EXECUTIVE SUMMARY

INVESTIGATION OF ITEMS REQUESTED BY CAMP VERDE TOWN COUNCIL ON AUGUST 18, 2014 SPECIAL SESSION AND ITEMS #5, 6, 7 OF JULY 30, 2014 EMPLOYEE COMPLAINT

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December 4, 2014

I. SCOPE OF WORK

On or about September 24, 2014, this firm was retained to investigate certain matters as set forth in the minutes of the Camp Verde Town Council meeting on August 18, 2014. Specifically, those items were:

A. Budgetary impacts and the allocation of resources in order to respond to public records requests;

B. Impact on employees when Council members take actions that directly impact Town employees;

C. The Town Code requirement to allow the Town Manager to manage the administrative affairs of the Town;

D. The rights of members of Council to make inquiries of Town staff;

E. The importance of holding the Town Manager accountable and the ramifications if Council members improperly interact directly with Town staff; and

F. Council Policies, Rules and Procedures and Code of Ethics requirements and possible options for Town Council including the enforcement process thereof.

In addition, this firm was requested to investigate Items #5, 6, 7 of a July 30, 2014 Employee Complaint, submitted to the Manager and Town Council. Those items were:

G. Item #5: Allegation that Councilor German falsely accused the Town Marshal (employee) of violating town code and wanting her criminally cited and disciplined in a Town Council meeting, which is alleged to violate Town Council Policies, Rules and Procedures 15.5 (D).

H. Item #6: Allegation that in a civil court hearing a local known felon testified under oath that Vice Mayor Baker assisted him in verifying information on the activities of an employee and provided him with guidance in his effort to discredit this potential ex-employee of the Marshal's Office.

I. Item #7: Allegation of Conflict of Interest and Nepotism between the Vice Mayor and Town Clerk, mother and daughter, constituting numerous Town Code violations.

II. PERSONS INTERVIEWED

- Russ Martin, Town Manager
- Mayor Charlie German
- Vice Mayor Jackie Baker
- Councilmember Bradford Gordon
- Councilmember Bruce George
- Councilmember Carol German
- Councilmember Robin Whatley
- Councilmember Jesse Jones
- Town Clerk Debbie Barber
- Jenna (Virginia) Owens, Assistant Planner
- Ron Long, Director, Public Works
- Troy O'Dell, Public Works Deputy Director
- Town Marshal Nancy Gardner

III. DOCUMENTS AND ITEMS REVIEWED

- Employee Complaint & Town Council Concerns to Russ Martin, July 30, 2014
- Minutes of August 18, 2014 meeting
- Council Information/Direction Request and follow up documents from Russ Martin relating to time spent responding to council information requests, email from Mike Jenkins
- AG Opinion provided by Debbie Barber regarding conflict of interest
- Town Council Policies, Rules, and Procedures

- Town Code (August 2014) and Town Code (August 2012)
- Records Management Policy
- Documents from Bruce George: Timeline for Complaint against Carol German and Cheri Wischmeyer, Section 7 Records Requests, AG Opinion regarding copying fees
- Arizona Public Records Law Pamphlet
- Public Records Law "Frequently Asked Questions"
- Personnel Policy Manual
- "You as a Public Official" Pamphlet
- Attorney General Opinion 1978
- Carol German Response to Employee Complaint with attachments
    - Meeting Minutes of October 2, 2013, October 16, 2013, November 20, 2013,
    - Agenda for November 21, 2013,
    - Agenda and Draft Minutes of January 24, 2014, August 29, 2014 Letter from Curtis Goodwin,
    - July 17, 2014 emails between Robin Whatley and Nancy Floyd,
    - July 18, 2014 letter to Mayor German from Warren Harris;
    - Thumb drive
- Debbie Barber Response to Employee Complaint
- Recording of court hearing, Michael Dunegan
- Town of Camp Verde Incident and Document Review, by Cheri Wischmeyer

IV. FINDINGS

A. BUDGETARY IMPACTS AND THE ALLOCATION OF RESOURCES IN ORDER TO RESPOND TO PUBLIC RECORDS REQUESTS

Town Manager Russ Martin explained that much staff frustration was felt due to public records requests from Ms. Wischmeyer, whose husband was a former Town Marshal, who was terminated. Several long-term Marshal's office employees resigned after Marshal Gardner was hired and Ms. Wischmeyer filed public records requests because she felt she was not getting full answers about why they resigned. Both the Clerk's office and the Marshal's officer were involved in responding to the requests. There is a significant rift between the two offices now.

The Marshal's office does charge for police records. Mr. Martin stated there is no budgetary impact because there is no need to hire staff to respond. When the requests are made, it is an acute time pressure that is disruptive to staff. The law does not allow them to charge for staff time. Also, they do not charge for records if they can be produced electronically or if the citizen chooses to scan themselves.

Under applicable law, a government agency cannot charge a fee for searching for records requested for a non-commercial purpose. The Town can charge only a reasonable fee for the cost of equipment, time and personnel used in making the copies, or for postage if such information is mailed. A.R.S. 39-121.01 (D) (1), and AG Opinion I86-090. Pursuant to the Attorney General, the Town may not charge for providing electronic copies or for allowing someone to come in and inspect, and/or make copies with their own personal device. AG Opinion I13-012. See also Town Policies, Rules and Procedures, 16.8, and the Records Management Manual.

The law does state that a citizen may not simply inspect and copy with their own device if a determination is made that this would constitute a "disruption to public business." Although in hindsight, staff may feel that responding to a request for voluminous information is disruptive to public business, there was no evidence that such a conclusion was reached in advance of any public records requests made in the past.

Requests for public records are not required by law to be made in writing. Town Clerk Debbie Barber said it is up to the Department head if they want a request in writing or if they would accept a verbal request, but they still need to provide documents either way. The Clerk's office does require a written request for citizens and logs requests, unless it is a simple request, such as for a copy of minutes. For Councilmembers, they do not maintain a log. They just typically provide the information by email. They do not keep a record of what they give to Council.

All records stored by a public body are not necessarily public records. In addition, privacy interests may on balance outweigh the general policy in favor of disclosure.

Mayor German noted the AG's policy is clear that they cannot charge for records that are electronically produced, and that the Town's Records Management Manual is pre-empted by that if it is inconsistent. The Manual should be updated and that is the responsibility of the Clerk and Town Manager to ensure dissemination and implementation for all departments.

Councilmember Gordon expressed concern for occurrences when a citizen is left alone to review records, or if records are not redacted as required. He thinks Russ Martin compiled a list of time spent responding to requests from Council, at his request. He noted that Section 15.5 of the Council Code of Conduct directs council to "limit requests for staff support." Mr. Martin did begin to gather that information, but ultimately came to the conclusion that there is no significant budgetary impact.

B. IMPACT ON EMPLOYEES WHEN COUNCIL MEMBERS TAKE ACTIONS THAT DIRECTLY IMPACT TOWN EMPLOYEES

Councilmember Involvement in Residency Issue

Mayor German said that Councilmember Carol German was upset that Town Manager Russ Martin requested a waiver for the Town Marshal, to allow her to reside outside the Town limits. Mayor German noted that the former Town Manager had lived in the same place just outside the boundary of the Town and no one complained. The policy said that the Marshal can live outside the Town with a waiver. (Code 3.2.4) It went to a Council vote and the waiver was rejected. The Council then changed the ordinance to require the Town Marshal to be a resident. From that point forward, it has appeared to him that Carol German has had a vendetta against the Marshal's office. Ms. German was also upset about the Council's decision with respect to hiring of a contract attorney for the Marshal's office.

Town Manager Russ Martin believes that the complaints regarding actions of Councilmember German and Vice Mayor Baker are the crux of concerns, which are mostly personnel and administrative in nature. The first issue, in October of 2013, that caused Carol German to be upset was the fact that the Town Marshal, Nancy Gardner, wanted to live just outside of the town's boundaries. Carol wanted the Town Marshal out of office. The Marshal was living outside the boundaries, without a council vote. Russ noted that the prior Town Manager had lived in the same area, just outside the boundaries. Ultimately, Marshal Gardner bought a home in Munds Park but also bought a trailer within the Town's boundary, so she has established residency. She is also looking for a home within the boundaries.

Councilmember Gordon believes tension is stemming from Councilmember Carol German's desire that the Town Marshal should go away. He believes she has coordinated with Cheri Wischmeyer, the wife of an ex-employee (Town Marshal) who was fired, and that they are trying to obtain public records to take a microscopic view of the Town Marshal's office to find problems. He would certainly agree that if there is evidence of corruption, it should be acted upon, but he does not think that is the case. He believes they have been "nitpicking" the Town Manager, Russ Martin, for six months.

Councilmember Whatley feels Carol German and Jackie Baker are "running amok." They are seeking to micromanage, and Department heads are scared. They were concerned that Carol German wanted all Directors to live in town, and many of them don't. After the residency issue, they all worried that Carol would be after them next. Public Works Director Ron Long echoed the concern of the Department heads that they would be next forced to live in town.

Councilmember's Request for Personnel Records

According to Russ Martin, in late July, requests were made for POST applications for three officers. The request was from Carol German or Jackie Baker, he is not sure. The officers were very upset because the applications contained extensive amounts of personal information that they did not want to be released to the public. Russ told the Clerk's office to hold off on release until he met with the officers to hear their concerns. The request for this information went too far, in Russ' opinion, because the motivation for the records was to deal with personnel issues. Other Councilmembers have questioned Russ about why he isn't doing more to protect the Marshal's office generally.

Public Works Director Ron Long stated that the all his staff are upset, based on Carol German and Jackie Baker trying to oust the Town Marshal. They all wonder, "Who is next?" Councilmembers are not supposed to be involved in who is fired and hired. Requesting documentation on Gardner's staff impacts all staff, because no one else wants to go through that.

Ms. German stated that she did make requests for background checks on three officers. She later rescinded her requests, after Russ Martin spoke to her. The reason she did so is that she wanted to "verify" information she had received from a citizen that these officers had had their certifications revoked in the past. She also had heard that one position was filled by a friend of the Marshal's and so she wanted to know if it was posted properly. She wanted to know why good officers were leaving and why the Town was hiring officers with "questionable backgrounds." This is the only public records request that she herself has made. She was upset that the employees were made aware of this request, which she believes "should have stopped with the Department head." She does not think this type of restriction appears in any policy.

She was told by a current employee that the Town Marshal informed the employees of the request and said that Carol German was "out to get them." This causes her great stress, as it

was not her intent. She feels she is walking on eggshells regarding the Town Marshal. She denies that she wants the Marshal out of office, and says it is up to the Town Manager.

Ms. German denies working with Cheri Wischmeyer or assisting her with public records requests. Ex-employees of the Marshal's office talk to Cheri and so Cheri has her own issues.

Ms. German stated, "I think the Manager plays into this." She believes there is a need for an independent Human Resource person who is not affiliated with the Marshal's office or with the Manager, so that employees have an unbiased person to go to with concerns. She knows Russ Martin is exploring sharing an HR staff person with the Camp Verde School District. This has been discussed for some time, and they have increased the number of employees.

