

CHAPTER 1

ADMINISTRATIVE CODE

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ARTICLE I: ADMINISTRATIVE CODE

Section 1.101: PREAMBLE

This Administrative Code is adopted pursuant to Section 3.9 of the Revised Charter of the City of Portsmouth to outline the operation of the municipal government, exclusive of the School, Fire and Police departments. It shall be applied and interpreted to further the spirit and intent of the Council/Manager form of Government in general and as specifically created by the Charter.

Section 1.102 ADMINISTRATIVE ORGANIZATION

The administrative service of the City shall consist of a City Manager and the following subordinate departments, each of which shall be administered by a department administrator, also known as a department head, appointed by the City Manager.

City Clerk	Legal
Economic and Community Development	Library
Finance	Planning and Sustainability
Health	Public Works
Human Resources and Negotiations	Recreation
Information Technology	Welfare/Outside Social Services
Inspection	

Section 1.103: ORGANIZATIONAL CHART

The organizational relationship of the administrative departments of the City to each other and to the electorate, the Mayor and City Council, and the various municipal boards and commissions shall be included as part of the annually adopted budget.

Section 1.104: SELECTION, QUALIFICATION, AND TERMS OF OFFICE OF DEPARTMENT ADMINISTRATORS

A principal administrator of each municipal department shall be selected and appointed by the City Manager. All such individuals shall serve under such terms and conditions as deemed appropriate by the City Manager.

Section 1.105: GENERAL POWERS AND DUTIES OF DEPARTMENT ADMINISTRATORS

Each department administrator, also known as a department head shall be responsible for:

- A. The efficient operation of the department;
- B. The preparation and submission of that portion of the annual municipal budget which relates to the department;
- C. The operation of the department in compliance with the approved municipal budget;
- D. The oversight of all personnel and property resources of the department to maintain the highest practical level of productivity.
- E. The preparation, maintenance, and preservation of all records required by law or otherwise for the operation of the department;
- F. The adoption of such rules, regulations, and policies as are necessary for the proper administration of the department; and
- G. Keeping the City Manager informed of the operating status of the department and of any matters requiring the involvement of the City Manager or the City Council for resolution.

Section 1.106 SPECIFIC DUTIES, FUNCTIONS AND RESPONSIBILITIES OF DEPARTMENTS

- A. **CITY MANAGER** – City Manager shall be the chief executive officer of the municipal government, with all the powers and duties inherent in that position and as further set forth in the Charter and these ordinances. The City Manager is responsible for ensuring effective communication between the City government and the public, and oversees the dissemination of information to ensure transparency and foster community engagement.

- B. **CITY CLERK** – The department administered by the City Clerk shall be responsible for all duties prescribed by state law and municipal ordinance for that office, including the collection and maintenance of official City records and vital statistics; preparation and maintenance of records of the City Council; and the administration of any licenses or permits delegated to that office by the operation of law and elections.
- C. **ECONOMIC AND COMMUNITY DEVELOPMENT** – The Economic and Community Development Department shall be responsible for the complete administration of any municipal programs involving the receipt and expenditure of funds generated by the federal government for community or economic development purposes. Economic development purposes include promoting and maintaining high-quality commercial development, providing assistance services related to business expansion, retention and relocation, supporting the local creative economy and cultural community, and promoting public/private partnerships aimed at fostering economic development that compliments Portsmouth's quality of life.
- D. **FINANCE** – The Finance Department shall be responsible for the provision of all accounting, tax and revenue collection, assessment, procurement, payroll, debt service, water/sewer billing, audit, cash management, and budget services of the municipal government, and other related duties as may be assigned from time-to-time by the City Manager or allocated by the municipal budget. To the extent the tax collector duties described by State statute remain under the oversight and control of the head of the Finance Department, no special audit shall be required as described in NH RSA 41:36 upon change in the tax collector.
- E. **HEALTH DEPARTMENT** – The Health Department shall be responsible for providing all public health services required by state law or municipal ordinance.
- F. **HUMAN RESOURCES AND NEGOTIATIONS** – The Human Resources and Negotiations Department is responsible for functions that support the hiring, training, development and retention of a skilled and effective workforce. These functions include recruitment, employee relations and records, benefits administration, and compliance with labor laws and regulations. Some departments have unique environments and needs, requiring close cooperation and coordination to ensure both respect for those specific needs and adherence to best human resources practices and legal requirements. Additionally, the department represents the City Manager, School Board, Fire Commission, and Police Commission in negotiating and administering all collective bargaining agreements involving the City of Portsmouth. All technology acquisitions affecting human resources functions must receive prior approval from the Human Resources Department in addition to the Finance Department.

- G. **INFORMATION TECHNOLOGY** – The Information Technology Department shall be responsible for the acquisition, maintenance, coordination, security and regulatory compliance of all City information technology for all elements of the municipal government. The CIO has authority to establish IT standards and ensure compliance for cybersecurity, system resilience, and operational efficiency. All departments shall comply with these standards including those maintaining systems unique to their operational environments. In emergency situations, the CIO has the authority to take immediate protective action. Nothing in this section shall be deemed to limit any authority vested in the City Council and City Manager under the Charter.
- H. **INSPECTION** – The Inspection Department shall be responsible for all matters related to adoption, application and enforcement of the New Hampshire State Building Code, including all codes adopted by reference, and all New Hampshire Building Code Amendments. The Inspection Department shall also be responsible for the administration and issuance of all permits related to these codes and any other permits assigned to the Inspection Department.
- I. **LEGAL** – The Legal Department shall provide all necessary legal services to the municipal government, including those of an advisory as well as a representational nature.
- J. **LIBRARY** – The Library Department shall be responsible for providing library services, managing library resources, programming events, and operating all public library facilities, including technology services maintenance of the facilities in partnership with the Information Technology Department and the Department of Public Works.
- K. **PLANNING AND SUSTAINABILITY** – The Planning and Sustainability Department shall be responsible for all land use regulatory functions required by state law and municipal ordinance, including zoning, subdivision review and site plan review. The Planning and Sustainability Department also provides support to the planning board, zoning board of adjustment, historic district commission, conservation commission, technical advisory committee and housing committee. The Planning and Sustainability Department also provides support to the Sustainability Committee and works to implement the City's sustainability goals. It also seeks to strengthen the City's resilience given climate change impacts and support the implementation of the Climate Action Plan.
- L. **PUBLIC WORKS** – The Public Works Department shall be responsible for all highway, grounds, part and municipal cemetery maintenance, wastewater collection and treatment, water distribution, metering and treatment, building and facility maintenance, stormwater management and maintenance, of infrastructure, and parking and transportation services of the municipal government. These responsibilities include all engineering, permitting, budgeting and oversight necessary to accomplish the work and meet regulatory compliance.

- M. **RECREATION** – The Recreation Department shall be responsible for developing and implementing recreational programs for the citizens of the City including youth and seniors, and for operating the facilities in which those programs are provided in partnership with the Information Technology Department and the Department of Public Works.
- N. **WELFARE/OUTSIDE SOCIAL SERVICES** – The Welfare Department shall be responsible for providing all welfare services mandated by the State of New Hampshire or otherwise provided by the municipal government. In addition to providing client services, the Welfare/Outside Social Services Department provides client referrals by maintaining relationships with community organizations, businesses and outside social service agencies.

Section 1.107 AUTHORITY OF THE CITY MANAGER

- A. The City Manager, as Chief Executive and Administrative Officer of the City, shall have the authority, within the general parameters established by the Charter and this ordinance,
 - 1. To assign and reassign areas of specific responsibility within the various municipal departments.
 - 2. To execute on behalf of the City Council all deeds, leases, indentures, declarations or conveyances of the City as may be authorized by the City Council. This grant of authority shall not diminish or restrict the power of the City Manager or designee to execute such licenses, agreements, contracts and other instruments as may authorized by the Charter, these ordinances and state law to properly administer and manage the organization and implement the policies of the City Council.
- B. The City Manager shall serve as the local director for emergency management functions and have direct responsibility for the organization, administration and operation of the City's emergency management operation in accord with RSA 29-P:39. The City Manager shall have all emergency management functions and responsibilities mandated or authorized by State, local or federal law and may appoint such other officials as may be required or appropriate to carry out the purpose of emergency management operations.

