



ORDINANCE

REVISING THE COMPOSITION AND PROCEDURE OF THE ETHICS REVIEW COMMITTEE

CITY OF NASHUA

In the Year Two Thousand and Seven

The City of Nashua ordains that Chapter 2 entitled “Administration”, Article IV “Officers and Employees,” Division 6 “Conduct Regulations” Section 2-284 “Ethics Review Committee” of the Nashua Revised Ordinances, as amended, be further amended by replacing Section 2-284 in its entirety with the following:

Sec 2-284. Ethics Review Committee

(a) Composition

1. There shall be a municipal committee known as the Ethics Review Committee (hereafter referred to as the “committee”), the purpose of which is to hear complaints solely of violation of NRO Chapter 2, “Administration”, Article IV “Officers and Employees,” Division 6 “Conduct Regulations” and not any state conduct statute. It is comprised of five (5) regular members and three (3) alternate members, appointed by the mayor and confirmed by the board of aldermen.
2. The regular members shall elect a chairperson who shall preside over all meetings of the committee. Alternate members shall only participate and vote in the absence of a regular member, as determined in descending order of seniority of their appointment.
3. Regular and alternate members shall serve a three (3) year term. Reappointments shall be permitted, but members not confirmed shall not hold office three months past expiration of their term. Alternate members may be reappointed as regular members.

4. Regular and alternate members of the committee shall not be regular or special municipal employees nor have immediate family members who are regular or special municipal employees.

b) Rules of Procedure

1. The committee shall review, modify as necessary and adopt the Rules of Procedure, by majority vote of members present and voting, and make those rules a public record by placing them on file with the City Clerk. No hearings on the complaint shall proceed until the Rules of Procedure have been adopted. Upon confirmation of the appointment of a new committee member, the committee shall convene a meeting for the purpose of introducing the new member to the Rules of Procedure and to clarify the role and conduct of the committee.
2. The following shall comprise the Rules of Procedure, subject to modification by the committee, under advise of legal counsel for the city, to promote fair and orderly proceedings:
 - a. Except as otherwise adopted or modified by the Rules of Procedure, proceedings shall adhere to Robert's Rules of Order.
 - b. All committee meetings shall be conducted consistent with the adopted Rules of Procedure and RSA 91-A
 - c. Hearings and all committee meetings shall be audio recorded and verbatim minutes shall be transcribed from the recording.
 - d. 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 91-A:3 for non-public meetings.
 - e. Any person may attend and make recordings of the public proceedings.
 - f. 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.
 - g. 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:
 - (1) Expects to gain or lose upon the disposition of the case;
 - (2) Is related to either party;
 - (3) Has advised or assisted either party with respect to the case after the committee receives the complaint;

- (4) Has given his opinion or has formed an opinion with respect to the case;
 - (5) Is employed by or employs any party in the case;
 - (6) Is prejudiced to any degree regarding the case; or,
 - (7) Employs any of the counsel appearing in the case.
- h. 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.
 - i. 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.
 - j. 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.
 - k. The complainant has the burden of proof by a preponderance of the evidence.
 - l. Strict rules of evidence shall not apply, but the committee may exclude hearsay and irrelevant, immaterial or unduly repetitious evidence.
 - m. Evidence shall be offered in the following order:
 - (1) Complainant's witnesses and documentary evidence.
 - (2) Defendant's witnesses and documentary evidence.
 - (3) Rebuttal by complainant.
 - (4) Rebuttal by defendant.
 - n. Testimony shall be under oath or affirmation.
 - o. Opposing parties and their counsel may cross-examine witnesses, and the party or party's counsel who called the witness may re-examine the witness concerning matters raised in cross-examination. The chairman shall prohibit badgering of the parties or witnesses, disruptive behavior and profanity.
 - p. Members of the committee may question witnesses for the purpose of clarifying their testimony, but shall remain impartial and not accusatory.
 - q. Documentary evidence will be accepted when authenticated and its relevancy established, as determined by the committee. .
 - (1) 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."