Ms. German does not think the process for handling complaints was followed because the Town Manager met with the 11 employees as a group, with the Town Marshal present. She was apparently the target, and yet she was not able to meet with them, to confront her accusers. Neither the Mayor nor the Manager talked to her or gave her a head's up right after the complaint was received, to ask her if it was true. This courtesy would have been appreciated, and her feelings are hurt. She feels she has been slandered and defamed.

C. THE TOWN CODE REQUIREMENT TO ALLOW THE TOWN MANAGER TO MANAGE THE ADMINISTRATIVE AFFAIRS OF THE TOWN

The Town Code's requirement as to the Council- Manager form of government can be found in Article 3-2-1 E. Internal Relations - Council-Manager Relations, which states as follows:

> *The Council and its Members shall deal with the administrative services of the Town only through the Town Manager, except for the purpose of inquiry, and neither the council nor any Member thereof shall give orders or instructions to any subordinate of the manager.*

Council Policies, Rules and Procedures 15.5 E. contains similar language:

> *Do not get involved in administrative functions. Council Members must not attempt to influence Town staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of Town licenses and permits.*

Several people interviewed expressed concern about Councilmember involvement in administrative affairs of the Town.

Councilmember Involvement with Bid Process

Mr. Martin explained that the Town decided to develop a list of qualified contractors so that they could do job orders and get work done more quickly. Carol German was upset and felt

that the process was not done correctly, because they ended up with only one local contractor on the list. She complained to Public Works Director Ron Long, who felt pressured and ended up "caving in" and going with a different process for awarding contracts that Councilmember German wanted.

Bids were also received for library work, and the one local contractor was third. Carol German complained again about that process. The bids had not yet been reviewed and were not public, but Carol insisted on seeing them, which meant all Council had to be given copies which in turn made all bids "public records." The Town Attorney had advised them not to release the bids, and Russ relayed this to Ron Long, but once again, Ron felt pressured by Carol and he released the records.

The Town Manager's concern was that the negotiation process may be compromised as a result, and that there may be a violation of public records laws. In addition, staff has complained about interruptions and pressure. The ultimate outcome on this issue was that all the bids were too high, so they are re-designing the building plans and will re-bid shortly.

Russ Martin also noted that when the Council calls the Town Attorney, and also speak to staff, staff calls the Town Attorney, and this increases expense.

As a result of staff's complaints to him about feeling pressured or fearful about their jobs, Russ is considering whether he should change his openness to having Council go directly to staff for information, and implementing a "don't talk to staff" policy. The issue for him is respect for the boundaries between obtaining information for constituents, and criticism of performance, which is a personnel issue. Staff should be able to say, "Please discuss with Russ."

Ron Long, Public Works Director, provided information on this point. He explained that when they put jobs out to bid, they have to follow procurement rules. The only Councilmember who raises questions is Carol German. She has many concerns. She questions what his staff does, day in, day out, and this affects the way they do business. It increases paperwork and staff frustration.

When they went to go to bid for "Job Order" contracts, she wanted to know why local businesses could not have preferences. If they did that, there would be lawsuits. It is fair for Council to ask questions, but he is not sure if Ms. German's questions and actions crossed the line. They had 3-5 contractors approved through the process which was handled appropriately in accordance with procurement rules. It was transparent and contractors were selected based on a matrix of qualifications. Carol German did not agree with the process, feeling it was tilted to bigger contractors and not local, smaller ones, as no local contractors were selected. She wanted to meet with him and his staff to see how and why the contractors were selected. When they want to Council for approval, the room was packed with all local contractors. 12 had applied. 4 met the criteria, but due to her intervention all 12 ended up being placed on the list.

In hindsight, his Deputy Troy O'Dell probably should not have given Carol German the information on the bids. She showed them to all the contractors, who got upset at the rankings. There are now some very hard feelings on the part of several contractors, and this impacted the Town's working relationships with the contractors. Some won't talk to him, which undermines his ability to get things done. Ms. German was essentially doing her own investigation. This led to numerous calls to the Town Attorney, two trips to Council, and many additional hours of staff time. He is not sure if this is "too much" but in his 14-15 years elsewhere he has never seen a Councilmember go to such detailed lengths to review the fairness of a bid.

The other issue Mr. Long had with Ms. German is that when they were going to bid for the design-bid-build contract for the Library, the low bidder was from Flagstaff, and the other two were from elsewhere in Arizona. Again, Carol was upset that no local contractors were on the list. Carol asked to see all the documents so she could see if the bids were done right. She was in his office, again taking up staff time, and attorney time. The bids were high, and they are going out for bid again. However, the low bidder could only hold his cost for 30 days and Carol's actions caused a delay that jeopardized that hold. Her actions have caused at least a 3-month delay. It was initially a good, clean bid that should have been awarded.

Now, Mr. Long has asked that Councilmembers make an appointment in advance to come in, and to let him know what they want to know about so that he can appropriately assess a response. He would like to know, where is the line? He feels Carol German crossed it.

Councilmember Carol German said that when she got questions from contractors on the "job order" contracting process, Russ Martin referred her to Ron Long, the Director of Public Works. She did not speak to him but did speak to his Deputy, Troy O'Dell, to ask him about the process and selection criteria, and who was on the committee. The committee included Russ Martin, who had said he did not have the specific knowledge and referred her to them. Troy told her they were going to select three but included a fourth. She requested to review all proposals. She then went to Council and said, "Let's either keep the process we have or give the job order contracts to everyone who is qualified."

Councilmember German later provided additional information:

Seeking information on this agendized item, I went to the Town Manager for an explanation of what "Job Order Contracting" is. The Manager directed me to the Public Work's Department. Troy Odell did an excellent job of explaining how Job Order Contracting works. I received clarification and information and presented it to the Council at the regularly convened meeting. I did not ask why local contractors could not have preference and I never said that I didn't agree with the process. To state "that I showed information to all the contractors" is a serious and an untrue allegation because Mr. Odell did not give me any information. Furthermore, I have never contacted any of the bidders relating to this matter. In fact I only know one contractor in town and he is a

long time personal friend outside my position as a Council Person. If local contractors were present at the Council meeting, that is their prerogative. This item was a properly agendized topic and after discussion the Council voted unanimously to include all contractors who submitted RFP"s. There was no interference with the process; in fact the process stayed the same. This was a Council decision.

After the above information was received, Mr. Long and his Deputy, Troy Odell were contacted to seek further clarification of their recollection. Mr. Long stated:

> We formed a review committee and utilized a matrix that awarded points for various categories relevant to the work that the JOCs would be doing, and we rated all 12 applicants that responded to the JOC request of qualifications. We then selected the top 3 based on raw scores from the matrix, and we had a virtual tie for 3rd place so we added the 4th place contractor to the award list based on how close they were in the scoring to the 3rd place applicant. Staff then prepared and submitted to the Clerk's Office, our Staff Report recommending Council to award to the top 4 applicants. Ms. German along with all the other council members were given the Staff Report prior to the Council meeting and it was based on that report that Ms. German approached Troy to determine how we selected the top 4. Troy allowed Ms. German to review the rating matrix but did not provide her with a copy. Apparently Ms. German wrote down or memorized the ratings which were somehow passed on to all of the local contractors that were not selected. This confidential information, the rankings, was not intended to be released due to its sensitive nature. Once the local contractors found out how all 12 ranked they contacted Troy and myself expressing their displeasure and resentment for our ranking.

Mr. Long clarified that Ms. German is not the only councilmember who ever raises questions, but she was the only person to question this JOC process. He stated that she is "more inquisitive than the rest of the council and her inquiries raise staff concerns." Mr. Odell also stated that he has not experienced such detailed inquiry from any other councilmember in Camp Verde or in his past five years' experience working in a similar role in Cottonwood.

Mr. Long and Mr. Odell both felt strongly that their process was unbiased and complied with applicable law. Ms. German was clear in her desire to include more local contractors. Although staff's work had been complete, as a result of Ms. German's inquiries and questioning of the process, the entire process that staff and the committee had established and completed was essentially invalidated, leading to high levels of staff frustration. While councilmembers raise issues in public meetings, what is unusual to staff is Ms. German's approaching staff to try to enlist help in changing an outcome to one that is in line with what she wants. Mr. Long stated that "If her actions did not cross the line, they came right up close to it. She wanted to change the process that had just occurred to get a different outcome."

The four contractors who were initially approved had all been notified, and each later had to be contacted and informed that the despite the review and approval process which had been completed, instead of four, all twelve who submitted were going to be approved.

Troy Odell clarified that he did not actually give Ms. German the list, the scores or the matrix, but only explained the bid process and results to her. In retrospect, Mr. Odell and Mr. Long stated that they are not sure how the contractors found out about the rankings, but Ms. German was the only one outside of the ranking committee and staff who knew the rankings at that time. And, all the contractors they spoke with said Ms. German had told them they were not ranked as high as others.

Regarding the bid for the library project, Councilmember German recalls asking the Clerk to see copies of all the bids for the Library project. She gave them to her. They were all too high.

Councilmember German provided later information on the above statement:

> The bids for the library had been opened and publicized. Bids become public upon opening when it involves public funds. The contractors are allowed to be at the bid opening. I inquired about the library bids at the Public Works Department and only received the list of the seven bidders and their bid amounts. This was the same list that was provided to the seven bidders. At no time did I review or ask to review the bid packets, and the bid packets were not released to me. Additionally, I did not share any information nor did I have any information to share with any bidders.
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> At no time did I give direction to staff. This was only an inquiry as allowed by Town Code and Council policy. My inquiry did not delay or alter the bid process. When the bids were returned, the item was agendized and the Council determined that all bids were too high. It was decided unanimously by the Council to re-bid using new bid criteria. The library project has continued to move forward. The Manager and the Council have been working to arrange financing while the bid process proceeds. The Council's actions to ensure a fiscally responsible decision did not unduly delay the library project, and is part of their responsibility to provide direction to the Manager.

After this information was received, further follow-up conversations were had with Mr. Long and Mr. Odell. Mr. Long clarified that

> The bids were not released to Ms. German prior to submittal of our staff report to the Clerk's Office. Our process, that we follow for every formal bid we advertise, is to prepare a Staff Report for Council that recommends a motion of some type to Council and we do not release any information prior to the submittal of the Staff Report. When Ms. German came to my office she had already seen the staff report. Ms. German wanted

to know why the bids were so high and what we could do to "value Engineer" the project to reduce costs and that is what started all the conversations with the Town Attorney Bill Sims. The bids were too high and Ms. German wanted to get local contractors on the list if possible.

Mr. Long stated that Ms. German wanted to negotiate with the top four contractors, which would not be permissible. She then asked if they could negotiate with all those who submitted. However, that is not the way the bid process works. Staff recommended that the bid be awarded to the lowest bidder, but council ended up rejecting this recommendation in response to Ms. German's requests and decided to go out and re-bid.

