

## **CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

**Thursday, October 6, 2016**

City Council Chambers

31 Wakefield Street, Rochester, NH

6:00 PM

### **Codes and Ordinances Committee**

Councilor Peter Lachapelle, Chair  
Councilor Elaine Lauterborn, Vice Chair  
Councilor Thomas Abbott  
Councilor Donna Bogan  
Councilor Robert Gates

### **Others Present**

Attorney O'Rourke  
Councilor Gray  
Councilor Willis

### **Others Present Continued**

Police Commission Bruce Lindsay  
Police Commission Lucien Levesque  
Police Commission Derek Peters  
Dennis Hancock, Resident  
Margie Hancock, Resident  
Michael Cormier, Resident  
Lea Dill, Resident  
Lisa Stanley, Resident  
Phil Jacques, Resident  
Barbary Soley, Resident

## **MINUTES**

### **1. Call to Order**

Councilor Lachapelle called the meeting to order at 6:00 PM. All members of the Committee were present.

### **2. Public Input**

Councilor Lachapelle invited the public to speak about any City topic that is not currently listed on the Agenda. He noted that any citizen would be allotted time to speak during each topic listed on the agenda.

### **3. Approval of the Codes and Ordinances Committee Minutes [September 1, 2016]**

Councilor Lauterborn **MOVED** to **APPROVE** the September 1, 2016, Committee meeting minutes. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

### **4. Discussion about Fireworks**

Councilor Lachapelle opened the discussion about setting off fireworks. He said he is not in favor of placing a complete ban of setting off fireworks in the City of Rochester; however, he supports having the Committee review the ordinance one more time.

Several Councilors agreed that it seems to be more of an enforcement issue. Councilor Gray asked if the Police Department could take any action against illegal fireworks displays if the violation was no longer in progress at the time the authorities reached the property in

question. Chief Allen replied that a neighbor could submit a written statement and photos in order to assist the Police Department with making the offender accountable.

Chief Allen said out of the 65 fireworks-related phone calls received in 2015, zero citations were issued. Similarly, to date in 2016 there have been 68 fireworks-related calls and zero citations have been given out this year.

Chief Allen said he met with the Director of Building, Zoning, and Licensing Services, the Fire Marshall, and the Police Commission to find ways to make the fireworks ordinance more enforceable. It was determined that a permitting process for fireworks displays, attaching a fee to the permitting process, limiting the permits to property owners, and requesting a lead time for obtaining a permit would be effective. Councilor Bogan asked if this would assist with “repeat” offenders. Chief Allen replied yes.

Councilor Abbott wished to clarify that no matter what ordinance is in place, the fireworks-related calls to the Rochester Police Department would still be low on the priority call list. Chief Allen replied that is correct.

Councilor Willis mentioned that Somersworth, NH, has had some success with an ordinance they have been using. It had been provided in one of the past Codes and Ordinances Committee meeting packets.

Councilor Lachapelle invited the public to come forward to speak about the topic.

Dennis Hancock, resident, gave reasons why he supported a total ban of fireworks. He said it is a quality of life issue.

Margie Hancock, resident, agreed with a total ban of fireworks and said implementing a permit fee of \$5 would do nothing to stop residents from setting off illegal fireworks since they spend thousands of dollars each year on fireworks.

Jackie Raab, resident, supported a total ban of setting off fireworks. She mentioned that her elderly mother has a difficult time hearing the loud noise. She questioned why the City would not ban fireworks during Mandatory Water Use Restrictions. She gave other reasons why fireworks should be prohibited in Rochester and why it was a quality of life issue.

Michael Cormier, resident, gave a lengthy heartfelt testimony of why setting off fireworks should be prohibited in the City of Rochester. He added that fireworks are being set off no matter the weather [30 mph winds] and in the middle of Mandatory Water Use Restrictions.

