

Codes and Ordinances Committee

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



Others Present

Mayor Paul Callaghan
Terence O'Rourke, City Attorney

CODES AND ORDINANCES COMMITTEE
Of the Rochester City Council
Thursday, August 4, 2022
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. Public Input

Susan Rice, resident, referenced a motion that was missing from the July 7, 2022 Codes minutes and asked that the minutes be corrected. Ms. Rice also spoke about RSA 91-A and what constitutes a meeting therein.

Christopher Rice, resident, emphasized the importance of thorough work at the committee level before sending item to be approved by Council. Mr. Rice also made suggestions regarding the proposed ethics policy.

3. Acceptance of the Minutes

3.1 July 7, 2022 *motion to approve*

Councilor Desrochers **MOVED** to **ACCEPT** the minutes of the July 7, 2022 meeting. Councilor Fontneau seconded the motion. Chair Lachapelle asked the Deputy Clerk to make the correction to the minutes as detailed by Ms. Rice during public input. The motion will be to accept the minutes as amended. The **MOTION CARRIED** to accept the minutes as amended.

4. Amendment to Chapter 167 of the General Ordinances of the City of Rochester Regarding Trapping and Bear Baiting on City Property

§ 167-24 Trapping and Bear Baiting Prohibited.
Except when necessary for the health, safety, and welfare of the community or the animal, trapping and bear baiting shall be prohibited upon all City-owned property.

City Attorney Terence O'Rourke explained that in 2016, the City Council had voted to ban trapping on City property; however, this was never put into the City Ordinances. He stated that this action should be codified into the ordinances at this time, and there is additional related verbiage regarding hunting and baiting which should be discussed and potentially placed in the ordinances as well. He reported that the City Manager had recently rejected an application for bear baiting on City property and felt that this process should be codified for any future requests.

Chair Lachapelle clarified the difference between trapping and/or relocation of nuisance animals, which would be done by Fish & Game versus trapping for sport.

Councilor Beaudoin inquired about the wording in the proposed ordinance, which indicates trapping is authorized: "for the health, safety, and welfare of the community or the animal..." He asked if this would be at the discretion of the City Manager. Attorney O'Rourke confirmed that this would be the case. If there were an animal in distress on City property, the proper authorities would be contacted to remove or relocate the animal. This verbiage needs to be in the ordinance to allow this activity without being in violation of the previous Council action prohibiting trapping on City property.

Councilor Fontneau questioned the current wording of the proposed ordinance and asked if the "trapping" referenced referred to bears or all animals. Attorney O'Rourke answered that trapping does refer to all animals. Councilor Fontneau felt that some clarifying terminology was needed. Councilor Beaudoin recalled that the State uses the language "fur-bearing animals" in the RSA regarding hunting and trapping. He suggested this could be used in the Rochester ordinance.

Councilor Desrochers clarified that the proposed ordinance only refers to activity on City property. Chair Lachapelle confirmed and said that hunting and trapping is allowed on private property as long as written authorization is received by the property owner.

Councilor Beaudoin **MOVED** to amend the proposed ordinance as follows:

§ 167-24 Trapping and Bear Baiting Prohibited.
Except when necessary for the health, safety, and welfare of the community or the animal, *trapping of fur-bearing animals* and bear baiting shall be prohibited upon all City-owned property.

Councilor Fontneau seconded the motion. Councilor Fontneau asked if the use of the term "trapping" would include trapping for humane purposes using a Havahart trap. It was confirmed that on City-owned property, the State would be able to trap for humane purposes. It does not

affect the use of Havaharts on private property.

Councilor Beaudoin asked for confirmation that this proposed ordinance would not restrict hunting on publicly-owned property. Attorney O'Rourke stated that this ordinance does not prohibit hunting on publicly owned property. The **MOTION CARRIED** by a unanimous voice vote.

5. Code of Ethics and Conduct (*Addendum A*)

Chair Lachapelle explained that the current draft Code of Ethics distributed to the Committee was drafted by Kim Conley, Director of HR. He said he had received suggested edits from Councilor Berlin, but would start discussions with Councilor Beaudoin's suggested edits.

Councilor Beaudoin agreed with statements made by Mr. Rice during public input; that this is a far-reaching document and should not be rushed for a final vote. He emphasized the need to review the document thoroughly and retain it in committee as needed for further workup until they feel it is ready for final approval.

Councilor Beaudoin referred the Committee to page 1 of the Code; Section A. Ethics, bullet point 6 "Decisions Based on Merit":

6. ***Decisions Based on Merit.*** *Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations. When making adjudicative decisions (those decisions where the member is called upon to determine and apply facts peculiar to an individual case), members shall maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and the law.*

Councilor Beaudoin questioned the last sentence "...and shall base their decisions on the facts presented at the hearing and the law." He stated that in his experience at State hearings, representatives would seek outside sources of information in order to become well-informed on the subject matter and to be able to ask questions pertinent to the topic. He felt that the current verbiage would allow the Council to make decisions based only on what is presented to them at a hearing, which may or may not be factual. He suggested the following edit:

"...members shall maintain an open mind until the conclusion of the hearing on the matter and ~~shall base their decisions on the facts presented at the hearing and the law and~~ should seek outside information on the subject matter from all possible sources"

Councilor Desrochers acknowledged that in these circumstances, it would be unlikely that there would be subject matter experts on the Council and it would be beneficial to look at outside sources. Councilor Beaudoin stated that it was incumbent upon Councilors to seek as much information as possible and to consider the accuracy or validity of information presented to them in order to make a determination. Attorney O'Rourke stated that on land-use boards, it is accepted that members can use their personal knowledge to help make a decision, and that would be relevant in this circumstance as well.

Chair Lachapelle clarified that the intent is not to complete the discussion on the Code of Ethics and sent it to Council for a decision in September. Rather, the Committee will discuss and make edits before sending it to HR and legal for review, at which point it will be returned to Codes and Ordinances for further review before being sent to Council.

Councilor Beaudoin referred the Committee to section 7. “Communication” on page 2 of the Code of Ethics and made the following edit:

7. **Communication.** ~~For adjudicative matters pending before the body, members shall refrain from receiving information outside of an open public meeting or the agenda materials, except on advice of the City Attorney.~~ Members shall publicly disclose substantive information that is relevant to a matter under consideration by the body which they may have received from sources outside of the public decision-making process.

Councilor Beaudoin explained that he felt this sentence also restricted Councilors’ ability to look at outside information. Councilor Desrochers asked for clarification on whether this passage was referring only to adjudicative matters, such as a trial. If so, removing the first two sentences would change the intention of the remainder of the paragraph. Councilor Beaudoin felt that it was dependent on how strictly the term “adjudicative” is being used; could it also be considered adjudicative if it is a discussion on a bill or motion pending. Attorney O’Rourke stated that the City Council rarely meets for adjudicative matters; it applies more often to Planning Board and ZBA. He explained that it refers to circumstances where the board is sitting as a judge. In these situations, there is a record being created of the matter in which outside information would not be contained in said record, and should not be considered. Councilor Beaudoin acknowledged that in an adjudicative matter, the body would not be able to consider any information that is not introduced during the hearing. Attorney O’Rourke confirmed that this is true. Councilor Beaudoin rescinded his prior strikeout and indicated the passage should be left as-is.

Councilor Fontneau suggested that if the Council is unlikely to preside in adjudicative matters, the section in question could be omitted. Attorney O’Rourke stated that the Code of Ethics is intended to be used for all City boards and commissions; so although not every section is relevant to Council, it might be relevant for other boards, such as Planning, ZBA, and School Board, all of whom hear adjudicative matters. Councilor Beaudoin emphasized that the Committee needed to keep this in mind when making edits; that this Code needs to work for all City boards and committees.

Councilor Fontneau suggested that the entire Council, along with the Chairs of Council subcommittees, should receive a copy of the draft Code of Ethics for proposed edits. This would streamline the editing process and avoid the back and forth between Council and Codes and Ordinances while further edits are made. Councilor Lachapelle acknowledged that this would be best practice; however, he had opened the floor for proposed edits while the Code of Ethics was being reworked, and very few people weighed in on the matter. There was further discussion on how the editing and review process would work to allow all interested parties to

have input. Councilor Beaudoin stated that, following the meeting, he would send his edits to the Committee and the Chairs of Boards and Commission for their review. Councilor Desrochers cautioned against email discussions on the Code with what could potentially be a quorum of the City Council. Councilor Beaudoin stated that there would not be discussion but rather dissemination of information for personal review, which would not be a violation of RSA 91-A.

Councilor Beaudoin directed the Committee to page 2 of the Code, section A. Communication, subsection (a) as follows:

- (a) Social Media Social media presence by those officials covered under this code is to be informative in nature and positively reflect on the community and City staff and promote local activities. All officials shall avoid expressing opinions or bias regarding City business or issues that may come before the Council/Commission/Board/Committee when it may be construed that they are acting on behalf of the City.

