

*Confidential and Attorney-Client Privileged*

**REPORT OF INVESTIGATIVE FINDINGS**

May 9, 2023

TO: Lisa Marshall, Kenyon Disend PLLC

FROM: Amy Kangas Alexander

RE: Confidential Investigation at the City of Everett Mayor's Office

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This firm was hired to investigate whether the personal relationship between Mayor Cassie Franklin and Deputy Mayor Nick Harper violates any City of Everett policies, and whether there has been any misuse of City resources or other malfeasance related to their relationship. My investigatory process, the factual background, and my findings are outlined below.

After Mayor Franklin separated from her spouse in July 2022, she and Mr. Harper entered a personal romantic relationship sometime between September 19, 2022 and early December 2022.<sup>1</sup> With the exception of an allegation that Mayor Franklin and Mr. Harper may have been texting each other during a Council meeting, this investigation found no specific allegations of misconduct related to the relationship. Mayor Franklin and Mr. Harper deny misusing City time or resources, including travel funds, to further their relationship. They both deny experiencing uninvited sexually-oriented verbal or physical conduct, or that there was any quid-pro-quo element to their relationship. They both deny demonstrating favoritism in the workplace as a result of their relationship.

In summary, the preponderance of the evidence does not support that the personal romantic relationship between Mayor Franklin and Mr. Harper has involved malfeasance, misuse of City resources, or violation of City policies.

**I. INVESTIGATIVE PROCESS**

My factual findings are based on interviews I conducted and documents I reviewed. I interviewed eleven individuals, who are City employees, elected officials, and members of the public. Interviews were conducted either in person, by videoconference, or by phone.

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<sup>1</sup> I refer to Deputy Mayor Nick Harper as Mr. Harper in this report for clarity and brevity, and because witnesses did not uniformly refer to Mr. Harper as Deputy Mayor. I intend no disrespect in forgoing his honorific.

My findings are made on a preponderance of the evidence basis, meaning that I find it is more likely than not that the events occurred as I describe them.

When making credibility determinations, I consider factors including the witness's opportunity and ability to observe or know the information, their ability to perceive and recall accurately, inherent plausibility, reasonableness in light of all the evidence, demeanor, motive to exaggerate or falsify, corroboration, past record, material omissions, and any bias or prejudice. This is not an exclusive list, and I do not apply every factor in every instance. A lack of credibility in one statement or one aspect of a witness's narrative may, but does not automatically, undermine the credibility of other aspects of their statement.

## **II. FACTUAL BACKGROUND**

City of Everett residents first elected Cassie Franklin mayor in November 2017. Mayor Franklin took office on January 1, 2018 and began her second term on January 1, 2022. Before her election to Mayor, she served on City Council for two years. Before joining government, Mayor Franklin was the CEO of the nonprofit Cocoon House.

### **A. Mayor Franklin's executive team.**

After her election, Mayor Franklin turned to the task of building her administration. On the recommendation of a member of her transition team, Mayor Franklin interviewed Nick Harper and appointed him Deputy Mayor at the beginning of her first term. Prior to vetting him for appointment, Mayor Franklin had only one or two interactions with Mr. Harper in his capacity as a Washington State Senator from 2011 to 2013. Mr. Harper was one of five Executive Directors in Mayor Franklin's administration (the Deputy Mayor position is classified as Executive Director). In 2019, Mayor Franklin also asked Lori Cummings, the Director of Parks, to join her team as an Executive Director.<sup>2</sup>

In response to declining revenues caused by the COVID-19 pandemic, the City conducted a series of voluntary separations in mid-2020. Three Executive Directors voluntarily separated, and their positions were not filled. Since mid-2020, the Mayor's executive team has consisted of Mayor Franklin, Mr. Harper, Ms. Cummings, and an Executive Assistant.<sup>3</sup> Mr. Harper's role is primarily external-facing: he manages key initiatives, policy, government relations, planning, economic development, community development, and communications. Ms. Cummings' role is internal-facing: she manages functions like information technology, operations, finance, and labor. Mayor Franklin directly manages the police and fire departments, and actively participates in the major projects and functions within Mr. Harper and Ms. Cummings' domains.

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<sup>2</sup> Until mid-2020, Ms. Cummings continued to serve as Director of Parks while assuming some Executive Director duties.

<sup>3</sup> The Mayor's Executive Assistant was previously Nichole Webber. Ms. Webber left that position and Deb Williams became the Executive Assistant beginning May 8, 2022.

The pay of non-represented employees like Mr. Harper and Ms. Cummings is set by City Ordinance, which establishes a salary schedule based on employee classification. Employees are placed on steps within each classification based on their tenure and performance. Mayor Franklin does not have direct control over the step on which Mr. Harper and Ms. Cummings are placed, though her performance ratings can influence whether they advance a step. Regardless, both Mr. Harper and Ms. Cummings are on the final step (step 10) within the Executive Director classification. On step 10, performance ratings do not influence pay. Mr. Harper has been on step 10 since January 1, 2019. As a result, he has received only cost of living (“COLA”) wage increases for the last four years. COLAs are also set by Ordinance, and are uniform for all non-represented employees, except that employees reporting directly to the Mayor did not receive a COLA in 2020.

Mayor Franklin describes her current executive team as “triad leadership.” She meets frequently with both Mr. Harper and Ms. Cummings together, which she prefers in order to have “more than one perspective in the room.” Mayor Franklin also meets with each of them one-on-one as needed.

#### **B. Mayor Franklin’s 2022 travel.**

Mayor Franklin attended seven overnight work-related trips in 2022. Mr. Harper attended three of these trips, each of which were in August or September 2022, shortly after Mayor Franklin separated from her husband on July 1, 2022.

Mayor Franklin frequently selects someone in her office to accompany her on work-related trips, which she states is typical at conferences and events. Of the four overnight trips in 2022 that Mr. Harper did not attend, Mayor Franklin’s Executive Assistant attended two and Mayor Franklin attended two without staff. The first 2022 travel on which Mr. Harper accompanied Mayor Franklin was the Mayors Innovation Project August 4-5 in Tacoma, Washington. The second trip was an exploration of minor league baseball stadiums in North and South Carolina August 27-30. The third trip was a Washington, D.C. lobbying event from September 12-15. Each of these trips was booked by the Mayor’s Office Executive Assistant Deb Williams with little to no instruction or involvement by Mayor Franklin or Mr. Harper.

First, the Mayors Innovation Project was a meeting of mayors and staff from around the country to network and discuss public policy issues. Mayor Franklin and Mr. Harper carpooled to and from the event, but were otherwise together only when attending forum sessions. They maintained separate hotel rooms. While the event lasted from the afternoon of Thursday, August 4 to the afternoon of Saturday, August 6, Mayor Franklin and Mr. Harper stayed only for a little over 24 hours, both leaving at approximately 11:00 a.m. on Friday morning. This early departure was pre-planned, with Mayor Franklin explaining that she “doesn’t like to be away from work that long” and her belief that her continued attendance would not benefit her or the City. Mr. Harper recalls they left early because Mayor Franklin had a meeting or event on Friday afternoon.

Second, the trip to North and South Carolina was to study the development of minor league baseball stadiums in two different cities. Mr. Harper leads the City's efforts to develop a new baseball stadium for the Everett AquaSox. Several others were in the delegation, including [REDACTED]. Mayor Franklin, Mr. Harper, and [REDACTED] sat together in a row on both flights, one of which was an overnight flight. The schedule on this trip was compressed: after a red-eye flight departing on August 27 and arriving on August 28, the delegation drove for about two hours, had breakfast and meetings, toured one baseball stadium, went to dinner, and returned to their respective hotel rooms. The next day, they toured another baseball stadium, and had a full day of meetings. They flew home the following morning. Mayor Franklin and Mr. Harper maintained separate hotel rooms for this trip. The agenda for this trip is attached as **Exhibit A**.

