

**City Council Workshop
February 22, 2023
Council Chambers
6:10 PM**

COUNCILORS PRESENT

Councilor Beaudoin
Councilor Berlin
Councilor de Geofroy
Councilor Desrochers (remote)
Councilor Fontneau
Councilor Gilman
Councilor Gray
Councilor Hailey
Councilor Hamann
Councilor Larochelle
Deputy Mayor Lachapelle
Mayor Callaghan

COUNCILORS EXCUSED

Councilor Malone

OTHERS PRESENT

Blaine Cox, City Manager
Katie Ambrose, Deputy City Manager
Terence O'Rourke, City Attorney
Susan Rice, resident
human, resident
Brian Kelly, resident
Kathleen Cavalaro, resident
Rad Nichols, COAST
Peter Nourse, Director of City Services
Ian Rohrbacher, Water Superintendent
Lisa Clark, Deputy Director of DPW
James Steinkrauss, Rath, Young, and Pignatelli
Todd Marsh, Welfare Director
Erin Nasino, Community Outreach Facilitator

Minutes

1. Call to Order

Mayor Callaghan called the City Council Workshop to order at 6:10 PM. He had announced at the Public Hearing preceding the Workshop that Councilor Desrochers was connecting to the meeting remotely via Microsoft Teams. He asked if it was reasonably impractical for her to attend the meeting in person. She confirmed that it was reasonably impractical to attend in person.

Deputy City Clerk Cassie Givara had taken a silent roll call attendance prior to the Public Hearing. All Councilors were present except for Councilor Malone, who was excused.

2. Public Input

Susan Rice, resident, spoke about the length of time spent at the subcommittee level on the Code of Ethics. Ms. Rice also spoke about City officials' endorsement of political candidates.

human, resident, addressed Council in regards to RSA 91-A and how it relates to Councilors connecting remotely to meetings.

Brian Kelly, resident, spoke to Council in favor of passing the Code of Ethics.

Kathleen Cavalaro, resident, addressed Council regarding adopting the Code of Ethics.

Councilor Beaudoin read a letter submitted to him by Cliff Newton, resident, in regards to the Code of Ethics and questioned portions thereof.

City Manager Cox said that there had been public input received online from Palana Belken, resident, titled “Pass the ethics code, cut the funny business.” He stated that a copy of this email had been distributed to all Councilors.

Mayor Callaghan stated that if there was no objection, he would like to amend the agenda to move item #8, the COAST presentation, to the number five position on the agenda immediately following his communications. There were no objections.

3. Communications from the City Manager

City Manager Cox shared the statistics of the February 21, 2023 Special Election for District 8, which had a 34% voter turnout for the ward with 1,019 votes cast. The vote returns are as follows:

Chuck Grassie: 568 votes for 55.7% of the vote
Dave Walker: 451 votes for 44.3% of the vote

City Manager Cox thanked the City Clerk’s office for a job well done on the Election.

4. Communications from the Mayor

Mayor Callaghan expressed appreciation for the clerk’s office for a very smoothly run election.

Councilor Gray reported that the Ward 4 Election held the day prior was the first Election in the State to fall under the “affidavit balloting” law. He stated that there were no affidavit ballots cast, and no voters presented who met the requirement criteria for such a ballot (first time voter in New Hampshire who did not present a valid photo ID at time of registration)

Mayor Callaghan thanked Executive Councilor Joe Kenney and the County Commissioners for working together at the Governor’s level to get \$621,000 approved for infrastructure improvements at the Rochester Childcare Center on Charles Street.

5. COAST presentation: Transportation Coalition

Rad Nichols, Executive Director of COAST, explained that he is appearing before Council to request support for the statewide Public Transportation Coalition and their advocacy for increased State funding for public transit in the upcoming budget. He stated that the Coalition is looking for more equitable funding between the State and the communities served.

Mr. Nichols detailed the challenges currently facing COAST, including labor shortages, inflationary pressures, and the dwindling federal funding that had been received during the pandemic, which is set to run out within the next year or two. He summarized the “Infrastructure Investment and Jobs Act”, an infrastructure law that will bring a 27% increase in federal transit

administration funding to the State of NH. Mr. Nichols said if they were able to access some of these funds, it could help to offset the monetary loss from the issues he had detailed. He spoke about the matching funds needed for all federal money received.

