



CITY OF KEENE

R-2013-24-A

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In the Year of Our Lord Two Thousand and Thirteen

A RESOLUTION RELATING TO CITY COUNCIL DISCIPLINARY PROCESS

Resolved by the City Council of the City of Keene, as follows:

WHEREAS, Section 28, of the City Charter for the City of Keene ("City Charter") provides for the possibility of the removal of the Mayor or Councilors on specific charges and after due notice and hearing for prolonged absence from or other inattention to duty, mental or physical incapacity, incompetency, crime, immorality, or misconduct in office, on affirmative vote on roll call of at least two-thirds (2/3) of the elected Councilors; and

WHEREAS, the City Council recognizes that there is no specific process contained in the City Charter or in the City Council Rules of Order with respect to the potential removal of the Mayor or members of the City Council; and

WHEREAS, the City Council recognizes that, in addition to the possibility of removal under Section 28 of the City Charter, members of the City Council or the Mayor may engage in other activities or actions that may be deemed inappropriate or detrimental to the discharge of their official duties as elected representatives of the City of Keene, which require disciplinary measures short of suspension or removal; and

WHEREAS, the City Council recognizes that, whether or not a removal proceeding is to be instituted under Section 28, of the City Charter, or whether or not a member of the Council or the Mayor engages in other activities or actions which may be inappropriate or detrimental to the discharge of their official duties, there must be a process by which the Council makes a determination of removal under Section 28, of the City Charter, or a determination for the imposition of a form of discipline short of removal; and

WHEREAS, in accordance with RSA 46:13, the City Council may "make, alter or repeal rules for the orderly transaction of its business...;" and

WHEREAS, this authority is implemented by Section 21, of the City Charter pursuant to which the City Council "shall establish its own Rules of Order...;"

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Keene, New Hampshire, that the following process be implemented and adopted as a Rule of the City Council with respect to either an action for removal under Section 28, of the City Charter, or for the imposition of discipline short of removal:

1. If the Mayor, or any member or members of the City Council, believe that the Mayor, or any other member of the City Council, should be subject to removal from office in accordance with the provisions of Section 28, of the City Charter, or subject to discipline short of removal, the reason or reasons

therefore shall be enumerated in a written complaint and presented by the Mayor or complaining member(s) ("Complainant(s)") to the full City Council for a vote on whether or not to proceed with the following disciplinary process. The complaint shall state specific facts for such disciplinary action, including removal based on one or more of the specific reasons justifying removal under Section 28.

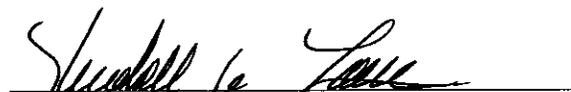
2. The City Council shall vote on the request for the disciplinary process at the next regularly scheduled City Council meeting after the filing of the complaint with the City Clerk. The Complainant(s) and the individual(s) subject to the complaint ("Respondent(s)") shall present in summary fashion their respective positions for and against proceeding with the request for the disciplinary process. At the conclusion of the presentations a proper motion shall be made to implement the disciplinary process. If the motion receives a second, the City Council shall deliberate the motion. At the conclusion of the deliberations, the City Council shall vote on the motion. A motion to proceed with the disciplinary process shall require a two-thirds (2/3) roll call vote of the City Council members present at the meeting. All members of the City Council present at the meeting shall vote on the motion.
3. If the City Council fails to adopt the motion to proceed with the disciplinary process by a (2/3) roll call vote, then the matter shall be closed. If the City Council votes to implement the disciplinary process, then the matter shall be referred to the City Council Disciplinary Committee for further investigation.
4. The City Council Disciplinary Committee shall consist of the chairman of each of the City Council standing committees with two (2) additional City Councilors chosen by the Mayor. Neither the Complainant(s), nor the Respondent(s) shall be a member of the City Council Disciplinary Committee. In the event that any such member is a chairman of a City Council standing committee, then the vice-chairman of that committee shall sit in his or her place on the City Council Disciplinary Committee. In the event that the chairman or the vice-chairman are both ineligible to sit on the City Council Disciplinary Committee, then the Mayor shall select their replacements. In the event that the Mayor is the individual requesting the disciplinary process, or is subject to the request for the disciplinary process, then the members to be selected by the Mayor shall be selected by the first eligible chairman in successive order of the Finance, Organization and Personnel Committee, or the Planning, License and Development Committee, or the Municipal Services, Facilities and Infrastructure Committee, or their successor committees in existence at the time of the proceedings.
5. The City Council Disciplinary Committee shall convene no earlier than ten (10) days and no later than twenty days (20) following the City Council action to proceed with the disciplinary process, and shall investigate the request for disciplinary action. Prior notice of the date, time, and place of the meeting(s) shall be provided to all interested parties, but not less than five (5) days' prior to the date of the initial meeting. The Complainant(s) and the Respondent(s) shall have the opportunity to present their respective

positions with respect to the request for disciplinary action and to be heard on the question. The Complainant(s) shall proceed first, followed by the Respondents. No other individual or City Council member shall participate in the proceedings except as required by, or with the approval of, the committee. Each side may be represented by independent legal counsel of their choosing to present the reasons for the complaint or the reasons against the complaint. The chairman shall chair the proceedings, and the City Council Disciplinary Committee may be assisted by the City Attorney or other legal counsel during all aspects of the investigation. The Rules of Evidence shall not strictly apply to the investigation by the City Council Disciplinary Committee, and the Committee may obtain and consider any and all evidence, testimony or other information it believes relevant to the investigation.

