

**WAYNESVILLE CITY COUNCIL
SPECIAL SESSION
MARCH 31, 2022
5:30P.M.**

1. Call to Order - Roll Call

2. Hilpert Report

3. PROPOSED RESOLUTION – Censure of Mayor

4. Adjournment

FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO: City Council of Waynesville, Missouri

John Doyle, City Administrator

Nathan Nickolaus, City Attorney

From: Drew W. Hilpert, Appointed Hearing Officer



RE: Allegations against Mayor Jerry Brown

Procedural Background

Complaint and Investigation. This investigation was required by section 100.050 of the City of Waynesville ("City"), City Code (the "Code"). Pursuant to paragraph S(2) of section 100.050, a complaint was made against Mayor Jerry Brown ("Mayor Brown"). Pursuant to paragraph S(3), the City Attorney reviewed the complaint and determined the complaint was legally sufficient by letter dated March 8, 2022. Pursuant to paragraph S(3), I, Drew W. Hilpert, was appointed the hearing officer to investigate the complaint. Several issues were raised during the investigation.

Report. Pursuant to Section 100.050 paragraph S(3) if I, as the hearing officer, determine that probable cause exists for violation of Section 100.050 of the Code, I am to report that finding to the City Council. Please accept this document as that report.

Standard of Proof. Section 100.050, paragraph S(5), states that in considering the hearing officer's report, the City Council is not subject to the strict rules of evidence. The standard of evidence is to be a *preponderance of the evidence*. I therefore have conducted my investigation in the same manner. A preponderance of the evidence is generally understood to mean a matter is *more likely than not*. To express such a standard in terms of a percentage would be to say that one is 51% sure a thing has happened. This is a generally accepted standard, and although not extraordinarily high, it still means that I am to assume Mayor Brown is innocent unless I believe it is *more likely than not* that he did violate a section of the Code.

City Code References

The following City Codes are at issue (only the relevant portions of the Code are copied here) and included for your review:

116.050: DUTIES OF CITY ADMINISTRATOR Paragraph B¹.

Neither the Mayor nor any members of the City Council shall direct or request the appointment of any person to, or his removal from, office by the City Administrator or in any manner take part in the appointment or removal of officers and employees in the administrative services of the City, and neither the Mayor nor the members of the City Council shall attempt to exercise any personal authority over the City Administrator. Except for purposes of inquiry and investigation, the Mayor and City Council

¹ This numbering appears to be in error on the website. This appears to be the 4th paragraph under 116.050, which suggests this paragraph should be "D." In any event, it appears as the second B. of Section 116.050 on the website.

shall deal with the administrative service of the City solely through the City Administrator and neither the Mayor or City Council nor any member thereof shall give orders to any subordinates of the City Administrator, either publicly or privately.

115.010: APPOINTMENT OF OFFICERS, QUALIFICATIONS, DUTIES

The following officers for the City of Waynesville, Missouri, shall be appointed by the Mayor, on the recommendation of the City Administrator, with the consent and approval of a majority of the members of the City Council, and shall perform the following duties, together with such other duties as may be assigned, from time to time, by the Mayor or the City Council, to-wit:

- A. *City Administrator* - See Chapter 116 concerning qualifications, duties and powers of the City Administrator.
- B. *City Clerk*. The City Clerk shall have a Bachelor's Degree in Business Administration or no less than five (5) years' worth of administrative experience, to include at the very least, two (2) years' experience in a leadership or supervisory role, preferably in several aspects of municipal government.
- C. *Deputy City Clerk*— The Deputy City Clerk's position is not mandatory, however, if a suitable candidate can be found, he/she must have been a member of the City's Administrative staff no less than three (3) years and during that time, working in a supportive role to the City Administrator and City Clerk. The Deputy City Clerk shall be nominated to the position according to the request of the City Clerk and by the recommendation of the City Administrator. Any recommended candidate for the position of Deputy City Clerk may be appointed such by a majority vote of the City Council.
- D. *Finance Officer* - The Finance Officer shall have a bachelor's degree in either Accounting or any other related financial field or have no less than three (3) years of accounting experience dealing with budgets, reconciling and overall management of company account. The preferred candidate will have no less than three (3) years' experience with the City concerning the financial aspects of City Administration to include Accounts Payable, Payroll and any other financial functions of the City. The preferred candidate shall have been nominated from within the City, on the recommendation of the City Administrator; however, if a suitable candidate is not available from within the City, then a candidate may be recommended by the City Administrator, that has been obtained through the normal hiring process. Any recommended candidate may be appointed such by majority vote of the City Council.
- E. *Building Official*—shall issue building permits when authorized or required by law or City ordinance. [Ord. No. 386 § 1, 7-10-1975]

