

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL FOURNIER (A/L)
BENJAMIN GRANT (A/L)



SARAH MICHNIEWICZ (1)
WESLEY PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

CITY COUNCIL WORKSHOP

Ethics Commission Ordinance and Executive Session RE: Collective Bargaining

January 13, 2025 at 5:00 PM in Council Chambers

REMOTE PARTICIPATION:

The City Council will conduct this meeting from Council Chambers, located on the second floor of City Hall. The public may attend the meeting in person. If you are not able to attend live in person, a recording will be available in the [Agenda Center](https://portlandme.portal.civicclerk.com/event/7631/media) following the meeting.

<https://portlandme.portal.civicclerk.com/event/7631/media>

AGENDA ITEMS:

Ethics Commission Ordinance

The Council will continue its discussion of an amendment to Portland City Code Chapter 2 to create an Ethics Commission Ordinance. In the general election in November 2022, voters approved Ballot Question 8, which modified the Charter to require that the Council enact an ordinance that establishes an ethics commission. Once the commission has been established, Question 8 also requires the Council, with input from the commission, to also enact a code of ethics ordinance. The language in Question 8 was added to the Charter on July 1, 2023, and the Council is now charged with enacting the ethics commission ordinance. The Council held workshops to review the ethics commission ordinance on October 23, 2023, January 8, 2024, and March 11, 2024, and it held a public hearing on the ordinance on November 18, 2024. At the hearing, Councilor Sykes proposed an amendment to the ordinance after which the Council moved to postpone action on the ordinance and to hold another workshop for further discussion.

EXECUTIVE SESSION:

In accordance with 1 M.R.S. section 405(6)(D), City staff request that an Executive Session be held to discuss and receive guidance on the City's negotiation of collective bargaining agreements with the Communications Employees Association; Labor and Trades, AFSCME Local 481-00; the Portland Police Benevolent Association; the Portland Police Superior Officers Association, Fraternal Order of Police Lodge ME 109; and the Professional and Technical City Employees Association.

ADJOURNMENT:

MEMORANDUM

TO: Portland City Council

CC: Michael Goldman, Corporation Counsel

FROM: Jim Katsiaficas, Brandon Mazer

DATE: January 13, 2025

RE: Ethics Commission Ordinance

In November 2022, Portland voters approved Charter Commission Ballot Question #8. This Charter modification contemplates a two-step process: 1) the establishment of an Ethics Commission (by ordinance), and 2) the adoption of a Code of Ethics Ordinance for it to administer. Upon adoption of the Code of Ethics Ordinance, the existing Code of Ethics resolution adopted by the City Council in 2022 would stand repealed.

The City Council has conducted several workshops on the first step -- a draft Ethics Commission Ordinance. Because the ethics concerns apply to all of City government and the Charter modification is placed in Article VIII of the Charter, which prohibits members of the City Council and School Board, City and School boards and commissions, and City and School Department officers and employees from having a personal interest in matters before them, the draft Ethics Commission Ordinance applies to both the City and the School Department.

Consistent with the Charter modification, the attached draft Ethics Commission Ordinance establishes a seven-member appointed commission serving three year terms (after the initial board, to allow for staggered terms). At least three of the initial Commission members will be appointed from a list of qualified persons recommended by the School Board. Given the difficulty of finding enough persons willing to serve on City boards and commissions, this draft Ordinance provides for action by a majority of those present and voting rather than by a majority of the seven-member Commission; perhaps a future Charter amendment will address the question of numbers on this and other boards and commissions. The draft Ordinance recites the qualification requirements in the Charter modification (must be City resident; cannot be elected City official, candidate for City elected office, or immediate family members of either). It also states the Commission's duties:

- (1) Prepare and recommend a Code of Ethics ordinance to the City Council for enactment;
- (2) Review the Ethics Commission and Code of Ethics ordinances at least once every three 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, provided that complaints regarding City and School Department employees' ongoing or prior alleged violations or misconduct shall be referred to the City for appropriate action under its 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 they relate to the City's Code of Ethics ordinance;
 - (6) Hear and render advisory opinions regarding adherence to City Council City board and commission and School Board ethics rules and procedures as they relate to the City's Code of Ethics ordinance;
 - (7) On receipt of requests from a majority of the City Council or of any City board or committee or the School Board, procure a second legal opinion from outside legal counsel; and
 - (8) Design and oversee program evaluations of the City's ethics program.

The draft Ordinance provides for the filling of vacancies, removal of members and promulgation of rules of procedure in the same manner as other City boards and committees. It allows the Ethics Commission to recommend to the City Council the appointment and funding of an Accountability Officer position that would report to the City Manager to serve as an ombudsman, to provide information and training for the public and City officials, and to provide other assistance as requested by the Commission and the Council, as well as to receive and follow up on public complaints about City government.

The draft Ordinance adds/modifies three procedural steps in the Ethics Commission's work.

