



Board of Ethics
Draft Meeting Minutes
Monday, September 16, 2024
Large Second Floor Conference Room
41 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: Tenley Callaghan, Marcia Moran, James D. Rosenberg, Stephen J. Shurtleff, Chairperson Sullivan, City Solicitor Danielle Pacik, and Deputy City Clerk Elisabeth Harrington

3. Approval of Draft Meeting Minutes.

Mr. Shurtleff moved approval of the July 29, 2024 meeting minutes. The motion was seconded by Ms. Callaghan and passed with no dissenting votes.

4. Public Hearing.

○ **Complaint regarding City Councilor Stacey Brown.**

Chairperson Sullivan noted that the author of the complaint, Mr. Tyler Savage would not be present.

Chairperson Sullivan explained how the complaint being considered in this hearing surrounds a consent agenda item, a report, from a City Council meeting agenda. Chairperson Sullivan asked City Solicitor Pacik to review the process and procedures of consent agenda items.

City Solicitor Pacik explained that City Council agendas contain both consent agenda reports and consent agenda resolutions. The items on the consent agenda may be voted on together through one motion rather than reviewing each item individually during the City Council meeting. Typically, the Mayor will ask if there is a motion to approve the consent agenda. After a motion, the item will be seconded. Before the vote, members of City Council who have a conflict of interest with an item on the consent agenda will announce their recusal from that item. In addition, members of City Council may pull an item from the consent agenda, by noontime on the day of the Council meeting, if the member of Council wishes to discuss the item further. Items pulled from the consent agenda are then discussed towards the end of the City Council meeting.

Members of the Board of Ethics reviewed the consent agenda report which was pulled by Councilor Brown for discussion at the May 13, 2024 City Council meeting and is referenced in the complaint filed by Mr. Savage. Chairperson Sullivan that the second paragraph of that report ends with the sentence, “It is recommended that a Police Detail be included as well.” It was discussed that promoters of events are responsible for paying for the expense of a police detail and that police details are typical with the closure of Main Street.

Members of the Board of Ethics then reviewed the May 13, 2024 City Council meeting minutes specific to review the discussion regarding the consent report pulled by Councilor Brown. Ultimately, that consent report was approved at the May 13, 2024 City Council meeting with no dissenting votes.

Chairperson Sullivan reviewed the City’s Code of Ethics, Section 1-6-3, which provides a definition of three types of conflict of interest. Chairperson Sullivan noted that one type of a conflict of interest exists when a councilor takes an action or makes a decision that “would” affect the councilor’s or councilor’s family member’s financial interest. A conflict of interest also exists when a matter before the public body involves the department for which the councilor or councilor’s family member is employed. Lastly, a conflict of interest exists when a councilor whose family member is employed in the City of Concord, when such family member is a member of a union in the City, and the public body is discussing any collective bargaining matters in a non-meeting. Chairperson Sullivan discussed the potential significance of the words “would” and “involves.”

Councilor Brown asked that the [letter submitted by her husband Wade Brown](#) and a [letter submitted by attorney Jason Reimers](#) be entered into the record.

Councilor Brown provided public testimony and further context. She explained the timeline of when the agenda is typically provided to the public and members of City Council. Councilor Brown described her review of consent agenda items and that she may reach out to abutters or other appropriate entities.

Councilor Brown provided more specifics on the consent agenda report which prompted Mr. Savage’s complaint. Councilor Brown discussed how she sits on the Parking Committee and while reviewing the specific consent agenda report, she noticed that the report did not mention notification to abutters regarding the potential street closure. Councilor Brown explained that she essentially pulled the report from the consent agenda because of her concern for the respect of all downtown parties.

Councilor Brown further explained that her family greatly values quality time together and her husband, who is employed by Concord Police Department, does not perform police details because of their family’s value of quality time. Due to her husband’s lack of providing police details, which she stated are voluntary, the correlation between the report and her husband’s employer did not cross her mind.

Mr. Shurtleff noted that two items occurred – Councilor Brown pulled the item from the consent agenda and she voted that the item be approved. Mr. Shurtleff also noted that Mr. Brown’s letter stated that the possibility he performs police details is “exceptionally rare.” Mr. Shurtleff noted that the possibility of Mr. Brown performing a police detail is nearly non-existent, but the probability that he could perform a detail exists.

Discussion followed regarding whether recusing should be based not just on how an item may affect a councilor but also on public perception.

Councilor Brown described her recusal from items originating from Concord Police Department and her recusal on items of financial benefit. Councilor Brown explained that this report originated from the City's Health and Licensing Officer Brian Santiago. She also stated that if there was a report from Concord Police regarding the event discussed in the consent report that would have recused.

More discussion followed regarding Councilor Brown's review of the consent report and her awareness that the report recommended police details.

Mr. Rosenberg asked Councilor Brown if she considered the benefit to Concord Police Depart, as an organization, because of the report's recommendation for police details. Councilor Brown discussed the individuality of officers selecting whether to perform details and that she did not consider the organization as a whole.

Councilor Brown further described her intent when she pulled the report from the consent agenda which was the consideration of abutters and downtown businesses.

Ms. Callaghan asked Councilor Brown why she did not recuse from the vote on this consent report when she was asked by Mayor Champlin, and Councilor Brown explained that she and Mayor Champlin had a difference of opinion.

Ms. Moran expressed that it seems as though this rests not on whether there was a conflict of interest but could there be a perception of a conflict of interest. Ms. Moran noted that the Code of Ethics specifies "would affect" and not "could affect."

Discussion followed regarding the payment for police details and if police details may indirectly impact retirement plans within the department.

Chairperson Sullivan noted that at the May 13, 2024 City Council meeting, Councilor Brown recused from a different agenda item which Councilor Brown stated is a regular occurrence and good practice as it is an item originating from Concord Police Department.

Bob Maccini, a Ward Five resident, noted that the complaint references one vote on one special event. Mr. Maccini noted that the Concord Police Department's job description for police officers does not list special traffic details as a component of the role. Mr. Maccini noted that if an insufficient number of officers volunteer for an event, Concord Police Department reaches out to other police departments to cover the detail. Mr. Maccini noted that Mr. Brown has only performed details at a handful of events in his career because the scale of those events required a significant amount of police officers.

Mr. Maccini added that Councilor Brown was appointed by Mayor Bouley to sit on the Parking Committee, and the Parking Enforcement Division is within Concord Police Department. Mr. Maccini noted that if Councilor Brown's vote on parking related items were to create a conflict of interest, then Mayor Bouley would not have appointed her to that committee.

There being no further public testimony, Chairperson Sullivan announced that the Board of Ethics would now begin its deliberative process.

Chairperson Sullivan noted that it does not seem improper for Councilor Brown to pull the report from the consent agenda.

Chairperson Sullivan discussed the wording of the Code of Ethics, “would affect,” and that most scenarios are a “could, maybe, or might.” Chairperson Sullivan explained that based on what he heard, he is inclined to say there was not a violation of that part of the Code of Ethics.

Chairperson Sullivan discussed the word, “involves,” and how should the board interpret it.

Mr. Shurtleff discussed that if a recommendation can come from this set of hearings it would be that members of City Council review the Code of Ethics. Mr. Shurtleff suggested potential changes to the wording of the Code of Ethics such as changing the wording of guilty or not guilty to proven or not proven. Mr. Shurtleff also suggested that the wording of would versus could be reviewed. He also suggested that the wording of family member be expanded to anyone you hold near and dear.

Ms. Callaghan discussed how the wording of “would” can be problematic and discussed how she does not believe that this instance with Councilor Brown rose to the level of a conflict of interest.

Mr. Rosenberg noted there is concern on its face, but there is no intent to violate or evidence thereof. Mr. Rosenberg added that if read hyper-technically, the consent report does involve the employer of Councilor Brown’s. Mr. Rosenberg stated that as such there is fair reason for discussion by the Board of Ethics yet, Councilor Brown expressed sincere concern for the report’s impact on businesses and residents. He does not believe that Councilor Brown’s intention was to involve Concord Police Department but to involve the community she serves.

Chairperson Sullivan reviewed the possible determinations that can be made after deliberation by the Board of Ethics per their rules.

Ms. Moran discussed the inclusion of the two sentences referencing police details in the consent report and discussed the report’s inclusion of the phrase “as well.” Ms. Moran discussed the benefit of recommending that City Council may benefit from reviewing and tightening up the language of the Code of Ethics. Ms. Moran stated that in this instance there was no obvious conflict of interest.

Mr. Shurtleff added that Mayor Champlin was right in pointing out to the Councilor about the potential conflict of interest.

Discussion followed regarding how the justification for a recusal, or for why there is not a recusal, is beneficial.

Chairperson Sullivan proposed the following findings of fact:

- The Cars & Coffee consent agenda item did not pose a conflict of interest for Councilor Brown because there was not evidence that the item would affect her husband’s financial interest.
- In our view, the Cars & Coffee event: i. had at the most, a tangential involvement of the Police Department; ii. had no material or substantial involvement of the Police Department; and iii. did not involve Police Department funding.
- The Cars & Coffee event was a non-controversial matter, which was ultimately approved unanimously by the City Council.
- Councilor Brown’s interest and intention was to address potential concerns of citizens and businesses in the area of the Main Street closure and not to involve the Police Department.

Mr. Shurtleff moved approval of the findings of facts. The motion was seconded by Ms. Callaghan and passed with no dissenting votes.

The Board of Ethics also discussed the definition of a “conflict of interest,” which includes the provision that “a conflict of interest shall exist when the matter before the Public Body *involves* the department for which the officer or elected official or officer or elected official’s family member is employed.” The Board noted that going forward, it would interpret the term “involve” to mean a material, substantial or direct involvement.

General discussion followed that too strict a definition may hinder volunteerism and the giving of professional experience to City boards and commissions. In addition, further explanation of why someone may or may not be recusing will help to diffuse citizen concern.

Mr. Shurtleff moved a finding of innocence for Councilor Brown. The motion was seconded by Ms. Callaghan and passed with no dissenting votes.

5. Setting of Future Meeting Dates, if applicable.

6. Adjournment.

At 10:50 AM, and there being no additional business, Ms. Callaghan moved to adjourn. The motion was seconded by Ms. Moran and passed with no dissenting votes.

A true copy, I attest:

*Elisabeth Harrington
Deputy City Clerk*