To:
Peter Eglick, Catharine Robinson, Michelle Sandoval, John Watts, Richard Sepler, Kenneth Clow, David Timmons, David Peterson, Michael Hoskins, Mark Welch, David King, Kris Nelson, Steve Gross, Cornelia Talley, and Amber Long

Via email and attachment to all. October 25th, 2016
Mark Cole, Complainant's Response to Mr. Sepler's Oct 5th letter.

Dear Mr. Eglick and all respondents,

Despite his stating otherwise, it appears Mr. Sepler is attempting to use "technical grounds" to escape explaining his role in building department and other city matters.

1. I disagree with Mr. Sepler's claimed exemption from jurisdiction regarding my complaint. As I've communicated in response to Mr. Watts' Oct. 6, 2016 letter, City Ethics Code and Personnel Policies apply to both former and current employees and elected officials. Otherwise departing city position after a code violation would provide immunity from code violation charges, be it one day after leaving city employment or 3 years. Nothing in code (or common sense) exempts past employees from code violation charges. Nothing in code intends to exempt past employees.

> Mr. Sepler quotes the definition of a city employee, PTMC Chapter 2.80.020(C) "Every individual elected or appointed to an office or position…" and says that it clearly does not include former city employees due that 2.80.040(E) identifies the restrictions that apply to former employees; that by using the word "former," 2.80.040(E) *intends* its definition 2.80.020(C) of a city employee to NOT include former employees. I see no sense in that for the same reasons stated above.
>
> In any case, 2.80.040(E) refers to actions a former employee cannot take ***after*** employment and it addresses no other matter. Logically, these restrictions are to protect the city from release and misuse of privileged information to which the past employee was privy and to keep the city protected from forms of graft than could occur, for example should a past employee be employed by a former city contractor.
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> 2.80.040(E) is not the sole provision of PTMC 2.80 that applies to former employees.
>
> 2.80.040(E) makes no reference to and indicates no attempt to change or qualify the code definition of a city employee or provide immunity to a past employee. It does not exclude obligations of a former employee to have performed per code or the city itself to apply code. It makes no reference to and does not grant immunity from all actions performed while employed.

2. I agree with Mr. Sepler: he has not violated PTMC 2.80.040(E).

3. I have alleged that the city and city members have very probably not disclosed information as

requested and have practiced deception.

I do believe the City Manager did not meet his commitment to properly monitor the City Engineer's permit activities. I do not think it was at first intentional, but merely negligent. Unless earlier indications come forth, I believe it became intentional only after a citizen complaint (Venarchick's) alerted the city to building department irregularities in the City Engineer's troubled Bld 13-048 project.

Mr. Sepler and any other city employee tasked by the City Manager to properly monitor Mr. Peterson's permit matters failed to do so. No documentation or disclosure confirms monitoring occurred at all. No documentation or disclosure indicates that city members investigated and reported on the City Engineer's activities even once alerted. Nevertheless, the City Manager claimed such. The City Manager (and by agreement, those Cc'd) made further ungrounded determinations. Based on what? What information? What sources?

Proper monitoring is not the most serious allegation. On the more granular level, it is up to the hearings officer to determine if the City Manager's erroneous information Cc'd to "all" is in fact a lie or not. I believe it is, but I also contend that the City Manager's emails to council are in fact evidence of agreement and behind-closed-door meetings.

In the complaint *(Sections I, items 26, 47, 50; Section 2, pg 2; Section 4, pgs 4,5,6,9)* and in my Oct. 6th email responses *(1.To Mr. Eglick and Respondents; 5.&6. Building Department documents; 11. Malcolm Harris Records Request; 13. Online Permit Portal; 18. Sandoval; & 22. Records Request)* are allegations and evidence of behind-closed-door meetings and determinations. Mr. Sepler and other city members appear and I believe have violated the Washington State OPMA.

In any case, they appeared to have met off-record and discussed matters addressed in the City Manager's emails. They thus acted improperly to the favor of Mr. Peterson, reaching an agreement that is a determination of Mr. Peterson's personal building department activities and his personal activities in relation to city codes and city actions. *Behind closed doors, improper meetings, and improper determinations.* These determinations, privy only to Mr. Peterson and others Cc'd, provided information that greatly assisted Mr. Peterson's landlord/tenant litigation and his finances.

