

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter One, Article VIII, **CODE OF ETHICS** of the Ordinances of the City of Portsmouth be amended as follows (deletions from existing language **stricken**; additions to existing language **bolded**; remaining language unchanged from existing):

ARTICLE VIII: CODE OF ETHICS

Section 1.801: DEFINITIONS

For purpose of this Article, the following terms shall be defined in the following manner:

- A. Charged Party: That Officer or Employee alleged to have violated this Ordinance and is the subject of the Complaint.**
- B. Complaint: Any written communication meeting the requirements of Section 1.806 (A).**
- C. Complainant: The person making the Complaint.**
- D. Employee: The term "Employee" shall include all employees of the City including the Police, School and Fire Departments whose salary is paid in whole or in part from the City Treasury.**
- E. Ethics Investigation Officer (EIO): That person serving in the capacity as described in Section 1.805.**
- F. Governing Body: The term "Governing Body" shall mean the City Council, School Board, Police Commission, or Fire Commission.**
- AG. Officer: The term "Officer" shall be defined to include every person who serves the City of Portsmouth in any official position which is established by state law, the Municipal Charter, the Ordinances of the City or by appointment of the City Council. ~~member of the City Council, School Board, Police Commission, Fire Commission, each member of every land use regulatory board, i.e. the Board of Adjustment, Planning Board, Historic District Commission, Conservation Commission, Technical Advisory Committee, Traffic Safety Committee, Building Code Board of Appeals, Recreation Board, Planning and Development Council, and Economic Development Commission, every department head as that term is used in the Administrative Code, Chief of Police, Fire Chief,~~**

~~Superintendent of Schools, the Trustees of the Trust Funds and members of the Housing Authority.~~

~~B. Employee: The term "Employee" shall include all employees of the City including the Police, School and Fire Departments whose salary is paid in whole or in part from the City Treasury.~~

~~C. Governing Body: The term "Governing Body" shall mean the City Council, School Board, Police Commission, and Fire Commission.~~

DH. Official Duties: The term "Official Duties" shall mean the following:

1. In the case of members of the City Council, School Board, Fire Commission, Police Commission and the City Manager, those duties and responsibilities set forth in the City Charter and/or established by State law.
2. In the case of ~~all other Officers, members of Land Use Regulatory Boards, the Trustees of the Trust Fund and the Portsmouth Housing Authority,~~ those duties and responsibilities set forth in the legislation **or vote which establishes the position held by the Officer or the job description for that position that established each board and/or outlines the duties and responsibilities of each board.**
3. In the case of the Chief of Police, the Superintendent of Schools, the Fire Chief, and all employees, those duties and responsibilities set forth in the respective job description for each party or employee.

Section 1.802: CONFLICTS OF INTEREST

- A. No Officer or employee shall engage in any business or transaction or shall have a financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his/or her official duties.
- B. Representing Private Interests Before City Agencies: No Officer or employee shall appear in behalf of private interests before any governing body or land use regulatory board of which the officer or employee is a member or membership on which is subject to approval by the officer or employee.
Officers and employees, however, may appear without compensation in behalf of constituents or in the performance of public or civic obligations. This section shall not prohibit appearances upon matters only incidentally requiring official action which do not develop into a

substantial part of the employment, provided, that the retainer is not for the purpose of appearing before the governing body or land use regulatory board.

- C. Representing Private Interests Before Courts: No officer or employee shall represent private interests in any action or proceeding against the interests of the land use regulatory board or governing body of which the officer or employee is a member, or membership on which is subject to approval by the officer or employee in any litigation to which the City is a party.
- D. Disclosures of Interest in Legislation: A Councilor who has a direct or indirect financial or other private interest in any proposed legislation shall publicly disclose, on the official records of the Council, the nature and extent of such interest.
- E. Disclosures by Officer or Employee of Interest in Legislation: An officer or employee who has a direct or indirect financial interest or other private interest in any legislation and who participates in discussion before or gives official opinion to the Council, shall publicly disclose on the official record the nature and extent of such interest.
- F. Gifts and Favors: No officer or employee shall accept any gift, over \$100.00, whether in the form of service, loan, thing or promise, any other form from any person, firm or corporation which to his/or her knowledge is interested directly or indirectly in any manner whatsoever, in business dealings with the City. This provision shall not apply to campaign contributions of \$100.00 or less.
- G. Disclosures of Confidential Information: ~~No~~ Any officer or employee, who holds any investment direct or indirect in any financial, business, commercial or other private entity which creates a conflict with his/her official duties shall publicly disclose on the official record the nature and extent of such interest.
- H. Investments in Conflict with Official Duties: Any officer or employee, who holds any investment direct or indirect in any financial, business, commercial or other private entity which creates a conflict with his/her official duties shall publicly disclose on the official record the nature and extent of such interest.
- I. Incompatible Employment: No officer or employee shall engage in or accept private employment or render or seek services or goods for private interests when such employment or service creates a conflict with his/her official duties.

