



**Karen Kramer, Esq.**

# **CONFIDENTIAL INVESTIGATION REPORT**

## **CITY OF MILPITAS – Complaint of Tom Williams**

**November 13, 2017**

**KRAMER WORKPLACE INVESTIGATIONS**

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**MIL-ARB-176**

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. SUMMARY OF FINDINGS .....	1
III. METHODOLOGY OF THE INVESTIGATION .....	1
IV. DESCRIPTION OF THE ALLEGATIONS .....	2
A. Demand Letter .....	2
B. Interview Of Tom Williams .....	3
1. Age-based Comments Directed at Mr. Williams .....	3
2. Comments and Conduct Directed at Other City Employees .....	4
V. WITNESSES' RESPONSES TO THE ALLEGATIONS .....	5
A. Age-based Comments .....	5
1. [REDACTED] .....	5
2. Councilmember Anthony Phan .....	6
3. [REDACTED] .....	7
4. [REDACTED] .....	7
5. [REDACTED] .....	8
6. [REDACTED] .....	8
7. [REDACTED] .....	9
8. [REDACTED] .....	9
9. Mayor Rich Tran .....	10
B. Conduct Of A Sexual Nature .....	12
1. [REDACTED] .....	12
2. [REDACTED] .....	12
3. [REDACTED] .....	13
4. [REDACTED] .....	13
5. [REDACTED] .....	13
6. [REDACTED] .....	13
7. Mayor Rich Tran .....	13
VI. FINDINGS REGARDING ALLEGATIONS AGAINST MAYOR RICH TRAN .....	14
A. Credibility Assessment .....	14
B. Findings Of Fact .....	15
1. Age-based Comments .....	15
2. Conduct of a Sexual Nature .....	16
VII. CONCLUSION .....	17

## Attorney-Client Privileged Investigation Report

Pursuant to the request of the City of Milpitas ("City"), Karen Kramer conducted a fact-finding investigation concerning the allegation of age-based harassment made by former City Manager Tom Williams.

### I. INTRODUCTION

The City retained Ms. Kramer on or about May 1, 2017, to investigate Mr. Williams' claim that he has been harassed by Mayor Richard Tran on the basis of his age.<sup>1</sup> Specifically, Mr. Williams alleges that Mayor Tran made several age-based comments to him and repeatedly asked him when he is going to retire. During the investigation, witnesses reported that Mayor Tran engaged in conduct of a sexual nature and made age-based comments to other City employees. At the City's request, these allegations are included within the scope of the investigation.

This report is a fact-finding document created through the methodology described herein. The report contains factual conclusions based upon the information made available in the course of the investigation. It does not draw any legal conclusions or assess whether any City policies were violated. Furthermore, while many hours were spent reviewing documents and interviewing witnesses, this report 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 age-based harassment and conduct of a sexual nature by Mayor Tran.

### II. SUMMARY OF FINDINGS

There was sufficient credible evidence presented to conclude that more likely than not, Mayor Tran made age-based comments to Mr. Williams, including asking him when he is going to retire, stating to Mr. Williams that he looks old and stressed out, and stating that the City needs to hire younger people and get rid of the "old guys." Likewise, there was sufficient credible evidence presented to establish that, more likely than not, Mayor Tran made age-based comments to other City employees. Therefore, the allegation that Mayor Tran made age-based comments is sustained.

The credible evidence presented establishes that more likely than not, Mayor Tran engaged in conduct of a sexual nature when he hugged a female Department Head and asked a City employee if she has single friends. This allegation is sustained.

### III. METHODOLOGY OF THE INVESTIGATION

The following persons were interviewed as part of this investigation:

1. Tom Williams, former City Manager, on May 24, 2017, in the presence of his attorney, Claire Cochran;
2. [REDACTED];
3. Councilmember Anthony Phan, on June 28, 2017;
4. [REDACTED];
5. [REDACTED];
6. [REDACTED];
7. [REDACTED];
8. [REDACTED];
9. [REDACTED];
10. Mayor Rich Tran, on October 12, 2017.

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<sup>1</sup> During his interview as part of this investigation, Mr. Williams identified his age as 53 years old.

## Confidential Attorney-Client Privileged Investigation Report

The following documents were reviewed and relied upon as part of this investigation:<sup>2</sup>

1. April 13, 2017 demand letter from Claire Cochran to Mayor Rich Tran and City Attorney Christopher Diaz regarding "*Tom Williams v. City of Milpitas, Mayor Tran*";
2. Notes made by Tom Williams regarding comments; and
3. Notes prepared by [REDACTED]

In addition to the above-referenced documents, the undersigned also reviewed the video recording of the February 21, 2017 City Council meeting.

With the exception of Councilmember Grilli, all of the interviews occurred in person. Mr. Williams' interview occurred in a conference room at his attorney's office. All other in-person interviews occurred in a conference room at City Hall. All of the interviews were audio-recorded and memorialized by handwritten notes.<sup>3</sup>

All of the witnesses were notified that the investigation is confidential. The witnesses were instructed to be honest and candid during their interviews. All of the witnesses were told they are not to take any retaliatory action against anyone who participates in the investigation and to report any retaliation directed at them.

There was delay in completing this investigation due to Mayor Tran's availability. The undersigned initially contacted the Mayor on July 27, 2017, to schedule his interview, but it was not until September 27, 2017, that an interview date and time was confirmed for October 12, 2017.

#### IV. DESCRIPTION OF THE ALLEGATIONS

##### A. Demand Letter<sup>4</sup>

The demand letter sets forth claims of age-related discrimination, retaliation and hostile work environment. With respect to Mr. Williams' claim of age-based harassment, the letter states that Mayor Tran "directly confront[ed] Mr. Williams' (*sic*) about his age (53), suggesting repeatedly that Mr. Williams should quit his job because he is 'too old.'"

The following comments are attributed to Mayor Tran by Mr. Williams:

- On approximately January 20, 2017, Mayor Tran said to Mr. Williams, "Hey, what's up. Now ya know I told the voters I had to investigate you, so noth'en personal but I gotta do what I gotta do. Hey, by the way, when are you going to retire? I need to mix it up with some younger people around here. People that look more like me";
- On approximately February 7, 2017, Mayor Tran said to Mr. Williams, "Hey there, Mr. City Manager. You don't look so good. You look stressed. Now, I'm not stressing you out, am I? But you know what I gotta do. My people are telling (*sic*) you're to blame for all this cost. You have cost the City way too much money. You sure you don't want to retire now"; and
- On approximately March 17, 2017, Mayor Tran said to Mr. Williams, "I am going to put your review on the Council agenda. I don't care what your contract says, I don't care about Ogaz and all that, my job is to get rid of you for my people. You old guys need to move out of the way."

The demand letter states, in pertinent part, "The statements made by Mayor Tran to Mr. Williams regarding his age are clear evidence of discriminatory motive and intent. These statements, combined with Mayor

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<sup>2</sup> Copies of these documents are attached as exhibits to this report.

<sup>3</sup> Ms. Cochran recorded Mr. Williams' interview.

<sup>4</sup> A copy of Ms. Cochran's demand letter is attached to this report as Exhibit 1.

