Class V highway upon vote of the City Council (RSA 231:45-a).

Class VI highways may be reclassified by the City Council as a Class V highway per RSA 231:22-a. Petitions for the layout of a Class V highway over a Class VI highway shall follow the betterment assessment procedures of RSA 231:28-33.

Emergency Lanes may be created out of the improvement of a Class VI highway. (RSA 231-59-a).

§ 223-29. Reserved.

§ 223-30. Discontinuance of Public Highways.

The City Council has full authority to discontinue any Class IV, V and VI highways (RSA 231:43).

§ 223-31. Private Highways.

Unless existing as of the effective date of this paragraph, private highways are prohibited from these requirements unless part of a plan approved by the Planning Board and noted as such.

The City shall have no requirement for care nor liability for adequacy or safety thereupon a private highway. The City may require certain geometric features and construction materials and methods for private highways to aid emergency vehicle access.

The City will not collect rubbish on a private highway. Until a highway is officially accepted as a City highway, the owner of the highway has the sole responsibility to collect rubbish, themselves, or other private agreement. No rubbish shall be placed on a public highway or right-

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of-way without approval from the Department.

Safe passage shall be maintained for all vehicles once a certificate of occupancy is issued on a private highway. The highway shall be accessible for residences, emergency vehicles, and service vehicles as determined by the Department of Public Works and the Fire Department. Safe passage shall include winter maintenance, general highway surface repair, and maintenance of all infrastructure such as lighting, fire hydrants, and sidewalks.

The City Council may change the name or address assignment of any private highway when necessary to conform to the requirements of the enhanced 911 telecommunications system (RSA F231:133, 231:133-a).

Residential owners of property which derive enjoyment from a highway not maintained by the City shall contribute equally to the reasonable cost of maintaining the private road and damaged occasioned to the highway by an abutter shall be corrected at that abutter's expense (RSA 231:81-a).

§ 223-32. Private Construction on a Class VI or Private Highway:

Private construction on Class VI highways shall be restricted to the approved uses per Chapter 275 Zoning and City process procedures.

The procedure for construction on a Class VI or private highway shall be:

The developer or its agent shall submit a Site Plan or Subdivision application to the Planning Department to request the authorization of Building Permits on a Class VI or private highway. The application shall address all requirements of Site Plan or Subdivision Regulations.

The application shall also include:

Draft language to be recorded which clearly states the municipality neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof in accordance with RSA 674:41.

After review and comment by the Planning Board, City Council shall vote to authorize Building Permits.

Prior to the issuance of a Building Permit, the applicant shall file with the Registry of Deeds a notice of the limits of municipal responsibility and liability in accordance with RSA 674:41.

§ 223-33. Acceptance of Privately Constructed Highways as Public Highways.

No proposed new public highway with or without new public sewer or water, public improvements, developer contributions, or any combination of the above, shall be laid out, accepted or constructed which is not subject to review and approval by the Planning Board,

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recommend for acceptance by the Department of Public Works and approved by the City Council (RSA 674:36).

A private highway shall not be considered for acceptance until a minimum of 75% of dwelling units or structures have obtained certificate of occupancy and any infrastructure required to support full function of at least such number of units is completed and functioning adequately as determined solely by the Department. Notwithstanding this section, the City shall release surety partially as appropriate to reflect achievement of progress goals towards completion of the infrastructure in accordance with approved plans and City construction standards.

All private highway construction which may be intended for acceptance as City highways shall be subject to surveillance by the City. Developers shall accommodate all such inspections and execute any corrective action required by the City to comply with City Standards.

The City will not normally accept highways or segments of highways for acceptance that would be subsequently used to support construction activities related to further build out of private highways and infrastructure that may be considered for acceptance.

Developers are responsible for all maintenance and services to highways intended to be petitioned for acceptance until such acceptance is final. Such services include but are not limited to trash pickup and snow and ice removal.

The degradation of a highway intended to be petitioned for acceptance shall not be considered for acceptance until it has been rebuilt or restored to the Department's standards.