Section 1.803: CONSEQUENCES OF VIOLATION

Any violation of any provisions of this ordinance shall constitute cause for **public censure**, fine, suspension or removal from office or, **in the case of Employees disciplinary action as may be set forth in any collective bargaining or employment agreement up to and including termination from** employment.

Section 1.804: BOARD OF ETHICS

- A. ~~There A Board of Ethics ("BOE") is hereby created and established a method for appointing a Board of Ethics.~~ This ~~Board BOE~~ shall consist of five (5) persons: ~~one member each two members shall be selected by lot~~ from the City Council, ~~and one member each from the~~ School Board, Police Commission and Fire Commission ~~and the.~~ **All members shall be selected by lot to maintain a full board as necessary.** The City Attorney (ex officio) or such other legal counsel (ex officio) ~~that shall provide legal advice and support for the Board BOE should decide.~~ The ~~Board BOE~~ members shall be **selected by lot and** drawn at the first meeting of the calendar year of ~~each of~~ the governing bodies.
- B. **Each BOE Member selected is required to serve unless the BOE Member is the subject of the Complaint, has a conflict of interest, or is excused due to unavailability or exceptional causes (such as a health issue).**
- C. ~~The members of Board BOE Member~~ shall elect a chairperson. ~~They shall and the BOE may~~ adopt such rules for the conduct of ~~their its~~ business as ~~they it sees fit and they.~~ **The BOE** shall have the power to draw upon ~~the various~~ City departments for reports and information and stenographic and clerical help. They shall have all subpoena powers as may be available to them under State law.

Section 1.805: ETHICS INVESTIGATION OFFICER

- A. **The position of Ethics Investigation Officer (EIO) is hereby created. The City Manager shall have the power to identify and retain an EIO to assist with the investigation and prosecution of any Complaint which has been referred for investigation. The EIO shall have sufficient experience and training to conduct the investigation.**
- B. ~~Advisory Opinions: Upon the written request of the Officer or employee concerned, the Board shall render advisory opinions based upon the provisions of this Code. The Board shall file its advisory opinions with the City Clerk but may delete the name of the officer or employee involved. In the event the Complaint is~~

against the City Manager, the responsibility to identify and retain an EIO shall reside with the City Attorney in consultation with the Mayor.

- ~~C. Hearings and Determinations: Any individual having information that an officer or employee as defined in Section 1:801, other than the City Manager or the City Attorney, is engaged in improper activities or has a conflict of interest may present his or her complaint to the City Attorney.~~
- ~~1. Said complaint shall be in writing, under oath, specific and to the point. The City Attorney shall review the written complaint with the Mayor and if either the Mayor or the City Attorney feels that the complaint is of substance, then the Mayor shall refer the matter to the Board.~~
 - ~~2. If both the Mayor and City Attorney believe that the complaint is without substance, the person making the complaint and the subject of the complaint shall be notified in writing of that fact.~~
 - ~~3. The Board shall hold a hearing which may be public or private at the discretion of the Board and at which the accused party shall be entitled to be represented by Counsel at his or her own expense to examine the party making the complaint, to summon witnesses and to present evidence on his or her behalf. If the Board finds that the individual is guilty as charged in the complaint, the whole matter shall be referred to the appropriate governing body for enforcement as set forth in Section 1:805.~~
 - ~~4. Complaints against the City Manager and/or City Attorney for violations of this Ordinance shall be in writing, under oath, specific and to the point, and shall be referred directly to the Mayor or Assistant Mayor. If either the Mayor or Assistant Mayor believes that the complaint is of substance, then the complaint shall be referred to the Board for a hearing as set forth in paragraph C.3 above. If the City Attorney and the Assistant Mayor believe that the complaint is not of substance, then the person making the complaint and the Mayor shall be notified of that decision.~~
 - ~~5. Complaints against the Mayor shall be filed with the City Attorney who shall review them with the Assistant Mayor. If either the City Attorney or the Assistant Mayor believes that the complaint is of substance, then the complaint shall be~~

~~referred to the Board for a hearing as set forth in paragraph C.3 above. If the City Attorney and the Assistant Mayor believe that the complaint is not of substance then the person making the complaint and the Mayor shall be notified of that decision.~~

- ~~6. All members of the City Council (including the Mayor), School Board, Police Commission and Fire Commission are eligible to serve and must serve on the board when requested to do so except, however, that any person that has been charged in a complaint shall be barred from serving on that particular board.~~
- ~~7. All complaints shall be disposed of or forwarded to the Board by the City Attorney and/or the Mayor and/or the Assistant Mayor within thirty days after receipt.~~
- ~~8. The Board shall have thirty days to investigate and hold meetings and to report to the appropriate governing body as a whole if their findings warrant further action.~~
- ~~9. The statements of the findings of the Board shall be issued upon the request of any person charged.~~

