

## **FINANCE AND ADMINISTRATION COMMITTEE**

**March 29, 2023**

**2:00 p.m.**

**Councilman Denny Wayne Conference Room (Busch Building, 4<sup>th</sup> Floor)**

### **MEMBERS**

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

### **MEMBERS**

**ABSENT:** Heather Hardinger.

### **STAFF**

**PRESENT:** Jason Gage, City Manager; Maurice S. Jones, Deputy City Manager; Collin Quigley, Deputy City Manager; Rhonda Lewsader, City Attorney; Anita Cotter, City Clerk; and Lauren Fischer, City Clerk Administrative Specialist.

**GUESTS:** Andrew Sullinger, *Springfield News-Leader*; and Linda Simkins, citizen.

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Councilman Andrew Lear, Chair, called the meeting to order at approximately 2:03 p.m., and roll call was conducted. Present: Mike Schilling, Matthew Simpson, and Andrew Lear. Absent: Heather Hardinger.

Councilman Lear noted the first item on the agenda was the approval of minutes. Anita Cotter, City Clerk, explained the February 8, 2023, and February 17, 2023, minutes would be available for the Committee members to review and approve during their meeting scheduled for March 30, 2023.

Councilman Lear moved to the next meeting agenda item which was the continued discussion and potential recommendations regarding City Charter Section 19.16. Rhonda Lewsader, City Attorney, thanked the City Clerk's Office for putting together the provided information for the Committee members (Exhibit A). She explained the information included requested information from the previous meeting regarding penalties and procedures pertaining to ethics code violations from other cities. She emphasized many of the penalties vary by city and have a variety of conflict provisions. She noted Kansas City has a violation procedure written into its code of ethics. She explained the Kansas City code of ethics includes an ethics commission that investigates and makes recommendations regarding violations. She noted the St. Louis Charter authorizes legal counsel to use aldermen to establish procedures.

Councilman Lear asked how Kansas City staffs its ethics commission. Ms. Lewsader replied the members are appointed. She referred to Kansas City Code of Ethics Section 2-2090 which states, "The mayor shall appoint seven members to the commission, naming one member as chair. Of the remaining six members, no two members will be residents of the same council district."

Councilman Lear reviewed the sample draft of the potential Charter changes provided (Exhibit A). He noted adjudication is mentioned in most city code of ethics sections rather than in their Charter sections. Ms. Lewsader noted St. Louis has a reference to an adjudication procedure in its Charter section but uses legal counsel to create that procedure. She further noted many other cities have adopted adjudication procedures into their code of ethics.

Jason Gage, City Manager, noted the main issue with the Charter section is the lack of definition for the terms “direct” and “indirect.” Mr. Gage and Ms. Lewsader discussed how the term “direct” could be easier to define based on a person having a true financial benefit. Mr. Gage asked if it is better to keep the Charter language simple by not defining those terms. Ms. Lewsader emphasized many cities have used the terms “direct” and “indirect;” it is just a matter of policy and what situations should be included when defining these terms.

Councilman Lear referred to the sample draft Charter Section 19.16. He mentioned subsection (1) which states, “City Council shall enact a code of ethics applicable to all elected officials, appointed officers, board members, and employees of the City” and subsection (2) which states, “Any City officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation...” He asked if the terms “substantial financial interests,” “direct,” and “indirect” needed definitions added to the draft Charter Section 19.16. Ms. Lewsader noted some cities have defined “substantial financial interests,” and the cities which chose not to define those terms leave it open to interpretation.

Councilman Lear asked if substantial financial interest should include a specified dollar amount. He expressed his opinion that defining the terms “substantial financial interest,” “direct,” and “indirect” would be beneficial to limit confusion. Ms. Lewsader noted the definition of “substantial financial interest” is defined in the State statute to include “...ownership by the individual, the individual’s spouse, or dependent children, whether singularly or collectively, directly or indirectly, of ten percent or more of any business entity or an interest having a value of \$10,000 or more; or the receipt of a salary, gratuity, or other compensation or remuneration of \$5,000 or more a year from any individual, partnership, organization, or association within any calendar year.” Councilman Lear expressed this information is also included on the City Council member’s personal disclosure forms which are kept on file.

Mayor Pro Tem Simpson asked if it would be possible for the Charter to refer to the State definition of “financial interests” and then define “direct” and “indirect” in the Code of Ethics. He expressed his opinion using a dollar amount when defining substantial financial interest in the Code of Ethics would be better than in the Charter because it would allow for future changes.

Mayor Pro Tem Simpson commented on subsection (1) of the draft Charter Section 19.16 which states, “City Council shall enact a code of ethics...” He noted the way the section is written, there is no prescribed time frame in which the City Council must enact a code of ethics. He asked what the responsibility of the City Council would be regarding enacting a code of ethics if the proposed Charter Section 19.16 were to be passed. Ms. Lewsader noted the City Council members would need time to have constructive discussions regarding the proposed provisions, have it drafted as an ordinance, and then have it placed on the City Council agenda. She

suggested a date or time frame could be inserted into the Charter section to add a deadline of accountability for the code of ethics to be enacted.

Mr. Gage clarified City Council has a current Code of Ethics, and subsection (1) of the draft Charter Section 19.16 is referring to an amendment. Ms. Lewsader noted that is correct, and there is also a current Code of Ethics regarding City Boards and Commissions.

The Committee members discussed clarifying the language in the existing Code of Ethics. They discussed adding a definitive date to hold City Council members responsible for enacting or updating a Code of Ethics based on the wording in draft Charter Section 19.16 which states, “City Council shall enact a code of ethics applicable to all elected officials, appointed officers, board members, and employees of the City.” The Committee members agreed to add a time frame, such as 180 days from the date of adoption, to the provision and clarify the phrase “shall enact a code of ethics.”

Councilman Lear asked if the word “employees” should be taken out of Charter Section 19.16 and if wording allowing the City Manager to address employee matters should be added. Mr. Gage noted the Code of Ethics can address different matters and can be very broad. Mr. Gage asked the Committee members if Charter Section 19.16 should be limited to financial interest only or if it should pertain to the Code of Ethics and conflicts of interest. He explained, years ago, the Code of Ethics mainly focused on how people were expected to treat other people in certain environments. Ms. Lewsader referenced the broadness of the Kansas City code of ethics which starts with the declaration of policies, orientation and training, use of City property, conflicts of interest, disclosures, transactions, annual report, and gifts.

Mayor Pro Tem Simpson expressed his opinion the language must be clear in the proposed changes for Charter Section 19.16. He suggested using the phrase “shall maintain” instead of “shall enact” when referring to the Code of Ethics in draft Charter Section 19.16. Mr. Gage discussed whether adding language such as “after a certain period of time, this section shall be reviewed...” would be beneficial to ensure this section is maintained. Councilman Lear and Mayor Pro Tem Simpson agreed that adding language “to maintain this section” would be helpful.

Councilman Lear reiterated Ms. Lewsader had noted subsection (1) of draft Charter Section 19.16 could be moved to a different area of the Charter completely. He expressed his opinion that a code of ethics applicable to elected officials is necessary, but there should be a duty to maintain a code of ethics.

The Committee members discussed how often this provision should be reviewed and the benefits this would have for future City Council members. Mr. Gage suggested adding this to the Charter section with the provision to be reviewed no less than a certain number of years. Mayor Pro Tem Simpson expressed his opinion adding this provision to the Charter section will allow the Code of Ethics to be reviewed periodically which will be a helpful reminder to City Council members.

Councilman Lear suggested adding information to the Charter Section 19.16 using wording such as the “code of ethics shall be maintained and reviewed every other year.” Ms. Lewsader asked if subsection (1) of draft Charter Section 19.16 should continue to include “...all elected officials, appointed officers, board members, and employees of the City.” Councilman Lear agreed all should be included but deferred to Mr. Gage regarding the employees of the City.

Mr. Gage noted Charter Section 19.16 pertains to conflict of financial interest. He questioned if the Committee members wanted the Code of Ethics added to a different section of the Charter completely. Ms. Lewsader suggested the wording of subsection (1) could be moved to a different area of the Charter, and Charter Section 19.16 could remain about financial conflicts of interest and contracts. Councilman Lear asked if the Code of Ethics and the Charter Section 19.16 should be two separate ballot questions. Mr. Gage expressed his opinion that this should not be two separate questions because the focus of Charter Section 19.16 is on financial conflicts of interest and only mentions City Council having a Code of Ethics.

Councilman Lear cited the phrase “substantial financial interest” under Charter Section 19.16 subsection (2). He asked if using the State’s definition of substantial financial interest should be included in this section knowing there are dollar amounts. Mayor Pro Tem Simpson expressed his concern about referencing State statute and adding monetary values into the City Charter language. He noted these amounts could change based on the consumer price index and could require this provision to be taken to the voters every decade.

The Committee members discussed ways to incorporate the State definition and phrasing of substantial financial interest into the Charter. Ms. Lewsader referred to Lee’s Summit code of ethics and charter. She noted the term “substantial financial interest” was added to the Lee’s Summit Charter, but the definition was adopted into its code of ethics which allows the definition to be updated in the future. Mayor Pro Tem Simpson discussed with the Committee members whether adding a financial level, to not be exceed the State amount, into the definition which would help if the State were to change its definition of the monetary value. Councilman Lear expressed his support for referencing the State’s definition of substantial financial interest but suggested adding more clarifying language.

