



BEFORE THE MUSCATINE, IOWA CITY COUNCIL

IN THE MATTER OF:

Diana L. Broderson, Respondent.

POST HEARING BRIEF IN SUPPORT OF REMOVAL OF MAYOR

COMES NOW, the undersigned, and pursuant to City Code Section 1-14, and hereby submits the following Post Hearing Brief in Support of the Removal of Mayor.

I. INTRODUCTION

This removal action is not a grudge match between the City Council and the Mayor of Muscatine. This removal action is based on dozens of instances of misconduct where the Mayor either asserted baseless and unfounded allegations against City officials and various members of the public, violated City Code and the City Code of Ethics, and/or misused her power for her personal benefit. The Mayor not only engaged in the underlying actions without legal authority to do so, but she engaged in such actions repeatedly, publicly and with full knowledge the consequences could affect the City if she did not stop. Not to be deterred, the Mayor refused to heed the advice of the City Attorney and continued to repeatedly deviate from the City Code, the Code of Ethics, her fiduciary duties, and to assert baseless and unfounded allegations throughout her tenure as Mayor.

Importantly, the Mayor's allegations were not benign. She made allegations that created a risk to the City that could cause substantial civil penalties and/or civil liability, which costs ultimately would have fallen on the taxpayers. Most egregiously, the Mayor made numerous false or baseless allegations that other people had committed crimes and went so far as to affirmatively seek the filing of criminal charges against the City

Councilmembers, the City Administrator, the City Attorney, and members of the local press. These actions cannot—and should not—be taken lightly.

The victims of the Mayor's false complaints have families, careers, and are established members of the community. The Mayor has relentlessly and inexcusably asserted baseless allegations that not only tarnished their good name, but attempted to destroy various facets of their lives. Though the Mayor may disagree with, or question, the propriety of certain items concerning City matters, neither her elected status nor her subjective opinion enable her to denigrate with impunity the individuals with whom she disagrees. Yet, this is precisely what she has done repeatedly.

Under the facts, it is evident the Mayor's repeated allegations were, at worst, made maliciously with the intent to besmirch her political opponents, city employees and private citizens and, at best, made recklessly, without regard to the consequences of her actions. Whatever the case may be, her conduct occurs so frequently as to be the rule and not the exception, thus constituting willful misconduct and willful or habitual neglect of office.

To no one's benefit, the Mayor's repeated false and baseless allegations were but one category of misconduct in which the Mayor has engaged. The Mayor also repeatedly violated the City Code, the City Code of Ethics, and misused her power in an effort to gain a personal advantage. As more fully explained below, the Mayor's combined actions necessitate her removal pursuant to City Code Section 1-7-6.

## **II. STATEMENT OF FACTS**

Diana Broderon was elected Mayor of the City of Muscatine in November 2015, and officially began her term of office on January 1, 2016. The evidence in this case

clearly establishes that, since taking office, the Mayor has exceeded her lawful authority by repeatedly violating the City Code, the City Code of Ethics, by asserting false and baseless allegations, and by misusing her authority for her own personal benefit. The specific facts and evidence that support these allegations are defined in greater detail in the following sections. Such facts and evidence are incorporated herein by reference.

### **III. CREDIBILITY DETERMINATIONS**

The Mayor's testimony in this case was not credible. It was both inconsistent with the testimony of the nearly a dozen other witnesses, as well as inconsistent with her own prior statements concerning the same subject matter. As the Fact Finders in this case:

“You are the sole judges of the weight of the evidence, the credibility of the witnesses, and the conclusions to be drawn from the facts and circumstances proved. If the testimony or any part thereof is conflicting, you will reconcile it if you can, so that it may all have weight and effect, but if you cannot, you will then give credit to that testimony and to those witnesses that to you as fair-minded men and women seem most entitled thereto. In passing on the credibility of the witnesses and weighing their testimony, you may and should consider their appearance and conduct on the witness stand, their age, intelligence, strength of memory, and means of knowledge of matters of which they speak, the remoteness of events about which they testify, their interest or lack of interest in the result of the trial, the motives, if any, actuating them as witnesses, their candor, fairness, bias or prejudice, the reasonableness and probability of their statements or the want thereof, whether their testimony is corroborated or contradicted by other witnesses or facts proven, and from all of these and all other facts and circumstances proven upon the trial, determine where to give credit and where to withhold the same, and give to the testimony of each witness the weight to which you believe it is fairly entitled.”

State v. Harrington, 284 N.W.2d 244, 249 (Iowa 1979).

In this case, the hearing took place over a two-day period spanning approximately twenty hours, with over a dozen witnesses testifying. The City's witnesses had no

personal stake in the outcome of this case, and their testimony was overwhelmingly corroborated by other witnesses' testimony or supporting documentation.

The Mayor presented two witnesses. The first was Melissa Snyder. Her testimony should be wholly and completely disregarded for violating the Mayor's own sequester order. Specifically, after her testimony, it was discovered her testimony was delivered in direct violation of the sequester order for witnesses as directed by the City Council at the outset of this hearing. The sequester order was requested by the Mayor's counsel and the order, once entered, made the Mayor and her counsel bound to sequester and gave them an affirmative duty to ensure the Mayor's witnesses were in compliance. However, as is the case with many aspects of the Mayor's behavior, she and/or her counsel failed to comply and simply chose to decide that the rules or orders do not apply to her conduct. In addition, Ms. Snyder's testimony was wholly irrelevant to whether or not the Mayor should be removed from office.

The only other witness presented on behalf of the Respondent was the Mayor. The Mayor presented only her self-serving testimony which did not credibly refute the testimony of the witnesses or the documentary evidence admitted in this case, much of which consisted of the Mayor's very own emails, press releases, and other correspondence. Indeed, in many instances, the Mayor's testimony outright conflicted with the testimony of others. For instance:

1. The Mayor testified that she was not coached about her powers and duties as Mayor. The testimony of City Attorney, Matt Brick, established that, contrary to the Mayor's testimony, she was coached about her powers and duties and the potential adverse consequences of exercising her position as Mayor beyond the scope of her duties under the City Code on at least three occasions.
2. The Mayor testified that the City Attorney gave her the phone number to the Ombudsman's office and indicated that she should give the Ombudsman a call.

The City Attorney testified to the contrary, indicating that he advised the Mayor not to call the Ombudsman and that he did not have the phone number to give to the Mayor.

3. The Mayor testified that when reporting suspected law violations to the County Attorney, she just wanted to know whether a particular fact-set constituted a crime, but was not asking that criminal charges be filed. The testimony of the County Attorney indicated the opposite, that he understood the Mayor's requests as requesting that he file criminal charges against the subjects of her complaints.
4. The Mayor testified that she made it very clear to the Property Manager of the Tower apartments that she was calling regarding her mother, who was a resident at the facility, and that she never suggested the Towers hold a spaghetti dinner for the police department at the property. Contrary to this testimony, the Property Manager testified the Mayor never mentioned that her mother was a resident and never indicated that she was calling in a personal capacity.

Not only did the Mayor's testimony conflict with the testimony of others, the Mayor's testimony also conflicted with her very own prior statements. For instance:

1. The Mayor testified that she never used the word "bullies," yet her very own statements indicate otherwise. See Exhibit Brick 4 (stating "Please arrive early and join your neighbors as we stand up to the bullies and fight for free and open local government.").
2. On May 21, 2016, Mayor Broderon held a "Coffee with the Mayor" and alleged that the City staff were afraid for their jobs and specifically referred to Chief Talkington. See Exhibit Brick 8. At the hearing, the Mayor testified she doesn't believe she said the Police Chief was afraid of his job, which is contrary to her very own statement. Moreover, the Police Chief testified that he was not afraid of his job and had no issue freely engaging with the Mayor. See Exhibit Statement #15, Talkington Depo. Tr. p. 6:19-7:8.
3. On May 21, 2016, Mayor Broderon held a "Coffee with the Mayor" and alleged that her complaint about anonymous staff making social media posts was not investigated. See Exhibit Brick 8. At the hearing, the Mayor testified that she never stated her complaints regarding City staff violating the social media policy were not investigated. Instead, she testified, that she simply stated that she forwarded on the social media posts and asked how they jive with policy, and that it hasn't gone anywhere. The Mayor's testimony is contrary to her very own statement. Moreover, City Attorney Matt Brick testified that he specifically looked into the complaints and advised the Mayor on at least two occasions that no violations had occurred.

4. The Mayor testified that she did not make a statement that she was being treated poorly because of her gender. In fact, the Mayor made at least two such allegations. See Exhibit Brick 8; see Exhibit Brick 4 (stating “As a woman Mayor, I am faced with Councilmen and a City Administrator who rather than engage in a discussion, compromise and dialog choose to change the rules and strip the Mayor's power away.”); see Mayor Exhibit VV (stating that “I would like to reiterate my concern that the problems I am facing result from me being female ... I fear that me being female in a leadership role has resulted in me being met with a complete lack of acceptance and respect.”).
5. The Mayor claimed during the hearing that the false and baseless complaints she made were part of her duty to report what she was told by citizens in the community. Yet when asked to name even one of these alleged citizens, she refused and/or was simply unable to support her justification by supplying a name of a citizen.
6. The Mayor testified she did not fully understand the limitations of her duties and that she did not know or understand the potential consequences of acting beyond the scope of her authority. This assertion is contrary to the city's records and testimony of City Attorney Matthew Brick.

Based on the foregoing, the Mayor's testimony was clearly inconsistent with the evidence and the testimony in this case, which includes testimony from the Muscatine Police Chief, respected members of the Iowa State Bar, City staff, and respected members of the community at large, all of whom had no personal stake in the outcome of this matter. It is specious to suggest that the Mayor's testimony is somehow more credible than the combined testimony of these disinterested witnesses, particularly in light of the discrepancies between the Mayor's own testimony and her prior statements. Given these facts, the Mayor's self-serving and uncorroborated testimony is simply not credible in this case.

#### IV. ARGUMENT

##### A. LEGAL STANDARD FOR MISCONDUCT

Pursuant to City Code 1-7-6, the Mayor may be removed from office for, among other reasons, willful misconduct or maladministration in office. Given the scarcity of case law on the subject, Iowa courts have not had occasion to define the precise contours of the phrase “misconduct” as utilized in the removal statute. The Iowa Attorney General’s office has interpreted the phrase and held that “Misconduct generally means any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.” 1997 Iowa AG LEXIS 26, \*10 (citing Black's Law Dictionary 901 (1979)).

As the Iowa Attorney General observed, misconduct “is necessarily a broad term,” and includes within its scope other common grounds for removal such as misfeasance, malfeasance, and nonfeasance, which together are often referred to as official misconduct. See id.; see also, 4 McQuillin Mun. Corp, § 12:327. Regardless of the nomenclature used, official misconduct is any wrongful conduct that affects, interrupts, or interferes with the performance of an official duty. See 4 McQuillin Mun. Corp, § 12:327.

As for maladministration, it has been held to simply mean wrong administration. See Minkler v. State, 14 Neb. 181, 183 (Neb. 1883)(stating that “The phrase maladministration is not found in any of the law dictionaries, but we cannot be far wrong in giving it the signification of wrong administration....”); see also, *e.g.*, Oxford English Dictionary, available at <https://en.oxforddictionaries.com/definition/maladministration>

(defining mal-administration as “Inefficient or dishonest administration; mismanagement.”) and Ballentine’s Law Dictionary (defining maladministration as “[i]nefficient administration; bad but not necessarily corrupt administration.”).

In order for misconduct or maladministration to provide a basis for removal, “a showing is required the alleged [conduct] was committed willfully and with an evil purpose.” State v. Bartz, 224 N.W.2d 632, 633 (Iowa 1974). “Acts which are simply irregular, even if violative of statutes, are not in themselves grounds for removal from office unless an evil and corrupt motive on the part of the officeholder is shown.” Id. (citations omitted).

As more fully discussed below, the Mayor engaged in misconduct and maladministration of office by repeatedly acting outside the scope of her powers. The Mayor’s actions that extended beyond her authorized powers fall into four general categories: a) City Code violations, b) Code of Ethics violations, c) making baseless allegations, and d) misuse of authority. These items are discussed below, in turn.

#### **1. MAYOR REPEATEDLY VIOLATED CITY CODE**

Importantly, the powers that a particular city officer or elected official has are not uniform throughout the State of Iowa. There are approximately a half-dozen different forms of government in Iowa, with each form of government allocating power in a different manner than the others. See Iowa Code § 372.1(1). As a result, a particular elected official’s scope of authority depends, necessarily, on the form of government that exists in any particular city, as further modified by that city’s charter and/or city code.

In Muscatine’s case, the City has the special charter form of government. Muscatine’s iteration of this form of government allocates all powers of the City to the

voting members of the City Council, unless a particular power has been specifically allocated elsewhere by City Code or state law. See Exhibit Mandsager 2; City Code § 1-9-2 (stating that “All powers of the City are vested in the Council except as otherwise provided by law or ordinance.”). The Mayor’s powers, in contrast with City Council’s broad powers, are limited to those powers specifically enumerated in section 1-7-2 of the City Code.<sup>1</sup>

Against this backdrop, it is evident that, from the outset, the Mayor decided her powers were greater than they actually were, and that she intended to operate in the manner that she envisioned her role, rather than to follow the limited confines of her position as established by City Code.

For example, as the uncontroverted evidence established, only the City Council has the authority to form ad-hoc committees. See Exhibit Brick 9; City Code § 2-10-1 and 2-10-2. Despite this rule, the Mayor formed two ad-hoc committees/task forces without Council approval – the Millennial Muscatine Committee and the Mayor’s Special Task Force. See Exhibits Brick 1 and 2.

While the Mayor’s self-serving testimony attempted to indicate that no ad-hoc committee had in fact been formed, the clear language of the Mayor’s own press release indicates otherwise:

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<sup>1</sup> See Exhibit Mandsager 1 and City Code § 1-7-2, providing as follows:

**1-7-2 Powers and Duties of the Mayor.** The Mayor shall be the chief executive officer of the City; shall take care that the laws of the State of Iowa and the provisions of this City Code are duly respected, observed, and enforced within the City; shall preside at all council meetings, preserve order and decorum and shall decide all questions of order, subject to an appeal from the Council; shall from time to time give the Council information for its consideration on such measures as may be in the interest of the City; shall be the conservator of the peace and may call for the assistance of the police and, if necessary, any citizen of the City to aid in quelling or preventing any riot or unlawful assembly, or in preventing or restraining any breach of the peace and any such police officer or citizen, when so called upon, who shall refuse to obey the orders of the Mayor shall be deemed guilty of a misdemeanor; shall sign on behalf of the City all contracts between the City and any other party; and shall perform all duties required by the Charter, the provisions of this Code, resolutions of the City Council and all other acts which the good of the City may require.

The Mayor will be sharing information ... regarding several new groups that she *has created* since taking office on January 1. The first is “Millennial Muscatine: which *is a group of young people in Muscatine that is chaired by Ryan Broderon, a current MCC student*, Eagle Scout, and young entrepreneur.....The second group *is the Mayor’s Special Task Force* which is in the creation process and will look into the current form of our local government. ...The group which *is made up of* people from all walks of life, genders, political parties, ages and socio-economic status will solicit input from the public in their final recommendations.

See Exhibit Brick 2 (emphasis added).