Third, the Washington, D.C. lobbying event from September 12 to 15, 2022 was organized by the Economic Alliance of Snohomish County, and referred to as the D.C. Fly-in. Mayor Franklin and Mr. Harper were the only representatives from the City of Everett attending, but there were about thirteen others in the delegation from local government or industry. Delegation and other meetings took up most of each day. Mayor Franklin and Mr. Harper again sat in adjoining seats on each flight. In addition to the plane ride, Mayor Franklin recalls that she and Mr. Harper may have walked together to get coffee one morning. Mr. Harper recalls that he and Mayor Franklin shared an Uber from one meeting to another. The agenda for this trip is attached as **Exhibit B**.

Mayor Franklin and Mr. Harper's work travel in 2022 was shortly after her separation from her husband. Mayor Franklin describes that she "probably intensifies work when going through hard stuff." Explaining how she and Mr. Harper grew close, Mayor Franklin said, "I had a lot of big projects, late summer and fall and we probably just spent more time working together. At some point in the fall, we probably realized that we were developing feelings for each other, something beyond a work relationship."

**C. Mayor Franklin's inquiry about City policies related to romantic relationships.**

Mayor Franklin returned from the D.C. Fly-in at about 11:00 a.m. on Thursday, September 15. On Monday, September 19, she met with Human Resources Director Kandy Bartlett to discuss City personnel matters. After discussing those issues, Mayor Franklin asked Ms. Bartlett, "If I were to be involved in a relationship with a City employee, would that violate any City policy?" Mayor Franklin did not disclose any particular City employee, nor whether she had a direct reporting relationship with the employee. Mayor Franklin explained that she made this inquiry to Ms. Bartlett because "I was developing feelings for [Mr. Harper], and felt he was developing feelings for me." Mayor Franklin wanted to know what would happen "if we were to act on those feelings." At the time, Ms. Bartlett did not have the impression that Mayor Franklin was already in a romantic relationship with a City employee.

Ms. Bartlett told Mayor Franklin that the City does not have a nepotism policy, but went on to discourage Mayor Franklin from engaging in a relationship with a City employee. While Ms. Bartlett does not remember her exact words, she reports communicating that a relationship between the Mayor and a City employee would not be a “best practice” or “advisable,” and could create problems with “public perception.” Mayor Franklin corroborates that Ms. Bartlett commented on the potential repercussions to her reputation, but explains that her purpose in speaking to Ms. Bartlett was only to gather information about City policies.

Ms. Bartlett heard nothing further on this topic from Mayor Franklin or any other person for the remainder of 2022.

At some point between her conversation with Ms. Bartlett on September 19 and early December 2022, Mayor Franklin and Mr. Harper initiated a personal romantic relationship. Neither of them provided specific information about their personal romantic relationship, such as when it started, the method and frequency of their communication, and when and how they spend time together. In early March 2023 as part of her interview for this investigation, Mayor Franklin said, “We’re not going out to dinner with flowers and roses. That’s not what this is. Lunches, drinks, conversations. We have affection for each other. [That’s] a reasonable term, that we are dating.” She said, “I wouldn’t say, now we’re boyfriend and girlfriend. I would say we’ve developed strong feelings for each other.” Mayor Franklin also reported as part of this investigation that she and Mr. Harper had not visited each other’s homes as part of their personal relationship.

**D. Mayor Franklin discloses a relationship with Mr. Harper to certain City officials.**

Beginning in December 2022, and continuing in January 2023, Mayor Franklin began disclosing to key city officials that she was in a personal romantic relationship with Mr. Harper.

City Attorney David Hall recalls that Mayor Franklin approached him in early December, though he describes that timeframe as a “guess.” Mr. Hall recalls that Mayor Franklin disclosed she “had strong feelings for somebody she worked with.” Mr. Hall was “a little bit surprised.” In her initial meeting with Mr. Hall, Mayor Franklin did not disclose that her romantic interest was Mr. Harper. Mr. Hall believes that either he guessed that Mr. Harper was the subject of Mayor Franklin’s romantic interest or that Mayor Franklin told him shortly after their initial conversation. Mr. Hall reports he may have been able to guess it was Mr. Harper “not because of anything I witnessed,” but because there “weren’t many possibilities.”

On January 6, 2023, Mr. Hall called Ms. Bartlett and asked her opinion about issues that could arise with the Mayor being in a relationship with an employee in a “high level position.” In her conversation with Mr. Hall, Ms. Bartlett correctly guessed that the employee in question was Mr. Harper, and Mr. Hall confirmed that her guess was correct.



On January 11, 2023, Mayor Franklin disclosed the relationship to Ms. Cummings. Ms. Cummings recalls that Mayor Franklin said the feelings between them were mutual, and that she did not believe that she violated any City policies as a result of the relationship.

On January 19, 2023, Mr. Hall and Ms. Bartlett asked to meet with Mr. Harper to “make sure that [the relationship] was consensual.” After the meeting, Ms. Bartlett determined that the relationship was consensual.<sup>4</sup>

In early February 2023, Mayor Franklin received a call from a reporter with the Everett Herald, who asked questions about her relationship with Mr. Harper. Shortly after, on February 6, 2023, Mayor Franklin disclosed her relationship to [REDACTED]. At that point, [REDACTED] recalls she had already heard rumors about the relationship between the Mayor and Mr. Harper. [REDACTED] recalls that in December 2022, a constituent had contacted her to notify her about the relationship, and by the end of December, she knew that “several people were aware.”

On February 15, 2023, the Everett City Council passed a motion directing [REDACTED] to enter into a contract with Stokes Lawrence, P.S. to conduct an investigation to determine whether the relationship between Mayor Franklin and Mr. Harper violates any City policies and whether there was any misuse of City resources or other malfeasance related to the relationship.

Members of the public have observed Mayor Franklin and Mr. Harper together in public places, such as stores, since news of their relationship became public in February 2023. In particular, one witness described seeing Mayor Franklin and Mr. Harper together at Wick-Ed Wine Cellars around 5:00 p.m. a couple of weeks after their relationship became public.

### **III. ANALYSIS AND FINDINGS**

#### **A. General concerns regarding Mayor Franklin and Mr. Harper’s relationship.**

With the exception of an allegation that Mayor Franklin and Mr. Harper may have been texting each other during a Council meeting, nobody I interviewed observed anything at work or in the community that caused them to suspect romantic interest between Mayor Franklin and Mr. Harper before the relationship became public. Most reported “shock” when they learned about the relationship. With the exception of [REDACTED] and [REDACTED], nobody I interviewed heard rumors about the relationship before Mayor Franklin

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<sup>4</sup> Ms. Bartlett did not disclose details about the conversation with Mr. Harper on January 19, 2023 on the basis of attorney-client privilege after I notified Ms. Bartlett that I was not requesting that she disclose attorney-client privileged communications. Ms. Bartlett did disclose the January 6, 2023 communications with Mr. Hall, the City Attorney. I considered whether this was a selective invocation of attorney-client privilege, to conceal information about misconduct or policy violations. On balance, however, it is more likely that the inconsistency was inadvertent. Mr. Hall’s opinion that the relationship between Mr. Harper and Mayor Franklin did not violate City policies or law corroborates that Mr. Harper did not disclose misconduct or policy violations in the January 19 meeting.

disclosed her relationship with Mr. Harper. Since the relationship became public on February 16, 2023<sup>5</sup> through newspaper reports, there have been no specific allegations of misconduct related to the relationship reported to me directly or indirectly. While one member of the public reported seeing Mayor Franklin and Mr. Harper at Wick-Ed Wine Cellars, they believed that to have been at approximately 5:00 pm, after the conclusion of the workday. In sum, there was no complaint or allegation of observed misconduct prompting this investigation.