100.050: CODE OF ETHICS

- A. *Responsibility of Public Office*. Stewardship of the public interest shall be the public official's primary concern, working for the common good of the citizens of the City and avoiding actions that are inconsistent with the best interests of the City. All persons, claims and transactions coming before City Council or any City Council Committee, Board or Commission shall be assured of fair and equal treatment.
- B. *Compliance with Law*. Public officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the laws of the nation, State and City and to carry out impartially these laws in the performance of their public duties to foster respect for all government. These laws include, but are not limited to, the United States and Missouri Constitutions, the laws of the State of Missouri and City Ordinances.
- C. *Conduct of Officials*. The professional and personal conduct of public officials shall be above reproach and shall avoid even the appearance of impropriety. Public officials shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of the Mayor, other members of the City Council, Council Committees, Boards, Commissions, City staff and the public.
- D. *Performance of Duties*. Public officials shall perform their duties in accordance with the processes and rules of order as established by the City Council, Council Committees, Boards and Commissions governing the deliberation of public policy issues, meaningful involvement of the public and implementation of policy decisions of the City Council by City staff.
- ...
- F. *Decision Based on Merit*. Public officials shall base their decisions on the merits and substance at hand and not personal opinion or preference.
- G. *Communication*. Public Officials shall publicly share with the body substantive information that is relevant to a matter under consideration by the City Council, Council Committees, Boards, and Commissions of the City which they may have received from sources outside the public decision-making process.

H. Conflict of Interest.

1. In order to assure independence and impartiality on behalf of the common good, public officials shall not use their official position to influence government decisions in which they have a material financial interest or personal relationship, which may give rise to the appearance of a conflict of interest or impropriety. As a result, public officials shall disclose investments, interest in real property, sources of income and gifts and shall abstain from participating in deliberations and decision-making where conflicts may exist.
2. Public officials should avoid action, whether or not specifically prohibited, which might result in or create the appearance of:
 - a. Using their public office for private gain;
 - b. Offering preferential treatment to any person;
 - c. Impeding City efficiency and economy;
 - d. Making a City decision outside of official channels; and
 - e. Affect adversely the confidence of the public and the integrity of the City.

...

- N. Policy Role of Members. Public officials shall respect and adhere to the City Administrator form of government as outlined in Chapter 116 of the City's Municipal Code with respect to the City Administrator's relationship to the Mayor and City Council. In this structure, the City Council determine the policy of the City with the advice, information and analysis provided by the City Administrator, City staff, Council Committees, Boards, and Commissions of the City. Except as provided by ordinance, the Mayor and/or Councilmen shall not interfere with the administrative functions of the City, the professional duties of City staff, personnel issues concerning hire, promotion or discipline (except upon appeal as provided for by ordinance), or impair the ability of staff to implement City policy and decisions. Public Elected Officials shall not direct or request services from City staff but shall forward all requests or concerns to the City Administrator for review.
- O. Behavior. All City elected and appointed officials shall conduct themselves in a professional business manner and should refrain from the public use of profane or offensive language so as to reflect well on the City. The City strongly disapproves of and does not tolerate harassment of the public, other elected officials or City staff. Public officials shall avoid offensive or inappropriate harassing behavior. Complaints of harassment, targeting of employees or complaints of inappropriate conduct will be promptly and carefully investigated in accordance with City policy.
- P. Positive Workplace Environment. Public officials shall support the maintenance of a positive and constructive workplace environment for the City employees and for citizens and businesses who conduct business with the City. Public officials shall recognize their roles in dealing with City employees and refrain from creating the perception of favoritism, confusing staff in regards to daily duties or tasks or any other form of inappropriate action to City staff.
- Q. City Attorney to Render Opinions on Request. Whenever any public official, subject to this policy, is in doubt as to the proper interpretation or application of this Code of Ethics policy, that public official may request that the City Administrator solicit from the City Attorney a full written statement of the facts and questions. The City Attorney shall then render a written opinion to such public official and the City Administrator shall provide the opinion to all members of the City Council without use of the name of the public official involved unless such public official permits the use of a name.
- R. Implementation.
1. The Code of Ethics for public officials of the City is intended to be self-enforcing. Therefore, it becomes most effective when public officials are thoroughly familiar with it and embrace its provisions. For this reason, these ethical standards shall be included in the regular orientation of candidates for Mayor and City Council, newly elected officials and appointed members of all boards and commissions.
 2. Public officials entering office shall receive a statement certifying that they have read and understand the City's Code of Ethics and copies of both Robert's Rule of Order and the Missouri Sunshine Law. Signing the statement is optional. However, all public officials are subject to the provisions of the Code of Ethics whether or not the statement is signed.
 3. The Code of Ethics shall be reviewed annually by the Governmental Affairs Committee. Recommendations from the Committee shall be considered by the City Council.
- S. Compliance and Enforcement.
1. The City's Code of Ethics expresses standards of ethical conduct expected for the public officials of the City Council, Council Committees, boards, and commissions of the City. Public officials themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of the government.

