

Codes and Ordinances Committee

Councilor Alex de Geofroy, Chair
Councilor Tim Fontneau, Vice Chair
Councilor Bryan Karolian (excused)
Councilor Patricia Turner
Councilor Dave Walker



Others Present

Terence O'Rourke, City Attorney
Phebe Miner, Legal Intern
Jim Grant, Director of Building and Licensing
Chris Rice, resident

CODES AND ORDINANCES COMMITTEE
Of the Rochester City Council
Thursday, March 7, 2024
Council Chambers
6:00 PM

Minutes

1. Call to Order

Chair de Geofroy called the Codes and Ordinances meeting to order at 6:00 PM.

2. Roll Call

Deputy City Clerk Cassie Givara took the roll call attendance. Councilors de Geofroy, Fontneau, Turner, Walker, and ex officio member Mayor Callaghan were present. Councilor Karolian was excused.

3. Public Input

Chris Rice, resident, addressed the Committee regarding the proposed amendment to Chapter 40 appearing on the agenda and gave suggestions on edits which could be made prior to full council approval.

4. Acceptance of the Minutes

4.1 February 15, 2024 *motion to approve*

Councilor Walker **MOVED** to **ACCEPT** the February 15, 2024 Codes and Ordinances Committee meeting minutes. Councilor Fontneau seconded the motion. The **MOTION CARRIED**

by a unanimous voice vote.

5. Continued Review of the City Council Rules of Order

- **Amendment to Section 1.5-C:6 “Procedures for Remote Participation” (addendum a)**

Chair de Geofroy explained that the suggested change is to add references to RSA 91-A into the script included in the Rules of Order. This RSA citation is already being verbally stated when the script is read at meetings; this amendment would just make the Rules of Order consistent with current practice.

Councilor Fontneau **MOVED** to recommend the amendment to Section 1.5-C(6) of the Rules of Order, “Procedures for Remote Participation” to full City Council. Councilor Turner seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

- **Amendment to Section 4.4 “Standing Committees” (addendum b)**

Councilor Walker stated that the verbiage suggested by the City Attorney was not the same as what he had suggested at the prior meeting and asked the City Attorney how he arrived at the suggested wording included in the packet. Attorney O’Rourke explained that he had concerns that if all City Councilors were made alternates for all subcommittees and compelled to attend the meetings, it would violate the provision that members cannot service on more than 3 standing committees. As written in the suggested amendment, alternates would not need to regularly attend but would be available on call if needed. The Committee discussed the procedure if this amendment is passed, with the Mayor or Chair of a committee calling on an alternate to attend if a quorum is not available. Councilor Walker explained that his original idea had been to not name specific councilors as alternates, but to have all Councilors as alternates. In this instance, if a Councilor was present for a meeting of which they were not a regular member, they could be appointed as the alternate if needed negating the need for a specific call-in. Attorney O’Rourke explained that this procedure would violate the Mayor’s authority to appoint. Councilor Walker **MOVED** to recommend the amendment to Section 4.4 of the City Council Rules of Order to full Council. Councilor Fontneau seconded the motion.

Mayor Callaghan acknowledged that it would make sense for an alternate to be able to serve on a board/committee if they are present at a meeting instead of a call being made to a specific alternate. He questioned how the proposed wording would ensure a quorum. Councilor Fontneau referenced Councilor Walker’s prior suggestion that all Councilors not appointed to a subcommittee automatically become alternates to all other committees. Attorney O’Rourke suggested the following: “**The Mayor shall appoint ~~two~~ (2) alternate members to each standing committee.**” This would serve the same purpose of ensuring alternates are available without requiring specific Councilors or specific numbers to be named as alternates for committees. Attorney O’Rourke explained that the Mayor would still appoint specific Councilors as alternates, whether it is several members or the entire body. This would allow any available Councilors to serve as alternates when available without violating the Mayor’s authority to appoint. Councilor Walker **MOVED** to **AMEND** section 4.4 by striking out the word “two” as detailed by Attorney O’Rourke. Councilor Fontneau seconded the amendment. The **MOTION CARRIED** to amend the section as stated above by a unanimous voice vote. Chair de Geofroy called for a vote on the original motion as amended.

The MOTION CARRIED, as amended, by a unanimous voice vote.