Lea Dill, resident, addressed the Committee about setting off fireworks. She asked if she submitted evidence to the Police Department, such as a video and/or trash bag filled with fireworks debris, would anything be done at that point. Chief Allen agreed that any evidence could be used to assist the Police Department in the ability to issue a citation.

Bruce Lindsay, Police Commission, addressed the Committee. He gave reasons why this is a quality of life issue. One neighbor can disturb the entire neighborhood for 5 or 6 hours at a

time. He questioned what is the benefit to the City of Rochester for allowing residents to set off fireworks.

Lisa Stanley, resident, said she listened to the testimony this evening and is in favor of banning fireworks all together or at least placing further restrictions on setting them off would be a step in the right direction. The current ordinance is too lenient.

Phil Jacques, resident, addressed the Committee, and said setting off fireworks should be reduced to only a few holidays a year, if not, a total ban. The current ordinance allows too many hours of letting off fireworks and among other things in Rochester it has become a quality of life issue.

Barbara Soley, resident, addressed the Committee about the impact setting off fireworks has on her son [military], animals, and elderly people in her neighborhood. She has been awoken in the middle of the night due to neighbors setting off fireworks and woken up in the morning to find small debris fires on her lawn. She added that many out of the State residents visit the Grand View Camping Area to set off fireworks.

Lucien Levesque, Police Commission, addressed the Committee and supported the permitting process. He said this has become a quality of life issue for many residents. The permitted fireworks display should be narrowed down to the one holiday a year in which the Country celebrates freedom.

Derek Peters, Police Commission, addressed the Committee and supported decreasing the permitted hours of setting off fireworks; however, he did not support an outright ban of the displaying of fireworks in the City of Rochester. He encouraged the Committee to seek legal advice from the legal Department and that a fine must be included in order to assist the local authorities to enforce the issue.

Councilor Lachapelle said that banning fireworks all together did not seem like a reasonable option. Councilor Abbott and Gates agreed.

It was determined that the following two motions would be brought to the Regular City Council Meeting in November:

Councilor Lachapelle stated that he did not support an outright ban; however, for the sake of bringing this matter to the City Council for a vote, he **MOVED** that the City of Rochester ban setting off fireworks. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a majority voice vote. The Amendment is as follows:

**23.1 Prohibition and Regulation of Fireworks.**

- A. In accordance with the provisions of RSA 160-C, it shall be illegal for any person, firm, partnership or corporation to offer for sale, expose for sale, sell at retail, purchase, possess, use, explode or display any permissible fireworks within the City of Rochester.

- B. The Police Chief and/or Fire Chief are authorized to seize, take, remove or cause to be removed, at the expense of the owner, all firework devices that are being discharged in violation of this ordinance.
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Councilor Lachapelle stated for the purpose of giving an option to the City Council if an outright ban fails at the City Council level, he **MOVED** that the current ordinance is amended as follows:

**23.2 Prohibition and Regulation of Fireworks.**

A. In accordance with the provisions of RSA 160-C, it shall be illegal for any person, firm, partnership or corporation to offer for sale, expose for sale, sell at retail, purchase, possess, use, explode or display any permissible fireworks within the City of Rochester, except as specifically provided for in this ordinance.

B. As used in this ordinance:

- i. “Display” means the use, explosion, activation, ignition, discharge, firing or any other activity which is intended to cause or which causes a firework to do what it was manufactured to do.
- ii. “Permissible fireworks” means those consumers firework devices defined as “permissible fireworks” in RSA 160-C, as the same currently exists or as, from time to time, hereinafter amended.
- iii. “Fire Chief” means the Fire Chief of the City of Rochester or his/her designee.
- iv. “Police Chief” means the Police Chief of the City of Rochester or his/her designee.

C. Permit Required. No Person shall use discharge or explode any permissible fireworks without a permit issued by the City of Rochester.