2. A person making a complaint against a public official, appointed official or employee for violation of this policy shall submit the complaint, in writing, to the City Clerk for submission to the City Attorney who will determine its legal sufficiency. The written complaint must be based substantially upon the personal knowledge of the complainant and must be signed under oath or affirmation by the person filing the complaint.
3. If the City Attorney determines that the complaint is legally sufficient, the City Administrator shall hire and appoint a hearing officer to determine if probable cause of the violation(s) of this policy exists. If the hearing officer determines that probable cause does exist for violation of this policy, the hearing officer shall report the finding to the City Council.
4. During the course of the investigation, the City Council has the authority to limit access of the public official named in the complaint to City Hall, Committee meetings and/or City staff.
5. The City Council shall make a final determination upon a majority vote of all members, except for any member of the City Council which may be the subject of a complaint. The hearing by the City Council shall not be subject to the strict rule of evidence and the standard of proof required for a final determination of violation of this policy shall be a preponderance of the evidence. At the discretion of the City Council, sanctions may include:
 - a. private or public reprimand or censure;
 - b. exclusion from leadership positions;
 - c. removal from office any elected, appointed official or employee.

Investigation

As part of my investigation, I reviewed the relevant Code provisions as well as interviewed (and reviewed written documentation from) Miriam Jones (“Jones”) *Executive Assistant*, Michele Brown *City Clerk*, Nathan Carmon (“Carmon”) *Building Official*, Amber Box (“Box”) *Finance Officer* and John Doyle (“Doyle”) *City Administrator*. Collectively I will refer to this group as the complainants.

I attempted to speak with Mayor Brown however he has thus far refused to speak with me. We initially had an in-person meeting scheduled on the same day as the above referenced witnesses. However, on the morning of the scheduled interview, I was advised by both the city attorney and city clerk that he was refusing to meet with me. I asked the city attorney to contact Mayor Brown and request that the mayor speak with me. The city attorney advised he did so, but Mayor Brown still refused the meeting. I sent Mayor Brown a text on his home phone and city phone requesting that he speak with me but received no reply. I emailed his home and official email requesting that he speak with me and advising that it was critical that I have his recollections about what had happened. He responded by only asking what I was investigating. I answered his question and again asked him to speak with me. I offered to meet with him in person, by phone or video call, and with his attorney present if he so preferred (a preference he had expressed to the city attorney). To date he has *not* agreed to speak with me. Should he respond before Thursday, I will supplement this document.

In addition, I spoke with Alan Clark and Councilman Liberty for limited purpose questions.

The issues raised by the complainants can be roughly grouped into four categories of concerns:

1. Mayor Brown’s interference with the public works director position;
2. Mayor Brown’s behavior in dealing with Miriam Jones and city staff;
3. Mayor Brown’s interference in the job duties of Nathan Carmon and others; and
4. Mayor Brown’s actions during the hiring of the economic development director.

Based upon those groups there are three questions that need to be answered regarding Mayor Brown's conduct.

