

**Codes and Ordinances Committee**

Councilor Peter Lachapelle, Chair  
Councilor Steve Beaudoin  
Councilor Skip Gilman  
Councilor Ashley Desrochers  
Councilor Tim Fontneau



**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

**Thursday, October 5, 2023**

**31 Wakefield Street, Rochester, NH**

Council Chambers

**6:00 PM**

**Agenda**

1. Call to Order
2. Roll Call
3. Public Input
4. Acceptance of the Minutes
  - 4.1 September 7, 2023 *motion to approve* P. 3
5. Amendment to Chapter 7-35 of the General Ordinances of the City of Rochester Regarding the Economic Development Commission (*kept in Committee 9/7*) P. 7
6. Amendment to Chapter 7-63 of the General Ordinances of the City of Rochester Regarding the Economic Development Reserve Fund (*kept in Committee 9/7*) P. 9
7. Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Code of Ethics and Conduct for Elected and Appointed Officials P. 13
8. Other
9. Adjournment

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City Clerk's Office

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**Codes and Ordinances Committee**

Councilor Peter Lachapelle, Chair  
Councilor Steve Beaudoin Vice Chair  
Councilor Skip Gilman  
Councilor Ashley Desrochers (excused)  
Councilor Tim Fontneau



**Others Present**

Mike Scala, Director of Economic Development

**CODES AND ORDINANCES COMMITTEE  
Of the Rochester City Council  
Thursday, September 7, 2023  
Council Chambers  
6:00 PM**

**Minutes**

**1. Call to Order**

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

Deputy City Clerk Cassie Givara took a silent roll call attendance. All Councilors were present except for Councilor Desrochers, who was excused.

Chair Lachapelle explained that it had been several months since the Codes and Ordinances Committee had met due to lack of pressing items needing action, and on one occasion due to lack of quorum which caused a cancellation.

**2. Public Input**

Susan Rice, resident, spoke in favor of adding “other” back to City Council agendas (agenda item 6).

**3. Acceptance of the Minutes**

**3.1 April 6, 2023 *motion to approve***

Councilor Beaudoin **MOVED** to **ACCEPT** the minutes of the April 6, 2023 Codes and Ordinances Committee meeting. Councilor Gilman seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

**4. Amendment to Chapter 7-35 of the General Ordinances of the City of Rochester**

### **Regarding the Economic Development Commission**

Chair Lachapelle explained that items 4 and 5 on the agenda were housekeeping items resultant from actions previously taken by Council. The Economic Development Capital Reserve Fund had been approved in July 2022, but there is further action needed to complete the process and include the fund in the City's ordinances.

Mike Scala, Director of Economic Development, confirmed that this action would memorialize the previously passed resolution previously as an ordinance and give it a place to "live" and be referenced.

Councilor Fontneau stated that historically, the Economic Development Commission (REDC) has not been involved in residential development. Director Scala agreed and explained that when the REDC was established in the 90s, the focus had been on businesses and commercial interests. However, as Rochester has changed over the decades, it was determined that adding residential to the charge of the REDC would be in keeping with the mission of the Economic Development department. Councilor Fontneau acknowledged the importance and the shift towards housing in Rochester, and stated that he supports these initiatives; however, he questioned whether the REDC should have the promotion of residential housing as part of their mission. Chair Lachapelle referenced the mixed-use developments in the downtown area with commercial on the first floor and residential units above. He felt that the proposed amendments would allow for more of these types of developments. Director Scala agreed that residential in the context of this amendment is not referring to single family housing; it would be mixed-use and workforce type housing that would be connected to commercial development.

Councilor Beaudoin indicated he had several questions for the City Attorney on the legality of the amendments, which would have to wait until a future meeting to be answered. He said that in his interpretation of NH RSA 34:1 regarding Economic Development Capital Reserve Funds, the law does not allow for residential development. Councilor Beaudoin asked if there was funding appropriated to the Economic Development Department separate from this funding to be held by the Trustees of the Trust Fund. Director Scala answered that the entirety of the appropriated funding is held in this Capital Reserve fund.

