

**ETHICS REVIEW COMMITTEE
MEETING MINUTES
May 1, 2023**

A meeting of the Ethics Review Committee was held on Monday, May 1, 2023 at 6:00 p.m. in the City Hall Auditorium.

The meeting was called to order at 6:00 pm.

Committee Members present: Timothy E. Bush
Lindsay N. Robinson
Roger Wiseman
Michael J. Tabacsko
David Tencza

Other City Staff present: Deputy Corporation Counsel Dorothy Clarke
Manuela Perry
Gary Perrin

Motion by Mr. Tabacsko to nominate Mr. Bush as chairperson of the committee. Seconded by Mr. Tencza.

A roll call vote was taken on the motion:

Roll call
Mr. Bush - abstained
Ms. Robinson - yes
Mr. Wiseman – yes
Mr. Tabacsko – yes
Mr. Tencza - yes

Motion carried.

Motion by Mr. Bush to nominate Mr. Tencza as vice chairperson of the committee. Seconded by Mr. Tabacsko.

A roll call vote was taken on the motion:

Roll call
Mr. Bush - yes
Ms. Robinson - yes
Mr. Wiseman – yes
Mr. Tabacsko – yes
Mr. Tencza - abstained

Motion carried.

Attorney Clarke reviewed with the committee relevant ordinances and laws:

- a. Ethics Review Committee NRO §12-30 - §12-34
- b. Existing Rules of Procedure, adopted May 4, 2017
- c. Part 5 (Conduct Regulations) of Chapter 5 (Administration of Government), §5-93 - §5-108
- d. NH RSA Chapter 91-A (the “Right-to-Know Law”)

The committee discussed the existing rules of procedure, adopted May 4, 2017.

Motion by Mr. Wiseman to adopt the Rules of Procedure, as amended, by removing Section 18. Seconded by Mr. Bush.

The motion passed by unanimous voice vote.

A copy of the adopted Rules of Procedure is attached and made part of these minutes.

Motion by Mr. Tencza for the committee go into non-public session for the purpose of consideration of the matter which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, pursuant to RSA 91-A:3, II (c). Seconded by Mr. Tabacsko.

A roll call vote was taken on the motion:

Roll call

Mr. Bush - yes

Ms. Robinson - yes

Mr. Wiseman – yes

Mr. Tabacsko – yes

Mr. Tencza - yes

Motion carried.

The committee entered non-public session at 6:28 pm.

The committee came back into public session at 7:20 pm.

Motion by Mr. Tencza to seal the minutes of the non-public session because divulgence of the information would likely affect adversely the reputation of any person other than a member of the committee. Seconded by Mr. Tabacsko.

A roll call vote was taken on the motion.

Roll call

Mr. Bush - yes

Ms. Robinson - yes
Mr. Wiseman – yes
Mr. Tabacsko – yes
Mr. Tencza - yes

Motion carried.

Motion by Mr. Tabacsko to adjourn the meeting. Seconded by Mr. Bush.

The motion passed by unanimous voice vote.

Meeting adjourned at 7:25 pm.

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CITY OF NASHUA Ethics Review Committee

Rules of Procedure

Adopted May 1, 2023

- (1)** Except as otherwise adopted or modified by the Rules of Procedure, proceedings shall adhere to Robert's Rules of Order.
- (2)** All Committee meetings shall be conducted consistent with the adopted Rules of Procedure and RSA 91-A.
- (3)** Hearings and all Committee meetings shall be audio-recorded, and verbatim minutes shall be transcribed from the recording for hearings and may be transcribed from the recording for meetings.
- (4)** Minutes of hearings and all Committee meetings shall be reviewed and corrected for transcription errors by Committee members, accepted and placed on file. Minutes shall be released to the City Clerk and available to the public in accordance with RSA 91-A:2 for public and RSA 91-A:3 for nonpublic meetings.
- (5)** Any person may attend and make recordings of the public proceedings.
- (6)** Only regular members of the Committee, alternate member(s) serving in the absence of regular member(s), counsel for the City, the complainant party and its counsel, the defendant party and its counsel and witnesses called by the parties shall participate in the hearing.
- (7)** No member of the Committee whose participation would be a conflict of interest shall participate in the hearing, except when called as a witness. The following, based on the RSA 500-A:12 jury standard, shall be criteria for recusal of a Committee member upon request by either party, concurred by the Committee based on evidence, that a member:

 - (a)** Expects to gain or lose upon the disposition of the case;
 - (b)** Is related to either party;
 - (c)** Has advised or assisted either party with respect to the case after the Committee receives the complaint;
 - (d)** Has given his opinion or has formed an opinion with respect to the case;
 - (e)** Is employed by or employs any party in the case;
 - (f)** Is prejudiced to any degree regarding the case; or

(g) Employs any of the counsel appearing in the case.

(8) The complainant and defendant parties may, but need not, be represented by counsel. Fees and expenses for counsel shall be borne by the respective parties, not by the City, irrespective of finding and recommendation(s) of the Committee.

(9) Barring good cause shown, failure of the complainant to appear at the scheduled hearing shall constitute failure to prosecute the complaint, and the complaint shall be dismissed with prejudice.

(10) Barring good cause shown, failure of the defendant to appear at the scheduled hearing shall result in the defendant waiving his/her right to defend against the allegations contained in the complaint.

(11) The complainant has the burden of proof by a preponderance of the evidence.

(12) Strict rules of evidence shall not apply, but the Committee may exclude hearsay and irrelevant, immaterial or unduly repetitious evidence.

(13) Evidence shall be offered in the following order:

(a) Complainant's witnesses and documentary evidence.

(b) Defendant's witnesses and documentary evidence.

(c) Rebuttal by complainant.

(d) Rebuttal by defendant.

(14) Testimony shall be under oath or affirmation.

(15) Opposing parties and their counsel may cross-examine witnesses, and the party or party's counsel who called the witness may reexamine the witness concerning matters raised in cross examination. The Chairman shall prohibit badgering of the parties or witnesses, disruptive behavior and profanity.

(16) Members of the Committee may question witnesses for the purpose of clarifying their testimony, but shall remain impartial and not accusatory.

(17) Documentary evidence will be accepted when authenticated and its relevancy established, as determined by the Committee:

(a) Under Rule 901 of NH Rules of Evidence, the requirement of authentication or identification "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

(b) Under Rule 401 of NH Rules of Evidence, relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

(18) Findings and recommendation(s) during deliberations shall require a majority vote on roll-call of the Committee members present and voting, and shall be recorded in the minutes. Only those members participating in the hearing shall vote on finding(s), recommendations and the contents of the advisory report.

(19) Proceedings conducted and records produced in nonpublic session may be sealed as authorized under NH RSA 91-A:3.

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ETHICS REVIEW COMMITTEE

At their May 24, 2023 meeting, the Ethics Review Committee voted to make only the portion of the May 1, 2023 nonpublic session minutes where public comment was discussed available for public disclosure. See below.

UNSEALED PORTION OF SEALED MEETING MINUTES OF THE NONPUBLIC

SESSION

MAY 1, 2023

Committee Members present: Timothy E. Bush
Lindsay N. Robinson
Roger Wiseman
Michael J. Tabacsko
David Tencza

Other City Staff present: Deputy Corporation Counsel Dorothy Clarke
Manuela Perry
Gary Perrin

The committee entered nonpublic session at 6:28 pm.

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The committee discussed having public comment in light of the confidential complaint process provided by the ordinances. Attorney Clarke was asked and provided legal advice regarding public comment.

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The nonpublic session ended at 7:20 pm.