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MEMORANDUM

TO: Kristina Handt, City Administrator

FROM: Sarah J. Sonsalla, City Attorney

DATE: July 15, 2016

RE: Censure of Council Member Bloyer

At the meeting on July 5, 2016, the City Council adopted Resolution No. 2016-60, which censured Council Member Bloyer. The Resolution imposed restrictions on Council Member Bloyer, including that he may not interact with any member of City staff without another council member present, he must direct all questions during City Council meetings to the chair and that he be required to participate in training on handling of confidential information. I was unaware of and therefore did not have the opportunity to review the resolution prior to it being adopted by the Council.

Council Member Bloyer has asked whether the City can legally impose these restrictions on him. I have consulted with the League of Minnesota Cities and independently researched the issue and the answer to this question is that the City should not impose these restrictions on Council Member Bloyer because they go beyond the scope of a censure and cannot be enforced.

The dictionary definition of a censure is “limited to expressing severe disapproval of (someone or something), typically in a formal statement, but not to discipline or punish.” In this case, the resolution censuring Council Member Bloyer not only expresses the Council’s disapproval of his behavior but also imposes restrictions that are in the form of a penalty or deprivation for his behavior. That goes further than the Council expressing its disapproval of Council Member Bloyer’s behavior.

The restrictions that are being imposed on Council Member Bloyer limit his rights to hold and enjoy his office as a city council member. The rule is well established that an elected official is entitled to hold that office without any restrictions. State v. Magie, 183 Minn. 60, 63-64 (Minn. 1931). Furthermore, under the First Amendment, a council member’s speech (which is considered highly protected political speech) also may not be restricted. Goward v. City of Minneapolis, 456 N.W.2d 460, 464 (Minn. Ct. App. 1990).

Based on the above, if Council Member Bloyer violates the restrictions that have been imposed on him, the City will not have a legal basis to be able to enforce them. Because there is no legal basis for the City to be able to enforce the restrictions against Council Member Bloyer, it is my recommendation that they be removed.

Please contact me if you have any questions regarding this information.