At the request of City Council, I considered several potential areas of concern with respect to Mayor Franklin and Mr. Harper's relationship. These include:

- Misuse of public funds to further the relationship, in particular with respect to travel;
- Misuse of City time and resources to further the relationship, such as use of city phones, or intimacy during the workday;
- Uninvited sexually-oriented verbal or physical conduct experienced by Mayor Franklin, Mr. Harper, or observed by a third party employee;
- Submission to the relationship or sexual conduct as a basis for employment decisions; and
- Demonstrations of favoritism.

In addition to these areas of general investigation, some witnesses raised concern about the effect of Mayor Franklin and Mr. Harper's relationship on City government and compliance, and other witnesses questioned whether specific interactions they observed between Mayor Franklin and Mr. Harper were appropriate.

In summary, the preponderance of the evidence does not support that the personal romantic relationship between Mayor Franklin and Mr. Harper has involved any malfeasance or misuse of City resources. Mayor Franklin and Mr. Harper deny any impropriety with respect to their relationship. While they provided little information about the timeline or nature of their personal relationship, Mayor Franklin reported that "any relationship with Mr. Harper has been consensual. There has been no harassment." Mr. Harper said, "our relationship is consensual."

**1. Misuse of public funds to further the relationship, in particular City-funded travel.**

The preponderance of the evidence does not support that Mayor Franklin and Mr. Harper used City-funded travel or City funds to further their romantic relationship. Mayor Franklin and Mr. Harper both attended three business trips in 2022: The Tacoma trip August 4-5; the North and South Carolina trip August 27-30; and the Washington, D.C. trip September 12-15. The evidence does not support that Mayor Franklin and Mr. Harper were involved in a romantic

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<sup>5</sup> A previous version of this report submitted on May 9, 2023 incorrectly listed this date as February 16, 2022. On May 22, 2023 I corrected the date. This is the only change I made to the report besides an adjustment to formatting to maintain pagination.

relationship when these trips took place, though the evidence supports they grew closer while on these trips.

While Mayor Franklin and Mr. Harper did not provide specific information regarding the timing and nature of their relationship, the evidence supports that their personal romantic relationship began sometime between September 19 and early December 2022, which was after their three business trips. Mayor Franklin stated that it was not until mid-September 2022 that she began feeling romantic interest towards Mr. Harper, which was when she approached Ms. Bartlett with her hypothetical question whether a relationship would violate any policies. Ms. Bartlett corroborates that Mayor Franklin did not communicate that she was in a romantic relationship at that time, on September 19, which was immediately after the D.C. Fly-in. Furthermore, I did not discover any evidence that Mayor Franklin and Mr. Harper took any action in furtherance of their relationship during the trip. Each trip involved full days of meetings, and no one-on-one time with Mayor Franklin and Mr. Harper besides plane or car travel. While they did eat meals together, they did so in the presence of others and never alone. In addition, they each booked and maintained separate hotel rooms. [REDACTED] corroborates that Mayor Franklin and Mr. Harper's interactions on the D.C. Fly-in trip were professional: "they were just a good team, very professional."

I considered whether the purpose of Mr. Harper's attendance on these trips was to grow his personal relationship with Mayor Franklin, even if their relationship was not romantic at the time.<sup>5</sup> I do not find this to be the case. Mayor Franklin typically selects someone in her office to attend her travel. Of her four overnight trips in 2022 that Mr. Harper did not attend, two were attended by her Executive Assistant, and two she attended without staff. With COVID-19 nearly eliminating in-person events and travel for two years, there was no "typical" way that events were staffed leading into 2022. However, each of the trips attended by Mr. Harper were clearly related to one of his key initiatives or domains of responsibility, such as government relations (Mayors Innovation in Tacoma); economic development (baseball stadium tour in the Carolinas); and lobbying (D.C. Fly-in). The evidence supports that Mr. Harper attended these trips due to business need, not his personal romantic interest in Mayor Franklin, or Mayor Franklin's personal romantic interest in Mr. Harper.

I also reviewed the non-travel business expenses of both Mayor Franklin and Mr. Harper. The City provided me with all expense reports submitted by both Mayor Franklin and Mr. Harper from May 1, 2022 to April 3, 2023. After the D.C. Fly-in, Mayor Franklin submitted expense reports for only four events. The first was registration for Mayor Franklin and another City employee to attend a domestic violence awareness event hosted by Governor Inslee on

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<sup>5</sup> These trips were conducted in quick succession, and the authorization for the D.C. Fly-in was submitted on August 8, the Monday after the Tacoma Mayors Innovation trip. This timing could suggest that Mr. Harper's booking the D.C. Fly-in was motivated by a desire to spend more time together after the Tacoma Mayors Innovation trip, but the evidence does not suggest this to be the case. The trips occurred in quick succession because travel increased in mid-2022 due to make up for COVID-19 event delays. Mayor Franklin did not instruct Ms. Williams to book the DC Fly-in after returning from the Mayor's Innovation trip—Ms. Williams books Mayor Franklin and Mr. Harper's travel independently.



September 26, 2022. The second was registration for the Mike Sells Labor Champion Ceremony on October 7, 2022. The third was registration for the Economic Alliance of Snohomish County State of the Station event on November 9, 2022. The fourth was for the Yale Mayor's College in New York. Mr. Harper did not submit any expense reports after the D.C. Fly-in, which was around the time his relationship with Mayor Franklin began. In addition, the City's Finance Director and Treasurer, Susy Haugen, reports that her clerks reviewed all expense reports submitted by Mayor Franklin and Mr. Harper and she has "not had any abnormalities brought to her attention." Expenses, particularly travel, are "scrutinized by people who are not afraid to draw attention to a problem." As such, the evidence does not support any misuse of funds related to the personal romantic relationship between Mayor Franklin and Mr. Harper.

## **2. Misuse of City time and resources to further the relationship.**

The preponderance of the evidence does not support that Mayor Franklin and Mr. Harper engaged in intimate behavior or communication during work time or on City property, or otherwise used City time and resources to further their relationship.

### **(a) Intimate behavior during work time or on City property.**

Both Mayor Franklin and Mr. Harper denied engaging in any physical intimacy with the other in a City building or other property, and no witness I spoke with reported observing physical intimacy between Mayor Franklin and Mr. Harper, or hearing about any such intimacy. City employees who work closely with Mayor Franklin and Mr. Harper deny that the two have ever been inexplicably absent, or that they have observed any hint of a personal relationship during business hours. I considered that each City employee I spoke with reports directly or indirectly to Mayor Franklin or Mr. Harper, and therefore may have a motive to falsify in order to support the Mayor and, by extension, their jobs in her administration. However, because there is no evidence of even a rumor of the romantic relationship among appointed employees (rumors came from the public and were conveyed to City Council Members), I find the City employees credible in their reports that they observed no romantic conduct between Mayor Franklin and Mr. Harper. As a result, the evidence does not support that Mayor Franklin and Mr. Harper used City time or buildings to further their personal relationship.

It was reported to me that [REDACTED] speculated that Mayor Franklin and Mr. Harper "took long lunches," but [REDACTED] denies observing or hearing a specific allegation that Mayor Franklin and Mr. Harper took extended lunches. Rather, his discussion of extended lunches was in the context of an internal discussion about risks to the City created by Mayor Franklin and Mr. Harper's relationship: "I used it as an example, not a fact, if they were to take long lunch hours and not report that time as vacation or that they were flexing time, that would be a concern to me." There is no evidence that Mayor Franklin and Mr. Harper had extended lunches with each other or otherwise misreported their time.