The Mayor’s testimony that she has not created a task force or ad-hoc committee is simply not credible when the Mayor’s very own words indicate that she, in fact, created two. In addition, the Mayor’s own testimony further established that her nephew had been appointed as chair of Millennial Muscatine Committee—fully negating any argument that the committee had not in fact been formed or members appointed.

Not only did the evidence clearly establish that the Mayor formed these ad-hoc committees or task forces, the uncontroverted testimony further established that the Mayor did not obtain Council approval before forming these ad-hoc committees or task forces. The evidence presented in this case thus clearly established that the Mayor violated Title 2, Chapter 10 of the Muscatine City Code when the Mayor formed the Millennial Muscatine Committee and the Mayor’s Special Task Force. As the Mayor’s actions in creating the ad-hoc committees/task forces ran afoul of City Code, her actions amounted to misconduct in office. See 1997 Iowa AG LEXIS 26, \*10 (stating “Misconduct generally means any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.”).

In addition to violating Title 2, Chapter 10, the evidence clearly established that the Mayor violated City Code Section 1-10-2(e)(1)(b) on at least three occasions when she contacted City staff directly. Although the Mayor clearly wants to have direct access to City staff, the City Code specifically prohibits her from dealing directly with any City staff other than through the City Administrator. See Exhibit Mandsager 3; City Code § 1-10-2(e)(1)(b) (stating that “Any elected official shall deal with City Department Heads and employees... solely through the City Administrator...”). Despite this being the law of the City, the evidence clearly established that the Mayor contacted City staff directly in the following instances:

1. On April 1, 2016, Respondent emailed City staff about a contractor who was bidding on a City project. Respondent advised staff to reject the contractor’s bid as the contractor lacked qualified staff and did not have enough skilled help to complete the bid. See Exhibit Statement #2, Edgmond 1;
2. On or about May 6, 2016, Respondent contacted Dave Gobin as part of an unapproved plan for her to have regular meetings with staff. See Exhibit Statement #5, Gobin Depo. Tr. pp. 13:13-14:5; and
3. On August 22, 2016, Respondent contacted City staff member Dave Gobin to, among other things, inform him that she planned to be part of his discussions and meetings regarding a proposed river port. See id.

At the removal hearing, the Mayor testified that the above-referenced communications with City staff did not violate City Code because the City Administrator, after the fact, authorized her to contact staff directly so long as he was carbon copied on the email. This explanation simply fails to negate the above-referenced Code violations.

The email in question that the Mayor references was sent on April 11, 2016, and could not have been relied on as the basis for the Mayor’s communication on April 1, 2016. See Mayor Exhibit FF. Moreover, as Mr. Brick’s testimony clearly indicated, this email was a follow up to the conversation that occurred previously concerning nuisance

properties, and the authorization to contact City staff via email, so long as the City Administrator was carbon copied, was limited to that particular topic. Even if that were not the case, however, on the remaining two occasions mentioned above, the Mayor attempted to meet with City staff directly to discuss City business without the City Administrator's presence. As the April 11, 2016, email made clear, this was not permitted. See Mayor Exhibit FF.

Accordingly, the clear evidence presented in this case established that the Mayor violated City Code Section 1-10-2(e)(1)(b) by contacting city staff directly, without the City Administrator personally or electronically present. As the Mayor's actions in communicating with City staff ran afoul of City Code, her actions amounted to misconduct in office. See 1997 Iowa AG LEXIS 26, \*10 (stating "Misconduct generally means any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.").

## **2. MAYOR REPEATEDLY VIOLATED THE CITY CODE OF ETHICS**

The uncontroverted evidence in this case established that the Muscatine City Council adopted Council Rules that include a Code of Ethics, which applies to its elected officials and City employees. See Exhibit Mandsager 4. The purpose of the Code of Ethics is to prohibit behavior that may affect the public's trust in the City and hinder governmental operations. See Mandsager 4, Code of Ethics, Sec. 1.0001 (stating that "[a]ccepting a position as a public official and/or employee carries with it the acceptance of trust that the official/employee will work to further the public interest; maintaining that

public trust is critical to the continued operation of good government.”). In furtherance of this stated purpose, the Code of Ethics provides that:

Members shall refrain from abusive conduct and should also refrain from making personal charges or verbal attacks upon the character or motives of other members of the council, boards and commissions, the staff, city employees or the public. Council members should treat all city employees, fellow council members and the public in a respectful manner and shall not speak ill of the City of Muscatine, Iowa, any city employee, fellow council members or the public at a public meeting.

Despite this clear prohibition against members making personal charges upon the character or motives of other elected officials, the uncontroverted evidence in this case established that the Mayor did precisely that on at least five separate occasions. Specifically, the uncontroverted evidence established that the Mayor made the following charges or attacks on the character or motives of Council:

- February 29, 2016:
  - On February 29, 2016, the Mayor sent an email personally attacking the motives of the City Council, alleging that the Council’s refusal to vote on all appointments was additional evidence she was being discriminated against, bullied and attacked by the Council and the City Administrator. While this email was initially private between the elected officials, the uncontroverted evidence clearly established that the Mayor made these allegations public and sent it to the Muscatine Journal.
  
- On May 21, 2016:
  - On May 21, 2016, the Mayor held a “Coffee with the Mayor” wherein she made a number of baseless, false and/or unsubstantiated comments, such as her complaint about staff making social media posts were not investigated; that many City employees are afraid for their jobs; the Council has not done anything to support the Mayor since she was elected; that the City Administrator and Council are not following the current form of government and are preventing her from doing her job; that she is being treated poorly by the Council and the City Administrator because of her gender; that the City Administrator and City Attorney refuse to answer her questions about the changes to her appointment powers; and that the City Administrator is the “root cause” of what is going on.

- June 20, 2016:

- On June 20, 2016, the Mayor sent correspondence to members of the public in which she made the following allegations:
  - The good-old-boys are attempting to destroy the Office of the Mayor in Muscatine. Simply put, some Councilmen are offended by diversity and open government. They have scheduled a meeting at 7:00 PM on Thursday, June 23rd at City Hall to discuss a resolution stripping away all of the Mayor's power and giving it to an unelected bureaucrat. We must send a clear message to your Councilman that this is wrong. Muscatine's people deserve better than a DC-style-closed-door-backroom government. Your voice matters, now is the time to make it heard.
  - Within days of taking Office, several members of the City Council and city bureaucrats began plotting their opposition to my efforts to bring new and diverse people into our City's Boards and Commissions.
  - Immediately upon my appointing people and moving them to the next step of Council approval, a DC style anti-appointment process began.
  - These examples illustrate that the issue of appointments is a key power of the Mayor's Office. Several of the Muscatine Councilmen and certainly the City Administrator have made it abundantly clear that they do not like me being Mayor. Their lack of respect and professionalism speaks volumes.
  - As a woman Mayor, I am faced with Councilmen and a City Administrator who rather than engage in a discussion, compromise and dialog choose to change the rules and strip the Mayor's power away.

See Exhibit Brick 4.

- August 1, 2016:

- On August 1, 2016, the Mayor sent a second correspondence to members of the public in which she made the following allegations:
  - Either the City Council failed to consider my recommendations, tabled my appointments, or, after much controversy, good people have removed themselves from consideration. For this I am most sincerely sorry. We should be recognizing people's willingness to serve our city, not use partisan obstructionism to block their appointments.

See Exhibit Brick 5.

- October 13, 2016:

- Respondent interviewed with Mary Mason of the Voice of Muscatine. During the course of this interview, Respondent repeatedly made personal attacks on

the character or motives of Council and City Staff. Specifically, Respondent alleged that since she got elected it has been the goal of the City Administrator to get rid of her. In addition, she alleged that City Council is using closed sessions impermissibly as a way to “keep the public from knowing everything that’s going on.” Furthermore, Respondent alleged that the Council and Administrator are unwilling to accept her as Mayor and accept the people’s vote, and that various members of Council are taking certain action because they are “followers” and “just want to be accepted.”

The aforementioned allegations are obvious personal attacks on the character and motives of the City Council and City Administrator. They violate not only the express prohibition against making such attacks, but the fundamental purpose underlying the City’s Ethics policy, which is to preserve the public’s trust in the City and the efficient operation of the government. Indeed, the Mayor’s actions highlight the importance of and wisdom behind the Ethics policy. The Mayor’s attacks are not merely harmless campaign rhetoric; they are personal attacks against the Councilmembers.

The uncontroverted evidence in this case clearly establishes that the Mayor violated the letter and spirit of the Code of Ethics, and in doing so caused the exact result the Code of Ethics is designed to protect against. As the Mayor’s actions in making these personal attacks ran afoul of the City’s Code of Ethics, her actions amounted to misconduct in office. See 1997 Iowa AG LEXIS 26, \*10 (stating “[m]isconduct generally means any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.”); see also, Price v. San Marcos, 744 S.W.2d 349, 351 (Tex. App. Austin 1988)(upholding official’s removal from office when the official twice violated City’s code of ethics).

### **3. MAYOR REPEATEDLY ASSERTED FALSE AND BASELESS ALLEGATIONS**

Perhaps most notably, the evidence in this case clearly established that the Mayor alleged impropriety after impropriety against City staff, City Council, and various members of the public. Specifically, the evidence indicated that the Mayor made the following allegations:

Allegation 1. On January 21, 2016, Mayor Broderson contacted City Attorney, Matt Brick, and relayed the following accusations:

- i. City staff violated the law by hiring a retired employee, Randy Hill, as a consultant;
- ii. City Administrator Gregg Mandsager accepted a gift, gratuity, or kickback in the form of airline tickets or a ride on a private plane from a contractor in exchange for the contractor being awarded a Muscatine construction project;
- iii. Muscatine Community Development Director, Dave Gobin, accepted a gift, gratuity or kickback in the form of airline tickets or a ride on a private plane from a contractor in exchange for the contractor being awarded a Muscatine construction project;
- iv. City Administrator, Gregg Mandsager, had unlawfully signed a health inspection report.

See Exhibit Brick 8A.

Allegation 2. On February 26, 2016, Mayor Broderson accused two Muscatine employees of violating the social media policy. These employees were later identified as Shelley Meyer and Michelle Metzger.

See Exhibit Brick 8A.

Allegation 3. On or about February 29, 2016, Respondent sent an email personally attacking the motives of the City Council, alleging that the Council's refusal to vote on all appointments was evidence she was being discriminated against, bullied and attacked by the Council and the City Administrator.

See Exhibit Brick 8A.

Allegation 4. On February 29, 2016, Mayor Broderson notified the City Attorney, that against the advice of the City Attorney, she had met with the State Ombudsman and made a complaint alleging a violation of the law regarding the City's health inspection program against City staff and Gregg Mandsager.

See Exhibit Brick 8A.

Allegation 5. On March 1, 2016, Mayor Broderson met with an investigator employed by Homefront Security which was investigating the Mayor's complaint of gender bias and, during this interview, claimed she had been threatened by Gregg Mandsager.

See Exhibits Brick 8A and Savelli 5.

Allegation 6. On March 1, 2016, while meeting with the investigator from Homefront Security, the Mayor alleged a private citizen had a mental illness in an attempt to justify the nomination of Karl Reichert to the Planning and Zoning Commission. This assertion was baseless and false.

See Exhibit Statement #7, Sworn Statement of John Hintermeister.

Allegation 7. On April 22, 2016, the Mayor emailed the City Attorney alleging that the Mayor's Community Improvement Action Team committee and the City's China committee were not properly authorized by the Council under the City Code. The City Attorney found no evidence to support her claims.

Allegation 8. On April 28, 2016, Mayor Broderson contacted the City Attorney to discuss allegations of alleged criminal conduct by a City Councilmember and upon receiving the opinion of the City Attorney that the matter did not involve criminal conduct, she later raised the same allegation with the Muscatine County Attorney in the summer of 2016 against Councilmember Fitzgerald.

See Exhibit Brick 8A; Mayor Exhibit DD.

Allegation 9. On April 28, 2016, the City Attorney was notified by the Iowa Public Information Board that the Mayor had filed an open meetings complaint against the City Council, City Administrator and City Attorney. The complaint alleged that the City's closed session meetings were not detailed enough and said minutes were not formally approved by the Council. The complaint was dismissed as being legally insufficient.

See Exhibit Brick 8A.

Allegation 10. On May 11, 2016, the City received notice that the Auditor of Iowa had received an anonymous complaint to perform a review of the City's 2014/2015 audit. The City subsequently learned that the complaint had been filed by the Mayor and involved the City's Sister-City and economic development opportunities with China. The Mayor did not discuss this request or her underlying concerns with City staff or the Council prior to filing her complaint.

See Exhibit Statement #8, Lueck Exhibit 1.

Allegation 11. On May 11, 2016, City staff was notified that a complaint had been made to the Iowa Public Employees Retirement System (IPERS) and that it was later discovered the complaint was made by Mayor Broderson, that the IPERS rules regarding retirement and eligibility had been violated by City Staff and Randy Hill.

See Exhibit Brick 8A.

Allegation 12. On October 31, 2016, Mayor Broderson filed another complaint with the Iowa Public Information Board alleging she had been inappropriately excluded from a meeting by City Council members, City Administrator and City Attorney.

See Exhibits Brick 7 and 8A.

Allegation 13. On October 17, 2016, the Mayor contacted the County Attorney, Alan Ostergren, and alleged criminal activity on the part of two journalists-Emily Wegner of the Muscatine Journal and Mary Mason of the Voice of Muscatine. Specifically, the Mayor sent an email to the County Attorney requesting the following:

“please consider this a request to investigate the possibility of a recent action against me is a criminal action. Following the Muscatine City Council meeting on 10-13-16, Emily Wegner of the Muscatine Journal and Mary Mason with The Voice of Muscatine followed me to my office as mayor of Muscatine, Iowa....Please investigate and determine if there is any criminal activity in the above behaviors and thank you for your assistance.”

See Exhibit Statement #12, Ostergren Exhibit 7.

Allegation 14. On or about December 12-13, 2016, Mayor Broderson contacted County Attorney, Alan Ostergren, alleging that she had an Attorney General's opinion indicating that City Council, City Administrator, and City Attorney engaged in criminal activity when they made changes to the

Mayor's appointment powers, and requested that the County Attorney file criminal charges against them.

See Exhibits Brick 8A; Statement #12, Ostergren Exhibits 1-6.

In each of the forgoing instances, the evidence presented at the removal hearing clearly established that the Mayor's allegations were false and/or baseless.

With respect to allegations 1, 2, 4, 7, and 8, the uncontroverted testimony of the City Attorney established that these allegations were presented to the City Attorney by the Mayor and, after considering and investigating her allegations, he determined and communicated to the Mayor that there was no basis to conclude that any violation had occurred.

Despite these findings and conclusions of the City Attorney, the evidence established that the Mayor was dissatisfied with the City Attorney's response as it related to alleged criminal activity of Councilmember Fitzgerald, see allegation 8, the City's Health Inspection Program, see allegation 1 (iv), and the IPERS matter, see allegation 1(i).

Dissatisfied with the response she received on these items, the Mayor—against the advice of the City Attorney—continued to pursue her allegations and reported them to the County Attorney, see allegation 8, to the State Ombudsman, see allegation 4, and to the Iowa Public Employees Retirement System, see allegation 11, respectively. Consistent with the City Attorney's original opinion on these matters, no findings have been made by the County Attorney, the State Ombudsman, or IPERS, supporting the Mayor's alleged violations.

