

City of St. Helens

CITY COUNCIL

Open Hearing Minutes

April 20, 2021

This meeting was held in the Council Chambers and via Zoom.

Members Present: Rick Scholl, Mayor
Doug Morten, Council President
Patrick Birkle, Councilor
Stephen R. Topaz, Councilor
Jessica Chilton, Councilor

Staff Present: John Walsh, City Administrator
Kathy Payne, City Recorder
Matt Brown, Assistant City Administrator
Bill Monahan, City Attorney with Jordan Ramis
Peter Hicks, City Attorney with Jordan Ramis

Others: Scott Keith, Spotlight
Aaron Trukositz, Councilor Topaz's Attorney



At 6:00 p.m., Mayor Scholl opened the hearing and stated the following:

This City Council open hearing is being held to consider the dismissal or disciplining of Councilor Topaz based on a recent investigation. This will be conducted as an open hearing as requested by Councilor Topaz. It is an "open hearing" where the public is able to participate, not an adversarial hearing.

On Friday, April 16, Councilor Topaz's attorney requested that the hearing be rescheduled. The request was denied as the Council set the meeting time and date on April 7, in addition there is no requirement that the City grant a postponement under the Attorney General's "Public Records and Meetings Manual" which provides guidance.

The hearing is not being held to continue hearing the findings of the investigation. Instead, it is to allow the Council to consider whether to impose discipline. The hearing will be conducted as follows:

- Attorney Peter Hicks will present the background of the investigation. The Council has held three executive sessions to review the results of the investigation, an exempt public record. Councilor Topaz had the opportunity to attend each of the executive sessions to hear the report. He attended two of the three executive sessions.
- After the presentation, Councilor Topaz and his representative will be given time to speak.
- Citizens will then be given the opportunity to provide comment in accordance with Council's Rules and Procedures. That means each speaker will have up to five minutes to provide comment.
- Council will then discuss whether it wishes to consider discipline based on the results of the investigation and the hearing input. Council may ask staff and attorneys for its options.

At the conclusion of the hearing, the Council has the option to give direction for next steps. If it determines that discipline is merited, the Council may direct the staff and the City's attorneys to develop and return with potential actions at a future Council meeting.

Peter Hicks gave a background and brief summary of the investigation that was conducted including the allegations. Council authorized the investigation on September 16, 2020, following a public comment that was made on September 2, which raised concerns related to potential harassment, discrimination, and concerns that Councilor Topaz was using his office for personal gain. As the City's attorney, they retained Jill Goldsmith, an attorney with WorkPlace Solutions. Jill conducted an extensive investigation beginning in November. Councilor Topaz was contacted eight times to review the allegations and allow for response. Councilor Topaz initially declined to participate in the investigation until he said his attorney would be available in January, which was two months after the investigation started. Goldsmith attempted to contact him in January and Councilor Topaz failed to respond. Given his failure to respond, Goldsmith determined that he did not want to participate, and put together her findings and conclusions. Fifteen witnesses were interviewed, as well as review of numerous Council records and meeting records. Hicks is being careful of the confidentiality of the complainants and the witnesses, due to concerns of retaliation.

Summary of allegations:

1. Councilor Topaz attempted to use his position as a councilor to cause the City to perform work on his personal residence because of a flooding problem the building historically had, and that he maintained a grudge against a particular employee due to her role in a 2009 stormwater and sewer project. The investigator noted that Councilor Topaz attempted to put his personal residence on a list of City projects during a Budget meeting in April 2019.
2. Councilor Topaz bullied staff, spread false statements about them, and behaved in a discriminatory manner. The investigator concluded that Councilor Topaz in fact behaved in inappropriate, unprofessional, and sometimes bullying manner towards staff. Those were often identified or verified by comments in public meetings based on Goldsmith's review.
3. Councilor Topaz used his position as a councilor in an attempt to harm an employee in her employment by trying to have her fired, attempting to block her legitimate attempts to be promoted, and otherwise used his position in an inappropriate manner due to his personal and discriminatory bias. That allegation was also substantiated. The investigator found that Councilor Topaz had in fact tried to block the female employee's application for promotion. Although his attempts were unsuccessful, as the City blocked those attempts. He behaved in a manner that portrayed both personal and gender bias towards an employee.
4. Councilor Topaz made offensive statements that reflected poorly on the City and in violation of policies, diversity resolution, and ethics code. He used his position to bully and harass staff. That allegation was also substantiated and the investigator found that Councilor Topaz had used a number of inappropriate terms, including referring to disabled individuals as cripples, referring to Asians or Asian Americans as china men, making offensive statements reflecting poorly on the City in violation to the City's policies, and had referred to Latinos in a derogatory manner, and also repeatedly used the "N-word" when referring to a local canyon that was previously known under a prior name around the turn-of-the-century.
5. Councilor Topaz used his platform as a city councilor to make defamatory, insulting, or untrue statements about City staff publicly, directly, and in local media. The investigator substantiated that allegation; indicating that Councilor Topaz had made untrue comments about the City staff in local media or written articles or letters, including making unfounded allegations in the Spotlight newspaper on June 28, 2019, including that he had been

silenced when records and meetings from Council minutes had indicated he had an opportunity to contribute on a number of occasions.

Councilor Topaz had multiple opportunities to offer his response to the allegations, including the eight attempts made by the investigator and the March 17, 2021 City Council Executive Session when the report was shared with Councilor Topaz. During that Executive Session, the Council elected to have an in-person meeting on March 31 where the entire investigation would be provided to Councilor Topaz and the other councilors. Councilor Topaz elected not to attend that meeting. The investigation was again discussed on April 7, 2021 during City Council Executive Session. When Councilor Topaz was asked to comment, he indicated that he would wait for his attorney to respond and did not offer any additional comment.

Councilor Topaz responded:

- He did not attend one of the meetings because he was in the hospital.
- The "N-word" was spoken in front of Council. It was also spoken in front of City Engineer Sue Nelson. Council raised the problem that he was kind of negative. This was recorded in a Court room over 10 years ago. The judge said Topaz replied correctly in a legal manner, historically.
- He cannot remember ever asking anyone to do something on his property. He has asked for the stormwater in his neighborhood to be fixed. The Clear Water Act says you're supposed to have sanitary sewer sealed and supply an alternate way for stormwater. The City sealed the sanitary sewer but did not put any pipes in for stormwater. The City's Engineering inspection showed 45 times the amount of water coming into that area when it rains. It was noted when the sewer system was installed in 1913, that there was always a wet area that needed to be drained. When the I&I Project was done, the City stopped collecting the stormwater that was supposed to be collected by the Clear Water Act and the City's determination when the system was installed in 1913.
- At that time, the City was dumping sewage into the river. The EPA said you cannot do that. That is when the sewer plant and cooling pond was built. To get the sewerage from his area to the other area, you had to have a pump station and run sewerage down 4th Street going south. To do that, they used a 30-inch concrete line. That raised the street, so the street level is now above the sidewalks, so the City is now dumping water on his property and the rest of his neighbors on 3rd and 4th Street.
- The City closed off storm drains, so water comes down St. Helens Street and floods backyards. City Administrator Walsh was with him when four inches of water was flowing into his neighbor's basement. Saying it was a request to take care of his property is a little iffy.
- During the trial over 10 years ago, the State Geologist mentioned that five blocks of water is draining into his back area. At the same time, the City put in two lines at the top of Nob Hill. If you are on top of Nob Hill and a friend of the City, you get sewer and storm drainage. One of the most interesting things about this line, which was reported to the State Licensing Board, was water has to flow uphill from one catch basin to another to get out. Some of the storm drains were put on 3rd Street, none of them at the low spot, but one you can identify when it rains because it is one inch above the water level. The water level goes into the sewer system, which it's supposed to protect.
- Talking about having an Engineering Department that designs things well is not very good. Bringing this engineering problem, or deficit, to the Licensing Board...the Licensing Board said they have no authority to do anything about it.
- They said Topaz said he's a professional engineer and he's not, so they are going to fine him. He and his attorney went to the Administrative Court, who said they did nothing wrong. He is a professional engineer but in another state. The Court of Appeals said Topaz violated Oregon law because he is saying publicly there is a problem and that is against

the rules. He lost that case. They took it to the Oregon Supreme Court and pointed out the same problem. They said Topaz is not allowed to talk about the problem and the fact that it is hurting five other properties. They all say it is illegal to talk about problems.

- Recently, there was a similar complaint by an engineer because the State Licensing Board said he was making a public statement and interfering with a government, and he should not be doing that. He took it to the Federal Court, and they said it was okay. Topaz's first amendment rights were violated.
- He asked how much money has been collected by the City for this investigation. Hicks did not have the information to answer at this time.
- He has not been told what he has done wrong.
- He finds it upsetting being accused of bad mouthing the Chinese. He works with a number of Chinese at a couple universities. He finds that slanderous. He also works internationally with the Chinese and has been told by the Federal Government about how the Chinese are following him and the scientific work he does.
- He uses the word "cripples" or "crips." How many of you have worked with crippled or handicap people? How many have you built equipment for them or built things that keep them alive and study them? He has a working relationship with them. They are taking his work connection away from him by saying it is terrible.
- He is an engineer and makes decisions based on good engineering. If people are inadequate, he will say so. If that keeps them from getting a job, that is his job.
- Another problem, a citizen came to him about a problem with the way the water reservoir is being fixed. He went up to look at it and was not allowed. He was told that the inspector, Tim, would not let him look at it. He did not know that Tim was qualified. He also found out that the fluid leaks into and out of the reservoir. If Topaz says there is an unhealthy problem and someone should have been on that project 24/7, that person is not qualified.
- His job is to protect public health and that is not being done by the Engineering Department.
- When they were cleaning out the reservoir, they found stuff and flushed it down the stream. He talked to the EPA about that. The EPA said you cannot dump that much water into a stream without a permit. You cannot dump chlorinated water into the stream.
- There are some major engineering problems. People who do that should not be working here.
- One of the things he was involved in was building a fetal monitor in 1972. He told a story of monitoring a baby.
- The fact that people are getting ticked off with him is not his problem. It is his job to get things done and keep people healthy. If that means getting rid of people, that is what he does.
- If you take what he says the wrong way, that is your problem and not his. He is not politically correct.
- He has asked questions that he never received answers to. He asked the Finance Director how much money was spent for the chemicals to knock down chlorine when the water was dumped into the stream. He was referred to another person. It came up at the next meeting how much the Finance Director was bothered by him. He could care less.
- He is trying to keep the City from getting in trouble with the EPA.
- The City's engineers drilled a core out of the concrete. They mentioned that the seal did not stick. It was not repaired correctly.
- And now, he is being told that he is blocking this person's employment. He confirmed that he is. That person should be fired. A lot of money is tied up in that tank. A number of homes near the tank have water problems and have to use sumps.
- When the City put the drain line in his area, they hit basalt after four feet of digging. The City Engineer did not tell the contractor that he was going to have chop rock. That's a huge cost.

- He cannot remember anyone ever saying, "take care of my property."
- He has paperwork of our engineer telling a contractor to take care of a particular person because they are a politician and politically important person. That makes him upset.
- He has asked how much money has been received for rent of the marijuana grow facility. Nothing was paid for 10 months. After that, they paid \$10,000/month, then \$15,000/month, then \$20,000/month, and now \$30,000/month. If you run the numbers, the City should have been paid \$720,000. According to them, it has not. He has been told permits and licenses have been paid but has not been told how much has been paid for the rent. If you look at the contract, you will find that the company has no insurance. If anything happens on that facility, the City will pay for it. He has asked about that and received no answer.
- We swore to follow the Constitution of the United States and the laws of Oregon. Marijuana is still federally illegal. State of Oregon does not allow marijuana to be grown on city property and the City is doing that. He talked about the impact of newborn babies born to drug addicts.
- He has requested an audit of tourism and has only gotten runarounds. The facilities guys assist with setup. They should be compensated for that time.
- It is not a crime to say people are not doing their job.
- He has stated that he will not talk until his attorney is present. They requested the meeting begin earlier and was refused.
- Until someone puts their name on a complaint, it is just hearsay.
- He would like to see the file of complaints.

Councilor Topaz's Attorney, Aaron Trukositz, responded...

- A copy of the report was requested but they have not received it. There were concerns about retaliation, but it could be redacted. Open government is a policy in Oregon.

Hicks informed Trukositz that Councilor Topaz indicated he had a lawyer in November who would be available January. They never saw a lawyer. Councilor Topaz indicated that his lawyer would be available to participate at any time. At the last meeting, he was asked for the name of his lawyer repeatedly, and coincidentally the name of his lawyer was Peter or Pete. He refused to give a last name. Trukositz's firm appeared about seven days ago. The City has waited for Councilor Topaz to give his version of the events, have the opportunity to respond to the allegations, and to meet with the investigator since November. He has not offered any response to allegations that were shared with him verbally at two meetings. He still did not attend the meeting where the entire report was produced for all of City Council. The day of the meeting, he indicated he had surgery. When the meeting was scheduled March 17, he did not indicate he could not attend March 31, and he attended the meeting April 7. Maybe he had surgery, but he certainly did not tell the City about it. He has had ample opportunity to have the report discussed with him. For Councilor Topaz to say that he is not aware of the allegations, is completely disingenuous. It has been briefed and discussed with him repeatedly. He did not address any of the allegations tonight.

Trukositz understands but does not believe Councilor Topaz has seen anything in writing. Hicks responded that he skipped the meeting when he could have reviewed it in writing. There were concerns from the Council that Councilor Topaz would disseminate the report publicly, so an electronic copy was not sent to him. It would be shown to him at a meeting that he said he could attend, but then elected not to.

Discussion ensued about the report. Councilor Topaz had ample opportunity to review the report. Hicks reached out Trukositz's co-counsel to review the report and received no response.

PUBLIC COMMENTS

- ◆ Al Petersen. He has a number of questions about this case.
 - Under what authority are these charges being made? A secret investigation was done and not shared. It has only been presented orally. It sounds like the City has refused to give the written report to the accused or his attorney, and they are claiming client privileges in the refusal.
 - What about disclosure laws? When a client and an attorney request disclosure, it is ethical for the other attorney to disclose evidence, what they are being accused of, and who the witnesses are.
 - It sounds like his Councilor is actually doing his job. He is out checking on City projects and doing what he was elected to do.
 - He looked in the City Code and did not find any reference to harassment, except where it was referred to wildlife. According to the public notice, this is some kind of disciplinary action or dismissal. The City Charter only allows for two options to be dismissed:
 - Declared by a judge to be incompetent
 - Convicted of a crime and goes to jail
 - This entire proceeding is completely out of order. It has no basis under any City ordinance. The investigator did not cite the law of the allegations. It sounds like Councilor Topaz was doing his job.
- ◆ Brady Preheim. He does not often agree with Al on anything. He would like to know what authority the City has to dismiss someone, not that he is disagreeing with it. This hearing reminds him of the impeachment trials of President Trump. He does not believe that any Councilor is not working towards the best interest for the City, except for Councilor Topaz. His entire being is to get even with the City, screw things up, and to see how much money he can cost the City. That is not acceptable. Councilor Topaz may disagree but when he chooses to run for office, he has a responsibility to work for the good of the City, not his personal reasons and not to obstruct the City. Once the Council has made a decision, it is his job as a City Councilor to support the Council. His whole objective is delay, delay, delay. He has not learned his lesson. He is not there to do his job. He is there to make things as difficult as possible. He does believe that the documents should be made public after redaction. Should the Council not do anything to him tonight, he will just be emboldened.
- ◆ Matt Brown. Read a statement into the record. *"Greetings Council Members, I come to you as someone in a leadership role within the City. I have come to you in your role as the governing body not once and now not twice, but three times in an effort to speak honestly and candidly about what has been happening in this workplace and what I have personally dealt with in my interactions with Stephen Topaz in violations of our Code of Ethics, the US Equal Employment Opportunity, and conduct expectations."*

My first complaint came on July 5th of 2019, almost 2 years ago now. It outlined 3 very clear situations of slandering employees, admitted harassment, and public humiliation of your employees. I also outlined 4 specific areas in the St. Helens Code of Ethics that I believe Stephan Topaz has violated and has proven himself to be a hinderance to the employees on a daily basis with his interactions as well as being incoherent during past public meetings with statements of half-truths and mis-guided mathematics. His behavior is disruptive to the future of this community and impacts staff's ability to fulfill our City's vision and mission. He has fully admitted to getting elected to cause trouble for the City and admittedly he has succeeded. In my first official complaint, I asked for one thing at the end... and one thing only. I asked for a public apology to be read during a public meeting so that all staff could hear it directly

from him and a written apology that can be given to the employees specifically impacted regarding the improper treatment and creation of a hostile work environment. An apology that shows understanding of what was done, why it was wrong and what will be done in the future to avoid these issues.

As a governing board, you failed to take any action. Two councilors that sit here now and 2 previous councilors sat there and let his actions continue without any recourse. Now 2 new councilors have started and have begun to see Stephen in action. I assume that councilors have read the final report that even I have not seen. Until tonight, all of you have remained silent. Your silence is acceptance of his behavior.

In August 2020, I wrote a follow up to my complaint noting that nothing has been done and the City Council has remained silent and in acceptance of the continued behavior. I informed City Council in writing; of the disparaging remarks I have witnessed relating to a certain city employee. Again, no action was taken by City Council. In late 2019, I had had enough and attempted to seek employment in another city. During that hiring process, newspaper articles from Stephen Topaz's editorials in the Spotlight newspaper were cited that included accusations disparaging my professional career as a Finance Director. I say to you on this day, that I feel my future professional career has already been tarnished by his false accusations and disparaging comments. For someone that is only 38, I have a long time to go before I can retire, and I do not know if I will ever get that next opportunity because of Stephan Topaz and the damage that he has already caused.

During the hiring process of our public works director, I overheard several times Stephen Topaz make inappropriate comments regarding people interviewed including race, education, and sex in relation to having a male or female public works director. These are crystal clear violations of the Equal Employment Act. The day of final interviews, I withdrew my name from the nominating committee based on opinions from our attorneys to personally protect myself from any potential legal action taken by those that were going to be interviewed that day. As a city Council you failed again to act, allowing him to continue to be involved in the hiring process knowing full well his bias against one of the applicants.

Just a few meetings ago during a work session, Stephan Topaz called me a drug dealer and thief. You all sat there in silence as a council. It was me who had to ask our attorney to say something and request an apology from Stephan. Then at the evening meeting I received an email apology that was nothing short of man-splaining what he intended to say. At that evening's meeting, my apology was met with more man-splaining of what he intended to say. A real apology does not include this. All he had to say was, I'm sorry for calling you a drug dealer and a thief and it will not happen again. But he chose to try and codify his position again with the knowledge of half-truths and heresy on situations that have never happened at the City of St. Helens and never happened in my career. The weeks following his statements, I was the butt of many jokes around City Hall. I have the right to work at a place where I am not disparaged or humiliated by one of my leaders; a city councilor. That right has been violated.

I have heard Stephen topaz refer to people in this community and others as china men and cripples. These are words that should never be heard by our community or our children. These are clear violations of our code of ethics, clear violations of the US Equal Employment Opportunity and clear violations of our conduct expectations and I stress again, not even an apology has been offered to our community and all those offended.

For a third time now, I urge this city council to act and show resolve that you value the dedicated employees and volunteers of your city, and the community as a whole so we can

finally have a resolution to this matter and move forward. I know it is difficult with our current governing policy and our charter because there are no clear or easy answers or path forward for you all. I know this is not something any of us signed up for to deal with, but when will it be enough for you as a council to act? How far are you willing to accept this to go on in your community? You hold the keys; you were elected to lead this community... so I am asking that you do that tonight. Make the decision so that we all can start to heal and find peace. I cannot guarantee much in this life, but I can guarantee one thing; the cost of doing nothing will be by far greater than the cost of a decision to dismiss Stephen Topaz as City Councilor."

Attorney Bill Monahan addressed the comments.

- There is not authority under the City's laws or Charter to dismiss Councilor Topaz. They used ORS 192.660(2) in order to protect the investigation as an exempt record, until Councilor Topaz requested a hearing. There are some charters in Oregon that specifically refer to a process for removal of a council member. They need to move toward opportunities for discipline.
- There was an opportunity for Councilor Topaz to attend a meeting to review the report in writing. Unfortunately, he was unable to attend, and they did not receive an advanced warning that he would be absent.
- Requirements for disclosure is in a criminal setting. This is an administrative setting. That does not apply.
- There was a comment about the right for Councilor Topaz to participate. Contact was made to his legal counsel and no response was received.
- Where in the City ordinances is there a basis for the complaints? One of the complaints is about discrimination, which is addressed in the Personnel Policies. All of the City's rules and regulations do not have to be included in the City Code, Municipal Ordinance, or Charter. The City has the right to regulate the workplace and protect employees by having an appropriate workplace.
- He would be happy to address the disciplinary action.

Mayor Scholl talked about the April 20, 2019 Budget Committee Hearing. He called Councilor Topaz out about his behavior during that meeting. Trying to move a project forward for his house was unethical. The lawsuit was filed in 2009. Was that criminal? Monahan responded that it was criminal. ORS 244 applies to government officials, that a public official is not able to use their position for personal gain. That is something the Oregon Government Ethics Commission (OGE) can look at. They are able to go back four years. The investigation was to evaluate the issues. The Council does not have the ability to enforce ORS 244.

- Where is the authority for discipline? That comes through the City's authority to apply its rules, regulations, and policies, and to determine whether someone's conduct is appropriate to the position. It is not clear exactly what action leads to a penalty. That is something the City Council, in a peer relationship, can decide on proper discipline. It could be a public censure, a letter from the Council, a resolution, or a restriction of some of their abilities to access employees who have raised complaints. They have a responsibility to protect their employees and have efficient operation of the City. Councilor Topaz says that he has been out there using his knowledge and his expertise to check on certain things to make sure they were done right. The City has professionals to do that. A member of the Council is one individual in a group of five. They operate as a group, unless they delegate authority to an individual. There is a statement in the governing policy that members of the Council will be assigned one or more departments to be affiliated with. The majority of the responsibility rests with the City Administrator. A Council member does not have the right to oversee the work of an employee or challenge a contractor or employee. These are basic rules of efficient operation of government that they live by.

- There was reference that these proceedings are out of order. They have gone through great lengths to have a fair, objective process. It gave the complainants and the person being filed against opportunity to provide input.
- The Council has a responsibility to act. The Council has been more than generous in providing Councilor Topaz an opportunity to speak. They are now at a place that they can talk about discipline if they wish to act. The voters are the only ones who can approve a Charter amendment if the Council wants to create a process for potential dismissal.

Hicks talked about the unique position Council is in. Councilor Topaz is not an employee, he is an elected official. Council is dealing with two separate issues: 1) Councilor Topaz and his conduct. 2) The City is also an employer. The City has an obligation to investigate the complaints raised by Brown and others. The City has a responsibility to protect its employees from vendors, third parties, contractors, or other people who create a hostile work environment, or participate in a discriminatory behavior. The allegations related to Councilor Topaz's conduct were substantiated. Council cannot ignore the fact that the complaints were substantiated and proven by listening to public meetings. The conduct was not just about Councilor Topaz raising questions about people's performance, it is about behavior that the Council has already indicated that is inappropriate and unacceptable under its Charter and Policies and Procedures. With respect to Brown, even if Councilor Topaz is not willing to apologize, that does not mean the Council cannot apologize.

Mayor Scholl apologized to Brown and all of the City staff for the situations that have transpired between them and Councilor Topaz. He is sorry and is baffled by how to deal with this. Petersen said he is "my councilor." He's right. He represents Petersen and many others. The City can be sued. Councilor Topaz stated a number of times that he does not care if the City gets sued and spends hundreds of thousands of dollars on attorney fees. Preheim is right. Councilor Topaz does find that his conduct in that April 20, 2019 Budget Committee hearing was very unethical by trying to direct a stormwater project to his property, after already losing a lawsuit in 2009. Half of his testimony earlier was erroneous. He would like to make rules that unless you are speaking on your own behalf, you need to make it clear that it is your own belief. The investigator reached out eight different times to Councilor Topaz. Personally, if he had allegations against him, he would have hired an attorney a long time ago and would have been very methodical and addressed the attorneys.

Council President Morten pointed out that Councilor Topaz had nothing to say about the five allegations. A huge process was undertaken to interview all the staff members affected. Does this set the framework for civil lawsuits against Councilor Topaz or is he protected because he is an elected official? These are serious allegations. If he were Councilor Topaz, he would worry about a civil suit. He is concerned about the individuals who have testified. He does not think it will stop here.

Hicks pointed out that they do not represent the individual employees and is not appropriate to advise them on what they can do. The City was obligated to perform the investigation, and now needs to determine what needs to be done to remedy the situation as an employer. The Council gets to decide if there was misuse of his office for personal benefit. With respect to the question about employees having personal claims against Councilor Topaz directly, that is up to them. Brown's comments were concerning and could give rise to liability. With respect to Councilor Topaz's individual liability, being a Councilor does not automatically shield him from a lawsuit.

Monahan agreed with Hicks. CIS covers Council when they are operating as a member of the Council. However, CIS will not provide coverage when an individual steps out of that responsibility and starts to take part in an unlawful act. There could be exposure. The City does not have a responsibility to defend someone's actions when they step outside their role as a Councilor.

Council President Morten expressed his concerns specifically for staff. Brown came to the Council multiple times and they did nothing. Hopefully, this process will yield positive opportunities if our staff wants to go further individually. If he were a staff member and that happened to him, he knows where he would be going.

Mayor Scholl pointed out that Councilor Topaz showed up at the water tank to do an investigation with no hard hat and no safety jacket. He showed up unannounced and no one knew he was there. It is not true that millions of gallons of water was dumped into the creek at once. He turned the City into the EPA but never told any of the Council. How do they deal with that statement, knowing the facts behind it? Reporters here what he says and run with it, but it is erroneous.

Monahan said that one option is to issue a statement to set the record straight to the public, based on the allegations. Hicks noted the potential retaliation concerns from Council President Morten. That was a protected activity. The employer needs to take steps to make sure they did not suffer from retaliation. If the Council disagrees with statements Councilor Topaz made, the Council needs to make sure they do not allow that conduct. To the extent that things stated are inaccurate, Council has the right to clarify that in the proper format.

Councilor Chilton believes that Councilor Topaz and his attorney have a right to view the investigation, whether or not they redact the names. Addressing Councilor Topaz, Council represents the people. They need to be professional in all aspects, including asking questions and looking into things, and being politically correct.

Councilor Birkle agrees with Councilor Chilton in respect to providing Councilor Topaz and his attorney with information in the report. That being said, he is prepared to move ahead with action prior to that happening. From what he heard tonight; he regrets coming into this process months after it began. He and Councilor Chilton have not been as personally involved. Adequate time has been provided to respond. He is ready to move forward with recommended suggestions of discipline. City employees have gone above and beyond the call of patience or even civility to wait for Council to act. They cannot allow more time to pass. A clear message needs to be made to employees that they will be protected, as well as an apology. He understands that dismissal is not an option.

Mayor Scholl is taking this personally because it is happening in this building. Councilor Topaz was coming in every day and distracting Administration staff. He would like to see some type of censorship for when he needs something. He has cost the City a lot of money in distractions.

Councilor Birkle talked about Councilor Topaz being elected by the citizens. He needs to be able to do his job but with restrictions and limitations for the protection of staff. Mayor Scholl said there are multiple ways to get information. The Council can appoint a liaison to get information to Councilor Topaz.

Council President Morten repeated his concerns about staff being bullied. Councilor Topaz has done nothing on Council. He has only been negative, negative, negative. They need to protect and support staff.

Councilor Chilton asked if Councilor Topaz's attorney has anything to say about what has been addressed.

Councilor Topaz talked about his property being brought up at a Budget Committee meeting. His property his affected underground by the water. The request was to put a storm drain down the

block to help 20 homes. Over the years, the City has been adding layers of asphalt to the road. The asphalt is 18 inches thick. Originally the sidewalks had drainage. Now the water runs from the road, onto the sidewalks and into the backyards on 3rd and 4th Street. Asking for a drain and gutters helps himself and his neighborhood. When the Court checked on it, they surveyed the groundwater going into this building...referring to 2009.

Mayor Scholl requested Councilor Topaz keep to the allegations at hand.

Councilor Topaz continued to say they sampled the water in his basement and found out there was fecal chloroform in it. Mayor Scholl reminded him that the investigation was already done.

Councilor Topaz said there is a dangerous health problem in the whole neighborhood, which would be taken care of by a pipe. They still need a storm drain there. Brown talked about him saying he was a drug addict. He missed an important word. The discussion was, "what if Brown was a drug addict? Can he be fired?" The answer is no. He could be tested when he applied and that was it, unless he was a physical danger. That should show up on the video tape.

Monahan interjected to say that this is causing further problems.

Councilor Topaz continued to talk about the example he used with Brown being a drug addict. Mayor Scholl requested Councilor Topaz stop talking about that.

Trukositz said it is hard for him to respond because he is just learning about these allegations today.

Hicks wants it to be very clear that there are no intimations or anything else from the Council about Brown's drug use or anything along those lines. That is speculation from Councilor Topaz. Addressing Councilor Topaz's attorney, he has known about these allegations six weeks. He has chosen not to share those. The Council may decide to waive privilege, but Councilor Topaz absolutely knows what they are. Trukositz said nothing in writing has been received.

Mayor Scholl pointed out that Councilor Topaz has admitted to Council that he has taken discussion from Executive Session to the news media. It is a violation of State law to disclose what was discussed in those meetings. Based on that there is mistrust. This is very sensitive information. Councilor Topaz had multiple opportunities to invite legal counsel.

Councilor Chilton wants to see the truth out there. The public needs to know why they acted in the way they did. Councilor Birkle understands what Councilor Chilton is saying but wants to make sure they are protecting staff.

Hicks pointed out that there is an executive summary that the Council could choose to release with redactions and a clear directive that retaliation is unacceptable and will not be tolerated. Council would have to waive the privilege.

Discussion ensued.

Mayor Scholl would also like to discuss other means of disciplinary action and restrictions to staff. There needs to be a policy and accountability in place if this were to happen again. Recalls are cumbersome and hard to get done.

Monahan clarified that Hicks would work with Councilor Topaz's attorney to provide the documentation as directed by Council. He will review actions the Council can take.

Motion: Motion made by Councilor Birkle and seconded by Councilor Chilton to direct counsel to provide a redacted executive summary of the report to Councilor Topaz's counsel, waiving attorney client privilege with respect to the executive summary.

Discussion.

Mayor Scholl talked about the document becoming public record. He does not want to see an article in the Spotlight saying it is all lies. A thorough investigation was done. Hicks confirmed that he has received a public records request from Councilor Topaz's attorneys.

Vote: Yea: Councilor Topaz, Councilor Birkle, Council President Morten, Councilor Chilton, and Mayor Scholl

Hicks confirmed they will release the executive summary with redactions to Councilor Topaz's attorney, without waiver of attorney client privileges to the other materials.

Motion: Motion made by Councilor Topaz to release the investigative report in the same manner.

Councilor Chilton does not think it is appropriate. Council President Morten agreed. That opens up too many liabilities for individuals who have come forward.

Motion died due to lack of second.

Monahan reviewed options for discipline and stronger language for future issues.

- Dismissal by the Council is not an option because they do not have Charter authority.
- A member of the Council swears an oath to support the laws and faithfully perform the duties of being a Council member. That oath could be expanded upon.
- Create standards for the roles and responsibilities of a Council member.
 - Decorum during Council meetings, interacting with City employees, requesting documentation, and taking time from employees.
 - Some cities have identified rules and regulations on how much time a Council member can utilize a staff member.
- A public censure.
 - Write a letter to Councilor Topaz, putting him on notice with their concerns and expectations for the future.
 - Write a resolution, which is a public document adopted by the Council and entered into the public record. It can draw attention to things the Council feels is inappropriate, needs to be stopped, and the consequences if it is not. It could also be placed on the City's website for a period of time.
 - Issue a statement that is distributed within the City's organization.
 - Recognize the findings and support of following City regulations and policies, as well as concern for the action of the individual.
 - Release a statement of expectations, making sure that City employees feel comfortable knowing that it will not occur in the future.
 - Confirm it is a safe place for people to raise concerns. They have to know that there will be no retaliation.
 - Take steps on restrictions of access. There were issues of Councilor Topaz coming into employee's workplaces and dominating their time.
 - Create restrictions for where the councilor has a right to be.

- The voters have elected him, and he has a right to participate in Council meetings, have access to public records and information to conduct his job, but does not have ability to cross the boundaries when they are identified.
- Modify the governing policy that the Councilor will be assigned one or more departments if they have not been censured or reprimanded by the Council within a certain timeframe.
- An action could rise to the Oregon Government Ethics Commission (OGECE).
- Recall process. The Council does not have the ability to initiate a recall. It is exclusively the right of an individual voter. It does not prohibit an individual's ability to run for office at a future date.
- Specific rules of conduct that is signed by Council members.
- Create sanctions.
- Revise the Charter by the vote of the people.

Council President Morten suggested discussing it further at their next meeting.

Mayor Scholl agreed with Monahan's suggestions.

Councilor Birkle would like to focus on immediate options, such as a public censure statement and restrictions to access. He would also like to make a statement or declaration to all employees that the Council is fully committed to following through, ensuring a safe workplace, and that other behaviors will not be tolerated.

Mayor Scholl agreed that would be appropriate. It can be added to the May 5 meeting agenda. He wants to receive a copy of everything that is given to Councilor Topaz's attorney.

Councilor Chilton wants to give Councilor Topaz and his attorney time to review the redacted summary before they proceed on the actions. She also wants time to research the options on her own.

Monahan will submit the options to Council in writing for their review.

Mayor Scholl stated that the Council tried to go in a different direction.

Scott Keith asked if the redacted executive summary would be available to the public. Mayor Scholl confirmed it would be, with a public records request.

Mayor Scholl personally apologized to Brown and others, on behalf of the Council. They want everyone to feel safe and comfortable. Their work is appreciated.

The hearing was adjourned at 8:40 p.m.



Respectfully submitted by Lisa Scholl, Deputy City Recorder.

ATTEST:

/s/ Kathy Payne
Kathy Payne, City Recorder

/s/ Rick Scholl
Rick Scholl, Mayor