

## **RESOLUTION 19-06**

### **A RESOLUTION SETTING FORTH THE COUNCIL FINDINGS CONCERNING THE GRIEVANCE ARISING OUT OF THE COMPLAINTS AND ALLEGATIONS AGAINST ALDERMAN ALLEN AND REACHING A CONCLUSION ON THE APPROPRIATE PUNISHMENT PURSUANT TO SDCL 9-8-5**

**WHEREAS, THE CITY OF BOX ELDER** is committed to providing and maintaining a safe work environment without intimidation or threats of violence. Any action which, in the City's opinion, is inappropriate to the workplace will not be tolerated.

**WHEREAS, THE CITY OF BOX ELDER** has created an Employee Handbook addressing workplace violence prevention so that the City's employees right to work without the fear of threats or violence in the course of their employment is protected.

**WHEREAS, THE CITY OF BOX ELDER** investigates such grievances with assurances to our employees that eliminates fear or threats of reprisal.

**WHEREAS,** the investigation revealed fear of both reprisal and retaliation from Alderman Allen by numerous employees, inhibiting their coming forward prior to mid 2018.

**WHEREAS,** in mid 2018 an employee grievance was filed with City Administrator & City Attorney, alleging: misconduct, harassment, and threatening behavior by a duly elected alderman of the City of Box Elder.

**WHEREAS,** pursuant to The City of Box Elder's employees handbook an independent investigation was conducted into the various complaints of the employee towards Alderman Allen.

**WHEREAS,** the common council has thoughtfully and meaningfully reviewed the independent investigation report of Robert Brancato and the written response to the allegations by Alderman Allen, consider the comments made by Alderman Allen's counsel and questioned both Mr. Brancato and City Administrator Schneider.

**WHEREAS,** the grievant openly discussed the behavior of Alderman Allen, which was supported by other Box Elder City employees and elected officials, that demonstrated a level of discord and propensity towards violence.

**WHEREAS,** Alderman Allen's behavior pattern dates back for at least a couple of years and his actions have become more severe.

**NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE**

**CITY OF BOX ELDER, through two executive sessions (amounting to 7.5 hours of discussion and deliberation), we do find support for the allegations and complaints alleged in the employee grievance and make the following findings:**

1. That on August 20, 2018, a Box Elder employee filed an official grievance with both the City Attorney and the City Administrator.
2. That on or about September 17, 2018, a due diligence investigation was commenced regarding various employee related complaints.
3. That Mr. Robert Brancato was retained to conduct an investigation into employee complaints based upon, among others, Section 1.5 Workplace Violence Prevention in the Box Elder Employee Handbook.
4. That on February 28, 2019, Investigator Brancato sent a request to Alderman Allen to schedule an interview.
5. That on March 4, 2019, Alderman Allen's attorney John Rusch scheduled the interview of Alderman Allen to occur on March 8, 2019 at 1:30 p.m. at his law office in Rapid City, South Dakota.
6. On March 8, 2019, Attorney John Rusch cancelled the interview.
7. On March 26, 2019, at 7:00 p.m., a properly noticed City Council meeting was held to address the investigation findings and the employee grievance issues.
8. An employee involved in the employee grievance has waived the right to a public hearing and requested privacy regarding these employee matters.
9. At the scheduled March 26, 2019 Council meeting, all council members were provided a copy of Investigator Brancato's report with exhibits in executive session.
10. At the March 26, 2019 Council meeting, both Alderman Allen and his attorney John Rusch were provided a copy of Investigator Brancato's investigation report and attachments and given several hours to review and consider the same.
11. At the March 26, 2019 Council executive session, Alderman Allen's attorney John Rusch was repeatedly allowed into executive session to address procedural concerns including jurisdiction and Due Process.
12. At the March 26, 2019 Council executive session, both Attorney Rusch and Alderman Allen were presented with an opportunity to address the Council on the merits of claims and procedural issues.

13. During the March 26, 2019 Council executive session, Attorney Rusch did take the opportunity to appear and speak on behalf of Alderman Allen.

14. At the March 26, 2019 Council meeting, the Council under its authority of SDCL 9-8-5, unanimously voted to temporarily suspend Mr. Allen based upon its consideration of the report of Investigator Brancato, its exhibits, and consideration of matters presented by Attorney John Rusch.

15. At the March 26, 2019 Council meeting, the Council afforded Alderman Allen and his attorney the future opportunity to be heard before a final determination and to submit any items they wish in writing to the Council on or before April 10, 2019 for its consideration.