Councilor Beaudoin **MOVED** that action on both items 4 and 5 be postponed until the next meeting when they could be further discussed and clarified with the City Attorney; particularly clarification on the amendments to Chapter 7-63. Councilor Gilman seconded the motion. Chair Lachapelle asked for confirmation from Director Scala that these items were not of an urgent nature and action could be postponed. Director Scala reported that the City Attorney had already reviewed these items and did not find anything objectionable; however, he confirmed it would not cause a problem to postpone the recommendation for Chapter 7-35.

Councilor Fontneau indicated he would suggest changing verbiage to specify mixed-use as opposed to specifically residential development. Chair Lachapelle clarified that the motion was to postpone the two agenda items to a time certain (the next Codes & Ordinances Committee meeting). Councilor Beaudoin confirmed that was the correct motion. The **MOTION CARRIED** by a unanimous voice vote.

## **5. Amendment to Chapter 7-63 of the General Ordinances of the City of Rochester Regarding the Economic Development Reserve Fund**

Director Scala questioned if the Committee would take action on this item, which was a recommendation to Council to codify this amendment into the City Ordinances per RSA 34:1-A. Councilor Beaudoin stated his intention was to postpone both items to get clarification from the City Attorney on the legality of these proposals and how they would work with the stipulations of the stated RSA. Director Scala reiterated that the amendment to Chapter 7-63 does not include anything regarding residential development; Council had already approved this resolution and the action requested is a recommendation to Council to codify the amendment into the City Ordinances. Councilor Beaudoin confirmed his motion had been to postpone both items 4 and 5.

## **6. Discussion: Amendment to Rules of Order Section 1.6 “Order of Business” to add “14. Other”**

Chair Lachapelle explained that this item had been proposed by Councilor Beaudoin. Chair Lachapelle stated that he opposed the re-addition of “Other” to Council agendas and felt there was already a process in place to add discussions for items that previously would have fallen under this category.

Councilor Beaudoin referenced a circumstance several months prior in which Councilor Berlin had requested a 2/3 vote at a Council meeting in order to add an item to the agenda. The vote had failed and Councilor Berlin was not allowed to introduce his topic. Councilor Beaudoin questioned the required 11-day timeline to which Councilors are subject for getting items on the agenda, which can be difficult to achieve. Additionally, Councilor Beaudoin referenced situations in which Councilor Gray had introduced discussions during meetings that would likely have fallen under “Other” because they are not on the posted agenda. These discussions had been allowed by the Mayor at Council meetings without this 2/3 vote.

Chair Lachapelle asserted that in the circumstance referenced involving Councilor Berlin, he likely would have received a 2/3 vote had he been more forthcoming with the topic he wanted to discuss; however, he did not explain why he was requesting the vote or the context of the discussion.

Councilor Fontneau asked when “Other” had been removed. Councilor Beaudoin and Chair Lachapelle answered that it had been approximately two years prior after the start of the new Council’s term. Councilor Fontneau acknowledged that he had voted in opposition of Councilor Berlin’s referenced item due to lack of definition on what was to be discussed. Additionally, Councilor Fontneau felt that bringing items to a meeting under “other” did not allow Councilors to properly review or research the topic.

Councilor Beaudoin stated that currently the rules of order allow any Councilor to add any item to the agenda within the normal agenda schedule. The requirement for a 2/3 vote to add an item to the agenda during a meeting seems to conflict with the rules of order allowing this open channel for Councilors to add agenda items. Chair Lachapelle reiterated that he felt the crux of the issue was in keeping things open and transparent. Councilor Beaudoin acknowledged he did not currently have an alternate approach while keeping in mind Robert’s Rules and the agenda

building process. Councilor Fontneau inquired where the requirement for a 2/3 vote to add an item to the agenda had originated, and if it was related to the 2/3 vote required to amend an agenda. He reiterated that he would be open to adding items to the agenda as long as the topic is properly defined to avoid being blindsided. Councilor Beaudoin confirmed that the 2/3 vote requirement originated from Robert's Rules. He agreed that it was not ideal to have an item presented for action without any time for Councilors to properly review. Councilor Beaudoin stated that after hearing the positions and opinions of the other Councilors, he is not adverse to leaving the agenda as it currently exists and not adding back "Other."

