



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 5801
January 19, 2021
Consent Calendar

AGENDA BILL INFORMATION

TITLE:	AB 5801: Code of Ethics Violation Complaint Disposition	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	In accordance with the Ethics Hearing Examiner's recommendation, dismiss the Code of Ethics violation complaint against Planning Commission Member Pirzio-Biroli without penalties.	<input checked="" type="checkbox"/> Action Needed: <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	City Manager
STAFF:	Bio Park, City Attorney
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Ethics Complaint 2. Ethics Officer's Determination of Sufficiency 3. Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation 4. Memorandum from Ethics Officer on City Council Deliberations
CITY COUNCIL PRIORITY:	n/a

AMOUNT OF EXPENDITURE	\$ n/a
AMOUNT BUDGETED	\$ n/a
APPROPRIATION REQUIRED	\$ n/a

SUMMARY

BACKGROUND

On August 3, 2020, a complaint was filed with the City Clerk under Section 2.60.070(A)(1) of the Mercer Island City Code (MICC) by several complainants, alleging code of ethics violations by Planning Commission Member Lucia Pirzio-Biroli. See Exhibit 1. In pertinent part, the complaint described the alleged conduct that violated the City's ethics code as follows:

"[R]epresentatives of the new Farmer's Market Building have hired a planning commission member to evaluate the comprehensive plan as it relates to Mercer Island and advise them of what is and is not possible under the city's code."

The complaint was forwarded to the City's Ethics Officer for a determination of sufficiency pursuant to MICC 2.60.070(A)(2). After reviewing the complaint, the Ethics Officer issued a decision concluding that if the allegations in the complaint are determined to be true, the complaint was sufficient to allege violations of MICC

2.60.030(D), RCW 42.23.070(2), and RCW 42.23.070(3), and not sufficient to allege a violation of any other provision of MICC 2.60.030 or chapter 42.23 RCW. See Exhibit 2.

The decision on determination of sufficiency was forwarded to the City's Ethics Hearing Examiner to conduct a hearing on the complaint, to make findings of fact and conclusions of law, and to issue a recommendation on the disposition of the complaint to the City Council pursuant to MICC 2.60.070(B). The hearing on the complaint was held on October 19, 2020, and the decision with Hearing Examiner's findings of fact, conclusions of law, and recommendation was issued on November 20, 2020. See Exhibit 3. The Hearing Examiner summarized his decision and recommendation as follows:

"Because the record reflects that Planning Commission Member Lucia Pirzio-Biroli did not violate the applicable provisions of the Mercer Island Code of Ethics that the Hearing Examiner has the authority to address based on the filed complaint and Determination of Sufficiency issued by the City's Ethics Officer, the Hearing Examiner recommends that the City Council dismiss the complaint without penalties."

DISPOSITION OF COMPLAINT

MICC 2.60.070(C) allows for the City Council to deliberate on the disposition of the complaint in Executive Session pursuant to RCW 42.30.110(1)(f) but requires the City Council to take final action in a public meeting. Consequently, the City Council deliberated on the disposition of the complaint in Executive Session and requested the City Manager to prepare an agenda bill for the disposition of the complaint during an open session of a City Council Regular Meeting.

Pursuant to MICC 2.60.070(D), the City Council may take the following actions in disposition of the complaint based on the findings, conclusions, and recommendations from the hearing examiner (as appropriate): dismissal of the complaint without penalties, referral to another agency with jurisdiction over the violation, admonition (an oral nonpublic statement made by the mayor to the official), reprimand (a letter from the City Council to the official), censure (a letter read to the official in public), remove the official from their board or commission effective immediately, or civil penalties of up to \$1,000. The action of the City Council is final and not subject to further administrative appeal or review by the City (except for any monetary amount of civil penalties assessed).

At the City Council's request, the Ethics Officer prepared a memo with guidance on the manner and process by which the City Council should decide on a final action in disposition of the complaint. See Exhibit 4. In summary, the Ethics Officer stated that under the City's code, "while the City Council may reject the hearing examiner's recommendations – as "recommendations" are, by definition, optional – the City Council may not reject or alter the hearing examiner's factual findings or legal conclusions; it must consider those as firmly established, and must use those as the bases for its ultimate decision on the matter." Accordingly, he stated further that "any decision to resolve the matter differently than recommended by the hearing examiner should be approached cautiously. It should be (1) consistent with both the factual findings and the legal conclusions made by the hearing examiner, and (2) accompanied by some explanation as to why, based on those findings and conclusions, the Council has decided a different resolution is more appropriate."

HEARING EXAMINER'S RECOMMENDATION

Dismiss the August 3, 2020 Code of Ethics violation complaint against Planning Commission Member Pirzio-Biroli without penalties.