

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Tom Abbott (absent)
Councilor Chris Rice (excused)
Councilor Laura Hainey
Councilor Daniel Fitzpatrick



Others Present

Terence O'Rourke, City Attorney
Lisa Stanley, Police Commissioner
Dave Camire, School Board member

**CODES AND ORDINANCES COMMITTEE
Of the Rochester City Council
Thursday, August 5, 2021
Council Chambers
6:00 PM**

Minutes

1. Call to Order

Chair Lachapelle called the Codes & Ordinances meeting to order at 6:00 PM

Deputy City Clerk Cassie Givara took a silent roll call. All Councilors were present except for Councilor Rice who was excused and Councilor Abbott who was absent. There was a quorum present.

2. Public Input

There was no one present in Council Chambers for public input.

3. Acceptance of the Minutes

3.1 May 6, 2021 *motion to approve*

Councilor Hainey **MOVED** to accept the minutes of the May 6, 2021 Codes & Ordinances Committee. Councilor Fitzpatrick seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

4. Discussion: Ethics Committee & Code

Chairman Lachapelle opened up the discussion for edits and corrections to the draft Code of Ethics which had been distributed in the packet as well as to the School Board and the Police Commission.

The following minor grammatical corrections were identified for correction:

- page 10, 6th paragraph down where the title reads “*Do no solicit political support from staff*” and should be changed to “Do not solicit.”
- Page 14, first paragraph, 2nd to last sentence which should be changed from “ability to work with staff and they public” should be changed to “staff and the public.”
- Page 15, under the title “Inappropriate Staff Behavior” the sentence which reads “These employees may be disciplines...” should read “...may be disciplined.”

Councilor Hainey inquired if the Code of Ethics was the correct place to outline repercussions for inappropriate staff behavior because it would likely be covered in the employee handbook or employee contracts. She stated that this document was intended for City Council, School Board, and Police Commission members as opposed to City staff and suggested that this entire section be removed. Dave Camire, School Board, suggested that the intent was to outline the reporting of inappropriate behavior by staff. Councilor Hainey **MOVED** to strike the last sentence in the paragraph as follows:

Inappropriate Staff Behavior

Council members should refer to the city manager any City staff or to the city attorney any City Attorney’s staff who do not follow proper conduct in their dealings with Council members, other City staff, or the public. ~~These employees may be disciplines in accordance with standard City procedures for such actions. (Please refer to the section on Council Conduct with City Staff for more details on interaction with Staff.)~~

Councilor Fitzpatrick seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

There was discussion regarding changing the title of the above listed section to something indicating it was about the reporting of said inappropriate behavior. Councilor Fitzpatrick stated that the intention seemed to be to prevent having a Council or Board member confront staff behavior personally, but rather taking the proper channels through the City Manager or City Attorney to report and address the behavior. The Committee set aside the decision to return to later in the meeting.

Lisa Stanley, Police Commissioner, directed the Committee to page 3 of the document, bullet point 2 which states, in part, “Members shall comply with the laws of the nation, the State of New Hampshire and the City of Rochester in the performance of their public duties.” She questioned why this was only referencing public duties as opposed conduct both publicly and privately. She stated

that members of boards and commissions already sign an oath of office promising to carry out these duties and to maintain this conduct and it should not be restricted to their public conduct. Attorney O'Rourke stated that the verbiage in this subsection of the Code of Ethics is actually broader than what is contained in the oath of office. Commissioner Stanley suggested changing the passage as follows:

2. Comply with both the spirit and the letter of the Law and City Policy. Members shall comply with the laws of the nation, the State of New Hampshire and the City of Rochester. ~~in the performance of their public duties. These laws include, but are not limited to: the United States and New Hampshire constitutions; the Rochester City Charter; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.~~

Councilor Lachapelle **MOVED** to remove the sentence as listed above. Councilor Fitzpatrick seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Commissioner Stanley directed the committee to page 5, section 12 which reads:

12. Representation of Private Interests. In keeping with their role as stewards of the public interest, members shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City, nor shall members of boards and commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

Commissioner Stanley pointed out that on page 13 section 5 reads "However, they should be sensitive to the way their participation especially if it is on behalf of an individual, business or developer– could be viewed as unfairly affecting the process." which appears to directly conflict with the earlier passage on page 5. Attorney O'Rourke clarified that in section 12, "representing" referred to appearing as legal counsel or a paid consultant on behalf of a third party. The caution suggested on page 5, as listed above, refers to a Councilor or board member appearing as a private citizen in support of a particular project or group. Attorney O'Rourke suggested adding the verbiage "as a paid or retained representative" to section 12. Councilor Fitzpatrick **MOVED** to add the verbiage as follows:

"...In keeping with their role as stewards of the public interest, members shall not appear **as a paid or retained representative** on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City..."

Councilor Hainey seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Commissioner Stanley questioned section 14 on page 5 titled “Police role of Members” and asked if the word “police” was necessary. Councilor Lachapelle stated that in drafting this code, they had taken multiple examples from other communities and combined the relevant pieces to develop a document for Rochester’s needs. This process accounts for some of the items which remain to be addressed. Attorney O’Rourke said that the word “police” in this context refers to overseeing a role, not to the police department. He stated that it was a non-interference clause and could be changed to “Non-interference of members.” Councilor Fitzpatrick **MOVED** to change the title of section 14 on page 5 as follows:

14. Police Role ~~Non-interference~~ of Members.

Councilor Hainey seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Commissioner Stanley directed the committee to page 9, section 4 of the document in regards to non-routine requests requiring special effort. The document says these requests need to start with the City Manager, but Commissioner Stanley stated that the Police Commission would more likely go to the Chief and the School Board would report to the superintendent. Attorney O’Rourke said that verbiage could be added in a footnote referencing the appropriate party for each board to report. Councilor Lachapelle **MOVED** to update the footnote to reference this correct reporting information for each board. Councilor Fitzpatrick seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Commissioner Stanley referenced the first paragraph on page 10 titled “*Never publicly criticize an individual employee.*” She said she had discussed this with the City Manager and there was a reference to the City Attorney which should not be included because it relates to elected officials. A motion was not needed because this item was identified as needing to be changed from the beginning. It was updated as follows:

Never publicly criticize an individual employee

Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee’s manager. Comments about staff performance should only be made to the city manager through private correspondence or conversation. ~~Comments about staff in the office of the city attorney should be made directly to the city attorney.~~ Appointed officials should make their comments regarding staff to the city manager or the Mayor.

Commissioner Stanley said that same issue is contained on page 15 and that passage was additionally changed as follows:

~~Inappropriate~~ **Reporting Staff Behavior**

Council members should refer to the city manager any City staff **or to the city attorney any City Attorney’s staff** who do not follow proper conduct in their dealings with Council

~~members, other City staff, or the public. These employees may be disciplines in accordance with standard City procedures for such actions. (Please refer to the section on Council Conduct with City Staff for more details on interaction with Staff.)~~

Mr. Camire stated that the School Board has an attorney and questioned if this deletion would be relate to that attorney as well. Attorney O'Rourke said that in the case of the School Board, with the footnote referencing the proper reporting authorities, it would indicate that the School Board members should refer to the Superintendent. He stated he would update the footnote to state that any reference to City Council throughout the document also refers to School Board and Police Commission, and any reference to City Manager also refers to Superintendent and Chief of Police.

