

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Steve Beaudoin Vice Chair
Councilor Skip Gilman
Councilor Ashley Desrochers (excused)
Councilor Tim Fontneau



Others Present

Mike Scala, Director of Economic Development
Terence O'Rourke, City Attorney

**CODES AND ORDINANCES COMMITTEE
Of the Rochester City Council
Thursday, October 5, 2023
Council Chambers
6:00 PM**

Minutes

1. Call to Order

Chair Lachapelle 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 Beaudoin, Fontneau, Gilman, and Chair Lachapelle were all present. Councilor Desrocher was excused.

3. Public Input

There was no one present for public input.

4. Acceptance of the Minutes

4.1 September 7, 2023 *motion to approve*

Councilor Beaudoin **MOVED** to **ACCEPT** the minutes of the September 7, 2023 Codes and Ordinances Committee meeting. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

5. Amendment to Chapter 7-35 of the General Ordinances of the City of Rochester Regarding the Economic Development Commission (addendum A)

Chair Lachapelle explained that this item had been kept in Committee because members had additional questions for City staff before they were prepared to make a recommendation.

Councilor Fontneau referred to chapter 7-35, section C (1) and the proposed amendment “Promote the City of Rochester, through advertising, prospect development and other means, as an attractive location for industrial, **residential**, and business **development and/or** expansion.” He stated that he felt the role of the Economic Development Commission had always been commercial and business development, and the residential aspect would be a new role for the commission. He expressed concern with using tax dollars to allow the Economic Development Commission to promote residential development, which isn’t normally a benefit to the tax base. Councilor Fontneau stated he would be more comfortable if the wording was changed to indicate the promotion of residential development “when in connection with commercial development.”

Mike Scala, Director of Economic Development, explained that the term “residential” was used as broad term to potentially encompass multiple options in the future. The REDC does not intend to seek out multi-family or strictly residential development, He stated that the goal of the type of development in question would be mixed-use with the potential of a residential component. Director Scala said that he would be open to the addition of verbiage specifying that this covers residential development when in association with business development. Councilor Fontneau **MOVED** to change the verbiage to indicate the promotion of “residential when in conjunction with commercial development.” Councilor Beaudoin seconded the motion.

Councilor Beaudoin echoed Councilor Fontneau’s concerns regarding the REDC promoting residential development and the perception of subsidizing such development. He cautioned against the term “residential,” without the caveat noted by Councilor Fontneau, to avoid single family or multi-family developments. Director Scala agreed that the suggested wording would be less constrictive than the previously mentioned term “mixed-use.” Councilor Beaudoin indicated that although he does not support such mixed-use developments with residential, such as the zoning change authorized at the Granite Ridge, he would be supportive of Councilor Fontneau’s amendment. There was discussion on the probability of a commercial development being proposed with a large residential component. Director Scala stated that the City would consider such a proposal if it was presented, but it was likely that the huge majority of proposals would be mixed-use with a residential component. The **MOTION CARRIED** by a unanimous voice vote. Attorney O’Rourke stated that he would work on the exact verbiage for this passage.

6. Amendment to Chapter 7-63 of the General Ordinances of the City of Rochester Regarding the Economic Development Reserve Fund (Addendum B)

Councilor Beaudoin directed the Committee to the strikeouts contained in the amendment and stated that the changes go beyond “housekeeping” and minor adjustments. He read an excerpt which states “...**encouraging the development of industrial and commercial sites, promoting the City as an attractive location for businesses and residents, and acquisition of land related to the same. The name of the fund is the Economic Development Reserve Fund.**” Councilor Beaudoin asserted that State RSA 34:1-a is very limiting with how money from an Economic Development Special Reserve fund can be used. He felt that the acquisition of land would be covered under the referenced statute, however everything else in the statute references

capital expenditures and capital improvements. He suggested that the proposed verbiage of the amendment is too broad and should be reworded in keeping with State law.

Attorney O'Rourke clarified that this verbiage being discussed is, verbatim, the resolution adopted by City Council on July 5, 2022. The only difference between what is being presented now and what was adopted is the formatting and paragraph numbering. The strikeouts referenced have already been approved by Council and deleted from the City ordinances, leaving 7-63 blank. The recommended action is to recommend to Council that the previously adopted resolution be integrated into the City Ordinances as chapter 7-63 so it will have a place to "live" and be referenced. Councilor Beaudoin asked if, based on the wording on RSA 34:1-a, if the REDC would be limited to the acquisition of land. Attorney O'Rourke read directly from RSA 34:1-a "Any city may establish a reserve fund for the maintenance and operation of a specific public facility or type of facility, a specific item or type of equipment, or for any other distinctly-stated, specific public purpose that is not foreign to its institution or incompatible with the objects of its organization. He said this is not contrary to the adopted resolution. Chair Lachapelle reiterated that the verbiage being discussed was already adopted by Council. The action being taken by the Codes committee is simply to recommend the formatting and recommend Council approval for the resolution to be integrated into the City's General Ordinances.