1. Did Mayor Brown's actions violate section 100.050 (the "Code of Ethics"), paragraph O?
2. Did Mayor Brown's actions violate section 100.050 (the "Code of Ethics"), paragraph P?
3. Did Mayor Brown's actions violate section 116.050 of the Code, paragraph B² and 100.050 (the "Code of Ethics"), paragraph N?

Mayor Brown's interference with the public works director position

The complainants raised concerns which occurred over a period of time, however, there were no serious issues raised until the City dealt with the retirement of the public works director.

Mitch McDonald ("McDonald"), served in the role of public works director from August 2009 until December 31, 2021. At some point in early-to-mid 2021, Mr. McDonald's impending retirement became known, and his work schedule was greatly reduced. He began to use terminal leave³ on October 1, 2021, which lasted until his final day of employment. On several occasions prior to McDonald's retirement, Mayor Brown requested that Doyle terminate McDonald and fill the public works director position. Doyle advised the mayor that he would not terminate McDonald and would allow him to remain until his expected retirement. Mayor Brown also insisted that Doyle hire Alan Clark ("Clark") as the new public works director at a salary of \$80,000 per year. Upon first introducing Clark to Doyle, Mayor Brown announced, "This is your new public works director." Clark is a previous Waynesville city councilman as well as a former St. Robert's city administrator. Mayor Brown instructed Doyle to hire Clark as the public works director several times. This included a lunch meeting at Hoppers, where, unbeknownst to Doyle, Mayor Brown had invited Clark with him to discuss the hiring of Doyle. Councilman Liberty was at the same restaurant and started to come to their table when Mayor Brown asked the councilman not to join them. Councilman Liberty confirmed being at the restaurant and being asked not to join the three men, though the councilman was unaware of any discussion at the table. Doyle and Clark both advised that the meeting was similar to an interview, as they discussed Clark's credentials to be a public works director. The three would meet again at Colton's Steak House in St. Roberts on a later occasion for a similar discussion.

Subsequent to learning of McDonald's retirement, Doyle analyzed what he believed was needed by the City and recommended to the City Council that the new position of economic development director be formed and that, at least for some period of time, the public works director position be left vacant. Doyle, and others, believed that a combination of his own skill as a professional engineer and the skills of his then-current supervisors negated the immediate need for a public works director. This proposal was ratified by the City Council in ordinance 2474, prior to McDonald's actual retirement. I will address these events in a subsequent section. From the perspective of the city staff, Mayor Brown became much more difficult to deal with after these events.

² This section has to be understood in the context that the mayor has certain duties and obligations in the hiring of certain employees pursuant to section 115.010 of the Code.

³ Terminal leave is a colloquial term used by city staff to express someone who is using vacation for the remainder of their employment, meaning that the person will be on vacation until their last day of employment.

Mayor Brown's actions against Miriam Jones and city staff

Subsequent to the City Council's decision noted above, several complainants identified occasions where Mayor Brown confronted Jones with issues pertaining to his City provided cell phone. Among her other duties, Jones is responsible for administering the City's cell phone program. On at least two occasions Mayor Brown brought his cell phone to Jones with issues. Jones took the cell phone to the City's local AT&T business agent, and they found there was nothing wrong with the phone. Mayor Brown approached her a third time but this time, in his anger, as Jones was seated behind her desk, he threw the cell phone toward Jones, and it landed in her lap. Jones believes Mayor Brown meant to throw the cell phone down on her desk, but he missed, and it hit her. He then leaned over her desk and demanded she fix the phone. Jones felt as though Mayor Brown would not let her speak or explain. Jones felt intimidated and uncomfortable. Jones again took the phone to AT&T who said there was nothing wrong with it. Yet another time, Mayor Brown brought the phone in, this time stopping Jones as she was leaving her office and again berating her about fixing the phone. He put the phone close to her face, and stated, in a perceived angry tone, that the phone did not work causing him to miss an important meeting. Again, Jones felt as though she was not allowed to explain that the AT&T business representative told her it was user action that causes the message to leave the inbox. As she tried to explain Mayor Brown put up his hand in a "stop" fashion indicating he did not wish to hear more. Jones again felt Mayor Brown was aggressive, causing her to feel angry, intimidated, and uncomfortable. She is now refusing to deal directly with Mayor Brown based upon the way she was treated.

