

A RESOLUTION

**Proposed
Resolution
20-100**

To formally reprimand Councilmember Jim Graham for conduct adversely affecting the confidence of the public in the integrity of the government.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Council Reprimand of Councilmember Jim Graham Resolution of 2013”.

**Council Reprimand
of Councilmember
Jim Graham
Resolution of 2013**

Sec. 2. (a) Inherent in the position of Member of the Council of the District of Columbia is the responsibility to act, at all times, with the highest standards of ethical conduct, honesty, integrity, and impartiality. A Councilmember must act in the public interest. A Councilmember must perform the duties of the office to which he or she is elected in a manner that maintains the confidence of the public in the integrity of the District government. A Councilmember must take no action that violates or threatens the public trust. These governing principles are embodied in District statute and regulations, in the Council of the District of Columbia Code of Official Conduct, and are incontrovertible to holding elected office.

(b)(1) Section 1801(a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-618.01(a)) (“CMPA”), is applicable to Councilmembers. It requires that:

Each employee, member of a board or commission, or a public official of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

(2) This requirement of law is reinforced in the Council’s Code of Official Conduct, which states, in part, that: “Councilmembers and staff shall maintain a high level of ethical conduct in connection with the performance of their official duties and shall refrain from taking, ordering, or participating in any official action that would adversely affect the confidence of the public in the integrity of the District government....” Rule 202(a) of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 20, Resolution of 2013, effective January 2, 2013 (Res. 20-1; 60 DCR 627) (“Council Rules”).

(c) Section 6B-1803.1(a) of the District of Columbia Municipal Regulations (“DCMR”), which sets forth the employee conduct regulations applicable to all District of Columbia employees, requires:

An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in or create the appearance of the following:

- (1) Using public office for private gain;
- (2) Giving preferential treatment to any person;
- (3) Impeding government efficiency or economy;
- (4) Losing complete independence or impartiality;
- (5) Making a government decision outside official channels; or
- (6) Affecting adversely the confidence of the public in the integrity of government.

(d) Adherence to the ethical principles underlying these statutes and regulations is vital to maintaining the public trust on which the Council of the District of Columbia operates.

Sec. 3. (a) Rule 654 of the Council Rules provides the Council with a formal process for issuing a reprimand to one of its members “based on a particular action or set of actions that is determined to be in violation of the Council’s Rules, law, or policy. . . .” A reprimand is a formal statement of the Council officially disapproving the conduct of one of its members.

(b) The Council has a duty to consider reprimanding one of its members when it determines that that member acted contrary to the CMPA, the employee conduct regulations embodied in the DCMR, or the Council Rules. A reprimand should not be easily adopted, but must be considered when the Council, as a body, is embarrassed by a member’s actions, the propriety of those actions is questionable, and the public confidence in the Council is harmed.

Sec. 4. (a) In 2008, while serving as both the Ward 1 representative to the Council of the District of Columbia and as a member of the Board of Directors for the Washington Metropolitan Area Transit Authority (“WMATA”), Councilmember Jim Graham was a voting member in the process of 2 separate projects, having a vote to approve or reject the underlying contract for each project. The first was a property development project before WMATA, the second a lottery contract before the Council.

(b) Two distinct companies bidding on each of the contracts, Banneker Ventures, which sought the WMATA development project, and W2Tech (which formed a joint venture with another entity called W2I), which sought to administer the District’s lottery, shared a common principal in Warren Williams. Councilmember Graham stated repeatedly and publicly his dislike for Mr. Williams.

(c) On or about May 29, 2008, a meeting was arranged between Councilmember Graham and Mr. Williams, with others in attendance. From the depositions of those present at the meeting, it appears that Councilmember Graham used the occasion to vent his personal issues with Mr. Williams. However, it is alleged that Councilmember Graham also stated at this meeting his willingness to barter his support. Specifically, that he would support Mr. Williams for the lottery contract if Mr. Williams withdrew from the WMATA development project.