In the use of social media, all officials are to abide by the following:

- Refrain from making belligerent, impertinent, slanderous, threatening, abusive, or personally disparaging comments.
- Ensure that they do not participate in discrimination or harassment, even if the identified behavior is not targeting a protected class, consisting of unwelcome conduct, sexual or otherwise, whether verbal, physical, or visual. Harassing conduct includes but is not limited to: slurs or negative stereotyping; bullying, threatening, intimidating or other hostile acts; degrading jokes and display or circulation of graphic material that degrades or shows hostility; and physical touching.
- Shall never demean or personally attack an employee regarding the employee's job performance in public; and
- Are to demonstrate their honesty and integrity, and to be an example of appropriate and ethical conduct

Councilor Beaudoin stated that he felt the first sentence in the paragraph should be removed as it is an infringement on a Councilor's First Amendment rights. Chair Lachapelle responded that he felt this sentence is referring to a social media presence that identifies a person in their official capacity as Councilor or Board member, in order to avoid the appearance of acting or speaking on behalf of the City. Councilor Desrochers pointed out that this section also falls under the portion relevant to adjudicative matters and stated that she felt it would be applicable if it referred specifically to social media conduct during adjudicative matters. Councilor Beaudoin stated that when considered in its entirety, the first paragraph is applicable and he suggested leaving it as-is.

Attorney O'Rourke stated that the Code of Ethics is an aspirational document; although it outlines how members "should" behave on social media, if they do behave outside the guidelines outlined in the code, even on an official account, there would be no punishment carried out. Unless a Councilor was otherwise breaking a law, they would still be protected due to their overriding First Amendment rights. Councilor Beaudoin referenced a portion at the end of the Code outlining potential sanctions. He felt if the social media portion were to remain within the

Code, it should be qualified in some way to avoid ethics violation charges for conduct on social media. Attorney O'Rourke agreed that the section needed to be tweaked and reworked. Councilor Desrochers suggested that underneath the header "Communication," there could be two separate sections; one for adjudicative matters pending before the body and the other for general matters, since they are different situations which need to be handled differently. Attorney O'Rourke agreed that this was a good solution.

Mayor Callaghan clarified that conduct and speech on social media, although protected by the First Amendment, is not necessarily free from consequence and could potentially be used in litigation. Attorney O'Rourke agreed that posts made by Councilors or Board members could be used against the City in a trial.

Councilor Beaudoin referred the Committee to section "8. Conflict of Interest" to the last portion and suggested the following edits:

~~In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and if they have a conflict of interest regarding a particular decision, shall not, once the conflict is ascertained, participate in the decision and shall not discuss or comment on the matter in any way to any person including other members unless otherwise permitted by law.~~

Councilor Beaudoin felt that there would be Councilors who may take issue with the portion he struck out, especially if the disclosure of income has to be specific. He spoke about the disclosure that is required of State Representatives, which is in place to avoid conflicts of interest for hearings on particular topics. He felt that if Rochester's financial disclosure were as general as the disclosure at the State level, it could be retained in the code. However, if it required specific amounts for income and assets to be disclosed, he felt it was not needed. Councilor Fontneau explained that the financial disclosure at the State level asked for representatives to disclose income in excess of \$10,000 derived from specific areas or industries. This is done at the start of each term so representatives could avoid recusing themselves from multiple votes if there could be a perceived conflict. There was further discussion on conflicts and recusal if there stands to be direct, personal financial gain. Councilor Beaudoin suggested verbiage be added to clarify that this is only applicable if there is a direct, personal financial gain. Chair Lachapelle read a sentence from the first paragraph of section 8, which states: "Members shall not use their official positions to influence government decisions in which they have (a) a material financial interest, (b) an organizational responsibility or personal relationship which may give the appearance of a conflict of interest, or (c) a strong personal bias."

Attorney O'Rourke stated that the City of Portsmouth has an article within their Code of Ethics to handle Conflict of Interest/Mandatory Financial Disclosure. They utilize the State form mentioned by Councilors Beaudoin and Fontneau and they note that the form is passed in compliance with the City charter amendment titled "Conflict of Interest", which the City of Rochester also has within their ordinances. Attorney O'Rourke felt that this could be tweaked for Rochester and would resolve the concerns being raised. There was further discussion on what constitutes a conflict. Mayor Callaghan advised that a Councilor or Board member could consult during the meeting with the City Attorney to determine if they would need to recuse

themselves from a vote. Attorney O'Rourke read verbiage from Portsmouth's financial disclosure. He referenced Councilor Beaudoin's concern that a Councilor would need to give specific income information. The proposed verbiage only requires a Councilor to disclose where the money is derived from if it is in excess of \$10,000, but does not ask for an exact dollar amount. The Committee decided to wait on verbiage from the City Attorney before making further changes to this section.

Councilor Beaudoin referred the Committee to section "15. Independence of Boards, Committees and Commission" to which he suggested be struck out in its entirety:

~~"Because of the value of the independent advice of Boards, Committees and Commissions to the public decision making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of Board, Committee and Commission proceedings."~~

He stated that he felt that this section would discourage Councilors from involving themselves in the discussion at Board and Committee meetings; however, upon further review, he found that this was covered in other sections of the Code and he recommended leaving the section as is.