Tran's tireless attempts to disparage Mr. Williams' job performance in the public forum, support a finding that Mayor Tran is attempting to get Williams fired, or to make him retire, due to his age."

**B. Interview of Tom Williams<sup>5</sup>**

**1. Age-based Comments Directed at Mr. Williams**

Mr. Williams related that Mayor Tran was sworn into office on December 13, 2016. Mayor Tran did not previously serve on the City Council or hold any other elective or appointive position within the City. Mr. Williams was not acquainted with Mayor Tran before he was elected.

Mr. Williams related that during Mayor Tran's mayoral campaign, Mayor Tran asserted that Mr. Williams is costing the City millions of dollars in settlements and that, if elected, he would call for a performance review of Mr. Williams. After the election, Mayor Tran continued to make public statements about Mr. Williams' job performance. According to Mr. Williams, Mayor Tran stated to other City Councilmembers and to City Attorney Christopher Diaz that he is going to place Mr. Williams on the City Council's agenda for a performance review. Mr. Williams' last performance review was in late November or early December of 2016.

Mr. Williams recalled that a couple of days after Councilmember Anthony Phan was sworn in, Councilmember Phan asked Mr. Williams how old he is and when he is going to retire. The conversation took place in the lobby outside of Mr. Williams' office. Mr. Williams recalled that various staff members were in the vicinity, but he did not know if they heard Councilmember Phan's comments. Mr. Williams did not disclose his age to Councilmember Phan and told Councilmember Phan that he is not planning to retire.

Mr. Williams related that in late December 2016 and again on January 5 or January 6, 2017, Mayor Tran went to Mr. Williams' office and inquired about his age and when Mr. Williams is going to retire. The door to Mr. Williams' office was open and staff members were outside of his office at their work stations. Mr. Williams responded that he did not have any plans to retire and he did not reveal his age to Mayor Tran. Mr. Williams stated that the conversation was very brief and they did not discuss any City related matters.

Mr. Williams reported Councilmember Phan's and Mayor Tran's comments to Mr. Diaz. Mr. Williams told Mr. Diaz that Councilmember Phan and Mayor Tran need to attend harassment training as soon as possible. According to Mr. Williams, thereafter, all newly elected Councilmembers, including Mayor Tran and Councilmember Phan, received orientation training by Mr. Diaz and the Human Resources Department, which included harassment training. They also received state mandated harassment prevention training.

Mr. Williams stated that Mayor Tran's age-based comments took place over a period of several months. Mr. Williams advised that on numerous occasions Mayor Tran asked him when he is going to retire, told him that he looks old and stressed out, and said that the City needs to hire younger people who look more like Mayor Tran. Mr. Williams asserted that Mayor Tran's comments occurred on a constant basis, both on Mayor Tran's Facebook page and verbally to Mr. Williams.

According to Mr. Williams, he contemporaneously documented Mayor Tran's remarks on January 20, 2017, February 7, 2017 and March 17, 2017.<sup>6</sup> On approximately January 20, 2017 at 3:15 p.m., Mayor Tran went into Mr. Williams' office. The door to Mr. Williams' office was open and City staff were in the lobby. According to Mr. Williams, Mayor Tran stated that he was told by the voters that he has to investigate Mr. Williams and that it was not personal. Mr. Williams also advised that Mayor Tran asked him when he is going to retire, and stated that he [Mayor Tran] needs to "mix it up" with younger people who look like him. Mr. Williams did not know what Mayor Tran was referring to when he stated that he needs younger

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<sup>5</sup> Mr. Williams was the City Manager from December 2006 until September 2017, when he retired. As the City Manager, all of the Department Heads reported to Mr. Williams. Mr. Williams reported to the City Council.

<sup>6</sup> Copies of Mr. Williams' notes are attached to this report as Exhibit 2.

people in the City who look like him. Mr. Williams opined that Mayor Tran was referring to his ethnicity.<sup>7</sup> Mr. Williams stated that he did not respond to Mayor Tran's comments. He reported Mayor Tran's comments to Mr. Diaz and Human Resources Director Tina Murphy. Mr. Williams documented Mayor Tran's remarks on a post-it note while Mayor Tran was in Mr. Williams' office.

On approximately February 7, 2017, Mayor Tran approached Mr. Williams before the City Council went into closed session. According to Mr. Williams, Mayor Tran stated to Mr. Williams that he does not look very good and that he looks stressed. Mayor Tran asked Mr. Williams if he [Mayor Tran] is stressing Mr. Williams out. Mayor Tran told Mr. Williams that he is being told [by citizens] that Mr. Williams cost the City too much money, which Mr. Williams assumed was related to the settlement of two high profile lawsuits against the City. According to Mr. Williams, Mayor Tran asked Mr. Williams if he is sure he does not want to retire. Mr. Williams did not respond to Mayor Tran's remarks. Mr. Williams did not know if other City employees heard Mayor Tran's comments. Mr. Williams documented Mayor Tran's comments on a business card.<sup>8</sup>

On approximately March 17, 2017, Mayor Tran went into Mr. Williams' office and advised Mr. Williams that he was going to place his performance review on the City Council agenda and he did not care what Mr. Williams' contract says. No one else was present in Mr. Williams' office, although there were employees outside of his office in the common area. Mr. Williams advised that Mayor Tran stated that it is his job to get rid of Mr. Williams. According to Mr. Williams, Mayor Tran chuckled and stated, "You old guys need to keep out of the way and make room." Mr. Williams told Mayor Tran to leave his office.

Mr. Williams advised that he did not report all of Mayor Tran's specific comments to Mr. Diaz because Mr. Diaz is appointed by the City Council and his duty is to protect the City Councilmembers. Mr. Williams documented most of Mayor Tran's comments on whatever paper he had available to him at the time.

Mr. Williams recounted another incident that occurred on approximately March 21, 2017, when Mr. Williams and Mayor Tran were in the City Hall elevator following a City Council meeting. According to Mr. Williams, Mayor Tran told Mr. Williams that it is time for him to retire. No one else was in the elevator and Mr. Williams did not respond to the comment. Mr. Williams requested a videotape of the encounter; however, the cameras in the elevator were broken. Mr. Williams did not document this incident.

Mr. Williams opined that Mayor Tran became more aggressive and bolder toward Mr. Williams, including publicly demanding at City Council meetings that Mr. Williams' performance review be placed on the agenda and leaking confidential documents to the media to "muzzle" Mr. Williams, in an effort to "get under his skin."

According to Mr. Williams, Mayor Tran did not make any age-based comments to him after his attorney's April 13, 2017 demand letter was sent to the City.

## **2. Comments and Conduct Directed at Other City Employees**

Mr. Williams related that Mayor Tran made similar age-based comments to other City personnel. Mr. Williams described one occasion that was reported to him by City Clerk Mary Lavelle when Mayor Tran saw photos of Ms. Lavelle's nieces and nephews and remarked that he did not know she is a grandmother. Ms. Lavelle reported the comment to Mr. Williams, Mr. Diaz, and Ms. Murphy. According to Mr. Williams, Ms. Lavelle was offended by Mayor Tran's remark.