One witness who is not a City employee reports observing Mayor Franklin and Mr. Harper together at a local wine tasting room, Wick-Ed Wine Cellars, in late February or early

March 2023, close to 5:00 p.m. on a weekday. Mayor Franklin believes that she and Mr. Harper may have been at Wick-Ed Wine Cellars during that time period after work, accompanied by friends and acquaintances.<sup>6</sup> While seeing Mayor Franklin and Mr. Harper together in this manner struck the witness as “unusual,” the preponderance of the evidence does not support that Mayor Franklin and Mr. Harper were spending personal romantic time together or drinking wine together during the work day at Wick-Ed Wine Cellars.

(b) Personal communication on City-owned devices and channels.

Mayor Franklin and Mr. Harper also deny using City-owned communication channels, like City email or phones, to further their romantic relationship. Both Mayor Franklin and Mr. Harper maintain two cell phones: one phone is City-owned and the other is personal. Mayor Franklin reports that she occasionally takes work calls on her personal phone and receives work texts on her personal phone, but she does not send work-related texts on her personal phone. Mr. Harper reports that he uses his work phone for work, and his personal phone for personal communication. Mayor Franklin and Mr. Harper carry both cell phones during the work day.

I requested text messages between Mayor Franklin and Mr. Harper on their work phones from June 1, 2022 through February 2023. Most messages are brief and professional: “Let me know when you want to debrief”; “Please call if you hear from Eric”; “Urgent. Please call.” There are no messages after January 12, 2023. There were about 14 different message threads outside of standard work hours of 8:00 a.m. - 5:30 p.m., which is consistent with Mayor Franklin and Mr. Harper’s reports that they sometimes communicate on work-related topics outside of the regular work day. For the most part, these messages appeared City-related, or likely to be City-related. For example, Mayor Franklin texted Mr. Harper on Saturday, November 12 at 8:24 p.m., “Can you give me a call?”

Some of the text messages between Mayor Franklin and Mr. Harper on their work phones from June 1, 2022 through February 2023 do not appear work related. For example, one message in December 2022 appears to be personal: Mayor Franklin: “Made it to Suncadia”; Mr. Harper: “Thanks for letting me know.”<sup>7</sup>

The following text messages are those outside of business hours that could also be considered personal:

- Saturday, November 5, 2022, Mayor Franklin: “Do you have power yet?”; Mr. Sunday, November 6, 2022, Mr. Harper: “No.”
- Saturday, December 31, 2022, Mayor Franklin: “I hope you’re feeling better. I need to know your schedule for next week. There are a number of things we need

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<sup>6</sup> Mr. Harper declined to participate in an interview to discuss this topic.

<sup>7</sup> This was a personal trip, as the documents provided to me by the City showed no expense reports or mileage requests for a trip to Suncadia on or around December 2, 2022.

to discuss for the coming weeks including the State of the City. Please call if you can. Or send an email and let me know. Thank you. Get well soon.”

**Exhibit C.**

(c) Personal communication during Council meeting.

██████████ reports that during the November 30, 2022 Council meeting, “it appeared that [Mayor Franklin and Mr. Harper] were texting.” ██████████ had heard rumors of their relationship before this meeting, and recalled that Mayor Franklin came to the meeting late, which was “very unusual,” and that Mr. Harper followed shortly after Mayor Franklin.<sup>8</sup> ██████████ reports “they were both on their phones during the meeting . . . It seemed they were texting each other as well as having eye contact.”

The recording of this meeting on YouTube shows that ██████████ sat about three feet away from Mayor Franklin, immediately to her left on the dais. Mr. Harper sat in the first row of the audience immediately in front of Mayor Franklin and ██████████. The recording shows Mr. Harper frequently on his phone, and Mayor Franklin often looking down at the table in front of her, which is blocked from view. Sometimes, a pen was visible in Mayor Franklin’s hand and she appeared to be handwriting. At other times, no pen was visible in Mayor Franklin’s hand as she looked down in front of her.

Text messages on Mayor Franklin and Mr. Harper’s City-owned phones do not have correspondence between the two of them on November 30, 2022. Mayor Franklin denied texting her team, including Mr. Harper, during that or any other council meeting, and she had no saved text messages on her personal phone prior to January 11, 2023. Mr. Harper reports that he does not recall texting with Mayor Franklin during the November 30, 2022 Council meeting, and does not have any November 2022 text messages on his personal phone.<sup>9</sup>

The preponderance of the evidence does not support that Mayor Franklin and Mr. Harper were texting romantically or intimately during the November 30, 2022 Council meeting. While I did not review text messages from either Mayor Franklin or Mr. Harper’s personal phones, as both deny having any text messages on that date, ██████████ did not personally observe any inappropriate or intimate messages between Mayor Franklin and Mr. Harper. This lack of personal knowledge by ██████████ and the absence of any other evidence that Mayor Franklin and Mr. Harper otherwise engaged in a personal romantic relationship during work hours or events makes it less plausible they would have sent messages with intimate content during a public council meeting. In addition, it is not plausible that Mayor Franklin and Mr. Harper would exchange romantic or intimate text during this meeting because ██████████

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<sup>8</sup> Minutes from the November 30, 2022 reflect that the meeting started at its scheduled start time.

<sup>9</sup> I inspected text messages between Mayor Franklin and Mr. Harper on their work phones. I did not inspect Mayor Franklin and Mr. Harper’s personal phones. Mr. Harper provided information about his personal cell phone through counsel.



██████████ sat in close proximity to Mayor Franklin, and Mr. Harper also sat next to at least one other person throughout the meeting.

I considered that Mayor Franklin and Mr. Harper could have deleted explicit or romantic exchanged during the council meeting on their City-owned and personal phones to avoid their disclosure. However, it is more likely Mayor Franklin and Mr. Harper deleted the messages on their personal phones as a matter of routine—not having anything to do with this investigation—because both report having no saved text message with any person on their personal phones in November 2022. Had they deleted text exchanges between them to avoid disclosure, it is likely they would have deleted only objectionable messages while retaining others during this time period. Nor is it plausible that Mayor Franklin and Mr. Harper would sent and deleted explicit or romantic messages from their City-owned phones given both of their knowledge that messages are subject to public disclosure.

In summary, while neither Mayor Franklin nor Mr. Harper disclosed specific information about how their personal relationship developed outside of work, such as how they communicated with each other outside of work or when they spent personal time together, their statements that they did not use City time or resources to further their romantic relationship are supported by the preponderance of the evidence. In light of all the evidence I reviewed, I find that Mayor Franklin and Mr. Harper’s close working relationship led to their personal relationship, and to the extent they developed romantic feelings towards each other as a result of their work together, this was incidental to City business.

### **3. Uninvited sexually-oriented verbal or physical conduct.**

The preponderance of the evidence supports that the relationship between Mayor Franklin and Mr. Harper was consensual, and that no other City employee has been subject to uninvited sexually-oriented verbal or physical conduct as a result of the relationship.

Both Mayor Franklin and Mr. Harper deny any uninvited sexually-oriented verbal or physical conduct. They report having strong boundaries between their personal and work relationship, and these boundaries are corroborated by each witness with whom I spoke. With the exception of ██████████ allegation regarding texting in the November 30, 2022 Council meeting, no witness reported observing or hearing about any behavior between Mayor Franklin and Mr. Harper at work that was indicative of their romantic relationship. No witness reported observing any non-consensual verbal or physical conduct outside of work between Mayor Franklin and Mr. Harper.