Councilor Fontneau made a minor correction of a redundant word in the passage (~~The name of the fund shall is the Economic Development Reserve Fund~~). Attorney O'Rourke stated he would make this clerical correction.

Councilor Fontneau questioned the section in paragraph D which reads: "~~Upon said 2/3rds vote expenditure requests may then be presented to City Council.~~" He inquired if "may" was used instead of "shall" for instances in which the REDC may decide not to move forward with a request for proposal from the City Council. The committee discussed this section further and clarified that the REDC cannot expend any money without City Council approval. However, even after a 2/3 vote, they may decide not to move forward with a project and the ordinance should be worded to not require them to go before Council with every project unless money is being expended.

Councilor Beaudoin asked if the money must be allocated for a specific purpose or project before being transferred to the Trustees of the Trust Fund. Attorney O'Rourke stated that was correct. Councilor Beaudoin asked how specific the request needed to be prior to investment and if it could just be a broad request for land. Director Scala clarified that there would be a fully fleshed out project proposal prior to the REDC coming to City Council.

Councilor Beaudoin **MOVED** to recommend to full Council the adoption of Chapter 7-63 into the City Ordinances. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

7. 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 (Addendum C)

Chair Lachapelle referenced the first of Councilor Beaudoin's suggested edits to section

A, in which he suggested that the proposed Board of Ethics (BOE) be comprised of five members instead of three, and the suggestion that the City Council member serving on the board should be approved by a majority vote of said Council. Chair Lachapelle stated that the Mayor has authority by the City Charter to appoint members to certain boards and commissions without a Council vote.

Councilor Beaudoin spoke about the serious implications of potential ethics violations, and the unlikelihood of this Ethics Board needing to convene for many years. He felt that the current verbiage for membership left out several boards who could potentially be affected, as well as leaving out members of the public. He suggested adding a member of the public to be approved by Council. Additionally, he stated that having the City Attorney involved with the Board of Ethics' process would constitute involving the administration in Council business. However, he felt that there *should* be a fifth ex officio member of the board with a legal background. The Committee discussed the potential difficulty in finding a member of the NH Bar to serve and the potential of replacing this suggestion with two members of the public instead. Attorney O'Rourke explained why he did not feel having members of the public serving on this board would be advisable; the members who are slated to serve are already elected by the public to represent Rochester's residents and their interests. There is also the question of how these members of the public would be vetted. Attorney O'Rourke reiterated that the way the ordinance is currently written, the members are comprised of established City boards and they would hold this BOE position as part of their official duties. A member of the public could be difficult to evaluate and appoint when considering the input of all the three elected boards involved. Attorney O'Rourke cautioned against bringing in members of the public while the BOE is still in its infancy. He suggested establishing the board and getting it up and running before any such changes are made.

Councilor Fontneau emphasized if the Committee recommends to full Council that this ordinance is adopted, that the Board of Ethics should not be established until January 2024 when the new City Council, School Board, and Police Commission are seated. He also suggested that the members have two-year terms to coincide with the elections of new Councilors and related boards.

Councilor Fontneau supported the idea of adding a member of the public to the BOE; although he agreed that there should be a fifth member to avoid tie votes. Councilor Beaudoin stated that because the BOE is an advisory board, even if they experienced a tie vote, it would equate to a failed vote and would still result in the question going to Council for action. Chair Lachapelle suggested that the discussion of membership take place with the full Council to gather more input.

Councilor Beaudoin questioned the portion of section 7-85 "*Complaints, Investigations, and Hearing*" which states "...*Such complaint must be based on personal knowledge and set forth facts with enough specificity and detail for a determination of sufficiency for investigation.*" He felt that if anyone besides the victim themselves were to report a violation, or if the person reporting the violation witnesses it themselves, then it could be considered hearsay. Attorney O'Rourke clarified that if the victim of a violation reports it to a fellow board member who then brings it to the BOE, that would constitute sufficient personal knowledge; this direct information is weighed more heavily than third party information passed through multiple people. Councilor

Beaudoin questioned the requirement for the complainant to sign the written complaint under oath and speculated that, in doing so, the complainant could be in violation if the victim was found to be untruthful. Attorney O'Rourke explained that the person taking the oath is swearing that they were given particular information by the victim, not that they are certain the information given is factual. There was a brief discussion on the legal definition of hearsay.

