



City Council Rules Committee
Draft Meeting Minutes
January 31, 2022
City Council Chambers
37 Green Street, Concord
5:30 p.m.

1. Councilor Bouchard, Committee Chair, called the meeting to order at 5:30 p.m.
2. Roll Call. Councilor Bouchard, Mayor Bouley, Councilors Kretovic, McNamara and Pierce were present. Councilor Grady Sexton was attending electronically from home, no one was in the room with her.

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

3. Committee Chair Councilor Bouchard provided an overview of the history of the referral from City Council before the Rules Committee as well as an overview of what had taken place to date. Councilor Bouchard indicated that during the January 10th Council meeting Councilor Brown voted on an agenda item that was directly connected to her employer. Before that vote, the question of a conflict of interest was addressed with Councilor Brown. Councilor Brown stated that no conflict existed and did not recuse herself from the vote. Mayor Bouley asked the Council to vote to have the Rules Committee review City Council Rules and Ordinance, 1-6, the Code of Ethics, specific to conflicts of interest and recusals. Councilor Bouchard reminded committee members that the question before the committee was to determine if the Council Rules and the Ethics Ordinance stated when the public interest of a Councilor collided with the private interests, or in this instance employment, was that a conflict of interest. Reasoning that the private interest could influence or appear to influence the decision a Councilor has to make in their working lives. To protect the Concord community's trust in Council, the integrity of the Council, as well as the member involved in the possible conflict, these discussions and meetings were transparent and open to the public. Councilor Bouchard indicated that the committee first met on January 24th. After reviewing the Rules, Ethics Ordinance and City Charter and after much discussion including

how the documents worked together, the committee asked City Solicitor Jim Kennedy to come back with suggested language, if needed, to improve the clarity of the conflict of interest language.

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

In follow-up to the January 24th Rules Committee Meeting, Solicitor Kennedy reviewed proposed amendments, outlined in red, to the Ethics Ordinance definitions under Section 1-6-3, relative to the definition of a “Conflict of Interest” and adding a new definition “Employee of an Organization.” He also reviewed a proposed edit to Section 1-5-, entitled, “Representing Private Interest Before City Agencies.”

1-6-3 - Definitions.

As used in this Article, the following terms are defined:

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 or the person’s family member is an employee of the organization or a member of ~~a~~its governing body. Elective officials and officers should also refer to Section 53 of the City Charter.

Employee of an Organization. An employee of an organization shall mean a person or the person’s family member who is employed by a public or private organization and such person receives compensation as a part of the employment. For State of New Hampshire or federal government employment, a conflict of interest shall only arise when the matter before the public body involves the State or federal agency or department of which the person or person’s family member is employed. For City of Concord employment, a conflict of interest shall only arise when the matter before the public body involves the department of which the person or person’s family member is employed. In no circumstance, however, shall a City Councilor whose family member is employed in any capacity with the City of Concord, participate in City Council discussions, or otherwise introduce, ask questions, speak or vote relative to collective bargaining, cost of living adjustments or benefits for City employees.

In reviewing the above proposed amendment, Solicitor Kennedy indicated that the above changes clearly defined that a member of City Council, like Councilor Brown, would not be able to vote on any matters specific to the Concord Police Department, as her spouse was employed there. He also indicated that since

Council had control of the budget for the City of Concord relative to collective bargaining, specifically cost of living increases and benefits and often times during collective bargaining negotiations, a member of City Council may learn or become privy to information that could impact one union, and other unions in the City and so to the extent that a spouse of a City Councilor was privy to that information, a conflict could arise. The amendment's changes would remove that opportunity under the ethics ordinance.

Specific to the proposed amendment, Councilor Pierce referred to a matter, that affected him, that came up at a Planning Board meeting some time ago, and inquired as to what recusing himself in that situation would look like. Solicitor Kennedy indicated that since the Planning Board was a quasi-judicial board someone in the example he provided should leave the room. Solicitor Kennedy further stated that at a Council meeting, with Council serving as the legislative body, a given Council member would be required to leave the table and not participate in the discussion, not leave the room. [After review of the minutes, Solicitor Kennedy advised that if the matter before the Public Body is a legislative matter, the officer or elected official who has a conflict of interest may remain seated at the table during the term of the recusal.]

Specific to the annual evaluation, and compensation, for the City Manager, Councilor Kretovic inquired as to whether or not Councilor Brown, whose husband worked for the City, should participate in discussions relative to the City Managers annual evaluation. Solicitor Kennedy indicated that she should not, if the above amendments were approved. Councilor Kretovic inquired as to whether or not it would be important to include the words, compensation for employees, to the above amendment. Solicitor Kennedy indicated those words could be added if the committee wanted to.

For discussion purposes, Councilor Pierce inquired as to whether or not the City should require elected officials to complete disclosure documents similar to those required at the State level. After brief committee discussion, members didn't feel it was necessary.

Following committee discussion about potential conflicts of interest that might arise at a Council meeting, Councilor Kretovic moved to recommend, to City Council, the proposed amendment to the ethics ordinance, with the addition of the word, compensation. The motion was duly seconded and passed unanimously with a roll call vote. Councilor Bouchard, Mayor Bouley, Councilors Grady Sexton, Kretovic, McNamara and Pierce voted to approve.

1-6-5 - Representing Private Interest Before City Agencies.

An elected official shall not appear on behalf of another's private interests before the governing body or any land use regulatory board. Officers shall not appear on behalf of another's private interest before the City body of which they are a member. Officers appearing on behalf of another's private interests before any

city body of which they are not a member shall disclose such interests prior to proceeding.