Later, Mayor Brown spoke to Michele Brown, in what she perceived to be a confrontational manner, about employees complaining about him. Michele Brown felt as though the mayor was trying to intimidate her and she too is no longer comfortable dealing with Mayor Brown alone.

Several female employees stated that their perception is that Mayor Brown will not listen to female employees and treats them disrespectfully. Several mentioned a belief that his behavior, in speaking aggressively while refusing to listen to female employees, is disrespectful and chauvinistic.

Mayor Brown's interference in the job duties of Nathan Carmon and others

The next general category of concern involves Mayor Brown causing confusion as to the duties of Carmon and others. As a preliminary matter it should be noted that Carmon has known Mayor Brown for a very long time, as both he and his family were Mayor Brown's optometrist patients nearly his whole life. As such they have a relationship that pre-exists Mayor Brown's time on the City Council. On several occasions Mayor Brown approached Carmon and inquired about happenings at the City. Doyle eventually warned Carmon against speaking to Mayor Brown about specific City actions directly, as it caused the perception that the mayor was directing his duties or had information that others did not. Doyle instructed Carmon to direct such questions to him if he was asked such questions by the mayor in the future. On a subsequent occasion, Mayor Brown again inquired of Carmon about things which were occurring with a new subdivision, as well as other issues. Mayor Brown's statements also implied he was looking for information about misconduct by Doyle. It does not appear that Mayor Brown was ever advised⁴ of the need to direct such questions to Doyle by Carmon until after March 9th. On the 9th, Mayor Brown approached Carmon, who had been avoiding Mayor Brown's calls in order to avoid any questions.

⁴ However, Mayor Brown has been advised by a committee of the Board of Alderman as well as the city attorney that the office of the mayor is not to interfere in the day-to-day operations of the City. That is the job of the city administrator

During that conversation, Mayor Brown stated to Carmon, “He [Doyle] can’t do this shit” as well as, “John can’t do this, its either going to be me or John. One of us has to go.” In addition, he suggested that something “fishy” was going on with Doyle and wanted Carmon to meet with him off City property to learn more. The discussion caused Carmon great distress because he did not want to be in the middle of any conflict between Mayor Brown and Doyle.

In addition to Carmon, Mayor Brown made requests to Box, Michele Brown, and Jones directly, which all felt should have been directed to the city administrator who serves as the mayor’s chief administrative assistant pursuant to City Code 116.050. The mayor also suggested that Doyle need not be involved in providing him the requested information.

Mayor Brown’s actions during the hiring of the economic development director

After the approval to hire a director of economic development, as noted above, the City began the process of hiring. In order to maintain the integrity of the process and avoid any appearance of favoritism, a specific hiring process was set out in ordinance 2474 before applications were reviewed. Two individuals applied. Both were given interviews. The first interview occurred in front of the hiring committee established by ordinance 2474.

On the date of the second interview (September 15th, 2021), Mayor Brown arrived at City Hall around 12:30pm. He demanded that Box give him a copy of the resume and interview documents for the candidate being interviewed at that moment. He then went into the conference room where the interview was being held, participated in the interview, and asked questions as if a member of the hiring committee. This created an inequity in the interview process as the mayor attended one but not both interviews.

Ms. Box advised Mayor Brown that he needed to return the interview material she had given him, and Mayor Brown advised that he was going to keep the information, “no matter what Michele [Brown] says”.

Later that day, Mayor Brown became angry with Michele Brown when she looked to Doyle for permission to provide certain additional documents pertaining to the candidates for the economic development director position, which he had requested. Mayor Brown pointed his finger at Michele Brown in what she perceived as an aggressive manner, and with a raised voice told her that Doyle was not her “boss” and that she should read 77.310 RSMo⁵. Mayor Brown then requested the list of names of the people who had applied for the position.

Mayor Brown then spoke to Doyle in Doyle’s office and demanded to know why Clark was not on the list to be interviewed. Doyle advised the mayor that Clark had not applied for the position. Mayor Brown advised that Clark had given the city his resume⁶ and asked what else he was supposed to do to get an

⁵ This statute provides, “The mayor shall have power to require, as often as he may deem it necessary, any officer of the city to exhibit his accounts or other papers or records, and to make report to the council, in writing, touching any subject or matter pertaining to his office.

