

RESOLUTION #2010-004

RESOLUTION OF CENSURE OF WARD TWO ALDERMAN SAM KOOIKER

WHEREAS, the Rapid City Common Council adopted by resolution a “Code of Conduct for Elected Officials” on November 6, 2006; and

WHEREAS, the Code of Conduct for Elected Officials requires elected officials to “demonstrate the highest standards of conduct, personal integrity, and honesty” and to “undertake their duties in a fair and impartial manner” and to insure that the workplace is free from “hostility or harassment”; and

WHEREAS, at the Public Works Committee meeting on September 15, 2009 Ward 2 Alderman Sam Kooiker added an item to the agenda regarding bus routes. During discussion of this item, Alderman Kooiker stated, in part, that “very, very serious concerns have been raised regarding the new routes and the fact that multiple boxes of the old flyers were thrown away and apparently the cost is in the tens of thousands of dollars.”; and

WHEREAS, after being informed at the public meeting by the Public Works Director that the dollar value of the discarded brochures was significantly less than the amount alleged by Alderman Kooiker, Alderman Kooiker went on to state, “the information that I’ve received from multiple and credible sources, and Robert we can talk about this later, is that it was three thousand dollars worth of signs that were changed; but it was thirty thousand dollars and dozens of brand new multi-color flyers that were thrown away in the dumpster, and I have pictures.” Alderman Kooiker went on to state, “ There is a very serious morale problem in this department as a result of this and other related issues . . .”; and

WHEREAS, as a result of the comments made by Alderman Kooiker, a formal harassment complaint was filed by the Transit Division manager alleging that Alderman Kooiker violated of the Code of Conduct for Elected Officials based upon Alderman Kooiker’s conduct over the past several years, culminating in the comments made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting; and

WHEREAS, the Council hired an outside attorney to conduct a factual investigation into the allegations and to report the findings to the Council; and

WHEREAS, after reviewing the outside attorney’s factual report on the investigation, the Council asked the attorney for an opinion regarding the existence of probable cause to believe that Alderman Kooiker violated the Code of Conduct for Elected officials; and

WHEREAS, the outside attorney has provided the Council a written opinion in response to the Council’s request; and

WHEREAS, the Council has reviewed the opinion of the outside attorney; and

WHEREAS, the investigative report shows that the Transit Division Manager provided 110 pages of email correspondence with Alderman Kooiker dating back to 2003 to provide context and in support of his complaint; and

WHEREAS, the investigative report shows that during the first 18 months of his tenure the Public Works Director reported more than 1000 pages of email correspondence with Alderman Kooiker; and

WHEREAS, Alderman Kooiker's extensive use of email to City employees far exceeds the amount of email correspondence of the rest of the Council combined; and

WHEREAS, the factual investigation shows that Alderman Kooiker engaged in an email exchange with the Public Works Director beginning on September 2, 2009 regarding the allegations made at the Public Works Committee meeting on September 15, 2009; and

WHEREAS, based on that email exchange, Alderman Kooiker received information from the Public Works Director prior to the Public Works Committee meeting that the cost of the brochures was significantly less than the tens of thousands of dollars Alderman Kooiker publicly stated at the dais; and

WHEREAS, despite the information provided in response to Alderman Kooiker's email inquiries and the verbal information provided by the Public Works Director at the September 15, 2009 Public Works Committee meeting, Alderman Kooiker continued to insist that thirty-thousand dollars in brochures had been disposed of and that the department suffered from a "very serious morale problem" ; and

WHEREAS, it is clear that Alderman Kooiker had received information prior to the September 15, 2009 Public Works Committee meeting showing the value of the brochures which were disposed of was grossly overstated by the City employees. Nonetheless, Alderman Kooiker insisted the value was thirty thousand dollars and further implied that mismanagement was occurring in the Transit Division through his comments about a "very serious morale problem" in the Transit Division; and

WHEREAS, Alderman Kooiker either knew, or should have known, that the statements he made at the September 15, 2009 Public Works Committee Meeting were inaccurate; and

WHEREAS, the statements made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting regarding the value of the brochures and the state of employee morale were untrue; and

