

DOVER CODE

CODE OF ETHICS

CHAPTER 22

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[**HISTORY:** Adopted by the City Council 12-14-77; Amended in its entirety by the City Council 09-20-2006 by Ord. No. 07-2006;* Amendments noted where applicable.]

GENERAL REFERENCES. Dover Charter Article X Conduct of Officials

* Editor's Note: Provisions of this chapter are derived from Ch. 22 of the former Code, adopted 12-14-77.

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ARTICLE I

ETHICAL STANDARDS

22-1. Definitions.

As used in this chapter, the following terms shall have the following meanings:

EMPLOYEE – Includes all city employees whose salary is paid in whole or in part from the City treasury and all positions over which the City Manager, Department Heads or the City Council have power or appointment.

APPOINTED OFFICER – Includes all positions appointed by the Mayor and Council or the City Manager, including appointment to the Housing Authority, but not employees.

ELECTED OFFICER – The Mayor, Deputy Mayor and all Councilors and the positions of ward election officials and charter commission members.

FAMILY – Any person who is related to an elected or appointed officer or employee in one of the following ways: spouse, parent, grandparent, child, grandchild or sibling. The definition also includes all persons who are members of the same household as the elected or appointed officer or employee regardless of whether they are related by blood or marriage.

COUNCILOR – a member of the Dover City Council.

22-2. Conflicts of Interest.

No elected or appointive officer or employee of the city, shall take part in a decision concerning the business of this city, or engage in any business, or transaction, in which they or a member of their family, directly or indirectly, has a financial interest, aside from his/her salary as such officer or employee, greater than any other citizen or taxpayer, nor shall they have any financial or other private interest, directly or indirectly, which is in conflict with the proper discharge of their official duties.

22-3. Representation of Private Interests before City Agencies.

No elected or appointed officer, or employee shall appear on behalf of private interests before any city board, commission, committee, subcommittee or authority. Councilors, however, may appear without compensation on behalf of constituents or in the performance of public or civic obligations.

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22-4. Required Disclosure by Council Members; Recusal.

A Councilor, or a Councilor with a family member, who has a direct or indirect financial or other private interest, in any proposed legislation, or matter of official business before the City Council shall publicly disclose on the official records of the Council, the nature and extent of such interest. Such disclosures shall be made orally prior to the legislation or matter being discussed as part of a council meeting agenda, or a Councilor may elect to file a written specific conflict of interest disclosure statement with the City Clerk. The statement shall be read aloud into the record at all public meetings during which the legislation or matter is discussed. In the case of a nonpublic session, the statement shall be read aloud at the next public meeting.

A Councilor with a conflict of interest shall recuse himself or herself from further participation in the matter. Recusal means to immediately remove from discussion and voting. Recusal shall also mean the Councilor is required to physically vacate his or her seat. During a nonpublic session, the Councilor shall remove himself or herself from the meeting room.

22-5. Required Disclosure by Officers and Employees; Recusal.

An appointed officer, or employee who, whether paid or unpaid, has a direct or indirect financial interest or other private interest in any legislation or matter of official business in the City of Dover and who participates in discussion before or gives official opinion to the Council, or otherwise participates in the official business of the City of Dover, shall publicly disclose on the official record the nature and extent of such interest. Such disclosures shall be made orally prior to the legislation being discussed as part of a council meeting agenda, or the officer or employee may elect to file a written specific conflict of interest disclosure statement with the City Clerk. The statement shall be read aloud into the record at a public meeting.

Appointed officers and employees with a conflict of interest shall recuse themselves from further participation in the matter. Recusal means to immediately remove themselves from discussion and voting. Recusal shall also mean the officer or employee is required to physically vacate his or her seat. During a nonpublic session, the appointed officer or employee shall remove himself or herself from the meeting room. In the case of a nonpublic session, the statement shall be read aloud at the next public meeting.

22-6. Gifts.

No Councilor, or appointed officer, or employee, shall accept any gift of twenty-five dollars (\$25.00) or more at one time, or one hundred dollars (\$100.00) in a calendar year from a single source, whether in the form of service, loan, thing or promise or any other form from any person, firm or corporation interested, directly or indirectly, in any manner whatsoever in business dealings with the city. Campaign contributions received during the official election period shall not be considered gifts.

