

TO: Mayor and City Council
FROM: David Chanski, City Administrator/Clerk
RE: Rules of Conduct and Procedure
DATE: January 2, 2024



Background

During the City Council meeting on December 5, 2023, the City Council had a discussion on the Rules of Conduct and Procedure and, specifically, how allegations of misconduct against councilmembers should be handled. Ultimately, the City Council directed staff to confer with the City Attorney on the issue.

City Attorney Opinion

Based on the discussion had by the City Council, staff asked the City Attorney 5 questions regarding allegations of misconduct:

1. Who should make them public (a member of the public or a councilmember)?
2. How should such allegations be investigated?
3. What are grounds for investigation?
4. What obligations does the council have to address allegations of misconduct?
5. What action can be taken if misconduct has occurred?

To the first question, the City Attorney stated that there is no requirement that misconduct allegations be made public absent a request for that data. Additionally, per [Minn. Stat. § 13.601, Subd. 2](#), misconduct that is asserted in communication between an individual and an elected official is private data unless either party makes it public.

To the second question, the City Attorney stated that the process for an investigation is determined by the nature of the allegation and the desires of the City Council. Cities handle investigations differently depending on the alleged misconduct, with some opting to have the city administrator or human resources person (of there is one) conduct the investigation and other times opting to have the city attorney or a third party conduct the investigation.

To the third question, the City Attorney stated that the trigger for an investigation depends on the desires of the City Council. The City Council could take up each allegation individually to determine if an investigation is warranted or set a formal policy that dictates why types of allegations will be investigated and by whom.

To the fourth question, the City Attorney stated that the City Council has no obligation to investigate allegations of misconduct. However, alleged misconduct that goes

unchecked or ignored effectively negates city policy, may expose the City to liability, and could result in organizational dysfunction.

To the fifth and final question, the City Attorney stated that there is, ultimately, little that can be done to an elected official if an allegation of misconduct is substantiated. The City Council can censure the offending member, which is a public rebuke. Censure is only as effective as the offending member allows it to be. One person could be very bothered by it, and another person may not care. Except for those very narrow scenarios outlined in [Minn. Stat. § 412.02, Subd. 2b](#), the City Council does not have authority to remove one of its members from the Council. However, the City Council may remove a member from a committee assignment or limit interaction with staff.

Ultimately, whatever direction the City Council may choose to go regarding allegations of misconduct, the City Attorney stated that the development of a policy addressing the procedure by which allegations of misconduct are handled would be wise.

The City Attorney has reviewed and approved all elements of this memorandum.