



City of Rochester, NH
Preamble for September 3, 2020 Codes & Ordinances Committee Meeting

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

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

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

- b.) **Public Access Troubleshooting:** If any member of the public has difficulty accessing the meeting by phone, please email PublicInput@RochesterNH.net or call 603-332-1167.
- c.) **Public Input:** Due to the ongoing situation with COVID-19, the City of Rochester will be taking extra steps to allow for public input, while still ensuring participant safety and social distancing. In lieu of attending the meeting, those wishing to share comments, when permitted, with the City Council (Public Hearing and/or Workshop settings) are encouraged to do so by the following methods:
- **Mail:** City Clerk/Public Input, 31 Wakefield Street, Rochester, NH 03867 (*must be received at least three full days prior to the anticipated meeting date*)
 - **email** PublicInput@rochesternh.net (*must be received no later than 4:00 pm of meeting date*)
 - **Voicemail** 603-330-7107 (*must be received no later than 12:00 pm on said meeting date in order to be transcribed*)

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

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City Clerk's Office

Codes and Ordinances Committee

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



CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council
Thursday, September 3, 2020
31 Wakefield Street, Rochester, NH
Meeting Conducted Remotely
6:00 PM

Agenda

1. **Call to Order**
2. **Public Input**
3. **Acceptance of the Minutes**
 - 3.1 August 6, 2020 *motion to approve* P. 5
4. **Update: Outdoor Dining Ordinance P. 11**
5. **Code of Ordinances – Proposed review plan P. 19**
6. **Other**
7. **Adjournment**

[Public Input Registration](#)

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City Clerk's Office

Codes and Ordinances Committee

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



Others Present

Terence O'Rourke, City Attorney
Jenn Marsh, Economic Development

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, August 6, 2020

31 Wakefield Street, Rochester, NH

Meeting conducted remotely

6:00 PM

Minutes

1. Call to Order

Councilor Lachapelle called the Codes & Ordinances meeting to order at 6:00 PM and read the following preamble:

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

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

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

Deputy City Clerk Cassie Givara took the roll call. All Councilors were present and indicated that they were alone in the location from which they were connecting remotely.

2. **Public Input**

Ray Barnett, resident (via conference line), addressed the committee regarding impact fees and the suggestion of exempting the school portion for elderly residents. Mr. Barnett also referenced the noise ordinance discussion on the agenda and a recent incident in his neighborhood regarding early morning construction vehicle noise from a cement truck at 5:45 AM.

3. **Acceptance of the Minutes**

3.1 **February 6, 2020 *motion to approve***

Councilor Lauterborn clarified that the February 6, 2020 meeting had been cancelled due to inclement weather. The minutes erroneously supplied in the packet were from the September 2019 meeting which had been already accepted at the March 5, 2020 meeting. No motion or action is necessary for this item.

3.2 March 5, 2020 *motion to approve*

Councilor Hainey **MOVED** to **ACCEPT** the minutes of the March 5, 2020 meeting. Councilor Abbott seconded the motion. Councilor Lauterborn made a correction to a passage on page 12 of the packet which indicated that Councilor Walker had made a motion. Councilor Walker had not been present and it had, in fact, been Councilor Lachapelle who made the motion. Councilor Lauterborn **MOVED** to **AMEND** the minutes as stated. Councilor Lachapelle seconded the motion. There was a brief discussion on the adjusted start time of meetings and at which meeting the decision had been made. Councilor Hainey **MOVED** to **ACCEPT** the minutes as amended. Councilor Abbott seconded the motion. The **MOTION CARRIED** by a unanimous roll call vote with Councilors Lauterborn, Abbott, Lachapelle, Rice, and Hainey all voting in favor.

4. Temporary amendment to 275-29.13 regarding Political Signage

Councilor Lachapelle gave some brief background information on this item. He stated that this item had come forward from Councilor Lachance who wanted to allow political signs to be placed in the right-of-way due to restrictions COVID-19 places on electioneering and soliciting door to door.

City Attorney O'Rourke clarified that the City does not have authority to declare an emergency which would allow this change in the signage ordinance; only the Governor and the State legislature would have such authority. Councilor Hainey recalled a time where the City did allow political signage to be placed on public property and asked for clarification on what is considered a right-of-way. Attorney O'Rourke said that public property is considered a right-of-way and that the current rules have been in place since at least the 2014 rezoning. He stated that regardless of the City ordinances, in 2015 the Supreme Court ruled that a City cannot have an ordinance that distinguishes between the contents of a sign; you cannot say that political signs are allowed in a right of way but other signs are not allowed. This Supreme Court ruling reaffirmed that the City's ordinance was correct. Attorney O'Rourke clarified that the way the current ordinance is written, a sign placed in the right-of-way will be removed regardless of its content. He stated that the zoning ordinance can regulate criteria such as size of signs, duration they can be placed, and other dimensional criteria, but not the content of the signs themselves.

Councilor Hainey asked if it would be possible to change the ordinance to temporarily allow only political signage to be placed in City right-of-ways from August through November and prohibit other types of signage. Attorney O'Rourke stated that this is not permissible. It was clarified that there is no action needed on this agenda item at this time.

Ray Varney, resident (via conference line), spoke about the great deal of time and effort which had been put into developing the City's sign ordinance. He cautioned against making changes which would allow for "snipe" signs and other signage to clutter the City's right-of-ways.

5. Proposed Amendment to Chapter 80: Outdoor Dining

Councilor Lachapelle referenced the recent changes to the ordinance which City Council had made to allow for extended hours at downtown restaurants and asked Jenn Marsh, Economic Development, if there were any additional recommended changes at this time. Ms. Marsh said there

were some minimal changes which could be considered and will be brought back to Council in the future. She inquired about a recent staff meeting in regards to allowing entertainment at downtown establishments. Attorney O'Rourke said that staff from multiple departments had met to discuss the entertainment aspect. The primary concern was spacing; taking ADA compliance into consideration and ensuring that there is no obstruction of walkways and sidewalks as well as minimizing potential for driver distraction. Attorney O'Rourke said that, with the approval of Director of City Service Nourse, the City would be looking into making North Main Street downtown a single lane for next spring and summer. It will be attempted, and if it works well and is received favorably, it can be considered as a permanent change with extended sidewalks and larger areas for tables and seating. Attorney O'Rourke said that the change would also allow for any downtown business, not only restaurants, to consider outdoor seating or entertainment.

Councilor Rice asked what systems and methods (jersey barriers, etc.) would be utilized during the first year when this single lane is being trialed. Attorney O'Rourke said although they have not finalized details, the parking spaces would be eliminated and blocked off to allow for seating and entertainment space. There may be allowances for certain businesses to maintain parking spaces if needed as long as space allows.

Councilor Hainey asked if there was any discussion on closing North Main Street downtown to traffic entirely and only keeping it open for pedestrian use. Attorney O'Rourke said that this option had been brought up by BZLS director Jim Grant. This option will be considered and discussed further over the winter; if enacted, the street would be closed down only for certain parts of the day, likely during the evening dining hours. Director Nourse of DPW will need to review this further as far as traffic patterns are concerned and where the traffic would need to filter if it cannot continue straight onto North Main Street.

Councilor Lachapelle asked if the road is narrowed to a single lane if the jersey barriers would be eliminated to allow for something more aesthetically pleasing. Attorney O'Rourke confirmed that if the trial is successful and is turned into a permanent approach, the barriers would be removed and the sidewalks would be expanded with the trees removed or relocated.

Councilor Lachapelle suggested that the further changes to the outdoor dining ordinance be worked on further by staff and changes be submitted no later than March or April at the latest, hopefully much sooner so it can go to full Council by early 2021.

6. Discussion: Chapter 275-28.3 Noise Ordinance

Councilor Lachapelle referenced a complaint which had been made regarding a cannon being set off repeatedly in Gonic on July 4. Attorney O'Rourke reported that the Rob Lynch, Compliance Officer, had made contact with the owners of the cannon and informed them that their activity was not allowed due to the City's noise ordinance amongst other reasons. The owner of the cannon had indicated that the cannon was moved out of state and would not be used again.

