

BARCLAY DAMON^{LLP}

Michael J. Sciotti
Partner

April 16, 2019

VIA E-MAIL & OVERNIGHT MAIL

William M. Borrill, Esq.
Corporation Counsel
City of Utica
1 Kennedy Plaza
Utica, New York 13502

Re: Investigation Report

Dear William:

By letter of March 11, 2019, Lori A. Wrobel (Secretary to the Civil Service/Personnel Department for the City of Utica), via letter of Zachary C. Oren, Esq. (City of Utica's First Assistant Corporation Counsel), pursuant to the City of Utica's Workplace Violence Prevention Program and/or Workplace Violence Prevention Policy for the City of Utica, authorized the undersigned to perform an internal administrative investigation.

The purpose of the investigation was to determine if there were any violations of the City of Utica's: (1) Employee Handbook; and (2) Workplace Violence Prevention Policy and Incident Reporting. More specifically, in regards to any workplace violence which may have occurred during the Finance Committee meeting in the Common Council Chamber on March 5, 2019. The City of Utica's Corporation Counsel's Office assigned as its file number 19-41.

After conducting a conflict check I agreed to undertake the investigation.

BACKGROUND MATERIALS

By letter of March 11, 2019, I was provided with the following materials by Zachary C. Oren, Esq.: (1) City of Utica Employee Handbook; (2) City of Utica Workplace Violence Prevention Program with Policy; (3) Sealed envelope enclosing DVD containing security camera video footage of the alleged incidents from two different camera angles; and (4) Contact information for individuals who were present during all or parts of the Finance Committee meeting occurring in the Common Council Chamber on March 5, 2019 ("Finance Committee Meeting").¹

¹ Please note additional documentation was sent by the Office of Corporation Counsel during the course of the investigation. Most of the information was requested by me, and some of the materials are referenced and attached to this report.

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APPLICABLE POLICIES & LAW

The City of Utica, in the before-mentioned Employee Handbook, adopted Section 908 (Violence in the Workplace) (Appendix 1), which states in pertinent part:

The City of Utica considers the safety of its employees, vendors, suppliers, visitors, and the general public to be of paramount importance. **The City has zero tolerance for any employee or individual on City property who threatens, intimidates, or infers violence against any person or property associated with the City.** The City considers any threat of violence or public violence as legitimate, and takes immediate appropriate action, including the involvement of law enforcement. Employee Handbook §908 (emphasis added).

Under this policy, “[a]n employee who is subject to, witnesses, or becomes aware of any threats or acts of violence should inform the employee’s supervisor immediately.” *Id.*

The Employee Handbook also defines the term “employee” to exclude “City Council Members.” *Id.* at §103. However, the term “employee” specifically includes “a person employed by the City.” *Id.* It really makes no difference as the policy also applies to any “...individual on City property...” Therefore, §908 of the Employee Handbook applies to City Council Members when they are on property owned or controlled by the City of Utica.²

The City of Utica enacted a Workplace Violence Prevention Program (Appendix 2) pursuant to the requirements of §27-B(4) of the New York State Labor Law (“NYSLL”) (“Every employer with at least twenty full time permanent employees shall develop and implement a written workplace violence prevention program for its workplace or workplaces...”). The statute broadly defines “employee” to include: “...a public employee working for an employer.” *Id.* at §27-B(2)(b).

In pertinent part, the Workplace Violence Prevention Program states: “Workplace Violence [includes] any physical assault, threatening behavior, verbal abuse occurring where a public employee performs any work-related duty in the course of his or her employment.” Appendix 2 at p. 7. In addition, a reportable workplace violence incident is defined as one or more of the following:

² This clearly means that Common Council members of the City of Utica who attend a meeting at Utica City Hall are covered by this policy.

1. An attempt or threat whether verbal or physical to inflict injury upon [a] person;
2. Any intentional display of force which would give a person a reason or fear to expect bodily harm;
3. Intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching;
4. Harassment of a nature that would give a person reason to fear escalation or make it difficult to pursue normal work life or private life; or
5. Stalking a person with the intent of causing fear when such stalking has arisen through or in the course of employment.

However, unlike the City of Utica's Discrimination and Harassment Policy (Employee Handbook at §904) ("This policy applies to all City employees and Elected Officials..."), which specifically applies to "elected officials," the Workplace Violence Prevention Program on its face does not have the same specific language. The Workplace Violence Prevention Program does state:

1. The City of Utica is committed to providing a work environment free from the hazards of workplace violence...threatening behavior or verbal abuse;
2. It establishes "a Zero Tolerance to violence in the workplace;"
3. "Acts of violence occurring where an employee performs any work-related duty in the course of his or her employment will not be tolerated;" and
4. "The program is intended to ensure that all our employees, including supervisors and department heads comply with the following work practices..." (Appendix 2 at p. 1) (emphasis added).

Thus, it is clear that the policies in question apply to members of the Common Council of the City of Utica.³ The policies in question are also consistent with New York law and guidance⁴ issued by the New York State Department of Labor ("NYSDOL"):

³ This becomes important as one member of the Common Council challenged the application of these policies to him. I found the challenge disingenuous as there is no good faith basis for claiming that a member of the Common Council is somehow immune from a complaint of workplace violence. This will be discussed in more detail later in this report.

⁴ Specifically, the key part of the guidance issued by the State of New York clearly indicates: "Workplace violence is any physical assault or act of aggressive behavior occurring where a public employee performs any

Further, based on a review of applicable law, regulations, and policies, it is clear that a violation of either the Workplace Violence Prevention Program or §908 of the Employee Handbook can occur even if:

1. No crime was committed;
2. No physical contact occurred; or
3. The person simply observed the conduct, but was not per se the victim.

BASIS FOR INVESTIGATION

The day after the Finance Committee Meeting, Utica Fire Department Temporary Fire Chief Scott Ingersoll (“Chief Ingersoll”) verbally complained⁵ about the conduct of Common Councilor Joseph Marino (“Common Councilor Marino”) and Common Councilor Frank DeBrango (“Common Councilor DeBrango”) in the presence of the Mayor, representatives of the Corporation Counsel’s Office, and Chief Mark Williams (“Chief Williams”) and Deputy Chief Edward Noonan (“Deputy Chief Noonan”) of the Utica Police Department, during a scheduled weekly meeting which Chief Ingersoll described as an “open forum.”⁶ During this meeting, Chief Ingersoll described the conduct he witnessed (i.e. saw and heard), and the conduct was also discussed by Chief Williams and Deputy Chief Noonan.⁷

work-related duty in the course of his or her employment...” (Emphasis Added). Workplace Violence Prevention Guidance for New York State Public Employers available at: (<https://labor.ny.gov/workerprotection/safetyhealth/workplaceviolence.shtm>). Further, “[i]n 2006, New York State enacted legislation requiring public employers to develop and implement programs to prevent and minimize workplace violence and help ensure the safety of public employees.” New York State noted that: “...workplace violence can occur in any workplace setting...” *Id.*

⁵ Please note the verbal complaint should have been reduced in writing in accordance with the Workplace Violence Prevention Program, but it was not. Specifically, the Workplace Violence Prevention Program states in part: “[a]n employee must report an incident in writing.” Appendix 2 at p. 3. Chief Ingersoll made a complaint about the conduct he observed, but he did not label it workplace violence. Employees are not required to reduce their general complaints to writing, and an employer must act on a verbal complaint even if the employee is not formally requesting an investigation. The rationale for this is that once the employer is on notice of the conduct in question, it must act.

⁶ I have since learned that this meeting is the Corporation Counsel’s Office Staff Meeting.

⁷ Chief Ingersoll leaves the Common Council Chambers to use the restroom at 6:02 p.m., and physically steps back into the room at 6:06:38 p.m. Please note that Chief Ingersoll heard comments being made by Common Councilor Marino and Common Councilor DeBrango prior to reentering the room. I do not believe that Chief Ingersoll heard the beginning of the exchange between Common Councilor Marino and Common Councilor DeBrango, but others in the room clearly did. Chief Ingersoll did not represent that he heard the entire exchange between Common Councilor Marino and Common Councilor DeBrango.

