

Summary of Investigation Regarding City Employees' Sexual Harassment Complaints

See full 16-page report by Thomas L. Fleury of Keller Thoma, PC at:

[Fraser Mayor Scanned Report](#)

On May 1, 2017, Mr. Fleury was contacted by Mr. Wayne O'Neal, Interim City Manager for the City of Fraser, who advised Mr. Fleury that he had spoken with employees of the City who had complained about the behavior of Joseph Nichols and Matt Hemelberg. Mr. Fleury assessed that the **verbal complaints made, were valid harassment and/or sexual harassment complaints.**

He advised Mr. O'Neal that pursuant to the state and federal statutes, the employer is obligated to conduct an investigation as soon as they become aware of any such activity in the workplace. Failure to conduct the investigation would be considered a violation of the federal and state laws regarding sexual harassment in the workplace and therefore **exposes the City to substantial financial liability regarding such a complaint.**

By way of a City Council vote (4-3), Mr. Fleury was retained to perform the investigation.

SUMMARY FROM SOME INTERVIEW EXCERPTS

- Both men were described as "bullies"; the mayor is "extremely hard to stand up to".
- The mayor began with soft hugs and often, that soon turned into hugs that offended her. **He would hold her, grip her against his body, and hold her to his gut.**
- The mayor complimented her about a dress she wore; **he put his hand on her leg** and said how nice she looked. She moved away from him so he was no longer able to touch her.
- The mayor once said, **"I hate to see you go, but I like watching you leave"**. She believed it was a sexual innuendo and made her uncomfortable.
- Told Mayor Nichols **you cannot hug me**. People will talk and make assumptions. The mayor responded, "I don't care, let them talk. So what, who are they?"
- At times, conversations went beyond casual and become **totally unprofessional and of a sexual nature.**
- The mayor began to speak to her in a condescending way, so much that a resident asked, "Is Joe mad at you?"
- While pumping gas at Speedway, the mayor approached her with an **unwelcomed hug that was too long and too close** occurred, making her feel incredibly uncomfortable.
- The mayor was seen/heard telling a resident he did not agree with that he **"had her mom's mouth on his balls"**.
- Mayor Nichols once gazed at her, which she interpreted, in a sexual manner and stated, **"not everyone can wear leggings, but you can"**. He then revealed he had been at an event where a woman approached him. He then said, **"She had leggings on and her camel toe was in my face"**.
- While at Meijer she hears the mayor shouting, **"hey, pretty baby"** as if he were giving her a "cat call".
- The overall behavior displayed by Mayor Nichols is **"creepy"** in the way he hugs and things he says.
- Councilman Hemelberg massaged her shoulders and came so close to her that **she could feel his upper body on her back.**
- Both men like to play "mind games" and **will intimidate people** whenever they can.
- Both men treated her in a sexual manner that was **offensive and unacceptable.**
- Both Mayor Nichols and Councilman Hemelberg, came to the counter laughing. They brought their phones out and began to **show her pictures of half naked ladies, perhaps strippers.**
- Mayor Nichols and Councilman Hemelberg leave her alone, but she has over heard them use **vulgar sexual terms:**
 - *I'd like to bag that one (referring to a woman)*
 - *I'd like to screw that one*
 - *Councilman Hemelberg also made statements such as Joe is not getting anything at the bar.*
 - *They said to each other that they would like to "fuck ([specific first name] perhaps another City employee)."*
 - *They often use words "tits, "ass", "boobs", "screw" etc.*
- Their behavior was described as unacceptable at City Hall, are **both abusive, and total inappropriate**
- Why no complaints: "How do you deal with that? **I was scared; we are just the girls in the office and they can do it.**
- **Fearfulness** the investigation and their disclosure will cause Mayor Joe Nichols and Councilman Hemelberg to retaliate.

INVESTIGATION FINDINGS

- Sexual harassment is a form of sex discrimination that violates [Title VII of the Civil Rights Act of 1964](#). Title VII applies to employers with 15 or more employees, including state and local governments.
- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. **The law further prohibits any retaliation of any person making the complaint or participating in an investigation.**
- **All witnesses were found to be credible;** and with no ulterior motive against the mayor or councilman to participate in the investigation.
- The investigator found the accounts support the men were engaging in unwelcome verbal and physical conduct of a sexual nature. It was also pervasive, occurring on numerous occasions to different employees. **It interfered with the employee's employment and created and intimidating, hostile or offensive atmosphere.**
- Because of their high ranking positions their behavior clearly **demonstrates an abuse of their power.** This leads to an atmosphere that is toxic resulting in serious morale problems that eventually lead to lack of performance and employees leaving their employment.
- Further, **the mayor has already exhibited retaliatory behavior** toward one employee after she complained directly to him. Mayor Nichols has also exhibited this retaliatory behavior toward residents and councilpersons with whom he disagrees; therefore, **it appears the risk of retaliation against these employees is extremely high.**
- **If Mayor Nichols and Councilman Hemelberg were employees in managerial positions within the City of Fraser, Mr. Fleury would recommend termination of their employment.** Given they are elected officials that is not applicable. The City Charter needs to be followed by council to determine any disciplinary action.
- Mr. Fleury further noted that there was no evidence to suggest that the complaints were in any way motivated by current political activity.

On May 17, 2017, both Mayor Joe Nichols and Councilman Matt Hemelberg were each provided an email correspondence from Mr. O'Neal regarding the investigation; establishing times and places to meet with Mr. Fleury, the investigator. Response was slow; in the end, both men chose to not meet with Mr. Fleury and were securing their own counsel.