

**WHITTIER CITY COUNCIL
SPECIAL MEETING
THURSDAY, MARCH 07, 2013
5:00 PM
COUNCIL CHAMBERS
P-12 BUILDING**

MINUTES

1. CALL TO ORDER

Mayor Lunceford called the meeting to order at 5:00 pm.

2. OPENING CEREMONY

Mayor Lunceford led the Pledge of Allegiance.

3. ROLL CALL

A. Council Members Present: Larry Bussman, Lester Lunceford, Dave Pinguoch (telephonic), Mary Brenneman (telephonic), Dan Blair, Becky Cotner

B. Administration Present: Brenda Krol, City Clerk

Others present: Peter Denmark, Dave Goldstein, Monty Irvin, Dyanna Pratt, Sue Miller, Scott Korbe, Tom Bolen, Luis & Jennifer Rogers, Andrea Korbe, Stephanie Burgoon, Erika Swearingen, Charlie Eldridge, Suzanne Eusden, Brooks Chandler, City Attorney

4. APPROVAL OF SPECIAL MEETING AGENDA

MOTION: Becky Cotner made a motion to approve the special meeting agenda as written.

SECONDED: Larry Bussman seconded the motion.

VOTE: Becky Cotner: Yes, Larry Bussman: Yes, Dave Pinguoch: Yes, Dan Blair: Yes, Mary Brenneman: Yes, Lester Lunceford: Yes

Motion passed 6-0.

5. BUSINESS ITEMS THE SUBJECT OF THE SPECIAL MEETING

A. Discussion on terms of City Manager contract.

Becky Cotner asked if there was a need for council to go into executive session for this.

Mayor Lunceford replied that it was the council's prerogative if they wanted to go into an executive session.

Mayor Lunceford stated that the City Attorney had informed him that those who attend telephonically can also attend the executive session.

Peter Denmark asked “Mr. Mayor may a little public input be allowed at this point?”

Mayor Lunceford replied “actually this is a council decision.”

Peter Denmark stated “I was just going to offer a thought that might help them make their decision.”

Mayor Lunceford allowed Peter Denmark to continue with his public input.

Peter Denmark said “I think that given the swirl over this issue that doing this in a public would be best, please.”

Becky Cotner stated that she personally does not have a problem with the contract with Mr. Bolen.

MOTION: Becky Cotner made a motion to enter into a contract with Mr. Bolen as City Manager.

SECONDED: Mary Brenneman seconded the motion.

DISCUSSION: Dan Blair asked Mr. Bolen if his experience as city administrator was one year.

Tom Bolen replied “I was a borough administrator for twelve months, yes.”

Dan Blair stated “I don’t see that as enough experience to offer the size of the contract, severance pay and there are other choice items that make this way to costly to offer, I think it would be a bad decision.”

Vice Mayor Blair also stated “I think Mr. Bolen, if we want to offer him a contract that we should revise the contract and offer him the revision.”

Vice Mayor Blair said “I don’t understand why we would want to enter into this contract, it is weighted too heavily in Mr. Bolen’s favor, and I don’t see what the incentive is to work.”

Dan Blair said “I would like to see the results of the background check. I know the background is going to be fine I would just like to see it.”

Dan Blair said “I would like to do the due diligence, I am not happy that I didn’t get to interview any other candidates.”

Dan Blair continued “I can’t imagine there not being other qualified candidates.”

Mary Brenneman asked for point of order and stated that council was only here to discuss three points of this contract, the rest has already been agreed to.

Dan Blair said “Well let’s discuss it then, there is the severance pay and then there is this other that apparently council is not allowed to talk about”

Dan Blair said “I don’t know why we would hire someone with a year of experience when we just had someone with a decade.”

Mary Brenneman asked for point of order again and said “we are here to discuss three points of the contract, one is the three months severance pay, the term of the contract which is standard and the third is annual leave.”

Dan Blair talked a little more about the contract and expressed his concerns.

MOTION: Dave Pinquoch made a motion to postpone the motion on the table until the next regularly scheduled meeting of March 19th 2013 and to further investigate the handling of the application and interview process.

SECONDED: Larry Bussman seconded the motion.

Thomas Bolen stated that there was already a motion on the floor and that there cannot be another motion.

Peter Denmark stated that tabling a motion has to come after an initial motion.

Dave Pinquoch said “a motion to postpone overrides the main motion.”

Brooks Chandler reviewed Robert’s Rules of Order and said “Rule 30-1 reads that a motion to post pone to a certain time or definitely takes precedence of the motions to commit, to amend and to post pone indefinitely yields to all incidental motions and to the motions to lay on the table for the previous question and to limit or to extend the limits of debate.”

Becky Cotner asked “am I to understand the problem is just the revision of the contract because council already voted to hire Mr. Bolen?”