Attorney O'Rourke addressed Mr. Barnett's concern about construction vehicle noise which had been brought up during public input. Per Director Grant of BZLS, the City ordinance states that construction activity within 300 feet of residential units is restricted to the hours of 7:00 AM to 6:00 PM Monday through Friday and 8:00 AM to 6:00 PM on Saturdays, although these hours can

potentially be modified on a case by case basis by Planning Board approval. Attorney O'Rourke said that although the police could be called for these incidents, the proper avenues would either be BZLS or the Planning department to address the issue. It was suggested that Mr. Barnett be contacted in regards to this discussion.

7. **Other**

Attorney O'Rourke referenced the re-codification of the City Ordinances which had been completed within the recent past. He said that the ordinances still contained many acronyms and terminology which is not in current use or is outdated. He suggested that each month, the Codes & Ordinances Committee review several chapters of the Code of Ordinances to clean them up and make suggested changes. The entirety of the suggested changes would then be presented to full Council in a packet form when the review is completed.

Councilor Lachapelle agreed that this review was a good idea and asked if relevant staff would be consulted for their recommendations as well. Attorney O'Rourke confirmed that both he and relevant staff would be reviewing the chapters and sending their recommendations to the Codes & Ordinances Committee for discussion. Councilor Rice stated that he thought 3-5 chapters is manageable for each codes meeting, but cautioned that they should focus on related chapters at each meeting so the committee can tackle all ordinances from each department at the same time without having to revisit or jump around.

Councilor Lauterborn spoke about a similar project of cleaning up and organizing the ordinance which had been done approximately 12 years ago. She said it had been an enormous undertaking, and the ordinances had been further cleaned up and clarified with the recodification in 2018. She supported taking on this project of reviewing the codes chapter by chapter over time in order to make it more understandable and current.

Councilor Abbott asked City Attorney O'Rourke to address Ray Barnett's public input comments in regards to impact fees. Attorney O'Rourke said that the impact fees are set by the Planning Board, and the Codes & Ordinances is not the appropriate board for discussion on the matter. He stated that although he was not certain without review if impact fees were assessed against residential development, fees are assessed for commercial and industrial development which do not bring children into the City and which are still subject to the school portion of the fees. Councilor Abbott stated that he recalled other cities had suggested waiving impact fees for particular demographics and had been told it was an age discrimination issue and was not permissible. Attorney O'Rourke agreed. Councilor Rice agreed that it was not only the elderly population affected, but that there are other residents without children who could also argue against having to pay these impact fees and it would be a slippery slope to start the process of waiving these fees only for certain demographics. Councilor Lachapelle clarified that if there were to be any further discussion on impact fees, it should be done at the Planning Board level.

Councilor Rice inquired if there was a City policy in order to ensure that citizens received follow up when they reached out to the City with concerns. Attorney O'Rourke said that there may be individual department policies, but he was unaware of any city-wide policy. Councilor Lachapelle said that he felt this would be a City Manager directive as opposed to something determined by City ordinance. Attorney O'Rourke referenced complaint forms specifically in Building, Zoning and

licensing department which would trigger a follow up by the compliance officer.

Councilor Lachapelle stated that the next meeting would be Thursday, September 3, 2020 at 6:00 PM via Microsoft Teams.

8. Adjournment

Councilor Lachapelle **ADJOURNED** the Codes & Ordinances Committee meeting at 6:50 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk

ARTICLE II
Outdoor Dining Establishments
[Adopted 1-12-2016 (§ 26.10 of the 1995 Code)]

§ 80-14. Requests for use of City property.

Requests for use of City property for outdoor dining providing food and alcohol service shall be made in writing to the City Manager on an annual basis by February 1 with no expectation of continued year-to-year use of the City property on a continuing basis. Requests will only be accepted by businesses licensed to serve food to the public. In the event that a new business opens during the outdoor dining season and wishes to incorporate outdoor dining in its plans, an application will be allowed for the remainder of the dining season only.

§ 80-15. Site plans required.

Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curblines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for outdoor dining, dimensioned routes of travel within the outdoor dining area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like. These plans will be reviewed by the Technical Review Group and suggestions forwarded to the City Manager.

§ 80-16. Area service agreement; season. [Amended 3-1-2016]

The terms and conditions of any such requests that are approved by the City Manager in any given year shall be described in an annual area service agreement, which includes a clear depiction of the area approved for outdoor dining use and the time period of approved use ("season"), with said area service agreement to be signed by the City Manager and the party or parties making the request. The season shall run from April 1 through October 31.

