

August 3, 2020

City Attorney Robert Sullivan:

Pursuant to the Municipal Code of Ethics, Reference Chapter I, Article VIII, Section 1.802 I am filing this ethics complaint for violating Portsmouth's CONFLICTS OF INTEREST A. City Councilor Esther Kennedy which states: "No Officer or employee shall engage in any business or transaction or shall have a financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his/or her official duties."

During the June 15, City Council meeting, the Citizens Response Task Force chairs updated the City Council, which included Esther Kennedy, on several developments related to the re-open and recovery plans for the small business, arts and nonprofit community. Among the points they made to council were that the goal of the efforts was to "save businesses, provide jobs, and provide safe options for the public." They stressed that the city needed to "move fast, not try to be perfect out of the start, and adjust on the fly as needed." Senator Martha Fuller Clark also spoke to Council at that evening, stating these efforts were a "plea for arts and culture" and that the city should be prepared to "modify and move forward" as needed.

On July 1st, Task Force Pop Up subcommittee chair Russ Grazier said in the Portsmouth Herald, "the Seacoast Repertory Theater will serve as fiscal agent for the summer-long project, after announcing organizers had exceeded fundraising goals.

During the July 8, Citizens Response Task Force meeting, the subcommittee for the Pop Up event updated with the following information, which can be found in the official meeting minutes, "For fiduciary oversight, the independent community workgroup that developed the Popup project has applied to become a non-profit organization with the name "Popup Portsmouth." *Seacoast Rep will act as fiscal agent for Popup Portsmouth until the organization reaches its own nonprofit status.*"

During the July 13, City Council meeting, the chairs of the Citizens Response Task Force, appointed by the Mayor, informed the City Council, which includes Esther Kennedy, that the \$50,000 contribution from the city to support Pop Up project would not be passed on to the Pop Up working group, but would be directed toward costs incurred by the city for the project, which was approved and funded with a unanimous vote by the city council.

These examples, all public and well documented, state very clearly the intent of the Task Force projects, an expectation of expediency, a lawful and legal fund-raising mechanism called 'fiscal agency,' as well as the important point that no city funds would go directly to the Pop Up working group.

On July 21, Kennedy was quoted in the Portsmouth Herald saying otherwise. Kennedy said, "the local Pop Up Portsmouth group has been promoting itself as a nonprofit and the city committed \$50,000, which is expected to be reimbursed with federal CARES Act money."

This was a false statement that is contrary to the updates and information she received as a city councilor and that I have listed above. Further, fiscal sponsorship by an existing nonprofit is lawful standard practice in short-term or one-time fundraising, much like the Clipper Strong Fund which Kennedy serves as administrator.

On July 23, Kennedy was quoted again in the Portsmouth Herald. She said that she “registered the name (Pop Up Portsmouth) to prove it wasn’t registered because the city was contributing \$50K which is expected to be reimbursed through federal CARES Act funds.”

This too was contrary to the public updates and information she received as a city councilor. City funds were never to be transferred to the Pop Up group, as she was officially told on July 13.

During the June 15 City Council meeting, the Citizens Response Task Force chairs discussed how the community came together to support the arts and business community, giving their time and expertise to the city for free. They expressed the enormous good will and positive energy behind these efforts.

By making intentionally misleading statements to the media that contradict official city records and information she was given directly from city committee chairs, Kennedy caused harm to the unanimously approved and funded city initiative by casting doubt among members of the public on the validity of the project. Kennedy took what was once a popular and positive city initiative and through the use of misinformation and imagined misdeeds, cast a shadow over it in the eyes of some members of the public. There are letters to the editor that support Kennedy’s claims, which go directly against official meetings records and minutes.

Kennedy willfully engaged in a miscommunication “transaction” with a “direct interest” to mislead the public and cast doubt and suspicion on a city initiative. Her actions endanger the project by creating doubt about the validity of the efforts and the volunteers. This is in conflict with “the proper discharge of her official duties” which is to support community initiatives unanimously approved by the City Council that aim to save businesses, provide jobs, and provide safe options for the public.

Further, on January 6, 2020, Kennedy took an oath of office to “Faithfully and *impartially* discharge and perform all the duties incumbent upon her as a city councilor.” Her irreparable actions and refutable accusations against a singular group of community volunteers were not *impartial*, and not commensurate with the oath she swore to uphold.

The aforementioned individual has therefore violated Portsmouth’s CONFLICTS OF INTEREST Ordinance and that is the basis for this ethics complaint against her.

In event that the Board of Ethics determines that councilor Kennedy has engaged in an act that is prohibited by the ethics ordinance I am seeking a remedy in accordance with:

Section 1.805: enforcement, paragraph A. Sanctions. 1.a. Vote for removal of councilor Kennedy from the city council pursuant to the city charter as amended.


Sincerely.

Nancy Pearson

 7/3/2020

NANCY Pearson stood before me and signed on this 3rd
day of August, 2020.

State of NH; Rockingham County.


Kimberli Kienna
Notary Public