### **4. Submission to the relationship or sexual conduct as a basis for employment decisions.**

The preponderance of the evidence does not support that Mayor Franklin or Mr. Harper is required to submit to the relationship as a basis for employment decisions. Both agreed they could leave the relationship without adverse consequences to their employment or the



employment of the other person. No witness reported observing or hearing about any behavior indicating that there was a quid pro quo element to the relationship between Mayor Franklin and Mr. Harper.

Mayor Franklin has not promoted Mr. Harper since he was appointed Deputy Mayor in 2018. I considered whether Mayor Franklin exercised influence over Mr. Harper's salary, but Mayor Franklin has no direct control over his pay—the pay of appointed employees is set by salary ordinance. While positive performance reviews can cause an employee to move up a step in the salary range, Mr. Harper was already on step 10 and receiving the maximum pay for his position since January 1, 2019. Because Mr. Harper reached maximum pay well before his personal relationship with Mayor Franklin, the evidence supports that Mayor Franklin has exercised no direct or indirect influence over Mr. Harper's salary since their personal romantic relationship began.

## **5. Favoritism.**

The preponderance of the evidence does not support that Mayor Franklin exerted favoritism towards Mr. Harper such that either his work initiatives were better supported or he received better pay or benefits as a result of his relationship with Mayor Franklin. Mayor Franklin reports she does not believe that anything has changed with respect to her working relationship with Mr. Harper, explaining, "I've developed friendship with other people I've worked with . . . When I'm working, we're working." She does not believe that she has started spending more time with Mr. Harper at work or taking more lunches with Mr. Harper. Mr. Harper denies that anything changed in his and Mayor Franklin's working relationship as a result of their romantic relationship. Ms. Cummings, similarly situated to Mr. Harper in her direct reporting relationship to the Mayor, has not observed any favoritism or backchannel between Mayor Franklin and Mr. Harper since she became aware of their personal romantic relationship.

### **(a) Performance reviews.**

On December 12, 2022 Mayor Franklin met with Mr. Harper and Ms. Cummings as a group to conduct their performance reviews and solicit feedback about her performance. This meeting was in connection with the year-end performance ratings that determine, in part, an employee's place on a salary step. This was the first time that the three met for a performance review as a group. In past years, performance reviews were inconsistent: sometimes they were completed in writing and sometimes they were informal. However, if verbal performance reviews occurred they were previously done in more traditional one-on-one settings. I find that Mayor Franklin's relationship with Mr. Harper did not cause Mayor Franklin to recuse herself from evaluating Mr. Harper's performance, but it did prompt her to change the evaluation process in December 2022 in an effort to avoid impressions of favoritism.

Mayor Franklin implemented the group review process because she "[didn't] want to give him feedback on performance without somebody else in the room mainly to make a safe space."

Mr. Harper recalls that Mayor Franklin told him, “I’m going to evaluate you together, because I don’t want there to be appearance that I’m treating you differently.” The evidence supports that the feedback provided in the meetings was consistent with the type of feedback each person had received in the past, before Mayor Franklin and Mr. Harper’s romantic relationship began.

Each year, Mayor Franklin submits numerical ratings of each of her direct reports. The following is a compilation of the overall performance ratings for Mr. Harper and Ms. Cummings from 2020-2022. There are no ratings available for 2019. Ms. Cummings’ ratings are included for the purpose of comparison because she is Mr. Harper’s closest peer:

	Nicholas Harper	Lori Cummings
2020	[REDACTED]	[REDACTED]
2021	[REDACTED]	[REDACTED]
2022	[REDACTED]	[REDACTED]

Mr. Harper’s 2022 ratings improved modestly from previous years, as they did the year prior. While Ms. Cummings’ 2022 ratings did not improve, she still was still rated higher overall than Mr. Harper.

While the group performance review conducted by Mayor Franklin for Mr. Harper and Ms. Cummings was a departure from past practice, there is no evidence to support that the procedural adjustments or the fact of the personal romantic relationship resulted in more or less favorable performance reviews for Mr. Harper.

(b) Expense approvals.

Mayor Franklin approves expenses for multiple employees, including Mr. Harper. The City did not shift Mayor Franklin as the approving authority for Mr. Harper’s expenses after they began their personal romantic relationship. I considered whether Mayor Franklin approved any inappropriate expenses for Mr. Harper. However, there is no evidence that Mr. Harper submitted work expenses after the D.C. Fly-in, so Mayor Franklin had no opportunity to approve expenses for Mr. Harper during their romantic relationship. Even had Mayor Franklin approved expenses for Mr. Harper that did not comply with City policy—which the evidence does not support that she did—the City’s robust system for reviewing and approving expenses would have provided an additional control against the inappropriate use of public funds.<sup>10</sup>

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<sup>10</sup> The City’s Finance Director and Treasurer, Susy Haugen, has developed a system of robust internal controls in the City’s Finance Department. For example, travel expenses are first routed to the Clerk’s office, and reviewed for appropriateness, compliance with policy, and documentary support. If there are discrepancies, the Clerk requests additional documentation. If the Clerk had concerns about what the expense was for, the Clerk escalates to Ms. Haugen. There are additional levels of review for expense reimbursements or advances, which do not apply to Mr. Harper or Mayor Franklin because both have City credit cards that they use for City expenses. Ms. Haugen reports that her Clerks and Procurement staff are “watchdogs.”

(c) Time entry approvals.

I also considered that Mayor Franklin approves Mr. Harper's requests for time off, which could raise concerns about misuse of sick or vacation time or absenteeism. Ms. Bartlett had this concern about "people reporting time accurately and consistently, to make sure how [Mr. Harper] was putting in exceptions was done accurately and completely." Ms. Bartlett checked in with Mr. Hall, Ms. Cummings, and Mayor Franklin to ensure that his timekeeping was being reviewed consistently, and asked her payroll department to double check Mr. Harper's use of exceptions and inform her of any inconsistencies. Ms. Bartlett reports that no concerns were raised. In addition, Mr. Harper began copying Ms. Cummings on any time off requests, which Ms. Cummings viewed as an "effort to be forthcoming about being out of the office." Because Ms. Cummings oversees the Human Resources function at the City, this would also provide Ms. Cummings the opportunity to intervene in the event that Mr. Harper misused time off. The preponderance of the evidence does not support that there was any favoritism in the approval of Mr. Harper's timekeeping or exceptions, or misuse of City time or exceptions.

**B. City policy analysis.**

The City Council provided me with certain City policies and asked me to determine whether these were violated in the course of Mayor Franklin and Mr. Harper's personal romantic relationship. Some of these policies apply to City employees. Others apply to elected officials. Some policies apply to both City employees and elected officials.<sup>11</sup> Consequently, for employee policies, my findings extend only to Mr. Harper's conduct. For elected official policies, my findings cover only Mayor Franklin's conduct.

In brief, the preponderance of the evidence does not support that the personal romantic relationship between Mayor Franklin and Mr. Harper violated any of these applicable City policies.

**1. Code of Ethics and Employee Rules and Regulations (Mr. Harper).**

The Code of Ethics and Employee Rules and Regulations ("Code of Ethics") promotes conducting City of Everett business in a "fair, open, efficient, and accountable" manner. In addition to specific rules and regulations on such topics as gifts, accident reports, controlled substances, and absenteeism, the Code of Ethics expresses the overarching policy that "Employees shall conduct their public and private actions and financial dealings in a manner that shall not present any apparent or actual conflict of interest between the public trust and their private interest." Under the Code of Ethics, an employee's "private actions" may present a "conflict of interest between the public trust and their private interest," but only as "appl[ies] to his or her position [and] in the conduct of his or her office or business." Thus, Mr. Harper's

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<sup>11</sup> The Council determined which of these policies apply to employees, which apply to elected officials, and which apply to both employees and elected officials.

conduct in his personal romantic relationship with Mayor Franklin could violate the Code of Conduct if it affects Mr. Harper's work conduct or professional interactions.

