

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Resolution No. 23-006: Censure
of Councilmember JC Harris

ATTACHMENTS:

1. Draft Resolution No. 23-006 and
attachments

FOR AGENDA OF: February 2, 2023

DEPT. OF ORIGIN: Legislative

DATE SUBMITTED: January 25, 2023

CLEARANCES:

- ☐ Community Development _____
- ☐ Marina _____
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

CHIEF OPERATIONS OFFICER: _____

- ☐ Legal _____
- ☐ Finance _____
- ☐ Courts _____
- ☐ Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation

The purpose of this agenda item is for the Council to consider a formal censure for Councilmember JC Harris.

Motion

Motion 1: "I move to adopt Draft Resolution No. 23-006 to formally censure Councilmember JC Harris."

Background

On December 9, 2022, the City received a complaint from an employee regarding Councilmember JC Harris. Based on the complaint received, the City retained a third party to investigate.

An executive session was held on January 12, 2023 for the Council to discuss a complaint made against a public official.

The completed investigation and the City's Human Resources summary are included as attachments to this packet in a redacted format.

Discussion

A censure is a formal statement that expresses severe disapproval of someone or something.

Approval of the censure as written will remove Councilmember Harris from his appointed Council Committee positions until the end of this term, which is December 31, 2023.

CITY COUNCIL'S FIRST DRAFT 1/25/2023

DRAFT RESOLUTION NO. 23-006

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, CENSURING COUNCILMEMBER JC HARRIS FOR ACTING IN A MANNER UNBECOMING OF A COUNCILMEMBER.

WHEREAS, elected officials hold a public trust and are expected to adhere to a standard of behavior that does not violate or appear to violate that trust, and

WHEREAS, RCW 42.17A.001(2) states "that the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty and fairness in their dealings," and

WHEREAS, the City of Des Moines is committed to providing a safe workplace for its employees, guests, contractors, vendors and the public, and

WHEREAS, the City strictly prohibits threatened or actual workplace violence, this includes using obscene or abusive language or gestures in a threatening manner, and

WHEREAS, Councilmember JC Harris has been a member of the Des Moines City Council since January 1, 2020, and

WHEREAS, during his tenure, there have been numerous complaints from City staff regarding his demeanor and negative treatment of them, and

WHEREAS, as a result, City administration has been forced to put in place unprecedented protocols to ensure City staff is protected from offensive or uncomfortable interactions with Councilmember Harris, and

WHEREAS, despite the implementation of these protocols, Councilmember Harris has routinely disregarded them and continues to engage in behavior that places City staff in uncomfortable and inappropriate situations, and

WHEREAS, on December 9, 2022, a staff member sent an email informing Human Resources and her supervisor that the previous

night she had been confronted by Councilmember Harris and that she felt intimidated by this encounter, and

WHEREAS, this encounter occurred at night after a Council meeting while the staff member was alone in the small entryway to City Hall, and

WHEREAS, the staff member reported Councilmember Harris used profanity while angrily accusing her of failing to do something that was not even within her job responsibilities, and

WHEREAS, due to the seriousness of this complaint, as well as the repeat nature of this type of incident, the City retained an outside attorney to conduct a third party investigation, attached to this resolution as Attachments 1 and 2, and

WHEREAS, the result of the investigation confirmed the interaction occurred as reported, however, Councilmember Harris merely dismissed the confrontation as "unremarkable," and

WHEREAS, the verbal abuse of a staff member is inappropriate in any work setting, and characterizing this type of behavior as "unremarkable" provides further evidence of Councilmember Harris' use of bullying behavior towards City staff, and

WHEREAS, as an elected official, Councilmember Harris is not subject to discipline like a staff member would be if they engaged in this type of inappropriate behavior, and

WHEREAS, the City Council as a body does have the ability to declare that this type of treatment of City staff by a Councilmember is unacceptable and that it is unbecoming of the office that holds a position of power and trust, and

WHEREAS, Councilmember Harris has been advised multiple times by both City Administration and well as members of the City Council that his treatment of City staff is unacceptable, however these admonitions have failed to correct his behavior, and