⁶ Clark provided a copy of his resume during the previously mentioned lunch meeting with Doyle and Mayor Brown. However, this was before the position of economic development director had been created and the subject matter of the meeting was the position of public works director.

interview. Mayor Brown stated that he wanted Mr. Clark on the interview list. The mayor then expressed further consternation advising that he had personally taken an application to Clark and didn't understand why Clark had not applied for the job. After further discussion, and as a result of the demands of Mayor Brown, Doyle instructed Michele Brown to set up an interview with Clark.

Clark was contacted and was scheduled for an interview at 10:30am on September 17th. However, on the morning of the 17th, Clark spoke with Doyle and asked why he received an interview when he had not applied for the position. He further declined to be interviewed as the position was not similar to the position they had discussed in the previous lunch meetings. Clark denied that Mayor Brown had ever given him an application. Doyle then went to speak with the mayor who was in City Hall at the time of the phone call with Clark and advised the mayor of the discussion. The mayor then, strangely, asked Doyle how Clark even got on the list for an interview in the first place.

Doyle and Michele Brown attempted to explain to Mayor Brown that his actions could cause legal problems for the city. Mayor Brown became irritated and angry and complained that things didn't used to be this way⁷.

The mayor eventually refused to nominate Doyle's recommended choice for the position to the City Council, though the choice was ultimately approved.

FINDINGS

1. *Did Mayor Brown's actions violate section 100.050 ("Code of Ethics"), paragraph O?*

While Mayor Brown may not have intended to offend city staff, his actions have caused fear, resentment, frustration, and offense, in several members of city staff. There is a perception that Mayor Brown is chauvinistic and engages in unprofessional behavior.

The Code of Ethics sets out the expectations for elected officials.

"All City elected and appointed officials shall conduct themselves in a professional business manner and should refrain from the public use of profane or offensive language so as to reflect well on the City. The City strongly disapproves of and does not tolerate harassment of the public, other elected officials or City staff. Public officials shall avoid offensive or inappropriate harassing behavior."

This is not strictly an issue of intent nor is it strictly one of perception. Rather the question is whether *a reasonable person* would be offended by Mayor Brown's conduct or find it unprofessional. The raising of voices, refusal to listen, and use of intimidating gestures, all on numerous occasions, is generally considered unacceptable and unprofessional conduct, which would offend a reasonable person. Based on a preponderance of the evidence, I believe that Mayor Brown's conduct violated paragraph O.

⁷ City staff believes this was a reference to a time when obtaining a job with the city was more about *who* one knew rather than having particular skills.

2. *Did Mayor Brown's actions violate section 100.050 ("Code of Ethics"), paragraph P?*

Mayor Brown's actions have caused at least four staff members to express some version of their belief that they can no longer work with him. Even if we assume that Mayor Brown had an honest belief in the misconduct of Doyle, the office of the mayor is still not empowered to conduct such investigations personally. He may recommend termination to the Council or work with the Council to have an investigation conducted.

The Code of Ethics sets out the expectations for elected officials.

Public officials shall support the maintenance of a positive and constructive workplace environment for the City employees and for citizens and businesses who conduct business with the City. Public officials shall recognize their roles in dealing with City employees and refrain from creating the perception of favoritism, confusing staff in regards to daily duties or tasks or any other form of inappropriate action to City staff.

Directing staff to perform certain tasks when such authority is clearly delegated by the Code to the city administrator, asking specific questions to employees seeking information about the city administrator, making disparaging comments about the city administrator to his supervisees, directing employees to meet with him to discuss issues about the city administrator, all creates a confusion with staff in regard to their duties, are generally inappropriate, and fail to contribute to a positive and constructive workplace environment.

Based on a preponderance of the evidence, I believe that Mayor Brown's conduct violated paragraph P.

4. *Did Mayor Brown's actions violate section 116.050 of the Code, paragraph B and 100.050 (the "Code of Ethics") paragraph N?*

The public works director is not a position hired by the City Council according to Section 115.010 of the Code. Therefore, pursuant to section 116.050, the city administrator is to make this appointment. The Code of Ethics paragraph N specifically states:

Except as provided by ordinance, the Mayor and/or Councilmen shall not interfere with the administrative functions of the City, the professional duties of City staff, personnel issues concerning hire, promotion or discipline (except upon appeal as provided for by ordinance), or impair the ability of staff to implement City policy and decisions."

