

December 22, 2021

Dear Parkville Ethics Commission:

Re: Johnston Ethics Complaint Rebuttal and Reply

I write in reply to Mayor Johnston's November 22, 2021 response to the ethics complaint I filed on October 19, 2021. The Mayor's response brings to full light her ethical unfitness to hold the office of Mayor of Parkville.

In response to my Complaint, the Mayor: (1) makes new false statements, which themselves violate the Ethics Code and are an affront to this Commission; (2) concedes and admits many of the facts constituting her Ethics Code violations; (3) attempts to whitewash her unethical conduct that she does address; and (4) attempts to direct this Commission's attention away from her unethical conduct and towards things that do not bear at all on whether the Mayor violated the Ethics Code. At many instances in her response, the Mayor attacks third parties (including private citizens) instead of responding to the fact allegations against her. This commission should wholly disregard the Mayor's attempts to draw attention away from her unethical conduct. As discussed below, the Mayor (I) further violates the Code of Ethics through her written response to this Complaint, and (II) confirms facts proving that she violated the Code of Ethics. This Commission should accordingly recommend that the Mayor be removed from office.

I. The Mayor's written response to this ethics complaint itself violates the Ethics Code and is grounds to recommend the Mayor's removal.

In the course of responding to an ethics complaint that sets forth a long list of the Mayor's unethical conduct, the Mayor lengthened that list by making false statements of fact and, in an effort to preserve her office, breached a substantial contract on the City's behalf.

1. The Mayor makes multiple false statements to this Commission.

It should go without saying that making false statements to the Ethics Commission violates the Ethics Code; that conduct is by no measure within the "highest standards of morality" or "above reproach." City Ethics Code § 107.020. Yet, that occurred here.

First, while attacking a private citizen, instead of showing why her actions did not violate the Ethics Code, the Mayor falsely asserts that Mr. Jason Maki made a "threat" to City officials of "Many Sleepless Nights Ahead". (*See Johnston Response at p.6*). Mr. Maki did not make such a threat, and the Mayor's own exhibits

demonstrate that Clarence Housh, a Parkville citizen and longtime resident, made this comment. (*See Johnson Exhibit 2 at p.2*). The Mayor's *own exhibit* thus proves the falsity of her statement to the Commission. This will be one of many statements presented to this Commission as "fact" by the Mayor; it is clearly not (as proven – by her own exhibit).

Second, Mayor Johnston admits that she was arrested for driving under the influence, an act that plainly falls below the "highest moral standards." City Ethics Code § 107.020. But instead of explaining why that conduct does not violate the Ethics Code, the Mayor argues that "they" (presumably including me) are hypocrites because, according to Mayor Johnston, "Mr. Maki has also been arrested for driving under the influence." (*See Johnston Response at p.8*). But Mr. Maki has never been arrested for "driving under the influence". This false, defamatory statement about Mr. Maki (who is not the subject of this Commission's inquiry) does not aid the Mayor's case; it further demonstrates her ethical unfitness for office.¹

Third, the Mayor asserts that the citizen who filed the complaint is a member of "Citizens for a Better Parkville," a Missouri continuing political action committee. I am not. Moreover, whether **any** citizen is affiliated with such a committee is immaterial to the Mayor's unethical conduct. It is telling that the Mayor chooses to focus her animus on groups formed to advocate for transparency and accountability in the actions of government officials instead of explaining why her conduct did not violate the Ethics Code. It did, and continues to do so.

Finally, Mayor Johnston is being untruthful in her claims that "[she] had no further follow up" after her initial efforts to persuade a commercial property owner in Parkville to "yank the lease" from an existing business that was found to be "undesirable" in favor of a different tenant. (*See Johnston Response at p.5*). At least one email obtained from the City shows this is not true and that Mayor Johnston is attempting to deceive the Ethics Commission and the public about her conduct. (*See Kellerman Exhibit 14*). It is possible that there are additional documents or fact witnesses that can expound upon Mayor Johnston's hand in the matter or uncover further untruths regarding this matter.

¹ Concerningly, the Mayor's false statement appears to arise out of an investigation of Mr. Maki (a private citizen) paid for by the Parkville taxpayers that involved the hiring of private investigator(s) and a series of requests made to the FBI; the State Auditor; the Missouri Ethics Commission; and the U.S. Department of Justice. In light of that extensive investigation, the Mayor likely made her written statement about Mr. Maki to this Commission knowing that it was false. Further, her use of a taxpayer-funded, and possibly illegal, investigation to salvage her grasp of the Mayoral office is likely yet another violation of City Ethics Code § 107.010.

B. The Mayor’s written response breaches a substantial City contract.

The City settled Sunshine law litigation with Mr. Jason Maki earlier this year. The Maki v Parkville matter cost the City nearly \$450,000.00, including \$195,000.00 in settlement fees which resolved the litigation. Absent a settlement, Maki v Parkville could have cost the City far, far more money and resources. A **core provision** of the contract concluding that matter expressly prohibits the City or its officials (e.g., the Mayor) from characterizing Mr. Maki’s sunshine requests that were the subject of that litigation (or his efforts in connection therewith) as “harassment.” (*See Maki v. Parkville Settlement Agreement attached as Kellerman Exhibit 15 at p.3*).

Despite that clear prohibition, the Mayor writes to this Commission that those Sunshine requests and Mr. Maki’s efforts related thereto were “non-stop harassment.” (*See Johnston Response at p.6*). She then doubled down by affirming that “I see nothing wrong with characterizing his behavior as harassment.”. (*See Johnston Response at p.7*). But there is something wrong with the Mayor characterizing the use of the Missouri Open Records act as harassment: it breaches the City’s contract.

The Mayor’s reckless, self-interested efforts to deflect this Commission’s attention to private persons have now placed the City and its taxpayers at risk of further legal action and its associated costs. Her choice to violate the terms of the *Maki v Parkville* settlement so that she could score some type of defamatory blow on Mr. Maki is by no means “discharg[ing] faithfully the duties of their office, regardless of personal considerations.” City Ethics Code § 107.020. Nor does it place “the public interest [in] their primary concern,” and it is also not conduct above reproach in both official and private affairs, which City Ethics Code § 107.020 also demands.

The Mayor thus continues to violate the Ethics Code in the course of responding to the very Commission charged with determining whether she violated the Ethics Code—and making a recommendation to remove her from office. Such a recommendation is warranted.

II. Mayor Johnston’s conduct prior to responding to this Ethics Complaint violated Parkville’s ethics laws.

The Parkville Code of Ethics is violated when the City’s Mayor acts unfairly and impartially or in a manner giving the appearance thereof; fails to uphold the law; removes government decisions from the proper governmental channels; uses the office for personal gain; fails to observe the highest standards of morality; or fails to conduct herself above reproach in both personal and official affairs. City Ethics Code §§ 107.010, 107.020, 107.050(d).

A. Mayor Johnston violated the Missouri Constitution and statutes controlling campaign finance.

The Mayor admits that she accepted corporate campaign contributions. (*See Johnston Response at p.2*). Accepting corporate contributions is illegal; it is prohibited by the plain text of the Missouri Constitution, Art. VIII § 23.3(3). Here, the Mayor accepted seven² illegal contributions totaling \$6,409.55—facts she cannot and does not dispute.

The Mayor also admits that she failed to disclose (concealed) campaign contributions. Missouri law places an affirmative duty of disclosure on those who undertake the responsibility of accepting money to fund campaigns for public office. RSMo Ch. 130. The Mayor responds by arguing that she either attempted to comply with or didn't understand the law, but that is not an excuse for failing to abide by the law (which countless other candidates successfully do every campaign cycle).

The Mayor admits that she failed to disclose in-kind contributions, which is just as illegal as failing to disclose cash contributions. (*See Johnston Response at p.3*). In light of her admission, the Mayor suggests that she didn't care to consider or determine how to report contributions until after the election. This is not trivial because a prime purpose of the disclosure laws is to inform voters. Her failure to disclose key campaign contributions until after an election undermined those provisions set forth in the Missouri Constitution and statutes and deprived Parkville voters of important information relevant to the election.

The Mayor further argues that she did not attempt to conceal any contributions. (*See Johnston Response at pp. 2-3*). The facts say otherwise. For example, the Mayor accepted (and likely expended) a corporate contribution in the amount of \$5,000 on March 26, 2019. (*See Kellerman Exhibits, located on Exhibit 1, at p.93*). Missouri law is clear that the Mayor was required to report that contribution within 24 hours of receipt. (*See RSMo § 130.046.1 and 130.050.3*). Instead, **she did not disclose the contribution until seven days after the election**—*which is illegal*, regardless of whether one labels it “concealment.” Further to this point, the Mayor accepted a separate \$5,000 contribution on April 4, 2019 which she also concealed until July 15, 2019 – nearly **four months after** the election. (*See Kellerman Exhibits, located on Exhibit 1, page 98*). She was required to report BOTH

² Those illegal corporate contributions included: 1. \$100 contribution on 2/11/19 from Al's Bar & Grill; 2. \$500 contribution on 2/15/19 from F&C Development Inc, an Indiana corporation; 3. \$225 contribution on 3/1/19 from Strong Spirits Distilling, Inc.; 4. \$64.55 contribution on 3/1/19 from the QuikTrip corporation; 5. \$85 contribution on 3/1/19 from Nick and Jake's; 6. \$435 contribution on 3/1/19 from The National Golf Club; and 7. \$5,000 contribution on 3/26/19 from Don Julian Builders, Inc., a Kansas corporation.

the acceptance of her illegal \$5,000 corporate contribution and the subsequent \$5,000 contribution within 24 hours of receipt, she reported none. Her actions violated Missouri Ethics laws—not once, but twice. Notably, the Mayor had come under public scrutiny before and during that election, so the importance of properly disclosing her funders was paramount to voters.

The Mayor further argues that her *illegal conduct* under the Missouri Constitution and statutes do not violate the Ethics Code because those matters are concluded between her and the MEC.

That is wholly not true: she remains subject to a suspended judgment, should she recidivate. Second, the past tense of those proceedings does not bear on whether the actions subject to that proceeding violate the Parkville Ethics Code. They do. It also begs the question: does the Mayor also think that conduct found to have constituted a crime (e.g., her DUI) does not violate the Ethics Code after the proceeding finishes (and, e.g., a sentence is levied)? Of course it does. She also suggests that her illegal conduct does not violate the Parkville Ethics Code because she settled the matter with the Missouri Ethics Commission for a lesser fine than what they could have exacted on her. However, settlements are compromises in value on both ends, often to avoid the cost of litigation—and they do not cleanse the Mayor’s underlying unethical conduct. Notably, the matter was not dismissed; the MEC required that she settle for a penalty rather than just walk away.

Missouri campaign ethics laws are not trivial matters; they are designed to engender transparency and act as a hedge against public corruption. Considering the intent and nature of these laws, the Mayor’s casual demeanor toward her violations is disturbing.

B. Mayor Johnston has used and attempted to use her public office to coerce private market participants and censor the media.

The Mayor cannot deny that she hoped to “yank the lease” from an “undesirable” Parkville business owner; her email expressly laid out that plan:

I’m going to make a contact with the future owner of a building I can’t name, but it is presently leased to a less than desirable tenant. If there is a clause that allows them to yank the lease, then perhaps that could work. Please keep this part confidential.

(See *Kellerman Exhibit 14*). The Mayor now attempts to whitewash her unambiguous statement. However, few things speak as clearly to intent as those words uttered “in the moment”—here, that the Mayor found a private business “undesirable”, wanted to find a way to terminate that businesses’s lease, and wanted City staff to conceal that plan. Her plain, manifest intent to interfere in private contracts is antithetical to the fairness and impartiality demanded by Parkville’s Ethics Code § 107.010,

107.020, 107.050(d)—as is her request that staff engage in unethical behavior by concealing the matter.

It should be of great concern to this Commission that the Mayor continues to display no regret for this unethical conduct. (*See Johnston Response at p.5* “There is absolutely nothing improper about my behavior concerning this allegation.”). The Mayor plainly confuses her role as Mayor with that of a private broker—which the Mayorship is not: it is not appropriate for the Mayor to interfere in private contracts.

Mayor Johnston also admits that she has used her public office to coerce private market participants and censor the media. (*See Johnston Response at p.5* “Yes I did attempt to influence leadership at Park University to consider discontinuing to provide content and advertising [of a local news outlet]”).

In light of that admission, the Mayor attempts to invoke the First Amendment, which affords her no protection in her official capacity as Mayor, particularly not when speaking on private matters that will harm private business. See *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) (the U.S. Supreme Court finding that a public official or employee only has a possibility of First Amendment protection when speaking in her capacity as a private citizen on a matter of public concern). The First Amendment does not protect her attempts: the Mayor clearly took action as the Mayor, not a private citizen. She even used the Mayor’s email account and digital letterhead to make her request to bring about economic harm. Indeed, she appears to believe that is her Mayoral duty to interfere in private commercial matters. The Mayor attempts to raise the First Amendment to protect those interferences. However, she is gravely mistaken. The First Amendment operates in precisely the opposite way: it protects the people (and private businesses) from the government, not the other way around.

Mayor Johnston **has admitted** she took action, as Mayor, to cause economic harm to a local media publication because of her personal views. The intent of her actions would bring about the chilling effect of censorship by forcing local news publications to refrain from any news reporting that she may view negatively. Her admitted conduct is a violation of the Parkville Code of Ethics § 107.010, 107.020, and 107.050(d).

C. Mayor Johnston instructed or pressured other City officials and employees to act in ways that would cause them to violate the Parkville Code of Ethics.

The Mayor does not contest that she also pressured City officials and employees to stop doing business with a media publication that she considers to be a political adversary (The Platte County Landmark). The Mayor’s actions are consistent with censorship and tyranny, not ethical government. In this separate, but related matter, Mayor Johnston **has admitted** she violated Parkville code of ethics

107.010, 107.020, and 107.050(d) by instructing or pressuring other City officials and employees to act in ways that would cause them to violate the Parkville Code of Ethics.

In her “yank the lease” email, the Mayor instructed the City staff to “Please keep **this part** confidential”, with “this part” being her intention to seek the removal of an existing business (which she found to be undesirable) from Parkville through a “yank the lease” clause. This clear instruction would have required City staff to engage in conduct contrary to Parkville’s code of ethics and generally acceptable ethical norms by concealing the Mayor’s own unethical efforts.

In response to her coercive actions coming to light, the Mayor has engaged in more whitewashing and deception. The Mayor believes she can deceive this Commission about her intent by claiming she was actually informing City staff that she “*want[ed] a possible [new] lease deal to remain confidential*” and this was driven by her concern about “*airing the financial condition of a struggling [existing] business*”. This is categorically untrue. Her instruction to City staff was clear and was designed to keep her actions hidden from the public – because she knew they were wrong and unethical. **Nowhere** in her email does she state the above or express any concern for the existing business. In fact, she does just the opposite by labeling it as “undesirable”.

D. Mayor Johnston has refused (or was a key participant in the City’s refusal) to permit inspection of public records in violation of Missouri law.

On October 11, 2019, during a sit-down interview with news media, the Mayor attempted to mislead KHSB reporter Ms. Cat Reid by claiming Mr. Maki was deliberately not retrieving the records he requested from the City. But in fact, *Mr. Maki was informed by City Staff that he was not permitted to retrieve the records*; had he been allowed, he would have surely done so. (See *Kellerman Exhibit 10 at pp. 1-2*). The Mayor’s misleading conduct constitutes a violation of City Ethics Code § 107.010 and 107.020.

Now, in her response, the Mayor states that she did not knowingly attempt to mislead reporter Ms. Reid. Instead, she claims that during her discussion with Ms. Reid, acting as the Mayor of Parkville, she was simply “relay[ing] to Ms. Reid what [she] was told by staff, that was despite having the records available for a period of time, Mr Maki had not retrieved them.” (See *Johnston Response at p.6*).

The Mayor is attempting to twist the facts. Her plainly stated comments to Ms. Reid were:

Mr. Maki, [has] only bothered to pick up the first 12 of the Sunshine [requests] . . . it certainly seems like harassment, when someone asks

for all this information, and then they don't even bother to pick it up, you know, why would you do that?

(See *Kellerman Exhibit 10 at p.1*). At no point during that interview did Mayor Johnston indicate that she was “relay[ing] to Ms. Reid what [she] was told by staff”. Here again in her response, Mayor Johnston is conducting herself in a manner inconsistent with Parkville’s Code of ethics by attempting to deceive this Commission and absolve herself of her unethical conduct with Ms. Reid. Her conduct in this matter is yet another violation of the City Ethics Code § 107.020 (conduct in both official and private affairs should be above reproach.).

Regarding the subject of those statements to Ms. Reid, there is good reason to believe that the Mayor was aware of a Board of Aldermen decision to release the records withheld from Mr. Maki (she would have been part of those deliberations, of course) and nevertheless concealed that decision from Mr. Maki or instructed her staff to act contrary to that decision—ultimately preventing Mr. Maki from accessing those public records which resulted in a (costly) lawsuit against the City. Yet, in response, the Mayor wholly denies that such a deliberation and decision ever occurred or that she acted contrary to it by stating:

[N]one of this is true. It did not happen. . . . The same paragraph [in the complaint] goes on to claim that I failed to [up]hold a board of aldermen’s decision to release the records. . . . This is a blatantly false allegation and I deny it.

(See *Johnston Response at p. 7*). But facts indicate otherwise, including that the Mayor is attempting to cover up her role and deceive the Commission and the public. Recently another Parkville resident has provided sworn testimony that the Board of Alderman decided to provide Mr. Maki the records he sought prior to the filing of his lawsuit and likely prior to the Mayor’s interview with Ms. Reid. (See *Krause Affidavit attached as Kellerman Exhibit 16*). This likely occurred in a closed session of the Board of Aldermen with the Mayor’s full knowledge as a Member of the Board. Section 107.100 of Parkville’s Code states that this “Commission shall have the power to examine witnesses under oath or affirmation and can request persons necessary for its investigation to appear before it and produce any records or documents it believes relevant”. It behooves this commission to test the Mayor’s claim and request that the City produce documents, votes, minutes, and emails that would confirm if:

- a) the Mayor has attempted to deceive the public regarding this matter;
- b) the Mayor, through her knowledge and lack of acting on that knowledge, put into place a plan to thwart the Board of Aldermen’s decision to release records withheld from Mr. Maki which ultimately resulted in approximately \$450K of legal fees and settlement costs to the taxpayer; and if true

- c) the Mayor or other City staff are guilty of Failure or Neglect of Duty of City Official, a criminal offense, as per Parkville Code 100.100 which states:

Failure or Neglect of Duty of City Official — Penalty. Any officer of the City who shall refuse or willfully and intentionally fail[s] or neglect[s] to perform any duty enjoined upon him . . . shall be deemed guilty of a misdemeanor . . . and may be removed from office by the procedure as set forth in Section 79.240 of the Missouri Revised Statutes of 1949.

E. The Mayor has otherwise improperly used her office and flaunted the law.

Mayor Johnston admits that she threatened a private citizen with an investigation by a state regulatory agency for expressing his view on her conduct. That violates § 107.020 of the Code of Ethics. Unfortunately, she displays no remorse for her conduct and goes so far as to explain it away as being "hardly unethical". (*See Johnston Response at p.8*).

Between September 1, 2018 and October 31, 2018, Mayor Johnston should have disclosed her relationship to Patricia Jensen, who is the attorney for Brian Mertz, the developer of Creekside. It is indeed relevant that she knew her from at least 2016 when Ms. Jensen contributed to Johnston's mayoral campaign. (*See Johnston Response at p.8*).

The Mayor's flaunting of the rule of law even extends to this proceeding: she was instructed, by Commission Chair Dehner, to respond to the complaint before close of business on November 22, 2021. She chose not to do so; her submission was untimely. (*See Kellerman Exhibit 17*).

Conclusion

Mayor Johnston has chosen to use her written response to further violate the Ethics laws and make defamatory statements about and otherwise attempt to assassinate the character of private persons who are not the subject of this Commission's inquiry. The Mayor's response is largely an attempt to deflect the Commission's attention away from her unethical conduct by referring to wholly immaterial matters (like nonparty, private citizens' personal conduct). She concedes many of the facts that each violate the Ethics Code independently. Collectively, they are overwhelming support for her removal from office.

The Mayor's undisputed past conduct was plainly unethical and reproachable. Her present conduct (including her written response to this Commission) is also wholly unbecoming of her office; it is the very essence of unethical behavior by a public official; and sets a poor example for our children and this City. In light of her repeated, long-running, and now ongoing violations of the City Code of Ethics, I

respectfully request that you recommend pursuant to City Ethics Code § 107.060 and RSMo § 79.240 that the Board of Aldermen remove Mayor Nan Johnston from office.

Elaine Kellerman

Elaine Kellerman, Resident of Parkville, MO

STATE OF MISSOURI

) ss

COUNTY OF PLATTE

Subscribed and sworn to before me, a Notary Public in and for the above County and State, on 12/22/2021.

Darricka Brisbin

Notary Public

My commission expires: 03/21/2024

**DARRICKA. BRISBIN
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
CLAY COUNTY
MY COMMISSION EXPIRES 3/21/2024
COMMISSION # 15635311**