First is to ensure that the Ethics Commission complaint process is not used as an alternative to employee discipline and grievance procedures. Complaints regarding City or School Department employees' alleged violations of the Code of Ethics Ordinance will be redirected without Commission investigation or action to the City or School Department for processing as appropriate under State law, personnel policies, and collective bargaining agreements. This is consistent with the Charter's protections for City employees – that complaints regarding their alleged prior or ongoing violations of the code of ethics ordinance be addressed by the City under personnel policies. This “carve out” from Ethics Commission jurisdiction was made because of the need to avoid violations of State law, personnel policies, and collective bargaining agreements that would result if what really are employment matters are addressed outside of the City's employee discipline and grievance procedures.

Second is to provide a process by which City and School Department officials and employees may forward requests for advisory opinions to the Ethics Commission. The requester will submit a written request to the City Clerk, who then will submit it to Corporation Counsel or to the School Department's legal counsel. Legal counsel will provide an initial opinion or, if counsel “determines that the opinion requested is of such a novel and unique question of fact and law as to need an advisory opinion for the Ethics Commission,” will send the request to the Ethics Commission to review and decide.

Finally in this regard, the City Clerk will compile a master list of all complaints and all requests for advisory opinions filed, except for those redirected as personnel matters, redacted to protect the identity of complainants and of those complained against, which list will be provided monthly to the Ethics Commission chair.

At the public hearing held on November 13, 2024, Councilor Sykes proposed an amendment to Section 1(k)(3) and Section 2(n)(2) to explicitly exclude the City Manager, Corporation Counsel, City Clerk, and Superintendent as “employees” for the purposes of the Ethics Commission to hear complaints under the Ordinance as it related to these positions. When it created that “carve out” or “off-ramp” from Ethics Commission jurisdiction, the Charter Commission was not aware which positions were considered “employees” subject to City or School Board personnel policies or collective bargaining agreements, but it included the carve out on advice of its legal counsel to avoid potential constitutional, State law, ordinance and policy violations. The existence of this carve out allowed the Charter Commission’s legal counsel to opine that the proposed Charter modification “does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.” as required by State law.

However, upon review of the City’s personnel policy, which was approved by the City Council, the City Manager, Corporation Counsel, and City Clerk are considered “employees” subject to this policy. We understand that the School Department’s personnel policy similarly considers the Superintendent an employee. By enacting this amendment, the Council would create a conflict between the Ordinance and personnel policies. Given the conflict, the Council decided to table the public hearing and hold an additional workshop to (1) acquaint the three new councilors with the Ordinance and related history and (2) have a further discussion regarding the applicability of the Ordinance to the City Manager, Corporation Counsel, City Clerk, and Superintendent.

Finally, upon additional review of the draft Ordinance, we would recommend a few additional edits ahead of a final vote:

1. Regardless of the outcome of Councilor Sykes amendment, we would recommend including a definition of “City or School Department Employee” and City or School Department Elected and Appointed Officials” to make it clear to whom the Ordinance applies;
2. Include a section in the Ordinance that explains how violations of the Ordinance are addressed;
3. Include a standard severability clause so that if specific sections of the Ordinance that were held to be invalid or unenforceable by a Court, the remainder of the Ordinance would continue in force; and
4. Include a standard Effective Date section.

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER(A/L)
ROBERTO RODRÍGUEZ (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 2 RE: ETHICS COMMISSION**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Sections 2-33 and 2-430 of the Portland City Code
Chapter 2 are hereby amended to read as follows:*

Art. I. In General, §§ 2-1 -- 2-15

Art. II. Officers, §§ 2-16--2-30

Div. 1. Generally, §§2-16-2-20

Div. 2. Prohibition on Immigration Status Checks §§2-21-2-30

Art. III. Boards, Commissions, Committees, etc., §§ 2-31--2-40

Art. III-A. Portland Land Bank Commission; Fund, §§ 2-41-2-45

Art. IV. Civil Service, §§ 2-46--2-90

Div. 1. Generally, §§ 2-46

Div. 2. Civil Service Commission, §§ 2-47--2-57

Div. 3. Employment Subcommittee, §§ 2-58-2-75

Div. 4. Police Citizen Review Subcommittee, §§ 2-76-2-90

Art. V. Employee Benefits, §§ 2-91--2-200

Div. 1. Generally, §§ 2-91--2-100

Div. 2. Retirement, §§ 2-101--2-200

Art. VI. Funds Due to City, §§ 2-201--2-300

Div. 1. Generally, §§ 2-201--2-220

Div. 2. Provisional Payments, §§ 2-221--2-229

Div. 3. Interest, §§ 2-230--2-300

Art. VII. Procurement and Contracting Procedures, §§ 2-301--2-400

Div. 1. Generally, § 2-301

Div. 2. Competitive Process for Contracts, §§ 2-302-2-312

Div. 3. Sale or Disposal of Real or Personal Property §§ 2-
313-2-400

Art. VIII. Civil Emergency Preparedness, §§ 2-401--2-415

Art. IX. Ethics Commission, §§ 2-430

**Art. X. Exemption from Vehicle Excise Tax for Certain Military
Personnel, §§ 2-436--2-450**

Art. XI. Portland Senior Tax Equity Program, §§ 2-451--2-459

...

