



Allentown

435 Hamilton Street
Allentown, Pa. 18101

Minutes - Final

City Council

Thursday, February 15, 2024

6:00 PM

Council Chambers

Special Investigation Committee - Gerlach, Hendricks and Zucal

Roll Call: Gerlach, Hendricks, Zucal, Affa

Mr. Ed Zucal stated that they are here to discuss a Resolution regarding a Special Investigation. He asked Mr. Hanlon to call a Roll Call. He stated that before they start he would like to read a Statement regarding an Executive Session they had. The Special Investigation Committee held an executive session on February 7 at 6PM in the Fifth Floor Conference Room pursuant to exemptions found in Section 798A of the Sunshine: (4) To consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed; and (5) To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations. He stated that the purpose as he said tonight was to discuss a Resolution. He asked Mr. Hanlon to read and discuss the components of the Resolution. He stated that up to this point they have been conducting business as an Ad Hoc Committee. So tonight, they are going to have an election, not an election, but an appointment of an actual Chairperson for the committee.

Present: 4 - Daryl Hendricks, Ed Zucal, Ce-Ce Gerlach, and Candida Affa

Election of Chairperson

Ms. Ce Ce Gerlach stated that she nominates Mr. Zucal.

Mr. Daryl Hendricks seconded that nomination.

Mr. Ed Zucal stated from this point forward he will be the official Chairperson of the committee. He asked to make note that Ms. Affa has arrived.

A motion was made by Ce-Ce Gerlach, seconded by Daryl Hendricks, to nominate Mr. Zucal as Chairperson

Yes: 3 - Daryl Hendricks, Ed Zucal, and Ce-Ce Gerlach

Discussion of Draft Resolution

[15-6660](#)

R29

City Council hereby determines and concludes that outside the Purchasing Agent neither the Director of Finance nor anyone from the Administration should participate in scoring or be present during the process to select a response to the RFP selecting investigatory services since it is an investigation of the Administration.

Sponsors: Gerlach, Hendricks and Mr. Zucal

Attachments: [R29 RFP](#)

[Ordinance #15948](#)

[Code Contracts Provisions](#)

[Charter Provisions on Council Investigation Authority](#)

Mr. Michael Hanlon stated that he will give the title of the Resolution and read City Council hereby determines and concludes that outside the Purchasing Agent neither the Director of Finance nor anyone from the Administration should participate in scoring or be present during the process to select a response to the RFP selecting investigatory services since it is an investigation of the Administration.

Mr. Ed Zucal asked Attorney Smith to highlight the components of the actual Resolution that the committee plans to introduce.

Attorney Charles Smith stated yes, sir. He stated that under Home Rule Charter, Section 210, it says that in addition to the authority of the City Controller conduct audits under Section 403 D of this Home Rule Charter, Council shall have the power, by ordinance, to make or cause to be made, investigations, audits or studies of the City and the conduct of any City department, office or agency, and, for this purpose may retain professional and technical assistance, subpoena witnesses, administer oaths, take testimony, require the production of evidence, and provide funds for such investigation, audit, or study. He stated that Subsection B, of Section 210 of the Home Rule Charter states The subjects of such investigation, audit, or study shall be specifically stated in the authorizing ordinance. The investigation that has been authorized by Ordinance #15948 which was passed unanimously on September 20, 2023. It is his belief that falls under Section 210 of the Home Rule Charter as an investigation of Council. The other issue that arises, City Council investigations are not separately addressed in the Code. This was handled as a Professional Service Contract because it involves professional services. An RFP was done and the Code Section that they are dealing with is Section 5 - 21, Contracts.

He stated now they are under Section 5 - 21 of the Allentown City Code regarding contracts and are under Subsection E and then they are under below E, they are under Subsection 2. They are under 5 - 21 E 2 and it says the selection process and again, they are talking about professional service contracts. The selection process shall be based on the objective criteria contained in the RFP and shall be conducted by a Selection Committee comprised of the Director of Finance, Department Head, Bureau Manager, and any other staffing appropriate. He stated that obviously, this is a City Council investigation and it doesn't neatly fit into those parameters so for an example: There is no Department Head for City Council, there is no Bureau Manager for City Council, but the issue has arisen whether the Director of Finance should be included in the selection process. He stated that the thought was that the way to handle this with trying to get this in front of City Council would be for this committee to entertain a Resolution tonight and the Resolution just like any other committee you will be forwarding it to Council either with a recommendation or unrecommended and then Council will have the opportunity to vote on that Resolution. He stated that is the legal background. Perhaps the Clerk can talk about the content in terms of what the Resolution would propose. Essentially, the Now, Therefore.

Mr. Michael Hanlon stated if they would pass this Resolution, you are sort of recommending that the Director of Finance nor anyone from the administration to participate in scoring or be present during the process to select a response. The Purchasing Agent would still be there and as you know, the Purchasing Agent attends to the scoring, sets up interviews, sets up the questions. It is not like nobody is going to be there. The Purchasing Agent will be there. She will guide you through the Technical Evaluation and then she will guide you through opening the Cost Proposals which comes after the Technical Evaluation and should you want to do interviews, the Purchasing Agent would run through the process. The Purchasing Agent is very good (inaudible).

Attorney Charles Smith stated that she would essentially be there and present, but she would not be a scorer.

Mr. Ed Zucal stated with that said so the purpose of this Resolution is because several parts of the administration are involved in the investigation and one of those may or may not be the Finance Director. It is their belief by having her or him be part of the scoring system is an inherent conflict of interest. It would be no different than if he was in Lehigh County Court before a jury of homicide and his Defense Attorney would allow him or hope for him to be able to pick his jury. He really doesn't think that the District Attorney would probably handle that too kindly. That is how he is trying to compare it so that they get a clear understanding on where they

are. He asked if anybody else on the committee has any questions.

Mr. Daryl Hendricks stated that he just wants to make a comment. In other words, the Purchasing Agent would be the De facto Bureau Head in place of any other Bureau Head that would not be there and should not be there. It serves in that same purpose, really.

Mr. Ed Zucal stated in reality she is part of the administration, but not part of the investigation.

Attorney Charles Smith stated right and he is just trying to and again, they are trying to apply the professional services contract language in the Code to a City Council investigation. The point he is making is in terms of who is on the Selection Committee which are the scorers. There will be someone present from the administration, administering and making sure things go according to a protocol, but they would not be scoring.

Mr. Ed Zucal stated that she is required to be there by Code and City Charter. It is not even an issue.

Mr. Michael Hanlon stated not the Charter. Under the Charter, you are investigation comes out of the Charter. You can hire someone. That comes out of the Charter. The Charter supersedes the Code, obviously. Now, those coming into conflict in some areas. You have investigations that have authorizations under the Charter. Not the Code. He stated that they have never done this before. He stated that Council has never done this before.

Attorney Charles Smith asked Mr. Hanlon how long has he been with the city.

Mr. Michael Hanlon stated too long. He stated 34 years.

Attorney Charles Smith stated when you speak. He stated 34 years and this is the first time you are encountering this. He stated that the other thing that he just wanted to point out and neglected to mention earlier because it is not a Home Rule Charter provision or a Code provision, but his understanding in the RFP scoring process is that all persons on a Selection Committee are required to sign a Confidentiality Form and that is taken very seriously in terms of what can be discussed outside of the selection process. He stated to him that goes to the issue of whether it is confidential.

Mr. Ed Zucal asked if there was anyone else from the committee.

Mr. Michael Hanlon stated that it is not only the Scoring Committee. It is everybody that handles those documents.

Ms. Ce Ce Gerlach asked is anyone from the administration coming to maybe provide their insight. She asked the Solicitor. No one.

Attorney Charles Smith stated don't forget that this would be a recommendation, up or down from the committee. They would have an opportunity when this gets brought in front of Council as a whole. They will certainly have an opportunity to weigh in at that point with their thoughts and concerns.

Ms. Ce Ce Gerlach stated right. She definitely will be supporting the Resolution. Just to avoid the conflict of interest and maintain a level of fidelity with the investigation.

Mr. Ed Zucal asked if there were any comments from anyone else on Council or from the public. This will go in front of Council and asked Mr. Hanlon at which meeting.

Mr. Michael Hanlon stated the 21st.

Mr. Ed Zucal stated the 21st of February.

A motion was made by Ce-Ce Gerlach, seconded by Daryl Hendricks, to send to Council for a favorable recommendation

Yes: 3 - Daryl Hendricks, Ed Zucal, and Ce-Ce Gerlach

ADJOURNED: 6:13 PM