- A. Area service agreements shall not be assignable to other parties.
- B. Use of the area subject to the area service agreement (the "area") may be precluded, modified or made subject to any such terms and conditions as may be determined by the City Manager at any

time during the season in order to accommodate special municipal events.

§ 80-17. Fee.

A minimum fee for the season of twenty-five dollars (\$25.) shall be required even if the size of the area subject to the agreement is less than 100 square feet. A fee of one dollar (\$1.) per square foot will be charged for the area subject to the agreement for all square feet above 100 square feet. The fee shall be due and payable to the City of Rochester prior to authorization to use the area.

§ 80-18. Restoration of area. [Amended 3-1-2016]

The area specified for outdoor dining use in the area service agreement shall be restored upon termination of the area service agreement at season's end. Specifically, at season's end, the enclosure system, tables, chairs and all other materials in their entirety shall be removed from the City-owned area with the area left in an unobstructed, undamaged, clean and sanitary condition at no cost to the City. Semi-permanent objects may remain in the area at season's end at the discretion of the City Manager.

§ 80-19. Indemnification; insurance.

Outdoor dining establishments on City property shall indemnify and hold harmless the City of Rochester and shall maintain and provide insurance of the types and amounts specified by the City's Legal Department and shall list the City as additional insured. A certificate of insurance documenting said types and amounts of insurance is to be submitted to the City's Legal Department before the start of the season.

§ 80-20. Damaging or obstructing public facilities.

Outdoor dining establishments shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, or make the same inaccessible for public use (other than within the approved area) or maintenance purposes.

§ 80-21. Hours of operation.

Outdoor dining establishments may utilize the area for outdoor dining during their normal business hours, except that all tables within the area shall be cleared of all food and alcoholic beverages by 11:00 p.m. Monday through Saturday and by 10:00 p.m. on Sunday with

no alcohol served within the area subsequent to 1/2 hour before the foregoing closure times.

§ 80-22. Alcoholic beverages.

- A. Outdoor dining establishments shall agree at all times to comply with all laws, rules and regulations of the New Hampshire State Liquor Commission and all other local, state and federal laws. Approval of the area service agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission and the City Manager. See RSA 178:24 and 179:27.
- B. Outdoor dining establishments shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering food with service at tables conducted by wait staff only.

§ 80-23. Accessibility.

Outdoor dining establishments will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act (ADA).

§ 80-24. Suspension of area service agreement.

The area service agreement may be suspended at the sole discretion of the City on an administrative basis.

§ 80-25. Revocation of area service agreement.

The area service agreement may be revoked in its entirety, excepting for indemnity provisions, by the City Manager at any time.

§ 80-26. Site design standards for establishments with alcohol service.

Outdoor dining establishments with alcohol service should meet the following site design standards:

- A. Outdoor dining establishments shall be separated from the public pedestrian space on the adjacent municipal sidewalk by an enclosure system consisting of heavy-duty black decorative metal materials or equivalent as approved by the City Manager or his/her designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and ensure public safety; the minimum height of

the enclosure system shall be 30 inches and the maximum height shall be 36 inches.

- B. Outdoor dining establishments shall not have live entertainment of any type located outside, and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed toward patrons in the outdoor dining area.
- C. Seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the area approved by the City Manager. Exceptions to this provision will be allowed consistent with New Hampshire State Liquor Commission approval for particular licensees. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- D. The internal dimensions and table/chair layout of the outdoor dining area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.
- E. Outdoor dining establishments must provide a five-foot radius clearance from the center of restaurant doorways (exterior), and doorways shall be kept clear at all times and a five-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.
- F. The enclosure system, tables and chairs shall be movable/nonpermanent.
- G. In all areas where outdoor dining establishments are allowed the width for the pedestrianway adjacent to the area shall, at a minimum, be three feet and, in any event, meet ADA requirements, but will depend on site conditions. The pedestrianway in both instances shall allow for and provide clear unimpeded passage and access along the area. The pedestrianway shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the area interfere with accessibility or public safety, including safe lines of sight for motor vehicles.
- H. Canopies over the outdoor dining areas shall not be allowed unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the outdoor dining. Table umbrellas are allowed, but must not extend beyond the area.