Mr. Nichols detailed the transportation funding allotted by the State, which is currently \$200,000 per year. This is the lowest of the New England States at almost 20 times lower than the next lowest State of Maine. Mr. Nichols stated that COAST's share of the \$200,000 is \$35,000, which funds approximately a day and a half of operations. When the money is leveraged with the federal funding, it covers approximately three days of operations.

Mr. Nichols said that the Transportation Coalition goal is to raise \$2.75 million in State operating funds, which would match 25% of the federal funding coming into the state for public transit and would equal out to approximately \$2.00 per capita funding for NH (up from .15 cents per capita). He explained that the additional needs request of NHDOT did not make it into the Governor's budget, and the transportation funding was level funded at \$200,000. Any additional funding would need to be an addendum House Bill to the budget.

Mr. Nichols stated he is looking for City Council support of the Transportation Coalition's objective and public expression of that support. He explained that Dover, Portsmouth, and Somersworth had already passed resolutions in support of this objective. He emphasized the need for additional funding, in particular matched funding, to continue transportation services.

Councilor Beaudoin requested ridership data for the City of Rochester. Mr. Nichols said that there were just under 50,000 riders in the City of Rochester the prior fiscal year.

Councilor de Geofroy referenced the 1:1 match versus the 4:1 match that Mr. Nichols had spoken about earlier. He asked if there was a particular threshold or criteria for these levels of matching funds. Mr. Nichols said this refers to operations, not capital; items such as employee salary costs are a 1:1 match and things such as equipment maintenance are a 4:1 match.

Mayor Callaghan asked about COAST's service in Maine and if they receive money from the State of Maine. Mr. Nichols explained the various stops they service in several Maine communities and said that they do receive Maine federal funds at a higher rate than they do from the State of NH.

6. FY22 Annual Audit Presentation – Marcum LLP (formerly Melanson)

Scott McIntyre and Andrew Gordon, Marcum LLC, gave a presentation summarizing the findings of the Fiscal Year 2022 audit.

Mr. McIntyre said there had been no significant audit adjustments no disagreements in applications of generally applied accounting principles. He gave an overview of the City's Financial Statements, Unassigned Fund balance, bonds payable, net pension liability, and additional financial considerations. Mr. McIntyre gave Council a brief overview of new standards upcoming in future years.

7. Amendments to Chapter 260 of the General Ordinances of the City of Rochester

regarding Water**7.1 Memo from Director of City Services**

Peter Nourse, Director of City Services, read the memo aloud, explaining the history behind the amendment process and reasoning behind many of the suggested changes. He explained the three types of changes that are being requested, the bulk of which are clerical and minor.

7.2 Revision Registry**7.3 Red-Line version of Chapter 260****7.4 Clean version of Chapter 260**

Councilor Beaudoin referenced the policy statement in section 260-3, which states *“In its administration of its drinking water program, the City will implement the best practices of the American Water Works Association (AWWA), other drinking water trade organizations, and the standards of the State of New Hampshire and US Environmental Protection Agency to the fullest extent.”* He inquired if State law would be preeminent over the AWWA standards. Ian Rohrbacher, Water System Superintendent, clarified that State law would prevail; the adoption and recognition of the standards by the AWWA serve to clarify and embellish the places in the State law that may require some interpretation. Director Nourse added that the AWWA are the guiding principles that the department follows; however, they are not the law.

Councilor Beaudoin inquired about section G under Chapter 260-4 regarding water flow and pressure requirements data. He asked if the City would be requiring this data before issuing water connection permits for new development. Director Nourse explained that this portion serves to clarify the party who should be performing these tests, such as an NFPA engineer as opposed to water department staff being in charge of these investigations. He clarified that this does not apply to single-family homes. There was further clarification on what testing would be required for various types of developments.

Councilor Beaudoin referenced 260-4, section H, which states *“A fire protection engineer may be required to design fire suppression systems...”* He asked if a fire protection engineer would be required to design this system in duplexes and larger developments. Director Nourse confirmed that this is true.

Councilor Beaudoin directed the Council to section 260-6, section C, which references “No. 7 dual check” devices. He said this term is used throughout the document, and inquired if there could be verbiage included to clarify that a function approved equivalent product could be used, because the Watts No. 7 Dual Check is a specific brand product. Director Nourse said the department did not realize this name was proprietary and would look into this.

