

June 14, 2017

Mayor Dale Cook

Commissioner Courtney Reardon

Commissioner Diane Hanson

Commissioner Mike Dunmeyer

Commissioner Gary Persinger

Dear Mayor, Commissioners and Residents of Dewey Beach:

This letter is written by and on behalf of the employees of the Town of Dewey Beach who have signed their names below.

The purpose of this letter is to demand, for the reasons set out below, the immediate and permanent removal of Mr. Marc Applebaum as Town Manager.

We are exercising our rights as whistleblowers under Delaware Code Title 19, Chapter 12 to report egregious misconduct, including violations of multiple provisions of the Delaware Code, common law, and Title VII of the Civil Rights Act of 1964.

Each of the numbered paragraphs below is a complaint against Mr. Applebaum which is based upon *personal observation* by an employee (or employees) of the Town of Dewey Beach. The eyewitnesses to the acts described below are prepared to testify under oath, and in court, as to the facts detailed.

Each of these violations has been reported to one or more Town Commissioners, who have done nothing to remedy these violations but rather have intentionally turned a blind-eye, while allowing Mr. Applebaum to run roughshod over the rights of employees and citizens of the Town.

The allegations, in no particular order, are:

**SEXUAL HARASSMENT:** Mr. Applebaum routinely engages in acts of sexual harassment in violation of Title VII of the United States Code and Section 710 of Title 19 of the Delaware Code. Mr. Applebaum's sexual harassment of women has been known to some of the Commissioners since at least 2010—*prior to* Mr. Applebaum's appointment as Town Manager. Despite their knowledge of documented allegations of harassment by Mr. Applebaum, the Commissioners appointed him to Town Manager where they knew he would be in a position of

authority over several women. The Commissioners' conduct evidenced a reckless disregard for the rights of female Town employees to be free from harassment and discrimination in the workplace and established a policy at the highest levels of Town government to allow the harassment of female Town employees. As Town Manager, Mr. Applebaum has harassed and discriminated against women in the following ways:

1. Mr. Appelbaum wears pajama bottoms into the office, often without underwear, intentionally making the outline of his penis visible to female employees;
2. On one occasion when Mr. Applebaum wore pajama bottoms, without underwear, into the office, he ordered two female employees into his office where he proceed to stand in front of his desk with an obvious erection. The two women were seated in chairs in front of Mr. Applebaum's desk. Mr. Applebaum was standing in front of his desk and close to the two women, such that his erection was near their eye level. When a male employee walked into Mr. Applebaum's office and saw what was happening, Mr. Applebaum screamed, "Get out, shut the door!"
3. Mr. Applebaum frequently wears no shoes in the office and on at least one occasion has rubbed his bare leg and foot on the leg of a female town employee in a suggestive manner, which she found repulsive.
4. Mr. Applebaum frequently tells sexual stories and jokes, as well as makes sexual comments and innuendo, to women in the office with the obvious intent of embarrassing and humiliating them. This conduct includes yelling the word "fornication" at the top of his lungs during a staff meeting.
5. Mr. Applebaum constantly uses the word "fuck" or "fucking" in the office and makes other obscene remarks in the presence of female employees.
6. Mr. Applebaum's often directs his obscenities at female employees to intimidate them and make them subservient, two female employees have already left as a result of this conduct.
7. Female employees who accept Mr. Applebaum's humiliating treatment without complaint are rewarded with advancement, to the detriment of

those who resist or complain; in this way, Mr. Applebaum attempts to coerce the objecting women to submit to his unlawful and offensive behavior without complaint.

8. Mr. Applebaum does not pay female Town employees equally and based upon their professional skills but rather rewards and pays fairly only those women who submit to him.
9. The signed employees below have frequently witnessed female employees crying when leaving Mr. Applebaum's office.

**ABUSIVE CONDUCT TOWARDS ALL EMPLOYEES/LACK PROFESSIONALISM:**

Through a pattern and practice of bullying, including derogatory remarks and interference with job responsibilities, Mr. Applebaum conveys to Town employees that he can do whatever he wants with impunity. This impression is reinforced by Town Commissioners and the Mayor when they fail to take any action in response to known misconduct by Mr. Applebaum.

