



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

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**DEPARTMENT OF LAW
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TO: MEMBERS, BOARD OF ETHICAL CONDUCT

FROM: WALLACE DIETZ, DIRECTOR OF LAW *WWD*
NICKI EKE, SENIOR COUNSEL

RE: DEPARTMENT OF LAW REPORT – ETHICS COMPLAINT FILED
AGAINST COUNCILMEMBER JOY STYLES

DATE: OCTOBER 26, 2022

I. BACKGROUND AND RECOMMENDATION

On October 13, 2022, Ms. Nicole Weatherspoon filed an ethics complaint against District 32 Councilmember Joy Styles.¹ The complaint alleges that Ms. Weatherspoon's vehicle with a flat tire, which was parked on a public road in Council District 32, was towed by Performance Towing & Recovery based on authorization provided by Councilmember Styles. The complaint asserts that the Councilmember failed to follow proper protocol and misused her official position with the Metropolitan Council by contacting Performance Towing & Recovery and authorizing the removal of Ms. Weatherspoon's vehicle from a public road.

For the reasons provided herein, it is the opinion of the Department of Law that the allegations in the complaint concerning failure to follow proper procedures, misuse of Council position, and unauthorized exercise of official power, if true, could be deemed to be a violation of the Standards of Conduct set forth in the Metropolitan Code. Accordingly, the Department of Law recommends that the Board of Ethical Conduct hold a hearing on the complaint.

¹ Exhibit A, October 13, 2022 Complaint of Nicole Weatherspoon.

II. DUTY OF THE DEPARTMENT OF LAW

The Department of Law is required to “evaluate the complaint, applying the law of the standards of conduct ... to the facts alleged in the complaint, and shall undertake an investigation as may be deemed necessary, to determine if such complaint alleges facts, which if proven true, could be deemed to be a violation of the” Standards of Conduct set forth in the Metropolitan Code.² Thereafter, the Department of Law issues a report concluding whether the facts alleged in the complaint, if true, would give rise to a violation of the Standards of Conduct, and recommending either that the complaint be dismissed or a hearing be held on the complaint.³

III. ALLEGATIONS IN THE COMPLAINT

The complaint alleges that the Councilmember has a personal conflict with Ms. Weatherspoon for previously questioning the Councilmember’s ethics in another action. Ms. Weatherspoon contends that the Councilmember chose to use her position within the Council as retaliation for their personal dispute.

The complaint alleges that Ms. Weatherspoon’s vehicle was towed from a public road based on authorization provided by the Councilmember to Performance Towing & Recovery. The complaint asserts that the Councilmember did not have the legal authority or right to have Ms. Weatherspoon’s vehicle removed by Performance Towing & Recovery. Ms. Weatherspoon claims that the Councilmember engaged in abuse of power in violation of the provisions of section 2.222.020 of the Standards of Conduct by:

- using her position with the Council to illegally have Ms. Weatherspoon’s vehicle with a flat tire removed from a public road;
- contacting an independent towing service, not one that was legally authorized by the Metropolitan Government, to remove Ms. Weatherspoon’s vehicle; and
- not following proper protocol, thereby resulting in the inference that there is some form of *quid pro quo* between the Councilmember and Performance Towing & Recovery.

² Metropolitan Code § 2.222.040(C)(1)(e).

³ *Id.*

IV. ANALYSIS OF ALLEGATIONS IN THE COMPLAINT

The crux of Ms. Weatherspoon's complaint is that the Councilmember failed to follow proper procedures and misused her official position by unlawfully authorizing Performance Towing & Recovery to remove Ms. Weatherspoon's vehicle from a public road.

The complaint alleges that when Ms. Weatherspoon contacted the Police Department about her missing vehicle, an officer stated that there was a HubNashville online request concerning the vehicle. HubNashville is an online portal maintained by the Metropolitan Government that provides an electronic method to submit requests for non-emergency services. Requests for services such as road repairs and reporting of codes violations can be submitted through the HubNashville online portal. Requests for services can be submitted by anyone via the following link: (https://hub.nashville.gov/s/?language=en_US).