WHEREAS, as a result, the City Council is now making a public statement of our disapproval of Councilmember Harris' actions and reaffirming our commitment to prevent hostile and intimidating treatment of staff members, and

WHEREAS, a censure motion is made for the purpose of publicly denouncing inappropriate interactions or behavior, and

WHEREAS, the City Council approves this motion to state unequivocally that bullying, hostile or intimidating behavior has no place in the City of Des Moines; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, RESOLVES
AS FOLLOWS:**

Sec. 1. Councilmember JC Harris is hereby censured for acting in a manner unbecoming of a Councilmember.

Sec. 2. The City Council approves of the removal of Councilmember JC Harris from all committee assignments for the remainder of his appointments.

Sec. 3. Notice of this Resolution of Censure shall be sent to all media outlets to whom the City of Des Moines sends official notices of public hearing.

Sec. 4. Notice of this Resolution of Censure shall be sent to all elected officials that represent the City of Des Moines.

Sec. 5. Notice of this Resolution of Censure shall be posted for a period of sixty days on the public notice bulletin board outside City Hall.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2023 and signed in authentication thereof this ____ day of _____, 2023.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

MEMORANDUM

DATE: January 11, 2023
TO: Michael Matthias, City Manager
FROM: Shawna Thomas, HR Analyst
Adrienne Johnson-Newton, HR Director



SUBJECT: SUMMARY OF FINDINGS- [REDACTED] AND JC HARRIS INTERACTION

Background

On November 29, 2022 Bonnie Wilkins, Chief Administrative Officer (CAO) sent an email to City of Des Moines councilmembers, inviting them to participate in the City's Senior Staff Leadership retreat, on December 12, 2022. She explained that each councilmember would be able to speak directly about their perspective on various topics as it relates to their vision for the City of Des Moines.

They were provided fifteen (15) minute timeslots from which they could choose to schedule their appearance at the retreat. Councilmember JC Harris received the email invite and responded but she believed his responses were unclear and it was not apparent to Ms. Wilkins that he had selected a specific time or that he was planning on attending. On December 2, 2022, Ms. Wilkins emailed Mr. Harris specific timeslots in an effort to determine if one of those slots worked and to confirm his attendance. He did not respond. Ultimately, Mr. Harris did not attend the Senior Leadership Staff retreat.

After the council meeting on December 8, 2022, Mr. Harris met with City Clerk [REDACTED] while she was alone in the foyer of the Council Chamber about not being confirmed for a timeslot for the Senior Staff retreat.

The following day, Ms. [REDACTED] sent an email to you (City Manager Matthias), Ms. Wilkins, Tim George, City Attorney and myself detailing her interaction with Mr. Harris. She stated that she felt like he had tried to intimidate her, that he was upset and angry and had used profanity when speaking to her. She also explained that she found his behavior to be "unprofessional and disrespectful." She then requested to have another staff member present in the future when she was locking up the facility due to her discomfort with his behavior.

After reviewing her complaint, the decision was made to retain a third party investigator to conduct a preliminary inquiry into her allegations regarding Mr. Harris' behavior. It is important to note, that councilmembers are not bound by City policy, however, Ms. [REDACTED] is subject to and protected by our personnel policies.

The City initiated our inquiry pursuant to **Section 2. General Policies and Practices, Discrimination and Harassment Complaint Procedure.** The third-party investigator, Ms. Kathleen Haggard with Haggard & Ganson LLP, interviewed Ms. [REDACTED] on December 19, 2022 and Mr. Harris on January 3, 2023. The final report was provided to Human Resources on January 6, 2023.

Summary of Findings_ [REDACTED] and Harris, JC

Summary of Finding(s)

Excerpt from final report:

1. [REDACTED] and Harris generally agree on the substance of their December 8 interaction.
2. Despite their general agreement on the substance, [REDACTED] and Harris did not perceive the interaction the same way.
3. Harris admitted he was frustrated that he had not been given a timeslot.
4. He admitted stating words to the effect of, "I never know if people are fucking with me or not."
5. Harris denied he was trying to intimidate [REDACTED]. He said he was frustrated with not receiving a timeslot but was not angry with [REDACTED] specifically.
6. He said he frequently uses profanity as a part of his normal speech, and it is not an indication of his mood or frustration level. He said if he learns someone is offended by profanity, he stops using it around them.
7. Harris said he is very sorry [REDACTED] was hurt by the interaction; however, to him it was unremarkable.