ARTICLE II: ***(RESERVED FOR FUTURE USE)***

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ARTICLE III: BOARDS

Section 1.301: CREATION

There shall be established the following Boards in the City of Portsmouth:

- A. Planning Board
- B. Recreation Board
- C. Board of Library Trustees
- D. Personnel Advisory Board
- E. Board of Trustees of the Trust Funds
- F. Zoning Board of Adjustment
- G. Building Code Board of Appeals

Section 1.302: APPOINTMENTS, TENURE AND REMOVAL

- A. All appointees to Boards shall serve for the term appointed or until a successor shall have been appointed and qualified. Appointments for unexpired terms shall be for the remainder of that term or until a successor shall have been appointed and qualified.
- B. At the first meeting of the Board, Commission, or Authority in January of each year, the committee shall elect a Chair, unless a procedure is otherwise specified in the enabling section of the ordinance. Records of attendance shall be kept by the Chair of Boards and Commissions appointed by the City Council. The attendance records of Boards and Commissions shall be reported to the City Council on an annual basis. If a member notifies the Chair of the Board or Commission prior to a meeting that s/he/they will not be able to attend the meeting due to sickness, vacation or out of town business travel, such absence will be considered an excused absence and so noted in the minutes of the meeting and the attendance sent to the Council. The City Council shall declare vacant the office of any member who has unexcused absences from more than one-third of the regularly scheduled meetings of the board or commission in any calendar year.
- C. In the case of appointees who must be removed pursuant to State Statute, the Chair of the Board or Commission shall notify the City Council in writing of any members in violation of the previous paragraph and such violation may be found by the City Council to be neglect of duty and may be grounds for dismissal.
- D. Every member of a board, commission or committee of the City, whose term is to expire, shall receive a notice from the City Clerk sixty (60) days prior to the expiration of his or her term. A copy of the notice shall be sent to the City Council. Public notice of the upcoming vacancy shall be advertised in the local newspaper.
- E. Eligibility for appointment to Municipal Boards shall be limited to residents of the City of Portsmouth. Any individual who is a resident of the City at the time of appointment to a Municipal Board shall become ineligible to remain on that Municipal Board in the event that the individual shall discontinue residency in the City. (Adopted 9/22/97)

Section 1.303: PLANNING BOARD

- A. Membership: The Planning Board of the City shall consist of nine (9) members and two (2) alternate members, specifically; (Adopted 1/23/95)
1. The City Manager, or the designee of the City Manager with the approval of the City Council, who shall be an ex-officio member;
 2. An administrative official of the City selected by the City Manager who shall be an ex-officio member;
 3. A member of the City Council selected by the Mayor with the approval of the Council, who shall be an ex-officio member;
 4. Six residents of the City appointed by the Mayor with the approval of the City Council.
 5. Two (2) alternates who shall be residents of the City appointed by the Mayor with the approval of the City Council. (Adopted 1/23/95)
- B. Term: All Planning Board members shall serve as such without compensation and the appointed members shall hold no other municipal office except ward official, election official and checklist supervisors. The term of each appointed member shall be three (3) years. The Mayor shall apportion appointments so that no more than three appointments occur annually. (Amended 6/3/2002)
- C. Powers: The Planning Board shall have those powers and perform those duties identified by State law and local ordinance. (Amended 3/22/93)

Section 1.304: RECREATION BOARD

- A. Membership: The Recreation Board shall consist of nine members appointed by the Mayor with the approval of the City Council.
1. One member shall be a City Councilor selected by the Mayor with the approval of the City Council, who shall be an ex-officio member.
 2. One member shall be a School Board member selected by the Mayor with the approval of the Council, who shall be an ex-officio member.
- B. Term: All board members shall be residents of Portsmouth and shall serve for a three year term without compensation. Appointments will be apportioned and appointed members shall hold no other municipal office.
- C. Functions: The Recreation Board shall perform the following functions:
1. Assist the Recreation Director in planning a city wide recreation program.
 2. Advise the City Manager in regard to recreational policy.

Section 1.305: BOARD OF LIBRARY TRUSTEES

- A. Membership and Term: The Board of Library Trustees shall consist of nine members and at least one of these members shall be a member of the Board of Education. All members shall be approved by the Mayor and shall be subject to the approval of the City Council. With the exception of the first appointments made under this authorization, all appointments shall be for a three year term and no member shall be eligible for more than two consecutive terms. First appointments made under this authorization shall be for such terms as will provide for three member's terms to expire each year.
- B. Powers and Duties of the Board of Library Trustees:
1. Adopt bylaws, rules and regulations for the conduct of its own business and choose its own officers.
 2. To determine objectives which will result in the continuing growth and improvement of library services and to establish policies necessary for the attainment of these objectives.
 3. Establish policies necessary for the operation of the library.
 4. Finances:
 - a. Prepare the annual budget for the Library in consultation with the librarian and present the same to the City Manager.
 - b. Receive and expend the income from all trust funds, donations and bequests made to the City for the benefit of the Library in accordance with the wishes of the done.
 - c. Expend all monies received from fines, payments for lost or damaged books, fees for providing non-resident services and other miscellaneous income.
 5. To recommend to the City Manager the appointment of the City Librarian and staff librarians.
 6. To prepare and present annual reports to the City covering all phases of the operation of the Library and to make an annual report to the N.H. State Library as may be required by the State Library Commission.
 7. Saving Clause: To perform all other acts necessary for the management and control of the Library.

Section 1.306: PERSONNEL ADVISORY BOARD

- A. Establishment: The Personnel Advisory Board shall be established in conformity with Section 49 of the Amended Charter of the City of Portsmouth, 1947, as amended.
- B. Functions: The Personnel Advisory Board shall perform the following functions:
 - 1. Exercise all power and perform all duties as stated in Section 49 of the Amended Charter of 1947, as amended.

Section 1.307: BOARD OF TRUSTEES OF TRUST FUND

- A. Establishment: The Board of Trustees of the Trust Funds shall be established in conformity with Section 67 of the amended charter of the City of Portsmouth, 1947.
- B. Functions: The Board of Trustees of Trust Funds shall perform the following functions:
 - 1. Exercise all power and perform all duties as stated in Section 67 of the amended Charter of 1947.
 - 2. Receive all trust funds which may donated or bequeathed to the City or any department thereof, unless otherwise provided or required.
 - 3. Distribute income and principle in accordance with the purpose for which the trusts were established.

Section 1.308: ZONING BOARD OF ADJUSTMENT

- A. Membership and Term: The Zoning Board of Adjustment shall consist of seven (7) members and two (2) alternates, all of whom shall be residents of Portsmouth, appointed for terms of five years by the Mayor with the approval of the City Council. Appointments shall be apportioned, and the Board shall annually elect a Chair for its membership.
Members and alternates shall serve without compensation and shall hold no other municipal office except ward official, election official and checklist supervisors. The Mayor shall submit the names of appointees to the council within thirty days after a vacancy occurs. (Amended 6/3/2002; amended 03/15/2021)
- B. Functions: The Zoning Board of Adjustment shall perform the following functions:
 - 1. Exercise all power and perform such duties as stated in Chapter 673:3 of New Hampshire Revised Statutes Annotated. In addition the Board shall have those powers as set forth in the Zoning Ordinance of the City of Portsmouth, Chapter 10, of this revised Code of Ordinances. (Amended 6/3/2002)

ARTICLE IV: COMMISSIONS AND AUTHORITIES

Section 1.401: RESIDENCY REQUIREMENT

Eligibility for appointment to Commissions and Authorities of the City of Portsmouth shall be limited to residents of the City of Portsmouth. Any individual who is a resident of the City at the time of appointment to a Commission or Authority shall become ineligible to remain on that Commission or Authority in the event that the individual shall discontinue residency in the City. (Adopted 9/22/97)

Section 1.402: ECONOMIC DEVELOPMENT COMMISSION

- A. **Membership and Term:** The Economic Development Commission shall consist of nine (9) qualified regular members and one alternate member. They shall be appointed by the Mayor subject to the approval of the City Council for a term of four years, except that the first two (2) appointments made by the Mayor for members whose terms expire in 2025 shall each be for a term of two (2) years. Thereafter, all appointments shall be for a term of four (4) years from the end date of any expiring term. Vacancies shall be filled for the remainder of the term of the member whose departure from the Commission created the vacancy. The Mayor and City Manager shall also serve as ex-officio members of the Economic Development Commission whose terms shall correspond to their respective tenure of office. (Amended 9/22/97; 09/05/23)
- B. **Powers and Duties:** The Commission shall develop and recommend to the City Council, City Manager, and boards, committees and commissions of the City policies, procedures, regulations, and ordinances and take such other actions that encourage and promote economic and business development, including business recruitment, retention, and growth, and the creation and maintenance of a healthy, diversified, and sustainable business community in the City and broad prosperity in the community.
- C. **Functions:** In furtherance of its duties set out in Subsection B, the Commission may perform one or more of the following functions:
1. Assist the City Council and City Manager in the formulation of economic development goals for the City.
 2. Assess existing economic development policies of the city for the purpose of recommending such modifications as may be appropriate to promote the economic development goals of the City.
 3. Formulate or assist in the formulation of new economic development strategies, policies, regulations, and ordinances for the purpose of achieving the economic development goals of the City in collaboration with the Assistant City Manager for Economic Development or as designated by the City Manager.
 4. Prepare and submit recommendations to the City Council, the City Manager and other boards, committees, and commissions on a broad range of matters related to economic development, including, business development, public-private partnerships, maintenance and development of commercial, industrial, and business districts, and business retention and attraction programs.

5. Make recommendations to the City Council regarding the acquisition, bonding, developing, building, leasing, financing and mortgaging of commercial and industrial land and buildings and other matters incidental to retaining and attracting business and industry to the City.
6. Respond to inquiries of the City Council on matters relating to economic development.
7. Conduct research into the economic conditions and trends of the community and the greater regional economy.
8. Survey, meet and confer with businesses, civic organizations, developers, educational institutions, landowners, and citizens to promote the merits of economic development and to understand better the resources and needs of the community to support its continued health, success, and growth.
9. Provide leadership and guidance to the City Manager in the areas of planning, economic development and redevelopment.
10. Perform such other duties and provide such other information, assistance, and advice to the City Council, City Manager, and other boards, committees and commissions and as is consistent with Subsection B herein.

Section 1.403: HISTORIC DISTRICT COMMISSION

There is hereby established an Historic District Commission and it shall have the powers prescribed in RSA 31:89a - 31:89(l) together with any amendments hereinafter enacted by the General Court and as further defined in this Section and in Article X, Chapter 10 of the Zoning Ordinances of the City of Portsmouth.

