

RESOLUTION NO. 15-102

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, GIVING NOTICE, PURSUANT TO MUNICIPAL CODE SECTION 2450(D), OF COMMENCEMENT OF THE PROCESS TO CONSIDER THE POSSIBLE CENSURE OF THE CITY CLERK FOR VIOLATION OF THE CITY'S CODE OF ETHICS

WHEREAS, the City of Carson (hereinafter the "City") has determined that it is essential for the proper operation of the City for the public to have confidence in the integrity of its local government; and

WHEREAS, the City has adopted a Code of Ethics as part of its Municipal Code through City Ordinance, Municipal Code section 2450, which establishes ethical standards for all City officials, including elected officials; and

WHEREAS, the City's Code of Ethics establishes that an elected official's responsibilities include compliance with federal, state and local laws, and that an elected official's conduct in his official affairs should be above reproach and avoid the appearance of impropriety; and

WHEREAS, the Code of Ethics provides that the City Council may take action in response to any violation of the Code of Ethics, including a resolution of censure; and

WHEREAS, on August 27, 2015, outside investigator Maria K. Aarvig, Esq., commenced an investigation into complaints made by various members of City staff related to conduct attributed to City Clerk Jim Dear, including allegations of discrimination, retaliation, creation of a hostile workplace and other alleged treatment of both City employees and non-employees, which if proven to be true could constitute multiple violations of the City's above-referenced Code of Ethics; and

WHEREAS, during the investigation, Investigator Aarvig interviewed thirteen (13) employees, including men and women of various races and from multiple departments within the City, gathered certain evidence, tested for corroboration the allegations made, and prepared a written report summarizing the results of this independent investigation; and

WHEREAS, no elected officials were interviewed; and

WHEREAS, the independent report prepared by Attorney Aarvig finds and concludes that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear has violated the above-referenced Code of Ethics; and

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear fostered, encouraged, and promoted racial division and animosity within work environment; and

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear regularly and pervasively made offensive and insulting remarks about nonwhite staff and elected officials, using terms such as "incompetent," "scumbag," "unprofessional," "liar," "corrupt," "evil," "stupid," "just no good," referring to someone as "an asshole" and commenting on hair in a racially derogatory context; and

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear's public *persona* is entirely different from the way he behaves towards staff; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear has angry outbursts, becomes agitated and red-faced, and behaves erratically and unpredictably in the workplace, resulting in staff being afraid of Mr. Dear and not knowing how far his behavior will go; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff feel unsafe in the workplace because of concern that City Clerk Jim Dear could just "snap" or go "Postal" and that he is unstable to the point there is a fear he could become violent; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff feel so shaken after confrontations with City Clerk Jim Dear in the office as to become physically ill or emotionally distraught; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff from multiple departments are concerned enough about personal safety that they have planned an escape route in case of an outburst by City Clerk Jim Dear; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear threatens City staff with termination; bullies, threatens and intimidates staff; uses others to spy on City staff or does it himself; puts staff in the middle of conflicts with members of City Council or the City Manager; takes out his frustrations on staff and embarrasses and humiliates them in front of others; and interferes with the work of City staff; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take

immediate remedial action from which the City Council could make findings that City Clerk Jim Dear manipulated City staff into hiring his girlfriend, Monette Gavino and thereafter mistreated Ms. Gavino in front of City staff; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear treats non-blacks with favoritism, such as directing that an employee be given a raise "because he's white;" avoids giving work assignments to black employees; has insisted that a black employee be terminated if a white employee is terminated, regardless of performance; and criticized recommendations for black candidates to key positions because they were black; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make that City staff actively avoids City Clerk Jim Dear, including avoiding eye contact and staying behind locked doors as much as possible; and,

WHEREAS, the independent report prepared by Attorney Aarvig further that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff fears being caught alone with Mr. Dear; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff has a widespread fear of retaliation for speaking out against Mr. Dear; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear's conduct towards City staff creates a potential liability for the City, is inconsistent with federal and state law and City policy, and given the number of complaining parties and the frequency of the offensive conduct, could be found to be severe and pervasive; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that an atmosphere of fear of retaliation and retribution exists among City staff; and,

WHEREAS, as an elected official, the City Clerk is not subject to the same rules and restrictions applicable to City staff, although the conduct of an elected official in the workplace subjects the City to the same liabilities; and,

WHEREAS, WHEREAS, irrespective of the fact that the City Clerk is not subject to the same rules and restrictions applicable to City staff, the City still owes an affirmative duty to its employees pursuant to federal and state law, including but not limited to Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Federal Whistleblower Protection Act, the California Fair Employment and Housing

Act, the California Labor Code, including Labor Code section 1102.5, and the California Whistleblower Protection Act.

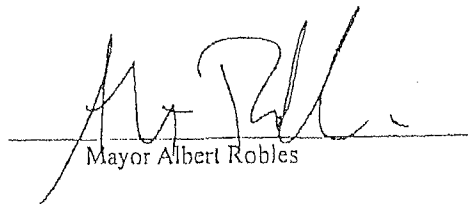
NOW, THEREFORE, be it resolved by the CITY COUNCIL of the CITY of CARSON, CALIFORNIA, as follows:

**Section 1.** The foregoing recitals are true and correct and are incorporated by reference herein.

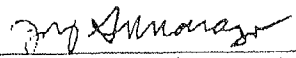
**Section 2.** The independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear's conduct has violated the City's Code of Ethics, likely violates federal and state law, including Title VII of the Civil Rights Act of 1964 and California's Fair Employment and Housing Act, and is inappropriate and unacceptable for a public official representing the City of Carson, and this Resolution serves as a formal notice to Mr. Dear pursuant to Carson Municipal Code section 2450 that a hearing will be held on October 20, 2015, to consider whether there is sufficient evidence to publicly censure him for his conduct as described above ("Censure Hearing").

**Section 3.** The independent investigator has reached out to City Clerk Jim Dear to afford him an opportunity to respond to the employees' statements. Mr. Dear has declined to speak to the investigator. Mr. Dear is hereby afforded the options to contact the investigator to respond to the allegations prior to the Censure Hearing, *or* he may respond to same in writing, prior to the Censure Hearing, *or* if he wishes he may respond orally at the September 17th hearing. His failure to respond to this notice shall as prescribed herein, shall be deemed a waiver of his right to respond to the investigation.

**PASSED, APPROVED and ADOPTED** at a regular meeting of the City Council on this 17<sup>th</sup> day of September, 2015.

  
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Mayor Albert Robles

ATTEST:

  
\_\_\_\_\_  
Joy Simarago, Deputy City Clerk

APPROVED AS TO FORM:

Sunny K. Soltani, City Attorney

**CERTIFICATE OF ATTESTATION AND ORIGINALITY**

I, Joy Simarago, Deputy City Clerk of the City of Carson, hereby attest to and certify that the foregoing resolution is the original resolution adopted by the Carson City Council at its special meeting held on the 17th day of September, 2015, by the following vote:

AYES:	COUNCIL MEMBERS:	Mayor Robles, Davis-Holmes, Hilton, and Gause
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	Santarina
ABSENT:	COUNCIL MEMBERS:	None

Joy Simarago  
Joy Simarago, Deputy City Clerk

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