No ordinance allowed the mayor to intervene in the authority of the city administrator to hire or not hire the public works director. In addition, the City Council set out specifically how the economic development director was to be hired. Ordinance 2474 would appear to have specifically *excluded* the mayor from the hiring process before a name was submitted to the City Council.

The mayor's demands to have McDonald fired, to have Clark hired as the public works director, to have Clark be interviewed, his unilateral decision to sit in on one of the interviews for economic development director (in clear violation of ordinance 2474), as well as his demand for certain documents related to the hiring process, all violated Section 116.050.

Mayor Brown's refusal to nominate the successful candidate for appointment by the City Council could either be seen as contributing to the appearance of impropriety (he refused to nominate because his candidate was not successful) or it could be seen as an attempt to *prevent* an appearance of impropriety (perhaps he chose not to nominate the candidate because he had participated in one but not both interviews). Without the Mayor's opinion, I cannot say which it was.

CONCLUSIONS

Conflict between city staff and elected officials is certainly not unknown in city governments, however the Code of Ethics sets out the expectations of councilpersons in Waynesville.

I do not believe the conduct described above would be illegal under state law⁸. I do not believe the conduct described above presents the city with a high degree of legal liability (however a continuation of such conduct might well create liability in the future⁹).

However, the Code of Ethics is not premised on criminal action or the creation of any certain level of legal liability. Rather, the Code of Ethics sets out a fairly high standard for elected officials, and thereby violation of said policy can be accomplished by less severe conduct.

This is such a case. Mayor Brown's conduct has been greatly detrimental to the morale and efficiency of city staff as described above, and by a preponderance of the evidence, I believe that Mayor Brown materially violated the Code of Ethics and section 116.050.

Pursuant to the Code of Ethics, the Board has the following options:

1. private or public reprimand or censure;
2. exclusion from leadership positions;
3. removal from office any elected official

It would appear that a private reprimand has already occurred as noted in footnote 4. It would further appear that exclusion from leadership positions and removal from office are the same thing in the case of a mayor.

Therefore, it would appear your real options are public reprimand/censure or removal from office. I suggest that prior to making your decision the City Council (1) consider whether or not a public reprimand will improve or resolve the problem and (2) consult the city attorney about the process required for removal of office.

I will be at your March 31st meeting to answer any questions you may have.

⁸ That statement applies to the conduct investigated above. I cannot opine as to any other issues that may exist. In addition, his conduct would certainly violate city ordinance 2474.

⁹ No matter what decision is made by the City Council, whether it finds Mayor Brown has violated policy or not, it must instruct Mayor Brown not to take any retaliatory action against the complainants for making the complaint or participating in the process, as there are legal protections against retaliation.

RESOLUTION OF CENSURE

WHEREAS, the City of Waynesville is a municipal corporation of the third class and has adopted the City Administrator form of government pursuant to § 77.042 RSMo; and

WHEREAS, Missouri’s statutes provide that when a city has elected to be managed under the city administrator form of government, the city administrator is the chief administrative assistant to the mayor and shall have general superintending control of the administration and management of the government business, officers and employees of the city, subject to the direction and supervision of the mayor.” And

WHEREAS, The City Code prohibits the Mayor from dealing with the administrative staff except through the City Administrator, nor giving orders to the employees of the city either publicly or privately (City Code at § 116.050(D)); and

WHEREAS, The City Code explicitly prohibits the Mayor from requesting that any person be employed by the city or take any part in the appointment or removal of any employee (City Code at § 116.050(D)); and

WHEREAS, The City of Waynesville has adopted a code of ethics (the “Ethics Code”), codified in § 100.050 of the City Code; and

WHEREAS, The Ethics Code provides that “The professional and personal conduct of public officials shall be above reproach and shall avoid even the appearance of impropriety.” (City Code at § 100.050 (C)); and

WHEREAS, The Ethics Code provides that “Public officials shall respect and adhere to the City Administrator form of government as outlined in Chapter 116 of the City’s Municipal Code with respect to the City Administrator’s relationship to the Mayor and City Council.” (City Code at § 100.050(N)); and

