

**SPECIAL COMMITTEE-OF-THE-WHOLE CITY COUNCIL MEETING  
WEDNESDAY, NOVEMBER 4, 2015 – 5:30PM  
AGENDA**

- I. Welcome and Call to Order** – President Pro Tem Connie Fults, City Councilmember (Ward 4)
- II. Roll Call** – Vickie Hass, City Clerk
- III. Explanation of Purpose/Rules of Conduct re: Tonight’s Meeting** – Hearing Officer Harry O’Rourke, Interim City Attorney
- IV. Summary of Investigation and Charges Issued by City Council Against Mayor Bob Nation** – Attorney Kevin O’Keefe, Special Legal Counsel to City Council
- V. Response to Charges** – Mayor Bob Nation/Legal Counsel
- VI. Resolution No. 417** – Resolution Of Censure Of Mayor Bob Nation – President Pro Tem Connie Fults
- VII. Public Comment** – President Pro Tem Connie Fults
- VIII. Adjourn** – President Pro Tem Connie Fults

**NOTE:** City Council will consider and act upon the matters listed above and such other matters as may be presented at the meeting and determined to be appropriate for discussion at that time.

Notice is hereby given that the City Council may also hold a closed meeting for the purpose of dealing with matters relating to one or more of the following: legal actions, causes of action, litigation or privileged communications between the City's representatives and its attorneys (RSMo 610.021(1) 1994; lease, purchase or sale of real estate (RSMo 610.021(2) 1994; hiring, firing, disciplining or promoting employees within employee groups (RSMo 610.021(3) 1994; bidding specification (RSMo 610.021(11) 1994; and/or proprietary technological materials (RSMo 610.021(15) 1994.

RESOLUTION # 417

BEFORE THE CITY COUNCIL  
CITY OF CHESTERFIELD, MISSOURI

In Re: The Matter of )  
 )  
**MAYOR BOB NATION** )

**RESOLUTION OF CENSURE  
OF  
MAYOR BOB NATION**

**WHEREAS**, on July 1, 2015, at the Chesterfield City Hall, Mayor Bob Nation, without invitation or permission, closed the door to the office of a Chesterfield employee (identified for these purposes as Jane Doe) and subjected Ms. Doe to an angry, unwanted, intemperate, vulgarity-laced tirade during which he: (1) demeaned Ms. Doe’s supervisor;<sup>1</sup> (2) expressed the view that Ms. Doe’s supervisor should and would be removed from his position;<sup>2</sup> (3) invited her to convey his comments to her supervisor;<sup>3</sup> (4) insulted persons active in the community and with whom Ms. Doe interacted in her official duties;<sup>4</sup> and

**WHEREAS**, Mayor Nation knew at the time he engaged in the foregoing conduct that what he was doing was improper;<sup>5</sup> and

**WHEREAS**, also on July 1, 2015, at the Chesterfield City Hall, Mayor Bob Nation, also engaged a Chesterfield employee (identified for these purposes as Mary Roe) and (1) angrily confronted her<sup>6</sup> as to her supervisor’s whereabouts; and (2) demanded that she give him access to her supervisor’s calendar without her supervisor’s permission;<sup>7</sup> and

<sup>1</sup> “. . . our so-called ██████████ r . . .” “He then went on in a loud and excited voice to disparage ██████████, calling him a son-of-a-bitch and that he ‘needs to go.’” “He called him manipulative . . .” (Ms. Doe’s memorandum of July 1, 2015.)

<sup>2</sup> “He said he was fed up with it and that ██████████’s time had come and he would be taking action soon to address it.” (id.)

<sup>3</sup> “He . . . then acknowledged that he was sure I’d be letting ██████████ know about the conversation, but that he didn’t care and in fact, he ‘welcomed it’ and the time had come to address these issues.” (Id.)

<sup>4</sup> “. . . that piece of shit of ██████████’s . . .” “█████████ and ██████████ can go fuck themselves.” “Fuck, ██████████.” (Id.)

<sup>5</sup> “He said he knew it wasn’t right to say these things to me as a subordinate of ██████████’s . . .”

<sup>6</sup> “His tone was hostile and intimidating.” (Ms. Roe’s “Confidential” memo.)

<sup>7</sup> “Mayor Nation demanded that he have rights to ██████████’s calendar. . .” (Id.)

