



Meeting Notes

GOVERNANCE COMMITTEE

Monday, March 14, 2022 at 10:00 a.m.
City Hall in Conference A

Members Present: Councilor Vincent Lombardi, in-person; Councilor Katherine Cook and Councilor John Tabor appeared by Zoom. There being no quorum in person, no actions were taken. The meeting continued for discussion purposes only.

Staff Present: Suzanne M. Woodland, Deputy City Manager/Deputy City Attorney

Members of the public were able to participate by Zoom.

Members of the Public: Petra Huda (in person); Esther Kennedy, Arthur Clough, and Zoleta Morgan (all by zoom)

1. **Welcome and Call to Order**

The meeting was called to order at 10:00 a.m.

2. **Roll Call**

Roll call taken of those present and recorded above.

3. **Minutes**

No minutes were approved due to lack of quorum. Place on next agenda for action.

4. **City Council Rules of Procedure – Line by Line Review**

Councilor Cook reported that she had followed up with the City Attorney in response to a number of questions that were raised at the previous meeting.

The committee members reviewed proposed amendments to the City Council Rules of Procedure. The proposed rule amendments discussed by the

Committee are attached to these meeting notes. There was general agreement to the proposed amendments and comments relative to Rules 3, 13, 14, 21 and 34.

The proposed amendment to Rule 32 generated discussion amongst the members. There was concern that the phrase "alter the city budget" was problematical and further consideration would be given to this proposed language. The Deputy City Manager offered to follow up further with the Finance Department and other Legal Department members to explore potential changes.

Rule 41 is to remain as is.

It was a robust discussion regarding Rule 43 that revolved around public dialogue and public comment. After some discussion, consensus was towards keeping public comment on every City Council agenda while exploring opportunities for public dialogue to occur outside of City Council Chambers in the neighborhood wards and as part of other public meetings but not necessarily City Council meetings. These public dialogue sessions would involve less than a quorum of City Councilors (suggestion three Councilors) who could report back to the whole City Council at the next meeting.

With regard to Rule 47, Councilor Cook will check with the City Clerk's office to determine how widely and frequently committee vacancies are "publicly advertised" and whether that means an advertisement in the newspaper in all instances.

With regard to Rule 7, the Deputy City Manager recommended that the City Manager's items should not be commingled with those of the City Councilors.

5. **Ethics Process**

After the conversation regarding potential rule changes was completed, the committee members moved on to discuss potential changes to that part of the City ordinance that deals with ethics complaints and procedures for resolving them.

Reference was made to a memorandum prepared by City Attorney Robert Sullivan in response to some of the Committee's questions with regard to potential changes to the ordinance. That memorandum is attached to these meeting notes.

One of the principal suggestions was to appoint an independent ethics officer whose responsibility it would be to investigate and report to the Ethics Board.

Former City Counselor Esther Kennedy was in attendance at the Governance Committee meeting by zoom. She shared her perspective on the current ordinance and commented on the proposal to have an impartial investigator review the facts of the complaint. She further suggested that the committee look carefully at the timing of meetings and other elements of the process to ensure persons involved have time to prepare adequately. Requiring witnesses to give

testimony under oath was recommended. She suggested that the impartial investigator be employed at the outset of the process so that the Mayor and the City Attorney would not be confined to the four corners of the complaint.

Arthur Clough provided a public comment on potential changes to the ethics ordinance, suggesting among other things a bigger hearing panel and supporting the idea of an independent ethics investigator.

Petra Huda commented on the ethics ordinance and questioned who is going to pay for the ombudsman or special investigator. She also referenced the City Charter regarding the limits on taking action against Councilors.

Councilor Lombardi advised that the Committee was looking at the whole of the ethics complaint process and further suggested an ombudsman might be kept on retainer with special training and ethics.

6. City Council Contact Process – Email and Legality of Responses

A question was raised with regard to City Councilors responding to residents who submit questions or comments via the website. The Deputy City Manager advised that Councilors may individually reply, but should avoid reply all or otherwise copying a quorum of Councilors. Councilor Cook recommended all new City Councilors have training on public record and public meeting requirements.