(d) Although Councilmember Graham minimizes the significance of his remark, 3 separate reports conclude that the remark was made:

(1) In its *Report of Investigation into the Office of the Chief Financial Officer's Lottery Contract Award*, OIG No. 2010-0492 ("OIG Report"), dated January 20, 2012, the District Government's Inspector General found:

During the course of W2I's meeting with a councilmember, who at the time also was a member of the board of a quasi-public entity, the councilmember indicated that he could not or was not inclined to go along with voting for or awarding the lottery contract to W2I because W2I's participating local partner had been awarded a contract with the quasi-public entity. The councilmember told W2I executives that he would support W2I's bid for the lottery contract if its local partner withdrew from the quasi-public entity's contract because he could not give the local partner everything.
OIG Report at 7.

(2) In its *Report of Investigation for the Board of Directors for the Washington Metropolitan Area Transit Authority* ("WMATA Report"), dated October 11, 2012, the law firm of Cadwalader, Wickersham & Taft LLP found:

Although Councilmember Graham's exact statements at the May 29, 2008 meeting are unclear ... it appears that Councilmember Graham suggested or, at the very least, implied that he would consider supporting W2I's bid for the lottery before the D.C. Council only if Banneker Ventures withdrew from the Florida Avenue Project. Indeed, Councilmember Graham has not outright denied making the statement, instead positing that he may have said something in passing that was misinterpreted by the participants of the May 29, 2008 meeting.
WMATA Report at 40.

(3) In its *Memorandum Opinion In Re: Jim Graham*, Case No.: AI-002-12 ("BEGA Opinion"), dated February 7, 2013, the District of Columbia Board of Ethics and Government Accountability ("BEGA") stated:

The weight of the evidence supports a finding by substantial evidence that Councilmember Graham did, in fact, offer to support Mr. Williams and W2I if he and Banneker Ventures withdrew from the WMATA development project.
BEGA Opinion at 13.

BEGA's review was based on the WMATA Report, the evidence amassed in support of that report, Councilmember Graham's written response to BEGA, and the arguments made by Mr. Graham's counsel before BEGA.

(e) The meeting participants, as evidenced by their sworn testimony in depositions and supported by contemporaneous e-mails and communications, took Mr. Graham's statement to be a *quid pro quo* offer with regard to the 2 pending contracts. This understanding is expressed in

e-mails to Councilmember Graham, to which he did not express surprise or make an effort to correct.

(f) In addition to his dislike for Mr. Williams, it has also been suggested that Councilmember Graham sought Banneker Ventures' withdrawal from the WMATA development project because of his preference for another development company, LaKritz Adler.

(g) Councilmember Graham's preference for LaKritz Adler, which was not the preference of the WMATA Board as a whole, appears initially to have taken the form of his pressuring Banneker Ventures to withdraw from the project. However, when that appeared unlikely, Councilmember Graham appeared to pressure Banneker to bring on LaKritz Adler as a partner or purchase LaKritz Adler's interest in an adjacent property.

Sec. 5. (a) Within several days of the May 29th meeting, an attorney with Mr. Williams of W2I sent an email to his clients in which he said, "this is complete bs [sic] and we are getting very close to corruption, bid rigging, and other inappropriate conduct ... perhaps the us atty [sic] should make the call on this by speaking with Mr. Graham about his request. Am I clear on th[i]s. To even consider it is placing each of us at risk. Period." BEGA Opinion at 11.

(b) Councilmember Graham's conduct in relation to the approval process for the WMATA Florida Avenue development project and the award of the District's lottery contract prompted 3 independent investigations:

(1) OIG Report: While not the primary scope of the investigation, the Inspector General evaluated allegations regarding Councilmember Graham's conduct. Although the Inspector General concluded that he did not find sufficient evidence to support or conclude that the Councilmember acted improperly, he did state that "the councilmember's action, in his capacity as a councilmember and as a member of the quasi-public entity's board, may give the appearance that he lost complete independence or impartiality, and may have affected adversely the confidence of the public in the integrity of government..." OIG Report at 7.

(2) WMATA Report: A report prepared by the law firm of Cadwalader, Wickersham & Taft LLP at the request of WMATA concluded that "Councilmember Graham acted in a manner contrary to [WMATA's] Standards of Conduct" in that he "pitted the interests of the Council of the District of Columbia against the interests of [WMATA], and thereby unnecessarily created a conflict of interest, or, at the least, the appearance of a conflict of interest" and that he "acted contrary to his duty to appear impartial." As a result, the report concluded, "Councilmember Graham's action resulted in a breach of his duty to place the public interest foremost in any dealings involving [WMATA]." WMATA Report at 53.

(3) BEGA Opinion: The Memorandum Opinion issued by BEGA on February 7, 2013, based only on a preliminary investigation, concludes that there is a "substantial body of evidence" suggesting that Councilmember Graham "violated at least three provisions of the District of Columbia Code of Conduct." BEGA Opinion at 26.

Sec. 6. (a) Only last year, legislation was enacted to establish the District of Columbia Board of Ethics and Government Accountability (D.C. Law 19-124). The committee report accompanying this legislation makes clear the legislative intent: "to ensure that the ethics

reforms contemplated by this bill will be enforced vigorously and without fear of reprisal or undue influence, the Committee establishes an independent Board of Ethics and Government Accountability.” Report on Bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, December 5, 2011, at 21.

(b)(1) The BEGA notified Councilmember Graham, in writing, on November 14, 2012, that it had commenced a preliminary investigation into his conduct as described in the October 11, 2012 WMATA Report. BEGA requested that Councilmember Graham explain: (1) whether he disputed any of the factual findings contained in the WMATA Report; and (2) whether he believed his conduct violated the District’s Code of Conduct for employees. BEGA Opinion at 2.

(2) Through counsel, Councilmember Graham responded in a letter dated December 11, 2012, that he disagreed with the core factual finding in the WMATA Report that he offered to support the bidder’s effort to secure the lottery contract if the bidder simultaneously withdrew from the WMATA project. He further argued that, even if true, his actions would not be a violation of the District’s Code of Conduct. BEGA Opinion at 2-3.

(c) Importantly, BEGA disagreed. The conclusion of BEGA’s 27-page Memorandum Opinion is that the allegations do comprise conduct that violates 3 different provisions in the District of Columbia Code of Conduct.

(d) For jurisdictional reasons, BEGA declined to proceed to a formal investigation, but it found preliminarily “there to be sufficient evidence to conclude that Councilmember Graham committed one or more violations of the District of Columbia Code of Conduct, justifying a formal investigation... .” BEGA Opinion at 4. Specifically, the BEGA Opinion states that:

(1) Councilmember Graham displayed a complete lack of impartiality in violation of 6B DCMR § 1803.1(a)(4), as his actions were motivated in significant part by personal animus against Mr. Williams and a desire to secure a contract for a particular company. BEGA Opinion at 17-18;

(2) Councilmember Graham gave preferential treatment in violation of 6B DCMR § 1803.1(a)(2), in that he tried to secure a role for LaKritz Adler in the WMATA development deal months after LaKritz Adler was eliminated from the competition. BEGA Opinion at 19;

(3) Councilmember Graham engaged in conduct adversely affecting the confidence of the public in the integrity of government in violation of 6B DCMR § 1803.1(a)(6), by his “sharp-elbowed political behavior.” BEGA Opinion at 19-20.

Sec. 7. (a) Councilmember Graham’s actions constitute a clear violation of Council Rule 202(a), which requires that, as a Councilmember, he “maintain a high level of ethical conduct” and “refrain from taking, ordering, or participating in any official action that would adversely affect the confidence of the public in the integrity of the District government.” The Council finds, following 2 years of controversy, 3 investigations, and widespread public comments, that Councilmember Graham’s actions have adversely affected the confidence of the public in the integrity of the District government.

(b) It should be noted that while the violations discussed in this resolution are serious and a breach of the public trust, there is no indication of criminal conduct by Councilmember Graham.

Sec. 8. To maintain the confidence of the public in the integrity of the legislative branch of government, the Council expresses disapproval of the conduct of Councilmember Jim Graham as detailed in this resolution, and hereby reprimands Councilmember Jim Graham for affecting adversely the confidence of the public in the integrity of government, in violation of D.C. Official Code § 1-618.01(a), 6B DCMR § 1803.1(a)(6), and Council Rule 202.

Sec. 9. The Council shall transmit a copy of this resolution, upon its adoption, to Councilmember Jim Graham.

Sec. 10. This resolution shall take effect immediately.