



Karen Kramer, Esq.

CITY OF SAN LEANDRO – COMPLAINT OF ROSE PADILLA JOHNSON

May 31, 2018

KRAMER WORKPLACE INVESTIGATIONS

PO Box 266 • Danville, CA 94526 • Tel 925.838.6435 • Fax 925.838.7564 • karen@kramerlaw.net

Pursuant to the request of the City of San Leandro (“City”), Karen Kramer conducted a fact-finding investigation concerning the complaint of sexual harassment and defamation made by Chief Executive Officer of the Davis Street Family Resource Center (“Davis Street”) Rose Padilla Johnson, against City Manager, Chris Zapata.

I. INTRODUCTION

The City retained Kramer Workplace Investigations on or about December 21, 2017, to investigate the allegations of sexual harassment and defamation made by Ms. Padilla Johnson. Specifically, Ms. Padilla Johnson alleges she was subjected to sexual harassment by Mr. Zapata, who she claims desired to have a sexual relationship with her. She further alleges that Mr. Zapata made negative comments about her by telling members of the community that he does not trust Ms. Padilla Johnson and calling her “a liar.”

This document is an Executive Summary of the report submitted to the City on May 23, 2018. While numerous hours were spent reviewing documents and interviewing witnesses, this Executive Summary does not purport to include every detail as described by the individuals involved. Rather, it assesses the important facts as they pertain to the allegations of sexual harassment and defamation made by Ms. Padilla Johnson against Mr. Zapata.

II. METHODOLOGY OF THE INVESTIGATION

Nine witnesses were interviewed as part of this investigation. The undersigned met with Ms. Padilla Johnson, in the presence of her attorney, on two occasions. The undersigned met with Mr. Zapata, in the presence of his attorney, on three occasions.

In addition to interviewing witnesses, the undersigned reviewed many documents relevant to the issues included within the scope of the investigation and listened to audio evidence provided by Ms. Padilla Johnson and Mr. Zapata.

III. FINDINGS REGARDING ALLEGATIONS OF SEXUAL HARASSMENT AND DEFAMATION

This Executive Summary includes findings of fact on the allegations made by Ms. Padilla Johnson against Mr. Zapata. This document does not express any opinion as to whether any of the actions described herein rise to the level of a violation of California law.

In conducting this investigation, the undersigned did not set out to prove or disprove the allegations, but rather to gather information in a neutral fashion and reach reasoned conclusions. The City gave the undersigned the discretion to conduct this investigation without interference, and did not attempt to influence the findings. The factual findings were made by carefully analyzing the documentary and testimonial evidence gathered as part of the investigation.¹

A. Credibility Assessment

It is important to note that prior to making a determination regarding the facts as alleged, the credibility of each witness was considered. In evaluating a witness’ credibility, many factors were considered, including possible bias or motivation to lie, the ability of a witness to recall information, the specificity of the information provided, whether the information provided was consistent with prior statements made by the witness and/or statements made by other witnesses, and the inherent plausibility of the information provided.

¹ The facts are assessed using a preponderance of the evidence (“more likely than not”) standard of proof. What might be considered hearsay in a legal proceeding was considered and given appropriate weight in this investigation.

There are few undisputed facts. Therefore, the undersigned carefully considered the appropriate weight to give the evidence presented by all of the witnesses who participated in this investigation, including Ms. Padilla Johnson and Mr. Zapata.

All of the witnesses, with the exception of a former City employee who was interviewed, have motivation to lie or misrepresent the facts as they recall them, and appear to have equal motivations to do so. Mr. Zapata is motivated to deny the allegations made by Ms. Padilla Johnson to prevent disciplinary action being taken against him and to preserve his reputation in the community. Ms. Padilla Johnson is equally motivated to fabricate or misrepresent the facts, as she was publicly “shamed” by Mr. Zapata’s December 9, 2016, letter, as well as her belief that he continued to disparage her after the loan was paid off and the issue with the location of the Wellness Center dispensary was resolved. The Councilmembers who participated in the investigation are likewise interested parties, as the claim made against Mr. Zapata could lead to financial liability for the City, as well as negatively impact the City’s reputation and their own reputations to the extent they were involved in communications with Ms. Padilla Johnson regarding the loan and dispensary issues.

Ms. Padilla Johnson made many inaccurate statements during her interviews as part of this investigation. It is unclear if Ms. Padilla Johnson did so knowingly or because of the passage of time and/or her own perception of certain events being clouded by the stress she was under due to the financial condition of Davis Street during the relevant time period.

