



Councilor Andrew Zarro, District 4, Chair  
Kate Snyder, Mayor  
Councilor Pious Ali, At-Large  
Councilor Mark Dion, District 5

## City Council Rules Committee

Monday, April 11, 2022

8:00 a.m., via ZOOM technology

### AGENDA

#### **Zoom Information:**

This meeting will take place remotely using Zoom.

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Portland City Council and as authorized under 1 M.R.S. 403-B because of the existence of an emergency or urgent issue that requires the committee to meet by remote methods. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit \*9. You will be unmuted by the host when it is time for public comment.

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1. Call to Order
  
2. Approval of March 28, 2022 minutes
  - a. Attached.
  
3. Review Code of Ethics and Discuss Possible Changes
  - a. Updated draft Code of Ethics attached.
  
4. Public Comment on Council Rules
  
5. Adjournment



## City Council Rules Committee

**Monday, March 28, 2022, 8:00 AM**  
**Remote Meeting Minutes**

Rules Committee Members:

Councilor Andrew Zarro, Chair  
Mayor Kate Snyder  
Councilor Pious Ali  
Councilor Mark Dion

The meeting, held by ZOOM technology, convened at 8:05 a.m. on March 28, 2022.

Attendees: Committee members Councilor Andrew Zarro, Chair, Mayor Kate Snyder, Councilor Pious Ali, and Councilor Mark Dion, City Clerk Katherine Jones, and Acting Corporation Counsel Jen Thompson, and assistant Nancy English. Members of the public Sarah Michniewicz, George Rheault and John P. attended.

Councilor Zarro convened the meeting and asked for a motion to accept the minutes of the February 28, 2022 and March 7, 2022 meetings. Councilor Ali moved and Councilor Dion seconded his motion to approve those minutes, which was approved by a roll call vote of 4-0.

Councilor Zarro asked Attorney Thompson to start the review of the draft Code of Ethics, based on a document from the City of Bangor, and available in the back-up material.

In her review, Attorney Thompson explained that she had revised the version adopted by Bangor to reflect discussions by the Committee about its policy preferences. For example, provisions making the Code applicable to City employees had been removed due to other existing provisions in the City Code and personnel policies. She also explained that, if the Rules Committee wanted its own code of ethics to apply to all the city boards and commissions rather than just the City Council, that would need to be done in the form of an ordinance rather than a policy.

Councilor Zarro asked if the Rules Committee could ask other boards to adopt the Code of Ethics it approves, and Attorney Thompson said it could suggest that be done but that an ordinance is the way to make a code of ethics binding on other boards.

Mayor Snyder asked if, on page 9, Section 12, Political Activities, the City Councilors may not use their official status in political campaigns, to solicit assistance for an institution, for example, and Attorney Thompson explained that section was primarily for donations of money.

Mayor Snyder asked if Section 10, Paragraph C, "Conflicts of Interest," would give a decision about a conflict of interest to the whole council, and Attorney Thompson said it would indeed be different from how such conflicts had been decided in the past, by the individual councilors, and would require a vote of the whole council.

Mayor Snyder added that she believed a Code of Ethics should "live" in the council rules and not in the City Charter – where it is being considered by the Charter Commission, and where it would become too onerous to change.

Councilor Ali asked if the reference to the use of city property found in Article II, paragraph 8, would prohibit that use by a group of young people, for instance at a school or park, when the City officials would like any fee to be waived. Attorney Thompson said that use would be eligible under rules already in place, and that this section covers individual private use.

Councilor Ali asked how the previous section, paragraph 7.1, would affect First Amendment freedom of speech in the use of social media. Attorney Thompson said the rule provides guidance about how to exercise that freedom, including by identifying in which capacity you are speaking and being sure not to appear as if you are presenting an "official" position.

Councilor Ali asked if stating support or no support for an issue would be a violation of the proposed language, and Attorney Thompson said it would not be a violation for a councilor to express support for an issue if they correctly identified the capacity in which they were speaking. Councilor Ali noted that he had seen social media sites for other political figures that are official pages and inquired whether the City could manage social media pages for individual councilors. Attorney Thompson said such a site would create a public forum in which comments received would be difficult to restrict because of First Amendment concerns. Attorney Thompson suggested the City Manager could answer the question of whether the City would host such social media accounts.

Councilor Dion said it was better to consider how to distinguish between speaking as a councilor and speaking as a private individual. It is hard to make the difference clear, he said, and the public cannot be expected to know when the private individual is speaking versus the councilor. He did not have the confidence to believe there was a way to effectively disclaim his own identity as a councilor when speaking publicly.

Mayor Snyder asked again about the vote needed for a conflict of interest, in particular, would a vote be needed if a councilor had already recused themselves. Attorney Thompson said she would review that question.

In Section 5.1, Unbiased Conduct, Chair Zarro asked if "political status" was appropriately included in the list of protected classes. He suggested it should be removed from this section.

Chair Zarro also asked where an "alleged violation" noted in Section 3 would come from. Attorney Thompson said an alleged violation would be reported by a councilor, be considered at a council hearing, and a fine could be imposed if recommended.

Councilor Ali asked if a City Councilor could simultaneously serve as a Legislator, and Attorney Thompson said she would check under state statutes relating to incompatible offices.

Chair Zarro said the Code of Ethics would be revised according to remarks made at this meeting and considered again at the next Rules Committee Meeting, to be scheduled later. He asked the committee members to email any additional questions and suggestions before that time.

During the period for public comment, Sarah Michniewicz said she agreed that, although the Charter Commission was considering adding a Code of Ethics to the Charter, that was not the best place for such a document. She had provided the Code of Ethics from Portland, Oregon, and suggested that the section on Norms could be useful.

Councilor Ali moved and Mayor Snyder seconded the motion to adjourn, which passed by a roll call vote of 4-0. The meeting adjourned at 9:03 a.m.

CITY OF PORTLAND  
CODE OF ETHICS

**§ 1. Declaration of policy.**

In keeping with the policies and obligations outlined in State statutory and decisional law, the City's Charter, Code of Ordinances, and personnel policies, it is recognized that high moral and ethical standards among city officials are essential to the integrity of the City's government and to the trust and confidence of the people of Portland in their governing body. Though there are several existing policies that require City Councilors, appointees, and staff to be fair and impartial and to act with integrity, by adopting this Code of Ethics, the City Council demonstrates its commitment to always work toward improving standards of public service and promoting the community's faith and confidence in the Council's work. In recognition of these goals, a Code of Ethics is hereby established for members of the Portland City Council.

**Standards of Conduct.**

**§ 2. Statutory standards.**

There are certain provisions of the general statutes of the State of Maine which should, while not set forth herein, be considered an integral part of this code. Accordingly, the provisions of the following sections of the general statutes of the State of Maine, as may be amended, are hereby incorporated by reference and made a part of this Code of Ethics and shall apply to all City Councilors, whenever applicable as if more fully set forth therein:

- A. 17 M.R.S.A. § 3104, Conflicts of interest; purchases by the state.
- B. 17-A M.R.S.A. § 456, Tampering with public records or information.
- C. 17-A M.R.S.A. § 602, Bribery in official and political matters.
- D. 17-A M.R.S.A. § 603, Improper influence.
- E. 17-A M.R.S.A. § 604, Improper compensation for past action.
- F. 17-A M.R.S.A. § 605, Improper gifts to public servants.
- G. 17-A M.R.S.A. § 606, Improper compensation for services.
- H. 17-A M.R.S.A. § 607, Purchase of public office.
- I. 17-A M.R.S.A. § 608, Official oppression.
- J. 17-A M.R.S.A. § 609, Misuse of information.
- K. 17-A M.R.S.A. § 903, Misuse of entrusted property.
- L. 21-A M.R.S.A. § 504, Persons ineligible to serve.

M. 30-A M.R.S.A. § 2605, Conflicts of interest.

N. 30-A M.R.S.A. § 5122, Interest of public officials, trustees or employees.

**§ 3. Conflicts of interest.**

- A. Deliberation and vote prohibited. No City Councilor shall, in such capacity, participate in the deliberation or vote, or otherwise take part in the decision-making process, on any agenda item before the council or any council committee in which the councilor or a member of the councilor's immediate family has a financial or special interest or the appearance of a financial or special interest, other than an interest held by the public generally.
- B. Disclosure of conflict. Any City Councilor who believes that the councilor or a member of the councilor's immediate family has a financial or special interest, other than an interest held by the public generally, in any agenda item before the council or a council committee to which the councilor has been appointed shall disclose the nature and extent of such interest, and the City Clerk or the Clerk's designee shall make a record of such disclosure. Such disclosure shall be made no later than the date of the first meeting of the City Council or committee thereof at which the agenda item concerned is to be taken up for consideration, recommendation, discussion or vote and at which the City Councilor is present. Additionally, any City Councilor, who believes that any fellow City Councilor or a member of such fellow City Councilor's immediate family has a financial or special interest, other than an interest held by the public generally, in any agenda item before the Council or a committee thereof shall disclose the nature and extent of such interest, and the City Clerk or the Clerk's designee shall make a record of such disclosure.
- C. Determination of conflict. Notwithstanding the language of Rule 26 of the Council's Rules of Procedure, once the issue of conflict has been raised relative to an individual City Councilor or committee member and disclosure has been made as provided above, such individual's fellow City Councilors or committee members shall review the facts as disclosed to them and shall vote on whether or not such individual has a financial or special interest with respect to the agenda item concerned. All conflict of interest questions relating to a particular agenda item shall be resolved prior to any consideration of the item concerned, and each City Councilor or committee member present shall be entitled to vote on all conflict of interest questions except those questions pertaining to that individual Councilor's or committee member's alleged conflict of interest.
  - (1) All votes of conflict of interest questions shall be recorded. A majority vote shall determine the question, but a vote by committee may later be reviewed by the full City Council upon the City Council's consideration of the same agenda item.
  - (2) Upon determination that a conflict of interest in fact exists, the City Councilor or committee member concerned shall be excused from participating in discussion, deliberation or vote on the relevant agenda item.

- D. Avoidance of appearance of conflict. To avoid the appearance of a violation of this section, once any individual City Councilor is determined to have a conflict of interest in respect to any agenda item and once all conflict of interest questions relating to the agenda item concerned have been determined as provided in Subsection C above, said individual shall immediately remove themselves from the meeting room. The City Councilor shall not return to the Councilor's regular seat as a member of the body until deliberation and action on the item is completed. If the item has not been finally resolved when the conflict of interest is first determined, said individual shall not be present for any subsequent action on the agenda item. Nothing herein shall require an individual Councilor to remove themselves for any item contained on a consent agenda on which there is no deliberation if the individual's conflict has been determined by the other members and the right to abstain from voting on the item has been granted.
- E. Personal interest. Nothing herein shall be construed to prohibit any City Councilor, from representing his/her/their own personal interest by appearing before the Council on any such agenda item.
- F. Municipal budget.
  - (1) Notwithstanding the provisions of § 4 below, no City Councilor shall abstain from or be prohibited from voting on the municipal budget when it comes before the Council on a Council agenda for approval.
  - (2) If during the Council discussion of the approval of the municipal budget the Council decides to deliberate upon a line item of the budget on which a councilor has been previously determined to have a conflict or has previously abstained, then the Councilor shall not participate in the deliberations on that particular line item. Upon the conclusion of any such deliberation, the Councilor shall continue to participate in other budget deliberations and vote on the municipal budget.
  - (3) It is the intent of this provision that all Councilors shall participate in the deliberation and vote on the municipal budget when it is presented to the Council for approval, but that no Councilor shall participate in a deliberation on or vote on any specific provision in the municipal budget for which the Councilor has previously been determined to have a conflict or has previously abstained.

**§ 4. Abstention; exercising the right to abstain.**

Any City Councilor who believes that he/she/they or a member of his/her/their immediate family has a special or financial interest, other than an interest held by the public generally, in any agenda item before the Council or any of its committees may, after disclosure of the nature and extent of such interest, publicly state his/her/their intent to abstain from participation in the deliberation or vote, or otherwise taking part in the decision making process on the agenda item. However, the City Council may by motion and vote determine that there is no conflict and that the City Councilor, board member or commission member shall not be permitted to abstain from participating and voting on the agenda item.

**§ 5. Certain privileges or exemptions prohibited.**

No councilor shall use the member's position to secure special privileges or exemptions for the councilor, his/her/their spouse, child, parents, other persons or employers. Nor shall any councilor accept anything of value that may tend to influence the councilor in the discharge of the councilor's duties, or which could have influenced the councilor in the discharge of his/her/their past duties.

**§ 6. Incompatible employment or activity prohibited.**

No councilor shall engage in or accept private employment or render services for private individuals or entities or engage in any business or professional activity when the employment, service or activity is incompatible with the proper discharge of the councilor's official duties, or when it would require or induce the councilor to disclose confidential information acquired by reason of his/her/their official position.

**Commented [1]:** These sections replace/simplify language around solicitation/political activity, etc.

**§ 7. Contracts, purchases and employment.**

In keeping with Article VIII, Section 1 of the City's Charter, no member of the City Council shall:

- A. Have a substantial financial interest, direct or indirect, in any contract entered into by or on behalf of the City of Portland except his/her/their employment contract, or in the sale to or by the city of any land, materials, supplies or services when such officer exercises on behalf of the city any function or responsibility with respect to such contract or sale.
- B. Purchase or accept anything from the city 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, 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.

**§ 8. Misuse of City resources.**

A City councilor shall not use city letterhead, personnel, equipment, supplies, or resources for a non-governmental purpose nor engage in personal or private activities during times when he/she/they is required to work on behalf of the City.

**§ 9 Coercive political solicitation.**

A city councilor shall not use the councilor's position to make threats or promises for the purpose of trying to get anyone to do any political activity or make a political contribution.

**§ 10 Political solicitation of vendors, contractors, and licensees.**

A city councilor shall not ask any person or entity that does or intends to do business with the municipality or that has or is seeking a license, permit, grant, or benefit from the City or that has done business with the City during the previous twelve months to make any political contribution or engage in any political activity.

**§ 11. Conduct of councilors.**

City councilors will hereafter conduct themselves according to the following rules of conduct as they pertain to work for and on behalf of the City of Portland:

- A. A councilor shall always represent that opinions stated are the councilor's own and do not necessarily represent those of the council unless the council has voted and passed an ordinance, resolution or motion that so states the expressed policy.
- B. A councilor shall not use his/her/their office for personal gain, especially financial gain, including particularly the acceptance of gifts and gratuities.
- C. A councilor shall not make false statements on which the council, city staff or other agencies rely to establish policy or make important decisions. A councilor violates this rule if he/she/they knows it is untrue, or if the person has knowledge that would lead a reasonable person of ordinary prudence to conclude that the statement is untrue.

**Commented [2]:** This simplifies some of the issues addressed in the prior social media provisions etc. in an attempt to more effectively address the concerns raised by members of the committee without creating unintended consequences or confusion.

**§ 12. Violation and penalties.**

The following procedure will be implemented by a council ethics and administration committee when an alleged violation of the rules stated herein occurs:

- A. Any councilor who believes that another councilor has violated the council ethics rules shall submit a written statement of the purported violation to the council ethics and administration committee.
- B. The committee shall review the violation in executive session to determine whether adequate reasons exist to bring formal charges. If the accused councilor is a member of the committee, the accused councilor shall remove him/her/themself from the committee and the council shall substitute another councilmember for the review.

**Commented [3]:** This aims to firm up the complaint/decision process. As drafted, it would require the creation of either a standing committee or an ad hoc committee called together to address a complaint - to be discussed further.

C. The committee shall come to one of the following conclusions:

1. There is insufficient evidence to conclude that any particular violation has occurred. In this case, the committee shall keep any records confidential unless otherwise prohibited by applicable law.

2. The committee concludes there may have been a violation, in which case the committee may call for full review by the council in executive session.

D. If the committee concludes there may have been a violation, the council shall classify the possible violation as major or minor in executive session. If the council determines that a minor violation has occurred, it shall pass an appropriate motion of censure at a public meeting. The accused councilor may demand a public hearing for minor violations. A major violation shall result in a public hearing by the council. The council shall select one of its members to present its findings at the hearing. The accused councilor shall neither conduct the meeting during the hearing nor shall the member present the findings.

The council shall give the accused council member adequate time to prepare a case and to present the case at the public hearing. Both the council and accused member shall present their own cases but they may be accompanied by counsel during the proceedings. The council presenter and the accused councilor may present witnesses who shall present their evidence upon oath.

After hearing the evidence, the council shall determine whether the purported violation was major, minor or whether there is insufficient evidence to determine that a violation occurred. If the council determines that a violation occurred, they shall also establish a penalty commensurate with the violation.

**§ 10. Findings open to public – Exceptions.**

The record of the committee's findings and other records made or filed under this chapter shall be open to public inspection unless such designation is inconsistent with some other provision of law.

**§ 11. Initiation of appropriate action.**

If the findings of the committee disclose a violation of this chapter, Corporation Counsel shall initiate appropriate action to effectuate the purposes of this chapter.