Solicitor Kennedy provided an overview of the above proposed amendment indicating that the proposed change was more of a housekeeping item. Councilor Pierce inquired if the Conservation Commission was a quasi-judicial body. Solicitor Kennedy indicated that the Conservation Commission was both quasi-judicial and legislative.

Following committee discussion, Councilor Kretovic moved approval of the proposed amendment to section 1-6-5 of the Ethics Ordinance. The motion was duly seconded and passed unanimously with a roll call vote. Councilor Bouchard, Mayor Bouley, Councilors Grady Sexton, Kretovic, McNamara and Pierce voted to approve.

Councilor Bouchard, Committee Chair, indicated that she felt the proposed changes provided clarity to potential conflicts of interest. Councilor Bouchard further stated that when looking at the events of the January 10th Council meeting and the documents before the Committee for review, she felt that there was an ethics violation at the January 10th City Council meeting. Councilor Bouchard indicated that she felt that it was appropriate for the Rules Committee to refer this issue, a potential conflict of interest violation, to the Ethics Board.

Mayor Bouley indicated that he agreed that it was appropriate for the Board of Ethics to review the potential violation that took place at the January 10, 2022 City Council meeting. Mayor Bouley indicated that, as members of City Council, it was clear within the Oath of Office they all swore to, City Council Rules, the City Charter and the Ethics Ordinance that Councilor Brown should have recused herself on the vote in question at the January 10th City Council Meeting. Mayor Bouley further indicated that the Board of Ethics didn't currently have a full slate of members asking the Rules Committee to hold off on referring this to the Ethics Board until the next Rules Committee meeting, allowing time to fill vacancies on the Board. Mayor Bouley spoke in support of the referral indicating he felt that there was a tremendous distrust of the government and that Council couldn't play into that and instead Council should stand in front of the community and show residents that members of City Council would hold each other accountable, so that residents knew that as Council members they were above the issue of conflicts of interest or improprieties and such. He further stated that Council needed to restore the integrity of the City Council and indicated that a referral to the Ethics Board would show the public that Council would live by their own rules.

Councilor Kretovic inquired as to whether or not a re-orientation for members of City Council would be appropriate to discuss issues like conflict of interest, specifically understanding that a Council conflict of interest did carry over to any committees a given Councilor served on as well as that Councilors should not show up at sub-committee meetings as outlined in the rules they serve. Councilor Kretovic further stated that Councilors should never be reprimanded for not showing up to a given sub-committee meeting like they were recently, specific to Mask Ordinance Committee meetings.

Mayor Bouley agreed that the documents before the Rules Committee also applied to those that served on the many boards & commissions within the City.

Councilor Kretovic inquired as to whether or not the documents being reviewed by the committee should be given to Council along with the Rules Committee recommendations. Mayor Bouley indicated that he hoped that the Council, as a whole, would look at this situation as a learning/teaching moment. He further stated that it was a good idea to have the Legal Department provide Council members with a re-orientation of such, reviewing Council Rules, the Ethics Ordinance, the Board of Ethics and the City Charter.

Councilor McNamara spoke in support of Mayor Bouley's comments specific to a re-orientation of the documents before Council.

Mayor Bouley asked the City Clerk if newly sworn in members of Boards & Commissions received a copy of the Ethics Ordinance when they were appointed to Boards & Commissions. City Clerk Bonenfant indicated that the Clerk's Office did not currently provide committee members with a copy of the City's Ethics Ordinance but would begin doing so.

Councilor Bouchard indicated that as discussed at the January 24th Rules Committee Meeting, she felt another citywide training session, for members of City Council as well as municipal boards & commissions, by the Legal Department would be beneficial. Solicitor Kennedy indicated that the Legal Department would look into organizing another meeting like they held a few years ago.

Councilor Bouchard asked committee members if they wished to refer the potential violation that took place at the January 10th City Council meeting to the Board of Ethics. Solicitor Kennedy reminded members that the Board of Ethics

didn't currently have a full slate of members right now. He further indicated that ordinances as written stated that referrals to the Board of Ethics were to be notarized statements submitted to the City Clerk.

Mayor Bouley indicated that because the Board of Ethics didn't currently have a full slate of members perhaps the Rules Committee could hold off on referring the potential conflict to the Ethics Board until the next Rules Committee meeting, allowing time to fill vacancies. Mayor Bouley encouraged committee members to submit names for consideration as potential members of the Board of Ethics for consideration.

Solicitor Kennedy asked committee members if they wished to amend municipal ordinances to indicate that any public body within the city or any individual may submit a complaint to the Ethics Committee. Mayor Bouley suggested that the committee wait until such time that the Board of Ethics had a full slate before recommending additional changes.

Councilor Bouchard indicated that the suggested changes to the Ethics Ordinance, that have been discussed this evening, will be submitted to City Council as suggested changes within their February City Council packets.

5. Scheduling of next meeting, if necessary.

There being no further business to discuss, Councilor Pierce moved to adjourn the meeting at 6:27 p.m. The motion was duly seconded and passed unanimously with a roll call vote. Councilor Bouchard, Mayor Bouley, Councilors Grady Sexton, Kretovic, McNamara and Pierce voted to approve.

Councilor Bouchard indicated that she would reach out to committee members to schedule the next Rules Committee Meeting after appointments to the Board of Ethics were made.

A true copy: I attest:

*Janice Bonenfant
City Clerk*