



Legislation Text

File #: 62441, Version: 2

**Fiscal Note**

The proposed resolution authorizes an investigation utilizes forensic IT analysis. Funding for this contract will be funded through existing appropriations.

**..Title**

SUBSTITUTE - Establishing the steps for analyzing the recording of the September 1, 2020 Common Council meeting.

**Body**

Drafter's Note: This Substitute Resolution directs the City Attorney's Office to contract with data and voice analysis experts to review the recording of the September 1, 2020 Common Council meeting and submit the results to the Common Council.

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WHEREAS, on September 15, 2020, Ms. Shadayra Kilfoy-Flores filed a Complaint, a copy of which is attached, alleging that Alder Paul Skidmore directed a gender-based vulgarity at her during the September 1, 2020 meeting of the Common Council and requesting his removal from the Council; and

~~WHEREAS, Wisconsin Statutes establish a process for the Common Council to hold a public hearing in the event that verified charges have been filed by a resident taxpayer.~~

~~NOW THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison shall hold a public hearing to accept testimony and evidence related to the Complaint filed by Shadayra Kilfoy-Flores against Alder Skidmore, and that the hearing shall include the following steps and processes:~~

- ~~1. The hearing shall occur at 5:30 p.m. on October 22, 2020 and, if necessary, shall recess and continue at 5:30 p.m. on October 27, 2020. The presiding officer of the hearing shall be Council President Sherri Carter who may rely on the counsel of the City Attorney regarding any procedural questions which arise during the course of the hearing.~~
- ~~2. The hearing shall be held via Zoom and shall be livestreamed and broadcast through the City's customary outlets.~~
- ~~3. The City Attorney and Common Council staff shall provide administrative support in conducting the public hearing, including necessary communications and coordination with the parties, Ms. Kilfoy-Flores and Alder Skidmore. The City Attorney shall provide formal notice of the hearing to the parties and notify Alder Skidmore of the opportunity to file an Answer to the complaint no later than October 19, 2020, and the opportunity to present a defense at the hearing personally and by counsel. The City Attorney shall provide Ms. Kilfoy-Flores with any Answer filed by Alder Skidmore.~~
- ~~4. The public hearing will proceed as a quasi-judicial hearing and ensure the rights of both parties to present sworn testimony and evidence, question witnesses, and present argument to the presiding officer and Council. The Council shall hear testimony from witnesses presented by the parties. The hearing shall not include hearing comments from members of the general public who are not the parties or relevant witnesses.~~
- ~~5. The purpose of the hearing is for the Common Council to determine whether the allegations of~~

the Complaint are true and, if so, for the Council to determine whether there is cause for removal of Alder Skidmore from office. Pursuant to Wis. Stat. § 17.001, “cause” is defined as “inefficiency, neglect of duty, official misconduct, or malfeasance in office.”

6. ~~The City Attorney and Finance Department shall be authorized to retain, at standard and customary compensation, a stenographer to transcribe the testimony and proceedings. The stenographer shall also be authorized to administer the oath to witnesses.~~
7. ~~Pursuant to Wis. Stat. § 17.16(4), the Complainant, Ms. Kilfoy-Flores, shall not be required to execute and deliver a bond in the amount of \$1,000 as security for the payment of costs and expenses of the hearing.~~
8. ~~Pursuant to Wis. Stat. 17.16(5), each Council Member may exercise their right to issue subpoenas for the attendance of witnesses and the production of evidence. The City Attorney and Common Council staff shall assist in drafting any subpoenas requested by Alders.~~
9. ~~Pursuant to Wis. Stat. § 17.16(7)(a), no person may be excused from testifying or providing evidence for the reason that doing so may tend to incriminate them, but no person so testifying may be prosecuted for or on account of testifying or producing any documentary evidence, except for perjury committed in giving the testimony.~~
10. The hearing shall proceed as follows:
  - a. ~~The City Attorney shall instruct Ms. Kilfoy-Flores and Alder Skidmore that they may submit witness lists to the City Attorney no later than October 20, 2020. The City Attorney shall ensure that witness lists are immediately shared with the opposing party. No witness shall be permitted to testify whose name does not appear on a witness list without approval of the Common Council.~~
  - b. ~~Ms. Kilfoy-Flores shall have the opportunity to present any sworn testimony of witnesses and evidence related to the Complaint. Following testimony of each witness, Alder Skidmore or his counsel shall have the opportunity to ask questions of the witness. Following any such questioning, Members of the Common Council shall have the opportunity to ask questions of each witness upon being recognized by the Council President.~~
  - c. ~~Alder Skidmore shall have the opportunity to present any sworn testimony of witnesses and evidence related to the Complaint. Following testimony of each witness, Ms. Kilfoy-Flores or her counsel shall have the opportunity to ask questions of the witness. Following any such questioning, Members of the Common Council shall have the opportunity to ask questions of each witness upon being recognized by the Council President. Following any such questioning, Members of the Common Council shall have the opportunity to ask questions of each witness upon being recognized by the Council President.~~
  - d. ~~Ms. Kilfoy-Flores shall have the opportunity to present any sworn rebuttal testimony of witnesses and evidence related to the Complaint. Following testimony of each witness, Alder Skidmore or his counsel shall have the opportunity to ask questions of the witness. Following any such questioning, Members of the Common Council shall have the opportunity to ask questions of each witness upon being recognized by the Council President.~~
  - e. ~~Following the close of testimony, Ms. Kilfoy-Flores or her counsel shall have the opportunity to present a closing argument. Alder Skidmore or his counsel shall then have the opportunity to present a closing statement, and Ms. Kilfoy-Flores shall then have the opportunity to present a response. Ms. Kilfoy-Flores shall then have the opportunity to present a response to Alder Skidmore’s closing statement. Statements of the parties at the close of testimony is not considered evidence or “proof” either for or against any party and should not be considered as~~

such by the Council in making their decision.

11. ~~At the conclusion of the hearing, the Common Council shall determine whether the Complaint's allegations are proven and, if so, whether the actions that are alleged constitute cause for removal or any other remedy or consequence. Removal from office shall require the affirmative vote of 15 members of the Council. Absent 15 affirmative votes, the Complaint shall be dismissed.~~
12. ~~The City shall pay the costs and expenses related to the hearing.~~
13. ~~In the event of an affirmative vote for removal, the City Attorney shall prepare an order and such order and the complete transcript of the testimony and proceedings and a statement of the cause for removal shall be filed with the City Clerk.~~

**WHEREAS, Ms. Kilfoy-Flores has requested that the City investigate the source of the vulgarity prior to the Common Council considering potential further action,**

**NOW THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison authorizes the expenditure of up to \$10,000 for the procurement of:**

- : A forensic IT analysis, examining metadata, logs and any other relevant digital information in the Zoom and any other software program used to store or manage data related to the September 1, 2020 Common Council meeting by a highly qualified digital forensic investigator.**
- : A forensic speaker recognition analysis of the September 1, 2020 Common Council meeting by a highly qualified audio forensic expert using properly scientifically verified approaches; and**

**BE IT FURTHER RESOLVED, that the Office of the City Attorney is authorized to select and contract with service providers to complete the analyses described above and to receive the results thereof; and**

**BE IT FINALLY RESOLVED, that the results of the analyses described above shall be provided to the Common Council no later than November 10, 2020 so that the Council may determine what, if any, additional steps will be implemented.**