A. Membership and Term

1. **Membership:** The Historic District Commission shall consist of seven members and two alternates appointed by the Mayor with the approval of the City Council. One of the members shall be a City Council member and another may be a Planning Board member as provided by State Law. At least two members shall be residents of the Historic District and at least one member shall be a person owning or being employed in a business within the Historic District. All appointees must be residents of Portsmouth. All members are required to have demonstrated interest in and commitment to promote the purposes of historic districting as stated in this Ordinance. A member's term serving at the time of enactment of this Ordinance shall not be affected. Future appointments, however, shall be filled in accordance with the provision of this Section. (Amended 9/21/98; Amended 11/22/2010; amended 03/15/2021)
2. **Term:** The members of the Commission shall be appointed for three-year terms. In the event a vacancy is created, an interim appointment shall be made in accordance with the procedures described above to complete the unexpired term. All members shall serve without compensation.

3. Attendance: Records of attendance shall be kept by the Commission. The attendance records shall be reported to the City Council on an annual basis. If a member notifies the Chair of the Commission prior to a meeting that s/he/they will not be able to attend the meeting due to sickness, vacation, or business obligations such absence will be considered an excused absence and so noted in the minutes of the meeting. The appointed alternate shall serve in the absence of a member. The City Council shall declare vacant the office of any member who has unexcused absences from twenty-five percent or more of the regularly scheduled meetings of the Commission in any quarter.

B. Organization, Meetings and Rules

1. The Commission shall annually elect a Chair, Vice-Chair and Secretary from the appointed members and create and fill such other offices, as it may deem necessary to fulfill its work during the first meeting of July. The Commission shall meet at the call of the Chair and at such other times as the majority of the Commission may determine, and shall adopt rules for the orderly conduct of meetings. Minutes of all meetings shall be kept and all records and meetings of the Commission shall be open to the public.
2. Quorum: In order for the Historic District Commission to issue a Certificate of Approval or Notice of Disapproval, at least five members must be present to constitute a quorum for the conduct of such business, and a majority of the members voting in the affirmative shall be required to issue a Certificate of Approval. (Adopted 9/25/89)

C. Powers and Duties

1. The Historic District Commission, consistent with the powers specified in the preamble of this Section, shall review and approve or disapprove all applications for construction, alteration, repair, moving and/or demolition of buildings or structures located within an historic district(s) before any building, demolition, or other permit may be issued by the Building Inspector, subject, however to the provision of the Scope of Review as specified in Article X, Section 10:1004. The review shall be limited to the exterior of the building(s) or structures and shall not apply to the interiors thereof.
2. The Building Inspector shall notify the Chair of the Historic District Commission within seven working days after receipt of any application for permit, which is subject to the Scope of Review and conditions of this Ordinance.
3. It shall be the duty of the Commission to file with the Building Inspector or other duly delegated authority, either a Certificate of Approval or a Notice of Disapproval following the review and determination of the application. Said certificate shall be filed with the Building Inspector within thirty calendar days after the filing of the application for said certificate, unless the applicant shall agree in writing to a longer period of time. No building permit shall be issued until a Certificate of Approval signed by the Chair or Vice-Chair has been filed with the Building Inspector. In the case of disapproval, such notice shall be binding upon the Building Inspector and no permit shall be issued. Failure to file

said certificates within the specified period of time shall be deemed to constitute approval of the Historic District Commission.

4. The Commission may request reports and recommendations regarding the feasibility of the applicant's proposal from the Planning Board, Fire Chief, Building Inspector, Health Officer and such other administrative officials who may possess information pertinent to the application. The Commission may request advice from such professional, educational, cultural or other groups as may be deemed necessary for the determination of a reasonable decision. The Historic District Commission may request the City Manager to have persons present whose input is deemed necessary.
 5. The Commission may request such technical assistance and consultants as may be deemed necessary to carry out the purpose of this Ordinance subject to funding, if necessary, by the City Council.
 6. The Historic District Commission shall have the power to adopt by-laws, rules and regulations necessary for the conduct of business providing the same have been approved by the City Council. The Commission also shall prepare and issue guidelines to assist the applicants in determining the appropriateness of the applicant's proposal.
- D. Appeal: Any person aggrieved by a final decision of the Historic District Commission shall have a right of appeal to the Board of Adjustment as provided by State Law. Any such appeal shall be filed with the Board of Adjustment within thirty days of the date of final decision of the Historic District Commission. Any person aggrieved may apply to the Commission for a rehearing. Upon the filing of application for rehearing, which must include a written statement with reasons for the request, the Commission shall either grant or deny the same. In the event such a rehearing is granted, the Commission shall schedule the rehearing for the next regularly scheduled Commission meeting, except at the request of the Petitioner. (Adopted 9/25/89)

Section 1.404: HOUSING AUTHORITY

- A. Membership, Qualifications, Tenure: The Housing Authority shall consist of five commissioners appointed by the Mayor to apportioned five year terms. The qualifications, tenure, and succession of the said commissioners shall be those set forth in Chapters 203-5 through 203-7 of the N.H. RSA.
- B. Power: The Housing Authority shall constitute a public body corporate and politic, exercising public and essential governmental functions within the provisions of Chapter 203-8 N.H. RSA, and all other provisions of the Housing Authority Law of N.H. as contained in said Chapter 203.

Section 1.405: CONSERVATION COMMISSION

- A. Authority to Establish, Purpose: The City Council of the City of Portsmouth, New Hampshire, hereby does adopt the provisions of Chapter 36-A of the RSA of the State of New Hampshire which chapter authorizes the establishment of a conservation

commission, for the promotion and development of the natural resources and for the protection of watershed resources of the City.

- B. Establishment, Duties and Powers: There hereby is established the Portsmouth Conservation Commission which shall consist of seven members and two alternates to be appointed by the Mayor with the approval of the Council. The duties and powers and terms of membership shall be set forth in said Chapter 36-A. (Amended 8/16/99)

Section 1.406: CABLE AND BROADBAND INTERNET COMMISSION (amended in its entirety 2/26/96; amended 01/23/2023)

- A. Membership, Qualifications, Tenure: The Cable and Broadband Internet Commission shall consist of five (5) commissioners and one alternate commissioner appointed by the Mayor subject to confirmation by the City Council. Of the initial appointments, three shall be of three (3) years and two shall be for two (2) years. Thereafter, all appointments including the alternate commissioner shall be for a term of three years. The alternate commissioner shall attend all Commission meetings and may vote at any time when there are less than five commissioners otherwise voting. (Amended 10/3/05)

Commissioners shall be residents of the City of Portsmouth at the time and during the terms of their appointments. Commissioners shall be familiar with the general concepts underlying the operation of cable television as well as the delivery of broadband internet services via multiple physical transport methods.

- B. The Commission shall have the authority to establish standing sub-committees on matters pertaining to the operation and performance of cable and broadband internet companies within the City.

Such subcommittees shall serve in an advisory capacity to the Cable and Broadband Internet Commission.

- C. Powers: The Commission shall oversee the operation of the existing Cable Television Franchise Agreement and any future agreements, which the City Council may approve as well as assist in the negotiation of such agreements. The Commission may, as the need arises, consider the availability and quality of Broadband Internet services delivered via any physical transport (which includes physical cable or over-the-air delivery) and work to understand the needs and desires of the citizens of the city of Portsmouth. Further, the committee may work with relevant providers to meet those needs and desires as appropriate and as guided by the City Council.

- D. The Commission shall meet as often as deemed appropriate and necessary to insure the proper operation of the Franchise Agreement. The Commission shall, upon request of the City Council, submit written or verbal reports of its activities.

Section 1.407: PORTSMOUTH HOUSING ENDOWMENT FUND ADVISORY BOARD

- A. The PHEF Advisory Board shall consist of seven (7) voting members, specifically:

1. A realtor maintaining an office in the City of Portsmouth (residential real estate), who shall be a resident of Portsmouth;
2. A residential real estate banker, who shall be a resident of Portsmouth;
3. A local appraiser, who shall be resident of Portsmouth;
4. A City resident;
5. A representative of the Portsmouth Housing Corporation;
6. An administrative official of the City from the Bureau of Community & Economic Development, who shall be an ex-officio member;
7. An administrative official of the City from the Legal Department, who shall be an ex-officio member.

All members shall be appointed by the Mayor and Council with the exception of the City officials who shall be designated by the City Manager.

B. Term: The appointed members of the Board shall serve a three-year term and shall serve without compensation.

C. Powers:

1. Formulate general policies regarding the operation of the program including application criteria;
2. Establish specific policies as the need may arise dictated by the program demands;
3. Advise the City Manager and City staff with regard to the operation of the program;
4. The Advisory Group shall not have the authority over the investment of the PHEF Trust, which function shall remain with the Trustees of the Trust Funds.

D. Meetings: The Advisory Group shall meet at least semi-annually and may be called by the City Manager, the City staff representatives or upon the request of the Advisory Board on five (5) days notice, which notice may be waived in an emergency.

Section 1.408: PARKING AND TRAFFIC SAFETY COMMITTEE (Adopted 11/21/2011)

The Parking and Traffic and Safety Committee shall be established and shall have the duties and authority as described in Chapter 7, Article I of these ordinances.

Section 1.409: TREES AND PUBLIC GREENERY COMMITTEE (Adopted 10/21/2013; Amended 08/01/2022)

There is hereby established a Trees & Public Greenery Committee. The Committee shall consist of ten (10) voting members including the following: a City Councilor, the City Manager or designee; the Tree Warden or designee; the Public Works Foreman in charge of tree maintenance; and six (6) individuals with an interest in trees and public greenery. Members of the Committee, other than City staff members listed above, shall be appointed by the Mayor with the approval of City Council for three year terms with the length of the initial terms being staggered at the discretion of the Council. Vacancies for the unexpired terms shall be filled in the same manner as the original appointments.

