SPECIAL CITY COUNCIL MEETING

Public Safety Bldg, Training Room, 825 41st Ave NE
Wednesday, September 28, 2022
2:00 PM

AGENDA

ATTENDANCE INFORMATION FOR THE PUBLIC
Members of the public who wish to attend may do so in-person, by calling ***1-312-626-6799*** *and* ***entering meeting ID*** **856 1199 7608** *or by Zoom at* **https://us02web.zoom.us/j/85611997608***. For questions please call the Administration Department at 763-706-3610.*

CALL TO ORDER/ROLL CALL

ITEMS FOR CONSIDERATION

1. **City Council Receipt and Consideration of the Investigative Report Regarding City Councilmember Kt Jacobs.**

ADJOURNMENT

Auxiliary aids or other accommodations for individuals with disabilities are available upon request when the request is made at least 72 hours in advance. Please contact Administration at 763-706-3610 to make arrangements.

BGS BARNA, GUZY & STEFFEN
Attorneys at Law

763.78 Item 1.

200 Coon Rapids Blvd. NW
Suite 400
Coon Rapids, MN 55433

BGS.com

MEMORANDUM

TO: Columbia Heights City Council
FROM: Scott Lepak, Assistant City Attorney
RE: City Council report
DATED: September 23, 2022

I reviewed the report from the investigator. The next step in the process is to determine how the City wishes to proceed.

The report is likely a public document

As an initial matter, it is my opinion that the report is ultimately a public document. The presumption is that all data is public unless otherwise indicated in the government data practices act. I did not locate an exception that would make this document private. The portion of Roberts Rules of Order suggested than in the private sector, there may be some limitations on disclosure of private details associated with a censure or other discipline. Nevertheless, it is my opinion that the government data practices act dictates a contrary result and this would be a public document.

Potential courses of action

Now that the City has the report, the Council will need to decide how to proceed. As an elected official, the governing authority is the City Council, including the Mayor. Ultimately, it will be their call. There are no rigid rules on what must take place so the City has a great deal of discretion. Here are some options:

A. Do nothing with the report. The Council is not required to take any action.

Pro

This option would likely lead to less adverse publicity in the short term.

This option would be more favorable to the council member at issue.

Con

This option is least likely to result in the council member correcting her behavior.

This option would be most likely to lead to reduced accountability of council members and potentially perceived lack of control/procedure by the Council.

Not taking action does not necessarily preclude the City from being portrayed in a bad light.

B. Private censure. This option would consist of the mayor meeting with the council member for a private censure and counseling. An option within this option would be a written private censure.

Pro

This option would likely lead to less adverse publicity in the short term – particularly if there are no written censures (oral censure).

This option would be more favorable to the council member at issue.

In the event that the Council member is openly amenable to "learning from past mistakes" this option may provide the best opportunity to retain/achieve cohesiveness on the council.

If there is subsequent actionable misconduct by the council member, this would provide some protection by the City against a charge for failure to act – particularly given the limitations on removal.

Con

There is no authority for the mayor to take this action. Note that council members' statutory duties are to be performed, almost without exception, by the council as a whole. For example, the council, not individual members, must supervise administrative officers, formulate policies, and exercise city powers. As individuals, council members have no administrative authority.

Given this limitation on mayoral authority, this option may carry no weight other than symbolic.

This option is less likely to result in the council member correcting her behavior.

This option may also lead to reduced accountability of council members and potentially perceived lack of control/procedure by the Council – particularly if the matter becomes public.

As noted above, not taking public action does not necessarily preclude the City from being portrayed in a bad light.

C. Public censure. This is the most public and open action available to the council. A sample based on the report is attached.

Pro

This option is most likely to result in the council member correcting her behavior.

This option provides the most public display of accountability of council members and control/procedure by the Council. While the initial negative public perception may occur, long term implications of a council in control may ultimately be beneficial.

If there is subsequent actionable misconduct by the council member, this would provide the most protection by the City against a charge for failure to act – particularly given the limitations on removal.

Con

This option would likely lead to the most adverse publicity in the short term.

This option may lead to the most alienation by the Council member which is a negative only if the council member has the potential to remain/become a productive part of the council as a whole.

D. Removal from appointed bodies such as boards and commissions within the council. This may be taken concurrent with the options noted above.

E. Removal from office.

The City does not likely have the option to seek to remove the individual from office except through a recall election which is a citizen rather than city initiated process. Misconduct of a public officer or employee, as defined by law, is a gross misdemeanor.[1] 609.43, 609.02, Subd. 4. Therefore, a misconduct conviction is not an infamous crime, and does not automatically result in an elected official's removal from office.

