



TO: City Council
FROM: Ethics Advisory Board
SUBJECT: EAB Report on Ethics Complaint 2022-03
DATE: May 11, 2023

On October 17, 2022, Mr. Brandon Stewart (“complainant”) filed a complaint. In compliance with City Council Policy 39, our report is as follows:

1. Summary of Complaint -

Summarized, the Complainant alleges that Mayor Brandon Whipple attempted to use the power/prestige of his office to seek favors for private gain on September 24, 2022 when he attempted to prevent a police officer from carrying out his duties at a Neighborhood Cleanup event.

2. Scope of Investigation -

The investigation included review of the complaint, the Mayor’s response, City of Wichita guidelines governing the Neighborhood Cleanup Program and related documents, body cam video, and interviews of three witnesses.

3. Summary of Facts -

On September 24, 2022, a free neighborhood trash cleanup for the Southwest Neighborhood Association (“SWNA”) area was sponsored by the City of Wichita. Events of this nature are routinely promoted by mailing flyers to addresses on a mailing list. The flyer distributed for this event to area addresses did not expressly state that participants must be residents of the area and did not specifically prohibit participation by landlords in the area in question. The flyer said this was an opportunity to dispose of large and bulky items from “your house, garage, shed and yard” by taking items to the Machinists Union parking lot. It gave directions to enter the lot from the northbound lane on Meridian. By way of previous example, a flyer provided for a similar event in 2020 said participants must live in SWNA, and IDs will be checked. For the September 24, 2022 event, the online neighborhood cleanup application information did not state it was only for residents and did not exclude landlords. Notably, the current online neighborhood application information for 2023 now states it is only for neighborhood residents and that businesses and landlords cannot participate, but their tenants can.

There is no individual income limit to participate. Specific neighborhoods qualify for these events based on each neighborhood's median income level.

The City of Wichita's Community Service Representative & Neighborhood Cleanup Administrator (CSR) was interviewed and also appears in the police officer's body camera footage. The CSR confirmed there is no individual income requirement to participate, but it is the neighborhood's median income. She said this event was unusually well attended because it was shared broadly on social media, which was not authorized or anticipated by the City since the event was intended only for the neighborhood. People and businesses from outside the area in question showed up at the September 24 event, causing a long queue of vehicles waiting to dump and requiring the trash company to bring additional dumpsters. To keep the event only for the intended area, the City only mails flyers to a particular mailing list.

Mayor Whipple has a rental property in the designated area and intended to drop off trash from his rental property at the Neighborhood Cleanup event. The City of Wichita's police body camera footage documents some of the interaction between the police officer assigned to work the event and the Mayor.

This is not a summary of the entire recorded interaction, which has been published in the media. Highly summarized, the officer at the event approached the Mayor's vehicle and attempted to get him to turn around after entering the site using the wrong entrance. The Mayor called the City Manager inquiring about making a complaint about the officer and alleging the officer "has no idea who I am." The officer took the Mayor's information and ID and walked off to locate the CSR to determine what to do next. Their initial conversation is recorded through the body camera as well. Then the Mayor left his truck and joined this recorded conversation.

The Mayor says in his response to the Complaint that when he approached the Machinists Union in his vehicle there was no signage, and he thought there was a wreck. To avoid this, he says he turned into the Machinists Union driveway. The Mayor said it was unclear there was one designated entrance and that other vehicles used the same entrance he used. He parked and asked the officer a "clarifying question." He says the officer was very aggressive which shocked and frightened him. He says the officer refused to speak with him and told him he was no longer welcome.

When interviewed, the officer said no one was being granted entrance when the Mayor came in because the dumpsters were full. There was a long line of cars waiting to go in the one designated entrance. It was clear to the officer that there was a line of cars waiting to get in the designated entrance, and he did not agree there was indication of an accident. He said you could see volunteers and officers at the entrance. The officer saw the Mayor make a U-turn in the street and enter the lot through the exit, which was partially blocked. He made nonverbal efforts to get the Mayor to turn around and then verbally told him to turn around multiple times. He admitted to speaking loudly and sternly but also said there was a sense of urgency, and it was a loud environment with a need to maintain control. He agrees the Mayor said he had a question, but when the

officer asked “what question?” the Mayor did not respond. He did tell the Mayor to leave and he was no longer welcome.

A volunteer at the event (“the witness”) saw some of the initial interaction but when interviewed months later for this investigation did not recall many details. The witness also was interviewed by the officer that day, which was captured by body camera (although the witness later said he did not know he was being recorded). He was sitting by the north exit from the parking lot directing people out of the exit. The first time he saw the Mayor’s red truck, it was pulling in the wrong way, so he did not know from which direction he came.

The witness said he is not good at estimating distances but said the officer was initially about 30 feet from the Mayor’s truck. The officer told the Mayor to turn around. He said the Mayor just looked at the officer when he was told to turn around. He said the officer was definitely speaking loudly and being stern. The body camera footage shows the witness saying to the officer that the Mayor “did nothing to diffuse the situation” and was in the wrong. When asked what he meant, he said because the situation was escalated unnecessarily such as by calling the City Manager, and Whipple did nothing to deescalate things. In the recent interview for this investigation, he also said, in his opinion, the incident has since been “blown out of proportion.”

The witness did not recall exactly what the Mayor and the officer said to each other before the video started, other than the officer told the Mayor to turn around more than once. In the body camera footage from the officer’s interview, the witness told the officer that the Mayor said he had a question. The witness did not sufficiently recall what else was said in that period before the video started. Generally, he was aware of people participating in the cleanup event who were from out of the SWNA area. He said there was an unknown number of businesses dropping off trash that day. He knew this because he knew one of the business owners he saw dropping off trash. It appears the end result is the Mayor dumped his trash.

4. Applicable Section(s) of the Code of Ethics Involved –

The complaint form used by the complainant is the original form, which did not specifically require listing a particular Policy 39 subsection (A-P) alleged to have been violated. However, violations of the following provisions appear to have been alleged:

Summarized, complainant alleges use of office to gain personal privilege and misuse of city assets, which is most similar to subsection D, which states:

“Seek no favors, nor use the prestige of office for private gain, nor use confidential information or government equipment or supplies to secure a profit or enhance wealth.”

5. Findings of the EAB –

Regarding Section D, the policy says seek no “favors” nor use the prestige of office for “private gain.” The officer directed Whipple to leave and said he did not initially know he was the Mayor. The Mayor did not comply with the officer’s directive. The Mayor says he attempted to engage the officer in conversation and was treated badly by the officer. He parked his truck in the lot and then called the City Manager directly from his phone during the encounter with the officer, on a weekend, to make and/or ask how to file a complaint against an officer. The Mayor took issue with the officer deciding who stays and goes. An interpretation of the recorded conversation between the Mayor and the City Manager is that the Mayor was complaining about the officer’s behavior. However, the Manager asked the officer whether the Mayor could proceed to the event, and the Mayor ultimately dumps his trash without waiting in line. After the officer took his driver’s license and walked away, the Mayor could not leave. He got out of his truck, walked to where the CSR and officer were, and joined their conversation.

The combination of the Mayor going in the wrong entrance, refusing to turn around to get in line or leave, contacting the Manager during the encounter with the police officer, stating multiple times that the officer “didn’t know who I was” constitutes seeking favor or private gain. The result was the Mayor dumped his trash without waiting in line and used the privilege of direct access to the City Manager.

The EAB finds the Mayor used his office to seek favor and private gain by the manner in which he sought to dump his trash instead of waiting in line. He also used his unique direct access to the City Manager when he called him during an encounter with a police officer, on a Saturday, to make a complaint about the officer.

Therefore, the EAB finds City Council Policy 39, Section D was violated. The EAB does not find a serious violation occurred. Policy 39 states if the Complaint is ruled a violation, the EAB “will require the official to undergo appropriate ethics training,” which it hereby requires. As no serious violation was found, no further recommendations are made.

In compliance with City policy and EAB procedures, this report is being provided to the complainant, the named official, outside counsel to the EAB, City Council, City Attorney, City Manager, City staff liaison to the EAB, and City Clerk.

The complainant and respondent have seven (7) days in which to email a response to Kathy.Sexton@wichita.edu stating any specific dispute of the facts or interpretation of the Code of Ethics. After seven days, assuming no response is received, the findings become final. If a response is received within the seven days, the allegation raised will return to the EAB agenda for reconsideration and a final decision.

In either case, the City staff liaison to the EAB or the City Clerk shall post the final report on the Ethics webpage at www.wichita.gov.