



Council Agenda Item

Meeting Date:	August 31, 2026
Agenda Item:	Procedure for Common Council Investigation Hearing
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BACKGROUND

(Enter the who, what, when, where, why)

The Common Council has requested to review an ethics complaint that was dismissed due to lack of sufficient votes to find probable cause. The issue of sufficient votes to find probable cause arose due to conflicts which prevented some members of the Ethics board from participating in the review. I was asked to prepare a memo regarding a proposed procedure for addressing the complaint. The exact procedure that should be utilized is subject to the Common Council's discretion, provided it does not interfere with the due process rights of respondent.

Initially I would propose that any procedural steps the Council intends to take be discussed in open session and that it agrees on the process prior to entering in closed session and reviewing the complaint and engaging in any preliminary investigation. This proposed process is based on the procedure utilized by the Whitewater Ethics board condensing the first two steps into the first meeting.

Once in closed session Council members should review a complaint that was filed and make a determination as to if it alleges any violation of the City's ethics code or a breach of any City policies or ordinances. Each council member should identify which policies, ordinances, or ethics code the alleged activity may violate. Then Council members should make a motion should they identify a potential violation. The motion would need to be seconded if someone agrees with the proposal. The Council should then discuss whether they believe the allegations or any reasonable inference from the allegations would meet the proposed violation. A majority vote from the council would move the process forward on any proposed violation. If a council member believes all of the potential violations are located, a motion could be made to end discussion of possible violations. If a council member believes that there are no potential violations alleged, then a motion should be made to dismiss the complaint for failing to state a violation. This portion of the process is designed to remove frivolous allegations raised solely to harass an individual.

If any potential violations are identified the next step is to complete a preliminary investigation of the alleged facts to determine if there is probable cause that the violations did in fact occur. Should the Common Council reach this stage, email's from the relevant time period will be available and the council will be able to ask any questions of the City Attorney regarding the investigation that has taken place. If the City Attorney is unable to answer the question, the question may be added to a list to be answered at a future meeting after additional investigation. When members are satisfied with the preliminary investigation they have completed they may make a motion to find probable cause or no probable cause for the violation. If four votes are received for either motion that will end the preliminary investigation process.

If there are questions that the emails and City Attorney are unable to answer, the Common Council may provide direction to the City Attorney to conduct further investigation and report back at a future date, without making a finding of probable cause.

Should the Council find probable cause a new hearing will need to be held for a fact-finding hearing. That hearing will be quasi-judicial in nature, and the Council Chairperson should sit in the position of judge ruling on admissibility or controlling the flow of witnesses. The committee should identify any witnesses it wants

present for that meeting, alternatively the committee may require the parties to identify any witnesses they believe would be relevant to the matter. Should a fact-finding hearing be needed, a memo will be provided providing more details for that process.