- i. Any person wishing to obtain a permissible fireworks display permit shall apply to the Police Chief and the Fire Chief at least 15 days prior to the display. The time frame may be waived at the discretion of the Police and Fire Chief.
- ii. The applicant shall provide the following information:
  - a. Date of application
  - b. Name, address, and telephone number of applicant
  - c. Address of location where the display will be held

- d. Diagram of the display location, showing the location of all nearby property lines, nearby buildings, public ways, nearby trees, electrical and telephone lines or other overhead obstructions, and the location of any nearby storage of flammable or combustible liquids or gases
  - e. Name of the owner of the property where the display will be held
  - f. Intended date and time of display, including a possible rain date
  - g. Written authorization of the property owner, if different from the applicant
  - h. Signature of the applicant
- iii. Permit fee. The fee for a permissible fireworks display shall be five dollars (\$5.00) per event. The fee shall be paid at the time of application and is non-refundable.
  - iv. Site inspections:
    - a. Prior to issuing a permit, the Police Chief or the Fire Chief may conduct an inspection of the display site to determine whether a permissible fireworks display can be held in a safe manner.
    - b. If, in the opinion of the Police Chief or Fire Chief, the proposed site is not suitable for the safe display of permissible fireworks, the application for a permit shall be denied.
- D. Subject to, and in accordance with the provisions of Chapter 160-C of the New Hampshire Revised Statutes Annotated it shall be lawful to possess and/or display permissible fireworks upon compliance with the following requirements:
- v. A person who is 21 years of age or older may display permissible fireworks on private property with the written consent of the owner or in the owner's presence, subject to the provisions of this ordinance and RSA Chapter 160-C, and any other applicable ordinance regulation or statute.
  - ii. No display of permissible fireworks shall be permitted within the City except between the hours of 6 PM and 11 PM on the following holiday: , Fourth of July (including the evening of July 3<sup>rd</sup> beginning at 6PM, including from such time until midnight on any rain date established for the annual city-wide fireworks display held at the Rochester Fairgrounds), after obtaining a permit.
  - iii. The display of permissible fireworks shall be of such a character, and so located and conducted, that it shall not be hazardous to property or endanger any person. In accordance with the provisions of RSA Chapter 160-C no permissible fireworks shall be permitted on public property and must be at least 50 feet from nearby buildings, nearby trees, electrical and telephone lines or other overhead obstructions, and the location of any nearby storage of flammable or combustible liquids or gases.
  - iv
  - v. No permissible fireworks may be used, discharged, exploded, or displayed during periods of very high or extreme fire danger as determined by the Fire Chief or the NH Division of Forests and Lands.

- v. Permissible fireworks may be used, discharged, exploded, or displayed in a manner such that any all discharge debris shall remain within the property lines of the lot on which the display originates.
  - vi. Anyone using permissible fireworks shall be responsible for removing any debris accumulated due to the discharge of fireworks that fall onto the public way, public property, and any private property within twenty-four hours. Anyone failing to remove such debris shall be financially responsible for its clean up.
  - vii. Display of permissible fireworks shall be permitted on public property the evening of July 3rd beginning at 6PM, including from such time until midnight on any rain date established for the annual city-wide fireworks display held at the Rochester Fairgrounds, provided that such display shall be authorized in a duly issued Block Party Application/Permit from the City's Licensing Board covering the public property on which the display is to occur."
- E. A violation of this ordinance shall be subject to the penalties provided for in Chapter 23, Section 23.11, Penalty, of the City of Rochester General Ordinance.
- F. This ordinance shall be construed consistently with NH Code of Administrative Rules Sa f c 2600, as made applicable by state statute and as adopted by reference in Section 23.1, of the General Ordinances of the City of Rochester, and is not meant to repeal any section thereof. Nothing in this ordinance shall be interpreted so as to conflict with the provisions of Chapters 160-B or 160-C of the New Hampshire Revised Statutes Annotated, as currently written, or as from time to time hereafter amended. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct independent provision and such holding shall not affect the validity of the remaining portions thereof.11-9-10
- G. The Police Chief or Fire Chief may suspend the use of permissible fireworks for any of the following reasons:
- vi. Unfavorable weather conditions, including but not limited to, lightning storms or high wind conditions exceeding 20 miles per hour or higher.
  - vii. If any person under the age of 21 possesses, uses, discharges or explodes, used, discharged or exploded any permissible firework device.
  - viii. If any person who is using, discharging, exploding, or displaying the permissible fireworks appears to be under the influence of alcohol or drugs;
  - ix. If, in the opinion of the Police Chief or Fire Chief, the use, discharge, exploding, or display of permissible fireworks would create a threat to public safety.