Commissioner Stanley pointed to the sections on page 11 which refer to public speaking at meetings and questioned whether this document was the proper place for this wording as opposed to how it already stands in the rules of order. City Attorney O'Rourke agreed that some of this could be removed, but recommended keeping the portion which reads "No qualified speaker will be turned away unless he or she exhibits inappropriate behavior" because this sentence refers to the conduct of board members in relation to their treatment of public speakers. Councilor Hainey said that this information is already covered in section 3(a) on page 10 Elected and Appointed Officials' Conduct with the Public. Commissioner Stanley suggested the sentence in question could be placed at the end of the "In Public Meetings" section of 3(a). Councilor Hainey suggested striking all of page 11 and the top of page 12 and moving the sentence "No qualified speaker will be turned away unless he or she exhibits inappropriate behavior" to the end of section 3(a) on page 10. Councilor Hainey **MOVED** to remove the top two paragraphs on page 11. After further discussion, the motion was amended to change the paragraphs as follows:

Be fair and equitable in allocating public hearing time to individual speakers.

The chair will determine and announce limits on speakers at the start of the public hearing process. Questions should not be asked for the express purpose of allowing one speaker to evade the time limit imposed on all others (e.g., "Was there something else you wanted to say?"). ~~Generally, each speaker will be allocated three minutes with the applicants and appellants or their designated representatives allowed ten. If many speakers are anticipated, the chair may shorten the time limit and/or ask speakers to limit themselves to new information and points of view not already covered by previous speakers.~~

~~No qualified speaker will be turned away unless he or she exhibits inappropriate behavior. Each speaker may only speak once during the public hearing unless the chair requests additional clarification later in the process. After the close of the public hearing, no more public testimony will be accepted unless the chair reopens the public hearing for a limited and specific purpose.~~

Councilor Fitzpatrick seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Hainey **MOVED** to change the paragraph on page 11 titled "*Give the appearance of active listening*" to "*Be an active listener.*" Councilor Fitzpatrick seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

There was a discussion regarding the section on page 11 in regards to asking a public speaker for clarification. It was determined that this section was germane and should remain in the document.

Commissioner Stanley referred to the page 15, section C titled Sanctions and the paragraph regarding “Public Disruption.” She said it seemed to relate more to public conduct as opposed to the conduct of elected officials. Attorney O’Rourke agreed that this information is included in other places such as the Council Rules of order and could be removed from this ethics document. Councilor Lachapelle **MOVED** to remove the section on page 15 as follows:

C. SANCTIONS

Public Disruption

~~Members of the public who do not follow proper conduct after a warning in a public hearing may be barred from further testimony at that meeting or removed from the Council Chambers.~~

Councilor Fitzpatrick seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

The last sentence on page 15 was changed as follows to correct an omitted word:

City Council members who intentionally and repeatedly do not follow proper conduct may be reprimanded or formally censured by the Council, or **lose** committee assignments.

Commissioner Stanley suggested that the word “censure” as used in the sentence may need to be defined within the document. Council Lachapelle said that it is the prerogative of the chair to use their gavel to restore order and it is under the mayor’s authority to have a member removed. Attorney O’Rourke stated that censure is a formal statement of disapproval. It was decided that a definition of censure should be added to the “Glossary of terms” within the document.

Commissioner Stanley reference the sentence at the top of page 12 which refers to “Serious infractions of the Code of Ethics or Code of Conduct” and questioned to what “serious” refers. Attorney O’Rourke said the law does not define “serious” and cautioned against a definition due to the subjective nature of the term and what may be considered serious to various people or organizations. The sentence already references the City Charter and state RSA.

There was a brief discussion regarding the process to be taken when confronting behavior/infractions by board members and the steps which need to occur.

Commissioner Stanley referred to page 17 with the bullet points under “Principles of Proper Conduct.” She stated that she felt the list was juvenile and might better be purposed as a handout for new board members or as part of the statement of page 20 which members would be signing. Attorney O’Rourke said the wording was intended as aspirational principles that board members would be agreeing to. Councilor Lachapelle suggested moving this list to the Member Statement document on page 20. Councilor Fitzpatrick suggested changing the title to “Aspirational Principles” or “Aspirational Goals.” Councilor Hainey **MOVED** to change pages 17 and 18 as follows:

D. PRINCIPLES OF PROPER CONDUCT

Proper conduct IS...