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22-7. Disclosure of Confidential Information.

No Councilor or appointed officer, or employee, shall intentionally disclose confidential or privileged information, or other information learned by virtue of official position as defined in RSA 42:1-a, or information obtained in sessions pursuant to RSA 91-A:2(1)(b) or (c), concerning the property, government or affairs of the city.

22-8. Investments in Conflict With Official Duties.

No elected or appointed officer, or employee, shall invest or hold any investment, directly or indirectly in any financial, business, commercial, or other private transaction which creates a conflict with their official duties.

22-9. Incompatible Employment.

No elected or appointed officer, or employee, shall engage in or accept private employment or render or sell services or goods from private interests which such employment or service is incompatible with the proper discharge of their official duties.

22-10. Future Employment.

No elected or appointed officer, or employee, shall solicit, negotiate for or promise to accept employment by any person, firm or corporation with which they are or their agency is engaged on behalf of the city in the transaction of business or which is or may be affected by their official action. In connection with this prohibition, no elected officer shall assume employment with the city for 365 days after leaving office.

ARTICLE II

**ETHICS COMMISSION; SCOPE OF AUTHORITY; COMPLAINT
PROCEDURE; REMEDIES**

22-11. Ethics Commission Established; Purposes.

A. There is hereby established an Ethics Commission consisting of five (5) commissioners who shall be Dover residents and appointed by the City Council. At least one commissioner shall be a former City Councilor or former School Board member as provided in C11-4 of the Dover City Charter. The purposes of the Ethics Commission are:

- (1) To provide a forum to hear and accept complaints of violations of ethical standards of behavior for elected and appointed officers under the jurisdiction of the Ethics Commission.

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- (2) To encourage Dover elected and appointive officers, and all members of boards, commissions, committees and subcommittees to act in the best interests of the City and perform their duties and responsibilities according to the ethical provisions of the City Charter and City ordinances;
 - (3) To require the disclosure of financial interests or other interests in matters affecting City business where the interests constitute a conflict of interest;
 - (4) To prohibit those holding public office and volunteer positions in our City from using their positions for personal gain and to foster the use of such positions only to advance public interests
 - (5) To promote the integrity of City government;
- B. The commissioners shall serve for three (3) year staggered terms. The initial Ethics Commission shall consist of five (5) Commissioners with one Commissioner appointed for a one (1) year term, two Commissioners appointed for two (2) year terms, and two Commissioners appointed for three (3) year terms. Subsequent appointments shall be for three years unless the commissioner is appointed to serve out a term to fill a vacancy. The Appointments Committee shall solicit and screen the applicants. The Appointments Committee shall present a list of all the applicants who have applied for a position on the Ethics Commission to the City Council with the recommendations of the Appointments Committee. The City Council acting as a committee of the whole shall interview and select the applicants for appointment to the Ethics Commission either from the entire list of applicants or based on the recommendations of the Appointments Committee. The City Council may appoint three (3) alternate commissioners for one (1) year terms. Alternates shall be involved in the activities and decisions of the Ethics Commission only in the absence of a regular member or members.
- C. No Commissioner shall be a current City Councilor or School Board member, or other elected official, or a member of any board, commission, committee or subcommittee of the City of Dover.
- D. The Commissioners of the Ethics Commission shall select a Chair and Vice Chair on an annual basis. No Commissioner shall serve more than two consecutive terms as the Chair.
- E. There shall be no compensation for the members of the Ethics Commission.

22-12. Scope of Duties and Authority; Training.

- A. The Ethics Commission shall operate in an advisory role to the City Council. The activities of all elected officers and members of all boards, commissions, committees and subcommittees whose members are appointed by the City Council shall be within the scope of authority of the Ethics Commission. The Ethics Commission members shall also be subject to the jurisdiction of the Ethics Commission. If a member of the

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Ethics Commission is the subject of an Ethics Complaint, the member shall be replaced in all proceedings by an alternate member. The Ethics Commission shall not have jurisdiction over the City Manager or other employees of the City of Dover.