- H. The Police Chief and/or Fire Chief are authorized to seize, take, remove or cause to be removed, at the expense of the owner, all firework devices that are being discharged in violation of this ordinance.”
- I. The City Manager, Mayor, and/or the City Council may declare a Special Event of cultural or civic significance and authorize the display of fireworks on the same terms as Section D. ii on particular days to celebrate those Special Events.

In accordance with NFPA 1:2009 1.13, or the applicable adopted section of the current Code, the Rochester Fire Department enacts the Listed Agent Program. The Fire Chief or his designee shall promulgate administrative rules for the management of the Listed Agent Program.”

Councilor Bogan seconded the motion. The **MOTION CARRIED** by a majority voice vote.

Councilor Lachapelle thanked the public for attending the meeting.

**5. Proposed Amendment to the General Ordinances Relative to Chapter 45 Overnight Parking Occupancy and Camping on City owned property**

Councilor Lachapelle introduced the following Amendment and invited the public to speak on the topic:

**AMENDMENT TO CHAPTER 45 OF THE GENERAL ORDINANCES OF THE CITY OF ROCHESTER REGARDING OVERNIGHT PARKING, OCCUPANCY AND CAMPING ON CITY OWNED PROPERTY**

**THE CITY OF ROCHESTER ORDAINS:**

That Chapter 45 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows:

**CHAPTER 45  
OVERNIGHT PARKING, OCCUPANCY AND CAMPING ON CITY OWNED  
PROPERTY**

**SECTION ANALYSIS**

- 45.1 Authority
- 45.2 Purpose
- 45.3 Acts Prohibited
- 45.4 Definitions
- 45.5 Exceptions
- 45.6 Responsibility
- 45.7 Removal
- 45.8 Enforcement
- 45.9 Severability
- 45.10 Effective Date

**45.1 Authority.**

In accordance with and under the authority of New Hampshire Revised Statutes Annotated 41:11; 41:11-a; and 47:17, the City Council of the City of Rochester hereby adopts the following ordinance for the regulation of overnight parking or camping on all City-owned property.

**45.2 Purpose.**

This purpose of this Ordinance is to protect the public peace, preserve public law and order, promote safety and welfare and ensure proper and decent conduct for the residents of the City of Rochester and the general public, in the use of City-owned properties.

**45.3 Acts Prohibited.**

From and after the effective date of this ordinance it shall be unlawful for any person to camp or to park any vehicle or recreational vehicle with occupancy by one or more persons, either overnight or for any period of time over two hours between dusk and dawn, on any City-owned lands within the City of Rochester.

**45.4 Definitions.**

(a) *Camp*: Includes pitching a tent, placing or erecting any other camping device, or sleeping in or on the City-owned property.

(b) *Recreational vehicle*: Any vehicle fitting the definition in RSA 216-I:1, VIII.

(c) *City-owned property*: All properties owned by the City of Rochester.

**45.5 Exceptions.**

Restrictions in this ordinance shall not apply when permission has been granted by the City Manager or the Chief of Police for official or emergency purposes or in conjunction with a special event.

