



Meeting Minutes

GOVERNANCE COMMITTEE

Friday, April 29, 2022 at 10:00 a.m.
City Hall in Conference A

Members Present: Councilor Katherine Cook, Councilor Vincent Lombardi, and Councilor John Tabor

Staff Present: Robert Sullivan, City Attorney
Synthia M. Ravell, Legal Administrator

Members of the public were able to participate by Zoom.

Invited Guests: Councilor Josh Denton, Former Mayor Eric Spear, Former Mayor Jack Blalock, Former Mayor Rick Becksted (via Zoom), Former Mayor Tom Ferrini

Members of the Public: Esther Kennedy, Zelita Morgan, Greg Mahanna, Liza Hewitt, Petra Huda, Paige Trace

1. **Welcome and Call to Order**

Chair Cook called the meeting to order at 10:05 a.m.

2. **Roll Call**

Roll call taken of those present and recorded above.

3. **Presentation by Councilor Josh Denton**

Councilor Denton provided an overview of the voting process and three different ideas for a Charter amendment dealing with either or both Ward-specific representation and how the mayor is elected. Currently it is at-large voting, with the top vote-getter becomes mayor and second top vote-getter becomes

assistant mayor. The two other systems to be considered by this Committee and then the City Council are as follows:

- (1) Several ward-specific city councilors (one per ward) and several at-large city councilors, and the top vote-getter from the at-large race becomes mayor. This is the Concord, NH system. If adapted to this system by the Portsmouth City Council, there would be five (5) ward-specific, four (4) at-large seats, and out of the at-large seats the person with the most votes would become mayor and the person with the second most votes would become assistant mayor.
- (2) Ward-specific councilors, at-large city councilors, and a direct-election mayor. This is the Dover, NH system.

Would like something presented to the voters to vote on since this has been discussed for so long should regarding consideration of another form of government, but does not feel moving forward to the Dover approach is the best; rather, a step-increase in order for the change to have a better chance to succeed. Would like to get the conversation going as some wards feel unrepresented.

4. Review of the Charter Provisions with Legal Counsel

Chair Cook turned to floor over to City Attorney Robert Sullivan to provide advice on Charter Amendments in general and this process.

City Attorney Sullivan stated that the City's Charter is the constitution of the City at the level of state law and describes how the government in Portsmouth operates. In New Hampshire there are many recognized forms of government, of which Council/Manager is one and is what our Charter has implemented. Another form is the Board of Alderman and Mayor form of government, such as that in Nashua. The difference between the two is that in a Board of Alderman form of government, the mayor is the chief executive officer of the city; whereas in the Council/Manager form of government, the Manager is the chief executive officer of the city. The important difference between those two forms of government is procedural. The Charter can be amended under state law in two ways.

- Revising Charter – any change in form of government is a revision.
- Amending Charter – any change other than a revision is an amendment.

The processes are dramatically different. To revise the Charter, at a very minimum a Charter Commission needs to be curated, they need to conduct a study, they need to issue a report, and ultimately referendum vote on whatever

the Charter Commission may or may not recommend. That all considers changing the form of government.

The items that Councilor Denton has discussed are amendments, not revisions, as they don't change the form of government, they amend the existing council management form that we have. The process is much simpler. Charter amendments can be initiated by citizens, by a petition approach, or by the City Council following the process of simply taking a vote. If the vote suggests an amendment, that amendment has to be must be referred to three (3) State agencies: Revenue Administration, Attorney General, and Secretary of State. If those three (3) agencies approve the amendment, then it would be placed on a ballot for a referendum vote.

In every case, any change in the Charter of any kind calls for a referendum vote at an election.

The items suggested by Councilor Denton would be amendments and could be initiated by the Council acting on its own; that would be the simplest way to do it. There are a lot of timelines, including that the State agencies have a 45-day timeline to conduct their review. The important thing to know is that if the City Council wanted to proceed with any of these Charter amendments or anything similar to it, they really need to begin this fairly early into the next year, 2023, to be sure to have plenty of time to accomplish all the steps necessary and get the question on the ballot. The first test is to determine if it is allowed by State law; both of the proposals discussed by Councilor Denton pass that test.