Councilor Beaudoin referenced section 260-8 “Meters”, section D. He surmised that this section puts limitations on the amount of water that can be used for cooling applications. He asked if existing properties would be grandfathered to avoid owners being required to replace their fixtures or systems. Director Nourse said that everything in the draft ordinance grandfathers

existing customers.

Councilor Beaudoin asked how water disconnects for non-payments of accounts are handled. Lisa Clark, Deputy Director of Department of Public Works, gave the timeline of how utility bills and late notices are distributed and summarized the entire process. She stated that typically there could be 450-500 late notices issued, which are then reduced to approximately 20-30 shut off notices following additional payments received. She explained that with few exceptions, these late notices are all handled and very seldom is anyone left without water. There was a brief discussion on the prohibitive cost of sending these late notices via certified mail.

Councilor de Geofroy said that after reviewing the “clean” version of the ordinance, he had identified several grammatical or clarifying edits that are needed. He said he would email these suggested edits to the Director.

Councilor de Geofroy referenced 260-6, Section F “Fire Water Services Requirements” which uses the verbiage “...at the discretion of the Department...” to describe the manner in which fire water will be serviced. He asked if the Fire Department is also part of this decision, or if this is solely the responsibility of the DPW. Director Nourse stated that the Fire Department and DPW both have access to the same system for permitting, and there can be collaboration on these items.

Councilor de Geofroy asked about the passage, which states “*Owner or Customer shall not be responsible for the cost of the sidewalk or roadway excavation and repair.*” He asked if there could potentially be an exemption made in cases of owner negligence causing the need for repair. Director Nourse said that the cost of such repairs is very high, especially with the increased cost of construction, and it is unlikely the City would be able to recoup these costs if they were charged to a homeowner. Mr. Rohrbacher gave further detail on how repairs are handled dependent on whether they are located on private or City property.

Councilor Hainey spoke about the notation in the memo read by Director Nourse that stated the “*fees in section 234-60 would be reviewed and further discussion may be warranted.*” She inquired how this review process would work. Director Nourse explained that Attorney James Steinkrauss conducted a regional review to compare Rochester’s rates to those of comparable communities. Attorney Steinkrauss gave an overview of the other communities whose fees he had analyzed and stated that Rochester’s rates were found to be comparable. Councilor Hainey asked if the fees assessed were only for water connections. Attorney Steinkrauss stated that he had reviewed and compared *all* the water rates listed in Rochester’s ordinance, including shut off fees, service fees, mailing fees, etc. Councilor Hainey asked if the amendments discussed this evening included any updates to water fees. Director Nourse said that the fees in the draft had not changed; the only update was the system development fee, which had just been amended by Council recently.

Councilor Desrochers read a passage from the registry of revisions, which states “*The*

definitions of public and private water services are delineated to clarify the City's and customer's ownership in anticipation of obligations under the recently revised Lead and Copper Rule. This delineation does not depend upon the property line but the point of sanitary control."

She asked the Director to explain what this meant in non-technical language. Attorney Steinkrauss said that the EPA had issued an update to the lead and copper rule in December 2021. This includes a requirement for all municipalities supplying water to create inventories of any known, suspected, or unknown service lines, which will be due in October of 2024. He gave further details on these regulations. Councilor Desrochers asked if this was in anticipation that the City could discover additional liens that contain lead or copper. Attorney Steinkrauss said that when the inventory is complete, the City will have an obligation to investigate any unknown service lines and is treated as though it is a lead line until proven otherwise.

Councilor Beaudoin asked about 260-5, section D, which indicates there could be "a testable backflow device" required in some circumstances. He spoke about the required testing for backflow devices and the cost of such testing, and inquired what the justification is for this increased requirement. Director Nourse said that the No. 7 dual check is what is required for single-family homes, and that is extended to duplexes. He explained that multi-family homes need a testable backflow device required by State law.

Director Nourse directed Council to the following minor edits:

- Section D of 260-4 "Application for Service," which references Article III. He clarified that there is no article III and this should read "Chapter 260-A."
- Chapter 260-8, section B: "The Department of Public Works will typically install up to a 2-inch meter per service, ~~except~~ and sewer deduct meters."
- 260-9: "...a customer may ~~have~~ installed by the Department a sewer deduct meter
- 260-32, Section A, the extension of water mains in accepted roadways may be approved by a vote of the City Council in accordance with City Ordinance ~~§ 223-9~~." Director Nourse stated that this chapter is currently being reviewed and will likely be going to the Codes and Ordinances Committee.