Ms. Padilla Johnson made several statements during her interviews that were contradicted by the credible evidence presented. Perhaps one of the more significant statements she made that the evidence presented did not support is her claim that during the July 5, 2016, Council meeting throughout which she answered questions from Councilmembers regarding the loan extension requested by Davis Street, members of the Council conflated the issues involving the loan with issues involving the dispensary. The recording of the July 5, 2016, Council meeting establishes that did not occur. Ms. Padilla Johnson stated during her interview that during the July 5, 2016, Council meeting, at least three of the seven Councilmembers asked her questions about the dispensary and she reminded them that she was there to speak about the loan, which had nothing to do with the dispensary. Upon listening to the recording of the July 5, 2016, meeting, the undersigned discovered that not one question about the dispensary was posed to Ms. Padilla Johnson. In fact, the only mention of the dispensary was made by Ms. Padilla Johnson in response to Councilmember Benny Lee’s questions.

Another inaccurate statement made by Ms. Padilla Johnson was her assertion during her interview that the last CD Mr. Zapata gave her included a song with lyrics that say “fuck you” or “fuck me.” Upon listening to all of the CDs Ms. Padilla Johnson provided, none of the songs include such lyrics.

Ms. Padilla Johnson also stated during her interview that after her meeting at Fosters Freeze with Mr. Zapata in October 2016, she did not have any contact with him until she hand delivered a check to him in January 2017. This is not accurate, as indicated by the text messages she sent Mr. Zapata on November 2, 2016 and November 15, 2016, when she asked Mr. Zapata to talk to her via phone and to meet with her “to get a plan.” Even Ms. Brunner’s letter references a November 2016 meeting between Mr. Zapata and Ms. Padilla Johnson in Mr. Zapata’s office. Mr. Zapata’s Outlook calendar entries refer to meetings with Ms. Padilla Johnson on November 15, 2016 and November 16, 2016. These meetings are also referenced by Mr. Zapata in his November 16, 2016, memo to the City Council.

Finally, Ms. Padilla Johnson maintained that during their October 2016 meeting in Mr. Zapata’s City-owned SUV at Fosters Freeze, she “begged” him to convince the City Council to give Davis Street an additional extension for repayment of the loan. This is difficult to understand in light of the documentary evidence that was provided indicating that Ms. Padilla Johnson led Mr. Zapata to believe that Davis Street would meet the October 31, 2016, payment deadline.

Specifically, on September 29, 2016, Ms. Padilla Johnson sent Mr. Zapata a letter to this effect. As of October 21, 2016, the City remained under the impression that the loan would be repaid by October 31, 2016, as evidenced by Finance Director David Baum’s letter to Ms. Padilla Johnson inquiring if Davis Street would be wiring the funds to the City. This impression was confirmed on October 25, 2016, when Rosalia

McMillen, Davis Street's Finance Officer, sent an email to the City's Finance Director, copying Mr. Zapata and the City Council, requesting the City's bank information so that the funds to repay the loan could be paid via wire transfer. Had Ms. Padilla Johnson communicated her inability to repay the loan to Mr. Zapata on October 19, 2016, when they last met at Fosters Freeze, it is more likely than not that Mr. Baum and Ms. McMillen would have not exchanged communications regarding repayment of the loan on or before October 31, 2016, via wire transfer. In fact, it was not until Ms. Padilla Johnson left a voicemail message for Mr. Zapata at 3:40 p.m. on October 31, 2016, stating, "Um, I just wanted to let you know that, uh, you did not get the check for \$1,500,000 today, um, and it's not going to come in today because the two strategies that I'm feverishly working on, neither were able to be concluded by today," that Mr. Zapata learned that the loan would not be repaid by the extended due date.

More likely than not, Ms. Padilla Johnson did not communicate in writing regarding Davis Street's inability to meet the October 31, 2016, deadline until November 2, 2016, at 9:48 p.m., when she sent an email to Mr. Zapata that states, in pertinent part, "I want to talk with you about two strategies pending that will result in our retiring the debt. My goal was this would have happened on or before 10.31.16. Timing is what prevented this from happening. I ask that you consider the work we do do (*sic*) help the most needy in our community and allow me a couple of weeks to close the deal which will result in the payoff of the working capital loan to launch the clinic. Thank you for making time to talk with me tomorrow at 830a."² Prior to sending this email, she sent Mr. Zapata a text message at 12:19 p.m., stating, "I really need your help Chris can I call you." He responded at 6:42 p.m., telling her he would call her at 8:30 a.m.

More likely than not, Mr. Zapata and Ms. Padilla Johnson discussed an extension of the loan term in November 2016, as reported by Mr. Zapata. It was during these meetings in Mr. Zapata's office, and not the meeting they had on October 19, 2016, that Ms. Padilla Johnson expressed desperation regarding a further extension of the loan due date. It is also more likely than not that during these meetings, Mr. Zapata told Ms. Padilla Johnson that she "holds the key."

Councilmember Pete Ballew credibly reported that during his conversation with Ms. Padilla Johnson regarding Mr. Zapata, she told him that Mr. Zapata told her he would not interfere in the process if the Wellness Center decided to move forward with locating its dispensary at the Davis Street property on Teagarden Street, and that he confirmed this with her a second time. What Councilmember Ballew reported is consistent with what Mr. Zapata reported in this regard, as Mr. Zapata maintained that he had "no dog in this fight," and did not care where the Wellness Center located its dispensary, but he thought the Council would have an issue with the dispensary being located at the community center on Teagarden Street. Ms. Padilla Johnson's claim that Mr. Zapata offered her an extension of the loan in exchange for the Wellness Center using a different site for its dispensary is undermined by Councilmember Ballew's testimony. Mr. Zapata acknowledged telling Ms. Padilla Johnson that she may be able to convince the Mayor to support a further extension of the loan term if the Wellness Center changed its intended location of the dispensary.

Ms. Padilla Johnson's interpretation of Mr. Zapata saying, "You have/hold the key" to mean that he wanted to engage in a sexual relationship with her does not seem plausible in the context of the relationship that she and Mr. Zapata had for over four years. More likely than not, if Mr. Zapata engaged in conduct of a romantic or sexual nature and wanted to use her need for an extension of the loan as incentive for her to engage in a sexual relationship with him, he would have done so earlier in 2016 when she initially requested the loan extension. Mr. Zapata provided a reasonable explanation for using the phrase "you have/hold the key," in that he was referring to negotiating with Mayor Pauline Cutter, who he thought would be the fourth vote Ms. Padilla Johnson needed to secure Council's approval for another loan extension.

Mr. Zapata also credibly denied engaging in any behavior of a romantic or sexual nature towards Ms. Padilla Johnson. Even if he made all of the comments she attributed to him, including complimenting her appearance and clothing, and telling her that if she was not married, he would be interested in someone like her, these comments were allegedly made in approximately 2013, three years before the "you have/hold

² A copy of Ms. Padilla Johnson's November 2, 2016, email is attached to this report as Exhibit 12.

the key” comment. Additionally, when he made this comment to Ms. Padilla Johnson in November 2016 (or even October 2016 if her version of what occurred is believed), Mr. Zapata considered Ms. Padilla Johnson to be untrustworthy, primarily due to her failure to notify the City prior to the loan being granted in June 2014 that the 1190 Davis Street property the City used for collateral for the loan was already encumbered by \$1,300,000, \$800,000 of which was a line of credit obtained weeks prior to her signing the City’s loan documents certifying 1190 Davis Street was unencumbered. It is unlikely that Mr. Zapata would have engaged in conduct of a sexual or romantic nature towards Ms. Padilla Johnson given her deception.

Gordon Galvan is also an interested party, as he is a member of the Davis Street Board of Directors, is rumored to have a financial interest in the Wellness Center, and has had a long history with the City. Although it is unclear if Mr. Galvan was intentionally dishonest during his interview, several of the statements he made were inconsistent with statements made by Ms. Padilla Johnson, undermining his credibility to a certain extent. However, it is worth noting that a great deal of what he shared during his interview was information he obtained from Ms. Padilla Johnson, so it is possible she provided information to him that was inconsistent with what she provided during her own interviews as part of this investigation, undermining her credibility and not Mr. Galvan’s.

For example, Mr. Galvan may have truly believed the statements he made regarding the City’s decision to use 1190 Davis Street as collateral for the loan. According to Mr. Galvan, Ms. Padilla Johnson did not know the City chose this property, which is contradicted by the evidence presented since this property is clearly identified in the loan documents that Ms. Padilla Johnson signed. Further, Ms. Padilla Johnson admitted knowing this when she signed the documents. Mr. Galvan also reported that when the loan was approved by the Council, 1190 Davis Street was not encumbered, which is false, as the title report shows that on May 30, 2014, the property was used as collateral for a loan issued by Wells Fargo.

Mr. Galvan also claimed that Mr. Zapata assured Ms. Padilla Johnson that he would “make the loan happen,” which Mr. Galvan should know is not within the control of a City Manager. As a former Councilmember, Mr. Galvan should be aware of the City Manager’s limitations, and that the City Manager does not have the authority to loan a nonprofit \$1,500,000 without approval from the City Council.

Finally, when evaluating the interested parties’ credibility, the undersigned considered the ability of the parties to recall pertinent information and the consistency of what they reported. For the most part, the Councilmembers who were interviewed provided consistent testimony regarding their recollections of what occurred pertaining to the City’s loan to Davis Street and the extension of the loan, indicating that more likely than not, the Councilmembers’ testimony is credible. Mr. Zapata, with the assistance of documentary evidence, including text messages, Outlook calendar entries, and emails, was able to provide a more complete description of his interactions with Ms. Padilla Johnson. Ms. Padilla Johnson, on the other hand, had less of a recollection of specific incidents, including when the incidents she complained about occurred.

It is worth noting that several statements contained within Ms. Brunner’s December 8, 2017, letter to the City Attorney also proved to be inaccurate. To begin with, the letter indicates that Ms. Padilla Johnson and Mr. Zapata only met at Fosters Freeze and that Mr. Zapata refused to meet in an office. Mr. Zapata’s Outlook calendar entries evidence numerous meetings between 2013 and 2016 that took place at City Hall or in Ms. Padilla Johnson’s office. The letter also states, “Mr. Zapata told her to write a proposal, which she did, and then Mr. Zapata quickly presented it to the City Council in a report on the consent calendar. The loan was approved in July 2014.” As the minutes for the June 16, 2014, Council meeting show, the loan was approved on June 16, 2014, and not in July 2014, and was not part of the consent calendar.

Another inaccurate statement is that Ms. Padilla Johnson submitted a proposal to extend the term of the loan in March 2016, but “never heard back” from the City. The documents provided by the City and Mr. Zapata show that Ms. Padilla Johnson submitted a proposal in a letter dated March 18, 2016, and on March 31, 2016, Mr. Zapata responded to Ms. Padilla Johnson’s letter, requesting additional information regarding her request for an extension.

The letter states that the last meeting between Mr. Zapata and Ms. Padilla Johnson occurred in October 2016, which is not accurate, as discussed above. The letter also indicates that Ms. Padilla Johnson asked

Mr. Zapata what he meant when he said, “You have/hold the key,” but during her interview, Ms. Padilla Johnson stated that she knew what he meant and asked him if he actually said what she thought he said, and that if he did, it was not okay.

Ms. Brunner’s letter accurately states that San Leandro Times reporter Amy Sylvestri told Mr. Galvan and Ms. Padilla Johnson that the December 9, 2016, letter was sent to her email directly from City Hall, as evidenced by the email Deputy City Manager Eric Engelbart sent Ms. Sylvestri on December 20, 2016. What is noteworthy is that during her interview, Ms. Padilla Johnson stated that Ms. Sylvestri told her and Mr. Galvan that Mr. Zapata gave her the letter. While it is possible Ms. Sylvestri told Ms. Padilla Johnson and Mr. Galvan this, the credible evidence presented indicates that more likely than not, no one “dropped off” the letter, let alone Mr. Zapata. Mr. Zapata did not have any communication with Ms. Sylvestri regarding the December 9, 2016, letter.

For these reasons, Ms. Padilla Johnson’s credibility is questionable and more suspect when compared to that of Mr. Zapata.

B. Findings Of Fact

1. Allegation of Sexual Harassment³

a. Relationship Between Rose Padilla Johnson & Chris Zapata

The credible evidence presented establishes that more likely than not the relationship between Ms. Padilla Johnson and Mr. Zapata was a professional relationship. It is undisputed that Ms. Padilla Johnson and Mr. Zapata engaged in conversations of a personal nature regarding their personal lives, but such conversations were not of a sexual or romantic nature. Mr. Zapata credibly reported that he considered Ms. Padilla Johnson to be a friend, but they never socialized together outside of work-related events.

Further corroborating this “professional friendship” are the text messages exchanged between Mr. Zapata and Ms. Padilla Johnson, none of which are inappropriate on their face. Mr. Zapata’s text messages to Ms. Padilla Johnson are not flirtatious and do not indicate that Mr. Zapata had a romantic interest in Ms. Padilla Johnson or that he engaged in communications of a sexual or romantic nature with her.

The text messages provided by Mr. Zapata, which span a 2½ year period (March 2014 to November 2016), do not support Ms. Padilla Johnson’s claim that Mr. Zapata communicated with her in a sexual or otherwise inappropriate manner. If anything, the text messages indicate that Ms. Padilla Johnson was very comfortable communicating with Mr. Zapata. In fact, on September 11, 2015, she wrote, in pertinent part, “I just want you to know that I value our friendship and realized how much I’ve missed moments just being friends outside our professional world. My hope is to someday extend that to include Martha and invite you both over for dinner.” She also admitted that she initiated most of her meetings with Mr. Zapata at Fosters Freeze.

It is more likely than not that Mr. Zapata did not make the comments Ms. Padilla Johnson attributed to him regarding his desire to have a romantic relationship with her. Specifically, Ms. Padilla Johnson claims that Mr. Zapata said to her, “If you were not married, I would really go for someone like you,” and “If things were different . . .”. Mr. Zapata denied making either of these comments. As set forth above, Ms. Padilla Johnson is a less credible witness than Mr. Zapata. She was unable to identify the date these comments were made, or even the year. She did not report the comments to anyone. Even after Mr. Zapata allegedly made these comments, which she reported made her feel uncomfortable, she continued to initiate one-on-

³ Although facts pertaining to the dispensary issues are addressed in the report, the scope of the investigation does not include these issues. Therefore, there are no findings addressing any concerns raised regarding the cannabis dispensary permit issued to the Wellness Center. It is also worth noting that the scope of this report does not include an assessment of the City Manager’s performance or his management style.

one meetings with Mr. Zapata in her car at Fosters Freeze. Such conduct is inconsistent with her claim that Mr. Zapata's conduct was unwelcome.

It is undisputed that Mr. Zapata said to Mr. Padilla Johnson, "You have/hold the key," or words to this effect. Ms. Padilla Johnson interpreted this comment meant Mr. Zapata wanted to have a sexual relationship with her and if she acquiesced, Davis Street would get an extension of the loan term. As set forth above, Ms. Padilla Johnson's interpretation is more likely than not inaccurate. Ms. Padilla Johnson claims this comment was made in October 2016, but Mr. Zapata would have no reason to make such a comment in October 2016, or even discuss the term of the loan with Ms. Padilla Johnson, because he was under the impression that the loan would be paid off by October 31, 2016. Additionally, it is more likely than not that Mr. Zapata was not interested in having a romantic relationship with Ms. Padilla Johnson in October 2016 or later because at that point, he knew she had falsely certified that the property used for collateral for the loan was unencumbered, and therefore he did not trust her.

The same is true regarding Ms. Padilla Johnson's claim that Mr. Zapata spilled ice cream on his genital area and rubbed his genital area while in her vehicle parked at Fosters Freeze. Mr. Zapata denied spilling ice cream on himself while in Ms. Padilla Johnson's vehicle, let alone rubbing his genital area while in her car. She was unable to provide the exact date this incident occurred, but maintained that she was offended by it. It is unclear why Ms. Padilla Johnson would continue to engage in one-on-one meetings with Mr. Zapata in her vehicle if he behaved so inappropriately.

Ms. Padilla Johnson's credibility regarding this incident is undermined by the fact that despite her claim she was offended and felt uncomfortable by Mr. Zapata's behavior, she continued to meet with Mr. Zapata at Fosters Freeze and initiated subsequent meetings with him. If she was truly offended and made to feel uncomfortable by his conduct, but felt she still needed to meet with him, she could have requested they schedule a meeting in his or her office, where others would have been nearby.

In the complaint letter, Ms. Brunner wrote that Mr. Zapata told Ms. Padilla Johnson that if she needed anything he could influence, she should let him know. Ms. Padilla Johnson did not specifically mention this comment during her interviews, but given what Mr. Zapata and Mayor Cutter reported, it appears highly unlikely that Mr. Zapata was under the impression he could get Ms. Padilla Johnson whatever she wanted, since the City Council did not always "rubber stamp" his recommendations. More likely than not, Mr. Zapata did not make such a comment to Ms. Padilla Johnson, who appears to have had the mistaken impression that Mr. Zapata had the authority to make significant decisions for the City without Council approval.