The main purpose of this Committee shall be to advise and assist the City's Tree Warden in enforcing the provisions of this Ordinance as well as to ensure the proper expansion, protection, and maintenance of the City's Urban Forest consistent with best arboricultural practices, horticultural practices, aesthetic concerns, and public safety. The Committee shall, with the assistance of the Department of Public Works, collect and maintain all records and data necessary to objectively evaluate whether progress is being made toward the proper protection and expansion of the City's Urban Forest. The Committee shall prepare an annual report summarizing all activity relating to this Ordinance and shall offer recommendations for actions to better achieve the proper maintenance and expansion of the City's Urban Forest. This report shall be presented to the City Council for its consideration.

Section 1.410: AUDIT COMMITTEE

There shall be a permanent Audit Committee established and maintained for the purpose of advising the City Council on the adherence to the City Charter- Section 7.4 INDEPENDENT AUDIT.

- A. **Membership and Term:** The Audit Committee shall have six (6) voting members who shall be appointed by the Mayor and confirmed by the City Council, three members shall be City Councilors, with a City Councilor selected by majority vote of voting members of the Committee to be the Chair. The Audit Committee members who are not City Councilors shall serve for a three-year term and possess experience in finance, accounting, auditing, and/or financial management and reporting. The City Manager shall be a member of the Committee with voice, non-voting. In the event of a vacancy in a member position on the Audit Committee, a qualifying individual shall be appointed by the Mayor to fill the remainder of the term of the vacant member. The terms of the City Council members of the Committee shall be for two (2) years coterminous with the term of the City Council.
- B. **Duties and Powers:** The primary purpose of the Audit Committee is to recommend an external auditor to the City Council. In the event the auditor identifies any serious exceptions, the Audit Committee shall advise and work with the City council as to next steps.

Section 1.411: CEMETERY COMMITTEE (Amended 05/01/2023)

- A. Membership and Term: The Cemetery Committee shall consist of not less than seven (7) or more than eleven (11) regular members. The members shall be appointed by the Mayor subject to the approval of the City Council. The first four (4) members appointed after adoption of this ordinance shall be appointed to terms of three (3) years commencing as of the date of completed appointment. Thereafter, all appointments shall be for terms of two (2) years. All appointments to fill vacancies shall serve the remainder of the vacant term. A quorum shall be a majority of the existing appointed members at any given time.
- B. Powers and Duties: The Committee shall provide advice and recommendations to the City Manager and the City Council with respect to all issues affecting municipal cemeteries, including the solicitation and acceptance of grants; the expenditure of any funds for specific improvements; and any expenditures from the Cemetery Trust Fund. Nothing herein shall limit the power of the City Council or City Manager to take immediate action in the event of exigent circumstances.
- C. It shall be the responsibility of the Cemetery Committee to encourage the restoration, preservation, and safeguarding of Portsmouth's historic cemeteries and their history for future generations.

Section 1.412: ARTS AND CULTURAL COMMISSION (Added 09-05-2023)

- A. Membership and Term: The Arts and Cultural Commission shall consist of 14 qualified regular members and one alternate member. Of those 14 members, 4 members shall represent the arts and cultural institutions in Portsmouth, both for-profit and non-profit in nature, and their membership on the committee shall be on behalf of their institutions, rather than as an individual membership. Those institutional members shall not serve consecutive terms, but their membership shall rotate among those arts and cultural institutions to foster participation on the part of various institutions. An additional 4 members shall be appointed from the community artists within the City of Portsmouth. Four members shall be individuals with appreciation for community arts and cultural programming. One City Councilor shall serve in a term corresponding with his/her/their respective tenure of office. The City Manager or his/her/their representative shall serve as an ex-officio member of the commission.
- B. Definitions: Arts and Cultural institutions should be defined as those institutions engaging primarily in direct community work in visual arts, musical arts, theater arts, literary and performance arts, cultural community events, and historical preservation and education.
- C. Powers and Duties: The Commission shall encourage support for arts and culture within the wider Portsmouth community, including, but not limited to the following:
 - 1. The Commission shall foster the implementation of the Cultural Plan of the City of Portsmouth, and shall conduct other studies and planning processes, as necessary, focusing on the arts and cultural community.

2. The Commission shall support the establishment of arts and cultural institutions in Portsmouth and the surrounding area, promote the welfare of existing arts and cultural institutions, and support coordination and communication among local artists, arts and cultural institutions.
3. The Commission shall make recommendations to the City Council concerning arts and cultural needs within the City and shall create a plan for attracting and retaining artists and arts and cultural institutions.
4. The Commission shall work to increase and sustain the arts and cultural appreciation of all residents while protecting and maintaining the quality of our arts institutions and historic and cultural assets. This process should consist of the encouragement of a broad, productive community effort to coordinate and enhance the utilization of all community resources involved in any respect with arts and culture.
5. The Commission shall identify governmental funding sources, including state and federal funding resources designated for Municipalities, to support its work. The Commission shall not raise funds in direct competition with arts and cultural organizations within the City of Portsmouth.
6. The Arts and Cultural Commission shall work in coordination with, and in support of the Public Art Review Committee to promote Public Art in the City of Portsmouth.

Section 1.413: ENERGY ADVISORY COMMITTEE

- A. **Mission:** The mission of the Energy Advisory Committee is to advocate for a lower cost, lower carbon energy future to our residents.
- B. **Membership and Term:** The Energy Advisory Committee will consist of one City Councilor to be designated by the Mayor to serve for the two year term they serve on the Council, and seven community members, one of those community members shall have an affiliation with a public utility, to each serve three year terms, and one member of the Sustainability Committee. The seven community members who are current members of the existing Blue Ribbon Energy Advisory Committee shall continue as members, if willing, for three year terms. As attrition causes the number of community members to drop below seven, the Mayor will appoint, with Council approval, new members to three year staggered terms. Thereafter, the committee will have 5-7 community members.
- C. **Qualifications:** Members will have demonstrated knowledge of electricity markets and regulation, and renewable energy and energy efficiency technologies that can benefit Portsmouth.
- D. **Powers and Duties:** The Energy Advisory Committee shall provide advice and guidance to the City Council, the City Manager, and City Boards with respect to:

The operations of Portsmouth Community Power, to include the recommendations for local projects supported by the Community Power Coalition of New Hampshire Joint Powers Agreement to benefit residents.

1. Community Power related issues.
2. Ways to reduce municipal energy costs and greenhouse gas emissions.
3. Technical advice on city energy efficiency strategies and options.
4. City energy procurement
5. Education of the community on energy efficiency and carbon reduction strategies.
6. Technical advice on energy strategies, electrification, and local resource development.

- E. Limitations: Nothing herein shall limit the power of the City Council or City Manager to take immediate action in the event of exigent circumstances. Nor shall anything herein limit the ability of the Energy Advisory Committee Chair or Co-Chairs to appoint subcommittees or determine the format of how to best structure meetings.

Section 1.414: SUSTAINABILITY COMMITTEE

- A. Membership and Term: The Sustainability Committee will consist of a City Councilor to be designated by the Mayor, a School Board member to be designated by the School Board, one member of city staff to be designated by the City Manager, one student to be designated by the Portsmouth School District, and between seven and eleven community members that have a demonstrated experience in or passion for sustainability, mitigating climate change, and protecting our eco-system to be appointed by the Mayor and voted on by the City Council to three-year terms. At the first meeting of the Committee in January of each year, the committee shall elect one or two Chairs.
- B. Powers and Duties: The Sustainability Committee shall provide advice and guidance to the City Council, the City Manager, and City Boards with respect to:
1. Implementation of the Climate Action Plan, achieving Portsmouth's Renewable Energy Policy, and additional recommendations on increasing energy efficiency, reducing greenhouse gas emissions, and taking measures to build resiliency against climate change.
 2. Increasing awareness of sustainable practices among residents, businesses, visitors, municipal staff, and other stakeholders to ensure that Portsmouth remains a leader as an Eco-municipality.
 3. Standing for environmental justice while protecting our eco-systems.
- C. Limitations: Nothing herein shall limit the power of the City Council or City Manager to take immediate action in the event of exigent circumstances. Nor shall anything herein limit ability of the Sustainability Committee Chair or Co-Chairs to appoint subcommittees or determine the format of how to best structure meetings.

ARTICLE V: PROCUREMENT PROCEDURES

Section 1.500: PROCUREMENT POLICY

All procurement shall be managed pursuant to the Procurement System and Policies adopted by the City Manager. The Procurement System and Policies shall be communicated and circulated in such forms as to provide transparency to vendors and the public. The City Manager shall develop and implement a Procurement System and Policies consistent with the Charter and these Ordinances to meet the following objectives:

- A. To procure materials, supplies, equipment and services other than professional, at the lowest cost consistent with the suitability of use standards of quality and service required;
- B. To establish clearly the roles and responsibilities for procurement functions within the municipal organization, including the designation of a position responsible for the day-to-day implementation of the procurement process in accord with the Charter;
- C. To exercise positive financial control over purchases;
- D. To provide an efficient means for procurement of materials, supplies, or equipment with avoids duplication and overstocking;
- E. To obtain professional services that meet the high standards for engineering, architectural, legal, and other professional services needed by the City;
- F. To support and take advantage of state, regional, cooperative and other procurement processes that leverage greater buying power and competitive pricing;
- G. To employ Competitive Bidding where practical and to adopt other Procurement Strategies that are fair, transparent and deliver good value for the City;
- H. To establish criteria and procedures for Emergency and Sole Source Purchases;
- I. To continue to identify evolving options for procurement particularly in areas of technology and other areas for which Competitive Bidding is generally impractical; and
- J. To comply with State and federal procurement requirements.

Section 1.501: DEFINITIONS

For purposes of this Article V, the following definitions shall apply.

“Competitive Bidding” shall mean that process by which materials supplies, equipment and other services are acquired through a formal process of bidding an award is made to the lowest qualified bidder.