16. At the March 26, 2019 Council meeting, the Council further set the matter of addressing Alderman Allen and employee grievance matters for further review and consideration on April 16, 2019.

17. That on April 10, 2019, Alderman Allen presented an eleven (11) page response with twenty-eight (28) pages of attached exhibits for the Council's consideration.

18. That the Council has received and considered Alderman Allen's April 10, 2019, submissions in its determination.

19. That on April 16, 2019, the Council met in executive session to further consider the totality of information in making a determination under SDCL 9-8-5 of its own rules of procedure in relation to the circumstances surrounding the employee grievance and the Brancato Investigation Report, and the actions of Alderman Allen.

20. That Attorney Rusch has requested the matter be rescheduled to a later date for a public hearing.

21. That both Attorney John Rusch and Alderman Allen were afforded the opportunity to appear in person, video conference or telephone to address the City Council in executive session April 16, 2019 to further supplement any of their written submissions of April 10, 2019 but choose not to attend.

22. That at Alderman Allen and his attorney's request, Investigator Brancato was made available in executive session to answer any questions from the Council members or from Alderman Allen or his attorney on April 16, 2019.

### **Council Findings of Investigation**

#### **1. Misuse of Power**

- a. Alderman Allen (Allen) operates his towing business within AC/DC automotive without a conditional use permit, as required under city ordinances, and has refused to remedy the situation.
- b. Allen was receiving brass, live ammunition and donated ammunition from the Box Elder Police Department on a regular basis per his request.
- c. On November 01, 2017 Bruce Hegel a former Councilman, contacted the city to inquire if Allen or his business (ACDC Automotive) had submitted a required Conditional Use Permit. Hegel also inquired if Allen and his business were on the rotation list used for towing operators, to which his business was listed. Mr. Hegel commented that he believed Allen was using his council position as a power position to influence his business and other things.
- d. On June 05, 2017, Allen filed a verbal complaint concerning a grass ordinance violation at property address 502 Box Elder Road. He stated that Code Enforcement needed to place a violation on the property due to not having the grass cut. It was noted a Code Enforcement Officer had been by this property earlier in the morning and stated it was in fact up to code.

Allen then stated, "I am going to rewrite some zoning ordinances, or I will "fill" the planning and council chambers with people until it's to my satisfaction".

- e. On May 08, 2017, Allen was heard complaining that his son had received an ordinance violation letter concerning an inoperable vehicle on his property, located at 563 Stealth Lane, Box Elder. Asking how he could prevent such harassing letters from being sent, Allen was advised that the vehicles needed to be covered. Allen then asked if he could issue a license for the cars, since he was a car dealer, he would issue a temporary license, and then the letters would stop. Allen had been previously advised (January 06, 2017) by the Zoning Department that the vehicle needed to be removed and/or repaired. Allen stated he would tow it to his business, which never happened. The initial complaint came from a citizen on December 27, 2016 stating there were three (3) inoperable and non-licensed vehicles on the property of Allen's son.
- f. On November 01, 2016, Allen complained to the Code Enforcement Division that his former business partner Kenneth Jobbins was sleeping and living at his place of business, Charo Enterprises 502 Box Elder Rd.

West; located in Box Elder. The code enforcement division visited the business, confirmed that Jobbins was not residing at the business and notified Allen of the findings. However, Allen made the accusations again on November 3 and November 14, 2016, even asking the Code Enforcement and Zoning Department to place the business under surveillance, to which they denied the request.

- g. In March of 2013, the former Mayor Bill Griffiths was under investigation for creating a hostile and harassment filled work environment. The result was a public display resulting in negative press coverage for the city as well as a loss in faith for the mayor. He was required to undergo a psychological exam and apologize to the victims.

At that time, Allen had addressed these victims in an individual way stating that he (Allen) was there for them should they want to talk to him. This action was a clear violation that the identities of said persons were to be protected, which in turn was lost by the actions of Allen. Allen and the former Mayor were at the time close friends.

## **2. Disorderly Conduct**

- a. On July 2018 Alderman Allen (Allen) stated in an email questioning the disconnection of temporary services asking why a phone call wasn't made prior to the disconnection saying "It simply is good business to not treat people like shit. It seems that lately this is the norm."
- b. On April 03, 2018, Allen was heard badgering Ron Koan in his office. This was concerning a City ordinance requiring engineering to be done on pole building structures. Allen then threatened that he would bring his friend Brian Forkner to the Legal, Finance and Public Safety committee to discuss his disapproval of hiring an engineer to build a pole barn.