6. Continued Review of the Code of Ethics and Conduct for Elected and Appointed Officials

Phebe Miner, legal intern, referenced discussion from the prior meeting regarding the sufficiency review portion of the “Board of Ethics” ordinance. The Committee had questioned whether this review of sufficiency should be conducted by City officials/staff or should be entirely members outside the city organization. The current ordinance lists City officials carrying out the sufficiency review to determine whether there is enough evidence to support a violation of the code; the process is then handed over to the “Ethics Investigation Officer” (EIO), who would be a hired independent party outside of the City administration.

Ms. Miner stated that she had reviewed the processes of neighboring towns and cities related to their ethics codes, and she summarized her findings. The City of Dover is closest to the suggestion from Councilor Walker that the entirety of the sufficiency review be conducted by outside parties not elected or employed by the City; with Dover’s 5-member sufficiency review being comprised of one former school board or City Council member along with four other residents of the City. In their process, if the complaint is deemed sufficient, it is then handed over to the City Council. The Dover ordinance states that the board members receive training, although they are not compensated monetarily.

Ms. Miner explained that in Somersworth, the ordinance states that the sufficiency review is comprised of 5 members; however, there are currently only three members serving. She speculated that this could potentially be due to the time commitment or difficulty in finding members to serve on such a board. This would need to be taken into consideration if Rochester were to explore a completely external sufficiency review board; keeping in mind that any complaints received are required to be reviewed within 30 days of receipt.

Councilor Walker reiterated his suggestion that a sufficiency review board could be comprised of HR officials from local businesses, who already have adequate training for dealing with ethics issues. Ms. Miner asked for clarification on the suggestion and whether these HR employees of local businesses could serve on said board regardless of their town of residence. Councilor Walker equated his proposal to members of the REDC, who are not required to reside in the city to serve on the board as long as they have business ties to the City. Ms. Miner inquired how board members could be compelled to serve if they were not City officials being appointed. Councilor Walker speculated that the City could contact local organizations to see if they would be amenable to having staff serve on the board; however membership would be voluntary. Ms. Miner reported that there is no precedent in the region for having an ethics board which is not comprised of residents of the town or city. The Committee discussed the requirement for members serving on the board to be Rochester residents or to have relevant HR experience. The potential difficulty of being able to assemble a quorum in a timely manner with a board comprised of local business staff was discussed.

Chair de Geofroy inquired how long the codes of ethics Ms. Miner had reviewed had been in effect. Ms. Miner stated that many of them had been established more than 10 years prior and already recertified; with Portsmouth’s Code of Ethics in place since the late 1980s. Chair de Geofroy requested that the process and background of these well-established codes be reviewed to determine what is working and how the Rochester process could be built. Ms. Miner committed to returning the following month with recommendations based on this review. Mayor Callaghan requested

guidance on how these board members would be appointed, whether city officials, residents, or local business staff. There was a brief discussion regarding whether these members would be City Manager, Mayor, or Council appointees.

Chair de Geofroy asserted that he did not identify any issues with having a sufficiency review made up of internal candidates, who would simply determine whether sufficient evidence of a violation exists to warrant elevating to an investigation. He speculated that there could always be perception of bias to some extent, regardless of how the board is comprised or appointed.

The review of the Code of Ethics was kept in Committee.

7. Amendment to Chapter 40 of the General Ordinances of the City of Rochester Regarding Council Designated Area Periodic Inspections

Attorney O'Rourke explained that this this amendment proposes a new approach to enforcing the property maintenance codes which are already adopted as part of the City ordinances.

In developing this approach, data was gathered regarding locations of non-owner-occupied multi-family rental properties, locations of code complaints regarding multi-family properties, and locations of property crimes in the City. This data was compiled into maps to illustrate the areas of the City where these criteria were most prevalent. Attorney O'Rourke explained that he had reviewed approaches to property maintenance code enforcement throughout the country and had developed this amendment with the Director of Building and Licensing Services (BLS).

Attorney O'Rourke summarized the approach, which would have the City Council designate areas of the City for periodic inspection based on the above-mentioned data. Code Enforcement officers would still be responding to complaints and carrying out their regular duties; this amendment would ensure inspections of certain properties in these designated areas on a routine basis. Attorney O'Rourke clarified that residents of multi-family rental properties are the least likely to complain about code issues due to fear of potential eviction or retaliation. This approach would remove the "neighbor against neighbor" complaint-based approach and potential adverse results for tenants. It would put the proactive responsibility on the City. He stated that the goal is that the numbers of property crimes and code complaints will gradually reduce once these periodic inspections become commonplace and improvements are made.

