

October 17, 2019

The special meeting of the City Council of the City of Sleepy Eye was held in the Council Chambers, 200 Main Street East, Sleepy Eye, MN at 6 p.m. on the 17th day of October, 2019 per due call and notice. Mayor Wayne Pelzel and Councilors Gary Windschitl, Nathan Stevermer, Douglas Pelzel, Joann Schmidt and Larry Braun were present. Also present were City Manager Bob Elston, City Attorney Alissa Fischer and City Clerk Michelle Strate. Also present was Brandon Fitzsimmons from Flaherty & Hood Law Firm

Special meeting was called for preliminary consideration of allegations against a City of Sleepy Eye City Council Member under Minnesota Statutes, Section 13D.05, Subdivision 2(b). City Council member is Larry Braun. Councilor Braun has requested that the meeting remain open.

Items to consider:

1. Consider whether Councilor Braun engaged in any inappropriate conduct
2. Any standards he violated as a result of such conduct; and,
3. Any appropriate action the City should take.

The Draft Resolution is Attorney/Client Privilege. Council went through the draft resolution to approve or strike information. Once all information was gone through and decided, a recess took place to allow Attorney Fischer and Attorney Fitzsimmons to amend the resolution. Recess called at 6:20.

Meeting reconvened at 6:40p.m.

Formal Resolution was presented to Councilor Braun. Councilor Braun was given the opportunity to respond to the allegations before him which he did. One point that Councilor Braun raised was that more than 30 days had elapsed between the complaint being filed and the hearing.

Attorney Fitzsimmons indicated that the Formal Complaint was made on July 1, 2019 and a hearing on July 22, 2019 followed, with the decision to move forward with a formal investigation.

Councilor Schmidt made a motion to approve the Resolution with corrections. Councilor Windschitl seconded the motion and motion carried

RESOLUTION NO. 6-2019

RESOLUTION OF CENSURE AGAINST CITY COUNCIL MEMBER LARRY BRAUN

WHEREAS, in July 2017, the City of Sleepy Eye City Council (City Council) adopted a resolution in response to an investigation report summarizing allegations of misconduct made by City of Sleepy Eye (City) staff against City Councilor Larry Braun (Councilor Braun), which concluded that Councilor Braun had engaged in conduct as a City Council Member directed toward City employees outside of noticed City Council meetings characterized as threatening and/or demeaning to City employees, and undermining of the authority of City supervisory employees, making no findings regarding whether the conduct occurred as described, but making it clear the reported conduct is inappropriate and unacceptable as it is beyond the scope of the office and authority of any individual City Councilor.

WHEREAS, the City Council adopted later in 2017 the City of Sleepy Eye Code of Conduct for Elected and Appointed Officials (Code of Conduct) that primarily established standards of conduct for such officials and a process for handling alleged violations of such standards.

WHEREAS, River View Sanitation (RVS) is the exclusive refuse collection, transportation, and disposal provider within the City under a contract between the City and RVS.

WHEREAS, after meeting in closed session at its July 9, 2019 regular City Council meeting for preliminary consideration of allegations against Councilor Braun, the City Council duly approved a motion in open session that: (1) the July 1, 2019 emails from River View Sanitation (RVS) co-owner, Brent Kucera to City Director of Public Works Bob Elston constitute a complaint against Councilor Braun under the Code of Conduct (Complaint); (2) the factual allegations in the emails state a sufficient claim of a violation of the Code of Conduct; (3) the Complaint has been lodged in good faith and not for impermissible purposes such as delay; and (4) a hearing would be held on the Complaint on July 22, 2019 at 5:30 p.m.

WHEREAS, the City Council met on July 22, 2019 in open session to continue its preliminary consideration of allegations against City Council Member Larry Councilor Braun, including a hearing on the Complaint and a response from Councilor Braun after which the City Council duly approved a motion in open session that: (1) the City Council consult with legal counsel to hire a third-party investigator to investigate the Complaint against Larry Braun of July 1, 2019; and (2) City Council Member [Doug] Pelzel act as the designated point of contact during the investigation

WHEREAS, Michelle M. Soldo, Attorney & Consultant, Soldo Consulting, P.C (Investigator Soldo) conducted the investigation into the Complaint.