Councilor Desrochers asked if there could be references cited within the Code if an item is covered under the City Charter, an ordinance, or other governing document. These references could be cited within the Code for cross reference rather than repeating the verbiage. Attorney O'Rourke responded that as the document approaches its more completed stages, these references are something that can be added.

Councilor Beaudoin referred the Committee to the section 3. Elected and Appointed Officials' Conduct with City Staff", subsection (b) to which he suggested be edited as follows:

(b) Do not disrupt City staff from their jobs

Elected and appointed officials should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. ~~Do not attend City staff meetings unless requested by staff even if the elected or appointed official does not say anything, his or her presence implies support, shows partiality, may intimidate staff, and hampers staff's ability to do their job objectively.~~

Councilor Beaudoin felt that this section discouraged Councilors or board members from learning and gathering information. He expressed that if there was a staff meeting covering a topic on which a Councilor was interested, they should be able to reach out to the City Manager to obtain permission to sit in impartially, whereas this portion of the Code prohibits that entirely. Chair Lachapelle stated that the Council is the Board of Directors that sets the policy, and the City Manager then enforces that policy. He did not feel that Councilors or Board Members needed to be involved in staff meetings or departmental functions unless there was an issue needing to be addressed. There was a discussion on the difference between Committee meetings and internal staff meetings and who should be attending. Councilor Beaudoin suggested removing his strike out and leaving the paragraph as is.

Councilor Beaudoin directed the Committee to section “C. Sanctions”, subsection (c) and suggested the following edit:

Councilmembers

Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, lose seniority or committee assignments (both within the City of Rochester and with intergovernmental agencies) or other privileges afforded by the Council. ~~Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by the Council.~~

Councilor Beaudoin stated that the wording was too broad and they may want to consider listing specific sanctions that could potentially be imposed. Attorney O’Rourke stated that the wording was left open-ended in this manner so the Council as a whole could discuss and determine what type of sanctions to impose; such as trainings, fines, removal from boards, etc. Chair Lachapelle advised that if Committee members had suggestions on specific types of sanctions that could be put into the Code, they submit those to him for review and distribution to Council. Councilor Fontneau spoke about a recent Council trial and said many members felt that they would have liked additional options that could have been implemented, such as fines, censures, or reimbursement, as opposed to removal. Councilor Beaudoin retained the strike out in the paragraph and noted that it still needed to be reworked.

Councilor Beaudoin suggested the following edits to the second paragraph of page 9, under the section “Board, Committee and Commission Members”:

The City Council may impose sanctions on Board, Committee and Commission members whose conduct does not comply with the City’s policies, up to and including removal from office. Any form of discipline imposed by Council shall be determined by a ~~majority~~ **Three-quarters (3/4)** vote of ~~at least a quorum of~~ the Council at a noticed public meeting and such action shall be preceded by a Report to Council with supporting documentation.

Councilor Beaudoin stated that he felt a simple majority vote was too stringent when the decisions being made could potentially affect a Councilor/Board Member’s livelihood, reputation or future. He felt that the vote of the Council should be $\frac{3}{4}$ or $\frac{2}{3}$ at least. Attorney O’Rourke suggested the following change: “Any form of discipline, **short of removal**, imposed by Council shall be determined...” because the process of removal is already detailed in the City Charter and requires 9 votes regardless of the number of board members present. Councilor Beaudoin felt that there needed to be further discussion on this section. He suggested the paragraph could specify that the majority of elected officials on a board vote on sanctions as opposed to just a quorum of those present.

Attorney O’Rourke directed the Committee to the following edit on page 7 off the Code under C. Sanctions:

(b) Ethics Training for Local Officials

~~Council members, City Treasurer, City Clerk,~~ Board, Committee and Commission Members who are out of compliance with State or City mandated requirements for ethics training

shall not represent the City on intergovernmental assignments or Council subcommittees and may be subject to sanctions.

Attorney O'Rourke explained that in the City of Rochester, these positions are City employees and not elected officials, so the paragraph does not apply to them. Councilor Fontneau asked if there are any State or City mandated requirements for ethics training, as referenced in the paragraph. Attorney O'Rourke clarified that the School Board does have these mandates, but the Council and subcommittees currently do not have any such requirements. If the Council adopts this Code, they could add in these requirements if they determine necessary. Councilor Desrochers suggested this type of ethics training be enacted as part of the Council orientation. She also spoke briefly about the formation of an Ethics Commission.

Councilor Beaudoin referred the Committee to the section of the preamble titled "The Code of Ethics Intentions" and the first paragraph which reads:

Is created upon the recognition that serving the community is a servant that is professional. As such, there is an acknowledgement within serving the public that the Code of Ethics is applicable to all aspects of a City Councilors life.

Councilor Beaudoin felt that this sentence was overreaching and should be removed. Councilor Desrochers stated that this could be an opportunity to lay out what is intended; such as conduct during meetings, during communications, etc. Chair Lachapelle referenced communications at prior ethics discussions with other Councilors who also felt that this was an overreach and that it would require Councilors to "report" any perceived violations they witness outside of meetings. Chair Lachapelle asserted that Councilors and Board members should be cognizant that they may be recognized in their private lives and they should conduct themselves accordingly.

Councilor Beaudoin spoke about the portion on "Accountability" contained on the second page of the preamble that reads:

Accountability- Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. **OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Councilor Beaudoin felt the verbiage in the last sentence was an infringement on First Amendment rights and implies that if a Councilor is not asked directly, then information should not be offered. He suggested that the sentence be struck. Councilor Fontneau clarified that the way it is worded could be confusing, but the intention is to indicate that a Councilor should *only* restrict information if the wider public interest demands. Councilor Beaudoin suggested that the sentence remain as is.

Chair Lachapelle said that Councilor Berlin had submitted input and made suggested edits to the Code; in particular the portion regarding social media that the Committee discussed earlier. He read a portion of the email in regards to "active listening." Councilor Berlin stated

that everyone listens differently, with some not sitting still looking directly at a speaker. He felt it was an overreach to impose on Councilors the manner in which they need to listen. Councilor Berlin suggested edits to this section to remove these restrictions. Chair Lachapelle acknowledged that not everyone listens in the same manner; however he did feel that there needed to be effort made to signal that attention is being given to a speaker. Councilor Desrochers suggested that the section be rephrased for clarity and to detail what activities Councilors should avoid during public input. Chair Lachapelle stated that it would be impossible to define every situation and factor within the Code of Ethics. He said it should be understood that if a speaker takes the time to come to a meeting and share a concern, board members should be respectful and make an effort to show that they are listening.

Councilor Fontneau agreed that the section should be rephrased, in particular the portion that speaks about facial expressions; A Councilor may inadvertently smile or make a facial expression, roll their eyes, etc. These are unintentional actions, while not always appropriate, should not be considered “ethics violations.” Councilor Desrochers stated she would work on revising the wording of the section and would send it to the Clerk for distribution to full Council when ready. Attorney O’Rourke reminded the Committee that this Code is for multiple Boards and Committees, not only Council. He explained that he has seen filings where there is mention of board member conduct during a hearing or meeting, and stated that people are paying attention to the way members are behaving during meetings. However, he agreed that the portion needed to be reworked. Attorney O’Rourke also clarified that when “discipline” is discussed for these types of infractions, the lowest level could be a member simply being spoken to by the Chair to acknowledge or correct an action.

Chair Lachapelle asked that Councilor Beaudoin send his edits to the City Clerk’s office for distribution to Council and HR. The Code of Ethics will be kept in Committee for further work. Attorney O’Rourke passed along that Kimberly Conley, Director of HR, is available for the next Codes meetings in September for this discussion.

6. Other

Councilor Desrochers stated that she is still gathering information, reaching out to the State, and working on wording in regards to the items she had briefly mentioned at the prior meeting about EPA certification/lead abatement relating to building permits. She said she would be coming forward with the information to be placed on the September agenda.

7. Adjournment

Chair Lachapelle **ADJOURNED** the Codes & Ordinances meeting at 7:23 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk

Preamble

City councilors (Servants to the community) have distinguished record of service to its citizens of the City of Rochester. The code of Ethics and Code of Conduct makes explicit the values and standards the city councilors have exemplified in our city of the years. The Code of Ethics and Code of Conduct are principles that is entrusted by the city and those that we serve. The city councilors of Rochester, NH should model values and accept responsibility to practice at the highest standards and aspire to continuously and consistently make decisions which are, first and foremost, with the interests of our citizens living in our community.

This “Code of Ethics for the City Councilors of Rochester, NH “is created as a set of guiding principles which articulate the responsibilities common to all members of the council. The Code of Ethics is designed to provide guidance to city councilors in the decision-making process involving their interactions with colleagues and public community. Respect for one another is essential to working in and effective, efficient, and innovative manner.

The Code of Ethics Intentions

Is created upon the recognition that serving the community is a servant that is professional. As such, there is an acknowledgement within serving the public that the Code of Ethics is applicable to all aspects of a City Councilors life.

The Code of Ethics establishes guidance for all servants to the Rochester community and is intended to be a basis for commitment to these core values, we are representatives of the City of Rochester.