8. Community Outreach Facilitator Program

Todd Marsh, Welfare Director, expressed his pride that Rochester is the first municipality in the State to have a Community Outreach facilitator position as part of the City Government. Director Marsh said that since the position has gone into effect, there has been increased outreach for prevention and overall effectiveness and spoke about the multiple benefits experienced with the inception of the position.

Erin Nasino, Community Outreach Facilitator, presented data from her first year of

operations in Rochester. She said that this position is non-traditional for New Hampshire, but her experience has been very positive so far and the organizations and partnerships have welcomed her in and been accepting and helpful.

Ms. Nasino explained that her position is referral-based and she presented data on where the 80+ referrals have resulted from; primarily from the police department, with multiple others coming from welfare, other community agencies, client self-referrals, and her own self-selected referrals based on police department activity. Ms. Nasino gave an overview of the demographics of clients, the reasons for referrals, and the types of services she has been able to facilitate. Ms. Nasino explained that her position helps connect clients with needed services, such as housing, mental-health services, financial services, legal help, substance use services, benefits, medical care, etc.

Ms. Nasino presented a representation of the number of police and EMS calls that have been reallocated since her position as community outreach facilitator began and represented the significant reduction in calls.

Ms. Nasino spoke about the work she has been doing with the homeless population and the services she has been able to facilitate. She detailed the multiple ways in which her position supports the City of Rochester. She spoke about the development of a digital tracking system of the homeless encampments in the City, both active and inactive, which are color-coded to alert staff of certain considerations at the camps.

Councilor Lachapelle referenced the slide showing the demographics of those receiving services. He inquired if there was a reason why there was higher number of housed individuals receiving services versus unhoused. Ms. Nasino surmised that part of the reason is that the Willand warming center is operational and the calls for service for the individuals utilizing the center are going to Somersworth as opposed to Rochester.

Councilor de Geofroy acknowledged that this position is the first of its kind within the State of NH, but asked if there were similar positions in other states that could be used as a template when building the Rochester position. Ms. Nasino said that her position of the first of its kind, operating within a welfare department, that she has heard of in New England. However, the State of Maine does have social workers through many police departments or contract positions with outside agencies. She spoke about her collaboration with local agencies on best practices and procedures.

Councilor de Geofroy asked how Ms. Nasino's experience has been collaborating with the Rochester Police Department and if there is any room for improvement with that relationship. Ms. Nasino said her experience with the police department has been very positive; she has been welcomed and they are utilizing her services regularly.

Councilor Desrochers asked if there was anything Ms. Nasino wished could be done within her position, such as an additional service to be offered. Ms. Nasino said having more access to a police offer for visits to encampments when the immediate need arises would be beneficial. Councilor Desrochers referenced the end of the rental assistance programs and asked what other things might be affecting the clients Ms. Nasino has been assisting. Ms. Nasino spoke

about the decrease in food stamps, which is a significant blow to some families, and she spoke about both housing insecurity and food insecurity being major issues. Ms. Nasino reported that there is a new director at Community Partners whom she has collaborated with directly, and whom she has had success with mental health service placement as well as case management services with a much faster rate than typical for these placements.

9. **Committee of the Whole – Code of Ethics**

Councilor Gray stated that he felt that most of what is contained in the proposed Code of Ethics is already contained in the City Charter, the Rules of Order, and State law. He asked if anyone had compared these documents to the Code of Ethics and if this document, if adopted, would supersede the Rules of Order.

Attorney O'Rourke directed Council to section 9. "Gifts and Favors" and the following edit: "Members shall not take **engage in quid quo by taking** any special advantage of services." He explained that this edit was included to clarify that simply going to an event where food is provided is not an issue as long as there is no understanding that favor would be given in exchange for this meal.

Councilor Fontneau said he felt that, through the course of this document's history, it had become cumbersome. He speculated that some may feel the need to have their own legal counsel review the document prior to signing to ensure they are not in violation of any of the sections. Councilor Fontneau also speculated that being required to sign this Code of Ethics might discourage some from running for elected office.

Councilor Gray said that State law already prohibits elected officials from receiving gifts and places a dollar amount on what can and cannot be accepted. He questioned why this stipulation should be included in the Code of Ethics if he is already obligated to adhere to these guidelines by State RSA. Councilor Lachapelle stated that he did not see any reason why items could not be included in the Code of Ethics simply because they are also covered by State laws. Councilor Gray reiterated that the State Law and Rules of Order have been in place without issue for many years and he did not feel it necessary to develop a new document. Councilor Desrochers suggested that if there is precedent in State law, the law should be cited in the Code of Ethics. Councilor de Geofroy said that although he agreed State law should not be undermined or superseded, there was no issue with having a concise summary document of these laws, such as the proposed Code of Ethics. Councilor Beaudoin agreed that if there is State law relevant to any of the items in the Code of Ethics, these State laws should be cited within the Code.

Councilor Fontneau requested that the State law stating a specific dollar amount for gifts be cited in the Code. Attorney O'Rourke clarified that there is no such State law listing a dollar amount. He summarized similar laws for State employees and criminal law prohibiting bribery.

Councilor Larochelle suggested there be an appendix added for the various definitions and citations being discussed in order to keep the document simple and easier to follow. He also clarified that by signing the Code of Ethics, it is not an agreement to adhere to the contents, but rather an acknowledgment of reading and understanding the contents.

Councilor Beaudoin said that the wording was still too ambiguous and leaves open to interpretation what could be considered “quid pro quo.” He supported listing a specific dollar amount. Councilor Berlin suggested “in accordance with NH RSA 640:5” be added to the end of section 9 for the benefit of those who feel the State law should be cited. Councilor Gray spoke further about how he felt the verbiage in section 9 is more restrictive than State law. Councilor Lachapelle read section 2 of the Code, which states “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” to clarify that the document does refer to the State RSAs.

Mayor Callaghan requested to call the question on the amendment to “Gifts and Favors.” Councilor Hainey said she had further discussion on section 9. Mayor Callaghan called for a vote on the motion to continue discussion. The **MOTION CARRIED** by a 12-0 hand count vote. Councilor Hainey asked for clarification on RSA 640:5. Councilor Berlin read the relevant portion of the RSA. Mayor Callaghan called for a vote on the amendment to section 9 (“...shall not ~~take~~ **engage in quid pro quo by taking** any special advantage...”). The **MOTION CARRIED** by a majority voice vote. Councilor Gray abstained from the vote.

Councilor Fontneau referred to section 8 regarding financial disclosure. He inquired about Councilor Gray’s earlier assertion that some sources of income were exempt from the disclosure requirement. There are no exemptions listed in the current Code of Ethics, and the RSA 15-A form used by the State and proposed to be used as part of the Code of Ethics is not listed in the document either. He asked how a Councilor would know what sources of income are exempt. Councilor Beaudoin read an excerpt from the Code of Ethics in regards to this financial disclosure form. He suggested that the 15-A form be reformatted and updated to reflect potential conflicts for Rochester Councilors, because most of the current categories do not apply at the local level. There was lengthy discussion on the financial disclosure section and what should and should not be listed, as well as conflicts of interest. Councilor Beaudoin read an excerpt from the City of Portsmouth financial disclosure, which he felt could take the place of the majority of section 8. Attorney O’Rourke stated that section 72 of the City Charter already details the information Councilor Beaudoin had referenced from the City of Portsmouth. Councilor de Geofroy said he was supportive of keeping the financial disclosure in the interest of transparency; even if the items listed are not a conflict, they would be listed up front and would take away any potential questions. Councilor Hamann suggested that if the City Charter already covers this information, than section 8 could be reduced to “Conflict of Interest: See City Charter Section 72.” Councilor Berlin **MOVED** to amend the section to strike the entirety of section 8 and simply list “8. Conflict of Interest: **See City Charter Section 72**” as well as updating the financial disclosure form 15-A to reflect Rochester’s needs. Councilor Hamann seconded the motion. The **MOTION CARRIED** by a 9 to 2 hand count vote. Councilor Gray abstained.