7. Committee Priorities for Next Meeting

Priorities for the next meeting include trying to finalize proposed rule amendments and ethic ordinance changes.

8. Public Comment

During public comment session, Petra Huda provided comment on several of proposed rule changes. She also raised a concern that the City Council did not follow proper meeting protocol at the last meeting.

Zoleta Morgan also commented as a member of the public to request that there be more ethics training. She supported public comment being available at every City Council meeting.

This meeting ran over so other business was set aside until the next Governance Committee meeting.

Notes prepared by
Suzanne M. Woodland
Deputy City Manager/Deputy City Attorney

Approved by Governance Committee on: May 31, 2022

Adopted with no further revision January 4, 2010.
Adopted with amendment to Rule 23 January 17, 2012
Adopted with amendment to Rule 23 January 13, 2014
Adopted with amendment to Rule 4, 7, & 37 January 25, 2016
Adopted with no revision January 16, 2018
Adopted with amendments to Rules 2, 3, 7, 19, 30, 43 & 45 January 8, 2020
Adopted with amendments to Rules 2, 4, 7, 11, 18, 19, 22, 23, 25, 26, 27, 30, 34, 40, 42, 43 February 7, 2022
(Revisions made after adoption are noted where applicable)



RULES AND ORDERS OF THE PORTSMOUTH CITY COUNCIL

REVISED RULES AND ORDERS OF THE PORTSMOUTH CITY COUNCIL

RULE 1. MEETING NIGHTS

The regular meetings of the City Council shall be on the first and third Mondays of each month at some time between 7:00 o'clock and 8:30 o'clock in the evening to be set by the Council. Work sessions may commence at any time after 6:00 p.m. and the regular council meeting may commence at any time after 7:00 p.m. (See Charter section 4.4). (AMENDED 4/2/90 TO AGREE WITH THE CITY CHARTER) (AMENDED 1/9/06)

RULE 2. SPECIAL MEETINGS

Special meetings may be called by written request of five or more members of the Council, by the Mayor, or by the City Manager. The party calling for the special meeting shall make every effort to schedule the meeting at a date no fewer than 7 days from the date the official notice is published to the City website if at all possible.

The City Clerk shall prepare a notice of the special session stating the time and the place and this notice shall be served personally upon each member of the Council and the City Manager, or left at their usual place of residence at least twenty-four (24) hours before the time of the meeting.

It shall also be the duty of the City Clerk, immediately upon receipt of written request for a special meeting to make every diligent effort to notify each member of the Council in person, either by telephone or otherwise of such special session. The City Clerk shall also post notices of the special meeting in a conspicuous place in City Hall and shall make every effort to publicize the meeting by way of local news media. A notice of the special meeting shall be posted on the City website. Only matters set forth in the notice of the meeting shall be discussed and/or acted upon.

RULE 3. WORK SESSIONS

Upon request of the Mayor or five or more members of the Council, the Council may meet in "work sessions." Each work session shall be devoted exclusively to subjects for which the preliminary receipt and discussion of information is deemed appropriate. No formal vote shall be taken on any matter under discussion, nor shall any Council member enter into a commitment with another respecting the vote to be taken at a subsequent meeting of the Council; ~~provided, however, that nothing herein shall prevent a polling of the Council or the taking of any informal vote on any matter under discussion. (Section removed per legal advice.)~~ –Work sessions shall be open to the public, public comment will be allowed at the end of work sessions in order to provide feedback, and notice procedures for regular meetings shall be followed.

RULE 4. COUNCIL MEETING AGENDA

All reports, communications, ordinances, resolutions, or other matters to be submitted to the Council shall, by 12:00 noon on Wednesday prior to each Council meeting be delivered to the City Clerk whereupon the City Clerk shall immediately arrange or cause to be arranged a list of such matters according to the Order of Business. Each member of the Council may place a single item of business under the name of that Councilor unless further items are approved in advance by the Mayor. The City Clerk shall furnish each member of the Council, CityManager, and City Attorney with a copy of the Agenda by 5:00 p.m. on Thursday prior to each Council meeting. The Agenda shall be posted on the City website on the Friday prior to the Monday meeting. (AMENDED 1/5/98) (AMENDED 1/25/2016)

RULE 5. CALL TO ORDER

The Mayor shall take the chair at the hour appointed for the meeting and shall call the members to order. A roll call shall be taken to determine if a quorum be present.