No action was taken on this item.

## 7. **Discussion: Roll call at subcommittee meetings**

Chair Lachapelle explained that he had received communications from a constituent regarding roll call attendance at subcommittee meetings. He said that "roll call" is currently included in the City Council Rules of Order, and subcommittees typically follow the same rules of order structure as Council. Councilor Gilman **MOVED** to recommend to City Council that a roll call attendance be taken at all subcommittee meetings per the City Council Rules of Order. Councilor Beaudoin seconded the motion. Councilor Fontneau asked if this was a roll call for attendance or for voting purposes. Chair Lachapelle clarified that the issue was regarding roll call attendance. There were instances where televised committees did not display nameplates, or in which the plates could not be read. A roll call would allow viewers to know which members were on the committee and which were present, absent, or excused.

Councilor Beaudoin read an excerpt from the prior Codes and Ordinances Committee meeting minutes, which indicated that the clerk had taken a silent roll call attendance and all councilors were present. He pointed out that a reader would not necessarily know who these councilors were unless they scrolled back to the beginning and looked at the roster listed for the committee. He felt a roll call would be helpful to constituents to understand who was present at the meetings. The **MOTION CARRIED** by a unanimous voice vote.

## 8. **Other**

Councilor Beaudoin referenced complaints received regarding Styrofoam in the streets of Rochester's downtown resulting from a local construction project. He indicated that City Manager Ambrose was doing a good job handling the issue and praised her for her ongoing communication and attention to the matter.

## 9. **Adjournment**

Chair Lachapelle **ADJOURNED** the Codes and Ordinances Committee meeting at 6:21 PM.

Respectfully Submitted,

Cassie Givara  
Deputy City Clerk

09/29/2023

**Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Economic Development Commission**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

**§ 7-35 Economic Development Commission.**

- A. The Economic Development Commission shall consist of 11 members, two of which members shall be ex officio members. Nine of the initial members of the Commission shall be those currently serving on the Commission. Thereafter, three members shall be elected annually for a term of three years with vacancies being filled by the City Council for any unexpired terms. The initial election shall be so arranged that 1/3 of the members may be elected each year. After the initial election, the three annual vacancies shall be filled by the Mayor in accordance with Section 74 of the City Charter. The Economic Development Commission shall recommend at least two persons from the private sector to the Mayor each year as potential nominees. In all cases, election shall be by the City Council. Members shall be chosen for their expertise, experience and abilities in business, industry, finance, real estate, government and law. A majority of the members shall reside within the City of Rochester and up to four of the elected members may reside outside of the City; provided, however, that any elected member residing outside of the City shall maintain a place of business or shall be employed within the City, while serving as a member of the Commission. The Mayor and the Economic Development Director shall be ex officio, nonvoting members of the Commission.
- B. The Chairperson shall be appointed annually by the Mayor, and the Commission shall elect from its members such other officers and committees as it deems necessary.
- C. The Economic Development Commission shall perform the following functions:
- (1) Promote the City of Rochester, through advertising, prospect development and other means, as an attractive location for industrial, residential, and business development and/or expansion;
  - (2) Assist prospects interested in evaluating Rochester as a potential industrial or commercial business location; act as the official agent of the City government in matters pertaining to economic development;

**Amendments are effective upon passage.**

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City Clerk's Office

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09/29/2023

Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Economic Development Reserve Fund