The procedure for public highway acceptance shall be:

- A. The developer or its agent shall submit a written petition to the City Clerk on behalf of the City Council for acceptance of a private highway as a City highway. The developer or its agent shall provide three copies of the letter each for the Planning Department, Public Works Department and Legal Department.
- B. The letter shall include:
 - a. Construction reports of materials testing data, certified by an independent, qualified source in paper and electronic format.
 - b. All inspection reports and photos.
 - c. Technical literature and data for all elements of the infrastructure including pavement design, pavement bases, utility pipes, water test results of pressure, disinfection, sewer manhole vacuum, sewer mandrel, video of water and sewer pipe interiors, pump stations and appurtenances in paper and electronic format.
 - d. Drainage maintenance agreement signed by the owner.

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- e. Descriptive deed, which details any fee title property and infrastructure that will be owned by the City and that which will be owned and maintained by a Homeowner's Association, if applicable, in paper and electronic format
 - f. Copy of drainage/utility and/or other easements in descriptive language in paper and electronic format
 - g. Recordable as-built plans in paper and electronic format
 - h. Full set of record drawings to include final survey plan showing all project improvements in paper and electronic format
 - i. A security in the form of an irrevocable letter of credit or passbook to guaranty that all site work was properly done to be posted by the applicant with the Department, which shall place the security with the City Treasurer. Such maintenance guaranty shall be in an amount of 2% of the value of the infrastructure intended to be conveyed to the City established in the City's schedule of values for such improvements and such values as are updated to reflect current values at the time of the petition. Elements shall include full cost of replacement for all street trees and other landscaping required, roadway, drainage and pedestrian facilities, and in force for three years after the date of City acceptance. If such repairs are required of the City following acceptance due to improper installation by the developer, such guaranty shall be used to implement corrective actions.
- C. The Department of Public Works will make a recommendation to the City Council for public highway acceptance when the following have been met:
- a. Resolution of any construction quality issues to the satisfaction of the Department to include restoration of damaged pavement even if such damage is due to age, consistent with sound trade practice.
 - b. All on or off-site improvements or contributions required by the Planning Board and Department of Public Works are complete and functioning as determined by the Department.
 - c. Final wear surface of asphalt pavement installed on all highways and sidewalks and all associated striping and signage.
 - d. All final grades, elevations and final vegetation within the right of way are complete, established and functioning as determined by the Department of Public Works
 - e. Drainage ditches have been stabilized; where grass is the stabilizer, a minimum of 90% growth has occurred as determined by the Department.
 - f. All stormwater, drinking water and wastewater facilities are complete and functioning as determined by the Department of Public Works
 - g. All on-site amenities such as highway trees, walking paths, gazebos, highway furniture, other structures, and landscaping required by the Planning Board are complete and functional as determined by the Department of Public Works
 - h. Adequate surety remains to complete the balance of the work as approved by the Planning Board

- i. A minimum of 75% of dwelling units or structures have obtained certificate of occupancy and all infrastructure required to support full function of at least such number of units is completed and functioning as determined by the Department of Public Works
- D. The City Council shall hold a public hearing on the proposed acceptance with public notice furnished by the City by certified mail (RSA 231:10). Upon acceptance by the City Council as a City highway, the following shall be submitted to the City Clerk with copies to the Planning Department, Legal Department and Department of Public Works within 30 days:
 - a. Signed warranty deed(s), easements, Home Owner Association covenants, stormwater management plans, if applicable and stamped recordable plan(s) for recording by the City Clerk
- E. The acceptance of a private highway as a public highway shall not be construed to confer upon the municipality any notice of, or liability for, insufficiencies or defects which arose or were created prior to such acceptance (RSA 231:92).

§ 223-34. Naming of Public Highways.

