

# CITY OF TONTITOWN, ARKANSAS

RESOLUTION NO. \_\_\_\_\_

## A RESOLUTION ADOPTING ARTICLES OF CENSURE AGAINST MAYOR ANGELA RUSSELL

WHEREAS, Angela Russell, as Mayor of the City of Tontitown, Arkansas, holds a fiduciary duty to uphold the Arkansas Constitution, comply with all applicable state and municipal laws, and maintain transparency and accountability in the governance and finances of the City; and

WHEREAS, the Arkansas Legislative Audit Reports for fiscal years ending December 31, 2023 and December 31, 2024 identified multiple material weaknesses, non-compliance issues, and statutory violations under the administration of Mayor Russell; and

WHEREAS, the Mayor's subsequent actions and administrative practices have raised serious concerns regarding judgment, oversight, adherence to public meeting laws, and proper stewardship of taxpayer funds;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Tontitown, Arkansas, that the following Articles of Censure are hereby adopted against Mayor Angela Russell:

### SECTION 1. BASIS FOR CENSURE

1. Unauthorized IT Payments – The Audit Report found that the City entered into a contract for IT support/services (August 4, 2022) and, in addition to regular vendor payments, paid \$27,840 to an employee of that vendor between September 2024 and January 2025 and advanced \$15,684 for equipment not yet received or reimbursed.
2. Improper Legal Fee Disbursement – The City disbursed \$15,080 on July 11, 2023, to pay legal fees for a private citizen group opposing the landfill expansion — an unauthorized expenditure of public funds.
3. Backdated Financial Transactions – The City paid an invoice dated January 22, 2024, with a check backdated to December 29, 2023, misrepresenting fiscal-year expenditures and overstating disbursements, thereby distorting the General Fund's true year-end balance.
4. Illegal Polling of Council Members Regarding Litigation Appeal (September 18, 2024) – On or about September 18, 2024, at approximately 3:15 P.M., Mayor Angela Russell contacted multiple City Aldermen individually to determine whether they supported proceeding with an appeal of the landfill expansion litigation. This conduct constitutes an illegal polling of the City Council, contrary to the Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-106).
5. Unauthorized Appointment of City Attorney (January 29, 2025) – On January 29, 2025, Mayor Angie Russell executed a Letter of Engagement (LOE) with the law firm of Harrington, Miller, Kieklak, Eichmann & Brown, P.A., designating attorney Justin Eichmann to serve as City Attorney for Tontitown. The LOE establishes multiple fixed monthly fees totaling \$7,600, authorizes rate adjustments "with approval from the Mayor," and references the firm's representation of the City in four categories of work. T...

### SECTION 2. IMPACT AND SIGNIFICANCE

The cumulative pattern of violations and administrative misconduct demonstrates a disregard for statutory compliance, fiscal accountability, and open government. These actions have eroded public trust, exposed the City to potential legal and financial risk, and compromised the integrity of the City's governance.

## **SECTION 3. EXPECTATIONS FOR CORRECTIVE MEASURES**

In light of this censure, the City Council directs and expects that Mayor Russell and the administration shall: - Implement comprehensive internal controls to prevent recurrence of unauthorized or improperly documented payments; - Strictly enforce procurement and bidding requirements under state law; - Reconcile and recover any outstanding overpayments or unreturned advances; - Accurately record all financial transactions within the proper fiscal year; - Cease any form of polling or informal deliberation among Council Members outside of duly noticed public meetings, in full compliance with the Arkansas Freedom of Information Act; - Respect the independence of the City Clerk-Treasurer and the statutory rights of individual aldermen to introduce ordinances; - Provide a written corrective-action plan and compliance report to the City Council within sixty (60) days of adoption of this resolution.

### ***I. Applicable Law***

A. Arkansas Code Annotated §§ 14-43-314 and 14-43-315 • § 14-43-314 provides for the election of city attorneys in cities of the first class. • § 14-43-315(a) authorizes a city council, by ordinance, to provide for the appointment of a city attorney in lieu of election, and to prescribe by ordinance the attorney's duties, term, and compensation. Therefore, appointment of a city attorney is lawful only if authorized by ordinance of the council. B. Tontitown Code §§ 30.50 and 30.52 • § 30.50: "There shall be a City Attorney, who shall be either elected or appointed as provided by law." • § 30.52: assigns duties including attending all council meetings and reviewing ordinances. Because § 30.50 defers to "law," the City's authority is governed by § 14-43-315, meaning council authorization by ordinance is required. C. Attorney General Opinions Arkansas Attorney General opinions (2006-038, 2010-080, 95-187, 2001-035) have repeatedly affirmed that: • A mayor cannot unilaterally appoint or contract with an attorney to act as city attorney without council approval. • An appointed city attorney must be established by ordinance, or the contract is voidable as ultra vires (beyond lawful authority). • If no ordinance has abolished the elective office, the position remains elective and any appointment is invalid.

### ***II. Analysis***

1. Lack of Ordinance Authorization – No record exists of any ordinance adopted by the Tontitown City Council authorizing the abolition of the elective office of city attorney or the appointment of a city attorney under § 14-43-315. Accordingly, the Mayor's execution of the LOE was not supported by lawful authority and constitutes an unauthorized contract unenforceable against the City. 2. Effect of the Mayor's Signature – The Mayor may execute contracts approved by Council but has no independent authority to bind the City to professional service contracts creating statutory offices. 3. Payments Under the LOE – Any payments made under this LOE may lack statutory authorization, be cited by Arkansas Legislative Audit as "unapproved contractual expenditure," and constitute an illegal exaction under Arkansas Constitution, Article 16, § 13.

### ***III. Recommended Council Actions***

1. Council Clarification – Adopt a resolution declaring that no valid appointment occurred under the January 29, 2025 LOE and direct staff to identify and report all payments made under this agreement. 2. Ordinance Adoption (if Appointment is Desired) – Draft and adopt an ordinance under A.C.A. § 14-43-315 formally establishing the City Attorney as an appointed position, defining compensation, duties, and term. 3. Ratification or New Procurement – If Council wishes to retain the same attorney, ratify the engagement by ordinance or solicit Requests for Qualifications (RFQs). 4. Legislative Audit

Notification – Submit this item and supporting documentation to Arkansas Legislative Audit for review and compliance confirmation.

#### **SECTION 4. FORMAL PUBLIC STATEMENT**

This Article of Censure shall serve as a formal and public reprimand of Mayor Angela Russell for actions inconsistent with her duties under law and the principles of ethical governance. It shall be entered into the permanent minutes of the City Council, filed with the City Clerk-Treasurer, and made available for public inspection.

#### **SECTION 5. EFFECTIVE DATE**

This Resolution shall be effective immediately upon adoption by the City Council of the City of Tontitown, Arkansas.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.