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

**§ 7-63 Economic Development Special Reserve Fund.**

**A. Statement of purpose.**

~~(1) The City of Rochester currently serves as the "Host Community" for the Turnkey Recycling and Environmental Enterprises Waste Disposal Facility (TREE) currently operated by Waste Management of New Hampshire, Inc., and located on the Rochester Neck Road. By virtue of its status as Host Community for TREE, the City of Rochester, in addition to incurring significant expenses in connection with such facility, receives significant financial benefits in the form of real property taxes, user fees (in the form of so-called "host community fees") and various other benefits relative to the cost to the City and its inhabitants of the disposal and/or recycling of various solid waste, including reduced and/or eliminated fees for the disposal and/or recycling of solid waste generated within the City of Rochester. It is currently estimated that the permitted capacity of the TREE Waste Disposal Facility (TLR-III) will be reached in approximately the year 2023. When such facility is filled to its permitted capacity, it is anticipated that the City will experience a loss in revenues, and the City and its inhabitants will experience increased costs associated with the disposal and/or recycling of solid waste, particularly in the form of reduced and/or lost user fees and reduced property tax revenues, as well as increased costs associated with the disposal and/or recycling of solid waste. Therefore, in an effort to offset the expected loss of revenues and increased costs occurring to the City as a result of the anticipated filling of the TREE Waste Disposal Facility to its permitted capacity and to promote the general fiscal strength and well being of the City, it is necessary that economic development in the City of Rochester be promoted and/or maintained to ensure the existence and/or expansion of a vibrant economic base for the City and its inhabitants.~~

~~(2) Therefore, the City Council of the City of Rochester, pursuant to the authority granted by RSA 47:1 b and 47:1 c, hereby establishes a special revenue reserve fund from the specific source identified in Subsection B of this section for capital expenditures or expenditures for capital projects, transfers to capital projects, transfers to capital reserve, or for any other appropriation of a nonrecurring nature in support of economic development as determined by the City Council. The special reserve fund established in Subsection B of this section shall be known as the "City of Rochester Economic Development Special Reserve Fund." No expenditure from said City of Rochester Economic Development Special Reserve Fund shall be made without an appropriation of such funds having been adopted by the Rochester City Council, which appropriation shall provide that such appropriation is for economic development purposes and shall contain a statement and/or finding by the City Council indicating the manner in which it is anticipated that such appropriation is related to the economic development of the City of Rochester.~~

~~B. There is hereby created a non-lapsing budgetary account within the City of Rochester, pursuant to the authority granted to the City by the provisions of RSA 47:1 b, such special reserve fund to be known as the "City of Rochester Economic Development Special Reserve Fund." Such fund shall be funded on an annual basis by the appropriation by the City Council to such special reserve fund of an amount not less than one hundred thousand dollars (\$100,000.) from the funds annually payable to the City of Rochester by Waste Management of New Hampshire, Inc., from the so-called "host community fees" payable to the City pursuant to the provisions of the Host Agreement between the City and Waste Management of New Hampshire, Inc., or of any successor to such agreement. In addition to such minimum funding level, the City Manager may, during any fiscal year of the City, upon written notification to, and appropriation by, the City Council,~~

~~transfer to said City of Rochester Economic Development Special Reserve Fund unappropriated host community fees in an amount not to exceed the difference between the total amount of host community fees received from Waste Management of New Hampshire, Inc., during such fiscal year and the amount of such host community fees previously appropriated by the Rochester City Council during such fiscal year (having in mind the minimum funding/appropriation requirement provided for herein and any other appropriation of such fiscal year's host community fees by the City Council during such fiscal year).~~

A. By Resolution adopted on July 5, 2022, the City Council established a Non-Capital Reserve Fund pursuant to RSA 34:1-a for the purpose of encouraging economic development within the City, encouraging the development of industrial and commercial sites, promoting the City as an attractive location for businesses and residents, and acquisition of land related to the same. The name of the fund shall is the Economic Development Reserve Fund.