WHEREAS, Alderman Kooiker's comments show unfairness and partiality on the part of Alderman Kooiker and lack the honesty required by the Code of Conduct for Elected Officials; and

WHEREAS, the comments made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting, a public forum, were designed to question the effectiveness of the management of the Transit Division without any good faith basis to do so, given that Alderman Kooiker was, or should have been, aware of the inaccuracy of the information he claimed to have received; and

WHEREAS, Alderman Kooiker's inaccurate comments unfairly cast the Transit Division manager in a poor light and were hostile in nature; and

WHEREAS, Alderman Kooiker's email to the City staff is excessive, abusive, and adversely impacts the employees' ability to carry out their duties; and

WHEREAS, the Council finds that Alderman Kooiker has violated the Code of Conduct for Elected Officials by making untrue statements at the September 15, 2009 Public Works Committee meeting; and

WHEREAS, the current complaint is the second formal complaint filed against Alderman Kooiker by a City employee; and

WHEREAS, the previous formal complaint filed against Alderman Kooiker was investigated by outside counsel as well; and

WHEREAS, the previous formal complaint against Alderman Kooiker was filed under a City policy that had never been formally adopted by the Council, but had been circulated to all City employees; and

WHEREAS, as a result of the investigation into the previous formal complaint against Alderman Kooiker and considering the fact that the policy under which the complaint had been filed was never formally adopted by the Council, each member of the Council privately expressed his or her personal disapproval of Alderman Kooiker's conduct to Alderman Kooiker instead of taking formal public action; and

WHEREAS, as a result of learning of the invalidity of the policy under which the previous complaint was brought, the Council directed the drafting of the current Code of Conduct for Elected Officials; and

WHEREAS, the Council is of the opinion that its prior private conversation with Alderman Kooiker did not effectively alter his conduct; and

WHEREAS, the Council has previously found, by resolution approved on November 6, 2006, that public statements made by Alderman Kooiker and another former Alderman were false; and

WHEREAS, a public apology is in order, given that the untrue statements made by Alderman Kooiker were made in a public forum; and

WHEREAS, Alderman Kooiker's conduct has seriously negatively impacted the efficiency of the delivery of services to the citizens of Rapid City, by improperly implying mismanagement of the Transit Division and by causing the City to expend in excess of \$10,000.00 to investigate this matter. This is in addition to the more than \$7,000.00 the City spent to investigate the previous allegation of harassment. In addition, a significant amount of staff time has been diverted from productive duties to addressing the complaint made against Alderman Kooiker as well as responding to an excessive number of email messages; and

WHEREAS, given the nature of the current violation of the Code of Conduct, the Council's previous private efforts to change Alderman Kooiker's conduct, the Council's previous actions regarding false statements, and the totality of the circumstances surrounding this investigation, it is appropriate to publically censure Alderman Kooiker for his violation of the Code of Conduct for Elected Officials..

NOW, THEREFORE, BE IT RESOLVED by the Rapid City Common Council that the Council finds the statements made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting regarding the value of the discarded brochures as well as the statements that implied mismanagement of the Transit Division were inaccurate and unsupported by the facts and that Alderman Kooiker either knew or should have known, of the inaccuracy of his statements at the time he made them; and

BE IT FURTHER RESOLVED by the Rapid City Common Council that Alderman Kooiker's actions leading up to and at the September 15, 2009 Public Works Committee meeting represent an ongoing pattern of harassing conduct that creates a hostile work environment adversely impacting the efficient and effective provision of services to the taxpayers; and

BE IT FURTHER RESOLVED by the Rapid City Common Council that Alderman Kooiker has violated the Code of Conduct for Elected Officials; and

BE IT FURTHER RESOLVED by the Rapid City Common Council that the complaint filed by the Transit Division manager is substantiated and the Council apologizes to Mr. Sagen for the unfair and inaccurate comments made by Alderman Kooiker at the September 15, 2009 Public Works Committee meeting; and

BE IT FURTHER RESOLVED by the Rapid City Common Council that Ward Two Alderman Sam Kooiker is hereby CENSURED.

Dated this _____ day of _____, 2010.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