10. Mr. Applebaum frequently screams and swears at Town employees, denigrating them in front of co-workers. This conduct includes "giving the finger" to employees, and even to the Mayor, when his back was turned.
11. In violation of the Dewey Beach Town Charter, Mr. Applebaum has repeatedly advised Town employees that they are not allowed to attend or speak at Town meetings and may not answers questions posed by the public or the Commissioners, even on matters related to their area of expertise. This policy established and enforced by Mr. Applebaum also violates their First Amendment rights under the United States Constitution.
12. Mr. Applebaum actively obstructs Town employees from carrying out their job requirements, regardless of the risk to public safety.
13. Mr. Applebaum frequently insults and denigrates Town Commissioners and the Mayor, both in their presence and when they are not present, in order to show Town employees that the Commissioners and the Mayor will not stand up to him, positioning himself as the ultimate authority on all matters pertaining to the Town, including the conditions of their employment. In this way, Mr. Applebaum signals to the employees that

they have no recourse or venue in which to complain about his conduct and intimidates them into either accepting his egregious behavior or leaving their positions. Long-time employee Barbara Kyewski quit earlier this year after 10 years on the job, stating, "I can't stand it any longer working for that man, it's unbearable." Similarly, Katrina White, who worked for the Police Chief for 4 years and then worked in the Town Hall as a clerk, quit saying she could no longer put up with Mr. Applebaum's sexual innuendos and harassment. Current employee Sheena Gossett has complained to the Town Clerk that Mr. Applebaum's constant swearing and sexual talk is offensive and affront to her religious beliefs. Under Section 16 of the Town Charter, the Commissioners are the appellate body for "the protection of Town employees" against improper job actions by the Town Manager. Because Town employees witness the level of authority possessed by Mr. Applebaum and the bullying of the Mayor and Commissioners by Mr. Applebaum, they understand that there is no real recourse for them should they be fired by Mr. Applebaum. In short, they are required to shut up and take it.

14. As an example of this concerted effort to show the employees that he and only he has the authority in the Town, at a recent meeting at which the Mayor was present, he not only gave the Mayor "the finger" to his back as the Mayor left the meeting, he stated that the Commissioners are "so stupid" that "we don't need them" and that he can run the town without them.
15. Under the Town Charter, it is the job of the Town Commissioners to establish and vote on the budget and to adhere to the budget in making appropriations. However, after the budget is voted on and established, Mr. Appelbaum makes significant changes to it as a means of controlling and punishing employees. Mr. Applebaum shifts funds from one department to another without seeking approval from the Commissioners. At times, this threatens public safety; however, since employees are not permitted to speak about this at Town meetings, they cannot do anything about it.
16. Mr. Applebaum frequently dons a "Rastafarian" outfit (consisting of a Rastafarian hat, a shawl, and a bag with a marijuana leaf on it) at the office, sometimes in conjunction with pajama bottoms. This is culturally insensitive, inappropriate, and suggestive of marijuana use. Often during the work day, Mr. Applebaum will leave the office for a very short time,

giving the distinct impression he has done so for the purpose of using marijuana while at work.

17. Mr. Applebaum maintains a “voodoo” doll on his desk and asks that employees who come into his office for meetings, including lifeguards, rub the doll. Employees who refuse are pressured. Many employees find this strange and humiliating and feel that they are intentionally being made to look foolish.

**RACIAL DISCRIMINATION** Town Employees of color are made to feel inferior by Mr. Applebaum, who in front of other Town employees, refers to them in derogatory fashion

18. Mr. Applebaum refers to employees of color as “the brown people.”
19. Mr. Applebaum treats employees of color as inferior and discriminates against them based upon their race.
20. Mr. Applebaum talks down to employees of color with an aggressive and derisive tone, in an effort to make them subservient

**IMPROPER INTERFERENCE WITH TOWN LAW ENFORCEMENT:** Mr. Applebaum uses his position as Town Manager to interfere with the workings of the Police Department

21. Mr. Applebaum goes around the chain of command at the Police Department, interfering with discipline, creating an unprofessional environment and jeopardizing public safety. It is essential to order and safety that police officers understand who they report to (the Chief) and that the chain of command is followed.
22. Mr. Applebaum attempts to pressure police officers and law enforcement staff to give him police reports, which by state law cannot be given to him. This situation became so untenable that the Delaware Criminal Justice Information System official had to intervene and tell Mr. Applebaum directly that this conduct is illegal.
23. The Chief of Police has been in his position for over 25 years and has extensive, specialized professional training for his position. Similarly, all

full-time Town police officers have attended police academy and received multiple certifications relevant to law enforcement. This training informs the appropriate manner of responding to a situation and interacting with members of the public. Mr. Applebaum has no such training but constantly involves himself in police procedures. Mr. Applebaum is not qualified to determine police procedure and matters of public safety.

24. Mr. Applebaum routinely attempts to interfere with the professional independence of police officers, among other things, by directing them to take enforcement actions against selective individuals and businesses. This violates not only the Town Charter but also the Delaware Code, which is designed to preserve the independence of law enforcement. This conduct sets a poor example for young officers who are new to the job and are led to believe that the law may be enforced selectively rather than uniformly.
25. When the Chief of Police was recently out on sick leave, Mr. Applebaum approached individual officers and suggested that the officers should assist him in forcing the Chief out of his position. He stated that he “did not trust the Chief.” As an inducement to help him oust the Chief, Mr. Applebaum suggested that one of the officers could replace the Chief. Witnesses have heard Mr. Applebaum state that the Chief “is not fit for the job.” This effort to undermine the Chief of Police with his officers not only violates the Chief’s due process rights under Chapter 93, Section 9301, but also jeopardized public safety by undermining the Chief’s authority—a crucial element in maintaining order and discipline within the Department.
26. Mr. Applebaum consistently pressures the Police Chief (and the Building Inspector) to violate State law by interfering with matters that are within the exclusive purview of State agencies, including the State Fire Marshall and the Alcohol Beverage Control Commission. When they refuse, Mr. Applebaum becomes visibly angry.
27. As a result of Mr. Applebaum’s continued efforts to direct and interfere with law enforcement operations, outside law enforcement (including the State Police) constantly question the Town’s policies.

**JEOPARDIZING PUBLIC SAFETY BY IMPROPER INTERFERENCE WITH DEWEY BEACH PATROL:** Dewey Beach Patrol is recognized as an Advanced Lifeguard Certified Agency by the United States Lifesaving Association. Dewey's well-trained, professional lifeguards are important to the families that visit Dewey and play an important role in public safety. Mr. Applebaum's continuing efforts to undermine the structure and functioning of DBP is a threat to the safety of beachgoers in our community and appear to violate the Town Charter, pursuant to which DBP reports to the Commission, and not the Town Manager.

28. Mr. Applebaum, who has no training in open water rescue, emergency medical services, or any other essential skill for lifeguarding, insists on interfering with the decisions of the Captain of the Dewey Beach Patrol, including scheduling and staffing of the lifeguards. The Captain of DBP, who has multiple certifications and extensive training, makes staffing decisions based upon public safety; these decisions are routinely overturned by Mr. Applebaum without explanation. Mr. Applebaum's decisions are made without regard to the safety standards applicable to open water lifeguarding.
29. For Memorial Day weekend 2017, the busiest, most populous weekend of the year in Dewey, 31 lifeguards were scheduled to work the weekend. Mr. Applebaum directed the number of lifeguards be reduced to 8. When the Captain of DBP refused, a shouting match ensued, during which the Captain was berated and humiliated.
30. Mr. Applebaum has placed young staff members "in charge of" DBP, who have no experience in lifesaving or EMS, and requires the Captain to report to them. Through this method, the DBP are humiliated and bullied into siding with Mr. Applebaum.
31. Mr. Applebaum conducts staff meetings with DBP lieutenants (without the Captain's knowledge) and prohibits the Captain of DBP from attending the meetings. In this way, Mr. Applebaum interferes with the command structure and asserts his control over the employees of DBP, who should be reporting only to the Captain. Mr. Applebaum has taken control over all disciplinary issues within DBP, essentially stripping the Captain of authority over DBP employees. Because Mr. Applebaum is completely unfamiliar with the rules and requirements for lifeguard certification, training, and discipline—i.e. he is ill-equipped to know whether a DBP employee has violated an essential rule or tenet of the employee's job—this

pose a threat to public safety. When members of DBP do not understand to whom they report or are accountable and when the rules of their employment are arbitrarily enforced, discipline is difficult to maintain.

32. Mr. Applebaum prohibits the Captain from attending Town meetings, speaking to Town Commissioners regarding DBP, or answering questions from the public regarding DBP. The DBP was told to “shut up” and not discuss any matters pertaining to DBP with anyone but the Town Manager.
33. The DPB requires its employees to undergo drug testing. Federal privacy rules under HIPAA limit the individuals who can see results of such testing; under HIPAA the Town Manager is not permitted to view the results of drug tests administered to DBP employees, however, Mr. Applebaum routinely asks for and views the results of these tests.

#### **IMPROPER INTERFERENCE WITH THE OFFICE OF THE BUILDING INSPECTOR**

34. Although he has no experience as a building inspector and little familiarity with the relevant building codes, Mr. Applebaum continually interferes with the job of the Building Inspector by insisting on seeing certain applications and directing the Building Inspector on how to handle applications.
35. Mr. Applebaum often tells certain Town residents that they do not need permits, in violation of the Town Code. Mr. Applebaum also interferes with the proper issuance of building permits in order to punish his perceived enemies. By reviewing applications, Mr. Applebaum determines whether anyone on his “enemies list” is seeking a permit and then obstructs the applicant’s ability to obtain a building permit. As a result of this interference, even when neutral application of the Building Code would result in the applicant receiving a permit, Mr. Applebaum forces the Building Inspector to deny the permit. Mr. Applebaum has even gone so far as to change the Building Code in order to deny applications. On two occasions, this has resulted in lawsuits. Mr. Applebaum’s use of the permitting process as a weapon to punish his enemies, violates the applicants’ Constitutional rights to substantive due process and equal protection, and undermines the authority of the Building Inspector



36. Mr. Applebaum's interference in the permitting process is so pervasive that during an argument with the Building Inspector, when the Building Inspector refused to apply the code the way the Town Manager sought, Mr. Applebaum shouted, "Now I have to be the building inspector."
37. When applicants pay the fee for a permit or a building expansion, that money is supposed to be earmarked for the office of the Building Inspector; however, it appears that those funds are diverted by the Town Manager for other purposes.

### **OTHER IMPROPER/DISHONEST DEALINGS**

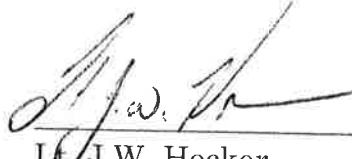
38. In violation of the Town rules and without permission, Mr. Applebaum took the Town's automobile on a long-distance trip to New Orleans. On this trip, Mr. Applebaum got into an accident, which he subsequently hid from Town Commissioners. It was not until the City of New Orleans police report was made available that the true facts were learned. Despite this misuse of the Town's car, accident, and attempt to cover up both the misuse and the accident, the Commissioners and the Mayor took no action against Mr. Applebaum but rather facilitated his malfeasance by attempting to hide the incident from the public. This failure to control or address Mr. Applebaum's conduct showed Town employees the extent to which no one supervises Mr. Applebaum's conduct and he is answerable to no one.
39. On another occasion, in violation of Town rules and without permission, Mr. Applebaum allowed his daughter to drive the Town vehicle to and in North Carolina. During her unauthorized use of the Town vehicle, Mr. Applebaum's daughter received a traffic ticket, which was only revealed when the Town clerk received a notice of it at the Town offices.
40. When employees attempt to question the propriety of a directive from Mr. Applebaum, they are told that he knows best, regardless of the subject matter, because he is "well-educated." The truth is that Mr. Applebaum has no formal education.
41. Although he brags to employees about his success as a businessman, Mr. Applebaum and his brother operated a business that went into bankruptcy, owing Delaware and Maryland residents hundreds of thousands of dollars.

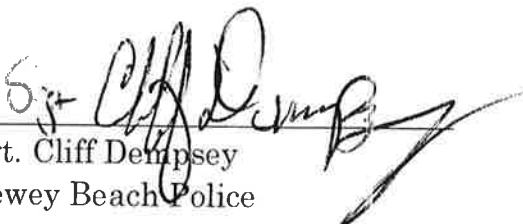
42. In view of Mr. Applebaum's lack of formal education and fiscal difficulties, it is unclear whether, in view of the Town Manager's extensive authority over all aspects of Town management including disbursement of funds, Town Commissioners have fulfilled their responsibilities under Section 15(b) of the Town Charter to "impose such qualifications for Town Manager as may be deemed necessary."

By ignoring complaints from Town employees and sanctioning the abusive, improper, and illegal conduct and policies of Mr. Applebaum, as detailed above, the Town Commissioners and the Mayor have exposed both themselves individually, and the Town as an entity, to legal liability for Mr. Applebaum's actions. If the Mayor and the Commissioners do not take *immediate* action to remove Mr. Applebaum and put an end to the toxic and abusive work environment detailed above, we the undersigned employees intend to seek legal relief in court.


Respectfully,


  
Chief Sam Mackert  
Dewey Beach Police


  
Lt. J.W. Hocker  
Dewey Beach Police

  
Sgt. Cliff Dempsey  
Dewey Beach Police

  
Sgt. Dave Naar  
Dewey Beach Police


  
Cpl. Greg Lynch  
Dewey Beach Police

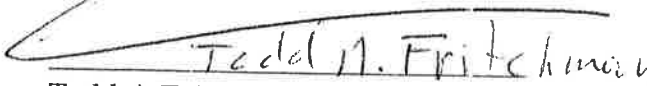
  
Ptlm. Matt Wilson  
Dewey Beach Police


  
Ptlm. Trevor White  
Dewey Beach Police

  
Ptlm. Jason Lovins  
Dewey Beach Police

  
LaToya Weatherly  
Dewey Beach Police

  
Frank Johnson  
Dewey Beach Police

  
Todd A. Fritchman  
Captain Dewey Beach Patrol

  
William Mears  
Dewey Beach Bldg Inspector