In addition to the foregoing, the evidence further established that the Mayor eventually bypassed the City altogether and began making reports directly to outside

officials or state agencies. The Mayor made two reports to the Iowa Public Information Board against the City Administrator, the City Attorney, and the City Council alleging violations of the Iowa Open Meetings Law, see allegations 9 and 12. The uncontroverted evidence in this case established that both of these complaints were baseless and, as such, were dismissed as legally insufficient. See Exhibits Brick 3 and Brick 6.

The Mayor also requested a re-audit of the City's 2014/2015 Audit based on alleged issues with the City's sister-city relationship with China. See Exhibit Statement #8, Lueck Exhibit 1. As testified to by the City Attorney at the removal hearing, the Iowa State Auditor's Office found no major irregularities to support the Mayor's allegations.

Moreover, the Mayor asserted allegations of criminal activity to the County Attorney on at least two occasions. First, the Mayor alleged criminal activity against two journalists. The County Attorney found that there was no basis to conclude that any crime had been committed by the journalists. See Exhibit Statement #12, Ostergren Exhibits 6-7. Second, the Mayor obtained an opinion from the Attorney General's office concerning changes to the appointment power, and the Mayor then forwarded this correspondence to the County Attorney alleging that the Attorney General indicated in its letter that the City Council, the City Administrator, and the City Attorney had engaged in criminal activity. See Exhibit Statement #12, Ostergren Depo. Tr. 18:3-21. The County Attorney reviewed the Mayor's allegation that the Attorney General concluded that the City Council, City Administrator, and City Attorney engaged in criminal activity, and found no basis to support her conclusion. See id.

With respect to allegations 3 and 5, the Mayor alleged that she was being discriminated against because of her gender and had been threatened by the City

Administrator. The uncontroverted evidence in this case established that a third-party investigator, Homefront Security, was retained to investigate the veracity of the Mayor's complaints. After interviewing over thirteen (13) witnesses and listening to audio of the alleged threat, the investigator found that all of the Mayor's allegations were baseless. Specifically, the investigator's report summary provided as follows:

HOMEFRONT SECURITY – INVESTIGATION REPORT: MUSCATINE

**Key Findings of this Investigation**

Pursuant to the preceding investigation which included the interview of 13 people, review of collected evidence and an analysis of Muscatine City Ordinances, it is my opinion the allegations by Mayor Broderson of hostile work environment and gender harassment cannot be substantiated. The Mayor's allegation of verbal threats is unfounded. There is not sufficient evidence to support the Mayor's claims at this time. In fact, review of recordings, witness interviews and analysis of city ordinances and other documents provide extensive evidence to the contrary. Additionally, there seems to be a lack of understanding by Mayor Broderson of the limitations of her duties as revealed through witness interviews of the members of the City Council and the City Administrator.

See Exhibit Savelli 5.

Based on the findings of Homefront Security, the Mayor's allegations that she had been discriminated against based on her gender, was the subject of verbal threats and subject to a hostile work environment, were baseless.

In each of the foregoing instances, it was determined that there was no basis for the Mayor's allegations. In total, the Mayor asserted at least thirteen (13) alleged law violations against the City staff, elected officials, and/or members of the public, as the case may be. Throughout her testimony the Mayor explained away these multiple allegations as her just reporting rumored law violations to the appropriate officials or agencies in an effort to do her job as Mayor. The alleged law violations ranged from civil

violations—a committee was not properly formed—to criminal violations—alleging that misdemeanor and felony crimes had been committed. Regardless, the allegations were many and the Mayor had no objectively reasonable basis to continue to assert them. At the hearing the Mayor had the opportunity to support her allegations by reporting the name of just one person to support her concerns. She either refused and/or simply could not provide the name of any persons relating to these false and baseless assertions. See Iowa Supreme Court Atty. Disciplinary Bd. v. Doe, 878 N.W.2d 189 (Iowa 2016)(imposing discipline against attorney and finding first amendment protections did not apply because attorney asserted an allegation against a judge which lacked objectively reasonable basis in fact.).

The Mayor’s continued assertion of baseless allegations caused the City to expend in excess of \$100,000 in public funds, see Exhibit Mandsager 5, investigating or responding to the baseless allegations, and, further, exposed the City and the subjects of the Mayor’s complaints to civil and/or criminal liability. The repeated making of baseless allegations exceeded the scope of the Mayor’s lawful authority and constituted misconduct in office. See In re Recall of Lee, 122 Wn.2d 613, 615 (Wash. 1993)(holding that Mayor clearly engaged in wrongful conduct which “affected” the performance of her duties when she falsely indicated that council took certain action it did not take); see Boyer v. City of Potosi, 77 S.W.3d 62, 72 (Mo. Ct. App. 2002) (upholding determination of lower tribunal that making of false report constitutes malfeasance); see also, Makwinski v. State Bd. Of Comm’rs, 76 N.J. 87, 385 A.2d 1227 (1978) (stating a finding of misconduct need not “be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good

behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.”).

Importantly, the Mayor’s assertion that she was simply asserting these allegations to ensure the laws were being followed in an effort to protect the City is not credible. The Mayor asserted many of the allegations after being instructed that there was no basis for them and did so repeatedly.<sup>2</sup> In addition, while the Mayor was quick to report alleged law violations of others, she had no qualms deviating from City Code or Code of Ethics when it benefited her. She did so frequently,<sup>3</sup> knowingly,<sup>4</sup> and often publically—and not once did she request an opinion from an outside agency to confirm whether her own actions constituted a violation of the law.

Given the frequency and baselessness of the allegations, it is evident that the Mayor was not concerned with upholding the strict letter of the law for the greater good of the City, but with reporting those whom she considered her political opponents in an effort to achieve their demise.

It should not be overlooked or taken lightly that the Mayor’s conduct of making false or baseless allegations to suit her political agenda was not limited to elected officials, City staff or members of the press. Her conduct even went so far as to attack or impugn the health or character of a private citizen when the Mayor was attempting to promote or justify part of her political agenda.

When being interviewed by an investigator for Homefront Security, the Mayor used this opportunity and forum to support her allegation that the City Council’s failure to approve her nomination to City Commissions was evidence of her being bullied or

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<sup>2</sup> See supra Allegations 1, 4, 8 and 11.

<sup>3</sup> See supra, section IV(A)(2)

<sup>4</sup> See supra Allegations 1.

subject to a hostile work environment. Specifically, regarding her nomination to the Planning and Zoning Commission, the Mayor asserted her nominee was the subject of complaints about his duties as an Executor of his father's Estate. In an effort to minimize his behavior, the Mayor viciously and intentionally attacked the health, mental status and character of an interested party to the Estate by asserting this person had a "mental illness."

Not only was this allegation unsupported, it was false and unconscionable. To attack a private citizen to further her political agenda is never acceptable. See Allegation 6 above.

#### **4. THE MAYOR MISUSED HER POWER TO OBTAIN PERSONAL BENEFITS**

Finally, the evidence in this case clearly established that the Mayor misused her position in an attempt to obtain a personal benefit not available to members of the general public.

Pursuant to Iowa Code section 68B.2A, "Any person who serves ... a political subdivision of the state shall not engage in any of the following conduct:

Outside employment or an activity that involves the use of the [ ] political subdivision's time, facilities, equipment, and supplies or the use of the state or political subdivision badge, uniform, business card, or other evidences of office or employment to give the person or member of the person's immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public."

At the hearing, the evidence established that in the summer of 2016, the Mayor contacted the Manager of the property locally known as the Tower Apartments, Ms. Deana Fleming. Ms. Fleming testified that the Mayor identified herself as the Mayor of Muscatine and voiced various grievances, concerning seating at the front entrance of the

apartments, the downstairs bathroom being locked, and younger disabled individuals living at the property, which the Mayor believed created some safety concerns. To address her safety concerns, the Mayor proposed having the Towers provide a spaghetti dinner for police officers at the Tower Apartments so law enforcement would be present at the facility and provide special or more intense attention to the Towers. At the time of the call, the Mayor did not indicate that the call was personal in nature and, more importantly, did not indicate that her mother was a resident at this facility.

In light of these facts, the evidence clearly established that the Mayor attempted to utilize her position as Mayor to improve the downstairs seating, to unlock the door of the downstairs bathroom, and to obtain increased security at her mother's apartments, not for the benefit of the City, but for the benefit of her own mother. These benefits were not available to other members of the public and the Mayor violated Iowa Code Section 68B.2A in seeking to obtain them by using her elected status.

The Mayor's self-serving testimony to the contrary is simply not credible. On September 2, 2016, the Mayor emailed the City Council, the City Administrator, and the City Attorney, and outright denied ever speaking with any staff from the Tower Apartments. See Exhibit Talkington 2.<sup>5</sup> Despite the Mayor's adamant denials that the conversation had occurred, the Mayor testified at length during the hearing about this conversation in an effort to refute the testimony of the Property Manager. The Mayor was

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<sup>5</sup> In pertinent part, the Mayor stated as follows:

I have never even met the on-site manager. I have never been to a meeting there or talked to any of them. I have never had any contact with the people who live or work there. I am not involved in this situation in any way. I've never even spoken to her. My only involvement with Towers is that my mom lives there and I called the corporate office quite a while ago about a question she had. Any reference to the Mayor being involved in a dispute with them is completely false. I will now contact the corporate office about this lady stating these things about me that are complete falsehoods. I may need more specifics from you Gregg about her saying that I met with Towers staff, which is untrue.  
Thanks for letting me know.

not forthright about the conversation after it happened, and there is no evidence to suggest that she is being forthright about it now. The Mayor's self-serving testimony is simply not credible in this case in light of what are, at best, apparent inconsistencies, and, at worst, outright falsities.

In addition, abuse of power is something the Mayor can do *only* by virtue of her elected position. Through her status as the Mayor, she has capacities to act in ways that can greatly disadvantage those she views as her opponents or enemies, such as repeatedly meeting/contacting the County Attorney to discuss criminal charges against reporters, elected officials and City staff. Similarly, it is an abuse of power for the Mayor to make baseless claims that require the City to expend taxpayer funds to defend, as well as when the Mayor spends her own campaign donations for non-campaign purposes. Another example is when the Mayor—during Council meetings, at her Coffee with the Mayor meetings, and in letters to the citizens—falsely stated that the Council refused to consider her appointments even though the Council had in fact approved the vast majority of her appointments. When the Mayor does these types of things, seemingly on a whim and without any evidence, it is an abuse of power.

#### **5. THE MAYOR'S ACTIONS WERE WILLFUL**

As previously mentioned, “The standard fixed by the statute for the removal of a public officer is not the mere violation of the statute; but the violation, to constitute a ground for removal, must be willful and with an evil purpose. The word “willful,” as used in this connection, was held in State v. Meek, to imply “knowledge on the part of the officer, together with a purpose to do wrong.” State ex rel. Cochran v. Zeigler, 199 Iowa 392, 202 N.W. 94 (1925).

Direct evidence that an official acted with an evil or malicious purpose is generally non-existent. In the absence of direct evidence, the court looks at the frequency of the conduct in question to infer malicious intent. See State ex rel. Collins v. Garretson, 207 Iowa 627, 628 (Iowa 1929) (holding that Appellant's noncompliance happened so frequently as to be the rule, not the exception, and, "beyond doubt," indicated that appellant engaged in such conduct willfully); see also, State v. Callaway, 268 N.W.2d 841, 842 (Iowa 1978) (holding that established pattern of misconduct warranted removal).

In this case, the Mayor violated the City Code on at least five occasions, the City Code of Ethics on at least five occasions, acted outside the scope of her authority by making false and baseless allegations on at least thirteen occasions, and misused her authority to obtain a personal benefit on at least one occasion. The Mayor continued to violate the City Code and the Code of Ethics and to assert allegations after being advised not to, after being advised of the falsity and baselessness of her prior allegations, and after being educated on the scope of and limitations to her authority. Based on the frequent, repeated, and knowing nature of the Mayor's conduct, it is clear that the Mayor engaged in such conduct willfully and with an evil or malicious motive.

As was the case in State ex rel. Collins v. Garretson, the Mayor's misconduct:

"was marked by graveness, and it demonstrated [her] unfitness for the position, as required by the authorities above cited. Mere accident or mistake does not appear in this respect, but rather, throughout [her] administration, appellant persisted in and connived at statutory evasion and maladministration." State ex rel. Collins v. Garretson, 207 Iowa 627, 223 N.W. 390 (1929).

## **6. CONCLUSION AS TO WILLFUL MISCONDUCT**

Based on the foregoing, the testimony in this case established by clear, convincing and satisfactory evidence that throughout her tenure, the Mayor repeatedly exceeded the scope of her lawful authority by violating the City Code requirements, by violating the City Code of Ethics, by asserting false and baseless allegations, and by misusing her authority for personal benefit. The evidence further established that the Mayor engaged in such conduct willfully and, as a result, she should be removed from office pursuant to City Code Section 1-7-6 for engaging in willful misconduct and maladministration in office.

### **B. LEGAL STANDARD FOR WILLFUL OR HABITUAL NEGLIGENCE OF DUTY**

Pursuant to City Code Section 1-7-6, the Mayor may be removed from office for, among other reasons, willful or habitual neglect. As with misconduct and maladministration, given the scarcity of case law on the subject, Iowa courts have not had occasion to define the precise contours of the phrase “willful or habitual neglect.” One court has interpreted willful neglect of duty as follows:

“willful neglect of duty means that the act or failure to act was for a bad or evil purpose, or when the officer conscientiously acts or fails to act contrary to a known duty, he must be guilty of some conscious wrong or inexcusable carelessness or recklessness in the discharge or a failure to discharge an official duty.”

Shields v. State, 1939 OK 203, P20 (Okla. 1939).

In the instant case, as mentioned in greater detail above, the Mayor was advised on multiple occasions of the scope of her duties and of the need to act within them. Despite this, the Mayor knowingly continued to make personal charges against the

character and motives of the City Council and persisted in her campaign to assert allegations against City staff and City officials. The Mayor's repeated violations of the Code of Ethics and repeated assertions of false and baseless allegations were made consciously, with full knowledge of the consequences that could attach to the City if she did not act within the confines of her proscribed duties. Under these facts, even if the Mayor's conduct did not amount to willful misconduct in office, it clearly amounts to willful or habitual neglect, as she recklessly and habitually continued to engage in such conduct without regard to the impact on the City and the limitations to her authority.

## V. DUE PROCESS

As a conclusory matter, it is anticipated that the Mayor will argue that she did not receive due process at this hearing. For due process to exist, the Mayor needed to receive:

“(1) notice and (2) the opportunity to defend. Mere notice of the commencement of the action is insufficient. To comply with the notice requirement of due process, the appealing party must present the issues to be addressed to provide the opposing party an opportunity to adequately defend. In determining whether an agency proceeding comported with due process, our benchmark is fundamental fairness.”

Alcoa v. Musal, 622 N.W.2d 476, 479 (Iowa 2001).

In this case, the removal hearing fully comported with principles of due process. Preliminary to the filing of charges, the Council authorized the City Attorney to draft and file the written charges for removal.<sup>6</sup> Thereafter, the City Attorney drafted the written charges and filed the same on February 17, 2017 with the City Clerk. The written charges

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<sup>6</sup> Iowa Code Chapter 66 authorizes removal hearings to be heard before the city council rather than through district court, and authorizes cities to establish the procedures for such hearing. Pursuant to this authority, the City Council adopted City Code Section 1-7-6, which provides that the Mayor may be removed from office after hearing by city council based on written charges prepared and filed by the city attorney. See Exhibit Mandsager 1. The stated grounds for removal under City Code 1-7-6 are the same as those established by state code. It was pursuant to this statutory authority that the City Council authorized the city attorney to draft and file written charges of removal so that a hearing concerning the same could be held.

of removal consisted of thirty-six detailed paragraphs of factual allegations against the Mayor.