Policy Violation(s)

Section 2: General Policies and Procedures, F. Workplace Violence, 1. Workplace Violence Prohibition:

The City of Des Moines is committed to providing a safe workplace for its employees, guests, contractors, vendors and the public. Therefore, in an effort to help prevent or reduce the possibility of physical or emotional violence here in our workplace, the City of Des Moines has implemented this policy on workplace violence for our employees.

1. WORKPLACE VIOLENCE PROHIBITION

The City strictly prohibits threatened or actual workplace violence. This includes, but is not limited to, any of the following conduct associated in or around the workplace or otherwise related to employment:

- f. Using obscene or abusive language or gestures in a threatening manner;

Section 8. A. Rules and Conduct, 1. Immediate Discharge:

IMMEDIATE DISCHARGE

There are certain kinds of actions that cannot be permitted to occur because of their impact on other employees and the City. Such offenses may result in discharge on the first occurrence. The following list contains examples of such offenses. This list of examples is not all-inclusive. Before a final decision is made regarding a discharge, the City will convene a pre-termination meeting as provided for in the section on discharge.

- g. Threatening, intimidating, coercing or interfering with supervisors or other employees.

Summary of Findings [REDACTED] and Harris, JC

Conclusion

As indicated in Ms. Haggard's final report, there is a general agreement about the "substance" of the conversation but a difference in perception of the event. Mr. Harris admits that he was "frustrated" though not specifically "angry" with Ms. [REDACTED]. He also stated that he uses profanity as part of his regular communications and will only stop if told someone is offended. He also stated that he was "sorry if Ms. [REDACTED] was hurt" by the interaction but to him it was "unremarkable."

Mr. Harris is an elected official and Ms. [REDACTED] is the City Clerk for the City of Des Moines. A major function of the role of City Clerk is to provide administrative support to the Councilmembers as requested- guided by any relevant laws, guidelines, regulations and established City practices and procedures. Due to the nature of this relationship, e.g., work direction can be provided from the Council, there is a perceived perception of power that a councilmember has inherent authority within their position, particularly as it relates to the City Clerk's role. It is also important to mention that Ms. [REDACTED] has served as the Deputy City Clerk for approximately four (4) years and was only recently promoted to the City Clerk role on July 1, 2022. She is still learning her role, the dynamics of Council and the various personalities of Councilmembers.

Mr. Harris' behavior, whether intended or not, created a situation where Ms. [REDACTED] felt intimidated in the work environment. Additionally, his behavior led to a request by her to avoid future encounters with Mr. Harris unless others are present. Mr. Harris' behavior towards Ms. [REDACTED] has unreasonably interfered with her work performance, where even the most mundane task of simply opening the door to let a Councilmember out after a council meeting, now needs two (2) staff members to perform to ensure Ms. [REDACTED] feels comfortable in Mr. Harris' presence.

Though Mr. Harris stated that he was "sorry" if Ms. [REDACTED] was offended; he also said that he felt the interaction was "unremarkable." This statement is concerning in that Mr. Harris was or should have been aware that Ms. [REDACTED] was not involved with the scheduling of Councilmembers for the Senior Leadership Staff retreat. He also stated that while he was not "angry" with Ms. [REDACTED] specifically, he admitted he was frustrated during the interaction. He also admitted to using profanity during their exchange.

Unremarkable is defined as *"not worth of note or attention...ordinary."* Mr. Harris admitted he was frustrated and used profanity in his interaction with Ms. [REDACTED]. This interaction occurred- away from Council Chambers or other staff in a small confined space, and was initiated by Mr. Harris regarding his frustration for not being given a timeslot at the retreat. For Mr. Harris to find this sort of interaction "unremarkable" is concerning because there are elements of this interaction, such as his using profanity to express frustration, that are considered unacceptable per City policy and current standards. In sum, what Mr. Harris described as unremarkable would warrant disciplinary action as unbecoming or gross misconduct if it were a City employee with authority over Ms. [REDACTED] who engaged in the same conduct.

Mr. Harris also stated that he uses profanity as part of his normal conversation but will stop if informed that someone finds it offensive. Mr. Harris' position that he understands that the use of profanity can be offensive for others in the workplace and is willing to not use it but puts the onus on someone to tell him its offensive is misguided. Rather, the adverse position of not using profanity in the workplace unless and until you know the other person is comfortable with it would be a more acceptable position, though the most prudent course of action is not to use profanity at all.

Summary of Findings_ [REDACTED] and Harris, JC

It is unclear if Mr. Harris believes the use of profanity belongs in professional communication and interactions. Notable, however, is that Mr. Harris does not customarily use profanity at the dais during Council meetings so there appears to be some recognition by him that certain circumstances require a heightened awareness or sensitivity to adjusting communication styles based on the environment and whom you are talking to.

In addition, neither Ms. [REDACTED] nor Mr. Harris indicated that they have a relationship where he could have comfortably assumed that his use of profanity, when couched in frustration and anger, could not be perceived as intimidating.

It would seem that Mr. Harris, as an elected official, should understand his responsibility to conduct himself in a professional and respectful manner towards City staff. Additionally it is concerning that, Mr. Harris did not take full responsibility for the interaction, his behavior and subsequent impact to Ms. [REDACTED] without minimizing it later by recounting his perception of the event as “unremarkable” and only apologizing that Ms. [REDACTED] felt hurt, but not apologizing for his actions.

This suggests that Mr. Harris views his unprofessional interaction and communication with Ms. [REDACTED] as the norm, which is unacceptable.

Next Steps

The City does not have the ability to enforce our personnel policies as it relates to the conduct of Councilmembers. However, this does not negate our responsibility to ensure that Ms. [REDACTED] is able to perform her expected duties in the workplace free from this sort of behavior.

As a result, the following is recommended:

- Reinforce the appropriate communication protocol for Councilmembers to City staff.
- Reiterate the need for professional and respectful communication for Councilmembers to city staff.
- Ensure (as requested) that Ms. [REDACTED] is not alone with Mr. Harris to the best of our ability.
- Empower Ms. [REDACTED] with the ability to remove herself from any one on one interaction/communication with Councilmembers that involves anger, intimidation, profanity or is unprofessional and defer to Ms. Wilkins and/or the City Manager to address on her behalf.

ⁱ Ms. [REDACTED] did not report remembering seeing anyone else around during her interaction with Mr. Harris. The video reveals that a person did enter the foyer while they are present, but the person does not approach the area of the room where they were interacting.

HAGGARD & GANSON LLP

Municipal Law • Investigations • Neutral Services

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January 12, 2023

Mr. Mike Bolasina
Summit Law Group
315 Fifth Avenue South, Ste 1000
Seattle, WA 98104

Re: City of Des Moines, [REDACTED] complaint

Dear Mr. Bolasina:

At your request, I conducted intake interviews with [REDACTED], Des Moines City Clerk, and JC Harris, a Des Moines City Councilmember. On December 9, 2022, [REDACTED] sent an email expressing concern about an interaction she had with Harris following the December 8 council meeting. I spoke with [REDACTED] on December 21, 2022, and Harris on January 3, 2023. This report constitutes a summary of the interviews and factual background.

On December 9, 2022, [REDACTED] emailed City Manager Michael Matthias as follows:

When leaving the Council Chambers after the 12/08/2022 meeting, Councilmember [REDACTED] stopped me in the Court lobby. He was very upset/angry and stated to me that he didn't appreciate that I didn't schedule him 15 minutes. I told him I didn't know what he was talking about. He said all he has ever asked for was 15 minutes with staff and that I didn't schedule him that. I then asked if he was talking about that Staff Retreat and he said yes. He said he asked to be scheduled a time slot before noon. I told him I wasn't in charge of his event and that "I" didn't schedule anyone for this event. I told him this event was planned by other staff and that I was invited to come. I told him I would let the staff who planned the event know he was upset about not being scheduled. He then said that he doesn't know who does what, that sometimes Bonnie does clerk stuff and then sometimes I do. He then went on to say he does know when people are "Fucking" with him or not. I then told him I would never do that!

I was confused as to why he chose to wait until I was alone to confront me. I felt like he was trying to intimidate me. I also don't appreciate the use of profanity when he was speaking at me. His lack of professionalism and respect was very disrespectful. Because I was very uncomfortable in this situation I am asking that I am not alone when locking up the facility after a Council meeting in the future.

Mr. Mike Bolasina
January 12, 2023
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Chief Administrative Officer Bonnie Wilkins had emailed the councilmembers on November 29 to invite them to speak, in fifteen-minute individual timeslots, at the staff retreat on December 12. Harris did not initially respond to Wilkins' invitation.

On December 2, Wilkins emailed Harris, stating, "Circling back to see if you are available/interested in attending the Staff Retreat on December 12th. If so, I do need to know as soon as possible....by next Monday. Time slots already taken are 10:30, 11:45 and Noon." Harris responded that he had not forgotten and asked if a list of suggested topics had been proposed.

Wilkins responded, "We're still working out details, but for logistics I need to know who is coming and what time. We may have to restructure depending on how many and at what times." Harris replied, "My preference(s) would be: start w 12:00 and work backwards." Harris told me he was trying to communicate that his schedule was flexible. He thought Wilkins would understand that she should schedule everyone else first then put him in an empty timeslot.

This was not clear to Wilkins, who responded, "12:00, 11:45, 11:15 and 10:30 are taken. 10:45, 11:00 and 11:30 are available." Harris did not reply, so Wilkins did not reserve him a timeslot. Five of the seven councilmembers reserved speaking times and three of those five showed up to the retreat.

██████ and Harris generally agree on the substance of their December 8 interaction. Harris admitted he was frustrated that he had not been given a timeslot. He admitted telling ██████ that staff needed to communicate better in the future. He admitted stating words to the effect of, "I never know if people are fucking with me or not."

Despite their general agreement on the substance, ██████ and Harris did not perceive the interaction the same way. ██████ perceived Harris as angry and thought he was attempting to intimidate her. She said Harris could have spoken to her and Wilkins together in the council chambers rather than confronting her alone in the hallway. ██████ said Harris's face was red, he spoke in a harsh tone of voice, and he was waving his hands around. She was offended by his use of profanity. ██████ said she was so fixated on Harris's apparently hostile demeanor that she could not see anything else going on around her, including other people in the room.

Harris denied he was trying to intimidate ██████. He said he was frustrated with not receiving a timeslot but was not angry with ██████ specifically. He said the conversation lasted only about a minute, during which time other people were nearby. He denied raising his voice or intentionally gesticulating with his hands. He said he uses profanity as a part of his normal speech, and it is not an indication of his mood or frustration level. He said if he learns

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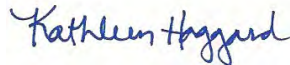
someone is offended by profanity, he stops using it around them. Harris said he is very sorry [REDACTED] was hurt by the interaction; however, to him it was unremarkable.

The City Hall security video shows the interaction, which lasted about 90 seconds, but does not contain audio. [REDACTED] told me that if I watched the video, I would see Harris looking animated and gesticulating with his hands. However, to an objective observer, that is not readily apparent. The footage is choppy, as if a motion-activated camera was used, but it does not show Harris acting in an obviously inappropriate manner. The footage does confirm that two other people were in the lobby during the interaction.

As noted, this letter is limited to a factual summary of the intake interviews and background. If you have any questions or need additional information, please let me know.

Sincerely,

HAGGARD & GANSON LLP

A handwritten signature in blue ink that reads "Kathleen Haggard". The signature is written in a cursive, flowing style.

Kathleen Haggard