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March 10, 2025

VIA ELECTRONIC MAIL ONLY

Ms. Kaitlyn Bernarde, City Clerk
407 Grant Street
Wausau, WI 54403
kaitlyn.bernarde@ci.wausau.wi.us

Dear Madam Clerk:

We are attorneys for the Honorable Doug Diny, Mayor of the City of Wausau. I write in reference to the "Order of the Ethics Board for the City of Wausau, Marathon County, Wisconsin," issued February 24, 2025 (the "Order"), which concerns a Complaint filed with the Ethics Board on January 14, 2025, by Jay Coldwell, Gerard C. Phelan, Kurt Hase and Scott L. Bryan (the "Complaint").

The following materials accompany this letter, in response to paragraphs 2, 4-5 of the City of Wausau Ethics Board's February 24, 2025 Order:

1. PDF copies of Mayor Diny's emails and memos (sent and received) concerning this matter (responsive to ¶¶ 2, 4 & 5 of the Order);
2. A Sworn Statement from Mayor Diny (responsive to ¶¶ 4 & 5 of the Order). Two documents referenced in Mayor Diny's statement are also included.

Though he has conducted a diligent search of his records, Mayor Diny reserves the right to supplement this submission in the event that he discovers any additional materials responsive to the Ethics Board's Order.

Ms. Kaitlyn Bernarde, City Clerk

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Thank you for your cooperation. If you have any questions, or any trouble opening the materials accompanying this submission, please contact me.

Very truly yours,

HURLEY BURISH, S.C.

/s/ Andrew W. Erlandson

Andrew W. Erlandson

cc Hon. Doug Diny (w/o enc., *via* electronic mail only)

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Sworn Statement of Mayor Doug Diny

1. My name is Doug Diny. I currently serve as Mayor of the City of Wausau. I make this statement upon information and belief, and in response to Wausau Ethics Board's February 24, 2025, Order.

2. I had a scheduled meeting in my office with the Wausau City Clerk on July 18, 2024, but my hand-written notes indicate we might have actually met on July 19. At that meeting we decided that it was too late to rush matters to get a ballot drop box ready for the August primary in compliance with Wisconsin law. The locks on the box we were considering using were rusted shut. I do not believe that, at that time, I was aware that City staff were contemplating re-wrapping that old box to make it a multi-purpose box for tax payments, water bills, correspondence, ballots, etc. It is my recollection that we agreed at that time that the Clerk would put together a plan and bring it to Council ahead of the November election.

3. Shortly after that meeting I informed City Attorney Jacobson that the Clerk and I had a plan to handle the box placement. I told her that I looked at what other cities were doing regarding city council consent (Brookfield, New Berlin and others). I talked to several mayors and got their opinion supporting my thought process. City Attorney Jacobson expressed her belief that those cities were "wrong," and she referred me to a Wisconsin Elections Commission Q&A best practices flier. That was the last time I recall the City Attorney speaking with me on the matter before the events that are the subject of the Ethics Board's current investigation.

4. The next contact I had with the City Clerk on the matter was Thursday September 19, 2024, at about 10:30 AM. The Clerk interrupted me while I was on a quarterly Zoom Call with ECDC (Ethiopian Community Development Council). I put the Zoom on mute and invited the Clerk in. At that time she told me she planned to deploy the box, and had just put postage on 4000+ absentee ballots and couldn't change it now. I was stunned by this news, expressed extreme disappointment that she broke our agreement. She said: "Anne said it would be a bad idea to take this to Council" and went on to say Anne (City Attorney Anne Jacobson) counselled her that she had sole discretion in the matter. I then expressed my concern about the optics of having a public dispute between the Clerk and the Mayor, as well as my concerns about lighting, security, proper markings, a new camera on the front door of City Hall, and the possibility of installing a live-feed camera. I was concerned about how the Clerk would enforce the law that voters can only drop off their own ballot. She objected to a live feed because she thought people

would be watching and call in bogus complaints. Adding to my surprise, the Clerk had just published Newsletter content concerning the November election, which included polling places, dates and times for early in-person voting, extended hours at City Hall, but never mentioned a drop box. The newsletter was at the printer when the Clerk came to see me on September 19.

5. After the meeting, I called the City IT Director, and he came down to my office at 12:00 PM to discuss camera upgrades and live feed options. He felt it was reasonable and had gotten some preliminary pricing.

6. The next day, Friday, Sept 20, 2024, late in the day, I noticed a contractor applying a new wrap to the box. I went to observe and talk with him. At first, I thought he was from our sign shop and wondered why he was working late on Friday and why they didn't prep the box in the shop before moving it outside. He told me that Ashley Kline (a customer service member in the Clerk's office) called him as a friend and told him they were in a hurry to get the box finished so he dropped what he was doing and came over to help. It was clear then that the Clerk had not followed my advice to properly plan and prepare for the drop box's deployment and installation.

7. On Sunday, September 22, realizing the drop box was unsecured, it occurred to me that I could simply wheel it inside and send a message. I told a close friend, and he asked me to get a picture. I had my wife come along to take a picture as well as hold the door for me. We wheeled it inside, up the elevator and to my office. I donned the hard hat for fun. It was an inside joke.

8. I notified the City Facilities Manager that I had moved the box early Monday morning. I notified the Police Chief as well, right before the 7:30 AM Police and Fire Commission meeting. Afterwards, the Police Chief, Fire Chief and both Deputy Chiefs were in my office for an interview with an appointee for PFC Commissioner. We were in the middle of budget reviews, so the week was very busy as it was, my Monday was back-to-back meetings all day. Coincidentally, the Ethics Board met that day, Monday, September 23, to discuss chairperson Kay Palmer's discussion with the City Attorney about changes to Municipal Code 2.03. I was in attendance.

9. District 7 Council member Rasmussen immediately set out to interfere with my duties as Mayor by coordinating with the Clerk and outside civilian activists to weaponize the issue. Local news reporter BC Kowalski emailed me at 1:35 PM on

Monday, September 23, indicating that he heard I had moved the box into my office and was looking for comment. Later in the afternoon, I received a similar email from Alder Rasmussen indicating that she heard I was seen on "security video" removing the drop box. This is a curious comment, considering that everyone who needed to know, including the Clerk, knew that I had secured it inside. Alder Rasmussen is not the custodian of building security video, and it's unlikely that anyone would have naturally thought to look at security video when it was already established where the box was secured. This was the beginning of a charade to further escalate and undermine the Mayor for political gain. It is widely understood: Alder Rasmussen wants to be mayor, and she seized the opportunity.

10. On Tuesday morning, September 24, I responded with a similar email statement to both Alder Rasmussen and BC Kowalski: "The outdoor Unsecured Dropbox was relocated to a safe indoor location until certain issues that the clerk is aware of are addressed."

11. Alder Rasmussen responded with: "In a disguise..." to which I responded, "No disguise" and included an attachment of the now famous photo of me with the drop box on the hand cart. 91 minutes later, BC Kowalski broke the story in the Wausonian using the photo Alder Rasmussen supplied and included security video details in the story along with comments Rasmussen had supplied. It went viral, of course, and the fuse was lit. The storm of media, death threats, calls etc., overtook the chance for a quick resolution with the Clerk (I have included with this submission a sound file containing as an example of the threatening voicemails). The City Attorney's office door is six feet from my door, she kept it closed all week, and they went into a radio silence posture.

12. Rasmussen continued to interfere by directing further staff to obstruct the Mayor in exercising his duties under WIS. STAT. § 62.09(8)(a): "The mayor shall be the chief executive officer. The mayor shall take care that city ordinances and state laws are observed and enforced and that all city officers and employees discharge their duties." Rasmussen also engaged civilian agitators to continue politicizing this chain of events.

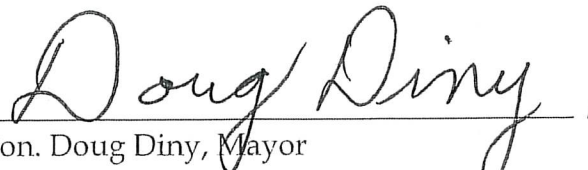
13. The charade continued about an hour later with local activist, Christine Salm, asking at 12:31 PM in an online open records request for security video footage of the "two people" removing the box. Curiously, the only people with knowledge of that would be someone having access to the indoor security, considering I was the only person who moved the box. The Clerk fulfilled that request one minute later, at 12:32 PM, by

uploading security camera footage from the second-floor elevator camera located inside the City Hall building. The Clerk is not the custodian of security video in the building, and it was well-known at the time of the request that the box was not stolen; I believe this was a clear attempt by Rasmussen to sow discord and disrupt the Mayor from working the issues out with the Clerk.

14. In several Facebook posts against the mayor early that week, Citizen Christine Salm also posted at least one photo on Facebook of the box being installed, which she has since taken down. A screen shot of the post is submitted with this statement.

15. Alder Rasmussen was not done interfering and directing staff in the matter. On October 2, 2024, Rasmussen sent an email to select staff indicating that she became aware of a Department of Criminal Investigations (DCI) agents at City Hall; Rasmussen requested staff "cooperate" with any criminal investigation. She further asked staff to disseminate this information to their work groups. DCI was conducting a discrete investigation, and it was not in Rasmussen's purview to obstruct or sway in any way. She concludes by saying that staff should feel free to call her (Alder Rasmussen) with any questions. I believe that in directing staff and giving the appearance that she had authority in the matter, Alder Rasmussen violated section 2.03.030(j) of the City Code of Conduct ("No official/employee shall in his or her official capacity do any act which he or she knows is in excess of his or her lawful authority or which he or she knows he or she is forbidden by law to do in his or her official capacity").

Under penalty of perjury, I swear and affirm that the foregoing statements are true and correct.



Hon. Doug Diny, Mayor
City of Wausau