

Codes and Ordinances Committee

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



CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, October 6, 2022

31 Wakefield Street, Rochester, NH

Council Chambers

6:00 PM

Agenda

1. Call to Order
2. Public Input
3. Acceptance of the Minutes P. 3
 - 3.1 September 1, 2022 *motion to approve*
4. Code of Ethics and Conduct P. 13
5. **Discussion:** Revision to City Building Permits adding option for EPA “Renovation, Repair, & Painting” certification number
6. Other
7. Adjournment

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City Clerk's Office

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
Councilor Dana Berlin
HR Director Kim Conley

CODES AND ORDINANCES COMMITTEE
Of the Rochester City Council
Thursday, September 1, 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 (*The above noted members were excused from the meeting at 6:45 PM).

2. Public Input

Susan Rice, resident, asked for clarification on rules of procedure for the meeting and when the public would be authorized to speak. Chair Lachapelle stated that public comment would be allowed at the start of the meeting, but would not be accepted during the discussions later in the agenda. Ms. Rice referenced the draft cover page of the proposed Code of Ethics in the packet which indicates it was "Adopted August 2022." She stated that this wording is misleading, as the Code has not yet been adopted.

Ms. Rice questioned how the proposed Code of Ethics would affect land-use boards. She also questioned the requirement for a signed acknowledgment within the Code of Ethics potentially prohibiting a person from filling an elected seat.

Ms. Rice spoke about the absence of backup in the packet for agenda item #7 and distributed state RSAs to the Chair for review in regards to land-use board bylaws.

3. Acceptance of the Minutes

3.1 August 4, 2022 *motion to approve*

Councilor Desrochers **MOVED** to **ACCEPT** the minutes of the August 4, 2022 Codes and Ordinances Committee meeting. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

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

Attorney O'Rourke explained that this agenda item coincides with an agenda item slated to occur at the September 6, 2022 City Council meeting for the first reading and referral to public hearing of a resolution to rescind the Economic Development special reserve fund. The City Council voted to discontinue this Economic Development special reserve fund, which will be replaced with the Economic Development non-capital reserve fund. The Codes and Ordinance Committee will need to send to the October City Council Regular meeting the recommendation for deletion of the Economic Development Special Reserve fund from the City's General ordinances.

Councilor Beaudoin spoke about the multiple steps and meetings involved in the process of rescinding one fund and establishing the new fund. He inquired if there could have been a way to complete the process more quickly without the multiple actions. Attorney O'Rourke stated that the money was originally sitting in the special reserve fund where it needed to remain by law. The Council then needed to approve establishment of the non-capital reserve fund, after said fund was revised and vetted by the Finance Committee and went to public hearing. Once the fund was approved, the money from the original special reserve fund could be moved to the non-capital reserve fund. However, this process would leave the special reserve fund empty, and the final stage is to rescind this fund and remove it from the City ordinances in another multi-stage process. Each step in the process is dictated by state RSA and needs to be followed appropriately.

Councilor Beaudoin **MOVED** to recommend to full Council the deletion of this portion of the General Ordinances regarding the Special Reserve Fund. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

5. Code of Ethics and Conduct

Chair Lachapelle stated that there had been suggested edits received from Councilor Desrochers, Councilor Berlin, and Attorney O'Rourke, along with some edits from HR Director Kim Conley. The Committee will go through the suggestions section by section.

Chair Lachapelle directed the Committee to the documentation from Ms. Conley regarding guidelines for elected and appointed officials using social media. Director Conley addressed the committee and emphasized the need to remain professional as a Councilor on social media, even

on personal pages, because constituents and peers are always watching.

Councilor Beaudoin referenced the portion of the provided social media guidelines with the following recommendation:

- *Post a disclaimer on your personal account that identifies the account purpose and that the opinions you express are your own.*

He felt this was a good option and stated he would be doing this on his personal Facebook page. However, he stated that he had concerns with the list of “Don’ts”:

- *Don’t write posts on personal accounts that would fit within the scope of employment.*
- *Don’t discuss your private accounts in public meetings or documents.*
- *Don’t link to your private accounts from an official city account.*
- *Don’t use city devices to maintain your private account.*