Councilor Beaudoin referenced section 7 “Communication” and the sentence stating that members are “advised” not to participate in discrimination or harassment. He felt that the verbiage needed to be clarified because it implied this activity would not lead to disciplinary action. Councilor Berlin said this section had been entirely reworked in Committee; the word “advised” was used because the whole section is aspirational. It cannot be said that a member is strictly prohibited from harassment or discrimination; however, that is where the sanctions

listed in the document come into play if these instances arise. Councilor Desrochers explained that there had originally been discussion about splitting this section into two separate categories, for adjudicative matter and general matters. Councilor Gray speculated that the current verbiage would prohibit Councilors from posting on social media regarding any matters before the board. Attorney O'Rourke defined the word adjudicative and explained why a member posting regarding matters on which the Council is serving as a judge would be prohibited. Councilor Gray suggested that the Code use easier to understand language in lieu of "adjudicative" or define the word itself. He again questioned the use of "advised" and felt it did not indicate what would happen if members engaged in what they were advised not to do. Attorney O'Rourke reiterated that in adjudicative matters, a Councilor is sitting in judgement and should remain neutral; if a Councilor does not remain neutral and publicly posts an opinion, there could be consequences for the City. However, outside of adjudicative matters, the word "advised" is used because members should aspire to behave in this manner, but it is not prohibited (although there may still be consequences). Councilor de Geofroy suggested removing the qualifier "outside of adjudicative matters" because he felt it implied that harassment and discrimination was acceptable as long as it was not related to an adjudicative matter. Councilor Berlin clarified the reasoning this terminology was used; to outline what speech is prohibited versus what speech is allowable, although not advisable. There was further questioning of adjudicative matters that could potentially come before Council. Attorney O'Rourke explained that Council rarely hears adjudicative matters, and said that the examples being questioned are policy matters as opposed to adjudicative matters. Councilor Beaudoin felt that being disallowed from posting on social media regarding an ongoing adjudicative matter on which the Council is sitting as a judge, is an infringement on a Councilor's First Amendment rights. Attorney O'Rourke explained that the First Amendment does not prohibit someone from making such a posting; but it does not free that Councilor from the potential consequences of such a posting.

Councilor Beaudoin expressed that he felt the verbiage indicated that a Councilor could be sanctioned for misconduct in their personal lives. Attorney O'Rourke explained that if the body decided that a Councilor's actions constituted misconduct in office, they could vote to remove the Councilor. However, he qualified that this is the currently the process that could occur, even without the Code of Ethics. Councilor Beaudoin stated that he felt the Code of Ethics reached into the personal lives of Councilors and their personal conduct could affect their position. He felt that this would discourage others from running for office. Councilor Lachapelle again read section 2 indicating that Councilors will comply with State and local law "in the performance of their public duties." Attorney O'Rourke clarified that the Code is discussing the conduct of members in the performance of their duties as Councilors and in the context of their position on the Council.

There was further discussion on Councilor de Geofroy's motion to amend section 7 as follows: ~~"Outside of adjudicative matters pending before the body,~~ Members of the Council/Commission/Board/Committee are advised not to participate in discrimination or harassment..." The **MOTION FAILED** by a 4 to 7 hand count vote with Councilor Gray abstaining. Councilor Lachapelle asked Councilor Gray why he was abstaining from each vote. Councilor Gray explained that he felt voting on these amendments would indicate that he agrees with the process to "replace the Rule of Order, replace sections of the City Charter, and supersede some of the State laws that are already addressing this."

Councilor Beaudoin referenced section “B. Conduct Guidelines” which says how members “should” behave. He objected to the wording because he said it regulates how members should treat other and he questioned if violations could cause a Councilor to face reprimand in their position on the body. He stated that he already knows how to treat others and the Code of Ethics does not need to reduce it to writing. Councilor Beaudoin suggested the whole section be removed in its entirety and the Council can go on what is currently in the City Charter. Alternately, he suggested the City Charter be used as a foundational document to start fresh and draft a brief Code of Ethics in the same manner as the City of Portsmouth. Councilor Desrochers said that the purpose of a Code of Ethics is to outline behavior that should be followed, regardless of whether or not it is seen as common sense.

Councilor Beaudoin read section (a) of “C. Sanctions” which states:

“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 not be assigned intergovernmental assignments or Council subcommittees by the Mayor. Members of committees appointed by the Mayor and/or the City Council who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct are not eligible to hold office.”