- A. Proposed highway names shall be approved by the City Council. Proposed names shall be submitted to the Planning and Development Department by application of private owner, developer or dedicator. The proposed name shall be reviewed by the E911 Committee. Following review the name and such name shall be presented to the City Council for approval. Naming assignments shall be issued by letter to the applicant with copies to City departments and the State E911 Unit within the Division of Emergency Services and Communications (RSA 231:133).
- B. The City shall not be bound by any name previously assigned to the highway, highway or right-of-way by the private owner, developer or dedicator. No name for a highway, highway, or right-of-way shall be selected which is already in use, or which is confusingly similar to any other existing name, or which otherwise might delay the locating of any highway in an emergency. Names of highways shall not duplicate or bear phonetic resemblance to the name of existing highways within the City (RSA 231:133)
- C. The City Council may change an existing name on any public or private highway at any time when in its judgment there is occasion for so doing such as in adherence to the requirements of the enhanced 911 telecommunications system (RSA 231:133)..
- D. Whenever a change in name is proposed to any highway or right of way, the E911 Committee shall make a recommendation to the City Council. Once approved, the E911 Committee shall make a record of a new name or name change and shall forward a copy of such record to the Department of Transportation, in accordance with the requirements of RSA 231:133, as presently enacted or in accordance with the corresponding provisions of any recodification or amendment thereof. In the process of assigning names to highways, highways and right-of-way, the E911 Committee shall follow the New Hampshire Addressing Standards Guide, to the extent possible:

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- (1) No name shall be assigned to a highway, highway or right-of-way which shall duplicate the name of any other proposed or existing highway, regardless of the use of the suffix "highway," "avenue," "boulevard," "drive" or the like.
 - (2) The extension of an existing highway shall have the same name as the existing highway.
 - (3) Before a new highway name is assigned to an existing highway, the proposed name of such highway shall be reviewed by the E911 Committee. The Committee shall submit their comments, if any, with regard to the proposed name to the City Council.
- E. The Planning and Development Department shall have the authority to assign a provisional name to all highways, highways and/or rights-of-way shown upon subdivision or site review plans being considered for approval by the Planning Board; provided, however, that no such provisional name shall be assigned to such highway unless it has been approved by the E911 Committee.

§ 223-35. Address Numbers on Highways and Right-of-Ways.

- A. Pursuant to the provisions of RSA 231:133-a, the Planning and Development Department shall have the authority to assign numbers to vacant lots and all existing residential and/or commercial structures.
- B. Assignment of addresses for new construction shall be initiated through the driveway permit application process. Applicant shall provide with the application a plan or map showing road stationing and the proposed tax map and lot numbers.
- C. Driveway permit applications, plans or maps shall be reviewed by the Planning and Development Department to determine addressing. Driveway permits shall not be issued until addressing is assigned. Addressing assignments shall be issued by letter to the applicant with copies to relevant City departments, the E911 Committee, the State E911 Unit within the Division of Emergency Services and Communications, and the US Post Office. The Planning and Development Department may issue temporary addresses until final assignments are determined.
- D. Existing address assignments may be altered when they no longer conform with addressing standards.
 - (1) When a proposed change would not impact any surrounding properties, the E911 Committee may propose an address reassignment. The property owner is issued a letter that provides the new proposed address and includes the reason for the address reassignment.
 - i. If the property owner agrees and signs a consent to the proposed change, the address reassignment process continues.
 - ii. If the property owner does not agree with the proposed change, they may submit an appeal to the E911 Committee for reconsideration. The Committee may decide to grant the appeal or confirm their original

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decision, at which the property owner may take the matter to City Council for a public hearing and final determination of the addressing concern.

- (2) When a proposed change impacts abutting properties or property owners do not provide consent, a public hearing shall be scheduled. In such cases, the City shall notify abutting property owners and hold a public hearing for which 10 days' notice has been given in accordance with RSA 231:133-a. Full authority and discretion to re-assign addressing shall rest with the City Council.

E. In assigning numbers to vacant lots and residential and/or commercial structures, the Planning and Development Department shall employ the following criteria:

- (1) For every 10 feet of right-of-way frontage within the Special Downtown District of the City of Rochester, as defined in Chapter 275, Zoning, of the Code of the City of Rochester, there shall be an individual number assigned.
- (2) For every 50 feet of right-of-way frontage outside of the Special Downtown District of the City of Rochester, as defined in Chapter 275, Zoning, of the Code of the City of Rochester, there shall be an individual number assigned.
- (3) Highways shall be numbered so that even numbers are located on the left side of the right-of-way and odd numbers are located on the right side of the right-of-way. The right and left sides of the right-of-way shall be determined by the relationship of the right-of-way to a person facing away from the center of the City of Rochester at the statue of Parson Main.
- (4) The numbering for cul-de-sac shall begin at the intersection of the cul-de-sac and the collector right-of-way and shall proceed from the right-hand side of the collector right-of-way from right to left around the cul-de-sac.
- (5) Mobile home parks and condominium and apartment complexes shall, to the extent possible, name their private highways and number each unit consistent with the E-911 standards set forth in this section.
- (6) Each apartment building shall be given one highway number and each apartment unit within such building shall be assigned that highway number and unit number.
- (7) Existing numbering patterns for existing highways, highways and rights-of-way which do not allow for the assignment of additional numbers for future development may be assigned new numbers by the Planning and Development Department.
- (8) The beginning of a highway shall be that end which intersects with a collector highway and, so far as possible, shall be that end closest in distance to the statue of Parson Main.