RULE 6. CHAIRING OF MEETING

In the absence of the Mayor, the Assistant Mayor shall preside during that meeting or until the Mayor arrives. In the absence of both the Mayor and the Assistant Mayor, the Councilor present who received the largest plurality in the last election shall preside during that meeting or until the Mayor or Assistant Mayor arrives.

RULE 7. ORDER OF BUSINESS

The business of all regular meetings of the Council shall be transacted in the following order, unless the Council by vote of at least two-thirds of the members present, shall suspend the rules and change the order:

- I. Work Session
- II. Public Dialogue Session (when applicable – every other regularly scheduled meeting)
- III. Call to Order [7:00 p.m. or thereafter]
- IV. Roll Call
- V. Invocation
- VI. Pledge of Allegiance
- VII. Acceptance of Minutes
- VIII. Recognitions and Volunteer Committee Reports
- IX. Public Comment Session
- ~~X. Public Hearings and Votes on Ordinances and/or Resolutions~~
- ~~X.~~
- ~~XI. Mayor~~
- ~~XI.~~
- XII. ~~City Manager Action Items~~
(A City Council Member may either speak to their item(s) previously placed on the agenda in accordance with Rule 4 or bring items that appears later on the meeting's agenda forward to be acted upon at this point. Items placed on the agenda by Council Members will be listed as such.)
- XIII. Consent Agenda
- XIV. Presentations and Written Communications

XV. ~~Mayer~~

~~XVI. City Council Members~~

~~(A City Council Member may either speak to their item(s) previously placed on the agenda in accordance with Rule 4 or bring items that appears later on the meeting's agenda forward to be acted upon at this point)~~

~~XVIII.XVI.~~ Approval of Grants/Donations

~~XIX.XVII.~~ City Manager's Informational Items

~~XX.XVIII.~~ Miscellaneous Business Including Business Remaining Unfinished at Previous Meeting

~~XXI.XIX.~~ Adjournment [at 10:00 p.m. or earlier]

(ADOPTED NEW ORDER OF BUSINESS 1/9/06; AMENDED 1/25/2016; AMENDED 08/21/2017; AMENDED 06/03/2019; AMENDED 03/02/2020)

RULE 8. CONSIDERATION OF MOTIONS

When a motion is made and seconded, it shall be considered by the Council, and not otherwise.

RULE 9. WRITTEN MOTIONS/ROLL CALL

Every motion shall be reduced to writing if the Chair so directs; or if any member of the Council requests it; and upon request of any member the roll call shall be called upon any question before the Council.

RULE 10. DIVISION OF QUESTION

The Division of a question may be called for when the motion contains two or more independent parts.

RULE 11. READING

This rule deliberately left open for future use.

RULE 12. ADJOURNMENT

The Chair shall consider a motion to adjourn always in order, the time of the next meeting having been agreed on. Such motion shall be decided without debate.

RULE 13. DISPOSITION OF MOTIONS

A. After a motion is seconded, and stated by the Chair, it shall be disposed of by vote of the Council unless the mover withdraws it before a decision or amendment.

B. A friendly amendment is one in which the councilor amending the motion and the originator of the motion and the second agree on the change. Friendly amendments accepted by the originator of the motion shall be voted by the whole if any member of the council requests a vote on the amendment.

RULE 14. MOTIONS DURING DEBATE

When a question is under debate, only the following motions shall be received: Adjourn; take a recess; raise a question of personal privilege; call for orders of the day; lay on the table; the previous question; limit or extend limits of debate; postpone definitely or to a certain time; commit or refer or recommit; amend; postpone indefinitely; questions of order and appeal; suspend the rules; object to consideration of questions; division of a question; division of the assembly.