Mr. Long also stated that it would be unfair to blame the delay solely on Ms. German, as the entire council agreed with her request to re-bid the project. Bids should be received in mid-December, 2014.

Mr. Long stated his concern that with respect to both the JOC and the library bids, all proper, unbiased processes were followed. As a result of Ms. German's inquiries and actions, the contracting community feels that he and his staff are not acting in a proper or "above board" manner. Staff feels as if their competency is called into question, and feel frustrated that their work was ultimately invalidated and rejected to obtain a different outcome. Friction is the end result.

Mr. Long would like a clear policy statement about permissible contact between council and staff. A question may appear to be only an "inquiry," but when it requires staff time to review, research, and contact the Town attorney, this appears to be too much of an imposition and potential interference with staff work.

Councilmember Involvement in Personnel Matters

The Mayor is also aware that Council interference with personnel matters creates tension, such as where there is increased scrutiny of the Marshal's office. There is the risk of "quid pro quo" or "tit for tat" when the feeling exists on the part of employees that if a Councilmember is not following policy by working with the Town Manager, why should they go through their chain? The result is the July 30, 2014 complaint to Council, when it should be addressed to the Town Manager. He has a concern about the Council losing legislative immunity if they are involved in personnel matters. The councilmember could be subpoenaed by a disgruntled employee.

Councilmember George believes the reason an outside investigation is needed is that a few Councilmembers have overstepped bounds. They accuse each other and things become even more divisive.

He is worried about Councilmembers making requests and looking at documents that are not redacted. He believes Ms. German is working in league with Cheri Wischmeyer, that they are a "team" and have both worked together to scan and review documents. Cheri has a long-time grudge against the Town for firing her husband, a former Town Marshal. He believes Ms. German is interfering with staff, that her request for staff background information should have gone through the Manager, and that she is trying to micromanage employee issues, conducting private investigations against the Town Marshal. He has no proof, but feels she has been on a "witch hunt" along with Ms. Wischmeyer to oust the Town Marshal, and they have a "vendetta" against the Marshal's office since the residency issue occurred. The records request sent in by Ms. German demoralized the Marshal's office and caused others to worry about their jobs.

Vice Mayor Baker denies working with Cheri Wischmeyer or Carol German to oust the Marshal. It was no secret that she was not happy with how the residency issue resolved, but she does not have a vendetta against the Marshal. She is unhappy but knows she cannot act without the Council.

Councilmember George stated that Ms. German has asked for detailed information on what employees are allowed to take vehicles home, and information on the salaries of all employees. Councilmember Gordon stated his belief to Ms. German that she was trying to "micromanage" and her reaction was defensive. He believes Councilmember German requests way too much information, consuming too much staff time.

Councilmember George would like to see written council policy that no council should conduct private investigations, especially where personnel matters are concerned.

Dunegan/Grover Issue – Vice Mayor Baker's Involvement

According to the Mayor, a citizen, Mr. Dunegan, complained that he got fired because Officer Russell Grover told his boss that he was a felon. The Mayor referred the complaint to Russ Martin. Grover allegedly went to Tire Pro and told Mr. Dunegan's boss that "We buy cars here and we don't want an ex-con working on our cars." Vice Mayor Baker decided to investigate this herself, and talked to Dunegan's boss, Donnie Hanks, who confirmed this. The Mayor told her to stay out of this as it was a personnel matter and she could lose her immunity. There is nothing in policies or procedures that expressly direct this, but under their form of government she is not to be doing this. Ms. Baker states that the Mayor did not tell her to "stay out of this or she could lose her immunity."

Russ Martin explained that the issue with Russell Grover, a former motor officer, was the second significant issue marking a change in Council – staff relations. A citizen named Michael Dunegan, known as a 5-time felon, had a complaint against the officer and felt the Town was not addressing his concerns. Jackie Baker offered to meet with him and listen to his concerns, which she did. Jackie gave Russ a recording and wanted something done. However, Russ told her the town policy and process requires a written complaint to be submitted on a specific form in order

for the Town to begin an official investigation. The Marshal had Internal Affairs begin an investigation. When a second complaint was received that Grover approached Dunegan's boss at his place of employment (Tire Pro) and made statements to indicate that the Town did not look favorably on doing business with Tire Pro if it employed Mr. Dunegan, both issues were sent to Cottonwood to investigate. Officer Grover was also not happy with the way the Town handled the complaints. Jackie Baker, who is also currently serving as Vice Mayor, began doing her own investigation. It was reported that she investigated a report that Grover would often go to a Circle K and stand in the cooler to cool off, but Ms. Baker stated that this did not occur. Russ had a concern about her being involved in personnel issues.

In March of 2014, Mr. Dunegan filed a complaint against Officer Grover relating to a traffic stop. Grover was eventually terminated. He appealed, but a Hearing Officer upheld the termination. Russ was friends with Officer Grover at the start of all these issues, but is no longer a friend of his.

Ms. Baker explained Mike Dunegan, whom she knows well as a customer of a restaurant she helps out at, complained at a Council meeting that there is "corruption in the Marshal's office that you need to know about." He said he had attempted to complain to the Marshal's office, but was told he needed an attorney, which he could not afford. He said he went to the Manager and was told the same thing. She gave him her card at a break, and told him to call her. She was thinking she would get his information and share it with the Town Manager. Dunegan's complaint was that a Marshal's office employee, Officer Russ Grover, was harassing him, in connection with a Domestic Violence matter. Grover and his wife were friends with Dunegan's ex-girlfriend, involved in the DV matter. Dunegan had pled guilty. He felt Grover had a conflict of interest, as he was the investigating officer. Dunegan gave Jackie a disk recording of his hearing. She and Cheri Wischmeyer and Carol German all listened to it. This is the only information of any sort that she reviewed with Cheri Wischmeyer.

Jackie Baker gave the disk to Russ Martin and told him there was something troubling on it that he should listen to. She was referring to a statement Grover made that he offered to show Dunegan's ex-girlfriend's Dad where Dunegan lives when the Dad said he wanted to shoot Dunegan. Jackie, Carol and the Mayor met with Russ Martin. Ms. Baker did tell Dunegan that if he had a new complaint, he should fill out a form. Later, Dunegan called and complained that Grover spoke to his boss and said that the Town Marshal's office would be upset to know that an ex-felon (Dunegan is a convicted felon) was working on their vehicles. Dunegan was worried he might lose his job. So, Jackie called his boss, Don Hanks, to "verify" that this was true. She used this word "verify" several times. She verified and then reported it to Russ Martin.

The Vice Mayor does not think she was "investigating," and thinks she acted properly. She stated she would not do anything differently. She stated that if the Manager does not follow through, she believes it is "our duty" to follow through and learn information.

She notes that Grover was later fired for lying about what occurred at a later traffic stop he made of Dunegan.

Councilmember Gordon feels that Ms. Baker stepped out of line when she confronted a citizen about an employee of the Marshal's office (Russ Grover) who was alleged by another citizen to have harassed him and his employer, instead of bringing the matter to Town Manager Russ Martin to look into. This is an example to him of a councilmember going outside her area of responsibility, and not following the appropriate "chain of command." He believes that when she was confronted about her behavior, she acknowledged it was inappropriate.

Councilmember Gordon stated that citizen complaints should be directed to the Town Manager, on an appropriate form, and investigated by the Manager. Councilmembers should not be engaging in their own investigations, and both Carol German and Jackie Baker should be going through Russ Martin. When this point has been made to Carol German, her response has been, "*That's my job.*" He has told her, "*No, it's the Manager's job.*" Budget compliance is their job, but personnel issues are in the Town Manager's domain only, and if there is a concern from the public, he should be the one to provide a response. Mr. Gordon is concerned with the potential of individual council liability and waiver of legislative immunity if Council is involved in personnel matters that lead to litigation. He would like a recommendation as to what guidance there is in policy as to council behavior.

Councilmember George stated that as to Vice Mayor Baker's conversations with a citizen and his employer to investigate an officer's alleged improper behavior, she will say she was trying to help a friend or to give advice. However, she went beyond that to the detriment of the Town. His concern is the conflict of interest between her desire to help a friend and her role as Vice Mayor.

Councilmember Public Records Request for Personnel Records

Russ Martin asked Carol German to withdraw her request for the POST applications and she agreed. He told her she had a right to seek the information, but it was seriously disruptive. Carol had said the reason she wanted the information was to see if it was true that one officer had a domestic violence arrest in the past and had an affair with someone at a prior job, and whether another officer had a policy violation in his past and may have been hired because he was friends with the Marshal. Carol's beef was with the overall hiring practices at the Marshal's office. She wanted to prove it through examination of recent hirings. Russ is okay with her questioning of the process, but questions about the process should be directed to him to examine and respond to. His issue is that Councilmember German was doing an independent investigation of personnel practices.

In connection with this, Russ met with Carol for about three hours. They talked about several things. She wanted to know why an investigation was not done about Cheri

Wischmeyer' s complaints about why police employees resigned. However, Russ had done an investigation and given it to Council.

Vice Mayor Baker stated she has not made any requests for information, on employees or otherwise.

Councilmember Jones states that with respect to Councilmembers digging into files, they may have a right, but "this is a line you don't cross." She would not want anyone getting her personnel files from previous employment. She does not think Council should do investigations of their own, or to help people who want to sue or otherwise harm the Town.

Town Marshal Nancy Gardner understood that Russ Grover was the ex-employee who told Carol German that Nancy had hired people with lesser qualifications and who had issues with their backgrounds, and that's why Carol German did the records request.

Jackie Baker called Town Marshal Nancy Gardner to have coffee and talk about things, after a comment she made in public about not talking to her. Russ Martin had told Nancy to hold off talking to her. Later, Jackie apologized to her. Nancy Gardner said she told the Vice Mayor that she and Carol engaged in behavior in violation of code when she spoke to Russ Grover when the case was in litigation, and when they requested copies of employee background information. Jackie said, "*I warned Carol about that.*" In a follow up email, Ms. Baker stated she did not make this statement to Carol German.

Nancy Gardner said that she told Jackie, "*When you called Tire Pro to speak to Dunegan's boss about Russ Grover, and talked to people at the Circle K about Russ' use of the cooler to cool down, we were in the middle of an investigation of Grover.*" Jackie said she had not known about that. Marshal Gardner said she told the Vice Mayor, "*That's why you go to Russ Martin.*"

D. THE RIGHTS OF MEMBERS OF COUNCIL TO MAKE INQUIRIES OF TOWN STAFF

Council's rights to make inquiries of Town staff is expressly provided for in Article 3-2-1 E of the Town Code, addressing Internal Relations - Council-Manager Relations:

> *The Council and its Members shall deal with the administrative services of the Town only through the Town Manager,* ***except for the purpose of inquiry****, and neither the council nor any Member thereof shall give orders or instructions to any subordinate of the manager.*

Town Council Policies, Rules and Procedures echo the same language in Section 12, Council and Candidate Relations with Town Staff:

12.1 No Councilmember shall request any staff project without first seeking approval of the Town Manager.

Section 3-2-1.E of the Town Code: Council to Act through Manager: ***Except for the purpose of inquiry,*** *the council and its members shall deal with the administrative branch solely through the manager, and neither the council nor any member thereof shall give orders or instructions to any subordinate of the manager either publicly or privately....*

The other applicable provision is 12.3, Staff Communications Through Town Manager:

At all times, all formal communications by Town Council Members to Town Staff shall be made through the Town Manager or the appropriate department head.