**45.6 Responsibility.**

All violations of parking restrictions and charges accompanied therewith shall be deemed the responsibility of the registered owner of said vehicle. Such registrations may be proven as set forth in RSA 261:60. Said registered owner shall be conclusively presumed to be in control of the vehicle at the time of the parking violation, and no evidence of actual control or culpability needs to be proven as an element of the offense in accordance with RSA 231:132-a.

**45.7 Removal.**

Any vehicle parked in violation of this Ordinance shall be ordered towed by the Rochester Police Department at the expense of the owner or custodian of said vehicle.

**45.8 Enforcement.**

(a) Any person who violates this Ordinance shall be guilty of a violation and shall be fined One Hundred Dollars (\$100.00).

(b) Any duly appointed police officer for the City of Rochester may enforce this Ordinance by utilizing any process authorized by state law, including but not limited to a Local Ordinance Citation pursuant to RSA 31:39-d and Chapter 44 of the City of Rochester Ordinance.

(c) All penalties collected for violations of this Ordinance shall be for the use of the City and deposited into the City's general fund.

**45.9 Severability.**



The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause or part thereof is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of any remaining sections, subsections, sentences, clauses or part of this Ordinance.

#### **45.10 Effective Date.**

**This Ordinance shall take effect upon passage.**

**The effective date of these amendments shall be upon passage.**

human, resident, addressed the Committee. He did not support this proposed ordinance. He said there should be some type of licensing for campers on City property; however, restricted any overnight camping is not moving in the right direction.

Councilor Abbott **MOVED** to recommend this proposed amendment to the full City Council for approval at the November 1, 2016, Regular City Council Meeting. Councilor Bogan seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

#### **6. Codification Review**

The Committee made a Sense of Committee on the following codification review questions:

Charter:

- Section A: Include the Adoption date for the City Charter
- Section B: Do not include attachment; revise note to state that the Exhibit A is on file in the City Clerk's office.

It was further recommended that the City Rules of Order should not be included with the Codification. This should be a separate document noted as an attachment on file with the City Clerk's office. The Sense of the Committee is to send the Codification to the full City Council for Approval.

#### **7. Other**

Councilor Lachapelle briefly updated the Committee about the recommendation to have the Codes and Ordinances Committee review an Amendment to Chapter 3 of the General Ordinances of the City of Rochester Regarding Composition of the Conservation Commission. The proposed amendment would increase the amount of "alternate" positions from only having one to two alternate positions. Councilor Lauterborn **MOVED** to recommend to the full City Council that this amendment be approved. Councilor Gates seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

### **AMENDMENT TO CHAPTER 3 OF THE GENERAL ORDINANCES OF THE CITY OF ROCHESTER REGARDING THE COMPOSITION OF THE CONSERVATION COMMISSION**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 3 of the General Ordinances of the City of Rochester regarding the composition of the Conservation Commission and currently before the Rochester City Council, be amended as follows:

**3.9 Conservation Commission.**

(a) -----

(b) The Conservation Commission shall consist of seven (7) members, one of whom may be a member of the Planning Board. Members of the Commission shall be appointed by the Mayor in accordance with the provisions of Section 74 of the Rochester City Charter for terms of three years. The terms of members of the Commission shall be so arranged that two regular members of said Commission shall be appointed annually and a chairperson shall be appointed every third year by the Mayor. Vacancies shall be filled for the unexpired terms. Two (2) alternate members of the Commission shall be appointed in the same manner as regular members of the Commission for a terms of three years, and when such alternates serve in the absence or disqualification of a regular member, he or she shall have full voting powers.

(c) ----

**The effective date of these amendments shall be upon passage.**

Councilor Gray asked if the discussion about political signage could be discussed at the next meeting. Councilor Lachapelle asked the City Clerk to add this topic to tentative agenda for November Codes and Ordinances Committee.

Councilor Gates **MOVED** to **ADJOURN** the Codes and Ordinances Committee at 7:50 PM. Councilor Lauterborn seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully submitted,

Kelly Walters, CMC  
City Clerk