RULE 15. ORDER OF QUESTIONS

The Chair shall put all questions in the order in which they are moved, unless the subsequent motion shall be previous in its nature; except in naming sums and fixing times, the largest sum and the longest time shall be put first.

RULE 16. MOTION FOR RECONSIDERATION

A motion for the reconsideration of a vote shall be open to debate, but such motion shall not be considered unless made by a member voting with the majority, nor unless such motion is made at the meeting at which such vote is passed, or notice of such motion is given at said meeting, in which case the motion shall be made at the next meeting; and only one motion for the reconsideration of any vote shall be permitted.

RULE 17. TABLING

No motion which has been tabled at a current or prior Council meeting may be acted upon after being removed from the table at a current meeting; but such action must be withheld until the next regular Council meeting which agenda will show the item of business.

RULE 18. SPEAKING PRIORITY

When two or more members rise at once, the Mayor shall then name the member who is entitled to the floor.

RULE 19. SPEAKING

When any member is about to speak in debate or to deliver any matter to the Council, and respectfully address the Mayor; the member shall confine themselves to the question under debate, and avoid personalities. (AMENDED 4/2/90) (AMENDED 1/10/2000)

RULE 20. INTERRUPTION OF SPEAKING MEMBER

No member shall be interrupted by another, but by rising to a call to order, to correct a mistake, or for explanation. But if any member in speaking, or otherwise, transgress the Rules of the Council, the Mayor shall or any member may call the offending member to order who shall immediately sit down, unless permitted to explain; and the Council, if appealed to, shall decide on the case, and without debate.

RULE 21. CONFLICTS OF INTEREST

No member shall vote or serve on any committee or any question as to which the member has a direct, personal and pecuniary interest. *(Note: There are additional provisions in the City Charter and Ethics Ordinance in relation to this rule.)*

RULE 22. VOTING REQUIRED

Every member present when a question is put, if not excluded by interest, shall vote. No member shall leave a meeting without permission.

RULE 23. COMMITTEE NOMINATION

Unless otherwise mandated by state law, charter or ordinance, except for the committees created solely by the Mayor, the Mayor shall submit for approval by the City Council all nominations of non City Councilors to committees. All nominations shall be laid on the table until the next regularly scheduled Council meeting. The Mayor shall make all appointments of the City Councilors to committees.

*(ADOPTED 1/22/96; AMENDED 1/17/2012; AMENDED 1/13/2014)

RULE 24. COMMITTEE MEMBERSHIP

No member shall be obliged to be on more than two committees at the same time nor to be chairman of more than one.

RULE 25. SPECIAL COMMITTEES AND COMMITTEE RESPONSIBILITIES

All special committees of the Council shall consist of three members, unless a different number be ordered. It shall be the duty of every committee of the Council to whom a subject is specially referred to report thereon within the time limit set by the Council or to request an extension thereof. No final report shall be received unless presented in writing, signed by a majority of the committee and agreed to in committee actually assembled.

RULE 26. COMMITTEE MEETINGS

This Rule deliberately left open for future use.

RULE 27. COMMITTEE OF THE WHOLE

The City Council may resolve itself of the Whole, at any time, upon a motion of a member made for the purpose; and in forming a Committee of the Whole, the Mayor may leave the Chair and appoint some member to preside in the Committee; and when the Committee of the Whole shall have gone through the subject referred to them, the Chairperson, or any other member that the Committee may order, shall report their proceedings to the Council.

RULE 28. COMMITTEE OF THE WHOLE PROCEEDINGS

The rules of proceedings in the Council shall be observed in Committee of the Whole, so far as they may be applicable; but no member shall speak twice to any question until every member choosing to speak shall have spoken.

RULE 29. ORDINANCES

All bylaws passed by the City Council shall be termed "ordinances", and the enacting style shall be: "The City of Portsmouth Ordains." Each ordinance shall be identified by a number and a short title, and the effective date shall be specified in it.

