

INVESTIGATION REPORT - DRAFT

City of West Linn/City Councilor – March 27, 2018

BACKGROUND

I was retained by the City of West Linn to perform an investigation into allegations raised by a citizen-volunteer, Complainant, concerning the conduct of a City Councilor, Respondent. All witnesses were admonished to refrain from discussing the investigation while it was ongoing and that they were protected from retaliation for speaking to me in good faith on the subjects we discussed. I admonished Respondent to refrain from engaging in behavior that could be perceived as retaliatory. All interviews were recorded.

ALLEGATIONS

1. Complainant's Complaint to the City Council, February 5, 2018

Complainant is a citizen of West Linn and a volunteer on the City's Committee for Citizen Involvement since February 2017. She alleges she was subjected to unwanted sexual advances from Respondent throughout 2017 and she came to the City Council meeting on February 5, 2018 to articulate this allegation.¹ In this statement to the Council, Complainant:

- Identified herself as a resident and volunteer in the City of West Linn;
- Stated she believed there was no safe process for victims to address sexual harassment by elected officials;
- Stated her belief that elected officials underwent no training, had no behavior guidelines or accountability (other than a recall vote) and that there were no tools for victims of harassment in public service;
- Called on the Council to prevent sexual harassment and abuse by elected officials;
- Stated she herself, while a member of the Committee for Citizen Involvement (CCI), deflected repeated and unwanted sexual advances from Respondent;
- Believed there was no guarantee that she could remain anonymous if she made a complaint to City Staff and so made a public complaint to alert the community to the truth about their public officials;
- Stated she believes she has been sexually harassed by Respondent; and
- Asked the Council to conduct an investigation and to take steps to prevent misconduct on the part of elected officials.

2. Specific Allegations

When I interviewed Complainant, she alleged:

- Respondent developed a relationship with her and in the context of that relationship, made inappropriate comments:
 - Respondent made a reference to his performance in bed in the event their relationship got that far;
 - Respondent invited her to his home, offered her intoxicants and invited her to stay the night;
 - Respondent asked her to be his campaign manager so he would have an excuse to spend time with her and his wife wouldn't suspect anything;

¹ http://westlinn.granicus.com/MediaPlayer.php?view_id=&clip_id=880&meta_id=37885 at approximately four minutes.

- Respondent told her he was infatuated with her and talked about his difficulty “controlling his urges” around her;
- Respondent made or implied inappropriate offers to her, including to pay for and accompany her on trips to Europe and Hawaii and to loan her money.
- After Complainant made her public complaint, Respondent possibly colluded with individuals who attempted to persuade her to drop her complaint; and
- After Complainant made her public complaint, she was not voted in as the Chair of the CCI and voted out as Vice Chair of the CCI.

FINDINGS AND CONCLUSIONS

1. Background

Complainant is a citizen of West Linn and joined the CCI in February 2017 at the urging of Respondent, whom she met in November 2016 at a campaign party for Mayor Axelrod. Complainant is 29 years old. Respondent is 74. The CCI met weekly or biweekly throughout 2017. Respondent was the Council representative to this committee and attended the meetings along with Mayor Axelrod, Complainant and the other volunteer members. Although Respondent enjoys a certain status as an elected official, he exercised no actual control, power or authority over Complainant. Complainant does not claim he did.

2. Development of Complainant and Respondent’s friendship

Respondent sought Complainant out and spent time talking to her after CCI meetings. Over time, Complainant and Respondent developed a friendship which included aspects of mentorship and personal confidences. Complainant told me she looked upon Respondent as an older friend or a sort of grandparent figure. Complainant confided in Respondent about personal matters over the course of their relationship.

Respondent told me he viewed his relationship with Complainant as a mentoring relationship with elements of flirtatiousness. Respondent said Complainant asked him if she could manage his campaign for reelection in one of these conversations after a CCI meeting soon after Complainant joined the CCI. Respondent this set off “alarm bells” in his mind. Respondent told me that he believed Complainant was flirtatious because offering to manage a campaign for an elected official is a compliment at a deep level.² However, Complainant never did anything objectively flirtatious; the only thing Respondent identified when I asked him what she specifically did to be flirtatious was her offer to be his campaign manager. Complainant did not invite nor reciprocate any flirtatious behavior. Respondent’s judgment that Complainant was flirtatious with him was mistaken.

Complainant told me Respondent invited her to his residence to continue a conversation after a CCI meeting. Complainant was not sure of the timeframe of this visit to Respondent’s home but thought it was sometime in the spring of 2017. Complainant accepted his invitation and drove herself in her personal vehicle to Respondent’s residence. Respondent lives on the banks of the Willamette River and has a “treehouse” overlooking the river which is accessible from the back deck of his home along a wooden path. Apparently, there is a tree growing through the structure and there are chairs to sit in. Complainant said the setting was a bit more private than she had anticipated upon accepting Respondent’s invitation. Complainant also expected his wife to be home, but Respondent’s wife was not present the first time they went to his home.

During this first visit to Respondent’s home, they spent time talking in the tree house drinking wine. Complainant believes she talked to Respondent about her personal life as well as her professional interests. She was not sure how long she stayed at Respondent’s home on this occasion but agrees that she stayed late into the night.

Respondent believes Complainant came to his home a total of four times, including the first visit, one in July 2017 and another time in the summer between July and September 2017. Complainant also specifically recalled a visit to Respondent’s residence in November or December 2017.

² Respondent said that if a man asked to manage his campaign, he would not take that comment as flirtatious, but would wonder if there was another agenda if they didn’t know each other well.

3. Alleged Objectionable Incidents³

a. "Connection"

During the first visit to Respondent's treehouse, Complainant told me Respondent said to her that he felt they had a good personal connection and he thought she was a good listener. Complainant believed this was on the first occasion they went to the tree house and said it gave her "alarm bells." Complainant continued to visit Respondent's home two or three more times after this first occasion when she reporting having "alarm bells." I do not view this comment as sexual in nature.

b. Performance in Bed

During a subsequent visit to the treehouse (possibly in July 2017, according to Respondent), Complainant said Respondent told her he was a poor performer in bed "in case it gets that far." Again, Complainant could not recall how long she stayed at his home, but Respondent told me they spent most of the night in the treehouse on a night in July 2017 talking and drinking wine until almost sunrise. Both agree there was one night they talked until almost sunrise, watched the moon rise over the river and engaged in deeply personal conversation.

During this conversation, Respondent told me Complainant related a specific story to him about a past sexual encounter. He said after she finished this story, he remarked that he was probably the worst lover in the world, essentially because he didn't know what else to say.

c. Invitation to spend the night.

Complainant alleged Respondent invited her to his home, offered her intoxicants and asked her to spend the night. However, when she explained the details to me, it transpired that Respondent offered her intoxicants but she declined saying she had to drive home whereupon Respondent offered her a guest bedroom. On these facts, Complainant did not claim Respondent asked her to spend the night with him (i.e., to have a sexual liaison); he was simply offering her a guest bedroom in his home.

Respondent told me Complainant spent the night in a guest bedroom in July 2017 on a night when they had consumed a great deal of wine and she didn't want to drive.

The first time I interviewed her, Complainant did not tell me that she spent the night at Respondent's home. The second time I interviewed Complainant, she agreed she spent the night in one of Respondent's guest bedrooms because she had consumed too much wine to drive.

d. Invitation to go to Hawaii

In August 2017, Complainant went on vacation and asked Respondent to drive her to the airport. During this ride, Complainant said Respondent asked her to go to Hawaii with him and offered to pay for the trip.

Respondent told me that he believed travel would be good for Complainant. He said he talked to her about going to Europe and going to Hawaii for this reason. As to Hawaii, he said he had a friend he could visit, so he and Complainant could travel together but go their separate ways once they reached Hawaii. Respondent said he believed these conversations occurred in the context of trusted friend to trusted friend. Respondent did not deny he would have traveled with Complainant had she been open to doing so.

e. Campaign Manager

In the summer of 2017, Complainant claims Respondent asked her to be his campaign manager so they would have an excuse to spend time together. Respondent claims Complainant asked him to be his campaign manager early on in their relationship. When I asked Complainant about this in my follow up interview, her statement changed somewhat. She told me she didn't quite remember who brought up the campaign manager role but that it was not her intention to offer to become Respondent's campaign manager.

³ I have attempted to arrange these incidents more or less in chronological order. Neither Complainant nor Respondent was confident with respect to the time line of events.

f. Offer to lend money

Complainant was between jobs in the fall of 2017 and told me Respondent offered to lend her money (which she did not accept). Respondent agrees he offered to lend her money when she was between jobs. He said he has done this before with people in need.

g. Complainant articulated a boundary in November 2017

Complainant acknowledged she had not told Respondent his remarks were offensive nor given him any overt indication that she did not enjoy his comments. In early November 2017, Complainant said Respondent made a comment she considered to be inappropriate (she could not recall what it was) and she told him not to make comments to her that he would not make in front of his wife. Complainant viewed this as a clear boundary she drew for Respondent. Complainant said Respondent told her in an elevated voice, "Well, let's face it, were not having an affair."

Respondent told me he did not recall Complainant telling him not to say things to her he would not say in front of his wife but said it was not out of the question that she would have told him this.

h. Discussion of European vacation

After Complainant drew this clear boundary for Respondent, she went to his home on one more occasion when Respondent's wife was not present, likely in November or December 2017. On this occasion, they sat in Respondent's living room talking and she was telling him about a trip to Europe she planned to take in April 2018. Complainant said Respondent asked her if she needed a vacation and they talked about going to Europe. Although Respondent did not come out and say this directly, Complainant was left with the impression Respondent was offering to pay for a trip to Europe for her and him together. Complainant said she dismissed this idea, but she wasn't extremely uncomfortable with the statement despite viewing it as inappropriate.

Respondent told me he did talk about traveling to Europe with Complainant and possibly offered to accompany her but was not sure if he did or not.

i. "Urges" and "infatuation" comments

In January 2018, the CCI was working on a document which would combine sections written by the members. Complainant said Respondent asked Complainant to work on it with him after a CCI meeting while at City Hall. During this conversation, Complainant said Respondent talked about how it felt like they were having an affair because of their long conversations in his treehouse, watching the moonrise together and drinking wine and said something about not being sure if he could "control his urges." Then Respondent asked, "would that be a problem for you?" Complainant interpreted Respondent to be asking if controlling her urges would be a problem and told him it would not, then returned the conversation to the document.

Complainant suggested working on the document by herself or involving another CCI member but said Respondent discouraged her from doing this.⁴ Complainant claims Respondent asked her to edit the document at his house, and she suggested working at Starbucks. At the end of this conversation, Complainant said Respondent made a comment about wanting her to meet his wife saying (according to Complainant), "Because it would be easier for [Respondent]." Complainant asked him what he meant, and he said if Complainant met his wife, his wife wouldn't be suspicious and it also might make him less infatuated with Complainant.

Complainant did not confront Respondent in the moment other than to try to deflect his suggestions about working together during this conversation. However, it was this conversation which persuaded her that he would not listen to her or respect her boundaries.

Respondent agrees he could have made a comment about controlling his urges but he believes they had this conversation in July 2017. He said that one of the times she came to his home in July, he said something to the effect that these was no danger in them being this close unless she had some kind of grandfather fetish because nothing was going to happen.⁵ Respondent said he could have also said something about controlling his urges at this time. Respondent did not recall telling Complainant he was infatuated with her. He said he was infatuated with the attention he received from her. Respondent also agreed it was possible he told her he was infatuated with her.

⁴ The CCI minutes specifically reference Complainant working on this document with another CCI member, not Respondent.

⁵ Respondent specifically denied Complainant herself used the phrase "grandfather fetish."

4. Complainant's complaint to the City

In the fall of 2017, Complainant took a friend into her confidence about her concerns with Respondent. This friend went to the City and spoke to City staff who alerted the HR Director. The HR Director reached out to Complainant. Complainant did not return multiple calls from the HR Director.

By January 2018, Complainant was more willing to come forward (after the "urges" conversation). Complainant knows Mayor Axelrod personally and decided to reach out to him to ask about her options. Mayor Axelrod told me he outlined her options⁶ and also explained to Complainant that neither he nor the council had legal authority to remove Respondent from office since he was a publicly elected official; Respondent could only be removed from office through a recall vote by those who elected him.

Complainant told me she went away from this conversation believing the only options she had were to do nothing or to make a complaint to Human Resources which would be a public process with no policy or procedures. Complainant decided to go to the City Council meeting and tell her story.

5. Third party's attempt to broker an agreement between Complainant and Respondent

A West Linn resident and Complainant met at an event for West Linn volunteers at the end of January 2018. They disagree exactly on what was said when they met but agree that they had a follow up meeting at Willamette Coffee on Saturday Feb 10 at 10:00 am.⁷ During this meeting, they also agree that the conversation turned fairly quickly to Complainant's claim against Respondent.

This West Linn resident made a statement to Complainant to the effect that he believed those with money were successful in defending these kinds of claims and noting that she did not have the resources to press her claims. Complainant was intimidated by this remark. In addition, he broached the idea of an agreement between Respondent and Complainant to avoid an investigation and asked Complainant to come to his home so they could type up the terms of the agreement on his computer. She agreed and accompanied him to his home where they agreed to some bullet points and agreed this resident would present them to Respondent. Based on the notes this resident voluntarily provided to me, it was clear someone had already been appointed to conduct the investigation when these conversations were taking place.

This resident then met with another resident and both of them went to Respondent's home to talk to him about what would be agreeable to Respondent and also satisfy Complainant to avoid an investigation. Later that day, Complainant asked her former boyfriend to intervene with this West Linn resident and ask him not to interfere.

Both Respondent and this resident agree that Respondent never asked this resident to intervene. The resident asserts he did so out of a desire to be helpful to the City and allow residents and the City to focus on an upcoming matter of importance to the City. I find the resident credible and credit his assertion he undertook to negotiate this agreement on his own without being prompted by Respondent.

Based on all of these factors, it appears that this resident attempted to intervene and negotiate an agreement between Complainant and Respondent. Complainant was initially open to the idea and voluntarily accompanied this resident to his home to draft the salient points of the agreement. Thus, what could have appeared to be an attempt to interfere with a witness in an investigation was actually a situation in which Complainant welcomed this resident's offer to broker a negotiation and willingly engaged in the negotiation.

6. Complainant was not voted in as Chair of the CCI nor was she retained as Vice Chair after making a complaint about Respondent

On February 6, 2018, the CCI discussed the election of Chair and Vice Chair of the Committee. At that meeting, Mayor Axelrod suggested Complainant as Chair since she had been serving as Vice Chair since October 3, 2017.⁸ Complainant was late to this meeting and had not yet arrived. The Chair of the CCI did not wish to vote Complainant in as Chair in her absence because no one knew if she would accept the nomination. The CCI Chair also asked if anyone had other

⁶ Mayor Axelrod outlined three options: 1) handle the matter privately; 2) make a complaint to Human Resources which would conduct an investigation; and 3) hand the matter publicly.

⁷ The resident believes Complainant offered to manage a possible campaign for office for him. Complainant doesn't believe she offered to be his campaign manager, but said she was interested in helping him if he ran for office.

⁸ Mayor Axelrod was in attendance at the February 5, 2018 Council work session where Complainant made her allegations against Respondent and this suggestion of Complainant for Chair followed that complaint.

ideas for Chair and Vice Chair, then deferred the vote to the next meeting.⁹ Later in the meeting, when Complainant had arrived, the subject was revisited. Complainant told the CCI that she felt confident as a Vice Chair but did not know if she was the best suited for Chair. She did tell them she would accept the position if she was nominated and voted in but said she would not suggest herself.¹⁰

At the February 13, 2018 meeting, another member (not Complainant) was unanimously elected as Chair by an open vote with none opposed, meaning Complainant also voted for this person as Chair.¹¹ With respect to the vote for Vice Chair, even though Complainant had indicated a willingness to continue to serve, the (now former) Chair of the CCI nominated another member in addition to Complainant as a candidate for Vice Chair. This newly nominated member joined the CCI on November 28, 2017 and attended seven out of the eight meetings the CCI held since that time. Because the nomination for Vice Chair was contested, the committee held a private vote by paper ballot. Complainant lost the Vice Chair position by a vote of 5 to 2.

Complainant contends that almost everyone voting during this meeting is a political ally of Respondent. She also contends that it is typical for CCI officers who wish to continue to serve to be elected to a new term of office and she believes she was not voted in as Vice Chair for a second year because of her complaint about Respondent the previous week.

According to an employee who has staffed the committee since 2016, it is typical for the Vice Chair to become the Chair on the CCI. A review of the minutes for the CCI shows that the Vice Chair of the CCI in 2016¹² became the Chair in 2017 (and was the person proposing someone other than Complainant for both Chair and Vice Chair on February 13, 2018).¹³ However this employee also indicated that the roles are largely responsible for meeting management and timekeeping.

Particularly given the conversation the previous week on the CCI suggesting Complainant as Chair and Complainant's own willingness to continue serving, it seems strange that a member who was new to the CCI would be voted in as Vice Chair. However, there also does not appear to be any material harm done to Complainant by the CCI's vote against her for Vice Chair. She remains a member of the CCI, albeit without the title of Vice Chair, which is largely a timekeeping role according to staff. Finally, the CCI is a citizen run committee with the power to elect its own officers. The City of West Linn has no power to control the CCI in this respect.

STANDARDS

Complainant is a volunteer for the City of West Linn. She has never been an employee. Nevertheless, I choose to refer to some of the standards for sexual harassment in employment to evaluate her claims against Respondent. For example, it seems useful to consider the concepts of "welcomeness" (i.e., did the Complainant welcome the behavior?), whether the alleged harassment was "severe or pervasive" (so as to create an intimidating or offensive environment overall) and whether Respondent had any power over Complainant pursuant to his status as an elected official (such that Complainant would be required to endure the behavior). This in no way suggests that I believe the City is held to this legal standard but is simply a way for me to apply well-accepted standards to the issues in this case.

CONCLUSIONS

1. The CCI has authority to make its own decisions about its officers without oversight by the City of West Linn.
2. Complainant entertained the possibility of a negotiated agreement with Respondent brokered by a third party and then decided she did not wish to pursue this potential agreement. Complainant was not coerced into this negotiation.

⁹ https://westlinnoregon.gov/sites/default/files/audio/2018.02.06_CCI.MP3 at 3:55 minutes.

¹⁰ https://westlinnoregon.gov/sites/default/files/audio/2018.02.06_CCI.MP3 at 84:20 minutes.

¹¹ https://westlinnoregon.gov/sites/default/files/audio/2018.02.13_CCI.MP3 at 40:07 minutes.

¹² https://westlinnoregon.gov/sites/default/files/fileattachments/community/meeting/10886/ci_minutes_2016-05-17.pdf. The individual voted as Vice Chair in this meeting was later selected as CCI Chair and served in 2017, but the meeting minutes where this was voted on do not appear on the West Linn meetings website (<https://westlinnoregon.gov/meetings>).

¹³ Minutes available on the website do not go further back than April 2016.

3. Respondent has no actual or apparent power or authority over Complainant and no ability to control her actions comparable to a supervisor in the employment context.
4. Respondent is an elected official, not an employee of the City. Complainant is a volunteer of the City. While serving the City of West Linn in their capacities, they met and developed a friendship over the course of 2017. This personal friendship was characterized by interpersonal trust and included intimate and personal conversations largely conducted at Respondent's personal residence. Complainant viewed Respondent as a mentor/grandfatherly figure. Respondent had an unfounded belief that there was a flirtatious element to their relationship which Complainant neither initiated nor reciprocated. He also believed he was mentoring her. I find their relationship was mutually welcomed.
 - a. Both Complainant and Respondent told me they had "alarm bells" about each other. I do not credit these claims. Respondent continued to seek out Complainant's company, inviting her to his home. Complainant continued to accept these invitations and come to his home. They drank wine and stayed up talking until the early hours of the morning. Respondent invited Complainant over to his house when his wife was not home and without telling his wife about it. Complainant went to Respondent's home knowing his wife would not be there.
 - b. Complainant was never a "captive" audience of Respondent's. She drove herself to his home on up to four occasions. Every time they were alone together, she had access to her car. After the first time she went to his home, she was aware of the context (i.e., the privacy of the treehouse) and the fact that Respondent's wife would not likely be there.
 - c. Complainant trusted Respondent enough to confide in him about her failed relationship, to seek out his company at his home, to sleep over at his home and to ask him to drive her to the airport in August to save transportation costs.
 - d. Even after Complainant told Respondent not to say things to her he would not say in front of his wife, Complainant went over to Respondent's house one more time, drinking wine and talking with him about possible trips to Europe.
5. In the context of their personal, welcomed relationship, Respondent made up to six comments to Complainant which she found offensive between February 2017 and January 2018. Respondent's intent in making these comments was likely his own erroneous belief that there was some kind of flirtation in existence between them. Respondent does not deny he made these comments; rather he says he does not recall making them, but it is possible he did, or he believes the context was such that the comments were appropriate. I find he made the comments described by Complainant. However, I also find that context matters, and Complainant was not wholly forthcoming about the context of the comments (i.e., made in the course of long, intimate conversations into the night while drinking wine). Specifically, Respondent made the following comments to Complainant while they were at his home drinking wine during the course of personal conversations:
 - a. Respondent mentioned his performance in bed;
 - b. Respondent made comments to Complainant about his wife being suspicious of them; and
 - c. Respondent offered a loan to Complainant and discussed possible trips with her.

In addition, after a CCI meeting, Respondent made a comment to Complainant about controlling his "urges" and being "infatuated" with her.

Respondent did not ask Complainant to spend the night with him, he offered her a guest bedroom when she was too intoxicated to drive.

6. Based on what Complainant described to me, Respondent never made a sexual advance towards her. Rather, Respondent made offensive or borderline offensive comments which were intended as flirtation.
 - a. For example, Complainant claims he mentioned his performance in bed "in case it gets that far" and said he was "infatuated" with her. Assuming he made the comments precisely the way she relates them, these are no more than an attempt at flirtation, not a direct sexual advance. Furthermore, I find that Complainant did not personally view one of these comments (the performance comment) as an offensive sexual advance because after he made it, she continued to see him alone at his home and stay late into the night talking and drinking wine with him.

- b. Respondent did not ask Complainant to go to Europe and Hawaii with him on a vacation. She said he implied it. She also told me she was not offended by the Europe vacation conversation. However, Respondent did not deny he discussed the possibility of traveling with Complainant.
 - c. Respondent did not make a sexual advance to Complainant when he asked her to stay the night. He was offering her a guest bedroom because she drank too much wine to drive. She accepted this offer. This was not a sexual advance.
 - d. Respondent offered a loan to Complainant and she did not accept it. This is not a gender based action.
7. Respondent made up to six comments to Complainant which she found offensive, all but one in the context of intimate personal conversations while drinking wine at his personal residence. One was in the context of conducting CCI business. None of these comments are severe. Furthermore, six comments made over the course of a year do not constitute a “pervasive” sexually harassing environment, especially given the overall welcomed context of the relationship between Complainant and Respondent.