The conduct discussed also included comments made between Common Councilor Marino and Common Councilor Jack LoMedico (“Common Councilor LoMedico”), which occurred in the minutes before the situation involving Common Councilor Marino and Common Councilor DeBrango. Chief Ingersoll thought the conduct of Common Councilor Marino and Common Councilor DeBrango was highly unprofessional and would have disciplined both Common Councilor Marino and Common Councilor DeBrango had they been members of the Utica Fire Department.

As a result of the verbal complaint of Chief Ingersoll (which was supported by Chief Williams and Deputy Chief Noonan), the Office of Corporation Counsel of the City of Utica decided to conduct an independent investigation of the allegations under the polices set forth above. After speaking with the Office of Corporation Counsel, they believed that an investigation was mandatory given the specific allegations complained of by Chief Ingersoll, which, again, were supported by Chief Williams and Deputy Chief Noonan. I concur.

Common Councilor Marino wrote a letter to Mayor Robert M. Palmieri dated March 21, 2019, which the Office of Corporation Counsel provided to the undersigned as part of the workplace violence investigation. In that letter Common Councilor Marino points out the following:

1. There “was no police report filed or action taken” as a result of the conduct which occurred during the Finance Committee meeting, “[d]espite there being several members of the Utica Police Department in attendance;”
2. “Not one single law enforcement agency, including the District Attorney were consulted...” relative to the events;⁸
3. The NYSDOL was not consulted by the City of Utica relative to the events; and
4. Legal counsel for the City of Utica Common Council was not consulted.

Appendix 9.

In response to that letter I also note the following:

1. A police report and/or criminal charges are not required in order for there to be a violation of either the Workplace Violence Prevention Program or §908 of the Employee Handbook;

⁸ While this is a true statement relative to the City of Utica, it is not accurate as to Common Councilor Marino. After the incident, Common Councilor Marino called law enforcement to discuss his option to file charges against Common Councilor DeBrango. Common Councilor Marino spoke with Deputy Chief Noonan in this regard, and at the end of the call decided not to press charges and apologized for his conduct.

2. The City of Utica is not required to contact law enforcement or the Oneida County District Attorney's Office about an internal investigation of workplace violence, especially since law enforcement was present during the incidents in question and maintain that no criminal conduct occurred (again, criminal conduct is not required);

3. There is no requirement to consult with the NYSDOL about this workplace violence investigation; and

4. Under applicable policy, there is no requirement for the City of Utica to have consulted with legal counsel for the City of Utica Common Council.⁹

WITNESSES INTERVIEWED¹⁰

After reviewing the materials which were provided to me by the Office of Corporation Counsel, I decided to interview the following individuals (on the dates indicated) who were present for all or part of the key moments of the Finance Committee Meeting:

<u>NAME</u>	<u>DATE OF INTERVIEW</u>
Budget Director Heather Mowat	March 20, 2019
Captain Mickle	March 20, 2019
Chief Williams	March 20, 2019
Chief Ingersoll	March 20, 2019

⁹ Please note that I had numerous communications with legal counsel for the City of Utica Common Council, including calls, e-mails and face-to-face communications. Also, upon request of legal counsel for the City of Utica Common Council, I allowed him to review the videos relative to the incidents in question. In addition, legal counsel for the Utica Common Council offered to be present during my interview of Common Councilor Marino, but Common Councilor Marino declined.

¹⁰ Prior to conducting the interviews, I believed that I had never spoken with, or met, any of the witnesses, except Chief Williams. After conducting the interviews I still believe that to be the case.

Common Councilor LoMedico ¹¹	March 22, 2019
Common Councilor Samantha Colosimo-Testa ¹²	March 27, 2019
Deputy Chief Noonan ¹³	March 27, 2019
Walter Phillips ¹⁴	March 28, 2019
Common Councilor Williamson	March 29, 2019
Common Councilor DeSanctis	March 29, 2019
Common Council President Galime	March 29, 2019
Common Councilor DeBrango ¹⁵	March 29, 2019

¹¹ Please note that Common Councilor LoMedico, Common Councilor Mark Williamson (“Common Councilor Williamson”), Common Councilor Robert DeSanctis (“Common Councilor DeSanctis”), Common Council President Michael P. Galime (“Common Council President Galime”) and Common Councilor DeBrango each elected to have legal counsel (i.e. Anthony Garromone, Esq.) present during their interviews.

¹² Common Councilor Samantha Colosimo-Testa (“Common Councilor Colosimo-Testa”) was interviewed via telephone given scheduling issues, and she elected not to have legal counsel present.

¹³ Deputy Chief Noonan was interviewed over the telephone given his vacation and scheduling conflicts.

¹⁴ Walter Phillips (“Mr. Phillips”) is a janitor employed by the City of Utica. He was not identified initially by the Office of Corporation Counsel as being present during the Finance Committee Meeting. After I reviewed the video recording of the meeting, I noticed Mr. Phillips entering and then leaving the Common Council Chamber, and reached out to the Office of Corporation Counsel for the identity of the person I observed. The Office of Corporation Counsel identified Mr. Phillips and I subsequently interviewed him over the telephone. Mr. Phillips was helpful in that he confirmed he heard yelling, swearing and someone stating “kick your ass.” However, Mr. Phillips was not able to identify who said what as he was only in the room for a short period of time. He did verify that the yelling and swearing was easily heard outside of the Common Council Chambers.

Common Councilor Marino ¹⁶	April 1, 2019
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In addition to the individuals who were present for all or part of the key moments of the Finance Committee Meeting, I also requested to interview the person who could discuss the video recordings with me. I was provided by the Office of Corporation Counsel with the contact information of Frank M. Mutolo (I.T. Project Manager for the City of Utica) ("Mr. Mutolo").

I subsequently conducted an in-person interview of Mr. Mutolo on March 22, 2019 in his office where I also reviewed the "original" video recordings/feeds provided to me by the Office of Corporation Counsel. Immediately after reviewing the "original" video recordings/feeds of the Finance Committee Meeting, I met with Anthony Garramone, Esq., who wanted to also review the "original" video recordings/feeds.

All witnesses were advised:

1. Why I was retained;
2. The City of Utica has a Zero Tolerance for workplace violence;
3. That I expected them to tell me the truth;
4. That I expected them to tell me what they heard or saw;
5. They were not allowed to record my interview of them (and I confirmed I was not recording them); and
6. Given that the investigation was on-going, that the interview should be kept confidential and not discussed with anyone else.

All witnesses agreed and acknowledged these points.

¹⁵ Please note that I intentionally interviewed Common Councilor Marino and Common Councilor DeBrago last. I offered to meet with Common Councilor Marino on the same day I met with Common Councilor DeBrago, but he was not able to do so.

¹⁶ Please note Common Councilor Marino also elected to have legal counsel (i.e. Anthony Murad, Esq.) present during his interview.

VIDEO RECORDINGS OF THE FINANCE COMMITTEE MEETING

It is a rare situation where there is a real-time recording of the incidents under investigation. This is one of those cases, but there are several limitations to the recordings which I reviewed. First, there is no sound, so I have no audio recording of the events. Second, one of the recording angles does not provide me with a full picture of the events, as it was covering the back part of the room. Third, the recording which provides the best angle “skips” at times. Finally, the best way to view the recording is on the computer of Mr. Mutolo, who has some zoom-in functionality that the DVD provided to me does not have.

The cameras in question were newly installed within the weeks leading up to the events, and no one appears to have been aware that the cameras were actively recording the Finance Committee Meeting. I showed all the individuals I interviewed, except those who I interviewed over the telephone, portions (but not all) of the video recordings/feeds provided to me.

The “skip” of the recording was explained to me by Mr. Mutolo as a result of the movement of the people being recorded and the settings on a camera. The camera is made by AXIS Communications and is an AXIS M30 Network Camera. Appendix 3. After showing the recording to Common Councilor Marino and his legal counsel, I received a letter and e-mail from Common Councilor Marino (Appendix 4 is the letter version which was also attached to the e-mail Common Councilor Marino sent me as a pdf document). In said letter Common Councilor Marino indicates/requests that:

1. He has serious concerns about the authenticity of the video;
2. There is a 45 second omission in the video at the critical moment that has been publicized as a physical altercation;
3. I investigate what happened to the video after the night in question and who may have had access to it;
4. I retain a forensic expert to assist with the video investigation;
5. I contact the manufacturer of the video and the City of Utica’s dedicated off-site cloud server;
6. I secure the main file/video to preserve the integrity of the video; and
7. If I do not respond to his letter within 5 business days, he will contact the Oneida County District Attorney’s Office.