The Code of Ethics prohibits the following behavior which is relevant, or potentially relevant, to this investigation:

- Dishonest or Fraudulent Acts;
- Breach of confidentiality;
- Insubordination;
- Improper absence from work; and
- Unsatisfactory work performance.

In summary, I find that Mr. Harper did not violate the City of Everett's Employee Code of Ethics. The full Code of Ethics is attached as **Exhibit D**. It contains additional prohibitions that are not relevant or applicable to this investigation, and that I do not discuss in this report.<sup>12</sup> .

Section 3.2 of the Code of Ethics on dishonest or fraudulent acts provides as follows:

3.2 Dishonest or Fraudulent Acts:

There shall be no theft or misappropriation of City or other employee's property (or property of clients and customers) nor any unauthorized use of or removal of City or other employee's property or any other conduct of a dishonest nature including, but not limited to:

- A. Falsifying or altering any City record or report such as an application for employment, medical report, a time card, a leave request, or an expense account
- B. Tampering with City property.
- C. Misusing, damaging, or destroying City property or equipment.
- D. Misrepresenting the truth, deceit, or taking unfair advantage of someone of something.

There are four potential factual bases to apply to this policy: Mr. Harper's use of time off, Mr. Harper's expense account, Mr. Harper's use of City property, and Mr. Harper's

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<sup>12</sup> For example, the Code of Conduct also prohibits: Employees from having a financial interest in any transaction involving the City; accepting gifts from vendors or customers that influence the employee or create an appearance of a conflict of interest; consumption of alcohol or illegal drugs on City property, or in a way that interferes with an employee's City work; non-compliance with safety standards or laws. These were not remotely implicated in my investigation.



communications about his relationship with Mayor Franklin. As discussed below, the evidence does not support that Mr. Harper has violated this section of the Code of Ethics.

First, Mr. Harper acknowledges he has taken more time off than is typical because the decision to investigate his relationship with Mayor Franklin has been “extremely challenging.” As discussed above, Mr. Harper’s requests for time off have processed normally except that Mr. Harper began including Ms. Cummings in his requests for additional transparency. There is no evidence that Mr. Harper abused the process for leave requests as a result of his relationship with Mayor Franklin.

Second, with respect to potential falsification of an expense account, Mr. Harper has an “expense account” only to the extent he can use his City credit card for authorized purposes. Mr. Harper used his City credit card for expenses such as gas and a rental car on the Carolinas trip, and an Uber for the D.C. Fly-in, as well as for per diem meals. As discussed above, Mr. Harper and Mayor Franklin were not engaged in a romantic relationship during these trips and Mr. Harper has not incurred any additional expenses since these trips. All expenses submitted by Mr. Harper from 2022 to April 3, 2023, or by Mayor Franklin on behalf of Mr. Harper, are attached as **Exhibit E**.<sup>13</sup> There is no evidence that Mr. Harper falsified or altered expense account records.

Third, with respect to potential misuse of City property, Mr. Harper and Mayor Franklin deny engaging in intimate behavior in or on City property. There is no evidence that Mr. Harper misused City property in the course of his relationship with Mayor Franklin.

Finally, the Code of Ethics also prohibits “misrepresentation of the truth or deceit, or taking unfair advantage of someone or something.” Mayor Franklin denies her relationship with Mr. Harper is anything other than consensual, and there is no evidence that Mr. Harper took “unfair advantage” of Mayor Franklin in the course of their relationship. With respect to the prohibition on “misrepresentation” and “deceit,” Mr. Harper did not disclose his personal romantic relationship from colleagues from the time it began sometime in the fall of 2022 until January 19, 2023 when he met with Mr. Hall and Ms. Bartlett. City policy does not require affirmative disclosure of a romantic relationship with a colleague, and when Mr. Harper was directly asked about his relationship, there is no evidence that he misrepresented the truth or deceived Ms. Bartlett or Mr. Hall. No other employee reports that Mr. Harper misrepresented his relationship or deceived them; rather, the few individuals who learned of the relationship from Mayor Franklin viewed it as a personal matter. While many colleagues expressed “shock” when they learned of the relationship and looked for hints they may have missed, none characterized the non-disclosure as a misrepresentation or deceit. I find that Mr. Harper did not violate the Code of Ethics prohibition on “misrepresenting the truth, or deceit.”

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<sup>13</sup> Some of Mr. Harper’s expenses were submitted by [REDACTED] on Mr. Harper’s behalf. These expenses are not included in **Exhibit E**.

Section 3.3 of the Code of Ethics on confidentiality provides in relevant part as follows:

3.3 Confidentiality:

- A. Any information learned during the performance of work at the City that is not commonly available to the public must be kept confidential. This includes information about co-workers, leads, supervisors, members of the public, and business affairs. Furthermore, this applies to information in any form - spoken, written or electronic.
- B. Disclosure of City confidential information is prohibited except when required for the performance of one's job at the City and when specifically authorized.

Mr. Harper has a close working relationship with Mayor Franklin. Mayor Franklin is his supervisor. There is no information that Mr. Harper is obligated to keep from Mayor Franklin in the course of performing his job at the City. Mr. Harper and Mayor Franklin frequently discuss City business outside of working hours, and there is no evidence that Mr. Harper inappropriately disclosed City confidential information in violation of the Code of Ethics in the course of his relationship with Mayor Franklin.

Section 3.6 of the Code of Ethics on insubordination provides as follows:

3.6 Insubordination

Insubordination jeopardizes productivity, lowers morale and undermines a supervisor's authority, and therefore, is not an acceptable form of conduct without a valid reason. Insubordination includes but is not limited to:

- A. Refusal of failure to obey orders or perform a job assignment given by a supervisor, or any authorized employees or City officer, provided that such orders and assignments are in accordance with the City Charter, ordinances, resolutions, and other local, state, or federal laws.
- B. Disrespect publicly displayed towards a lead, supervisor, or a City officer while performing work for the City.
- C. Threatening, intimidating, coercing, undermining, or interfering with supervision.
- D. Abusive language or profanity to any lead, supervisor, or members of the public.

Both Mayor Franklin and Mr. Harper deny that their working relationship has changed due to their personal romantic relationship. This is corroborated by Ms. Cummings, who has

observed no change in how Mayor Franklin and Mr. Harper work together. There is no evidence that Mr. Harper has engaged in insubordinate behavior towards Mayor Franklin.

Section 3.7 of the Code of Ethics on improper absence from work provides as follows:

**3.7 Improper Absence from Work:**

Absence from work must be preauthorized. If the tardiness or absence could not be anticipated, the employee must immediately notify his/her supervisor or department director. There shall be no absence from work, tardiness, or quitting early without a reason recognized as valid by the City.

As already discussed, Mr. Harper acknowledges he has taken more time off than is typical, but there is no evidence that Mr. Harper's absences have been improper or unauthorized.

Section 3.12 of the Code of Ethics on unsatisfactory work performance provides as follows:

**3.12 Unsatisfactory Work Performance:**

Employees are expected to perform their work for the City in an efficient and competent manner. Employees shall not engage in any activities other than assigned work during working hours and/or while operating City equipment and/or while on City time without approval in advance by their supervisors. Employees are expected to perform their work for the City in a respectful, courteous, and polite manner at all times. It shall be a violation of this policy for employees to be insulting, rude, insolent, profane, or in any way uncivil, discourteous, or discriminatory towards any customer, citizen, fellow employee, or any other person while working for the City or operating City equipment. It may be considered a violation of this policy for an employee not to exercise the care and attention to their work that the circumstances require.

