

Memo

To: City Council
From: David W. Kuhn, City Solicitor
CC: Mayor, Police Chief, News Media
Date: March 29, 2007
Re: Councilmanic Action

At the March 27 meeting of City Council, there was some discussion among Council members and some of the citizens who attended the meeting, regarding the subject of an investigation into certain actions of the Third Ward Councilman and his wife. The matter was subsequently reported in the various news media and web sites. This Memo constitutes an attempt to clarify the procedural requirements involved in initiating and conducting such investigations.

Initially, it should be noted that any suspected criminal acts would be investigated by an appropriate law enforcement agency or an appropriate prosecutor, or designee, and could involve any person, whether or not a member of City Council.

Section 8, City Charter, entitled RULES OF COUNCIL, provides, in part, that”The Council.....may punish its members for disorderly behavior and, by vote of not less than all of the members elected to Council less two, may expel a member for disorderly conduct or the violation of its rules; but no member shall be expelled unless notified of the charge against him and given an opportunity to be heard in his own defense.” Section 8 also provides that “the decision of the Council in any such case shall be subject to review by the Courts.”

Section 40, City Charter, entitled INVESTIGATIONS BY COUNCIL OR MAYOR, provides as follows:

“The Council, the Mayor or any person or committee authorized by either of them, shall have power to inquire into the conduct of any department, office or officer of the City and to make investigations as to

municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence.”

It is axiomatic that an elected governmental body, such as the City Council, takes action through the majority vote of its members. Section 9, City Charter, provides, in part, that “The affirmative vote of a majority of the members elected to the Council shall be necessary to adopt any ordinance, resolution, order or vote.... .” Clearly, in order to initiate an inquiry into the actions of any member of City Council, as provided in the City Charter, a majority vote of City Council would be necessary. Any such vote authorizing an investigation, should provide not only for the personnel and funding for the investigation, but also specify the precise subject matter that is to be investigated.