

OREGON GOVERNMENT ETHICS COMMISSION

PRELIMINARY REVIEW

CASE NO: 20-168ELC

DATE: July 30, 2020

RESPONDENT: KASER, Cara, City Councilor, City of Salem

COMPLAINANT: OWENS, Sarah, Vice-Chair, Central Area Neighborhood Organization

RECOMMENDED ACTION: Move to Investigate Possible Violation of ORS 244.120(2)

PRELIMINARY REVIEW: The Oregon Government Ethics Commission (Commission) received a letter of complaint from Sarah Owens, Vice-Chair, Central Area Neighborhood Organization, on July 1, 2020. (#PR1). Sarah Owens alleged that Cara Kaser, a City Councilor for the City of Salem City Council (City Council) may have failed to declare a conflict of interest when a vote involving a federal grant was acted upon by the City Council. Receipt of the complaint was acknowledged in letters to Sarah Owens and Cara Kaser. Ms. Kaser was provided with the information received in the complaint and invited to provide any information which would assist the Commission in conducting the preliminary review in this matter.

Background

The federal Department of Housing and Urban Development (HUD) created a "Home Investment Partnerships Program" (HOME) in 1990. The purpose of the HOME program is to:

Provide formula grants to States and localities that communities use—often in partnership with local nonprofit groups—to fund a wide range of activities including building, buying and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. Shortly after HOME funds become available each year, HUD informs

1 eligible jurisdictions of the amounts earmarked for them. Participating
2 jurisdictions must have a current an approved Consolidated Plan, which will
3 include an action plan that describes how the jurisdiction will use its HOME
4 funds. [www.hud.gov/program_offices/comm_planning/affordablehousing/pr
5 ograms/home/](http://www.hud.gov/program_offices/comm_planning/affordablehousing/programs/home/).

6
7 At its June 22, 2020 meeting, the City Council discussed and then voted on approving the
8 2020-2024 Consolidated Plan to award and deny (HUD) HOME funds to multiple
9 organizations. One entity that applied was DevNW. According to its website, DevNW is
10 a nonprofit that was created in 2019 for the purpose of helping people in the region obtain
11 homes, start small businesses and revitalize neighborhoods. DevNW had applied for
12 funds, per the agenda for the June 22, 2020 City Council meeting, for the "acquisition
13 and conversion of an existing church and parsonage for up to 14 affordable housing units
14 and office space of the nonprofit." (#PR3). The application for funds was the first step in
15 the project. The church to be renovated into housing and office space is located at 905-
16 925 Cottage Street NE in Salem. Respondent and her husband, Eric Bradfield, own their
17 house at 934 Cottage Street NE, property that is located directly across the street from
18 the former church. Eric Bradfield is co-chair of the Grant Neighborhood Association (GNA)
19 and serves in a volunteer capacity. Mr. Bradfield provided testimony at the June 22, 2020
20 City Council meeting, in opposition to DevNW's application, as a resident of the
21 neighborhood. Ms. Kaser participated in discussion on and then voted to deny DevNW's
22 application for HOME funds at that meeting.

23 24 **Complaint**

25 The Complainant alleges that Respondent had a conflict of interest in actions she took as
26 a Salem City Councilor:

27
28 At a June 22, 2020 meeting of the Salem City Council, during the public
29 hearing on Salem's Consolidated and Annual Action Plans, Councilor Kaser
30 heard public comment from Eric Bradfield on behalf of his "household" in
31 which he advocated against awarding HOME Investment Partnership funds

1 for project to develop low-income housing on the property located at 905
2 [-]925 Cottage Street NE. Kaser then argued and voted against the award
3 WITHOUT EVER DISCLOSING that she was/is a member of Eric
4 Bradfield's "household", and with him, owns a house located at 934 Cottage
5 Street NE, directly across the street from the subject property. During the
6 course of the discussion Kaser, along with the rest of City Council,
7 discussed the merits of and opposition to, a rezoning of the subject property,
8 despite knowing the application was due to go before the Planning
9 Commission, and voted against the award of HOME funds for the express
10 purpose of preempting the rezoning and the rights of the developer,
11 DevNW, to the due process rights to a quasi-judicial proceeding on a land-
12 use matter. (#PR1).

13
14 Respondent provided a letter in response to the complaint, which will be provided in its
15 entirety to the Commissioners with this report, and is excerpted below:

16
17 My name is Cara Kaser and I am a City Councilor for the City of Salem
18 representing Ward 1. I was elected to the City Council in 2016 and my term
19 runs from Jan. 1, 2017-Dec. 31, 2020. . . . All Councilors and the Mayor are
20 volunteer, unpaid positions. . . . In this response, I seek to provide the
21 Commission with information to demonstrate that I acted in good faith on
22 my own understanding and interpretation of ORS Chapter 244, and on the
23 opinion of the Salem City Attorney, and did not believe that I had an actual
24 conflict of interest as defined in ORS 244.020(1) nor did I have a potential
25 conflict of interest as defined in ORS 244.020(13), and because of this was
26 not required to handle any such conflict of interest as described in ORS
27 244.120 in this decision. I also seek to provide the Commission with
28 information to demonstrate that my not disclosing my relationship with my
29 husband, Mr. Eric Bradfield, was unintentional, but also immaterial, in this
30 decision. (#PR2).