Mr. Williams also described a conversation between Mayor Tran and Public Works Manager James Levers. According to what Mr. Levers reported to Mr. Williams, Mayor Tran asked Mr. Levers how long he has worked for the City. When Mr. Levers responded that he has worked for the City for 28 years, Mayor Tran commented that Mr. Levers must be one of the oldest employees in the City.

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<sup>7</sup> According to Mr. Williams, Mayor Tran is Vietnamese-American.

<sup>8</sup> During Mr. Williams' interview as part of this investigation, he stated that the conversation took place in his office. According to Mr. Williams' notes, the incident took place at 5:47 p.m. in the common area outside of Mr. Williams' office.

Mr. Williams stated that Councilmember Marsha Grilli told him that she was holding her grandson when Mayor Tran stated that he thought she is too old to have a baby. Mr. Williams did not know if Councilmember Grilli responded to Mayor Tran's remark.

Mr. Williams related an incident that occurred at the City's management holiday dinner on December 19, 2016. Mayor Tran and Councilmember Bob Nunez attended the dinner. According to what Ms. Murphy told Mr. Williams, she overheard Mayor Tran ask Public Works Director Nina Hawk her age and commented on how young she looks. Mr. Williams was seated at the same table, but he did not hear the remark.

Mr. Williams stated that at the February 21, 2017, City Council meeting, Building Director Keyvan Irannejad was scheduled on the City Council agenda to receive an award. According to Mr. Williams, when Mayor Tran introduced Mr. Irannejad, he stated, "You old guys come up first."

Mr. Williams did not have knowledge of other age-based comments made by Mayor Tran, but he heard "buzz" that Mayor Tran continues to make age-based comments.

Mr. Williams reported that Mr. Tran sexually harassed City employees. According to Mr. Williams, Ms. Murphy reported to him that during the December 19, 2016, holiday dinner, Mayor Tran asked Fire Chief Rob Mihovich, Police Chief Steve Pangelinan and Mr. Irannejad if they can set him up on a date. Additionally, Ms. Murphy reported to Mr. Williams that Mayor Tran walked around the table, placed his hands on Ms. Hawk's shoulders, and stated that she is his favorite.

Mr. Williams advised that several City Department Heads asked him on almost a daily basis why nothing was being done about Mayor Tran's conduct, including Ms. Hawk, Recreation and Community Services Director Renee Lorentzen, Chief Mihovich and Planning Director Brad Misner. Mr. Williams stated that in his 30-year career, he never received as many complaints against an elected official as he has received about Mayor Tran.

**V. WITNESSES' RESPONSES TO THE ALLEGATIONS**

**A. Age-based Comments**

**1. [REDACTED]**

On one occasion, [REDACTED] personally observed behavior by Mayor Tran that [REDACTED] opined was inappropriate. On December 19, 2016, [REDACTED] attended a holiday dinner for the City's Department Heads and the unrepresented management team. Mayor Tran and Councilmember Nunez also attended the dinner. [REDACTED] related that [REDACTED] was seated at the table across from Mayor Tran and that [REDACTED] was seated next to Mayor Tran. According to [REDACTED], Mayor Tran stated to [REDACTED] that [REDACTED] "looks really young," and asked [REDACTED] how old [REDACTED] is. [REDACTED] laughed it off and did not respond to Mayor Tran's question, but according to [REDACTED], [REDACTED] appeared uncomfortable. Thereafter, [REDACTED] related the comment to Mr. Williams. [REDACTED] also spoke to [REDACTED] later that week to ask [REDACTED] if [REDACTED] was offended by Mayor Tran's comment. According to [REDACTED], [REDACTED] is pretty easygoing and did not appear to be upset during their conversation.

[REDACTED] related that other City employees told her that Mayor Tran made age-based comments to them. Specifically, [REDACTED] told [REDACTED] of an incident that occurred during the election season. According to what [REDACTED] told [REDACTED], Mayor Tran was in [REDACTED] office and saw photos of [REDACTED] nieces and nephews. Mayor Tran asked [REDACTED] if they are [REDACTED] grandchildren, which [REDACTED] found to be offensive. [REDACTED] did not know if [REDACTED] responded to Mayor Tran's remarks.

[REDACTED]

██████████ related to ██████████ that during the first week after Mayor Tran took office, the Mayor was in City Hall introducing himself to City staff. Mayor Tran asked ██████████ how long ██████████ has worked for the City and commented that ██████████ must be one of the City's oldest employees.

██████████ related that at a City Council meeting on February 21, 2017, ██████████ was scheduled to receive a commendation by the City Council. At the same meeting, several high school students were scheduled to receive awards.<sup>10</sup> According to ██████████, Mayor Tran said the "young folk" will have to wait and that the City was going to take care of the "old guy" or "old timer" first, or words to this effect, referring to ██████████. ██████████ advised that ██████████ again referred to ██████████ as the "old guy" or "old timer" when Mayor Tran gestured for ██████████ to come up to the podium to receive ██████████ presentation. A couple of weeks later, Mr. Williams said to ██████████, "Can you believe that the Mayor said that to ██████████ or words to this effect. ██████████ did not discuss the comment with ██████████ and ██████████ did not know if Mr. Williams spoke to ██████████ about Mayor Tran's remarks. ██████████ also recalled that in February 2017, Mr. Williams told ██████████ that Mayor Tran asked him when he is planning to retire.

On April 12, 2017, ██████████ received a telephone call from ██████████, who related to ██████████ that Mayor Tran ordered ██████████ to place Mr. Williams' performance review on the open session agenda for the next City Council meeting. ██████████ told ██████████ that ██████████ explained to Mayor Tran that ██████████ needed to listen to the recording of the previous City Council meeting to determine if Mr. Diaz agreed that the matter could be heard in open session. According to what ██████████ told ██████████, Mayor Tran acted like a "little kid" when ██████████ told him that ██████████ would not place his item on the open agenda before ██████████ listened to the recording of the previous City Council meeting.

Following the December 19, 2016, holiday dinner, ██████████ became more aggressive in advising new City Councilmembers that they are required to undergo harassment and discrimination training. ██████████ related that Mayor Tran completed his training 5½ months after taking office and that Councilmember Phan completed his training almost six months after taking office.

## **2. Councilmember Anthony Phan<sup>11</sup>**

Councilmember Phan received on-line harassment training in April 2017. Based on media reports and materials that were provided in closed session, Councilmember Phan believes that Mr. Williams is over 50 years old. Councilmember Phan never directly asked Mr. Williams his age.

Councilmember Phan denied asking Mr. Williams when he is going to retire and stated that he was not aware of anyone else who discussed the issue with Mr. Williams. Councilmember Phan denied discussing Mr. Williams' age with other City Councilmembers. The only time Councilmember Phan heard the phrase "old timer" was when Councilmember Nunez made this comment to refer to himself. Councilmember Phan recalled that Mr. Williams referred to Mr. Irannejad as an "oldie but goodie" when Mr. Williams introduced Mr. Irannejad to Councilmember Phan.

Following Councilmember Phan's election and prior to when he was sworn in, Councilmember Phan had a one-on-one breakfast meeting with Mr. Williams. During their meeting, Councilmember Phan asked Mr. Williams how long he had been employed by the City. When Mr. Williams stated that he has been with the City for a little over 10 years, Councilmember Phan responded that is a long-time employee and asked Mr. Williams to describe his long-term goals. Councilmember Phan stated that he did not intend the comment to imply that Mr. Williams should retire, but he acknowledged that he could see how Mr. Williams might have construed it in that manner. Mr. Williams responded that he wants to see the City move forward

<sup>10</sup> According to the public record, the item was to announce the winners of the Martin Luther King Jr./Black History Month essay contest for students in grades 1-12.

<sup>11</sup> Councilmember Phan is serving his first term as a Councilmember. Councilmember Phan identified his age as 23 years old.



with economic development and general City policies. According to Mr. Phan, the subject of Mr. Williams' retirement was not discussed at the meeting.

3. [REDACTED]

[REDACTED] is the [REDACTED]. In [REDACTED] capacity as the [REDACTED], [REDACTED] exchanges text messages with Mayor Tran and attends community functions with him.

[REDACTED] related that on one occasion in March 2017, [REDACTED] invited Mayor Tran to go out for a drink to get to know him in [REDACTED] capacity as the [REDACTED], and to congratulate him on winning the election. [REDACTED] described their conversation as awkward because the POA endorsed another mayoral candidate during the election.

According to [REDACTED], while [REDACTED] and Mayor Tran were having a drink, he asked [REDACTED] if [REDACTED] likes Mr. Williams. [REDACTED] responded that [REDACTED] does not work closely with Mr. Williams, but from what [REDACTED] knew, Mr. Williams' interactions with the [REDACTED] had never been adversarial. Mayor Tran told [REDACTED] that the voters want him to investigate Mr. Williams related to the settlement of claims that cost the City a lot of money. [REDACTED] advised that during their conversation, Mayor Tran also stated that it is time for "new blood" and for more people like him in City Hall, with reference to younger individuals such as Councilmember Phan, who is 23 years old. [REDACTED] did not recall Mayor Tran making any other age-based comments.

[REDACTED] advised that as a result of this meeting, the [REDACTED] prepared a letter of support for Mr. Williams.

4. [REDACTED]

[REDACTED] advised that it is not the practice of the City for a City Councilmember to unilaterally place a matter on the agenda. According to [REDACTED], Mayor Tran behaved in an inappropriate manner when he instructed [REDACTED] to place Mr. Williams' performance review on the next City Council agenda.

[REDACTED] related that at the April 4, 2017, City Council meeting, Mayor Tran asked that Mr. Williams' performance review be placed on the public portion of the agenda. Mr. Diaz and Mr. Williams responded that it is not legally appropriate. Five days after the City Council meeting, Mayor Tran went to [REDACTED] office to sign some documents and stated that he wanted Mr. Williams' performance review placed on the next City Council agenda. [REDACTED] responded that [REDACTED] would watch the video recording of the previous City Council meeting to determine if it would be appropriate. Mayor Tran asked [REDACTED] when [REDACTED] would be reviewing the video recording and stated that he would call [REDACTED] to find out if [REDACTED] was going to place the item on the agenda.

[REDACTED] characterized Mayor Tran's behavior as "direct," but not aggressive. [REDACTED] also related that Mayor Tran was standing quite close to [REDACTED] during their conversation, which [REDACTED] described as out of the ordinary. According to [REDACTED], the Mayor's request placed [REDACTED] in an awkward position, because if [REDACTED] decided not to place the item on the agenda, [REDACTED] did not know how [REDACTED] would respond to Mayor Tran. [REDACTED] did not feel intimidated by the Mayor's conduct.

[REDACTED]

Confidential Attorney-Client Privileged Investigation Report

According to [REDACTED], the Mayor made one age-based comment to [REDACTED]. Prior to the election, Mayor Tran met with [REDACTED] to discuss the requirements of running for office. Mayor Tran observed photos of [REDACTED] nieces and nephews and asked [REDACTED] if they were [REDACTED] grandchildren, which [REDACTED] found to be rude and inappropriate, because Mayor Tran made an inappropriate implication about [REDACTED] age, but [REDACTED] was not offended by the Mayor's comment. [REDACTED] discussed [REDACTED] interaction with the Mayor with [REDACTED] and Mr. Williams, but [REDACTED] did not make a formal complaint. Mayor Tran has not made any other age-based comments to [REDACTED].

[REDACTED] attended the City Council meeting on February 21, 2017, when [REDACTED] was scheduled to receive a commendation. According to [REDACTED], Mayor Tran called the "old guys" to the podium to receive the commendation.

[REDACTED] related that Mr. Williams told [REDACTED] that Mayor Tran said to him that he is too old for the job and "maybe he needs to move on." According to [REDACTED], Mr. Williams is one year younger than [REDACTED]. [REDACTED] did not recall if other City employees expressed concerns to [REDACTED] about age-based comments by Mayor Tran.

5. [REDACTED]

[REDACTED] related that approximately one to two months after Mayor Tran was elected to the position of Mayor, [REDACTED] introduced [REDACTED] to Mayor Tran. According to [REDACTED], Mayor Tran shook [REDACTED] hand, looked [REDACTED] up and down, and asked [REDACTED] how long [REDACTED] has worked for the City. Mayor Tran also made a reference to calling in the senior people to pick their brains about how the City worked, starting with the employee with the most longevity. [REDACTED] was offended by the Mayor's comments because [REDACTED] interpreted Mayor Tran's remarks as calling [REDACTED] "old." [REDACTED] did not recall Mayor Tran stating that [REDACTED] must be one of the oldest employees in the City.

[REDACTED] did not witness Mayor Tran make age-based comments to other City employees.

6. [REDACTED]

[REDACTED] does not have any concerns regarding [REDACTED] individual interactions with Mayor Tran.

[REDACTED] related that at a City Council meeting, [REDACTED] was presented with a plaque of recognition from the Insurance Services Office.<sup>16</sup> After [REDACTED] was presented with the plaque of recognition, Mayor Tran made a comment to the effect of, "now that we are done with the old people, let's start with the young," referring to the school-age children in the audience. [REDACTED] was not offended by the comment, and explained that the Mayor is new to the City and may not have recognized that his statement was inappropriate.

[REDACTED] did not hear Mayor Tran make any age-based comments to other City personnel. According to [REDACTED], Mr. Williams told [REDACTED] that Mayor Tran made comments about Mr. Williams' age and asked him when he is going to retire.

[REDACTED]

[REDACTED]

<sup>16</sup> According to the public record, [REDACTED] was presented with a plaque of recognition at the February 21, 2017 City Council meeting.

7. [REDACTED]

[REDACTED] related that at the December 19, 2016, holiday dinner, Mayor Tran asked [REDACTED] how old [REDACTED] is. [REDACTED] changed the subject and did not respond to Mayor Tran's question. [REDACTED] was uncomfortable with Mayor Tran's question, but [REDACTED] was not offended. [REDACTED] explained that [REDACTED] was uncomfortable because [REDACTED] did not want [REDACTED] age to be viewed as an impediment to [REDACTED] ability to perform [REDACTED] job. According to [REDACTED], Mayor Tran did not say to [REDACTED] that [REDACTED] looks really young and he did not bring up [REDACTED] age on any other occasion. [REDACTED] advised that Mayor Tran also told [REDACTED] that it is important for him to bring his ideas forward from his perspective as a millennial.

