

Legal Authority for the Hammond City Council's Investigation into the Building Department

Submitted to: Hammond City Council
Date: December 4, 2024

Procedural History

In response to public outrage over the issuance of permits electronically signed by a dead employee amongst other irregularities in the operations of the Building Department, the Hammond City Council passed resolution 24-0827-08 to investigate the Building Department. The official minutes reveal that "there was a motion by Councilman Andrews and second by Councilman DiVittorio to move forward with opening an investigation into the building department and the scope will be determined at future meetings."

A review of the video of the August 27, 2024 Council Meeting reveals the City Attorney advising that opening an investigation required a super majority to proceed. He further advised that the Council could open an investigation and determine the precise scope at later meetings. After that brief discussion, the City attorney clarified that the motion was to "open an investigation in building department and the scope would be determined at future meetings." The Council voted unanimously to open the investigation at that time.

At the October 8, 2024 meeting of the Council, there was a motion by Councilman Wells and a second by Councilman DiVittorio to approve a resolution of the Hammond City Council providing a scope for its investigation

of the building department and for incidental matters. The vote on the resolution was 3-2, with Andrews, DiVittorio, and Wells in favor and Gonzales and Leon opposed. The City Attorney erroneously opined that this resolution failed due to the fact it was not passed by a 4-1 or greater majority of the Council, as is the requirement to open an investigation. As will be explained in further detail hereinbelow, the City Attorney is incorrect and has conflated purpose and scope in reaching his flawed conclusion. Accordingly, the City Council effectively passed the resolution defining the scope of the previously opened investigation into the building department by way of a simple majority vote on October 8, 2024.

Lastly, on November 19, 2024, the Council voted on a motion to hire undersigned counsel to conduct the investigation based on a proposal submitted to the Council which closely tracked the scoping resolution voted for on October 8, 2024 by a majority of the Council. That vote also passed by simple majority of 3-2, with Andrews, DiVittorio, and Wells in favor and Gonzales and Leon opposed. At the conclusion of that meeting, the City Attorney again raised his concerns that the investigation could not proceed in any way because it was his opinion that the scope required a 4-1 vote. The City Attorney continues to seek to block these successfully passed resolutions by erroneously stating that no investigation into the building department has been opened.

Applicable Municipal Laws

The 1977 Hammond City Charter provided the City Council with powers to call for investigations and further provides for the Council's duty to provide annual audits of City finances and its powers to call for supplemental audits at its discretion. The relevant sections of the 1977 Charter read as follows:

Section 2-06. - Investigations.

The council, by the favorable vote of at least two-thirds of its authorized membership, may make investigations into the affairs of the City and the

conduct of any City official, officer, employee, department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. The council may provide by ordinance for the punishment, as a misdemeanor, of a person for the willful failure or refusal to obey such subpoena or request for evidence. Investigations by the council shall be for specified purposes.

Section 2-07. - Independent audit.

The council shall provide for an annual independent postaudit, and such additional audits as it deems necessary, of the accounts and other evidence of financial transactions of the City, including those of all City departments, offices, or agencies. Auditors shall be designated by the council, shall be without personal interest in the affairs subject to audit and shall be a certified public accountant or firm of such accountants. The audit shall be submitted to the council at one of its regularly scheduled meetings and shall be a public record, and a summary thereof shall be published at least once in the official journal. The council may accept audits by the state, if such are made that satisfy the requirements of the council.

The Code of Ordinances for the City of Hammond is the controlling statutory law in this matter. The code itself provides for the rules of interpretation to be applied when reading the ordinances:

... Nontechnical and technical words. Words and phrases shall be construed according to the common and accepted usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning. ...¹

The Chapter Two, Article 2 of the Code of Ordinances for the City of Hammond governs the City Council. Sections 2-20-2-23 are the pertinent Ordinances to investigations:

Sec. 2-20. - Authority to conduct investigations.

The city council may make investigations into the affairs of the city and the related conduct of any city official, officer, employee, department, office or agency, and for this purpose, may subpoena witnesses, administer oaths, take testimony and require the production of evidence.²

¹ Ord. No. 2683, C.S., § 1, 5-2-00.

² Ord. No. 2717, C.S., 10-3-00.

Sec. 2-21. - Purpose.

Investigations shall be for specified purposes.³

Sec. 2-22. - Council vote needed to initiate.

Investigations shall be commenced upon the adoption, by the favorable vote of at least two-thirds (2/3) of its authorized membership, of a resolution calling for an investigation by the council for specified purposes.⁴

Sec. 2-23. - Subpoena of witnesses and documents.

(a) Authority. The council or any committee thereof may, in the investigation of any matter before it, summon witnesses and compel their attendance, may compel witnesses to testify under oath, and to produce documents, things, or other evidence in their possession which may be necessary to the matter or matters under investigation. The president of the council shall have the power to sign and issue subpoenas in the name of the council requiring attendance and giving testimony by witnesses and the production of documents, things, and other evidence.

(b) Oath. Witnesses shall be sworn by the clerk of the council or by any other person designated by the council president for the administration of oaths.

(c) Service. All subpoenas shall be issued to witnesses by the clerk of the council under the signature of the council president. The services of subpoenas may be made by the seventh ward marshal, or the sheriff, or any deputies thereof, or by any officer or employee of the city in person or by domiciliary service.

