

September 9th, 2023

RE: Ordinance 1704 Complaint

Dear Director Preston,

Pursuant to Ordinance 1704 § 4, I am notifying the Human Resources Director that I have become aware of two incidents that I am obligated to report under that Ordinance. Section 4 of the Ordinance provides that “any volunteer who is subjected to or **aware of** incidents of workplace harassment should report the incidents to the Human Resources Director or Alternate.” In my role as Mayor, I am concerned about ensuring that every member of Council feels safe and comfortable participating in City business, and I feel duty-bound under our policies to make this report. I do not make this decision lightly, but I feel that it is in the best interest of our Council that the incidents detailed herein be investigated, as the incidents have not been able to be resolved internally without this formal process.

Incident #1: Seaside, Oregon - League of Oregon Cities Conference

Occurred on the evening of April 25, 2023 while attending the Seaside League of Oregon Cities Conference. Council President Mary Baumgardner, Councilor Scott Erwin, and myself met after the conference activities had concluded for the day at a brewery to socialize (Sisu Brewing Company, located at 133 Broadway St, Seaside, OR 97138). It was the first time that the three of us had the opportunity to meet together to get to know each other as a group in a social setting. At some point during the conversation, Council President Baumgardner told a story about her childhood. Councilor Baumgardner referenced a male acquaintance. During the story, Councilor Erwin interjected and asked Councilor Baumgardner, “did you fuck him?” referencing the friend she mentioned during the story. As I remember the incident, Mary did not respond to the question at first and continued to tell the story. When the question was not answered, Councilor Erwin asked the question again, asking “did you fuck him?” a second time. At this time I think Councilor Baumgardner answered the question, and the subject was changed.

The evening continued and the group continued to socialize the rest of the evening, and eventually the three of us returned to our separate hotel rooms for the evening. In the days that followed, Mary confided in me that the comments made at the brewery made her feel uncomfortable. I had also thought about the comments as well in the days that followed. Mary and I discussed how the situation could be addressed. I then discussed the incident with the City Manager in May. The City Manager mentioned at this time that he was planning to talk to Councilor Erwin about an instance of inappropriate language used with staff. The result of these discussions was that I was to call Councilor Erwin as the mayor and inform him that the inappropriate comments he made at the brewery made Councilor Baumgardner feel very uncomfortable and let him know that it was inappropriate and not acceptable.

I made the aforementioned call on May 16th, 2023. It was my hope that Councilor Erwin would take the opportunity to make contact with Councilor Baumgardner and remedy the situation with an apology and plan of corrective action to ensure that Councilor Baumgardner

felt safe and that the behavior would not occur again. On information and belief, the situation remains unresolved, as to my knowledge Councilor Erwin did not apologize to Baumgardner or address the situation with her. I am concerned that the comments made at the Seaside brewery violated our policy against harassment, and the comments and lack of remedying the situation by the person who made the comments have contributed to a hostile working environment that is actively worsening as a result of events that have occurred since that time detailed below.¹

Incident #2: Inappropriate comment I became aware of stemming from a city attorney finalist one-on-one interview that occurred August 14th, 2023.

Each member of the City Council conducted a one-on-one interview with the finalist candidate for the City Attorney position following an earlier executive session interview. The City engaged a recruiter to coordinate the process and has been seeking to hire an in-house attorney. Based on my understanding, the one-on-one interviews occurred between Wednesday, August 9th, 2023 and Monday, August 14th, 2023. The final one-on-one interview took place Monday evening. I met with the candidate on Wednesday, August 9th for lunch. On information and belief, Council President Mary Baumgardner met with the candidate on Friday, August 11th, 2023 for coffee. Councilor Leo Groner met with the candidate on Monday, August 14th, 2023 around lunchtime for coffee, and Councilor Scott Erwin met with the candidate on Monday, August 14th, 2023 in the evening hours. Prior to the final one-on-one with Councilor Erwin, the candidate spoke with the City's executive recruiter, [REDACTED]. I received a report from the recruiter on the afternoon of Monday, August 14th that all went well with the three one-on-one interviews that had occurred at that time and that the candidate was eager to know about the next steps but that one meeting remained in the one-on-one stage with Councilor Erwin. Later that week on Friday, August 18th, I was very surprised to learn from the recruiter that the candidate had withdrawn from the process. I was sent a screenshot of a text where the candidate stated to the recruiter, in part, "I'm formally withdrawing from the West Linn process. My last Councilor meeting gave me way too many red flags and reservations." I then spoke with the recruiter by phone that afternoon.

At this time, I was told by the recruiter that the final one-on-one interview was set up by Councilor Erwin in a bar on the evening of Monday, August 14th. I was then made aware of an inappropriate comment alleged to have been made to the candidate by Councilor Erwin. At some point during the one-on-one interview, it was told to me by the recruiter that the topic of diversity came up in relation to the City Council. The candidate told the recruiter that the candidate had mentioned that Councilor Groner was Jewish as an example of diversity on Council during the one-on-one with Councilor Erwin, and it was relayed to me by the recruiter that Councilor Erwin had allegedly responded by saying something to the effect of "I have Palestinian friends who wouldn't give a shit that he is Jewish." The existence of the comment was relayed to me on two occasions, once by the recruiter and once by the City Attorney Peter Hicks who I believe also heard about the comment from the recruiter. It was told to me that the comment was not authorized to be disclosed because the candidate had told the comment to

¹ Ordinance 1704 prohibits, among other things in a list provided therein, "unwelcome, unwanted or offensive * * * intimate jokes, and other sexual talk, [and] intimate inquiries[.]" *Ord. 1704, Pg. 4.*

the recruiter on the phone when asked what was said that made him uncomfortable but had not expressly authorized the recruiter to share the comment as he had accepted another position and wanted to move on. The recruiter let me know that she was relaying this comment to me out of a sense of duty due potential employment law liability brought onto the City by the existence of and nature of the comment.

After reviewing Ordinance 1704, I am aware that the previous comment would likely violate the City's ordinance against workplace harassment, which prohibits "making jokes or derogatory comments * * * related to the gender, race, ethnicity, religion or age of a particular person or group." I later learned from the recruiter that the finalist candidate himself was Jewish, which compounded the severity of the situation and revealed how hearing that comment would have negatively impacted his view of the City in a way that was not previously known. Because the inappropriate comment would likely violate our policy detailed previously, and because of the potential liability brought onto the City by the comment, I am reporting this comment for investigation in accordance with my obligations under Ordinance 1704 detailed on Page 1.

The Executive Session and Follow Up Communication

On Thursday, August 31, City Council held an executive session to discuss a confidential memorandum prepared by the City Attorney's office to receive legal advice about the do's and don'ts of interviews in response to what was alleged to have occurred in the final one-on-one at the bar, and give the Council an opportunity to ask questions about what happened and what inappropriate comments were made that caused the candidate to feel uncomfortable, as referenced in the confidential memorandum. During the meeting, Council President Baumgardner raised the issue of a potential pattern of behavior regarding inappropriate comments made by a member of City Council and told the full Council about an incident that happened to her that involved Councilor Erwin (Incident 1 detailed above) without providing specific graphic details to Council. Baumgardner was then advised by the City Attorney about the complaint process available through Ordinance 1704 and was advised to follow that process as the remedy to her concerns. At this time, the City Attorney also mentioned the duty upon the City to ensure potential violations of our harassment policy are addressed. Councilor Erwin responded to Baumgardner's remarks and the City Attorney's comments by saying something to the effect of, the City Council should focus on its agenda and doesn't need this sort of distraction that has plagued the City in the past. Erwin made these comments as he looked at Baumgardner, and Baumgardner interjected and inquired as to why he was looking directly at her as he spoke about why the matters were not worth further inquiry. Erwin responded with something to the effect of, because you brought this issue up. I felt uncomfortable at this point, as it appeared to me that Erwin may have been attempting to discourage Council President Baumgardner from reporting the incident that she experienced and/or discouraging her and the Council from inquiring further into the comments in both incidents through a complaint or investigation which could also violate our policy against retaliation and discouraging a complainant from coming forward.² Following this exchange, I stepped in as chair of the meeting and said that I felt very uncomfortable with what had just happened and stated that the City's

² See Ord. 1704, Pg. 9 (Retaliation Prohibited; broadly defining retaliation.)

agenda is important but more important is ensuring that everybody on Council feels safe participating.

On Friday, September 1st, (the morning after the previously mentioned meeting), I received an email addressed to myself and City Manager Williams from Councilor Erwin. The email contained hostile work environment allegations that Councilor Erwin decided to raise against Council President Baumgardner. A copy of the email will be provided to Human Resources and the investigator. The timing of Councilor Erwin raising these allegations was concerning in that Erwin had just been put on notice the previous day that a complaint could be filed against him under the Ordinance. I have been uncertain how to respond to the email sent to me given our policy that broadly defines retaliatory conduct that would have the effect of discouraging a person from making a complaint or participating in an investigation. I am seeking formal guidance about how to handle that correspondence as well given the circumstances.

Requested remedy:

An investigation into the incidents detailed above is conducted to determine whether City policies were violated and recommending a plan of corrective action to remedy the situation. Councilor Erwin demonstrates accountability for the comments, thereby ensuring that all members of Council feel safe participating in City affairs.

Submitted by Mayor Rory Bialostosky