Councilor Beaudoin read the remainder of the section, which goes on to state "*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.*" He felt that this process unnecessarily involves the City Administration in Council business. He suggested that such complaints be submitted to the City Clerk, who then forwards the complaint directly to the Board of Ethics. Councilor Beaudoin expressed that the way the process works as written would allow the City Attorney and/or Mayor too much authority to determine which complaints to investigate as opposed to allowing the BOE to be an independent body separate from the administration. Chair Lachapelle speculated that it is necessary to have vetting of complaints to determine their validity; otherwise, there could potentially be a large amount of baseless complaints going through the BOE.

Attorney O'Rourke clarified that after a sufficiency review between the City Attorney and Mayor or Deputy Mayor, any complaint received would go to the Ethics Investigative Officer (EIO) prior to going to the Board of Ethics. He explained that the sufficiency review is critical and reported that the City of Portsmouth, upon which the formatting and wording of the Rochester BOE ordinance is based, found that the huge majority of complaints received were without merit; it would not be beneficial to convene the BOE for every single complaint received.

Councilor Fontneau spoke about past experience with serving on a similar board of standards in the real estate profession, and how the process worked. He questioned if there should be an additional person besides the Mayor and City Attorney for these sufficiency reviews. Attorney O'Rourke suggested that if the Committee wanted to consider adding a third member, it could work as follows: If the complaint were against someone serving on a City Board, the three members could be the Mayor, City Attorney, and City Manager. If the complaint were against someone on the School Board, the three members could be the City Attorney, Mayor, and Superintendent. If the complaint were against someone on the Police Commission, the three members could be the City Attorney, the Mayor, and the Police Chief. Attorney O'Rourke said he could revise this section to include the third member of the sufficiency reviews. Councilor Fontneau **MOVED** to recommend the amendment to section 7-85 (b) to include this third member. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Beaudoin read the portion of the ordinance which states "*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...*" He stated that if a complaint is not deemed sufficient, the complainant should be notified of the justification for this insufficiency. The section outlines how, if the complaint is found sufficient, it is referred to the EIO for investigation. Councilor Beaudoin stated that he felt the complaint should be referred to the Board of Ethics for review, and if they felt it warranted further investigation, they could then refer the complaint to an EIO of their choosing. Attorney O'Rourke read an excerpt from 7-84 (A) which reads "...*The City Manager shall have the power to identify and retain an EIO,*

with approval from the BOE...” There was a brief discussion on when in the process the EIO would be hired and how the timeline would work. Councilor Fontneau spoke about the prior year’s City Council trial and how the Council took a vote for which he felt unprepared and without hearing any live testimony from either side.

Attorney O’Rourke explained the different bodies involved in the process, likening the EIO to the police/prosecutor, doing the investigative piece and considering charges. The BOE would act as the Grand Jury, deciding whether or not to bring charges. And finally the City Council, School Board, or Police Commission would be the petit jury if a trial was deemed necessary, at which point witnesses could be called and testimony heard. Councilor Beaudoin stated that his understanding of the proposed ordinance would not allow the charged party to question the EIO or the complainant in front of the Board of Ethics. Attorney O’Rourke read the portion of 7-85: D (1) which states “... *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.*” Councilor Beaudoin questioned the phrasing “as it determines appropriate” and felt that the BOE should not be the deciding factor on who is and is not allowed to provide testimony. Chair Lachapelle stated that the whole purpose of the BOE is to gather information to make a determination; the BOE is not likely to disallow anyone from providing information.

Councilor Fontneau stated that he did not see the need for the Ethics Investigative Officer. He speculated that most of these cases brought forward would likely be handled with the BOE hearing testimony from the two involved parties without the need for external investigation. Chair Lachapelle agreed that the entire process as laid out is unlikely to be needed frequently but stated that the format is based on the already established and proven programs of other municipalities and legal review; it is important to maintain the entire process in the ordinance and not remove steps before it is even established.

Councilor Beaudoin agreed that the formation of the Board of Ethics is essential; however, he stated that the City should take the time to ensure that the establishment of the BOE ordinance is done properly and not rushed. Chair Lachapelle clarified that the Code of Ethics has already been established and adopted. He indicated that he felt it would be beneficial to send the BOE ordinance to the full Council for a discussion and further edits as needed. Councilor Fontneau agreed that the BOE document should be sent to full Council without a recommendation from the Codes Committee, but instead as a discussion item. The Committee decided to send the BOE ordinance to the November 8, 2023 City Council meeting for a first reading and referral to the November 21, 2023 City Council Workshop meeting.