Russ Martin stated his understanding is that Council creates law, ordinances and policy, and that the Manager has the daily responsibility to follow Council's direction. He takes his direction from the majority. The Council hires the Manager, the Town Attorney and Magistrate, but the Town Manager hires and supervises the Town Marshal and Town Clerk.

With respect to Council relations and inquiries for records or of staff, Mr. Martin said the issue is first whether there is a right to do so, but more importantly, is it disrespectful and disruptive to get involved with personnel matters. When this happens it appears politically vindictive as opposed to a professional analysis occurring. He is concerned about loss of immunity if a Councilmember gets involved with personnel matters.

Mayor German stated that the Council's job is to listen to constituents, and if they have concerns, to get answers if possible. Council has the right to inquire but they should go through Russ if they want clarification or have a concern. If the issue is to be addressed in records, it should be addressed to the Clerk. If it is a personnel matter, it should be addressed to the Town Manager. He knows anyone, including Council, can request records.

In his view, if a councilmember has a significant concern she should bring it to the entire Council. If needed, they can get legal advice or have the Town Manager look into an issue. The concern should be placed on the agenda so the process is open.

E. THE IMPORTANCE OF HOLDING THE TOWN MANAGER ACCOUNTABLE AND THE RAMIFICATIONS IF COUNCIL MEMBERS IMPROPERLY INTERACT DIRECTLY WITH TOWN STAFF

Council Policies, Rules and Procedure provides in Section 15, Code of Conduct for Elected and Appointed Officials, 15.5 Council Conduct with Town Staff, that such contact should be limited:

B. Limit Contact to specific Town Staff

Tasks performed by staffs that come from outside the normal chain of supervision could cause staff confusion, inadequate work product and inefficient performance. Questions of Town staff and/or requests for additional background information should be directed through the Town Manager, Town Clerk or Department Heads, or the Department Head's designee. The Town Manager should be copied on any request. In accordance with Town Code Section 3-2-1-E, no Council Member shall give orders or instructions to any subordinate of the manager other than instructions for the purpose of inquiry without the consent of the Town Manager. When in doubt about what staff contact is appropriate, Council Members should ask the Town Manager for direction. Materials supplied to a Council Member in response to a request will be made available to all members of the Council so that all have equal access to information.

Based on the above, if Council does more than inquire of staff, and directs them to perform significant tasks, or directs them to change processes, that conduct would be deemed inappropriate.

In addition, 15.5 D. contains another prescriptive rule:

Never publicly criticize an individual employee. Council should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's manager. Misdirected comments could violate the Town's personnel rules and limit the Town's ability to deal fairly and efficiently with personnel matters. Comments about staff performance should only be made to the Town Manager through private correspondence or conversation.

Based on this section, if Council publicly criticizes an employee, or complains about their performance to anyone other than the Town Manager, that conduct would be deemed improper.

As to holding the Town Manager accountable, Mayor German mentioned that Citizen Cheri Wischmeyer raised concerns with him about several things including potential violations of federal law with respect to mail tampering. He asked Cheri to address these issues in a meeting with him and their Town Attorney, Bill Sims, and she did. This had to do with an allegation that the Town Marshal was opening anonymous letters. He intends to address the lengthy list of concerns Cheri noted in a recent September 17, 2014 letter in Russ Martin's upcoming review.

The Mayor does want to be sure there is a system of checks and balances in place. He agrees there should be timely evaluations of the Marshal's office, and all staff, and that is the Town Manager's job. He explained that Russ also serves as the HR Director, a function recently held

by a Marshal's office employee, as staff did not feel she was neutral. Russ Martin has been exploring seeking a shared HR Director relationship with the Camp Verde school district and the Fire District. The Mayor agrees it would be good to have a separate person filling that role, but they do not have the need or budget for a full-time slot.

There is nothing in the policies, procedures or training for Council that the Mayor is aware of to address the role or duties of Council in an investigation. They set law, and policy, and the Manager implements the direction. The Manager is to be held accountable, hopefully by measurable standards. He feels they all could benefit from training on the implementation of the Council-Manager form of government, and the role of the individual councilmember. A citizen for example can request information verbally or have a right to records. However, a Councilmember cannot take off that "hat" and make a request only as a private citizen.

Councilmember German's Complaints about Staff

Russ Martin expressed concern that Councilmember Carol has tried to investigate complaints against Town staff. One involved an employee named Jenna, a planner in the Community Development Department. There was a question about a citizen's ability to put signs up on the highway. Carol complained that staff (Jenna) was belligerent. There was another issue when a local business wanted to put up an A-frame sign and Carol went to the Department to say she was "following up, to let them know of the complaint." Russ asked, in fact begged, Carol German to let him know about any complaints about staff, so that he could handle them. Russ learned about the complaints from Jenna and her boss, Mike Jenkins. The employee was very upset and fearful that her job was in jeopardy. He noted that employees may wish to appease the Councilmember and respond differently than they would to the Town Manager. This impacts both staff productivity and Russ' ability to manage his staff.

Jenna Owens provided her point of view. Jenna has been with the Town as a planner for 9.5 years. She reports to Mike Jenkins, the Community Development Director. The only Councilmember she has had a concern about is Carol German. There were two incidents. Jenna is her own sole support and was really uncomfortable being confronted by the same Councilmember about how she treats people. She was very worried about her job as a result.

First, in April-May of this year, a citizen had a question about putting a guest house on her property. Jenna explained to her what she could and couldn't do. The citizen was not happy with the answers. Jenna gave her a card and told her to call if she had any questions. Mike Jenkins was also part of the discussion. A few days later, Carol German came in and told Jenna she had received a call from the citizen who felt that Jenna had been rude and disrespectful to her. Jenna was shocked as she has not ever treated anyone that way. Mike Jenkins overheard Carol's accusation and he took it to Russ Martin to handle. To Jenna, this is the reverse of protocol: Carol should go to Russ, who would then go Mike to look into it.

Second, Nicky Miller with Camp Verde Promotions came with a question about putting up banner poles on vacant property. Jenna told her the Code would not allow them to be placed there, but she could do that on close-by locations and she would get her a map of them. Jenna got approval for the other locations and left the information for Nicky to pick up. Carol German then came in and complained about how badly Jenna had treated Nicky, how rude and disrespectful she had been. Again, Mike Jenkins came in and pulled Carol aside to privately to speak to her. Mike had the Economic Development Director Steve Ayers speak to Nicky, who said she had no problem at all with Jenna's treatment of her. Mike then talked to Carol who backtracked and said it was "no big deal."

Jenna is now nervous and will not talk to Ms. German again without someone else present. Mike Jenkins has told staff now there is a new policy, and if any Councilmember wants to talk to you about your conduct, you immediately call the Town Manager to advise him before proceeding.

Ms. German states she does not get involved in personnel issues. Councilmember German does not recall a conversation with Jenna in Community Development that was problematic. She did not refer to her as "belligerent" and would not, as she feels Jenna is a friend.

When she receives calls from citizens, she will go to the Town Manager and ask to "verify." If he does not have the answer, he will direct her to talk to the Department staff. She desires always to "verify" before she can speak to an agenda item.

Russ stated that Carol has also frequently called staff on unbudgeted items, such as putting up banner poles. Russ notes that if a Councilmember has a concern about staff's prioritization that complaint is an issue that should be raised with Russ, not with staff directly.

Russ has no issue with Councilmembers dealing with constituent complaints, and going directly to staff with questions or to obtain information. However, if there is a personnel complaint, that should be brought to the attention of him as the Town Manager, so that he can ensure it is properly investigated and handled. He is to be held accountable for his staff's performance, to address issues and to discipline where appropriate.

Russ noted that if a Councilmember investigates or tries to get involved with discipline, their immunity may be compromised in terms of liability, as they are acting outside their protected role.

Councilmember Gordon has heard second-hand that Ms. German has been disrespectful to Russ and town staff, in public. What comes to mind is information that Mike Jenkins and possibly Ron Long were referred to by Ms. German as unprofessional. And, he is aware that Ms. German publicly criticized the Town Marshal in a council meeting, though he does not recall the specifics. This is very divisive. He also is concerned that staff are afraid for their jobs. The 11

people who signed the complaint feel targeted as a result of public records requests and public criticism.

Councilmember Gordon has no concerns about Russ Martin's behavior. He thinks he is a good administrator, staff is happy; he balances the budget and has made good economic decisions in bad economic times. Russ does not always get his way with the Council but takes it well when he does not.

Councilmember Jones stressed that they are under a Council-Manager form of government, and that they hire the Manager to do a job. If they are not happy, they should be critical in his review, or move on. She trusts him 100%. She does agree there is a need for a neutral Human Resource person.

To her knowledge, the only people on Council with any issues are Carol German and Jackie Baker. They used to all support Russ, but for the last 6-7 months it seems like whatever he does is not good enough for Ms. German and Ms. Baker.

Councilmember Robin Whatley feels Russ Martin is a great Manager, the best they have ever had. Nancy Gardner cleaned house so that the Marshal's office is no longer a "good old boys club," which is what Russ wanted her to do. Carol German undercuts the Manager by the level of her involvement in details. Robin is concerned about the loss of good people. She has called the Town Attorney once, whereas Carol and Jackie call him all the time. This costs money. She thinks legal questions should go through Russ, first. She does wonder why the Mayor brought Cheri Wischmeyer to meet with the Attorney.

F. COUNCIL POLICIES, RULES AND PROCEDURES AND CODE OF ETHICS REQUIREMENTS AND POSSIBLE OPTIONS FOR TOWN COUNCIL INCLUDING THE ENFORCEMENT PROCESS THEREOF

The Code of Conduct (the Ethics policy, though not expressly labelled as such) is found in Section 15. The provisions relevant to this investigation are as follows:

15.4 Council Conduct with One Another

A. In Public Meetings (3) Avoid personal comments that could offend other council members

If a Council Member is personally offended by the remarks of another Council Member, the offended Member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Member to justify or apologize for the language used. The Chair will maintain control of this discussion.

15.6 Council Conduct with the Public (B) In Unofficial Settings 2. It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Councilmembers, their opinions and actions.

15.10 provides for Enforcement of the Ethics Policy:

A. Complaints
1. Public officials themselves have the primary responsibility to assure compliance with this Code of Conduct.

2. The...Mayor has the responsibility to intervene when actions of Public Officials appear to be in violation of this Code of Conduct.

If there is a complaint, 15.10 A. (4) provides for review:

The Town Attorney shall review the Complaint and shall simultaneously notify in writing the Town Official subject to the complaint of such review.....Within 30 days, the Town Attorney shall submit the results of his or her review to the Complainant, to the official who is the subject of the complaint, and to the Mayor... The Town council shall consider the Town Attorney's report at a Public Meeting...

For Complaints against the Mayor and/or other Members of the Town Council, the process of Resolving Complaints is set forth in 15.10 B:

1. The Town Attorney shall have the authority to decide either to (a) act directly on any complaint filed against the Mayor and/or other Members of the Town Council pursuant to subparagraph A above, or (b) refer a complaint to an independent reviewing authority...

Where violations are found, the Sanctions are provided for in Section 15.11, and are limited to reprimand, censure, loss of seniority or committee assignment, or official travel restrictions.

Section 16 of the Council Policies, Rules and Procedures is expressly directed towards treating one another with respect.

Councilmember George believes Councilmember German should resign. He does not think she deals ethically or with integrity. She has others write letters. She denounced the Council in the paper, calling a Council policy "stupid." She packs Council meetings with her friends and neighbors to protest a park entrance proposed as it would be next to her house. This may not be illegal but the Town bought Forest Service land to build a park and they have been frustrated in their ability to do so.

Councilmember Robin Whatley states that Carol German does what she is not supposed to and then acts as if she is the victim. In a newspaper article, Carol criticized Council on the residency vote. She said Russ Martin should not have made the recommendation. The policy

states they are not supposed to criticize each other in public. She tried to confront Carol German on this but did not succeed. Ms. Whatley would like direction as to what action they can take when a councilmember "goes rogue." She would like Carol German to resign.

Councilmember Carol German complained that on November 21, 2013, there was an instance when Councilmember Robin Whatley made some accusations against Carol German that were not on topics that were on the agenda. Ms. Whatley was angry at her for comments made in a newspaper. The Town Attorney investigated and later asked Ms. Whatley to apologize to Ms. German in a public meeting for holding a discussion that may have exceeded the scope of the Executive Session agenda. Ms. Whatley stated that the Town Attorney did not ask that she apologize to Ms. German, but that she did apologize to Ms. German verbally. Relations have been strained with her since, and she does not understand why. She said she received an email from a citizen complaining about Ms. Whatley's treatment of her at a council meeting.

Councilmember German feels the council is "fractured." The problems seem to have begun with the Town Marshal residency issue and since have escalated. She would like to see them treat each other with respect and courtesy, and thinks perhaps some training may be helpful. The Town Attorney is not always present at Council Meetings. Although this would be an added expense, she thinks his presence might prevent tensions from escalating.

G. ALLEGATION THAT COUNCILOR GERMAN FALSELY ACCUSED THE TOWN MARSHAL (EMPLOYEE) OF VIOLATING TOWN CODE AND WANTING HER CRIMINALLY CITED AND DISCIPLINED IN A TOWN COUNCIL MEETING, WHICH IS ALLEGED TO VIOLATE TOWN COUNCIL POLICIES, RULES AND PROCEDURES 15.5 (D).

Councilmember Carol German stated she did not make a "false" accusation that the Marshal was violating the Town Code by residing outside the Town, because it was true. She did not say she wanted her "cited" or "disciplined." This allegation refers to the meeting held on October 16, 2013. There was an earlier meeting on October 2, 2013, where the issue of waiver of the residency requirement was discussed. At that time, Carol asked the Town Manager who confirmed that Marshal Gardner was living outside the Town boundary. Russ Martin said he had given her permission to do so, and that the Town Manager was the only one required by the Code to live in the Town. Ms. German felt that this was not true and that his action of granting permission was outside of his authority. The Council voted on the waiver request and it was denied. She noted that in November, 2013, the Council voted to change the Code to require that the Marshal live within the Town limits or the 86322 zip code, and removed the waiver option.

Councilmember George definitely recalls Carol German stating at the council meeting on the residency requirement, that the Marshal should be "prosecuted" for violating the Town Code. Yet, he noted the Marshal had resided outside the Town for a year without complaint.

Councilmember Jones does not recall if Carol German said the Marshal should be "cited or disciplined." She does note that Cheri Wischmeyer has a "vendetta" against the Marshal's office and that Carol German seems to be "consumed" by Cheri.

Councilmember Robin Whatley also recalls Carol German at the Council meeting on the Marshal's residency, saying the Marshal should be "cited or disciplined." Carol German did not want the Marshal hired, and was livid about her living out of town; however, the Marshal was hired with knowledge of the waiver provision and was told that Council would likely waive the residency requirement.

Town Marshal Nancy Gardner stated that when she was hired, she was told that the Town would prefer that she live in town, but it was not required. Carol Gardner wanted to show her some homes that she could buy in Camp Verde, but she decided to buy in Munds Park. Carol was upset, and packed the Council meeting to discuss the residency waiver issue with her friends and neighbors. The second meeting in October, 2013 where this was discussed was the one where Carol said, "*We should get with the Town Attorney in Executive Session, because she is violating the laws and ordinances she is supposed to be enforcing. This is punishable by jail time and a fine of $2500.00.*" The insinuation was that Council should look into how to proceed on the violation. The audio recording on this meeting apparently was not made.

Marshal Gardner feels this is publicly mocking and degrading and this is itself a violation of the Town code. Darby Martin stood up at the meeting and said that the Marshal was the "most ethical person" and since then, there has been this feud between Carol German and the Marshal's office. Two ex-employees are part of this as well. Carol German, Jackie Baker and Cheri Wischmeyer are all at Carol's house after the Council meetings.

Nancy Gardner now has a motor home and address in Camp Verde, and a voting card.

Marshal Gardner said that she consulted a lawyer on the residency issue, who told her she had a good case, since she was told it would not be required and the job was not advertised as such, based on one of the Code provisions. At the time she applied for the job, Code provision 3-1-1 stated that "Residency within Town limits for department heads or other personnel may be required for certain positions as reflected in the advertising for the position". The Marshal's job advertisement said only that "residency in the town is preferred." She believed though she may win the battle, she might lose the war so decided to park the motor home in town.

H. ALLEGATION THAT IN A CIVIL COURT HEARING A LOCAL KNOWN FELON TESTIFIED UNDER OATH THAT VICE MAYOR BAKER ASSISTED HIM IN VERIFYING INFORMATION ON THE ACTIVITIES OF AN EMPLOYEE AND PROVIDED HIM WITH GUIDANCE IN HIS EFFORT TO DISCREDIT THIS POTENTIAL EX-EMPLOYEE OF THE MARSHAL'S OFFICE.

This facts relating to this matter is addressed earlier and restated here for convenience.

Ms. Baker explained that a citizen named Mike Dunegan, whom she knows well as a customer of a restaurant she helps out at, complained at a Council meeting that there is "corruption in the Marshal's office that you need to know about." He said he had attempted to complain to the Marshal's office, but was told he needed an attorney, which he could not afford. He said he went to the Manager and was told the same thing. She knew he was an informer for the police. She gave him her card at a break, and told him to call her. She was thinking she would get his information and share it with the Town Manager. Dunegan's complaint was that a Marshal's office employee, Officer Russ Grover, was harassing him, in connection with a Domestic Violence matter. Grover and his wife were friends with Dunegan's ex-girlfriend, involved in the DV matter. Dunegan had pled guilty. He felt Grover had a conflict of interest, as he was the investigating officer. Dunegan gave Jackie a disc recording of his hearing. She and Cheri Wischmeyer and Carol German all listened to it. This is the only information of any sort that she reviewed with Cheri Wischmeyer.

Jackie Baker gave the disc to Russ Martin and told him there was something troubling on it that he should listen to. She was referring to a statement Grover made that he offered to show Mr. Dunegan's ex-girlfriend's Dad where Dunegan lives when the Dad said he wanted to shoot Dunegan. Jackie, Carol and the Mayor met with Russ Martin. She did tell Dunegan that if he had a new complaint, he should fill out a form. Later, Dunegan called and complained that Grover spoke to his boss and said that the Town Marshal's office would be upset to know that an ex-felon was working on their vehicles. Dunegan was worried he might lose his job. So, Jackie called his boss, Don Hanks, to "verify" that this was true. She used this word "verify" several times. She verified and then reported it to Russ Martin.

The Vice Mayor does not think she was "investigating," and thinks she acted properly. She stated she would not do anything differently. She stated that if the Manager does not follow through, she believes it is "our duty" to follow through and learn information.

I. ALLEGATION OF CONFLICT OF INTEREST AND NEPOTISM BETWEEN THE VICE MAYOR AND TOWN CLERK, MOTHER AND DAUGHTER, CONSTITUTING NUMEROUS TOWN CODE VIOLATIONS.

The Town Code provisions alleged to have been violated are:

- 3-2-1.I (A) – For temporary absence or disability of Town Manager, Town Marshal will serve as Acting Town Manager, and if not available, Town Clerk will serve, and Manager is under direct supervision of Town Council

- 3-2-1.I (B) – For a vacancy in the position, the Acting Town Manager shall be appointed by resolution of the Council

- 3-2.1.I (C) – Eligibility. No member of the Council, their spouse or relatives to the first degree shall be eligible for appointment as Town Manager until one year has elapse after such Councilmember shall have ceased to be a member of the Council

- 3-2-1 (B) 6 – Election Official. The clerk shall be the Town election official and perform those duties required by state statute and as directed by council (town clerk is subordinate to council)

- 3-2-1 (B) 8 – Administrative Duties. The clerk shall perform those administrative responsibilities and duties that are conferred upon the Clerk by council.

There are numerous sources of guidance on Conflict of Interest and Nepotism. Town Council Policies, Rules and Procedures provide in Section 10.1 and 10.4, as to Conflict of Interest, as follows:

> *10.1 Introduction and 10.4 Disclosure: Where a pecuniary or proprietary interest exists in the outcome of a vote, or where their personal interests or those of their close relatives may be affected, the Council Member must disclose and declare the conflict of interest, refrain from voting and withdraw from participating in any discussions or decision-making regarding the matter.*
>
> *10.2 Purpose: The purpose of Arizona's conflict of interest law is to prevent self-dealing by public officials and to remove or limit any improper influence, direct or indirect, that may bear on an official's decision, as well as to discourage deliberate dishonesty.*

10.7 Improper Use of Office for Personal Gain: Public officers and employees are prohibited from using or attempting to use their official positions to secure valuable things or benefits for themselves, unless such benefits are part of the compensation they would normally be entitled to for performing their duties.

Section 10.9 addresses Non-Statutory Conflicts of Interest:

10.9 Council should endeavor to avoid all appearances of impropriety. In such cases where a member feels ethically constrained from participating in discussion and voting, the Member may declare a conflict.

See also Council Policies, Rules and Procedures, 16.5 Conflicts of Interest.