Subsequently, the City Council scheduled the matter for hearing on March 23, 2017. Mayor Broderson was personally served with an original notice and the written charges for removal on March 9, 2017, as required by City Code Section 1-7-6. See City Code 1-7-6 (“Notice of such hearing shall be by personal service on the Mayor whose removal is being sought not less than ten (10) days before the date of such hearing.”).

Thereafter, on March 14, 2017, the Mayor was served with transcripts containing the sworn testimony of nearly all of the undersigned’s witnesses, as well as “Minutes of Testimony” which included statements concerning the anticipated testimony of every witness that the undersigned intended to call. With these items, the Mayor had not only notice of the charges against her, but had the evidence and testimony that the undersigned intended to rely upon to support this case.

At the removal hearing, the Mayor had the opportunity to be, and in fact was, represented by counsel. She had the opportunity to cross-examine all of the evidence presented against her and to present her own evidence. See City Code § 1-14-4. In addition, the City Council, as the fact finder, shall be required to make specific findings of fact and conclusions of law when issuing its decision. See id.

It is hard to envision under these circumstances how Respondent did not receive due process when she: 1) received detailed notice of the allegations against her, 2) received notice of the specific testimony of each witness to be presented against her, and 3) had a full and fair opportunity to defend the case, which included the opportunity to cross-examine every witness against her, all which were sworn to tell the truth, to call her

own witnesses, and to put on her own evidence. These procedures clearly satisfied the due process requirements that the Mayor received notice of the charges against her and be provided a reasonable opportunity to defend.

To the extent that the Mayor takes issue with fact that the City Council authorized the drafting and filing of the removal charges by City Attorney Matthew Brick and later voted to set the matter for hearing, the Iowa Supreme Court has clearly held that these procedural actions required to commence the evidentiary hearing are purely ministerial and do not deprive the Mayor from receiving a fair and impartial hearing. See Botsko v. Davenport Civ. Rights Comm'n, 774 N.W.2d 841, 849 (Iowa 2009) (stating “the mere filing of a complaint by an executive director is considered ministerial in nature and does not give rise to a due process issue in the event the executive director participates in the final agency adjudication.”).

Moreover, to the extent that the Mayor argues that she did not receive due process because the City Council authorized the filing of the charges, hired the special prosecutor, and will ultimately adjudicate the matter, the Iowa Supreme Court has already established that there is no due process violation simply because the same agency fills investigative, prosecutorial, and adjudicative roles. See id. (stating that “the mere fact that investigative, prosecutorial, and adjudicative functions are combined within one agency does not give rise to a due process violation.”).

If the Mayor takes the position that she did not receive a hearing in front of a fair and impartial tribunal, it is well established that there is a presumption of honesty and integrity that attaches to those serving as adjudicators—and to overcome this presumption requires significant evidence to the contrary. See Botsko v. Davenport Civ.

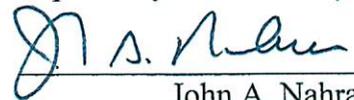
Rights Comm'n, 774 N.W.2d 841, 849 (Iowa 2009) (stating “the challenging party must bear the difficult burden of persuasion to overcome the presumption of honesty and integrity in those serving as adjudicators.”). To overcome this presumption, the Mayor needed to present evidence of actual bias. She presented no such evidence and, as a result, cannot possibly overcome the presumption of fairness.

Based on the foregoing, the removal hearing in this case clearly comported with due process as it ensured the Mayor had a reasonable opportunity to defend the charges against her. Any arguments to the contrary are unfounded, without evidence and/or simply misplaced.

**VI. CONCLUSION**

WHEREFORE, as provided above, the evidence in this case established by clear and satisfactory evidence that the Mayor engaged in willful misconduct and in willful and habitual neglect of office. Pursuant to City Code Section 1-7-6, the Mayor should be immediately removed from her position and, as such, the undersigned respectfully requests that the City Council Order that the Mayor be immediately removed from office of the Mayor of the City of Muscatine, and further Order that she immediately relinquish all City property to the City Clerk, and for such other and further relief deemed just and equitable in the premises.

Respectfully Submitted by,



John A. Naha  
6204 Emery Court  
Bettendorf, IA 52722  
SPECIAL PROSECUTOR



BEFORE THE MUSCATINE, IOWA CITY COUNCIL

<p><b>IN THE MATTER OF:</b></p> <p><b>Diana L. Broderson, Respondent.</b></p>	<p><b>FINDINGS OF FACT AND ORDER ON THE CITY OF MUSCATINE'S WRITTEN CHARGES OF REMOVAL</b></p>
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On March 23<sup>rd</sup> and April 1<sup>st</sup> of 2017, the above-captioned cause came for hearing before the undersigned. The Written Charges of Removal were presented by Special Counsel John A. Naha. The Respondent, Mayor Diana L. Broderson, was present and represented by Counsel William Sueppel and Catherine S. Gerlach. The undersigned after having heard the evidence, reviewed the exhibits, heard arguments of counsel and otherwise being fully advised in the premises finds as follows.

The Written Charges of Removal were filed on February 17, 2017 with the Muscatine City Clerk, and were authorized by the City Council pursuant to Iowa Code Chapter 66 and City Code Section 1-7-6. Subsequently, the City Council scheduled the matter for hearing on March 23, 2017. Respondent, Mayor Diana L Broderson, was personally served with an original notice and the Written Charges of Removal on March 9, 2017, as required by City Code. Thereafter, on March 14, 2017, Mayor Broderson was served with notice of the hearing date, with written transcripts containing all available sworn testimony of the City's witnesses, and with detailed "Minutes of Evidence" which included statements concerning the anticipated testimony of every witness that the city intended to call before the undersigned.

The hearing before the undersigned was conducted in the city council chamber before a certified court reporter. Before testifying each witness was placed under oath to tell the truth.

The removal hearing began on March 23, 2017 and resumed and concluded on April 1, 2017. The Respondent was present for the entirety of this hearing with her counsel. The Mayor

had the opportunity to cross-examine all of the witnesses presented against her, the opportunity to present her own witnesses and exhibits, as well as to examine all of the exhibits entered in the record. These procedures satisfied the due process requirements that the Mayor receive notice of the charges against her and that she be allowed a reasonable opportunity to defend as provided by State and City Code. During the hearing the Mayor had the opportunity to present evidence and witnesses on her behalf.

At the outset it is necessary to address the credibility of Mayor Diana L. Broderson. In assessing the credibility of Mayor Broderson we must also look to the testimony of the other persons called to testify during this hearing. We have considered the reasonableness and probability of the statements made by witnesses other than Mayor Broderson and determined whether their testimony is corroborated or contradicted by other witnesses or facts proven, and from all of these and all other facts and circumstances proven upon the hearing to determine where to give credit and where to withhold the same. Upon review of all of the evidence we find the credibility of Mayor Broderson to be incredible as compared to credible. Simply put, at times her testimony was not only inconsistent with statements she had previously made and inconsistent with press releases she had authorized but also contrary and inconsistent with the testimony of others and evidence we believe. The undersigned acting as judges of the weight of the evidence and credibility of the witnesses find Mayor Broderson not credible.

#### **I. The Mayor Violated City Code.**

We find there is sufficient evidence to support a finding that Mayor Broderson formed two ad hoc committees/task forces without City Council approval. The evidence is overwhelming that the Mayor declared at a City Council meeting on April 14, 2016, that she was going to create a task force to look into the form of local government and on April 18, 2016, she

issued a press release indicating she had created a group she referred to as “Millennial Muscatine” and the Mayor’s special task force which would look into the varying forms of local government. Despite the Mayor’s denial of the formation of these two (2) committees during the hearing the record before us clearly indicates the Mayor formed these two (2) committees or task forces when she knew the sole authority for creation of such entities was solely with the City Council.

Additionally, the evidence and testimony presented supports our finding that on at least three (3) occasions, the Mayor directly contacted city staff without the approval of the City Administrator. The city code clearly provides that any such contact shall be “solely” through the City Administrator. As set forth during the hearing and in the post-hearing brief submitted by the city, the facts demonstrate that the Mayor has repeatedly violated the city code and acted beyond the scope of her authority.

## **II. The Mayor Violated the City Code of Ethics.**

We also find the evidence and testimony presented supports that the Mayor made personal attacks upon the character or motives of elected officials and City staff, which is in direct violation of the City Code of Ethics, on at least five (5) occasions.

1. On February 29, 2016, the Mayor alleged the City Council refused to vote on all of her appointments because she was being discriminated against and attacked by the City Council and the City Administrator, and the Mayor made these allegations public by sending her email correspondence to the Muscatine Journal. There was no basis found to support her accusations.
2. On May 21, 2016, the Mayor held a public “Coffee with the Mayor” wherein she made a number of allegations deprecating upon the character and motives against the City

Council, City Administrator, and City Attorney. There was no basis found to support her accusations.

3. On June, 20, 2016, the Mayor sent correspondence to members of the public in which she alleged numerous statements deprecating upon the character and motives of the City Council and City Administrator, including, but not limited to, they are attempting to destroy the Office of the Mayor of Muscatine; they are offended by diversity and open government; and they lack respect and professionalism. There was no basis found to support her accusations.
4. On August 1, 2016, the Mayor sent a second correspondence to members of the public making allegations against the character and motives by stating the City Council was blocking her appointments due to partisanship or failed to consider her recommendations. There was no basis found to support her claims.
5. On October 13, 2016, the Mayor was interviewed by Mary Mason of the Voice of Muscatine, wherein she made personal charges on the character and motives of the Council and City staff, which include, but are not limited to, the City Administrator's goal has been to remove her from office since she got elected, the City Council was using closed sessions impermissibly, and the Council and Administrator are unwilling to accept her as mayor and accept the people's vote.

There was no evidence presented to support the Mayor's accusations. The facts conclude that the Mayor repeatedly violated the City Code of Ethics.

### **III. The Mayor Asserted False and Baseless Allegations.**

We find the evidence and testimony indicates the Mayor asserted false, baseless or unsubstantiated improprieties against City staff, City Council and various members of the public.

The allegations and findings are as follows:

1. The Mayor made a complaint to the Iowa Public Employees Retirement System alleging City staff violated the law by hiring a retired employee, Randy Hill, as a consultant. IPERS did not take action in the matter.
2. The Mayor alleged the City Administrator accepted a gift, gratuity, or kickback in the form of airline tickets or a ride on a private plane from a contractor in exchange for the contractor being awarded a Muscatine construction project. No basis was found to support this allegation.
3. The Mayor alleged the Muscatine Community Development Director, Dave Gobin, accepted a gift, gratuity or kickback in the form of airline tickets or a ride on a private plane from a contractor in exchange for the contractor being awarded a Muscatine construction project. No basis was found to support this allegation.
4. On February 19, 2016, the Mayor claimed she was the subject of gender bias or discrimination by the City Administrator. This claim was investigated by the City and a third-party, Homefront Security and was found to be unsubstantiated.
5. At the time of the investigation, the Mayor's complaint of gender bias her accusations grew to include that she was the subject of a hostile work environment by the City Council and the City Administrator. This claim was investigated by the City and a third-party, Homefront Security and was found to be unsubstantiated.
6. On February 26, 2016, the Mayor accused two Muscatine employees of violating the social media policy and investigation was taken by the City. These employees were later identified as Shelley Meyer and Michelle Metzger. The City did investigate the matter and no basis was found to support this allegation.
7. On February 29, 2016, the Mayor sent a list of appointments to the city council via email. When councilmembers requested additional information about the nominees Mayor Broderson responded by alleging the city council's refusal to vote on her appointments was evidence she was being discriminated against by the City Council. No basis was found to support this allegation.

8. On February 29, 2016, the Mayor notified the city attorney, that against the advice of the city attorney, she had met with the State Ombudsman and made a complaint alleging a violation of the law regarding the city's health inspection program against City staff and the City Administrator. No basis was found to support this allegation.
9. On March 1, 2016, during the investigation interview with Homefront Security, the Mayor falsely asserted the existence of a mental illness by a private citizen of Muscatine, Iowa. No basis was found to support this allegation.
10. On April 22, 2016, the Mayor emailed the City Attorney alleging that the Mayor's Community Improvement Action Team committee and the City's China committee were not properly authorized by the Council under the City Code. No basis was found to support this allegation.
11. On April 28, 2016, Mayor Broderson contacted the city attorney to discuss allegations of alleged criminal conduct by a city council member and upon receiving the opinion of the city attorney that the matter did not involve criminal conduct and she later raised the same allegation with the Muscatine County Attorney in the summer of 2016 against Councilmember Fitzgerald. No basis was found to support this allegation.
12. On April 28, 2016, the city attorney was notified by the Iowa Public Information Board that Mayor Broderson had filed a complaint against the City Council, the City Administrator and the City Attorney. This complaint was dismissed as legally insufficient by the Iowa Public Information Board.
13. On May 11, 2016, the City received notice that the Auditor of Iowa had received an anonymous complaint to perform a review of the City's 2014/2015 audit. The City subsequently learned that the complaint had been filed by the Mayor and involved the City's Sister-City and economic development opportunities with China. The Mayor did not discuss this request or her underlying concerns with City staff or the Council prior to filing her complaint. The State Auditor has not concluded that the City made any errors in the audit.
14. On May 21, 2016, Mayor Broderson held a "Coffee with the Mayor" stating that the city employees were afraid for their jobs and specifically referred to Chief Talkington. This allegation proved to be false.
15. On or about October 17, 2016, Mayor Broderson contacted the Muscatine County Attorney to discuss and request criminal charges against two journalists, namely Emily Wegner of the Muscatine Journal and Mary Mason of the Voice of Muscatine. No basis was found to support this allegation.
16. On October 31, 2016, the Mayor filed another complaint with the Iowa Public Information Board alleging she had been inappropriately excluded from a meeting by

the City Council, the City Administrator and the City Attorney. The complaint was dismissed as legally insufficient by the Iowa Public Information Board.

17. On or about December 13, 2016, the Mayor contacted the Muscatine County Attorney to discuss criminal charges be commenced against the City Council, the City Administrator and the City Attorney. No basis was found to support this allegation.
18. Shortly after December 13, 2016, the Mayor asserted that the Muscatine County Attorney had been ordered to file criminal charges by the Attorney General against the City Council, the City Administrator and the City Attorney. This allegation proved to be false.

The evidence in this case demonstrate that the Mayor repeatedly made false and baseless allegations.

#### **IV. The Mayor Misused Her Power to Obtain Personal Benefits.**

We find the evidence and testimony presented supports that the Mayor misused her position in an attempt to obtain personal benefit not available to members of the general public in violation of Iowa Code Section 68B.2A. At the hearing, the evidence established that in the summer of 2016 the Mayor, introducing herself as Mayor of Muscatine Diana Broderson, contacted the Manager of the property locally known as the Tower Apartments, Ms. Deana Fleming, regarding various grievances. At the time of the call, the Mayor did not indicate that the call was personal in nature and, more importantly, did not indicate that her mother was a resident at this facility. In light of these facts, the Mayor attempted to utilize her position as Mayor to benefit her mother, and these benefits were not available to other members of the public.