Any vehicle towed without the consent of the owner must be reported to the Police Department within one hour of the completion of the towing of the vehicle.⁴ Records of vehicles towed in the area of the Metropolitan Government are entered into HubNashville by the wrecker companies that removed the vehicles. Such entries on HubNashville allow the Police Department to provide information to individuals searching for their vehicles that were parked on public property.

Section 12.08.150 of the Metropolitan Code, which addresses the impoundment of vehicles, provides in relevant part:

Members of the metropolitan police department or the parking enforcement patrol or its contractor shall have authority to impound or immobilize any vehicle under the circumstances hereinafter enumerated:

1. When a vehicle is parked, stopped or standing upon any alley, street, highway or thoroughfare within the area of the metropolitan government in violation of any traffic or parking related regulation or ordinance of the metropolitan government, other than a [metered parking violation];

...

5. When a vehicle upon any alley, street, highway or thoroughfare in the metropolitan government area is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle does not provide for its custody and removal

⁴ Metropolitan Code § 6.80.175.

“ ‘Impoundment’ means removing a vehicle from a street, alley, highway or thoroughfare to the nearest garage or other place of safety, or a garage designated or maintained by the police department or otherwise maintained by the metropolitan government.”⁵

In addition to the power given to the Metropolitan Police in section 12.08.150, the Department of Codes Administration has authority to investigate and enforce Code provisions pertaining to abandoned vehicles.⁶ Metropolitan Code section 12.08.210(A) states: “No person shall permit an abandoned vehicle to remain on any alley, street, highway or thoroughfare within the area of the metropolitan government.” “Abandoned motor vehicle” includes “a motor vehicle that is in an obvious state of disrepair and is left unattended on public property for more than three days.”⁷ A vehicle in “obvious state of disrepair” includes a motor vehicle “without one or more wheels or inflated tires”.⁸ Sections 12.08.210 and 12.08.220 of the Metropolitan Code outline the notice, administrative and appeal processes applicable to the removal and disposal of vehicles abandoned on public roads.⁹

As reflected above, the Police Department and the Department of Codes Administration have the power to authorize the removal of vehicles that meet certain criteria from public roads. The complaint alleges that Ms. Weatherspoon received a Removal Notice from the Department of Codes Administration on September 23, 2022, directing that the subject vehicle be removed from public property by October 4, 2022. The complaint reflects that Ms. Weatherspoon’s vehicle was towed by Performance Towing & Recovery on or about September 27, 2022.

Under Section 3.06 of the Metropolitan Charter, members of the Council have authority to enact legislation regarding the broad scope of powers described in Article 2 of the Charter. The Charter does not authorize Council members unilaterally to request a vehicle to be towed without going through either the Police Department or the Department of Codes Administration.

⁵ Metropolitan Code § 12.08.150(A)(2).

⁶ See Metropolitan Code §§ 12.08.210(G), 12.08.230.

⁷ Metropolitan Code § 12.08.210(B).

⁸ Metropolitan Code § 12.08.210(C).

⁹ See Exhibit B, Metropolitan Code §§ 12.08.210, 12.08.220.

The provisions of the Standards of Conduct mentioned or addressed in the complaint are discussed below.

(1) Metropolitan Code § 2.222.020(d)

Section 2.222.020(d) of the Metropolitan Code states that employees shall “not accept or solicit any cash of any amount, other than in compliance with election campaign laws and fully reported pursuant to same, irrespective of the intent of the payor, if such payment or solicitation is in any way directly or indirectly related to the employee's position in the metropolitan government”.

The complaint is devoid of facts which reflect that the Councilmember accepted or solicited money related to her official position. Instead, the complaint merely states: “Because Ms. Styles did not follow proper protocol it can be inferred that there is some form of *quid pro quo* between Ms. Styles and Performance Towing and Recovery.”¹⁰ (Emphasis added.)

It is the opinion of the Department of Law that the facts alleged in the complaint are insufficient to give rise to a violation of section 2.222.020(d) of the Standards of Conduct.

(2) Metropolitan Code § 2.222.020(i)

Section 2.222.020(i) of the Metropolitan Code prohibits employees from using their positions improperly to secure unwarranted privileges or exemptions for themselves, relatives or others. The Standards of Conduct specify, however, that employees are not precluded from acting in a manner consistent with their official duties or from zealously providing public services to anyone entitled to them.¹¹

Ms. Weatherspoon contends that the following violates the Standards of Conduct: “Ms. Styles used her position with the Council to illegally have my vehicle removed from outside of my home.”¹²

¹⁰ See Exhibit A, October 13, 2022 Complaint of Nicole Weatherspoon, page 2.

¹¹ Metropolitan Code § 2.222.020(i).

¹² See Exhibit A, October 13, 2022 Complaint of Nicole Weatherspoon, page 2.

In *In re Zisa*, 896 A.2d 1111 (N.J. Super. Ct. App. Div. 2006), the court addressed a New Jersey statute which provided: “No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others”. *Id.* at 1115. The court construed the term “unwarranted privilege” as follows:

The statute ... bars a municipal official from using his position to secure an “unwarranted” privilege or advantage. An unwarranted privilege or advantage would be one that is unjustified or unauthorized, one that would permit the municipal official to obtain something otherwise not available to the public at large.

Id.

It is the opinion of the Department of Law that allegations in the complaint that for retaliatory purposes, the Councilmember used her official position to illegally have Ms. Weatherspoon’s vehicle removed from a public road by Performance Towing & Recovery, if true, could violate the provisions of section 2.222.020(i) of the Metropolitan Code.

(3) Metropolitan Code § 2.222.020(k)

Section 2.222.020(k) of the Metropolitan Code states that employees shall not give reasonable basis, by their conduct, the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship or influence of any person.

The complaint alleges that the Councilmember violated section 2.222.020(k) based on the following: “Ms. Styles contacted an independent towing service, not one that was legally authorized by Metropolitan Government, to perform this action.”¹³

It appears that Ms. Weatherspoon is contending that the Councilmember is unduly affected by the kinship or influence of Performance Towing & Recovery, resulting in the unauthorized removal of Ms. Weatherspoon’s vehicle from a public road at the request of the Councilmember. The complaint does not contain any specific facts, however, regarding kinship, friendship, or business relationship between the Councilmember and Performance Towing & Recovery.

¹³ See Exhibit A, October 13, 2022 Complaint of Nicole Weatherspoon, page 2.

It is the opinion of the Department of Law that conclusory allegations that the Councilmember “contacted an independent towing service, not one that was legally authorized by Metropolitan Government” to remove Ms. Weatherspoon’s vehicle are inadequate to establish a violation of section 2.222.020(k) of the Standards of Conduct.

(4) Allegations Regarding Abuse of Power and Official Misconduct

Section 2.222.020(m) of the Standards of Conduct provides that employees “[s]hall not violate the direct or indirect conflict of interest, consulting, lobbying, or any other requirements of state law existing or which may be adopted regulating the conduct of municipal or county officials or employees”. (Emphasis added.)

Section 39-16-402 of the Tennessee Code Annotated, which addresses official misconduct, states in relevant part:

(a) A public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:

- (1) Commits an act relating to the public servant's office or employment that constitutes an unauthorized exercise of official power;
- (2) Commits an act under color of office or employment that exceeds the public servant's official power;

(b) For purposes of subdivision (a)(2), a public servant commits an act under color of office or employment who acts or purports to act in an official capacity or takes advantage of the actual or purported capacity.

Tennessee Code Annotated § 39-16-402 prohibits a public servant,¹⁴ with intent to harm another, from intentionally or knowingly: (1) committing an act relating to the public servant's office that constitutes an unauthorized exercise of official power; or (2) committing an act under color of office that exceeds the public servant's official power.¹⁵

It is the opinion of the Department of Law that the allegations in the complaint regarding unauthorized exercise of official power by the Councilmember, if proven, could be deemed to be a violation of section 39-16-402 of Tennessee Code Annotated and accordingly, section 2.222.020(m) of the Standards of Conduct.

¹⁴ “Public servant” is defined in Tenn. Code Ann. § 39-11-106(a)(33) to include any “public officer or employee of the state or of any political subdivision of the state or of any governmental instrumentality within the state”.

¹⁵ See Tenn. Code Ann. § 39-16-402(a).

V. CONCLUSION

It is the opinion of the Department of Law that the allegations in the ethics complaint filed by Ms. Nicole Weatherspoon, if proven, could be deemed to be a violation of subsections (i) and (m) of section 2.222.020 of the Standards of Conduct. Therefore, the Department of Law recommends that the Board of Ethical Conduct hold a hearing on the complaint filed against Councilmember Joy Styles.

The Department of Law notes that it is not its duty to determine that a violation of the Standards of Conduct has indeed occurred. Evaluation of veracity of the facts alleged in the complaint and determination of whether a violation occurred are ultimately the responsibilities of the Board of Ethical Conduct during the hearing process.

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10/13/2022

Metropolitan Nashville Ethical Review Board

Metropolitan Nashville Clerk's Office
1 Public Square, Suite 205
Nashville, TN 37201

To Whom It May Concern

My name is Nicole Weatherspoon. I reside in Nashville Council District 32 and am requesting a formal review of the recent actions of Councilwoman Joy Styles who represents my district for what I believe to be abuse of power pursuant to Metropolitan Code of Laws § 2.222.020.

On September 23rd, 2022, we received a notification from Metro Codes regarding our vehicle with a flat tire on a public road. This notification stated that the problem needed to be resolved by October 4th, 2022. I have attached a copy of this notice for your review.

On September 27th, my husband arrived home to discover our vehicle was missing. We immediately contacted the Metropolitan Police Department as we believed our vehicle to be stolen. With the assistance of the police department, we discovered our vehicle had been towed by Performance Towing & Recovery. The officer stated there was a HubNashville online request concerning our vehicle. I contacted Performance Towing on September 28th and inquired under whose authorization this action was taken. The Performance Towing employee responded with "your councilwoman." Ms. Styles did not have the authority nor legal right to take such action. Because Performance Towing responded specifically with "your councilwoman" it is apparent that Ms. Styles used her official capacity to take this action.

Ms. Styles has a personal conflict with me for previously questioning her ethics in another action. She has chosen to use her position within the Council as retaliation for our personal dispute.

The following subsections of the Metropolitan Code of Laws § 2.222.020 were violated by Ms. Styles misuse of her position:

i.

- I. *Shall not use their metropolitan government positions improperly to secure unwarranted privileges or exemptions for themselves, relatives or others, provided, however, that this provision does not preclude employees from acting in a manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them. Ms. Styles used her position with the Council to illegally have my vehicle removed from outside of my home.*

- II. *Shall not give reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position, or influence of any person. Ms. Styles contacted an independent towing service, not one that was legally authorized by Metropolitan Government, to perform this action.*

- III. *Shall not accept or solicit any cash of any amount, other than in compliance with election campaign laws and fully reported pursuant to same, irrespective of the intent of the payor, if such payment or solicitation is in any way directly or indirectly related to the employee's position in the metropolitan government. Because Ms. Styles did not follow proper protocol it can be inferred that there is some form of *quid pro quo* between Ms. Styles and Performance Towing and Recovery.*

Ms. Styles has committed theft and conversion as it pertains to this situation. While I am aware it is outside of your purview for the damages she has caused, I do hope you will review the seriousness of Ms. Styles actions.

Sincerely,



Nicole Weatherspoon

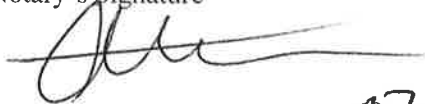
State of Tennessee County of Davidson.

On this 13th day of oct, 2022, before me personally appeared Nicole Weatherspoon, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

Witness my hand, at office, this 13th day of oct, 2022.



Notary's Signature



My commission expires: 07-09-2024.



THIRTY DAY VEHICLE REMOVAL NOTICE

DEPT. OF CODES ADMINISTRATION
METRO HOWARD BUILDING
700 2ND AVENUE SOUTH
NASHVILLE, TENNESSEE 37201

This vehicle checked:

Date: 9, 23, 22
Time: 1204 a.m. p.m.

Zoning Inspection Chief Phone: 862-6551

By: S. Evans
(Inspector's Name)

Location of vehicle: on R.O.W. at 1737 BRIDGECREST DR.
(Note exact location)

VEHICLE INFO: Make GMC Model 1500 Body Type P/U Year 1992

Color Red/white Vin# 1GTDC14K1N2519734

Pursuant to Section 12.08.210 of the Metropolitan Code of Laws, The Metropolitan Government of Nashville and Davidson County has determined that this vehicle may constitute an ABANDONED VEHICLE because it is over four years old and has been left unattended on public property.

It is illegal to permit an abandoned vehicle to remain on any alley, street, highway or thoroughfare within the area of the Metropolitan Government.

YOU MUST REMOVE THIS VEHICLE BY 10-04-2022
REMOVAL DATE

If the vehicle is not removed by the removal date, it will be taken into custody and demolished unless you file an appeal with the director of the department of codes administration within ten (10) days from date of notice.

THIS IS NOT A TRAFFIC CITATION

EXHIBIT B

Metropolitan Code 12.08.210 Abandoned vehicles.

- A. No person shall permit an abandoned vehicle to remain on any alley, street, highway or thoroughfare within the area of the metropolitan government.
- B. "Abandoned motor vehicle," for the purposes of this chapter, means a motor vehicle that is over four years old including any contents of that vehicle, that is left unattended on public property for more than ten days, or a motor vehicle that is in an obvious state of disrepair and is left unattended on public property for more than three days.
- C. "Obvious state of disrepair" means a motor vehicle exhibiting one or more of the following characteristics: inoperable under its own power, without one or more wheels or inflated tires, burned throughout, or with more than one broken window.
- D. "Motor vehicle" means any self-propelled, wheeled conveyance that does not run on rails.
- E. "Demolisher" means any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck or dismantle motor vehicles.
- F. "Public property," for the purposes of this section, shall include but not be limited to, any alley, street, highway or thoroughfare within the area of the metropolitan government.
- G. The department of codes administration is authorized to investigate any alleged violations of this section and to enforce the provisions of this section.
- H. When, after investigation, the department of codes administration determines that a motor vehicle may constitute an abandoned motor vehicle, the department shall attach a notice to the vehicle. The notice shall state the date and time that it was attached, the name and department of the person attaching the notice, and the location of the vehicle. The notice shall further state that the metropolitan government has determined that the vehicle may constitute an abandoned vehicle, and shall set forth the date by which the owner must remove the vehicle including any contents from public property. It shall further state that if the vehicle is not removed, it will be taken into custody and demolished unless the owner files an appeal with the director of the department of codes administration within ten days of the removal date.
- I. The department of codes administration may authorize other departments or boards of the metropolitan government to attach the notice described in subsection H of this section. If the notice described in subsection H of this section is attached to the vehicle by a department or board other than the department of codes administration, the department of codes administration shall be immediately informed that the notice has been attached.
- J. If a vehicle to which a notice is attached pursuant to subsection H of this section is not removed by the removal date specified in such notice, an inspector from the department of codes administration may apply to the director of codes administration or his designee for authority to sell, give away, or dispose of the vehicle including any contents to a demolisher. The application shall set out the name of the applicant, the year, make, model and serial number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment. The application shall contain an affidavit by the inspector, stating that the facts alleged therein are true, and that no material fact has been withheld. If the director of the department of codes administration or his designee finds that the application is executed in proper form and establishes that the motor vehicle including any contents has been abandoned on public property, the director shall have the authority to allow for disposal of the vehicle including any contents to a demolisher after compliance with the notification procedures set forth in subsection K of this section.

- K. If a vehicle, including any contents, to which a notice is attached pursuant to subsection H of this section is not removed by the removal date specified in such notice, the department of codes administration shall provide written notice to the owner of the vehicle and to all lienholders of record that the vehicle has been found to be abandoned. This notice shall be sent by registered or certified mail, return receipt requested, to the last known address of the owner of record and to all lienholders of record. The notice shall be written in plain language and shall contain the year, make, model and vehicle identification number of the motor vehicle, if ascertainable, the location of the motor vehicle, and a statement advising the owner that he or she has ten days to appeal the determination by the department of codes administration that the vehicle is abandoned or to remove the vehicle including any contents from the property, or the department of codes administration shall take the abandoned vehicle into custody to be sold or demolished. The notice shall further inform the owner and any lienholders that pursuant to the provisions of Tennessee Code Annotated Section 55-16-108, the vehicle may be disposed of to a demolisher immediately after it is taken into custody, but in the event the vehicle is not disposed of immediately, the owner or lienholder has the right to reclaim the motor vehicle after it is taken into custody but before it is sold or demolished, upon payment of all towing, preservation, storage or any other charges resulting from placing the vehicle in custody. The notice shall state that failure of the owner or lienholders to exercise their right to reclaim the vehicle including any contents shall be deemed a waiver by the owner and all lienholders of all right, title and interest in the vehicle and any contents and consent to the demolition of the vehicle or its sale at a public auction. If the owner or lienholder cannot be located through the exercise of due diligence, notice by publication shall be given pursuant to Tennessee Code Annotated Section 55-16-105(c).
- L. If the owner or lienholder of an abandoned motor vehicle fails to appeal the determination that the vehicle is abandoned or fails to remove the motor vehicle within the time allowed for an appeal, the department of codes administration is authorized to take the vehicle including any contents into custody or to employ a private contractor to remove the vehicle including any contents from public property. The department is authorized to sell the vehicle at public auction or, by certificate of authority, as provided in Tennessee Code Annotated Section 55-16-108, to dispose of the motor vehicle including any contents to any demolisher for demolition, wrecking or dismantling or as otherwise provided by law. If an appeal is made pursuant to Section 12.08.220, the motor vehicle shall not be taken into custody or demolished until such time as the director of codes administration affirms the determination that the motor vehicle is abandoned.
- M. Sale of the vehicle at public auction shall follow the procedures set forth in Tennessee Code Annotated Sections 55-16-106 through 107.

(Ord. 2002-1128 § 1, 2002; Ord. 2002-1071 § 1, 2002; Ord. 93-620 § 2 (part), 1994)

Metropolitan Code 12.08.220 Appeals.

- A. Any owner or lienholder of a motor vehicle aggrieved by the determination that a vehicle is an abandoned motor vehicle may appeal to the director of codes administration or his designee within ten days of receipt of the notice provided for in Section 12.08.210(K). Failure to appeal within the specified time period shall without exception constitute a waiver of the right of appeal, and consent to the demolition of the vehicle or its sale at a public auction.
- B. After a hearing, the director of codes administration shall enter an order and send a copy to the owner and lienholder, stating whether the vehicle was properly determined to be abandoned. If such order states that the vehicle is abandoned, the owner and/or lienholder will be informed of the date that the vehicle will be taken into custody if not removed.

(Ord. 93-620 § 2 (part), 1994)