As already discussed, Mayor Franklin, Mr. Harper, and Ms. Cummings deny that anything has changed since the onset of the personal romantic relationship with respect to how work is performed or how they interact professionally with each other. Mayor Franklin and Mr. Harper deny engaging in romantic or intimate behavior during City time, and I received no specific allegation their relationship caused Mr. Harper to engage in activities other than assigned work while on City time.

In summary, while Mr. Harper largely declined to respond to questions about "private actions" that may be covered by the Code of Ethics, there is no specific allegation or evidence

that Mr. Harper violated the Code of Ethics. I find no violation of the Code of Ethics by Mr. Harper.

## **2. Anti-Discrimination and Harassment Policy (Mr. Harper).**

The City's Anti-Discrimination and Harassment Policy applies to employees of the City of Everett. The full policy is attached as **Exhibit F** and includes complaint procedures and a prohibition on retaliation. Its anti-discrimination and harassment provisions state in relevant part as follows:

### **2.0 Policy**

- 2.1 The City of Everett is committed to maintaining a work environment that is free of discrimination and harassment. Employees are expected to refrain from engaging in any act that discriminates or creates an intimidating, hostile or offensive working environment against another employee because of a person's protected status. Protected status is defined as a person's race, creed, color, national origin, age, gender, sexual orientation, marital or veteran status, pregnancy, religion, ethnic background, the presence of a physical, sensory or mental disability or any other basis prohibited by local, state or federal law.

An act of discrimination and/or harassment is a violation of the Policy. Depending upon the severity of the actions identified by the City, appropriate disciplinary action may occur up to and including termination to anyone found to be violating this Policy.

- 2.2 The City will not tolerate any form of discrimination or harassment against City employees by anyone. This includes other employees, managers, supervisors, visitors, vendors, contractors or customers.

### **3.0 Definitions**

- 3.1 Discrimination - It is a violation of this Policy to discriminate in the provision of employment opportunities, benefits or privileges, creating discriminatory working conditions or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, based on the person's protected status. Discrimination of this kind may also be strictly prohibited by a variety of federal, state and local laws.
- 3.2 Harassment - The City prohibits harassment of any kind. Harassment is prohibited by a variety of federal, state and local laws where:



- A. Submission to such conduct is made either explicitly or implicitly a term of condition of employment,
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- C. Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive environment.

The preponderance of the evidence does not support that Mr. Harper violated the Anti-Discrimination and Harassment Policy. There are no allegations that Mr. Harper engaged in behavior that violates the City's policy against discrimination and harassment. In the course of my interviews and investigation, no witness reported conduct by Mr. Harper that was in violation of the City's policies against discrimination and harassment. Both Mr. Harper and Mayor Franklin report that their relationship is consensual, non-harassing, and that they could leave the relationship without an adverse effect on their employment. I find Mr. Harper did not violate the City's Anti-Discrimination and Harassment Policy.

**3. Email Management within the City of Everett (Mayor Franklin and Mr. Harper).**

The City of Everett Email Management Policy applies to both Mayor Franklin and Mr. Harper. The full policy is attached as **Exhibit G**. In general, the policy establishes guidelines and procedures to comply with laws governing records retention and disclosure requirements related to email. There is no allegation or evidence that Mayor Franklin or Mr. Harper deleted emails that were subject to the Public Records Act, or otherwise interfered with the email retention schedule in this policy. I find that Mr. Harper and Mayor Franklin did not violate the Email Management within the City of Everett policy.

**4. Electronic Communications & Technology Resources (Mayor Franklin and Mr. Harper).**

The City of Everett's Electronic Communications and Technology Resources policy applies to both Mayor Franklin and Mr. Harper.<sup>14</sup> The full policy is attached as **Exhibit H**. In general, the policy "defines the appropriate use of electronic communications and technology resources that are owned by the City of Everett." In large part, the policy relates to obligations of the City's IT Director to maintain a secure system and develop protocol and training for employee use of the system. To the extent the policy contains prohibitions on individual use of

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<sup>14</sup> The effective date of this policy is February 1, 2023. Even if the version of this policy I reviewed had been in effect before February 1, 2023, the preponderance of the evidence does not support that either Mayor Franklin or Mr. Harper violated it.

electronic communications and technology resources, the following are relevant, or potentially relevant, to this investigation:

## 7.0 GUIDELINES

### 7.1 De minimis use

7.1.1 Occasional, but not limited, personal use of City electronic communication and or technology resources is allowed only if all the conditions are met:

7.1.1.1 There is little or no cost to the City of Everett;

7.1.1.2 Any use is brief in duration, occurs infrequently, and is the most effective use of time or resources;

7.1.1.3 The use does not interfere with the performance of official duties;

7.1.1.4 The use does not disrupt or distract from the conduct of City business due to volume or frequency;

7.1.1.5 The use does not disrupt other City employees and does not obligate them to make a personal use of City resources;

7.1.1.6 The use does not compromise the security or integrity of City property, information, or software; and

7.1.1.7 The use is consistent with City policies and procedures.

Mayor Franklin and Mr. Harper deny sending any personal emails to each other on either personal or City-owned email. They sent several text messages that could be considered personal on City cellphones, such as Mayor Franklin informing Mr. Harper she had arrived at Suncadia, and checking in with Mr. Harper over the weekend about whether he was without electricity at his home. However, I find that these messages fall within the de minimis use exception of personal use of City electronic communications, as they are brief, non-disruptive, and do not otherwise violate any City policies.

### 7.2 Inappropriate use

7.2.1 The following private uses of electronic communications and technology resources are prohibited at all times:

7.2.1.1 Any use for the purpose of conducting any outside business or private employment;

7.2.1.2 Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside political party;

7.2.1.3 Any use for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition; and

7.2.1.4 Any use related to conduct that is prohibited by a federal or state law or rule, or by this policy or any other City code or policy.

There is no evidence that Mayor Franklin or Mr. Harper engaged in conduct on City-owned communication channels that violates federal or state law, or is prohibited by City code or policy. While I did not request and review every email between Mayor Franklin and Mr. Harper, both are keenly aware of the public nature of their electronic communications on City-owned channels, and otherwise engaged in no personal romantic behavior during City time or on City property. Thus, the preponderance of the evidence does not support that Mayor Franklin or Mr. Harper engaged in any use related to conduct that is prohibited by a federal or state law or rule, or by City code or policy.

7.2.5 Destroying, altering, dismantling or otherwise interfere with the integrity of electronic information and or information resources.

There is no evidence that Mayor Franklin or Mr. Harper destroyed or deleted City-owned electronic information or information resources. While Mayor Franklin and Mr. Harper did delete text messages on their personal cell phones, such messages do not fall within this policy because they are not on City-owned devices.

7.2.7 Electronic communications or usage of technology resources that violate the Everett Codes of Ethics and Employee Rules and Regulations or City of Everett Anti-Discrimination and Harassment Policy.

The text messages I reviewed between Mayor Franklin and Mr. Harper are professional, and do not violate the Code of Ethics, Employee Rules and Regulations, or the Anti-Discrimination and Harassment Policy. As discussed, while I did not request and review all emails between Mayor Franklin and Mr. Harper, both are aware that their electronic communications are subject to public disclosure. Both were careful to not engage in romantic conduct in connection with their work. Thus, the preponderance of the evidence does not support that Mayor Franklin or Mr. Harper engaged in any use of electronic communications or technology resources that violate the Code of Ethics, Employee Rules and Regulations, or the Anti-Discrimination and Harassment Policy.

For the reasons discussed, I find that Mayor Franklin and Mr. Harper did not violate the Electronic Communications and Technology Resources Policy.

**5. Open Data (Mayor Franklin and Mr. Harper).**

The City's Open Data Policy applies to both Mayor Franklin and Mr. Harper. The full policy is attached as **Exhibit I** and describes the procedures by which the City makes the data it generates and collects "openly available to the public[.]" The policy contains requirements for departments to collaborate on making data available to the public, but does not have requirements for individuals. Therefore, I find that Mayor Franklin and Mr. Harper did not violate the Open Data Policy.

**6. Scope of Duty and Course of Employment (Mayor Franklin and Mr. Harper).**

The City's policy on Scope of Duty and Course of Employment applies to both Mayor Franklin and Mr. Harper. The full policy is attached as **Exhibit J** and describes the circumstances under which the City Attorney will defend a City officer or employee against claims and litigation "arising from any conduct, acts or omissions of such officers or employees in the scope and course of their City employment."

In particular, the policy requires that officials and employees provide notice of potential claims:

- 2.3 Officers or employees shall, in the event of any incident or course of conduct giving rise to a claim for damage and/or litigation, as soon as practicable give the Department Head and City Attorney's Office written notice thereof, identifying the officers or employees involved and containing information with respect to time, place and circumstances thereof and the names and addresses of persons allegedly injured or otherwise damaged thereby and of available witnesses and shall forward to the City Attorney's Office every demand, notice, summons or other process relating to any such incident or course of conduct, and received by him or his representative and shall cooperate with the City Attorney's Office and, upon request, assist in making settlements in the conduct of suits and in enforcing any claim or any right of contribution or indemnity against any person or organization who may be liable to the City because of any damage or alleged loss arising from the incident or course of conduct.

I find that the personal romantic relationship between Mayor Franklin and Mr. Harper has not been an "incident" or "course of conduct" that is reasonably anticipated by either party to "giv[e] rise to a claim for damages and/or litigation" because neither party has made any allegation of wrongdoing against the other. As such, there was no obligation for either to report.



Moreover, even if Mayor Franklin and Mr. Harper were required to provide notice under this policy, they substantially complied when Mayor Franklin, a Department Head, verbally notified the City Attorney of her relationship with Mr. Harper in early December 2022.

I find that Mayor Franklin and Mr. Harper did not violate the Scope of Duty and Course of Employment Policy with respect to their personal romantic relationship.

**7. Resolution 7752 City Council Rules of Procedure (Mayor Franklin).**

Resolution 7752 establishes Council Rules of Procedure and applies to Mayor Franklin. The full policy is attached as **Exhibit K** and describes the procedures by which the Council operates, including agenda-setting, public comment, motions, and subcommittees. There has been no allegation that Mayor Franklin violated the Council Rules of Procedures in relation to her relationship with Mr. Harper, nor is there evidence supporting any such violation. I find that Mayor Franklin did not violate the Council Rules of Procedure in relation to her personal romantic relationship with Mr. Harper.

**8. City Business Expense Travel Policy (Mr. Harper).**

The City's City Business Expense Travel Policy applies to employees of the City of Everett. The full policy is attached as **Exhibit L** and "relates to travel and reimbursements for expenses incurred by City employees while on City-related business." In large part, this policy sets procedures for reimbursement of expenses, setting out the requirement for prior approval, use of particular forms, and required documentation. The Clerk's office reviews each expense submission for compliance with these procedural requirements and found no irregularities with respect to Mr. Harper's travel expenses. More broadly, the policy states in relevant part as follows:

- 2.3 Reasonable and necessary expenses incurred while conducting City business are authorized for reimbursement subject to the conditions contained within this policy. Employees traveling on official City business are expected to spend funds prudently, plan appropriately, and adhere to City policy and documentation requirements. Travelers are expected to schedule their departure and return such that additional or unnecessary costs are not incurred. Employees are responsible for excess costs and any additional expenses incurred for personal preferences or convenience.

As discussed above, Mr. Harper was not in a personal romantic relationship with Mayor Franklin when they travelled on City business three times in August and September 2022, but these trips likely caused Mr. Harper and Mayor Franklin to grow closer. Each of the three trips lasted no longer than necessary to complete City business. For example, Mayor Franklin and Mr. Harper left the Mayors Innovation Forum after less than 24 hours and well before the end of the conference. The agenda for this conference is attached as **Exhibit M**. For the D.C. Fly-in, delegates arrived in D.C. around 10:00 p.m. and had their first meetings at 9:30 a.m. the

following morning. They flew home at 8:00 a.m. in the morning, after their final event at 5:00 p.m. the evening prior. The Carolinas trip was similarly compressed—Mr. Harper’s travel was scheduled to reduce unnecessary costs, with little to no discretionary time for socializing with Mayor Franklin. **Exhibits A and B**. There is no evidence that Mr. Harper missed any portion of the trip or incurred additional expenses in furtherance of a relationship with Mayor Franklin.

I find Mr. Harper did not violate the City Business Expense Travel Policy with respect to his relationship with Mayor Franklin.

**9. Charge Cards and Procurement Card Program (Mr. Harper).**

The City’s Charge Card Policy applies to employees of the City of Everett. The full policy is attached as **Exhibit N** and its purpose “is to provide instructions for the use of charge cards by employees of the City of Everett.” Like the Business Expense Travel Policy, this policy sets procedures for reimbursement of expenses, setting out the requirement for prior approval, use of particular forms, and required documentation. The Clerk’s office reviews each expense submission for compliance with these procedural requirements and found no irregularities with respect to Mr. Harper’s charge card expenses. In my review of Mr. Harper’s charge card expenses provided by the City, there was no violation of the Charge Card Policy.

The City also maintains a Procurement Card policy, attached as **Exhibit O**, which sets out policies and procedures for the use of Procurement Cards or “PCards.” Mr. Harper and Mayor Franklin have credit cards, not PCards. As such, there is no evidence that they abused the use of a PCard in violation of City policy.

I find that Mr. Harper did not violate the Charge Card or PCard Policies.

**10. Resolution 6963 travel policy for elected officials (Mayor Franklin).**

Resolution 6963 Travel Policy for Elected Officials applies to elected officials such as Mayor Franklin. The full resolution is attached as **Exhibit P**. In large part, this policy describes procedures for reimbursement of expenses, and sets out reimbursable expenses, required documentation, prior approval, and required documentation. More broadly, the policy provides that “City elected officials will exercise prudent judgment in incurring expenses on City business.”

The Clerk’s office reviews each of Mayor Franklin’s expense submissions for compliance with procedural requirements. The Clerk’s office found no irregularities with respect to Mayor Franklin’s travel expenses. [REDACTED] is the approving entity for Mayor Franklin’s expenses, and [REDACTED] signed her approval of Mayor Franklin’s travel expenses in 2022.

As discussed above, Mayor Franklin was not in a personal romantic relationship with Mr. Harper when they travelled on City business three times in August and September 2022,

*Privileged and Confidential*

Lisa Marshall, Kenyon Disend PLLC

May 9, 2023

Page 27

however these trips caused Mr. Harper and Mayor Franklin to grow closer. There is no evidence that Mayor Franklin did not “exercise prudent judgment in incurring expenses” with respect to her August and September travel, or any travel since her relationship with Mr. Harper began. I find that Mayor Franklin did not violate Resolution 6963 Travel Policy for Elected Officials.

#### **IV. CONCLUSION**

Thank you for the opportunity to work on this matter. Please do not hesitate to contact me if you have any questions.