Jim Grant, Director of Building and Licensing Services, acknowledged that there are often right-to-know requests following code complaints to determine where the complaint had originated, pitting neighbor against neighbor. He clarified that he is tasked with carrying out the International Property Maintenance Codes (IPMC), however there needs to be a better mechanism to enforce these codes than the complaint-based approach being used currently. Director Grant responded to a comment made at public input, which he interpreted to imply that affordable dwelling units should not be as safe as higher priced rentals. Director Grant acknowledged that bringing properties up to code does cost money; however, the tenants of these units deserve safe accommodations and should not be faced with potential loss of housing due to the cost of these necessary improvements being completed by property owners.

Councilor Fontneau clarified that the IPMC applies to all properties, not only rental units as covered in the proposed amendment. He expressed concern that the maps included with the

amendment appear to target only certain types of properties; non-owner-occupied multi-family units. The maps seem to focus primarily on the downtown area, which has the most multi-family units as well as the oldest housing stock in the City. Councilor Fontneau stated that landlords may feel singled out based on the location of their property while there are similar properties that fall outside of the designated areas and are not subject to the same scrutiny. He requested that the stakeholders, owners of non-owner-occupied multi-family units, be invited to weigh in on this amendment.

Councilor Walker inquired why property crime statistics were used in the development of the maps included to support the inspection approach. Attorney O'Rourke responded that tenants of properties that are not up to code are more likely to be victims of property crimes.

Councilor Walker speculated that the current verbiage of the amendment "targeting" non-owner-occupied multi-family units could open the City up to discrimination lawsuits. Attorney O'Rourke clarified that owners of such properties are not a protected class and could not fall under the classification for such discrimination litigation. Attorney O'Rourke explained that BLS staff would not be conducting inspections *only* of multi-family rental units; they would still be conducting their regular tasks and inspections of all types of properties. This amendment would simply ensure that the areas identified as being in most dire need are designated as being inspected periodically without complaints needed to initiate the inspections. Councilor Walker agreed with Councilor Fontneau that affected property owners should have an opportunity to speak on the matter at a public hearing.

Councilor Walker inquired how the process would be carried out and if interior inspections would be noticed prior to occurring. Director Grant clarified that no interior inspections would be carried out under this proposal; all inspections are external to identify code deficiencies.

Mayor Callaghan requested that there be a definition of "inspection" included in the amendment because it is not clear based on the current language. Director Grant directed the Committee to the IPMC and the definition of inspections. He stated staff will not be entering properties unless there are egregious visible violations, at which point proper authorizing documentation to enter the property would be secured.

Mayor Callaghan acknowledged the correlation between property crimes and property code violations. He stated that his interpretation of the amendment did not limit inspections to multi-family rentals with the phrase "...inspections of residential rental buildings or structures..." Attorney O'Rourke agreed that inspections are not limited to rental properties. Mayor Callaghan stated that this proactive approach to code enforcement will likely result in improvement of property values and quality of life for residents.

Mayor Callaghan spoke about the potential of fines collected being placed into a fund to assist residents with property improvements in order to get their properties up to code. He spoke about several other potential financing options the City could review to assist residents with improvements. Attorney O'Rourke spoke about the previous "Neighborhood Compliance Program" and the process the City had followed. Instead of fining property owners, fees were waived under the stipulation that funds would instead be reinvested into property improvements. The goal had not been for the City to make money, but rather to have these properties brought up to code and for the neighborhoods to be improved for residents. He said the City had experienced great success with this approach.

Councilor Walker inquired how BLS staff would proceed if an owner refused access to their property. Director Grant indicated that the inspections are primarily front, exterior visual inspections; staff are not digging for problems and will not investigate further unless an obvious violation is identified.

Councilor Fontneau reiterated the inference that only non-owner-occupied rental properties would be addressed. Attorney O'Rourke clarified that this particular proposal identifies non-owner-occupied rentals in particular areas of the City, because these properties are currently what the City has data detailing; however, Code Enforcement would still be carried out for all types of properties in the City per the IPMC.

Councilor Fontneau cautioned against the perception of certain properties being targeted and the possible resulting effect of rent increases and unaffordability due to the cost of these improvements being made upon code enforcement. He suggested there could be a middle ground between the complaint-based approach and the designated area inspection approach. Chair de Geofroy agreed that there could be further review and revisions to the proposal to avoid the perception of targeting or bias.