- I. No object strictly related to advertising shall be allowed in the area.
- J. No improvements or personal property located within the area shall extend on or over any City property located outside the area.

§ 80-27. Rules and regulations.

Outdoor dining establishments shall agree at all times to comply with all local laws, rules, regulations and orders, including but not limited to the following:

- A. The Health Department shall approve outdoor food service operations and cleaning operations, with the area to be left in a clean and sanitary condition at all times, and no outdoor garbage containers will be permitted. The area shall be left in clean condition at close of business with all garbage removed in its entirety from the area, and any ground debris swept up, at close of daily business. No food prep, grilling, service windows, service counters, wait stations, or bus buckets shall be allowed in the area and no condiments, paper products or the like shall be stored on the tables in the area. The Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
- B. The Director of Buildings, Zoning, and Licensing Services shall review/approve that bathroom facilities are sufficient to support outdoor dining seating.
- C. Only decorative lighting shall be permitted.
- D. A place of assembly inspection and updated place of assembly permit shall be required from the Fire Department, and the Fire Department shall review/approve means of egress as part of the Technical Review Group process.

§ 80-28. Approval of agreement.

No area service agreement should be approved by the City Manager except in conformance with the foregoing.

§ 80-29. Other terms and conditions.

The above are policy guidelines that will serve as the basis for area service agreements, which may include other terms and conditions deemed by the City Manager to be in the public interest.

§ 80-30. Number and location of establishments.

The number and location of outdoor dining establishments on City property shall be at the sole unfettered discretion of the City Manager acting in the public interest, and no entitlement is created by this policy for any party to have outdoor dining at any location.

§ 80-31. Use of property other than sidewalks. [Added 4-5-2016]

Use of City property, other than sidewalks, for outdoor dining as defined in this article and the terms of said use must be separately negotiated with the City outside of the above-delineated permitting process.

Amendments to Chapter 80 passed at the July 21, 2020 Special City Council Meeting

THE CITY OF ROCHESTER ORDAINS:

That Chapter 80 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (additions in italics and deletions struck out):

§ 80-21 Hours of operation.

Outdoor dining establishments may utilize the area for outdoor dining during their normal business, except that all tables within the area shall be cleared of all food and alcoholic beverages by ~~11:00 p.m.~~ 1:00 a.m. Monday through Saturday and by 10:00 ~~_____ p.m.~~ on Sunday with no alcohol served within the area subsequent to ½ hour before the foregoing closure times.

The effective date of these amendments shall be upon passage.

THE CITY OF ROCHESTER ORDAINS:

That Chapter 80 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows deleting section 80-31 in its entirety:

~~§ 80-31 Use of property other than sidewalks.~~

~~Use of City property, other than sidewalks, for outdoor dining as defined in this article and the terms of said use must be separately negotiated with the City outside of the above delineated permitting process.~~

The effective date of these amendments shall be upon passage.

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City Clerk's Office

Code Review Plan

<u>Department</u>	<u>Chapters</u>
Clerk	Chapter 7, Administrative Code
CM/DCM/Finance	Chapter 7, Administrative Code Chapter 49, Cemeteries Chapter 123, Licensing Board Chapter 183, Public Buildings
BZLS	Chapter 11, Adult-Oriented Establishments Chapter 22, Amusements and Entertainment Chapter 40, Building Construction and Property Maintenance Chapter 54, Citations Chapter 80, Food and Food Service Chapter 94, Health and Sanitation Chapter 110, Junk and Secondhand Dealers Chapter 135, Mobile Home Parks Chapter 162, Pawnbrokers
Fire	Chapter 16, Alarm Systems Chapter 75, Fires and Fire Safety
Police	Chapter 28, Animals Chapter 149, Nuisances Chapter 167, Peace and Good Order Chapter 254, Vehicles and Traffic
Arena and Rec	Chapter 158, Parks, Recreation, and Arena
Planning	Chapter 176, Planning Board
DPW	Chapter 200, Sewers Chapter 210, Solid Waste Chapter 218, Stormwater Management and Erosion Control Chapter 223, Streets and Sidewalks Chapter 260, Water