“Emergency Purchases” shall mean the acquisition of goods or services that are required within a time frame that does not allow for Competitive Bidding or Competitive Procurement Strategies. These acquisitions typically occur in situations in which (1) a municipal operation would be seriously hampered or unavailable without such immediate purchase or (2) the health, welfare and/or safety of employees or the public are at risk. Emergency Purchases shall be further defined and will be managed by the Procurement System and Policies adopted by the City Manager.

“Procurement Strategies” are used when Competitive Bidding is not required and shall mean those processes, such as requests for proposals, solicitation of quotes, and the development of qualified contractor and vendor rosters, that include a competitive aspect to the acquisition of goods and services but by which price may not be the determining factor.

“Procurement System and Policies” shall mean a comprehensive framework for the acquisition of goods and services that includes Competitive Bidding, Procurement Strategies, the adoption of policies, the issuance of purchase orders, and the execution of contracts and other legal documents relative too procurement.

“Sole Source Purchases” shall mean goods or services that are (1) available only from a single source, supplier or vendor such as replacement of proprietary parts or (2) are operationally required for consistency of equipment and technology (often for training, maintenance and security purposes). Sole Source Purchases shall be further defined and will be managed by the Procurement System and Policies adopted by the City Manager.

Section 1.502: COMPETITIVE BIDDING PROCESS

Procurement by the City shall be Competitive Bidding where practical and not disadvantageous to the City. Competitive Bidding is deemed generally impractical for the following types of purchases:

- A. Goods or services valued at less than \$50,000 (limit adjusted annually by the Finance Department effective July 1 in accordance with the most recent available regionally adjusted Consumer Price Index (CPI) as published by the US Department of Labor, Bureau of Labor Statistics);
- B. Professional or other services involving special skills, training, experience, judgment, discernment or discretion;
- C. Goods or services that are required within a time frame that does not allow for Competitive Bidding such as in an emergency to protect public health or property;
- D. Goods or services available from a single source, supplier or vendor such as replacement of proprietary parts, or for consistency of equipment for purposes of training, safety and maintenance; and
- E. Technology acquisitions.

The Competitive Bidding process shall:

- A. Provide adequate notice to bidders pursuant to competitive process;

- B. Ensure that no bids shall be opened until the appointed time;
- C. Reserve the City's right to cancel any award at any time before final notification of the successful bidder without any liability against the City;
- D. Reserve the City's right to reject any or all bids, to waive technical deficiencies, and to accept any bid that may deem to be in the best interest of the City;
- E. If a bid is to be awarded, award the bid to the lowest, qualified bidder properly responding to the invitation to bid unless the City Manager petitions the City Council to make a different award based on the best interest of the City;
- F. Provide results of bid openings to the public within five (5) business days of opening.

Section 1.503: DISPOSTION OF REAL ESTATE

In the case of disposal of excess or surplus real estate owned by the City, the City shall, subject to City Council approvals, competitively bid or auction such real estate subject to such reserve, terms, conditions, easements and other rights as may be placed on the transfer of the property and accept the highest responsive bid unless deemed unsatisfactory and not in the best interest of the City.

In cases where the City owns a manufactured home with taxes owed on such property in the amount of \$50,000 or less, the Tax Collector shall make a recommendation to the City Manager as to the disposition of the manufactured home by sale or otherwise with the intent to recoup as much of the taxes owed as possible as well as such additional monies as may be negotiated. Upon the recommendation of the Tax Collector, the City Manager shall be authorized to transfer such property without any further authority from the City Council or recommendation of the Planning Board.

Property taken by tax lien may be deeded to the person from whom it was taken or their heirs or devisees for a sum equal to the full amount of taxes, interest and penalties due thereon in accordance with State law.

The Tax Collector shall have no obligation to take by tax deed any property with environmental contamination or other liabilities that outweigh the value of taxes likely to be recovered as well as for any reason contrary to the public interest and allowed by law

Nothing in this section is intended to limit the City Council's ability to release or grant interests in land through quitclaim deed, easement or other conveyance or to swap or convey all or part of any parcel as part of a public improvement.

Section 1.504: DISPOSITION OF SURPLUS PROPERTY

- A. Any real property shall be disposed of consistent with State Law.

B. Other property:

1. Property Valued at Less than \$1,000 Other Than Real Estate:

The City Manager shall have the authority to discard, donate or sell any municipal supplies, materials and equipment valued at less than \$1,000 and no longer required by the City.

2. Property Valued between \$1,000 to \$50,000:

The City Manager shall have the authority to dispose of property with a value less than \$50,000 through a competitive process, auction, or trade-in in a manner to optimize value to the City. This limit shall be adjusted annually by the Finance Department effective July 1st in accordance with the most recent available regionally adjusted Consumer Price Index (CPI) as published by the US Department of Labor, Bureau of Labor Statistics.

3. Property Valued at \$50,000 or more:

No municipal supplies, materials and equipment valued at \$50,000 shall be offered for sale or donation unless and until the City Council so orders. Any such sale authorized the City Council may be conducted by Competitive Bidding, public auction, of any other means authorized by the City Council.

ARTICLE VI: *(RESERVED FOR FUTURE USE)*

Not an Official Copy

ARTICLE VII: VALIDITY AND ADOPTION

Section I.701: VALIDITY

Separability: Should any section, clause, or provision of this Code be declared by the Court to be invalid, the same shall not affect the validity of the Code as a whole or any part thereof, other than the part so declared to be invalid.

Section I.702: ADOPTION

- A. Ordinances Repealed: All ordinances or parts of ordinances in conflict with this "Administrative Code" are hereby repealed.
- B. Short Title and Effective Date: This Code, entitled "The Administrative Code" shall become effective upon its passage by the City Council.

ARTICLE VIII: CODE OF ETHICS

Section 1.801: DEFINITIONS

PRELIMINARY

The citizens of Portsmouth are entitled to a fair, ethical, and accountable City government. The effective functioning of democratic government requires that all of its officials, whether elected or appointed, comply with both the letter and the spirit of the laws and be independent, impartial, and fair in their judgement and actions. Public Office is to be used for the public good, not for personal gains. Public deliberations and processes must be conducted in an atmosphere of respect and civility and openly, unless legally confidential. To this end, the City Council adopts this Code of Ethics for all of its officers and officials, whether elected or appointed.

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.

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.

2. 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.
- I. Quasi-Judicial: Those City employees or officers who are required by state or municipal law to act in a neutral and impartial manner in making judicial-type decisions in the performance of any particular function, while performing that function.
- J. Family: Any group of people closely related by blood, marriage or choice, as parents, children, and members of one's household.
- K. Direct Personal Interest: An interest in real estate created by the City employee or official or their family member being an owner or abutter of real estate being considered by a public body, or likewise, an interest in a business for which any action in their official capacity could result in personal or familial financial gain or loss.
- L. Direct Pecuniary Interest: A gain or loss in the form of money, property, or any other item of measurable value provided to or taken from a person.

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 on 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. Reference is made to the separate and distinct disclosure obligations of municipal officials under Chapter 1, Article IX, Section 1.901 and election candidates under

Article IX, Section 1.902.

- 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 per calendar year, whether in the form of service, loan, thing or promise, travel and lodging, or any other form from any person, firm or corporation which to his/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. (See Section 1.901 of this ordinance.)
- 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.
- J. Actions in a Quasi-Judicial Capacity: City employee or official acting in a quasi-judicial capacity must abide by all provisions of state law with regard to conflict of interest and ethics. This shall include:
 - a. Compliance with all statutes and governing case law.
 - b. Avoiding any involvement in an application when a family member is participating in any way in connection with the application presented to the City employee or official, inclusive of when that family member speaks at public comment or in a public hearing.
 - c. Officials acting in a quasi-judicial capacity shall not speak publicly as members of the public at hearings on matters or issues that are pending before any public body of which they are a member, except when the official has a direct personal interest as defined herein.
 - d. City employees or officials acting in a quasi-judicial capacity shall not participate as a party to any litigation which involves a person, property, or issue which might reasonably come before that employee or official when acting in a quasi-judicial capacity, except when the City employee or official has a direct personal interest as defined

herein.

- e. A City employee or official acting in a quasi-judicial capacity shall not vote or participate in the discussion of any matter which would place the official in contravention of any Code of Ethics' provision contained in this ordinance.

Section 1.803: CONSEQUENCES OF VIOLATION

Any violation of any provisions of this ordinance shall constitute cause for public censure, 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 Members 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, with approval from the Board of Ethics, to assist with the investigation and prosecution of any Complaint which has been referred for investigation. The EIO, with approval from the Board of Ethics, 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 agreement with the Mayor and with the approval of the Board of Ethics.

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 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 completed 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 is 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 of the date of referral 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.
- E. If the employee is a member of a bargaining unit covered by the terms of a collective bargaining agreement, the investigation will comply with those provisions of the applicable collective bargaining agreement; this may include, but is not limited to the employee having Union representation at any investigative interview that may lead to discipline.

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.

ARTICLE IX: CONFLICT OF INTEREST/MANDATORY FINANCIAL DISCLOSURE

Section 1.901: MUNICIPAL OFFICIALS DISCLOSURES (Amended 12/22/14; amended 04/16/18)

A. Preliminary: This ordinance is adopted by the City of Portsmouth in compliance with the mandate contained in the Charter Amendment entitled "CONFLICT OF INTEREST" which was adopted by referendum vote of the City of Portsmouth on November 3, 1987 as amended pursuant to referendum vote of the City of Portsmouth on November 7, 2017. This ordinance may be referred to as the Mandatory Disclosure Ordinance.