WHEREAS, Investigator Soldo completed a Confidential Memorandum regarding City of Sleepy Eye Complaint Investigation, dated October 7, 2019 (Investigation Memorandum), related to the Complains, which was provided to the City Council.

WHEREAS, Councilor Braun received the Investigation Memorandum on October 12, 2019 and was notified that he would have the opportunity to respond to the Investigation Memorandum at a special meeting of the City Council on October 17, 2019.

WHEREAS, The City Council did not conclude prior to these actions whether any sanction may be warranted as a result of the Complaint. Instead, the City Council investigated the Complaint to primarily determine the facts related to the Complaint and obtain an assessment of related matters from a third party neutral fact-finder.

WHEREAS, the City Council met on October 17, 2019 in open session for preliminary consideration of allegations against Councilor Braun in which Councilor Braun was given an opportunity to respond to the Investigation Memorandum.

NOW, THEREFORE, BE IT RESOLVED by the City of Sleepy Eye City Council, Sleepy Eye, Minnesota as follows:

1. The City Council finds that:

- A. On December 3, 2018, without Council authorization and, in contravention of the Code of Conduct, Councilor Braun called RVS Co-owner Brent Kucera, alleged that RVS was not abiding by its contract with the City, mentioned contacting a lawyer, and implied that RVS' contract with the City was in jeopardy.

- B. In response to the Complaint and during the investigation into the Complaint, Councilor Braun engaged in antagonistic and unprofessional behavior, direct evidence that he is capable of behaving in the caustic manner alleged by RVS Co-owner Brent Kucera.
2. The City Council concludes that Councilor Braun's above-conduct violates of Section 3 of the Code of Conduct stating:
- Subd. 1. After taking oath of office as an elected official, or accepting appointment to a City board or commission, every elected and appointed official of the City agrees to conduct themselves in accordance with the following standards of conduct:

.....
 - b. The Mayor and City council support the maintenance of a positive and constructive work place environment for City staff, private citizens and businesses dealing with the City. Officials shall recognize their roles, as delineated in the City charter, City code and state statutes and in individual dealings with City staff, and shall not interfere with, undermine or otherwise act inconsistently with the organizational structure of the City pursuant to which the City Council has delegated to the City Manager the duties and responsibilities to manage and supervise all operations of all City departments and to coordinate and direct the personnel functions of the City, including all responsibility for appointing and disciplining City employees.
 - c. The City is well-served when policy is shaped by a diversity of viewpoints, experiences and backgrounds; however policy discussions and debates shall at all times remain civil and respectful. Officials shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the council, boards, commissions, staff or the public intended to disrupt and not further the City's business.
3. The City Council:
- A. Disapproves and condemns Councilor Braun's above-conduct
 - B. Finds and concludes that such conduct is acting beyond the scope of his office and authority
 - C. Disclaims any duty to defend or indemnify him for such unauthorized conduct or any liability or responsibility for claims arising therefrom.
 - D. Determines that this resolution constitutes a censure against Councilor Braun.
4. Councilor Braun is directed to not engage in any conduct that violates the above-standards or any other standards applicable to City Council members, and, that if he does, the City Council: (i) disapproves and condemns any such conduct; (ii) concludes and determines that such conduct would be acting beyond the scope of his office and authority;(iii) may take any appropriate action against him; and (iv) disclaims any duty to defend or indemnify him for such unauthorized conduct or any liability or responsibility for claims arising therefrom.
5. Councilor Braun is directed to not make any communication as a City Council member directly with City vendors that violates the above-standards.
6. Councilor Braun is prohibited from being assigned to any committee, liaison, or representative role for the City Council that relates to City refuse collection, transportation, and/or disposal.

7. That Mayor Wayne Pelzel consult with legal counsel to draft and provide Councilor Braun and Brent Kucera with any appropriate notice related to this resolution.

Passed and Adopted by the Council on this 17th day of October, 2019.

CITY OF SLEEPY EYE

By: Wayne Pelzel
Its Mayor

ATTEST:

By: Michelle Strate
Its City Clerk

There was no other business and the meeting was properly adjourned at 7:15 p.m.

Wayne Pelzel, Mayor

Michelle Strate, City Clerk