



MINUTES
Committee of the Whole
Monday, July 24, 2023 @ 5:30 p.m.
Tony Benavides Lansing City Council Chambers

CALL TO ORDER

Council President Wood called the meeting to order at 5:31 p.m.

PRESENT

Council Member Carol Wood
Council Member Jeremy Garza
Councilmember Adam Hussain
Councilmember Peter Spadafore- excused
Councilmember Patricia Spitzley – arrived at 5:49 p.m.
Councilmember Brian T. Jackson
Councilmember Jeffrey Brown
Councilmember Ryan Kost

OTHERS PRESENT

Sherrie Boak, Council Office Manager
Jim Smiertka, City Attorney
Lisa Hagen-Lawrence, City Attorney
Emily Linden, Internal Auditor
Shelbi Frayer, Chief Strategy Officer
Michael Lynn
Erika Lynn
Loretta Stanaway
Nick Zande

Minutes

MOTION BY COUNCIL MEMBER GARZA TO APPROVE THE MINUTES FROM JULY 10, 2023.
MOTION CARRIED 6-0.

Public Comment

Mr. Lynn spoke on agenda item F on the ethics complaint filed by the People's Council. He informed the Committee that he filed a FOIA complaint and was provided an invoice from OCA. Was told by the OCA there was 796 communications in the FOIA, and his opinion was that this should not be on the people's dollar. Mr. Lynn provided a copy of the communication for the Council and record. Mr. Lynn concluded by asking for a complete thorough investigation.

Ms. Stanaway spoke on the ethics items on the agenda; spoke in opposition to the way the process that was done for complaint 2023-01. Ms. Stanaway then spoke on the People's Council July 10, 2023, complaint against the Mayor. Lastly Ms. Stanaway spoke in opposition to the relocation of a fire station in the Complex project.

Mr. Zande spoke on the agenda items on ethics and the South Washington complex.

Ms. Lynn clarified to Council that what was provided last time was a draft ethics complaint, and once formalized would be sent to the Ethics Board. The modification will reflect the FOIA request mentioned by Mr. Lynn earlier. Ms. Lynn went on to speak to the Ethics complaint from the People's Council, and the investigation should determine if anything is illegal. Lastly, Ms. Lynn asked Council to sign onto the ethics violation they intend to file.

Council Member Hussain stepped away from the meeting at 5:45 p.m.

Discussion/Action

RESOLUTION – Fireworks; Lansing Lugnuts for July 29, 2023

Ms. Frayer stated this is a standard application and she was available for questions.

Council Member Hussain returned to the meeting at 5:46 p.m.

MOTION BY COUNCIL MEMBER GARZA TO APPROVE THE RESOLUTION FOR THE ADDITIONAL DATE FOR THE LANSING LUGNUTS FIREWORKS DISPLAY FOR JULY 29, 2023. MOTION CARRIED 6-0.

RESOLUTION – Setting a Public Hearing; Ordinance to amend the uses of Council Chambers and Conference Room

Council President Wood went through the ordinance proposed changes. It includes clarifying the name to "Tony Benavides Lansing City Council Chambers", Council facilities labeling throughout the document, recognizing Council leadership, and security and maintenance, and changing from Channel 28 to City TV.

Council Member Spitzley arrived at 5:49 p.m.

MOTION BY COUNCIL MEMBER GARZA TO APPROVE THE RESOLUTION TO SET THE PUBLIC HEARING FOR AUGUST 14, 2023, TO AMEND THE ORDINANCE ON THE COUNCIL CHAMBERS AND CONFERENCE ROOM. MOTION CARRIED 7-0.

RESOLUTION – Setting a Public Hearing; Ordinance to amend Chief Strategy Officer Duties

Council President Wood noted this would be tabled because there are ongoing discussions with the mayor on an ad meanable language. There was a concern by the mayor on the reporting to City Council section of the changes.

Council Member Hussain asked what the mayor's concerns were and if it was reporting bi-monthly, and the Council President Wood confirmed the Mayor informed Council leadership he had a concern with meeting every other month. Council Member Spitzley asked if the mayor proposed a timeline and Council President Wood stated he has not provided a timeline.

DISCUSSION – Ethics Complaint 2023-01 Investigation Summary Report

Communication from Mitch Rice regarding Council Member Brown's Ethics Violation

Council President Wood outlined the process, noting the complaint went to the Ethics Board and they had an outside counsel with a determination. That determination came to Council with a recommendation. On June 26, 2023, Council Member Brown spoke to Council and took responsibility and acknowledged if he needed more training he would do that, and if Council deemed censorship he would adhere to that as well.

Council President Wood outlined the options Council can consider:

1. Place the report on file.
2. Take the report with its recommendation on additional training, and direct Council Leadership to work with the OCA or others to provide training to Council Member Brown by September 1, 2023.

3. Take the report recommendations for training and place on file along with removing Council Member Brown from all Committees he currently sits on.
4. Consider taking actions to remove Council Member Brown from City Council.

As leadership, Council President Wood stated she was recommending the 2nd option. It is appreciated that he took responsibility and ownership for the issues raised.

Council Jackson referenced the 16-page document from the outside counsel, interviews, call back interviews, and noted his understanding that it appeared the OCA initiated this and the Mayor also signed it. He then spoke on discussions and appeals at the AD HOC on Homelessness & Solutions Committee the Council Member Brown chairs, where he witnessed Council Member Brown doing what he thought he could do to help those residents. He then referred back to the document stated he believed it was hearsay and assumption of the OCA being weaponized, and then spoke in support of Council Member Brown. He added he never witnessed any other conversations beside those.

Council Member Spitzley spoke on the options, supporting the 1st or 2nd option.

Mr. Smiertka stated the City Attorney is not weaponized, and the OCA did not put anything together, it was provided to them and to the Ethics Board. The Board recommended an outside counsel, and that is why there was a full investigation from them. He concluded by stating the OCA follows the city ordinance.

Council Member Hussain asked for clarification on what the genesis of the complaint was. Mr. Smiertka stated he could not recall specifically. Council Member Hussain noted that he did sign it, but because of that it appears he started the allegations. He clarified for the public that he was contacted by the OCA, confirmed he did hear of the issues 3rd and 4th hand, and was uncomfortable to sign it. He stated he was advised that since he heard some of the things happened, he needed to sign the document to the Ethics Board. Council Member Hussain concurred with Council Member Jackson on the belief that the OCA was weaponized.

Council Member Spitzley referenced the handout of 16 pages for 2023-01 and an outside opinion, questioning why the OCA only did a 2 page in house opinion on the People's Council complaint against the Mayor.

Council Member Garza spoke on the reason why he signed the complaint, stating he was uncomfortable signing it, and clearly stated in his interview he never heard anything directly. He then apologized to Council Member Brown.

Council Member Jackson referenced the document and complaint, questioned why it was filed and if the motivation behind it should be investigated.

Council President Wood explained she had received a call from the Mayor and heard issues that were brought to his attention. She in turn called the OCA with what she had heard and had made it clear in her statement to the outside counsel that information she received was from the call from the Mayor.

Council Member Spitzley admitted she contacted Council Member Brown immediately when she was approached. She added that there are statements with your duties of your role as a Council Member. She asked for full investigations on all complaints, not picking and choosing.

MOTION BY COUNCIL MEMBER SPITZLEY TO HAVE COUNCIL MEMBER BROWN OBTAIN TRAINING BY THE OCA BY SEPTEMBER 1, 2023. MOTION TO PLACE ETHICS VIOLATION INVESTIGATION ON FILE. MOTIONS CARRIED 6-0.

DISCUSSION -Communication – People's Council, July 10, 2023 – Ethics Inquiry

Council Member Hussain stated he was not comfortable to speak on this based on OCA communications to each Council Member prior to the meeting.

Mr. Smiertka referenced the Campaign Finance Act, and there is potential of misdemeanor charges where complaints will be filed with the Secretary of State. The Act says Council speaks in a situation of the public, someone could file a misdemeanor against that person. The Ethics Board does not have jurisdiction over the complaint, per ordinance, because it falls under the Campaign Finance Act, an individual can file a complaint. He reiterated that if statements are made by Council, because they are in a public facility and serve in an elected office, someone could file a misdemeanor charge against them. Mr. Smiertka assured them that Council can do what they want, but OCA has to advise them as their legal counsel that they are at risk of a misdemeanor charge.

Council President Wood noted there was an ask from Council Member Hussain the OCA on what City Council can do in this case.

Mr. Smiertka referenced a memo delivered prior to this meeting, (included in the packet) which referred to MCL 169.257, more commonly known as Section 57 of the Michigan Campaign Finance Act. He explained that an appointed official can use their own time, but using a city expenditure, they cannot make statements of a political issue. Mr. Smiertka went through the memo which provided details on violations of Section 57 and what prohibitions would not apply including making statements no on City time or use of City resources; dissemination of factual information relevant to the function of the public body; use of public facility as long as others have equal opportunity to use such facility, on personal time.

Council Member Spitzley asked about clarification on an elected official or not acting for a public body that hypothetically an elected official acting on behalf of a public body that would be the question. In her opinion she believed that was the gray area in the memo. She asked the Committee if they would consider hiring an outside counsel to provide a report similar to the earlier ethics report on the Council Member Brown complaint. Mr. Smiertka disagreed with that suggestion, clarifying that the earlier Council Member Brown complaint was Ethics and this is subject to the Campaign Finance Act. Council Member Spitzley asked how it can be different because under the Council's authority they can request outside counsel. Mr. Smiertka stated that under the Campaign Finance Act, that remedy is exempt, but an individual can file a complaint. Council Member Spitzley asked if hypothetically a citizen filed a complaint with the City, can that be referred. Mr. Smiertka stated if someone feels there has been a violation, they have to sign a formal complaint.

Council Member Garza asked Mr. Smiertka for clarification on the definition for "public facility", and if Council was asked at a Ward meeting about this subject, can it be discussed. Mr. Smiertka stated that if that meeting and dialogue is in a public facility, that Council Member would be at risk of making that dialogue an opinion. He suggested the best thing to do would be to take that dialogue outside. He reiterated again that what he is stating is not a command, but the OCA duty to advise Council if there is a risk.

Council Member Hussain asked if he can use privileges as Council to obtain all City email accounts that the Mayor's email communication went to, and he also asked if the OCA communicate with the Mayor on this, and Mr. Smiertka stated he did not. Council Member Hussain then asked if an official complaint was submitted, and Council was asked to sign, would OCA be the ones asking them to sign. Mr. Smiertka stated this is different; if you have knowledge to a violation, then you have a fiduciary obligation to file the complaint. Council Member Hussain disagreed, noting that he was asked to sign the complaint against Council Member Brown with no first hand knowledge, and now he is being given different advice on this complaint. Mr. Smiertka reiterated that this is different from the complaint against Council Member Brown because this has to do with the Mayor's campaign financing and the ACT, and therefore governed by that.

Council Member Spitzley asked hypothetically, if a formal complaint comes through, is the City Council able as a body through their authority, refer it for additional legal outside attorney. Mr. Smiertka noted their office has provided an opinion to this body that this current complaint is covered by the Campaign Finance Act for remedy and if they have a complaint that person needs to file it with the Secretary of State, and added this was outlined in an earlier memo and not challenged. The memo presented at this meeting was in response from Council Member Hussain for clarification. Council Member Spitzley asked how does a "challenge" present it self to this body, and does Council have to formally "disagree with the opinion".

Council Member Hussain asked for a verbal explanation from the OCA based on earlier statements, since the OCA reports to Council and with the first complaint against Council Member Brown the OCA sought outside legal counsel, but in this case they did not. He added that in his opinion, that since the OCA also reports to the Mayor and this complaint regards the Mayor the OCA is not performing all the options. Mr. Smiertka acknowledged the OCA does report to Council and the Mayor, but in this case they saw no reason to go to outside counsel.

Council President Wood explained to the Committee that the Council in the past has gone to outside counsel, and it at that time it had to do with the retirement system and buyouts of department heads. At that time the OCA provided an opinion, and Council was not happy with that so they hired an attorney with Foster and Swift. At which point they got an opinion that their understanding was correct, and they change an ordinance because of that.

Council Member Spitzley assured Mr. Smiertka she believes the OCA is competent, and this discussion is not attacking OCA credibility. She suggested the Committee consider referring this to outside counsel and when that opinion comes back the City Council has done their due diligence.

Council Member Jackson questioned contributions by the City Attorney to the Mayor's fund, noted in the Mayor's funding request it actually stated "I am serving as Mayor", he send to City email accounts, used a similar City logo, and asked OCA how just those things along could not be a violation. Mr. Smiertka stated again that it is not an ethics but Campaign Finance Act topic, and he stood by the opinions his office provided and stated there is no need to go outside; a complaint can be filed with the Secretary of State.

Council Member Kost asked the OCA if the OCA has the authority to tell or not allow Council to go to outside Counsel and Mr. Smiertka quoted 4-304.6 from the City Charter.

Council Member Jackson stepped away from the meeting at 6:40 p.m.

The opinion of 4-304.6 is that Council will accept the OCA opinion.

Council Member Kost asked Mr. Smiertka if he contributed to City elected officials' campaigns in the past, Mr. Smiertka confirmed, and Council President Wood called for point of order.

MOTION BY COUNCIL MEMBER SPITZLEY TO REFER THE DOCUMENTS TO AN OUTSIDE LEGAL COUNSEL.

Council Member Jackson returned to the meeting at 6:42 p.m.

Council Member Hussain concurred with Council Member Spitzley for outside counsel and then referenced the Charter 4-304.6 which stated Council can act after requesting City Attorney written opinion, which they did.

MOTION CARRIED 7-0.

Council will need to review the outside counsel list and take recommendations.

Communication from Mitch Rice regarding Council Member Brown's Ethics Violation

MOTION BY COUNCIL MEMBER GARZA TO PLACE THE COMMUNICATION FROM MITCH RICE ON FILE. MOTION CARRIED 7-0.

Place on File- Communication from Kathy Krafft regarding the Cooley-Haze House

Council President Wood explained the document notes a concern because after the sale of the property the buyer never did what he verbally stated he would do, however the OCA has confirmed there was nothing binding in the purchase agreement.

MOTION BY COUNCIL MEMBER HUSSAIN TO PLACE ON FILE. MOTION CARRIED 7-0.

OTHER

Update by the Administration – South Washington Complex (SWOC) Current City Department(s) Relocations (Temporary and Permanent) & Financial Impact

Ms. Frayer acknowledged the July 10th request for financials and a cost analysis for the August 14, 2023 meeting, and confirmed there was not additional updates since that meeting.

Adjourn

The meeting adjourned at 6:47 p.m.

Respectfully Submitted by,

Sherrie Boak, Recording Secretary, Lansing City Council

Approved by the Committee August 14, 2023