On April 09, 2018, Allen had Brian Forkner attend the Finance, Legal and Public Safety meeting. At this point Forkner shared his belief that an engineer's study was not needed to build a pole barn.

- c. On August 07, 2018, Allen invited a group of individuals to the council meeting. Ignoring "Robert's Rules of Order", Allen and the invited group became belligerent and verbally abusive to the new City Attorney Vetri. The issue discussed was again the rezoning proposed for Highway 14/16. At this time, Allen clearly broke conflict of interest regulations as he has his business in this area. Allen was defamatory to both Vetri and Koan

during this meeting.

- d. Allen was unhappy with the removal of Veteran's Flags during the City Hall renovation, demanded that the flags be returned to their former position, and when the request was refused, Alderman Allen stated that he was going to run for mayor and terminate everyone in the building, causing fear among the staff.
- e. On January 3, 2018, Allen was observed acting in a threatening and obscene manner and harassing the city staff. The action was so concerning that the City Administrator / CFO Nicole Schneider and Mayor Larry Larson met with the Pennington County Sheriff's Office, Captain Corey Brubakken. The incident surrounded the adopted Ethics document, to which Allen disagreed.
- f. In December of 2017 an email chain with Allen as a participant made comments discussing the city administrator's gender and that of a failed leader – referring to the Council President were discussed.
- g. On November 09, 2017 City Administrator/CFO Nicole Schneider, Robert Kaufman and "Doe" held a meeting to discuss Nicole's safety. She was particularly concerned, as Allen had begun to follow her home in his vehicle at the end of her workday. A request for her to contact the Pennington County Sheriff's office was issued.
- h. On October 17, 2017, Allen was observed at the office of Ron Koan, City of Box Elder Planning Director. With the office door open, Allen was heard yelling at Koan. This was concerning a plot of land that the Fire District had for sale. Allen had long wanted to purchase this property in order to expand his business. Based on the heard conversation Allen asked Koan why he was "working with the Fire District President Barb Frerichs" to prevent Allen from the purchase of said land. Koan calmly stated he did not agree with Allen and had no such collusion.
- i. At the August 7, 2018 council meeting concerning the rezoning of Box Elder Road Allen made verbal attacks upon the City Attorney and others alleging lies and deception.
- j. During the previous administration, "Jane Doe" was one of the victims of harassment at the hands of former Mayor Griffiths. She stated he would give both unwanted hugs and attempted to kiss her forehead several times. While she had been advised, her reporting of that incident would be

kept confidential, she later learned that Allen was sharing both her name and statement verbatim to other persons.

- k. Upon being elected Mayor, Allen advised Mayor Larson that Alderman “runs this town”, not the Mayor.
- l. In June 2015 Allen, asked Mayor Larson to have both the Public Works Director and Finance Officer terminated from employment.
- m. Allen would attend Planning & Zoning meetings and make derogatory comments towards Ron Koan, while sitting in the audience and causing disruptions.
- n. During the interview with Box Elder Police Chief Dubbs advised Allen was attempting to get police intelligence from its officers, thus making the department staff very uncomfortable. It was then that Dubbs notified all his officers that there is a chain of command and to not entertain such actions.
- o. After a City Council meeting in mid 2018; Allen confronted Alderman Hanson and Alderwoman Beltran and yelled “That was a real chicken shit way to get me off council”.
- p. In Fall of 2016 Allen, during a heated meeting regarding the ethics policy told Council President Hollinshead to “Go f\*\*k yourself!”

### **3. Conflict of Interest**

- a. On August 7, 2018, Allen entered the audience and began discussing City business with individuals sitting in the front row of the audience and discussing the rezoning of Box Elder Road with the City Council. Allen’s business (AC/DC Automotive) is affected by the rezoning. During this meeting Allen did not openly disclose his bias or personal interest in the issue of rezoning. Nor did he recuse himself as a member of the City Council.
- b. Allen has placed himself on the Box Elder Police Department’s rotation for towing services.

**Be it further resolved**, based on these findings and the serious nature of the findings, the City of Box Elder Common Council hereby with the concurrence of two-thirds of the

aldermen for the betterment of the City, the Council and to grant relief to the aggrieved parties vote to expel from the Council Alderman Allen effective immediately.

Dated at Box Elder, South Dakota, this 16th day of April, 2019, BOX ELDER

COMMON COUNCIL.

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Larry Larson, Mayor

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Nicole Schneider, Finance Officer