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[1] **609.43 MISCONDUCT OF PUBLIC OFFICER OR EMPLOYEE.**
A public officer or employee who does any of the following, for which no other sentence is specifically provided by law, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both:
(1) intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the office or employment within the time or in the manner required by law; or
(2) in the capacity of such officer or employee, does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity; or
(3) under pretense or color of official authority intentionally and unlawfully injures another in the other's person, property, or rights; or
(4) in the capacity of such officer or employee, makes a return, certificate, official report, or other like document having knowledge it is false in any material respect.

RED CEDAR CONSULTING LLC

CITY OF COLUMBIA HEIGHTS
INVESTIGATIVE REPORT

Date: September 21, 2022

To: Kelli Bourgeois
City Manager

From: Isaac Kaufman
Manager & Lead Investigator, Red Cedar Consulting, LLC

Re: Investigation and Findings – City Councilmember KT Jacobs

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Ms. Bourgeois:

This memorandum provides a summary of the external and independent complaint investigation that I conducted on behalf of the City of Columbia Heights ("City"). This investigation pertains to allegations that City Councilmember KT Jacobs made a phone call to City Council candidate Justice Spriggs, and that during that call KT Jacobs made inappropriate comments and asked inappropriate questions about Justice Spriggs' race and ethnicity.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Kay Lynn Jacobs, a.k.a. KT Jacobs, is one of five members of the Columbia Heights City Council. She was elected to the City Council in 2020 and is currently serving a four-year term that will expire in January 2025.

B. Justice Spriggs is a candidate for the Columbia Heights City Council. Following the August 9, 2022 primary, he is one of four candidates running to fill two seats on the Council. Justice Spriggs is currently a fourth-year student at the University of Minnesota medical school. In his campaign materials, Justice Spriggs identifies himself as *"biracial"* and mentions that his paternal grandfather was African American.[1]

[1] *See* https://www.justicespriggs.com/about

C. At the City Council's regularly scheduled meeting on Monday, July 25, 2022, Justice Spriggs spoke during the Community Forum portion of the meeting. Justice Spriggs reported that the day before (Sunday, July 24), he had received a call from a person who had given a falsified name, using a phone number linked to a Councilmember. Justice Spriggs reported that the person making the call had asked him numerous questions about his campaign for City Council, including questioning him about his biracial heritage. *See* Exhibit F.

D. Following the July 25 City Council meeting, KT Jacobs acknowledged that the call to Justice Spriggs had been made using her phone but asserted that the call had been made by an unidentified family member, not by KT Jacobs herself. KT Jacobs apologized for what had taken place and requested that the City Council immediately vote to censure her. *See* Exhibits H, J.

E. At a special meeting of the City Council on August 1, 2022, the Council voted unanimously (with KT Jacobs abstaining) to retain an independent investigator *"to investigate and determine if the allegations raised at the July 25, 2022 open forum and related actions thereafter violate the City Council Code of Conduct or reasonable expectations of conduct by a Columbia Heights City Council member." See* Exhibit K. On August 2, 2022, the City retained Red Cedar Consulting, LLC to conduct the investigation authorized by the City Council.

F. This Investigator took voluntary statements from the following individuals:

1. Justice Spriggs - Aug.15, 2022
2. Dan Spriggs (Justice Spriggs' father) – Aug. 16, 2022 (via Zoom)
3. KT Jacobs – Aug. 25, 2022

See Exhibits L, M, N.

G. Following the interview with KT Jacobs, the investigative record in this matter was closed.

H. For the reasons set forth in this report, the allegations against KT Jacobs regarding the July 24, 2022 phone call are sustained. This Investigator further finds that KT Jacobs has not been truthful during this investigation.

II. INVESTIGATIVE RECORD

The investigative record in this matter includes the following items, which are marked and submitted as exhibits to this report:

A. Screen shot from Justice Spriggs City Council campaign website – Message left by "Kathy Huff"

B. Screen shot from Justice Spriggs cell phone -- Caller ID "Kay Jacobs"

C. Screen shot from Justice Spriggs cell phone – record of incoming call from KT Jacobs, July 24, 2022 at 10:49 a.m. (2 hours 17 minutes)

D. Screen shots of sites listing phone number used by KT Jacobs for City Council business

E. KT Jacobs voice mail message to Justice Spriggs, July 25, 2022

F. Minutes of regular City Council meeting, July 25, 2022

G. Justice Spriggs Facebook post, July 26, 2022

H. KT Jacobs Facebook post, July 27, 2022

I. Justice Spriggs City Council campaign press release, July 29, 2022

J. Agenda packet for special City Council meeting, Aug. 1, 2022 (including July 29, 2022 letter from KT Jacobs)

K. Minutes of special City Council meeting, Aug. 1, 2022

L. Summary of Justice Spriggs voluntary statement, Aug. 15, 2022 (with signed Data Practices advisory)

M. Summary of Dan Spriggs voluntary statement, Aug. 16, 2022 (with signed Data Practices advisory)

N. Summary of KT Jacobs voluntary statement, Aug. 25, 2022 (with signed Data Practices advisory)

O. Campaign notes provided by KT Jacobs

III. POLICIES AND DIRECTIVES

City Council Handbook, Ch. 13 – Code of Conduct

The mayor and council members are dedicated to promoting values and integrity of local government and democracy and are committed to governing efficiently and effectively. After taking the oath of office as a city council member, they agree to conduct themselves in accordance with the following code of conduct:

- The professional and personal conduct of council members must be above reproach and avoid the appearance of impropriety. Members should refrain from abusive conduct, personal charges, or verbal attacks upon the character or motives of other members of the council, boards, commissions, staff or the public intended to disrupt and not further the City's business.

  . . . .

Ethical leadership is vital to the functioning of the City and to maintaining the public's trust and confidence in the City and the democratic process.

Key traits of ethical leaders:

. . . .

- Know the importance of conscientious and ethical government as a value in itself. Ethical council members do not use their office or authority for revenge, prestige, or personal gain. Ethical council members recognize that government is a human institution. As a result, the human motivations of those in government will determine if the government itself is effective or ineffective, good or bad, ethical or unethical. Ethical council members care enough to make a positive difference and then act accordingly.

See Exhibit J.

IV. FINDINGS AND CONCLUSIONS

Finding No. 1: Based on a preponderance of the evidence, the allegations against KT Jacobs regarding the July 24, 2022 phone call to Justice Spriggs are sustained.

A. Having taken the oath of office and served on the City Council for more than a year and a half, KT Jacobs is assumed to be aware of the City Council Code of Conduct and of the reasonable expectations that she engage in respectful and professional communications as a representative of the City.

B. The phone call that is the subject of this investigation was made at 10:49 a.m. on July 24 and lasted two hours and 17 minutes. *See* Exhibit C. Justice Spriggs and his father Dan Spriggs both report that they were seated at a table together when the call came in on Justice Spriggs' cell phone. Justice Spriggs used the speaker function on the phone, which allowed Dan Spriggs to hear the call. Based on Justice and Dan Spriggs' unrefuted descriptions of the call, the caller asked Justice Spriggs questions about his policy positions and questioned whether Justice Spriggs was old enough and had enough experience to be on the City Council. The caller also questioned whether Justice Spriggs' commitments to medical school and later to practicing as a doctor would leave him enough available time for the City Council. The caller then asked Justice Spriggs if he was *"really biracial"* and whether he had been raised in a white or black household. Justice Spriggs explained his heritage, including that his grandfather on his father's side had been black. The caller commented that *"that's not how that works"*. At the end of the call, Justice Spriggs asked if the caller was Councilmember Jacobs; after a pause of five or more seconds, the caller responded, *"No"*. *See* Exhibits L, M.

C. The principal issue in dispute in this investigation is whether the caller on July 24 was in fact KT Jacobs. For the reasons discussed below, this Investigator finds it more likely than not that the caller was KT Jacobs.

1. "Kathy Huff"

a. Justice Spriggs' campaign website includes a "Get Involved!" tab with a form for volunteers.[2] On July 24, 2022 at 7:36 a.m., a form was submitted electronically by a person identifying herself as "Kathy Huff". *See* Exhibit A. The phone number listed on the form (612-810-0512) is the cell phone number that KT Jacobs uses

[2] Join Our Campaign! (google.com)

for City Council business. *See* Exhibit D. The form submitted by "Kathy Huff" included the message, *"I would like to have a conversation with you about your campaign focus – please call me Monday, July 25 before 11 or between 1 and 4 pm. Thank you." See* Exhibit A.

b. Justice Spriggs reports that he had medical school commitments on the morning of July 25. He texted the number on the volunteer form, *"How about now?" See* Exhibit L. At 10:49 a.m., Justice Spriggs received the call from KT Jacobs' phone number with the caller ID *"Jacobs Kay". See* Exhibit B.

c. On July 25, 2022, KT Jacobs left a voice mail message for Justice Spriggs, stating in part, *"I think you may have received a call from my telephone yesterday from a family member of mine. . . a family member with some issues. . . . According to my phone, a call was made, and I know that she was in my office and going through my notes and stuff." See* Exhibit E.

d. Following the July 25 City Council meeting at which Justice Spriggs spoke during the community forum, *see* Exhibit F, KT Jacobs met with City Manager Kelli Bourgeois and City Attorney Jim Hoeft. On information and belief, KT Jacobs acknowledged to Bourgeois and Hoeft that the call to Justice Spriggs had been made using her phone but told them that the call had been made by her husband's niece who lives in Green Bay, Wisconsin. KT Jacobs declined to provide the niece's name or any additional information.

e. KT Jacobs reports that at a City Council training event on July 26, 2022, she apologized for the phone call to Justice Spriggs but reiterated that she had not made the call. *See* Exhibit N.

f. In a Facebook post on July 27, 2022, KT Jacobs wrote: *"[On] July 25, Mr. Justice Spriggs reported a concerning conversation he had recently with an individual who called him from my personal cell phone. . . . [T]he call to Mr. Spriggs was made by an extended family member who should not have had access to my phone and had no authorization to use it. . . ." See* Exhibit H. KT Jacobs reports that this statement was drafted with assistance from the League of Minnesota Cities. *See* Exhibit N.

g. At her investigative interview on August 25, 2022, KT Jacobs denied making the July 24 phone call to Justice Spriggs and again asserted that that call had been made by her husband's niece. KT Jacobs added that she had not been present during the call, nor had she directed or encouraged her husband's niece to make the call. KT Jacobs stated that she and her husband had decided not to make his niece available for an interview or to provide any contact information. When confronted with the name "Kathy Huff," KT Jacobs responded that that was the name of her husband's niece who had made the phone call. According to KT Jacobs, "Kathy Huff" is about 30 years old and has *"low-level mental health issues." See* Exhibit N.

h. This Investigator ran searches through three prominent people-finder aggregation sites (Truthfinder, Spokeo and Instant Checkmate). These searches revealed no

one named "Kathy Huff" in the specified age range (30) living in the Green Bay area.

i. KT Jacobs was formerly married to Robert Huff. When confronted with that information, KT Jacobs explained that her current husband's niece's name is actually spelled "Hough" – she asserts that it is a coincidence that her ex-husband and her current husband's niece have last names that are pronounced the same but spelled differently. *See* Exhibit N. But as noted above, the person who contacted Justice Spriggs on July 24, 2022 identified herself on the electronic form as "Kathy Huff". *See* Exhibit A.

2. In her investigative interview, KT Jacobs reported discovering that, prior to the phone call to Justice Spriggs, "Kathy Huff" had used her phone to send a text message to arrange the call. KT Jacobs speculates that "Kathy Huff" had gained access to her phone and sent this text message while KT Jacobs was in the shower. *See* Exhibit N. KT Jacobs has not provided a screen shot or other evidence of that purported text message. The record shows that "Kathy Huff's" initial contact with Justice Spriggs was through the volunteer form on his campaign website, not through a text message. *See* Exhibit A.

3. KT Jacobs reports that she was out shopping on the morning of July 24, 2022, during the time that "Kathy Huff" made her phone call to Justice Spriggs. She further reports that her husband was at work at Home Depot, leaving "Kathy Huff" alone in the house. KT Jacobs identifies multiple stores that she patronized that morning (Sam's Club, Walmart, Target, Cub Foods, Caribou) but reports that she made all her purchases in cash and cannot provide any receipts or credit card records. KT Jacobs is also unable to identify any witnesses to vouch for her whereabouts that morning. *See* Exhibit N.

4. Notes on Justice Spriggs' campaign

   a. KT Jacobs has provided a copy of notes that she had compiled regarding Justice Spriggs' campaign for City Council, including platform positions cut and pasted from the campaign website. The notes are typewritten, with a handwritten phone number at the top and other handwritten information in various places on the first two pages. KT Jacobs reports that the phone number (Justice Spriggs' number) is in her handwriting, while the remaining handwriting on the document is not.

   b. KT Jacobs reports that the campaign notes were on the desk in her office next to her phone while she was out shopping on the morning of July 24. KT Jacobs purportedly believes that "Kathy Huff" used the notes as a *"script"* for her call to Justice Spriggs.

   c. The number *"10:43"* is handwritten in the lower left corner of the first page of the document. This corresponds closely to the time when the call to Justice Spriggs was made (10:49 a.m.). No explanation has been provided why "Kathy Huff"

would write the time of the call on the corner of a document that KT Jacobs purportedly had left on her desk.

d. Although the legibility of the other handwritten notes on the document is poor, one of those notes appears to read, *"25% Afr. Dad 50% Mother White Grandfather 100%."* As previously discussed, Justice and Dan Spriggs report that the caller on July 24 had questioned Justice Spriggs' identification as biracial. The platform positions copied into the document from Justice Spriggs' campaign website mention that *"Justice will bring a new, diverse voice to the City Council"* – but, significantly, they do not specifically include Justice Spriggs' biracial identification. According to KT Jacobs, "Kathy Huff" was visiting from out of state, and neither KT Jacobs nor her husband had had any discussions with her about Justice Spriggs or his City Council campaign. If in fact "Kathy Huff" was using KT Jacobs' campaign notes as a script, no explanation has been provided as to how she would have obtained information about Justice Spriggs' biracial identification or what reason she would have had to ask questions on that specific topic.[3]

See Exhibit O.

5. In June 2022, the City held a public forum for candidates in the upcoming City Council election. Dan Spriggs reports attending a viewing party for that event at Murzyn Hall, where he was seated in the back of the room. Dan Spriggs reports that KT Jacobs was at a table near the front of the room with a group of other people, where he could hear her making comments about how Justice Spriggs was not qualified for the City Council, including that he was not really biracial. These comments, as reported by Dan Spriggs, were similar to comments that he heard made by the caller on July 24. *See* Exhibit M. KT Jacobs confirms that she attended the viewing party and that she saw Dan Spriggs there as well. She recalls raising the concern – as she had in the past – that Justice Spriggs would be too busy for City Council business while completing medical school, but she denies saying anything about Justice Spriggs' biracial identification. *See* Exhibit N.

6. Prior to the July 24, 2022 phone call, both Justice and Dan Spriggs had heard KT Jacobs speak at numerous City Council and committee meetings and other events. They both also heard the voice mail message that KT Jacobs left for Justice Spriggs on July 25. *See* Exhibit E. Based on this comparison, both Justice and Dan Spriggs are confident that the voice of the July 24 caller was KT Jacobs' voice. *See* Exhibits L, M.

7. The City Council scheduled a special meeting on August 1, 2022 to consider authorizing an investigation into the allegations raised by Justice Spriggs at the July 25 community forum. On July 29, 2022, KT Jacobs submitted a letter to the other

[3] Dan Spriggs reports that the caller on July 24 also criticized other Columbia Heights leaders, including Mayor Amada Marquez Simula, State Senator Mary Kunesh, and State Representative Sandra Feist. *See* Exhibit M. It seems highly unlikely that a relative of KT Jacobs visiting from out of state would voice strong opinions about those Minnesota political figures.

Councilmembers asserting that comments made by Mayor Simula on social media would *"mak[e] an investigation seem to be an intentionally punitive action rather than a fact-finding process."* KT Jacobs requested that the Council *"consider an immediate vote of censure."* In her investigative interview, KT Jacobs asserted that it was not her intention to avoid an investigation, but this is belied by the content of her July 29 letter. *See* Exhibit J. It is also noteworthy that KT Jacobs abstained from the vote authorizing this investigation, with all four of the other Councilmembers voting in favor. *See* Exhibit K.

D. This Investigator finds that in her comments to Justice Spriggs during the July 24, 2022 phone call – particularly questioning his biracial heritage and then misidentifying herself – KT Jacobs failed to conduct herself in accordance with the City Council Code of Conduct. KT Jacobs further failed to meet the City's reasonable expectations regarding respectful and professional communications.

<u>Finding No. 2:</u> Based on a preponderance of the evidence, KT Jacobs has been untruthful regarding the July 24, 2022 phone call.

Both prior to and during this investigation, KT Jacobs has repeatedly maintained that she did not make the July 24, 2022 phone call to Justice Spriggs. As discussed in detail above, based on a full consideration of the evidence in the record, it is more likely than not that KT Jacobs' assertions regarding the July 24 phone call have been untruthful. This Investigator finds that by making these repeated untruthful statements – and in addition to her conduct during the phone call itself – KT Jacobs has failed to conduct herself ethically and in accordance with the City Council Code of Conduct.

I am closing my file at this time but remain available to respond to questions or to provide further input.

Regards,

s/ Isaac Kaufman

Isaac Kaufman
Manager & Lead Investigator
Red Cedar Consulting, LLC

22-20