

Brenda Jones
Disclosure Resolution
SUBMITTED BY COUNCIL MEMBERS BRENDA JONES AND KWAME
KENYATTA:

WHEREAS Recent events have transpired that resulted in serious allegations that the Mayor and members of his administration have engaged in conduct which may include a breach of the public trust and misuse of public funds; and

WHEREAS The Detroit City Council is the legislative branch of the City charged with fiscal oversight and a fiduciary obligation to the citizens of Detroit; and

WHEREAS The City of Detroit Law Department is headed by the Corporation Counsel and is mandated by the Detroit City Charter, Section 6-403, to defend all actions or proceedings against the City and to obtain the consent of the City Council to settle all civil litigation; and

WHEREAS Rule 1.13 of the Michigan Rules of Professional Conduct (MRPC) requires that a lawyer employed to represent an entity represents the entity as distinct from its individual officials, directors, or employees; therefore the Corporation Counsel's obligation of representation is to the City as the entity, including both the executive and legislative branches of government; and

WHEREAS On September 11, 2007, a unanimous jury determined that Mayor Kilpatrick and the City violated the Whistleblower's Protection Act and awarded plaintiffs Gary Brown and Harold Nelthrope \$6.5 million (six million, five hundred thousand dollars); and

WHEREAS The Mayor adamantly vowed to appeal the verdict but abruptly changed course following facilitation on October 17, 2007, and requested City Council's approval to pay \$8,400,000.00 (eight million, four hundred thousand dollars) in settlement of the plaintiffs' claims (including \$400,000.00 to Walter Harris for a related claim yet to come to trial); and

WHEREAS In reliance upon information provided by the Corporation Counsel, City Council accepted the recommendation as being in the best interest of the citizens, and voted to approve the settlement on October 23, 2007; and

WHEREAS City Council has subsequently learned that critical information/documents relative to the recommendation for settlement was not disclosed at the time of the request for City Council approval; and

WHEREAS The withheld information/documents are vital to the fulfillment of City Council's Charter mandated obligations generally, and its role pursuant to section 6-403, specifically, mandating that no civil litigation of the City may be settled without the

consent of the Council, and impacts upon ongoing related issues of serious import to the City; and

WHEREAS This information was known and available to the corporation counsel at the time of settlement and thereafter, and as revealed in the recent Freedom of Information Act (FOIA) litigation, Detroit Free Press, Inc. v City of Detroit, Case No. 08-100214-CZ, some of it has been obtained by the local press but has yet to be published or provided to the City Council; and

WHEREAS Pursuant to a ruling by the Wayne County Circuit Court on February 5, 2008 ordering disclosure of the information/ documents, the subject information/documents are being held under seal of the court pending the termination of any appeal(s) and/or the lifting of a court-ordered stay; and

WHEREAS The City's decision to pursue appeal of the Wayne County Circuit Court's ruling will likely result in the information/documents remaining under seal for an indefinite period of time and further delay in disclosing the subject information/documents to City Council will seriously undermine the Council's ability to make informed decisions with respect to pending and potential legal matters; and

WHEREAS City Council, as the legislative branch of the City with fiscal responsibility and authority to settle litigation, and as an indivisible part of the City which is the defendant in the aforementioned litigation, has an absolute right to receive and review the subject information/documents; **NOW THEREFORE BE IT**

RESOLVED That the Corporation Counsel, including any and all outside legal counsel retained by the City or the Mayor in defense of Gary A. Brown and Harold C. Nelthrope v City of Detroit and Kwame Kilpatrick and Walter Harris v City of Detroit and Mayor Kwame Kilpatrick shall immediately disclose to the Detroit City Council all information/documents identified by the Wayne County Circuit Court in its February 5, 2008 decision in Detroit Free Press, Inc., v City of Detroit, Case No. 08-100214-CZ, as well as reproductions of electronic communications between the Mayor and/or members of his administration transmitted utilizing City of Detroit communication devices as referenced in pleadings in the above-referenced matter; and **BE IT FURTHER**

RESOLVED That consistent with the powers and duties prescribed to Detroit City Council in Sections 4-109 and 6-403 of the Charter, Corporation Counsel and all outside legal counsel retained by the City or the Mayor in defense of Gary A. Brown and Harold C. Nelthrope v. Mayor of Detroit and City of Detroit et al and Walter Harris v City of Detroit and Mayor Kwame Kilpatrick are requested to appear for a closed session of Detroit City Council set for February 12, 2008 at 1:30 p.m. and to produce **all** documents at issue or referred to in Detroit Free Press, Inc., v City of Detroit, **Case No. 08-100214-CZ** at that time.