Councilor Beaudoin expressed concern that political discussion on his personal page could be construed as a violation of these guidelines and, in turn, an ethics violation. He felt that they needed to be cautious with how these guidelines are worded. Chair Lachapelle reminded Councilors that as elected officials, they are in the public eye whether they like it or not and they should use caution when posting anything on social media, keeping in mind that it can be seen by constituents. Councilor Berlin said that his concern was that the portion of the ethics code regarding social media was under the section on “adjudicative matters.” He asked if the social media use being discussed is specifically during adjudicative matters, or if it is being discussed generally in the role as an elected official. Attorney O’Rourke suggested dropping the word “adjudicative” and simply stating that these guidelines are for matters pending before the body. Councilor Berlin read the first portion of his edits as follows :

“Council members shall avoid posting to social media, in regards to any adjudicative matters pending before the body. Outside of adjudicative matters pending before the body, members of the Council/Commission/Board/Committee are advised to 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 stereotypes, bullying, threatening, intimidating, or other hostile acts, degrading jokes and display or circulation of graphic material that degrades or shows hostility, and physical touching. Members are also advised to never demean or personally attack an employee regarding the employee’s job performance in public”

Councilor Berlin stated that he felt members should not be posting regarding adjudicative matters to personal, political, or professional pages. Outside of adjudicative matters, members should only be limited as outlined in the passage above. Councilor Desrochers reminded the Committee that they had discussed this distinction between adjudicative and general matters at the prior meeting and it had been determined that this could be split into two sections: Social media conduct during adjudicative matters and general social media guidelines. She stated that she had similar verbiage to Councilor Berlin’s edits in her suggested edits.

Attorney O'Rourke directed the Committee to section 6 under "A. Ethics" and the following edits:

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 on the personal knowledge of a Member on the issue presented to the rest of the City Council at said hearing.** ~~Should seek outside information on the subject matter from all possible sources-~~

Attorney O'Rourke clarified that this verbiage is asking that members state any personal knowledge publicly at the meeting so it is reflected in the record and available for other members to consider when making their decision. He felt that the prior wording implied that members would seek outside information on their own without presenting this information to the board. Councilor Beaudoin stated that the issue is with the word "adjudicative" within the paragraph. He wished to clarify that this particular paragraph deals with adjudicative matters and not public hearings or other meetings. Attorney O'Rourke gave examples of how a member's personal knowledge could be introduced at a ZBA or Planning Board meeting and used to assist in the decision-making. He reiterated that the emphasis is being placed on the knowledge being shared with the board publicly. This would avoid having a member make a decision or voting based on personal knowledge without disclosing the reasons behind their decisions.

Councilor Desrochers requested that there be better definition of what type of adjudicative matters this would cover. Attorney O'Rourke clarified that adjudicative matters are rare for City Council and are more common on land use boards. These are matters where the board would sit as judges in making a determination on a matter. Councilor Desrochers suggested that there be verbiage added requiring a member to state if they were a subject matter expert. There was a brief discussion on the subjective nature of the term "expert" and whether it would be sufficient to just state personal knowledge and allow other members to give it the weight they felt it deserved. Councilor Beaudoin expressed concerns that this would allow "hearsay" to be introduced into adjudicative matters. HR Director Conley clarified that when "outside sources" were referenced, it was intended to mean facts and relevant data/research that would be introduced at the meeting as opposed to opinions or speculation. Attorney O'Rourke clarified that the Council is not a legal court and does not follow the rules of evidence. He further clarified that hearsay, which would not be a recognized term for a Council proceeding, would refer to statements made by someone other than the member making the statement; however, in the situation being discussed it would be a member him/herself making a statement into the record. Councilor Berlin stated that the City Council follows their "Rules of Order" and inquired if hearsay evidence is allowable by these rules. Attorney O'Rourke answered that because the Council is not a court, this is allowable.

Councilor Berlin directed the Committee to section “3. *Conduct of Members.*” He suggested the following edits:

- 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.

Councilor Berlin stated that although he agreed that members should not be attacking others for their personal interpretation of their motives, it should not be prohibited to question these motives in an appropriate manner if they felt there were ulterior motives at play. Attorney O’Rourke stated that this verbiage is common throughout the government in codes of conduct; it is typically considered out of order to question another member’s motives on the floor, and doing so is a reprimandable offense. Councilor Berlin agreed that it was not appropriate to question a member’s motives during a meeting, but he stated that due to the code of ethics extending beyond meetings, this wording would prohibit members from politely asking others outside of a meeting what their reasoning was behind a decision. Councilor Beaudoin pointed out the wording in the first sentence, which indicates that this refers to members “...while exercising their office...” He stated that he felt this specifically referred to conduct during meetings. Councilor Berlin agreed on this interpretation and felt that the passage should be left as-is.

