

City of Rochester Board of Ethics – September 7, 2021

MINUTES

Meeting called to order at 6:40 pm by Board Chair Carl Steinbrenner. This meeting was held via video conference in response to a NYS law passed September 1, 2020 allowing public meetings to be held virtually.

Members present:

Mia Cannon
Doug Escher
Kevin Graham
Carl Steinbrenner
Timothy Weir

Members Not Present:

James Patterson
Hon. Loretta Scott

Non-Members Present:

Patrick Beath, Acting Corporation Counsel
Councilmember Mary Lupien
Other public attendees not identified

Approval of Minutes

- Approval of Minutes for the July 13, 2021 meeting were unanimously approved.

Pending Business:

- The board continued review and discussion of C21-1, a complaint concerning a written correspondence distributed to the public by City Councilmember Mary Lupien on March 11, 2021. Secretary Weir provided a brief overview of C21-1 to include a summary of the facts presented in the complaint as well as the main issues raised during the board's last meeting in July 2021.

During the discussion, Councilmember Lupien was afforded the opportunity to address the board. Councilmember Lupien reiterated points made during the last meeting regarding her belief that no violation of the ethics code occurred as a result of the

correspondence and her actions were consistent with the role and responsibilities as a member of City Council. In addition, Councilmember Lupien cited prior matters heard by the board that were similar in nature to include the Uber/Lyft complaint and the Mayor's letter supporting the United Way.

Throughout the discussion, board members offered their view of the issue. The discussion focused on the talking points included in the correspondence and whether their inclusion afforded a specific group an advantage over other groups or the general public. In addition, the use of Councilmember Lupien's official title and the City email system were considered during the deliberations.

The board unanimously agreed that Councilmember Lupien's inclusion of talking points on behalf of a specific group and her use of City email were technical violations of ethics code provisions C4 and C5, however, these violations were considered "de minimus" and further complicated by the broad language of the City's ethics code. All agreed these provisions should be considered for revision in the future to provide more clarity to what actions may constitute a material violation and provide proper guidance to City officials and employees. Chair Steinbrenner offered to prepare a draft advisory opinion regarding this issue which will be reviewed by the board at the next meeting.

The board then considered the amended complaint, C21-1a, from the Rochester Police Locust Club which alleges Councilmember Lupien released nonpublic information regarding ongoing civil litigation involving the City. In addition, the complaint requests the BOE to review the association between Councilmember Lupien and a City employee who also has served as her campaign manager. Secretary Weir provided an overview of the issues for consideration and the discussion focused on the definition of "nonpublic information". Chair Steinbrenner asked Acting Corporation Counsel (ACC) Beath to research how the City defines nonpublic information to assist the board in their deliberations. ACC Beath agreed to provide clarification at the board's next meeting. In addition, Secretary Weir read a statement provided by the Rochester Police Locust Club concerning this matter.

Secretary Weir provided a brief summary of complaint C21-2 which alleges conflict of interest violations against members of the Police Accountability Board relating to their attendance at a post-election gathering during which "anti-police chants" were captured on video and posted to twitter and facebook accounts. The board discussed jurisdictional issues with respect to conflict of interest provisions set forth in the PAB legislation. Preliminarily, it was the view of the board that it does not have authority to consider allegations that relate to PAB ethics provisions. ACC Beath agreed to research this issue and provide guidance at the next meeting.

Chair Steinbrenner requested that Secretary Weir contact the Rochester Police Locust Club to seek clarification on which specific ethics code provisions they believe were violated with respect to the complaints pending before the board.