- ~~Keeping promises~~
- ~~Being dependable~~
- ~~Building a solid reputation~~
- ~~Participating and being available~~
- ~~Demonstrating patience~~
- ~~Showing empathy~~
- ~~Holding onto ethical principles under stress~~
- ~~Listening attentively~~
- ~~Studying thoroughly~~
- ~~Keeping integrity intact~~
- ~~Overcoming discouragement~~
- ~~Going above and beyond, time and time again~~
- ~~Modeling a professional manner~~

Proper conduct IS NOT...

- ~~Showing antagonism or hostility~~
- ~~Deliberately lying or misleading~~
- ~~Speaking recklessly~~
- ~~Spreading rumors~~
- ~~Stirring up bad feelings, divisiveness~~
- ~~Acting in a self-righteous manner~~

It all comes down to respect

~~Respect for one another as individuals...respect for the validity of different opinions...respect for the democratic process...respect for the community that we serve~~

E. CHECKLIST FOR MONITORING CONDUCT

- ~~Will my decision/statement/action violate the trust, rights or good will of others?~~
- ~~What are my interior motives and the spirit behind my actions?~~
- ~~If I have to justify my conduct in public tomorrow, will I do so with pride or shame?~~
- ~~How would my conduct be evaluated by people whose integrity and character I respect?~~
- ~~Even if my conduct is not illegal or unethical, is it done at someone else's painful expense? Will it destroy their trust in me? Will it harm their reputation?~~
- ~~Is my conduct fair? Just? Morally right?~~
- ~~If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?~~
- ~~Does my conduct give others reason to trust or distrust me?~~
- ~~Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?~~
- ~~Do I exhibit the same conduct in my private life as I do in my public life?~~
- ~~Can I take legitimate pride in the way I conduct myself and the example I set?~~

- ~~○ Do I listen and understand the views of others?~~
- ~~○ Do I question and confront different points of view in a constructive manner?~~
- ~~○ Do I work to resolve differences and come to mutual agreement?~~
- ~~○ Do I support others and show respect for their ideas?~~
- ~~○ Will my conduct cause public embarrassment to someone else?~~

Councilor Fitzpatrick seconded the motion. Attorney O'Rourke said that removing these sections would undermine the entire document; it is a code of ethics and conduct, with both ethics and conduct being defined earlier in the code. While ethics is covered throughout, removing this section removes the description of conduct. Councilor Hainey **WITHDREW** her motion. Councilor Fitzpatrick withdrew his second. The **MOTION CARRIED** by a unanimous voice vote.

Mr. Camire asked if there was a timeline on the document which dictates when it would need to be reviewed. Councilor Lachapelle said that it can be changed and nothing is set in stone at this stage. He suggested that every two years when the Codes committee reviews the rules of order, this Code of Ethics can be reviewed at the same time. Attorney O'Rourke clarified that this document would not be adopted as part of the City Ordinances. He stated that each board could potentially make reviews and changes to suit their needs independent from the other boards. Councilor Lachapelle stated that this could be added to the next Codes & Ordinances agenda to add to the Rules of Order that the Codes Committee will review the Code of Ethics.

It was discussed that any further minor grammatical changes could be sent directly to Attorney O'Rourke for correction.

Mr. Camire stated that the School Board was meeting the following week and they would have a discussion on the changes that had been made this evening and discuss any further changes to come back to the Codes Committee. Commissioner Stanley stated that the Police Commission was not meeting in September, but they would discuss the document at their next meeting and forward any further suggested changes.

The changes to the Code of Ethics document were kept in committee.

15. Other

No Discussion.

16. Adjournment

Chairman Lachapelle **ADJOURNED** the Codes & Ordinances Committee meeting at 7:20 PM.

Respectfully Submitted,

Cassie Givara, Deputy City Clerk