Mayor Callaghan specified that the City employs building inspectors and code enforcement officers; their job is to enforce these adopted code laws and they should be given the ability to do so. Chair de Geofroy agreed and cautioned against the perception of the City advocating for not enforcing these property codes; but he acknowledged there needs to be an approach that is perceived as more equitable and fair.

Chair de Geofroy suggested that Director Grant report back to the committee with a comprehensive detailing of BLS' approach and to and process for code enforcement to help the committee understand current practice and how it can be improved or changed. Director Grant stated there needs to be a determination whether it is the City's approach to code enforcement that is the issue, or if it is the codes themselves that are objectionable. If it is the latter, the City needs to look into changing the codes if they are not supportive of enforcing them.

Director Grant spoke about the codes he is tasked with enforcing and the department's current approach. He summarized a courtesy letter submitted to violating properties and the potential of softening the language included in this notice if requested.

Mayor Callaghan suggested the following amendment: **"The City hereby requires periodic inspections of residential rental buildings or structures as part of a targeted effort within geographic areas specified by the City Council...."** Attorney O'Rourke explained that there are laws in the State of NH that recognize the difference between single-family residences and multi-family dwellings, which are considered businesses and held to different standards. However, striking out the words "residential rental" would still allow for periodic inspections in these designated areas. Mayor Callaghan **MOVED** to amend the proposal by striking the words "residential rental" as shown above. Councilor Fontneau seconded the motion. The amendment to the **MOTION CARRIED** by a majority voice vote.

Chair de Geofroy proposed that this item be kept in committee to allow further review and work and reiterated the request to Director Grant for a more comprehensive detailing of how this process

would be approached and carried out in these designated areas. Councilor Walker reiterated that there should be a public hearing held on the matter to allow stakeholders to share their thoughts prior to consideration for adoption.

8. Amendment to Chapter 94 of the General Ordinances of the City of Rochester Regarding Lead Paint Poisoning and Prevention Control

Attorney O'Rourke gave an overview of a new State law going into effect on July 1, 2024; RSA 130-A Regarding Lead Poisoning Prevention and Control. If adopted by the City, this would allow City officials to enforce the provisions of this law. If not adopted, the only party able to enforce the provisions would be DHHS; with limited inspectors throughout the State and the requirement to file a request for service, this could be prohibitive. Attorney O'Rourke clarified that this is not creating a new law, but rather allowing the City to enforce a law already in effect without the involvement of a State agency.

Councilor Walker inquired how this law would be enforced; if it is complaint-driven or would it involve periodic inspections. Director Grant stated that the trigger for this enforcement would be a question on the City's building permits regarding any renovations or projects on pre-1978 properties. He explained that effective July 1, the City would be requiring a certificate of lead safety prior to a certificate of occupancy being issued. Director Grant briefly summarized the difference between lead-free and lead safe.

Councilor Walker inquired if the City is currently undertaking lead testing for children in Rochester schools. Mayor Callaghan responded that there is no in-school testing occurring; there had been legislation proposed at the State level which would enact this testing, but it did not pass. Councilor Walker suggested that elevated levels on a child's lead test could be a trigger for testing of the property where the child lives.

Councilor Fontneau cautioned that requiring properties to be lead safe would come at an increased cost for improvements and in turn, an increased cost for rents. He stated that the system unfairly places elevated lead levels on landlords, suggesting that the onus should be on parents to ensure that their children are tested on the recommended schedule to identify exposures. He surmised that there are multiple sources of lead exposure for children besides rental properties. Additionally, Councilor Fontneau questioned if there would be liability for the City if a property is certified as lead safe and a child later tests positive at this location. Attorney O'Rourke stated that the City would not be liable in a circumstance as explained; the liability would fall on the property owner.

Councilor Walker asked how the City would be carrying out lead testing. Director Grant explained that City staff will not enter properties to perform lead testing; the change in law being discussed is the requirement of specific certification for lead safety which will now be enforced by the City. The Committee discussed various methods of testing for lead. Director Grant indicated he would invite the Health Inspector, who is lead certified, to attend an upcoming Codes and Ordinances meeting and explain the process in greater detail.