(d) Penalty for failure to appear. Any person having been duly summoned to appear before the council, or any committee thereof, who fails to appear without just cause at the appointed time and place, and/or who fails to produce documents or things subpoenaed, shall, upon conviction thereof, be fined not more than two hundred dollars (\$200.00), or imprisoned for not more than sixty (60) days, or both.

(e) Contempt of the council. Any person summoned as a witness who refuses to answer any question put to him, except such as might lead him to accuse himself of some crime, and/or who fails to produce documents or things subpoenaed at the time and place so ordered, shall be guilty of contemptuous behavior in the presence of the council in session, and the council may, instanter, by resolution cause him to be arrested and imprisoned for not more than ten (10) days.

³ Ord. No. 2717, C.S., 10-3-00.

⁴ Ord. No. 2717, C.S., 10-3-00.

(f) Continuing contempt. Every day a person fails or refuses to obey such summons, or to produce documents, things, or other evidence subpoenaed, or to give testimony, as required, shall constitute a separate offense.⁵

Legal Analysis

Authority to Initiate Investigations

The Charter explicitly allows the Council to investigate city affairs and the conduct of any department without stipulating procedural prerequisites such as defining the scope at the initiation.

Identification of Target and Purpose

Target: The Building Department, specifically concerning permit issuance following the inspector's death.

Purpose: To investigate potential irregularities and to address public concerns about the legitimacy of the permits issued during the period in question.

Procedural Validity

The Charter does not require the scope of an investigation to be established at the time of initiation. It mandates only that the investigation serves a legitimate purpose and identifies a target. The Council's unanimous vote demonstrates a collective recognition of the need for the investigation, satisfying the requirement of a legitimate legislative purpose.

Understanding the distinction between the **purpose** and **scope** of an investigation is essential for legal compliance and effective governance.

Purpose: The fundamental reason for the investigation. Here, the purpose is to address public concerns about potentially improper issuance of

⁵ Ord. No. 2717, C.S., 10-3-00.

building permits and to ensure the Building Department operates transparently and lawfully.

Scope: The specific parameters defining what the investigation will examine. This includes the time frame of permit issuances, the processes followed after the inspector's death, and any personnel involved in approving permits without proper authorization.

While the **purpose** provides the justification, the **scope** outlines the actionable steps to achieve that purpose. Importantly, the purpose must be established to validate the investigation, whereas the scope can be refined as more information becomes available.

City Attorney's Assertion

The assertion that the initial vote is invalid due to the deferred scope lacks grounding in the Charter's provisions. The Charter's silence on the timing of scope definition implies procedural flexibility, allowing the Council to determine the scope as the investigation unfolds. It is apparently the position of the City Attorney that despite clearly advising the Council that they could vote to open an investigation into the building department, which would require a supermajority, and that they could define the scope of the investigation at later meetings, which does not require a supermajority nor did the City Attorney say that was his position when informing the Council President that doing so was an option, that unless the scope is approved by a supermajority that the investigation is somehow not open. This position requires one to ignore the plain language of the Code of Ordinances and the ordinary rules of parliamentary functioning. Furthermore, the City Attorney's opinion is not binding on the Council and they may choose to ignore his advice and are even empowered by the City Code to hire outside legal counsel at any time by simple majority vote. This is relevant not to suggest a simple majority could open the investigation, as same was clearly done unanimously; but instead, to show that the framers of the City Code recognized that the City

Attorney is an executive appointee who answers to the Mayor. In a situation such as the present, where the Council is attempting to investigate an executive department, the flawed legal advice of the City Attorney that seeks to obstruct the Legislative branch's investigation into the Executive branch should be subject to heightened scrutiny by the Council simply based on organizational dynamics.

Legal Precedents and Best Practices

Legislative Investigations: Courts have upheld that legislative bodies possess inherent authority to conduct investigations pertinent to legislative functions (e.g., *McGrain v. Daugherty*, 273 U.S. 135 (1927)).

Scope Definition Timing: It is acceptable for the scope to be defined after the initiation, especially when immediate action is necessary to address pressing public concerns.

Administrative Law Principles: Administrative bodies are often granted leeway in procedural matters unless explicitly restricted by statute or charter provisions.

Conclusion

The Council, by way of unanimous vote, on August 27, 2024 opened an Investigation into the Building Department. At a subsequent meeting of the Council on October 8, 2024 the scope of the investigation was approved by simple majority vote. On November 19, 2024 a majority of the Council votes to hire Sartin Riché Trial Lawyers to conduct the investigation for the Council. The City Attorney has attempted to thwart the investigation by providing an incorrect analysis of what is required to open an investigation. As the Council is not bound to follow the poor legal advice coming from the Executive branch suggesting that they do not have the authority to conduct their investigation into an Executive agency, the Council President should move forward with the

signing of our engagement letter so that we may begin the investigation for the Council.

Sartin Riché Trial Lawyers remains committed to conducting a transparent, unbiased, and efficient investigation in full alignment with the Hammond City Council's objectives.

We welcome the opportunity to assist the Council in safeguarding the integrity of the Building Department and implementing meaningful reforms to enhance its operations.

For further discussion or questions regarding this proposal, please contact our office at (504) 636-6606 or via email at barry@sartinriche.law and kevin@sartinriche.law.

Respectfully submitted,

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