It is really up to a hearings officer to determine if Mr. Sepler was aware or not that the information the City Manager provided to Council was false in any way; whether or not Mr. Sepler discussed the City Engineer's landlord/tenant issues or building department matters with the City Manager and others Cc'd at all; and whether or not there is either the "appearance" or the likely occurrence of improper actions by city members. As well, the hearings officer has right to and it is up to the officer to determine if he needs to [PTMC 2.80.080(B)F] "request additional information, to assist the hearings officer in reaching an initial determination." The hearings officer, as well, can make his own disclosure request of the city if he chooses.

4. Let me quote Ethics Code here:
2.80.010(A) Policy. Public officials shall conduct their public and private actions and financial dealings in a manner that shall present NO apparent or actual conflict of interest between the public trust and their private interest;
2.80.080(6)j. Rules of Evidence. The extent to which the Washington Rules of Evidence (ER) will be applied shall be determined by the hearings officer in the exercise of his or her discretion. The Rules of Evidence, to the extent determined applicable by the hearings officer, should be liberally construed to promote justice."

My hope is that code intends Justice for all involved, both complainant and respondents. Respondents have all the resources of the city. Complainants do not. As well, complainants have no right of appeal.

5. In regards to Mr. Sepler's position on actions prior to June 24th, 2013, I disagree. The hearings officer should be able to review and examine such for violations IF these are related to and/or clarify violations (or innocence) from 6/24/13 onwards. If Mr. Sepler or any respondent's participation in post-6/24/13 actions aimed to hide their or Mr. Peterson's actions or past performance, then review of past actions is necessary to help determine violations of post 6/24/13 actions. Additionally,

For example, Mr. Sepler is copied on the City Manager 6/24/13 and 7/3/13 emails Cc'd council that state the City Manager's determinations regarding landlord/tenant litigation. These emails indicate previous discussion, agreement, and no disagreement on the City Manager's determinations. Had Mr. Sepler read and studied building department documents, including City Engineer communications with the building department, he would know that City Engineer/Building Department matters were amiss, and should have so responded in a documented reply to the City Manager.

If Mr. Sepler has been "in the dark" in all these matters – including examining the City Engineer's building permit activities, he should state so. If he did examine such and saw nothing amiss, he should state so and why. If he had no discussions with these matters with the City Manager, Engineer, and Attorney, he should state so. One of the intentions of this Complaint and opportunities of respondents to refute violations is to discover where the City Manager's emailed information came from and what his email truly intended.

As well and subject of the complaint, the City Engineer's alleged violations continued well into 2014. His litigation makes claims that building department documents show are false. Also, many documents that base the complaint were not provided to my attorney until April 2014. It was not until mid-2014 that I received and read the raw city disclosures from my attorney. It was not until late 2014 that building department documents were paired with other city disclosures to reveal a broader understanding of city processes and events.

Some building department documents were viewed by me in July 2013. Others were

presented in discovery RFPs from the City Engineer in December 2013. City disclosures and department documents were provided in April 2014, including 6/24/13 and 7/3/13 City Manager emails (to all Cc'd) that indicate city complicity with the City Engineer.

Full and the most significant discovery (of city complicity only provided due a Pubic Records Act request) did not arrive to my litigation attorney until April 2014. For purposes of the hearings officer understanding events that occurred post-June 24th,2013, evidence from previous time periods is necessary and should be allowed.

Due the date city disclosures arrived which provided documents "not available to the general public" per 2.80.040A(5), I also believe the hearings officer can consider allegations that might arise from pre-June, 2013 events per Rule of Discovery that can extend the Statute of Limitations to include pre-June 24th, 2013 events.

6. While I do not believe city officials, including Mr. Sepler, were "monitoring" the City Engineer's project at all, I do believe city employees met their procedural building permit duties. They delivered no true scrutiny to the City Engineer's building department communications until 6/18/13. That was an error but did not prompt my complaint. After 6/18/13, I believe something went very wrong with some or all of the respondents' ethics *meter* to a degree to be determined.

There is also a matter of incomplete disclosures provided by the city and/or the avoidance (a deceptive behavior) of creating documents by using verbal conversations that were undocumented and unlawful meetings that resulted in determinations and actions.

In summary, I disagree with Mr. Sepler's position regarding his immunity and his position considering allegations that might be generated by events prior to June 24th, 2013.

Respectfully,
Mark Cole