



19-1072

TITLE: Consider/Discuss/Act on a Civil Ethics Complaint - Shemwell, L. 2019-11-12

Under Ordinance No. 2018-08-063 (the McKinney Ethics Ordinance) the City Council shall review a preliminary report of the investigating attorney on a complaint and dismiss or order further investigation of the complaint.

COUNCIL GOAL: Operational Excellence

MEETING DATE: December 17, 2019

DEPARTMENT: City Attorney
City Secretary

CONTACT: Mark S. Houser, City Attorney
Empress Drane, City Secretary

RECOMMENDED CITY COUNCIL ACTION:

Review the Investigating Attorney's Preliminary Report (Closed Session) and vote under ARTICLE VII. - CODE OF ETHICAL CONDUCT AND PROCEDURES, DIVISION 4. - CIVIL COMPLAINT PROCEDURES, Section 2-293 (1)-(4) to either (a) dismiss the complaint or (b) order the further investigation of the pending complaint.

ITEM SUMMARY:

- The City Secretary has received an ethics complaint, Ethics Complaint - Shemwell, L. 2019-11-12 which has been reviewed by an Investigating Attorney pursuant to the Ethics Ordinance. The next step in the review process involves the City Council's decision to dismiss (for the grounds listed in the Ordinance) OR to order a more thorough investigation because sufficient cause exists to suggest a civil violation may have occurred.
- The City Council may convene in Closed Session under the Texas Open Meetings Act, Section 551.074 to discuss the pending matter; however, the subject (person) of the complaint may require the deliberations to be in a public

hearing under Section 551.074(b). Notwithstanding the above, the City Council may convene in Closed Session with its attorney to seek legal advice on this matter under Texas Open Meetings Act, Section 551.071(a).

Sec. 551.074. PERSONNEL MATTERS; CLOSED MEETING.

(a) This chapter does not require a governmental body to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

(2) to hear a complaint or charge against an officer or employee.

(b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.

BACKGROUND INFORMATION:

- On November 12, 2019 the City Secretary received complaint Shemwell, L. No. 2019-11-12.
- The relevant sections of Section 2-293 (b)-(j) of the Ethics Ordinance are contained below. The subsection which describes the City Council's options under this Agenda Item is highlighted in **BOLD** for ease of review:

(b) Within twenty business days after the council receives a preliminary report and recommendation from the investigating attorney, council will vote and render a decision as to whether the complaint should be:

(1) Dismissed as frivolous;

(2) Dismissed because the subject conduct was undertaken in good faith reliance on a formal written opinion of the city attorney;

(3) Dismissed because sufficient cause does not exist to suggest a violation may have occurred; or

(4) Investigated more thoroughly by the investigating attorney because sufficient cause exists to suggest a civil violation may have occurred.

(c) When deciding if a complaint should be dismissed as frivolous, the council may consider the following, and any other pertinent points:

- (1) The existence and nature of any relationship between the accused official and the person filing the complaint before the complaint was filed;
- (2) Any evidence that the person filing the complaint knew or reasonably should have known that the allegations in the complaint were groundless; and
- (3) Any evidence regarding the motives of the person filing the complaint.

(d) When the council determines that an investigation should be made it will direct the investigating attorney to further investigate the allegations in the complaint using such procedures as are appropriate considering the nature and circumstances of the particular complaint.

(e) If the council determines that there is not sufficient cause to proceed with the investigation or proceeding, it will dismiss the complaint and send notification of this dismissal to the complainant and the respondent. In its letter of dismissal, which letter must be sent within ten (10) business days after the vote on sufficient cause, the council must set forth a short summary of the facts and the reasons for dismissal.

(f) If the council determines that there is sufficient cause to proceed, it will send notification of this finding to the complainant and the respondent. In its letter of finding sufficient cause for investigation, which letter must be sent within ten (10) business days after the vote on sufficient cause, the council must set forth a short summary of the facts and the reasons suggesting substantial cause.

(g) The respondent may file with the council a response to the complaint within ten (10) business days after his or her receipt of the council's decision to proceed with an investigation of the allegations set out in the complaint.

(h) At any time after a complaint has been filed, the council may seek and enter into an agreement with the accused official, former official, or candidate against who the complaint was filed. The agreement should include, or incorporate by reference or otherwise, the nature of the complaint, findings of fact, conclusions of law, the council's reasons for entering into the agreement, an admission of violation or a statement of no desire to contest the complaint by the accused official and a waiver of the right to a hearing. It will also, where relevant, include a promise by the accused official not to engage in certain actions, the imposition of penalties permitted by this code of ethical conduct and procedures,

remedial action to be taken, and oral or written statements to be made. If an agreement is breached by the accused official, the council may rescind the civil agreement and reinstitute the proceeding.

(i) The council may not sustain a complaint or impose sanctions against an accused official without first providing the accused official with notice and an opportunity to defend themselves against the allegations in the complaint in a public hearing held for such purpose.

(j) The council may conduct hearings and other proceedings on a complaint in closed executive session if permitted by state law, but any final decision and action must be rendered during an open public meeting. The council may, in its sole discretion accept public comment as a part of any proceeding(s) under this article.

FINANCIAL SUMMARY: N/A

BOARD OR COMMISSION RECOMMENDATION: N/A

SUPPORTING MATERIALS: