

CITY OF BRIDGEPORT

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December 2, 2020

Honorable City Council
Of the City of Bridgeport
45 Lyon Terrace
Bridgeport, CT 06610

Re: Resolution No. 152-19 Requesting Legal Assistance from the City Attorney's Office

Dear Honorable Council Members:

This correspondence is in response to the above-referenced resolution adopted upon Immediate Consideration by the City Council at its August 3, 2020 meeting.

The Office of the City Attorney respectfully submits the following information, advice, counsel and recommendations:

RELEVANT LEGAL AUTHORITIES

- **BPT City Charter, Chapter 5, Sec. 5 (b)** which states in pertinent part:

"The city council may determine its rules of proceeding in conformity to the general principles of parliamentary law, may punish members for disorderly behavior, and after notice and hearing may, by a two-thirds vote of all council members, expel a member for due cause. . ."

- **BPT Code of Ordinances, Sec. 2.04.140 Removal from office – Procedure** which states:

"A. No person shall be removed from office pursuant to the authority vested in the city council by the city Charter except in accordance with the provisions of this section.

B. A removal proceeding may be initiated by:

1. The mayor summons an officer to appear before the city council at a place and time specified in the summons to show cause why he/she should not be removed from office as provided in the city Charter. Such summons shall specify the charges against the officer whose removal is sought. A copy of such summons shall be filed with the city clerk;

2. The affirmative vote of eleven council members upon a resolution summoning the officer to appear before the council at a place and time specified in the resolution to show cause why he/she should not be removed from office. Such resolution shall specify the charges against the officer whose removal is sought.

C. Whenever the city council votes to summon an officer to appear before it, as provided in the Charter and this section, the council president shall cause a summons, containing the information required by the Charter, to be served on such officer.

D. The officer whose removal is sought shall have the right to appear at any proceeding conducted pursuant to the provisions of this section; to be represented by counsel; to confront and cross-examine all witnesses; to produce witnesses in his own defense and to the same compulsory process as is available to the city council under Chapter 5, Section 5(e) of the city Charter.

E. The city council, sitting as a committee of the whole, with the council president presiding (or in his/her absence a council member elected by a majority of the council members present) shall conduct a public hearing to determine whether cause exists for removal and shall prepare and submit a recommendation to the full council for its action thereon. A transcript of any such hearing shall be prepared and filed with the city clerk, as required by Chapter 2, Section 17(c) of the city Charter. The mayor or the independent counsel appointed pursuant to subsection I of this section, as the case may be, shall have the burden of proof as to the complaint. A finding by the ethics commission of a violation of the ethics ordinance shall constitute prima facie evidence supporting removal under this section. The record of transcript of any proceeding before the ethics commission shall be included in the record and made available to the members of the city council. Conformity to legal rules of evidence shall not be required. All witnesses shall be sworn. The council shall be the judge of the relevance and materiality of the evidence offered. Council members may question witnesses at any point in the proceeding. The council may receive and consider the evidence of witnesses by affidavit, but shall only give it such weight as deemed proper after consideration of any objection made to its admission.

F. The committee of the whole and city council shall act upon the proposed removal within thirty (30) days of the conclusion of the hearing required by subsection E of this section, provided that the time limit may be amended by a majority vote of the whole number of council members, for reasonable cause shown.

G. No officer shall be removed except upon the affirmative vote of two-thirds of the members of the city council, as required by the city council, as required by the city Charter.

H. Any complaints pending before the city council on the effective date of the ordinance codified in this section shall be handled pursuant to its provisions.

I. Whenever the city council votes to summon an officer to appear before it, pursuant to Chapter 2, Section 17(b) of the city Charter, it shall, by majority vote, appoint an independent counsel to prosecute the complaint.”

- **BPT City Council Rules of Order, Rule XXVI:** *Conduct in City Council* which states:

“In speaking, City Council members shall refrain from mentioning any other member by name, shall confine themselves to the question, shall be courteous and not use unbecoming, abusive, or unparliamentary language, and shall avoid personalities.

Any member who, in debate or otherwise, indulges in personalities or makes charges reflecting upon the character of another member, shall make an apology in open session at the meeting at which offense is committed, or at the next succeeding regular meeting, and, failing to do so, shall be named by the President or held in contempt, and suspended from further participation in debate until said apology is made.”

- **Conn. Gen. Stat. Sec. 7-148h.** *Ethics commission; establishment and powers. Interest in conflict with discharge of duties* which states in pertinent part:

“(a) Any town, city, . . . may, by charter provision or ordinance, establish a board, commission, council, committee or other agency to investigate allegations of unethical conduct, corrupting influence or illegal activities levied against any official, officer or employee of such town, city, district or borough. The provisions of subsections (a) to (e), inclusive, of section 1-82a shall apply to allegations before any such agency of such conduct, influence or activities, to an investigation of such allegations conducted prior to a probable cause finding, and to a finding of probable cause or no probable cause. Any board, commission, council, committee or other agency established pursuant to this section may issue subpoenas or subpoenas duces tecum, enforceable upon application to the Superior Court, to compel the attendance of persons at hearings and the production of books, documents, records and papers. . .”

- **BPT Code of Ordinances, Ch. 2.38 – Code of Ethics** which states in pertinent part:

“2.38.030 - *Standards of conduct.*

A. General Prohibition. No official or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his/her duties or employment in the public interest and of his/her responsibilities as prescribed in the provisions of this chapter.

B. Specific Conflicts. No official or employee shall:

1. Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him/her in the performance of his/her

duties or employment in the public interest. Nothing herein shall preclude the solicitation or acceptance of lawful contributions for election campaigns;

2. Knowingly have or acquire any financial interest or any personal interest, direct or indirect, in any contract or purchase order for any real estate, supplies, materials, equipment or contractual services furnished to, or used by, the city in connection with any project, matter or thing which comes within his/her jurisdiction or the jurisdiction of the board, commission or committee of which he/she is a member or the department or agency by which he/she is employed;

3. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his/her duties or employment in the public interest or which may impair his/her independence of judgment in the performance of such duties or employment;

4. Without proper legal authorization, disclose confidential information concerning the property, government or affairs of the city, nor shall he/she use such information to advance his/her financial or personal interest;

5. Vote upon or otherwise participate in any transaction, contract or sale with the city or in the sale of real estate, materials, supplies or services to the city or from the city, if he/she has a personal or financial interest therein;

6. Use or permit the use of city-owned vehicles, equipment, materials or property for personal convenience or profit, except as authorized by the proper authority.

7. Provide false information on an official form provided to the city;

8. Use their official position to retaliate against any person who files an ethics complaint.

C. Contracting. No official or employee or any business with which he/she is associated shall enter into any contract (other than a contract of employment not otherwise prohibited by, or in conflict with, the provisions of this chapter) or engage in any business transaction or activity with the city, or have a personal or financial interest, direct or indirect, in such transaction, unless the contract has been awarded or the transaction conducted through an open and public process, including prior public offer and public disclosure of all proposals considered and the contract awarded.

D. Fair and Equal Treatment. No official or employee shall use his/her position to secure or to grant special consideration, treatment, advantage, privilege or exemption to himself/herself or any person beyond that which is available to every other person; except that nothing herein is intended to, or shall void, affect, restrict or limit in any way the power or authority of any officer to exercise that discretionary authority granted him/her pursuant to his/her position.

E. Penalties. The failure to comply with, or any violations of, the standards of conduct established by this chapter may upon determination by the proper authority, following proper proceedings and hearings, constitute a cause for disciplinary action or other appropriate

penalties. Nothing in this chapter is intended to, or shall, deprive any official or employee of all those rights and remedies granted him/her by any relevant and applicable contract, collective bargaining agreement, ordinance, Charter provision, statute, constitution or other legal authority. Any and all contracts, agreements, undertakings, commitments, purchases and obligations made, entered into, procured or agreed to in violation of this chapter shall be null and void.

2.38.040 - *Commission on ethics.*

. . . D. Powers and Duties. . . The commission shall not later than fifteen (15) days after the close of the hearing file its findings as to a violation of this chapter, together with a memorandum of its reasons therefore with the city clerk, and publishes a notice thereof in a newspaper circulated in the city. The commission shall have no authority to discipline any official or employee and nothing in this chapter is intended to, and should not be construed so as to deprive any official or employee of any right, privilege or remedy granted him/her by any relevant and applicable contract, collective bargaining agreement, ordinance, Charter provision, statute, constitution or other legal authority. The commission may recommend to the appropriate appointing authority disciplinary action or sanctions to be imposed as against officials, which recommendations may include, but are not limited to, reprimand, censure and removal from office.

ANALYSIS & DISCUSSION

The City Council has adopted rules for proceeding in accordance with authority granted by Charter, Chapter 5, Sec. 5 (b).

Pursuant to City Council Rules of Order, Rule XXVI, the Council President may under certain prescribed circumstances name or hold in contempt and suspend from further participation in Council debate until an appropriate apology is made. It is reasonable and proper to interpret this Rule as suspending the member named or held in contempt from participation both at meetings of the full City Council and any committees thereof. While Rule XXVI does not expressly require a vote by the full City Council to approve the President's naming or holding a member in contempt and barring such member from debate until an appropriate apology is made, it is recommended that the Council President consider having the City Council vote to ratify any such action.

Pursuant to Charter, Chapter 5, Sec. 5 (b) the City Council has further authority to punish its members for disorderly behavior and to expel a member for due cause. Due cause means adequate justification as reasonably determined by the City Council based upon all pertinent facts, circumstances and information. It is our recommendation that prior to issuing any discipline (beyond suspension of debate privileges under Council Rule of Order XXVI) against a council member, procedural due process requirements require the member be notified of any charges being brought against him and the member be afforded the right to a hearing on such charges.

Moreover, Ordinance Sec. 2.04.140 *Removal from office-Procedure* sets forth a detailed due process procedure when a person who holds a city office is being considered for removal from

that office. There are two means by which this process of removal can be commenced. Section 2.04.140(B)(1) provides that the Mayor may summons an officer to appear before the city council at a designated time and place to show cause as to why the officer should not be removed. Such summons shall specify charges against the officer. Section 2.04.140(B)(2) provides that removal proceedings can commence upon the affirmative vote of eleven city council members on a resolution summoning the officer to appear before the council at a time and place specified to show cause why he/she should not be removed. Such resolution shall specify the charges against the officer whose removal is sought.

It would appear based on the language of Charter Sec. 5(b) and Ordinance Sec. 2.04.140 that the City Council as a whole (not the Mayor) should be the party to decide in what manner, if any, to proceed concerning Council member disorderly conduct or behavior. This is so because under Charter Sec. 5(b) the authority to punish and remove a city council member is vested with the Council itself. Section 2.04.140 (B)(1), which grants the Mayor the authority to summons an officer to the council for removal purposes, appears to apply more appropriately when there is a claim that a City officer serving on a commission/board has engaged in conduct that warrants removal from office.

This position is further supported by Charter, Chapter 2 Sec. 17 (a) which empowers the Mayor to seek removal of any person he or his/her predecessor has appointed to an office if the Mayor believes that such person is incompetent, is guilty of misfeasance or malfeasance, or is in violation of the City's ethics rules. It should be noted that Charter, Chapter 2, Sec. 17(b) is not applicable to scenarios where the City Council is addressing the issue of removing a member of the body for due cause; since that section governs only "any person appointed to office by the city council", not elected Council members.

In order to determine how to proceed, the City Council first must decide by formal vote whether charges against a member are warranted. If the Council decides that charges are not warranted, then the matter is closed. If the Council decides that charges are warranted, then it must also determine whether the conduct rises to the level that would warrant removal from office if the charges are sustained (i.e. proven) at a due process hearing.

If the Council adopts a resolution to bring charges for removal of a member from office under Ordinance Section 2.04.140 1 (B) (2) cited above, then the procedural process outlined in such ordinance must be followed.

If on the other hand the Council votes to prefer charges; but nevertheless, the Council determines that even if the charges are proven, the conduct does not rise to a level where removal from office is warranted, then the Council does not have to strictly adhere to the procedural requirements of City Ordinance 2.04.140. However, the Council still must draft charges, serve them upon the charged member, and provide such member a reasonable opportunity to be heard on said charges before the Council can determine guilt or innocence and administer any lesser punishment than removal from office. Although the Council would not have to strictly adhere to the provisions of City Ordinance 2.04.140 under such a scenario, the procedural process outlined in that section can, and it is recommended should, be used as guidance in order to ensure an accused member is afforded proper notice and opportunity to be heard on any charges brought.

With regards to determining the extent to which the City Council possesses authority to discipline its membership, the forum in which the behavior or conduct at issue occurs is relevant to the analysis. The authority of the Council to determine acceptable versus non-acceptable behavior is strongest and clearest when addressing matters that occur during an official meeting of the Council as a public body or during a Council committee meeting, public hearing or other official proceeding. A lesser level of authority may be exercised over conduct of Council members outside of official public meetings, but which nonetheless pertains to or concerns official City Council business or operations, or communications between or amongst Council members or City staff, and which impedes the body's ability to conduct official business and/or reflects negatively upon the integrity and reputation of the body itself.