The Town's Personnel Policy Manual provides guidance in Chapter 1, General Employment Rights and Responsibilities:

Policy 1-2 Code of Conduct

As employees of the Town of Camp Verde, we must manage our personal and business affairs so as to avoid situations that might lead to conflict, or the appearance of conflict, between self-interest and our duty to the Town, to the persons served by the Town and to the general public.

Common sense and good judgment will dictate the proper course of action in most situations. However, if there is a question of even a slight conflict with our Code of Conduct, others will tend to exaggerate it. The best policy is to resolve such questions at the outset so they will not become embarrassing problems later. Such matters can be easily addressed by discussing them with the Department Head or Human Resources Director.

1-2-1 Performance of Duties

(D) Employees shall perform their duties impartially in a manner consistent with the law and public interest, unswayed by kinship, position, partisan interests, public pressure, or fear of criticism or reprisal.

1-2-3 Conflict of Interest

Every employee has an obligation to diligently identify, disclose, avoid and/or manage conflicts of interest. Potential conflicts of interest exists when an employee or employee's immediate family member may be directly financially impacted, whether favorably or detrimentally, by a decision made by the Town of Camp Verde in which the employee participates.

(B) Nepotism. Employees should not be involved in the decision to hire or in the supervision of any member of their immediate family.

The League of Arizona Cities and Towns' publication, "You as a Public Official," serves as a further source of guidance. As to Conflicts of Interest, it states that Councilmembers are required to disclose those that involve a substantial and pecuniary or proprietary interest.

With respect to Nepotism, the League's guidance reminds officials that Arizona's anti-nepotism statute (A.R.S. 38-481) prohibits public officials from appointing their relatives to offices or positions of employment compensated from public funds.

The League offers guidance on the exact situation that exists in Camp Verde, where a Councilmember is elected when her immediate family member is an employee of the Town:

> *The important question of whether a city or town employee can continue employment after a relative has assumed a position on the Council was addressed by the General Counsel of the League who concluded that an employee could continue employment, but if the employee's appointment or re-appointment was placed before the council, the relative could not participate in any way in that decision. See General Counsel Opinions June 24, 1968 and January 19, 1977 and AG Opinion 78-71.*

Vice Mayor Jackie Baker has lived in Camp Verde for 30 years. She has been on the Council since 1999, except for a two-year period from 2007-2009. The Town Clerk, Debbie Barber, is her daughter. Debbie worked for the Town for about 20 years, long before Jackie ran for Council. She does not socialize with Bill Sims, but has known him for a long time.

Vice Mayor Jackie Baker said the issue of nepotism or conflict of interest is an issue that has been raised every so often over the years. There has never been a charge of any specific problem. She has never "appointed" Debbie, and if Debbie were to serve as Acting Town Manager, that would only be temporary. An Acting Town Manager only has limited authority, and if anything came up where a vote to appoint Debbie would be needed, the Vice Mayor would recuse herself.

Russ Martin noted that he supervises the Clerk. He does not believe there are any legal issues or violations with this situation. His only practical frustration is that whatever issues he hears from the Clerk, Debbie Baker, he later hears echoed by Jackie. Oftentimes, Jackie is the only Councilmember with a concern, and the concern happens to be one raised by her daughter. An example is the completion of a DBG project. Another example is the recent direction to Russ and the Town Attorney to find an independent investigator. Per policy the Town Attorney would be solely responsible, but per council direction, the Manager was to be involved as well. The Clerk felt it should be only the Attorney as per policy and then Jackie Baker echoed the same words at the Council meeting. This is not illegal, but does mean he has to fight some battles twice.

The Clerk and Vice Mayor are both in Exec Session so there are no confidentiality issues.

Russ stated that in the four years he has been Town Manager, the Clerk has been in the position of Acting Town Manager 3-4 times. He agrees that if there was to be a vote during that time, the Clerk's mother would need to recuse herself. He also noted that they have never had to "appoint" a Clerk on a permanent basis. A solution to this would be to change the policy to allow the Town Manager to appoint an Acting Town Manager in his absence.

Town Clerk Debbie Barber does not see any violation of Code. She has never had to officially serve in the role of Acting Town Manager. Even if Russ is out of town, he is available by phone. She stated that she has never actually been "appointed" Acting Town Manager, but can see how a perception of nepotism or conflict of interest could exist.

In the past, she has tried to make helpful suggestions to Town Managers on the best way to approach her mother, but Russ prefers to do things on his own. Generally, Jackie asks for information from the Clerk's office from the Deputy Clerk, to avoid issues.

The Mayor has no concerns about the relationship between the Vice Mayor and her daughter, the Town Clerk.

Councilmember Gordon has no knowledge of any specific improprieties, or information being transmitted that shouldn't be between Jackie Baker and her daughter, the Clerk, Debbie Barber.

Councilmember George stated that Debbie Baker wrote a response to the Employee Complaint saying that this "never happens," but the appearance is that Debbie defends her mother and puts her personal relationship first. This is more of a feeling than it is based on anything specific.

Councilmember Jones stated that there is an appearance of this between Jackie Baker and Debbie Barber but she cannot point to anything specific or concrete of concern. She does not feel it is professional to have this relationship.

Councilmember Robin Whatley asked if the response Debbie Barber filed to the Employee Compliant was as a daughter or as the Clerk. She would like Jackie or Debbie to resign.

Marshal Gardner also wondered why Debbie Barber wrote her own Response, making it a public record.

Town Clerk Debbie Barber provided input into her reasons for preparing her Response to the July 30, 2014 Employee Complaint. Debbie Barber was not asked or directed by anyone to write a response to the July 30, 2014 Complaint, but chose to do so herself after her mother, Vice Mayor Baker, showed her the Complaint. She did not consult with the Town Manager or Town Attorney before doing so. Debbie felt like much of the Complaint was directed at her and her

staff for not following proper procedure. And, she felt protective of her mother and wanted to defend her.

She checked with her staff and learned they were not in fact sending copies of all documents given to each Councilmember to all the others, which is what the written policy requires them to do. She recalled that at two retreats, the entire council had said they did not want to receive copies of junk mail. This was an informal conversation. So they stopped copying council on all documents distributed to others, perhaps 1-2 years ago. Sometimes, Debbie concluded they should all be copied, if the information related to a budget or agenda item.

Defensively, she said Council violates policy all the time, such as by putting agenda items on when they come in past the deadline. Russ Martin has said that policy was a "guideline."

Debbie Barber also stated that on July 25, 2014, Darby Martin came to her office and told her that someone had sent in a public records request, and that "Your mother and Carol German are trying to take the Town Marshall out and bring discredit to this Town." Darby spent what seemed like three hours talking to her and the Deputy Clerk about what was going on. Darby revealed "confidential information" about employee's backgrounds that she had locked in a drawer in her office, and felt that if that information got out, it could be harmful to the employees. Darby said the Marshal's office employees felt that they all had targets on their backs.

Darby also said, "Your mother has been conspiring with a convicted felon, we have it on tape." Darby said Jackie was trying to hurt people on purpose. Darby said, "I won't let Jackie Baker or Carol German hurt anyone, I'm going to take them out…I'm going to find every piece of dirt I can," and asked for all sorts of emails.

Debbie Barber complained verbally to Russ Martin about Darby revealing confidential information. She told Russ about the conversation and said she was taking it both "personally and professionally." Russ' response to her was, "Consider the source." She thinks nothing was done about her complaint. Debbie only recently has given this more thought and thinks if Darby is secreting information that is a problem if she did not give this information to someone who did a background check. (According to Marshal Gardner, this information was in fact a part of the background check.)

According to Marshal Gardner, Darby Martin got tired of negative information in blogs about the Marshal and others, so she did a public records request for all emails between Cheri Wischmeyer and the Council. Debbie Barber told Darby, "Don't do this, we will get in trouble, we don't log requests, we just give Council and others what they want." Debbie then called her mother, Vice Mayor Baker, to complain, instead of calling Russ Martin. Darby still has not received the response from Debbie Barber.

The Marshal said Debbie filed a recent "Hostile Work Environment" complaint against her and Darby stating she was being called a "criminal" because of the nepotism allegation in the Employee Complaint. There is a provision in the Code that says basically that every Code violation is a misdemeanor. Debbie claims that Darby stated they were out to get Debbie, but Darby told the Marshal this is not true.

It was after Debbie Barber complained to Russ that the Employee Complaint was filed, so she felt it was in retaliation for her verbal complaint to Russ, and she wrote her response so she could have her side heard, since Russ had already given the Complaint to Council.

Debbie Barber stated in her Response letter that the "video and minutes of the meeting show that Councilmember German was not criticizing the Marshal's performance, but the fact that the Marshal moved outside of town limits without a waiver." Debbie's response states this accusation was "not false, as it was a violation of Town Code 3-2-4." However, Debbie did not attend this meeting herself. At the time she prepared this, she was not aware that the audio did not record. Her comments were based only on the minutes. She said there were other meetings where Carol stated her concerns were not about performance.

Debbie stated that her conclusory statement that the Marshal violated the Code was made because all ordinances have criminal penalties and fines attached as they are all Class 1 or 2 misdemeanors. She agrees in hindsight that she should have talked to the Town Manager and Attorney before writing this, but she was angry and upset that her mother was attacked.

Debbie listened to the recording and wrote in her response that the allegations are a "blatant lie." Debbie agrees that it was not necessary or appropriate for her to respond to this allegation, professionally or personally, as it did not deal with her duties but she was defending her mother. She is very protective of her mother.

V. CONCLUSIONS

A. BUDGETARY IMPACTS AND THE ALLOCATION OF RESOURCES IN ORDER TO RESPOND TO PUBLIC RECORDS REQUESTS

While there is definitely indirect cost involved with responding to public records requests in terms of staff time researching, gathering and redacting records, the law is clear that such cost cannot be recouped by charging fees and costs to the individual making such requests, for non-commercial purposes.

As recognized by the Town Manager, the impact on staff time devoted to such tasks is limited as it is of an acute nature. Such requests are sporadic and do not warrant the hiring of additional staff to respond to such requests. Responding to public records request may feel to staff that it is an imposition and a distraction from other duties, but it is very much a part of staff's duties. When such requests are received, priorities often must be shifted.

The conclusion is that there is no significant budgetary impact, nor are there additional resources that should be allocated in order to respond to such requests.

B. IMPACT ON EMPLOYEES WHEN COUNCIL MEMBERS TAKE ACTIONS THAT DIRECTLY IMPACT TOWN EMPLOYEES

The impact on employees when Councilmembers take actions that directly impact them is recognized in Section 15, Code of Conduct for Elected and Appointed Officials, 15.5, Council Conduct with Town Staff:

> *Tasks performed by staff that come from outside the normal chain of supervision could cause* ***staff confusion, inadequate work product and inefficient performance*****.....**
>
> *Never publicly criticize an individual employee. Council should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's manager.* ***Misdirected comments could violate the Town's personnel rules and limit the Town's ability to deal fairly and efficiently with personnel matters.***
>
> *Comments about staff performance should only be made to the Town Manager through private correspondence or conversation.*
>
> ***Do not get involved in administrative functions. Council Members must not attempt to influence Town staff on the making of appointments, awarding of contracts...***

The Town Manager is the sole person charged with responsibility to manage the administrative affairs of the Town, including personnel issues.