Admittedly, the one CD that Mr. Zapata indisputably gave Ms. Padilla Johnson contains music that some might consider to be sexually suggestive, but Ms. Padilla Johnson reported to the undersigned that she uploaded the CDs Mr. Zapata gave her to her iPod and listens to them in her car. Had she been offended by the music he gave her, it is unlikely she would have uploaded the music to her iPod, let alone listened to it.

Mr. Zapata acknowledged that he may have complimented Ms. Padilla Johnson's appearance and/or her clothing. Doing so does not indicate that he was physically attracted to her or wanted to have a sexual relationship with her. Mr. Zapata advised that he has complimented the attire of others at City Hall, including males, and Councilmember Lopez recalled Mr. Zapata complimenting her appearance, in the presence of her husband, when they were dressed up for a gala.

b. City Loan to Davis Street Family Resource Center

Based upon the testimony of the witnesses and the documents provided to the undersigned by the City and Mr. Zapata, the following chronology of events occurred regarding the loan the City gave to Davis Street:

- In mid-2014, Ms. Padilla Johnson and Mr. Zapata negotiated the terms for the City to issue a loan to Davis Street in the amount of \$1,500,000 for two years, after Ms. Padilla Johnson told Mr. Zapata that Davis Street wanted to open a primary care clinic and needed to borrow \$1,500,000 to do so.

It is unclear if Ms. Padilla Johnson requested the City loan Davis Street the money or if Mr. Zapata suggested that the City could do so;

- The \$1,500,000 loan was approved by the City Council on June 16, 2014. The loan documents, including the Deed of Trust, were signed by Ms. Padilla Johnson on June 24, 2014. The Deed of Trust identifies 1190 Davis Street in San Leandro as the security for the loan, and further states that the property was unencumbered at the time the Deed of Trust was signed. This was inaccurate, as a title report shows the property was used as collateral for a line of credit at Wells Fargo Bank on May 30, 2014;⁴
- Davis Street made monthly interest payments, as set forth by the terms of the loan. In approximately January 2016, Ms. Padilla Johnson notified Mr. Zapata that Davis Street needed an extension on the term of the loan because Davis Street had not received the federal reimbursements it expected to receive. In January 2016, Ms. McMillen and Mr. Baum exchanged emails regarding Davis Street's need for an extension;
- Ms. Padilla Johnson acknowledged knowing the property at 1190 Davis Street was used by the City as collateral for the loan when she signed the loan documents. She further acknowledged knowing that the property was already encumbered by two loans when she signed the loan documents;
- On March 18, 2016, Ms. Padilla Johnson submitted a formal request to extend the term of the loan to December 2017, and offered to pay \$100,000 towards the principal. On March 31, 2016, Mr. Zapata responded to Ms. Padilla Johnson's request, seeking additional information before "formulating a recommendation to the City Council." Ms. Padilla Johnson's April 8, 2016, response to Mr. Zapata's letter points out that Davis Street "put up real estate to secure this loan" and that it was unable to repay the full loan amount because the federal reimbursements Davis Street anticipated receiving have not been received. On April 12, 2016, Davis Street provided Mr. Zapata with the documents he requested;
- In approximately June 2016, the City discovered that the original loan to Davis Street was not properly recorded and that there were other liens against 1190 Davis Street. Mr. Zapata also learned that 1190 Davis Street was for sale, but that Ms. Padilla Johnson did not intend to use proceeds from the sale to repay the City until Davis Street's other debts were repaid;
- On July 5, 2016, the City Council approved a three-month extension for repayment of the loan, with a new due date of October 31, 2016. Despite Ms. Padilla Johnson's assertion to the contrary, it is more likely than not that she was not "grilled about the permit process" on July 5, 2016. The audio recording of the July 5, 2016, Council meeting evidences that no member of the City Council mentioned the cannabis dispensary permit to Ms. Padilla Johnson;
- On August 30, 2016, Mr. Zapata sent a letter to Ms. Padilla Johnson requesting she let the City know by October 1, 2016, if Davis Street would seek another extension of the loan term. On September 29, 2016, Ms. Padilla Johnson sent a letter to Mr. Zapata stating that Davis Street intends to "fully retire the debt on or before October 31, 2016." On October 21, 2016, Mr. Baum sent a letter to Ms. Padilla Johnson asking if Davis Street intended to repay the loan via wire transfer. Ms. McMillen responded via email on October 25, 2016, asking for the City's bank information;
- The loan was not repaid on or before October 31, 2016. Ms. Padilla Johnson left a voicemail message for Mr. Zapata at 3:40 p.m. on that date to notify him that Davis Street was unable to repay the loan by the end of the day;

⁴ The title report is attached as an exhibit to Mr. Zapata's December 9, 2016, letter. See Exhibit 19.

- It is more likely than not that in November 2016, Mr. Zapata and Ms. Padilla Johnson met to discuss repayment of the loan. Despite Ms. Padilla Johnson's claim that this discussion occurred in Mr. Zapata's city-issued car in mid-October 2016, the credible evidence indicates this is incorrect. As of mid-October 2016, the City was under the impression that Davis Street would repay the loan by October 31, 2016, as evidenced by Ms. Padilla Johnson's September 29, 2016, letter and the communications exchanged between Mr. Baum and Ms. McMillen regarding the funds being repaid via wire transfer, so there would have been no need for Mr. Zapata and Ms. Padilla Johnson to have such a discussion on October 19, 2016;
- Ms. Padilla Johnson's statements about what occurred regarding the loan after October 31, 2016, are inconsistent. She acknowledged that she met with Mr. Zapata after October 31, 2016, to explain why Davis Street could not repay the loan by the due date, but she also stated that after October 19, 2016, she did not have any contact with Mr. Zapata until she handed him a check on January 18, 2017. It is undisputed that when Mr. Zapata and Ms. Padilla Johnson spoke about Davis Street's inability to repay the loan, Mr. Zapata told Ms. Padilla Johnson that he could not help her get an additional extension and he recommended she speak to Mayor Cutter regarding her request. He admitted saying to her, "You have/hold the key," or words to this effect, which she interpreted to mean he would assist her in getting an additional extension in exchange for engaging in a sexual relationship with him, while he maintained that the key to her getting an additional extension was convincing Mayor Cutter to support her if the matter was taken before the City Council, as Mayor Cutter would be the "fourth vote." As set forth above, it is more likely than not that Mr. Zapata's comment was not intended as a request for a romantic or sexual relationship;
- On November 8, 2016, the City Attorney sent a letter to Ms. Padilla Johnson giving Davis Street 10 days to repay the loan;
- On November 15, 2016 and November 16, 2016, Ms. Padilla Johnson and Mr. Zapata met to discuss repayment of the loan. According to Mr. Zapata's memo to the City Council, Ms. Padilla Johnson stated that Davis Street would repay the loan when the permit for the cannabis dispensary is approved;
- A closed session Council meeting occurred in late November 2016 (possibly November 21, 2016), during which Mr. Zapata was directed by the Council to send Ms. Padilla Johnson a letter giving Davis Street until January 6, 2017 to repay 25% of the loan, with full repayment due on June 30, 2017. As part of this offer, the City would withhold any grant money until the loan was paid in full, and wanted a forensic audit to ensure that the City's money was used for its intended purpose;
- On January 6, 2017, Ms. Padilla Johnson sent a letter to Mr. Zapata, making a counteroffer, agreeing to repay the full loan amount within 30 days. On January 10, 2017, the City accepted Davis Street's counteroffer, giving Davis Street until February 6, 2017, to repay the loan; and
- On January 18, 2017, Ms. Padilla Johnson delivered a check to Mr. Zapata in the amount of \$1,500,000.

The credible evidence presented indicates that more likely than not, Mr. Zapata did not engage in any inappropriate conduct with respect to the loan given to Davis Street in June 2014, or the extension given to Davis Street in July 2016, or the ongoing negotiations that occurred after Davis Street failed to repay the loan by the October 31, 2016 due date.

2. Allegation of Defamation

Ms. Padilla Johnson alleges that Mr. Zapata called her "a liar" on several occasions and referred to her as "the black widow." Mr. Zapata denied calling Ms. Padilla Johnson "a liar," but acknowledged telling others that Ms. Padilla Johnson lied and that he does not trust her.

It is understandable why Mr. Zapata believes Ms. Padilla Johnson lied to and about him. He maintains that her claim that he behaved inappropriately in any respect while they were parked in a car at Fosters Freeze is false. He also believes that she signed the loan documents that state that the 1190 Davis Street property was unencumbered when in fact it was encumbered, and that she knew this when she signed the documents.