B. Definition: For purposes of this Article only, the following terms shall be defined in the following manner:

Municipal Official: For the purpose of mandatory financial disclosure, the term "Municipal Official" in this provision shall include members of the City Council, School Board, Police Commission, Fire Commission, Planning Board, Zoning Board of Adjustment and Historic District Commission, including City employees appointed to the Land Use Boards.

Income: The term "income" shall be defined as a gain of recurrent benefit usually measured in money that derives from capital, labor, or investment.

Capital Assets: The term "capital assets" shall be defined to include interests and investments in Portsmouth-based businesses, businesses owned by Portsmouth residents and businesses which transact business with the City of Portsmouth. The term "capital assets" shall also be defined to include all real estate holdings and interests in real estate located in the City of Portsmouth.

Financial Disclosure Statement: The term "financial disclosure statement" shall mean a written statement, given under oath:

- 1) Listing an individual's primary source of annual income and capital assets. However, in no instance shall disclosure be mandated of any capital asset whose value at the time of disclosure is below Ten Thousand (\$10,000) dollars nor shall the value of any source of income or the value of any capital asset be required for disclosure.
- 2) Listing any sources of income, whether or not connected with the City of Portsmouth which individually produce income in an amount greater than \$10,000 calculated annually on a per calendar year basis.
- 3) Listing affiliations with local organizations in which a person is serving in a fiduciary capacity, such as a trustee, director, or other officer.

- C. Obligation of All Municipal Officials: All municipal officials will maintain an updated financial disclosure statement in the Office of the City Clerk. The Financial Disclosure Statement shall be updated annually as of June 30th. Forms shall be based on the form used by the State to implement RSA 15-A (attached) prepared by the City Clerk for approval by the City Council and made available to all municipal officials for this purpose.
- D. Determining Violations: For violation and enforcement purposes, complaints alleging violation of the mandatory disclosure ordinances shall be administered in accordance with the process under the Municipal Code of Ethics, Reference Chapter I, Article VIII.
- E. Public Records: Financial Disclosure Statements shall be public records.
- F. Return of Records: Financial Disclosure Statements shall be returned to the public official six (6) months after leaving office.
- G. Penalties: Any violation of this article shall be subject to the penalties prescribed for violation of the City Code of Ethics, Sec. 1.801 et seq.

Section 1.902: ELECTION CANDIDATE FINANCIAL DISCLOSURE (Adopted Section 1.902 in its Entirety 6/4/2007; amended 07/10/2017; amended 04/16/2018 pursuant to referendum vote of the City of Portsmouth on November 7, 2017; amended December 4, 2023)

- A. Required Disclosure: Each candidate for City Council, School Board, Police or Fire Commissions, and every Political Action Committee shall report contributions and election related expenditures.
- B. Political Action Committee: The term “Political Action Committee” (PAC) is any person or group of people raising and spending money to elect or defeat candidates for City Council, School Board, Police and Fire Commissions or pass or defeat Charter Amendments, Ballot Questions or Referenda.
- C. The report of expenditures shall specify the cumulative total, and need not be itemized, and shall be required only if the candidate’s or Political Action Committee’s for expenditures since the last municipal election equal or exceed a cumulative total of \$100.00.
- D. The report of monetary contributions to the candidate or Political Action Committee shall identify each contribution of \$50.00 or more and the candidates will disclose the number of donations under \$50.00 and the total sum thereof since the last municipal election by name, address, amount and date of contribution(s). All such contributions in excess of \$50.00 shall be reported, whether the contribution is made in money, materials, or services. Contributions from sources unknown to the candidate shall be reported as such.
- E. The reports must be filed, or updated as appropriate, with the Office of the City Clerk seven (7) days prior to any election at which the candidate, slate of candidates or Charter Amendment, Ballot Question or Referendum appears.

- F. Any contribution received within the seven (7) days prior to the election must be submitted in a final report to the Office of the City Clerk no later than two (2) weeks following the election.

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- G. All campaign signs, literature, and other advertising will state the candidate or PAC that paid for it, along with the Fiscal Agent and their address or an Internet address, if the Internet address is printed or written in a size of type or lettering large enough to be clearly legible and the website immediately and prominently displays all of the information required by this section through election day.
- H. Violations: For violation and enforcement purposes, complaints alleging violation of the mandatory disclosure ordinance shall be administered in accordance with the process and penalties available under the Municipal Code of Ethics, Reference Chapter 1, Article VIII. In addition to any penalties available under the Code of Ethics, any violations of the mandatory disclosure ordinance may be reported by the Board of Ethics to the Office of the New Hampshire Attorney General.
- I. The City Clerk shall prepare forms which shall be utilized by all persons and Political Action Committees subject to these disclosures.
- J. Public Records: All election financial disclosures shall be public records and that names, towns and amounts of donors shall be published on the City website.

ARTICLE X: CITY COMMUNICATIONS SYSTEM

The City hereby approves the establishment of a consolidated City communications system; the purpose of which is to provide the most efficient and highest quality communications possible to serve the emergency, fire, and police needs of the City of Portsmouth. All emergency communications systems shall, in accordance with this ordinance, be located in the new Police Communications Facility, which shall be located at One Junkins Avenue in the Municipal Complex upon completion of construction.

Section 1.1001: OPERATION AND MANAGEMENT OF CONSOLIDATED CITY SERVICES COMMUNICATIONS SYSTEMS

- A. All policies, procedures, rules and regulations governing the City's emergency communications systems shall be developed and promulgated by the Portsmouth Police Chief, together with the Portsmouth Fire Chief, who shall have co-equal status with the Portsmouth Police Chief regarding the aforementioned policies and procedures.
- B. Dispatch personnel shall be comprised of Portsmouth Police Department employees, job descriptions for such personnel shall be developed by the Police Chief and by the Fire Chief. The hiring of dispatch personnel shall be conducted in accordance with normal hiring policies for the Portsmouth Police Department; however, the Fire Chief shall play an integral role in the hiring process for such dispatch personnel. The Police Chief and Fire Chief will develop a training curriculum for dispatchers, and all dispatchers will receive training before a consolidated City communication system is put into operation.
- C. The Fire Chief shall develop policies for fire and ambulance dispatching, including contractor ambulance services. Dispatchers will be cross-trained in fire and police functions, and specific questions that must be asked by a dispatcher will be developed by the Police Chief and Fire Chief for their respective services. Two dispatchers will be on duty 24-hours per day. Each dispatcher will have a primary function assignment on each watch, either police function or fire function; however, each dispatcher shall have the ability to provide support services for the other, unless two simultaneous emergencies occur. In the event of simultaneous emergencies, the police personnel shall provide the necessary backup until the emergency is completely disposed.
- D. A part-time dispatcher list will be established to provide trained personnel when City personnel cannot fill a vacancy.
- E. The emergency communications project will be submitted to the City Council through the Portsmouth Police Commission and will be part of the Portsmouth Police Department's budget.

Section 1.1002: COORDINATION OF RELATED COMMUNICATIONS SYSTEMS

- A. The Director of Public Works shall be responsible for the regular workday dispatching function for Public Works activities, and will continue to maintain a base station and separate frequency to handle this activity.

All Public Works emergency dispatching (nights, weekends, holidays) will be coordinated by the Fire Chief, unless the emergency is of such a nature that the Director of Public Works assigns a Public Works dispatcher to handle dispatching from the Public Works base during the course of the emergency response, i.e., snowstorm, flood, etc. In the event that a Public Works dispatcher is assigned to handle this dispatching function, then the Director of Public Works shall maintain responsibility of such dispatching.

- B. The Director of Emergency Management Services, in conjunction with the Fire Chief, the Police Chief and the Director of Public Works, shall develop policies to assure coordinated responses and communications during any unusual occurrences that entail the use of the City's emergency management ordinance.

(Adopted 1/15/90) (Effective 7/01/91)

ARTICLE XI: BUDGET PREPARATION DATE

Section 1.1101:

Pursuant to Section 7.9 of the Charter of the City of Portsmouth, each officer or director of every municipal department, including the Charter departments, shall submit an itemized estimate of the expenditures for the next fiscal year for the department or activities under that individual's control to the City Manager no later than March 15 of each year.

(Adopted in its entirety 9/17/90)

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ARTICLE XII: PROHIBITED PRACTICES IN PUBLIC BUILDINGS

Section 1.1201:

A. FIREARMS PROHIBITED IN PUBLIC BUILDINGS

It shall be unlawful for any person to have a firearm in his or her possession at any time while within any public building.

B. EXCEPTIONS

1. The prohibitions established in Section 1.1201.A, shall not apply to bona fide federal, state or local law enforcement officials.
2. The Chief of Police is authorized to grant advance written permission to allow any individual or organization demonstrating good reason to possess a firearm within a public building with permission to do so under such terms and conditions as the Chief may establish.

C. PENALTY

The penalty for violation of this provision shall be \$500 per occurrence.

(Article XII adopted in its entirety, as amended, 2/4/91)

ARTICLE XIII: MUNICIPAL ENFORCEMENT PROCEDURES

Section 1.1301: CITATION AUTHORITY

- A. City departments or officials charged with the responsibility for enforcing the ordinances and codes of the City are hereby authorized to issue citations for any violation of the ordinances or codes that they are responsible for enforcing. The enforcement authority provided hereby is in addition to the authority for ordinance and code enforcement that currently exists.

Section 1.1302: DEPARTMENTS AUTHORIZED

- A. The heads of the Fire and Planning, Inspections and Department of Public Works and/or employees designated by the heads of those departments are hereby authorized to issue such citations.
- B. All proposed citations are to be reviewed with the Office of the City Attorney prior to issuance.