In the course of this investigation, it was learned that the actions of Councilmember German had a significant negative impact on employees in several respects.

- Her statements in support of her effort in seeking to have the Council deny the Town Marshal's waiver request were perceived by some as "crossing the line" when the reference was made to her conclusion that the Marshal was already violating Town Code, and that this was a "*personnel issue that should be addressed in Executive Session.*" This position instilled fear and resentment among some members of the Marshal's office and Department heads.

- Councilmember German's actions in criticizing Assistant Planner Owens in public caused the employee great distress and embarrassment, and caused her to fear for her job security.

- Councilmember German's actions in seeking personal background information on current Marshal's office employees allegedly to "verify" information with respect to the appropriateness of their hiring was viewed by members of the Marshal's office, as well as the Town Manager and other Council Members, as an impermissible interference with personnel issues and a potential invasion of employee's privacy interests. This action caused significant defensiveness among the staff. There was no need for Ms. German to verify any such information. To the extent she had concerns about proper hiring, the appropriate step to take was for her to inquire of the Town Manager as to hiring procedures. If she was not happy with the response, again, the action to take is to address the Manager's performance. Ms. German did withdraw her request, but unfortunately, some damage to employee relations had already occurred.

While a Councilmember is a member of the public and can also make a public records request, the Councilmember does not lose his or her status as a member of council in making such a request. When it comes to information in personnel records, if the information is not clearly designated by law as a public record, the information can only be produced if the determination is made that, on balance, a legitimate public right to know outweighs the employee's privacy interest, or if the employee consents. See Employee Work Rule 5-2. Background information that pre-dates an employee's employment is not clearly information mandated to be released as a public record and would require both a review to determine if it was required by law and/or the employee's consent. It is therefore appropriate for an employee to be

informed of such a request. If that request is motivated by a desire to interfere in personnel issues, such a request would be an improper violation of Council Policies, Rules and Procedures, and Town Code, and can reasonably be expected to cause disruption to the employees affected. In addition, this action has caused some members of the Marshal's office to perceive that Councilmember German is seeking to discredit and eventually oust the Town Marshal.

- Councilmember German did not influence the staff with respect to their conduct in the process in awarding Job Order Contracts, but her inquiries resulted in the entire process being invalidated. Four were selected based on an unbiased process that complied with legal requirements Councilmember German was unhappy that local contractors were not given preference and/or were not as highly ranked as other contractors, and her actions ended up in a council vote that changed the outcome of the process, so that it was different than that which was advertised. Many significant hours of staff time were spent responding to her requests for information. She obtained information as to the ranking by staff, and staff believed that she disseminated that information among contractors who bid on the work, though this is denied by Ms. German. As a result, the relations between staff and the contracting community have been negatively impacted.

- Councilmember German also expressed similar displeasure to staff about the Library contracting process as it led to bids that were too high and did not result in a local contractor receiving an award. As a result of her involvement, the council decided to re-bid the project, once again invalidating the process that staff employed and leading to friction between staff and Ms. German.

Vice Mayor Baker's involvement with the citizen's complaint against the Marshal's office employee was perceived as an impermissible interference with personnel administrative matters, and caused some to feel that Vice Mayor Baker is aligned with Councilmember German in seeking to discredit the current Town Marshal. The Marshal's office was undertaking its own investigation, and Cottonwood was assisting. The Vice Mayor's involvement was not necessary and could have caused harm to the Town's investigation.

C. THE TOWN CODE REQUIREMENT TO ALLOW THE TOWN MANAGER TO MANAGE THE ADMINISTRATIVE AFFAIRS OF THE TOWN

The Town of Camp Verde operates under the Council-Manager form of government. The Manager is solely responsible for management of the administrative affairs of the Town. Article 3-1, 3-2-1 E. Internal Relations - Council-Manager Relations provides as follows:

> *The Council and its Members shall deal with the administrative services of the Town only through the Town Manager, except for the purpose of inquiry, and neither the council nor any Member thereof shall give orders or instructions to any subordinate of the manager.*

Council Policies, Rules and Procedures, Section 12, Council and Candidate Relations with Town Staff, provides that:

> *12.1 No Councilmember shall request any staff project without first seeking approval of the Town Manager.*
>
> *15.5 E. Do not get involved in administrative functions. Council Members must not attempt to influence Town staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of Town licenses and permits.*

The reasons for avoiding Council involvement in management of administrative and personnel matters have been discussed, above.

D. THE RIGHTS OF MEMBERS OF COUNCIL TO MAKE INQUIRIES OF TOWN STAFF

The rights of Councilmembers to make inquiries of Town staff are expressly recognized in Town Code, Article 3-1, 3-2-1 E. Internal Relations - Council-Manager Relations:

> *The Council and its Members shall deal with the administrative services of the Town only through the Town Manager,* ***except for the purpose of inquiry****, and neither the council nor any Member thereof shall give orders or instructions to any subordinate of the manager.*

This Code provision is also expressly recognized in Council Policies, Rules and Procedures, Section 15, Code of Conduct for Elected and Appointed Officials, 15.5 Council Conduct with Town Staff, B. Limit Contact to specific Town Staff:

> *Tasks performed by staff that come from outside the normal chain of supervision could cause staff confusion, inadequate work product and inefficient performance. Questions*

of Town staff and/or requests for additional background information should be directed through the Town Manager, Town Clerk or Department Heads, or the Department Head's designee. The Town Manager should be copied on any request. In accordance with Town Code Section 3-2-1-E, no Council Member shall give orders or instructions to any subordinate of the manager ***other than instructions for the purpose of inquiry*** *without the consent of the Town Manager. When in doubt about what staff contact is appropriate, Council Members should ask the Town Manager for direction. Materials supplied to a Council Member in response to a request will be made available to all members of the Council so that all have equal access to information.*

These provisions recognize the right of inquiry, but contain limitations against assigning projects to staff, or giving orders or instruction to staff. Section 12, Council and Candidate Relations with Town Staff:

12.1 No Councilmember shall request any staff project without first seeking approval of the Town Manager.

12.3 Staff Communications Through Town Manager At all time, all formal communications by Town Council Members to Town Staff shall be made through the Town Manager or the appropriate department head.

E. THE IMPORTANCE OF HOLDING THE TOWN MANAGER ACCOUNTABLE AND THE RAMIFICATIONS IF COUNCIL MEMBERS IMPROPERLY INTERACT DIRECTLY WITH TOWN STAFF

The Town Manager is responsible for all aspects of administrative functions of the Town, including personnel matters. Council Policies, Rules and Procedures, and the Town Code, are both clear that all requests, concerns or complaints about staff performance, or about administrative functions such as hiring processes or the awarding of contracts, should be raised first with the Town Manager. If he is not allowed to have full control of these matters, he cannot be held directly accountable for problems. If the majority of Council are unhappy with his performance, this is a matter to be handled in performance reviews or in addressing his continued service in his role as Town Manager.

The ramifications of Council Members improperly interacting with Town Staff include, as discussed above, the negative impact on staff, causing fear and resentment; the negative impact on the Manager's ability to handle administrative and personnel issues; and divisiveness between staff and Council. Department heads who have been negatively impacted by such interaction have instructed their staff to be sure not to respond to Council requests without

informing the Town Manager and seeking his permission. In addition, they have asked that any requests for information be formalized into a written request. This behavior is understandable, but establishes a never-before existence of a protective and defensive approach to dealing with Councilmembers' requests.

An additional ramification of interactions that may involve impermissible involvement in personnel or administrative matters is a loss of legislative immunity, in the event Council's actions become a focal point of litigation.

F. COUNCIL POLICIES, RULES AND PROCEDURES AND CODE OF ETHICS REQUIREMENTS AND POSSIBLE OPTIONS FOR TOWN COUNCIL INCLUDING THE ENFORCEMENT PROCESS THEREOF

Council Policies, Rules and Procedures in addition to those set forth above which are relevant to this investigation include 15.4 and 15.6, Council Conduct with One Another, which focus on respectful treatment of each other.

> *Council is to avoid making personally offensive comments in public meetings, ...and avoid making derogatory comments in unofficial settings, such as in talking to citizens or in making statements to the press.*

Section 15.10 addresses enforcement. It states as follows:

> *15.10 Enforcement of the Ethics Policy*
>
> *Public officials themselves have the primary responsibility to assure compliance, and that the Mayor has the responsibility to intervene when actions of Public Officials appear to be in violation of this Code of Conduct.*

If a complaint is made, the Town Attorney is responsible "*to review such Complaint while simultaneously notifying the Town Official who is the subject of the Complaint of his review.*"

Where the complaint is against the Mayor and/or Council, the Town Attorney "*shall have the authority to decide either to act directly on any complaint filed or refer a complaint to an independent reviewing authority.*"

Section 15.10 A (5) states that, "*in resolving a complaint, the totality of the circumstances shall be taken into consideration, including the intent of the person accused of the wrongdoing.*"

Section 15.11 provides for Sanctions in the event a violation is found: "*Reprimand, censure, loss of seniority or committee assignment (both within the Town of Camp Verde and with intergovernment agencies) or official travel restrictions.*"

G. ALLEGATION THAT COUNCILOR GERMAN FALSELY ACCUSED THE TOWN MARSHAL (EMPLOYEE) OF VIOLATING TOWN CODE AND WANTING HER CRIMINALLY CITED AND DISCIPLINED IN A TOWN COUNCIL MEETING, WHICH IS ALLEGED TO VIOLATE TOWN COUNCIL POLICIES, RULES AND PROCEDURES 15.5 (D).

This allegation is SUSTAINED IN PART, as to seeking discipline. Councilmember German acknowledged stating, and the minutes of the October 2 and 16, 2013 reflect, that the Town Marshal's action in residing outside the Town's limits, without having obtained a waiver, were a violation of the Town code. According to the Town Code provision, any and all Code violations may be deemed a misdemeanor and punishable accordingly. (Article 1-8, "*Penalty*": A. *Any person found guilty of violating any provisions of this code, except as otherwise provided, shall be guilty of a Class 2 misdemeanor and upon conviction thereof shall be punished as provided by law.*)

The audio was not made for one of the meetings where this was discussed. Several councilmembers and the Marshal specifically recall Councilmember German stating that she wanted the Marshal disciplined, and others did not recall. The minutes of the October 16, 2013 meeting show that Councilmember German referred to this as a "*personnel matter that should be addressed in Executive Session.*" Potential discipline of a Town employee is a matter appropriate only for the Town Manager to address, and not the Council, so that consideration of discipline in Executive Session would be impermissible involvement by the Council in personnel matters.

