



Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: John Cotti, City Attorney

Date prepared: February 25, 2021 Meeting date: March 8, 2021

Subject: Investigation of Allegations in January 16, 2021 Letter from Cannata, O'Toole, Fickes & Olson (Mayor Pierson and Councilmember Farrer)

RECOMMENDED ACTION: At the request of Mayor Pierson and Councilmember Farrer, consider whether to hire an outside firm to investigate the allegations of harassment contained in the January 16, 2021 letter from Cannata, O'Toole, Fickes & Olson.

FISCAL IMPACT: There is sufficient funding in the Adopted Budget for Fiscal Year 2020-2021 in Legal Counsel – Professional Services (100-7005-5100) to cover the costs of an outside investigator.

DISCUSSION: On January 16, 2021, the City received a letter from Cannata, O'Toole, Fickes, & Olson containing allegations of harassment. At the request of Mayor Pierson and Councilmember Farrer, the City Council is being asked to consider whether to hire an outside firm to investigate those allegations of harassment.

ATTACHMENTS: January 16, 2021 Letter from Cannata, O'Toole, Fickes & Olson



Therese Y. Cannata
tcannata@cofolaw.com

January 16, 2021

By Email and U.S. Mail

John C. Cotti
Best Best & Krieger LLP
1230 Rosecrans Ave, Ste. 110
Manhattan Beach, California 90266-2482

Re: Reva Feldman, City Manager for the City of Malibu

Dear Mr. Cotti,

We represent Reva Feldman in connection with her employment as the City Manager for the City of Malibu, and specifically with regard to the unprecedented personal and professional attacks by Bruce Silverstein, a current member of City Council.

Ms. Feldman started her work for the City of Malibu in 2005, and was promoted to Assistant City Manager in 2009. In 2016, she became the City Manager. She serves at the direction of the City Council and has been generally praised for her hard work and successes. Until recently, she has been able to productively perform her duties and responsibilities.

Over the past weeks, dating back to November 2020, Ms. Feldman tried, without success, to address Mr. Silverstein's many requests and demands including his Public Records Act requests and various communications related to his taking his seat on the City Council. It was apparent with each successive email or call that his point was not the pursuit of information. Rather, he appears to be acting as a self-appointed "special prosecutor" in pursuit of his paranoid delusions about how the City of Malibu has or is operated through its representatives, including Ms. Feldman. While Ms. Feldman has been his main target for harassment, Mr. Silverstein has demonstrated that he will turn on and attack anyone who disagrees with him.

Ms. Silverstein ran on a platform to remove the current City Manager, and his political platform is his private affair. His incessant threats and attacks against a City employee, while he serves as a member of the City Council, is an entirely different matter. He has no right to constantly threaten or harass City employees who serve the City Council as a body and not individual councilmembers. He has no right to demand that the City Manager and her staff work exclusively for him while ignoring their many other duties to

the City. He has no right to demand special equipment such as a City-purchased cellphone or to interrogate the City Manager about whether she has ever granted favors or special requests to other councilmembers. He also has no right to demand that his communications with Ms. Feldman be tape recorded. He has no right to prepare a 100-plus page diatribe, filled with false and misleading statements about the City Manager and shove it into that City employee's personnel file without regard to the internal process and review by other Councilmembers and the City Attorney. When informed of this error in judgment, he published that same personnel complaint on his social media platform with reckless disregard for the truth or falsity of the claims and for the purpose of harming Ms. Feldman's professional reputation, in violation of Ms. Feldman's privacy rights.

As an initial matter, we note that as a newly elected member of the City Council, Mr. Silverstein should show deference and respect for those who can teach him the rules and procedures for getting the business of the City done. He has flatly refused to listen to anyone, especially Ms. Feldman. Moreover, he is, *without cause*, hostile, volatile, and unprofessional in his encounters with Ms. Feldman, City staff, and other Councilmembers. A few examples of what Mr. Silverstein has demanded in recent weeks illustrate the bizarre nature of the problem that Ms. Feldman now faces.

First, he demanded the right to tape record all conversations and meetings with Ms. Feldman, claiming (incorrectly) that his conversations with a City Manager had to be recorded in order to comply with the Brown Act. At the same time, Mr. Silverstein refuses to meet in person with Ms. Feldman, even with others present and safety protocols in place, claiming concerns about COVID-19. Yet, he meets in person with other City staff on request.

Second, after he declined a City-issued computer on grounds that it may invade his privacy, he became enraged when told that he could not have a City-issued cell phone. As an initial matter, he is woefully ignorant of the rules concerning the public's right to access his texts and emails no matter what device they are stored on. The problem with his cell phone request is that it was not in the City budget nor was a device available to all City Council members. Ms. Feldman referred to the proper process for obtaining that right, and Mr. Silverstein attacked the messenger, falsely claiming he is the victim of disparate treatment.

Third, he demanded all attorney-client communications for the past five years, which Ms. Feldman provided on a secure share drive link. Thereafter, Mr. Silverstein reported that he accidentally forwarded that link to someone (unnamed). Mr. Silverstein is an attorney and certainly knew the rules of securing such information. Notably, he has failed to identify the recipient or document any efforts to claw back the privileged information he disclosed.

Fourth, he has accused Ms. Feldman, without cause, of failing to follow City policies and practices and that she has favored other councilmembers over him in setting agendas. Ms. Feldman and her staff have patiently explained the policies and practices to Mr. Silverstein on multiple occasions. He simply refuses to abide by them (while he purports to be an expert and quote the rules to everyone else).

Fifth, he is reportedly sharing with city councilmembers – *from other California*

cities – his proposed legislation for transparency (in which he specifically and maliciously calls out Ms. Feldman for her purported lack of transparency). Related to that, he wrongly insists that his proposal to override a recent Ninth Circuit case (*Martin v. City of Boise*) by requiring homeless persons to obtain a camping permit from the City of Malibu, and when told by Ms. Feldman of the need to discuss it with the Los Angeles County Sheriff's Department who provide law enforcement services for the City, he has blasted her. He also incorrectly claims that no one will take up his proposal – in fact, it was on the January 11, 2021 meeting agenda, but the City Council could not get to it because Mr. Silverstein spent all evening objecting to the agenda and arguing with other Councilmembers. The matter has been placed again on the City Council agenda for January 25, 2021. And, this week, he also decided to share his “camping permit” idea, with other California cities.

At a fundamental level, Mr. Silverstein refuses to acknowledge that the City Manager and staff work for the entire City Council and not for one particular member of the Council. He bitterly complains that he is being subjected to special rules – which is not the case. He insists that Ms. Feldman and her staff spend their days responding to his questions, demands and tantrums. No answer is ever sufficient (all answers are allegedly insubordinate and inadequate; his emails are cherry-picked for effect, and read like a hostile cross-examination of City staff. He also neglects to include the entire email exchanges, which demonstrate Ms. Feldman's many efforts to respond and reason with him. Further, he fails to acknowledge, for example, that in response to his Public Records Act requests, the City produced over 5,000 documents and in his capacity as a member of the City Council, the City has delivered a similar number of additional documents. He arrogantly assumes that he is an expert on City rules and procedures, or he pretends to do so as an excuse for disrupting the work of the City. His read of California law on, for example, his “right” to tape record conversations is strained, at best. He has falsely stated that the City Manager is arbitrary and capricious in putting together the meeting agendas, and pompously lectured other City Council members at the most recent meeting on their failure to understand the agenda rules. The problem has become so severe that the City Council recently passed an initiative to limit the staff time that any one councilmember can demand over a given period. Now, Mr. Silverstein obsesses about when the clock is running on his allotted time, and along with that, demands exceptions to that rule.

The City Council Meeting on January 11, 2021 was objectively horrendous. Mr. Silverstein opened the meeting and dominated the meeting to the point where he effectively disrupted all meaningful business of the City's agenda. The City Council and citizens of Malibu attending the meeting, via Zoom, were subjected to a large dose of Mr. Silverstein's toxic, disruptive, paranoid, delusional, and verbally violent speeches. Here is the link to the meeting:

<https://malibucity.primegov.com/Portal/Meeting?compiledMeetingDocumentFileId=1170;>

and here is one article that summarizes what happened that night:

[http://www.malibutimes.com/opinion/article_d6f555c8-556e-11eb-a1a0-](http://www.malibutimes.com/opinion/article_d6f555c8-556e-11eb-a1a0-db57ec766773.html)

[db57ec766773.html](http://www.malibutimes.com/opinion/article_d6f555c8-556e-11eb-a1a0-db57ec766773.html). This meeting was a window into what Ms. Feldman has personally endured for many weeks, and the extent to which his demands make it nearly impossible for Ms. Feldman to do her job.

Because Ms. Feldman is under a constant attack by Mr. Silverstein, she lives in fear of retaliation – for doing her job and exercising her professional judgment in the performance of her duties. She finds herself reluctant to offer her opinions on matters

affecting the day-to-day operations of the City, especially if she senses that it will trigger another outburst by Mr. Silverstein. She worries about shielding her staff from these attacks. She is extremely distressed and frightened by recent events, causing her sleepless nights and stressful days. Mr. Silverstein presents as someone who is unstable and unpredictable. Even if he restricts himself to merely hateful words, his constant barrage of lies and innuendos about Ms. Feldman, as well as his very public attacks on her, may incite others to move from political dialogue to physical violence against those in local government, including the City Manager or her staff. Of particular note is an affidavit that he has been waiving around (and publishing) signed by his friend and a former City Council Member, Jefferson Wagner. The affidavit, as it pertains to the City Manager and other City employees, is flatly false. To be clear, Ms. Feldman had no knowledge nor any involvement whatsoever in the search warrant that was signed by a Superior Court Judge and executed by local police. The so-called citation to evidence (the “opposition research”) is literally a link to nowhere. I must add that while Ms. Feldman maintained professional relations with Mr. Wagner while he served on the City Council, it was well known that Mr. Wagner possesses and stores multiple weapons in his home and appeared to have issues concerning accurate reporting about his true residence for purposes of holding political office. Also, for the record, Ms. Feldman’s contract was approved by a vote of 4-1, and there is not one shred of evidence that Mr. Wagner’s vote was sought or mattered in that regard.

For all of these reasons and with great sadness, Ms. Feldman has concluded that there is no reasonable path by which she will be able to fully perform her duties as City Manager for the duration of her current contract. That is not to say that Ms. Feldman does not want to continue her work as City Manager. She loves her job, and she has been doing everything possible these past weeks to balance her actual job duties with the need to respond to Mr. Silverstein’s constant demands. This past week, for example, Mr. Silverstein, has been sending emails demanding to know why his legally flawed proposed ordinance on the “camping permit” issue was listed on the agenda as an item for discussion at the last meeting rather than as an ordinance to be immediately passed. The problem is that Mr. Silverstein will continue to make unreasonable demands, attack Ms. Feldman and City staff for doing their job, and continue to spread lies about Ms. Feldman that will impede her work for the City. And, his threats will in all likelihood escalate. Indeed, the more he is challenged, the more unhinged he becomes. This, we must add, will continue to do serious harm to Ms. Feldman’s ability to get future employment. All of this exposes the City of Malibu to future claims for, *inter alia*, harassment, retaliation, hostile work environment, discrimination, constructive termination, and who knows what else if Mr. Silverstein persists with his lies and paranoid, delusional grievances against the City Manager.

Ms. Feldman’s contract expires in approximately fifteen (15) months (May 2022). She would like to amicably part ways with the City that she has faithfully served for almost sixteen (16) years. Her demand, at this stage, is for the City to enter into a separation agreement that is respectful to all concerned, amicable in its tone, and financially reasonable given the damage done to her so far. This would include a buyout of Ms. Feldman’s remaining contract, including the value of the benefits it provides. The agreement would include a release of claims and a non-disparagement clause. Assuming we select a date in early May 2021 as her departure date, the contact/benefits buyout would be one year, which is approximately \$375,000. Ms. Feldman would, in return, continue to perform her job

Mr. Cotti
January 16, 2021
Page 5

while working with the City to find her successor. She has no illusions about what that will be entail because Mr. Silverstein will stop his attacks on her, cease his so-called “investigation,” or otherwise embrace the professionalism required to serve as an elected official for the City of Malibu. However, with a clear and fair separation agreement in place, Ms. Feldman will press on for a smooth transition in service to the City Council.

Please feel free to call me, should you have any questions. Please note that in accordance with San Francisco’s current health directives, my office continues to work remotely. My law partner, Mark Fickes, and I are the points of contact on this matter. I can be reached by email (tcannata@cofolaw.com), or if you wish to speak to me directly, please call my direct dial number at 415.409.2957. Mr. Fickes can be reached by email (mfickes@cofolaw.com), or on his direct dial at 415.852-7979.

Very truly yours,

CANNATA, O’TOOLE, FICKES & OLSON LLP



THERESE Y. CANNATA

TYC:hs