

FINANCE AND ADMINISTRATION COMMITTEE

February 17, 2023

10:30 a.m.

Councilman Denny Wayne Conference Room (Busch Building, 4th Floor)

MEMBERS

PRESENT: Andrew Lear, Chair; Matthew Simpson; Heather Hardinger; and Mike Schilling.

MEMBERS

ABSENT: None.

STAFF

PRESENT: Jason Gage, City Manager; Maurice Jones, Deputy City Manager; Collin Quigley, Deputy City Manager; Rhonda Lewsader, City Attorney; Cora Scott, Director of Public Information and Civic Engagement; Anita Cotter, City Clerk; Lauren Fischer, City Clerk Administrative Specialist.

GUEST: Linda Simkins, citizen.

Councilman Lear, Chair, called the meeting to order at approximately 10:30 a.m., and roll call was conducted. Present: Heather Hardinger, Mike Schilling, Matthew Simpson, and Andrew Lear. Absent: None.

Councilman Lear, Chair, noted today's meeting is the continued discussion and potential recommendations regarding City Charter Section 19.16. He noted at the previous meeting Rhonda Lewsader, City Attorney, researched and provided the Committee members with information about other major City Code of Ethics and Charter sections regarding conflict provisions (Exhibit A).

Ms. Lewsader provided a summary of charter and code of ethics sections of the top ten cities in Missouri. She noted Kansas City and St. Louis do not include provisions about contract conflicts in their charters. She noted Independence has a provision equivalent to the City of Springfield which states Council members and employees may not contract with the City. She noted several cities have provisions in their charters that require disclosure of substantial interests but do not address contracts.

Councilman Lear discussed recommendations the Committee members wanted to review regarding City Charter Section 19.16. He noted this includes separating out rank and file employees in the Charter and considering whether or not if Council members and higher-ranking City employees should be allowed to contract with the City. Councilman Lear asked if these recommendations were stricter than other city charters. Ms. Lewsader responded the Independence and St. Charles charters which do not have provisions prohibiting officials or employees from contracting with the city in their charters but do have this provision in their codes of ethics.

Councilman Lear expressed his opinion using the Charter to address the prohibition of employees and City officials contracting with the City can enhance public trust. He expressed the importance of maintaining public trust and suggested making the needed provisions using the Charter rather than changing the code of ethics section. He noted items to discuss include revising the current conflict provision, removing employees from the agreement, and not allowing higher rank officials to contract with the City. He further noted other items to discuss include unintentional violations and how to adjudicate alleged violations.

Councilman Lear asked if the National League of Cities had any recommendations on approaching unintentional or de minimis violations. Ms. Lewsader referred to Exhibit A. She noted the International Municipal Lawyers Association (IMLA) model ordinance states the contract may be voided but does not include any information about a penalty for the official or employee who entered the contract. Councilman Lear noted Section 9-111 in the IMLA model states any contract entered into in violation of this section may be voided by the City.

Jason Gage, City Manager, explained Section 9-111 is specific to contracts but there could be other types of transactions that could be considered a violation of Charter Section 19.16. He further noted the City Charter has a broad definition when referring to the types of transactions and violations. He noted a violation could be as simple as an employee who is unaware of a partnership between a business and the City. He further noted this would be where provisions for de minimis violations would come into effect.

Ms. Lewsader pointed out two cities which are prohibiting contracts in their entirety. She noted the Independence Charter states “any violation of this section shall render the contract voidable by the City Council or the City Manager.” She further noted it does not describe a penalty to the employer or the official. She noted the St. Charles Charter states “violation of this section with the knowledge expressed or implied of the person or the corporation shall render the contract voidable by the Mayor or the City Council.”

The Committee members discussed the St. Charles Charter regarding council members and board members already engaged in a business transaction at the time of appointment. They discussed the language and verbiage that works well in the St. Charles Charter. They noted areas such as voiding the contractor’s sale and consequences to officers or employees who willfully conceal substantial financial interests.