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
- ~~(12)~~ (13) Ethics Commission.

...

Sec. 2-416. - ~~2-429.~~ ~~2-435.~~ Reserved.

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 City and School Department elected and appointed officials and 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. For the initial appointment of Commission members set out in (c) below, at least three (3) members shall be appointed, to terms of one (1), two (2), and three (3) years, from a list of recommended qualifying individuals submitted to the City Council by the School Board, provided that the list contains at least three qualified individuals.

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. Any School Board-recommended members whose terms expire shall be replaced by a School Board-recommended appointee, provided that the School Board provides the City Council with a list of recommended qualifying individuals that contains a sufficient number of individuals to fill the vacancies.

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 School 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 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 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 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 City and School Department elected and appointed officials and 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 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 the requester's 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, City board and commission, and School Board ethics rules and procedures as they relate to the City's Code of Ethics ordinance;
7. On receipt of a request from a majority of the City Council, any City board or commission, or the School Board procure a second legal opinion from outside legal counsel; and
8. Design and oversee evaluations of the City's ethics program, composed of the Code of Ethics Ordinance, the Ethic's Commission's bylaws and policies, and their administration and make recommendations to the City Council and School Board regarding such ethics program.

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 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 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 a direct or indirect pecuniary interest, as defined by 30-A M.R.S. §2605, as amended, common law, the Code of Ethics, or the Charter.

n. Complaints; Advisory Opinion Requests; Filing with City Clerk; Public Hearings.

1. Filing with City Clerk. Except as provided in (n) (4) below, 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 this Subsection 1 and Subsection 2 below. Corporation Counsel's office or, as applicable, counsel for the School Department, shall review all Complaints and requests for advisory

opinions to determine the level of confidentiality needed pursuant to Subsection 8 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.

2. Complaints. Complaints under (k) (3) above alleging violation of the City's Code of Ethics Ordinance may be filed by any City or School Department official or 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 shall be referred without Commission investigation or action to the City or School Department for appropriate action under State law, its personnel policies and/or collective bargaining agreements as set forth in (n) (4) below.

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 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 employee seeking advisory opinions under this paragraph, the City Clerk shall submit 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.

4. Personnel Matters. The City Clerk shall redirect all complaints about or advisory opinions concerning City or School Department employees to the City Manager, Superintendent or other authorized individual as stipulated under State law and the City's or School Department's personnel policies and/or collective bargaining agreements. Such complaints and advisory opinions shall not be read, reviewed, or further processed by the City Clerk, the Ethics Commission, or anyone other than the individuals so authorized.
5. Reserved.
6. Hearings. Within 14 days after the City Clerk's receipt of a complaint or a request for an advisory opinion not redirected pursuant to (n)(4) above, the Chair shall set the date, time, and place of a 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 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.
7. Dismissal of certain complaints and advisory opinion requests. If the Ethics Commission finds any complaint or advisory opinion request 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 and may dismiss the advisory opinion request without issuing an opinion.

8. This Section and the Ethics Commission complaint and advisory opinion process shall protect the identity and rights of complainants, requesters, 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.
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 not include complaints or advisory requests redirected pursuant to (n)(4) above, and shall be redacted to protect the identity and rights of complainants, requesters, 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. The chair of the Ethics Commission shall share the report with the rest of the Ethics Commission at its next regularly scheduled meeting.

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 hearing unless the complainant and persons complained against agree, or the requester agrees, in writing to extension of that time period.

2. Every Ethics Commission decision on a complaint or 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 or advisory opinion of the Ethics Commission to the complainant or requester, and any designated interested parties, within seven (7) days of such decision or opinion.

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 or opinion 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 or School Department 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 found by the Ethics Commission to be in violation of or to have violated the Code of Ethics ordinance may only be reprimanded or censured by the City Council or School Board, as applicable, after notice and hearing conducted by the City Council or 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).

Office of Corporation Counsel
Michael Goldman, *Acting Corporation Counsel*
Amy R. McNally, *Associate Corporation Counsel*
Nicole M. Albert, *Associate Corporation Counsel*
Rachel L. Millette, *Associate Corporation Counsel*
Avery A. Dandreta, *Associate Corporation Counsel*



MEMORANDUM

To: Mayor Dion and Members of the City Council

From: Michael Goldman, Corporation Counsel

Date: October 30, 2024

Subject: Ethics Commission Ordinance

In the general election in November 2022, voters approved Ballot Question 8, which modified the Charter to require that the Council enact an ordinance that establishes an ethics commission. Once the commission has been established, Question 8 also requires the Council, with input from the commission, to enact a code of ethics ordinance. The language in Question 8 was added to the Charter on July 1, 2023, and the Council is now charged with enacting the ethics commission ordinance. The Council held workshops to review the ethics commission ordinance on October 23, 2023, January 8, 2024, and March 11, 2024.

In anticipation of the City Council's meeting on Monday, November 18, 2024, I have attached the following:

- A draft of the proposed ethics commission ordinance with the most recent changes tracked against the draft that the Council reviewed at the March 11, 2024 workshop (Attachment A); and
- City Charter, Article VIII, Section 1-A - Ethics Commission and Code of Ethics (Attachment B).

Please review the attached documents and feel free to reach out to me directly if you have any questions before the Council's meeting on November 18. Attorney Jim Katsiaficas, who drafted the ordinance with the Council's input throughout the workshop process, will be available at the November 18 meeting to discuss the ordinance and answer any questions that you might have.

ATTACHMENT A

City of Portland
Code of Ordinances
Sec. 2-425

Administration
Chapter 2

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 City and School Department elected and appointed officials and 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. For the initial appointment of Commission members set out in (c) below, at least three (3) members shall be appointed, to terms of one (1), two (2), and three (3) years, from a list of recommended qualifying individuals submitted to the City Council by the School Board, provided that the list contains at least three qualified individuals.

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. Any School Board-recommended members whose terms expire shall be replaced by a School Board-recommended appointee, provided that the School Board provides the City Council with a list of recommended qualifying individuals that contains a sufficient number of individuals to fill the vacancies.

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 School Department officials, candidates for any City or School Department elected office, City employees, ~~SS~~School ~~d~~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 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 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 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 City and School Department elected and appointed officials and 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 ~~s~~S~~chool~~ ~~d~~e~~partment~~ employees' ongoing or prior alleged violations or misconduct 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 the requester's 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, City board and commission, and School Board ethics rules and procedures as they relate to the City's Code of Ethics ordinance;

7. On receipt of a request from a majority of the City Council, any City board or commission, or the School Board procure a second legal opinion from outside legal counsel; and
8. Design and oversee evaluations of the City's ethics program, ~~s regarding compliance with~~ composed of the Code of Ethics Ordinance, the Ethics Commission's bylaws and policies, and their administration and make recommendations to the City Council and School Board regarding such ethics 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 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 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 ana direct or indirect pecuniary

interest, as defined by 30-A M.R.S. §2605, as amended, common law, the Code of Ethics, or the Charter.

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

1. Filing with City Clerk. Except as provided in (n) (4) below, ~~C~~omplaints 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 this Subsection 1 and Subsection 2 below. Corporation Counsel's office or, as applicable, counsel for the School Department, shall review all Complaints and requests for advisory opinions to determine the level of confidentiality needed pursuant to Subsection 8 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.
2. Complaints. Complaints under (k) (3) above alleging violation of the City's Code of Ethics Ordinance may be filed by any City or School Department official, ~~or~~ or 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 ~~S~~School ~~d~~Department employees' ongoing or prior alleged violations or misconduct shall be referred without Commission investigation or action to the City or ~~S~~School ~~d~~Department for appropriate action under State law, its personnel policies and/or collective bargaining agreements as set forth in (n) (4) below.
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 ~~S~~School ~~d~~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

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 ~~s~~School ~~d~~Department official or employee seeking advisory opinions under this paragraph, the City Clerk shall submit the general written statement to the ~~s~~School ~~d~~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.

4. Personnel Matters. The City Clerk, ~~in consultation with Corporation Counsel,~~ shall ~~forward-redirect~~ all complaints about ~~or advisory opinions concerning~~ City or ~~s~~School ~~d~~Department employees ~~directly~~ to the City Manager, Superintendent or other authorized individual as stipulated under State law and the City's or School Department's personnel policies and/or collective bargaining agreements. Such complaints and advisory opinions shall not be read, reviewed, or further processed by the City Clerk, the Ethics Commission, or anyone other than the individuals so authorized.
5. Reserved.

6. ~~Public~~Hearings. Within 14 days after the City Clerk's receipt of a complaint or a request for an advisory opinion not redirected pursuant to (n)(4) above, 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.
7. Dismissal of certain complaints and advisory opinion requests. If the Ethics Commission finds any complaint or advisory opinion request 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 and may dismiss the advisory opinion request without issuing an opinion.
8. This Section and the Ethics Commission complaint and advisory opinion process shall protect the identity and rights of complainants, requesters, 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.
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 not include complaints or advisory requests redirected pursuant to (n)(4) above, and shall be redacted to protect the identity and rights of

complainants, requesters, 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. The chair of the Ethics Commission shall share the report with the rest of the Ethics Commission at its next regularly scheduled meeting.

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 and persons complained against agree, or the 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 or advisory opinion of the Ethics Commission to the complainant or requester, and any designated interested parties, within seven (7) days of such decision or opinion.
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 or opinion 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 or School Department 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 found by the Ethics Commission to be in violation of or to have violated the Code of Ethics ordinance may only be reprimanded or censured by the City Council or School Board, as applicable, after notice and hearing conducted by the City Council or 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).

of the city treasury on account of any such transaction.

- (b) Purchase or accept anything from the city or school department, other than those items or services which are offered to the public generally, and then only upon the same terms and under the same procedures offered to and used for the general public. This shall not include those items or services which are received as compensation, or as a part of such person's employment contract, or which are necessary for the performance of such person's duties.
- (c) Accept or receive from any person, firm, or corporation acting under a franchise, contract, or license from the city or school department, any frank, free pass, free ticket, or free service, or accept, directly or indirectly, from any such person, firm, or corporation any service upon terms more favorable than those granted to the public generally. (Referenda 11/4/86; 11/2/10)

Section 1-A. Ethics Commission and Code of Ethics.

The city council shall enact and maintain an ordinance that establishes an ethics commission and, with input from the ethics commission, shall enact a code of ethics ordinance to be administered by the ethics commission. Upon the effective date of the code of ethics ordinance, the existing code of ethics resolution adopted by the city council shall be repealed. 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 officials and city employees.

(a) Ethics Commission Ordinance. The city council shall enact an ordinance directing it to create an ethics commission, appointed by the city council and consisting of seven (7) members who are residents of the City, serving for three (3) year terms, to undertake the following duties:

1. Prepare and recommend a code of ethics ordinance to the city council for enactment as provided in subsection (b) below;

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, provided that complaints regarding city employees' ongoing or prior alleged violations or misconduct shall be referred to the city for appropriate action under its personnel policies;
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;
6. Hear and render advisory opinions regarding adherence to council and board rules and procedures;
7. On receipt of requests from a majority of the city council or of any board or committee, procure a second legal opinion from outside legal counsel; and
8. Design and oversee program evaluations.

Elected City officials, candidates for any City elected office, and their immediate family members are not eligible to be appointed as members of the ethics commission.

The ethics commission shall meet as needed, but no less than annually.

The ethics commission ordinance shall establish the process for filing, hearing and deciding complaints and for soliciting advisory opinions. Complaints may be filed by any official, employee, or resident of the city, by the accountability officer, or may be initiated by the ethics commission, in accordance with that process. Requests for advisory opinions

may be filed by any official or employee of the city, in accordance with that process. Receipt of a complaint or request shall be acknowledged by the ethics commission. 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.

The ethics commission ordinance and 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 personnel policies. The ethics commission shall refer any complaint alleging corruption, fraud, or abuse of a criminal nature to the appropriate law enforcement agency.

The ethics commission shall be an independent body, free from interference from any city 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) Code of Ethics. 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 officials and city employees. At a minimum, such code of ethics ordinance shall include and address:

1. Standards of Conduct;
2. Conflicts of Interest;
3. Confidential Information; and
4. Disclosure Forms for city elected and appointed officials to complete and file with the city clerk and update as appropriate.

(c) Appointment of Accountability Officer. The ethics commission may recommend that the city council appoint an accountability officer and fund that position. The accountability officer shall: serve as an ombudsperson to members of the public; provide city information to the public and officials to educate them about government accountability, integrity, and transparency; provide training for public officials on ethical matters; and undertake such other duties as may be requested by the ethics commission and authorized by the city council. The accountability officer may provide administrative support for the civilian police review board. The accountability officer also shall receive complaints from the public about alleged government waste, favoritism, mismanagement, and violations of the public trust; the accountability officer will refer matters that are within the scope of the ethics commission's duties to the ethics commission, and vice versa.

(d) 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 any city councilor or mayor found by the ethics commission to be in violation of or to have violated the ethics code may be reprimanded or censured by the city council.

(Referendum 11/8/2022)

Section 1-B. Peaks Island Council.

The city council shall maintain an ordinance establishing the "Peaks Island Council," including powers, duties, membership requirements and other necessary provisions deemed appropriate by the city council. The Peaks Island Council shall act as an elected advisory body to the city council.

(Referendum 11/8/2022)

Section 2. Ordinances, rules and regulations continued.

All ordinances in force at the time that this charter takes effect, not inconsistent with this charter, shall continue in force until amended or repealed. All rules and regulations of the municipal officers or of any office of the City of Portland

MEMORANDUM

TO: Portland City Council

CC: Michael Goldman, Corporation Counsel

FROM: Jim Katsiaficas, Brandon Mazer

DATE: November 13, 2024

RE: Ethics Commission Ordinance

In November 2022, Portland voters approved Charter Commission Ballot Question #8. This Charter modification contemplates a two-step process: 1) the establishment of an Ethics Commission, and 2) the adoption of a Code of Ethics Ordinance for it to administer. Upon adoption of the Code of Ethics Ordinance, the existing Code of Ethics resolution adopted by the City Council in 2022 would stand repealed.

The City Council has conducted several workshops on the first step -- a draft Ethics Commission Ordinance. Because the ethics concerns apply to all of City government and the Charter modification is placed in Article VIII of the Charter, which prohibits members of the City Council and School Board, City and School boards and commissions, and City and School Department officers and employees from having a personal interest in matters before them, the draft Ethics Commission Ordinance applies to both the City and the School Department. We have worked to incorporate changes suggested by the City Council and by the School Department and to address concerns voiced during the workshop process. The Ethics Commission Ordinance language is entirely new; the underlining in the attached draft shows only those changes since the March 11, 2024 City Council workshop.

Consistent with the Charter modification, the attached draft Ethics Commission Ordinance establishes a seven-member appointed commission serving three year terms (after the initial board, to allow for staggered terms). At least three of the initial Commission members will be appointed from a list of qualified persons recommended by the School Board. Given the difficulty of finding enough persons willing to serve on City boards and commissions, this draft Ordinance provides for action by a majority of those present and voting rather than by a majority; perhaps a future Charter amendment will address the question of numbers on this and other boards and commissions. The draft Ordinance recites the qualification requirements in the Charter modification (must be City resident; cannot be elected City official, candidate for City elected office, or immediate family members of either). It also states the Commission's duties:

- (1) Prepare and recommend a Code of Ethics ordinance to the City Council for enactment;
- (2) Review the Ethics Commission and Code of Ethics ordinances at least once every

- three 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, provided that complaints regarding City and School Department employees' ongoing or prior alleged violations or misconduct shall be referred to the City for appropriate action under its 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 they relate to the City's Code of Ethics ordinance;
 - (6) Hear and render advisory opinions regarding adherence to City Council City board and commission and School Board ethics rules and procedures as they relate to the City's Code of Ethics ordinance;
 - (7) On receipt of requests from a majority of the City Council or of any City board or committee or the School Board, procure a second legal opinion from outside legal counsel; and
 - (8) Design and oversee program evaluations of the City's ethics program.

The draft Ordinance provides for the filling of vacancies, removal of members and promulgation of rules of procedure in the same manner as other City boards and committees. It permits the Ethics Commission to recommend to the City Council the appointment and funding of an Accountability Officer position that would report to the City Manager to serve as an ombudsman, to provide information and training for the public and City officials, and to provide other assistance as requested by the Commission and the Council, as well as to receive and follow up on public complaints about City government.

The draft Ordinance adds/modifies three procedural steps in the Ethics Commission's work.

One is to ensure that the Ethics Commission complaint process is not used as an alternative to employee discipline and grievance procedures. Complaints regarding City or School Department employees' alleged violations of the Code of Ethics Ordinance will be redirected without Commission investigation or action to the City or School Department for processing as appropriate under State law, personnel policies, and collective bargaining agreements.

Second is to provide a process by which City and School Department officials and employees may forward requests for advisory opinions to the Ethics Commission. The requester will submit a written request to the City Clerk, who then will submit it to Corporation Counsel or to the School Department's legal counsel. Legal counsel will provide an initial opinion or, if counsel "determines that the opinion requested is of such a novel and unique question of fact and law as to need an advisory opinion for the Ethics Commission," will send the request to the Ethics Commission to review and decide.

Finally, the City Clerk will compile a master list of all complaints and all requests for advisory opinions filed, except for those redirected as personnel matters, redacted to protect the identity of complainants and of those complained against, which list will be provided monthly to the Ethics Commission chair.

**AMENDMENT 1 TO ORDER 82-24/25
PREPARED BY JAMES KATSIAFICAS, ESQ.
FOR COUNCILOR SYKES AND COUNCILOR PHILLIPS
RE: CODE OF ETHICS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That Chapter 2 is hereby amended to read as follows:

ARTICLE IX. ETHICS COMMISSION

...

Sec. 2-430. Ethics Commission.

...

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:

...

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 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 provided, however, that for purposes of this Section, the City Manager, Corporation Counsel, City Clerk, and Superintendent shall not be considered City or School Department "employees";

...

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

...

2. Complaints. Complaints under (k)(3) above alleging violation of the City's Code of Ethics Ordinance may be filed by any City or School Department official or 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 shall be referred without Commission investigation or action to the City or School Department for appropriate action under State law, its personnel policies and/or collective bargaining agreements as set forth in (n)(4) below; provided, however, that for purposes of this Section, the City Manager, Corporation Counsel, City Clerk, and Superintendent shall not be considered City or School Department "employees".

Public Comment: Ethics Board Ordinance
Joey Brunelle <joey.brunelle@gmail.com>

Tue, Nov 12, 8:16 PM
(6 days ago)

to April, Victoria, Anna, Anna, Pious, Mark, Regina, rrodriguez, Kate, bcc: publiccomment

Councilors & Mayor,

There are two things in this email:

1. A summary of what the Ethics Board is designed to do, ***with concrete examples!***
2. A short discussion of what's wrong with the current ordinance.

1. Why an Ethics Board?

The Charter Commission didn't create this board to be a pain in your ass as elected officials, I promise. It was intended to **help** you, by create a board of upstanding community members who could increase public trust in government by adjudicating things that, before now, have either been the purview of Corporation Counsel (which is not always seen as a neutral arbiter, since they literally work for the Council), or the stuff of rumors and hearsay.

This Ethics Board will make clear rules and guidelines around ethics and behavior, based on best practices and standards from other cities, and provide both you and the public with a source for a "second opinion."

- *Have a potential conflict of interest and want to make absolutely sure you're doing the right thing?* Ask the Ethics Board to back you up! They can do a deep dive for you, and make absolutely sure you're on the right course.
- *Being accused of a conflict of interest but don't actually have one?* Ask the Ethics Board to issue a ruling to clear your name once and for all! Who can argue with a board of 7 upstanding citizens?
- *Does a constituent suspect that a member of city staff is exhibiting discriminatory behavior related to race or gender by - for example - giving preferential treatment for parking tickets or permits?* They can file a complaint with the Ethics Board which will, as a third-party arbiter, and with the greatest respect for privacy, get to the truth of the matter without things getting messy for you as an elected official!
- *Is another elected official behaving inappropriately towards their colleagues by - for example - posting slanderous screeds on social media?* Ask the Ethics Board to issue a judgement based on the standards of behavior outlined in the Ethics Code they created!

2. What's wrong with this ordinance?

From my perspective there are four (4) things wrong with the current ordinance, and these are exactly the same problems I identified back when we last discussed this in January 2024. (Side note: *why was there zero movement and zero updates on this for ten months!?!?*)

>> Here is the document outlining those four problems and why they're problems: https://docs.google.com/document/d/1hcjsYyXg6BR1w_RD-sFDaEiGm8tAAi9nVkyqArU5FFA/edit?usp=sharing

>> *For the sake of emphasis, my Top 2 are below.*

(1). The School Department got added to this in a council workshop at the suggestion of a councilor, but the Charter Commission neither intended for the school department to be included, nor did they write it that way. The Charter Amendment says "The City" - elsewhere in the Charter, when we want to refer to the school department, it says "the school department." Not so here. Just "the City" which is always meant to refer to the "City of Portland" and not the school department.

The big consequence of this addition is that it will disqualify *thousands* of people from serving, because anyone who has a teacher, a bus driver, a janitor, or a coach in their immediate family will be disqualified from serving. That eliminates a HUGE chunk of the population. That's just unnecessary.

Limit the purview, increase the available appointees. If the School Department wants an Ethics Board, let them make their own.

(2). Language has been added that is not in the Charter which limits the Ethics Board's ability to review "compliance with the Charter" - suddenly the words "with respect to the Ethics Code" have been added, out of nowhere. Those words aren't in the Charter, but they completely change the meaning of that ability.

The Charter says: "Hear and render advisory opinions regarding questions of compliance with the City charter;" FULL STOP.

But this ordinance says, "Hear and render advisory opinions regarding questions of compliance with the City Charter ***as it relates to the City's Code of Ethics ordinance.***" Where the heck did that last bit come from??

You can't just add words and change the meaning of the Charter for no reason. The Charter Commissioners specifically wanted the Ethics Board to be able to review matters of "compliance with the Charter." Go back and read the minutes. That's how they *wrote* it, that's what the voters *passed*. You can't limit that after the fact with words that - I'll say again - **do not appear in the Charter.**

>> There are two other major problems, but these are the biggest bees in my bonnet. If you'd like to read my short document outlining the four problems, you can find it here: https://docs.google.com/document/d/1hcjsYyXg6BR1w_RD-sFDaEiGm8tAAi9nVkygArU5FFA/edit?usp=sharing

Ryan Lizanecz <lizanecz97@gmail.com>

Wed, Nov 13, 5:04 PM
(5 days ago)

to publiccomment

Good afternoon,

I am re-submitting this public comment alongside some policy suggestions for the City Council to consider in advance of tonight's first-read of the City's Ethics Commission Ordinance.

I was one of the elected Charter Commissioners who helped draft the Ethics Commission charter amendment that you are now tasked with implementing. The committee I chaired put a lot of effort into the amendment over the course of several months. As you know, the Amendment passed by a wide margin, while other overhauls of City government failed on the same ballot (executive mayor, etc.). I believe it is fair to say this Amendment, as written, had bipartisan support from across the City.

I recommend that the Council make the following policy revisions before voting to approve the Ordinance. I know this process has been (quite literally) years long, and much thought has gone into the drafting of the ordinance by both the Council and the legal team. It's great to see we are almost there.

Here are my comments and recommendations:

1. Allowing the Ethics Commission to oversee school operations is risky and was intentionally omitted from the Charter language to allow for a narrower approach.

When we drafted the amendment, we intentionally left the School Department out of the charter language. If you look at the language of the Amendment, you will not see any mention of the School Department.

In hindsight, I recognize we should have been specific. I cannot speak for the group, but I know I had concerns that the Commission could get hauled into disputes regarding the children and families, alongside other issues that are extremely sensitive in nature. Or, otherwise be weaponized to disrupt school processes (especially in this extremely sensitive political time). Further, it risked overburdening the Ethics Commission and City staff with potentially frivolous complaints from parents, students, teachers, etc.

In short, I recommend striking the school department language from the proposed ordinance, at least for the time being until the Commission gets off the ground.

2. Sections 2(K)(5) and 2(K)(6) include language that frustrates the intent and language of the Charter Amendment.

Regarding 2(K)(5), the Charter Commission wrestled with the idea of allowing for a public body to render advisory opinions regarding compliance with the City Charter. As a compromise, we settled on granting this authority to the Ethics Commission. The intent was to allow the Ethics Commission to issue, upon request, advisory opinions regarding the City Charter in general, not only regarding compliance with the City Charter as it relates to the Ethics Ordinance.

Regarding 2(K)(6), the intent of the original language was to allow the Ethics Commission to hear and render opinions regarding adherence to City Council and Board rules and procedures in general, not only as they relate to the City's Ethics Ordinance.

I would recommend striking the proposed language (highlighted in blue) in both Section 2(K)(5) and Section 2(K)(6) to allow for the Ethics Commission to issue advisory opinions regarding compliance with the City Charter and Council rules of procedure in general, not only as they relate to the Ethics Ordinance.

Of course, you are not necessarily bound by what we intended. However, I want the Council to carefully consider what the plain language of the amendment says and ask yourselves if it mirrors the ordinance as currently written.

This is an exciting time for Portland. Thank you for what you do, I know it is often thankless, and I look forward to seeing this finally come to life.

Ryan Lizanecz
183 Brackett Street
Portland

Three quick points on the Ethics Commission

Zack Barowitz <zbarowitz@gmail.com>

Thu, Nov 14, 7:39 AM
(4 days ago)

to City, publiccomment

Honorable Mayor and Councilors:

Several aspects of the Ethics Commission (EC) have been obscured in the writing of the ordinance, among them are:

- The educational component: Much of the purpose of the EC is to educate city officials on proper conduct. The code of ethics would have little meaning without an understanding of what constitutes (un)ethical behavior and the differences between ethical and legal.
- The Charter Commission Report clearly states that the Accountability Officer (AC) shall be funded by the Council and hired by the Ethics Commission. This is to ensure maximal independence and objectivity of the EC and the Accountability Officer. The function of the AC is to serve as an Ombudsman which, in a nutshell, is to help resolve disputes both internally and with the public. Additionally, the AC would serve as the lead staff person for the Commission.
- The Charter states that the Ethics Commission shall see all complaints and determine the process of filing complaints. Complaints must not be referred to the Commission at the discretion of any elected or appointed official. (See highlighted portions of language from the Charter language below.)

Thank you,
Zack

8. Design and oversee program evaluations. Elected City officials, candidates for any City elected office, and their immediate family members are not eligible to be appointed as members of the ethics commission. The ethics commission shall meet as needed, but no less than annually. The ethics commission ordinance shall establish the process for filing, hearing and deciding complaints and for soliciting advisory opinions. Complaints may be filed by any official, employee, or resident of the city, by the accountability officer, or may be initiated by the ethics commission, in accordance with that process. Requests for advisory opinions may be filed by any official or employee of the city, in accordance with that process. Receipt of a complaint or request shall be acknowledged by the ethics commission. 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. The ethics commission ordinance and 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 personnel policies. The ethics commission shall refer any complaint alleging corruption, fraud, or abuse of a criminal nature to the appropriate law enforcement agency. The ethics commission shall be an independent body, free from interference from any City 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.

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Ethics Commission public comment

Zack Barowitz <zbarowitz@gmail.com>

Thu, Nov 14, 10:54 PM
(4 days ago)

to City, publiccomment, Annella

Honorable Mayor and Councilors:

The Ethics Commission was drafted into the charter to increase transparency, accountability, and to educate public officials on proper conduct, all to increase public trust in Portland's government. The amendment received unanimous approval from the commission and was passed overwhelmingly by the public. Unfortunately, the purpose of the commission was never adequately explored by the Portland City Council. As a result the current draft of the ordinance runs counter to the purpose and operation of the Ethics Commission.

The ordinance, as written, would bar almost any complaint or request for an advisory opinion from ever reaching the ethics commission.

To remedy this, we recommend amending several provisions included in Section N.

Section n(2): The language that bars "ongoing or prior alleged violations" essentially prevents ethical complaints from ever being brought against any employee. Of course, there should be provisions in place to protect employees in accordance with state law.

2. Complaints. Complaints under (k)(3) above alleging violation of the City's Code of Ethics Ordinance may be filed by any City or School Department official or 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 shall be referred without Commission investigation or action to the City or School Department for appropriate action under State law, its personnel policies and/or collective bargaining agreements as set forth in (n)(4) below.~~

Section n(3): This language makes it so only officials or employees can ask for advisory opinions regarding prospective application of the Ethics Ordinance; compliance with the City Charter; and board rules and procedures. **Any resident of the City should be able to file a request for review. If it is deemed frivolous, it can be dismissed.**

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 **or resident of the City** and must be made in accordance with the process set out herein

Section n(3): The below language essentially allows the Corporation Counsel's office to gatekeep what goes before the Commission. Of course, there are confidentiality concerns, but we would recommend that the Commission review such complaints in executive session or only have corporation counsel review for confidentiality concerns. Or allow for the corporation counsel's decision to be appealed to the commission so long as certain criteria are met. The Charter amendment specifically provides that City staff cannot interfere with the Commission. Additionally, the inclusion of the words "novel and unique" ensure that the bar is set impossibly high.

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.

Thanks for taking the time to read.

Ryan Lizanecz

183 Brackett Street

These are my own opinions and not reflective of my employer

Zack Barowitz

22 Huntress Street

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ATTENTION: