

Report
of the
Independent Investigator
City of Minneapolis

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BACKGROUND AND SCOPE OF THE INVESTIGATION

On July 17, 2001, the United States Attorneys Office for the District of Minnesota filed a charge of extortion against Minneapolis City Council Member Brian Herron. That charge alleged that Herron took \$10,000 from Minneapolis businessman Selwin Ortega in exchange for Herron's promise to assist Ortega with licensing issues facing his "Las Americas" grocery stores. On the same day the charge was filed, Herron resigned from office and admitted his guilt pursuant to a plea agreement. On August 29, 2001, the federal government announced the filing of an indictment against Basim Sabri, a Minneapolis property owner and developer. Those charges involved Sabri's offering of bribes to Herron – who, unknown to Sabri, had begun cooperating with the government in late June, 2001, shortly after Herron was confronted with his own illegal acts. Sabri allegedly offered money to Herron in exchange for his official assistance in connection with the development of a Minneapolis hotel.

In connection with each of the Herron and Sabri cases, the federal government publicly filed certain transcripts of FBI recordings of meetings among Herron, Ortega and Sabri. In addition to being evidence of Herron's and Sabri's own conduct, those transcripts contain various references by Herron and Sabri to other purported acts of corruption within Minneapolis government, particularly in the regulatory services areas.

On September 25, 2001, the City of Minneapolis (the "City") retained the Chicago law firm of Stetler & Duffy, Ltd. to conduct an independent investigation in connection with the public allegations arising out of the Herron/Sabri cases. Stetler & Duffy, Ltd. also retained, with the City's permission, a local private investigator (a former special agent of the FBI), to assist in the investigation.

Although we have been formally retained by the City Attorney's Office and our contract for legal services was approved by the City Council, we accepted this engagement on the condition of complete independence in both the conduct of our investigation and the reporting of our conclusions. The City Attorney's office provided us with various resources to conduct the investigation, including, for example, secure office space, supplies, computers, assistance in contacting individuals for interviews, and the provision of City records and other materials. Neither the City Attorney's Office nor any other City department, employee or official had any involvement in the substantive aspects of the investigation. Prior to issuing this report, we have not reported back to any City official or employee about the results of our investigation.

The scope of this investigation was not formally defined for us by the City. Instead, we were provided with the public allegations from the Herron/Sabri cases (outlined in detail, below) and instructed that we were to rely on our experience and judgment in framing the scope of the investigation, given the practical limitations of time and expense. We also inferred that the City did not want an investigation that only mirrored the federal criminal investigation. In the interest of our independence, however, we did not receive specific guidance about the additional scope of the investigation.

Based on our initial review of the public allegations, as well as those practical limitations, we preliminarily defined the scope of the investigation to include the following areas:

- (1) Allegations arising from the Brian Herron guilty plea and the Basim Sabri indictment;
- (2) Allegations of wrongdoing relating to the City's regulatory practices from publicly-filed documents in the Herron/Sabri cases;

- (3) Other credible allegations of wrongdoing regarding the City's regulatory functions;
- (4) The City's regulatory policies and practices procedures as they relate to these allegations.

This investigation was not intended to be a disciplinary investigation or to be used to further any disciplinary investigation. Nor was it intended to be an exhaustive review or audit of the City's regulatory practices. Although we make recommendations and suggestions in this report, they are only intended to highlight areas for review and consideration by the City. Moreover, because of the limited nature of the investigation, the City might determine that further areas of inquiry are needed that are not covered in this report. Rather than going beyond what we believed was the reasonable scope of the investigation, we thought it prudent to issue our findings and recommendations and leave it to the City to decide if further work is necessary.

METHOD OF THE INVESTIGATION

We began by familiarizing ourselves with the structure of City government and, in particular, the functions and responsibilities of the Department of Operations and Regulatory Services. We did this by obtaining and reviewing organizational charts, the City Charter and Code of Ordinance, and other background materials. We also spoke with management-level and supervisory personnel in the following units of City government:

- Licenses and Consumer Services
- Environmental Health
- Zoning Administration
- Planning Development Services
- Construction Inspection Services
- Housing Inspection Services
- Planning Department
- Minneapolis Community Development Agency

To understand the specific allegations of wrongdoing, we reviewed various publicly-available materials, including the Brian Herron plea agreement and written statement, the Basim Sabri indictment, search warrant affidavits filed in each of those criminal cases, transcripts of recordings attached to or quoted in those affidavits, and press reports. We also requested the City Attorney's Office to provide us with copies of all documents provided to the United States Attorney's Office pursuant to grand jury subpoena. Most of those materials related to communications and files regarding properties owned by Selwin Ortega, Basim Sabri and Manouchehr Dousti.

Among other materials reviewed during the course of the investigation are the following: City computers, transcripts of depositions conducted in administrative hearings, records of City Council and Committee proceedings and actions, and other City records and materials requested from specific City personnel or departments.

After obtaining a basic understanding of the structure of the City's regulatory system and the public allegations, we conducted a series of interviews of City employees and officials, as well as other individuals. Two factors drove the determination of which and how many employees and officials to interview. First, we wanted to ensure a broad cross-section of job types and responsibilities within the regulatory services areas. Second, because the public allegations suggested that wrongful pressure was brought to bear with respect to specific businesses or properties, we targeted those job positions most likely to have had significant contact with those businesses. None of the City personnel we interviewed were selected because of any credible information of wrongdoing. Especially given the large number of individuals selected, it would be unfair and inaccurate to infer otherwise.

In total, we interviewed more than 70 individuals in this investigation. Among those interviewed were elected and appointed officials, department heads and deputies, supervisory personnel, City attorneys, and more than 30 inspectors, including from the departments of environmental health, licensing, zoning, housing, and construction services. We also interviewed many third parties, including former Council Member Brian Herron; Selwin Ortega, the federal government's primary cooperating witness in the Herron/Sabri investigation; and Manouchehr Dousti, alleged to have given \$2,000 to Herron. We also requested Basim Sabri to submit to an interview, although he had not agreed to that request by the time of the writing of this report.

Our power and authority as investigators derived solely from the City's power to compel cooperation by its own personnel. We had no power to force cooperation by third parties, including former employees or officials, such as by the ability to issue subpoenas for documents or testimony, or to execute search warrants. We also did not have the power or the resources of the federal government, such as to conduct undercover operations, surveillance or electronic monitoring. Nevertheless, we commend the City officials and employees for their cooperation and assistance in this investigation. We also found most third parties to be cooperative. It bears noting, however, that we made requests for information from the United States Attorney's Office – which possessed potentially critical information bearing on our investigation of the City's regulatory operations, including what other City officials or employees, if any, were subjects of that investigation. The United States Attorney's Office responded as follows: "I cannot confirm or deny the existence of any additional investigations on this subject. However, it is the policy of the Department of Justice and of this Office not to disclose any matters related to pending

prosecutions or investigations except as is necessary during the course of the prosecution or pursuant to Court Order.”

THE FEDERAL CHARGES AND RELATED PUBLIC ALLEGATIONS

The public allegations mainly come from the Herron plea agreement and written statement, the Sabri indictment, search warrant affidavits, publicly filed excerpts of transcripts of recorded conversations, and other filings in the Herron/Sabri cases. The first of the public allegations were in Herron's plea agreement of July 17, 2001, in which Herron admitted his guilt for the offense of extortion under color of official right, a violation of 18 U.S.C. § 1951. In that agreement, Herron admitted the following facts relating to that charge:

In May, 1998, Herron requested and received a \$7,000 loan from a Minneapolis business owner (now known to be Selwin Ortega). In April, 1999, Herron accepted forgiveness of the \$4,000 remaining balance then outstanding on the loan. In late June, 2001, Herron requested and received a \$10,000 cash payment from Ortega. (Ortega had been secretly cooperating with the FBI, and his payment to Herron was at their request.) Herron's plea agreement admitted that at the time of that payment he promised Ortega to advocate on his behalf in connection with an “active regulatory issue pending before the City Council.” The specific charge and Herron's guilty plea were only for this \$10,000 payment.

In addition to the Ortega payments, Herron admitted in his plea agreement to receiving payments from two other business persons within his ward. Both payments were for \$2,000. Neither business person is identified by name. One payment occurred in the Summer of 2000 and was made with “the understanding that the defendant would insure that the business operator would not have any inspection problems from the City of Minneapolis.” The other payment –

the date of which is not specified – was made with “the understanding that the defendant would insure more favorable treatment for the business from the City of Minneapolis.”

Herron also admitted this conduct to the FBI in a written statement on June 29, 2001. He explicitly admitted that the payments were “bribes.” However, neither the plea agreement nor Herron's written statement contain any information suggesting that Herron actually took any official action in exchange for any of those payments. Herron's written statement gives additional details regarding the two separate \$2,000 payments from ward business persons, although those individuals' identities were redacted. (We now know that one of those payments was made by an individual named Manouchehr Dousti, who operated a used car lot at 3700 Chicago Avenue. We believe the other alleged payment was from Basim Sabri.)

After being confronted by the FBI about the payments from Ortega, Herron agreed to cooperate with the government in its investigation of Basim Sabri. On August 21, 2001, the government filed an indictment against Sabri charging three counts of bribery in violation of 18 U.S.C. § 666(a)(2). Sabri was charged with offering Herron bribes totaling \$95,000 in exchange for Herron's promise to assist him (1) with obtaining “regulatory approvals” for a real estate development at 2nd Avenue and Lake Street; (2) by threatening the City's use of eminent domain against private business owners; and (3) with obtaining developmental grants from the City and other municipal agencies. Again, however, there was no allegation that Herron – who was working for the FBI at that time – ever actually committed or intended to commit any official acts in exchange for the promise of those payments. Sabri pleaded not guilty to those charges. On January 22, 2002, those charges were dismissed by the court on legal grounds.

In connection with its investigation of Herron and Sabri, the government has filed materials in the public record, including affidavits and selected transcripts of recordings, containing additional and more detailed allegations. Many of those allegations involve the regulatory operations of the City. They are summarized as follows:

Sometime in or before early 1996, Herron allegedly asked Ortega to transfer some unidentified property to an unnamed associate of Herron. According to Ortega, his properties soon came under "intense scrutiny by inspectors." Which property and which inspectors were allegedly involved is not specified, but the implication is that Herron caused those inspections to occur in retaliation for Ortega refusing to transfer the property.

According to the allegations, the next significant contact between Herron and Ortega did not occur until the May, 1998, request by Herron for the \$7,000 "loan." Ortega claims to have felt coerced to make the loan because of Herron's official position. Herron repaid \$3,000 of the loan to Ortega in September, 1998. It is alleged that within days of Ortega accepting that payment, City inspectors made a series of visits to Ortega's businesses. Again, the implication is that this was in retaliation for Ortega agreeing to accept the partial loan repayment.

When Ortega complained to Herron about those inspections, Herron purportedly claimed to be unaware of them. Nevertheless, he allegedly offered to help Ortega obtain a "conditional use permit" if needed to avoid the inspections, and he promised to make some calls to "squash" the problem. Herron then allegedly suggested that Ortega speak with Basim Sabri who could tell Ortega how Herron "did business." Herron's relationship with Sabri at that time is not alleged.

Ortega subsequently met with Sabri in December, 1998, at which time Sabri allegedly told him that Herron denied sending City inspectors to harass Ortega. Yet Sabri also told Ortega

that he would find out "who you can write out the check to for Brian." It does not appear that Ortega made any such payment to or on behalf of Herron (at least not until June, 2001), although Ortega did agree to forgive the remaining \$4,000 loan balance in April, 1999.

According to the public allegations, Ortega's inspection problems with the City resurfaced in February, 2001, when Ortega was served by the City with a notice for a meeting of a Technical Advisory Committee ("TAC") concerning the possible suspension or revocation of Las Americas' licenses. No specific allegation suggests that Herron caused or was involved in the decision to institute the TAC proceedings, or that they were related in any way to Ortega's financial relationship with Herron.

At the government's behest, Ortega contacted Sabri to ask him if he could get Herron to help him with the TAC licensing issues. On February 22, 2001, Sabri allegedly told Ortega that the previous day he had contacted the office of then-Council Member James Niland to complain about Ortega's inspection problems. During that same conversation, Sabri told Ortega that Herron had called the licensing department earlier that day on Ortega's behalf.

In April, 2001, the Public Safety and Regulatory Services Committee of the City Council recommended referring Ortega's TAC issues to an administrative hearing for possible license revocation. Herron was a member of that City Council committee, and he voted in favor of the referral to the administrative law judge, along with the rest of the committee.

On May 5, 2001, despite having voted to recommend a revocation hearing for Ortega's businesses, Herron allegedly promised Ortega that he would not let the City shut him down and that he should not worry. On June 7, 2001, Herron allegedly reiterated to Ortega his understanding that the remaining \$4,000 loan balance had been forgiven. Herron then told

Ortega that Herron was encountering opposition from Council Member Niland in connection with Ortega's license problems, and that Herron would try to persuade Niland not to shut Ortega down. Herron also allegedly promised to speak with Council Member Doré Mead about Ortega's license problems.

On June 25, 2001, according to the allegations, Herron asked Ortega for the \$10,000 payment. During that same conversation, Herron told Ortega that he had been lobbying Council Member Niland and "others" not to shut Ortega's businesses down because Ortega is "just getting into compliance" and because he employs many people and provides many services. Herron then purportedly stated that Niland was hard to convince, although he was not really interested in shutting Ortega down as long as he came into compliance. Herron again stated that he would speak with Council Member Mead, and that he would inform her that Ortega was becoming compliant. Herron then told Ortega that he "always tried to run interference for you and help you out with inspections and stuff."

According to the allegations, Herron met with Ortega to receive the \$10,000 payment two days later. At that meeting, Herron promised Ortega that he would help him obtain liquor licenses for two of his businesses. Herron also purportedly stated that he had again spoken with Council Member Niland about Ortega, and that he "made it very clear to the staff that I'm not interested in seeing you shut down." He also promised to speak with other Council Members on Ortega's behalf.

Many related allegations about Basim Sabri's dealings with the City also warrant attention. On April 29, 1999, Sabri told Ortega that he had just made a \$3,000 cash payment to "another city councilman [i.e., other than Herron] who's very big." Sabri also stated that Herron

helped Sabri's businesses with some fire code violations. Sabri repeatedly bragged to Ortega that he had inspectors and police officers on his "payroll." Sabri explained to Ortega that he sometimes paid cash, but that his usual method was to give inspectors gifts, such as certificates or a stay at a hotel.

In February, 2001, Sabri allegedly told Ortega about his asserted violations of campaign finance laws. In particular, Sabri said that he avoided the \$300 campaign contribution limit in connection with Council Member elections by having employees, friends and relatives write checks to candidates, and then reimbursing those contributors. Sabri also bragged that he was raising \$27,000 for Mayor Sayles-Belton's then-upcoming reelection campaign, in exchange for which she would appoint him to two unspecified committees.

Brian Herron began cooperating with the federal government's investigation on June 29, 2001. His cooperation included several recorded meetings with Sabri in July, during which Sabri offered Herron bribes for official acts by Herron, as more fully described above. Because of his status as a cooperating witness at that time, Herron did not perform those acts.

FACTUAL FINDINGS

Overall Conclusions

Brian Herron has admitted to engaging in a criminal offense in connection with his receipt of \$10,000 from Selwin Ortega in June, 2001.¹ We have found substantial independent evidence to confirm Herron's admission and guilty plea. We have also found substantial evidence that Herron acted illegally and/or unethically by taking money and things of value from Basim Sabri and Manouchehr Dousti. Herron attempted to influence some regulatory matters for those individuals, possibly in exchange for those payments. However, we have found no evidence to support the public allegations that other City officials or employees were knowingly involved in Herron's wrongful conduct or otherwise acted improperly. Herron's conduct appears to be an aberration that is not indicative of the manner in which elected officials and employees of the City generally conduct themselves. In short, our investigation has shown the lack of any systemic corruption within the City's regulatory functions.

This does not preclude the possibility that other individuals have engaged in corrupt conduct from time to time – or even in connection with these events, although we have found no specific evidence of any such acts. No system of government can completely prevent abuses such as Herron's. The necessary discretionary authority of elected officials and public employees alike means that there will always be the potential for abuse. However, the City's policies and procedures, as well as its political culture and the professionalism of its personnel, serve to deter

¹On February 6, 2002, Herron was sentenced by the United States District Court. The terms of that sentence include twelve months incarceration and the payment of \$4,000 restitution to Selwin Ortega and \$5,000 restitution to Manouchehr Dousti.

corrupt practices in the City's regulatory operations. As always, though, some recommendations for improvement – mostly prophylactic in nature – may be warranted.

The Public Allegations

Several factors required us to begin our investigation by reviewing the charges against Brian Herron and the related public allegations concerning Herron's and Basim Sabri's asserted contacts with the City's regulatory operations. First, because the Herron case was the impetus for this investigation, it was necessary and logical to start by reviewing those allegations. Second, the federal government has not shared their investigative information with us, other than what is already in the public record. Although certain transcripts of recorded conversations have been released, most are excerpts which have only been selectively disclosed, and many others have not been disclosed at all. Third, because Herron pleaded guilty, there will not be a trial in which that information is fully disclosed. Similarly, because Sabri's indictment was dismissed by the court, it is not clear when, if ever, the government's investigation will become public.² Finally, the government's investigation would not have focused on all areas of potential concern to the City, such as the City's regulatory policies, procedures and structure. The investigation also would not have addressed potential violations of administrative, State and local law, as well as ethics provisions.

1. The Ortega Payments to Herron

It is beyond dispute that Herron engaged in at least one criminal act of extortion – the request for and receipt of the \$10,000 payment from Ortega. Herron has explicitly and

²In its recent court filing regarding Herron's sentencing, the government stated that it intends either to appeal the dismissal of the Sabri indictment or to seek prosecution of Sabri in another venue.

repeatedly admitted his guilt for this act. He has done so in his plea agreement and guilty plea and during his interview with us. Moreover, our review of the evidence demonstrates that Herron's request for the \$10,000 payment was clearly made in connection with his promise to help Ortega in connection with his licensing problems. It is less clear whether the earlier \$7,000 loan and the partial forgiveness thereon were "requests for bribes" (i.e., extortion under color of official right). In his written statement to the FBI, Herron admitted that they were. However, Herron seemed to contradict that statement in his interview with us, saying that the loan and its forgiveness were *Ortega's* ideas and were not tied to any quid pro quos. In fact, in his version of events, as told to us, Herron consistently contradicted Ortega's statements and attempted to minimize his own culpability. Nonetheless, because Herron's initial conversations with Ortega regarding the loan were not recorded, we cannot conclude whether that payment was linked to any promises by Herron for official action. Whatever the particular criminal violations by Herron, however, our focus was on whether Herron *actually* performed or influenced any official acts in exchange for the payments, and, more importantly, whether other City officials or employees were knowing participants.

As noted above, the public allegations begin with Ortega's claim that in or before early 1996, Herron made some sort of a proposal for Ortega to transfer real estate to one of Herron's associates and that, after Ortega rejected that proposal, Ortega's properties came under scrutiny by some unidentified inspectors. Ortega spoke with us about these allegations. In particular, Ortega told us that Herron asked him to transfer his property at 401 East Lake Street to another individual. According to Ortega, after he told Herron that the property was not available, Ortega's businesses came under intense scrutiny. Ortega also claimed to us that a City inspector

(who he refused to identify) then confided in him that Herron thereafter initiated a plan to close down all of Ortega's stores.

Herron's version is far different from that of Ortega. According to Herron, an individual – with whom Herron was not a friend – told Herron that he was interested in the property at 401 East Lake Street to use as a restaurant and asked him what he knew about the property. Herron told this individual that the property was owned by Ortega and that he should contact Ortega if he were interested in making an offer. (Herron states that he had known Ortega for some time from the community business association and from Ortega contacting him about inspection problems.) Herron asserts that he did not approach Ortega about that proposal or act as a middleman for the potential purchaser. Instead, Herron claims that when Ortega subsequently informed Herron that he did not want to sell the property, Herron told him that he should do whatever he wanted. Herron further claimed to us that he did not seek to retaliate against Ortega for this.

The documentary and other evidence shows that Herron did indeed communicate with City employees in late 1995 and early 1996 regarding inspections of Ortega's properties, including the 401 East Lake Street store. Herron admits that these contacts occurred but asserts that they were unrelated to the potential sale of Ortega's property.

First, in or about October, 1995, Herron asked a licensing inspector to investigate whether the 401 East Lake Street store was involved in an unlicensed check-cashing operation. The inspector responded to Herron by memorandum, stating that no license was required because the business did not charge more than a 1% fee:

I visited the store at 4th and Lake . . . and visited with Modesto Ernesto Reyes, the owner. Mr. Reyes states that he does cash checks, but does not charge in excess of 1% as a fee. Thus, no license is required. I recall that Mr. Reyes made inquiries about a year ago and discovered this exception. . . The amount of check cashing which takes place appears minimal when compared to the other business activities.

Herron confirmed for us that this was a Las Americas store.³ He claimed that his request to the licensing inspector was predicated solely on a constituent complaint received by his office.

On January 17, 1996, Herron again contacted the licensing department about the same Las Americas grocery store. This time, Herron's request – which was in writing – informed the licensing division of certain purported neighborhood complaints, and he requested a “TAC Call-In Hearing”:

During the past several months, my office has received several complaints about Las Americas. These complaints were received from adjoining businesses, residents and neighborhood groups. The complaints have consisted of, but not limited to: unauthorized parking in adjoining businesses' parking space, delivery trucks blocking street traffic, and most recently commencing a remodeling project without City permits (Building Inspections has been notified) and in the process, blocking the public sidewalk for pedestrian use, with a deleterious effect on adjoining businesses. Questionable activities also include check cashing policies, harboring illegal aliens, and trafficking in stolen goods.

I am concerned enough about the above to inquire about calling a TAC Call-In Hearing.

The licensing inspector who responded to that complaint reported to us that the business only had some minor health-related issues. The inspector reported back to Herron what he had found at the property. Herron then decided that there was insufficient predication for a TAC

³Herron stated that he does not know who Modesto Ernesto Reyes is.

proceeding,⁴ and he told the inspector just to continue to monitor the problems. In fact, a note subsequently written on that document by the inspector reads: "Spoke to B. Herron - wants to hold off on TAC - just monitor . . ."

Herron again denied to us that these contacts with the licensing department were improper. Instead, he again claimed that this issue arose because his office was receiving constituent complaints. Herron's administrative assistant at the time confirmed Herron's account. After reviewing the above-quoted memorandum, she told us that she recalled personally receiving several telephone complaints from the Central Neighborhood Improvement Association regarding the Las Americas store, and that she thereafter typed the memorandum at Herron's direction to address those complaints.

About one month later, Herron contacted the same licensing inspector to investigate yet another Las Americas store, this time at 336 East Lake Street, purportedly because of neighborhood complaints. The licensing inspector forwarded the complaint to a health inspector, although we do not know the results from that inspection. Herron again denied any impropriety with respect to that contact. Instead, he claimed to us that the request for an inspection was based on a complaint his office received from a customer about foul-smelling meat purchased at that grocery store.

Notwithstanding Herron's denials, we do not know whether Herron's contacts with these inspectors were in retaliation for Ortega's alleged refusal to engage in the proposed real estate transaction or whether they occurred in the ordinary course of Herron's representation of his constituents. We have no evidence that Herron attempted to follow up on these contacts with

⁴For an explanation of the TAC proceedings, see pp. 23-24, below.

additional pressure or with the suggestion of a quid pro quo. Moreover, aside from these three incidents, the inspection records are unclear about whether Ortega's properties came under "intense scrutiny" in early 1996, as asserted by Ortega. Nevertheless, our investigation shows that the licensing and health inspectors properly attended to their duties by responding to and evaluating those complaints based on the facts available to them. There is no indication that they took any adverse and unwarranted actions against the properties because of pressure by Herron, although – like virtually all of the inspectors we interviewed – they felt compelled to give priority and respond to complaints coming from a Council Member.

It was not until more than two years after those complaints that Herron allegedly requested the \$7,000 "loan" from Ortega. Because of the time lag, the two events do not appear to be directly related. According to Ortega, in or about May, 1998, Herron came unannounced to his store at 336 East Lake Street and asked to speak with Ortega in private. Herron explained that he needed a \$7,000 loan to help repay some debts. According to Ortega, he was shocked by the request, but acceded to it because he was afraid of additional inspections. Ortega then asked Herron to sign a handwritten IOU, which Herron did, and Herron agreed to make monthly payments of just \$200. Ortega claims that he then retrieved \$7,000 in cash from funds he used for his check cashing service, placed that cash in an envelope and gave it to Herron. According to Ortega, the inspections then ceased.

Herron's version of events again contradicts that of Ortega. According to Herron, *Ortega* asked to see him because Ortega thought that Herron was distraught. When Ortega asked Herron what was wrong, Herron told him about his serious financial problems, including overdue bills and other debts. Herron claims that he never demanded the money; instead, it was *Ortega* who

kept offering money to him, and he finally told Ortega that \$7,000 would be helpful. Herron further asserts that it was his own idea to evidence the loan by the handwritten promissory note.

Ortega informed us that he went to the FBI in August, 1998, to report the loan he made to Herron, which Ortega claimed to have been "coerced" into making by Herron. After being fully debriefed by the FBI, Ortega agreed to cooperate in an undercover investigation regarding Herron. We do not know why Ortega waited three months after making the loan to contact federal authorities.⁵

One month after the undercover investigation began, Herron came to Ortega's office to repay \$3,000 of the loan in cash. According to Ortega, Herron acted as though he was displeased that Ortega accepted that partial repayment. Also according to Ortega, his businesses again came under scrutiny by inspectors within days after that repayment. In his interview with us, Herron disputed Ortega's assertions. Herron claimed that he voluntarily made the \$3,000 repayment after receiving a tax refund, and that he wanted to repay the remaining balance as soon as possible. Notwithstanding Herron's claim, he made no further payments.

⁵Ortega reportedly told the FBI that he had only "sporadic" contact with Herron between the time he made the loan and the time he went to the FBI, and that he had not been having inspection problems during that period of time. One reason for the delay might be that Ortega was waiting to see if Herron would make monthly payments on the loan. Herron had not made any such payments until September, 1998, after Ortega had already begun to cooperate with the FBI. An alternative reason for Ortega's decision to cooperate with the FBI relates to something Herron allegedly told Ortega during that period of time. According to an FBI search warrant affidavit, Herron told Ortega that he had heard that Ortega might be the subject of a criminal investigation. The FBI later confirmed that Ortega was believed, at the time, to be an associate of a person who was under criminal investigation on a different matter. It is possible that Herron's statement to Ortega might have caused Ortega to become concerned with his own potential criminal exposure, and that he decided to approach the federal authorities to garner favor with them. However, we have no information about the nature of this separate criminal investigation, and we cannot conclude with any confidence that it had any bearing on Ortega's decision to cooperate.

Ortega asserts that he first met Basim Sabri soon after Herron's partial repayment of the loan in September, 1998. According to Ortega, Sabri came to his office and introduced himself as a fellow entrepreneur and business owner. The two began speaking about Ortega's inspection problems. According to Ortega, Sabri gave the impression that he had been sent by Herron, because he kept mentioning Herron and suggesting that he should not accept repayment of the outstanding balance on the loan. During an FBI-recorded conversation on February 17, 1999, Sabri suggested that Ortega would be better off forgiving the loan balance because "you may need a favor . . . let's see what we can get him [Herron] to do for you." After Ortega finally agreed to forgive the loan balance, Sabri acted as Herron's intermediary in trying to get Ortega to return the handwritten promissory note: "Can I get the, ah, the piece of paper for Brian at all?"

Not only did Sabri suggest that Ortega should forgive the loan balance, but he suggested that Ortega should give Herron *more* money. During a meeting between Ortega and Sabri on December 7, 1998, Sabri was singing Herron's praises, according to Ortega, and Ortega told Sabri that he wanted "to work with him [Herron]." Sabri reportedly replied, "I'll find out who you can write out the check to for Brian, but don't use a company check." During another meeting between Ortega and Sabri on April 29, 1999, Sabri again suggested that Ortega give Herron money, saying, "you can send in all, or whatever you may want . . . six, seven [thousand] is good." Notwithstanding these conversations, no more money passed from Ortega to Herron until the June, 2001, payment of \$10,000.

Herron denied to us that Sabri was acting as his intermediary with Ortega in connection with the forgiveness of the remaining loan balance or the requests for additional payments. According to Herron, he first met Sabri soon after being elected to office and they became friends

over time, dining together at each other's houses and in other settings. Herron claims that sometime after he made the partial repayment to Ortega, Sabri called Herron out of the blue about the \$4,000 owed to Ortega. Sabri reportedly had spoken with Ortega and had advised him to forgive the remaining loan balance. Herron claims that he was shocked that Sabri knew about the loan and told Sabri that it was "none of his business." Herron asserts that he then went to see Ortega to assure him that he had not sent Sabri on his behalf and that he wanted to pay back all the money owed. According to Herron, Ortega told him that he should not worry about the money. Herron asserts that he nevertheless told Ortega that he would pay him back.⁶

Herron's version of Sabri's involvement in these events is not credible. The more important question for this investigation, though, is whether Herron actually influenced any official actions in this regard. Notwithstanding Ortega's assertions, our review of inspection reports and other City records regarding Ortega's businesses did not reveal any unusual change in regulatory activities either after Ortega gave Herron the \$7,000 "loan" or after Ortega accepted the partial repayment. Importantly, none of the inspectors we interviewed who had contact with Ortega's businesses reported being pressured by Herron, one way or the other, with respect to inspections during that period of time.

However, management personnel in the licensing department told us about some contacts from Herron regarding Ortega's inspection problems. It is not clear exactly when these contacts occurred, although they appear to be before 2001. Herron reportedly wanted to ensure that Ortega was getting fair treatment from the inspectors and that an undue burden was not being

⁶This assertion is contradicted by the government's filing with the Court in support of a lenient sentence for Herron. According to that filing, "Herron stated that he didn't repay the remaining \$4,000 because . . . Sabri . . . had paid Ortega the \$4,000 on Herron's behalf."

placed on immigrant-operated businesses in his ward, such as Ortega's. These contacts were described to us as being in the form of inquiries by Herron. Herron never asked for the inspectors to "lay off" of Ortega or for any other specific official action. Management personnel responded to Herron by urging him to have Ortega address his violations. Herron's contacts were not seen as unusual.

We again find no evidence that any City employees or officials (other than Herron) engaged in any improprieties in connection with Herron's acceptance of the Ortega loan or its forgiveness by Ortega. Herron certainly intend to convey the impression to Ortega that he could and would affect such inspections of Ortega's businesses. To some extent, Herron did make contacts with the regulatory departments about those businesses. However, we have found no evidence that any official actions were actually influenced by any of those contacts.

Herron's alleged subsequent offers to help Ortega obtain a "conditional use permit" and to make some calls to "squash" Ortega's supposed inspection problems also do not appear to have been carried out by Herron. Because Ortega was already cooperating with the federal investigation, it is reasonable to conclude that much of what he said during the recorded conversations was intended to elicit incriminating responses from Herron, but was not necessarily based on fact. We are unaware of any of Ortega's businesses that were lacking a conditional use permit at that time.

Throughout this entire period of time, Ortega's businesses had problems complying with health and other ordinances which in no way related to anything done or not done by Herron. The documentation and interviews of inspectors reveal that one constant problem was Ortega's

failure to have a certified food manager on the premises of each of his stores. This apparently caused many of the other sanitation-related issues seen by the inspectors.

By late 2000, the problems with Ortega's Las Americas stores had become pervasive enough that the licensing department initiated a process called a "Technical Advisory Committee" or TAC. A TAC is not a formal legal proceeding. Rather, it is a method by which the licensing department seeks to obtain a business's agreement to resolve outstanding violations and implement other conditions (sometimes including the payment of a penalty) in exchange for no further adverse action being taken against the business's license. Typically, the process involves an informal meeting between the regulatory staff and the license holder, much like a settlement conference. If an agreement is reached in principle, then the regulatory staff recommends the TAC agreement to the Public Safety and Regulatory Services ("PS&RS") Committee of the City Council for approval.

In this case, the TAC process was initiated as a result of a licensing inspector observing that many of the applications for renewal of Las Americas' licenses were on hold because of reported health violations. That inspector compiled documentation relating to those problems and presented it to supervisory personnel. Together with the environmental health department, the licensing department decided to pursue a TAC meeting in an attempt to resolve the persistent problems with those businesses. In March, 2001, the licensing department and Ortega reached an agreement to resolve those matters, although that agreement was subject to approval by the City Council.

We are aware of no evidence that Herron was involved in or influenced the decision to initiate the TAC proceeding regarding Ortega's businesses in early 2001. That decision was

made internally in the licensing department without any Council Member involvement, a fact confirmed by our interviews and the depositions of the several City employees and managers involved in that process. Only *after* the TAC proceeding was initiated did certain Council Members become actively involved in those discussions. In particular, on April 6, 2001, after the TAC recommendation was issued and prior to the PS&RS Committee hearing, an informal meeting occurred among Council Members Mead, Niland, Herron and Ostrow – representing wards containing Las Americas stores – and staff members of the licensing department and the City Attorney's Office. At that meeting, the Council Members explained why they believed that the recommended TAC agreement was too lenient. Niland and Mead were reportedly the most ardent opponents of the recommended TAC agreement; Herron was generally described as the least vocal Council Member in that meeting, although he agreed with the decision of the others to oppose the recommended agreement. Subsequently, the PS&RS Committee and then the full City Council voted to reject the TAC agreement and to refer the matter for a revocation hearing before an administrative law judge.

As mentioned above, among the public allegations is the suggestion that Herron lobbied other Council Members and Council staff persons on Ortega's behalf in 2001. We are aware of one isolated incident arguably supporting that allegation, reported to us by Council Member Niland. According to Niland, Herron stopped by his office a couple of weeks after the PS&RS Committee hearing and said, "it seems like it's working," meaning that the City Council's rejection of the TAC agreement was forcing Ortega to remedy the Code violations. Niland reported that the conversation was brief and that Herron was not attempting to lobby him.

Notwithstanding that incident, we conclude that Herron's repeated tape-recorded statements to Ortega that he was "lobbying" other Council Members and staffers on Ortega's behalf were exaggerations, if not total falsehoods. Herron's advocacy on behalf of Ortega was half-hearted, at best. This conclusion is supported by the fact that Herron voted *against* the recommended TAC agreement in April, 2001 -- which would have allowed Ortega's businesses to retain their licenses. Because there is no allegation that Ortega made any payments to Herron between the Committee hearing and the \$10,000 payment on June 27th (two days before Herron began to cooperate with the federal government), it seems unlikely that Herron would have changed his position on the TAC recommendation during that period of time. Herron advised us that he never lobbied other Council Members on Ortega's behalf, although he admitted advising Ortega that he needed the support of Niland and Mead. More importantly, there is no evidence that any Council Member or City employee engaged in any improprieties in connection with the TAC proceedings or the City Council's decision to reject the proposed TAC agreement.

Ortega retained attorney Albert Garcia, Jr. to represent him in connection with the PS&RS Committee's consideration of the TAC agreement. It has been reported that Garcia previously acted as a political consultant for various elected officials, including members of the PS&RS Committee and the full City Council that was reviewing the proposed TAC agreement. Garcia filed his lobbyist registration statement for Las Americas on April 20, 2001. In fact, on April 11, 2001, Garcia appeared and represented Ortega during the hearing conducted by PS&RS

Committee. Garcia spoke for just a few minutes and admitted that he had only reviewed the proposed TAC agreement one hour earlier.⁷

It is reasonable to conclude that Ortega hired Garcia based on the perception that Garcia would be able to influence the proceedings because of his former political associations. Ortega already had retained lawyer Jordan Kushner to represent him in that matter when he hired Garcia. On July 16, 2001, one day before the government's investigation of Herron became public, Garcia terminated his representation of Las Americas, according to Garcia's lobbyist disbursement report and Ortega's lawsuit. Kushner has since represented Ortega in connection with the proceedings before the administrative law judge.

Notwithstanding Garcia's involvement, the PS&RS Committee and the full City Council each unanimously voted to reject the recommended TAC agreement. Therefore, we do not believe that Garcia wielded any actual influence on Ortega's behalf in connection with that proceeding. However, some two months later, on June 27, 2001, Herron told Ortega (during a conversation recorded by the FBI) that he had attempted to contact Garcia so that the two of them could meet with Council Member Niland to convince him to reverse his position on Ortega's licenses. Niland stated that Herron never arranged for such a meeting, and we have no contrary evidence. Herron also denied arranging for Garcia to meet with any other Council Members. Moreover, the federal investigation of Herron and Sabri became public three weeks later. Although Herron admits speaking with Garcia about the Las Americas matter, he asserts that he only told Garcia to advise Ortega to correct the violations and infuse capital into his stores.

⁷According to a lawsuit Ortega has since filed against Garcia to recover a \$10,000 retainer fee, Ortega hired Garcia "to lobby the City of Minneapolis" on his behalf. Garcia has rejected our request for an interview, citing the pending lawsuit against him by Ortega.

According to Ortega, Garcia told him that he had one meeting with Herron during which he "wined and dined" Herron.

The transcripts also show that, on June 27, 2001, Herron promised Ortega to help him obtain liquor licenses for his businesses. Because Herron began cooperating with the FBI just two days later, we think it unlikely that Herron took any actions to fulfil his promise, even if he had intended to do so.

2. The Alleged Sabri Payments to Herron

Herron has also admitted "taking money" from Basim Sabri, both according to Herron's own statements to us and a search warrant affidavit filed in Sabri's federal prosecution. According to Herron, in 1999 or 2000, he asked Sabri for a \$2,000 loan, and Sabri gave him the money but told him that he did not want him to pay it back. Herron claims that the money was actually for a friend of his, although Herron did not tell that to Sabri. Herron's use of that money was corroborated by his friend who told us that Herron gave him \$2,000 to help with a move to a new residence (although the friend did not know that the money came from someone else). Herron says that he has not repaid any of that money to Sabri. Sabri's payment to Herron is also partially corroborated by Ortega who, in April, 1999, reportedly said that Sabri told him that he had given Herron money and gifts totaling \$5,000.

We do not know if the variance in the amount of the reported payment is because Herron actually took additional money or things of value from Sabri, or because Sabri was bragging about and exaggerating the amount of the payment. Either way, the reports that Sabri paid money to Herron are credible, given Sabri's recorded attempts to bribe Herron after Herron began cooperating with the federal authorities.

It is not clear, however, whether Herron actually took any official actions on Sabri's behalf in exchange for that money.⁸ Herron has explicitly denied to us that he ever helped Sabri because of the payment from him. Instead, he claimed that he has always sided with the City employees when they were at odds with Sabri. Notwithstanding this denial, our investigation has revealed that Herron gave Sabri some assistance in certain of Sabri's regulatory matters.

First, beginning in late 1999, Sabri enlisted Herron's assistance with respect to a zoning dispute he was having with the City. The issue concerned the development of a coffee shop at Sabri's International Bazaar located at 301 East Lake Street. Sabri had submitted to the zoning office an application for "site plan review," a process required for certain types of businesses. The zoning inspector rejected the application because he interpreted the code to require parking that was not shown on the application. Sabri responded in writing by arguing that the project was exempt from that requirement, and he cc'd that letter to Herron. At the same time, Herron contacted the zoning inspector's supervisor about the controversy. According to the supervisor, Herron asked if the zoning office could find the exemption to apply in that case. The supervisor agreed with that request, and the project was allowed to proceed.

According to our interviews of City officials and employees, Herron also had some involvement in a Sabri proposal for the development of an AmericInn Hotel in Herron's ward. Beginning in early 2001, Herron assisted Sabri in making initial inquiries to the Minneapolis Community Development Agency ("MCDA") about funding for that project. In particular, Herron reportedly invited the MCDA Executive Director to a meeting at Herron's office with

⁸No recordings exist of meetings between Herron and Sabri before Herron began cooperating with the FBI on June 29, 2001.

Sabri and his partner in that development. Sabri did not make a formal request for funding at that meeting. Instead, he made a presentation regarding the project's concept, including the possible need for the MCDA to exercise eminent domain over a parcel of land. A few months later, Herron initiated a second informational meeting between the MCDA and Sabri. Sabri reportedly never made any formal application to the MCDA for funding of that project. Employees from the zoning office also attended either those or other meetings regarding the proposal, but Sabri never applied for any permits. The proposal appears not to have gone any further.

Herron admitted to us certain limited participation in Sabri's proposal. He asserts that although Sabri repeatedly requested his assistance for help on the project, his only involvement was to put Sabri in touch with the appropriate people at the MCDA and to ask the MCDA to speak with Sabri about his proposal. Herron claims that subsequently he publicly opposed the proposal. That claim is corroborated by contemporaneous news reports in May, 2001, stating that Herron made a public statement opposing the development after a neighborhood group expressed opposition to it. According to Herron, after he made that public statement, Sabri offered him a financial stake in the development if he would change his position and make the deal happen. Herron claims that he laughed at Sabri and walked away.

After being confronted by the FBI regarding the Ortega payments, Herron began to cooperate with the FBI, including the commencement of an undercover investigation of Sabri. According to a search warrant affidavit, Herron admitted to the FBI that Sabri had previously offered him a 5% interest in the development, although Herron again claimed to have rejected that offer. Herron nonetheless agreed to assist the FBI with that aspect of its investigation. In

particular, the FBI recorded three meetings in July, 2001, that Herron had with Sabri during which Sabri offered bribes to Herron in exchange for official action by Herron in connection with that same development project. During the last meeting, Sabri gave Herron cash and a check totaling \$5,000.

Despite Herron's involvement in the MCDA meetings, we have found no evidence that Sabri was actually able to improperly influence any City official or employee with respect to this development. It is not clear whether Herron's pre-cooperation involvement – primarily, arranging meetings – was part of a quid pro quo with Sabri. The subsequent FBI-tape recorded conversations appear to corroborate Herron's assertion that he had not accepted – at least, not explicitly so – Sabri's earlier offer for a financial stake in the project. We have found no evidence suggesting that any other City official or employee acted improperly in connection with the AmericInn proposal.

Finally, during a recorded conversation with Ortega in 1999, Sabri suggested that Herron was helpful with Sabri's "fire sprinkler bullshit." Sabri did not refer to any specific property during that conversation. Sabri did have some issues with his Karmel Square property at 2940 Pillsbury Avenue, beginning as early as March 1998. However, we have no evidence suggesting that Herron had any involvement in those issues.

We do not know the full extent of Sabri's relationship with Herron. Sabri was both a property owner/developer and a self-described "lobbyer." According to one of the FBI search warrant affidavits, Sabri bragged of making between \$50,000 and \$80,000 per year of unreported income from lobbying activities. Although Sabri was never registered as a lobbyist, he acted at times as an advocate for other business owners. For example, Sabri appeared and testified on

Ortega's behalf when the recommended TAC agreement came up before the PS&RS Committee. During those proceedings, Sabri described himself only as "a neighbor of Mr. Ortega on several properties." Despite Sabri's advocacy, the PS&RS Committee, including Herron, unanimously voted to reject the recommended TAC agreement and to refer the matter for a revocation proceeding.

Sabri similarly advocated on behalf of another business owner in the 8th Ward named Miled Soussi. Soussi owned a business called Tires For Less. In December, 1999, the PS&RS Committee considered whether to recommend revoking the business license for Tires For Less because of its failure to implement certain site plan requirements. According to the meeting minutes, Sabri attended that meeting and spoke on Soussi's behalf. Herron opposed revocation and instead sought to have the committee postpone the matter to give Soussi time to resolve the site plan problems. The PS&RS Committee nonetheless voted to recommend revocation, with Herron the lone dissenter. However, each time the matter thereafter came up for a vote before the full City Council, it was postponed. According to the zoning inspector responsible for the site plan issues, those postponements were accomplished at Herron's urging. The matter thus remained in limbo – with no enforcement action being taken against Tires For Less – for approximately seven months, during which period of time the business continued to operate with its license intact.

According to the zoning inspector, in July, 2000, Herron finally agreed to resolve the matter by the issuance of a letter to Tires For Less. That letter required Tires For Less to submit new applications for site plan review and conditional use permits within a short period of time and upon the threat of a resumption of revocation proceedings. According to that letter, this

resolution was achieved "with the agreement of Council Member Herron." Tires For Less eventually complied with those requirements, and the issue has since been finally resolved.

We have no evidence that there was anything improper about Herron's and Sabri's involvement in this matter. Soussi – who agreed to an interview with us – admitted that Herron helped him a couple of times in dealing with the City, but he denied that Herron ever asked for anything in return. Soussi also said that he was acquainted with Sabri because of Sabri's relationship with the prior owner of the building, and that Sabri was helpful in dealing with the City. Herron also denied to us that he ever asked for or received any money from Soussi or Tires For Less. He claims that the matter simply came to his attention when he saw it on the docket and he concluded that the revocation was unwarranted. Herron explained that Tires For Less had been forced to relocate by action of the MCDA and that the new site plan requirements were unduly harsh. Herron admitted to helping to resolve the issues. He was also aware of Sabri's involvement, although he said that was independent of his own involvement.

Although we do not fully understand the relationship between Herron and Sabri, it is clear that Herron took significant steps to assist certain of Sabri's businesses in connection with City matters. We also conclude that Herron took money from Sabri, and that Sabri tried to curry favor with Herron by acting as an intermediary for Herron with Ortega. We do not know, however, whether Herron's assistance to Sabri was in exchange for that money or for Sabri's help with Ortega, although that is certainly possible. Nevertheless, we have found no evidence that any other City officials or employees acted improperly in connection with Herron's or Sabri's conduct.

3. The Dousti Allegations

Herron requested and received money from another Minneapolis businessman named Manouchehr Dousti, the owner of a used car dealership and a repair garage. Both Herron and Dousti admitted to us that Dousti gave Herron \$5,000 in the year 2000. Dousti explained that he gave Herron a check for \$2,000 and cash in the amount of \$3,000, characterizing those payments as a "loan." Herron also described them as a "loan" from a friend, although it was not evidenced by a promissory note. Both Dousti and Herron understood that the money was to be used by Herron to help pay for his mother-in-law's funeral expenses. Each of them denied to us that there was any quid pro quo. Dousti also asserted that his businesses were not regulated by the City, implying that there was nothing that Herron would have been able to do for him.

In fact, Dousti's business had at least two matters with the City during this period of time. First, the property on which Dousti's used car dealership was located was the subject of a proposed acquisition by the MCDA for use in a flood control development project. On August 24, 1999, an independent appraiser concluded that the fair market value of the property was \$138,000. On September 28, 1999, the MCDA sent Dousti a letter offering to purchase his property for the appraised amount. Because the project was in the 8th Ward, the MCDA consulted Herron before making that offer. A handwritten notation on the MCDA file folder reads, "9/27 Per CM Herron's phone call-send out offer." The MCDA lawyer responsible for that proposed transaction explained that Herron's involvement was typical and appropriate, and that Herron did not attempt to influence the MCDA other than to give his approval to proceed with the offer when advised by the MCDA that it was ready to do so.

The proposed transaction was never concluded. In addition to purchasing the real estate, the MCDA would have been required either to relocate Dousti's used car business to a comparable location or to purchase the business. The MCDA was unable to find any suitable site for relocation, and the project budget did not allow for a purchase of the business. Therefore, we are told, the proposal has been abandoned and the flood plain project will be designed around that property.

We have no evidence that Herron improperly attempted to influence the proposed MCDA transaction. The offered price was equivalent to the appraisal price, and the transaction was not consummated. Of course, it is possible that when Dousti made the payments to Herron he hoped or believed that Herron could intercede on his behalf with the MCDA. As a Council Member, Herron was also on the MCDA Board of Directors and would have had a vote on whether the deal would be approved.

The second matter that Dousti had with the City during this period of time related to an automobile repair garage he purchased in or about the Summer of 2000. That business was required to be licensed by the City. Although licensed by the previous owner, Dousti did not obtain a new business license when he purchased the garage. Upon discovering that it was not licensed, the responsible City inspector ordered Dousti to cease those operations until he submitted a license application. Soon thereafter, Herron left a voicemail message for the inspector in which he said that Dousti was a "good guy" and asked if the inspector could "give him a break." The inspector reportedly returned the call and spoke to one of Herron's staffers, explaining that Dousti was required to obtain a business license and that there was nothing she could do until he submitted his application. That same day, Dousti submitted an application, and

he was allowed to resume operations pending its approval. We were told that the licensing department routinely allows new license applicants to begin operating if a complete application has been submitted and is merely pending approval. The inspector asserted that Herron's contact regarding Dousti did not influence any part of that process.

Herron's involvement in the proposed MCDA acquisition and the licensing issue appear innocuous, and there is no evidence that he had any substantial effect on the outcome of those matters. Moreover, we cannot conclude that there was a specific quid pro quo between Dousti's payments to Herron and any official action by Herron, although this is certainly a possibility. It is significant that Dousti has not been charged by the federal government with any offense relating to those payments. Moreover, as part of the sentence imposed upon him by the federal court, Herron is required to pay \$5,000 restitution to *Dousti*. That restitution order would not be appropriate if Dousti were complicit in a criminal offense by Herron.

There are no allegations, and we have found no evidence, that any other City personnel acted improperly in connection with these matters.

4. Alleged Payments by Sabri to Other Officials

As noted above, Sabri bragged to Ortega of making a \$3,000 cash payment to "another city councilman who's very big." Like many of Sabri's statements, we have no specific reason to credit the truth of this statement. Sabri's obvious purpose in making such statements to Ortega was to impress Ortega with his importance and asserted political connections. However, we cannot rule out the possibility that the statement is true. After all, Sabri subsequently offered \$95,000 in bribes to Herron. Yet, because Sabri's statement is so general and without any corroboration, it would be meaningless and unwarranted speculation to conclude that it might be

true. We assume that the federal government pursued this allegation as a part of its investigation, but was unable to uncover any evidence to support it, or at least insufficient evidence to support a prosecution.

Sabri also bragged during the recorded conversations about engaging in a scheme to avoid campaign finance restrictions. In particular, Sabri claimed to have used nominees – including friends, relatives and employees – to get around a \$300 limitation on contributions to elected officials or candidates. Although we reviewed the campaign finance reports for several elected officials, we were not able to determine whether this assertion was true. At the time of Sabri's statement, the reporting requirements only required that contributions in excess of \$100 be itemized by donor. Therefore, if Sabri's nominees made individual contributions in amounts less than \$100, they would not be disclosed. Moreover, even if the individual contributions were in amounts of \$300 or greater, one would not necessarily be able to determine whether the listed contributors had some relationship with Sabri. A more in-depth investigation on this issue would minimally require investigating all listed contributors to determine whether the contributions were bona fide or made at the behest of another person, such as Sabri. Even that level of investigation might not be fruitful.⁹

Sabri also reportedly bragged to Ortega that he planned to raise \$27,000 for then-Mayor Sayles-Belton's reelection campaign in exchange for two unspecified committee appointments. We have no evidence to support that allegation, as Sabri is not listed as a contributor on any of

⁹In its sentencing filing in the Herron case, the United States Attorney's Office stated that, with Herron's assistance, it was able to develop "overwhelming evidence of a wide range of corrupt activities engaged in by Sabri including his admitted campaign election fraud . . ." In speaking with us, Herron admitted that Sabri suggested such a scheme, but he asserted that he rejected the idea.

Mayor Sayles-Belton's campaign finance reports, and we are unaware of Sabri ever serving on any mayoral-appointed committees.

5. Alleged Corruption of Regulatory Services Employees

Sabri's repeated statements on tape about having inspectors and police officers on his payroll is of questionable credibility. The partial transcripts made publicly available by the United States Attorney's Office do not reveal any particulars of Sabri's alleged payments, other than Sabri's statement that he tended to give gifts rather than money. Moreover, the context of those statements – Sabri trying to impress Ortega with his influence and power – suggests that they are braggadocio.

Whether or not Sabri's statements are true, the possibility of discreet instances of corruption within the ranks of the City's workforce exists.¹⁰ In fact, it is probable that over time, in such a large workforce as that of the City's, there will be additional instances of this kind of misconduct. Yet detection of particular instances is difficult without the cooperation of the individual or business involved. However, notwithstanding Sabri's statements, we have found no indication of any systemic problems.

We are aware of one case in which Ortega, in his capacity as a government cooperating witness, gave an environmental health inspector \$300 worth of certificates for a local casino. During that same meeting, the inspector agreed to allow Ortega a specified period of time to complete certain repairs at one of his stores. Although the inspector took the certificates, he

¹⁰We did not specifically investigate Sabri's statement about corruption in the police department. We based that decision on the lack of any corroboration and the lack of any detailed allegations susceptible to being investigated. Because of the size of the police force, an investigation of such an uncorroborated and nonspecific allegation would not be practical.

subsequently voided them in writing and reported the incident to his supervisor, explaining that he had not wanted to offend Ortega by rejecting the gift outright. The supervisor then returned the voided certificates to Ortega with a letter explaining that a City inspector is not permitted to accept such a gift from a business owner whom he regulates. The inspector's encounter with Ortega was recorded and directed by federal authorities. Although we were not provided with access to that recording, we believe that the employee had no intention to retain the gift and that he acted with no corrupt intent.

We do not know what other undercover activities, if any, Ortega was directed to do by the FBI. Ortega himself informed us that he was not involved in any other investigations of City personnel. Notwithstanding Ortega's assertion, it is possible that Ortega was directed to conduct similar activities with other City employees, but that the government has requested Ortega not to reveal the outcome of those operations. In fact, in a letter written to the City, the United States Attorney's Office stated, "we have specific information concerning Mr. Ortega's inspection *contacts* which will not be publicly disclosed until the upcoming trial of Basim Sabri . . ." That statement suggests that Ortega was involved in additional undercover operations of which we are unaware.

We have also been informed of an allegation made in Fall, 2000, regarding a taxi licensing inspector being in "the hip pocket" of the owner of a taxi company. This allegation was brought to the licensing department by a former employee of that business. The licensing department investigated this matter itself and found no merit to the allegation. Having reviewed that file, we find that the matter was appropriately investigated by supervisory personnel. The allegation of an improper relationship between the inspector and the business owner was not

supported by any evidence, and the complainant did not provide any particulars regarding that allegation.

Each of the over 30 inspectors we interviewed supported our conclusion that no systemic problems exist. Except for the one instance alleged above, each inspector denied ever taking money or any thing of more than nominal value from a regulated person or business. Moreover, none of the inspectors reported being aware of any instances of other inspectors improperly requesting or accepting things of value.

6. Alleged Harassment/Retaliation Against Ortega and Sabri

Ortega has alleged, at various times, harassment or retaliation by various City departments, officials and employees. In February, 1998, Ortega's lawyer wrote a letter to then Mayor Sayles-Belton complaining of "harassment and discrimination" by "inspectors and officials." Specifically, Ortega asserted that inspectors were placing an "inexplicable" amount of time and effort on Ortega's properties, that they were issuing numerous "unjustified" citations, and that they were refusing to approve licenses for new businesses despite meeting City Code requirements. The letter suggested that such actions were racially motivated, a conclusion purportedly based on unspecified "statements" made by unidentified inspectors and officials. The licensing department responded to those claims in writing, explaining its reasons for each of the actions taken with respect to Ortega's properties and refuting any improper motivations. Ortega and his lawyer thereafter met with representatives of the City to discuss Ortega's claims. It is not clear exactly what resolution was reached at that meeting, but one regulatory services employee reported that the parties discussed the particular violations at issue and agreed to a

schedule for their correction. In a subsequent letter to Mayor Sayles-Belton, Ortega expressed his satisfaction with that resolution and its elimination of his concerns.

Similarly, Sabri has complained of harassment and discrimination by City employees or officials in at least four different departments (licensing, zoning, fire, and the Minneapolis Empowerment Zone). Those complaints have been made in the context of Sabri contesting various adverse official actions taken by those departments.

We have not found any evidence of harassment or discrimination against Ortega or Sabri by City employees or officials. Ortega's and Sabri's claims of discrimination based on race or national origin are not supported by any particulars. It is true that the businesses or properties for each of these individuals have been the subject of attention by certain of the City's regulatory departments. However, we have found no evidence that the City's actions were based on other than the professional judgment of those employees or officials that those actions were justified by the circumstances of the particular cases.

Some suggestion has been made that the City Council's rejection of the recommended TAC agreement regarding Ortega's properties was in retaliation for Ortega's status as a "whistle-blower" in the federal government's investigation. In particular, the United States Attorney's Office sent a letter dated December 13, 2001, to the City regarding "the concern of Mr. Ortega that the city was taking licensing action against him based in part on activities taken by Mr. Ortega in cooperation with the FBI." That letter also stated as follows:

I know the City does not want to discourage business owners like Mr. Ortega from cooperating with law enforcement. In addition to potential whistleblower liability for the City, any perceived retaliation against Mr. Ortega would discourage other business owners from reporting corruption in city government.

The suggestion of retaliation against Ortega does not appear to be supported by the history of the TAC proceedings. On April 20, 2001, the City Council unanimously voted to reject the TAC agreement and ordered that "the proper City officers be directed to proceed with scheduling a revocation hearing before an Administrative Law Judge." Ortega's involvement in the federal investigation was not publicized until Brian Herron's guilty plea in July, 2001. We are unaware of any evidence that any City official or employee was aware of Ortega's status as a cooperating witness *before* the decision on the TAC agreement was made. Therefore, that decision could not have been retaliatory. Moreover, as discussed above, various Council Members voiced apparently legitimate concerns about the recommended TAC agreement in light of Ortega's continuing violations. The possible revocation of Ortega's business licenses is now being reviewed by an administrative law judge, and there has not yet been any final determination of that issue.

Ortega also has recently filed a lawsuit against the City and several housing inspectors for civil rights violations arising from their alleged "illegal search" of Ortega's personal residence. (*Ortega v. City of Minneapolis, et al., No. MC 01-016858, Henn. Dist. Ct.*) In particular, Ortega alleges that last Summer, the City shut off the water supply to his house as a pretext to allow its housing inspectors to conduct a search. The City has denied all material allegations of that complaint. Because those claims are part of a pending lawsuit, we will not address them further in this report.

Other Regulatory Issues

1. Emphasis on the City's Ward-Based System and Constituent Services

The City's system of government is frequently (if not accurately) described by political commentators as a strong council/weak mayor system. The City Council consists of thirteen Council Members, each elected from a separate ward. None of the Council Members are elected at large. According to the City Charter, the Council has the exclusive authority to enact ordinances, subject to the Mayor's veto power (which may be overridden by a two-thirds majority vote). Among other powers possessed by the City Council are the powers to approve, deny, or revoke business licenses, and to hear appeals from the denial of applications for zoning variances or conditional use permits. Most of the other City officers – such as the City Coordinator, the City Attorney, the City Assessor, the Planning Director, the Police Chief, and the Fire Chief – are appointed by an Executive Committee consisting of the Mayor and four Council Members. Such appointments must first be nominated by the Mayor and subsequently ratified by vote of the full City Council. Therefore, the City Council has power over the selection and removal of virtually all heads of City departments.

Our investigation has found that the regulatory functions of the City are influenced by an emphasis on the City's ward-based system. This emphasis appears to be a result of the structure of City government and a cultural attitude regarding the importance of ward power. This point was made repeatedly to us by various Council Members, as well as employees in the regulatory service areas. The emphasis on ward power is also fostered by the concept of “aldermanic courtesy” – by which Council Members might defer to the preference of the Council Member for the particular ward at issue.

Some individuals in and out of City government perceive that Council Members often focus on the interests of their ward to the exclusion of the interests of the City as a whole. Clearly, the provision of services to residents in a Council Member's ward is frequently seen as one of the primary objectives of the job. Council Members are frequently seen as mediators between their constituents, on the one hand, and the regulatory departments, on the other hand. There is also a perception that certain regulatory actions require the blessing of the Council Member in whose ward the affected business or property is located.

Our findings regarding Brian Herron's influence on certain regulatory matters illustrate this perception. For example, as discussed above, Herron apparently had influence over the actions of the zoning office with respect to Sabri's coffee shop project at 301 East Lake Street, as discussed above. Although the zoning inspector rejected Sabri's application, Herron's intervention with the zoning supervisor reportedly caused a reversal of that decision. Similarly, the MCDA sought Herron's approval before sending an offer to Dousti for the purchase of his property. Yet Herron had no greater official interest in that transaction than any other member of the MCDA board. Finally, the Tires For Less issue, also discussed above, was resolved by the zoning inspector "with the agreement of Council Member Herron."

Virtually all inspectors we interviewed reported giving priority to requests or complaints coming from Council Members over those coming from the public at large. We believe this practice is the result of two factors. First, it is natural (and, arguably, desirable) for regulatory personnel to be as responsive as possible to appropriate requests coming from elected officials.

Second, most departments lack sufficient resources to respond to *all* complaints and, thus, prioritize Council Member requests.¹¹

These findings are not necessarily intended to suggest any deficiency with this system or political culture. Council Members understandably take a proprietary interest in their individual wards. They have a legitimate need to know and be involved in regulatory questions concerning their ward, and they reasonably expect responsiveness from regulatory personnel on such issues. The City Charter's organization of ward-based elections mandates that result. However, the potential for abuse is increased where constituents, employees and officials labor under the false assumption that such influence is unchecked.

The perceived influence of individual Council Members is balanced by several factors. First, we believe that, despite the conduct of Brian Herron, the City's officials and employees overall demonstrate a high level of integrity. This integrity is fostered by the relatively high level of education and professionalism. Consequently, very few regulatory services employees reported having felt inappropriately pressured to take actions which they would not otherwise take. Moreover, in contrast to many large municipalities where political patronage is perceived to influence an employee's performance, the existence of an extensive civil service program protects employees in the performance of their duties and diminishes that perception. Finally, the

¹¹For example, until recently, the zoning office had just one field inspector for the entire City. The environmental health department has sixteen inspectors who must conduct routine (at least annual, usually) inspections of all groceries, restaurants and other food establishments, as well as respond to complaints. The business licensing office currently has ten inspectors to deal with approximately 12,000 licenced businesses.

existence of a highly unionized workforce, as compared to most municipalities,¹² minimizes the perception of intervention by elected officials.

2. Special Council Permits

Various provisions of the City's Code of Ordinance refer to a mechanism called "special permits" or "special council permits." Those provisions require property owners to obtain City Council approval for specified property uses. For example, erection of signs larger than twelve square feet, moving a building, possession of certain animals, operation of sidewalk cafés, and use of campers as temporary housing, all explicitly require the property owner to first apply for and obtain a special permit ("Prescribed Special Permits"). The Code provides that certain of these permits can be granted administratively, while others must be granted by the City Council.

In contrast to the Prescribed Special Permits, the City Council routinely grants "special permits" in circumstances *not* permitted by the Code ("Non-Prescribed Special Permits"). This latter category of special permits apparently has evolved – primarily with respect to zoning matters – as a *de facto* substitute for more cumbersome procedures required by the Code, such as amendments, variances, and conditional use permits. Because those procedures require public hearings, comment and approval, they can cause substantial delay and expense. Non-Prescribed Special Permits have been used as a shortcut around those obstacles in certain situations. They have also been used, for example, to allow construction activities to begin "pending approval" of a re-zoning application. Of course, once construction begins pursuant to a special permit, it would be a substantial hardship for the re-zoning application to be denied.

¹²Approximately 93% of the City's workforce is represented by 24 separate bargaining units.

The process for obtaining a Non-Prescribed Special Permit is as follows: The application goes to the appropriate department (for example, zoning). The department will recommend that the application be *rejected* because it seeks something that is not permitted by the Code. The application and departmental recommendation then go to the Council Member for the affected ward. If the Council Member recommends approval, the application then goes to the appropriate committee which will consider the matter, and then to the full City Council. We are told that because of "aldermanic courtesy" among Council Members, the City Council usually approves Non-Prescribed Special Permits if requested to do so by the Council Member for that ward.

Over 200 special permits are issued each year. A large subset of those permits are the Prescribed Special Permits, and they present no problem. The problem arises with the Non-Prescribed Special Permits. We are not concluding that this type of special permit is being used with any improper motivation. Nor are we necessarily finding that the granting of such permits is always undesirable from a policy perspective. Such use of those permits can provide flexibility and reduce hardships. For example, obtaining even a six-inch variance from the set-back restrictions can be a lengthy and cumbersome process. As one Council Member explained, if that process causes an unnecessary hardship, then the grant of a special permit might be appropriate.

Even if Non-Prescribed Special Permits can be beneficial from a practical perspective, there are two problems with that practice. First, it is not subscribed by City Charter or ordinance. Second, it contains no restrictions or criteria on how or when it is to be used. The rationale behind the public hearing requirements in the Code of Ordinances is to allow neighborhood and community influence upon the decision-making process. Non-Prescribed Special Permits hinder

that goal, and they do so without any balancing of the competing interests. Many of the officials and employees we interviewed conveyed those very concerns to us.

The problem with the ill-defined uses or criteria for special permits is illustrated by the lengthy and expensive litigation over the metal "Kondirator." In 1990, American Iron & Supply, Co., ("AIS") filed an application for a special permit to construct and operate a scrap metal mill called a "Kondirator." The special permit application was approved by the Council Member for that ward and, then, by the full City Council. In 1991, despite having already issued the special permit, the City ordered AIS not to begin construction or operation of the Kondirator. Instead, the City required AIS to provide additional information regarding the environmental effects of the operation before being allowed to proceed. AIS responded by filing a lawsuit against the City for damages and other relief. The City denied the allegations and asserted that the issuance of the special permit did not relieve AIS of its obligation to satisfy the other environmental requirements. The Kondirator litigation continued throughout the 1990s. Finally, in 2000, the City agreed to settle the case by paying \$8,750,000 to AIS.

The Kondirator litigation probably would not have been possible without the shortcut of the special permit process. Although the City has denied, and continues to deny, that AIS's claims were meritorious, the approval of the special permit created some arguable ambiguity about the applicant's obligations. That ambiguity likely would not have existed if the process had contained the usual safeguards of administrative and public involvement.

Moreover, when combined with the cultural bias for "aldermanic courtesy" in City Council, the potential pitfalls of Non-Prescribed Special Permits are apparent. We conducted only a preliminary review of the special permits for which Brian Herron recommended approval

since 1998. It is not possible to determine, from such a review, whether any of those permits were improperly or improvidently granted. However, given that such permits are granted notwithstanding the disapproval of the regulatory departments, a potential for abuse exists.

3. Effectiveness of Regulatory Enforcement Mechanisms

One common theme that regulatory personnel expressed to us was the perceived difficulty with compelling compliance by businesses and property owners with the various City and State codes, such as the health, building and zoning codes. Employees generally cite three factors as the basis for this belief: (1) inadequate sanctions provided by law for lack of compliance; (2) inadequate resources; and (3) lack of support by management and other City departments.

The typical response to a violation is the issuance of an "order" or "violation notice." As the name indicates, this is simply an official notification to the business that it is not in compliance with a standard or rule. Orders or notices are not truly sanctions in and of themselves. Currently, two types of sanctions are generally available: (1) adverse action against a business license; and (2) criminal citations or complaints.

Adverse action against a business license can take the form of suspension, revocation or non-renewal. Although an effective deterrent against serious violations, this sanction only applies to those businesses for which a license is required in the first place. Only approximately one-third of businesses in the City are required to be licensed. Moreover, such an action requires a hearing before an administrative law judge.¹³ Regulatory services employees, therefore, are hesitant to suggest such action except in the more egregious cases or in cases of repeated

¹³The informal "TAC hearing" process, described above, may also result in sanctions, but only with the agreement of the license holder.

problems. Although effective where appropriate, therefore, revocation or suspension does not address the problem of isolated or less serious violations.

We have also been told that the second type of sanctions – criminal citations or complaints – are not frequently used by regulatory services employees. In fact, many employees have reported never using them, and others only on occasion. Chief among the reasons for this is that City inspectors perceive the fines – which are typically small – to be inadequate deterrence. In addition, inspectors have also stated that the deterrence value is minimal because of the belief that many citation recipients fail to respond to the summons without any adverse action being taken against them.

Currently, no intermediate level of sanctions is available in all departments. However, we understand that an “administrative enforcement and adjudication” pilot program is being established in the licensing department, with the intention of expanding it to other regulatory areas. In fact, on September 14, 2001, City Council passed ordinance 2001-Or-104 amending Title 1 of the Code of Ordinances to create a new Chapter 2, entitled “Administrative Enforcement and Hearing Process.” The stated purpose of the ordinance is to “facilitate compliance with certain provisions of this Code and avoid unnecessary delay in the enforcement” thereof. It applies to violations of most of the regulatory provisions of the Code of Ordinances. The procedures thereunder require the inspector to give a violator a written order with a date by which the violation is to be remedied. If the violation is not fixed, then the inspector can issue an administrative citation which requires the payment of a specified civil fine ranging from \$50 - \$500. The citation can be contested at an administrative hearing which is not presided over by a judicial officer, but by one of many volunteer panel lawyers approved by the City Attorney's

Office. Citations may also be resolved by consensual mediation conducted by the hearing officer. The rules of evidence are not to be strictly enforced during the hearing, and the hearing officer's decision is final. This new process may address the concerns expressed by many employees regarding the adequacy of potential sanctions. We suggest that the City closely monitor the implementation of this program and consider seeking its rapid expansion if it is deemed successful.

Related to the issue of the available sanctions is the perception that the City lacks the resources to pursue those sanctions. In particular, City employees generally expressed two concerns: first, that there are an inadequate number of field inspectors in certain departments, including zoning, construction services, and health; second, that the City Attorney's office is not sufficiently staffed to prosecute criminal citations or complaints or administrative hearings. We understand that municipal resources are virtually always scarce, and we have no opinion regarding the accuracy of the perception about the lack of resources. Ultimately, the cost of enforcement versus the value of the resulting compliance or deterrence is a policy decision. Such a judgment is not and could not be within the scope of this investigation.

Finally, some City inspectors and other employees expressed the concern that management in the regulatory services departments does not always support the employees' enforcement recommendations, especially the decision to issue a citation or complaint. Of course, it is not surprising that inspectors – who are focused on individual matters – might feel that others in City government do not take those matters as seriously as they do. Because of the fact-intensive inquiries which would be required, we cannot draw any conclusions regarding whether supervisors or others have acted appropriately in such matters.

4. Coordination Among City Departments

Although we did not conduct an in-depth review of the operations of the various City departments, they generally appear to be well-coordinated and well-managed. In fact, in a 2000 study conducted by Syracuse University and *Governing Magazine*, the City's government was rated among the top three best-managed large cities in the nation. Nevertheless, improved coordination among regulatory departments is possible. In determining how much integration or coordination is appropriate, of course, one needs to be mindful about waste and inefficiencies.

Most of the regulatory operations of the City that we have reviewed fall under the Department of Operations and Regulatory Services. That department is headed by the Assistant City Coordinator, and it includes the following functions: licensing, health and environmental services, zoning review and inspections, plan review, construction inspections, and housing inspections. The Planning Department, which is responsible for recommendations regarding zoning changes and developmental issues, is a separate department. Other separate regulatory departments include the Assessor's Office, the Police and Fire Departments, and Public Works. Because they were not directly implicated by the public allegations, we did not conduct systematic reviews of those latter departments.

Typically, regulatory activities, such as inspections, are instigated either by complaints or by a scheduled event. As discussed above, complaint-based inspections are conducted at the discretion of the inspector. Scheduled inspections vary depending on the type of inspection at issue. For example, restaurants are required to be inspected for environmental health violations on a periodic basis depending on their risk category (e.g., annually). Building inspections are required at certain steps in the construction process. Applications for new licenses trigger a

review by a licensing inspector. Many of these inspection activities require coordination between two or more regulatory departments. For example, an application for a restaurant license requires an addendum to be completed by an inspector from the environmental health department before the licensing department can recommend approval of the license. Similarly, the inspection department's issuance of a Certificate of Occupancy requires an inspection to be completed by the Fire Department.

Some employees have expressed their concern that the system and procedures in the regulatory departments are not always adequate to assure a sufficient level of coordination. One example of this involves a Basim Sabri property at 2940 Pillsbury Avenue South. Last summer, that property was cited by the fire department for a long list of violations, many of which the department considered serious hazards. Those violations apparently had existed for a long period of time. Some employees blame the apparent inattention to those violations on the lack of coordination among the fire department, the inspections department, and the licensing department. In fact, we understand that recent discussions among those departments have focused on establishing a system for joint inspections in some circumstances.

On a related matter, we understand that no integrated computer database exists for all regulatory functions. The most widely-used system within the regulatory services departments is known as "KIVA." The functions provided by KIVA include tracking complaints, inspections, permits, licensing activity, billings and assessments. The KIVA system is used by several departments, including construction inspections, housing inspections, zoning administration, licensing and the fire department. However, only construction inspections and housing inspections use all of the system's functions. In particular, we understand that the other

departments do not use KIVA to track inspections or complaints. For example, while the licensing department uses KIVA to track license issuance and the collection of license fees, the department does not computerize its inspections activities. Instead, orders issued to businesses are hand written and manually placed in files maintained by the individual inspectors. Complaints are only maintained if written orders are issued.

The environmental health department, which handles food inspections, does not use the KIVA system at all. Instead, it uses a separate system called TNG, which is specifically designed for that department's specialized functions. Even within that department, however, some employees report not using TNG to track complaints or inspections histories. The zoning department uses a system known as "Access" to track inspection activities.

Because no common database exists, departments lack the ability to conduct "one-stop shopping" when dealing with issues pertaining to a particular business or property. This problem is especially significant with respect to the overlapping work done by the licensing department and the environmental health department. If an integrated system were in place, then inspectors would be able to review a property's compliance history for all regulatory areas. This would allow them to better focus their energies on true "problem" properties. A greater level of integration would also allow employees to act as backstops for problems in other departments.

Our investigation, however, did not involve a systematic review of KIVA or any other databases, and we did not retain any experts who would be capable of conducting that kind of review. Moreover, we understand that the various regulatory departments have divergent functions and responsibilities, and that integration might not be feasible for software design or

economic reasons. Therefore, we do not necessarily conclude that greater integration is required. However, the City should consider reviewing this issue.

5. Ethics and Economic Disclosure Requirements

State law (M.S.A. §10A.09) and City ordinance (Code of Ordinances §15.40) require elected and appointed officials periodically to file Statements of Economic Interest on forms prescribed by the state Campaign Finance and Public Disclosure Board. Those filings require the individual's disclosure of certain kinds of outside compensation, securities holdings, and real property holdings. The obvious purpose for this filing is to require disclosure of potential or actual conflicts of interest based on pecuniary relationships. However, the type of financial information required to be disclosed is relatively narrow. For instance, there is no requirement for the disclosure of loans or gifts. As a result, Herron was not required to disclose his receipt of money from Ortega, Dousti and Sabri – whether characterized as loans or gifts.

Chapter 15 of the Code of Ordinances, and various state statutes, contain extensive additional ethics requirements for service as a City official or employee. Some of those provisions are detailed in the City's employee handbook which is distributed during employee orientation. However, our investigation has revealed the lack of any routine or uniform training regarding ethics policies. Additionally, we are aware of no formal training or education regarding the City's structure, its cultural emphasis on ethical behavior, and the mechanisms in place to encourage such behavior.

We have reviewed a 30-minute "ethics video" that was created approximately two years ago. We understand that this video was shown to various employees on a one-time basis. Although a useful tool for emphasizing the City's values on ethics compliance, the video was

limited in its scope and in its exposure to employees. For example, employees apparently receive no formal or uniform training on how to deal with ethical issues regarding constituent requests or complaints. And, more directly relevant to this investigation, they are not provided with any uniform guidance on how to deal with communications with Council Members or their staffs.

RECOMMENDATIONS

In conducting this investigation, we did not view our role to include making formal recommendations for specific changes to City government or its operations. We believe that such a task is best left to those most familiar with the City's government or to experts in this particular area. Moreover, we understand that the implementation of any recommendations might be impractical or unfeasible for various reasons, including fiscal considerations. However, in the course of our investigation we became aware of specific issues that may require further review or action by the City. We address those issues here only for the City's convenience. By highlighting these specific areas, we do not mean to limit the City's review of all areas addressed in this report.

Creation of a Constituent Services Office

Various City officials and employees suggested to us that the City should consider establishing an office that would be responsible for receiving and forwarding regulatory complaints and inquiries from constituents. We think that suggestion merits consideration. Currently, many constituents use elected officials as their point of contact with the regulatory departments. They do this for two reasons. First, elected officials are an obvious alternative to the sometimes difficult task of determining who the appropriate contact is within the regulatory departments for the particular inquiry at issue. Second, we presume that many constituents perceive that elected officials can and will wield influence with the regulatory departments on their behalf.

A central repository for complaints and inquiries would release elected officials from the time-consuming task of shepherding complaints to and from the regulatory departments.

Although we expect that many constituents would continue to contact their Council Members with complaints and other issues – as they are entitled to do, the elected official would have the ability to refer the matter to the Constituent Services Office for follow-up. We believe that if effectively operated, constituents would come to view such a mechanism as a desirable alternative to the overburdened offices of the elected officials.

Additionally, a central office would address the public perception that regulatory issues may be resolved by the action of an *individual* elected official. It would also address the perception among some regulatory employees that the regulatory department heads owe their jobs to the elected officials who appointed them, and that, therefore, they expect their subordinates to defer to Council Member requests. Although elected officials could still contact inspectors and other employees directly, we believe that those contacts would be seen as unusual and limited to more substantial matters or issues of policy. We are not recommending the precise nature or staffing for such an office. However, it may be advisable for the office to be headed by a person not appointed by the elected officials themselves.

The City might also consider implementing a procedure for documenting formal requests for constituent service made directly by elected officials to regulatory departments. Such a procedure could be limited to requests for specific official action (for example, a request for an inspection of a particular property), and it could be defined to exclude informational inquiries, the simple passing on of complaints from constituents without a specific request that the complaint be acted upon, and other informal contacts. Such a process might be beneficial because it would resolve any ambiguity regarding the nature or scope of the request.

Formalized Ethics Training

We also recommend that the City review the possibility of establishing formalized ethics training. As stated above, we are not aware of any formal ethics training or instruction of City personnel. Because regulatory services employees are often in the difficult position of dealing both with constituents and elected officials, training for them is especially important. This is illustrated by the case of the inspector who was given (and then voided and returned) gift certificates by Selwin Ortega. Although we believe that the inspector did not act improperly, if that inspector had received formalized ethics training, he may have avoided even the appearance of impropriety.

Training should include not just the traditionally areas of business ethics (such as the acceptance of gifts and gratuities, the use of public property for personal purposes, etc.), but it should also seek to give employees greater guidance about how to respond to inquiries or requests from constituents and elected officials. And, if not already a part of their operational training, employees should be informed about the basic structure of City government, including the powers and roles of the various branches and officials.

Broader Financial Disclosures by City Officials

The City should also consider requiring more extensive economic disclosures by officials and candidates for office. As discussed in our findings, officials currently are not required to disclose the receipt of loans or gifts. We consider this to be a significant gap in the disclosure requirements. We understand that the current form for and content of these disclosures is mandated by state statute, and we have not reviewed whether the City can require greater disclosures than those called for by the state legislature. However, if it is determined that the

City has that ability, the City should consider doing so. The additional required disclosures can have appropriate limitations, such as by dollar amounts. They can also have appropriate exclusions, such as loans made by financial institutions or gifts from relatives. Requiring such disclosures would have two effects. First, they would reveal additional types of potential conflicts of interest not currently disclosed. Second, the disclosure requirement would be an additional factor an official would have to consider before accepting a payment that may have the appearance of being improper.

Special Council Permits

As described above, special council permits are frequently used despite the lack of explicit authority under the City Charter or Code of Ordinance. Moreover, as demonstrated by the Kondirator litigation, their use might expose the City to liability in its dealings with constituents. We thus suggest that either (1) their use be ended except where explicitly authorized by law, or (2) the City Charter or Code of Ordinances be amended to provide for their use, including the criteria and procedures to be followed for their issuance. We are not equipped to recommend which course to follow, whether certain uses should be permitted while others should be eliminated, and what procedures, if any, should be required for the issuance of these permits.

Referral of Prosecution of Basim Sabri

On January 28, 2002, the federal indictment against Basim Sabri was dismissed by the United States District Court based on the court's finding that the statute under which Sabri was charged was unconstitutional. That dismissal was purely on legal grounds. As of the writing of

this report, the United States Attorney's Office had neither appealed the dismissal nor filed any alternative charges against Sabri.

Based on all the evidence available to us, especially the transcripts of recordings of Sabri, we believe that Sabri's conduct should continue to be subject to prosecution at the state and/or local level. In particular, we believe that there is sufficient evidence to support a felony charge of bribery under Minn. Stat. 609.42(1). The transcripts of Sabri's conversations with Herron in July, 2001, are unambiguous: Sabri was offering money to Herron in exchange for Herron's promise to take action within the scope of his office. The City, therefore, should consider referring this matter to the appropriate local or state authority.

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