Upon findings of violations of the City's Code of Ethics by the City's Ethics Commission, the City Council may initiate due process disciplinary proceedings against a member. The City's Code of Ethics at Ordinance Sec. 2.38.040 D. provides that the Ethics Commission has no disciplinary authority; but may recommend disciplinary action or sanctions to be imposed as against officials, (which recommendations may include, but are not limited to, reprimand, censure and removal from office) to the appropriate appointing authority. Section 2.38.040 D. does not provide for the Ethics Commission to recommend discipline of individuals to a disciplinary authority (unless such authority is also the appointing authority), which is not the case for Council members who obviously are not appointees, but rather elected officials.

However, Sec. 2.38.040 D. does provide that the Ethics Commission shall not later than fifteen (15) days after the close of the hearing file its findings as to a violation of this chapter, together with a memorandum of its reasons therefore with the city clerk and publishes a notice thereof in a newspaper circulated in the city. Consequently, such published notice may form the basis for disciplinary proceedings being conducted by the City Council against a member found by the Ethics Commission to have committed an Ethics Code violation, even though the Council is not "an appropriate appointing authority" to whom the Ethics Commission recommends disciplinary action or sanctions to be imposed as against an official as referenced by Sec. 2.38.040 D.

Moreover, Ordinance Sec. 2.04.140 E. provides: "... A finding by the ethics commission of a violation of the ethics ordinance shall constitute prima facie evidence supporting removal under this section. The record of transcript of any proceeding before the ethics commission shall be included in the record and made available to the members of the city council. . . "

DRAFT Notice Letter for the Council to Approve for Issuance by the Council President

Resolution No. 153-19 states in various of its WHEREAS Clauses that:

"WHEREAS, recently there has been a material decrease in decorum and civility, a commensurate increase in unbecoming, abusive and unparliamentary conduct, at City Council and committee meetings, as well as by City Council Members acting outside of such official meetings concerning matters regarding City council business, operations and fellow Members;

WHEREAS, the decrease in civility and decorum and the increase in abusive conduct impairs the ability of the City Council to perform its duties and obligations under the Charter of the City of Bridgeport; and

WHEREAS, this is a matter that requires immediate consideration in order to preserve good order and discipline in official City Council proceedings and to foster courteous and non-abusive behavior that reflects positively upon the City Council and instills public confidence in the body, particularly during these times of the COVID-19 emergency and the national protests and demonstrations concerning the need for substantive police reform.

Nevertheless, despite the recent material decline of civility in Council discourse and debate, and the increase in discourteous, unbecoming, abusive, unparliamentary language, personal attacks and making charges reflecting upon the character of another member as well as other disruptive behavior; the City Council leadership and the Council as a whole have refrained from pursuing, or failed to take, formal administrative action to enforce the Council's Rules of Order, decorum, civility, parliamentary procedures and behavior. Therefore, it is respectfully recommended that no disciplinary action be taken for actions, conduct, behavior or statements occurring to date.

Rather, it is urged that the City Council vote as a body to approve the City Council President issuing a letter to provide that body's membership with clear and timely advance notice that henceforth improper, inappropriate, disruptive and/or disorderly behavior that violates the City Charter, ordinances, Council's Rules of Order and/or any other governing legal authority will no longer be tolerated and will be subject to disciplinary action as appropriate. A DRAFT sample letter is submitted herewith (as Attachment "A") for the Council President's consideration.

Very truly yours,



R. Christopher Meyer
City Attorney

Cc: Mayor Joseph P. Ganim
Lydia Martinez, City Clerk
Frances Ortiz, Asst. City Clerk
John P. Bohannon, Jr., Deputy City Attorney
John Mitola, Associate City Attorney
Bruce R. Levin, Associate City Attorney
Eroll V. Skyers, Associate City Attorney
Mark T. Anastasi, Esq.

Attachment "A"

December 2, 2020

Honorable City Council
Of the City of Bridgeport
45 Lyon Terrace
Bridgeport, CT 06604

Re: Disorderly, Abusive, Unparliamentary Behavior / Conduct by City Council Members

Dear Fellow Council Members:

Attached is a copy of the legal advice and opinion letter from City Attorney R. Christopher Meyer dated December 2, 2020, which he has submitted to all of us in response to City Council Resolution No. 152-19 (approved upon Immediate Consideration at our Regular monthly meeting of August 3, 2020).

As you can see, City Attorney Meyer drafted a proposed letter to be issued by me in my capacity as City Council President; and pursuant to his recommendation I am submitting to the body this executed letter for ratification prior to my formally issuing it to each City Council member. As discussed in the City Attorney's written response to Resolution No. 152-19, the purpose of this letter is to provide clear and timely notice to the Council membership that our past tolerance as a body of disruptive, disorderly, abusive, unparliamentary behavior and conduct will no longer be tolerated by the Council President, the Council Leadership, and the full City Council.

I will not be singling out any Council member (or members) as an example(s) of prior inappropriate conduct, since to do so would simply lead to further divisiveness and unnecessary debate. Rather, I respectfully and sincerely ask that each of us examine our own recent interactions with our fellow members and our public behavior, to confirm in our own minds the apparent need for a more forceful response to any future disorderly conduct.

Therefore, express notice is hereby provided that future inappropriate actions, disruptive, unparliamentary, abusive or disorderly behavior by Council members that violates City Charter, Code of Ordinances, City Council Rules of Procedure or other legal authority will no longer be accepted as appropriate or tolerated in the futile hopes that such improper behavior will cease of its own accord. The Council must be more pro-active in demanding that all members act in an appropriate manner, being reasonably respectful to our fellow members, City staff and the public we serve.

Obviously, this does not mean that our membership will not continue to have certain policy, process and political disagreements. That is to be expected in any elected legislative body. However, as public officials elected to represent our respective Council districts, we owe it to our legislative body, to our constituents and to our great City, to serve with dignity and distinction; to treat our fellow members with mutual respect and civility; and to exercise reasonable decorum and proper behavior.

Further, I want to emphasize that this letter is not a threat. Its purpose is to provide fair notice of the change in how this body intends to respond to future behavior that is disruptive, disorderly, abusive or unbecoming, and which impedes the important legislative responsibilities assigned by City Charter to us as a public agency.

As your elected President I recognize that it my responsibility to lead on this matter and to accept my own share of the responsibility for perhaps being too willing to tolerate prior misconduct in the hope and expectation that things would improve of their own accord and without forceful intervention of the Council Leadership. I urge you all to please read City Attorney Meyer's letter carefully and note the various legal authorities he cites as governing our behavior and conduct. These authorities include, but are not limited to:

- **BPT City Charter, Chapter 5, Sec. 5 (b)** which states in pertinent part:

“The city council may determine its rules of proceeding in conformity to the general principles of parliamentary law, may punish members for disorderly behavior, and after notice and hearing may, by a two-thirds vote of all council members, expel a member for due cause. . . “

- **BPT Code of Ordinances, Sec. 2.04.140 *Removal from office – Procedure***
- **BPT City Council Rules of Order, Rule XXVI: *Conduct in City Council*** which states:

“In speaking, City Council members shall refrain from mentioning any other member by name, shall confine themselves to the question, shall be courteous and not use unbecoming, abusive, or unparliamentary language, and shall avoid personalities.

Any member who, in debate or otherwise, indulges in personalities or makes charges reflecting upon the character of another member, shall make an apology in open session at the meeting at which offense is committed, or at the next succeeding regular meeting, and, failing to do so, shall be named by the President or held in contempt, and suspended from further participation in debate until said apology is made.”

- **BPT Code of Ordinances, Ch. 2.38 – *Code of Ethics*.**

I direct your attention to the City Attorney's letter for more detailed discussion of these legal authorities.

This notice notwithstanding, it remains my staunch hope and even continued expectation, that as responsible elected officials we will be able to avoid any future disorderly behavior by all our members. Obviously, utilizing the disciplinary tools available to the body is perceived to be a last resort, one which the Council Leadership would clearly like to avoid any necessity for. However, prospectively we will not hesitate to take forceful disciplinary action as warranted.

Thank you all for your thoughtful attention to this matter; and I ask for your vote of support for the formal issuance of this notice letter.

Sincerely,

Aidee Nieves
City Council President

Cc: Mayor Joseph P. Ganim
Lydia Martinez, City Clerk
Frances Ortiz, Asst. City Clerk
R. Christopher Meyer, City Attorney
John P. Bohannon, Jr., Deputy City Attorney
John R. Mitola, Associate City Attorney