While Ms. German's statement did not state unequivocally that she sought discipline of the Marshal, such was the implication perceived by others present at the meeting. A statement by a Councilmember that she seeks discipline of an employee in a public Council meeting would violate Council Policies, Rules and Procedures 15 (D) and (E), and Town Code provision 3-2-1 E, Internal Relations, Council Manager Relations.

This action on the part of Councilmember German was one of the main causes of defensiveness on the part of the Marshal's office, who felt she was unfairly criticizing the Marshal. In addition, it caused other Department heads to panic that the residence requirements

might be changed for themselves as well, causing feelings of fear and resentment toward Councilmember German.

Ms. German stressed that she does not have a vendetta against the Town Marshall.

H. ALLEGATION THAT IN A CIVIL COURT HEARING A LOCAL KNOWN FELON TESTIFIED UNDER OATH THAT VICE MAYOR BAKER ASSISTED HIM IN VERIFYING INFORMATION ON THE ACTIVITIES OF AN EMPLOYEE AND PROVIDED HIM WITH GUIDANCE IN HIS EFFORT TO DISCREDIT THIS POTENTIAL EX-EMPLOYEE OF THE MARSHAL'S OFFICE.

This allegation is SUSTAINED in part. While Mr. Dunegan did not use these exact words, in her interview, Vice Mayor Baker admitted that she attempted to "verify" that town employee officer Russell Grover was improperly harassing him and threatening his employment, by speaking with Mr. Dunegan's boss. The Vice Mayor's intent was good: she wanted to aid a citizen who had complained that he was not receiving assistance from the Town Marshal or Town Manager. However, by intentionally involving herself in a personnel issue that could lead to discipline, Vice Mayor Baker improperly inserted herself into the administrative affairs of the Town, in violation of Council policy and the Town Code provisions applicable to the Council-Manager form of government, Town Code 3-2-1 E, Internal Relations - Council-Manager Relations.

As noted above, such actions risk the loss of legislative immunity due to her involvement in an administrative function. The proper course of action would have been to bring the issue directly to the Town Manager, to investigate and resolve himself or to direct the Town Marshal to investigate and resolve. The Town Manager is the ultimate responsible individual, and if he is not adequately performing his duties, the Council can address that as a performance issue with the Manager.

I. ALLEGATION OF CONFLICT OF INTEREST AND NEPOTISM BETWEEN THE VICE MAYOR AND TOWN CLERK, MOTHER AND DAUGHTER, CONSTITUTING NUMEROUS TOWN CODE VIOLATIONS.

This allegation is NOT SUSTAINED. Under the applicable provisions of Arizona law set forth above, as well as the Town Policies, Rules and Procedures, Town Code, Personnel Manual and other applicable guidance as set forth in the Arizona League of Cities and Towns, a conflict of interest situation exists where there is a substantial pecuniary or proprietary interest in the outcome of a decision to be made. Under these same rules, improper nepotism exists where a

Councilmember participates in a decision to hire or appoint a relative, which did not occur here. There is no violation where a Councilmember is elected after her immediate family member is an existing Town employee, as was the situation here, where Vice Mayor Baker was elected long after her daughter, Town Clerk Debbie Barber, was hired.

The existence of Code provisions providing that the Town Clerk serve as a temporary Acting Town Manager in the event of the absence of both the Town Manager and the Town Marshal do not change this conclusion, as no formal act of the Council is required for that to occur. Moreover, should a Council action be required, the proper course of action would be for the Vice Mayor to declare the conflict, and recuse herself from any discussion or participation in decision-making and voting.

Although there is no violation of the Conflict of Interest or Nepotism rules, there is a concern that exists with the appearance of impropriety. In particular, Town Clerk Debbie Barber took it upon herself to prepare a written response to the Employee Complaint, addressing items that were addressed to her own alleged misconduct, and additionally responding to allegations addressed to her mother's alleged misconduct, as well as that of Councilmember Carol German, who is known to be close friends with the Vice Mayor. Ms. Barber did not consult with the Town Manager or Town Attorney before doing so.

Ms. Barber admittedly was emotionally reactive and wished to protect her mother. In so doing, she made several conclusory statements that were inappropriate, in several respects. For example, as to allegation #5, she was not present at the Council meeting referred to, and could not have listened to the audio as the meeting was not taped, and yet she made absolute statements about what was and was not said. In addition, she offered what could be construed as a legal opinion as to the violation of the Town Code by the Marshal. She offered her personal conclusion that the allegations in #6 were a "blatant lie," yet, there was no reason relating to the performance of her duties as a Clerk to respond to this allegation, as it involved a court hearing in a non-Town matter. While the desire to defend her mother is understandable, that role falls to the Town Manager and Town Attorney. And, her mother actually acknowledged that she spoke to Mr. Dunegan and his boss, to provide him with assistance in having his concern addressed.

By involving herself in this area, in such a public way, she has stepped outside the boundaries of her role as a Clerk, creating the appearance of impropriety and potentially harming the Town by taking positions as a matter of public record that may not be aligned with the position that the Town, through the Manager working with the Town Attorney, would otherwise take. This is a violation of Policy 1-2 of the Personnel Policy Manual, Chapter 1, which provides in pertinent part:

> *As employees of the Town of Camp Verde,* ***we must manage our personal and business affairs so as to avoid situations that might lead to conflict, or the appearance of***

***conflict**, between self-interest and our duty to the Town, to the persons served by the Town and to the general public.*

1-2-1 Performance of Duties

*(D) **Employees shall perform their duties impartially in a manner consistent with the law and public interest, unswayed by kinship**, position, partisan interests, public pressure, or fear of criticism or reprisal.*

VI. MISCELLANEOUS MATTERS

A. Town Attorney

A few Councilmembers expressed concern that the Town Attorney, Mr. Sims, is close friends and aligned with Councilmember German and Vice Mayor Baker. Two Councilmembers raised a concern that when the Complaint was made, Bill Sims said, "I need to speak with Jackie." They feel he does not equally represent them.

Others remarked on the fact that it is expensive to use him for advice, and suggested the Manager be consulted first, or that a form be filled out regarding the need for advice on a topic. One Councilmember suggested that, although it would increase expense, Council meetings may run more smoothly if the Town Attorney was present for every meeting.

One councilmember suggested that each time a Councilmember calls the Town Attorney, this should be reported to the rest of Council with the subject matter of the report.

B. Divisive Council Meetings

The Mayor and others expressed a frustration with Carol German, noting that if she does not like the outcome of a Council decision, she will engage citizens to come to Council meetings and voice their opposition. The alternative which would be less divisive is put something on an agenda, or voice an alternative at the Council meeting, or move to strike a line item in the budget, but if she does not do this, she should be willing to accept the action and move on. Councilmember German does not feel that she hangs on to issues.

Councilmember Jesse Jones noted that the body language during Council meetings is problematic. Carol and Jackie roll their eyes, and huff. There is similar language with Robin Whatley towards Carol German and Jackie Baker.

Councilmember Whatley's perception is that Carol German does not like Russ Martin or anyone who does not toe the line as she wishes. Ms. Whatley is not afraid of Ms. German

and feels her position on the Council is to rebut her. She is frustrated that the votes are generally 5-2, with Carol German and Jackie Baker being the 2. Both Councilmembers generally do not explain their opposition during discussion, but wait instead until after voting "no" to make a speech.

C. Allegations and Rumors about Targeting

According to Debbie Barber, Darby Martin, the Marshal's assistant, told Debbie Barber that she was out to get rid of Jackie Baker and Carol German. Jackie called Darby to try to talk to her, and did reach Nancy Gardner, the Marshal. Russ Martin apparently told them not to talk to her, which upset her, and made her angry with Russ. Later, Jackie made a comment to the Marshal at a council meeting in front of Mike Jenkins, a Department Director, "Some people forget who the boss is around here and I've had it with that crap!" She later realized this was disrespectful and apologized to both Mike Jenkins and Marshal Gardner. This is when the Marshal told her about the Employee Complaint.

Jackie Baker stated that recently at a council meeting, Emma Grover said Darby Martin come to her house and told her to sue Jackie Baker because she was instrumental in getting Russ Grover fired. She said Russ Martin and Nancy Gardner were working together to get rid of Jackie Baker and Carol German. Jackie was emotional and expressed that she no longer knows whom she can trust, expressing that it has never been this way before. She is not sure she has always received honest answers from Russ Martin, because when she asked him about the Complaint he said he had just received it and hadn't reviewed it, but she thinks he already had.

Councilmember Carol German said that on September 3, 2014, that she was told that the Town Marshal and the Town Manager were collaborating to get rid of her and another councilmember. She was told this by Russ Grover's wife, Emma, who was friends with Russ Martin and his wife at one point in time, before Russ Grover was fired. She said Emma heard this when they all drove back from a trip to California together.

Debbie Barber feels the team has fallen apart and they are all walking on eggshells. She feels they need healing.

VII. RECOMMENDATIONS

A. After consideration of the totality of circumstances and Council Member's intent, the Mayor should consider whether any enforcement action is warranted, in accordance with Council Policies, Rules and Procedures, Section 15.10 and 11.

B. Training for Council on the Council-Manager form of government, including what actions are prohibited, would be beneficial. "Inquiries" and attempts to "verify" information, if accompanied by requests for documents and/or with a goal of changing procedures and outcomes of proper processes, can cross the line – or come close to it - and be considered improper interference with administrative or personnel matters. Such training could include respectful communication and conflict de-escalation techniques. A "mini-retreat" – or periodic mini-retreats – may be useful in aiding council in focusing on the goal of teamwork and improved communications between Council, and between Council and staff.

C. All Council Members, Officials and interested parties should be mindful that no one likes to have the implication that they are accused of being a "criminal." Even if a person violates a Town Code provision, there must be a prosecution and conviction before a misdemeanor violation can exist. And, a conclusion of "violation of Town Code" – even if it seems obvious to a layperson - is ultimately a conclusion for the Town Attorney or other prosecuting authority.

D. Counseling may be warranted for the Town Clerk with respect to separation of personal and professional interests, to avoid the appearance of conflict of interest.

E. It would be beneficial for people who feel they are being "targeted" to have private, facilitated, direct discussions with those they believe are being targeted, to clear the air. Where appropriate, acknowledgement of harm from statements made or from unintended consequences, and apologies, can go a long way to improve and heal relationships.

F. Steps are being taken to retain a part-time independent Human Resource person, which should continue to be pursued as a priority.

G. Steps are also being taken to update the Records Management Manual, which should also be pursued as a priority.

H. For the purposes of transparency, Council should consider whether their individual inquiries of the Town Attorney should be reported to the rest of counsel with respect to the subject matter.

I. For the purposes of transparency, the Clerk's office should consider whether to keep a log of all public records requests, whether in writing or verbally. If more than nominal amount of time will be spent, a log of time can be kept.

This concludes the Report. Thank you for the opportunity to be of service.

Respectfully submitted,

Amy Lieberman

Amy L. Lieberman