There was further discussion on passage “D. Board of Ethics Hearing” section 1, and the final sentence “*The BOE may hear from such other and further parties as it determines appropriate.*” Attorney O’Rourke explained that the BOE would have hired an experienced EIO to carry out the investigation for them; it should not be the purview of the Board of Ethics themselves to determine which witnesses to call and what testimony to hear unless they need further clarification at the time of the hearing. Councilor Beaudoin speculated that by only hearing the report of the Ethics Investigative Officer, the charged party does not have sufficient opportunity to present evidence or testimony which could potentially be exculpatory. Attorney O’Rourke read an excerpt from section C which reads “*The Charged Party shall have an*

opportunity to provide a response to the Complaint.” He explained that this is the opportunity for the charged party to provide any such evidence or witnesses on their behalf, at which point the EIO can investigate further.

Councilor Beaudoin **MOVED** to send the Board of Ethics ordinance to the full City Council for a first reading at the November 8, 2023 City Council meeting and a referral to the November 21, 2023 City Council Workshop for discussion. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

8. Other

Chair Lachapelle stated that the next Codes and Ordinances Committee meeting would take place on November 2, 2023.

9. Adjournment

Chair Lachapelle **ADJOURNED** the Codes and Ordinances Committee meeting at 7:06 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk

Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Economic Development Commission

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):

§ 7-35 Economic Development Commission.

- A. The Economic Development Commission shall consist of 11 members, two of which members shall be ex officio members. Nine of the initial members of the Commission shall be those currently serving on the Commission. Thereafter, three members shall be elected annually for a term of three years with vacancies being filled by the City Council for any unexpired terms. The initial election shall be so arranged that 1/3 of the members may be elected each year. After the initial election, the three annual vacancies shall be filled by the Mayor in accordance with Section **74** of the City Charter. The Economic Development Commission shall recommend at least two persons from the private sector to the Mayor each year as potential nominees. In all cases, election shall be by the City Council. Members shall be chosen for their expertise, experience and abilities in business, industry, finance, real estate, government and law. A majority of the members shall reside within the City of Rochester and up to four of the elected members may reside outside of the City; provided, however, that any elected member residing outside of the City shall maintain a place of business or shall be employed within the City, while serving as a member of the Commission. The Mayor and the Economic Development Director shall be ex officio, nonvoting members of the Commission.
- B. The Chairperson shall be appointed annually by the Mayor, and the Commission shall elect from its members such other officers and committees as it deems necessary.
- C. The Economic Development Commission shall perform the following functions:
 - (1) Promote the City of Rochester, through advertising, prospect development and other means, as an attractive location for industrial and business **development and/or** expansion and **residential uses related thereto**;
 - (2) Assist prospects interested in evaluating Rochester as a potential industrial or **commercial** ~~business~~ location; act as the official agent of the City government in matters pertaining to economic development;

Amendments are effective upon passage.

Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Economic Development Reserve Fund

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**):

§ 7-63 Economic Development ~~Special~~ Reserve Fund.

~~A. Statement of purpose.~~

~~(1) The City of Rochester currently serves as the "Host Community" for the Turnkey Recycling and Environmental Enterprises Waste Disposal Facility (TREE) currently operated by Waste Management of New Hampshire, Inc., and located on the Rochester Neck Road. By virtue of its status as Host Community for TREE, the City of Rochester, in addition to incurring significant expenses in connection with such facility, receives significant financial benefits in the form of real property taxes, user fees (in the form of so-called "host community fees") and various other benefits relative to the cost to the City and its inhabitants of the disposal and/or recycling of various solid waste, including reduced and/or eliminated fees for the disposal and/or recycling of solid waste generated within the City of Rochester. It is currently estimated that the permitted capacity of the TREE Waste Disposal Facility (TLR-III) will be reached in approximately the year 2023. When such facility is filled to its permitted capacity, it is anticipated that the City will experience a loss in revenues, and the City and its inhabitants will experience increased costs associated with the disposal and/or recycling of solid waste, particularly in the form of reduced and/or lost user fees and reduced property tax revenues, as well as increased costs associated with the disposal and/or recycling of solid waste. Therefore, in an effort to offset the expected loss of revenues and increased costs occurring to the City as a result of the anticipated filling of the TREE Waste Disposal Facility to its permitted capacity and to promote the general fiscal strength and well-being of the City, it is necessary that economic development in the City of Rochester be promoted and/or maintained to ensure the existence and/or expansion of a vibrant economic base for the City and its inhabitants.~~