Councilor Berlin directed the Committee to the remainder of section 7. *Communications* and read his edits in their entirety:

7. Communication. Council Members shall avoid posting to social media in regards to any adjudicative matters pending before the body. Outside of adjudicative matters pending before the body, members of the Council/Commission/Board/Committee are advised not to participate in discrimination or harassment, even if the identified behaviors are 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 displays or circulation of graphic material that degrades or shows hostility; and physical touching. Members are also advised to never demean or personally attack an employee regarding the employee’s job performance in public.

He reiterated that outside of adjudicative matters, members should only be limited by restrictions against discrimination or harassment.

Councilor Desrochers read her edits to this portion in their entirety as follows:

- (a) **Pertaining to all communications in any form of media which includes communications with news entities, on social media and/or public events.**
 - a. *Presence in the media by officials covered under this code is to be informative in nature and positively reflect on the community and City staff and promote*

local activities.

- b. Refrain from making belligerent, impertinent, slanderous, threatening, abusive, or personally disparaging comments.*
- c. 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.*
- d. Shall never demean or personally attack an employee regarding the employee's job performance in public; and*
- e. Are to demonstrate their honesty and integrity, and to be an example of appropriate and ethical conduct*

(b) For adjudicative matters pending before the body, members shall:

- a. 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.*
- b. 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.*

Councilor Desrochers explained that she had edited the original document to make a more clear distinction between adjudicative matters and general conduct. Councilor Beaudoin stated that he felt section A(a) *“Presence in the media by officials covered under this code is to be informative in nature and positively reflect on the community and City staff and promote local activities”* was too restrictive, especially when taking into consideration B(b) *“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.”* He felt that City Councilors and Board members still had a right to express themselves about City business in any way they see fit. Chair Lachapelle reiterated that he agreed in a Councilor’s right to express their opinions; he just felt there should be a disclaimer present that the opinions are personal and not the position of the City. Councilor Berlin stated that it should not be viewed as a violation to post something on a personal social media page, even if that content is not considered “informative.” He reiterated the need for a disclaimer to distinguish between a personal and professional page. Councilor Desrochers said the verbiage could be added to indicate this is “pertaining to all communications when acting as/identified as a member of the body. “

Attorney O’Rourke endorsed Councilor Berlin’s proposed wording and reminded the Committee that the Code of Ethics is a living document that will be reviewed bi-annually and can be changed and revised as it is put into use and learned from;. He recommended making Councilor Berlin’s verbiage into the new *“7. Communications.”* Councilor Beaudoin stated that

he felt the wording and punctuation needed to be cleaned up slightly, but he was in favor of Councilor Berlin's proposed wording. Councilor Beaudoin **MOVED** to recommend the revisions to section 7. Communications. Councilor Gilman seconded the motion. Councilor Desrochers said she was in favor of the revisions as long as there is a clear distinction between public/professional and private pages.

Attorney O'Rourke spoke in regards to the "*Conflict of Interest*" section. He explained the revisions he made by adding the relevant portion of Portsmouth's ordinance, in which they adopted the NH RSA 15-A financial disclosure form. He stated that he had added a portion stating that the form would be returned to a member six months following the end of their term. There was discussion in committee regarding what is contained on this form and the type of financial activity that would need to be reported. Councilor Beaudoin spoke about the criteria for recusals from discussions and actions.

Councilor Berlin addressed the Committee regarding the section titled "Practice Active Listening" and explaining his suggested revisions:

"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. While you cannot be required to listen to public speakers in a certain way, it is advised that all members remain conscious of their actions during such time as a member of the public might be speaking. To the best of your ability remain focused on the speaker and avoid noise and distractions."

Councilor Berlin stated that the Code cannot dictate how a member listens; however, this wording clarifies that speakers need to feel like members are listening and asks board members to be cognizant of this fact.

Councilor Desrochers explained her suggested edits to the section:

- (a) *Practice active listening*
 - a. **Members shall be cognizant of non-verbal body language and facial expressions that could be interpreted as disbelief, anger, or boredom.**
 - b. **Members shall make attempts to listen actively and respectfully to city staff, members of the public and other council members whenever possible.**

Councilor Desrochers spoke briefly about body language and her suggested wording, which keeps the phrasing general and outlines what should and should not be done while listening. Chair Lachapelle agreed that both Councilors' suggested wording was sufficient. Councilor Berlin surmised that both passages said essentially the same thing. He reiterated that this code is aspirational and felt that this section is just requesting that members make their best effort of the appearance of active listening. Attorney O'Rourke stated that he would combine the two edits to integrate the suggestions from each one.

