



Board of Ethics
Draft Meeting Minutes
Monday, June 24, 2024
City Council Chambers
37 Green Street
9:30 AM

1. Call to Order.

Chairperson John Sullivan called the meeting to order at 9:30 AM.

2. Roll Call.

Present: Marcia Moran, Stephen J. Shurtleff, Chairperson Sullivan, City Solicitor Danielle Pacik, and Deputy City Clerk Elisabeth Harrington

Present, but remote: Tenley Callaghan and James D. Rosenberg

Due to remote participation, Chairperson Sullivan asked both Ms. Callaghan and Mr. Rosenberg, per RSA 91-A, what their reason is for not physically being in attendance, if there is anyone else present with them who can hear or listen, and if they are alone.

Ms. Tenley stated that she is out of state, that nobody is present who can hear her call, and that she is alone in a room.

Mr. Rosenberg stated that he is out of state on a pre-planned family vacation, that nobody is present who can hear his call, and that he is alone on a porch.

3. Approval of June 5, 2024 Draft Meeting Minutes.

Ms. Moran moved approval of the June 5, 2024 draft meeting minutes. The motion was duly seconded and passed with no dissenting votes.

4. Consideration of Complaints Received through June 1, 2024.

Chairperson Sullivan provided a general overview of the received complaints. Chairperson Sullivan explained that at this meeting, the board will review each complaint and response and then determine one of two possible outcomes for each complaint: a complaint will either be dismissed with no further action or a public hearing will be set.

Chairperson Sullivan stated that the board will first review a complaint filed against City Councilor Ali Sekou by Dennis Soucy. City Solicitor Pacik recused, and left the table, because Councilor Sekou's response included an e-mail from City Solicitor Pacik. City Solicitor Pacik indicated that she does not anticipate being called as a witness but preferred to recuse out of an abundance of caution.

Chairperson Sullivan noted that the complaint does not cite a specific vote or action which occurred. Chairperson Sullivan also noted that in Councilor Sekou's response letter, Councilor Sekou deciphered the complaint as regarding his recusal from a vote at a recent City Council meeting where he did not specify the reason for the recusal.

Chairperson Sullivan stated that in reading Councilor Sekou's response, it appears that the matter at issue for which Councilor Sekou recused, and did not provide a reason as to why, has to do with his relationship to an organization. Chairperson Sullivan stated that the relationship had been disclosed to members of City Council in the past and that there were no questions raised by members of City Council when Council Sekou recused.

Chairperson Sullivan stated that based on the Code of Ethics, a Councilor has to make a disclosure prior to the recusal, but the rule does not specify that the disclosure must be at that particular time.

Chairperson Sullivan stated that pending the input of the board, he would be in favor of dismissing the complaint and not proceeding to a public hearing.

Mr. Shurtleff agreed with Chairperson Sullivan, expressed that the complaint did not contain specific information about what may have transpired, and stated that the complaint should be dismissed.

Ms. Moran agreed with the observations of Chairperson Sullivan. Ms. Moran added that she would like the public to be made aware that complaints should include reference to specific times, dates, places, and offenses. Ms. Moran added that the Councilor was given an opportunity to provide a reason for his recusal at the subsequent meeting and chose not to provide a reason. Ms. Moran believes the Councilor surmised the reason for the complaint and tried to respond, but that the complaint does not have enough information to proceed.

Mr. Rosenberg agreed with Chairperson Sullivan in that the complaint lacked specificity. Mr. Rosenberg suggested that the board suggest best practices to City boards and committees that when someone recuses they also state the reason for the recusal.

Ms. Callaghan stated that she agrees that the complaint fails to state a specific violation.

Mr. Shurtleff moved to dismiss the complaint against Councilor Sekou. The motion was duly seconded and passed unanimously in a roll call vote.

City Solicitor Pacik rejoined the table at 9:42 AM.

Chairperson Sullivan next reviewed five allegations outlined in one complaint against City Councilor Stacey Brown by Tyler Savage. The five allegations include: that the Councilor voted on a matter which involved Concord Police Department which is her husband's employer; that the Councilor identified herself as a Councilor and participated in public meetings held by other boards; that the Councilor violated RSA 91-A which concerns public meeting law; that the Councilor spoke at a Zoning Board meeting in 2023; and that the Councilor voted on a matter where her employer made a donation to the City.

Chairperson Sullivan stated that this board has limited authority and serves as an advisory board to the City Council who may or may not consider recommendations from the Board of Ethics.

In reference to the complaints regarding the employer's donation and the participation at a 2023 Zoning Board meeting, Chairperson Sullivan expressed that he does not believe the board has authority to adjudicate matters that happened years prior.

Regarding the complaint referencing RSA 91-A, Chairperson Sullivan expressed his thought that the complaint is outside of the board's authority as the referenced statute is clear in that it is administered by the Superior Court and State Ombudsman.

Chairperson Sullivan expressed that the final two complaints may require a public hearing. He summarized a portion of Councilor Brown's response letter where she indicated that she acts as an advocate and participates in public meetings of non-Council boards where she identifies herself. Chairperson Sullivan cited section 1-6-5 of the Code of Ethics which provides an outline on how Councilors may not represent the interest of others before any board.

Discussion followed about the exception to Code of Ethics section 1-6-5 which is applicable to someone speaking as an applicant or abutter.

Chairperson Sullivan stated he is inclined to schedule a public hearing regarding a vote, per the complaint, on an item regarding Concord Police Department.

For informational purposes, City Solicitor Pacik cited and dispersed the City Council Rules. City Council Rule 6D states that Councilors can attend public meetings in their individual capacity but not on behalf of City Council.

Chairperson Sullivan asked City Solicitor Pacik, if a proceeding is brought before the Zoning or Planning Board as a conflict between two neighbors, can a Councilor attend and support one neighbor over the other?

City Solicitor Pacik explained that type of nuanced situation has not been decided and explained that City Council Rules allow for an elected official, as an individual in their own capacity as an interested citizen, to participate before a public body.

Chairperson Sullivan then stated that based on this explanation of City Council Rules, his opinion is to dismiss the complaint regarding attending public meetings and proceed with a public hearing regarding the vote involving Concord Police Department.

Mr. Shurtleff asked for clarification from the City Solicitor of what a Councilor should do when participating in a meeting of a public body.

City Solicitor Pacik explained that the Councilor should make it clear that the Councilor is attending the meeting in their individual capacity and not as a member of City Council.

Ms. Moran expressed that Councilor Brown's participation in the Council item regarding Concord Police Department warrants further exploration. She also expressed that the complaint regarding public meeting participation does not contain enough specificity to move forward.

Mr. Shurtleff agreed with Ms. Moran and Chairperson Sullivan.

Ms. Callaghan expressed that she is comfortable with what others have stated and agreed with proceeding on a public hearing on the item regarding the Concord Police Department.

Mr. Rosenberg agreed in proceeding with a public hearing regarding the Concord Police Department issue.

Ms. Moran moved to proceed with a public hearing related to Councilor Brown failing to recuse from the item relating to Concord Police Department and to dismiss the other allegations outlined in the complaint filed against Councilor Brown. The motion was duly seconded and passed unanimously in a roll call vote.

Next, Ms. Callaghan reviewed the complaint filed against Planning Board member Earle Pierce by Allan Herschlag for his failure to recuse himself and state the reason for his recusal.

Ms. Callaghan stated that she does not believe the Ethics Ordinance specifies when members are to state their reason for recusing. Per Mr. Pierce's response, in which he notifies the Planning Board in writing when he plans on recusing, Ms. Callaghan believes that he acted appropriately and follows the spirit of the law.

Mr. Rosenberg thanked Ms. Callaghan for, and agreed with, her summary.

Ms. Moran stated that she agrees with Ms. Callaghan and that the complaint should be dismissed.

Mr. Shurtleff moved to dismiss the complaint. The motion was duly seconded and passed unanimously in a roll call vote.

Ms. Callaghan provided a summary on the complaint against Transportation Policy Advisory Committee (TPAC) Chair Greg Bakos. The complaint states that as the chair of the committee, Mr. Bakos added an item to the TPAC agenda for discussion. The item for discussion was regarding the feasibility study for the I-93 bridge deck park. Mr. Bakos is employed by the firm conducting the study.

Ms. Callaghan noted that Mr. Bakos's response was timely because it was received within 20 days of when Mr. Bakos was provided the revised notification.

In summarizing a portion of Mr. Bakos's response letter, Ms. Callaghan explained that TPAC is a group of volunteers coming together to keep the City abreast of transportation issues. She continued by discussing that appointing individuals in the know to this committee will mean having people in this position because the volunteers coming forward are involved in these areas professionally.

Ms. Callaghan continued by expressing that the complaint does not state specific violations. She appreciated the other argument made by Mr. Bakos in his response letter that he did not recuse himself because there was not a vote. Ms. Callaghan references the Ethics Ordinance which states that one may not introduce, speak, or vote on a motion, ordinance, resolution, or issue. Therefore, Ms. Callaghan believes that the board is right to dismiss this complaint because of lack of information. Ms. Callaghan suggested the board request the City Council ask the City Solicitor to advise various committees on how to proceed in similar situations as to not violate the Code of Ethics.

City Solicitor Pacik stated that she does work with the public bodies if issues arise, and she visits different boards to educate members about conflicts of interest. City Solicitor Pacik stated that in this instance, the best practice is for City staff to provide updates to TPAC.

General discussion followed regarding the I-93 bridge deck park and City Council's allocation of funds in the fall of 2023 to conduct a feasibility study.

Mr. Shurtleff asked City Solicitor Pacik if TPAC, other than being advisory to the Council, awards contracts.

Ms. Callaghan reviewed the responsibilities of TPAC per their website.

City Solicitor Pacik discussed the management of contracts and requests for proposals by the City's Purchasing Manager.

Chairperson Sullivan discussed how Mr. Bakos's employer appears to have a business relationship with the City and questioned if any actions by TPAC could increase the City's billable time to the consulting firm.

City Solicitor Pacik discussed how the City uses the firm, Mr. Bakos's employer, for at least a couple of projects.

Ms. Callaghan expressed that one could quickly get into a conflict in this situation.

Ms. Moran expressed that the question is what the ongoing role of this TPAC chair could play in future business to his employer and that he should be apprised of the situation.

Chairman Sullivan cited Code of Ethics 1-6-3 which states that to make a conflict of interest one has to take an action or make a decision that affects a financial interest.

City Solicitor Pacik explained that City Council or City Administration would make the decision to proceed or not proceed with a project, but TPAC could vote to recommend to Council.

Chairperson Sullivan asked if there is evidence that Mr. Bakos is participating in discussion on the I-93 bridge deck park.

City Solicitor Pacik referred to meeting minutes included in the complaint.

Ms. Callaghan expressed that this situation is difficult because even if nothing done was wrong, it can very quickly become wrong.

Mr. Shurtleff agreed with Ms. Callaghan but expressed that it is more difficult because Mr. Bakos is the chair and controls the agenda.

Chairperson Sullivan stated he would not vote to dismiss this complaint and that having staff, rather than Mr. Bakos, report on issues is not sufficient.

City Solicitor Pacik explained that if Mr. Bakos's firm is going to be involved in a particular project, then he would recuse from those particular projects moving forward.

Mr. Shurtleff expressed that this item should be reviewed at least for clarity.

Ms. Callaghan expressed that the City's appointment may have put Mr. Bakos in this position.

Mr. Shurtleff moved to review this complaint and hold a public hearing.

Ms. Callaghan asked who can provide testimony in a public hearing. It was discussed that City Administration could testify.

Mr. Shurtleff's motion was seconded.

Ms. Moran reiterated that the I-93 bridge deck park feasibility study was previously appropriated and that the complaint alleges that the chair of TPAC, Mr. Bakos, placed an already funded project on a TPAC agenda for discussion. She continued by expressing that there was no other action on the part of the chair other than to keep the committee, sub-committee, and City Council apprised of the study. Ms. Moran expressed that she had difficulty viewing the conflict of interest.

Mr. Rosenberg noted that he agrees with Ms. Moran's comment. He asked if the board might make a statement of guidance should something more meaningful than a comment on the project status arise.

Ms. Callaghan moved to amend the motion to not hold a public hearing and instead make a recommendation to Council and Mr. Bakos to inform them about their concern about future issues and conduct. The motion was duly seconded.

Chairperson Sullivan noted that there is only a potential to move to a public hearing or dismiss a complaint.

Ms. Callaghan withdrew her amendment.

A roll call vote was held and three members voted in favor of Mr. Shurtleff's motion to hold a public hearing. The motion passed.

5. Setting of Future Meeting Dates.

The City Clerk's Office will arrange one date with the Board of Ethics for both public hearings to be held.

6. Adjournment.

At 10:37 AM, there being no additional business, Mr. Shurtleff moved to adjourn. The motion was duly seconded and passed unanimously in a roll call vote.

A true copy, I attest:

*Elisabeth Harrington
Deputy City Clerk*