WHEREAS, The Ethics code further provides that "Except as provided by ordinance, the Mayor and/or Councilmen shall not interfere with the administrative functions of the City, the professional duties of City staff, personnel issues concerning hire, promotion or discipline (except upon appeal as provided for by ordinance), or impair the ability of staff to implement City policy and decisions. Public Elected Officials shall not direct or request services from City staff but shall forward all requests or concerns to the City Administrator for review.” (City Code at § 100.050(N)); and

WHEREAS, The Ethics code provides that "All City elected and appointed officials shall conduct themselves in a professional business manner and should refrain from the public use of profane or offensive language so as to reflect well on the City. The City strongly disapproves of and does not tolerate harassment of the public, other elected officials, or City staff. Public officials shall avoid offensive or inappropriate harassing behavior. Complaints of harassment, targeting of employees or complaints of inappropriate conduct will be promptly and carefully investigated in accordance with City policy.” (City Code at § 100.050(O)); and

WHEREAS, The Ethics code provides that "Public officials shall recognize their roles in dealing with City employees and refrain from creating the perception of favoritism, confusing staff in regards to daily duties or tasks or any other form of inappropriate action to City staff.” (City Code at § 100.050(P)); and

WHEREAS, Dr. Jerry Brown is the elected mayor of the City of Waynesville, Missouri, and as such is a ‘Public Official’ as described in the Ethics Code; and,

WHEREAS, The City has received complaints from employees alleging that Mayor Brown has violated the city code, and the city ethics code; and

WHEREAS, Pursuant to the City Code, these complaints were reviewed by the City Attorney who determined that they were legally sufficient; and

WHEREAS, Based on the determination of the City Attorney, Mr. Drew Hilpert was appointed to investigate the complaint; and

WHEREAS, Mr. Hilpert investigated the complaints and has presented his report to the City Council; and

WHEREAS, the Mayor refused to cooperate with this investigation; and

WHEREAS, Based on the information it has received, which the Council finds to be credible, the City Council of the City of Waynesville, makes the following findings:

FIRST, That the City Council finds that Mayor Jerry Brown violated the Code, Section 100.050(O) in that he has behaved in an unprofessional and offensive manner toward certain employees as spelled out in the report.

SECOND, That, in violation of the City Code, Section 100.050(P), by directing staff to perform certain tasks when such authority is clearly granted to the City Administrator, and that he violated Section 100.050(N) of the City Code in that he has intentionally undermined the City Administrator form of government by repeatedly attempting to circumvent the City Administrator and asking staff to report to him about the City Administrator.

THIRD, the Mayor violated the City Code, Section 100.050(N), which prohibits the Mayor from interfering in the hiring process for city employees, and Ordinance 2474 which specifically excluded the Mayor from the hiring process for the economic development director, by ordering the City Administrator to interview a candidate who had not even applied for the position and taking part in the interviews for that position.

FOURTH, Despite numerous private consultations and warnings, the Mayor has been unwilling or unable to change his behavior, necessitating this public admonishment; and

WHEREAS, The City Council believes that the Citizens of this City have the right to expect their elected leaders to behave in a manner which above reproach and to faithfully honor their oaths to uphold the laws of this State and the Ordinances of this City; and

WHEREAS, While it is hoped that the moral integrity of each elected official will make the City's Code of Ethics self-enforcing when individuals fail to meet those standards it becomes the duty of this Council to enforce those principles,

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAYNESVILLE, MISSOURI, AS FOLLOWS:

(1) Mayor Jerry Brown is hereby censured by the City Council for multiple violations of the city code and conduct inappropriate for an elected official in this City. The Council hereby condemns his conduct in the strongest terms and apologies, on behalf of the City, to the employees who have been adversely affected by his behavior.

(2) The Council urges Dr. Brown to seek counseling and training so as to be able to change his behavior and adhere to the principles of our City Code.

(3) The Mayor is hereby removed from all appointments, committees, and commissions on which he now serves, excepting those for which he is entitled to be a member based on any statute or ordinance.

(4) The Mayor is hereby prohibited from representing the City at civic events which are not specified in state statutes or the City Code. Until such time as the Council believes that the Mayor has made meaningful changes in his behavior, the Mayor Pro Tem and the City Administrator shall represent the City at purely social or honorific events.

PASSED BY THE CITY COUNCIL THIS 31ST DAY OF MARCH, 2022.

PRESIDING OFFICER

Attest:

Michele Brown, CITY CLERK