



City Council Rules Committee
Draft Meeting Minutes
January 24, 2022
City Council Chambers
37 Green Street, Concord
4:00 p.m.

1. Councilor Bouchard, Committee Chair, called the meeting to order at 4:00 p.m.
2. Roll Call: Councilors Bouchard, Grady Sexton, Kretovic, McNamara and Pierce were present.

Staff Members Present: Jim Kennedy, City Solicitor and Janice Bonenfant, City Clerk.

Councilor Bouchard provided a brief overview of the meeting. She indicated that in follow-up to the January 10, 2022 City Council meeting members were charged with reviewing City Council Rules and the City's Ethics Ordinance, specific to conflicts of interest, to see if changes were warranted to further clarify the intent of the documents, specific to recusing oneself from voting on a given item.

Councilor Bouchard indicated she had provided copies of City Council Rules, the City's Ethics Ordinance, the City Charter and the City Council Oath of Office to committee members. Councilor Bouchard began the meeting by referencing the City of Concord's Oath of Office, specifically the wording "*I, do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all of the duties incumbent on me as a City Councilor for the City of Concord, according to the best of my abilities,*" stating that "impartially" stood out as an important word within the oath that they all took. She further stated that it was important for residents/citizens within the community to know that members of City Council were working, on their behalf, in the best interest of the City and that Council rules were clear to everyone.

3. Review of Referral from City Council.
 - A. Review of City Council Rules, and City Ordinance 1-6, Code of Ethics, specific to conflicts of interest and recusals.

Solicitor Kennedy addressed committee members indicating that he was present to review documents with members, while providing information about the documents being reviewed. Mr. Kennedy indicated that his role was to provide information not to make a determination as to whether or not a conflict of interest violation took place at the January Council meeting. He clarified that the Committee could choose to make recommendations to the Council following committee review.

City Council Rules:

Section 6A. *Councilors shall comply with the City of Concord's Ethics Ordinance relative to conflict of interest and qualification to participate in any matter before the City Council.*

Solicitor Kennedy read Section 6A of City Council rules into the record, indicating that, as written, it directs City Councilors to the City's Ethics Ordinance.

Section 6B. *The issue of a conflict of interest and qualification of a Councilor to participate in any matter before the City Council, shall be declared, pursuant to section 6A, on his/her own motion or on the motion of another Councilor, prior to the City Council discussion on the matter, or if discussion has occurred, as soon as the conflict of interest becomes known. At such time the Councilor affected, or the Councilor raising the conflict of interest, shall advise the Council as to the full extent of the conflict. The Mayor, or to the extent that the Mayor is subject to the conflict of interest inquiry, the Mayor Pro Tem or presiding officer, shall in the first instance rule on the issue of conflict of interest. The decision of the Mayor may be put to a vote of the Council. A majority of those present and voting shall determine the eligibility of a Councilor to vote on the issue under consideration.*

Solicitor Kennedy read Section 6B of City Council Rules into the record, indicating that as stated, within Section 6B, should a conflict arise at a given Council meeting the process as outlined indicates the Mayor, or presiding officer, shall in the first instance rule on a given potential conflict of interest after which any member of City Council may request the decision be put to a vote of the whole Council.

Ordinance No. 2950 – Ethics Ordinance:

1-6-3 Definitions.

Conflict of Interest. *A conflict of interest exists when a person takes an action or makes a decision that would affect his or her financial interest, the financial interests of the person's family member or the interests of any organization in which the person is a member of a governing body.*

Solicitor Kennedy read the above section of the City's Ethics Ordinance into the record explaining that questions about what constitutes a financial interest can arise when considering potential financial conflicts of interest. He further stated that often times when there are rules or statutes relative to these concepts one looks to the courts for assistance in interpreting these rules.

Solicitor Kennedy referred to a case out of the City of Concord, Atherton v. Concord, in 1968, during that case court documents stated "there is a conflict of interest when a public officer votes on

a matter in which he has a direct personal pecuniary interest,” he further stated that the court went on to say “a man cannot serve two masters at the same time and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is or may be in conflict with the public interest.” Solicitor Kennedy indicated that what the court was saying was that when one was making a vote on something one should consider whose interest they were serving when making a given vote, further stating that the court was saying you cannot have two masters when making a vote on a given item.

Councilor Kretovic indicated that, in her opinion, the Solicitors comments specific to the court case referenced were clearer to her than as written in the ethics ordinance.

Specific to a potential conflict of interest that may have taken place at the January City Council meeting, Solicitor Kennedy stated he didn't think it was the Rules Committee's task to determine whether a conflict existed, rather, it was the committee's job to determine whether the documents before the committee for review should be amended to make them clearer, specific to potential conflicts of interest. Solicitor Kennedy indicated the Council, as a whole, would need to determine if a conflict existed, at the meeting.

City Charter:

53. Official Interest in Contracts.

No elective or appointive officer or employee of the City shall take part in a decision concerning the business of the City in which the officer or employee has a financial interest aside from salary as such, direct or indirect, greater than any other citizen or taxpayer.

Solicitor Kennedy, read the above section of the City Charter into the record indicating that this section of the City Charter provided more guidance.

Councilor Grady Sexton inquired as to whether or not the City Solicitor was aware of any other cases within the State of New Hampshire that made rulings on conflicts of interest that may provide additional guidance to the committee. Solicitor Kennedy was not aware of other cases.

Councilor Grady Sexton inquired as to what the legislative history of the City's Ethics Ordinance was. Solicitor Kennedy indicated it was originally drafted by the Rules Committee and approved by Council in 2011. The ordinance was then revised in 2015.