~~(2) Therefore, the City Council of the City of Rochester, pursuant to the authority granted by RSA 47:1-b and 47:1-c, hereby establishes a special revenue reserve fund from the specific source identified in Subsection B of this section for capital expenditures or expenditures for capital projects, transfers to capital projects, transfers to capital reserve, or for any other appropriation of a nonrecurring nature in support of economic development as determined by the City Council. The special reserve fund established in Subsection B of this section shall be known as the "City of Rochester Economic Development Special Reserve Fund." No expenditure from said City of Rochester Economic Development Special Reserve Fund shall be made without an appropriation of such funds having been adopted by the Rochester City Council, which appropriation shall provide that such appropriation is for economic development purposes and shall contain a statement and/or finding by the City Council indicating the manner in which it is anticipated that such appropriation is related to the economic development of the City of Rochester.~~

~~B. There is hereby created a non-lapsing budgetary account within the City of Rochester, pursuant to the authority granted to the City by the provisions of RSA 47:1-b, such special reserve fund to be known as the "City of Rochester Economic Development Special Reserve Fund." Such fund shall be funded on an annual basis by the appropriation by the City Council to such special reserve fund of an amount not less than one hundred thousand dollars (\$100,000.) from the funds annually payable to the City of Rochester by Waste Management of New Hampshire, Inc., from the so-called "host community fees" payable to the City pursuant to the provisions of the Host Agreement between the City and Waste Management of New Hampshire, Inc., or of any successor to such agreement. In addition to such minimum funding level, the City Manager may, during any fiscal year of the City, upon written notification to, and appropriation by, the City Council,~~

~~transfer to said City of Rochester Economic Development Special Reserve Fund unappropriated host community fees in an amount not to exceed the difference between the total amount of host community fees received from Waste Management of New Hampshire, Inc., during such fiscal year and the amount of such host community fees previously appropriated by the Rochester City Council during such fiscal year (having in mind the minimum funding/appropriation requirement provided for herein and any other appropriation of such fiscal year's host community fees by the City Council during such fiscal year).~~

A. By Resolution adopted on July 5, 2022, the City Council established a Non-Capital Reserve Fund pursuant to RSA 34:1-a for the purpose of encouraging economic development within the City, encouraging the development of industrial and commercial sites, promoting the City as an attractive location for businesses and residents, and acquisition of land related to the same. The name of the fund is the Economic Development Reserve Fund.

B. The City Council, at its sole discretion, may appropriate funds into said Economic Development Reserve Fund through supplemental appropriations or the annual budgeting process, however, in no case shall said annual appropriation be less than One Hundred Thousand Dollars (\$100,000.00). Revenue sources can be Waste Management Host Fee Revenues, or General Fund Unassigned Fund Balance. In addition, other unanticipated revenue sources, and proceeds from transactions that were originally derived from the Economic Development Reserve Fund, may also be appropriated into the fund upon a majority vote of the City Council.

C. Pursuant to RSA 34:6, the Trustees of Trust Funds shall have custody of all non-capital reserves transferred to the Economic Development Reserve Fund. The Trustees of the Trust Fund will hold the monies appropriated to the Economic Development Reserve Fund in a separate liquid investment account. Appropriations made to the Economic Development Reserve Fund will be submitted to the Trustees of the Trust Fund within the same fiscal year of the appropriation.

D. Pursuant to RSA 34:10, the City Council names the Economic Development Commission as its agent to carry out the objects of the Economic Development Reserve Fund. All expenditures made by the Economic Development Commission shall be made only for or in connection with the purposes for which said Fund was established and only in accordance with §7-38-40 of the City Code. All requests for expenditures shall be approved by the 2/3rds vote of the Economic Development Commission prior to being presented to City Council for final approval. Upon said 2/3rds vote expenditure requests may then be presented to City Council. Expenditure requests shall identify expense categories, or specific project scope detail. General administrative, travel and conference activities shall be ineligible expense activities. Expenditure requests can be presented as part of the annual budget process, or through supplemental appropriations. All approved expenditures shall follow the City's Purchasing Policy.

E. The City Council may dissolve the Economic Development Reserve Fund at its sole discretion. Upon dissolution of any portion of said fund appropriated from the General Fund said funds will lapse to surplus (General Fund Unassigned Fund balance) and cannot be repurposed directly to a different capital fund or project.

Amendments are effective upon passage.

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. 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.