



# ***COMMITTEE of the WHOLE***

## ***CITY COUNCIL***

### **SUMMARY**

**February 7, 2022**

**5:00 P.M.**

### **Charter Required Charter & Ethics Training Virtual Meeting**

#### **ELECTED OFFICIALS PRESENT:**

D. Reed, J. Cepeda-Freytiz, J. Waltman, M. Goodman-Hinnershitz, B. Tyson, M. Ventura. E. Moran and M. Rodriguez

#### **STAFF PRESENT:**

L. Kelleher, S. Smith, F. Denbowski, E. Stock, E. Smith, M. Gombar, I. Litvinov, J. Kelly, K. Zeiber

#### **OTHERS PRESENT**

M. Eggert, S. McFarlane, M. Lynch, B. Murray

The meeting was called to order at 5:05 pm by Mr. Waltman.

#### **I. Ethics Training**

Mr. Stock introduced Ethics Board Chair Melissa Eggert. He stated that Charter Article 12 requires a Code of Ethics to be added to the Administrative Code (Part 10) and the establishment of a Board of Ethics. The Charter's Conflict of Interest section states:

The use of public office for private gain is prohibited. No elected official, officer, or employee shall (i) act in an official capacity on matters in which the employee or official has a private financial interest clearly separate from that of the general public; (ii) accept gifts and other things of value in return for a favorable decision or vote. In all cases, gifts received must be publicly recorded and submitted to the City Clerk specifying the date received, the name and address of the donor, and the value of the gift; (iii) act in a private capacity on matters dealt with as a public official or employee; (iv) use confidential information for personal gain; and (v) appear before City departments, offices, and agencies on behalf of private interests.

Mr. Stock explained that the Ethics Board has jurisdiction only over the Ethics Code, which based on the State Ethics Statute, and the Conflict of Interest section of the Charter. He noted that when the Board was initially established complaints about a variety of issues were

submitted and most could not be addressed by the Board as they were not ethics related complaints.

Mr. Stock stated that the City Clerk is required by the State to send out Ethics Commission Statements of Financial Interest to City officials annually. The City Clerk also sends the local Ethics Board Supplemental Form. He explained why these forms must be completed annually and the penalties that can be assessed for refusal to comply.

Mr. Stock reviewed the first section of the Code – Declaration of policy requiring that:

A. The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

B. Each official or employee of the City must be constantly on guard against conflicts of interest. No official or employee should be involved in any activity which might be seen as conflicting with his/her responsibilities to the City. The people of Reading have a right to expect that their representatives act with independence and fairness towards all groups and not favor a few individuals or themselves.

C. The following principles, although not representing substantive rights, are fundamental driving forces for officials and employees of the City of Reading in everything they do.<sup>17</sup>

(1) Public office as a public trust. Public servants should treat their office as a public trust, only using the powers and resources of public office to advance public interests and not to attain personal benefits or pursue any other private interest incompatible with the public good.

(2) Independent objective judgment. Public servants should employ independent objective judgment in performing their duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.

(3) Accountability and democratic leadership. Public servants should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules. **[Amended 5-28-2013 by Ord. No. 28-2013<sup>18</sup>]**

(4) Respectability and fitness for public office. Public servants should safeguard public confidence in the integrity of government by being honest, fair, caring and respectful and by avoiding conduct creating the appearance of impropriety or which is otherwise unbecoming a public official.

D. In recognition of these aforementioned goals and principles, there is hereby established a Code of Ethics to be administered by the Board of Ethics. The purpose of this code is to establish ethical standards of conduct for all officials and employees of the City of Reading, its agencies and authorities, whether elected or appointed, paid or unpaid, by providing guidelines to clarify actions or inactions which are incompatible with the best interests of the City and by directing disclosure of private, financial or other interests in matters affecting the City. The provisions and purpose of this code and such

rules, regulations, opinions and disciplinary decisions as may be promulgated by the Board pursuant hereto, interest of the City.

Mr. Abodalo connected with the meeting.

Mr. Stock also explained the Prohibitions for Ethics Board members and the Prohibited Behaviors for all city officials and employees, which includes a gifts section added in 2017. He stated that the Charter requires gifts to be reported to the City Clerk. The Ethics Code provides further definition and guidance. He stated that di minimus gifts are those with a value of less than \$50. He explained that gifts of food need to be shared with others. He suggested that all City officials and employees report the receipt of gifts for review by the Ethics Board's subcommittee to stay in compliance with the Code.

Mr. Stock highlighted the requirements around political contributions, which can be found on the City's website and the County Elections website at all times. He also highlighted the Nepotism and Whistle Blowing sections, which mirror the State Statute.

Mr. Stock covered the Fraudulent or other activity section which contains additional prohibited behaviors, noting the need for those observing fraudulent activities to report the activity to the Board through filing a complaint using the form located on the City's website. He explained the Awarding Contracts section which prohibits an official, employee and their family from entering into a City contract for \$500 or more and the need to report a no-bid contract to the Board.

Mr. Stock explained the process used for complaints beginning with the determination of jurisdiction or dismissal, a preliminary investigation or dismissal if sufficient evidence is unavailable and a findings report to the Board, noting that the Board can initiate their own complaints but they have never used that option. He stated that if the official or employee is found to be at fault, he/she can request a hearing before the Board. If the Board finds the official/employee at fault they can impose a variety of penalties and sanctions ranging from admonition, suspension, termination, removal from office, restitution and fines. He noted that all complaints/investigations are handled confidentially. He added that there are penalties for submitting false or unfounded complaints.