Councilor Beaudoin questioned the legality of not allowing someone to hold office if they refuse to sign the referenced acknowledgment. He said the Council does not have the authority to keep a duly-elected official off the Council for not signing a document. Attorney O’Rourke clarified that the “members” this section is referring to are not elected officials but rather appointed positions. In regards to subcommittee assignments by the Mayor, not signing the acknowledgment could remove Councilors from consideration for these assignments, but would not prevent them from being seated on Council, School Board, or Police Commission if elected. Councilor Beaudoin suggested that the verbiage be changed to remove “not eligible to hold ~~office~~” and replace it with “not eligible to hold **appointed positions**.” Councilor Gray questioned if the Rules of Order section on removals from office, which requires a 2/3 majority vote, would still prevail. Attorney O’Rourke said that Councilor Gray is correct and this provision does not apply to those currently serving on subcommittees. Councilor Fontneau said it should be noted that, if this Code is adopted at the March regular Council meeting, this provision does not apply to those currently serving on a subcommittee. Attorney O’Rourke suggested a footnote attached to section (a) reading “This section does not apply to Council members or Committee members currently serving at the time of adoption.” The **MOTION CARRIED** to amend section (a) of “C. Sanctions” as detailed above by a 10 to 1 hand count vote, with Councilor Gray abstaining.

Councilor Beaudoin directed Council to C. Sanctions, section b. Ethics training for local officials. He inquired who determines the requirements for ethics training. He posited that the body itself should determine what is needed for ethics training. He suggested that the section be amended as follows: “...State or City mandated requirements for ethics training **as determined by City Council**...” Councilor Desrochers expressed that the body who will be held to this Ethics Code should not be the same people mandating what should be learned about ethics. She suggested the section be left as-is and amended in the future if needed. Councilor Berlin explained that there are already required trainings for Councilors; these can be used as a baseline and there can be a list compiled of mandated training for elected officials. Attorney

O'Rourke agreed that the City Council should decide what training will be mandated. Councilor de Geofroy suggested there be wording added to specify a timeline for compliance to training requirements before sanctions are enacted. Councilor Berlin reminded Council that the first level of sanctions is the Mayor simply speaking to a Councilor regarding the issue. Mayor Callaghan called for a vote on the amendment. The **MOTION CARRIED** by a 10 – 1 hand count vote, with Councilor Gray abstaining.

Councilor Beaudoin referenced the portion of C. Sanctions stating that Councilors “...*may be reprimanded by the Mayor or formally censured by the Council...*” He said that this seemed to expand the authority of the Mayor over what is outlined in the City Charter. He speculated that if the Charter were not updated as well, this verbiage would not be allowed. Attorney O'Rourke clarified that the current wording of the Charter states that the Mayor will preside over all meetings of Council, making the Mayor the Chair of the Committee. Chairs have the authority to reprimand. The section was left as-is with no amendments.

Councilor Beaudoin spoke about the portion under “C. Sanctions” stating that Councilors could be “*required to pay any monetary costs associated with investigating violations.*” He said that it does not indicate that costs are not applicable if a party is found innocent. Mayor Callaghan stated the costs are applicable only if a party is found in violation. Councilor Beaudoin suggested striking the sentence in its entirety as follows:

Further, any Councilmember found in violation of this Code or any other misconduct in office may also be subject to the following sanctions imposed by the Council:

1. Required to attend and successfully complete training related to the nature of the violation.
- ~~2. Required to pay any monetary costs associated with investigating violations~~
3. Required to issue a formal, sincere apology.
- 4..Removed from office in accordance with Section 70 of the City Charter.

Councilor de Geofroy asked if this provision is legally enforceable. Attorney O'Rourke referenced the follow up line reading “*Failure to comply with any sanctions imposed by the Council will be considered a violation of this Code and an act of misconduct in office.*” He explained that if an individual were found in violation and received a sanction short of removal from office, and they failed to pay the applicable costs, they could be brought up on further violations for failure to pay. Councilor de Geofroy clarified that a Councilor could be removed from office, however there would be no legal obligation to pay these costs following removal from office. Councilor Desrochers pointed out that the verbiage currently reads that Councilors “may” be subject to these additional sanctions, including costs of investigation. It is not a definite, and it allows options outside of removal from office. Councilor Berlin **MOVED** to remove bullet point number 2, as shown above. Councilor Larochelle seconded the motion. The **MOTION CARRIED** by an 8 to 2 hand count vote, with Councilor Gray abstaining.

