

Workforce Solutions

City of Windsor Heights City Council Investigation

December 2020

Findings Presented by Jon Thomas

Executive Summary:

Workforce Solutions was contacted in late August 2020 to evaluate a claim relating to Windsor Heights City Councilor Harms' conduct and if this conduct creates a hostile work environment for city employees.

At issue is whether city employees have a reasonable basis to fear adverse consequences, including but not limited to, loss of employment and public scrutiny as a result of Councilor Harms.

This claim was founded.

The facts show comments made by Councilor Harms to Public Works Director Jacobus did create a hostile work environment. In addition to Director Jacobus, other employees have brought forth corroborated examples of why they legitimately feared public ridicule from Councilor Harms. For example, employees performed work at the direction of Councilor Harms on private property, for a private citizen, to avoid upsetting Councilor Harms and potential negative consequences.

Numerous other concerning allegations have arisen from this investigation regarding the questionable conduct of Councilor Harms. These allegations include:

1. Councilor Harms directed staff to perform work on private property.
2. Councilor Harms misused city resources by holding a block party without a permit or paying the fees associated with a block party permit.
3. Councilor Harms' failure to disclose a personal interest / potential conflict when voting to waive fees for her daughter's choir to use the city's community center for a concert.
4. If Interim City Manager Arentsen selectively communicated with specific council members rather than all council members.
5. Why issues and requests for committee meetings by council members are not being considered or even brought before the full council for consideration.

Executive Summary continued:

The following outcomes were determined for each of these additional claims:

1. Councilor Harms did indirectly request city employees assist a private homeowner with a downed tree that was clearly on private property and not the responsibility of the City.

This claim is founded.

2. Councilor Harms did not submit the required paperwork for a block party at her residence during the summer of 2020. Councilor Harms then texted Public Works Director Jacobus after normal business hours to remind him to drop off the unauthorized and undocumented barricades for the block party. Councilor Harms declined the opportunity to be interviewed about this allegation. Evidence of the improper nature of this activity is the personal check (check # 5104) for \$8.00 she issued well after the fact on October 15, 2020 to pay the fees associated with the block party.

This claim is founded.

3. Councilor Harms was party to a city council meeting and participated in a vote allowing the community center to be used by a school choir and for usage fees to be waived. Later, it was learned that Councilor Harms had a child in the choir. Therefore, due to the obvious conflict of interest Councilor Harms should have abstained from voting on the resolution. As a matter of procedure and ethical integrity, Councilor Harms had a duty to reveal the conflict of interest even though her abstention from the vote would have had no impact on the final vote. Therefore, Councilor Harms actions while procedurally deficient, likely do not reach the meet the threshold of being illegal. In addition, any personal benefit Councilor Harms would have received would have been minimal and there is no evidence to support she participated in the vote for monetary gain.

This claim is founded.

Executive Summary continued:

Additionally, Councilor Harms after being made aware of this claim on September 27th, 2020, made payment to the City on October 15, 2020 by personal check (check # 5105) in the amount \$1,140 (one thousand, one hundred forty dollars). This payment was submitted to alleviate any appearance of impropriety including any personal financial gain she may have received as a result of the vote to allow the choir to use the community center.

4. Councilor Harms raised questions about whether Interim City Administrator Arentsen selectively communicated with some council members rather than communicating with all council members. After interviewing Administrator Arentsen and a review of Administrator Arentsen's outgoing and incoming e-mail, this allegation is not supported by evidence.

This claim is unfounded.

5. Councilor Skeries raised concern why items were not being placed on the agenda, and committee meetings not being held when these actions were requested by Councilor Skeries and Councilor Harms. Councilor Skeries further questioned if this behavior was gender driven or if it was because Councilors Skeries and Harms are frequently outspoken and ask questions. This issue was clarified by Mayor Burgess in his interview when he stated he cancelled individual committees within the City, to include public safety, public works and others, because the meetings proved to be fruitless and were filled with conflict. In fact, in a council meeting following the Derecho storm, Mayor Burgess accepted full responsibility for not placing an item from Councilor Skeries on the agenda. Furthermore, there was no evidence uncovered to support the allegation Mayor Burgess selectively ignores requests by Councilor Skeries or Councilor Harms due to their gender or any other criteria.