Councilman Lear asked if there were any of the Missouri cities that address individual action towards council members who willfully conceal financial interest. Ms. Lewsader responded she was unsure because she was unable to complete a more thorough search due to time constraints. She noted the Columbia Charter states anyone who violates the conflict-of-interest provision is guilty of a misdemeanor and any council member or board member who violates the provision forfeits their office. She further noted their charter provisions are based on the state law. Mr. Gage asked how many cities in the state are charter cities. Ms. Lewsader answered she is unsure.

Councilman Lear mentioned Independence Charter Section 5.3, which states “no council member, board member, or employee shall enter into a private business transaction with any person or business entity with a matter pending if they are to be called upon to render judgement.” He expressed the way this section is written seems broad and asked if that would include if a council member were to purchase items such as a private residence. Mayor Pro Tem Simpson expressed this could also include shopping at a grocery store that has applied for rezoning with the City. Councilwoman Hardinger noted some of the presented charter sections include limits on the dollar amounts that a council member is not allowed to exceed during business transactions.

Mr. Gage discussed items listed in Independence Charter Section 5.3. He expressed his opinion that the act of buying does not influence the decision maker. He explained that a person is not influenced by spending money, and the issue is more if a person is receiving gratuitous items.

Councilwoman Hardinger asked if there were any provisions about when someone would be required to disclose possible conflicts of interest. Ms. Lewsader answered there are several cities that require disclosures. She noted about five cities have a disclosure requirement in their charter but describe the conflicts of interest in their code of ethics sections. She further noted the cities that have adopted disclosures into their charter have a variety of provisions regarding the types of conflict of interest.

Councilman Lear discussed what defines a substantial conflict of interest. Ms. Lewsader noted the Lee’s Summit Code of Ethics states “a substantial financial interest means ownership by the individual, or his/her spouse, directly or indirectly, of any business entity or interest, either as an owner or creditor.” The Committee members expressed interest in how the Lee’s Summit Code of Ethics includes definitions of terms and phrases. They noted that the Lee Summit Charter defines direct and indirect substantial financial interest the same as state law.

Councilwoman Hardinger expressed interest in knowing if there were any recent cases where a city had to take action against a council member or an employee and what the processes or procedure included. Mr. Gage agreed and noted one thing to think about is what would prompt an investigation into a violation.

Councilman Lear asked how the Committee members should proceed in drafting a conflict-of-interest provision for the Charter. The Committee members discussed possibly setting out the wanted provisions and allowing the City attorney and staff to create a draft.

Councilwoman Hardinger noted that the proposed Charter provisions would need to be written in a broad manner to avoid constant changes to the Charter. Mr. Gage explained how it is difficult to find a balance between using the Charter, a citizen-approved document, versus using the code of ethics, which will allow the Council members to have all the authority when looking at provision changes. He expressed that the Committee must ensure that whatever changes are made to the Code of Ethics is also fulfilling the intent of the Charter. Councilwoman Hardinger noted that any provision changes need to allow for transparency and accountability which could be done in the Charter and reinforced in the Code of Ethics by adding additional language.

The Committee members discussed provisions and verbiage they liked from other city codes of ethics and charter sections. They discussed provisions to add to Springfield's Charter section. They suggested provisions to include in the Charter such as the disclosure of substantial financial interest, refraining from voting on or participating in items of financial interest, and that Council members are not to contract with the City. They discussed adding in a provision for disciplinary action for those who willfully violate the Charter and those who unknowingly violate the Charter. It was suggested allowing the City Manager and Human Resources to handle any issues for those employees who are below a director status and require that City Council enact a Code of Ethics.

Councilwoman Hardinger questioned if a Council member discloses to the State their financial interest how the person would know if that conflicts with the City. Mayor Pro Tem Simpson noted that having a willful provision added to the Charter would be helpful. He expressed his opinion that at some point a person of a higher status would have to take personal responsibility to ensure the proper steps are taken to report all disclosures. Ms. Lewsader clarified with the Committee members about adding a provision to the Charter for an employee who willfully enters a contract that violates the Charter and that would result in the contract being voided. Mr. Gage noted willful violation would need to be defined to avoid the use of plausible deniability.

Councilwoman Hardinger expressed that it would be helpful to see the processes and procedures used by other cities similar to Springfield. She further noted it would be helpful to know if those cities have an ethics committee who reviews the conflict-of-interest violations.

Councilman Lear suggested the next steps would be to address willful violations in the Charter and then use the Code of Ethics to add additional detail for minor offenses. Mr. Gage commented that the Charter provision is specific and not as broad as the Code of Ethics. He suggested using a different phrase when referring to creating an ordinance to use as a protocol for Charter Section 19.16.

Ms. Lewsader clarified the Committee members wanted to add that a Council member who willfully violates the Charter will be subjected to forfeiture of office. Mr. Gage asked what the legal difference between the verbiage shall be removed by Council and forfeiture. Ms. Lewsader explained that forfeiture means the person forfeits their office at the time of the action but if a person is part of a procedural action, they are entitled to due process to determine if they are guilty or innocent.

Mayor Pro Tem Simpson asked who the qualified parties would be to make the determination under due process. Ms. Lewsader answered it would depend on the provision that is created to determine the forfeiture of office.

The Committee members discussed examples of forfeiture of office. Ms. Lewsader noted the provisions she has seen follow the impeachment process used in State law. Councilwoman Hardinger asked if the State provisions are similar to the process that requires a Council member to forfeit their position if they run for a State office and if this is a process that could be applied

to the City. Mr. Gage noted there is a process in the Springfield code of ethics for forfeiture of office for Council members. He further noted this process could be changed as long as it does not conflict with the Charter.

Ms. Lewsader discussed Section 2-60 of the Springfield Charter which covers violations. She noted the Charter was written at a time when the City controlled the municipal courts. She further noted when the law changed, the municipal courts were no longer allowed to prosecute Charter violations. She recommended if the Committee wants to use this procedure in the Code of Ethics, due process procedures will need to be defined in the Charter section.

The Committee members discussed options for adjudication. Mr. Gage suggested the severity of the offence, if the person committed the violation, and if the violation was a willful act would need to be considered when looking at reprimands. The Committee members expressed the need to have an objective third party investigate the violation depending on the severity of the situation.

Councilwoman Hardinger noted some of the presented city codes use education surrounding what constitutes an ethics violation. She expressed her opinion that constant education about ethics would allow for more justification if a Council member would need to be removed from office.

Councilman Lear mentioned the St. Charles Charter which states “any City officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit the office or position.”

Mr. Gage asked if the willfully conceals statement refers to the annual disclosure about a substantial financial interest in a business. Ms. Lewsader noted the St. Charles Charter states that if there is a substantial financial interest, the officer must make it known, and they are to refrain from voting. She noted the willfully conceals statement does refer to the annual disclosure information. She further noted the annual disclosure form covers the previous year and what projects that are currently in progress. Mr. Gage and the Committee members discussed annual disclosures.

Councilman Lear asked the Committee members to look over the current Code for the next discussion. Ms. Lewsader noted she would email a copy of Section 2-60 to the Committee members. The Committee members discussed the next meeting date.

Councilman Lear thanked everyone for today’s attendance and discussion.

There being no further business to come before this Committee, Mayor Pro Tem Simpson moved to adjourn. Councilwoman Hardinger seconded the motion, and it was approved by the following vote: Ayes: Schilling, Simpson, Hardinger, and Lear. Nays: None. Absent: None. Abstain: None.

The meeting adjourned at approximately 11:47 a.m.

Completed by Lauren Fischer