Respect- Treat all people with dignity and respect. Avoid making assumptions and judgements

Integrity- responsible and hold ourselves accountable for the decisions we make, and the words we use. As we make mistakes acknowledge them and work to correct them.

Civility- Be courteous and polite with our behavior. Be open, honest, and direct in all aspects of communication.

Growth- Foster an environment where learning and growth are supported

Teamwork- Be collaborative and constructive, thus contributing to a positive working atmosphere

Constructive Attitude- Conduct oneself in forward-looking and productive manner to advance our work for the community. Listen to all perspectives and are considerate of others.

Diversity- Welcome and support people of all backgrounds, abilities, and identities. Have general awareness of the rights, concerns, and feelings of others always.

The Code of Conduct Intentions

The intent of the Code of Conduct is to set behavioral expectations for our City Councilors and to encourage and facilitate constructive conversation to allow as safe, healthy, and productive culture to thrive.

Selflessness- Holders of public office should act solely in terms of the public interest. They should not do so to gain financial or other material benefits for themselves, their family, or their friends

Objectivity- In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability- Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty- Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office should promote and support these principles by leadership and example.



City of Rochester, NH

**Code of Ethics and Conduct
For
Elected and Appointed Officials**

DRAFT

Adopted

A. ETHICS

The citizens and businesses of the City of Rochester are entitled to have fair, ethical and accountable local government. To this end, the public should have full confidence that their elected and appointed officials:

- Comply with both the letter and spirit of the laws and policies affecting the operations of government.
- Are independent, impartial, and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless required by law to be confidential, in an atmosphere of respect and civility.

Therefore, members of the City Council, all Boards, and Committees and Commissions shall conduct themselves in accordance with the following ethical standards:

1. **Act in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Rochester and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before them.
2. **Comply with both the spirit and the letter of the Law and City Policy.** Members shall comply with the laws of the nation, the State of New Hampshire, and the City of Rochester in the performance of their public duties.
3. **Conduct of Members.** The professional and personal conduct of members while exercising their office must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, Boards, Committees and Commissions, the staff or public.
4. **Respect for Process.** Members shall perform their duties in accordance with the processes and rules of order established by the City Council.
5. **Conduct at Public Meetings.** Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand.
6. **Decisions Based on Merit.** Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations. When making adjudicative decisions (those decisions where the member is called upon to determine and apply facts peculiar to an individual case), members shall maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and the law.

7. **Communication.** For adjudicative matters pending before the body, members shall refrain from receiving information outside of an open public meeting or the agenda materials, except on advice of the City Attorney. Members shall publicly disclose substantive information that is relevant to a matter under consideration by the body which they may have received from sources outside of the public decision-making process.

(a) Social Media Social media presence by those officials covered under this code is to be informative in nature and positively reflect on the community and City staff and promote local activities. All officials shall avoid expressing opinions or bias regarding City business or issues that may come before the Council/Commission/Board/Committee when it may be construed that they are acting on behalf of the City.

In the use of social media, all officials are to abide by the following:

- Refrain from making belligerent, impertinent, slanderous, threatening, abusive, or personally disparaging comments.
- Ensure that they do not participate in discrimination or harassment, even if the identified behavior is not targeting a protected class, consisting of unwelcome conduct, sexual or otherwise, whether verbal, physical, or visual. Harassing conduct includes but is not limited to: slurs or negative stereotyping; bullying, threatening, intimidating or other hostile acts; degrading jokes and display or circulation of graphic material that degrades or shows hostility; and physical touching.
- Shall never demean or personally attack an employee regarding the employee's job performance in public; and
- Are to demonstrate their honesty and integrity, and to be an example of appropriate and ethical conduct

8. **Conflict of Interest.** In order to assure their independence and impartiality on behalf of the common good and compliance with conflict-of-interest laws, members shall use their best efforts to refrain from creating an appearance of impropriety in their actions and decisions. Members shall not use their official positions to influence government decisions in which they have (a) a material financial interest, (b) an organizational responsibility or personal relationship which may give the appearance of a conflict of interest, or (c) a strong personal bias.

A member who has a potential conflict of interest regarding a particular decision shall disclose the matter to the City Attorney and reasonably cooperate with the City Attorney to analyze the potential conflict. If advised by the City Attorney to seek advice from other appropriate entities, a member shall not participate in a decision unless and until he or she has requested and received advice allowing the member to participate. A member shall diligently pursue obtaining such advice. The member shall provide the Mayor and the City Attorney a copy of any written request or advice and conform his or her participation to the advice given. In providing assistance to members, the City Attorney represents the City and not individual members.