The Mayor further misused and or abused her powers by suggesting to Ms. Fleming that the Towers should host a spaghetti supper for the police department presumably to receive better service from the police department. Additionally, through her status as Mayor, she repeatedly met/contacted the County Attorney to discuss criminal charges against reporters, elected officials

and City staff, which is not available to members of the public. The facts conclude the Mayor misused her power to obtain personal benefits.

The City Council finds that the Mayor engaged in misconduct and maladministration of office by repeatedly acting outside the scope of her powers and abusing or misusing the office of Mayor to gain advantages or benefit for her personal agenda which is not available to similarly situated members of the public. The City Council also finds that based on the frequent, repeated and knowing nature of the Mayor's conduct, she engaged in such conduct willfully and with an evil or malicious motive.

In addition to the specific findings made above we find the evidence establishes that Mayor Broderon has repeatedly exceeded the scope of her lawful authority by violating City Code provisions, by violating the City Code of Ethics, by asserting false and baseless allegations and by misusing or abusing her authority or office for personal benefit. The Mayor's repeated violation of the Code of Ethics and repeated assertions of false and baseless allegations were made consciously, with full knowledge of the consequences that could attach to the city. Further her continued conduct of operating outside the scope of her authority, after being advised of the possible adverse consequences to the city, amounts to willful or habitual neglect and/or willful misconduct in office. We further find that her repeated conduct and frequency of misconduct is evidence that her conduct was made with an evil or malicious motive.

We further find the false, baseless and inappropriate actions of Mayor Broderon have cost the City of Muscatine in excess of \$100,000.

## V. The Actions of the Mayor Rise to the Level of Removal.

Section 1-7-6 of the City Code states that the Mayor may be removed from office by action of the City Council for, *inter alia*, willful or habitual neglect or refusal to perform the duties of his or her office; for willful misconduct or maladministration in office; or corruption. Removal from public office is a significant action as the object is to rid the community of an incapable or unworthy official. *See State v. Callaway*, 268 N.W.2d 841 (Iowa 1978) (citations omitted).

Legal authorities provide that a neglect of duties occurs when there is a substantial failure to perform the official duties of office. *See Luckritz v. City of Camanche*, 2008 Iowa App. LEXIS 501, \*13 (Ia. Ct. App. July 16, 2008) (removal for failure to show up for a trial); *see also Shields v. State*, 89 P.2D 756 (Okla. 1939) (neglect of duty when an office acts or fails to act contractor to a known duty); 4 McQuillin, *supra*, §12.325. The above authority suggests that the failure to perform can be either a significant single action (such as the commission of a crime) or a number of repeated actions (repeatedly breaching a fiduciary duty—especially after being repeatedly warned not to take said actions).

The Iowa Attorney General's office has stated that misconduct and/or maladministration includes "any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act." *See* 1997 Iowa AG LEXIS 26, \*11-14. Other legal authorities define misconduct as that which 'affects, interrupts, or interferes' with the performance of an official duty. *See* 4 McQuillin Mun. Corp, § 12:327. As for maladministration, it has been held to simply mean 'wrong' administration. *See Minkler v. State*, 15 N.W. 330 (Neb. 1883).

To determine that an action constitutes misconduct to support removal, the fact finder will often find that “the alleged misconduct was committed willfully and with an evil purpose.” See *State v. Bartz*, 224 N.W.2d 632 (Iowa 1974). An “evil purpose” is found by “grave misconduct or such flagrant incompetency” to show an “unfitness for the position.” *State ex rel. Crowder v. Smith*, 4 N.W.2d 267 (Iowa 1942). Courts have also found evil purpose/malice by looking at the frequency of the conduct in question to infer malicious intent. See *State ex rel. Collins v. Garretson*, 207 Iowa 627 (Iowa 1929) (noncompliance happened so frequently as to be the rule, not the exception); see also, *State v. Callaway*, 268 N.W.2d 841 (Iowa 1978) (a repeated pattern of misconduct warranted removal).

In a related case, a mayor was removed for misfeasance after contacting the treasurer and directing them to write off a delinquent water account after falsely stating the council had voted to write-off said debt. See *In re Recall of Lee*, 122 Wn.2d 613 (Wash. 1993) (mayor’s conduct “affected” the performance of both mayor’s and treasurer’s duties and the mayor “carried out her duties in an improper manner and failed to perform her duties faithfully.”) In another case, the mayor was removed after making a false report to the council about a police chief, which was contradicted by the testimony of other witnesses. See *Boyer v. City of Potosi*, 77 S.W.3d 62 (Mo. Ct. App., 2002). Violations of ethics codes have also been found to be grounds for removal, such as a case where a city removed an elected official after he twice violated that city’s ethics code by representing himself in front of the city’s zoning board. See *Price v. San Marcos*, 744 S.W.2d 349 (Tex. App. Austin 1988) (“the City’s goals of preventing the appearance of impropriety, conflicts of interest, and self-dealing in local government—all legitimate ends—were rationally related to and achieved by applying the ethics ordinance to [the elected official] and his removal from office.”)

Based on a thorough review of the evidence of this case—including the witness statements, exhibits, testimony and briefs, we find that the City’s special prosecutor has satisfied the elements for the removal of the Mayor of the City of Muscatine. Specifically, pursuant to Section 1-7-6 of the City Code, we find that, as set forth above, the Mayor has willful and habitual neglected to perform her duties, she has failed and refused to perform her duties, she has committed willful misconduct and maladministration in office, and she has used her office and title in a dishonest and fraudulent manner tantamount to corruption. We further find that the Mayor repeatedly willful acted contrary to her affirmative duties to do otherwise and that the Mayor’s behavior affected, interrupted and interfered with the performance of official City duties. Finally, we find that the Mayor has engaged in grave misconduct and flagrant incompetency showing she is unfit for her position—especially given the frequency of her misconduct.

ORDER

IT IS THEREFORE THE ORDER OF THE CITY COUNCIL that Mayor Diana L. Broderson shall be immediately removed from the office of the Mayor of the City of Muscatine, and further order that she immediately relinquish all City property to the City Clerk.

Dated this \_\_\_\_\_ day of May 2017.

\_\_\_\_\_  
Bob Bynum

\_\_\_\_\_  
Scott Natvig

\_\_\_\_\_  
Phillip Fitzgerald

\_\_\_\_\_  
Michael Rehwaldt

\_\_\_\_\_  
Allen Harvey

\_\_\_\_\_  
Santos Saucedo

\_\_\_\_\_  
Tom Spread

City Clerk to mail copies to:  
William J. Sueppel  
Meardon, Sueppel & Downer, P.L.C.  
122 South Linn Street  
Iowa City, IA 52240  
ATTORNEYS FOR RESPONDENT

John A. Nahra  
6204 Emery Court  
Bettendorf, IA 52722  
SPECIAL PROSECUTOR FOR CITY



BEFORE THE CITY OF MUSCATINE, IOWA CITY COUNCIL

IN THE MATTER OF: )
DIANA L. BRODERSON ) BRIEF AND MEMORANDUM OF LAW

COMES NOW, Diana L. Broderson, Mayor of Muscatine, Iowa, by and through her undersigned counsel, and hereby submits her Memorandum of Law in support of her defense:

BACKGROUND AND PROCEDURAL HISTORY:

Mayor Diana L. Broderson was elected by the citizens of the City of Muscatine in November of 2015. She was sworn in on December 17, 2015, and took office officially as Mayor of Muscatine on January 4, 2016. Throughout 2016, the City Council, City Administrator, City Attorney, and Mayor Broderson faced challenges in effective communication due to competing priorities and personality conflicts. The Council took various legislative actions throughout the year to strip the Mayor of her powers provided by Iowa law, and the City Administrator and City Attorney continued to conflict with the Mayor when she posed various apparently challenging questions and sought answers for concerned citizens in the course of her duties as Mayor.

Based on these conflicts, the City of Muscatine filed "Written Charges of Removal" against Mayor Diana L. Broderson on February 17, 2017 under Iowa Code Section 66.29 and Muscatine City Code Section 1-7-6. These charges were drafted by the



City Attorney, Mr. Matthew Brick, at the direction of the City Council and City Administrator. The City Council voted on Thursday, January 12, 2017 to authorize and instruct the City Attorney to file these Written Charges of Removal. Minutes of Evidence were prepared and "Sworn Statements" were taken in anticipation of these charges being drafted and filed. A Special Prosecutor was hired by the City Council to prosecute its case before the City Council. Mayor Broderson was served with the Charges and Notice of Hearing on March 9, 2017. The hearing was held before the Muscatine City Council, acting as both Judge and Jury, on March 23, 2017 and concluding on April 1, 2017. In total, the hearing lasted for over twenty hours. The City Council asked that the parties prepare briefs on the relevant law and proposed decisions. The Council has indicated they will vote on whether to remove the Mayor following the submittal of the briefs. The City Code requires a two-thirds affirmative vote to remove Mayor Broderson from the office of Mayor.

At the outset of the proceedings, Mayor Broderson filed a motion requesting the Council to recue itself from any adjudicative functions in order to protect her due process rights. This motion was heard by the City Council prior to receiving evidence. The City Council voted to reject the Mayor's Motion to continue with the hearing deciding that they would sit in adjudication of the charges that they ordered to be filed.

The Written Charges of Removal and Legal Arguments filed by the City cited numerous allegations against the Mayor which the City claimed constitute "Willful Misconduct and/or Maladministration" through: (1) Defamation and False Allegations; (2) Failure to Comply with the City Code of Ethics; (3) Failure to Comply with the City

Code; (4) Breach of Fiduciary Duties; and (5) Misuse of Power and/or Abuse of Office. The City also alleges the Mayor has engaged in "Willful or Habitual Neglect or Refusal to Perform the Duties of Her Office" throughout her term in office.

The City called the following individuals to testify to the contents of their Sworn Statements: Frances Annette Donelson, James Jerald Edgmond, Gerald Ewers, Deana Fleming, David Gobin (telephonically), Randall Eugene Hill, John Hintermeister (telephonically), Nancy Lueck, Michelle Mietzger, Shelley Meyer, Brandy Dulceak Olson, Alan Ostergren, Stephanie Romagnoli, Jeffrey W. Sorensen, and Brett Talkington (telephonically). Additionally, the City called Louis Savelli, Greg Mandsager, and Matthew Brick to testify.

Throughout the proceedings, various procedural irregularities occurred. On March 23, 2017 and April 1, 2017, while the City Council members were acting in their adjudicative capacity as both judge and jury, the following events occurred: (1) Councilman Santos Saucedo testified to the veracity or authenticity of Exhibit E and his opinions thereof, later testifying twice to facts in question by two separate witnesses, and then updating his Facebook status from his iPad while a witness was testifying, cancelling a practice scheduled for later in the evening; (2) Councilman Tom Spread testified about Exhibit 1 attached to the Sworn Statement of Jeffrey Sorensen and words either contained or not contained therein, his memory of Exhibit 1, as it was an email from him of his recollections of an event, and then again later about whether or not a word appeared in a different exhibit used demonstratively by a witness; and (3) Councilman Rehwaldt interjected to "point out a mistake" in a Sworn Statement of a

witness. He later leaned over to discuss a point with witness, Greg Mandsager, who was on the stand testifying. He fell asleep, at one point, during testimony. Finally he recused himself from one vote on one procedural motion due to a "conflict of interest." Each of these events happened while the Council members were acting in an adjudicative capacity presiding over the hearing. Other irregularities included City Administrator Mandsager opening the door to observe the proceedings even though, as a witness, he was ordered excluded from the proceedings when not testifying. The Mayor was not notified of a telephonic witness in advance, so that she could prepare to have documents and evidence she intended to use for their cross-examination available electronically or by other means.

#### **APPLICABLE LAW:**

Iowa Code provides for the Removal of Public Officers under Chapter 66, which also allows a City to set forth a removal procedure through ordinance. IOWA CODE §66.29 and 66.30. Iowa Code Section Chapter 66 and relevant case law is controlling for the proceedings under Muscatine City Code 1-7-6.

#### **1. Muscatine City Council is an Improper Venue:**

Procedurally and foremost, it is important to note that these removal proceedings should not have occurred before the Muscatine City Council. Mayor Broderson filed a Motion for Removal to District Court to protect her due process rights. The City Council rejected the motion to file the pending charges in the Iowa District Court in and for Muscatine County to ensure there is an "untainted body" to

present the case to, which guarantees a "fair trial in a fair tribunal." Botsko v. Davenport Civil Rights Com'n, 774 N.W.2d 841, 848-854 (Iowa 2009). As noted in her Motion, as part of these proceedings, Mayor Broderson is entitled to the full protections of due process of the United States and Iowa Constitutions, and these rights were violated when the City Council moved forward and denied her request.

The United States Constitution states that no person shall "be deprived of life, liberty, or property, without due process of law," in its Fifth Amendment, and its Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." This is extended by the State of Iowa in Article I, section 9 of the Iowa Constitution which affirms that "no person shall be deprived of life, liberty, or property, without due process of law." The Supreme Court of Iowa has succinctly stated that "'[d]ue process requires fundamental fairness in a judicial proceeding' so a trial that is fundamentally unfair violates the guarantees of due process in the United States and Iowa Constitutions." More v. State, 880 N.W.2d 487, 499 (Iowa 2016) (quoting State v. Becker, 818 N.W.2d 135, 148 (Iowa 2012), internal citations omitted).

On February 22, 2017, in Burke v. City Council of City of Lansing, the Court of Appeals of Iowa was ruled on a similar situation as is presented here in the Matter of Diana L. Broderson. The Burke case involved a removal proceeding of a City Councilman under a City Ordinance and Chapter 66. The Court in Burke found that a City Council involved in prosecuting, investigating, and deciding a removal case was a clear intermingling of functions that amounted to a violation of Burke's due process

rights. Burke v. City Council of City of Lansing, 2017 WL 706214, 5 (Slip Copy) (Iowa Ct. App. 2017). The court found that when the Council authorized the initiation of the removal process, it was essentially serving as prosecutor. Id.

This hearing where the Council acted as complainant, judge, and jury amounts to a violation of Mayor Broderson's due process rights. Beyond that, the Council participated as witness while acting as judge and jury, amounting to another violation of the Mayor's due process rights. The numerous procedural irregularities in these proceedings, such as the inability to show exhibits to telephonic witnesses, creates an inability for the Mayor to face those witnesses who are testifying to facts and charges against her with appropriate cross-examination.

Adding to the unfairness of the process, the City Attorney drafted and filed the charges against Mayor Broderson and then acted and served as chief witness explaining the charges through testimony and his legal conclusions thereof following his personal "recusal." Additionally the City Attorney's law firm acted as legal advisor to the City Council during the hearing proceedings, acted as advisor for the prosecution prior to the hearing date, and provided paralegal assistance to the Special Prosecutor in the actual prosecution of the charges. Hardly a fair hearing where the City Attorney serves as Prosecutor, Witness, and Advisor to the City Council.

As a result of these serious irregularities, unfair procedures, and due process issues raised, it was improper for the City Council to refuse to follow Iowa Code Chapter 66, which sets forth a clear procedure for removal proceedings that would have protected constitutional due process for Mayor Broderson. This process creates a due

process violation that was specifically condemned by the Court of Appeals in the Burke case.