Councilor Beaudoin questioned the use of the word “intends” in the final paragraph before D. Implementation. He suggested rephrasing, because it is impossible to know another person's intent. There was brief discussion on potential verbiage. Attorney O'Rourke clarified that there are all kinds of intent and ways to prove intent; however, this paragraph is worded to

protect the reporting party. He said this paragraph explains that sanctions imposed by City Council may not be the only ramifications faced if a party is reported to other governmental authorities.

Councilor Beaudoin said that he would like the inclusion of wording stating that if a party makes an allegation against another individual, such allegation should be made under oath and under penalty of perjury. Councilor de Geofroy had a question about the lack of specificity in how often the document would need to be reviewed. He expressed concern about the potential of a new Council not adopting the Code of Ethics and if that would cause the document to expire. Councilor Lachapelle referenced the final paragraph of the document, which reads:

“...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.”

Councilor Lachapelle explained that the intent is to review the Code of Ethics along with the Rules of Order at the start of each new Council’s term. However, it can be amended at any time throughout the term if needed. Attorney O’Rourke suggested that the Codes and Ordinances Committee discuss an amendment to the Rules of Order section pertaining to the agenda for the Inaugural meeting. The agenda could potentially be amended to add a review of the Code of Ethics to the reconvened Council meeting and this review would then be embedded in the Rules of Order.

Councilor Beaudoin read an excerpt of the City of Portsmouth Code of Ethics pertaining to swearing any allegation in writing and under oath. Councilor de Geofroy acknowledged the benefit of having the ability to have sworn statements, but emphasized the less formal approach of a Councilor verbally addressing another Councilor for a perceived issue before it escalates.

Councilor Hainey referred to section 6. “Decisions based on Merit” and the sentence *“...shall base their decisions on the facts presented at the hearing and on the personal knowledge of a Member...”* Attorney O’Rourke confirmed that members of a body are able to use their personal knowledge and experience with an issue in making a decision. Councilor Berlin clarified that this personal knowledge can be used in making a decision, but it needs to be shared with the body at the hearing/meeting for their consideration. Councilor de Geofroy **MOVED** to change the word *peculiar* to *particular* in this section for clarity. Councilor Desrochers seconded the motion. The **MOTION CARRIED** by a 10 – 0 hand count vote with Councilor Gray and Councilor Beaudoin abstaining.

Councilor Fontneau referred to the following section:

- 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.

He asked if Councilors would be able to speak at subcommittee meetings either in favor or opposed to items on an agenda. Attorney O'Rourke read an excerpt from the Code of Ethics (4. Council Conduct with Boards, Committees and Commissions, section a) in regards to these circumstances. It was discussed that members are able to do this as long as it is clear they are not speaking in their official capacity and as long as the speech is being done publicly at a meeting.

Councilor Fontneau referenced the portion of the conduct guidelines that states, "*Avoid personal comments that could offend other members.*" He felt there is no way of knowing what may or may not offend others. Councilor Berlin explained that the way the section currently reads allows a member to call for a "point of personal privilege" if they find the language of others offensive and would serve to inform others of what language to avoid going forward. There was further discussion on this section and how the process would work.

Councilor de Geofroy suggested the following edit to section e. under Sanctions: "These sanctions are ~~alternatives-in addition~~ to any other remedy that might otherwise be available..." Councilor Desrochers seconded the motion. The **MOTION CARRIED** by an 11 – 0 hand count vote, with Councilor Gray abstaining.

Attorney O'Rourke explained that the suggested amendments would be integrated into the document and a revised version would be supplied to Council prior to a vote on adoption at the March 7 meeting.

10. Department Reports

No Discussion.

11. Non-public/non-meeting

Councilor Gray announced that Frisbie had held a ribbon cutting on their new inpatient rehabilitation unit, which he feels is an asset to the community.

Mayor Callaghan requested a roll call to enter into the non-meeting. The **MOTION CARRIED** by a 12 – 0 roll call vote with Councilors Hainey, Gray, Gilman, Fontneau, Larochelle, de Geofroy, Desrochers, Berlin, Beaudoin, Hamann, Lachapelle, and Mayor Callaghan all voting in favor.

12. Adjournment

Mayor Callaghan **ADJOURNED** the City Council Workshop meeting at 10:24 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk