



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

City Council Rules Committee

Monday, May 2, 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.

Please click the link below to join the webinar:

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1. Approval of April 11, 2022 Rules Committee meeting minutes
 - a. Attached.
2. Call to Order
3. Review draft Code of Ethics and discussion
 - a. Attached.
4. Public Comment on Code of Ethics
5. Committee vote on Code of Ethics, including any changes
6. Adjournment



City Council Rules Committee

**Monday, April 11, 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 8:02 a.m. on April 11, 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, Jeffrey Curran, and John P. attended.

Councilor Zarro convened the meeting and asked for a motion to accept the minutes of the March 28, 2022 meeting. Councilor Dion moved and Councilor Zarro seconded his motion to accept those minutes, which was approved by a roll call vote of 2-0.

Councilor Zarro asked Attorney Thompson to start the review of the updated Code of Ethics, with revisions made following the last meeting on March 28, 2022.

After discussion with Chair Zarro and Mayor Snyder, Attorney Thompson said an Ethics Committee would do a first level review of violations and would inform the City Council and the person involved what the next steps would be.

Mayor Snyder asked how complaints from the public would be dealt with, and Attorney Thompson said she assumed a councilor would forward those complaints to the Ethics Committee. Mayor Snyder said such a committee would best be put in place annually and suggested clarifying language on the creation of the committee in the Code of Ethics.

Councilor Dion asked if complaints should go through the Mayor's Office, and the Code of Ethics have the Mayor forward the complaints to the City Council. He also questioned whether the section setting out a different approach to major and minor violations was a good idea.

Councilor Dion also requested that a Statement of values be added to the Code of Ethics to make it clear that the purpose of such a code would be to sustain those values.

Attorney Thompson suggested a statement of values could precede the "Declaration of Policy" section at the beginning of the draft Code, and that the distinction between major and minor violations be removed from a later section in the document.

Councilor Dion said he do not think a distinction between major and minor violations was useful and proposed removing that language. Mayor Snyder agreed it was best not to make a distinction.

Mayor Snyder asked that, if the Mayor was responsible for forwarding complaints, that could be clarified. She said a four-person Ethics Committee may be needed and that a committee of two could bring things forward. Attorney Thompson said that could be taken care of in Section 12.

Mayor Snyder said that, while sometimes complaints could be handled by staff, any kind of obligation could set up an unintended outcome.

Chair Zarro asked if there should be a not-to-exceed monetary value for violations. Attorney Thompson said the broad City Charter language ban is for gifts of any kind. Chair Zarro said that the Code of Ethics should follow that language.

Councilor Ali asked what Section 8, Misuse of City Resources, meant. Attorney Thompson said that a city councilor should make clear when actions are undertaken as a city councilor and that, in the council and in a committee, you are acting in your capacity as a councilor, for example. Councilor Ali asked if, when, for example, one of the Friends organizations requested his support, he could provide a letter on city council letterhead stating support.

Attorney Thompson said if the full City Council has supported whatever is being considered, that would be fine, but not if it has not.

Councilor Ali asked if he could provide a letter of recommendation for a mentee, for example, and Attorney Thompson suggested he could use his own letterhead for that. She offered to try to clarify the language if it was confusing, and Councilor Ali asked that that be done.

Chair Zarro suggested that language in Section 8 be revised to clarify the Mayoral obligation to bring forward complaints. Mayor Snyder said she had no other changes. Chair Zarro suggested Section 8 be removed, or possibly Attorney Thompson could draft an amendment of Section 8 for the committee to review for consideration of the City Council. Councilor Ali said it should not be too restrictive.

During the period for public comment, Sarah Michniewicz said this Code of Ethics was a

solid bit of work that she hoped would be made unnecessary by the work of the Charter Commission. Councilor Dion's request for a statement of values was a good idea, and the complaint process should be kept as simple as possible – otherwise it might be thought less legitimate.

George Rheault said he thought the process had no value. Nothing was being fixed by the Code, which only restates existing policy.

Jeffrey Curran said criminal statutes already define unethical actions as crimes. The proper avenue for a complaint is to go to the Police Department.

Public comment was closed by Chair Zarro at 9:01 a.m.

Chair Zarro said the Code of Ethics would be revised according to remarks made at this meeting and asked if committee members wished to consider those revisions again at another Rules Committee Meeting, to be scheduled later. The Committee agreed to another meeting. Mayor Snyder said it was best to send the City Council a final draft. Chair Zarro asked the committee members to email any additional questions and suggestions before the next meeting, the date of which he would share with the Committee.

Mayor Snyder moved and Councilor Dion seconded the motion to adjourn, which passed by a roll call vote of 4-0. The meeting adjourned at 9:08 a.m.

CITY OF PORTLAND CODE OF ETHICS

§ 1. Declaration of policy and statement of values.

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, beginning with this statement of values.

A. Trust. The purpose of City government is to serve the public. City officials treat their office as a public trust. Citizens have a fair and equal opportunity to express their views to City officials. Therefore, the City's powers and resources are used for the benefit of the public rather than any official's personal benefit. City officials ensure public respect by avoiding even the appearance of impropriety. The long-term benefit to the public as a whole is held above all other considerations, including serving important individuals and special interests. The public interest, however, includes protecting the rights of under-represented minorities. Administrators implement policies in good faith, as equitably and economically as possible, regardless of their personal views. Whistle-blowing is appropriate for unlawful or improper actions. City officials devote City resources, including paid time, working supplies, and capital assets, to benefit the public. Political campaigns are not conducted on City time or property.

B. Objectivity. City officials' decisions are based on the merits of the issues. Judgment is independent and objective. City officials avoid financial conflict of interest and do not accept benefits or gifts of any kind from anyone and, in particular, from people requesting to affect decisions. If an individual official's financial or personal interests will be specifically affected by a decision, the official withdraws from participating in the decision. City officials avoid bias or favoritism and they respect cultural differences as part of decision-making. Intervention on behalf of constituents or friends is limited to assuring fairness of procedures, clarifying policies or improving service for citizens.

C.. Accountability. Open government allows citizens to make informed judgments and to hold officials accountable. City officials exercise their authority with open meetings and public records, facilitating open discussion. Officials who delegate responsibilities also follow up to make sure the work is carried out efficiently and ethically. Campaigns for election should allow the voters to make an informed choice on appropriate criteria.

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. Expressions of support and recommendations by a councilor drafted on city council letterhead should be based upon the decision of the full council to give the entity or individual its support.

Commented [NE2]: In response to Councilor Ali's request for clarification, and Jen's response. However, later notes for the minutes suggest this section be deleted entirely. Councilor Ali at one point said he would draft an amendment -- but I am not sure what that was going to say.

§ 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 any 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 [3]: 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 standing council ethics and administration committee, appointed annually with the other standing committees and with four (4) members, when an alleged violation of the rules stated herein occurs:

- A. Any councilor who believes that another councilor has violated the council ethics rules, whether by personal knowledge or by a substantiated report of any member of the public, 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.
- 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; or-
 - 2. ~~The committee concludes there~~ There may have been a violation, in which case the committee may call for full review by the council in executive session.

Commented [4]: 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.

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 a public hearing of the City Council. 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.

Statement of Purpose. The purpose of City government is to serve the public ***interest.*** City officials ***shall*** treat their office as a ***tangible representation of the*** public trust ***granted to each Councilor.*** Citizens ***shall*** have a fair and equal opportunity to express their views to City officials. Therefore, the City's powers and resources are ***to be*** used for the benefit of the ***common good*** rather than any official's personal benefit. ***The principles of equitable and fair municipal governance shall include but are not limited to honesty, trust, integrity, transparency, individual and collective behavior that promotes responsibility, accountability, mutual respect, and commitment to the City and its constituents. Council action shall promote the ability of residents to exercise their rights by effectively communicating information that is understandable, accessible and culturally responsive thereby assuring residents a path to meaningful participation in the proceedings of the Council and the meetings of its various Committees.***

Gratuities

No councilor, either directly or as the beneficiary of a gift or other thing of value given to a spouse, partner, or dependent child, shall accept or receive any gifts or other thing(s) having either a fair market value or aggregate actual cost greater than fifty dollars (\$50), but in no case greater than one hundred dollars (\$100) in any calendar year including, but not limited to, gifts, promises of future employment, favors or services, gratuities or special discounts, from a single person, organization or business entity, without the person, organization or business entity receiving lawful consideration of equal or greater value in return.

An employee may not use his [their] public office for his [their] own private gain or for that of persons or organizations with which he [they are] is associated personally. An employee's position or title should not be used to coerce; to endorse any product, service or enterprise; or to give the appearance of governmental sanction. An employee may use his [their] official title and stationery only in response to a request for a reference or recommendation for someone he [they have] has dealt with in Federal employment or someone he [they are] is recommending for Federal employment.

<https://www.justice.gov/jmd/misuse-position-and-government-resources> (on 4/26/2022)

Code of Federal Regulations

§ 2635.704 Use of Government property.

(a) Standard. An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(b) Definitions. For purposes of this section:

(1) Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

(2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

<https://www.law.cornell.edu/cfr/text/5/2635.704>

(c) Misuse of Public Position or Resources. Except for infrequent use at little or no cost to the city, officials shall not use public resources that are not available to the public in general, such as city staff time, equipment, supplies or facilities, for other than a city purpose.

<https://www.codepublishing.com/WA/Kirkland/html/Kirkland03/Kirkland0314.html#3.14.030>