

From: [Kathleen McDaniel](#)
To: [Rhienna Gabriel](#)
Cc: [Scott McMeans - D2](#)
Subject: RE: Objection to Resolution 18-0460
Date: Saturday, May 19, 2018 11:19:17 PM
Attachments: [Res Censuring Alderperson Rhienna Gabriel for Inappropriate Conduct.pdf](#)

Alder Gabriel,

I have been asked by Alder McMeans to respond to your letter regarding the resolution to censure you, which I drafted at the direction of the Committee of the Whole after the May 8th meeting. You object to the process used to advance the resolution, as well as the form and substance of the resolution. You additionally state that you had no prior hearing to determine the facts and what law applies to those facts, that you had no opportunity to confront those presenting information against you, and that members of the Council have engaged in ex parte communications. Further, you complain that the resolution is an embarrassment to the Council process, is handwritten, cites no legal authority, and is an unlawful restriction on your responsibilities as an alderperson. Finally, you allege that this is an attempt of the council to silence you, alleging a violation of your civil rights and the democratic process. While my office does not generally get involved in aldermanic disputes, it is the role of the City Attorney to advise the Council as a legislative body on process and to defend the City from allegations against the entity as a whole or its officers. Therefore, I will respond to each complaint outlined in your letter individually.

First, you object to the process used to advance the resolution. The motion to impose discipline (censure and sanctions) was made by the Committee of the Whole. Manitowoc Municipal Code 3.010(3) states, in relevant part "The Committee of the Whole is intended to address matters which require full Common Council knowledge before final action, joint recommendations, or items not otherwise suited for a standing committee." In this case, the Council President requested that the Committee of the Whole take up these items. It was appropriate for the Committee to make a recommendation, and just like a request from any other committee; I prepared the appropriate document for their recommendation.

Next, you object to the form and substance of the resolution, as well as calling the resolution an embarrassment to the Council, alleging that it is handwritten, cites no legal authority, and is an unlawful restriction on your responsibilities as an alderperson. If you review the agenda online, you will be able to see the resolution, which I have also attached to this email. It is available online at <https://manitowoc.legistar.com/LegislationDetail.aspx?ID=3506757&GUID=F8794C29-5DB7-41BA-B238-1FCF736BBD28&Options=&Search=>. The document is not handwritten, cites the relevant legal authority for Council to discipline you (Wis. Stat. §62.11(3)(a)), and in my opinion as City Attorney, is not an unlawful restriction. The form is appropriate under Wisconsin law, City ordinance, and Council rules.

Further, you state that you had no prior hearing before passage of the resolution. I believe that you may be confusing the statutory removal process outlined in Wis. Stat. § 17.16(3) with the censure and discipline, as I explained to you in an email on May 9, 2018. There is not a hearing or trial required for censure or discipline under Wisconsin law, City ordinance, or Robert's Rules. Again, you

are not being removed from office at this time, nor has anyone sought your removal.

Additionally, you state that you have had no opportunity to confront those presenting information against you. As you were a participant in the closed session meeting on May 8, 2018, this is confusing. You had the opportunity to speak at that meeting, and without divulging closed session details, I recall you actively participating in that meeting. If you are referencing your rights under the confrontation clause, that only applies to criminal prosecutions.

You also allege that members of the Council have engaged in ex parte communications. In legal terms, an ex parte communication is a communication between one party and the tribunal without the other party present. I am unclear as to how you believe that occurred here. If you are alleging an open meetings violation, I do not have any independent knowledge of that. Open meetings complaints may be made using the statutory process outlined in Wis. Stat. § 19.97.

Finally, you state that this is an attempt of the Council to silence you, violating your civil rights and the democratic process. I cannot speak to the legislative intent of the Council as I am not a member of that body, but an appointed officer. The Council has the ability to discipline a member, so long as that discipline is being imposed fairly and equitably. You do not have a statutory right to sit on standing committees. If the resolution were to be adopted on Monday, you would still be able to request that legislation be introduced by following the process outlined in Manitowoc Municipal Code 3.010(4) and Council Rule 8 – making a written request to the chair of a standing committee. You would also be able to vote on any item that came before the Common Council, which would include all resolutions, ordinances, and the vast majority of City contracts.

I hope that this response clarifies the issues that you raised. I will defer to Alder McMeans to circulate this email to the whole Council if he wishes.

Kathleen M. McDaniel

Manitowoc City Attorney

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(920) 686-6990 | kmcdaniel@manitowoc.org

From: Scott McMeans - D2
Sent: Saturday, May 19, 2018 8:43 AM
To: Rhienna Gabriel
Cc: Kathleen McDaniel
Subject: Re: Objection to Resolution 18-0460

Alderpersion Gabriel,

I am in receipt of your letter dated May 18th regarding your concerns with the Council document 18-0532: Resolution censuring Alder Gabriel for inappropriate conduct.

I have sent your letter to Attorney McDaniel to review and comment on regarding your

challenges with the due process in this matter as that is within her role for the Council and committees. With that, I will expect back communication to ensure your concerns, where appropriate, are addressed in advance of the meeting.

I would further direct you to Granicus where the resolution on 18-0532 is found. This is the binding document that will be discussed. Your reference to the “resolution being handwritten” is a face sheet. The actions coming out of the Committee of the Whole are no different than other actions from any committee meeting where they are documented both electronically and on paper to capture signatures. Formal resolutions and ordinances are drafted as needed to become the actionable document. This is one of those situations.

I acknowledge that you have a right to be heard and have an opinion in this matter, which you have had previously in both open and closed sessions. All Council members, including yourself will also have the ability to speak to this resolution on Monday.

If you have anything further for me, please do not hesitate to contact me.

Scott McMeans
Alderson, District #2
City of Manitowoc

On May 19, 2018, at 6:00 AM, Rhienna Gabriel <rgabriel@manitowoc.org> wrote:

Mayor Nickels and Common Council,

Please take time to read the attachment.

<Resolution 18-0460.pdf>

Regards,

Rhienna Gabriel
City of Manitowoc, D-10 Alderman
920-316-0311

<image1.jpeg>