B. The City Council, at its sole discretion, may appropriate funds into said Economic Development Reserve Fund through supplemental appropriations or the annual budgeting process, however, in no case shall said annual appropriation be less than One Hundred Thousand Dollars (\$100,000.00). Revenue sources can be Waste Management Host Fee Revenues, or General Fund Unassigned Fund Balance. In addition, other unanticipated revenue sources, and proceeds from transactions that were originally derived from the Economic Development Reserve Fund, may also be appropriated into the fund upon a majority vote of the City Council.

C. Pursuant to RSA 34:6, the Trustees of Trust Funds shall have custody of all non-capital reserves transferred to the Economic Development Reserve Fund. The Trustees of the Trust Fund will hold the monies appropriated to the Economic Development Reserve Fund in a separate liquid investment account. Appropriations made to the Economic Development Reserve Fund will be submitted to the Trustees of the Trust Fund within the same fiscal year of the appropriation.

D. Pursuant to RSA 34:10, the City Council names the Economic Development Commission as its agent to carry out the objects of the Economic Development Reserve Fund. All expenditures made by the Economic Development Commission shall be made only for or in connection with the purposes for which said Fund was established and only in accordance with §7-38-40 of the City Code. All requests for expenditures shall be approved by the 2/3rds vote of the Economic Development Commission prior to being presented to City Council for final approval. Upon said 2/3rds vote expenditure requests may then be presented to City Council. Expenditure requests shall identify expense categories, or specific project scope detail. General administrative, travel and conference activities shall be ineligible expense activities. Expenditure requests can be presented as part of the annual budget process, or through supplemental appropriations. All approved expenditures shall follow the City's Purchasing Policy.

E. The City Council may dissolve the Economic Development Reserve Fund at its sole discretion. Upon dissolution of any portion of said fund appropriated from the General Fund said funds will lapse to surplus (General Fund Unassigned Fund balance) and cannot be repurposed directly to a different capital fund or project.

**Amendments are effective upon passage.**

09/29/2023

**Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Code of Ethics and Conduct for Elected and Appointed Officials**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

**ARTICLE XI**

**Code of Ethics and Conduct for Elected and Appointed Officials**

**§ 7-83 Board of Ethics.**

- A. A Board of Ethics (“BOE”) is hereby created. This BOE shall consist of three (3) persons: one member shall be appointed by the Mayor from the City Council, one member shall be appointed by the Chair of the School Board from the School Board, and one member shall be appointed by the Chair of the Police Commission from the Police Commission.
- B. Each BOE Member selected is required to serve unless the BOE Member is the subject of the Complaint, has a conflict of interest, or is excused due to unavailability or exceptional causes (such as a health issue).
- C. The BOE Members shall elect a chairperson and the BOE may adopt such rules for the conduct of its business as it sees fit. The BOE shall have the power to draw upon City departments for reports and information and stenographic and clerical help.

**§ 7-84 Ethics Investigation Officer.**

- A. The position of Ethics Investigation Officer (“EIO”) is hereby created. The City Manager shall have the power to identify and retain an EIO, with approval from the BOE, to assist with the investigation and prosecution of any Complaint which has been referred for investigation. The EIO, with approval of the BOE, shall have sufficient experience and training to conduct the investigation.

**§ 7-85 Complaints, Investigations, and Hearing.**

- A. **Complaint Requirements.** Any City official may submit a written complaint alleging one or more violations of the Code of Ethics and Conduct for Elected and Appointed Officials (“Ethics Code”). Such complaint must be based on personal knowledge, and set forth facts with enough specificity and detail for a determination of sufficiency for investigation. The Written Complaint must be signed under oath. The Complaint shall be delivered to the City Attorney with a copy to the Mayor and City Clerk. The City Attorney shall promptly provide a copy of the Complaint to the Charged Party.
- B. **Review for Sufficiency.**
  - 1. A Review for Sufficiency of the Complaint will be completed within thirty (30) days of receipt. This review will be based on the allegations contained in the Complaint and the immediately available public meetings or records referenced in the Complaint.
  - 2. The City Attorney and Mayor shall conduct the Review of Sufficiency, except in cases in which the Mayor is the subject of the Complaint. Complaints against the Mayor shall be reviewed by the City Attorney and the Deputy Mayor.
  - 3. If the Complaint is deemed insufficient, the Complainant will be notified in writing of that decision with a copy provided to the Charged Party. A Complaint will be deemed sufficient if it is determined that the Complaint establishes on its own that it is more probable than not that a violation of the Ethics Code may have occurred.

