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CITY COUNCIL WORKSHOP

Ethics Commission

March 11, 2024 at 5:00 PM in Council Chambers

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall.

To watch the meeting remotely, please visit <https://portlandme.portal.civicclerk.com/event/7148/media>.

AGENDA ITEMS:

Discussion: Development of an Ethics Commission Ordinance (Attorneys Jim Katsiaficas and Brandon Mazer, Perkins Thompson)

ADJOURNMENT:

ARTICLE IX ETHICS COMMISSION

Section 1. Chapter 2, Article III, Sec. 2-33 is amended to read:

Sec. 2-33. Applicability.

(a) The above limitation on terms shall apply to the following boards and commissions:

- (1) Board of appeals;
- (2) Board of assessment review;
- (3) Reserved;
- (4) Cable television committee (CATV);
- (5) Civil service commission employment subcommittee;
- (6) Civil service commission police citizen review subcommittee;
- (7) Community development block grant allocation committee;
- (8) Friends of the park;
- (9) Historic preservation committee;
- (10) Land bank commission;
- (11) Planning board;
- (12) Portland public art committee; and
- (13) Ethics Commission.

Section 2. Article IX is amended by the addition of Chapter 2, Sec. 2-430 to read:

Sec. 2-430. Ethics Commission.

a. *Purpose.* The Ethics Commission shall provide impartial oversight and render decisions and advisory opinions to ensure that standards of ethical conduct are observed by ~~elected and appointed~~ City and ~~School Board and~~ School Department elected and appointed officials and ~~City and School Department~~ employees. The Ethics Commission shall be an independent body, free from interference from any City and School Department elected and appointed officials and employees. The Ethics Commission may request funding from the city council for independent investigations, legal services, staffing, or other demands pertinent to its mission.

b. *Composition.* There shall be an Ethics Commission composed of seven (7) members. All members shall be appointed to fill at-large seats, and may reside in any part of the City.

c. *Appointment; Terms.* For the initial members of the Ethics Commission, two members shall be appointed by the City Council for a term of one (1) year, two members shall be appointed for a term of two (2) years, and three members shall be appointed for a term of three (3) years. Thereafter, the City Council shall appoint members for terms of three (3) years. Such members shall serve until their successors are duly appointed and qualified.

d. *Qualifications.* Members of the Ethics Commission shall be legal residents of the City, having resided in the city for a period of at least three (3) months prior to the members appointment. Elected City officials, elected ~~S~~school ~~D~~department officials, candidates for any City or School Department elected office, City employees, school department employees, and their immediate family members are not eligible to be appointed as members of the Ethics Commission.

e. *Vacancies.* Permanent vacancies on the Ethics Commission shall be filled by the City Council in the same manner as other appointments hereunder for the unexpired term of the former member.

f. *Removal of Members.* Any member of the Ethics Commission may be removed for cause by the City Council at any time; provided, however, that before any such removal, such member shall be given an opportunity to be heard in ~~his or her~~their own defense at a public hearing.

g. *Compensation.* Members of the Ethics Commission shall serve without compensation.

h. *Meeting frequency; chair; secretary; minutes, public records.* The Ethics Commission shall meet as needed, but no less than annually. The members of the Ethics Commission shall annually elect one (1) of their members as chair to preside at all meeting and hearings and to fulfill the customary functions of that office. The members of the Ethics Commission also shall annually elect one (1) of their members as secretary to keep the minutes of the proceedings of the Ethics Commission, showing the vote of each member on every question, or ~~his or her~~their absence or failure to vote, and to file the same with the City Clerk, who shall maintain the permanent records and decisions of all board meetings, hearings and proceedings, and all correspondence of the Ethics Commission, as required by statute, and to fulfill the customary functions of that office. Except as otherwise provided by State law, such records shall be public records open to inspection during working hours upon reasonable notice.

i. *Quorum and Necessary Vote.* No business shall be transacted by the Ethics Commission without a quorum, consisting of four (4) members being present. The Ethics Commission shall act by a majority of members present and voting.

j. *Conflicts.* No member of the Ethics Commission shall participate in the hearing or disposition of any matter in which ~~he or she~~the member has an interest. Any question of whether a member has a conflict of interest sufficient for a member to be recused shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be recused from the matter.

k. *Duties.* In addition to the jurisdiction conferred on it by other sections of this Article and in accordance therewith, the Ethics Commission shall undertake the following duties:

1. Prepare and recommend a Code of Ethics ordinance to the City Council for enactment. The City Council shall, with the recommendation of the Ethics Commission, enact and maintain a Code of Ethics ordinance defining the

