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CONFIDENTIAL MEMORANDUM

TO: Monique Cohen, Chief Legal Counsel

FROM: Brenda L. Bannon, Investigator

DATE: February 17, 2020

SUBJECT: *Workplace Investigation Executive Summary Report*

I. SCOPE OF INVESTIGATION AND EXECUTIVE SUMMARY

On or around December 6, 2019, I was retained by the Metropolitan King County Council to perform an independent workplace investigation regarding a complaint that had been lodged by [NW] against Carolyn Busch. At the time the complaint was raised, [NW] was an Outreach Coordinator and Ms. Busch was the Council's Chief of Staff. The Council has employed [NW] since 1998. Ms. Busch was hired in 2013, and left her County employment for six months in 2017 before she returned in early 2018. The dispute at issue arose in the context of a November 19, 2019 closed-door workplace-planning meeting between Equity and Social Justice ("ESJ") Director [NW] and [NW] that was interrupted by Ms. Busch. During the course of the meeting, it is alleged that Busch walked in without invitation, yelled and swore, and upset [NW]. The scope of the investigation was limited to whether or not Ms. Busch acted with discriminatory protected status animus towards [NW], and whether or not the evidence otherwise supported a policy violation of "inappropriate conduct" (MKCC Policy and Procedures Against Harassment and Discrimination, **Appendix A**).

I have interviewed the three individuals present during the 11/19/19 meeting. I have also interviewed a former Councilmember, two Councilmembers' Chiefs of Staff (one current and one former), a Councilmember's former Legislative Aide (current ESJ Committee Chair), a former Government Affairs Director (former supervisor to [NW]) and the current Communications Director (former supervisor to [NW]). The former ESJ Committee Chair is no longer employed by the Council and refused an interview. The Investigator has also reviewed miscellaneous emails, memoranda, reports, notes, agendas, job descriptions, personnel file materials, and historical contextual

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information. The documents are too voluminous to individually list. Human Resources provided some of the background information and sequence of events to the Investigator.¹

II. POLICY PROVISIONS AND LEGAL STANDARD

The Investigation was launched following the protocols set forth in MKCC Policy and Procedures Against Harassment and Discrimination, **App. A**. “Protected status” in this particular case included race, sex and age. The policy describes “inappropriate conduct” as “conduct that may not rise to the level of unlawful discrimination, harassment, or retaliation but nonetheless sends a negative message or results in a hostile, derogatory, or negative environment based on protected status.” **App. A** (Definitions, E).

This report is an executive summary report and is not intended to be a comprehensive recitation of all the information that was collected, reviewed and considered as part of the investigation. If a description is a direct quote, it will be noted as such by quotations mark. The findings and conclusions set forth in this report are based on the entirety of the record considered by the Investigator, and are not limited to the factual information contained in this report. The findings are based on the preponderance of the evidence standard, which means that based on the credible evidence gathered during the investigation, it is "more likely than not" that an event occurred or did not occur as alleged. Finally, this report is not intended to provide any legal conclusions or offer any legal advice and should not be construed as such. Per the policy provision, the Investigator was asked to form a conclusion as to whether or not a policy violation had occurred, and whether additional consultant resources may be beneficial to consider.

III. SUMMARY OF INVESTIGATIVE FINDINGS

On November 19, 2019, the ESJ Director and the Outreach Coordinator were seated at a conference room table, involved in a lengthy strategic planning meeting in a closed-door conference room. The room had a window allowing others to view the ongoing meeting. The meeting was scheduled from 7:00 a.m. to 1:00 p.m. Late in the morning, Ms. Busch interrupted the meeting. Ms. Busch came into the room to recount that a Councilmember had recently confronted her in the hallway, and he had asked her about a staff member telling him that **NW** was going to lose her job.

There is factual conflict amongst the three witnesses in the conference room as to what occurred next. The Investigator exercised discretion in resolving these disputed facts in light of all the evidence reviewed in the investigation. Regarding the specific sequence and occurrence of events during the 11/19/19 meeting at issue, the Investigator credits the report of the two witnesses in the meeting where their recounting of the event was very similar; the evidence supports a finding that Ms. Busch was emotionally animated, speaking with a very loud voice, upset/angry about potential lies being spread

¹ The interviews occurred between 12/11/19 through 1/23/20; the complainant and subject were each interviewed twice. The holiday season, vacations, the need to interview former employees, and the volume of documentary evidence all tended to slow down the completion of this investigation.

and a recent “hallway discussion” with a Councilmember, and was initially standing over and swearing while she recounted the hallway encounter. Busch sat down after the initial dialogue concluded. The evidence supports a conclusion that at the time of the 11/19/19 meeting and during her interviews, Ms. Busch was not fully aware of how she was communicating to the other persons in the conference room.

IV. CONCLUSION

Specific to the 11/19/19 meeting, the evidence supports a factual predicate supporting a policy violation of inappropriate conduct. There is no evidence to support a factual predicate of protected status animus by Ms. Busch towards [REDACTED] NW. [REDACTED] NW reluctantly agrees that this is the case but nonetheless expressed her viewpoint that Busch’s communications towards her are evidence of an implicit bias. Even though the policy violation is not based on a protected class animus or causal connection, based on the disjunctive language found in the policy as written (“or”), the Investigator concludes that the evidence still supports a finding of inappropriate conduct.

Moving forward, Ms. Busch could benefit from the consulting services of an Executive Coach to provide her with additional insight into observing and responding to nonverbal communication cues, and additional tools to address workplace disputes and communications styles that will support her future professional development and success as the Council’s Chief of Staff.