5. Discussion of Proposed Charter Amendment

Chair Cook noted that the Committee reached out and invited former mayors due to their unique perspective on this issue. It has come up repeatedly, so they've encountered it themselves through discussions. Opening the floor to the former mayors and let them share their insight.

Former Mayors Jack Blalock, Tom Ferrini, Eric Spear, and Rick Becksted, provided their insights and perspectives.

Eric Spear – As a voter, choosing candidates, he knows he can select a good half dozen candidates. You get good people out of the mix. The risk of having ward councilors, sometimes there aren't going to be good choices; State Representative is like that. Sometimes you walk into the booth and there's only one choice for State Representative because there's only one running in your ward, which is kind of frustrating. He likes having more choices as a voter. As a councilor, when issues came before him as a councilor, sometimes they impact one particular area more than others – Public Works project; zoning change; road change. He was always cognizant of how it impacts those people because we're all human, want to get re-elected, and a voter that voted for him in that

area and he wants to be sure he's serving their interest as best he can. It's human nature that if we go to a ward system and he's from his ward and there's an issue happening in some other area of the City, you might care as a human being and you want to do the right thing, but realistically they can't vote for you, can't influence your outcome in any way, so if it's a budget issue you might vote against it to save money. Having Councilors be at-large, makes them responsible to every voter in the City on every issue because they're all Portsmouth-wide issues we're dealing with as Councilors. The relationship between voter and policy maker needs to continue and not be broken into factions of wards. This issue has come up in the past. For example, in the past some neighborhoods felt that capital spending was not being distributed across the City. When talking about getting fair representation, that's where the Council and administration should focus; what are the issues that people feel they're being neglected and tackle those issues and try to solve them as at-large members.

Jack Blalock – Agrees a lot with what Former Mayor Eric Spear said. When you run at-large, you are representing all the citizens in the whole City. One thing he did in his first term is they had each ward represented by a councilor even if he did not live in that ward. Not important whether or not you live in the ward that you are the liaison to, and it was simply that the Councilor would go to the neighborhood committee meetings. One of the beautiful things about running at-large and the way we do it, it is very non-partisan and you do, indeed, have to represent the City. Some have lived in more than one ward and it's a small community area-wise and not that big a population, and it's been working quite well. You may have an ineffective Council every now and then, but it can always be corrected because it is every 2 years. The better way to do it is to emphasize to the Council in general that each area of the City is important and to not draw some sort of political line to create any kind of bastion of power.

Rick Becksted – He likes the simple fact of that you have to earn a vote across the entire City. Thinks it's important for all nine (9) members of the Council to represent all the wards; don't need a divide. People like the system that we have. It is a short-lived two-year term and things can happen dramatically within those two years, but the system we have now is a fair system. Agrees with what we have now.

Tom Ferrini – Former Mayors Rick Becksted, Steve Marchand, himself and Bob Lister were not from Wards 2 and 5. Proximity to a Ward is not necessary for fair representation. If voting by wards, fewer people will be involved in the system and stifle the opportunity for people to run. Looking at the mayoral issue, Dover has a mayor by popular vote, so 2 to 3 people vote but 2 don't get in and are not elected to sit on council. In practice, more people will be out of the system than in it.

Former Mayor Blalock added to the mayoral issue that it would change the way the City Council is. Currently, the mayor is a city councilor who has three (3) extra responsibilities – bringing forward appointments, helping to set the agenda, and chairing the meeting. The advantage of being assistant mayor is you don't have to do any of the first two things, but every now and then you get to chair a meeting. It's a wonderful thing to be the mayor of Portsmouth; treasure it. To be elected mayor out of a large group in the city that you were born and raised in is truly remarkable. Wouldn't change anything about the way it happened. It would change the chemistry if the mayor is separately elected, it would change the way the mayor interacts with the City Council.

Chair Cook stated that she spoke with Former Mayor Weeks and heard from Former Mayor Marchand and both expressed similar thoughts and said they would be willing to come if there was another session. Chair Cook opened the floor to the other Members of the Governance Committee and the City Clerk if they wanted to share their thoughts.

Councilor Lombardi stated that dividing into Wards politicizes the process. With 6,000 voters, that would be about 1,000 voters per ward. You would have to touch more people to get elected for the City. He doesn't feel like he's responsible for just his neighborhood. He would have some of the same concerns – stagnant people; loss of good people. He feels the current system is good and there could be some solutions. He is hesitant for any change forward.