F. Any building or structure for which a number has been designated shall have such number affixed thereto in such manner as to be plainly visible from the highway,

which abuts the main entrance to the property. Such numbers shall be a minimum of 4 inches in height with minimum stroke width of ½” in accordance with the Fire Code as adopted by the State of New Hampshire.

- G. Failure to display an assigned number in the manner set forth above shall be grounds for denial of a certificate of occupancy. Any violation of the provisions of this article or any order of the Director or the Code Compliance Officer related thereto are subject to citation and the civil penalties set forth in RSA 47:17 and Code § 54-3.

§ 223-36. Construction of Sidewalks.

Sidewalks built by the City of Rochester for the use of the travelling public shall be in locations approved by the City Council. Sidewalks shall be constructed under the supervision of the Department. The Department will not maintain non-contiguous sidewalks which are of such limited in practical size such as sidewalks along a singular property frontage which are not served by adjacent sidewalks.

Residents who wish to have new sidewalks built for their highway may by petition of abutters who by written application shall agree to pay a portion of the cost of construction of said sidewalk, said portion not exceeding 1/2 of the said cost, payment to be made over a period not to exceed 10 years. The portion of the cost to be borne by the petitioner shall be both reasonable and proportional to the benefits according to the land upon which such assessment is made (RSA 231:112).

§ 223-37. Highway Lighting.

The Department shall have supervision of all municipal lighting and location of electric light and utility poles within the City limits and is authorized to prescribe rules and regulations for any modifications of any poles, crossarms or supporting fixtures which are located within the public highway. Improvements made for private purposes to said poles, crossarms, or supporting fixtures shall require a permit from the Department and be made at the requestor's expense.

Highway lighting for new residential or commercial construction or highway layout shall be guided by the City's Subdivision or Site Plan regulations and the professional judgement of City staff.

Requests for new or enhanced highway lighting on public highways not appurtenant to new construction or highway layout construction shall be considered by the City Council. In general, the following areas may be considered:

The termination area of dead end or no outlet highways.

Intersections of public highways.

Highway areas where multi-modal safety or general public safety can be enhanced.

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Crosswalks.

Highway lighting shall be for the benefit of the traveling public and shall not be considered for the sole benefit of the property of abutters.

It is unlawful to place any light along a highway so positioned to impact the vision of the travelling public (RSA 236:55).

§ 223-38. “Adopt-A-Spot” Areas

The City Manager, in the exercise of duties relative to the oversight of all real and personal property owned by the City of Rochester, as specified in Section 14 of the Rochester City Charter, from time to time, designates certain areas of the City, primarily areas included within or closely related to the highways servicing the City of Rochester, as “Adopt-A Spot” areas. “Adopt-A-Spot” areas are maintained, landscaped and/or otherwise beautified by designated individuals and/or entities that volunteer to preform such functions for the purpose of improving the appearance of the “Adopt-A-Spot” areas, as well as the appearance of the City of Rochester as a whole. The City Manager shall annually, on or about May 1 of each year, establish a list of "Adopt-A-Spot" areas for the ensuing calendar year beginning on such May 1 and ending on the following April 30. A copy of such list shall be maintained in the City Manager's office and in the office of the City Clerk. In the event that the City Manager fails to update the "Adopt-A-Spot" list on or about May 1 of a given year, the "Adopt-A-Spot" list then on file in the office of the City Manager shall be controlling for the purposes of this section. No person shall, within any "Adopt-A-Spot" area, erect or maintain any sign or other advertising material whether for political purposes or otherwise, except for such advertising material and/ or device as has been previously authorized in writing by the City Manager or his/her designee. Any person failing to comply with the provisions of this section shall be guilty of a violation.

