

## **RESOLUTION R-2022-01**

### **A RESOLUTION TO CENSURE ALDERMAN DONNA HARTMAN FOR RETALIATORY ACTIONS TOWARD CITY EMPLOYEES ENGAGED IN A PROTECTED ACTIVITY**

**WHEREAS**, on December 14, 2021 there was a Resolution (R-2021-17) on the agenda of the regular scheduled Board of Mayor and Aldermen meeting. Said Resolution was to censure Alderman Donna Hartman regarding two (2) employee complaints against her which were investigated by outside counsel and found to be substantiated (*See attached Supplement to the Outside Counsel letter dated December 29, 2021*). During discussion on the Resolution during said meeting, Alderman Donna Hartman referred to both of the complaining individuals multiple times by specific name. Prior to this occurrence, no one had disclosed the employees' identities to the public; and

**WHEREAS**, the disclosure of the identities of the aggrieved employees by Alderman Donna Hartman during the open public meeting qualifies as retaliation under the state and federal law regarding hostile work environment, as well as other employment statutes. Alderman Donna Hartman's comments during the Board meeting on December 14, 2021 served to "call out" or "single out" the employees who grieved against her. In doing so, Alderman Donna Hartman has further exacerbated the hostile work environment she had already fostered. The aggrieved employees she named in the Board meeting have engaged in a protected activity to speak out against the behavior by Alderman Donna Hartman; and

**WHEREAS**, for Alderman Donna Hartman to disclose the identity of the complaining parties in a public forum, recorded by video and attended by many citizens of the City, was highly inappropriate and violates the Personnel Rules of the City of Fayetteville. Such disclosure also violates the anti-retaliation provisions of state and federal law (*See Ferguson v. MTSU, 451 S.W.3d 375, 380 (2014), 451 S.W.3d at 381*. "It [the anti-retaliation provision] is designed to prohibit employer actions that are likely to deter employees from filing complaints with the EEOC or otherwise asserting their rights under anti-discrimination statutes. If employees do not receive protection from retaliatory conduct after they complain about discrimination, they will be less likely to report discriminatory conduct.""). Such conduct creates a more hostile work environment; and

**WHEREAS**, Alderman Donna Hartman's identification of the (previously anonymous to the public) complaining parties at the December 14, 2021 public

Board of Mayor and Alderman meeting constitutes additional unlawful retaliation against the employees. Such identification in a public forum has served to further exacerbate a hostile work environment under which the employees must operate.

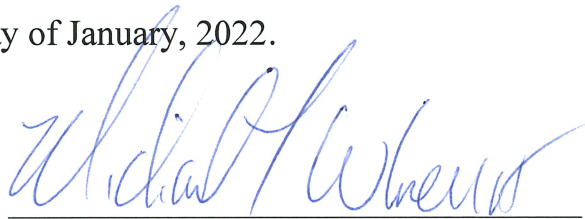
**NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FAYETTEVILLE, TENNESSEE, THAT:**

On these Facts, the Board of Mayor and Aldermen of the City of Fayetteville records its disapproval of Alderman Donna Hartman's actions as an elected official of the City of Fayetteville, and records in its Meeting Minutes, as a matter of public record, its disapproval of Alderman Donna Hartman's conduct as referenced in the above Facts.

The censure will adequately address the public's concern regarding the protection of City employees from unprofessional conduct and/or unlawful retaliation by elected officials that may create or further exacerbate a hostile work environment for said employees, and further affirm the City's interest in promoting a safe and protective workplace for its employees.

On these Facts, and by the recommendation of the outside counsel, the Board of Mayor and Aldermen of the City of Fayetteville believe that the censure should be read aloud during the regular scheduled Board of Mayor and Aldermen meeting on this date, January 11, 2022, and that this censure should be published, as this censure will act as a specific deterrence for Alderman Donna Hartman and as a general deterrence for other Aldermen in the future, that such conduct will not be tolerated.

Approved and adopted this the 11<sup>th</sup> day of January, 2022.