31 ///

1 Ms. Kaser explains that she consulted with the City Attorney and received advice
2 indicating that she did not need to declare any conflict of interest regarding the situation
3 at issue. She also provided minutes of the June 22, 2020 meeting as well as a detailed
4 explanation of her actions taken during that meeting. (#PR2).

5
6 The minutes of the June 22, 2020 City Council meeting indicate that item number 20-203,
7 an application by DevNW for HOME funds, was discussed and voted on by the City
8 Council:

9
10 Public Hearing for 2020-2024 Consolidated Plan, Analysis of Impediments
11 to Fair Housing Choice, and 2020-2021 Annual Action Plan Ward(s): All
12 Wards Councilor(s): All Councilors Neighborhood(s): All Neighborhoods
13 Result Area(s): Strong and Diverse Economy; Welcoming and Livable
14 Community Staff presentation by Shelly Ehenger, Program Manager
15 Persons Testifying: Paul Tigan, 836 Church Street NE, Land Use Chair of
16 the Grant Neighborhood Association, File No. 20-203 Emily Reiman, 437
17 Union Street NE, CEO of Dev NW, File No 20-203; Eric Bradfield, 934
18 Cottage Street NE, File No. 20-203; Councilor Leung declared a conflict of
19 interest with DevNW

20
21 Questions and Comments by: Councilors Lewis, Andersen, Hoy, Nanke,
22 Kaser, Ausec and Mayor Bennett

23
24 A motion was made by Mayor Bennett, seconded by Councilor Andersen to
25 adopt the 2020-2024 Consolidated Plan, Analysis of Impediments to Fair
26 Housing Choice, the 2020-2021 Annual Action Plan, Amend the 2019
27 Annual Action Plan, and direct staff to submit the documents and required
28 forms to the U.S. Department of Housing and Urban Development (HUD)
29 **but removing the HOME funds for the acquisition and conversion of**
30 **an existing church and parsonage of 14 affordable housing units and**
31 **office space for the non-profit, it is scheduled at \$392,539, and it's at**

1 **902 (sic) to 925 Cottage Street. The motion carried by the following**
2 **vote: Aye: Kaser, Andersen, Nanke, Lewis, Hoy, Bennett, and Nordyke7 -**
3 **Nay: Ausec1 - Abstain: Leung. (#PR3)(emphasis added).**
4

5 **RECOMMENDATIONS:** Cara Kaser is and was a member of the City Council during the
6 period relevant to this preliminary review. As a City Council member she is considered a
7 “public official” (as defined in ORS 244.020(15)) and is subject to ORS Chapter 244
8 Oregon Government Ethics law.

9
10 Conflict of Interest

11 ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a
12 potential conflict of interest. The difference between an actual and potential conflict of
13 interest is determined by the certainty of the private financial impact. An actual conflict of
14 interest occurs when a public official participates in an official action, decision or
15 recommendation that would have a direct and specific financial impact on that official, the
16 official's relative or any business with which the official or a relative is associated. A
17 potential conflict of interest occurs when a public official's action, decision or
18 recommendation could have a financial impact on the official, the official's relative or any
19 business with which the official or a relative is associated. “Relative” is defined at ORS
20 244.020(16) to include the spouse of the public official.

21
22 If a public official has a conflict of interest, they need to comply with the appropriate
23 disclosure and disposition requirements found in ORS 244.120. ORS 244.120(2) requires
24 an elected official, as here, to:

25
26 (a) When met with a potential conflict of interest, announce publicly the
27 nature of the potential conflict prior to taking any action thereon in the
28 capacity of a public official; or

29 (b) When met with an actual conflict of interest, announce publicly the
30 nature of the actual conflict and:

31 (A) Except as provided in subparagraph (B) of this paragraph, refrain from

1 participating as a public official in any discussion or debate on the issue out
2 of which the actual conflict arises or from voting on the issue.
3

4 Respondent, per the minutes of the June 22, 2020 City Council meeting discussed and
5 then voted to deny the application made by DevNW for the HOME funds to be allocated
6 by the City Council as part of the 2020-2024 Consolidated Plan.
7

8 In this case, the minutes of the June 22, 2020 City Council meeting, as well as the
9 information provided by Ms. Kaser indicate that Ms. Kaser did not disclose any conflict of
10 interest at the June 22, 2020 City Council meeting when the City Council discussed and
11 then voted to deny federal HOME funds to DevNW to use to convert 905-925 Cottage
12 Street NE to fourteen affordable housing units and office space. Ms. Kaser's home is
13 located at 934 Cottage Street NE in Salem, directly across the street from 905-925
14 Cottage Street NE. A multi-unit affordable housing complex containing a commercial
15 office, directly across from her home, could affect the value of Ms. Kaser's home. Indeed,
16 as noted by the objection posed by GNA, one of the concerns raised at the meeting was
17 that if the funds were approved, the next step would be to convert the area to a
18 commercial office zone in order to incorporate the office proposed by DevNW and that
19 would be "wholly incompatible with the vicinity of the property, which lies in the middle of
20 a 150-acre contiguous tract of developed, stable residential housing". (#PR4).
21