Section 1.1303: ORDINANCE VIOLATIONS FUNCTION ESTABLISHED

- A. An Ordinance violations function is hereby established for the purpose of processing citations issued by the department authorized to issue such citations. This function shall administratively be part of the Tax Collector's Office, and shall, in conjunction with the departments involved, be responsible for preparing citation forms, distributing these forms to the departments as needed and collecting, accounting for and depositing all monies received from citation penalties (including currently existing parking citation penalties) according to procedures established by the Finance Director. Additionally, this function shall be responsible for initiating the appropriate judicial proceedings with regard to citations that are not paid. It is the intent of this Section that parking violation citations become a part of Ordinance Violation Citations.

Section 1.1304: CITATION DEFINED: CONTENTS

- A. A citation is a written and/or printed notice describing a specific violation of a City ordinance or code which is served on the person responsible for the violation. Each day on which a violation exists or occurs is a separate offense and a citation may be issued for each offense. A citation shall be served in the manner described in this article and shall contain the following information.
 - 1. A clear and concise description of the violation.
 - 2. The location of the violation and the date and time on which it was observed.
 - 3. The name and address of the person responsible for the violation.
 - 4. The penalty for the violation as provided for by this article.
 - 5. A statement or table describing the penalties for future occurrences of the same violation.

6. A statement as to whether the citation is being issued for a first, second or subsequent offense.
7. The name and address of the office to which payment of the penalty may be made.
8. The time period during which a reduced penalty may be paid in full satisfaction of the citation.
9. Notification that failure to pay the penalty will result in court action.
10. The signature and printed name and department of the individual issuing the citation.

Section 1.1305: SERVICE OF CITATION

- A. Any citation shall be served by the official issuing it in any one of the following ways.
 1. In hand to the person responsible for the violation.
 2. At the abode of the person responsible for the violation.
 3. By certified or registered mail, return receipt requested, to the last known address of the person responsible for the violation.
 4. In any other manner permitted by the laws of the State of New Hampshire.
- B. The official serving the citation shall maintain a record of the date, time and manner of service of the citation including the Post Office receipt and return receipt if service was accomplished by registered or certified mail.

Section 1.1306: CITATION PENALTIES

- A. Except for parking violations, the penalties for any offense for which a citation has been issued shall be as follows:

First offense	\$ 25.00 if paid within 7 days \$ 50.00 thereafter
Second offense	\$ 50.00 if paid within 7 days \$100.00 thereafter
Subsequent offense	\$100.00 if paid within 7 days \$200.00 thereafter

Penalties for parking violations shall be as established by the appropriate ordinance.

Section 1.1307: GENERAL PENALTY: CONTINUING VIOLATIONS

- A. Unless otherwise specifically provided, any person who commits an act prohibited or made unlawful by this code or any other code or ordinance of the City or who fails to perform any act required by any such codes or ordinances shall be guilty of a violation and shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00) for each offense. Each day any violation of any provision of any code or ordinance shall exist or continue shall constitute a separate offense.

Section 1.1308: PENALTY FOR FAILURE TO PAY CITATION: SEPARATE OFFENSE

- A. Whenever any person fails to pay any penalty imposed pursuant to a citation issued under the authority granted by this code, such person shall be guilty of a violation and shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00) for each offense. Each citation penalty, which is not paid, shall constitute a separate offense.

(Article XIII adopted in its entirety, as amended, 5/4/92)

ARTICLE XIV: MUNICIPAL FUND BALANCE

Section 1.1401: MANDATED FUND BALANCE

The General Fund Balance of the City, at the end of any fiscal year as recorded in accordance with generally accepted accounting principles (GAAP) and excluding any and all reserves, and any dedicated fund balances of the General Fund (otherwise referred to as Unassigned Fund Balance of the General Fund) shall be maintained at the prescribed amount of not less than 10% of the actual Total General Fund appropriations for that fiscal year.

Section 1.1402: OPERATIONAL OBJECTIVE

Notwithstanding the provision of 1.1401, it is recognized that the financial management goal of the City of Portsmouth is to annually maintain an Unassigned Fund Balance of between 10% and 17% of total general fund appropriations.

Section 1.1403: USE OF UNASSIGNED FUND BALANCE

In any subsequent fiscal year, the City Council may utilize the excess of actual Unassigned Fund Balance of the General Fund (as determined by the annual financial audit of the City) over the prescribed level in Section 1.1401 from the prior fiscal year for capital projects, transfers to capital reserve, or any other appropriation nonrecurring in nature.

Section 1.1404: EMERGENCY APPROPRIATIONS

At any time, in any budget year, the City Council may, after notice and public hearing, make emergency appropriations from Fund Balance to meet an essential need for public expenditure. Such appropriations shall be adopted by written resolution, after notice and public hearing by a favorable vote of a majority of the members of the City Council. If such appropriation reduces the Unassigned Fund Balance to a level below that prescribed by 1.1401 of this ordinance, the resolution authorizing such appropriation shall include a plan to restore the funds within a period not to exceed two (2) years to the prescribed level. The City Council may, by a two-thirds (2/3) majority vote appropriate from the Unassigned Fund Balance for non-emergency appropriations by following the foregoing procedure, provided that such appropriation does not reduce the Unassigned Fund Balance below the minimum balance required by 1.1401 of this ordinance.

Section 1.1405: RESTORATION PLAN

Whenever the Unassigned Fund Balance of the General Fund is less than the prescribed level, the City Council shall be required, within the fiscal year, to formulate and implement a plan to restore such prescribed amount to the General Fund, such plan shall not exceed a two (2) year period.

(Article XIV - Adopted in its entirety 8/18/97; Amended 04-02-2012 replaced "Undesignated" with "Unassigned"; further amended 02-19-2013)

ARTICLE XV: LEAVE AT TERMINATION FUND

Section 1.1501:

The City of Portsmouth shall establish a special revenue fund from which payments for leave at termination shall be paid.

Section 1.1502:

The Leave at Termination Fund shall be created from leave at termination budgetary appropriations, which shall be made by the Municipal, Police, Fire and School Departments. The appropriation amount shall be determined by an actuarial study. The departments shall budget the required amount as determined in accordance with that study.

Section 1.1503:

The actuarial study shall be reviewed every three years.

Section 1.1504:

Each department, except for the School Department, shall transfer the entire appropriated amount from its termination line item to the special revenue fund on July 1, of each fiscal year starting with FY1999. The School Department shall contribute to the special revenue fund in FY2000.

Section 1.1505:

Each department shall maintain its own balance within the fund, from which payments for leave at termination shall be paid. In the event that any department incurs leave at termination liability in excess of its balance in the special revenue fund, that department shall borrow from the reserve for termination liability account. The debt created thereby shall be paid back through annual appropriation transfers.

(Article XV adopted in its entirety 8/3/98)

ARTICLE XVI: ADOPTION OF FEES

Section 1.1601: PROCEDURE

Municipal fees, whether not otherwise established by other ordinance or law shall be adopted by the City Council by resolution during the annual budget adoption process or at such other times as the City Council may determine to be in the best interest of the City.

Section 1.1602: EXCLUSION

Municipal fees do not include penalties, charges or costs negotiated or imposed pursuant to an administrative order, compliance agreement, or other resolution pertaining to an enforcement activity.

Section 1.1603: AUTHORITY TO CHARGE FOR PROGRAMMING

Department heads responsible for programming activities such as classes, trainings, and special events may, without the approval of the City Council, but subject to the City Manager's review and oversight, charge for participation in programmed activities.

Section 1.1604: DEFAULT

Any municipal fee which is not listed in the fee resolution adopted during the annual budget process, or any municipal fee which is determined to require a process other than adoption by annual budget resolution, shall remain at the level at which it was last validly adopted by the City.

ARTICLE XVII: FUNDING, REVIEW, AND ACQUISITION OF PUBLIC ART

Section 1.1700: STATEMENT OF PURPOSE

It is hereby declared that it shall be the public policy of the City of Portsmouth to assist and encourage the participation of its citizens and visitors in the enjoyment of the many benefits which flow from the arts. The City of Portsmouth is committed to acquiring public art by donation, acquisition and commission. Among other activities to this end, the City will allocate a portion of the expense of public building construction and significant building renovation projects to be spent on works of art which shall be available for the benefit of all without additional cost to those persons. Such works of art which shall be called public art as defined in more detail herein.

Section 1.1701: DEFINITION OF PUBLIC ART

“Public Art” or “Public artworks” are meant to be enduring original artworks of the highest quality and craftsmanship. The artworks should be an integral part of the landscaping and/or architecture of a building or other site, considering the historical, geographical and social/cultural context of the site and constructed on a scale that is proportional to the scale of the development. “artwork” – includes but is not limited to, painting, murals, inscriptions, stained glass, fiber work, statues, reliefs or other sculpture, monuments, fountains, arches, or other structures intended for ornament or commemoration. Also included in this definition are installations that are technological in nature, carvings, frescoes, mosaics, mobiles, photographs, drawings, collages, prints, crafts – both decorative and utilitarian in clay, fiber, wood, metal, glass, plastics and other materials. Landscape items include the artistic placement of natural materials and other functional art objects. Works of art may be temporary, portable, or permanent in nature.

This definition shall not include:

Objects that are mass-produced from a standard design or reproductions of original art works; decorative, ornamental or functional elements, which are designed by the building architect; landscape architecture and landscape gardening except where these elements are an integral part of the artwork by the artist; directional elements such as super graphics, signage, or color coding except where these elements are integral parts of the original work of art; logos or corporate identity.