I subsequently acknowledged receipt of the letter via e-mail. Appendix 5. I was subsequently informed by the Office of Corporation Counsel that Common Councilor Marino did in fact contact the Oneida County District Attorney's Office. Appendix 6. A few comments relative to Common Councilor Marino's letter/e-mail¹⁷ to me:

1. The scope of my investigation is set forth in Appendix 7;
2. Common Councilor Marino cannot unilaterally extend the scope of my investigation; and
3. To be frank, I do not answer to Common Councilor Marino.

All that being said, I previously directed both the Office of Corporation Counsel and Mr. Mutolo to secure the original recording/video feed. After receiving the letter/e-mail from Common Councilor Marino, the Office of Corporation Counsel was again so advised and confirmed that they had done so. Further, the Office of Corporation Counsel produced a letter to me from TAS Electronics (Appendix 8) indicating that the recording/video feed had not been modified. In addition, I asked Mr. Mutolo directly whether the recordings I had been provided had been modified, and he said "no." I asked Mr. Mutolo whether anyone had requested him to modify the recordings, and he said "no," and added that it was not possible.

As discussed below, Common Councilor Marino maintains the investigation is politically motivated, and he is truly concerned about the video recording "skip." Please note I resolve the "skip" issue in favor of Common Councilor Marino and Common Councilor DeBrango by **crediting their version of events** as to what happened during the "skip." As to the politics of this matter, it is irrelevant to me and had no bearing on my investigation or this report.¹⁸

ALLEGATIONS & POLICY APPLICATION

Almost all of the witnesses were unaware that Chief Ingersoll made a verbal complaint about the conduct he witnessed (which was supported by the observations of Chief Williams and Deputy Chief Noonan) at the Finance Committee Meeting. Common Councilor Marino's allegation that the investigation is politically motivated overlooks the fact that a City of Utica employee verbally complained about the conduct he witnessed (i.e. saw and heard), and that the Chief of Police and Deputy Chief of Police supported the allegations with their observations. In

¹⁷ In Common Councilor Marino's e-mail to me he states in part: "...in the interest of honoring our gentleman agreement of confidentiality..." Please note this was not a gentlemen's agreement, but rather a directive to Common Councilor Marino from me which he acknowledged.

¹⁸ Several witnesses wanted me to review an alleged video involving Common Councilor Marino that did not relate to this investigation. I did not review the video, and found it not to be relevant to my investigation based on the description of it by certain witnesses.

fact, law enforcement believes that if they were not present to intervene and physically separate Common Councilor Marino and Common Councilor DeBrango, punches would have been thrown between Common Councilor Marino and Common Councilor DeBrango.

Common Councilor Marino also asserted during his interview that he was not an employee of the City of Utica and therefore the Workplace Violence Prevention Program does not apply to him. As indicated above, the Workplace Violence Prevention Program states in part “[t]he program is intended to ensure that all our employees, including supervisors and department heads comply with the following work practices...” (Appendix 2 at p. 1). Thus, the policy clearly applies to all employees, and in this regard I requested the following information from the City of Utica relative to whether or not members of the Common Council are employees of the City of Utica:

Question #1: Are members of the Common Council paid by the City of Utica?

Answer: Yes.

Question #2: Do members of the Common Council receive W-2s from the City of Utica?

Answer: Yes.

Question #3: On the W-2 in Box “E” is the name of the Common Councilor listed as an “Employee”?

Answer: Yes.

Question #4: On the W-2 in Box “C” is the City of Utica listed as the “Employer”?

Answer: Yes.

The credible evidence establishes that Common Councilors are treated as employees by the City of Utica for federal income tax purposes. I further find that the clear language set forth in the Workplace Violence Prevention Program applies to all employees. Even if the language did not apply directly to members of the City of Utica Common Council, it does not matter, as Chief Ingersoll is clearly an employee of the City of Utica; claims to have witnessed unprofessional conduct while employed by the City of Utica; was performing his job duties when he witnessed the conduct; and subsequently complained about the conduct. Further, as indicated above the provision of the Employee Handbook applies to any “...individual on City property...” Appendix 1.

ALLEGATIONS INVESTIGATED

There are two potential violations of the Workplace Violence Prevention Program and Employee Handbook which occurred at the Finance Committee Meeting:

1. Verbal exchange between Common Councilor LoMedico and Common Councilor Marino; and
2. Verbal exchange and confrontation between Common Councilor DeBrango and Common Councilor Marino.

These situations occurred back-to-back with little if any time lapsing between them. I would note that Common Councilor DeBrango was not a member of the Finance Committee, but was nonetheless present to hear the presentations by the Police and Fire Departments. The credible evidence finds that this was not unusual, and that he had the absolute right to be present at the meeting. The credible evidence also establishes that the meeting in question was open to the public, and that no members of the general public or press were present during either incident. Common Councilor Marino alleges that he was set-up during the meeting, but the credible evidence does not support this in any manner.

To place both incidents in perspective, Chief Williams, Deputy Chief Noon and Captain Mickle were discussing a proposal to place an armed law enforcement officer at City Hall when the building was open to the public. There appears to have been a disagreement between Common Councilor Marino, law enforcement and other common councilors over some of the specifics of the proposal. Common Councilor Marino is the Chair of the Finance Committee and was running the meeting. I take no position on the merits of the proposal, as that is not my charge, nor is it relevant to this report other than to place the incidents in question in perspective. Chief Ingersoll was present to make a presentation to the Finance Committee after the Police Department completed its presentation.

VERBAL EXCHANGE BETWEEN COMMON COUNCILOR LOMEDICO AND COMMON COUNCILOR MARINO

During the Finance Committee Meeting, Common Councilor LoMedico and Common Councilor Marino engaged in a verbal exchange. The credible evidence establishes that both Common Councilor LoMedico and Common Councilor Marino: (1) swore; (2) called each other names; (3) were argumentative; and (4) yelled at each other. It appears Common Councilor LoMedico questioned Common Councilor Marino about his disagreement with the position of law enforcement concerning the specifics of placing an armed law enforcement officer at City Hall when the building was open to the public.

Common Councilor Marino then said, in sum and substance, to Common Councilor LoMedico that he has been on the Common Council for 6 years and has done nothing. Common Councilor LoMedico responded by stating that Common Councilor Marino is “full of shit” and was “acting like a fucking monkey.” Common Councilor Marino responded, “your tough old man,” and that he would “take him outside and kick his ass.” The credible evidence establishes that Common Councilor LoMedico states “I am not going to fight you,” and he then voluntarily left the room with Common Councilor Williamson. The evidence establishes that Common Councilor Marino was the instigator, but Common Councilor LoMedico did respond inappropriately.¹⁹

Some relevant witness statements:

<u>INTERVIEWEE</u>	<u>RELEVANT COMMENTS</u>
Common Councilor Colosimo-Testa	She described Common Councilor LoMedico and Common Councilor Marino as swearing at each other. She heard the “fucking monkey” comment made by Common Councilor LoMedico. She did not believe that a violation of the Workplace Violence Prevention Program had occurred after I reviewed it with her. She did not hear any threats, the conduct did not infer violence and she did not believe there was any intimidation. She stated she has seen a lot worse in her time on the Common Council and believed the exchange was nothing more than politics. (Please note that Common Councilor Colosimo-Testa leaves the room at 6:04:02 p.m., which was approximately 18 seconds before Common Councilor LoMedico leaves the room with Common Councilor Williamson, so she did not hear the entire exchange.)

¹⁹ It is a close call whether or not Common Councilor LoMedico violated the applicable policies. There is proof that he did threaten Common Councilor Marino, but the exact words he used are not apparent. It does appear though that Common Councilor LoMedico did threaten to kick Common Councilor Marino’s ass, or words to that effect.