**WHEREAS**, Mayor Bob Nation has admitted that he engaged in the conduct described above and has not once denied that the facts related by those subjected to his actions were accurate; and

**WHEREAS**, the City of Chesterfield has adopted a written "No Harassment" policy that prohibits verbal conduct which has the purpose or effect of creating an intimidating, hostile or offensive working environment or which has the purpose or effect of unreasonably interfering with an individual's work performance and which encompasses actions between co-workers and non-employees alike; and

**WHEREAS**, the City of Chesterfield has adopted a code of conduct which city personnel are expected to live up to, including prohibiting discourtesy, interfering with the work performance of others, and disruptive activity in the workplace; and

**WHEREAS**, Mayor Bob Nation's conduct with Ms. Doe on July 1, 2015, was contrary to Chesterfield's No Harassment policy and was contrary to the code of conduct expected of Chesterfield personnel; and

**WHEREAS**, Mayor Bob Nation's conduct with Ms. Roe on July 1, 2015, was contrary to Chesterfield's No Harassment policy and was contrary to the code of conduct expected of Chesterfield personnel; and

**WHEREAS**, Mayor Bob Nation's conduct, especially his vulgar and intemperate statements to Ms. Doe and in demeaning and threatening her supervisor to her and demanding access to Ms. Roe's supervisor's calendar, was disruptive to the good order and discipline of the City's workforce and interfered with the loyalty subordinates owe to their superiors and thereby disturbed the efficiency and well-being of the City; and

**WHEREAS**, Mayor Bob Nation has sought to minimize his misconduct on the basis that he "had a bad day on July 1" and merely "vented his frustration" such that these women "bore the brunt" of his ire with someone else, and suggests these were "isolated incidents"; and

**WHEREAS**, the City Council notes that Chesterfield's policies do not provide that one cannot harass an employee more than once or prohibit only second acts of misconduct; and

**WHEREAS**, the City Council understands that we can hardly hold those who work for us to the high standards we expect if we do not hold ourselves and those accountable to us to those same standards of professionalism, good conduct, fair treatment and respect; and

**WHEREAS**, several citizens recently addressed this Council and cautioned that elected officials should always act with dignity and honor and be sensitive to not act in ways that embarrass the City or its residents; the City Council wholeheartedly agrees and appreciates their ratification of our view that if elected officials act in a way that does not reflect the dignity of the office they hold, that tarnishes the City's honor or is a source of embarrassment we must act in some way to hold them to account for their actions;

**WHEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI, AS FOLLOWS:**

The City Council of the City of Chesterfield hereby expresses its profound disappointment with the conduct of Mayor Bob Nation on July 1, 2015, as aforesaid, and publically reproaches Mayor Bob Nation for his inappropriate behavior.

The City Council further expresses to Mayor Bob Nation that the Council and the people of Chesterfield have a right to expect that the Mayor will in the future comport himself with honor and temperance and treat all with whom he interacts in the course of his duties with dignity and respect.

The City Clerk is instructed to lodge this Resolution in the official records of the City.

PASSED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.

\_\_\_\_\_  
Council President Pro-Tem,  
Presiding Officer

Attest:

\_\_\_\_\_  
City Clerk

BEFORE THE CITY COUNCIL  
CITY OF CHESTERFIELD, MISSOURI

In Re: The Matter of )  
 )  
**MAYOR BOB NATION** )

**ORDER TO SHOW CAUSE  
AND ANSWER TO CHARGES OF MISCONDUCT**

**WHEREAS**, the Mayor and City Council have received the report of special counsel ("Report") regarding the results of an inquiry into allegations of improper conduct on the part of Mayor Bob Nation, a copy of which is appended hereto for reference; and

**WHEREAS**, the City Council believes the information contained in the Report, the critical portion of which is undisputed, suggests that the Council should consider taking disciplinary against Mayor Nation and institute other appropriate corrective action; and

**WHEREAS**, it is appropriate that Mayor Nation be advised of specific allegations of misconduct and afforded an opportunity to be heard before the Council acts;

**NOW, THEREFORE, IT IS DIRECTED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI, AS FOLLOWS:**

**ORDER TO SHOW CAUSE**

TO: Mayor Bob Nation

You are hereby notified that you are to appear before the City Council on ~~WEDNESDAY~~, ~~NOVEMBER 4~~, 2015, at 5:30 PM in the City Council Chambers at Chesterfield City Hall to show cause, if any there be, why the City Council should not adopt the attached Resolution of Censure in response to your acts of misconduct as detailed in the charges and specifications that follow.

**Item One. Violation of No Harassment Policy**

The City of Chesterfield has adopted and promulgated a "No Harassment Policy" which states in relevant part as follows:

. . . the City of Chesterfield expects that all relationships among persons in the workplace will be business-like and free of bias, prejudice and harassment. Harassment of any kind is prohibited and will not be tolerated.

Harassment is defined as verbal or physical conduct which:

1. Denigrates or shows hostility . . . toward an individual because of his/her . . . gender;
2. Has the purpose or effect of creating an intimidating, hostile or offensive working environment;
3. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
4. Otherwise adversely affects an individual's employment opportunities.

The policy specifically states it encompasses "not only supervisor/subordinate actions, but also actions between coworkers, vendors, customers or other non-employees."

Finally, the policy provides that:

If the City determines that an employee has harassed another employee, appropriate remedial action will be taken against the offender, up to and including termination.

The City prohibits any form of retaliation against an employee for lodging a complaint under this policy or for assisting the investigation of a claim of harassment.

**CHARGE #1** That on July 1, 2015, at the Chesterfield City Hall Mayor Bob Nation violated the Chesterfield No Harassment Policy with regard to the persons identified in the accompanying Report as Jane Doe and Mary Roe, employees of the City of Chesterfield.