[REDACTED] advised that [REDACTED] told [REDACTED] that Mayor Tran asked him how long [REDACTED] has worked for the City and that after [REDACTED] told the Mayor that [REDACTED] has worked for the City for 28 years, Mayor Tran commented that [REDACTED] "must be really old," or words to this effect.

[REDACTED] reported the above-described comments by Mayor Tran to Mr. Williams.

8. [REDACTED]

[REDACTED] related that [REDACTED] received concerns about Mayor Tran from Mr. Williams, [REDACTED] and the [REDACTED]. According to [REDACTED], only Mr. Williams reported to [REDACTED] that the Mayor made age-based comments.

[REDACTED] advised that Mr. Williams told [REDACTED] that Mayor Tran said to Mr. Williams that he is old and should retire. [REDACTED] was not present when Mayor Tran made age-based comments to Mr. Williams. [REDACTED] characterized the relationship between Mayor Tran and Mr. Williams as "problematic," commencing from when Mayor Tran was running for office, and escalating after Mayor Tran was elected into office.

According to [REDACTED], on three occasions, commencing when Mayor Tran was sworn in and again in January and February 2017, Mayor Tran asked [REDACTED] when Mr. Williams is going to retire, and told [REDACTED] that he wants an outside facilitator to conduct an evaluation of Mr. Williams' performance. [REDACTED] advised that Mayor Tran stated that he is dissatisfied with Mr. Williams and that Mr. Williams cost the City a lot of money. [REDACTED] explained to Mayor Tran that the City Council just performed an evaluation of Mr. Williams in November 2016, which included a 2% longevity raise, and that pursuant to the terms of Mr. Williams' employment contract, his next evaluation would occur in November 2017. Mayor Tran told [REDACTED] that he did not agree with [REDACTED] and that it is his responsibility, based on the promises he made to the community, to conduct an immediate independent evaluation of Mr. Williams. [REDACTED] advised Mayor Tran that at least two other City Councilmembers must agree with Mayor Tran in order to conduct an independent evaluation.

[REDACTED] related that Mayor Tran told [REDACTED] that [REDACTED] is too old to have a baby.<sup>19</sup> [REDACTED] characterized the comment as "odd" and "inappropriate," but [REDACTED] was not offended by the comment. [REDACTED] advised that [REDACTED] has known Mayor Tran since he was a teenager, as he is friends with [REDACTED] twin sons.

[REDACTED]

[REDACTED]

<sup>19</sup> [REDACTED] did not explain the context of Mayor Tran's comment, but [REDACTED] reported that Mayor Tran made this comment when [REDACTED] was holding [REDACTED] grandchild at City Hall.

**9. Mayor Rich Tran<sup>20</sup>**

During his interview as part of this investigation, Mayor Tran described himself as the community's "son" because he was raised in Milpitas. Mayor Tran opined that Mr. Williams is a good City Manager. Mayor Tran stated that he barely spoke to Mr. Williams during his first 100 days of office and that he did not take any action concerning Mr. Williams during that time period.

Mayor Tran related that during his campaign for Mayor, City residents expressed concerns to him regarding Mr. Williams' use of taxpayer money to settle claims for damages. Prior to being elected, Mayor Tran stated in the media that Mr. Williams costs the City too much money. According to Mayor Tran, he did not say that Mr. Williams costs the City too much money after his election, although as a City resident he has his own opinions on the issue. Mayor Tran advised that prior to taking office, he was warned that Mr. Williams has a history of running over anyone who gets in his way, and that Mr. Williams uses psychological tactics to exploit other people's weaknesses.

Mayor Tran denied speaking with Mr. Williams about retirement, denied asking Mr. Williams when is he going to retire, and denied telling Mr. Williams that she should retire. Mayor Tran also denied stating to Mr. Williams that he wants to "mix it up with younger people who look like him," or words to this effect. Mayor Tran denied asking City Department Heads or other City Councilmembers when Mr. Williams is going to retire. Mayor Tran also denied telling Mr. Williams that it is time for Mr. Williams to retire while they were alone in the City Hall elevator.

Mayor Tran asserted that Mr. Williams falsely accused Mayor Tran of making these statements in the media. Mayor Tran opined that although Mr. Williams considers himself to be the victim, Mayor Tran is in fact the victim of false allegations.<sup>21</sup> In Mayor Tran's opinion, Mr. Williams is looking for an "angle" to sue the City by falsely alleging that Mayor Tran made age-based comments to Mr. Williams.

Mayor Tran stated that the only conversation he had with a Department Head about retiring occurred when Chief Pangelinan called Mayor Tran the second week after Mayor Tran took office and told him that he is planning to retire after 30 years of service. Mayor Tran told Chief Pangelinan that he did not want him to retire and that it would be hard to fill the void if Chief Pangelinan leaves City employment. Mayor Tran stated there are several vacancies in the City and that he does not want anyone to retire.

Mayor Tran denied telling Mr. Williams in early February 2017 that Mr. Williams looked stressed out, and also denied asking Mr. Williams if he [Mayor Tran] was stressing him out. Mayor Tran also denied telling Mr. Williams that he is costing the City too much money and asking Mr. Williams if he is sure he does not want to retire. Mayor Tran asserted that he is very cautious about what he says when he is in City Hall, and he opined that such comments are inappropriate in his capacity as the Mayor.<sup>22</sup>

Mayor Tran did not recall if he asked Mr. Williams his age, but he acknowledged that he may have done so. Mayor Tran related that he asks an individual his or her age in response to an individual asking him his age. Mayor Trans denied telling Mr. Williams that it is his [Mayor Tran's] job to get rid of him, that he does not care what Mr. Williams' contract says, and that "you old guys" need to move out of the way and make room.

According to Mayor Tran, he only spoke to Mr. Williams one-on-one on approximately two occasions, and these conversations lasted less than 10 minutes. Mayor Tran related that on one occasion in approximately late March 2017, he spoke to Mr. Williams in Mr. Williams' office. Mayor Tran told Mr. Williams that he

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<sup>20</sup> Mayor Tran has been a member of the City Council since December 2016. Mayor Tran identified his age as 32 years old. He has never been employed by the City. Mayor Tran is employed by Santa Clara County as a Social Worker and has been in this position for approximately three years.

<sup>21</sup> Mayor Tran advised that he is considering filing a lawsuit against Mr. Williams for defamation.

<sup>22</sup> Mayor Tran also stated during his interview that he always assumed Mr. Williams was recording him, implying he would not make the comments attributed to him because Mr. Williams could be recording him.

## Confidential Attorney-Client Privileged Investigation Report

wanted to see for himself if the allegations that Mr. Williams cost the City too much money are true. Mayor Tran advised that he told Mr. Williams that he is one of the best City Managers and that the City is looking good financially, but that the City's residents want a third party independent evaluation of Mr. Williams' performance, that it is nothing personal, and that Mayor Tran would not be in office very long if he did not follow up with the evaluation. According to Mayor Tran, he told Mr. Williams that if "the investigation" clears Mr. Williams of the allegations regarding him costing the City millions of dollars in settlements with former City employees, Mayor Tran would announce to the media that he is cleared. Mayor Tran denied telling Mr. Williams that it is his job to "get rid of" Mr. Williams. He also denied telling Mr. Williams, "You old guys need to move out of the way," or words to this effect.