4. If the Complaint is deemed sufficient for further investigation, it shall be referred to the EIO for further action and all parties will be notified of this step through communication in writing.

- C. Investigation Phase. The EIO shall be provided the full cooperation of the City government to conduct such investigation as may be necessary to determine whether any violation may have occurred and next steps. The Charged Party shall have an opportunity to provide a response to the Complaint.

The EIO's investigation shall be completed within forty-five (45) days of the date of referral unless the Charged party and the Chair of the BOE mutually agree to a longer period.

The EIO shall provide a written report with the conclusions reached in the completed investigation to the BOE. The EIO shall provide a non-binding recommendation as to the disposition of the Complaint to the BOE. Thereafter, all action with regard to the Complaint shall be taken by the BOE.

- D. Board of Ethics Hearing.

1. The BOE shall take no further evidence on any Complaint, but shall make its determination based upon the report received by the EIO. However, the BOE shall hold at least one (1) public hearing at which the EIO, the Complainant, and the Charged Party shall be afforded an opportunity to present oral and written argument to the BOE. The BOE may hear from such other and further parties as it determines appropriate.

2. Any party may be represented by legal counsel at his or her own expense at any stage of proceedings related to the Ethics Code.

3. The BOE shall issue a written decision within thirty (30) days of the final public hearing with findings and a disposition, dismissal, or referral for further action if a violation found. If a violation has been found, the BOE shall recommend a sanction or penalty and refer the matter to the City Council, School Board, or Police Commission for disposition, sanction, or other action as set forth in the Ethics Code.

**§ 7-86 Conflict Between Ethics Code and this Article.** To the extent a conflict arises between the Ethics Code and this Article, this Article shall prevail.

**Amendments are effective upon passage.**

Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Code of Ethics and Conduct for Elected and Appointed Officials

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions struckout additions in RED):

ARTICLE XI

Code of Ethics and Conduct for Elected and Appointed Officials

§ 7-83 Board of Ethics.

A. A Board of Ethics (“BOE”) is hereby created. This BOE shall consist of ~~three (3)~~ **five (5)** persons: one member shall be appointed by the from the City Council **with a majority vote from the council**, one member shall be appointed by the Chair of the School Board from the School Board **with a majority vote of the board**, ~~and~~ one member shall be appointed by the Chair of the Police Commission from the Police Commission **with a majority vote of the commission**, **one member shall be appointed by the Mayor from the public sector with a majority vote of the council**, **one member shall be an ex officio member of the NH Bar as appointed by the mayor with a majority vote of the council**. **The selection of board members shall occur no later than the first two regular meetings of the aforementioned boards after being sworn in.**

B. Each BOE Member selected is required to serve unless the BOE Member is the subject of the Complaint, has a conflict of interest, or is excused due to unavailability or exceptional causes (such as a health issue). **The BOE shall convene, after appointment, for an organizational meeting to select a chair and vice chair. Thereafter, the BOE shall meet at the call of the chair.**

C. The BOE Members shall elect a chairperson and the BOE may adopt such rules for the conduct of its business as it sees fit. The BOE shall have the power to draw upon City departments for reports and information and stenographic and clerical help.

§ 7-84 Ethics Investigation Officer.

A. The position of Ethics Investigation Officer (“EIO”) is hereby created. The City Manager shall have the power to identify and retain an EIO, with approval from the BOE, to assist with the investigation and prosecution of any Complaint which has been referred for investigation. The EIO, with approval of the BOE, shall have sufficient experience and training to conduct the investigation.