Mr. Stock described the benefits of obtaining Advisory Opinions, noting the importance of seeking an Advisory Opinion prior to acting. He stated that an Advisory Opinion can be used as a defense if a complaint is filed.

Ms. Goodman-Hinnershitz inquired about where officials and employees should submit questions. Mr. Stock replied that the Board meets only when required and questions should be referred to him.

Mr. Waltman stressed the need to be aware at all times and that if you are unsure if an activity is ethical you should avoid that activity or seek guidance from Mr. Stock. Mr. Stock agreed, noting that it is quite unpleasant to be the subject of a complaint.

Ms. Reed questioned if the Code or the Charter require the subject of a complaint to bear the costs of legal counsel. Mr. Stock stated that that language does not currently exist but Council could consider drafting that legislation with the Council Solicitor.

## **II. Charter Training**

Mr. McFarlane introduced himself and Mr. Smith, Charter Board Solicitor. He explained that prior to 1996 the City was a Commission form of government tied to the State 3<sup>rd</sup> Class City Code. The move to the Home Rule Charter restructured Reading's government and freed the City from various State controls, allowing a form of self-governance. He stressed the importance for all officials and employees to comply with the Charter, the importance of reporting violations and using education about the Charter to prevent violations.

Mr. Smith explained that the Charter language must be followed, noting that you cannot rename something just to avoid a requirement, as happened in the past. He stated that the Charter contains various language that is invalid or incorrect such Section 907 Appropriation and Revenue Ordinance and Section 1110 Recall – both were eliminated by the electorate in 2021.

Mr. Smith explained that there are limited ways to amend the Charter listed in Section 1204 and all amendments require approval of the electorate:

- (a) The citizens of the City through the Berks County Board of Elections and the process defined in State Statute Title 53, Subpart E Home Rule and Optional Plan, Chapter 29;
- (b) City Council through the enactment of an ordinance to refer referenda to the Berks County Board of Elections; or
- (c) Proposed amendments by a Charter Review Commission being placed on the ballot in accordance with § [1203](#) of this Charter.

Mr. Smith stated that City Council enacted the Charter Board ordinance in 2005, after the electorate approved an amendment requiring the creation of a Charter Board via referendum in 2002. The Charter Board ordinance fills in some of the blanks and provides an enforcement component.

Mr. Smith stated that there are currently two (2) Charter Board vacancies and one (1) applicant has been waiting for the mayor's recommendation since May 2021. He encouraged the mayor and Council to fill these two seats without further delay.

Mr. Smith stated that the Charter Board has jurisdiction over the Charter and the Administrative Code; however, they do not have jurisdiction over the Personnel Code or the Ethics Code.

Mr. Smith stated that since 2005 the Board has handled 58 complaints; although not all 58 went through the entire investigation/hearing process and 54 Advisory Opinions. He stated that the hearing process mirrors the process used by the Ethics Board. He noted that the Charter Board is able to initiate their own investigations but they have only taken that route one (1) time.

Mr. Smith clarified that Advisory Opinions can only be requested prior to taking action, not after. He noted the importance of seeking guidance prior to taking action, as the Opinion can be used as a defense against a complaint by the person who sought the Opinion. After action is taken that action could be subject to a Charter complaint.

Mr. Smith noted that there have been officials who have challenged the constitutionality of the Charter Board in court cases. At all times various levels of the court system have ruled that the Charter Board is a constitutional body.

- Mayor Spencer challenged the constitutionality of the Board – its existence was affirmed by the Commonwealth Court.
- Recently, the Commonwealth Court again affirmed the constitutionality and soundness of the Board in the matter *Scott v. City of Reading Charter Board*, Berks Co. CCP No. 2019-21454, *reversed and remanded by 1307 CD 2020, reargument denied, petition for allocator pending*. As noted, the City’s former Mayor, Wally Scott, has petitioned the Pennsylvania Supreme Court to allow an appeal, so that he may argue that the Charter Board really is an unconstitutional court and not a local agency.

Mr. Smith described the importance of the education of officials and employees as a preventative measure. He stated that he is working on an update to the annotated Charter which includes the results of complaints and Advisory Opinions which has helped to clarify the Charter over the past 26 years.

Ms. Cepeda-Freytiz inquired about who can request Advisory Opinions and submit complaints. Mr. Smith stated that Advisory Opinions can only be submitted by public officials (including those appointed to the Boards, Authorities and Commissions) and any official or aggrieved City taxpayer can submit complaints.

Ms. Goodman-Hinnershitz inquired if complaint legal costs can be assigned to those who are the subject of Charter complaints. Mr. Smith stated that like the Ethics Code, the Charter Board ordinance or the Administrative Code can be amended to include that language.

Ms. Goodman-Hinnershitz expressed the belief that there are some that have no regard for the terms of the Charter.

### **III. Executive Session**

Mr. Gombar announced the need for an executive session on litigation at 6:24 pm. The six members of Council, Mr. Moran, Mr. Gombar, Mr. Lachat, Mr. Litvinov, Ms. Kelleher and Ms. Smith were present. The executive session concluded at 6:50 pm and the meeting adjourned.

*Respectfully Submitted by  
Linda A. Kelleher, CMC, City Clerk*