RULE 30. ORDINANCE PROCEDURE

Each Ordinance shall pass through the following stages, to wit: There shall be a first reading for information. Administration may have special presentations at the first reading in order for the public to be able to consider the Ordinance change. If the first reading is passed, the Council shall, consistent with public notice requirements of law, set a time and place for a public hearing and consideration of second reading. If the second reading is passed, the Council shall set a time and place for a third reading. An ordinance may be rejected at any stage in its progress. No ordinance shall be amended except on second reading. Passage of the third reading shall constitute final passage.

RULE 31. ORDERS AND RESOLUTIONS

In all votes by which the City Council shall express anything by way of command the form of expression shall be "Ordered" and whenever it shall express opinions, principles, facts or purposes, the form shall be "Resolved." Resolutions prepared in writing prior to introduction shall be identified by a short title.

RULE 32. TAXING, SPENDING, AND BORROWING

Each order or resolution authorizing the levying of a tax, the expenditure of money, or the borrowing of money shall have two separate readings and a public hearing with notice as required by law. In addition, for any motion for which it is reasonably foreseen that the action will alter the City budget, the motion shall require a 2/3 vote of the City Council.

RULE 33. RECORD RETENTION OF RESOLUTIONS AND ORDINANCES

When an ordinance or resolution shall have passed the City Council, it shall receive the signature of the Mayor. It shall be enrolled in the City records of the City Clerk, and the original ordinance or resolution shall be placed in some safe deposit in the archives of the City.

RULE 34. CITY CLERK

The City Clerk shall attend all Council meetings, including work sessions and ~~executive nonpublic~~ sessions, and shall keep a record of procedures of the Council by recording the motions and votes thereon. The City Clerk shall make notes of the general content of the remarks by members of the Council, the Mayor, and the City Manager and not their specific detail. The City Clerk shall note in the minutes all reports, memorials and other papers submitted to the Council by their title or brief description of the purport. The City Clerk shall arrange for the televising and broadcast over the internet of all regular meetings. The City Clerk shall cause to be recorded through the use of appropriate recording device the business of all Council meetings, said recordings to be maintained by the City Clerk as a public record for a period of three years. Preservation of the recordings and custody of all recordings shall be the sole responsibility of the City Clerk who shall prepare such rules for use as the Clerk deems necessary or appropriate to the discharge of the above responsibility.

RULE 35. SEATING ARRANGEMENT DURING COUNCIL MEETINGS

Council seats shall be assigned by the Mayor. Council members who wish to exchange seats may do so upon request to the Mayor. Seating arrangement may be changed at any time the Mayor wishes. (AMENDED 10/29/90)

RULE 36. PROCEDURE FOR QUESTIONS TO THE CITY ATTORNEY

Whenever a City Councilor has a question of the City Attorney, during a City Council Meeting, on the Council Rules, the Portsmouth City Charter or on Parliamentary Procedure, they shall, through the Chair, be given the immediate right to state their question.

RULE 37. HOUR CITY COUNCIL MEETINGS TO CONCLUDE

City Council meetings shall conclude no later than 10:30 P.M. or at such time as any agenda item being discussed at 10:00 P.M. is acted upon. Any agenda items under the name of the City Manager which have not been voted upon by the Council as of 10:00 p.m. shall be treated thereafter as Consent Agenda items, applying Council Rule 46 as completely as the situation allows. If because of this rule any agenda items remain to be taken up, the Council shall recess the meeting to a time certain at which recessed meeting the remainder of the agenda shall be acted upon unless a majority of the Council wishes to suspend in order to continue. (AMENDED 1/9/06) (AMENDED 1/25/2016)

RULE 38. NOTICE TO COUNCIL REGARDING APPOINTMENT QUALIFICATIONS

All nominees to positions on boards or commissions of the City shall submit in writing, on a form as provided by the City Clerk, information regarding their occupational backgrounds, the nature of their nominations, and their reasons for wishing to serve. Such form shall accompany the agenda in which the nomination is to be made and shall be delivered to City Council members in accordance with Rule No. 4.