Councilor Tabor stated that there are a dearth of candidates in Ward elections and a smaller ward could become partisan. All who run have to learn every Ward and the current system makes candidates get out and respond quickly to the electorate and the voters. The recent election there were 1695 new voters and the voters voted in significantly younger City Council members.

Councilor Denton followed up and agreed with the overwhelming majority but wanted to bring this matter forward for voters to have an opportunity to have a say.

Former Mayor Ferrini stated that one thing he hasn't heard is why this would make things better; is there a public policy outcome that's going to be better for the voters of Portsmouth for doing that.

Councilor Cook stated the Committee's appreciation for the former mayors coming and providing their views. She stated that if the system isn't broken, it doesn't need to be altered. There are challenges; there could be a better way to address concerns and have put in play public dialogue sessions. Other concerns about voting are the inequity to run and the time to needed serve; would have to find solutions to both time and costs (i.e. printing of signs). Councilor Cook stated that she would not support a change but, rather, find other solutions.

6. Discussion of Further Charter Review Process

Councilor Cook stated this isn't the last time we're going to talk about the Charter as the Governance Committee; there are probably other potential amendments to the Charter that need to be considered and several things in the Charter that are outdated. Will bring thing back at a later meeting.

7. Public Comment – Commenced at 10:58 a.m.

Esther Kennedy – agrees with everything said, respects the cost of running but believes once you get your signs it's really the knowledge of how to purchase things ahead of time so it's almost an education seminar that if you get your signs that can be used year after year, that makes the cost as you get going a lot less. Appreciates concerns regarding wards. She said that the first year she ran, everyone was from Ward 4. She said causes is what gets people to run and get involved – community causes, not ward causes. With Wards, people only support “their neck of the woods” whereas those running at-large, people support Portsmouth.

Zelita Morgan – talked about governance was for the people and at the first meeting of the Governance Committee there was no quorum and no residents present. Governance matters and need to listen to the people. If you're talking about government, for the people and by the people, then the people are missing. She has no comment on today's topics. Have a discussion, forums, times when people can attend.

Greg Mahana – focus on the big picture; former mayors have had a lot of good information and agrees with some of the things that Chair Cook said. He was the only person who ran from Ward 4 in the last election. A lot of people feel unrepresented. Demographics of Elwin Park are either retirees who don't want to come to meetings or families who have no time or resources. Assign someone to communicate and reach out to wards and demographics to bring them in.

Liza Hewitt – tries to stay involved. She votes for people; those she likes and what they stand for. If there was a ward system she feels it may be bound to seek out them out even though a person in a ward may not feel like that person represents them. CIP is a closed and secretive society. It should be opened up in a way the public can understand it.

Petra Huda – noted it takes courage to bring up new and different ideas. What we have works very well. Just because it's time to look at this, doesn't mean we have to change anything. Thinks it's great that it was brought forward, thought about, thought through and supports open clear discussion

Paige Trace – thanked Councilor Denton for bringing this up and making it public. As a resident, you look at the City Council as a collective group with unique minds – don't care where each councilor lives; does care what they know and how they can help Portsmouth.

Chair Cook closed Public Comment at 11:07 a.m.

Next meeting is scheduled for May 16, 2022. The time between this meeting and the next was designed around the budget meetings. Will continue to discuss changes to the rules and committees.

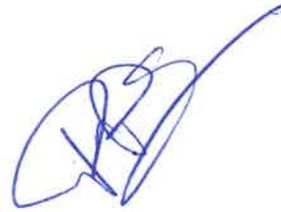
Motion to adjourn was made by Councilor Tabor, seconded by Councilor Lombardi. A roll call vote was unanimous. Meeting adjourned at 11:09 a.m.

Respectfully submitted by
Synthia M. Ravell
Legal Administrator

Approved by Governance Committee on: May 31, 2022

**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: February 1, 2022
TO: KAREN S. CONARD, CITY MANAGER
FROM: ROBERT P. SULLIVAN, CITY ATTORNEY
RE: CHARTER AMENDMENTS



At the City Council meeting on January 24, 2022, on a motion of Councilor Josh Denton, the City Council "voted to instruct City Attorney Sullivan to draft a memorandum outlining the Charter Amendment process for review by the newly formed Governance Committee." This memorandum will outline that process.