This claim is unfounded.

Parties to the Investigation:

Mark Arentsen – Interim City Administrator

Dave Burgess - Mayor

Mike Jones – Mayor Pro-Tem / Council Member

Threase Harms – Council Member

Joseph Jones – Council Member

Michael Loffredo – Council Member

Susan Skeries – Council Members

Chad McCluskey – Chief of Police

Dalton Jacobus – Public Works Director

Dan Morgan – Public Works Employee

William Goodrich – Assist Director Public Works

Austin King – Public Works Employee

Robert Fleming – Public Works Employee

Craig Stoker- Public Works Employee

Whitney Tucker – Communications Specialist

** Councilor Threase Harms and Councilor Joseph Jones both declined opportunities and requests for interviews as part of this investigation. **

Interviews & Summary:

Interviews were conducted with the parties identified above who were believed to have direct knowledge about potential conflicts or information relative to the focus of this investigation.

- 1. This investigation began after an employee of the City of Windsor Heights raised concerns about an atmosphere of fear and retribution including the potential loss of employment due to retaliation by the city council.**

When the investigation was initiated, the initial cause of the complaint was broad and vague and encompassed the entire Windsor Heights City Council. After conducting numerous interviews and isolating the source of friction, it was learned that Councilor Harms was the source of the fear of retribution that evolved from public shaming at city council meetings, and other meetings, with City staff and others.

The investigation provided compelling evidence city employees from front line public works employees to a Department Head expend extra effort to try and appease Councilor Harms in order to avoid conflict and public ridicule from Councilor Harms. There are demonstrated examples of harsh public criticism of the City's communications with residents and how staff performs their job.

Another example is Councilor Harms requesting a meeting with Windsor Heights staff and representatives of the City of Des Moines and the Department of Transportation regarding a cross walk near 63rd street and an elementary school. In this instance, Councilor Harms presented herself as overbearing and unreasonable during the meeting after being presented with data, including traffic studies and roadway designs, which did not support her position.

During the meeting, Harms was dismissive of the evidence stating something to the effect that – “I don't want to talk about what has been done in the past, I want to talk about how we are going to make this happen in the future.”

Interviews & Summary continued:

By the end of the meeting, the City of Des Moines agreed to pay for a majority of the project. However, the ongoing maintenance expenses would be paid Windsor Heights at a cost of over \$5000. Councilor Loffredo, who was present at this meeting, was unwilling to accept the ongoing maintenance costs and the project was abandoned.

Director Jacobus recalled a conversation with Councilor Harms during his first winter at the department when he took each Council member for a ride along while plowing snow so they could better understand the process and difficulty of the task. During her ride along, Councilor Harms commented to Jacobus that he was, 1) either going to be her best friend, or 2) her worst enemy. This comment understandably caught Jacobus off guard and he responded that he didn't believe either scenario needed to occur. Councilor Harms then went on to make subtle and potentially threatening reference the previous Public Works Director who had his employment terminated by the City.

As specifically outlined in question 3, Assistant Public Works Director Goodrich directed employees to perform work on private property, in violation of City policy and best practices, simply to avoid conflict and backlash from Counselor Harms who had requested city crews respond to the area and assist the homeowner.

2. Does the current organization chart (method), whereas city council members freely contact department heads and make specific requests promote efficiency?

The organizational structure of the City of Windsor Heights has been a topic of discussion in the recent past (less than 2 years). The previous City Administrator wished to isolate City Department heads from elected officials and requested all communication go through the City Administrator who would then contact Department Heads.

Interviews & Summary continued:

The policy, which was repealed by action led by Councilor Mike Jones, was too stringent and in a general sense, stated city council members could not directly communicate with city staff without communicating through the City Administrator. Councilor Jones felt this policy and ideology was too restrictive and prevented open lines of communication between the Council and staff.

In interviews with both Police Chief McCluskey and Public Works Director Jacobus, both indicated there have been times when city council members have overstepped their authority and attempted to direct the work of the departments. Both indicated they have not suffered retaliation for not meeting the specific requests of city council members but it can make for a more tense work environment with the city council.

As an example, when interviewed on August 25th, Director Jacobus had spent 32 hours answering concerns and questions specifically from city council members (Harms, Skeries, and Loffredo) and while they are trying to serve their constituents, the requests and expectations placed upon Director Jacobus required him to spend much of the week responding to 10 pages of e-mails about areas of low concern and as a result, tasks of greater importance were not able to be addressed. The Council's constant requests for "pet projects" create an inefficient and unproductive work environment.

Ultimately, Chief McCluskey and Director Jacobus both agreed open lines of communication with the council are necessary and appropriate so long as Council is aware of where the boundaries are and don't overstep in trying to steer the direction the department is moving towards. To try and serve and maintain the happiness of five (5) individual Council members would be unobtainable and the appropriate course of action is for the Council to decide by a majority vote the direction the city should proceed and then the Council should hold the city administrator accountable to ensure the direction and will of the council is followed.

Interviews & Summary continued:

“The amount of contact the city council has with me at all times of the day and all days of the week is inappropriate and unsustainable for matters which are not of an emergent nature”, Jacobus stated.

As a specific example of the inefficiency and unrealistic expectations of the city council, Director Jacobus contacted me on the morning of September 2nd asking to be interviewed in regards to city council behavior on Tuesday evening, September 1st. To summarize the event, Councilors Harms and Skeries contacted Jacobus at approximately 6:00 pm in the evening about a prepared concrete pour site which was scheduled to be “poured” the next morning at 7 am. Councilors Harms and Skeries contacted Jacobus stating the property owner was not happy with the design and Councilors Harms and Skeries didn’t think the design looked right and requested Jacobus respond to the area to evaluate the site. Jacobus was at home with his family and requested pictures of the work site be sent to his phone. Councilor Skeries sent pictures to Director Jacobus who then referenced the engineer’s drawing for the site and confirmed the work site was prepared in accordance to the designs set for by the engineer and was in compliance with both state and federal guidelines. Jacobus offered to make a minor adjustment by having the contractors add a back curb to the pour however this did not satisfy Councilors Harms and Skeries.

Not happy with Jacobus’ unwillingness to respond to the scene, Councilors Harms and Skeries contacted Mayor Burgess who responded to the scene to assess the work site. Mayor Burgess and Director Jacobus then had a brief conversation to which Jacobus explained his position that this design was part of a larger design for the street and was needed in order to be in compliance with industry standards, this design had been prepared for public comment and review, the bids had been released and the contractor selected to perform the work to this scope.

Interviews & Summary continued:

Jacobus was asked if he would consider holding off on performing the installation of the concrete in the morning to which he stated “No” and proceeded to contact the contractor and direct the contractor regardless of who showed up in the morning, the site was to be prepared and completed in accordance with the design and plans prepared by the engineer; regardless of property owners or elected officials who may try and intervene in the work being completed.

3. Did a city council member direct city staff to perform work on private property recently or in the past?

This question was directly related to activity by public works employees in performing work on private property both recently and in the past.

Director Jacobus contacted City Administrator Andresen regarding Councilor Harms advising homeowners she would have public works respond to the residence and assist them with moving a large limb the homeowner did not have the equipment to move.

Director Jacobus was unavailable and out of state at the time of this occurrence and Bill Goodrich, the Assistant Public Works Director, was directing the public works daily activities at the time.

Goodrich stated he received a text message from Chief McCluskey stating Councilor Harms had requested someone proceed to an address on 73rd Street to help an address out with a tree problem.

Goodrich stated he directed Craig Stoker to proceed to this address and identify the problem. Stoker advised Goodrich he would not go because public works should not be performing work on private property and that he wasn't going.

Interviews & Summary continued:

Stoker sent Dan Morgan (another public works employee) to the residence. Morgan later told Goodrich he went up with a piece of equipment and pushed the tree limb out of the tree into the homeowner's backyard, on private property. Other public works employees (Bobby Fleming and Austin King) were present when this work on private property was conducted.

The work conducted was clearly on private property and not near the City's right-of-way.

Goodrich stated he felt Chief McCluskey was simply passing on a message but in hindsight after meeting with Public Works Director Jacobus, he understands he should have declined to perform any work on private property unless such work originated on City owned property and spilled over onto the private property.

Goodrich was also unsure who to take direction from on the day in question as Director Jacobus was on approved leave. Goodrich now understands he is not to take directions from any other staff or elected official and if he has questions, he should direct those questions to the City Administrator.

In retrospect, Goodrich stated he would not perform the work again as it fell obviously on private property and there was still closed streets and plenty of work which needed to be completed on streets and on city owned property.

Director Jacobus expressed during his interview this should have never have occurred and he considered disciplining Goodrich for his actions but later considered the circumstances and the hectic nature of everything going on and was more concerned with ensuring nothing of this nature would occur in the future.

Interviews & Summary continued:

Director Jacobus felt strongly his staff would have told most people “No” but because the request came from Councilor Harms the staff are “terrified of her and she can be a bully”. Jacobus went on to state Harms would have never have asked him to do such a thing however this incident demonstrated a failure in leadership by the Assistant Public Works Director.

4. Did the interim City Administrator selectively communicate with some members of the city council rather than communicating with all members of the city council on issues effecting Windsor Heights?

As the investigation proceeded, Councilor Harms and to some level, Councilor Skeries alleged Interim City Administrator Arentsen selectively communicated with some Council members about specific issues rather than communicating with all the elected officials.

In his interview, Administrator Arentsen refuted this statement confidently and stated he communicates with the council members who communicate with him the most. An analysis of Administrator Arentsen’s incoming and outgoing messages confirmed those council members who contacted him the most received the most e-mails from Administrator Arentsen in return. A number of reasons also contribute to this data as well such as Mike Jones, is the Mayor Pro-Tem, and thus is communicated with more than other council members.

The analysis of Administrator Arentsen’s e-mail also reflected he communicates daily and sometimes multiple times a day with Mayor Burgess and despite suggestions that Administrator Arentsen communicates less with female council members than male council members, Councilor Skeries was the council member with the highest amount of correspondence from Arentsen during the reviewed time frame.

After completing an interview with Administrator Arentsen and reviewing the data from his sent and received e-mails, there is no evidence to support this claim of differential treatment to council members based upon gender

or in general.

Interviews & Summary continued:

During the course of the thirteen (13) interviews conducted as part of this investigation, those interviewed brought to light two (2) potential conflicts which may have occurred by Councilor Harms in recent months.

The first question raised was **did a potential conflict of interest exist on Councilor Harms' behalf in approving the fees waiver for a choir group to use the Community Center? The conflict is related to Harms having a child in the choir, which she did not disclose to other council members nor did she abstain from voting on the fee waiver?**

From the interviews conducted with three (3) of the five (5) council members, in accordance with current practice, when non-profit groups wish to use the Windsor Heights Community Center the fees associated with the use of the facility may be waived by the city council.

Councilor Harms brought forth to the city council a request to waive fees for a school choir group to use the community center.

Council Harms brought forth the request and motion which passed the city council without issue. As a matter of proper procedure, Councilor Harms failed to disclose her daughter was in the choir and that a "potential" conflict of interest may exist. From talking with other city council members, and Administrator Arentsen, while many feel Councilor Harms should have disclosed her small but relevant interest in the motion, the Council would have likely voted to approve the group's fee waiver regardless. Councilor Harm's failure to disclose the potential conflict was more of a procedural failure to be transparent than one of a legal matter as her interest or benefit from the resolution was not significant.

Interviews & Summary continued:

The second question raised related to whether or not a **"Block Party" held in Councilor Harms' neighborhood, occurred for which there was no "permit" or paperwork and for which no related fees were paid to or received by the City?**

The occurrence of a block party in Councilor Harms' neighborhood was confirmed and the event took place on Saturday, June 27th. Councilor Harms contacted Director Jacobus on Tuesday evening at approximately 9:50 pm requesting barricades be dropped off to her neighborhood for the purpose of blocking the street and allowing her neighborhood to restrict access to through traffic.

The City of Windsor Heights has an established practice for requesting barricades and permission to close streets and hold events of this nature. A minimal fee is associated with the event application for use of city barricades for the purpose of closing the street.

According to Director Jacobus, Councilor Harms did not complete the application, pay the fees, or receive the appropriate approval to proceed with the event. Public works employees dropped off the barricades as requested because quite literally "it wasn't worth the fight" to argue with a city council member to follow the proper procedure.

The block party application is readily available on the City of Windsor Heights' website and should have been completed and submitted for review by the City Administrator, Police Chief, Fire Chief, and Public Works Director.

Final Summary:

1. Were any criminal acts committed by any elected official or employee of the City of Windsor Heights?

No employee of the City of Windsor Heights was found to have committed any criminal act as a result of this investigation.

2. The issues raised with the use of the community center for Councilor Harms' daughter's choir has been clearly stated by other council members to be more of a procedural issue than a criminal issue. Councilor Harms should have declared her potential conflict and abstained from the vote. However, the end result would have almost certainly been the same and therefore, Councilor Harms did not receive any benefit or savings as a result of her position as an elected official.
3. In regard to the issues raised relating to the block party, Councilor Harms conduct in this matter was inappropriate. As a well-established member of the community and veteran of the city council, Councilor Harms was likely aware, or should have been, of the process by which to have a block party approved by the city. The fact that Councilor Harms texted Director Jacobus at 9:50 pm, three days before the event, requesting barricades is improper. If the appropriate procedure was followed and the associated fees paid, Director Jacobus could have followed the proper process. Accordingly, any after hour texts, which were not emergent in nature, would not have been necessary.

Final Summary continued:

4. A question was raised as to if Councilor Harms' acts constituted Non-Felonious Misconduct In Office (Iowa Code 721.2)? By black and white letter of the law, Councilor Harms use of barricades for her block party without the appropriate application and associated fees (\$8.00) was representative of misconduct. However, the legal question of whether Councilor Harms' actions were done so "*knowingly*" and with intent are unclear as Councilor Harms declined to be interviewed.
5. Councilor Harms' direction / request for public works employees to perform work on private property in moving a tree when there were far more pressing matters of greater importance to the community is a potential violation of 721.2(5). However, the manner in which this request was made is vague at best and messages passed through the Police Chief to the Assistant Public Works Director do not demonstrate a clear directive by Councilor Harms that the work on private property be completed. Factually, there is no direct text or message which would make this a prosecutable case.

What is clear in this instance is public works employees performed the work because they knew the request / suggestion came from Councilor Harms. This fact drove them to take actions and perform work out of fear in order to avoid upsetting her or suffering public ridicule or backlash from her if the work was not completed.

As a result of this investigation, and only after Councilor Harms was made aware of the allegations involving potential unethical and improper conduct, did she compensate the city for both the cost of the community center rental for her child's choir event (\$1,140) and the cost of her neighborhood block party (\$8.00).

Final Summary continued:

6. There is no reason to doubt Director Jacobus' statements regarding comments made by Councilor Harms during the snow removal ride-along from his first winter in Windsor Heights. It was clear that Councilor Harms inappropriately attempted to obtain a sense of loyalty from Director Jacobus in exchange for his continued employment.

Moving forward as a matter of efficiency, the City Administrator must help Director Jacobus manage city council expectations, access, and responses the city council. Director Jacobus is losing significant productivity by addressing numerous individual requests and concerns of city council members which take hours of time to complete and in some cases, almost entire weeks to resolve. These requests interfere with the efficiency, effectiveness and service of the Public Works Department to the citizens of Windsor Heights.

Timeline of Events relating to City Council and Public Works:

March 2018	Public Works Director Dalton Jacobus is hired.
Winter 2018 / January 2019	Director Jacobus encourages city council members to ride along with him during snow routes to better understand the operation after receiving numerous complaints from Council about snow removal operations. During this ride along, Council Harms make comments to Director Jacobus about the previous public works director and either being friends or enemies.
Spring 2019	Director Jacobus, Councilor Loffredo, and Councilor Harms have a meeting with representatives from the City of Des Moines at the request of Council Harms about a crosswalk on 63 rd Street near Cowles Elementary. During this meeting, information and data is shared showing the crosswalk is unnecessary and not cost effective. Ultimately, the crosswalk project did not proceed.
Spring 2019 – Summer 2020	The behavior of the city council and the additional requests and demands placed upon the public works department continue to affect the efficiency of the department and create additional work for city staff rather than allowing work to be completed which was of greater priority. City council meetings during this time are consistently filled with conflict and create an unpleasant and unproductive work environment for some employees.
Summer 2020	<p>As the dynamics of the city council change and evolve as well as the amount of construction projects occurring within the City, the amount of communication and demands of some council members became overwhelming.</p> <p>The final act which brought forth this investigation was the request / direction of Council Harms to have public works employees perform work on private property following the Derecho.</p>
September 1, 2020	Councilor Harms and Councilor Skeries demanded that work cease on the College Drive project because they did not like the configuration of the sidewalk on the SE corner of Plaza Circle and College Drive. They bring together members of the Public Works Committee and residents on the project to get their opinions on what should be done.

Fall 2020

After receiving the complaint of misuse of city equipment, interference of operations by city council members with the public works department, an investigation was requested and recommendations sought to alleviate the hostile work environment many employees sense and improve the efficiency of the public works department.

33-7440-2730 5104

THREASE HARMS

DATE 10-15-20

PAY TO THE ORDER OF City of Windsor Heights \$ 8.00

Eight and ^{no} 100/100 DOLLARS

FOR 79th St. Baricade

[Signature]

33-7440-2730 5105

THREASE HARMS

DATE 10-15-20

PAY TO THE ORDER OF City of Windsor Heights \$ 1,140.00

One thousand one hundred forty and ^{no} 100/100 DOLLARS

FOR Heartland Youth Club

[Signature]

Administrator Arentsen's Sent E-Mail Review

	Total E-Mails Sent	Loffredo	M. Jones	Skeiers	Harms	J. Jones	Burgess	Other	All Council
May Total	33	5	2	5	0	4	20	16	6
June	59	18	33	31	5	14	87	43	41
July	206	26	22	35	5	19	121	75	37
August	168	20	23	11	4	3	104	66	34
Individual Total	466	69	80	82	14	40	332	200	118
Cumulative Total		187	198	200	132	158	450	318	

** Pleaes note the individual total is not inclusive of the "All Council" column.*

** Example, for total e-mails sent to Loffredo the number would be 80 + 118 = 198 for total e-mails sent my Arentsen*

Windsor Heights City Council Timeline

August 20th, 2020	Investigation is Initiated
Week of August 24th	First Interviews begin taking place with Public Works Staff
Week of August 31st	Interviews continue with Public Works Staff
Week of September 7th	Interviews continue with City Staff
Week of September 14th	Interviews continue with City Staff
Week of September 21st	Interviews continue with City Staff
Week of September 28th	E-mails to those not interviewed yet requesting dates and times for Interviews
Week of October 5th	Attempt to schedule those not interviewed
Week of October 12th	Received Notification of Councilor Harms decision to not participate in investigation
Week of October 19th	Attempt to schedule those not interviewed
Week of October 26th	Complete Interviews with Reaming Staff
November	Begin Work on Final Report - Delayed for COVID related Complications
December 7th	Preparation and Release of Final Report