Attorney O'Rourke directed the Committee to his edits of section "C. *Sanctions.*" He explained the suggested wording under "*a. Acknowledgment*", which indicates that if a person applies to be appointed to a board or commission, they must sign an acknowledgment to comply

with the Code of Ethics or else they will not be granted an interview with the Appointments Review Committee and subsequently not be given a seat on said board. Councilor Berlin asked how this would affect current board members. Attorney O'Rourke stated that this would not take effect until adopted and would be instated for those applying to boards and commissions post-adoption. He said that ideally, current members would sign the acknowledgement, although theoretically it would not take effect until after the next election due to current board assignments already being made.

Attorney O'Rourke discussed his edits to section C as follows:

Councilmembers

Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Mayor or Council, lose 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.~~

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.

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.

Attorney O'Rourke explained that the final sentence allows for further sanctions to be imposed or escalation of action if a member does not comply with the sanction that has been handed down.

Councilor Desrochers stated that she approves of the list of sanctions developed by Attorney O'Rourke as a starting point; however, she emphasized the need for the formation of an Ethics Commission. She felt that such a committee would take the responsibility off Council and board members to research and review towards the judgement of their peers, as well as reducing the time away from the job they have been elected to perform. She recalled that constituents had inquired why Rochester does not have an Ethics Commission and how they might get involved if one was formed. Attorney O'Rourke recommended a two-step process, with a first step of having the Code of Ethics adopted by Council, Police Commission, and School Board. Once the Code has been adopted, there can be a discussion started about the formation of an Ethics Commission and the make-up of said board

Councilor Beaudoin referenced the sentence stating “*Council members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Mayor or Council.*” He felt that this portion gave too much power to the Mayor and suggested striking “by the Mayor” to indicate that the censure would come from the elected body. Councilor Beaudoin questioned the sanction requiring payment for costs of investigation. Attorney O’Rourke stated that it is a standard sanction in multiple professional organizations that a member found in violation would be required to pay for the costs of the investigation. It was clarified that these costs would be assessed only if a member was found in violation. Councilor Desrochers speculated that these costs might be a deterrent for repeat violators and would prevent taxpayers from having to cover the costs of these investigations. Attorney O’Rourke suggested the following edit in response to Councilor Beaudoin’s concerns: “*Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded by the Mayor or formally censured by the Council...*”

Councilor Beaudoin inquired if, in a situation where an investigation led to the removal of an official from office and a sanction was imposed for the former member to pay the cost of said investigation, how the City would go about collecting that money once the member is no longer seated. Attorney O’Rourke acknowledged the potential for this situation and said that if it were to occur, the money could be pursued under a breach of contract if the member had signed the Code of Ethics following election. Councilor Berlin expressed concern that if the financial cost of an investigation were imposed on a violator, it could be detrimental and implausible to pay if the cost were not capped at a manageable amount. Chair Lachapelle stated that if this censure were being imposed, it would be for good reason and the costs would be justified. There was further discussion on scenarios that could occur if investigatory costs were assessed. Attorney O’Rourke pointed out that the Code of Ethics states these sanctions “may” be imposed, not “shall.” He cautioned against a cap and speculated that the costs could potentially deter the behavior for which a member could be found in violation.

HR Director Conley stated that she would distribute a power point to the Committee regarding conduct on social media for them to review. Ms. Conley asked if there were any clarifications needed on the preamble for the Code of Ethics as discussed at the prior meeting. Councilor Berlin suggested the following edit within the preamble:

~~“...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.~~

He clarified that he did not feel a Councilor should be held to the same standards in their private life as they would be at a meeting or a City function, and Councilors/board members should not be reprimanded for perceived violations in their private lives. Councilor Beaudoin acknowledged that this verbiage was contained in the preamble but not reflected within the code.

Chair Lachapelle stated that the Code of Ethics would be kept in Committee and come back in October with further suggestions solicited from Council. Councilor Beaudoin asked if this Code, if adopted, would override the individual codes in place for other boards and commissions. Attorney O’Rourke stated that members of these boards would be asked for input, as had been done on the previous iteration of the Code, with hopes that they will also adopt the

Code of Ethics. However, it is not a requirement that the other boards adopt it. Chair Lachapelle asked the Committee if they would entertain the invitation of a School Board member and a Police Commissioner to the October meeting for further work on the Code of Ethics. The Committee consensus was to bring these board members to the meeting for input. Attorney O'Rourke stated he would record the edits up until this point and distribute to the Committee.