§ 7-85 Complaints, Investigations, and Hearing.

A. Complaint Requirements. Any City official may submit a written complaint alleging one or more violations of the Code of Ethics and Conduct for Elected and Appointed Officials (“Ethics Code”). *Such complaint must be based on personal knowledge, and set forth facts with enough specificity and detail for a determination of sufficiency for investigation.* **(This section needs discussion. As written, only the complainant would be able to file a complaint. No complaint could ever be filed thirdhand or by a member of the public)** *The Written Complaint must be signed under oath. The Complaint shall be delivered to the City Attorney with a copy to the Mayor and City Clerk. The City Attorney shall promptly provide a copy of the Complaint to the Charged Party.*

*B. Review for Sufficiency.*

1. *A Review for Sufficiency of the Complaint will be completed within thirty (30) days of receipt. (This section needs discussion. This is a council function and should not involve the administration whatsoever. Alternatively, possibly the complaint should be filed under oath with the city clerk and referred to the BOE chair)* [This review will be based on the allegations contained in the Complaint and the immediately available public meetings or records referenced in the Complaint.

2. The City Attorney and Mayor shall conduct the Review of Sufficiency, except in cases in which the Mayor is the subject of the Complaint. Complaints against the Mayor shall be reviewed by the City Attorney and the Deputy Mayor.

3. If the Complaint is deemed insufficient, the Complainant will be notified in writing of that decision with a copy provided to the Charged Party. A Complaint will be deemed sufficient if it is determined that the Complaint establishes on its own that it is more probable than not that a violation of the Ethics Code may have occurred. 07/27/2023 Page 13 of 15 4. If the Complaint is deemed sufficient for further investigation, it shall be referred to the EIO for further action and all parties will be notified of this step through communication in writing.] **(The entire preceding section could effectively shut down the entire complaint without any adjudication. All complaints should be filed with the city clerk who should then forward the complaint to the chair of the BOE who should then call a meeting of the board to determine the validity of the complaint.)**

C. Investigation Phase. The EIO shall be provided the full cooperation of the City government to conduct such investigation as may be necessary to determine whether any violation may have occurred and next steps. The Charged Party shall have an opportunity to provide a response to the Complaint. The EIO's investigation shall be completed within forty-five (45) days of the date of referral unless the Charged party and the Chair of the BOE mutually agree to a longer period. The EIO shall provide a written report with the conclusions reached in the completed investigation to the BOE. The EIO shall provide a non-binding recommendation as to the disposition of the Complaint to the BOE. Thereafter, all action with regard to the Complaint shall be taken by the BOE.

*D. Board of Ethics Hearing.*

1. *The BOE shall take no further evidence on any Complaint, but shall make its determination based upon the report received by the EIO. (This section needs work. The BOE should not be basing their decision solely on the EIO's report but should remain neutral until the public hearing is held. Further, this would infer that the BOE could have discussion in a non public environment which would violate RSA 91-A)* However, the BOE shall hold at least one (1) public hearing at which the EIO, the Complainant, and the Charged Party shall be afforded an opportunity to present oral and written arguments **as well as offer testimony from witnesses** to the BOE. The BOE may hear from such other and further parties as it determines appropriate.

2. Any party may be represented by legal counsel at his or her own expense at any stage of proceedings related to the Ethics Code.

EDITS SUBMITTED BY COUNCILOR BEAUDOIN:

3. The BOE shall issue a written decision within thirty (30) days of the final public hearing with findings and a disposition, dismissal, or referral for further action if a violation found. If a violation has been found, the BOE shall recommend a sanction or penalty and refer the matter to the City Council, School Board, or Police Commission for disposition, sanction, or other action as set forth in the Ethics Code.

§ 7-86 Conflict Between Ethics Code and this Article. To the extent a conflict arises between the Ethics Code and this Article, this Article shall prevail.

**For the sake of good housekeeping, the ethics policy should be edited to reflect any conflicts between it and this policy.**