Mayor Callaghan asked if this proposal would initiate the addition of a checkmark on building permits for the involvement of a lead abatement contractor for all properties pre-dating 1978. Chair de Geofroy summarized that the State law is already in place requiring this process be followed; the proposal for the City is to take on the responsibility of ensuring the follow through is occurring

without having to rely on the State. Director Grant confirmed this would be a field built into the permitting software. Certain criteria would be flagged, such as year the property was built, requiring a certification number to be entered. It was further clarified that the proposal is an administrative function to ensure that the law has been followed.

Mayor Callaghan clarified that the City would not be inspecting for the presence of lead paint; these inspections would be done by certified abatement contractors and the City would be requiring their certification number. Director Grant confirmed this that the Board of Health had already directed BLS to add this field to building permits; the proposal before the committee is the enforcement portion of the process.

Mayor Callaghan **MOVED** to recommend to the full City Council the Amendment to Chapter 94 regarding lead paint poisoning and prevention control. Chair de Geofroy seconded the motion. Chair de Geofroy referenced a vote taken by Council the prior year regarding these checkboxes for lead certification numbers to be added to building permits. Attorney O'Rourke confirmed that Council had voted to add this field to building permits; with this new law going into effect, staff felt it would be propitious to combine both the city enforcement aspect along with the change to the building permits. Councilor Fontneau expressed support for the addition of certification numbers to the building permits but spoke against City staff involvement in lead abatement and the potential related liability. Mayor Callaghan emphasized the adverse effects lead exposure can have on a child's brain development, and the priority this should take over renovation costs. Chair de Geofroy agreed and stated that the costs of any lead abatement and improvement should be borne by property owners. The **MOTION CARRIED** by a majority voice vote.

9. Building and Licensing Services - Compliance Updates and Review

Director Grant explained that currently, the City's Zoning Board of Adjustments serves as the board of appeals for compliance of the IPMC. He suggested that the City could explore the option of creating their own board of appeals specifically to handle the Council Designated Area process, which would be comprised of individuals with expertise in this area, such as landlords and developers and those familiar with IPMC. This board could be viewed as more fair and unbiased. Director Grant spoke of the potential of using a score card for inspections. He requested direction and guidance from the Committee in order to know how to proceed and which methods and approaches the City would like explored. He reiterated that if there are codes the City does not believe should be enforced, these codes should be reviewed and potentially removed. Director Grant cautioned against the possibility of a great deal of time and effort being placed into the Council Designated Area proposal just to have it voted down by City Council. He suggested that guidance could be given prior to staff spending time developing programs which are not structured in a way the City wants.

Chair de Geofroy requested more data to be brought forward in regards to code compliance processes; numbers might be helpful in determining what is being done well and what could be changed. Director Grant reiterated that these numbers are currently complaint-driven and relatively low. There was discussion regarding the committee receiving a more detailed explanation of the current BLS approach and how the proposed designated area approach would work.

10. Other

There was no discussion under “other.”

11. Adjournment

Councilor Walker **MOVED** to **ADJOURN** the Codes and Ordinances Committee meeting at 8:03 PM. Councilor Turner seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk

6. The Chair shall announce the remote participant *prior* to the Call to Order and follow this suggested script: “Board member (name) is participating in this meeting remotely. (name) are you there? (participant– “yes I am here”) In accordance with RSA 91-A:2, III (a) (name) was it reasonably impractical for you to be physically present at this meeting? (participant) – yes, it was impractical for me to be physically present), (Chair), I find that it is not reasonably practical for (participant) to be physically present for this meeting. (Name), can you identify all other persons physically present in your current location? (participant names others).”

SECTION 4.4 STANDING COMMITTEES

At the commencement of the new year following the regular municipal election, the following committees shall be appointed by the Mayor:

Finance:

Shall consist of seven (7) members including the Mayor who shall serve as chair.

Public Works and Buildings:

Shall consist of five (5) members.

Public Safety:

Shall consist of five (5) members.

Codes and Ordinances:

Shall consist of five (5) members.

Community Development:

Shall consist of five (5) members.

Appointments Review Committee:

Shall consist of five (5) members.

- A. No Council Member shall serve on more than three (3) standing committees, excluding the Finance Committee.
- B. All vacancies occurring in any standing committee shall be filled by the Mayor.
- C. The Mayor shall appoint ~~two (2)~~ alternate members to each standing committee. Alternates are not required to attend regularly scheduled meetings, but may be called upon by a Chairperson to attend a meeting in order to form a quorum in the absence of appointed regular members.