Councilor Pierce inquired as to whether or not reference to perceived conflict of interest existed in the current ethics ordinance. Solicitor Kennedy indicated that reference to apparent conflicts of interest were in the 2011 version of the ordinance and removed when the current ordinance was approved in 2015.

Councilor Grady Sexton asked for clarification from Solicitor Kennedy as to what he felt his role was specific to assisting the committee with the potential conflict of interest that may have taken place at the January City Council meeting. Solicitor Kennedy indicated he was present to review documents with members while providing information about the documents being reviewed. He further stated that he was at the meeting to provide guidance not a recommendation to Council on potential actions that took place at the January Council meeting. Solicitor Kennedy indicated he wasn't aware of the facts of the potential violation and therefore couldn't make a ruling on the incident. He stated that if he was asked for a legal opinion from the Rules Committee, or City Council, he could provide it. Solicitor Kennedy indicated that determining as to whether or not a

rules violation took place at the January City Council meeting could be submitted for review by the Board of Ethics. Solicitor Kennedy clarified that City Council would be the entity to refer that task to the Board of Ethics.

Solicitor Kennedy further stated he felt the task before the Rules Committee was to consider potential language changes to the documents before them.

Councilor Bouchard clarified her understanding of the task before the committee to be, after reviewing the documents before them, 1) submit any potential amendments to those documents to Council for their consideration and 2) should the Rules Committee determine that they think a conflict did exist at the January 10, 2022 City Council meeting, ask that City Council refer the issue to the Board of Ethics for review.

Councilor Grady Sexton inquired as to whether or any potential amendments, recommended by the committee for consideration by City Council, would be retroactive. Councilor Bouchard and Solicitor Kennedy confirmed recommended changes would not be retroactive.

Committee discussion regarding what the definition of an indirect conflict of interest was, as well as where it was within the documents they were reviewing, took place. Committee members also discussed the fact that many times Council members recused themselves from voting and/or discussing items, during budget adoption, even if they didn't have a specific financial conflict of interest. Members indicated that historically, if they or their family members served on a given board or committee that funds were being appropriated to, members recused themselves. Solicitor Kennedy indicated that a decision as to whether or not someone violated the intent of the documents before the committee should be referred to the Board of Ethics. He further stated that if the Rules Committee was looking for clarification of wording within the Ethics Ordinance that should also be referred to the Board of Ethics.

To obtain clarification on the recusal process, Councilor Pierce inquired as to whether or not he, as the trustee of his mother's trust fund, should vote on a gift he was making to the city, in his mother's memory. Solicitor Kennedy indicated that, specific to that example, Council Rules allowed him to self-recuse, have the Mayor rule on it and/or have Council vote on it. Councilor Bouchard stated that, whether or not to recuse oneself, from the example given, could depend on the what the donation was being designated to be used for.

Councilor McNamara inquired as to when a member of City Council should declare their intent to recuse themselves on a given item. Committee members indicated that one should state their intent to recuse when they became aware of a conflict they felt required them do so.

Councilor Bouchard asked Solicitor Kennedy if he saw any language within the documents before the Rules Committee that prevented a voting member, that was either an employee of a business or on the board of a business donating to the City, to abstain from voting on a given agenda item that was being considered. Solicitor Kennedy indicated that a factual determinative analysis would have to take place for each potential conflict of interest. Councilor Bouchard then asked Solicitor Kennedy if he thought clarity of language was needed within any of the documents before the Rules Committee to state that members of a legislative body should refrain from voting on items as outlined above. Solicitor Kennedy indicated he didn't think revisions were needed, further stating that if the Rules Committee and/or City Council wanted to refer any of the items to the Legal Department for review, the Legal Department would do so.

Councilor Pierce indicated that he liked the idea of adding language clearly stating that any member of City Council could recuse themselves from voting on a given item at any time for purposes of transparency or the appearance of a conflict of interest. Solicitor Kennedy reminded members that item 6B, within Council rules, allowed members of City Council to do that. Solicitor Kennedy also reminded committee members that within Council Rules, item 6C required one to vote, unless recused, if present.

Following committee discussion regarding the conflict of interest wording within the Ethics Ordinance and City Council Rules. Solicitor Kennedy indicated that he didn't find that the wording of City Council Rules conflicted with the Ethics Ordinance.

Councilor Kretovic moved to modify the Ethics Ordinance to clarify direct or indirect interest as defined within the City Charter, further stating that reference to the court case, Atherton v. City of Concord 1968 would be appropriate to clearly define the ordinance. The motion was duly seconded.

Solicitor Kennedy recommended the scheduling of a subsequent meeting, allowing staff time to draft recommended language for the committee's consideration prior to submission to the Council, as a whole, for approval.

After brief committee discussion, the next meeting was scheduled for Monday, January 31, 2022 at 5:30 p.m. in City Council Chambers.

Councilor Grady Sexton inquired as to whether or not the committee was tasked in determining if there was a rules violation at the January 10, 2022 City Council meeting. Councilor Bouchard indicated that no the committee's charge was to look at whether the documents before the committee were clear and/or needed to be clarified.

Councilor Bouchard referred to an education session put on by the Solicitors Office, a few years ago, where the City Solicitor hosted a seminar review the Ethics Ordinance and the Right to Know law, for members of City Council and members of Board and Commissions stating she felt it might be time for another similar session. Solicitor Kennedy indicated that if directed the Legal Department would do so.

There being no further business to discuss, Councilor Kretovic moved to adjourn the meeting at 4:48 p.m. The motion was duly seconded, by Councilor Pierce, and passed with no dissenting votes.

A true copy; I attest:

*Janice Bonenfant
City Clerk*