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THE MUNICIPAL LAW FIRM

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MEMORANDUM

TO: Kyle City Council
FROM: Megan Brua, Ethics Compliance Officer
DATE: July 22, 2024
RE: Commission Review of Complaint Regarding City Council Member

Question presented: Does a conflict of interest exist where a citizen makes a complaint about a City Council member and said complaint is reviewed by the Ethics Commission, particularly by the commission member that was appointed by the City Council member who is the subject of the complaint?

Relevant Authority: Section 2-272(g) – ...A commission member is not required to recuse themselves from a matter that has been referred by the council member who appointed them unless the matter being referred is a request for declaratory ruling or other official action on a matter where the referring member of the city council or their actions are the subject of the referral. A commission member also may not participate in official action on any complaint:

- (1) that the member initiated;
- (2) during the pendency of an indictment or information charging the member with an offense, or after a finding of guilt of such an offense.

Answer and Discussion: If a citizen of Kyle makes an ethics complaint against a City Council member, and that complaint is reviewed by the Ethics Commission, the commission member who was appointed by the City Council member who is the subject of the complaint should recuse themselves.

The Ethics Commission consists of seven members and each member of the Kyle City Council appoints one member of the commission, subject to the approval by a majority vote of the Council. The members of the commission are supervised and may be removed by the City Council pursuant to Section 12.02 of the Kyle City Charter. Section. 2-272(b). Commission members are appointed to three-year terms to serve concurrently with the corresponding council member's term. Upon a council member vacating his/her seat, the corresponding commission member appointment

immediately expires. Section 2-272(c). This creates a clear conflict of interest when a City Council person is the subject of an ethics complaint being reviewed by the commission. Should the ethics investigation result in termination of a council persons duties, the corresponding commission member's appointment ends as well.

The Kyle Code of Ethics, Section 2-272(g), is clear. It requires a commission member to recuse themselves from a matter where the referring member of the City Council or their actions are the subject of the referral. In the instant case, the matter being referred to the commission involves an ethics complaint of a specific City Council member. Therefore, the commission member who was appointed by that City Council member should recuse themselves from the matter in order to avoid violating the Code of Ethics.

In 2022, former Ethics Compliance Officer Doug Montgomery received a similar question regarding the recusal of the Mayor pursuant to Section 2-272(g). In that circumstance, a commission member who was appointed by the then Mayor recused himself from discussion surrounding an ethics complaint filed against the Mayor. Mr. Montgomery informed the commission that recusal by the commission member was not required because, "while he was appointed by the Mayor, it's really a nomination subject to the approval of full council." While that statement is true regarding the nomination of commission members, the fact remains that an ethics investigation that results in the termination of a council persons duties also results in the termination of the corresponding commission member's appointment. This was a conflict that was overlooked by the former Compliance Officer.

Therefore, due to the reasoning discussed above, the commission member appointed by the City Council member that is the subject of an ethics complaint should recuse themselves from discussion of the complaint.