

January 30, 2023

Boulder City Clerk and Staff:

Pursuant to City of Boulder Municipal Code Title 2, Chapter 7, I am filing a complaint for a Code of Conduct violation against Mayor Brockett and Council Members Benjamin, Folkerts, Friend, Joseph and Speer, the six members of City Council who voted to approve the recommendations of the Police Oversight Panel Selection Committee at the City Council Special Meeting on January 26, 2023.

Factual Allegations:

A: City Council Members violated the Municipal Code when they voted to approve the recommendations of the Police Oversight Panel Selection Committee

1. Qualifications: Ordinance 8430 section 2-11-6 (a) (9) (B) requires "An absence of any real or perceived bias, prejudice or conflict of interest;". These Qualifications are mandatory legal minimum requirements, not merely guidelines and suggestions. The specific legal question posed by part (a) (9) (B) is whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility of predisposition, prejudice, partiality or conflict of interest by the nominees.
2. Appointments: Ordinance 8430 section 2-11-6 (a) (15) requires "Council will approve or reject the appointments by majority vote"
3. Lawsuit: one of the nominees is a party to a lawsuit against the City of Boulder and Maris Herold, Chief of Police for the City of Boulder (Case Number 2022CV30341), the allegations included in such lawsuit which could be similar to cases to be reviewed by the Police Oversight Panel
4. Additional testimony and evidence, including social media screenshots and exhibits, have been previously submitted to the City Council and City Clerk; these records include email as well as a prior Code of Conduct Complaint and, being discoverable and accessible through an official records search inquiry, are not included within this submission.
5. To the best of my knowledge, the social media screenshot evidence submitted to the City represents the official account of one of the nominees in question, the accuracy and validity of which has not been disputed by the nominee, Lisa Sweeney Miran.
6. The "real or perceived bias, prejudice or conflict of interest" language included in Ordinance 8430 is consistent with existing language contained in "Bias Motivated Crime" statutes in Colorado as well as other states and federal law; "Perceived" sets a legal threshold that is lower than "real or actual" and is based on how something is seen, interpreted or thought of. Council Members chose to ignore the legal precedents established by these existing laws as well as the existing guidance regarding judicial disqualification/recusal and dismissal of prospective jurors for cause, choosing instead to base their decisions to approve the nominees on information that was neither germane

to the decision nor consistent with the enabling Ordinance (citation: City Council Meeting video archive for January 19th and January 26th, 2023).

7. Council Members voting to approve the Recommendations of the Selection Committee failed in their sworn duty to uphold the legal requirements of Ordinance 8430 in direct violation of their official responsibilities to the residents of the City of Boulder

B: City Council Members violated the Municipal Code of Conduct when they voted to approve the recommendations of the Police Oversight Panel Selection Committee

1. Chapter 7 of the Municipal Code outlines Codes of Conduct expectations for Member of Council, the purpose of which is to “protect the integrity of city government” by, among other things, establishing “high standards of conduct for elected officials” and outlining Expectations in section 2-7-8 (e) and (f) including doing more than “just the minimum required to meet legal or procedural requirements” and “taking into consideration all available information, circumstances and resources.”
2. City Council has an affirmative responsibility and obligation to ensure that boards, committees, task forces, etc., are performing their duties in full compliance with the Municipal Code. After information on the Police Oversight Panel selection criteria and process was presented to Council by the Equity Officer at the January 19th City Council meeting, the City Attorney commented that not all requirements of Ordinance 8430 had been followed (paraphrasing). To this day I am unaware of any information that refutes that assertion by the City Attorney.
3. Several Council Members have personal relationships with one or more nominees and/or have direct or family relationships with one or more of the local organizations serving on the Selection Committee, raising questions regarding whether recusal by those Council Members would have been appropriate and warranted by the legislative intent and expectations of the Code of Conduct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 30, 2023.

Emily Reynolds