<p>Deputy Chief Noonan</p>	<p>At the outset he said no criminal act occurred. He indicated that they both said “fuck you” to each other, and that they were swearing at each other. Both individuals discussed kicking each other’s asses in sum and substance. Deputy Chief Noonan was surprised and taken aback by their comments. He described it as a heated, unprofessional verbal exchange. The exchange was beyond what politicians would typically say to each other. He believed both were equal aggressors and engaged in verbal abuse and verbal threats to each other.</p>
<p>Common Councilor Williamson</p>	<p>Common Councilor Williamson indicated that Common Councilor Marino was the instigator. They both were disrespectful towards each other, and that they both verbally abused the other. Common Councilor Marino did threaten to kick Common Councilor LoMedico’s ass, and Common Councilor LoMedico made comments back. He described it as a “testosterone thing.”</p>
<p>Common Councilor DeSanctis</p>	<p>Common Councilor Marino was the instigator. Common Councilor Marino did state to Common Councilor LoMedico “let’s step outside” (i.e. to fight). Both were rude and argumentative to each other. He believed that Common Councilor Marino did threaten Common Councilor LoMedico, and that they both engaged in verbal abuse of each other.</p>
<p>Common Council President Galime</p>	<p>Common Councilor Marino was the instigator. He described it as a heated exchange with name calling. They were yelling at each other, but does not recall anyone swearing. He described it as politicians being politicians, and Common Councilor Marino was engaging in a</p>

	<p>personal attack on Common Councilor LoMedico. He did not think it would escalate beyond words. He did not believe a violation of the Workplace Violence Prevention Program had occurred.</p>
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The credible evidence establishes the following occurred in light of the clear language set forth in the Workplace Violence Prevention Program and Employee Handbook:

<u>EVENT</u>	<u>DID IT OCCUR?</u>
Physical Assault	No
Threatening Behavior	Yes – both individuals threatened to kick each other’s ass, or words to that effect.
Verbal Abuse	Yes – by both.
An attempt or threat whether verbal or physical to inflict injury upon person	Yes – verbal only by both.
Any intentional display of force which would give a person a reason or fear to expect bodily harm	No
Intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching	No
Harassment of a nature that would give a person reason to fear escalation or make it difficult to pursue normal work life or private life	No

Stalking a person with the intent of causing fear when such stalking has arisen through or in the course of employment	No
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I note that politicians call each other names, and probably swear at each other from time-to-time. I hazard to say that such conduct is probably a job requirement for some politicians. However, the Workplace Violence Prevention Program and Employee Handbook are not meant to police common courtesy between politicians and employees of the City of Utica in the presence of the politicians who make unprofessional comments. Be that as it may, this exchange went beyond politicians simply being unprofessional.

Politicians cannot in 2019 threaten to fight one another. Words have consequences, and I find that both Common Councilor Marino and Common Councilor LoMedico violated the Workplace Violence Prevention Program and applicable provision of the Employee Handbook by engaging in threatening behavior and verbal abuse of the other. Common Councilor LoMedico was correct to walk away from a situation that was escalating. I am not sure whether or not Common Councilor Marino and Common Councilor LoMedico were in fact serious, or just engaging in highly unprofessional conduct towards each other. The short and simple truth is that the conduct occurred.

VERBAL EXCHANGE AND CONFRONTATION BETWEEN COMMON COUNCILOR DEBRANGO AND COMMON COUNCILOR MARINO

Almost immediately after Common Councilor LoMedico leaves the chambers (6:04:20 p.m.), the confrontation between Common Councilor Marino and Common Councilor DeBrango occurs (6:05:15 p.m.). As previously mentioned, the video "skips" from 6:04:33 to 6:05:15. Common Councilor Marino and Common Councilor DeBrango both state they got up to go have a discussion in the back room of the Common Council Chambers (in which there is no camera). Common Councilor Marino indicated that he stopped suddenly while entering the back room and given the close proximity of Common Councilor DeBrango (i.e. he is right on his heels), Common Councilor DeBrango bumped into Common Councilor Marino. Given that video evidence during the gap does not exist, I credit this version of the events.

What follows is troubling.²⁰ Common Councilor Marino believed at the time the bump was intentional. Both Common Councilor DeBrango and Common Councilor Marino argue nose-to-nose and chest-to-chest on the video, but do not appear to actually touch each other. Chief Williams indicates in sum and substance that if law enforcement had not intervened there was going to be a fist fight between Common Councilor DeBrango and Common Councilor

²⁰ Please note that a viewer of the video must zoom in to see the full extent of what occurred.

Marino. The video clearly supports Chief Williams' recollection (6:05:15 – 6:07:13). In fact, at one point during this time frame Chief Williams, Deputy Chief Noonan and Captain Mickle all have to step between Councilor DeBrango and Common Councilor Marino. Common Council President Galime requested that law enforcement stay until the meeting was over, and Chief Williams contacted officers to do so. Chief Williams refused to leave the Common Council Chambers until another police officer arrived. As a viewer will see, there were 5 different law enforcement officers in the room that evening at various times.

There was an allegation of a head-butt that Common Councilor Marino allegedly received from Common Councilor DeBrango. Numerous witnesses indicated that Common Councilor Marino stated that Common Councilor DeBrango head-butted him, including Captain Mickle, Chief Ingersoll, and Deputy Chief Noonan. In fact, Common Councilor Marino indicates that he yelled out during the confrontation: "You head-butted me you son of a bitch." Another witness indicated that Common Councilor Marino stated in sum and substance: "there are 3 cops here and none of you saw that" (referring to the alleged head-butt). When pressed, Common Councilor Marino admitted to me that he was not head-butted, and that he made up that statement. He tried to explain away his material real-time misrepresentation of the events by stating he said it "for effect." In essence, he lied about what occurred. The video does not show a head-butt, and no Common Councilor saw a head-butt. None of the three law enforcement officers witnessed a head-butt, and all agree that if a head-butt occurred additional action may have been required. Common Council President Galime indicates a head-butt occurred because "he heard it," but he is mistaken. Chief Williams, Deputy Chief Noonan and Captain Mickle do not believe a crime occurred and given their backgrounds and professional experiences I accept the fact that nothing criminal occurred.

Turning back to what started this argument/confrontation, Common Councilor Marino stated to Common Councilor DeBrango something about "your boys," and it quickly escalated from that point. Common Councilor DeBrango yelled back, "what do you mean," or words to that effect. It is clear from almost all witnesses that they yelled, swore and threatened each other. Neither Common Councilor DeBrango nor Common Councilor Marino recall exactly what they said. However, Common Councilor Marino admits that:

1. He swore at Common Councilor DeBrango;
2. He yelled at and threatened to kick Common Councilor DeBrango's ass;
3. He was arguing nose-to-nose and chest-to-chest with Common Councilor DeBrango; and
4. The conduct was unprofessional.

For his part, Common Councilor DeBrango admits that he:

1. Was arguing nose-to-nose to Common Councilor Marino; and
2. Yelled at Common Councilor Marino.

Both maintain this was a political argument – nothing more. Both are mistaken. I find that the credible evidence establishes a violation of the Workplace Violence Prevention Program occurred in that both Common Councilor DeBrango and Common Councilor Marino engaged in threatening behavior and verbal abuse of each other in the presence of employees of the City of Utica. The credible evidence establishes the following occurred in light of the clear language set forth in the Workplace Violence Prevention Program and Employee Handbook:

<u>EVENT</u>	<u>DID IT OCCUR?</u>
Physical Assault	No. However, I do find the credible evidence establishes there would have been a physical altercation had three high ranking members of law enforcement not been present to physically separate and hold back Common Councilor DeBrango and Common Councilor Marino.
Threatening Behavior	Yes – both individuals threatened the other.
Verbal Abuse	Yes – by both.
An attempt or threat whether verbal or physical to inflict injury upon person	Yes – verbal only by both. Further, the video evidence clearly shows three high ranking members of law enforcement physically separating Common Councilor DeBrango and Common Councilor Marino.