## **2. Mayor Broderon Has Not Engaged in Willful Misconduct or Maladministration**

The City has the burden of proof in this matter for both production and persuasion. The City must prove the charges by clear, satisfactory, and convincing evidence. This requires the City to establish the facts by more than a preponderance of the evidence, but something less than beyond a reasonable doubt. State v. Bartz, 224 N.W.2d 632, 638 (Iowa 1974).

The City defined misconduct in their Charges as "any unlawful behavior by a public officer in relation to the duties of this office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act." The City then set forth five categories of specific misconduct. Throughout the witness testimony, the City alleged that the Mayor violated sections 1.003 (2) and 1.001(v) of the City's Ethics Policy by: (1) "making baseless complaints;" (2) "making complaints without sufficient evidence;" (3) "attempting to change state law to override City Code;" (4) "making allegations against a member of the public without evidence;" (5) "making allegations without evidence;" and (6) "filing complaints without evidence" which all amounted to Willful Misconduct and Maladministration of Office. Additionally, the City alleged that the Mayor was acting outside the scope of the authority prescribed to her by Iowa law and the Muscatine City Code, and that such act amounted to maladministration. This is not the

legal standard established, by statute or legal jurisprudence, for the removal of an elected official.

Willful Misconduct or Maladministration of Office is consistently defined under Iowa Code Chapter 66 as intentional, with acts that are committed knowingly, and with a evil purpose or purpose to do wrong. The cases interpreting Chapter 66 show the grounds for removal are serious, and require evil design, corrupt motives and purpose, and grave misconduct. See State v. Callaway, 268 N.W.2d 841, 842 (Iowa 1978) (stating "[i]n order to establish "willful misconduct" as a ground for removal, it is necessary to show a breach of duty committed knowingly, with an evil intent and with a purpose to do wrong"); State ex. rel Cochran v. Zeigler, 202 N.W. 94, 96 (Iowa 1925) (stating that the primary purpose of the statute is the protection of public interests, and finding that "such peril arises only when his administration of the office is marked by such grave misconduct or such flagrant incompetency as demonstrates his unfitness for the position," as the controlling purpose of the statute); and State v. Bartz, 224 N.W.2d 632, 638 (Iowa 1974) (summarizing that the Court has "said that in cases where a public official is charged with misconduct, maladministration or corruption under §66.1, The Code, it must be proven that the alleged misconduct was committed willfully and with an evil purpose."). Removal is drastic and penal. The object is to rid the community of a corrupt, incapable or unworthy official. State v. Callaway. Acts which are simply irregular, even if violative of statutes, are not in themselves grounds for removal from office, unless an evil and corrupt motive, on the part of the officeholder is shown. Bartz, 224 N.W.2d at 638.

The types of acts which have warranted removal for willful misconduct or maladministration of office under this Iowa statute are serious and should not be construed lightly. See Op. Atty. Gen. 1948, 224 (describing improper expenditure of public funds authorized by a Board of Supervisors would rise to the level of maladministration); or Op. Atty. Gen (Buren) March 11, 1966, WL 157566 (stating that an action of a City Council diverting public funds to an unauthorized use would be maladministration); or State v. Missildine, 245 N.W. 303, 304 (Iowa 1932) (finding a "mere error in judgment" is not maladministration of office or willful misconduct); and State v. Meek, 127 N.W. 1023, 1024 (Iowa 1910) (stating that the term willful misconduct is not applicable to every mistake or departure from the law or statute defining an officer's duties, and is not even applicable to simple voluntary acts, but that the statute requires an evil and corrupt purpose.) Even acts that are irregular or specifically prohibited by a statute do not rise to the level needed to warrant removal, if there is no evil and corrupt design and purpose. See State v. Manning, 220 Iowa 525 (Iowa 1935). The law sets this standard high, and requires proof by clear, satisfactory, and convincing evidence. Callaway, 268 N.W.2d at 842. In State v. Bartz, the Iowa Supreme Court noted that there is a paucity of case law construing or applying the removal of provisions of Chapter 66. The Court stated that this was indicative of the fact that the remedy for removal of a duly elected official is a drastic measure and that the usual method of removing officeholders is by resort to the ballot. Bartz, 224 N.W.2d at 638.

The Mayor presented evidence throughout the proceedings that showed that her statements or actions were made with well-researched history, facts, and information

that the Mayor reasonably believed should be shared to protect the best interests of the Citizens and City of Muscatine. At no time did the City present evidence of any intent of the Mayor, and at no time did any witness testify that the Mayor knowingly acted with any evil purpose or intent to do wrong. Intent is a critical element that must be proven to remove an elected official. Without proving evil intent or purpose or intent to do harm, the City has not met its burden of proof necessary to support removal.

The evidence presented in this matter showed unequivocally that the various acts Mayor Broderson has been accused of do not rise to the level of "Willful Misconduct or Maladministration of Office" as stated under Iowa law. Breach of etiquette, stern language, breach of decorum, public disagreement, and conflicting opinions do not come close to the intent of the law warranting removal of an elected official. Greed, corruption, fraud, and other serious crimes of moral turpitude call for removal. The Mayor's actions in these situations do not rise to this serious standard and do not meet the legal criteria set forth by the statute or case law interpreting the relevant Chapter.

***A. Mayor Broderson Did Not Engage in Defamation or Make False Allegations***

Defamation is defined under Iowa law as the publishing of written or oral statements that tend to injure a person's reputation and good name. Newell v. JDS Holdings, LLC, 834 N.W.2d 463, 470 (Iowa Ct. App. 2013). To establish defamation, the City would need to prove that the statements made were false and that they caused damage. Id. If the statement is against a public official, there are two additional

elements required to be established by the City by clear and convincing evidence: both that the statement is false, and that it was made with actual malice. Bertrand v. Mullin, 846 N.W.2d 884, 892 (Iowa 2014). Malice is only established when the City proves the substantial requirement that the statement was made with knowledge that it was false or that the Mayor showed a reckless disregard for whether the statement was false or not when it was made. Stevens v. Iowa Newspapers, Inc., 728 N.W.2d 823, 830 (Iowa 2007).

The City also alleges that the Mayor made unfounded claims or false allegations against various individuals without "authority to do so." The Mayor presented evidence refuting each of these allegations and showing that she had a factual basis to make every statement that have been alleged as "defamatory." She provided such evidence when making these statements. For instance, in the most notorious claim offered by the City alleging defamation, the Mayor's concern over a contractor, it was shown that the Mayor spoke the truth. The litigation involving the contractor in Davenport was widely and publicly reported. The City, so quick to persecute, didn't even bother to investigate the Mayor's concerns.

***B. Mayor Broderson Did Not Fail to Comply with City Code***

The City alleged that Mayor Broderson failed to comply with Sections 1.003 and 1.001(v) of the Muscatine Code of Ethics, and city and state laws by making personal charges against the character or motives of the City Council, members of the public, or City employees. The various allegations raised by the City of such personal charges

allegedly made by the Mayor do not rise to the level of willful misconduct and maladministration of office. (See Bartz, Manning, and Callaway)

The conflicts between the City Code of Ethics, the City Code, and the Code of Iowa all create a conflict as to what law or policy the Mayor is subject to. The City Code states that "[t]he Mayor is not a member of the Council and shall not vote as a member of the Council." Muscatine City Ordinance 1-7-4; IOWA CODE §372.4 (2016). The City Code of Ethics states that it is applicable to officers of the City, which it defines as, in pertinent part: "member of the City Council" and goes on to govern "Member" standards of conduct. *Sec. 1.002; Sec. 1.003* Muscatine City Code of Ethics. The City's Code of Ethics specifically states that it applies to employees and council members.

However, the Mayor and others testified that it was not applied to or enforced against employees or used to govern employee behavior when City employees engaged in personal attacks against the Mayor in council meetings. Witnesses also testified that the Code of Ethics was not invoked or enforced when a member of the City Council gave a personal presentation filled with statements against the Mayor. Testimony and evidence also showed the City chose not to enforce the Policy when employees of the City posted inflammatory and personal attacks against the Mayor on social media websites for the public to examine. Testimony and evidence showed that the City only applied and invoked the Ethics policy when it concerned the Mayor.

The City has based the majority of its "charges" against the Mayor on alleged violations of the Code of Ethics. The City chooses not to apply it to members of the Council or employees in the same manner the City has applied it to the Mayor. The City

witnesses testified to this, citing "free speech" rights while not providing the Mayor the same such rights, when the Mayor and the city employees have the same free speech rights under the Constitution.

*C. Mayor Broderon Did Not Fail to Comply with City Code*

The City alleges that Mayor Broderon violated City Code Section 1-10-2(E)(1)(B), which seeks to prevent contact between "any elected official" and City employees, and prohibits Council Members from directly issuing orders to City employees. The limited direct contact that the Mayor had with City staff was not in violation of the City Code and would not rise to the level of willful misconduct or maladministration of office. The Mayor never ordered staff to act in any way. The Mayor copied the City Administrator and/or City Attorney on emails as requested to by the City Administrator as required. See Exhibit DD, I, FF. Occasional brief conversations with city staff in no way contravenes the City Code, and no testimony indicated otherwise. The idea that a Mayor would need permission from a City Administrator to say hello or ask a brief question pertaining to the City of any employee would lead to an absurd result and inefficiencies in conducting City business. Not only is this Ordinance outrageous in its application to the Chief Executive Officer of a City, it was not fairly or uniformly applied to the other elected officials mentioned in the Ordinance. The evidence showed that this standard is also not applied equally to the Mayor and Council members, it was only applicable when the City Administrator chose to enforce it. The Police Chief and Economic Development Director both testified that

they spoke with Council members and even the Mayor at times and did not need "permission" from the City Administrator to do so.

***D. Mayor Broderon Never Breached Any Fiduciary Duties***

A fiduciary obligation and duty is imposed under Iowa law when there is a fiduciary relationship between the parties. The Restatement (Second) of Torts states that "a fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." Restatement (Second) of Torts §874 cmt. a, at 300 (1979). The Iowa Supreme Court states that factors indicating a fiduciary relationship exists include: "the acting of one person for another; the having and exercising of influence over one person by another; the inequality of the parties; and the dependence of one person upon another." Weltzin v. Cobank, ACB, 633 N.W.2d 290, 294 (Iowa 2001).

The Mayor has duties, according to the City, to act in good faith, exercise reasonable care, and maintain loyalty to the City. The City provides no specific law or citation to its definitions of fiduciary duty and where the obligations arise from. The obligations of the Mayor to the City and the Citizens of Muscatine, were met and exceeded. The Council and City staff, on the other hand, have taken unreasonable steps and actions to incur the direct costs for which it now tries to blame the Mayor.

The evidence showed that costs incurred by the City Council, the staff, and the City Attorney were done on their own volition and without direction or demand by the Mayor. There was no testimony to indicate that the Mayor required the City to incur

such expenses, or that the Mayor even requested such expenses be incurred. No breach of any fiduciary duties occurs when a Mayor is acting in what she believed to be the best interests of the City and the citizens she was duly elected to represent. Every act the Mayor took was taken with an eye toward what was best for the City. She wanted to make sure that the City was following the law and above reproach. The City has misapplied the fiduciary standard against the Mayor. The City, again, has not proven the elements necessary to establish a breach of fiduciary duty under Iowa law. There is no proof provided as to how this would rise to a level of willful misconduct or maladministration under Chapter 66, Iowa Code.

***E. Mayor Broderon Did Not Misuse Her Power or Abuse Her Discretion***

Misuse of Power and Abuse of Discretion are general terms used by the City in their charges and throughout the City Attorney's testimony to encompass multiple acts it claimed constitutes acts that have caused substantial harm to the City and its citizens. The City provided no testimony or specific law or citation to define these terms or where the standards come from for public officials. There is no relevant case law or statutes by which removal from office can be sustained for these alleged violations, as Chapter 66 establishes the grounds upon which the Mayor may be removed.

The evidence showed that the Mayor neither misused her power nor abused her discretion in her acts as Mayor. She continually acted in the best interests of the Citizens of Muscatine and in order to protect the interests of the City, as she was elected to do. This would appear to be a made up standard by the City and certainly is not a standard

set forth in the Iowa Code or case law, to constitute a legitimate ground to remove an elected official from office. Those grounds are set forth in Iowa Statute for removal of an elected official, and do not include misuse of power or abuse of discretion. These undefined phrases cannot be considered by the City Council as a legal standard in deciding whether the Mayor should be removed. The City Council is duty bound to follow Chapter 66, Iowa Code.

*F. Mayor Broderon's Actions Were Not Willful*

The City argues that the Mayor's actions are deemed willful because she was "warned" multiple times regarding the scope of her authority. Simply stating that the Mayor was "counseled" or being made aware, and yet continuing to take voluntary actions outside the "scope" of the authority presented to her by the City Attorney and City Administrator does not constitute willfulness under Chapter 66, Iowa Code, pertaining to removal from office. See Infra Callaway, Zeigler, Bartz, and Manning for interpretations of what constitutes willfulness under the applicable Iowa law. Additionally, a mayor, under Iowa law and Muscatine City Code has expansive duties and scope of authority. See Powers and Duties of the Mayor, Muscatine City Code, 1-7-2. The City counseled the Mayor only when the City Administrator or the Council did not agree with the Mayor, or when they changed the law or ordinances to limit the Mayor's powers and authority. The evidence presented here of disagreement about policies and their interpretation of strong conflicts between personalities are insufficient to rise to the level of actions warranting removal under the applicable law.

### **3. Mayor Broderson Never Engaged in Conduct that Amounts to Willful or Habitual Neglect or Refusal to Perform the Duties of Her Office**

Willful and Habitual Neglect of Duties is an additional ground set forth for removal under Muscatine City Code and Iowa Code Chapter 66. The City stated in their "charges" and through testimony of the City Administrator and City Attorney that the Mayor was "educated on the scope of her authority" and her limitations and has failed to properly perform her duties by abiding by these limitations set forth. Iowa law defines the terms willful and habitual neglect under Chapter 66 as act that would constitute willful refusal to perform duties, or through neglect, violated the law. State v. Sullivan, 299, N.W. 411 (Iowa 1941) (finding no willful or habitual neglect or refusal to perform duties where county supervisors acted on routine matters, consulted various authorities and attempted to obtain information they needed or could get to make informed decisions from various officials.) The evidence presented showed, like in the Sullivan case, that the Mayor acted on well-founded beliefs, in consultation with officials in various capacities, and only in so far as the duties under Iowa law allowed and dictate she act. She followed procedures of Iowa law, reported acts to the proper authorities, and acted within the bounds of her defined authority. The Mayor never refused to perform a duty she was obligated to perform. The fact that the Council did not like the way she performed her duties does not constitute willful neglect or refusal to perform the duties of the office or willful misconduct or malfeasance as required under Chapter 66, Iowa Code. The Mayor acted fully within the authority granted to

her by law. All action taken by the Mayor were with the best interests of the City in mind.

#### **4. The Mayor Did Not Engage in Campaign Finance Ethical Violations**

The City alleges that the Mayor engaged in violations of Campaign Finance laws at various times. However, the City presented no evidence. The testimony presented by the City showed that the City never even consulted the State Ethics Board. The Mayor, however, testified she did consult with the State Ethics Board and the Board found that the Mayor acted in full compliance with the law. The City, should they believe the basis for removal to be some sort of campaign finance violation, should seek those remedies through Chapter 68, through the proper prosecution by the State, and in the proper venue of a court of law. Trumping up a phony charge, without evidence and without legal basis, showed the extent to which the City needed to reach in this matter in its attempt to remove the Mayor.