Michael T. Whisenant, Mayor

ATTEST:



Richard Howell, Interim City Administrator

DARRELL G. TOWNSEND  
WILLIAM B. JAKES, III  
FREDERICK W. HODGE, JR.  
ROBERT M. BURNS  
G. ANDREW ROWLETT\*  
GREGORY W. CALLAWAY  
NEIL M. MCINTIRE\*  
STEPHEN W. ELLIOTT

\*RULE 31 LISTED GENERAL  
CIVIL MEDIATOR

LAW OFFICES  
**HOWELL & FISHER**

PLLC

3310 WEST END AVENUE

SUITE 550

NASHVILLE, TENNESSEE 37203

OFFICE: (615) 244-3370

DIRECT: (615) 921-5224

FAX (615) 244-3518

[www.howell-fisher.com](http://www.howell-fisher.com)  
[selliott@howell-fisher.com](mailto:selliott@howell-fisher.com)

FETLEWORK S. BALITE-PANELO  
MARIA T. de QUESADA  
WILLIAM B. JAKES, IV  
ELLE G. KERN  
NICHOLAS A. LASTRA  
AUSTIN C. EVANS  
SAMANTHA A. FOSTER

MORTON B. HOWELL  
1919-2000

DOUGLAS M. FISHER  
1927-2019

December 29, 2021

**VIA ELECTRONIC MAIL:**

**[mwhisenant@gsqmap.com](mailto:mwhisenant@gsqmap.com)**

Michael Whisenant, Mayor  
City of Fayetteville  
110 Elk Avenue South  
Fayetteville, TN 37334

**Re: Supplement to outside counsel report**

Dear Mayor Whisenant:

This correspondence will serve as a supplement to my report provided to the BOA at its work session on December 9, 2021. I did not intend to make such a supplemental report as I had hoped that the December 14, 2021 BOA meeting would serve as closure to this matter involving Alderman Hartman. However, Alderman Hartman's actions during the BOA meeting of December 14 cannot be ignored.

**FACTS**

On December 14, 2021, there was a Resolution (R-2021-17) on the BOA's agenda to censure Alderman Hartman regarding the two employee complaints against her which I had found to be substantiated. During discussion on the Resolution, Alderman Hartman referred to both of the complaining individuals multiple times by specific name. To date, the identity of neither of the employees had been disclosed to the public. Only the six Aldermen, the Mayor, City Attorney, City Attorney, Administration Director Pam Gentry, and myself knew the identities of the two aggrieved employees. No one had disclosed the employees' identities to the public prior to December 14, 2021 BOA meeting.

**LAW**

The disclosure of the identities of the aggrieved employees by Alderman Hartman during the public meeting qualifies as retaliation under state and federal law regarding hostile work environment as well as other employment statutes. Alderman Hartman's comments during the Board meeting on December 14 served to "call out" or "single out" the employees who grieved against her. In doing so, Alderman Hartman has further exacerbated the hostile work environment she had already fostered



(as more fully stated in my prior report to you). Both of the employees she named in the Board meeting have engaged in a protected activity to speak out against the behavior by Alderman Hartman. Alderman Hartman obviously knew that both employees had engaged in the protected activity. Prior to the December 14, 2021, as noted, only a select few individuals knew that the two employees had grieved against Alderman Hartman. No one had disclosed their identities prior to the December 14 meeting. Until that point, the identities of the employees had been handled tactfully and properly. The purpose of the anti-retaliation provisions is to ensure employees “unfettered access to statutory mechanisms.” See Ferguson v. MTSU, 451 S.W.3d 375, 380 (2014), 451 S.W.3d at 381. “It [the anti-retaliation provision] is designed to prohibit employer actions that are likely to deter employees from filing complaints with the EEOC or otherwise asserting their rights under anti-discrimination statutes. If employees do not receive protection from retaliatory conduct after they complain about discrimination, they will be less likely to report discriminatory conduct.” Ferguson, 451 S.W.3d at 381. The same premise applies here.