- B. The Ethics Commission shall only receive written complaints signed under oath before a Notary Public.
- C. The Ethics Commission shall conduct activities in public including the investigation of complaints, presiding over hearings, the taking of testimony, and deliberations with the exception of the initial screening of Complaints. The provisions of RSA 91-A shall apply to the activities of the Ethics Commission.
- D. The Ethics Commission shall apply the provisions of Article X of the City Charter and Chapter 22 of the City Code.
- E. The Ethics Commission shall provide and require professional training for the commissioners. It shall also provide information to the public, the City Council and members of all boards, commissions and committees of the City of Dover on the role and functioning of the Ethics Commission by providing taped reruns of the training sessions as well as other resources;
- F. The Ethics Commission shall have the power to promulgate its own rules of order subject to the approval of the City Council. All elected and appointed officers shall have an ethical duty to fully cooperate with the activities of the Ethics Commission including but not limited to participation in discovery, appearances before the Ethics Commission, the answering of questions, specific responses to the allegations and the production of documents in a timely manner at the request of the Ethics Commission where the request for documents is reasonably required to investigate and resolve the allegations.
- G. The Ethics Commission shall not issue advisory opinions based on hypothetical situations. All opinions shall be rendered as decisions pursuant to the Complaint procedure stated in Section 22-13.

22-13. Procedures; Initial Screening; Referrals; Hearings.

- A. All Ethics Complaints shall be in writing on a form approved by the City Attorney, supplied by, and available at, the office of the City Clerk. All complaints shall be signed under oath before a notary public provided free of charge by the City Clerk's office and shall be filed with the City Clerk. Complaints shall only be received from residents of Dover, property owners in Dover and vendors who engage in business with the City of Dover. Each complaint shall be confined to a single subject matter and shall state facts constituting an alleged violation of the ethics provisions of the City Charter or City Code. The complaint shall name a specific person or persons who are alleged to have violated an ethical provision. The complaint shall also state the specific applicable provision of the City Charter or Code on which the complainant relies in making the Complaint.

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- B. All complaints shall only allege facts involving alleged ethical violations occurring during the one hundred eighty (180) calendar days prior to the filing of the Ethics Complaint, or the term of the present City Council, whichever is longer. In addition, all complaints shall require the complainant to certify under oath the following:
- (1) The complainant has read the provisions of Article X of the Dover City Charter;
 - (2) The complainant has read the provisions of Chapter 22 of the Dover Code;
- C. The City Clerk shall seal each Ethics Complaint and forward the Ethics Complaint to the Chair of the Ethics Commission within two (2) business days of the filing. The Ethics Commission shall meet in nonpublic session pursuant to RSA 91-A:3 II (c). The Ethics Commission shall examine the contents of the Ethics Complaint and conduct an initial screening of the Ethics Complaint within twenty (20) business days after the filing of the Ethics Complaint with the City Clerk's office. The Ethics Commission shall take one of the following actions:
- (1) Refer the matter and /or any suspected criminal activity directly to the Police Department for investigation and possible prosecution as a criminal matter without further involvement by the Ethics Commission. There shall be no public disclosure of the Complaint by the Ethics Commission.
 - (2) Refer the matter to the City Council for investigation and action by the City Council as a matter involving the City Manager's actions or inactions without further involvement by the Ethics Commission.
 - (3) Refer the matter to the City Manager for investigation and action by the City Manager as a matter involving the actions or inactions of a city employee without further involvement by the Ethics Commission.
 - (4) Dismiss the complaint for stating facts that if true would not constitute a violation of the ethical provisions of the City Charter, City Code or state law.
 - (5) Dismiss the complaint for failure to state sufficient facts for establishing a reasonable basis to believe that an ethical violation may have occurred.
 - (6) Dismiss the complaint by stating the reason for the dismissal in writing;
 - (7) Dismiss the complaint for failure to comply with the procedural requirements of Paragraph 22-13 (B).
 - (8) Accept the matter for hearing and decision by the Ethics Commission. Acceptance of the Ethics Complaint shall occur upon the determination by the Ethics Commission that there is a reasonable basis to believe the facts in the complaint may constitute an ethical violation. The acceptance of the complaint

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shall not be construed as a final determination that an ethical violation has occurred.