It is further understandable why Mr. Zapata does not trust Ms. Padilla Johnson. In his mind, she falsely accused him of behaving inappropriately, assured him on September 29, 2016, that Davis Street would repay the City's loan by the October 31, 2016, due date but did not notify him that payment would not be made on that date until 3:40 p.m. that afternoon, and previously told him that even if the 1190 Davis Street property sold, Davis Street would pay its other debts prior to repaying the City. Even if what Ms. Padilla Johnson wrote on September 29, 2016, in that she intended to retire the full debt by October 31, 2016, was true at that time, she admittedly knew prior to October 31, 2016 that was not likely to happen, and did not communicate that information to Mr. Zapata until October 31, 2016..

Mr. Zapata provided credible evidence supporting his belief that Ms. Padilla Johnson lied to and about him, giving him reason not to trust her. It is more likely than not that he genuinely believed these statements to be true when he made them.

Ms. Padilla Johnson's claim that Mr. Zapata referred to her as "the black widow" is based upon Councilmember Ed Hernandez's reference to Ms. Padilla Johnson as a "black widow." It is undisputed that Councilmember Hernandez used the words "black widow" when speaking about Ms. Padilla Johnson, but he maintains that what he said was, "It's as if he thinks she is a black widow," or words to this effect in response to Mr. Galvan discussing Mr. Zapata's interactions with Ms. Padilla Johnson.

Even if Councilmember Hernandez made the statement attributed to him by Mr. Galvan and Ms. Padilla Johnson (i.e. Chris referred to Rose as a "black widow"), there was no credible evidence presented indicating that Mr. Zapata did in fact refer to Ms. Padilla Johnson in that manner. Councilmember Hernandez confirmed that he never heard Mr. Zapata refer to Ms. Padilla Johnson as a "black widow." None of the other witnesses interviewed heard Mr. Zapata call Ms. Padilla Johnson a "black widow." In fact, the Councilmembers interviewed maintained that they never heard Mr. Zapata speak negatively about Ms. Padilla Johnson, except for one Councilmember who recalled Mr. Zapata comparing Ms. Padilla Johnson to Elphaba from *The Wizard of Oz*.

To the extent Ms. Padilla Johnson claims that Mr. Zapata made false statements about her to the press, the credible evidence presented establishes that more likely than not, this is inaccurate. No evidence was presented indicating that Mr. Zapata had any communication with the press regarding Ms. Padilla Johnson. The City maintains that the December 9, 2016, letter that Mr. Engelbart sent to Ms. Sylvestri is a public record because it involved a matter of public concern and public funds. Further, no credible evidence was presented establishing that more likely than not, the December 9, 2016, letter contains any false statements.

C. AP-1000 "Harassment/Discrimination Prevention Complaint Process"⁵

The City's policy against harassment and discrimination that was in effect at the time of the alleged misconduct by Mr. Zapata prohibits sexual harassment, including unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature when submission to such conduct is made a condition of employment, is used as the basis for employment decisions, or unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.

The credible evidence presented as part of this investigation establishes that more likely than not, Mr. Zapata did not engage in conduct of a sexual nature, let alone conduct that was a "condition of

⁵ A copy of this policy is attached to this report as Exhibit 36.

employment,” was a basis for any employment decision, or that interfered with any employee’s work performance. Therefore, there has been no violation of AP-1000.

IV. CONCLUSION

Based upon the foregoing, Ms. Padilla Johnson’s claim that Mr. Zapata engaged in any conduct of a sexual nature towards her is not sustained. The credible evidence presented establishes that more likely than not, Mr. Zapata did not engage in any conduct of a romantic or sexual nature towards Ms. Padilla Johnson, nor did he offer to give her an extension of the loan term in return for engaging in a sexual relationship with him.

It is undisputed that Mr. Zapata said that Ms. Padilla Johnson lied to and about him and that he does not trust her. The credible evidence presented establishes that more likely than not, Mr. Zapata believed both of these statements to be true when he made them. No credible evidence was presented supporting Ms. Padilla Johnson’s claim that Mr. Zapata referred to her as “the black widow.” Ms. Padilla Johnson’s claim that Mr. Zapata made false statements about her is not sustained.

It is more likely than not that Mr. Zapata did not engage in conduct that rises to the level of a violation of City policy.

Respectfully Submitted,



Karen Kramer