### **FINDINGS**

For Alderman Hartman to disclose the identity of the complaining parties in a public forum, recorded by video and was attended by many citizens of the City, was highly inappropriate and violates the Personnel Rules of the City of Fayetteville. See Rule 4.11. Such disclosure also violates the anti-retaliation provisions of state and federal law. Public disclosure of the identities of City employees who file grievances for workplace harassment and bullying serves to have a chilling effect on not only those employees who have complained, but those employees who may have grounds to complain in the future. Alderman Hartman’s identification of the employees who complained against her during the BOA meeting is clearly a form of retaliation against the employees for engaging in a protected activity. What Alderman Hartman has done, in effect is to say: If you complain about me, I will retaliate against you identifying you and “call you out” during a BOA meeting when I have the floor during a discussion in front of a large audience and you have no opportunity to respond to me as an employee. Why would a City employee complain in the future if he/she knew that the elected officials would single them out in a BOA meeting? Obviously, there lies again a problem with the imbalance of power when Alderman Hartman identifies those employees during a meeting when those employees are powerless to do anything to stop her from doing so. “Calling out” or “singling out” such employees who do complain does not promote a productive, safe, and healthy work environment at the City of Fayetteville. It actually has the opposite effect—such conduct creates a more hostile work environment. It is troubling to me that Alderman Hartman chose to disclose the employees’ identities during a discussion of a Resolution to publicly censure her for her previous inappropriate behavior.

During the meeting on December 14, Alderman Hartman made several comments during discussion on the Resolution that need to be addressed. First, several statements made by Alderman Hartman during the meeting I did not find to be true based on my investigation and/or such statements were not supported by any other individual. She made similar comments to me during my interview of her. Alderman Hartman is entitled to those opinions and her view of what occurred with regard to the two employees. Such comments by Alderman Hartman during the Board meeting do not constitute retaliation against the two employees; they are simply her view of the evidence and her editorial opinion. Second, Alderman Hartman stated there were eight other individuals that I should have interviewed during my investigation, and I did not. Alderman Hartman shared with me those eight individuals’ names during my interview of her. I asked her to provide me with names of individuals I should interview related to the complaints by the two employees. Upon further investigation, I learned that seven of the eight names that Alderman Hartman had provided to me were not related to the complaints by the two employees; instead, their knowledge was related to prior employment conduct or claims. I did interview one of the individuals she supplied to me, but



she knew nothing of the complaints by the two employees. Therefore, interviewing the other seven individuals that Alderman Hartman had supplied would not have been productive or beneficial to my investigation. Alderman Hartman also referred to prior complaints by other City employees. Once again, the scope of my investigation was to investigate the claims of the two employees, and nothing more. Alderman Hartman made a comment regarding the anonymous threatening letter received by one of the employees to tell them to drop the complaint or it would be embarrassing to her and her family. That is exactly what has occurred here, to wit: By the employee not dropping the complaint and by Alderman Hartman subsequently calling out the employees in the Board meeting by name, she has caused embarrassment to that employee and her family. Alderman Hartman during the meeting stated that the anonymous, threatening letter was not admissible in court. I categorically disagree. The employee's spouse, if called to court, could substantiate that he did in fact receive the letter and the circumstances surrounding that. While Alderman Hartman could deny she had anything to do so with the letter, the letter would be admissible. Lastly, Alderman Hartman during the Board meeting referenced a derogatory comment made by interim City Administrator Richard Howell about her (made not in her presence to City employees). This comment by Mr. Howell occurred approximately 1 ½ years ago. Through my investigation, I confirmed that former City Administrator Scott Collins investigated Mr. Howell for making such a comment. Mr. Howell admitted to Mr. Collins that he had made that comment, expressed regret for doing so, and that he had used poor judgment. Mr. Collins verbally reprimanded Mr. Howell, told him such comment was improper, and that it should not happen again. Mr. Howell advised Mr. Collins that such comment was wrong and it would not happen again.

### **RECOMMENDATION**

Based on my knowledge and experience, I find that Alderman Hartman's identification of the (previously anonymous to the public) complaining parties at the December 14, 2021 public BOA meeting constitutes additional unlawful retaliation against the employees. Such identification in a public forum has served to further exacerbate a hostile work environment under which the employees must operate. Her identification of the employees also could result in a chilling effect on future claims. It is my recommendation that the City of Fayetteville issue a second public censure of Alderman Hartman for such conduct. Prior to any hearing on a second public censure, Alderman Hartman must be cautioned that she should refrain by referencing the two employees by name and doing so will result in further unlawful conduct by her.

Should you have any questions or comments, please do not hesitate to contact me.

Thank you.

Very truly yours,

*/s/ Steve Elliott*

Stephen W. Elliott

SWE/mj