RULE 39. SUSPENSION OF RULES

No standing rule or order of the Council shall be suspended unless a two-thirds majority of the members of the Council present shall consent thereto, for a specific purpose; nor shall any rule or order be repealed or amended without one week's notice being given of the motion therefore, or unless a two-thirds majority of the Council shall concur therein.

RULE 40. PARLIAMENTARY AUTHORITY

Except where specifically controlled by Charter, Statute, Ordinance or these Rules, proceedings of the City Council shall be conducted pursuant to the parliamentary authority of the most recent revision of Roberts Rules of Order, Newly Revised, published by PublicAffairs.

RULE 41. ADDRESS BY PUBLIC

Members of the public-at-large may address the Council on any issue being discussed by the Council after a motion to allow same has been made by any Council member and passed by a majority vote, provided that no person shall speak for more than five (5) minutes. [LEAVE AS IS. While this provision is not standard practice, it offers more flexibility for comment if the Council is divided on whether or not to allow it.]

RULE 42. PUBLIC'S RIGHT TO KNOW GUARANTEED

All letters, memos, reports and other information provided or circulated to the City Council by staff members or received as communications to the Mayor and City Council from any person shall be included with the Agenda packet of a City Council meeting and made publicly available by 12:00 Noon on Friday prior to each Council meeting, or if sent separately to Council members shall be made publicly available in the Office of City Clerk. Exempt under this Rule are those documents which would not be deemed public records under the New Hampshire Right to Know Law (RSA 91-A) or personal communications. (AMENDED 1/27/92)

In addition to the foregoing, any e-mails which are received by the City on behalf of the entire City Council shall be entered into the public record by the City Clerk. Any person addressing an e-mail to the entire City Council shall be provided with the option to have such person's e-mail entered into the City Council packet and public comment record for the meeting. Only e-mails which include the name and address of the sender shall be provided to the City Council and thus be subject to the rule. Any public comment received by e-mail subject to this rule shall be updated after the Council agenda packet is released and prior to noontime on the day of the Council meeting to which the packet is addressed. Any public comments received after such noontime deadline shall be distributed to the individual Councilors, but shall not become part of the public record of the meeting. (ADDED 08/21/2017)

RULE 43. PUBLIC COMMENT SESSION

A. Public Comment:

A Public Comment session shall appear on the agenda of every regular Council meeting in which there is not a pre-scheduled public dialogue session. This session shall be a period of time not to exceed forty-five minutes during which any member of the public may have three minutes to address any topic which that member of the public has identified to the City Clerk prior to the commencement of the meeting. Speakers shall be limited to one three minute comment period per person per meeting and may not defer any of their allotted speaking time to any other person. All speakers must register in person (not electronically or telephonically) with the City Clerk prior to the City Council meeting. Residents, business owners and taxpayers of the City shall be given speaking priority over any other speaker. All speakers must give their home address at the time of their speaking. Any person abusing the provisions of this rule may be prohibited from speaking at future public comment sessions by a majority vote of the City Council. Any provision of this rule may be modified on a per case basis by majority vote of the Council. (AMENDED 02/20/2018)

* Comments for which a public hearing is scheduled under the same agenda shall not be permitted.

- The Chair reserves the right to select speakers of different issues to be permitted to speak in order to provide a form of various topics to be presented.
*(ADOPTED 1/18/94).

B. Public Dialogue:

The City Council shall hold a Public Dialogue session ~~only at before~~ regular City Council meetings and/or City Council Work Sessions and/or public dialogue sessions and/or other noticed public meetings ~~occurring no more than quarterly~~. At such Council - Public Dialogue Sessions no more than three members of the Council, the City Manager and any appropriate staff as determined by the City Manager shall welcome all interested individuals for an informal dialogue session. The purpose of this session is to provide an opportunity for members of the public to directly interact with members of the Council, the City Manager and any appropriate staff as determined by the City Manager from time to time. The Mayor shall determine which City Council members participate in each public dialogue session on a rotational basis, with the requirement that all City Councilors participate in at least one public dialogue session in a calendar year. By vote of the Council, such Council - Public Dialogue sessions may be scheduled to be held at other times and in other locations in the City beyond City Hall. ~~All Council - Public Dialogue sessions shall be held in accordance with RSA 91-A, the Right-to-Know Law by notice being made and minutes being taken.~~ (AMENDED 08/21/2017; AMENDED 02/20/2018)