<p>Any intentional display of force which would give a person a reason or fear to expect bodily harm</p>	<p>Yes – the video and witnesses statements clearly support that Common Councilor DeBrango and Common Councilor Marino were nose-to-nose and chest-to-chest with each other while engaging in threatening behavior. During the video, a viewer will see both Common Councilor DeBrango and Common Councilor Marino step toward each other while being separated by law enforcement.</p>
<p>Intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching</p>	<p>No. I do not believe Common Councilor DeBrango intentionally bumped into Common Councilor Marino while they were walking into the back room of the Common Council Chambers. Common Councilor Marino clearly believed it was intentional at the time, but has subsequently changed his mind and choose not to file a police report.</p>
<p>Harassment of a nature that would give a person reason to fear escalation or make it difficult to pursue normal work life or private life</p>	<p>Yes – by both.</p>
<p>Stalking a person with the intent of causing fear when such stalking has arisen through or in the course of employment</p>	<p>No</p>

Both Common Councilor DeBrango and Common Councilor Marino made their peace with each other before the evening was over. At one point they can be seen going into the back room of the Common Council Chamber and exiting later.²¹ They subsequently gave a TV interview on the subject together.²² I believe that both Common Councilor DeBrango and

²¹ The proof does indicate they continued to yell and swear at each other in the back room. Please note the Community Police Officer and Common Council President Galime refused to leave until both Common Councilor DeBrango and Common Councilor Marino left City Hall.

²² <https://www.wktv.com/content/news/Two-Utica-Council-members-dispute-eye-witness-accounts-of-physical-fight-506802751.html>

William M. Borrill Esq.
Corporation Counsel
City of Utica
April 16, 2019
Page 20

Common Councilor Marino sincerely regret and are embarrassed by their conduct. The fact that they made peace with each other after the event occurred is not relevant to my consideration. The question is whether the conduct they engaged in violated the Workplace Violence Prevention Program and/or applicable provision of the Employee Handbook -- it clearly did. Please make no doubt about it, this was an extremely serious confrontation that law enforcement believes would have escalated into a fist fight had they not been present. I fully agree the position of law enforcement. The fact that no crime occurred is not dispositive to whether the Workplace Violence Prevention Program was violated. It is clear that a policy violation can occur even if no crime occurred.

CONCLUSION

I am concerned about comments made by various common councilors that they have seen much worst conduct during their tenure on the Common Council. Let me be crystal clear, the conduct set forth above is not acceptable conduct for politicians to engage in; and clearly violated applicable policies. What the City of Utica should do to the three individuals is beyond the scope of my investigation. One option is to bring in a trainer to facilitate workplace violence training for the Common Council at a minimum.

If you have any questions, please feel free to call me at (315) 425-2774.

Very truly yours,



Michael J. Sciotti

MJS:ml
Attachments

CITY OF UTICA

EMPLOYEE HANDBOOK

Adopted By Resolution on:
May 18, 2007



Prepared by:
Public Sector HR Consultants LLC
14 Knollwood Drive
Glenville, New York 12302
Telephone: 518.399.4512
Fax: 518.384.1963
www.publicsectorhr.org

908 Violence in the Workplace

Policy Statement – The City of Utica considers the safety of its employees, vendors, suppliers, visitors, and the general public to be of paramount importance. The City has zero tolerance for any employee or individual on City property who threatens, intimidates, or infers violence against any person or property associated with the City. The City considers any threat of violence or potential violence as legitimate, and takes immediate appropriate action, including the involvement of law enforcement. The City will comply with the requirements of Section 27(b) of New York State Labor Law in taking appropriate steps to address and prevent workplace violence to the extent possible.

Notification of Threatening Behavior – An employee who is subject to, witnesses, or becomes aware of any threats or acts of violence should inform the employee's supervisor immediately. Likewise, any suspicious individuals or activity must be reported immediately.

Prohibited Conduct – Provoking a fight or fighting are prohibited at all times while on City property or at any location while representing the City.

Firearms and Weapons – Employees are prohibited from possessing firearms or weapons of any kind while on City premises; in City vehicles while conducting business for the City; or at work sites, or any other location during working hours or while representing the City, regardless of whether the person is licensed to carry the weapon. The only exceptions are law enforcement personnel and security personnel. If any employee has knowledge of another employee's possession of a weapon, that knowledge should be reported to a supervisor or Department Head as soon as possible.

Policy Violations – Violations of this policy will result in immediate disciplinary action, up to and including termination and/or legal action.



ROBERT M. PALMIERI
MAYOR

CITY OF UTICA

1 Kennedy Plaza, Utica, New York 13502
(315) 792-0227 fax: (315) 792-0226

LORI A. WROBEL
CIVIL SERVICE/PERSONNEL DEPARTMENT

CITY OF UTICA WORKPLACE VIOLENCE PREVENTION PROGRAM

The City of Utica is committed to providing a work environment free from the hazards of workplace violence or any physical assault, threatening behavior or verbal abuse. This program establishes a Zero Tolerance to violence in the workplace. It also establishes responsibilities for employees, visitors and clients of our buildings. Acts of violence occurring where an employee performs any work-related duty in the course of his or her employment will not be tolerated. Offenders may be removed from the premises and subjected to appropriate disciplinary actions as further described in applicable policies, collective bargaining agreements and Civil Service laws, rules and regulations.

The program is intended to ensure that all of our employees, including supervisors' and department heads comply with the following work practices that were designed to make the workplace more secure. Management will demonstrate a clear commitment during the implementation and enforcement of this Workplace Violence Prevention Program.

The City of Utica also has a Workplace Violence Prevention Policy in place. A copy of this policy can be obtained by contacting the Personnel Department.

The City of Utica has other policies in place that would likely decrease Workplace Violence issues, such as the Weapons Policy and the Sexual Harassment Policy.

Employee Training

The cornerstone of an effective workplace violence prevention plan is appropriate training of all employees, supervisor and department heads. The City of Utica will educate its employees about the risk factors associated with the various types of workplace violence and provide appropriate training in crime awareness, assault and rape prevention and defusing hostile situations.

Training will be provided at time of initial assignment, prior to a new control method being implemented or annually. Workplace Violence Prevention training for employees will be used to inform employees of the details of the Workplace Violence Prevention Program. Emergency policies and procedures that describe how the City of Utica will respond to an incident and the specific roles assigned to our employees within the overall plan will be discussed.

The following topics will be discussed during the initial and annual training:

- What is Workplace Violence
- Management's commitment to Zero Tolerance of Workplace Violence
- Techniques on how to recognize and avoid Workplace Violence situations
- What are high risk occupations
- How to report a Workplace Violence Incident
- The importance of reporting all incidents
- How and when incidents will be investigated by the employer
- Where employees can go for assistance
- Where to obtain post incident crisis counseling
- Risk Factors
- How to protect themselves

Incident Reporting

Any threat that is considered by the employee to be an immediate danger to life and health should be reported to Law Enforcement by dialing 911.

Any potentially dangerous situations must be reported immediately to the Civil Service/Personnel Office. When reporting a threat of violence, the employee should be as specific and detailed as possible. The Civil Service Office/Personnel Department will conduct swift and thorough investigations of all workplace violence complaints.

An employee must report an incident in writing. Reports or incidents warranting confidentiality will be handled appropriately and information will be disclosed to others on a need-to-know basis in the judgment of the city. All parties involved in a situation will be counseled and the results of investigations will be discussed with them. The City of Utica will actively intervene at any indication of a possibly hostile or violent situation. Employees are expected to exercise sound judgment and to inform the Civil Service Office/Personnel Department if an employee exhibits behavior which could be a sign of a potentially dangerous situation.

This includes threats by employees, as well as threats by customers, vendors, solicitors or other members of the public. Such behaviors include, but are not limited to:

- Discussing weapons or bringing them to the workplace.
- Displaying overt signs or extreme stress, resentment, hostility or anger.
- Making threatening remarks.
- Sudden or significant deterioration of performance.
- Displaying irrational or inappropriate behavior.

All department heads and supervisors are responsible for implementing and maintaining this program in their work areas. They should be familiar with the contents of this program and be able to answer questions relating to the program. Each employee will be given a copy of this policy. Employees may obtain additional copies by contacting the Civil Service/Personnel Department.

Employees or employee representatives who believe that a serious violation of the Workplace Violence Prevention Program exist should follow the proper chain of command by reporting their concern immediately with the Civil Service/Personnel Department.

Management, Employee Representative and each Union will review an Workplace Violence Program in its entirety on an annual basis.