Section 1.1702: PUBLIC ART COMMITMENT

One (1%) percent of the bid price or negotiated contract price for the construction of capital construction appropriations for any public construction project, excluding roadways and utility infrastructure, but not excluding facilities such as pump stations and treatment facilities, in which the bid price or negotiated price shall be in excess of Five Million (\$5,000,000.00) Dollars up to Thirty Million (\$30,000,000.00) Dollars (expressed in terms of actual construction costs exclusive of design and engineering fees), shall be contributed to the Public Art Trust for the purpose of funding public art. Thereafter, such funds shall be expended in accordance with the terms of this ordinance and the Public Art Trust.

Section 1.1703: PUBLIC ART TRUST

There shall be created a Public Art Trust to serve as a repository of all public art financial contributions generated by application of this ordinance or made by private persons or entities. Such Trust shall be administered for the purpose of implementation of this ordinance. The term of the Trust shall be expended in accordance with the terms of this ordinance and the Public Art Trust.

Section 1.1704: EXEMPTION

By a two-thirds (2/3) vote, the City Council may exempt a municipal building from the Public Art Commitments described in Section 1.1701 if the purpose of this ordinance would not be fulfilled due to the building's inaccessibility to the public, location, use or other factors. In those cases, the public art associated with the project should be placed on other publicly owned property within the city, at the determination of the Council. Any Council determination to exempt a building under this provision shall be made no later than the final vote of the Council authorizing the funding for the project.

Section 1.1705: PUBLIC ART REVIEW COMMITTEE

The City Council hereby establishes a Public Art Review Committee (PARC) for the implementation and review of this ordinance, and all matters related to public art within Portsmouth. Whenever from any source an issue relating to Public Art should be brought to the attention of the City Council, that matter will be referred to the standing committee.

- A. Membership and Term: The Public Art Review Committee (PARC) will consist of between seven and eleven members. Members shall include one member of city staff in a non-voting capacity to be designated by the City Manager, a City Councilor in a non-voting capacity, and the rest shall be community members. Members shall have demonstrated experience in the fine arts, architecture, art criticism, engineering or structural analysis, art history, graphic arts, interior design, landscape architecture, town planning, or other art and design-related fields, or who have demonstrated a strong interest in the visual arts and civic improvement. Other than the City Manager's appointment, the members shall be appointed by the Mayor, with approval from the Council, to staggered terms varying from two to three years.

The PARC shall be chaired by a members of the local arts community and shall interview or make recommendations to the PARC openings to the Mayor, as they may determine necessary. The term of the chairperson shall be for one year, with eligibility for reelection for two additional terms.

- B. Powers and Duties: The PARC shall have the following responsibilities:

1. To foster development and awareness of public art within the City of Portsmouth, and advise the City Manager, City Council, and Land Use Boards with respect to matters relating to the development of public art awareness within the City of Portsmouth.
2. To accept referrals from the City Council or any other public body concerning public art and art issues generally

3. To provide input on masterplans, zoning ordinances, strategic planning documents as they relate to public art and art issues generally.
 4. To collaborate with the City on the acquisition, maintenance and marketing of its public art and develop a stewardship policy
 5. Establish Guidelines for review of public art based on the Public Art Acquisition Policy. The guidelines shall be based on the following criteria¹:
 - The quality of the artwork; and
 - Appropriateness of the size, scale and materials for the site(s); and
 - Availability of an appropriate site; and
 - Costs of installation and maintenance of artwork; and
 - Condition and durability of the artwork; and
 - Aesthetic merit; and
 - Inclusion of a mandatory maintenance plan (including materials used and proper care for such materials)
 6. Initiate public forums where appropriate for determining thematic approaches and location options for public art
 7. Determine recruitment strategies to attract qualified artists for public art projects
 8. To review applications for public art following the Public Art Acquisition Policy, select final proposals, and advise the city on issues related to Percent for Art
 9. Review all applications for sponsored works of public art following the same guidelines as those for the Percent for Art program
 10. Advise and oversee public art programs established by the City of Portsmouth in accordance with any policies and guidelines either established by the City or established by the Public Art Review Committee at the request of the City Council
 11. To recommend to the City Council, as requested, replacement members to the PARC when they arise
 12. Identify and solicit funds to supplement the public art budget
 13. Perform further duties related to public art within the City of Portsmouth that the City Manager may request
- C. Meeting Requirements: The PARC shall meet as necessary, but at least quarterly
- D. Reporting Responsibility: The Public Art Review Committee (PARC) shall include an annual report of their proceedings and programs to City Council. Details of the report include, but are not limited to:

- a. Assessing available and potential resources in the Public Art Trust
 - b. Assessing possible and/or proposed municipal capital projects and criteria that would benefit from the inclusion of an artist in their design
 - c. Assessing the impact of and opportunity for public art projects that advance economic development opportunities
- E. Revenue Development: The PARC may solicit or receive gifts, money or other to be applied to principal or interest into the Public Art Trust, for either temporary or permanent use for the acquisition, maintenance and/or installation of public art.

Section 1.1706: EXPENDITURE OF PUBLIC ART FUNDS

Expenditure of public arts funds shall be determined by the City Council. In authorizing such expenditures the Council shall apply the following protocol and criteria:

- A. At least 75% of the principal amount of the public art contribution generated by any particular building project shall be expended for public art on the site of the project, unless subject to the exemption in Section 1.1704, with remaining funds placed in the Public Art Trust for maintenance as described in 1.1708, or for other public art purposes. The remaining funds should be kept in the general Public Art Trust without designation for a particular project, to be disbursed at the direction of the City Council with advice from the PARC.
- B. In determining the selection of any public art project, the City Council will consider the recommendations of the Public Art Review Committee (PARC), or seek such other advisory recommendation as the City Council deems appropriate
- C. Upon the authorization by the City Council of a public arts project, the administrative and financial implementation of the authorization shall be performed by the administrative officials of the City
- D. The Trustees of Trust Funds shall disburse funds from the Public Art Trust in amounts and at times as shall be specified in one or more written requests from the City Manager acting pursuant to authorization of the City Council. Each request shall identify the amount(s) requested, the purpose of the expenditure, and the public art project or public art concerning which the expenditure pertains and be accompanied by a copy of the Council authorization

Section 1.1701: ACQUISITION OF PUBLIC ART THROUGH DONATION

In addition to acquisition of public art through expenditure of funds from the public art commitment and expenditure of other financial contributions from the public art trust, the PARC shall have the authority to recommend in favor or against acceptance of suitable donations of art to the City Council. These works of art will be accepted unconditionally and free of all obligations and encumbrances. The City reserves the right to relocate donated artwork from time to time; and to not display a donated piece of art

As pieces of public art are acquired, they will be entered into the City Art and Artifact Index maintained by Portsmouth Public Library staff. Changes of location, whether temporary or permanent will be recorded in the Art and Artifact Index.

Section 1.1708: MAINTENANCE AND REPAIR OF PUBLIC ART

Public art funds under the ordinance and the Public Art Trust to be created in conjunction herewith shall be available for repair and maintenance of public art, regardless of whether the public art work was initially funded by the Public Art Trust or otherwise. Maintenance needs for existing public art will be identified by the Public Works Department, with advice from the PARC, with cost estimates for the same. As per instructions in Section 1.1706D, the City Manager with approval of the City Council, will authorize expenditure of funds from the Public Art Trust.

All donated, acquired or commissioned works of *outdoor* art shall include a cash stewardship donation of approximately 10% of the cost of the artwork which will be added to the Public Art Trust for ongoing stewardship of public art. *Indoor* art may or may not require a stewardship donation, depending on the type of art. The PARC will determine if a stewardship donation is required for a given piece of indoor art, and if so, the amount of the donation. If the artwork is donated, the committee will determine the value of the artwork.

Works from the collection may be considered for removal if they are in poor condition, damaged or deteriorated beyond reasonable repair or conservation or for other good cause. Should the Public Art Review Committee determine that a work of art be de-accessioned due to maintenance or repair challenges, or for any other reason, the committee shall make that recommendation to the City Council for its consideration and action. The City Council retains the authority to remove a work of art after receiving a recommendation for deaccessioning from the PARC. If a piece is decommissioned, the date and reason for withdrawal will also be so recorded in the City Art and Artifact Index.

Section 1.1709: FUNDING ACCEPTED

This ordinance authorizes and the Public Art Trust shall provide for the acceptance by the City of donations, grants or contributions to public art which might be approved from time to time by the City Council.

This ordinance also authorizes the Council to accept donations with a designated purpose to commission works of public art to be placed on public property. The commissioning process shall follow the same procedures outlined in the ordinance for public art associated with capital expenditures by the City.

¹ The Trustees of the Portsmouth Public Library have their own policy for art acquisition. PARC will defer to the Trustees of the Library for art acquisition at the Library.

ARTICLE XVIII: PAYMENT BY CREDIT CARD

Section 1.1801: AUTHORITY GRANTED TO THE OFFICE OF CITY MANAGER

Pursuant to the authority granted to the City by RSA 80:52-c the City Manager is hereby authorized to direct appropriate municipal officials to accept payment of local taxes, charges generated by the sale of utility services, or such other fees as the City Manager may determine by use of a credit card.

Section 1.1802: SCOPE OF AUTHORITY

Authority granted to the City Manager pursuant to this ordinance includes but is not limited to the following:

- A. To determine the types of payments that may be accepted by credit card.
- B. To determine the maximum or minimum amount of any individual credit card transaction which shall be allowable for any particular payment.
- C. Whether service charges shall be charged and the amount thereof.
- D. To negotiate and execute processing agreements with third party credit card processors governing the collection of credit card payments, including any terms relating to the applicability of processing fees, the amount of such fees, and the terms and remittance of funds to the City.
- E. To execute such other agreements and take any further actions necessary to implement and modify credit card payments in accordance with the terms of this ordinance and RSA 80:52-c.

(Adopted 07/21/2008)