In accordance with the law, members shall disclose investments, interests in real property, sources of income, and gifts; and if they have a conflict of interest regarding a particular decision, shall not, once the conflict is ascertained, participate in the decision and shall not discuss or comment on the matter in any way to any person including other members unless otherwise permitted by law.

9. **Gifts and Favors.** Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office that is not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.

10. **Confidential Information.** Members must maintain the confidentiality of all written materials and verbal information provided to members which is confidential or privileged. Members shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial, or other private interests.
11. **Use of Public Resources.** Members shall not use public resources which are not available to the public in general (e.g., City staff time, equipment, supplies or facilities) for private gain or for personal purposes not otherwise authorized by law.
12. **Representation of Private Interests.** In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any Board, Committee, Commission or proceeding of the City, nor shall members of Boards, Committees and Commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.
13. **Advocacy.** Members shall represent the official policies or positions of the City Council, Board, Committee or Commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Rochester, nor will they allow the inference that they do. Councilmembers and Board, Committee and Commission members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention or display endorsements during Council meetings, or Board, Committee and Commission meetings, or other official City meetings.
14. **Policy Role of Members.** Members shall respect and adhere to the council-manager structure of the Rochester City government. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by City staff, Boards, Committees and Commissions, and the public. Except as provided by the City Charter and Code, members shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.
15. **Independence of Boards, Committees and Commissions.** Because of the value of the independent advice of Boards, Committees and Commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of Board, Committee and Commission proceedings.
16. **Positive Workplace Environment.** Members shall support the maintenance of a positive and constructive workplace environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

B. CONDUCT GUIDELINES

The Conduct Guidelines are designed to describe the manner in which elected and appointed officials should treat one another, City staff, constituents, and others they come into contact with while representing the City of Rochester.

1. Elected and Appointed Officials' Conduct with Each Other in Public Meetings

Elected and appointed officials are individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even though individuals may not agree on every issue.

- (a) *Honor the role of the chair in maintaining order*
It is the responsibility of the Mayor, as chair to keep the comments of members on track during public meetings. Members should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.
- (b) *Practice civility and decorum in discussions and debate*
Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of debate by a free democracy in action. Free debate does not require nor justify, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.
- (c) *Avoid personal comments that could offend other members*
If a member is personally offended by the remarks of another member, the offended member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The chair will maintain control of this discussion.
- (d) *Demonstrate effective problem-solving approaches*
Members have a public stage and have the responsibility to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

2. Elected and Appointed Officials' Conduct with the Public in Public Meetings

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- (a) *Be welcoming to speakers and treat them with care and gentleness.*
 - a. While questions of clarification may be asked, the official's primary role during public testimony is to listen.
- (b) *Be fair and equitable in allocating public hearing time to individual speakers.*
 - a. The chair will determine and announce limits on speakers at the start of the public hearing process.

(c) *(c Practice active listening*

- a. It is disconcerting to speakers to have members not look at them when they are speaking. It is fine to look down at documents or to make notes but reading for a long period of time or gazing around the room gives the appearance of disinterest. Members shall try to be conscious of facial expressions and avoid those that could be interpreted as "smirking," disbelief, anger, or boredom.

(d) *Maintain an open mind*

- a. Members of the public deserve an opportunity to influence the thinking of elected and appointed officials.

(e) *Ask for clarification, but avoid debate and argument with the public*

- a. Only the chair – not individual members – can interrupt a speaker during a presentation. However, a member can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

3. **Elected and Appointed Officials' Conduct with City Staff**

Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected, and City staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by everyone for the good of the community. The council is committed to providing an environment that is free from discrimination and harassment, even if the identified behavior is not targeting a protected class.

Harassment consists of unwelcome conduct, sexual or otherwise, whether verbal, physical, or visual. Harassing conduct includes, but is not limited to slurs or negative stereotyping; bullying, threatening, intimidating or other hostile acts; degrading jokes and display or circulation of graphic material that degrades or shows hostility; and physical touching

(a) *Treat all staff as professionals*

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

(b) *Do not disrupt City staff from their jobs*

Elected and appointed officials should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Do not attend City staff meetings unless requested by staff – even if the elected or appointed official does not say anything, his or her presence implies support, shows partiality, may intimidate staff, and hampers staff's ability to do their job objectively.

(c) *Never publicly criticize an individual employee*

Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Appointed officials should make their comments regarding staff to the City Manager or the Mayor.

- (d) *Do not get involved in administrative functions*
Elected and appointed officials acting in their individual capacity must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.
- (e) *Do not solicit political support from staff*
Elected and appointed officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.
- (f) *No Attorney-Client Relationship*
Members shall not seek to establish an attorney-client relationship with the City Attorney, including his or her staff and attorneys contracted to work on behalf of the City. The City Attorney represents the City and not individual members. Members who consult with the City Attorney cannot enjoy or establish an attorney-client relationship with the attorney.