According to Mayor Tran, Mr. Williams did not want an independent performance evaluation and Mr. Williams raised his voice to him when Mayor Tran told him that he has to follow through with the evaluation. In response, Mayor Tran told Mr. Williams to "chill out" and relax.<sup>23</sup> He denied that Mr. Williams told him to leave his office.

Mayor Tran recalled that Mr. Williams invited him to the December 19, 2016, holiday dinner. Mayor Tran stated that it is "not out of the question" that he may have commented to a Department Head that he or she "looks really young." Mayor Tran did not recall asking Ms. Hawk how old she is, and suggested "someone made that up." Mayor Tran asserted that he does not make age-based comments unless the topic is brought up to him first. Mayor Tran related that during the holiday dinner, he was asked how old he is and whether he is married or has children. He denied initiating any discussion regarding age or appearance.

Mayor Tran denied stating during a City Council meeting, "You young folks are going to have to wait, we're taking the old timer first," in reference to two presentations that were scheduled on the agenda (the announcement of the winners of an essay writing contest that was open to school children from grades 1 through 12, and a plaque of recognition that was scheduled to be presented to Mr. Irannejad by the Insurance Services Office). Mayor Tran asserted that this statement was made by Mr. Williams.

Mayor Tran denied saying to Councilmember Grilli she is too old to have a baby. He reported that he chose Councilmember Grilli to be his Vice-Mayor, instead of choosing Councilmember Gary Barbadillo, who is Filipino and "looks more like him."

Mayor Tran acknowledged asking Ms. Lavelle if the children in the photos in her office of are her grandchildren. Mayor Tran asserted that he often visits City employees in their cubicles and makes small talk with them, such as asking employees about their families, to make a personal connection with them. Mayor Tran did not know Ms. Lavelle's age.

Mayor Tran stated that he is not acquainted with Mr. Levers. Mayor Tran denied telling Mr. Levers that he must be one of the oldest City employees, or that Mayor Tran wanted to call in all of the City employees to "pick their brains," starting with the employees with the most longevity. Mayor Tran asserted that he visited the Public Works Department for the first time one week prior to his interview since he tries to avoid Ms. Hawk because he is concerned that additional allegations may be brought against him.

Mayor Tran related that Detective James invited him to meet her for a drink in her capacity as the POA President to discuss Mayor Tran's support of the Police Department. Detective James asked Mayor Tran what he intends to do about Mr. Williams. Mayor Tran responded that he is not out to get anybody and that he intends to follow the proper procedures in calling for an investigation of Mr. Williams' job performance. Mayor Tran also related to Detective James that if the investigation clears Mr. Williams, Mayor Tran is ready to "rock and roll" with the City Manager and to continue to make the City the best it can be. Mayor Tran denied telling Detective James that he wants "new blood" in the City or to hire people more like him.

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<sup>23</sup> Mayor Tran described himself as having to calm Mr. Williams down using his "Social Worker skills."

Mayor Tran denied that he is biased based on age. He cited as an example that he appointed Councilmember Grilli as the Vice Mayor, who according to Mayor Tran is over 60 years old. Mayor Tran opined that the allegations against him are fabricated for political reasons to remove him from office.

Mayor Tran completed on-line harassment training in April 2017.

**B. Conduct of a Sexual Nature**

1. [REDACTED]

According to [REDACTED], at the holiday dinner on December 19, 2016, Mayor Tran went around the table to say goodbye to the Department Heads as he was leaving the event. [REDACTED] observed Mayor Tran "awkwardly hug" [REDACTED] from behind as [REDACTED] was seated at the table. He also hugged [REDACTED] from behind and told [REDACTED] that [REDACTED] is his favorite Department Head. According to [REDACTED], [REDACTED] did not appear uncomfortable by the Mayor's behavior.

With the exception of the December 19, 2016 holiday dinner, [REDACTED] did not personally observe Mayor Tran hug other City personnel.

Immediately following the December 19, 2016, holiday dinner, [REDACTED] went out with some of the other Department Heads. According to [REDACTED], [REDACTED] and [REDACTED] told [REDACTED] that Mayor Tran asked them during the dinner if they know of any women with whom they could set him up. According to [REDACTED], [REDACTED] and [REDACTED] appeared to be amused by Mayor Tran's question and did not appear to be offended.

[REDACTED] related that at the March 21, 2017, City Council meeting, the City Council was scheduled to ratify the contract with the POA. [REDACTED] was seated immediately in front of [REDACTED]. According to [REDACTED], [REDACTED] told [REDACTED] that [REDACTED] attended a dinner with members of the [REDACTED] and Mayor Tran, and that during the dinner, [REDACTED] felt that Mayor Tran was "hitting" on [REDACTED]. According to what [REDACTED] reported, [REDACTED] told [REDACTED] that Mayor Tran asked [REDACTED] personal questions and asked [REDACTED] if [REDACTED] knows of anyone whom he could date. [REDACTED] told [REDACTED] that [REDACTED] showed Mayor Tran photos of [REDACTED] family and [REDACTED] spouse to convey to Mayor Tran that [REDACTED] is not available. According to [REDACTED], [REDACTED] told [REDACTED] that [REDACTED] was so flustered that [REDACTED] left without paying for [REDACTED] dinner or saying goodbye.

2. [REDACTED]

[REDACTED] denied that Mayor Tran expressed a romantic interest in [REDACTED]. [REDACTED] related that when [REDACTED] went for a drink with Mayor Tran at Omega in March 2017, Mayor Tran asked [REDACTED] if [REDACTED] is dating anyone.<sup>24</sup> [REDACTED] responded that [REDACTED] is married and has two children. According to [REDACTED], Mayor Tran did not ask [REDACTED] to go out on a date with him, but he asked [REDACTED] if [REDACTED] has any friends who are single. [REDACTED] responded that [REDACTED] did not know of anyone who is single. According to [REDACTED], [REDACTED] laughed off Mayor Tran's question. [REDACTED] stated that [REDACTED] was not offended by Mayor Tran's behavior, as [REDACTED] is not easily offended.

[REDACTED] advised that [REDACTED] invited Mayor Tran to meet [REDACTED] for a drink because the [REDACTED] did not endorse him during the election.<sup>25</sup> [REDACTED] described their conversation as "awkward," and stated that at one point, Mayor Tran said to [REDACTED] that he is "more loyal than [REDACTED]. I'm more loyal than all of you put together." [REDACTED] felt the conversation was so awkward and [REDACTED] was so anxious to leave that [REDACTED] said goodbye and left without paying for [REDACTED] beer.

<sup>24</sup> According to [REDACTED] conversation with the Mayor occurred when they met to have drinks and not during dinner, as mentioned by [REDACTED].

<sup>25</sup> [REDACTED] advised that [REDACTED] had similar meetings with Councilmembers Phan and Nunes.

3. [REDACTED]

[REDACTED] related that [REDACTED] heard secondhand from [REDACTED], [REDACTED] and [REDACTED] that during the December 19, 2016, holiday dinner, Mayor Tran commented on the appearance of some of the female employees at the table and asked some of [REDACTED] colleagues if they could help him find a date. [REDACTED] was seated at the opposite end of the table and did not hear Mayor Tran's comments.

4. [REDACTED]

[REDACTED] advised that during the December 19, 2016, holiday dinner, [REDACTED] was seated next to Mayor Tran. According to [REDACTED], during dinner, Mayor Tran stated to [REDACTED] that he is not married and that he is looking for the right woman. [REDACTED] denied that Mayor Tran ask [REDACTED] to set him up on a date. [REDACTED] did not hear Mayor Tran ask anyone at the table to set him up on a date.

5. [REDACTED]

[REDACTED] did not recall if Mayor Tran hugged [REDACTED] or shook [REDACTED] hand as he was leaving the December 19, 2016, holiday dinner.

[REDACTED] related that Mayor Tran stated on one occasion, possibly at Mayor Tran's swearing-in, that [REDACTED] is his favorite Department Head. [REDACTED] opined that Mayor Tran made similar statements to other Department Heads.

[REDACTED] related that [REDACTED] told [REDACTED] that Mayor Tran hugged [REDACTED]. According to what [REDACTED] reported to [REDACTED], Mayor Tran placed both of his arms around [REDACTED] neck and shoulders. According to [REDACTED], [REDACTED] characterized Mayor Tran's behavior as "odd," and stated that [REDACTED] felt uncomfortable. Based on [REDACTED] experience, [REDACTED] became more cautious and aware of how to physically engage with Mayor Tran when greeting him. [REDACTED] thereafter attended a Chamber of Commerce crab feed and noticed Mayor Tran walking around greeting people. According to [REDACTED], as Mayor Tran approached [REDACTED] while [REDACTED] was seated, [REDACTED] turned in [REDACTED] chair and held [REDACTED] hand out to shake hands with Mayor Tran to avoid Mayor Tran hugging [REDACTED]. Mayor Tran did not shake [REDACTED] hand, but instead walked behind [REDACTED] and placed both of his hands on [REDACTED] shoulders. [REDACTED] felt uncomfortable with Mayor Tran's conduct. [REDACTED] did not know if anyone observed Mayor Tran's behavior. [REDACTED] reported Mayor Tran's conduct to Mr. Williams.

6. [REDACTED]

[REDACTED] related that Mr. Williams told [REDACTED] that Mayor Tran sometimes hugs staff members and they do not like it. [REDACTED] advised that [REDACTED] has known Mayor Tran since he was a teenager and they usually greet one another with a hug.

### 7. Mayor Rich Tran

Mayor Tran denied stating during the December 19, 2016, holiday dinner that Ms. Hawk is his favorite Department Head. Mayor Tran related that his favorite Department Heads are the Police Chief and Fire Chief. Mayor Tran recounted that he gave everyone at the table a hug and advised that he was "not raised to shake hands."<sup>26</sup> Mayor Tran stated that he also hugs individuals at community events unless they are not "huggers," and he does not intend to stop this practice. Mayor Tran acknowledged that he has hugged Ms. Hawk and Ms. Lorentzen.

Mayor Tran denied asking any Department Head to set him up on a date or introduce him to women. Mayor Tran stated that he is frequently asked if he is married or has children and if he is interested in being

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<sup>26</sup> According to Mayor Tran, Milpitas is a "tight knit community" and they "embrace each other."

introduced to women. Mayor Tran related that a Department Head jokingly mentioned setting up Mayor Tran on a date.<sup>27</sup>

Mayor Tran denied asking Detective James to set him up on a date. According to Mayor Tran, Detective James asked him if he is seeing anyone.

## **VI. FINDINGS REGARDING ALLEGATIONS AGAINST MAYOR RICH TRAN**

The purpose of this report is to make findings of fact on the allegations made by Mr. Williams and other City personnel against Mayor Tran. This report does not express any opinion as to whether any of the actions complained about rise to the level of a violation of California law or City policy.

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 factual findings were made by carefully analyzing the documentary and testimonial evidence gathered as part of the investigation.<sup>28</sup>

### **A. Credibility Assessment**

It is important to note prior to making a determination as to 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.

There is insufficient evidence to conclude that any of the witnesses interviewed during this investigation were intentionally dishonest. For the most part, discrepancies in the witnesses' testimony appear to stem from varying perceptions and recollections of specific incidents, as well as the passage of time.

Based on the evidence presented, the undersigned finds Mr. Williams to be a credible witness. In making this determination, the undersigned took into account that Mr. Williams did not make a formal complaint against Mayor Tran until Mr. Williams' attorney submitted a demand letter on April 13, 2017, after Mayor Tran called for a performance review of Mr. Williams at the April 4, 2017 City Council meeting. Based on the timing of Mr. Williams' complaint, it is possible that Mr. Williams' motive in making the allegations against Mayor Tran is for financial gain and/or to forestall adverse employment action against him.

On the other hand, there is corroborative evidence that supports Mr. Williams' allegations against Mayor Tran. Mr. Williams contemporaneously documented three of the age-based comments that were attributed to Mayor Tran by Mr. Williams. There is insufficient credible evidence to conclude that, more likely than not, Mr. Williams fabricated the documents. Additionally, several of the witnesses who were interviewed as part of this investigation independently corroborated Mr. Williams' allegation that Mayor Tran made age-based comments. When weighing these factors, the undersigned gave greater weight to the corroborative evidence than to any possible ulterior motives on the part of Mr. Williams.

For the most part, Mayor Tran was candid during his interview. In evaluating Mayor Tran's credibility, the undersigned considered that Mayor Tran denied engaging in behavior that was directly contradicted by witnesses who have no known interest in the outcome of the investigation. Mayor Tran failed to acknowledge the conduct attributed to him and maintained that he has not done anything wrong. He stated during his interview that it is his goal to be the "best Mayor in the nation," and that the citizens of Milpitas are happy, so he is happy and is sleeping at night.

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<sup>27</sup> Mayor Tran declined to identify the Department Head who jokingly mentioned setting him up on a date.

<sup>28</sup> 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.



During his interview, Mayor Tran referred to a letter of support for Mr. Williams signed by the Department Heads. Despite Mayor Tran's assertion to the contrary, the Department Heads who signed a letter in support of Mr. Williams did not appear to be fearful of losing their jobs if they did not sign the letter or support Mr. Williams in his complaint against the Mayor. Mayor Tran advised that he did not blame the Department Heads for supporting Mr. Williams, as he felt they were in a "bad spot" and were told they would lose their jobs if they did not sign the letter. The Department Heads who participated in this investigation were credible when they shared their observations and personal experiences with the Mayor. They did not corroborate every allegation reported, acknowledging when Mayor Tran did not do or say what was attributed to him, undermining Mayor Tran's claim that the Department Heads feel compelled to support Mr. Williams.

Perhaps most noteworthy is [REDACTED] testimony that Mayor Tran asked [REDACTED] on at least three occasions when Mr. Williams was going to retire. [REDACTED] testimony evidences that Mayor Tran was preoccupied with the notion of Mr. Williams retiring or leaving his position as City Manager. Also compelling is [REDACTED] testimony that Mayor Tran stated it is "time for new blood" at City Hall and for more employees "like him" and Councilmember Phan at City Hall, which [REDACTED] interpreted to refer to his age, because they are both younger than most City employees. Mayor Tran's credibility is undermined by his denial of asking any Department Head or Councilmember when Mr. Williams is going to retire.

Mayor Tran's credibility is also undermined by his assertion that it was Mr. Williams who commented about [REDACTED] being "old" during the February 21, 2017, Council meeting. The video of the meeting reflects that it was Mayor Tran who referred to [REDACTED] as "old" and not Mr. Williams.

Based upon the foregoing, Mr. Williams is a more credible witness than Mayor Tran.

## **B. Findings of Fact**

### **1. Age-based Comments**

The credible evidence demonstrates that, more likely than not, Mayor Tran made age based statements to Mr. Williams over a period of several months. Mr. Williams contemporaneously documented these statements and reported them to his colleagues. As explained above, Mr. Williams is a more credible witness than Mayor Tran. Mayor Tran's repeated inquiries and comments to Mr. Williams regarding Mr. Williams' retirement are consistent with the repeated inquiries he made of [REDACTED] regarding Mr. Williams' retirement. Therefore, it is more likely than not that Mayor Tran made the following statements to Mr. Williams:

- On approximately January 5 or January 6, 2017, Mayor Tran asked Mr. Williams how old he is and when Mr. Williams is going to retire;
- On or about January 20, 2017, Mayor Tran said to Mr. Williams, "Hey, by the way, when are you going to retire? I need to mix it up with some younger people around here. People that look more like me," or words to this effect;
- On approximately February 7, 2017, Mayor Tran said to Mr. Williams, "Hey there, Mr. City Manager. You don't look so good. You look stressed. Now, I'm not stressing you out, am I . . . You sure you don't want to retire now," or words to this effect;
- On or about March 17, 2017, Mayor Tran said to Mr. Williams, "I am going to put your review on the Council agenda . . . You old guys need to move out of the way," or words to this effect; and
- On approximately March 21, 2017, Mayor Tran told Mr. Williams that it is time for him to retire.

More likely than not, Mr. Williams contemporaneously reported Mayor Tran's statements to other individuals within the City. As related by [REDACTED], Mr. Williams told [REDACTED] in February 2017 that Mayor Tran asked

him when he is planning to retire. ██████ advised that Mr. Williams told ██████ that Mayor Tran stated to Mr. Williams that he is too old for the job and maybe he needs to move on. According to ██████, Mr. Williams told ██████ that Mayor Tran made comments about Mr. Williams' age and asked him when he is going to retire. ██████ recounted that Mr. Williams told ██████ that Mayor Tran stated that he is old and should retire.

Further supporting Mr. Williams' claim is the fact that several of the witnesses who were interviewed as part of this investigation independently corroborated Mr. William's allegation that Mayor Tran made age-based comments to them. As set forth above, these witnesses are deemed more credible than Mayor Tran, as they have no vested interest in the outcome of this investigation.

Specifically, ██████ related that at the December 2016 holiday dinner, Mayor Tran asked ██████ how old ██████ is. Mayor Tran acknowledge that he may have asked ██████ age. According to ██████, Mayor Tran also told ██████ that it is important for him to bring his ideas forward from his perspective as a millennial, evidencing the importance of age to Mayor Tran. ██████ recounted that in March 2017, Mayor Tran stated to ██████ that it is time for "new blood" and for more people like him in City Hall, referring to younger individuals such as Councilmember Phan.

It is undisputed that Mayor Tran asked ██████ if the pictures ██████ has in ██████ office are of ██████ grandchildren. ██████ reported to the undersigned that ██████ was offended by Mayor Tran's question, but Mayor Tran credibly explained that he makes small talk such as asking employees about their families to make a personal connection with them. It is more likely than not that Mayor Tran's question to Ms. Lavelle was insensitive and a poor attempt to connect with ██████. The reality is that ██████ is in ██████ "mid-50s" and could be a grand██████.

More likely than not, Mayor Tran asked ██████ how long ██████ has worked for the City and commented that he wanted to "pick the brains" of the City's most senior employees. Despite what was reported by Mr. Williams and others, ██████ did not recall Mayor Tran telling ██████ that ██████ must be one of the oldest employees in the City. Presumably, ██████ would remember Mayor Tran making such a comment if it was said. Mayor Tran's question regarding ██████ tenure with the City does not directly or by inference imply that ██████ is old, or that Mayor Tran was interested in knowing ██████ age. Similarly, Mayor Tran's comment that he wants to pick the brains of City employees with the most longevity does not necessarily connote that Mayor Tran was referring to the age of these employees as contrasted with their tenure with the City.

Despite Mayor Tran's claim that it was Mr. Williams who referred to ██████ as "old," the video recording of the February 21, 2017, City Council meeting confirms that Mayor Tran referred to ██████ as "old" when ██████ was presented with a plaque of recognition by the Insurance Services Office. According to the video recording of the meeting, Mayor Tran remarked, "We got a lot of presentations or recognitions for our young residents tonight. But we'll save the young people for last and we'll go with recognizing some of the older folks, employees here at our City." Mayor Tran's reference to "young residents" was presumably referring to students in grades 1 through 12 who were the winners of a Martin Luther King Jr. essay contest sponsored by the City and who were present during the Council meeting to receive their awards. When placed in context, Mayor Tran's reference to older (but not old) City employees was made in relation to school-age children in grades 1 through 12 who were also scheduled on the agenda to receive awards. Compared to school-age children, ██████ is "older."

## 2. Conduct of a Sexual Nature

It is undisputed that Mayor Tran hugged ██████ and ██████ during the December 2016 holiday dinner. Mayor Tran acknowledged that he has greeted both male and female employees with a hug and that he does not intend to stop this practice, as he was not raised to shake hands. On another occasion, ██████ held ██████ hand out to shake hands with Mayor Tran at a Chamber of Commerce event, to avoid Mayor Tran from hugging ██████. According to ██████, Mayor Tran ignored ██████ cue, walked behind ██████ and placed both of his hands on ██████ shoulders.

Confidential Attorney-Client Privileged Investigation Report

For the reasons set forth above regarding [REDACTED] credibility, the credible evidence presented establishes that more likely than not, Mayor Tran asked [REDACTED] if [REDACTED] has any single friends. Even though [REDACTED] denied that Mayor Tran asked him to set him up on a date, presumably this was Mayor Tran's intent when he asked [REDACTED] if [REDACTED] has any single friends.

**VII. CONCLUSION**

There is sufficient credible evidence presented to conclude that, more likely than not, Mayor Tran made age-based comments to Mr. Williams and other City employees. Therefore, Mr. Williams' claim that Mayor Tran made age-based comments to him is sustained.

More likely than not, Mayor Tran engaged in conduct of a sexual nature when he "hugged" [REDACTED] and [REDACTED], and inquired of [REDACTED] if [REDACTED] has any single friends. The claim that Mayor Tran engaged in conduct of a sexual nature is sustained.

If any further assistance is needed, please do not hesitate to ask.

Respectfully Submitted,



Karen Kramer