(2) 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.”

- r. No recommendation(s) shall be approved by less than three (3) members.
- s. 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.
- t. Proceedings conducted and records produced in non-public session may be sealed as authorized under NH RSA 91-A:3.

(c) Complaint.

1. Any individual having information that a municipal employee, as defined in NRO Chapter 2, “Administration”, Article IV “Officers and Employees,” Sec 2-271, is engaged in improper activities or has a conflict of interest under the NRO Division 6 “Conduct Regulations”, may file his or her complaint with corporation counsel, who shall forthwith submit said complaint to the Ethics Review Committee. The committee chairperson may respond to questions regarding strictly procedural or scheduling matters. Motions by parties shall be filed through the city’s legal office and then forwarded to the committee.
2. The complaint shall be in writing, containing specific allegations of conduct violation(s) under NRO Chapter 2, “Administration”, Article IV “Officers and Employees,” Division 6 “Conduct Regulations” based on firsthand personal knowledge and shall be accompanied by a statement, under oath by the person making the complaint, swearing or affirming the truth of the statements made. A completed complaint shall be sealed and available only to committee members, counsel for the city and the parties until such time as the complaint is unsealed at the request of the defendant or as the result of action taken by the committee consistent with RSA 91-A.
3. The defendant may request that the complaint be unsealed and that the hearing be held in public in accordance with RSA 91-A. In this event, the complaint, the hearing and the audio recorded minutes and the verbatim transcribed minutes of the hearing shall be open and accessible to the public.
4. The first committee meeting with the complaint on the agenda shall constitute the committee’s receipt of the complaint. The committee shall review the complaint to determine if said complaint contains sufficient specific alleged facts to allege a violation of NRO Chapter 2, “Administration”, Article IV “Officers and Employees,” Division 6 Conduct Regulations, and that the complaint is under oath. If the committee determines that the complaint is sufficient, it shall provide notice as provided herein and proceed with the hearing. If the committee

finds that said complaint is insufficient, it shall notify the complainant of such deficiency and allow the complainant to amend and resubmit said complaint.

5. The committee shall not have jurisdiction over any complaint if, prior to the acts alleged in the complaint, the defendant has obtained an advisory opinion under NRO section 2-280 and has acted in accordance with that opinion.
6. The committee shall provide notice of the hearing location, time and date for the complaint, in accordance with RSA 91-A, and served in hand or by certified mail with return notice of receipt, to the complainant and to the defendant. Copies of the complaint and the Rules of Procedure, adopted by the committee pursuant to paragraph 2.0, shall be provided to the parties with the hearing notice. .

(d) Hearing.

1. The committee shall hold a hearing which shall be conducted pursuant to the adopted Rules of Procedure. The hearing shall be held within 30 days of the committee's receipt of the complaint, unless a continuance is granted for good cause.
2. Counsel for the city may attend the hearing in an advisory capacity on issues of law and procedure, but shall not otherwise participate in the questioning of witnesses or deliberations.
3. The public shall have the right to attend any public hearing in accordance with RSA 91-A:2. The committee may conduct the hearing and deliberate upon its findings and recommendation(s) in non-public session in accordance with RSA 91-A:3.

(e) Reporting.

1. The committee shall report its findings and recommendation(s) in a written report mailed not later than thirty (30) days after the conclusion of the hearing, to the mayor, the board of aldermen and respective employer board, commission or agency as may be appropriate. The report shall contain a copy of the complaint. . A copy of the committee's report shall be sent to each party by certified mail.
2. Only regular members or alternate member(s) serving in the absence of regular member(s) shall deliberate and vote on the finding and recommendation(s).
3. The committee shall vote to seal or release the report to the public subject to RSA 91-A and subject to City policy regarding dissemination of personnel information.
4. The committee shall file its report with the city clerk for archiving
5. The committee's recommendation(s) shall be advisory and shall not bind the mayor, board of aldermen, or other boards, commissions, agencies or officials, who may take such action on the committee's finding and recommendation(s) as authorized by law.