4. **Council Conduct with Boards, Committees and Commissions**

The City has established several Boards, Committees and Commissions as a means of gathering more community input. Citizens who serve on Boards, Committees and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

- (a) *If attending a Board, Committee or Commission meeting, be careful to only express personal opinions*
Councilmembers may attend any Board, Committee or Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a Councilmember at a Board, Committee or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.
- (b) *Limit contact with Board, Committee and Commission members to questions of clarification* It is inappropriate for a Councilmember to contact a Board, Committee or Commission member to lobby on behalf of an individual, business, or developer, and vice versa. It is acceptable for Councilmembers to contact Board, Committee or Commission members in order to clarify a position taken by the Board, Committee or Commission.
- (c) *Respect that Boards, Committees and Commissions serve the community, not individual Councilmembers*
The City Council appoints individuals to serve on Boards, Committees and Commissions, and it is the responsibility of Boards, Committees and Commissions to follow policy established by the Council. But Board, Committee and Commission members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to threaten Board, Committee and Commission members with removal if they disagree about an issue.
Appointment and re-appointment to a Board, Committee or Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Board, Committee or Commission appointment should not be used as a political "reward."

- (d) *Be respectful of diverse opinions*
A primary role of Boards, Committees and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Boards, Committees and Commissions, but must be fair and respectful of all citizens serving on Boards, Committees and Commissions.
- (e) *Keep political support away from public forums*
Board, Committee and Commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support Board, Committee and Commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

C. SANCTIONS

- (a) *Acknowledgement of Code of Ethics and Conduct*
Councilmembers who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct shall be ineligible for intergovernmental assignments or Council subcommittees. Board, Committee and Commission members who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct are not eligible to hold office.
- (b) *Ethics Training for Local Officials*
Councilmembers, City Treasurer, City Clerk, Board, Committee and Commission Members who are out of compliance with State or City mandated requirements for ethics training shall not represent the City on intergovernmental assignments or Council subcommittees and may be subject to sanctions.
- (c) *Behavior and Conduct*
The City of Rochester's Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the City of Rochester Council, Boards, Committees and Commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. The chairs of Boards, Committees and Commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention.

Councilmembers

Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, lose seniority or committee assignments (both within the City of Rochester and with intergovernmental agencies) or other privileges afforded by the Council. Serious infractions of the Code of Ethics or Code of Conduct could lead to other sanctions as deemed appropriate by the Council.

Individual Councilmembers should point out to the offending Councilmember perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being questioned, then the matter should be referred to the Vice Mayor. It is the responsibility of the Mayor (Deputy Mayor) to initiate action if a Councilmember's behavior may warrant sanction. If no action is taken by the Mayor (or Deputy Mayor), then the alleged violation(s) can be brought up with the full Council.

Board, Committee and Commission Members:

Counseling, verbal reprimands and written warnings may be administered by the Mayor to Board, Committee and Commission members failing to comply with City policy. These lower levels of sanctions shall be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor shall be distributed in memo format to the chair of the respective Board, Committee or Commission, the City Clerk, the City Attorney, the City Manager, and the City Council.

The City Council may impose sanctions on Board, Committee and Commission members whose conduct does not comply with the City's policies, up to and including removal from office. Any form of discipline imposed by Council shall be determined by a majority vote of at least a quorum of the Council at a noticed public meeting and such action shall be preceded by a Report to Council with supporting documentation.

When deemed warranted, the Mayor or majority of Council may call for an investigation of Board, Committee or Commission member conduct. Also, should the City Manager or City Attorney believe an investigation is warranted, they shall confer with the Mayor or Council. The Mayor or Council shall ask the City Manager or the City Attorney to investigate the allegation and report the findings.

These sanctions are alternatives to any other remedy that might otherwise be available to remedy conduct that violates this code or state or federal law. In order to protect and preserve good government, any individual including the City Manager and the City Attorney after complying with the State of New Hampshire Bar Rules of Professional Conduct, who knows or reasonably believes a member acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, may report the violation to the appropriate governmental authorities.

D. IMPLEMENTATION

The Code of Ethics and Conduct is intended to be self-enforcing and is an expression of the standards of conduct for members expected by the City. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, this document shall be included in the regular orientations for candidates for City Council, applicants to Board, Committee and Commissions, and newly elected and appointed officials. Members entering office shall sign the below acknowledging they have read and understand the Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct shall be periodically reviewed by the City Council, Boards, Committees and Commissions, and updated it, as necessary.

I affirm that I have read and understand the City of Rochester Code of Ethics and Conduct for Elected and Appointed Officials

Signature

Date