

**BEFORE THE BOARD OF ALDERMEN
FOR THE CITY OF GREENWOOD**

In Re:

The Impeachment of Mayor Levi Weaver,

Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND

The City of Greenwood is a fourth class city and political subdivision of the State of Missouri. The City's elected officials are comprised of four Aldermen and a Mayor. Following the election of April 2023, these elected officials were:

Mayor – Levi Weaver

Ward I Alderman – Shaun Dugan

Ward I Alderman – Ryan Murray

Ward II Alderman – Joshua Archambault

Ward II Alderman – Kyron McClure

On June 21, 2023, the Board of Aldermen held a special meeting. The sole item on the agenda for the special meeting was resolution R2023-49, a resolution adopting articles of impeachment against Mayor Levi Weaver. The resolution was passed unanimously by the Board of Aldermen and the following three articles of impeachment were adopted:

Article 1. Intimidation of an Elected Official.

In March of 2022, Mayor Levi Weaver, went to the house of a member of the Board of Aldermen to confront the Alderman over a dispute. While at the house, Mayor Levi Weaver displayed and brandished a firearm in an effort to intimidate the Alderman.

Article 2. Blocking Citizens from Utilizing the City's Facebook Page.

During 2022, Mayor Levi Weaver intentionally blocked citizens from accessing the City's Facebook page. Such conduct was done without the consent of the Board of Aldermen or any other administrator of the Facebook page. The Mayor's conduct was done intentionally to silence the ability of the citizens to engage with their government. Such conduct by the Mayor was a violation of the rights of the citizens guaranteed by the United States and Missouri Constitutions to engage in freedom of speech and to petition their government.

Article 3. Attempting to Violate the City's Code of Ordinances Regarding Business Licenses.

During 2022, Mayor Levi Weaver instructed City staff to not require certain businesses located within the City of Greenwood to obtain City business licenses. Such conduct was done without the consent of the Board of Aldermen. Such conduct violated the City's Code of Ordinances and Jackson County's Ordinances.

The hearing of impeachment was conducted on September 18, 2023. The hearing was conducted before Alderman Murray, Archambault, and McClure, with Alderman McClure acting as the presiding official. Alderman Dugan previously resigned on August 8, 2023, and no replacement had been appointed prior to the hearing of impeachment.

The City was represented by special counsel Kevin Graham, Graham Law Group, P.C.

Mayor Levi Weaver was present and was represented by Ralph Monaco and Aaron Racine, Monaco, Sanders, Racine, Powell & Reidy, L.C.

Also present was Larry D. Harman, Withers, Brant Igoe & Mullenix, P.C. Mr. Harman was hired as special counsel to the City to assist the presiding officer with rulings at the hearing of impeachment.

Prior to the introduction of evidence, the Mayor submitted Motions to disqualify Aldermen Murray and McClure from participating in the hearing based upon the Mayor's allegations of bias.

WITNESSES

The following witnesses offered testimony at the hearing:

Mayor Levi Weaver

Tyson Bechtold

Patty Jessup

LeeAnn Moore

Matthew Geary (over objection)

No witnesses were called and not allowed to testify.

EXHIBITS

The following exhibits were admitted at the hearing and attached hereto as part of the record:

City Exhibits:

Exhibit 1 – Missouri State Highway Patrol Report. (6 pages)

Exhibit 2 – Records relating to Marvin Megee. (6 pages)

Exhibit 3 – Records relating to Joel Frazee. (12 pages)

Exhibit 4 – Emails regarding Business Licenses. (3 pages)

Exhibit 5 – City of Greenwood Business License Ordinance. (4 pages)

Respondent Exhibit:

Exhibit 20 – Resolution No. R2014-16, Social Media Policy. (11 pages)

No exhibits were offered and denied admission.

II. FINDINGS OF FACT

1. Mayor Weaver has served as the City's Mayor for about eight (8) years, and his current term expires in April 2024.

2. Upon taking office, Mayor Weaver swore an oath to uphold the City's Ordinances, Missouri's Constitution and laws, and the United States Constitution. (Weaver testimony)
3. There is one (1) vacancy in Ward 1 of the City's Board of Aldermen.
4. On March 8, 2022, Mayor Weaver went to Alderman McClure's house, where Alderman McClure and Tyson Bechtold were visiting and socializing in Alderman McClure's open garage. (Weaver testimony)
5. Prior to arriving at Mr. McClure's house, Mayor Weaver had been drinking. (Weaver testimony)
6. Mayor Weaver was "very upset" when he arrived at Mr. McClure's house. (Weaver testimony)
7. Mayor Weaver arrived at Mr. McClure's house with a firearm on his person. (Weaver testimony)
8. Mayor Weaver approached Alderman McClure in an angry manner and raised his voice and threatened Alderman McClure. (Weaver testimony)
9. Mayor Weaver was "very, very, angry" with Alderman McClure. (Bechtold testimony)
10. Mayor Weaver was threatening harm to Alderman McClure. (Bechtold testimony)
11. Mayor Weaver used "lots of expletives" and pointed at Mr. McClure. (Bechtold testimony)
12. Mayor Weaver said something to the effect of "I could fucking end you." (Bechtold testimony)
13. Mayor Weaver had his hand on the butt of the firearm while threatening Alderman McClure. (Bechtold testimony)

14. Mayor Weaver threatened Alderman McClure verbally during the incident. (Bechtold testimony).
15. Mayor Weaver remained at Alderman McClure's residence for 30-60 minutes. (Weaver testimony)
16. A police report was made regarding the incident at Mr. McClure's residence. (Weaver testimony, Ex. 1)
17. The investigation of the incident at Mr. McClure's residence was conducted by the Missouri State Highway Patrol. (Weaver testimony, Ex. 1)
18. No criminal charges were filed because Mr. McClure did not wish to pursue charges. (Weaver testimony, Ex. 1)
19. The City's Facebook page contains government information that is available to its citizens. (Weaver testimony)
20. The City's Facebook page is the only format on which a citizen may watch the City's meetings live. (Weaver testimony)
21. In 2022, Mayor Weaver blocked Joel Frazee in the middle of a meeting while Mr. Frazee was live-streaming the meeting. (Weaver testimony)
22. Mayor Weaver identified two comments made by Mr. Frazee that he claims violated the City's social media policy because Mayor Weaver alleges that they were false and personal attacks. Those comments are:
 - a. "The Mayor better watch his tone with my wife"
 - b. "She is right, 100% It should be a no! I mean the mayor is still married and has a girlfriend?!" (Exhibit 3)

23. Mr. Frazee's wife was a member of the Board of Aldermen when the comment was made.
24. Mayor Weaver admitted that he was married at the time the comments were made. (Weaver testimony).
25. Following Mr. Frazee's posted comments on the City's Facebook page, Mayor Weaver blocked Mr. Frazee from accessing the City's Facebook page, and *all* of Mr. Frazee's comments were removed. (Weaver testimony, Exhibit 3).
26. Those comments were made during a livestream of the City's Board of Aldermen meeting and were Mr. Frazee's opinions and commentary about actions that were taking place during the meeting. Those opinions and commentary directly related to the City business being discussed at the time. (Exhibit 3)
27. Mayor Weaver never consulted with the Board of Alderman regarding Mr. Frazee being blocked from Facebook. (Weaver testimony)
28. Mayor Weaver was responsible for blocking Mr. Frazee from the City's Facebook page. (Weaver testimony)
29. During Mayor Weaver's time in office, Mayor Weaver blocked former Mayor Marvin Megee from the City's Facebook page, and other than Mr. Frazee, Mayor Weaver did not block any other citizens from the City's Facebook page. (Weaver testimony)
30. The City's social media policy contains warning language that may be given to a citizen prior to blocking a citizen from Facebook. (Weaver testimony, Ex. 20)
31. Mayor Weaver failed to give any type of warning to Mr. Megee or Mr. Frazee prior to blocking them from Facebook. (Weaver testimony)

32. On July 29, 2022, the City Attorney, Mr. Geary, emailed Mayor Weaver and instructed him that: "If there are people blocked on the City's Facebook page, they should be unblocked." (Weaver testimony, Ex. 3)
33. Approximately three days later, on August 1, 2022, Mayor Weaver agreed to allow Mr. Frazee to be unblocked. (Weaver testimony, Ex. 3)
34. In February of 2022, the City's Clerk, Ms. Shoemaker, posted on the City's Facebook page a reminder for citizens to obtain a business license for all businesses operating in the City of Greenwood. (Weaver testimony, Ex. 4)
35. The Clerk's business license post was approved by Mayor Weaver. (Weaver testimony, Ex. 4)
36. Following the Clerk's business license posting, Mayor Weaver indicated to the Clerk that not all residents needed to obtain a business license. (Weaver testimony)
37. The Mayor has no duties or authority relating to the approval of business licenses applications submitted to the City. (Weaver testimony)
38. Mayor Weaver testified that one citizen, a man named Reggie, Philly cheese items and sold them for money, but should not be required to obtain a business license. (Weaver testimony)
39. Mayor Weaver is very familiar with Reggie and has bought his goods. (Weaver testimony)
40. The City's business license ordinance requires certain persons who operate a business in the City to obtain a business license. (Weaver testimony, Ex. 5)
41. Food preparation businesses were not exempted from the City's business license. (Weaver testimony, Ex. 5)

42. Mayor Weaver stated: "I'm getting a ton of blow back because of your business license post. The things (sic) is these residents aren't running side business, the (sic) are side hustles which is not the samething (sic). Let the side-hustle residents alone." (Ex. 4)
43. Mayor Weaver then instruction the City Clerk: "We are a support and take care of our own community and it will stay that way." (Ex. 4)
44. Mayor Weaver indicated that "side hustles" should not have to comply with the City's business license ordinance. (Weaver testimony)
45. The term "side hustles" is not defined in the City's business license. (Weaver testimony, Ex. 5)
46. Mayor Weaver has not requested that the Board of Aldermen amend the City's business license ordinance to define the term "side hustle." (Weaver testimony)
47. The City's Clerk "understood" the Mayor's position with regard to business licenses and stated that she "will respect your decision." (Weaver testimony, Ex. 4)
48. The Mayor submitted no evidence of bias with regard to Aldermen Murray and McClure.

III. CONCLUSIONS OF LAW

1. The City of Greenwood is a fourth-class city as defined by RSMo. Ch. 79.
2. Greenwood's Board of Aldermen has jurisdiction over the impeachment hearing and personal jurisdiction over Mayor Weaver pursuant to RSMo. § 79.240.
3. There is a presumption that those serving as adjudicators, such as Aldermen McClure and Murray, are honest and act with integrity. *State ex rel. Powell v. Wallace*, 718 S.W.2d 545, 548 (Mo. Ct. App. 1986) (citing *Withrow v. Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 1464, 43 L.Ed. 2d 712 (1975)).

4. Moreover, “[a]dministrative decisionmakers are expected to have preconceived notions concerning policy issues within the scope of their agency's expertise.” *Fitzgerald v. City of Maryland Heights*, 796 S.W.2d 52, 59 (Mo. Ct. App. 1990) (citing *Hortonville Joint School Dist. No. 1 v. Hortonville Education Assoc.*, 426 U.S. 482, 493, 96 S.Ct. 2308, 2314, 49 L.Ed.2d 1, 9 (1976)). “Familiarity with the adjudicative facts of a particular case, even to the point of having reached a tentative conclusion prior to the hearing, does not necessarily disqualify an administrative decisionmaker, *Wilson v. Lincoln Redevelopment Corp.*, 488 F.2d 339, 342–43 (8th Cir.1973), ‘in the absence of a showing that [the decisionmaker] is not ‘capable of judging a particular controversy fairly on the basis of its own circumstances.’ ” *Id.* (quoting *Hortonville Joint School District*, 96 S.Ct. at 2314).
5. Mayor Weaver did not produce any evidence of bias. He presented no testimony, no affidavits, nor did he produce any exhibits. Mayor Weaver only filed two unverified motions and presented argument of counsel. However, “unsworn statements by counsel are not evidence of the facts asserted,” and “statements in briefs are not in evidence and are insufficient to supply essential matters for review.” *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo. Ct. App. 1997) (citations omitted).
6. Mayor Weaver presented no evidence that Aldermen McClure or Murray were not capable of judging the impeachment proceedings fairly on the basis of its own circumstances.
7. Because Mayor Weaver did not present any evidence of bias or that Alderman McClure was not capable of judging the impeachment proceedings fairly on the basis of its own circumstances, Mayor Weaver’s Motion to Disqualify Alderman McClure is denied.

8. Because Mayor Weaver did not present any evidence of bias or that Alderman Murray was not capable of judging the impeachment proceedings fairly on the basis of its own circumstances, Mayor Weaver's Motion to Disqualify Alderman Murray is denied.
9. In addition, Mayor Weaver's Motions to Disqualify Aldermen McClure and Murray are denied based upon the "rule of necessity."
10. RSMo. § 79.240 allows removal of a mayor of a city of the fourth class "by a two-thirds vote of all members elected to the board of alderman."
11. As there are four members elected to the Board of Aldermen a vote of three members of the Board is required to remove the Mayor. *See e.g. State ex rel. Brown v. City of O'Fallon*, 728 S.W.2d 595, 598 (Mo. App. 1987) (noting that "similar legislation requiring a 'two-thirds vote' of all the members has been held to include the votes [of] non-participating members) (citing *Braddy v. Zych*, 702 S.W.2d 491, 493-94 (Mo. App. 1985)).
12. Pursuant to RSMo. § 79.240, the Board of Aldermen was the sole instrumentality authorized to remove the City's Mayor.
13. "In those instances, where the only forum authorized by statute would be unable to proceed, the Rule of Necessity could be invoked to permit a decision to be made by the adjudicating body in spite of its possible bias or self-interest." *State ex rel. Powell v. Wallace*, 718 S.W.2d 545, 548 (Mo. App. 1986) (citing *United States v. Will*, 449 U.S. 200, 101 S.Ct. 471, 480-81, 66 L.Ed. 2d 392 (1980)). *See also Fitzgerald*, 796 S.W.2d at 60 ("Due process considerations do not require a biased administrative agency to forego making a decision which no other entity is authorized to make. Under such circumstances, the so-called *Rule of Necessity* permits an adjudicative body to proceed in spite of its possible bias or self-interest.").

14. Because there are only three serving members of the Board of Aldermen removal of Alderman McClure, Alderman Murray, or both, the Board would not have been fundamentally capable of impeachment because there would only be one or two members of the Board voting on impeachment.

15. RSMo. § 79.240 authorizes a Fourth Class City to impeach and remove its Mayor “for cause shown.”

16. Cause for impeachment and removal of a public official includes “acts of misfeasance, the improper performance of some act which may lawfully be done, malfeasance, the commission of some act wholly beyond actor’s authority, and nonfeasance, the failure to perform a required duty.” *McCallister v. Priest*, 422 S.W.2d 650, at 657 (Mo banc 1968)

17. Missouri Chapter 571.030 RSMo., states:

571.030. UNLAWFUL USE OF WEAPONS.

A person commits the offense of unlawful use of weapons, except as otherwise provided b sections 571.101 to 571.121, if he or she knowingly:

.....

(4) Exhibits, in the presence of one or more persons, any weapon readily capable of lethal use in an angry or threatening manner; or

(5) Has a firearm or projectile weapon readily capable of lethal use on his or her person, while he or she is intoxicated, and handles or otherwise uses such firearm or projectile weapon in either a negligent or unlawful manner or discharges such firearm or projectile weapon unless acting in self-defense . . .

18. Mayor Weaver exhibited a weapon in an angry or threatening manner. Such conduct was aimed at Alderman McClure was done in a manner to intimidate Alderman McClure.

19. The Board finds that there is substantial and competent evidence that Mayor Weaver’s actions in intimidating and threatening Alderman McClure while Mayor Weaver’s hand was on a firearm is cause to remove Mayor Weaver from office.

20. The First Amendment to the United States Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

21. The Missouri Constitution's Bill of Rights states, in relevant part:

Section 8. Freedom of speech—evidence of truth in defamation actions—province of jury.—That no law shall be passed impairing the freedom of speech, no matter by what means communicated: that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject, being responsible for all abuses of that liberty; and that in all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and in suits and prosecutions for libel the jury, under the direction of the court, shall determine the law and the facts.

Section 9. Rights of peaceable assembly and petition.—That the people have the right peaceably to assemble for their common good, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

22. By blocking Mr. Frazee, Mayor Weaver prevented him from commenting during the meeting.

23. By blocking Mr. Frazee, Mayor Weaver caused all comments made by Mr. Frazee to be removed. This included comments that are clearly not in violation of the City's Social Media Policy.

24. The Board finds that neither of the challenged comments made by Mr. Frazee violated the City's Social Media Policy.

25. "The nature of an alleged threat is analyzed from the viewpoint of a reasonable recipient."

Felts v. Vollmer, 2022 WL 17546996 *10 (E.D. Mo. December 9, 2022) (citing *Doe v. Pulaski Cnty. Special Sch. Dist.*, 306 F.3d 616, 622 (8th Cir. 2002) ("[A] court must view the relevant facts to determine whether the recipient of the alleged threat could reasonably conclude that it expresses a determination or intent to injure presently or in the future.")).

26. The Board finds that the comment “Mayor better watch his tone with my wife!!” was not a threat.

27. Instead, the comment was related to the way the Mayor conducted himself and interacted with another elected official during a public meeting. This comment is protected by the United States and Missouri Constitutions and did not violate the City’s Social Media Policy.

28. The comment section of a City-maintained Facebook page is a limited public forum. See *Davison v. Randall*, 912 F.3d 666, at 688 (4th Cir. 2019).

29. The City may not engage in viewpoint discrimination with regard to its Facebook page.

IV. Viewpoint discrimination occurs when a government official’s decision to ban someone from Facebook is “impermissibly motivated by a desire to suppress a particular point of view.” *Davison v. Randall*, 912 F.3d 666, at 687 (4th Cir. 2019).

30. Mayor Weaver utilized his ability to oversee the City’s Facebook page in an effort to engage in viewpoint discrimination and block those he disagreed with, including Mr. Frazee, from accessing and commenting on the City’s Facebook page.

31. Such conduct by Mayor Weaver restricted the Constitutionally-protected ability of citizens to engage in free speech and petition their government.

32. The Board finds there is substantial and competent evidence Mayor Weaver violated the constitutional rights of Mr. Frazee, and such actions could have subjected the City to liability and cause exists to remove Mayor Weaver from office.

33. The City’s business license ordinance (Ex. 5) requires that certain businesses operating the City of Greenwood obtain a business license.

34. Mayor Weaver interceded on behalf of a citizen and instructed the City Clerk to ignore the requirements of the City's business license ordinance and to not pursue a business license against an individual engaged in the preparation and sale of food products.

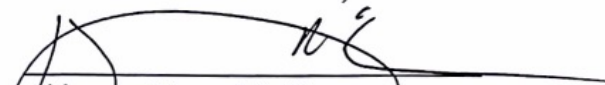
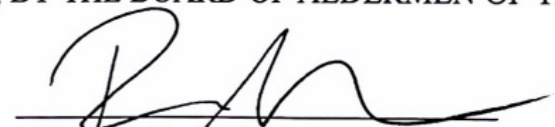
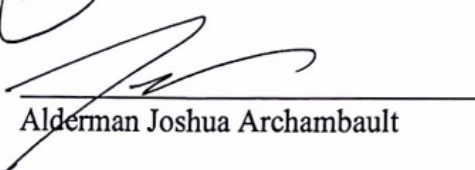
35. The Board finds that there is substantial and competent that Mayor Weaver instructed the City Clerk to not enforce the law, and such conduct is cause for removal from office. *See e.g. Fitzgerald v. City of Maryland Heights*, 796 S.W.2d 52, 63 (Mo. Ct. App. 1990) (holding that failing to support state statutes, which the Mayor had taken an oath to do, undermining respect for the law by telling a private citizen to disregard orders from a police chief was an impeachable offense).

IV. DECISION

The Board of Aldermen of the City of Greenwood, after consideration of all of the evidence presented and after giving Mayor Levi Weaver an opportunity to respond to the Articles of Impeachment, finds there is substantial and competent evidence that cause exists to remove Mayor Levi Weaver from his elected position with the City.

WHEREFORE, the Board of Aldermen sustain the Articles of Impeachment and convict Mayor Levi Weaver of the charges against him as set forth in the Articles of Impeachment. Mayor Levi Weaver is immediately removed as Mayor for the City of Greenwood.

PASSED THIS 26th DAY OF SEPTEMBER 2023, BY THE BOARD OF ALDERMEN OF THE CITY OF GREENWOOD, MISSOURI.


Alderman Kyron McClure
Alderman Ryan Murray
Alderman Joshua Archambault

ATTEST:

LeeAnn Moore

LeeAnn Moore, City Clerk