Ms. Lewsader spoke about the penalty listed in draft Charter Section 19.16 subsection (2) which states, “Violation of this subsection with the knowledge express or implied of the person or corporation contracting with or making a sale to the City shall render the contract or sale void by the City Manager or City Council.” She noted this provision was included in several cities’ disclosure provisions, although some used the term “voidable.” She explained if a contract is “voidable” then the City Manager or the City Council could choose to void the contract but using the term “void” would end the contract immediately.

The Committee members discussed the consequences of voiding a contract, such as for a construction project which is already in process. Councilman Lear expressed his opinion if a willful violation occurs and the person loses their position or seat on a board, the contract should not be void if it meets all the correct criteria. Mayor Pro Tem Simpson noted the timing of the discovery of the willful violation should be a factor in deciding if a contract is void.

Councilman Lear asked for a legal opinion about voiding a contract. Ms. Lewsader responded this would be considered a policy issue. She explained using the term “voidable” would depend on whether the Committee members would want the City Council or the City Manager to have a chance to review the circumstances of the willful violation. Ms. Lewsader noted a provision could be added to define when a willful violation would need to be taken to the City Council. Mayor Pro Tem Simpson discussed the legality of voidable contracts versus contracts that are automatically voided. Ms. Lewsader conveyed there could be more liability to the City if a contract is voidable because the decision would be up to the discretion of the City Manager or the City Council. Ms. Lewsader noted if the contract is void, then the additional language pertaining to the City Council or the City Manager is not needed.

Ms. Lewsader reviewed the suggested changes for draft Charter Section 19.16 with the Committee members. She noted changes in subsection (2) to include using the term “void” instead of “voidable” and striking the terms “direct and indirect” when referring to substantial financial interest. She noted adding the term “administrative board” in subsection (3) because non-administrative boards would not typically be entering into contracts as they do not control any funds or property. She further noted this could be changed to just state “boards” in the event a non-administrative board received a contract through the City.

Councilman Lear noted Charter Section 19.16 subsection (3) which states, “Any violation by a councilmember shall result in forfeiture of office.” Councilman Lear expressed his opinion the terms “any” and “willful” when referring to a violation could cause issues if a person disclosed the information, but a transaction inadvertently happened such as an employee using a purchasing card being unaware of a City Council member’s financial standing within a company.

Mr. Gage asked if the term “willful” covers instances where the person should have known or been aware of their personal financial interest. Ms. Lewsader responded “willful” is defined in case law as “knowingly.” She discussed possible changes in subsection (3) which included moving the statement “any violation by a council member shall result in forfeiture of office” to the section above and reviewing the definition of “knowingly” in case law.

Councilman Lear noted the State definition of “substantial financial interest.” He asked if it included a person who was hired and received a remuneration but does not have an ownership in a business. Ms. Lewsader responded the State definition includes persons who receive a “salary, gratuity, or other compensation or remuneration of \$5,000 or more...”

Mr. Gage asked about the State law provision which states a person shall make known their interest and shall refrain from voting upon or participating in that capacity. Ms. Lewsader answered there are provisions in the State law which allow a council person to disclose their financial interest then proceed to vote if it is a legislative act. She further noted this provision also allows a councilmember to recuse themselves from voting if they chose to not make the financial disclosure.

The Committee members discussed whether City Council members should be able to vote on legislative matters that may directly or indirectly affect them financially. They discussed

whether a person should be required to recuse themselves from voting in addition to disclosing their financial interest information.

Ms. Lewsader emphasized the statement in draft Charter 19.16 Subsection (3) which states, “No member of the council, city manager, deputy or assistant city manager, or department head shall be financially interested, directly or indirectly, in any contract with the city...” She explained although a department head’s signature is required to enter into a City contract, there are employees at lower levels who negotiate contracts, such as City purchasers who work on invitation for bid contracts. Councilman Lear suggested adding a stipulation into the employee Code of Ethics to address those employees. Mr. Gage suggested adding the position of the purchasing officer to the list of individuals mentioned under the conflict-of-interest provision in the Charter section.

The Committee members discussed the next steps to review Charter Section 19.16 with the requested changes. Councilman Lear emphasized the amount of work put into this draft and noted he would like to see this go before City Council in a study session. This topic could be presented to the Committee of the Whole for further discussion.

Mayor Pro Tem Simpson moved the draft Charter Section 19.16 as revised to be referred to the Committee of the Whole. Councilman Schilling seconded the motion, and it was approved by the following vote: Ayes: Schilling, Simpson, and Lear. Nays: None. Absent: Hardinger. Abstain: None.

Councilman Lear thanked everyone for their attendance and discussion.

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

The meeting adjourned at approximately 3:46 p.m.

Completed by Lauren Fischer