Record Keeping

It is important to the success of the Workplace Violence Prevention Program that all employees understand the importance of reporting all incidents to the employer.

The City of Utica will use records of injuries, illnesses, incidents, hazards, corrective actions, and training to help identify problems and solutions for a safe and helpful workplace.

The record keeping requirements outlined in 12NYCRR Part 801, Recording and Reporting Public Employees Occupational Injuries will be utilized for logging employee injuries or illnesses relating to workplace violence. A report must be made if two or more employees are hospitalized. Any employee fatality must also be reported to the nearest PESH Office.

Discrimination

Employees will not be discriminated against for bringing forth a safety and health concern, for filing a complaint or for participating in or causing any proceeding or inspection relating to this program.

Responsibilities

Employee

- Be familiar with City of Utica Workplace Violence Prevention Policy and Program
- Do not carry weapons at work (see Workplace Violence Policy for expanded statement)
- Advise supervisor of any orders of protection or other necessary precautions that apply to the workplace.
- Workplace violence can be carried out by individuals not employed with in the workplace. Should an employee be concerned about an individual who may come to believe they could present a danger, you should report this to your supervisor, for your and your co-workers protection. Your supervisor will take the appropriate steps and do everything possible to protect your confidentiality; example you have an order of protection and that individual may come to your work.
- **Emergency Situation** (act of violence or imminent threat):
Immediately contact Law Enforcement at 911
Use any panic buttons
Get away from situation
Promptly notify your supervisor
- **Non-emergency Situation**
Promptly report all violence, threats, intimidation, or other disruptive behavior to your supervisor
Notify supervisor of any safety or security concerns at the worksite or in the field
- Utilize EAP (Employee Assistance Program)

Supervisor:

- Be familiar with City of Utica Workplace Violence Prevention Policy and Program
- Do not carry a weapon at work (see Policy for expanded statement)
- **Emergency Situation** (act of violence or imminent threat):
Immediately contact Local Law Enforcement at 911
Use any panic buttons
Get away from situation
Promptly notify your supervisor
- **Non-Emergency Situation:**
Promptly report all violence, threats, intimidation, or other disruptive behavior to your Civil Service/Personnel Department
Notify Civil Service/Personnel Department of any safety or security concerns at the workplace or in the field
- Utilize EAP (Employee Assistance Program) for employees
- Insure new hires receive Workplace Violence Training
- Insure current employees receive yearly Workplace Violence Training

Post-Incident Response

Post-incident response and evaluation are important parts of an effective Workplace Violence Prevention Program. The City of Utica is committed to the following:

- Assuring that all injured employees receive prompt and appropriate medical care;
- Securing the premises to safeguard evidence and reduce distractions during the post incident;
- Reporting the incident to the appropriate authorities as required by applicable laws and regulations;
- Prepare an incident report immediately after the incident utilizing the incident report form found in the appendix;
- Conducting post-incident debriefings and counseling utilizing EAP staff;
- After the occurrence of a workplace violence incident conduct a review of the workplace violence prevention plans.

What is Workplace Violence?

New York State Employer Workplace Violence Prevention Code Rule 827 defines Workplace Violence as any physical assault, threatening behavior, verbal abuse occurring where a public employee performs any work-related duty in the course of his or her employment.

A reportable workplace violence incident is defined as one or more of the following:

- a. An attempt or threat whether verbal or physical to inflict injury upon person.
- b. Any intentional display of force which would give a person a reason or fear to expect bodily harm.
- c. Intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching.
- d. Harassment of a nature that would give a person reason to fear escalation or make it difficult to pursue a normal work life or private life when harassment arises out of or in the course of employment.
- e. Stalking a person with the intent of causing fear when such stalking has arisen through or in the course of employment. An incident may be committed without one person actually touching, or striking or doing bodily harm to another person.

Communication and Employer Commitment

At the City of Utica, we recognize that to maintain a safe, healthy and secure workplace we must have open, two-way communication between all employees, including supervisors and department heads, on all workplace safety, health and security issues.

The City of Utica has a communication system designed to encourage a continuous flow of safety, health and security information between management and our employees without fear of reprisal and in a form that is readily understandable. Examples of our communication methods include:

- Initial Training of new hires along with annual training;
- Reinforcing a Zero Tolerance approach to Workplace Violence through the use of training, signs and posters;
- Informing employees, supervisors and department heads of the provisions of our program for workplace security;
- Evaluating the performance of all our employees in complying with our establishments security measures;
- Recognizing employees who perform work practices which promote security in the workplace;
- Ensure annual training is provided to all employees to increase their understanding and compliance with work practices and methods of reporting incidents;
- A fair system of disciplining workers for failure to comply with workplace security practices.
- This program in its entirety will be reviewed by management, each union and the Employee Representative on an annual basis.

Risk Evaluation

Risk evaluations were conducted in June/July 2012 for the following departments:

1. Fire Department, Bleecker Street
2. Fire Department, Whitesboro Street
3. Fire Department, Sunset Ave
4. Fire Department, Oneida Square
5. Fire Department, Mohawk Street
6. Fire Department, Wetmore Street
7. Police Department
8. Police Department Garage
9. Department of Public Works
10. Department of Parks and Recreation
11. Youth Bureau
12. Building Maintenance
13. Comptroller
14. City Clerk
15. Assessor
16. Vital Statistics
17. Police Department, Records Division
18. Urban and Economic Development
19. Facilities
20. Codes Enforcement
21. Engineering
22. Law
23. Mayor / Budget
24. Civil Service
25. Media
26. Purchasing
27. Section 8

Risk Evaluation Results Summary – Responses from Employee Survey and Site Inspections

Assessor's Office/City Clerk's Office/Comptroller's Office all located on the 1st floor at City Hall, 1 Kennedy Plaza, Utica has requested Security Guards.

- Due to budget constraints, the City could not afford to hire full-time Security Guards at this time. It was discussed and noted that access to the 1st floor is limited to one (1) entrance;
- Security cameras have been installed and access to the building, elevators and Common Council Chambers is visible;
- Each office on the first floor has a locked counter which limits access to authorized personnel only;
- Each Cashier in the Comptroller's Office has a panic button;
- There is a full-time armed police officer on duty during the daytime hours and his office is located on the first floor. Although his job is not to secure City Hall, employees feel safer knowing that he is here.

Civil Service/Media/Mail Room/Mayor's Office/Urban & Economic Development/Engineering/Codes Enforcement all located on the 2nd Floor of City Hall, 1 Kennedy Plaza, Utica.

- All offices have a locked counter limiting access to authorized personnel.
-

Department of Public Works located on Wurz Ave, Utica, New York.

- Public access to the building needs to be controlled. A sign-in sheet and reception area is available and the Commissioner of DPW will limit access to building;
- During summer hours the large overhead garage doors are left open. Security cameras are in place and entrance/exit will be monitored;
- Incidents were being taken care of in-house. From this point forward, employees have been made aware that all incidents must be reported.

Department of Public Safety, Bureau of Fire, Bleecker Street, Whitesboro Street, Sunset Ave, Oneida Square, Mohawk Street, Wetmore Street, Utica.

- If the garage door is opened, then someone from that house is watching to ensure that nobody enters;
- Every firehouse has a House Watch that maintains a log-in;
- It was noted that 5 Engine does have shrubbery that will be checked to make sure that it does not obstruct any views. If the shrubbery at 5 Engine does obstruct any views, it will be corrected immediately;
- Fire Department also agreed to have the Evacuation Plan posted by August 1, 2012.

Department of Public Safety, Bureau of Police, 413 Oriskany Street West, Utica.

- It was noted that all elevators and bathrooms are locked limiting access to employees only;
- Mirror should be installed in the corner leading to Traffic, MIS, Logistics, JAU;

Department of Public Safety, Bureau of Police.....cont'd

- Basement allows for authorized personnel only;
- The folding chairs should be moved away from any of the emergency exit doors (located in the basement);
- First floor needs to keep the window area clean, no posters, flyers, advertisements which limit visibility from any officer entering area or existing that area;
- ID Badges need to be reissued for CSEA employees at UPD;
- The garage located on this property is in the process of installed a locked gate in order to restrict access;
- Survey indicates that Police Officers would feel safer with two (2) officers per patrol car. Industry standards do not call for two (2) officers per car. Police Officers are aware of the nature of the position when accepting employment and understand they deal with violence on a daily basis. Academy training followed by extensive training by the UPD prepares officers for the dangers of the position;
- Survey indicated that Police Matrons do not feel safe and would like some type of panic button for an emergency situation. The current use of communication is a hand set radio which is available at any time. Concerns for safety were noted starting at the end of the cell block through the vestibule of the Utica City Court Building. A security camera was recently installed in this area which alleviates concern.

Risk Factors

Where risk factors were discovered within our facility, engineering controls, administrative controls, and work practices will be used to prevent or minimize the risk of workplace violence. This has been and is an ongoing process in the City of Utica. The recent installation of security cameras, key card control are some of the recent improvements.

This program will adhere to the hierarchy of controls which is as follows: engineering controls, work practice controls and finally personal protective equipment.

Appendix 1

CITY OF UTICA

WORKPLACE VIOLENCE PREVENTION POLICY and INCIDENT REPORTING

The City of Utica is committed to the safety and security of our employees. Workplace violence presents a serious occupational safety hazard to our agency, staff, and clients. Threats, threatening behavior, or acts of violence against employees, visitors, guests, or other individuals by anyone on City of Utica property will be thoroughly investigated and appropriate action will be taken, including summoning criminal justice authorities when warranted. All employees are responsible for helping to create an environment of mutual respect for each other as well as clients, following all policies, procedures and program requirements, and for assisting in maintaining a safe and secure work environment.

This policy is designed to meet the requirements of NYS Labor Law 27b and highlights some of the elements that are found within our Workplace Violence Prevention Program. The process involved in complying with this law included a workplace evaluation that was designed to identify the workplace violence hazards our employees could be exposed to. Other tools that were utilized during this process included establishing a committee made up of management and Authorized Employee Representatives who will have an ongoing role of participation in the evaluation process, recommending methods to reduce or eliminate the hazards identified during the process and investigating workplace violence incidents or allegations. All employees will participate in the annual Workplace Violence Prevention Training Program.

The goal of this policy is to promote the safety and well being of all people in our workplace. All incidents of violence or threatening behavior will be responded to immediately upon notification. The City of Utica has identified response personnel that include a member of management and an employee representative. If appropriate, the City of Utica will provide counseling referrals for employees.

All City of Utica personnel are responsible for notifying the contact person designated below of any violent incidents, threatening behavior, including threats they have witnessed, received or have been told that another person has witnessed or received.

Designated Contact Person:

Name: Lori A. Wrobel
Title: Secretary to the Civil Service Commission
Department: Civil Service
Phone: (315) 792-0227
Location: City Hall, 1 Kennedy Plaza, 2nd Floor, Utica

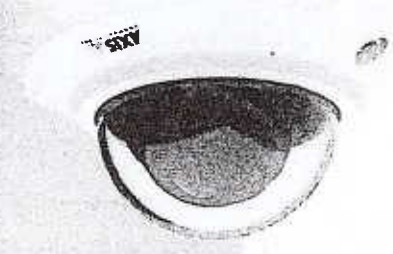
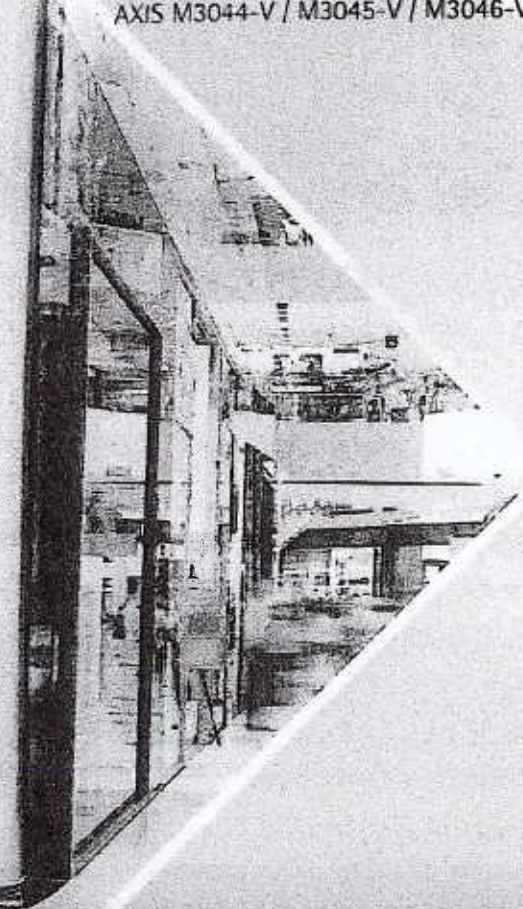
Posted: May 11, 2012

Appendix 2

City of Utica Workplace Violence Incident Report

AXIS M30 Network Cameras

AXIS M3044-V / M3045-V / M3046-V



Discreet and
affordable indoor
surveillance for
stores, hotels,
schools, offices
and more.

AXIS[™]
COMMUNICATIONS



CITY OF UTICA

1 Kennedy Plaza, Utica, New York 13502
Department of Legislation
315.792.0113

1206 Garden Road
Utica, New York 13501
315.723-1238
ioeutica@gmail.com

Joseph A. Marino
Councilman 4th District

April 3, 2019

Michael J. Sciotti
Barclay Damon
125 East Jefferson Street
Syracuse, NY 13202

RECEIVED

APR 05 2019

Michael J. Sciotti

Re: City of Utica Investigation

Dear Mr. Sciotti:

Thank you for the opportunity to meet with you on April 1, 2019, with regard to the investigation that you are conducting at the request of the City of Utica Mayor by way of the Corporation Counsel.

After reviewing the video with you, I have some serious concerns about its authenticity. As we discussed, there is a forty-five second omission in the video at the only critical moment that has been publicized as a "physical altercation".

I know that the City of Utica is committed to providing a safe work environment and in keeping that in mind, I think it would be prudent for you to investigate what happened to the video after the night in question and who may have had access to the same. Further, what did the City of Utica do to ensure the integrity of its originality.

I think you would agree it would be easier for you, as well as the public, to make an informed decision as to what occurred, if you have the original version of the video, unedited. You cannot be expected to conduct a thorough evaluation of the facts without all the information available to you, including the review of the full video. While the current video clearly shows I did not violate any "workplace violence" rules, I am sure that the missing portion of the video will further support that. As you mentioned during our conversation, the camera captures movement and it is very suspicious that the period of forty-five seconds that is in question is missing especially since the entire hour plus meeting was captured with at most, as you have said, no more than few second lapses.

Mr. Sciotti
April 3, 2019
Page 2

Also, it defies common sense that the only time when, presumably, the most motion should have been occurring, with two men standing and three more individuals in attendance getting up to come over to them, would have not triggered these motion sensing cameras. As we both know, we were able to personally view captured footage with much less motion, which was clearly recorded.

Please discuss and investigate this issue with professionals who can provide an unbiased assessment regarding the missing portion of the video. I am told there are ways to forensically determine if the video was in some way altered. Further, I have been made aware that videos of this nature have a digital fingerprint that can, perhaps not recover the deleted portion of images, but certainly show each frame and their numbers to determine if there is a gap in that sequence.

I ask that you also contact the manufacturer of the video and our dedicated off-site cloud server Utica maintains to have them provide you with the backup and if need be, have the manufacturer of the video review the hardware and software to see if it was edited in any way.

Lastly, I ask, for the interest of the remaining integrity of the video, from at least this point forward, please see that you can secure the main file from any further possibility of tampering.

If I do not receive a response from you within five business days, I will have no choice but to contact the District Attorney's office for further review of this particular video file.

I look forward to your response and appreciate your professionalism.

Very truly yours,

JOSEPH MARINO

JM/mn

Sciotti, Michael J.

From: Sciotti, Michael J.
Sent: Friday, April 05, 2019 8:14 AM
To: 'Joe Marino'
Subject: RE: City of Utica Investigation

Mr. Marino,

Thank you for your e-mail and letter. I acknowledge receipt.

From: Joe Marino [<mailto:joeutica@gmail.com>]
Sent: Wednesday, April 03, 2019 6:05 PM
To: Sciotti, Michael J.
Subject: City of Utica Investigation

Mr. Sciotti,

Please see attached letter(which in the interest of honoring our gentleman agreement of confidentiality you are the only person receiving) in regards to our meeting on April 1, 2019. The original is following in the mail via USPS.

Thank you for your time and I really appreciate your professionalism in handling this case and I look forward to hearing from you.

Joseph A. Marino

Councilman, 4th Ward

CITY OF UTICA
Department of Legislation
1 Kennedy Plaza, Utica, New York 13502
Phone: (315) 723-1238 Fax: (315) 792-0220
E-mail: JoeUtica@gmail.com



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joeutica@gmail.com

Joseph A. Marino
Councilman 4th District

April 10, 2019

Oneida County District Attorney
Scott McNamara
235 Elizabeth St
Utica, NY 13501

Mr. District Attorney,

As you may be aware, the City of Utica has hired an outside independent investigator following an incident in the City of Utica Common Council Chambers on March 5, 2019.

While some have grossly overstated a "physical altercation"; let me state clearly, neither I nor the other party ever felt threatened and we relayed this privately and publicly. Regardless of this fact combined with the publicly stated comment by the city that no complaint was ever filed with them, an costly investigation was initiated, nonetheless.

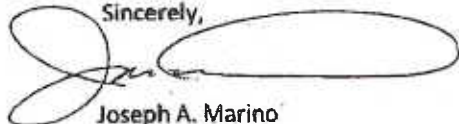
During the course of an interview conducted by Mr. Michael Sciotti, regarding this incident with myself and my attorney, Mr. Anthony Murad present, we were shown a video from the City of Utica camera inside the Council Chambers. In short, and after personally viewing the footage, it appears that approximately 45 seconds are missing from this video that would corroborate my previously public comments on this matter. To be specific, the video time stamp skips clearly in time from 6:04:33PM to 6:05:16PM.

I have asked Mr. Sciotti, the investigator, to look into this matter in a previous letter which I have attached. With sufficient time having elapsed with no response, I'm now asking your office to search for the truth in this matter.

I find it very suspicious that approximately 45 seconds of a video that would plainly show no substantive physical altercation, has gone missing while the Mayor's office and his employees have pushed members of the media to call it a "brawl".

Thank you for your attention to this matter. I know that Utica residents are looking for the truth and closure on this issue.

Sincerely,



Joseph A. Marino



ROBERT M. PALMIERI
MAYOR

CITY OF UTICA

DEPARTMENT OF CIVIL SERVICE
1 KENNEDY PLAZA, UTICA, NEW YORK 13502
PH.315-792-0227 | FAX. 315-792-0226

LORI A. WROBEL
SECRETARY TO CSC

CIVIL SERVICE COMMISSION
DIETRA HARVEY, CHAIRPERSON
DAVID H. WILLIAMS, COMMISSION
TERESA WOJNAS, COMMISSIONER

March 11, 2019

Michael J. Sciotti, Esq.
Barclay Damon
125 East Jefferson Street
Syracuse, NY 13202

Dear Mr. Sciotti,

By the authority vested in me pursuant to the City of Utica Workplace Violence Prevention Program and/or Workplace Violence Prevention Policy for the City of Utica, I am hereby authorizing you to conduct an internal administrative investigation to determine if there were any violations of the City of Utica Handbook, City of Utica Workplace Violence Prevention Program and/or Workplace Violence Prevention Policy and Incident Reporting in regards to any workplace violence which may have occurred during the Finance Committee meeting occurring in the Common Council Chamber on March 5, 2019.

For proposes of this investigation, I am assigning to you the full force and authority of the Civil Service/Personnel Department for the City of Utica to assist and aid in furtherance of said investigation.

Sincerely,

Lori A Wrobel
Civil Service/Personnel Department
City of Utica

TAS ELECTRONICS
167 WHITESBORO STREET
YORKVILLE, NY 13495
315-768-6190
NYS SECURITY LIC # 12000300502

Zachary C. Oren, Esq.
First Assistant Corporation Counsel
Department of Law
Utica Corporation Counsel
1 Kennedy Plaza
Utica, NY 13502
(315) 792-0171

Upon receiving a call on 4-5-19, I was requested to review specific video footage and validate the authenticity of the exported video as well as the video still on the NVR (NETWORK VIDEO RECORDER). The incident in question occurred on March 5, 2019 around 1800 hrs.

It is my expert opinion that both the video that was exported and distributed as well as the video still on the storage array on NVR match and were not modified or altered in any way. The video post and pre of this event show no signs of alteration or data deletion. When recording in motion/event only, there are times when the sensitivity and thresholds programmed are not satisfied to trigger a recording to the NVR. Post and prerecord times also limit the time for the system to record before and after a motion/event takes place. This is best represented to the untrained eye as video that starts from a certain time and jumps to another time without staying consistent.

I am a NY Lic Security specialist and a dealer for Honeywell, Axis, Hikvision, Nuuo, Flir, Pelco, Geovision, Exacq and many others.

If anyone has any further questions, please feel free to contact me.

Sincerely,

Thomas Sheehy


Tas Electronics



CITY OF UTICA

1 Kennedy Plaza, Utica, New York 13502
Department of Legislation
315.792.0113

1206 Garden Road
Utica, New York 13501
315.723-1238
joeutica@gmail.com

Joseph A. Marino
Councilman 4th District

March 21, 2019

Mayor Robert M. Palmieri
1 Kennedy Plaza
Utica, New York 13502

Mayor Palmieri,

I write today regarding a finance committee meeting at City Hall on March 5, 2019 and your subsequent comments to local media about that meeting. I have been completely transparent about this issue and would expect nothing less of you.

In a radio interview on March 7, 2019 you indicated that a complaint was filed regarding a "workplace violence" incident and that a video existed of the event (WUTQ Talk of the Town 3/7/19). I understand several Freedom of Information Law (FOIL) requests have been filed with the city to obtain copies of any such complaint as well as the security video. I call upon you to fulfill these FOIL requests immediately and release the video, unedited and in its entirety, today.

I further understand that many City Hall employees have already seen this video, so let's stop hiding behind a politically motivated ploy and let the taxpayers see the video that many of your employees have already seen - even though most who've seen it, have no role in furnishing you legal advice. The public deserves to see this video without further delay. Any excuse to hide this video because of an "investigation" flies in the face of the fact that the video has already been viewed dozens of times by City Hall employees.

Here are some facts that support my assertion of hyper political behavior by you at a very unfortunate time, since this is the first time in the history of the City of Utica, that the legislative body is being investigated by a Mayor.

- Despite there being several members of the Utica Police Department in attendance, including the Chief, there was no police report filed or action taken.
- Not one single law enforcement agency, including the District Attorney were consulted in this alleged Workplace "Violence" matter.
- Not one single Labor agency, including the New York State Department of Labor were consulted in this alleged Workplace "Violence" matter.
- Our own Council Attorney, nor anyone in our branch of government were consulted prior to you unilaterally hiring an "independent" investigator.

I am requesting a full cost analysis because this is a glaring overreach of authority and gross misuse of tax payer funds.

What is the hourly rate of this contract or other charges that the City of Utica taxpayers now need to pay for?

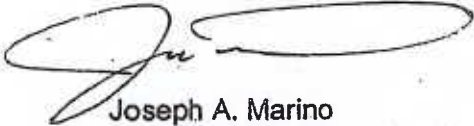
Was there also a formal Request for Proposal followed to obtain these services?

My concern as an elected official and a taxpayer is that you are steering this politically motivated investigation as a way to distract voters from other lawsuits you have mishandled recently, not to mention the distraction of avoiding real issues facing city residents like roads, taxes and term limits.

Mr. Palmieri, you are effectively forcing City of Utica taxpayers to be unwilling donors to the Palmieri for Mayor campaign by using the people's money to fund your sensationalism, rumors and rhetoric. You owe the people of this City real transparency as I have given them. Anything less is insulting to say the least.

Let's release the video today and get these questions answered so people can have at least some of their confidence restored in their government and move on to the reality of things that actually affect their lives at home.

Sincerely,



Joseph A. Marino
Common Councilor
4th Ward, City of Utica