



CITY OF RAPID CITY

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MEMORANDUM

TO: City Council and Mayor

FROM: Joel P. Landeen, City Attorney

DATE: 10/3/12

RE: Grievance Policy Discussion

At the October 1st City Council Meeting, former Alderman Dave Davis expressed concern that a policy to refer grievances against the Mayor to a third party had not been brought forward to the Council by the July 16th meeting as had been previously directed. I take full responsibility for the fact that it was not brought forward. Between the direction from the City Council to bring forward a policy on June 4th and the meeting on July 16th, I lost track of this item during the transition in Council and inadvertently did not bring it back for consideration as I should have. As in most aspects of life the squeaky wheel gets the grease, and other items were moved up the priority list to the detriment of this request. I apologize for letting it get lost in the shuffle.

I would now like to specifically address the City Council's direction for a policy to deal with grievances filed against the Mayor. The Council gave general direction that such grievances be referred to a "third party", but gave no further direction as to whom this third party should be. At the meeting on June 4th where I was directed to come up with this policy, I had not had a chance to consider its merits so I did not comment or express reservations with the direction provided by the City Council. After having a chance to consider it, I have grave concerns about referring grievances, even those involving the Mayor, to third parties. It is important to understand what a grievance truly is: it is a process which provides employees with a means to directly address management with concerns about management's policies or the employees' work environment. The hope is that by allowing employees to take their concerns directly to management with a grievance, many issues will be resolved internally before they become a bigger problem or result in legal proceedings.

SDCL 3-18-15.1 requires the City to have a policy for informally addressing employee grievances. In order to comply with this statute, the City has adopted a policy to deal with grievances. For non-union employees, the policy is contained in the Non-Union Employee Information Guide. The policy defines a grievance as follows:

Grievance means a complaint by an employee or group of employees concerning the interpretation, application or alleged misinterpretation or misapplication of the regulations, ordinances, policies or rules of the City of Rapid City, which complaint has not been resolved satisfactorily in an informal manner between the employee and the immediate supervisor. Prior to filing a formal grievance an employee must attempt to rectify the situation with the immediate supervisor, unless that attempt would be futile. No person shall be discriminated against because of the filing of or involvement in a grievance.

If the grievance is not resolved informally with the employee's immediate supervisor, it can be appealed to the employee's department director. If the employee is unsatisfied with the decision of the department director, they may appeal to the Mayor. The appeal to the Mayor is referred to as a Step II grievance. Pursuant to SDCL 3-18-15.2, an employee unsatisfied by the decision of the Mayor may appeal to the South Dakota Dept. of Labor. Pursuant to the Council Notification Policy, the staff is required to inform the Council when there is a Step II grievance. The Council has access to the grievance and related documents. In the case of the grievance identified by former Alderman Davis at the City Council meeting, I notified the Council by email on April 27th that the Mayor had ruled on the grievance and further invited you to contact me if you had any questions about the grievance or if you needed any additional details.

When considering a policy for grievances against the Mayor, the first question I asked is who would the third party decision maker be? With the exception of the Compass Audit staff, all of the City's employees work for the Mayor. As such, no employee, including myself, would be suitable to hear grievances against the Mayor. The next obvious third party would be members of the City Council. However, allowing the Council into the grievance procedure would create the potential for significant problems. Under our current form of government, the Mayor is the City's CEO. If the Council could overrule the Mayor's decisions, especially with regard to employment of the City staff, this would allow the Council to interfere with a mayor's ability to run the City and perform his statutory duties. I believe there is a chance that such a system would not even be legal if it were challenged. The potential for abuse of such a system should also be apparent. If a disgruntled employee knows he can formally interject the City Council into the process by alleging a complaint against the Mayor, he may do so just to convert an employee issue into a political one in the hopes of insulating himself from an adverse employment action. In a highly charged political environment, it would be unfortunate if employee issues were politicized. Doing so would make it very difficult for management to do its job and make tough decisions that are sometimes necessary to keep the City functioning. Ultimately, if a mayor is making employment decisions or implementing policies that the public disagrees with, voters can express their displeasure at the ballot box and remove them from office. Interjecting an arguably "neutral" third party who could rule against a decision made by the Mayor would still pose a significant impediment to the Mayor's ability to function as the City's CEO. Should the decisions

made by an elected official who answers to the voters be able to be overruled by a non-elected person or entity that was designated as a third party to hear grievances? Even if you decide that this appropriate, then the current law provides for a neutral third party by allowing an employee to appeal directly to the Department of Labor.

In my opinion, the City's current grievance policy is satisfactory and should not be amended to interject a third party. The structure of our City's government is that the Mayor is the City's CEO. As such the Mayor needs to be able to manage the City's employees and make decisions which are going to upset employees, including decisions about whether employees will be terminated. If an employee has a concern with a supervisor or the Mayor, the complaint needs to be brought to those individuals' attention so that they can have an opportunity to address the concern. If the employee is not satisfied with the response, there exists an appeal to a third party, the South Dakota Department of Labor. While it is important to respect the chain of command and the processes the City has in place to deal with work place concerns, employees always have the ability to speak with members of the City Council about concerns they may have with management or if they believe the City is violating some law, rule or regulation. The City has formally adopted a non-retaliation memo and resolution specifically recognizing an employee's right to speak with elected officials. These documents are linked to the City's Human Resources page. As further protection, the City Council through the notification policy is also required to be informed of grievances that are not resolved within the department. It is not as if the Mayor can hide or dispose of grievances against him without the City Council being aware of it. For the reasons I have provided, I would request that the Council reconsider its previous direction to provide a formal process for grievances against the Mayor being referred to a third party.