Section 1.806: COMPLAINTS, INVESTIGATIONS AND HEARING

- A. Complaint Requirements.** Any person may submit a written complaint alleging one or more violations of Section 1:802. Such complaint must be based on personal knowledge, and set forth specific facts with enough specificity and detail for a determination of sufficiency for investigation. The Written Complaint must be signed under oath and include contact information, including: home address, phone number and email address (such personal contact information to be treated as confidential upon request). The Complaint shall be delivered to the City Attorney with a copy to the Mayor and City Clerk. The City Attorney shall promptly provide a copy of the Complaint to the Charged Party.
- B. Review for Sufficiency.**
 - 1. A Review for Sufficiency of the Complaint will be conducted within thirty (30) days of receipt. This review will be based on the allegations contained in the Complaint and the immediately available record of any public meetings or records referenced in the Complaint.**

2. The City Attorney and the Mayor shall conduct the Review for Sufficiency except in cases in which either the subject of the Complaint. Complaints against the City Attorney shall be reviewed by the City Manager and Mayor. Complaints against the Mayor shall be reviewed by the City Attorney and the Assistant Mayor.
3. If the Complaint is deemed insufficient, the Complainant will be notified in writing of that decision with a copy provided to the Charged Party. A Complaint will be deemed sufficient if it is determined that the Complaint establishes some reasonable possibility that a violation of the Code of Ethics may have occurred.
4. If the Complaint is deemed to be sufficient for further investigation, it shall be referred to the EIO for further action and all parties will be notified of this step through a communication in writing. That communication in writing will contain the following:

This Determination of Sufficient does not determine the truth or falsity of any of the allegations contained in the Complaint or constitute any finding or conclusion that a violation occurred.

- C. **Investigation Phase.** The EIO shall be provided the full cooperation of the City government to conduct such investigation as may be necessary to determine whether any violation may have occurred and next steps. The EIO shall have all subpoena powers as may be available under State law. The Charged Party shall have an opportunity to provide a response to the Complaint.

The EIO's investigation shall be completed within forty-five (45) days unless the Charged Party and the City's representative (City Manager or City Attorney) mutually agree to a longer period.

The EIO shall provide a written report with the conclusions reached in the completed investigation to the BOE. The EIO shall provide a non-binding recommendation as to the disposition of the Complaint to the BOE. Thereafter, all action with regard to the Complaint shall be taken by the BOE.

- D. **Board of Ethics Hearings.**

1. The BOE shall take no further evidence on any Complaint, but shall make its determination based upon the report received from the EIO. However, the BOE shall hold at least one (1)

public hearing at which the EIO, the Complainant, and the Charged Party shall be afforded an opportunity to present oral and written argument to the BOE. The BOE may hear from such other and further parties as it determines appropriate.

2. Any party may be represented by legal counsel at his or her own expense at any stage of an ethics proceeding.
3. The BOE shall issue a written decision within thirty (30) days of the final public hearing with findings and a disposition, dismissal or referral for further action if a violation has been found. If a violation has been found, the BOE shall recommend a sanction or penalty, and refer the matter to the City Council (if an Officer or the City Manager) or to the City Manager (if an Employee) for disposition, sanction or other action as set forth in Section 1:807.

Section 1.8057: ~~ENFORCEMENT DISPOSITION AND SANCTION~~

- A. **Sanctions:** In the event that the ~~Board of Ethics-BOE~~ determines that any ~~officer~~Officer or ~~employee subject to its control, has engaged in any act prohibited by the City Manager~~ committed a violation of this ~~ordinance or failed to make a mandated disclosure, the governing body shall~~ Ordinance, the City Council may take any ~~one~~ of the following ~~steps~~ actions:
- ~~1. In the case of the Governing body members:~~
 - a. Vote for removal pursuant to the City Charter as amended;
 - b. Vote to publicly censure **or admonish** the offending member;
 - c. Vote to place the matter on file; **or**
 - d. Vote **for innocence of any wrong doing to overturn the finding of a violation.**
 - ~~2. In the case of all officers and employees the governing body, consistent with the Merit System and any applicable bargaining agreements, shall:~~
 - ~~a. Vote for removal~~
 - ~~b. Vote for dismissal~~
 - ~~c. Vote for suspension for a definite period~~
 - ~~d. Vote for the censuring~~
 - ~~e. Vote to place the matter on file~~
 - ~~f. Vote for innocence of any wrongdoing.~~

B. **In the case of Employees, the City Manager shall have all rights available under any employment agreement or collective bargaining agreement to discipline or terminate the employee and the City Manager shall make such report to the City Council as it determines necessary, in public or non-public session as may be determined at the time, as to the action taken.**

BC. Criminal Sanctions: In addition to the civil sanctions imposed by this ordinance, violation of any provision of this ordinance shall constitute a criminal offense and the City Council may authorize the City Attorney or any other attorney approved by it to prosecute such a violation in the Portsmouth District Court.

The penalty for violation of any provision of this Ordinance upon conviction in the Portsmouth District Court shall be \$1,000 for each offense.

(Adopted In Its Entirety 4/4/88)

The City Clerk shall properly alphabetize and/or re-number the ordinances as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

Deaglan McEachern, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk