

CITY OF ELGIN  
SPECIAL SESSION MINUTES FOR APRIL 1, 2015

COUNCILORS PRESENT -

Name:	Present:	Name:	Present:
Mayor Alan Duffy	Yes	Councilor Brent Linville	Yes
Councilor Michelle Miles	Yes	Councilor Kathy Warren	Via Phone
Councilor Teresa Shaffer	Yes	Councilor Jeremy Richards	Yes
Councilor Rocky Burgess	Yes	Student Councilor Lena Johnson	Yes

Call to Order

The meeting was called to order at 7:00 PM by Mayor Duffy with the salute to the flag.

Roll Call

Mayor Duffy requested roll call. Councilor Miles, Councilor Shaffer, Councilor Burgess, Councilor Richards, Councilor Linville, Councilor Warren and Student Councilor Johnson all responded present.

Mayor Duffy addressed the Council and the audience stating that Councilor Warren was attending the meeting via speaker phone. Mayor Duffy further requested for everyone to conduct themselves in a respectful manner and those who wish to address the Council to come forward to the table and to speak into the microphone.

Complaint # 3-15-7

Administrator Eckstein read a statement in response to the complaint filed by Mr. Mackie. Administrator Eckstein then stated he would read the complaint. Mr. Mackie made a point of order. After being recognized by the Mayor, Mr. Mackie stated he had not been officially informed of the meeting other than seeing the notice posted at the Post Office and therefore did not have witnesses present or been able to gather documentation making this an illegal meeting by due process of the City. Administrator Eckstein responded that rule only applies when a grievance is submitted by an employee or official of the City and he is neither.

Mr. Mackie stated he never was an employee. Then went on to state the grievance is only of City employees not volunteers. What the City Council did previously with him was not according to the Charter or Ordinances. Administrator Eckstein stated this is a complaint made by a citizen and it is being handled just like any other complaint. Wyatt Baum, legal counsel for the City, stated from a notice and due process standpoint, as long as the notice was posted with adequate time to give reasonable notice to the citizens, then allowed to have.....

Mr. Mackie interjected to say according to their due process; he was to be notified by mail or certification. Administrator Eckstein agreed for a qualified grievance, yes that is the process, but this is a complaint. Mr. Mackie stated it doesn't matter as the Complaint says he would be notified. Wyatt asked Mr. Mackie what he meant by due process. Mr. Mackie responded saying: the City charter, City Ordinances and City Bylaws that govern the Council; they want everything done where everyone is held accountable, then let's start to hold them accountable, no matter how small the infraction. Wyatt responded saying due process is a broad concept in Constitutional law. Technically due process is rested with those individuals who are accused. The accused would need to be notified. Furthermore not sure why you would need witnesses as the complaint is what you heard. You have the opportunity to share with the Council what you

saw. Mr. Mackie stated his point was he was not officially notified; therefore this is an illegal meeting. Administrator Eckstein stated legal made his point, let's move forward. Wyatt asked Mr. Mackie if he saw the notice at the post office. Mr. Mackie responded he had. Wyatt asked if he was here now and Mr. Mackie responded yes, but he didn't have his paperwork in order to prove his case to the Council. All the Council has is what has been provided by Administrator Eckstein. Someone stated all we have is the complaint. Mr. Mackie then said he, Administrator Eckstein, has had time to prepare for over a week; Mr. Mackie did not have time to prepare. Does he have to go gather his information? Wyatt asked what other information Mr. Mackie had. Mr. Mackie responded it doesn't matter; what matters is they are not following procedures. That is what this is all about; following the procedures, making people stand up for what they are supposed to be doing, not getting by for now and ask for forgiveness later. That is what has been going on for over a year. Administrator Eckstein questioned what that had to do with him as he has only been with the City less than 6 months. Mr. Mackie stated Administrator Eckstein was following in the footsteps of previous administrators. Administrator Eckstein requested to complete his defense.

Wyatt addressed the Council and stated his position as legal counsel for the City, stating he had reviewed the Charter, and Ordinances of the City, when someone submits a formal grievance to the City, notices are sent out by first class mail. When an individual or citizen files a complaint, the written complaint is available to be looked at, along with allowing the individual who made the complaint to come in and make their case. Notices that go out for regular meetings are adequate to make the public aware of the meeting. Whether or not the Council decides to provide Mr. Mackie with additional time to gather evidence and meet at another time that is the Council's prerogative. Mr. Baum stated after reviewing the Charter and Ordinances, the Council is within their rights to continue now. Mayor Duffy asked for Council input. Councilor Burgess and Councilor Shaffer both stated they wanted to proceed now. It was the consensus of the Council to proceed.

Administrator Eckstein then read the complaint made against himself and Dan Larman. Administrator Eckstein continued with his defense statement reading the portion of the February 10, 2015 Approved Council Minutes that pertain to the Public Works Service Truck. Councilor Miles voiced her objection to having her name put in bold print on the voting results in the document provided to the Council for this meeting. Administrator Eckstein apologized. Administrator Eckstein continued with reading the minutes of February 10, 2015. Administrator Eckstein then read the pertinent section of the approved March 10, 2015 minutes followed by reading the pertinent section of the unapproved March 24, 2015 minutes. Administrator Eckstein stated he had available a recording of the March 10 minutes that were referenced by Mr. Mackie and asked if the Council would like to listen to it. Mayor Duffy asked for any questions from the Council and Councilor Miles stated the minutes of March 24, 2015 have not been approved yet. None of the Councilors asked to listen to the March 10 recording. Administrator Eckstein then stated he also has a recording of the March 24 meeting and asked if the Council would like to listen to it. All Councilors declined.

Administrator Eckstein continued giving his defense citing information he was given from Oregon.gov regarding disposition of Surplus Property as the City Charter does not provide guidance on this issue including the definition of Surplus Property. Councilor Miles responded she had an email from Shawn O'Day from League of Oregon Cities that did not agree. Councilor

Miles then read the email she had received. Administrator Eckstein re-read the section of the March 10 minutes and asked if the Council voiced their wishes to have the old service truck disposed of in any other way. The Council responded they had not.

Administrator Eckstein then concluded his defense by reading the remainder of his statement. Mayor Duffy then invited Mr. Mackie to come forward.

Mr. Mackie stated in rebuttal: "Regardless of Council approval they still need to follow protocol and procedures of the City. In the past, surplus vehicles have always gone out to sealed bid. Councilor Linville responded with a No. Mr. Mackie stated there is one instance where it was not done. And it got brought up and it was said it would not happen again and it did happen again. Those people that did it did not get punished. Again the Council insists on following protocol and following guidelines, then follow them. Where are the quotes? I have yet to see an official quote, even went to City Hall and asked. Administrator Eckstein said would have them the next day and then was told I have only one. Where are they? 20k for a utility bed, you could have shopped around and got a better deal I can guarantee that. If that would have gone out to 3 other separate people, it would have come in a lot cheaper. The disposal of the service truck, the one that they sold \$650 Councilor Linville moved, in the Feb 10, 2015 unapproved minutes, now approved, says Councilor Linville moved to purchase newer service truck, not a pickup, service truck. Service truck means already equipped and ready to go. What the Council was presented with was a 2015 picture and detail of the used dodge pickup that has been sold to the City. If that isn't misguidance and misdirection, I don't know what is. In turn with that motion, that does not give Administrator Eckstein or Dan (Larman) permission to dispose of the City pickup. Even though the dodge, to proceed, it doesn't say to make the final deal, only to proceed. The trade in is also illegal. Not to mention that Administrator Eckstein has a spending limit and needs authorization to write checks. I don't know about the ledger yet or if it's available to see at this point in time. My understanding is this isn't even recorded yet and this is 3/10/15 of a check written to Legacy Chrysler for \$32,550. There are no other signatures except for Administrator Eckstein, no initials, nothing. As for the accusations of last Council meeting of calling him a liar there is a reason why we have it in the charter for him to take the notes and present and make up the meeting minutes. This is a prime example of why we have that. Now the recording isn't real great, I have a hearing issue, but what I heard on the recording is what I believe in. The issue to come at hand is Administrator Eckstein did not do his job. And he is at the meeting trying to make changes to cover what he should have done previously before submitting the meeting minutes to the Councilors. He should have proofed, there are going to be typos and misspellings but to change what it actually says, he did not do his job. He is not fulfilling his job duties as he swore he would. Technically, makes him a liar. I'm finished."

Administrator Eckstein stated the Council had given their approval and authorized the purchase of the truck as long as the total cost was under \$40,000. I was acting under the guidance of the Council and that is my number one job description -- to handle the day to day activities with the general direction of the Council. I don't know what else to say. You guys said to keep it under \$40,000 and it came in at \$32,550.

Mayor Duffy recognized Mr. Mackie. In rebuttal, Mr. Mackie stated he (Administrator Eckstein) did not get three quotes so he did not properly follow the city functions.

Administrator Eckstein stated he did get three quotes and asked Councilor Linville if he had seen the quotes. Councilor Linville confirmed he did see the quotes. Mr. Mackie then asked where are they? There is no proof except your word. Mr. Mackie then asked Councilor Burgess if he had seen the quotes as he is on the Public Works committee – he should have seen the three quotes. Councilor Burgess responded he did not ask to see them. Mr. Mackie responded he should have seen them; he should not have had to ask for them, he should have seen them. Buying a pickup is not a day to day service. Councilor Burgess stated he voted to approve what was done. His only concern was that the cost did not exceed \$40,000 as is stated in the minutes – other than that it is good. Mr. Mackie stated obviously Councilor Burgess did not do the research.

Mayor Duffy asked if there was anyone else present who would like to speak to the complaint. With no response, Mayor Duffy addressed the Council asking for input. Councilor Linville asked since Administrator Eckstein read from the State and Councilor Miles read from Shawn O'Day, legal counsel for League of Oregon Cities, is there any legal issue or problem with the way the City disposed of the vehicles. Mr. Baum responded when it comes to public contracting, most times the overriding general policy is transparency. You want to make sure the process is transparent and the City can get the best deal possible. Most situations where it's such a low dollar amount, typically under \$5,000 to \$10,000, and in this case under \$1,000, it's up to the discretion of the City to dispose of the property as it best sees fit. A lot of times that is delegated to the contractor for the City because you don't want to continually convene a quorum to make a decision on such a low dollar value item. That's part of the function of city government. Given such a low value the City did nothing wrong.

Councilor Burgess stated everyone knew what was going on, there was nothing hidden. The Council voted, it passed, and moved on.

Councilor Warren stated whenever anyone contacts Shawn O'Day she is always advised to contact the City Attorney as they cannot give advice.

Wyatt stated his understanding was the email defers to City Council. His understanding, listening to the discussion at this meeting, is the Council authorized the purchase of the vehicle. Councilor Shaffer stated the Council was not misled in any way by Administrator Eckstein. He did the right.

Councilor Miles stated in the interest of transparency, should this not have been advertised for sale. Wyatt responded that is within the discretion of the City Council. The rules for the disposition of public property are more relaxed. With the low dollar amount; under \$1,000, the City did not run afoul, there is no liability. Councilor Miles stated had it been advertised, it could be construed as preferential treatment. Mr. Mackie interjected he would have liked to have had the vehicle. Administrator Eckstein made a point of order. Mr. Mackie was not recognized by the Mayor and Administrator Eckstein asked him to be warned. Mr. Mackie stated so warned. It was asked who the old service truck was sold to and Administrator Eckstein answered it was sold to Summit Builders. Wyatt stated there is a preference to sell local; to sell or donate is at the City Council discretion.

Mr. Mackie asked to be recognized by the Mayor. He then stated the attorney is calling on the legal end of his terminology. Past precedence – other than the other vehicle that someone got

their hand slapped for, it has always gone out to a sealed bid. And if you have not been in this city for very long, without doing a little bit of research, you are going to have a hard time knowing what the past precedence is. Councilor Linville stated past precedence doesn't mean squat. That is a moot point. With this, we are wasting our time the further we go. Being recognized by the Mayor, Mr. Mackie stated the ex mayor, now Councilor, since he has left the chair of mayor and gone to councilor, if you look at past minutes, he has been hostile towards the Council. Mayor Duffy stated Mr. Mackie's comment was out of order. He then asked how the Council would like to resolve the complaint. Councilor Linville made the motion to dismiss the complaint. Councilor Shaffer as Second. With no further discussion the Mayor called for a Roll Call vote.

Roll Call Vote: Councilor Miles -- Aye, Councilor Shaffer -- Aye, Councilor Burgess -- Aye, Councilor Warren -- Aye, Councilor Richards -- Aye, Councilor Linville -- Aye, Mayor Duffy -- Aye. Motion Carried.

Councilor Miles suggested the policies of the City be looked at. Mayor Duffy was in agreement.

#### Complaint #3-15-6

Administrator Eckstein read the complaint in full. He went on to state when a person is antagonized and provoked from the crowd, unrecognized, constantly they have the right to defend themselves when their job is questioned, in my beliefs. The councilors have every right to ask a question of an employee. But per the guidelines they are supposed to go through the administrator first in private counsel. Some councilors are unaware of that, I understand and will work with that. When it is insults and shouts from the crowd, the employee has a right to defend themselves.

Mayor Duffy recognized Mr. Mackie. Mr. Mackie stated regardless of my comment, whether she was on the clock or volunteering your time is regardless. The point being made is the fact that she had disregard for her own employer and bashing of her own employer. They should follow their own charter. That is what these complaints are all about- following your own procedure; doing your own jobs, doing your own duties. That is what this is all about. When Mr. Mackie attempted to ask a question of a councilor, Mayor Duffy stated the Council will not be addressing questions. Mr. Mackie went on to say the he is trying to help the City. These complaints are to help the city to get policies and procedures in place like they need to be. Wyatt asked if there are 2 issues with the complaint; one being how the employee responded and the second being Administrator Eckstein not taking notes. Mr. Mackie responded yes there are two separate issues in this complaint. Wyatt asked if he is complaining about the employee or is he complaining about the charter. Mr. Mackie responded "both". Administrator Eckstein asked if anyone on the Council felt the employee was being insubordinate. Mayor Duffy stated in his opinion, he has a whole different view when mayor and you see the employees on regular basis. At the Council meetings we all know when we question, we want answers, and it can get aggressive with questioning. Even the audience gets aggressive. Having first hand been in the office and seeing what they are doing, I have a better understanding. Some councilors have spent some time there; Mayor Duffy suggests all councilors spend time in the office.

Councilor Shaffer stated since her question caused the complaint, she did not feel the employee was bashing her, she was only responding. As Administrator Eckstein said, when you are

bashed by the audience regularly, tempers flare. It was late at night, but she did not feel the employee was out of line towards her. Councilor Miles stated the employee called her and asked her opinion. Councilor Miles felt the response was a little over the top. It was agreed the employee's response was an uncomfortable situation. Administrator Eckstein stated any employee issues or concerns are to be brought to his attention first. Councilor Burgess stated he understands pressure. He was uncomfortable; he doesn't like to see someone so upset that they say they will quit especially from stress because of the job. All she was doing was her job, he was uncomfortable, but he sympathized with her.

Mayor Duffy recognized Mr. Mackie. Mr. Mackie stated: What you are seeing here is no different, less, than what you guys dismissed me for from being on the Planning Commission and Budget Committee. I had less of a reaction and because I asked questions of people I didn't know, and didn't see, they filed a grievance on me and so you guys just chose to back Dan and not actually have a meeting prior to, again your own guidelines. In turn, you are setting precedence and if you vote not to do anything with her you are punishing a volunteer but you won't punish your own employees. Councilor Burgess stated they did meet on his behalf, over letters that were written by the people that he had confronted. And it was talked about it and then posted a meeting for it. We did the proper procedure. We done what was done and then Mr. Mackie was brought in. Mr. Mackie responded saying according to your procedure I am to be at those meetings. Councilor Burgess said No. Mr. Mackie then said once it is filed with the city, he is to be at those meetings. He is to be notified. Councilor Burgess stated No you are not on that one. He went on to say we meet first and then we come back and we meet with you after we have read everything and understood the whole situation then we meet with you. Were you not notified after we met? Mr. Mackie stated not with the parties present, you have to have the other parties present. Councilor Burgess stated we had the statements from the employees. Mr. Mackie responded saying: That's third party. Mr. Mackie started to ask the employees a question and Mayor Duffy called a Point of Order and directed Mr. Mackie to not address the employees. Administrator Eckstein stated that is the second Point of Order for Mr. Mackie's conduct and would entertain a motion to have him removed. Councilor Richards moved to have Mr. Mackie removed from the meeting. Councilor Linville as Second. The Mayor called for a Roll Call vote.

Roll Call Vote: Councilor Miles -- Abstain, Councilor Shaffer -- Aye, Councilor Burgess -- Aye, Councilor Warren -- Aye, Councilor Richards -- Aye, Councilor Linville -- Aye, and Mayor Duffy -- Aye. Motion Passed. Mr. Mackie then left the meeting.

Councilor Linville moved to dismiss the complaint. Other than the fact, we all know and have stated we need to continue to work on city documents and get them updated. Councilor Burgess as Second. The Mayor called for a Roll Call vote.

Roll Call Vote: Councilor Miles -- Aye, Councilor Shaffer -- Aye, Councilor Burgess -- Aye, Councilor Warren -- Aye, Councilor Richards -- Aye, Councilor Linville -- Aye, Mayor Duffy -- Aye. Motion Carried.

#### Complaint #3-15-8

There was no foundation for this complaint and it was not addressed.

Complaint #3-15-4

Administrator Eckstein stated a conditional use permit has been filed with the City by Kathy Warren. It is included on the agenda for the April 14, 2015 meeting of the Planning Commission. He went on to state Mr. Mackie did request Councilor Warren be removed from the Council for the violation. Mayor Duffy stated the only way the Council can remove an elected official is by gross misconduct or recall.

With no further open complaints or business, Mayor Duffy asked for a motion to adjourn. Councilor Miles stated she has read the policy book and really thinks the Council needs to start doing their homework. It can save a lot of trouble if homework is done and procedures are followed. Councilor Shaffer moved to adjourn. Councilor Linville as Second. The vote was unanimous for approval. Motion Carried.

Meeting Adjourned

Minutes respectfully submitted;

Theresa Chandler, Library Director

APPROVED 4-14-2015