- D. The Ethics Commission shall notify the complainant and the person against whom the allegations were made of the determination of the initial Screening Committee unless the matter is referred to the Police Department. The notification shall be made by sending a letter by certified mail return receipt requested or personal service of process. If accepted by the Ethics Commission, the initial notice shall also include a hearing date. A copy of the Ethics Complaint shall be included with the notice. All Complaints, except those referred to the Police Department shall be released to the public after the person against whom the complaint is made has been notified. A copy of all Complaints released to the public shall be available in the Clerk's office.
- E. The Ethics Commission shall conduct a hearing for cases accepted by the Ethics Commission within thirty (30) calendar days of the date of acceptance of the Ethics Complaint by the Ethics Commission. One continuance of not more than thirty (30) calendar days may be granted, but no further continuances shall be granted.
- F. Fourteen (14) calendar days notice shall be provided to the parties for all hearings. The Ethics Commission may hold pre-hearing and other informal conferences prior to the evidentiary hearing to aid in the disposition of the proceeding. All hearings and informal conferences shall comply with the provisions of RSA 91-A.
- G. The hearing shall not be subject to the rules of evidence. All evidence that will reasonably assist the Ethics Commission shall be admissible, but evidence that is irrelevant or immaterial, unduly repetitious, insulting, or harassing shall be excluded. The Ethics Commission may require, with reasonable written notice, the appearance of any official, board member or employee to appear before it to provide testimony.
- H. The hearing shall provide an opportunity for all parties to be heard and to present evidence. Witnesses shall testify under oath. Parties may engage in a brief opening and closing statement. Written memoranda may be required by the Ethics Commission.
- I. An audio recording shall be made of the proceedings. All recordings and documents shall be stored with the City Clerk and maintained pursuant to state law.
- J. The Ethics Commission shall issue a written report within thirty (30) calendar days of the hearing. The report shall include a determination whether the allegations contained in the complaint are actionable or not actionable. In addition, if the complaint is found to be actionable, the report shall include a recommendation on a remedy as provided in Section 22-14 for the City Council to consider. The Ethics Commission shall forward a copy of the decision and recommendation with specific findings to the parties and to the City Council. A copy of all reports and recommendations shall be available to the public in the City Clerk's office.

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- K. The complainant shall have the burden of proof. The standard of proof for the Ethics Commission to use for deciding matters before the Ethics Commission shall be clear and convincing evidence.
- L. Clear and convincing evidence is an intermediate standard of proof that calls for more proof than that based on more probable than not, but less proof than that based on beyond a reasonable doubt. Clear and convincing evidence is defined in New Hampshire law as that evidence that establishes a factual conclusion to be highly probable, rather than merely more probable than not. It requires that the party having the burden of proof place in the trier of fact an abiding conviction that the truths of his/her factual contentions are highly probable. Otherwise, he/she has failed to prove it and is not entitled to relief.
- M. Upon the establishment of the Ethics Commission, the Ethics Commission may receive and act on ethical complaints involving allegations occurring prior to the adoption of this ordinance if the complaint alleges a violation of an ethical standard in effect on the date of the alleged violation. Current elected officials affected by ethical standards adopted pursuant to RSA 31:39-a shall be exempt for a period of ninety (90) days after the adoption of this ordinance. After the adoption of this ordinance and the selection of the members of the initial Ethics Commission, no Ethics Complaint shall be accepted for filing by the City Clerk's office for thirty (30) days after the swearing in of the last commissioner.

22-14. Remedies.

- A. All decisions of the Ethics Commission shall be advisory to the City Council. The City Council is not obligated to accept the decisions and recommendations of the Ethics Commission.
- B. The City Council shall have the following remedies available as per RSA 49C-13:
 - (1) Place on file without further action;
 - (2) Verbal Warning;
 - (3) Written censure;
 - (4) The civil penalty provided in C10-9 or C11-13 of the City Charter;
 - (5) Removal from office by a vote of the Council.

22-15. Severability.

If any provision of this ordinance is declared invalid or unenforceable by a court of law, the remaining portions shall remain in full force and effect.