CITY OF PORTSMOUTH
Legal Department
Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire
(603) 431-2000

September 2, 2020

Nancy Pearson
104-112 Lincoln Avenue #1
Portsmouth, NH 03801

Esther Kennedy
41 Pickering Avenue
Portsmouth, NH 03801

RE: Ethics Complaints of August 3, 2020

Dear Ms. Pearson and Councilor Kennedy:

This will advise that we have met to review the two ethics complaints filed by Ms. Pearson against Ms. Kennedy. Our role in conducting this review was not to determine whether any ethics violations had actually occurred, but rather to determine pursuant to Section 1.804 C of the City's Ethics Ordinance whether or not the complaints are "with or without substance". The purpose, under the ordinance, of our limited and threshold review is to prevent complaints which have, in our judgement, little possibility of being proven to be founded from occupying the time and energy of the City's Board of Ethics.

With our limited role in mind, we have reviewed the two complaints, both dated August 3, 2020, in detail and compared the allegations which they contained to the criteria established in the City's Code of Ethics. The test which we applied was to determine whether or not if all of the facts alleged in the complaints were proven to be true, there would be a reasonable possibility of a Code of Ethics violation to be found by the Board of Ethics. Using that test, we have determined that one aspect of one complaint should move forward to the Board of Ethics for further inquiry. All remaining allegations of each complaint we have determined could not reasonably support a finding of an ethics violation on the part of Ms. Kennedy.

The allegation which we believe calls for inquiry by the Board of Ethics is the allegation contained in the fifth paragraph of the first complaint filed on August 3, 2020 by Ms. Pearson. Specifically, it is alleged that "by registering the trade name [Pop Up Portsmouth], Kennedy engaged in a 'transaction' with a 'direct interest' in the outcome of Pop Up Portsmouth which is 'in conflict with the proper discharge of her official duties.'" This is said to be in violation of Section 1.802 A. In essence, it appears that the Board of Ethics could possibly find that by registering the tradename, Councilor Kennedy engaged in a transaction which sought to defeat a legislative goal established by the Portsmouth City Council. That is a decision the Board of Ethics must make, not us.

It will be the work of the Board of Ethics to clarify whether the facts which are alleged to support that claim are accurate and whether, if so, Councilor Kennedy engaged in a transaction in conflict of interest with her duties as a City Councilor in violation of the Code of Ethics.

We have reviewed all of the remaining allegations contained in the two complaint letters, and have concluded that even if all true the factual allegations could not make out the ethical violations alleged in the complaints. Therefore, we have determined not to move those ethical complaints forward so that the Board of Ethics will not be required to decide them. It is our view that the facts alleged in support of these remaining allegations, strong as those allegations may be, nonetheless fall within the bounds of allowable political and legislative activities.

In accordance with the requirements of Section 1.804 C (I) of the Code of Ethics, the single complaint as described above is forwarded to the City's Board of Ethics and the remaining claims are dismissed.

Sincerely,

James Splaine
Assistant Mayor

Robert P. Sullivan
City Attorney

RPS/smr
cc: Board of Ethics
Mayor and City Council
Karen Conard, City Manager