6. Upon the completion of the investigation of the complaint, the City Council Disciplinary Committee shall deliberate the question. Upon the completion of the deliberations, the Committee shall make a recommendation to the full City Council in the form of a proper motion. That motion shall be to either dismiss the complaint as not well founded, or to recommend that the City Council proceed with disciplinary action with respect to the complaint. The motion shall contain sufficient findings of fact referencing the investigation to support the Committee's recommendation.
7. The recommendation of the City Council Disciplinary Committee shall be acted upon by the full City Council at the next regularly scheduled meeting following the recommendation of the City Council Disciplinary Committee. Action on the recommendation of the City Council Disciplinary Committee shall require a two-thirds (2/3) roll call vote of all the City Council members present at the meeting. If the recommendation of the City Council Disciplinary Committee is to dismiss the complaint as not well founded, and if the recommendation is approved by two-thirds (2/3) roll call vote, then the matter shall be closed. If the recommendation is to dismiss the complaint, and the recommendation is not approved by a two-thirds (2/3) roll call vote, or if the recommendation is to proceed with disciplinary action and the recommendation is approved two-thirds (2/3) roll call vote, then the City Council shall hold further hearing on the complaint.
8. If further hearing is required after the vote of the City Council on the recommendation from the City Council Disciplinary Committee, then the City Council shall schedule a date and time for further hearing before the City Council with sufficient prior notice to the Complainant(s) and to the Respondent(s) to prepare for the hearing, but no less than five (5) days' prior to the date of the hearing. The Complainant(s) and the Respondent(s) shall be provided with a copy of the complaint and the City Council Disciplinary Committee's recommendation at the time of the hearing notice. The Complainant(s) shall proceed first, followed by the Respondent(s). Each side shall have an opportunity for rebuttal. No other individual shall participate in the proceedings except with the approval of the Mayor or as may be necessary to present the complaint or the defense against the complaint. Members of the City Council may ask clarification questions of the participants directed through the Mayor. The Complainant(s) and the

Respondent(s) may be represented by legal counsel of their choosing during the hearing. The Mayor shall be Chairman of the proceedings, and the Mayor and City Council may be assisted by the City Attorney or other legal counsel during all aspects of the proceedings. If the Mayor is a complaining party, or is the subject of the complaint, then, pursuant to Section 6 of the Rules of Order, the Mayor shall be deemed to be temporarily absent and the City Council shall elect a City Councilor who is not a Complainant or a Respondent to serve as Chairman until the completion of the proceedings. The Rules of Evidence shall not strictly apply to the proceedings and the City Council may consider any and all evidence, testimony or other information it believes relevant to the question. The Chairman's decision with respect to the admittance or exclusion of evidence or other information shall be final.

9. Upon the conclusion of the presentations, the City Council shall deliberate on whether or not to impose disciplinary action. Upon completion of the deliberations, the Chairman shall accept a proper motion to impose disciplinary action. A motion to impose any disciplinary action, up to and including removal of a member of the City Council or the Mayor, shall be accepted only if it contains specific findings of fact directly supporting such disciplinary action, including removal based on one or more of the specific reasons justifying removal under Section 28, of the City Charter, and only if the proposed disciplinary action is specifically stated in the motion. Any decision by the City Council to impose disciplinary action, up to and including removal from office under Section 28 of the City Charter, shall require a two-thirds (2/3) roll call vote of the City Council. All members of the City Council present at the meeting shall vote on the motion.
10. If the City Council fails to adopt the motion to impose disciplinary action as presented, or as properly amended, by a two-thirds (2/3) roll call vote, then the matter shall be closed and the proceedings shall be concluded.
11. If the motion for disciplinary action is for removal of the Mayor or member(s) of the City Council under Section 28 of the City Charter, and if the City Council shall, by two-thirds (2/3) roll call vote, adopt the motion, then such member(s) or the Mayor shall be immediately removed from office.
12. If the motion for disciplinary action is other than removal under Section 28, of the City Charter, and if the City Council shall, by two-thirds (2/3) roll call vote adopt the motion, then the City Council shall impose the discipline stated in the motion, short of removal or suspension of the member(s) or the Mayor from office.
13. Nothing contained herein shall be interpreted in a manner to alter, amend or revise any provision of the City Charter.
14. The City Council disciplinary process is subject to the requirements of NH RSA 91-A.


Kendall W. Lane, Mayor

PASSED December 19, 2013

A true copy, attest:



City Clerk