#### **5. "Statements of Fact" Against Mayor Broderson Do Not Meet These Legal Standards Required Under Iowa Law**

As stated above, Iowa has clear case law on what constitutes the proper standard for removal from office, what actions constitute a basis for said removal, and what procedures are appropriate when this removal process is undertaken. The City, in their charges against Mayor Broderson, have set forth "Statements of Fact," and sometimes referred to in the prosecution as allegations, that they believe form the basis for the

Mayor's removal from Office. For clarity and for sake of completeness, the Mayor will address each allegation individually and the evidence presented on each allegation. The legal standards presented above are applicable to each of these items. As shown below, it is clear that none of these items, individually or considered as a whole, rise to the level of actions that would warrant the extraordinary remedy of removal from office. Each item is addressed in the same numerical order they were raised in the "Charges" filed by the City.<sup>1</sup>

**A. The "Charges":**

1. The Mayor was accused of making baseless complaints to the City Attorney, amounting to a violation of the Ethics Policy. The testimony on item 1 showed that the Mayor was only relaying information that was expressed to her by concerned citizens. They were not unfounded, or "baseless" complaints. The Mayor called the appropriate person, the City Attorney, to discuss these issues. As the Mayor testified, the City Attorney advised her to contact the State Ombudsman. The Mayor's personal notes from that conversation show the Ombudsman's phone number was given to her during her conversation with the City Attorney, and the email from the City Attorney acknowledges this contact with the Ombudsman and thanks the Mayor

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<sup>1</sup> While the Mayor will address each of these allegations individually, no response herein or at trial should be deemed an admission that the Council has authority to adjudicate such "charges." The City's charges include various accusations of violations of City Ethics Policies, City Code, "opening the City to potential liability," accusations of Mayoral acts without Council approval, and apparent violations of campaign finance laws, though no actual findings of such violations or charges have ever been made by the appropriate authorities who have lawful jurisdiction to do so, or that such violations or a basis for such charges even exist under Iowa law. The Mayor maintains that the City Council is without jurisdiction to even consider many of the "charges" they have set forth.

for the "update" on the issues they had discussed. See Exhibits A and A1. See also Exhibits D, E1 showing basis for various complaints.

2. The City Attorney testified that item 2 under "Statement of Facts" did not represent the basis for a charge for removal against the Mayor. It is clear from the text of this allegation that this could not form the basis of any removal of the Mayor.

3. There is no charge listed in item 3 of the Charges against the Mayor. What is apparent in this item is a potential violation of Iowa's Open Meetings laws. Going into closed session to have the City Attorney explain the role of elected officials and his belief of the apparent liability to which the City was exposed to, and to berate the Mayor does not appear to meet any of the strict standards allowing a council to go into closed session. This is especially true when, as the City Attorney testified, the purpose of the closed session was to discuss personnel issues and professional competency of the City Administrator under Iowa Code 21.5(i) and "strategy" in matters relating to employees not covered by collective bargaining under Iowa Code 21.9, i.e. the City Administrator and other employees of the City. See Exhibit BB.

4. The charge in item 4 accuses the Mayor making "baseless" complaints of gender discrimination. At the time the Mayor sent the Email in question, the Mayor questioned whether she was being treated differently because of her gender. See Exhibit VV. The outside investigator in fact did confirm that the Mayor felt she was being treated differently because of her gender. This investigator specifically testified that he did not believe the Mayor was lying about her beliefs. These facts alone show there was a basis for the Mayor's belief. However, beyond that, the investigator refused to

interview any of the individuals the Mayor provided to them which would corroborate her story. The fact that the City Attorney hired an outside investigation team from Des Moines to investigate the Mayor's email statement, when no formal complaint had been filed by the Mayor, was the City's choice to do. Evidence and testimony was presented at the hearing which showed that previous City employees had made specific gender-based complaints against specific male City Council members and no such investigation was ever conducted. See Exhibit G.

The most interesting detail in this charge is that the City Administrator provided a closed session tape to a private investigator without first obtaining a court order, in apparent direct violation of Iowa Code Chapter 21.

5. The City Attorney testified that there was no charge listed in item 5. Testimony on this issue showed that the Mayor was personally attacked on social media by employees of the City. The City refused to enforce its Ethics Policy or its Social Media Policy. The policies stated that the City expected respect and politeness between employees and City officials on personal social media accounts. Enforcing the City's own Social Media policy, according to the City Attorney's testimony, would amount to a violation of free speech guarantees and federal labor laws. The Mayor was now the person on the hot seat for even bringing these personal attacks up and seeking the City to enforce its policies. The Mayor has not been afforded the same free speech rights.

6. The charge in Item 6 is that the Mayor stated she was being bullied and discriminated against by the Council and City Administrator and should be removed

from office for making such "baseless complaints" in violation of the Ethics Policy. First, the testimony and evidence showed that the Mayor never said she felt discriminated against in this instance. She expressed an opinion that she felt bullied. Expressing her personal feelings is not making a "baseless" allegation.

The Mayor's personal opinion, like those persons posting on social media, has 1<sup>st</sup> Amendment "Free Speech" protection. Additionally, the City failed to prove the critical element of evil intent or purpose of the Mayor. These types of statements do not rise to the level of grave misconduct warranting removal.

7. The City Attorney testified that he agreed that the Mayor never filed a "complaint" against the City when she met with the Ombudsman. The Mayor shared with the City Attorney that she was contacting the Ombudsman, and he said he appreciated the update. See Exhibit A1. There is no evidence that the Mayor ever filed a complaint. Further, a Mayor meeting with the State Ombudsman to discuss issues that have arisen or been brought to her attention as Mayor, is simply the Mayor meeting her duties to uphold the laws of the State of Iowa and protect the City. The Mayor was acting under a legal duty and within her legal rights to do so. The Mayor was acting in the best interest of the City. The City failed to establish any facts that would establish this item as a violation of City Code, City Ethics Policy, or State or Federal law that would warrant removal from office.

8. The Mayor's statement alleged under item 8 was presented as evidence at the hearing. See Exhibit O. No personal attacks or verbal charges or claims were made in that statement that could amount to "baseless claims" in violation of the City's Ethics

Policy. The City completely mischaracterized the Mayor's words in bringing this allegation.

9. No evidence was presented that showed the Mayor was attempting to change state law to override City Code as described in item 9. The Mayor did not advocate for any change of the law. Testimony showed that the Mayor was informed, that a state legislator upon hearing, that the Mayor could not contact the City Attorney directly, sought to change state code. The Mayor had no further contact with any legislators with regard to this matter. She did not attempt to change state law or override the City Code. The City presented no evidence to the contrary on this item. Beyond that, however, even if she had, the Mayor is still a citizen of the United States of America, whether she is Mayor of Muscatine or not. She is entitled to contact representatives regarding State law, and has not given up her constitutional rights to participate in a the democratic process simply by being elected Mayor. The City provided no evidence to establish any evil intent or purpose on the part of the Mayor.

10. The City Attorney testified that there was no charge under item 10. The Mayor provided public records to the press when asked. The Mayor was previously informed that her e-mails were public records. The concern that chain emails do raise is whether they constitute an open meetings violation, as all Council members were present on the e-mails and discussions about issues facing Muscatine were occurring via email. After the public became aware of these email discussions, the City attempted to correct the issue. However, simply adding a disclaimer of "this email is not an attempt to elicit discussion" does not offer protection from an open meetings violation.

11. The Mayor was charged with "making allegations against a member of the public without evidence" on item 11. The City, through various witnesses, expressed that the Mayor engaged in "defamation" -- though not one person could actually elicit what they meant when testifying using such legal terms, or what elements would need to be met to make such a serious charge against the Mayor. The Mayor passed on concerns that were expressed to her about a contractor that was bidding on a City project. The Mayor passed along the truth. Upon investigation, which the City never bothered to do, they would have discovered that the contractor had caused problems with the casino project in Davenport. It was covered extensively in the media and the facts were substantially as the Mayor indicated. The Mayor had a duty to protect the best interest of the City. Passing on information with regard to a potentially troublesome contractor served to help the City. The amazing thing was that no one in the City bothered to do so much as to even Google the name of the contractor and the Davenport casino project to discover that the Mayor was providing accurate information. The Mayor did not violate City Code or policy in contacting the City staff as she copied the City Administrator on the email, as he had previously directed. The Mayor simply passed on information and her expression of concern. There was evidence to support the Mayor's concerns, and no violation of City Ethics Policies occurred. The City presented no evidence to contradict the Mayor's testimony. The City has failed to prove this allegation, let alone show that this was done by the Mayor, with some evil purpose or corrupt motive.

12. The City Attorney testified that there was no charge listed in item 12. The Mayor was told, through an e-mail, that she could contact City staff as long as the City Administrator was present or copied on the communication. See Exhibit DD, I, FF. She has not violated that directive. This does not and should not form the basis for removal from the office of Mayor.

13. Item 13 alleges that the Mayor violated City ordinances by stating her intent to form a task force or committee. The Mayor did not violate the City Code when she sought to seek citizen input on issues facing the City. The Mayor never actually created any task force or committee. The Mayor never actually authorized the expenditure of funds. The Mayor simply stated that she intended to create a task force as the previous Mayors had done on multiple occasions. Simply to state a desire to take action is not a violation of the Code, nor is it a violation of any policy of the City. This is a petty charge which shows the animus toward the Mayor that had developed only a few months into her term. The idea that the Mayor cannot speak or express an opinion that might be contrary to the stated beliefs of Council members or City administration, without having a charge brought against her, confirms the Mayor's belief that she was being bullied. Again, there is no evidence as to any evil intent or grave misconduct on the part of the Mayor.

14. The City Attorney testified that no "charge" exists under item 14 when the Mayor requested that an original appointment she made be placed on an agenda. What this item shows is the continued animus by Council members to act against any action the Mayor sought to take in her appointment powers.

15. The Mayor is accused of making allegations without evidence when she asked the City Attorney whether or not previous mayors had authorization to form task forces when it became clear that she was being held to a different standard. She asked the City Attorney simple questions. She did not state that the committees were not properly authorized, she asked how they were properly authorized under the City Code. She asked a question. She did not make a claim or complaint. The City Attorney could not answer how the committees were formed. He stated that he did not know whether they were properly authorized or not. Again, the e-mails between the City Attorney and Mayor show that the charge, as stated, is completely unfounded. The Mayor did not allege that the committees were not properly authorized. No evidence was presented to prove this allegation. There is no showing of evil intent, purpose, or corruption in the Mayor's inquiries. See Exhibits I and CC.

16. The Mayor did not allege any criminal violation by Council Member Fitzgerald when she forwarded an email from a concerned citizen. The Mayor stated that a neighbor of Council Member Fitzgerald had raised concerns with her. The Mayor asked the City Attorney for advice as to how this should be handled. The Mayor never "alleged" anything. For the City to state or allege otherwise is a complete mischaracterization of the evidence. The Mayor did provide information with regard to the concerns expressed by the citizen. The charge, again, is misworded to attempt to show some wrongdoing by the Mayor. The e-mails between the Mayor and City Attorney clearly show that the Mayor was not making allegations, but simply asking the City Attorney how the situation should be handled. There was nothing baseless or

without evidence as the e-mail clearly shows. This is another example of the Mayor simply doing her duty and the City trying to make it appear that she was causing trouble. See Exhibit DD.

17. The allegation listed in item 17 against the Mayor is false. The complaint to the Board alleged that the minutes were not detailed enough. The Public Information Board agreed that they could be more detailed. The complaint was dismissed after the City agreed to keep more detailed minutes. See Order of Dismissal. This was not a complaint without evidence, and in fact, raises additional concerns about the City's continued and dubious uses of closed sessions to discuss issues would not appear to be proper use of closed session under Iowa Code Chapter 21. These closed sessions where "litigation is imminent" were actually being held with the potential adverse party, the City Administrator, allowed into the closed session and it did not appear that litigation was imminent.

18. Under item 18, the charge is that the Mayor held a committee meeting without the council and then made allegations against the Council in violation of the Ethics Policy at the meeting. The idea that the "Coffee with the Mayor" was somehow a "committee" is ludicrous. By definition, a committee must be more than one person. The Mayor simply had a forum in which people could ask her questions and she would answer them. A forum that was also attended by Council members who also identified themselves as Council members and answered questions from the public. What is interesting that the Mayor and the male Council members did the same thing at the same meeting, but the Mayor is charged with a violation of the City's ethics policy. The

act of the Mayor in holding a forum to talk with her constituents does not rise to an act done knowingly, willfully, and with an evil or corrupt purpose.

This serves to reinforce the Mayor's belief that she is being bullied. The idea that the Mayor cannot call herself Mayor without City Council or City Administrator approval is ridiculous. Simply stating that I am the Mayor is not a violation of any law or policy. The Mayor is the duly elected Mayor of Muscatine and has a right, as the Mayor, to use that title. The Mayor did not spend City money, did not usurp City resources in any way by having the "Coffee with the Mayor." In fact, the City advertised the first two "Coffees with the Mayor," which is tantamount to approval since the City Administrator authorized the advertising.

Stating that she disagreed or outlining the disagreements that she has had with the Council and administration is not a violation of the City's ethics policy. Stating that she tried many times to work with the Council without success is, at worst, simply her opinion, at best, a statement of fact, neither of which are ethical violations. She did not disparage anybody. She did not take anyone's name in vain. She simply stated her frustration. The idea that the Mayor cannot have an opinion or disagree publicly with Council and staff again shows that she is being treated differently. The City has failed to show any corrupt or evil intent, design, or purpose behind the Mayor's gathering. She was doing her job, meeting with the citizens to ask and answer questions regarding the City's activities.

19. Item 19 shows the absurd results of the City's ordinance on contact between elected officials and staff, which has not been uniformly applied. The Mayor

was approached by a City department head, who was telling her about his plans for the City. The Mayor stated that she would like to have regular meetings with City staff. That is the extent of the Mayor's action. This may be the most petty charge of them all. It is a one sentence conversation with a staff member. This does not amount to Willful Misconduct or Malfeasance in office. There is no evidence that the Mayor ever met with City staff on a regular basis. She simply stated her desire to have staff meetings, with the City Administrator present, on a regular basis to understand what was happening in the City. Again, no evidence was presented showing an evil intent, grave misconduct, or corrupt purpose from the Mayor.

20. Item 20 alleges that the Mayor filed complaints without evidence, amounting to another violation of the Ethics Policy. The Mayor, following conversation with the State Ombudsman, asked for an audit involving City expenditures for an extended trip to China and providing City staff to work with the Chinese symphony when it was in Muscatine. The complaint obviously had evidence, as the Auditor ordered a special audit, which has lasted approximately one year and has continued to today. If the concerns expressed by the Mayor were baseless or without evidence, no further investigation of the matter would have taken place. The fact that the audit team reviewed City records with the City's accounting firm and then decided that what they saw warranted a more detailed investigation shows that there was evidence associated with the Mayor's concerns. The Mayor was perfectly within her rights to ask for the audit. The Mayor is authorized to ask for a special audit. No evidence was presented

by the City to show evil intent or grave misconduct. The Mayor is trying to make sure city funds are properly expended and accounted for. This is part of her duties as Mayor.