RULE 44. NAMING OF MUNICIPAL BUILDINGS, PARKS AND FACILITIES

The procedure to be followed in naming municipal buildings, parks and facilities shall be that a written request be submitted to the Mayor by the City Councilors or resident who proposes the naming of any municipal building, park or facility. The Council shall then schedule a work session to deliberate concerning that request. In general, it shall be deemed inappropriate to name complete municipal buildings after actual persons, although portions of buildings may be so named. Subsequent to the work session, the request shall then be placed on the next available

Council agenda for a vote of the full City Council. (ADOPTED 8/14/2000)

RULE 45. PUBLIC HEARINGS

City Council public hearings shall be subject to the following terms and conditions:

- A. The order in which speakers shall be called, the duration of time permitted for each person to speak and the number of opportunities which any person shall be provided to speak on any issue may be regulated by the Mayor in the interest of legislative efficiency.
- B. All speakers must limit their presentation to the issue for which the public hearing has been called. Any speaker not in compliance with this provision shall be ruled out of order by the Mayor.
- C. The order of presentation of all public hearings shall be as follows:
 - 1. Any additions to presentation given at first meeting related to the public hearing offered by the City administration
 - 2. City Council questions and deliberation regarding the subject matter of the public hearing
 - 3. Public hearing speakers
 - 4. Additional Council questions and deliberations.
- D. Subsequent to the process described above, any public hearing which results in the requirement of a City Council vote shall be immediately followed by that vote

(ADOPTED 5/6/2002; AMENDED 05/01/2017; AMENDED 08/21/2017)

RULE 46. CONSENT AGENDA

The agenda for any regular meeting of the City Council may include a section entitled "Consent Agenda". The Consent Agenda shall consist of items of City Council business which the Mayor, the City Manager and the City Clerk have previously determined to be routine in nature. All Consent Agenda items shall identify the action which it is anticipated will be taken by the City Council on it. Any item of business shall be removed from the Consent Agenda and placed elsewhere on the Council agenda for the same meeting at the request of any member of the City Council. All recommended actions on Consent Agenda items shall be deemed to have been taken by the City Council on the passage of a motion, "to adopt the Consent Agenda". (ADOPTED 1/9/06).

RULE 47. APPOINTMENTS TO BOARDS AND COMMISSIONS

All vacancies on Boards and Commissions shall be publicly advertised. Unless otherwise required by statute or ordinance, the Mayor shall only bring forward for reappointment to any Board or Commission the name of any person ~~who shall have served ten~~

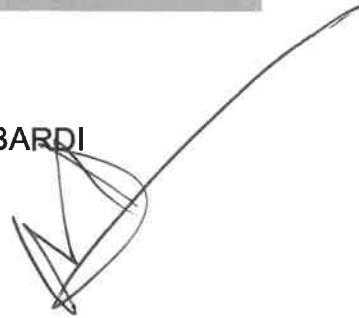
~~(10) or more consecutive years~~ on the same Board or Commission if such position shall have been publicly advertised prior to the effective date of the requested reappointment. (Adopted 03/19/2018)

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

MEMORANDUM

DATE: March 11, 2022
TO: COUNCILOR JOHN TABOR and COUNCILOR VINCENT LOMBARDI
FROM: ROBERT P. SULLIVAN, CITY ATTORNEY
RE: CODE OF ETHICS



This memorandum is written at your request to memorialize a discussion held on March 10, 2022 in City Hall between yourselves and myself. The topic of discussion was the City's Code of Ethics, certain perceived issues with it and some possible responses to those issues. Below you will find each of the perceived issues, as well as the possible resolution which was discussed at our meeting.