- code of ethical conduct for ~~elected and appointed~~ City and ~~School Board and School~~ Department elected and appointed officials and ~~City and School department~~ employees as required by the City Charter.
2. Review the Ethics Commission and Code of Ethics ordinances not less than once every three (3) years and make recommendations for any amendments to the City Council;
 3. Hear complaints and render written decisions with findings of fact regarding alleged violations of the City's Code of Ethics ordinance, except that complaints regarding City or school department employees' ongoing or prior alleged violations or misconduct ~~and complaints by employees~~ shall be referred without Commission investigation or action to the City Manager or Superintendent, as applicable, for appropriate action under the City's or School Department's personnel policies and/or collective bargaining agreements;
 4. Hear and render advisory opinions regarding questions of prospective application of the City's Code of Ethics ordinance;
 5. Hear and render advisory opinions regarding questions of compliance with the City Charter as it relates to the City's Code of Ethics ordinance;
 6. Hear and render advisory opinions regarding adherence to City Council, ~~and~~ City board and commission, and School Board rules and procedures;
 7. On receipt of a request from a majority of the City Council, ~~or of~~ any City board or ~~committee~~ commission, or the School Board procure a second legal opinion from outside legal counsel; and
 8. Design and oversee evaluation of programs regarding compliance with the Code of Ethics Ordinance and make recommendations to the City Council and School Board regarding such programs.

1. *Appointment of Accountability Officer.* The Ethics Commission may recommend that the City Council appoint an Accountability Officer and fund that position pursuant to Article VIII, Section 1-A(c) of the City Charter. The Accountability Officer shall report directly to the City Manager.

m. *Meetings, Hearings, and Procedures.*

1. Regular meetings of the Ethics Commission shall be held at the call of the chair or as provided by the rules of the Ethics Commission. Special meetings of the Ethics Commission shall be called by the chair, at the request of any three members of the Commission, or at the request of the City Council. Except as otherwise provided by State and federal law, all meetings and hearings of the ~~Board-Commission~~ shall be open to the public.
2. The Ethics Commission shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the State of Maine and this Section. Such rules shall be subject to City Council approval and then filed with the secretary and with the City Clerk. Any rule so adopted which relates to the conduct of hearings, and which is not required by federal or state law or by this Section may be waived by the ~~Board-Commission~~ upon good cause being shown.
3. Conflicts. No member of the Ethics Commission shall participate in the hearing or disposition of any matter in which they have an interest, as defined by 30-A M.R.S. §2605, as amended, common law, the Code of Ethics, ~~and or~~ the Charter.

n. *Complaints; Requests; Filing with City Clerk; Public Hearings; Decision.*

1. Filing with City Clerk. Complaints alleging violations of the Code of Ethics ordinance and requests for advisory opinions, permitted by this Section, shall be filed with the City Clerk pursuant to Subsection 1 and Subsection 2 below. Corporation Counsel's office shall

review all Complaints and requests for advisory opinions and reviewed by Corporation Counsel's office to determine the level of confidentiality needed pursuant to Subsection 68 below. The City Clerk shall then alert the chair of the Ethics Commission of the filing and shall acknowledge in writing to the complainant or requester the Ethics Commission's receipt of a complaint or request for advisory opinion. Further, the City Clerk, in consultation with Corporation Counsel, shall forward all complaints about City or school department employees directly to the City Manager or other authorized individual as stipulated under the City's personnel policies and/or collective bargaining agreements.

1-2. Complaints. Complaints under (k)(3) above alleging violation of the City's Code of Ethics Ordinance may be filed by any official, employee, or resident of the city, by the Accountability Officer, or may be initiated by a majority of the membership of the Ethics Commission, in accordance with the process set out herein, provided that complaints regarding City or school department employees' ongoing or prior alleged violations or misconduct ~~and complaints by employees about other employees~~ shall be referred without Commission investigation or action to the City or school department for appropriate action under its personnel policies and/or collective bargaining agreements.

3. Advisory Opinion Requests. Requests for advisory opinions under (k)(4), (5), or (6) above may only be made by an official or employee of the City or school department and must be made in accordance with the process set out herein. The requester seeking an advisory opinion under (k)(4), (5), or (6) shall first submit a general written statement to the City Clerk ~~Corporation Counsel~~ describing the nature of the matter. The City Clerk shall then forward the general written statement to— Corporation Counsel who shall (1) render an initial opinion and provide it to the requester, or (2) if Corporation Counsel determines that the opinion requested is of such a novel and

unique question of fact or law as to need an advisory opinion from the Ethics Commission, refer the matter to the Ethics Commission, which shall review the matter at its next available public hearing and render an advisory opinion thereafter. If Corporation Counsel renders an initial opinion, and, after reviewing that opinion, the requester would like the Ethics Commission to also consider the matter, the requester shall submit its written statement and a copy of Corporation Counsel's initial opinion to the Ethics Commission, which shall review the matter at its next available public hearing and render an advisory opinion thereafter. Notwithstanding anything to the contrary above, if the requester is a school department official or employees seeking advisory opinions under this paragraph, the City Clerk shall submit their requests for an initial opinion the general written statement to the school department's counsel, rather than to Corporation Counsel, who shall render an initial opinion or make a determination using the same procedure as is used by Corporation Counsel in (1) and (2) above.