**SPECIFICATION 1.1** In (a) closing Ms. Doe's office door without her leave to do so; and (b) subjecting Ms. Doe to a vulgar, unwelcome and angry rant against citizens with whom she interacts and her immediate supervisor and an inappropriate and hostile tirade, Mayor Nation engaged in verbal and physical conduct with the effect of creating an intimidating, hostile and

offensive working environment for Ms. Doe contrary to the City's No Harassment Policy.

**SPECIFICATION 1.2** In (a) angrily demanding that Ms. Roe tell him the whereabouts or her supervisor; (b) directing her to provide him unauthorized access to her supervisor's calendar; and (c) subjecting her to his criticism of her direct supervisor Mayor Nation created an intimidating, hostile and offensive working environment for Ms. Roe contrary to the City's No Harassment policy.

**Item Two. Violation of Conduct Policy**

The City of Chesterfield has adopted and promulgated a conduct policy which gives all personnel "fair notice of what is unacceptable conduct" including, but not be limited to:

4. Discourtesy.  
\* \* \*

14. Interfering with the work performance of others. . . . disruptive activity in the workplace.

**CHARGE #2** That on July 1, 2015, at the Chesterfield City Hall Mayor Bob Nation violated the Chesterfield conduct policy with regard to the persons identified in the accompanying Report as Jane Doe and Mary Roe, employees of the City of Chesterfield.

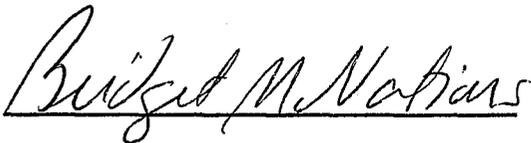
**SPECIFICATION 2.1** In (a) closing Ms. Doe's office door without her leave to do so; and (b) subjecting Ms. Doe to a vulgar, unwelcome and angry rant against citizens with whom she interacts and her immediate supervisor and an inappropriate and hostile tirade, Mayor Nation was discourteous to Ms. Doe, interfered with Ms. Doe's work performance and engaged in disruptive activity in the workplace, all contrary to the City's conduct policy.

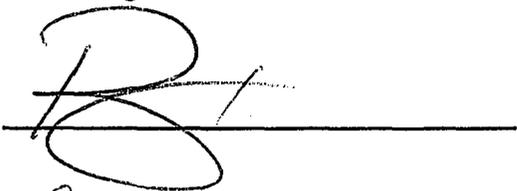
**SPECIFICATION 2.2** In (a) angrily demanding that Ms. Roe tell him the whereabouts or her supervisor; (b) directing her to provide him unauthorized access to her supervisor's calendar; and (c) subjecting her to his criticism of

her direct supervisor Mayor Nation was discourteous to Ms. Roe, interfered with Ms. Roe's work performance and engaged in disruptive activity in the workplace, all contrary to the City's conduct policy.

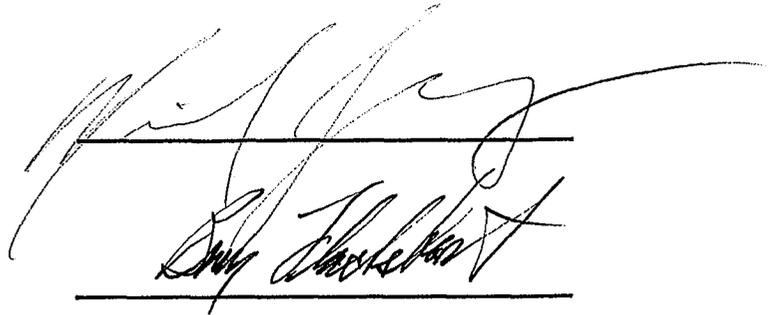
**ADOPTED BY THE CITY COUNCIL OF CHESTERFIELD THIS 19th DAY OF OCTOBER, 2015.**

  
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TO: Chesterfield City Council and Mayor Nation

FROM: Kevin M. O'Keefe, Special Counsel

DATE: September 9, 2015

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My engagement charged me to investigate "the interaction between Mayor Nation and Jane Doe<sup>1</sup> that took place on July 1, 2015." I was also requested to "include any relevant surrounding information . . . to understand the context of this . . . interaction." And I was told that I may "expand to other relevant factors . . . [to] help the Council make a determination of how best to respond to the latest allegations against the Mayor."

I was requested to "prepare written findings of fact and a recommendation to the Council on how to respond to the matter" including an opinion as to the "extent of potential liability, if any, that the city may face based on [my] findings regarding the allegations against the Mayor."

I have interviewed Ms. Doe, witnesses to the events of July 1, all Chesterfield employees holding positions comparable or superior to Ms. Doe, any member of the City Council who wished to be heard and witnesses to allegedly similar events. Mayor Nation cooperated fully with me and was especially generous with his time, for which I am most grateful.

This memorandum and related documents are now submitted to the Mayor and City Council in accord with that engagement.