6. Discussion: Revision to City Building Permits adding option for EPA “Renovation, Repair, & Painting” certification number

Councilor Desrochers gave some background on the prevalence of childhood lead exposure in NH as well as the detrimental results and unintentional consequences of this exposure. She stated that any home built prior to 1978 should be treated as though it contains lead and that any contractor doing work in a home should maintain the referenced certification. Councilor Desrochers emphasized the importance of education and awareness regarding lead exposure.

Chair Lachapelle asked what would need to be done at the City-level to facilitate this proposal. Councilor Desrochers stated that there could be a check box added to the building permit application asking for a contractor's certification code. She clarified that it would not be a requirement, but rather a mechanism for a talking point with Code Enforcement and a starting point for education and information distribution. Chair Lachapelle suggested that the Director of Building and Licensing be invited to the October Codes and Ordinances meeting for further discussion on this matter. Councilor Berlin questioned whether putting this option on the building permits may cause it to become a requirement somewhere down the road. Councilor Desrochers stated that she had not heard of municipalities mandating this information. She clarified that this is a recommendation from NH Healthy Homes, which is a part of the Department of Health and Human Services, as a starting point for education. She reported that there are also unused federal funds for these certifications as well as lead abatement, and this proposal could be a way to funnel some of this funding for use in Rochester.

Councilor Desrochers addressed the comments made by Ms. Rice during public input and stated that if she or anyone else wanted more information, it can be found at leadfreekidsnh.org.

4. Other

No Discussion.

5. Adjournment

Chair Lachapelle reported that the next Codes and Ordinances Committee meeting will be held on October 6, 2022 at 6:00 PM.

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

Respectfully Submitted,

Cassie Givara
Deputy City Clerk



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 on the personal knowledge of a Member on the issue presented to the rest of the City Council at said hearing. ~~should seek outside information on the subject matter from all possible sources.~~
7. **Communication.** Council Members shall avoid posting to social media in regards to any adjudicative matters pending before the body. Outside of adjudicative matters pending before the body, members of the Council/Commission/Board/Committee are advised not to participate in discrimination or harassment, even if the identified behaviors are 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 displays or circulation of

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graphic material that degrades or shows hostility; and physical touching. Members are also advised to never demean or personally attack an employee regarding the employee's job performance in public. 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.~~

8.7. 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.

All members will maintain an updated financial disclosure statement in the Office of the City Clerk. The Financial Disclosure Statement shall be updated annually as of June 30th. Forms shall be based on the form used by the State to implement RSA 15-A prepared by the City Clerk for approval by the City Council and made available to all members for this purpose.

Financial Disclosure Statement shall mean a written statement, given under oath:

- 1) Listing an individual's primary source of annual income and capital assets. However, in no

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instance shall disclosure be mandated of any capital asset whose value at the time of disclosure is below Ten Thousand Dollars (\$10,000.00) nor shall the value of any source of income or the value of any capital asset be required for disclosure.

2) Listing any sources of income, whether or not connected with the City of Rochester which individually produce income in an amount greater than Ten Thousand Dollars (\$10,000.00) calculated annually on a per calendar year basis.

Financial Disclosure Statements shall be public records and shall be returned to the member Six (6) months after leaving office.

Waiting on verbiage from Terence on Portsmouth ordinance for the following paragraph

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.

~~9.8.~~ **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.

~~10.9.~~ **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.

~~11.10.~~ **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.

~~12.11.~~ **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.

~~13.12.~~ **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.

~~14.13.~~ **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.

~~15.14.~~ **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.

~~16.15.~~ **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.

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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) ~~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. While you cannot be required to listen to public speakers in a certain way, it is advised that all members remain conscious of their actions during such time as member of the public might be speaking. To the best of your ability, remain focused on the speaker and avoid noise and distractions.~~

b. ~~Members shall be cognizant of non-verbal body language and facial expressions that could be interpreted as disbelief, anger, or boredom.~~

~~a-c. Members shall make attempts to listen actively and respectfully to City staff, members of the public and other Members whenever possible.~~

(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

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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.

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- (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*

Section needs rewording

Councilmembers who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct shall ~~be ineligible for not be assigned~~ intergovernmental assignments or Council subcommittees by the Mayor, Board, Committee and Commission members- 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.

(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 by the Mayor 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.~~ Needs to be expanded on.

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.

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.

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.

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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, **short of removal** imposed by Council shall be determined by a majority vote of **elected members** ~~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