22 For clarity, Grant Neighborhood Association is not listed as a source of income by Ms.
23 Kaser in her required "Statement of Economic Interest" filed in 2020 with the state of
24 Oregon. Her husband, Mr. Bradfield, is not paid by GNA and serves as "co-chair" as an
25 unpaid volunteer. As such, it is not a business with which Ms. Kaser is associated.
26 Moreover, the remarks made by her husband, per the minutes of the June 22, 2020 City
27 Council meeting, were made by Mr. Bradfield as a resident of the neighborhood and not
28 as co-chair of GNA. Any remarks made to and received by the City Council would most
29 likely be considered part of the "discussion" regarding the DevNW proposal. Any conflict
30 would arise not from Mr. Bradfield's actions but from Ms. Kaser's action in her official
31 capacity regarding her and her husband's ownership of a single-family home across the

1 street from the proposed multi-family affordable housing unit.

2
3 Citing the advice provided by the City Attorney, Respondent asserts that she did not have
4 to announce a conflict of interest because she was advised that any financial impact
5 would be difficult to identify or too speculative. Ms. Kaser was advised, however, to
6 declare a potential conflict on the matter "just to be safe." (#PR2). Although the financial
7 impact must be certain to create an actual conflict of interest, a financial impact that
8 "could" occur creates a potential conflict of interest.

9
10 Respondent also notes that "the City Council decision in question--whether or not to
11 award federal pass-through funds to multiple organizations for a variety of projects--was
12 a legislative decision that did not result in any direct action being taken on the property
13 located at 905-925 Cottage St NE". The decision in question, however, included a
14 decision not to award HOME funds to DevNW to purchase and convert the former church
15 at 905-925 Cottage Street NE. The decision may have been an action that could create
16 a potential pecuniary impact to the owner of a home across the street from the property,
17 because of the effect a fourteen-unit affordable housing complex and office space could
18 have on property values on single-family homes in the residential area.

19
20 Finally, Ms. Kaser indicates that:

21
22 [A]fter Mr. Bradfield's testimony during the June 22 City Council meeting, I
23 forgot to announce my relationship with him. Because Mr. Bradfield is a co-
24 chair of the Grant NA, most, if not all, of the current City Councilors know
25 that he is my husband. In fact, I remember thinking during Mr. Bradfield's
26 testimony that everyone who I could see on my computer screen at that
27 moment knew who he was. Simply put, my intention was to not conceal my
28 relationship with Mr. Bradfield, and my non-disclosure was unintentional. I
29 also firmly believe that had the City Council meeting been held in the
30 Council Chambers that some fellow City Councilor of mine would have
31 given me a friendly reminder to disclose my relationship for the sake of

1 being transparent. (#PR2).

2
3 As noted above, the conflict results from Ms. Kaser taking official action regarding the
4 proposal for a multi-family affordable housing unit and commercial office across from her
5 home, and not from her relationship to Mr. Bradfield or his remarks made at the June 22,
6 2020 meeting. It should be noted, however, that Mr. Bradfield, as an owner of the 934
7 Cottage Street NE property, is a relative of Ms. Kaser's and also stood to benefit
8 financially from Ms. Kaser's official actions.

9
10 The provisions of ORS 244.120(2) provide the method by which public officials must
11 declare a potential conflict of interest. Ms. Kaser acknowledges and a review of the
12 minutes of the June 22, 2020 City Council meeting confirms that no announcement of a
13 potential conflict was made by Ms. Kaser prior to Ms. Kaser's participation in discussion
14 and the vote on the issue. From information available to the Commission, it appears there
15 may have been a violation of ORS 244.120(2)(a) by Ms. Kaser when she failed to
16 announce any conflict of interest before she discussed and voted on the matter of the
17 DevNW application for HOME funds to renovate property into a multi-family housing
18 complex and a commercial space located across from Ms. Kaser's home.

19
20 There appears to be a substantial, objective basis to believe that Respondent may have
21 committed one or more violations of the conflict of interest provisions of Oregon
22 Government Ethics law. The Oregon Government Ethics Commission should move to
23 investigate whether Respondent may have violated ORS 244.120(2). (Motion 4).

24
25 **ASSOCIATED DOCUMENTS:**

26 #PR1 Complaint filed by Sarah Owens
27 #PR2 Response from Cara Kaser
28 #PR3 Minutes, June 22, 2020 Salem City Council Meeting
29 #PR4 Letter, dated June 17, 2020, from Grant Neighborhood Association to
30 Salem City Council

PREPARED BY Lisa Christon, Investigator *LC 7/30/2020*
APPROVED BY Ronald A. Bersin, Executive Director *RB 7/30/2020*
REVIEWED BY Amy Alpaugh, Assistant Attorney General *apvd
per Bersin
7/29/2020*