§ 223-39. Security.

The Department may require any person seeking to perform any work affecting any highway, bridge, sidewalk or other public property to furnish surety in the form of a cash, or letter of credit to indemnity to the City of Rochester in such sum and with sureties as the Department may deem proper. Bonds will generally not be acceptable forms of security.

§ 223-40. Violations and Penalties.

Any violation of the provisions of this article or any order of the Director or the Code Compliance Officer related thereto are subject to citation and the civil penalties set forth in RSA 47:17 and Code § 54-3.

ARTICLE II

~~Newsracks and Public Way Obstructions~~ ~~[Adopted 6-6-1995 as Ch. 35 of the 1995 Code]~~

~~§ 223-19. Purpose.~~

Commented [R01]: Much of this seems no longer applicable. We could pull together a sidewalk obstruction / encumbrance section that outlines our current needs like addressing: outdoor seating, "sandwich boards", other marketing tools, and scaffolding or construction needs?

The purpose of this article is to promote the public health and safety through the regulation of the placement of newsracks and public way obstructions.

§ 223-20. Definitions.

As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

CITY — The City of Rochester.

NEWSPAPER or NEWS PERIODICAL — A daily or weekly publication containing all of the following: current news, editorials, feature articles and advertising. **[Amended 3-5-2019]**

NEWSRACK — Any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or news periodicals.

PARKWAY — That area between the sidewalk and the curb of any highway, and where there is no sidewalk, that area between the edge of the highway and the property line adjacent thereto. "Parkway" shall also include any area within a highway which is not open to vehicular travel.

PUBLIC WAY OBSTRUCTION — Any object other than a newsrack which obstructs the free passage of pedestrians or vehicles on the highways, sidewalks, parkways or highways. The term "public way obstruction" shall include, but not be limited to, signs and planters.

HIGHWAY — That portion of a highway improved, designed, or ordinarily used for vehicular travel.

SIDEWALK — Any surface provided for the exclusive use of pedestrians on any public right of way under the jurisdiction of the City.

HIGHWAY — All that area dedicated to public use or public highway purposes and shall include, but not be limited to, highways, parkways, alleys, sidewalks, garages, parking lots, parks and playgrounds. **[Amended 3-5-2019]**

Public Way Obstructions

- A. No person shall obstruct a public road or sidewalk, except with a permit issued by the Department of Public Works.
- B. No person shall, place, install, or locate any structure, fixture, object, or other encroachment within the limits of a public road or sidewalk, except as follows:
 - a. Pursuant to a license issued by the department of public works
 - b. A sign or fence permitted in accordance with the City's Zoning Ordinance, or

Commented [R02]: Draft language which could include all types of encumbrances. This would require the creation of an Obstruction Permit.

- e. ~~For all other types of structures, fixtures, objects or other encroachments, pursuant to a revocable license from the Department of Public Works, which the Director may issue for good cause for non-intrusive structures, fixtures, objects, or other encroachments on such terms as the Director may determine and require.~~

~~§ 223-21. Prohibited acts.~~

- A. ~~No person shall install, use, attach or maintain any newsrack or public way obstruction which projects onto, into or over any part of the highway of any public highway or which rests, wholly or in part, upon, along or over any portion of the highway of any public highway.~~
- B. ~~No person shall install, use, attach or maintain any newsrack or public way obstruction which in whole or in part rests upon, in or over any public sidewalk or parkway when such installation, use or maintenance endangers the safety of persons~~

or property, or when such site or location is used for public utility purposes, public transportation purposes or other uses, or when such newsrack or public way obstruction unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, the ingress or egress for any residence or place of business, or the use of poles, posts, travel signs or insignias, hydrants, mailboxes or other objects permitted at or near said location.

- C. Within 60 days of the passage of this article every person or other entity shall comply with the provisions of this article with respect to each newsrack and/or public way obstruction owned by it within the City. [Amended 3-5-2019]

§ 223-22. Permit required; application for permit.

- A. No person shall install or maintain any newsrack or public way obstruction which in whole or in part rests upon, in or over any public sidewalk or parkway without further applying for and being granted a permit from the Licensing Board. The permit application shall include the following:

- (1) The physical dimensions of each newsrack or public way obstruction to be installed or maintained in the City by the person;
- (2) The name, address, and telephone number of the person or entity to whom or to which the permit is to be issued; and
- (3) A diagram showing the location of the newsrack or public way obstruction and the dimensions of the sidewalk, if any, upon which it is to be located.

- B. Newsracks shall require the submission of a permit application, but the permit shall be granted by the Licensing Board on a ministerial basis provided that the proposed newsrack as installed will not violate the provisions of § 223-21 above.

§ 223-23. Standards for installation, maintenance and operation.

Any newsrack or public way obstruction which in whole or in part rests upon, in, or over any public sidewalk or parkway shall comply with the following standards:

- A. All newsracks and public way obstructions must be individually permitted by location.
- B. No newsrack or public way obstruction shall be chained, bolted or otherwise attached to any public property, or to any private property, without the written permission of the City, the owner, or the person in possession of the property to which the attachment is to be made.
- C. Newsracks and public way obstructions shall not be chained or otherwise attached to one another.
- D. The City shall issue a proof of permit in the form of a sticker or decal which shall be attached to the newsrack or public way obstruction at all times.
- E. All permits must be renewed annually prior to July 1.
- F. Unlicensed newsracks or public way obstructions will be considered abandoned and

Commented [R03]: I wasn't able to locate this permit. I'm not sure its still applicable.

~~subject to removal without notice.~~

G. ~~All permits are nontransferable.~~

H. ~~The annual fee for each permit shall be fifty dollars (\$50.), regardless of when during a year such permit is issued.~~

I. ~~Any permit may be revoked at any time, by action of the Licensing Board; provided, however, that any revocation initiated by the Licensing Board shall entitle the owner of the newsrack and/or public way obstruction to a pro rata refund of the annual permit fee paid pursuant to the preceding Subsection H of this section.~~

Commented [R04]: I don't believe we do this.

§ 223-24. Identification required.

~~Within 30 days after this article becomes effective, every person or other entity which places or maintains a newsrack or public way obstruction on the highways of the City shall have his/her/its name, address and telephone number affixed thereto in a place where such information can be easily seen.~~

§ 223-25. Hold harmless agreement; insurance. [Amended 3-5-2019]

~~Every person or other entity which places or maintains a newsrack or public way obstruction on a public sidewalk, parkway, highway or highway in the City shall file a written statement with the Licensing Board, satisfactory to the City Attorney, whereby he/she/it agrees to indemnify and hold harmless the City, its officers, City Council members and employees from any loss or liability or damage, including expense and costs for bodily injury or damage to private or public property sustained by any person as a result of the installation, use or maintenance of a newsrack or public obstruction within the City. A certificate of insurance in a form approved by the City Attorney indicating no less than one million dollars (\$1,000,000.) in general liability insurance coverage and naming the City as an additional insured shall be maintained on file with the Licensing Board by each such person or entity.~~

Commented [R05]: I don't think we have a mechanism for enforcement or follow-up for this section

§ 223-26. Removal of newsrack or public way obstruction.

~~The City Manager or his/her designee shall remove any newsrack or public way obstruction placed on any highway, sidewalk, parkway or highway in violation of this article.~~

§ 223-27. Severability.

~~The provisions of this article are severable. If any provision of this article or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article without the invalid provisions or applications.~~

§ 223-28. Injunction.

~~Any violation of this article is hereby declared to be a nuisance. In addition to any other relief provided by this article, the City Attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this article. Such application for relief may include the seeking of a temporary restraining order,~~

~~preliminary injunction and/or permanent injunction.~~

~~§ 223-29. Damage to newsracks and public way obstructions.~~

~~Any damage to newsracks or public way obstructions, whether or not properly licensed, by any cause whatsoever, including snowplowing and removal, shall be at the sole expense of the owner.~~

~~§ 223-30. Violations and penalties.~~

~~Any violation of the provisions of this article or any order of the Director or the Code Compliance Officer related thereto are subject to citation and the civil penalties set forth in RSA 47:17 and Code § 543.~~