The topic of municipal charter amendment and revision is governed by RSA 49-B HOME RULE-MUNICIPAL CHARTERS. <http://www.gencourt.state.nh.us/rsa/html/III/49-B/49-B-mrg.htm>. The statute is complex and has been subject to frequent and substantial change by the state legislature in recent years. However, the salient features of the statute as of this date are as follows:

1. The statute lays out two distinct pathways for charter revisions versus charter amendments. The key difference being that a charter revision will always call for the creation of a charter commission consisting of nine (9) members who shall be elected at either a regular or special municipal election. See RSA 49-B:4.
2. A charter revision as defined as "any change to an existing charter that results in a change in the municipalities form of government to any of the following forms:
 - i. Traditional town meeting
 - ii. Official ballot town meeting
 - iii. Town council
 - iv. Official ballot town council
 - v. Budgetary town meeting
 - vi. Representative town meeting
 - vii. City under Mayor/Alderman plan
 - viii. City under Council/Manager plan
 - ix. Any other form thereafter expressly authorized by statute.

See RSA 49-B:4-d

3. Because Councilor Denton's motion, which has led to this memo, specifically referenced charter amendments and it is not believed that he is interested in charter revisions as described above, there will be no further discussion of charter revision in this memorandum.

4. A charter amendment “shall mean any change to an existing charter that does not constitute a revision [as described above]”. See RSA 49-B:4-f.
5. The procedural steps necessary to effectuate a charter amendment are described in RSA 49-B:5. That statute outlines both a relatively simple process under which the City Council can propose amendments to the municipal charter and a process by which a written petition of a number of voters equal to at least 15% of the number of ballots cast at the last regular municipal election may propose amendments to the charter. This memorandum will focus on the procedure which may be initiated by the City Council.
6. If the City Council wishes to propose amendments to the charter, a general statement of the process is as follows:
 - a. The City Council shall provide for notice and hearing on the proposed amendment(s) in the manner described at RSA 49-B:5 I.
 - b. Within seven (7) days of the last public hearing, the City Council shall file with the City Clerk a report containing the proposed amendment(s).
 - c. The City Clerk would then forward the proposed amendment(s) to the Secretary of State, the Attorney General, and the Commissioner of the Department of Revenue Administration under RSA 49-B:4-a.
 - d. After the state agencies described above have reviewed and approved the proposed amendment(s), which by statute should occur within 45 days after the receipt of the amendment(s) from the City Clerk, then within seven (7) days the City Council may order the proposed amendment(s) to be placed on a ballot at the next municipal election or at a special election that occurs not less than 60 days after the Council vote.
 - e. As described by Councilor Denton at the City Council meeting of January 24, 2022, alternative statements of a single amendment are prohibited. Therefore, each proposed amendment must be drafted to be a simple yes or no vote. RSA 49-B:5 II(b)
 - f. As noted, submission of the amendment(s) to the voters at a municipal election is mandatory, and is regulated in form and timing by statute. RSA 49-B:6.
 - g. There are critical notice and scheduling provisions.

The foregoing is a brief overview of the charter amendment process, which is narrowly tailored to meet the understood intent of the motion made by Councilor Denton. For more detail members of the Council or the Governance Committee are either referred to the statute at the link described above or invited to ask further questions of the Legal Department.

DRAFT

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

CLEAN VERSION OF AMENDMENTS TO Chapter One, Article VIII, CODE OF ETHICS of the Ordinances of the City of Portsmouth are as follows:

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.
- G. 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.
- H. 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, 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.
 - 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: 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. A Board of Ethics ("BOE") is hereby created. This BOE shall consist of five (5) persons: two members shall be selected from the City Council and one member each from the School Board, Police Commission and Fire Commission. 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) shall provide legal advice and support for the BOE. The BOE members shall be selected by lot and drawn at the first meeting of the calendar year 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 BOE Member shall elect a chairperson and the BOE may adopt such rules for the conduct of its business as it sees fit. The BOE shall have the power to draw upon 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. 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.

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 1.807: DISPOSITION AND SANCTION

- A. In the event that the BOE determines that any Officer or the City Manager committed a violation of this Ordinance, the City Council may take any of the following actions:
 - 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 to overturn the finding of a violation.

- 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.

- C. 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.