## **FINDINGS**

### **Events of July 1, 2015**

The events which took place in city hall on the afternoon of Wednesday, July 1, 2015, are not in dispute. Jane Doe prepared a contemporaneous memorandum to record the event. A redacted copy is attached as Exhibit A. In my conversations with Mayor Nation he twice said he had reviewed her written memo and did not dispute that the events and statements she described took place (except that he said he started by saying he was not angry with Ms. Doe but was "just venting"). Mayor Nation also prepared and

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<sup>1</sup> In an effort to minimize embarrassment or consequences to employees brought into this process they will be referred to by pseudonyms in written documents.

provided to me a written memorandum with his comments and recollection of the event. A redacted copy of that memo is attached as Exhibit B.

Thus, both Ms. Doe and Mayor Nation agree that the Mayor was agitated and disturbed that his name was misspelled<sup>2</sup> on the letter he was being asked to sign that afternoon. Mayor Nation went into Ms. Doe's office and closed the door. Thereafter Mayor Nation remained between Ms. Doe and the doorway effectively blocking Ms. Doe from being able to exit while their conversation ensued.

While Ms. Doe and Mayor Nation differ as to whether he began his comments by saying it was "time he had a venting session" or, in the Mayor's recollection, saying "I'm not angry with you, I'm just venting", there is not a dispute that he proceeded to express frustration and evidence agitation or anger about "our so-called city administrator" and other subjects. Nor is there any dispute that he made the following statements in an agitated manner which Ms. Doe reasonably sensed as anger:

- "That piece of shit of [REDACTED]'s needed to go" (referring to a painting).
- "[REDACTED] and [REDACTED] can go fuck themselves."
- "Fuck [REDACTED]. He's not even a resident."
- Referred to [REDACTED] (Ms. Doe's boss) as a "son-of-a-bitch" who "needs to go."
- Told Ms. Doe that it is "time for [REDACTED] to pack his bags" and Mayor Nation would "see to it."

After he finished "venting" to Ms. Doe Mayor Nation opened her office door and proceeded to another employee's desk immediately outside. Mayor Nation then asked that employee, Mary Roe<sup>3</sup>, where [REDACTED] was. When told [REDACTED] was out of the office on vacation Mayor Nation complained to Ms. Roe about [REDACTED]'s absences and demanded that Ms. Roe give Mayor Nation access to [REDACTED]'s calendar. Ms. Roe, who is and was known by Mayor Nation to be [REDACTED]'s subordinate, stated she was unable to authorize such access without [REDACTED]'s approval.

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<sup>2</sup> His name originally appeared as "Robert Nations." When he asked that it be changed it was revised to "Robert Nation." He was still disturbed because he always uses the first name of "Bob." He finally signed the "Robert Nation" signature block as "Bob Nation."

<sup>3</sup> Also a pseudonym.

Ms. Roe observed Mayor Nation to be visibly "agitated and angry" and said his actions and appearance made her "uncomfortable." Ms. Roe prepared a memo of her recollections of the event. A redacted copy is attached as Exhibit C.

No male employee reported ever experiencing anything akin to what happened to Ms. Doe or Ms. Roe. Mayor Nation denied engaging in any similar "venting", denigration of Mr. Herring, stream of vulgarities or closing himself into an office with any other city personnel.

Mayor Nation left a voice mail message for Ms. Doe in which he apologized for his conduct. He later offered to apologize in person, an offer she declined because his actions have made her uncomfortable and fearful. I have no indication Mayor Nation has attempted to apologize to Ms. Roe for what she witnessed and how she was treated.

#### Metro Mayors Meeting, September 11, 2014

In keeping with my direction to address other relevant matters that afford context or might suggest a direction for response I also made inquiry into an event that took place last December when Mayor Nation was representing the City of Chesterfield at a meeting of the regional "Metro Mayors" organization. Several Council Members and others made reference to this event as an example of Mayor Nation's possible tendency to intemperance, anger, inappropriate conduct and use of vulgarity.

The Metro Mayors organization is comprised of the mayors of regional cities over 10,000 population. It meets periodically to exchange information and to promote cooperation and collaboration among the communities the members represent. The meeting at issue was held on December 11, 2014. That was the day when the City of Chesterfield was scheduled to file a law suit to challenge the sales tax distribution system in St. Louis County, a subject very important to Mayor Nation.

As the meeting progressed the other mayors in attendance declined to prioritize discussion of sales tax distribution despite Mayor Nation's urging to do so. This frustrated and angered Mayor Nation. What happened next is a matter of some dispute.

Most of those in attendance with whom I spoke recalled that Mayor Nation expressed his displeasure by using vulgarity (telling the group either "fuck off" or "fuck you" and referring to the proceedings as "bullshit"), forcefully slapping his hand on the table and abruptly leaving the meeting.

In my first conversation about the event with Mayor Nation he said the subject of sales tax distribution was much on his mind that day and was one he then and now feels very strongly about. He said he made a "strong statement" and that vulgarity "may have been involved." He also said he "forgets exactly what was said" but that he later became unhappy with what he said and called everyone in attendance to apologize to them.

Mayor Nation recalled that two members of the City Council discussed the Metro Mayors event with him in January or February. They called him to task for allowing his emotions to potentially disrupt the city's regional relationships. He said he thought the members were acting on their own and tried to threaten him. Councilmember ██████ related that he was asked by Councilmembers to reproach Mayor Nation for his intemperate and disruptive actions. He and Councilmember ██████ spoke to the Mayor who admitted "maybe" he had used profanity at the Metro Mayors meeting. The two Councilmembers counseled the Mayor that his actions put the City in a bad light and that he was not fairly representing the City by such conduct.

In my second interview with Mayor Nation he became agitated when I returned to this subject. When I recounted what I had been told and asked if he used the vulgarities attributed to him he categorically denied having used any vulgarities. He said any assertion that he used the words described above was "an absolute fabrication" and said he believed he may have used the word "friggin" instead. He acknowledged that while at the Metro Mayors meeting he was "indignant and upset" at the way the meeting had gone, but stated to me that anyone who said he had used such vulgarities "is a lying piece of shit."

#### Ms. Roe

Ms. Roe serves as staff assistant to Mayor Nation. She assists him with scheduling, correspondence, etc. Her workplace is right outside his office door in city hall.

She recounts that she generally overhears Mayor Nation's telephone conversations in his office and they are frequently so loud and forceful as to be readily audible at her desk. She has heard him use colorful or ribald language with sufficient frequency as to be disturbing and disruptive to her. She was reluctant to complain in the past but after observing his conduct in regard to Ms. Doe and having him directly confront her in regard to her direct superior she is very uncomfortable with his presence and nervous lest she be put in a difficult position again.

## Mayor Nation's Understanding of the Matters

In response to the Council's request to provide information that might help the Council make a determination of how best to respond to the matters at hand I offer the following observations.

Mayor Nation has clearly expressed to me his remorse at his conduct on July 1. He says he understands he was wrong. But in doing so I must report that he never appeared to express, appreciate, or even recognize, that demeaning and insulting an employee's supervisor in such dramatic and disquieting ways places the employee in an untenable situation and undermines order, discipline and efficient functioning of the organization.

I must also report that Mayor Nation, while regretful for the outbursts described in this report, does not seem to appreciate the gravity of the matters. He referred to his counseling meeting with Councilmembers [REDACTED] and [REDACTED] regarding the Metro Mayors meeting as the result of a "witch hunt" generated by [REDACTED] and more of a political threat than a genuine reprimand. Likewise, in my last meeting with him, he suggested concern for his July 1 actions was "blown up" for political purposes, and said he doesn't understand how Ms. Doe could have felt threatened or intimidated by his actions unless she is overly sensitive.

And, as reflected in his July 1 event memo, Exhibit B, he attributes all of what has happened to purposeful manipulation of events by [REDACTED]. In my conversations with him he also attributes his situation to political retribution by Councilmembers who supported his opponent in the 2013 election.

## **APPLICABLE STANDARDS OF CONDUCT**

Section I(A) of the July 2015 Personnel Manual of the City of Chesterfield says that the "policy handbook has been prepared to serve as a guide for the employer/employee relationship" and that the policies are designed and adopted "to make the City of Chesterfield a great place in which to work."

Section I(E) of the Manual articulates a "No Harassment Policy" which states in relevant part as follows:

. . . the City of Chesterfield expects that all relationships among persons in the workplace will be business-like and free of bias, prejudice and harassment. Harassment of any kind is prohibited and will not be tolerated.

Harassment is defined as verbal or physical conduct which:

\* \* \*

2. Has the purpose or effect of creating an intimidating, hostile or offensive working environment;
3. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
4. Otherwise adversely affects an individual's employment opportunities.

This policy also prohibits sexual harassment. Sexual harassment is defined as:

\* \* \*

2. . . . all other verbal or physical conduct of . . . [an] otherwise offensive nature, particularly where:

A. submission to such conduct is made explicitly or implicitly a term or condition of employment; [or]

\* \* \*

C. such conduct has the . . . effect of creating an intimidating, hostile or offensive working environment.

The policy requires employees observing or experiencing harassing conduct to report the matter, and specifically states the policy includes "not only supervisor/subordinate actions, but also actions between coworkers, vendors, customers or other non-employees."

Finally, the policy provides that:

If the City determines that an employee has harassed another employee, appropriate remedial action will be taken against the offender, up to and including termination.

The City prohibits any form of retaliation against an employee for lodging a complaint under this policy or for assisting the investigation of a claim of harassment.

Sec. V(C) of the manual gives all personnel "fair notice of what is unacceptable conduct" to include, but not be limited to:

4. Discourtesy.

5. Off-duty conduct that does not reflect favorably on the City.

\* \* \*

14. Interfering with the work performance of others. . . . disruptive activity in the workplace.

15. Harassing, including sexually harassing, employees or customers.

\* \* \*

## 25. Violation of personnel policies.

Finally, Sec. V(D) of the manual addresses the city's sexual harassment policy in more detail and states that "harassment between our employees and non-employees . . . in connection with the work is also prohibited."

In addition, as noted below, the City Council has inherent authority to require all city officials and personnel to act at all times so as to act in a manner that may tend to injure the good name of the organization, disturb its well-being or hamper it in its work.

### **COUNCIL AUTHORITY**

Section 77.340, RSMo., authorizes the removal from office of any elective officer of a third class city for cause and after hearing by two thirds vote of the members of the City Council.

In considering this statute in the context of impeachment of the mayor of a 3<sup>rd</sup> class city the Missouri Court of Appeals has said:

Therefore, the appropriate meaning of the "for cause" standard for impeachment of the elected Mayor here should not only "specifically [relate] to and [affect] the administration of [his] office, and ... be ... of a substantial nature directly affecting the rights and interests of the public," [citation omitted]; it should also be limited to objective reasons which reasonable people, regardless of their political persuasion, could agree would render any mayor's performance ineffective. Such cause would include acts of misfeasance, the improper performance of some act which may lawfully be done, malfeasance, the commission of some act wholly beyond actor's authority, and nonfeasance, the failure to perform a required duty.

*Fitzgerald v. City of Maryland Heights*, 796 S.W.2d 52, 56-57 (Mo. Ct. App. 1990)

Section 2-31 of the Chesterfield City Code also contemplates that a mayor of the city is subject to removal from office in the manner provided by law.<sup>4</sup>

Section 2-51 of the Chesterfield City Code provides that the "current edition" of Roberts Rules of Order Newly Revised is the parliamentary authority for

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<sup>4</sup> "When any vacancy shall happen in the office of Mayor by . . . removal from office . . . or otherwise . . . ." Sec. 2-31, City Code.

the city in the conduct of Council meetings except as may be inconsistent with state law or specific procedural rules adopted by the City Council.<sup>5</sup>

The current edition of Roberts Rules is the 11<sup>th</sup> Edition, published in 2011. In that publication it states as follows (*Roberts Rules of Order Newly Revised, 11<sup>th</sup> Edition, Ch. XX, Sec. 61, page 643*):

“. . . an organization or assembly has the ultimate right . . . to require that its members refrain from conduct injurious to the organization or its purposes.”

“Punishments that a society can impose generally fall under the headings of censure, fine (if authorized in the bylaws), suspension or expulsion.”

At Sec. 63, page 655, *Roberts* also emphasizes that “A society has the right to investigate the character of its members as may be necessary to the enforcement of its own standards.”

*Roberts* refers to conduct “tending to injure the good name of the organization, disturb its well-being or hamper it in its work” and says “[i]n any society, behavior of this nature is a serious offense properly subject to disciplinary action, whether the bylaws make mention of it or not.” (*Id.*, at Sec. 61, p. 644.)

Based on the foregoing authorities it is the opinion of the author that Mayor Nation may be subject to impeachment and removal from the office of mayor if two thirds of the City Council believes he has:

- (1) either
  - (a) improperly performed some otherwise lawful act (misfeasance), or
  - (b) done something which he was not lawfully entitled to do (malfeasance), or
  - (c) failed to perform as required (nonfeasance); and
- (2) such conduct relates to the administration of his office; and
- (3) the circumstances affect the rights and interest of the public in, for instance, the correct discharge of an official's duties and the efficient and proper conduct of the government's affairs.

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<sup>5</sup> “The rules contained in the current edition of “Roberts Rules of Order Newly Revised” shall be the parliamentary authority and shall govern the conduct of all meetings of the Council in all cases where they are not inconsistent with statute or with the rules of procedure [Section **2-50**] herein or hereafter adopted.” Sec. 2-51, City Code.

Likewise it follows, as articulated in *Roberts Rules*, that the City Council also has inherent authority to impose lesser discipline in the face of conduct which may or may not rise to the level of misfeasance, malfeasance or nonfeasance but which tends to injure the good name of the city, or tends to disturb the efficient and effective operation of the city and/or tends to hamper the city in the management of its affairs or delivery of services to its constituents.

Such lesser discipline may include public or private censure or other sanctions or constraints intended to penalize past conduct and/or promote compliance with appropriate standards of conduct in the future without actually removing the Mayor from office or effectively rendering the performance of his duties impossible.

Neither state statutes nor city ordinances provide a fixed procedural process by which a city council is to go about considering disciplinary action against an elected official. *Roberts Rules* does, however, provide guidance that is consistent with the constitutional due process standards developed in decisional law (*RONR, 11<sup>th</sup> Edition, Ch. XX, Sec. 63, page 656*):

A member or officer has the right that allegations against his good name shall not be made except by charges brought on reasonable grounds. If thus accused, he has the right to due process – that is, to be informed of the charge and given time to prepare his defense, to appear and defend himself, and to be treated fairly.

One difference between *Roberts Rules* and state law, however, pertains to the public nature of disciplinary proceedings. *Roberts* declares that the entire process should be closed and protected against the public being aware of the charges or consideration being given to them. See: *RONR, 11<sup>th</sup> Edition, Ch XX, Sec. 63, page 655*.

But Missouri's Sunshine Law allows closure of meetings and records only as they pertain to "employee" personnel files and actions. The Missouri Attorney General has opined (Opinion No. 77-92, Flotron, March 16, 1992) that the word "employee" in that statute (Sec. 610.021(3) and (12), RSMo.) does not encompass elected officials. That opinion is consistent with the Missouri Court of Appeals holding in *Hawkins v. City of Fayette*, 604 S.W.2d 716, 723 (Mo. Ct. App. 1980) which held that the "personnel" exemption for closure of meetings and records did not pertain to actions relating to an elected mayor.



July 1, 2015

Mayor Nation came into my office at approximately 3 p.m. today, returning a letter we had prepared for his signature, asking who had prepared the letter and "that wasn't his name." By mistake, we had added an "s" to his last name. I explained that [REDACTED] wrote it and I had formatted and gotten the signatures from Monsanto and RGA. He was right to be angry and frustrated with this and I apologized and said I would redo the letter.

He then shut my door and I could tell he was very angry about something, which I assumed would be more about the letter and misspelling his name. He said it was "time he had a venting session with me about our so-called [REDACTED]" and about why we are still involved with Chesterfield Arts/Arts Unleashed. He was particularly referring to a benefit concert "Art Invasion" that is at the amphitheater on July 18. He went on to talk about how after this gallery exhibit in City Hall is done that should be the last one and, "that piece of shit of [REDACTED]'s needed to go [referring to the large painting on the 2<sup>nd</sup> floor atrium]. Why should we continue to support the [REDACTED]'s and Chesterfield Arts when all they have done is try to get the City's money? [REDACTED] and [REDACTED] can go fuck themselves. We should sever all ties with this new arts group and have no interaction with them at all. Who is driving this? Is it [REDACTED] [REDACTED]?" I tried to explain to him that [REDACTED]'s painting was removed this week and that the City is now arranging the gallery exhibits and they have nothing to do with Arts Unleashed/Chesterfield Arts. I explained that as for the Concert, it's generally a rental and they have sponsors to cover the costs and that [REDACTED] was not involved in planning this event. I told him the City is also benefitting from the funds raised at that event. I said [REDACTED] has been leading/planning that event, to which he replied, "Fuck, [REDACTED]. He's not even a resident."

He then went on in a loud and excited voice to disparage [REDACTED], calling him a son-of-a-bitch and that he "needs to go." "It's time for him to pack his bags and I'm going to see to it." He called him manipulative and said that he only presents select information to Councilmembers about any given subject. He said he knows [REDACTED] is avoiding him and that he's responsible for a number of "shenanigans" recently. I listened, but was very uncomfortable and unsure as how to reply, quite shocked that he would talk to me about my own boss in this manner. He said he knew it wasn't right to say these things to me as a subordinate of [REDACTED]'s and that he had never mentioned such things to [REDACTED] or [REDACTED]. He said he was fed up with it and that [REDACTED]'s time had come and he would be taking action soon to address it. I only said that decision was up to him and City Council. He kept looking at me as though I should say something more and then acknowledged that he was sure I would be letting [REDACTED] know about the conversation, but that he didn't care and in fact, he "welcomed it" and the time had come to address these issues.

He left my office and then asked [REDACTED] to have access to [REDACTED]'s calendar. She replied that [REDACTED] would have to grant him access and she couldn't do that. The Mayor said that "he's never here and I need to know where he is."

While I am in a leadership position and have a great deal of interaction with the Mayor, the conversation made me very uncomfortable and uneasy. The tone of his voice and vulgar language used was very upsetting. To hear him disparage [REDACTED] and accuse him of such things so blatantly was particularly offensive to me.

Memorandum for record regarding conversation between myself and [REDACTED] on the afternoon of Wednesday, July 1, 2015.

To begin, I will say that there is a long history of strained relationship between me and our [REDACTED]. I have tried on numerous occasions to lay a foundation for better communication between the two of us. Evidence of this is a memorandum for record that I prepared last October following a meeting with [REDACTED]. I shared this memorandum with Council Member [REDACTED] (who at the time was serving as Mayor Pro-Tem). In an effort to try to improve the communication process, we scheduled to have a couple of lunch meetings with the three of us. After one or two of these meetings, I thought that [REDACTED] and I could communicate between the two of us without the assistance of [REDACTED]. Unfortunately, [REDACTED] has disappointed me in this regard.

[REDACTED] has displayed extremely passive-aggressive behavior and at times is borderline insubordinate. I find this unacceptable in that state statute dictates "[REDACTED] will be chief administrative assistant to the Mayor". To me this implies that there is a subordinate relationship between the Mayor and [REDACTED]. He is frequently not at city hall and his whereabouts are unknown to me. I know that he is (or should be) a busy employee of the city with many responsibilities and therefore, am respectful of his time. However, as Mayor, I need to be kept abreast of city matters and need to have open and ongoing communication with the city administrator in order that I can fulfill my duties as Mayor. On several occasions after not getting an answer on his phone numbers I have left voice messages asking him to call me. Most of these times, I would get an e-mail response, but several times there was no response at all. Last Wednesday was one example that after having talked with [REDACTED] and asking her specifically to ask him to call me, he did not respond. After coming into the office in the afternoon, [REDACTED] told me that he was on vacation. I was perplexed as usually when he is taking vacation, I/we are given advance notice. She then added that he is in the area. His non response to me is a prime example of his unprofessional and irresponsible passive-aggressive behavior.

There have been a handful of little things that have occurred recently that have added to my frustration with our [REDACTED]. I think he may have had knowledge or involvement, if not responsibility for these ridiculous actions. One such occurrence was scheduling for travel to a CALEA event in Colorado Springs. I had been asked by [REDACTED] if I would be willing to participate in support of our department at this event relating to re-accreditation of Chesterfield Police Department during the period July 24 through July 26. [REDACTED] told me that past Mayors have usually attended, and for this reason, I thought I should also follow suit. It was explained to me that we did not need to be out there until Friday night and that airline reservations would be made for me. After a couple weeks went by, I inquired with the [REDACTED]'s secretary to verify the dates because I had another request from [REDACTED] for another event that I thought conflicted with the trip to Colorado. Shortly after this inquiry, I was told that they had me on a 6 AM flight and that a travel agency had booked the flight and that was the only one that would get me there in time? I thought this sounded strange and checked for myself and found this was

not true, there were several other flights at comparable fares that would get me out there in plenty of time without having to get up at 3:30 in the morning. [REDACTED] knows that I am not fond of early mornings and I am surprised that I was not consulted before the reservation was made. I think it is likely that [REDACTED] was consulted and he said go ahead because he knew this would aggravate me with the unnecessarily early morning travel arrangement. After asking [REDACTED] about all this, the reservation was changed, again without checking with me. I was disappointed that there was a penalty fee for the change of reservation. This is not responsible management of taxpayer dollars.

On Wednesday morning, I had put in a call to our [REDACTED] to ask him a couple questions. He was not available and I left a voicemail for him. He returned my call later that afternoon. I had also had a phone conversation with [REDACTED] and received a call from [REDACTED] that a letter going to East-West Gateway was ready for my signature. I told her that I would come in the afternoon to sign the letter. When I arrived to sign the letter, I found that my signature block was incorrect. As long as I have been Mayor, it is known that I sign all correspondence as Bob Nation. The signature block had my first name as Robert, and my last name was misspelled. I was perplexed that there would be this type of mistake and asked who did this, in a quizzical manner. I could understand if another secretary had done this, but then did [REDACTED] or someone proof-read? I was disappointed, but not angry at this shortcoming. I had also been informed by [REDACTED] after asking if [REDACTED] was in, that he was on vacation. I don't know if he had previously proof-read this letter (as it was a high priority letter with participation from Monsanto and RGA) or left this to [REDACTED]

I believe that I have a good relationship with all city employees with the exception of [REDACTED]. It is my impression that these relationships are based on mutual respect and honesty. The relationship that I have had with [REDACTED] is no exception, and because she is a member of senior management, I have had fairly frequent contact with her coordinating on several issues. I was not angry with her and prefaced what I said to her with "I m not angry with you and am just venting". I mistakenly thought that our relationship was such that I could confidentially vent to her and this was why I closed the door. What I said to her in no way was intended to be threatening or intimidating, merely venting in private. My frustrations with he [REDACTED] have been building for quite some. It is my belief that the [REDACTED] has deliberately tried to provoke my aggravation, and if there is any unhealthy work environment, it is being created by and is the responsibility of the [REDACTED]. However, I now realize I had no right to vent to [REDACTED] as I did.

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On July 1, I witnessed Mayor Nation walk into [REDACTED] office, he started to talk to her then he closed the door. I heard him raise his voice, but could not hear what he was saying; I could only tell by his raised voice that he sounded very angry. After he left [REDACTED] office he came to my desk and asked me where [REDACTED] was. I told him [REDACTED]'s calendar shows he has vacation scheduled from 1pm-5pm. Mayor Nation asked me if [REDACTED] is just allowed to take vacation whenever he wanted without telling anyone. His tone was hostile and intimidating, I reassured him [REDACTED] was not going out of town; he was off for the afternoon. Mayor Nation demanded that he have rights to [REDACTED]'s calendar, and said that he needs to know where [REDACTED] is! I explained to Mayor Nation that I would not be able to give him rights to [REDACTED]'s calendar without approval from [REDACTED]. Mayor replied that he had asked for calendar rights in the past, and then said to me "I am sure you can see what is going on here!" At this point, I could tell he seemed very agitated and angry, I felt very uncomfortable and chose not respond to his comment, I only replied that I was sorry, I could not give him rights without approval".

This is not the first time Mayor Nation has made me uncomfortable; sometimes he comes off as a bully, which I just internalize.