21. The City Attorney testified that the Mayor did not make a "complaint" as alleged in item 21. Again, this charge is factually incorrect and the City Attorney agreed in testimony that no "complaint" was ever filed (even though the City Attorney drafted the charge). The Mayor did not file a complaint with IPERS, the Mayor contacted IPERS with regard to an employee that was not gone from the City for one month prior to working with the City again. The inquiry, as the evidence shows, was not baseless. Iowa Code provides that an individual may not retire and receive IPERS retirement benefits and then begin working for an IPERS-covered city for one month following retirement. Iowa Code 97B.52A. The individual obviously did that as the City has testified to and confirmed. The fact that the City was able to prearrange for this employee to come back through a temporary agency less than one month after retirement does not make the inquiry baseless. The Mayor had a right to question this practice when concerned citizens asked her about it.

22. Item 22 again raises the broad and unfounded accusation of "making baseless complaints." The Mayor, held a "Coffee with the Mayor," which again, is not a committee. The Mayor expressed concerns, frustration and stated how she was being treated as Mayor. The Mayor has every right to publicly state her feelings and how she feels that she was treated poorly. The fact that the parties may disagree does not make her claims and concerns baseless. Again, these public complaints do not rise to the level

of willful misconduct or malfeasance in office. The City failed to offer evidence of evil or wrongful intent or purpose or corrupt motive.

There is no factual basis for each one of the seven alleged charges against the Mayor. The charges are not an accurate portrayal of the Mayor's statements. The Mayor did not state that the social media posts were not investigated. She stated that there was nothing the City felt it could do. The Mayor testified and stated that she has had employees tell her directly that they were and are afraid for their jobs. The Council has clearly done nothing to support her since she was elected, as evidenced by taking her powers away and bringing this action. That is a statement of fact. She truly believes that gender has played a role in her treatment. This is her reasonably-held belief. The investigator also confirmed that is what she believes. She believes that the City Administrator is the primary cause of her problems. The City Administrator told her that he runs the City, and he clearly does, as no one can speak to each other without his prior authorization. That is clearly the individual that runs the City. These were not verbal attacks or personal charges, they were statements of personal belief and fact.

23. Item 23 makes an apparent allusion to a campaign finance violation without the City presenting any evidence. This is a spurious allegation. The City never investigated the Charge or contacted the Ethics Board. The Mayor contacted the State Ethics Board, and the Board agreed that this expenditure was perfectly legal. The City provided no evidence of any wrongdoing relating to campaign finance.

Using the term "unelected bureaucrat" is not only factual, but it is not a personal charge against any individual member of the City Council or City staff, and therefore

not a violation of the Ethics Policy. Calling the Council bullies does not rise to the level requiring removal from office. The term "closed door backdoor government" was referencing a dislike for the dubious use of executive sessions and chain e-mails to conduct business outside of the public view. The Mayor ran on a platform of having open government, and this was one of the issues that she wanted changed. The fact that the Council disagreed with her idea of open government and the fact that she publicly called them on it is politics, not willful malfeasance or willful misconduct in office.

What is interesting in this point is that there have been actual admonishments filed against City Council members by the State Ethics Board, and yet the City failed to take any action against those male Council members or file charges seeking their removal. See Exhibit RR1.

24. Under item 24, the employees of the City of Muscatine again were disrespectful and publically disparaging the Mayor on social media. How do City employees have more rights to speak and post about elected officials than the Mayor? Why doesn't the Mayor have the same free speech rights? How does the City, by policy or ordinance, change the U.S. and State Constitution? Asking for information and researching options and inquiring into what, if any, action can be taken against employees that were badmouthing her is not an ethics violation or any other type of violation supporting removal from office. If the City's own policy violated federal law, it should not have been provided to the Mayor as the Social Media Policy. It should have been amended or repealed. The Ethics Policy should be enforced against the

employees and council members in the same manner it is being enforced against the Mayor.

25. The City Attorney testified that no charge existed under item 25. Receiving legal advice and charting legal strategy on apparent potential liability from the City Attorney, in a closed session meeting, where the potential adverse litigant is present, however, is a questionable use of closed sessions under Iowa's Open Meetings laws.

26. No charge was stated under item 26, according to the City Attorney's testimony.

27. Item 27 again makes a claim that the Mayor violated campaign finance laws without any basis for such allegations. The Mayor's use of campaign funds to distribute a letter to the public was approved by the State Ethics Board as a legitimate use of campaign funds and not a violation of the campaign finance law. Stating in that letter that the Council blocked her appointments was a true statement. Providing telephone numbers and e-mail addresses of Council members that were posted on the City website is clearly not a violation of City ordinance or policy. There were no personal charges or verbal attacks upon the character or motives of any member of the City Council in that letter. While the Mayor disagreed with the Council on many things, she did not directly attack any individual. No violation of law or policy was proven for this charge.

28. The City provided no testimony as to the Mayor's conversation with the reporter. The City has the burden of proof and presented no proof on item 28. A mere

allegation does not rise to the level of clear, convincing and satisfactory evidence to support a violation of the City's ethics policy, let alone rise to the level, justifying removal from office. The Mayor's belief that the City Administrator was the cause of her problems is a sincere belief and a well-founded belief as confirmed through this particular proceeding. The Mayor testified that the City Administrator explained to her that he runs the City. What makes that statement more believable is the fact that the City has codified a process by which no one can speak to a staff member without first having authorization from the City Administrator. If you are the one that everyone must first seek permission from before acting or speaking, you are the person in charge. That is a fact, not an opinion. Again, there is no showing of evil purpose, intent, or grave misconduct by the City.

29. The Mayor saw the Economic Development Director at a prayer breakfast and stated that she wanted to be involved in the proposed River Port Project. The charge on its face is ridiculous. The claim that this brief encounter constitutes willful malfeasance or willful misconduct supporting removal from office is beyond the pale. There is absolutely no showing of the evil intent that the City is required to prove. This statement was not made in a way to harm the City in any way, shape or form. Having such an innocent conversation and having a policy that was not uniformly applied against the Mayor as a basis for removal is not only ludicrous, it is lacking any basis in Iowa law.

30. The testimony on item 30 at the hearing showed that Jeff Sorensen's actions were directed to Kas Kelly. He testified that he had very little involvement with

the Mayor. The Mayor testified that she in no uncertain terms suggested that the facility should sponsor a spaghetti supper. The Mayor while identifying herself as the Mayor of Muscatine, did not seek action on behalf of the City of Muscatine, nor did the apartment manager believe that she was seeking to act as a representative of the City of Muscatine. She understood that the Mayor was questioning two things regarding her mother, who lived at the facility. Following the issue of a no-trespass order against Kas Kelly, the Mayor contacted the Police Chief to see how this order was obtained and whether it was a legitimate and enforceable order. She took no further action, nor demanded any further action be taken. The evidence presented for this claim presents no basis to support the Mayor's removal from office.

31. Item 31 mischaracterizes the evidence and testimony of the witnesses. The Mayor contacted the County Attorney not to have him press charges, but to question whether it was illegal to tape-record her without her knowledge when the Mayor was told that that tape recorders were turned off. The County Attorney testified that the Mayor did not ask him to pursue any legal action. The actions of the Mayor in no way violated the City's ethics policy. The Mayor made no verbal attacks or personal charges upon the unethical journalist. The Mayor asked the County Attorney, the proper authority in interpreting State Code, if a violation of the law existed. The Mayor explicitly states in the email: "I don't know if this is a criminal matter or a civil matter. Any advice you can give me would be appreciated." See Exhibit MM. She did not make a charge, she asked a question. Asking a question is not making a baseless complaint.

Seeking information on your legal options from the proper legal authority is not a violation of City Code or Iowa law.

32. The Mayor rightfully questioned the dubious use of a closed session to discuss her and the exclusion of her from the meeting. The complaint was not without evidence. The evidence was clear that the Mayor was excluded from the closed session. Her complaint centered around whether the Council could vote to keep her out of a closed session. Again, the Mayor did not make any personal charges or verbal attacks upon the character or motives of any member of the City Council. The Mayor simply asked whether Iowa law allowed her to be excluded from a closed session. The Mayor had the right to question her exclusion.

33. No charge was listed under item 33, according to the City Attorney's testimony.

34. The allegation under item 34 as drafted totally mischaracterizes the Mayor's actions and the evidence presented clearly showed this. The Mayor asked whether it was a violation of Chapter 400 to change the City ordinance with regard to the appointment of the Civil Service Commission. The County Attorney agreed that the City Ordinance violated Chapter 400. The County Attorney further agreed that the Mayor correctly read the statute where it directed that a violation of the statute was a criminal offense. The County Attorney said that it would be difficult, if not impossible, to charge any individual under the statute. This matter was also discussed with the Attorney General, and the Attorney General's Office agreed that the City Council violated State Code by changing the City ordinance to remove the appointment power

of the Mayor. The County Attorney testified that the Mayor did not claim that he had been ordered to file criminal charges by the Attorney General. He stated that was another individual that had contacted him. The County Attorney also testified that the Mayor did not ask him to file criminal charges against anyone. The Mayor acted within her authority to ensure that the City follows the law. The City presented no evidence that the Mayor had an evil purpose or corrupt motive in seeking that the City follow State law.

35. Again, the City tries to allude to some sort of campaign ethics violation, without any proof, without any investigation, without any consultation with the State Ethics Board and without the jurisdiction to do so. The City carries the burden and has not met it. Furthermore, the Mayor has contacted the State Ethics Board, and the expenditure of monies for attorney fees in defending herself in this matter is a proper campaign fund expenditure. The City improperly accuses the Mayor of a violation of Campaign laws where it has not investigated and offers no proof, and yet fails to pursue similar charges against male elected officials who have received actual admonishments under the law.

36. The Mayor did not request or demand that any of these monies be spent. The fact is that the City chose to spend money, without consulting the Mayor or discussing the matter with the Mayor. This totally misconstrues the fiduciary responsibility or a violation of a fiduciary duty by the Mayor. The Mayor in no way intentionally or wrongfully spent City money or misappropriated City money. The Mayor never directed any staff member to act in any way. The Mayor did not request

that this money be spent or that these actions be taken. That was something the City chose to do on its own. This does not amount to any violation by the Mayor that would authorize her removal. The Mayor did not violate any law or policy. Nothing in Chapter 66 authorizes removal under this claim.

### CONCLUSION

Acts, whether of omission or commission, in order to constitute grounds for removal must have been done knowingly, willfully, and with an evil or corrupt motive or purpose. State v. Manning, 220 Iowa 525 (Iowa 1935). Like the Court said in Manning, in the case of Mayor Broderson, there has been no showing by the City that the purpose of her actions or statements was meant to harm or which was inimical to the interests of the City. No evidence of any corrupt or evil design or purpose as presented by the City, and no corrupt or evil purpose is manifest from the evidence.

Intent is an essential element that must be proven in order to establish the grounds on which support the removal of an elected official. The City failed to meet its burden of proof in this matter. The City has not proven that the Mayor's conduct was so detrimental that she was incapable or unworthy to serve out her term of office.

The City's "Statements of Fact" filed with charges against the Mayor as compared to the actual evidence and testimony presented at hearing show a complete disconnect between what the City believes amounts to appropriate bases for removal from office and what the actual laws of Iowa provide for. Setting aside the due process violations, venue and jurisdictional issues, and other various improper irregularities of these

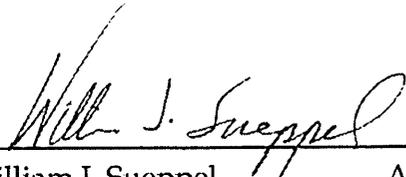
proceedings, the Mayor's alleged actions do not constitute any proper basis for removal from office under Iowa law. The evidence showed that the Mayor has not engaged in Willful Misconduct and/or Maladministration, including any alleged defamation, making false allegations, breaches of any fiduciary duty, or misuse of power or abuse of office. None of the alleged actions of the Mayor violate the City Code of Ethics or Ethics Policies. The evidence showed that the Mayor did not engage in Willful or Habitual Neglect or Refusal to Perform the Duties of Her Office. What these allegations do show is that the Council, City Attorney, and City Administrator had animus toward the Mayor from Day 1 of her taking office and from that point onward took note of each and every action she made, turning them into these stated "charges" for removal. The Mayor may have been a thorn in the side of the Council and City Administrator and an annoyance to the City Attorney. The Mayor and the Council may have serious disagreements as to how the City operates and who should be allowed to participate. However, none of the actions she took could ever amount to the serious actions necessary to constitute a basis for removal from office under Iowa law.

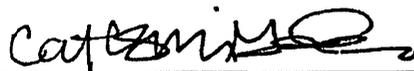
For these reasons, the Mayor of Muscatine, Diana L. Broderson, respectfully requests that the City Council dismiss the charges for removal filed against her by the City Council of Muscatine, Iowa.

Respectfully submitted this 2nd day of May, 2017.

Respectfully submitted,

MEARDON, SUEPPEL & DOWNER P.L.C.

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ATTORNEYS FOR MAYOR BRODERSON



BEFORE THE CITY OF MUSCATINE, IOWA CITY COUNCIL

IN THE MATTER OF: )  
DIANA L. BRODERSON ) PROPOSED DECISION  
)  
)  
)

*COMES NOW, Mayor Diana L. Broderon, by and through her undersigned counsel, and provides her Proposed Decision as directed by the City Council of Muscatine:*

This matter comes before the City Council of Muscatine, Iowa on written charges for removal filed by the City Council of Muscatine and drafted by the City Attorney for the City as ordered by the City Council of Muscatine, Iowa. The charges for removal were filed under Iowa Code 1-7-6, pursuant to Iowa Code Chapter 66.29.

On March 23, 2017 and April 1, 2017, the City Council of Muscatine heard evidence and testimony on the charges filed in this matter. Based on the testimony of the witnesses, the evidence presented and offered to the adjudicator and fact-finder, the Council **FINDS** there is no basis for removal of Mayor Broderon as Mayor of Muscatine under the City Code of Muscatine and Iowa Code Chapter 66. Iowa Code sets forth that findings of willful misconduct and maladministration of office must be committed knowingly, with an evil intent, and a purpose to do wrong. State v. Callaway, 268 N.W.2d 841, 842 (Iowa 1978). The evidence presented to the Council did not rise to the level of a finding of evil intent or purpose to do wrong, and as a result, the Council cannot find that Mayor Broderon should be removed for willful misconduct or maladministration of office.

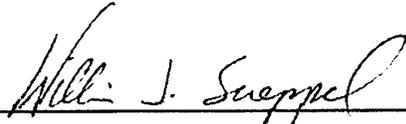
Further, the Mayor cannot be removed from office for willful or habitual neglect or refusal to perform the duties of her office. The City produced no evidence that showed Mayor Broderson failed to properly perform her duties, or willful refusal to perform the duties set forth for Mayor under the law or Code of Muscatine. As a result, the Council will not find that Mayor Broderson should be removed from office for willful or habitual neglect or refusal to perform the duties of her office as Mayor of Muscatine.

**THEREFORE, IT IS ORDERED** that the charges against Mayor Broderson for removal under Muscatine City Code 1-7-6 under Iowa Code 66.29 are dismissed. Costs of this action are assessed to the City, including the Mayor's costs and attorney's fees. Mayor Broderson and her counsel are ordered to submit an affidavit and itemized billing of costs and attorney fees to the City Council and City Clerk of Muscatine for payment upon receipt pursuant to Iowa Code Chapter 66.

Respectfully submitted this 2nd day of May, 2017

Respectfully submitted,

MEARDON, SUEPPEL & DOWNER P.L.C.

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