BURDEN ON COMPLAINANTS

Statement of the Issue

It was observed that the current City Code of Ethics places a substantial burden on the complainant who files a Code of Ethics complaint against a City Official. This burden includes not only the requirement that the complaint be drafted to meet the specific requirements of the City's Code of Ethics, but also the fact that the complainant is then required to appear in front of the City's Board of Ethics and prove the complaint against the City Official implicated in it. This is a technical and stressful burden to place upon the complainant, when the City might wish to make it simpler rather than more complex to file an ethics complaint.

Proposed Solution

After some discussion, it was decided that one possible solution to this problem might be that rather than requiring complainants to actually prove their complaints to the Board of Ethics as required under the current ordinance, the ordinance could be amended so that an outside, independent ethics officer appointed on a standing basis by the City Council would conduct the investigation and issue a report to the Board of Ethics. The independent ethics officer would take testimony, review documents, and conduct whatever research is necessary to produce the report. In this manner, the complainant would simply have to produce a sufficiently detailed complaint for the Mayor and City Attorney to determine that it was of substance. Thereafter, that complaint would be deferred to the outside ethics officer who would do the investigation and research and

write a report. The report would then go to the Board of Ethics, which would not be required to hold a judicial-type hearing, as is currently the case. This would eliminate the burden of doing those things from the complainant and simplify the work of the Board of Ethics.

SHOULD THE CITY COUNCIL BE COMPELLED TO ACT?

Statement of the Issue

It is apparently believed by some that when provided with a report from the Board of Ethics which finds an ethical violation on the part of a City official that the ordinance should compel the City Council to implement discipline of some sort. This is not required under the current ordinance.

Proposed Solution

In our discussion, it was concluded that even if the ordinance contained a plain statement compelling the City Council to impose discipline when the Board of Ethics found an ethical violation, then it would be possible given the authority of the City Council to amend the ordinance, for the Council to rather readily bypass such a requirement. The remedy for the community if a City Council should not take appropriate action on an ethical violation should lie at the ballot box.

IF A CITY COUNCIL MEMBER WAS THE SUBJECT OF AN ETHICAL COMPLAINT, THAT PERSON SHOULD NOT VOTE ON RESOLUTION OF THE COMPLAINT

Statement of the Issue

It is believed that if a Council member is the subject of an ethics complaint, then that Councilor should not vote on his/her case.

Proposed Solution

In our discussion, we all agreed that the Code of Ethics should be amended to include a provision saying that if a City Councilor is the subject of an ethics complaint, that Councilor should not vote on the resolution of that complaint.

EXPANSION OF BOARD OF ETHICS MEMBERSHIP TO FIVE (5) MEMBERS

Statement of the Issue

The Board of Ethics currently contains four (4) members, selected by lot from City Council, the School Board, the Police Commission, and the Fire Commission. Since this is an even number, it has been suggested that the membership should be expanded to five (5) so that tie votes will not occur.

Proposed Solution

Our discussion concluded that if the City wished to expand the membership on the Board of Ethics to five (5) members, then the fifth member might be a citizen of the community at large selected by the Mayor with the approval of the City Council. This selection should occur at the same time that the current four (4) members are selected by lot and be for the same term.

CREATION OF ADDITIONAL ETHICS VIOLATIONS

Statement of the Issue

It has been expressed by some that the Code of Ethics should be expanded to include ethical requirements not currently in the ordinance. These might include the adoption of an ethical violation by any official who creates the appearance of impropriety in City government (even when no actual impropriety exists) and adoption of an ethical provision prohibiting the disclosure of confidential information obtained by any City official in the performance of their duties. An example of the foregoing would be the public release of information learned during a non-public session.

Proposed Solution

Our discussion concluded that if additional ethical constraints could be determined by the City Council, then it would be a straightforward matter to include them in the current ordinance by amending it.

To the extent that the City Council would wish to proceed with any or all of the foregoing ideas, or anything else, then the City Legal Department would draft the actual ordinance language necessary to accomplish the stated purpose.

RPS/smr

Attachment

cc: Karen S. Conard, City Manager
Councilor Kate Cook, Chair, Governance Committee