2.4. Personnel Matters. The City Clerk, in consultation with Corporation Counsel, shall forward all complaints about City or school department employees directly to the City Manager, Superintendent or other authorized individual as stipulated under the City's personnel policies and/or collective bargaining agreements.

3.5. Filing with City Clerk. Complaints alleging violations of the Code of Ethics ordinance and requests for advisory opinions, permitted by this Section, shall be filed with the City Clerk and reviewed by Corporation Counsel's office to determine the level of confidentiality needed pursuant to Subsection 6 below. The City Clerk shall then alert the chair of the Ethics Commission of the filing and shall acknowledge in writing to the complainant or requester the Ethics Commission's receipt of a complaint or request for advisory opinion. Further, the City Clerk, in consultation with Corporation Counsel, shall forward all complaints about City or school department

~~employees directly to the City Manager or other authorized individual as stipulated under the City's personnel policies and/or collective bargaining agreements.~~

~~4.6.~~ Public Hearings. Within 14 days after the City Clerk's receipt of a complaint, the Chair shall set the date, time, and place of a public hearing on complaints and on requests for advisory opinions, advertised and conducted by the Ethics Commission as required by various State and federal laws pursuant to which matters are brought before the Ethics Commission. The public hearing, which may be conducted in executive session, shall be conducted in accordance with relevant State and federal law, the City Code, and the rules of the Ethics Commission.

~~5.7.~~ Dismissal of certain complaints. If the Ethics Commission finds any complaint filed with it to have been based upon allegations it determines to be frivolous, scurrilous, libelous, unsubstantiated, unfounded, of nuisance, or with malice, it may so determine and may dismiss the complaint without deciding the merits of the complaint.

~~6.8.~~ This Section and the Ethics Commission complaint process shall protect the identity and rights of complainants, whistleblowers, and persons complained against in accordance with and as required by all State and federal laws, regulations, codes, municipal ordinances, and policies, including but not limited to the Maine Freedom of Access Act, the Maine Whistleblowers' Act, and the City of Portland's and the School Department's personnel policies.

~~9.~~ The Ethics Commission shall refer any complaint alleging corruption, fraud, or abuse of a criminal nature to the appropriate law enforcement agency.

~~7.10.~~ City Clerk Report. The City Clerk shall compile a master list of all complaints and requests for advisory opinions filed with the City Clerk's office. Such list shall be redacted to protect the identity and rights of

complainants, whistleblowers, and persons complained against in accordance with and as required by all State and federal laws, regulations, codes, municipal ordinances, and policies, including but not limited to the Maine Freedom of Access Act, the Maine Whistleblowers' Act, and the City of Portland and School Department's personnel policies. Such report shall initially be given to the chair of the Ethics Commission on a monthly basis, but may be reduced to quarterly at the request of the chair.

o. *Decisions and Record.*

1. The Ethics Commission shall decide the complaint or request for an advisory opinion within 30 days after the closing of the public hearing unless the complainant or requester agrees in writing to extension of that time period.
2. Every Ethics Commission decision on a complaint or request for advisory opinion shall be in writing and every decision on a complaint shall include findings of fact and conclusions of law.
3. The City Clerk shall mail notice of any decision of the Ethics Commission to the complainant and any designated interested parties within seven (7) days of such decision.
4. The minutes of the Ethics Commission meetings and hearings; the meeting and hearing transcripts, if these are made; all exhibits, papers, complaints, applications, and requests filed in any proceeding before the Ethics Commission; and the written decision of the Commission shall constitute the record.

p. *Appeals to Superior Court.* An appeal from any final decision of the Ethics Commission on complaints under (k) (3) above may be taken by any aggrieved party or by any authorized officer or agent of the City to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

q. *Violations of the Code of Ethics.* Violations of the Code of Ethics ordinance shall be addressed as set out in that

ordinance, provided, however, that the Mayor, any City Councilor or School Board member~~Mayor~~ found by the Ethics Commission to be in violation of or to have violated the Code of Ethics ordinance may be reprimanded or censured by the City Council o School Board, as applicable.

r. *Severability.* The provisions of this Section and each of its sections, subsections, paragraphs, subparagraphs, sentences and clauses are severable. In the event that any such provision is held to be invalid or unenforceable by any judicial or administrative tribunal, it is the intent of the governing body that all other provisions thereof shall remain in full force and effect.

s. *Effective date.* This Section shall go into effect on _____, 2024 (30 days after passage).