

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. against 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."

For background, Pop Up Portsmouth is the working title of a volunteer group who presented a project to the city's Citizens Response Task Force, appointed by the Mayor, to provide a Covid safe outdoor venue on city property to support local arts, nonprofits, restaurants and retail. The City Council, which includes Esther Kennedy, unanimously agreed to support the project with \$50,000 if the volunteers could raise matching funds. **It is worth noting that per the Task Force Chairs, city funds would never go to the working group, but be used to directly cover the project expenses incurred by the city.** Using the fiscal agency of the 501c3 nonprofit, Seacoast Reparatory Theatre (SRT), the volunteers, now a 'working group' raised nearly \$100,000 in private donations in four days, exceeding the city's matching criteria. This is when the working group went into action to begin steps to incorporate legally as a nonprofit.

During the July 13, City Council meeting, the chairs of the Citizens Response Task Force, appointed by the Mayor, reported to the City Council, which includes Esther Kennedy, at the 1:52:25 mark that the working group for the Pop Up event was *going through the process of 'incorporating as a nonprofit'* under the name, POP UP PORTSMOUTH.

Two days later, on July 15, according to the New Hampshire Secretary of State's Office, *Kennedy reserved the trade name* POP UP PORTSMOUTH. Her Business ID is 846526, the principal office address she gave is 41 Pickering Ave, Portsmouth, NH, 03801, and her notification email is esthersmarina@gmail.com.

Pop Up Portsmouth was slated to occur on city property and had been supported with city funding. By registering the trade name, 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," and violates section 1.802 A. By impeding the efforts of the working group to legally form as a nonprofit, she jeopardized the funding and the project and undermined a unanimous city council vote and city sanctioned project.

Additionally, during the same July 13, City Council meeting, at the 1:57:05 mark, Kennedy commented on the CARES act funds and Portsmouth businesses. She stated, "Does my business need help? No, I'm doing pretty good." This is an important comment. She used her business email on the official trade name registration form, picture attached. As a business owner by her own admission, she created a conflict of interest when she claimed the trade name and impeded the progress of a city-sanctioned competing business venture. This is "in conflict with the proper discharge of her official duties, because she took steps that are in direct conflict with a city-sanctioned business venture that she herself supported in a unanimous council vote.

I am also filing this ethics complaint for violating Portsmouth's CONFLICTS OF INTEREST H. against City Councilor Esther Kennedy which reads: "Investments in Conflict with Official Duties: Any officer or employee, who holds any investment direct or indirect in any financial, business, commercial or other private entity which creates a conflict with his/her official duties shall publicly disclose on the official record the nature and extent of such interest."

Kennedy did not "disclose on the official record" that she holds a 'direct private entity' (the trade name of Pop Up Portsmouth) which is a city-sanctioned competing business venture and creates a 'conflict with her official duties,' nor did she "publicly disclose on the official record the nature and extent of such interest."

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 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

Nancy Pearson R 7/3/2020

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

Kimberli Kienia

*Kimberli Kienia
Notary Public*

8/3/2020