Dan Blair said “we are discussing the contract and the length of the contract because the contract that was emailed to him was for three years and I think it would definitely be worth our while to make it for one year.”

Dave Pinquoch stated that the City’s current manager Bob Prunella was not given a 30 notice of termination as stated in his contract.

Dave Pinquoch said “at the last special meeting a motion was made to hire Mr. Bolen and made a motion to postpone the motion just like I did this time and I was disallowed last time which violated Robert’s Rules of Order, which leaves the question is that main motion even in play?”

VOTE: Dave Pinquoch: Yes, Larry Bussman: Yes, Dan Blair: Yes, Mary Brenneman: No, Becky Cotner: No, Lester Lunceford: No.

Motion failed 3-3.

Becky Cotner asked if she could make her motion again or if it was still on the table.

Brooks Chandler stated that she did not have to make it again.

Dan Blair asked a few more questions regarding Mr.Bolen’s contract in regards to severance pay.

Brooks Chandler said “this is a contract that is what’s called terminate ably at will, all city manager contracts can be terminated at any time for any reason by council, and the severance applies no matter when council made any decision to terminate the contract.”

Dan Blair stated that he thinks the contract and the two points of severance is worth discussing in executive session.

Dan Blair said “there are terms of this contract that I can’t even discuss with other council members.”

Dan Blair said “I tell you I guess I need to get an education and become a city manager because I have never heard of instant vacation.”

Tom Bolen asked to respond to some of Dan Blair’s concerns and questions.

Mayor Lunceford turned the floor over to Mr. Bolen.

Tom Bolen told Dan Blair “I can assure you in the city manager and borough manager arena severance is always included in every contract and most often blocked time of annual leave are negotiated.”

Larry Bussman stated that the only thing that bothers him about the contract is the 160 hours of leave.

Larry Bussman said “I think that it should be gradually accrued at the same rate as other exempt employees.”

Mayor Lunceford said to Larry Bussman “I am assuming this is an opportunity to counter offer.”

Mayor Lunceford asked Mr. Bussman “Is there something that you would rather see than that instant accrual, either no leave at all or some of that leave?”

Larry Bussman said “I think a new hire should start off fresh and earn their leave.”

Mayor Lunceford said “council is here tonight to discuss the three items that were not in the initial contract that was proposed to Mr. Bolen and right now councilor Bussman has on the table that he would like to see the instant leave changed to zero and that it be accrued like any other new hire.”

Mayor Lunceford asked Mr. Bolen if that change would be acceptable to him or not.

Mr. Bolen replied “probably not, my last contract and municipal posting was identical to this one, three months severance pay and 4 weeks annual leave earned immediately on the block and the caveat is that the council is always in the position to approve or disapprove of that leaved.”

Mr. Bolen said “I would also like to add that there has been a lot of mention about my one year of experience.” “I have ten years of municipal experience, two and a half of those years were as a capital project manager, managing multiple projects and managing multiple consultants.” “The seven and a half years that I spent at the Northwest Arctic Borough, which is a strong mayor form of government I actually functioned as kind of a lead administrator, somewhat without title, I managed the day to day affairs particularly when the Mayor was out of town.”

Mr. Bolen said “my position at Northwest Arctic Borough was followed by my year in Haines where I was not terminated but had a one year contract and was there one year and one month.”

Mr. Bolen said “my experience in the construction business has always been at a very high level.”

There was a little more discussion on leave before Dave Pinquoch called for the question.

VOTE: Becky Cotner: Yes, Mary Brenneman: Yes, Dave Pinquoch: No, Dan Blair: No, Larry Bussman: Yes, Lester Lunceford: Yes.

Motion passed 4-2.

6. CITIZEN’S DISCUSSION (agenda items only)

Peter Denmark stated that it is always good to see Mr. Chandler in Whittier and he welcomed Mr. Bolen to Whittier.

Peter Denmark stated that as a citizen he has been concerned about the process here and some of that has been exhibited here tonight.

Peter Denmark said “that every year the city spends thousands of dollars every year sending city councilors to the AML conference which offers training in how to run administratively and Robert’s Rules of Order and we essentially had to have the city attorney here to run the meeting.”

Peter Denmark said “the simple act of making motions, what’s viable and what is not is very disappointing to me as a former councilor to see anybody at the council table being able to manage these issues.”

Peter Denmark said “the motion tonight, that was allowed to postpone a vote was disallowed at the last meeting, same motion and to me that brings the validity of that business in question.”

Peter Denmark said “the process here has been highly irregular, there has been a lot of conversation and I know that there are a lot of people who are very concerned about the process, how this occurred.”

Peter Denmark told Dan Blair that when he was on the council he was involved in the process of hiring city managers and instant leave when never a part of any one of them.

Peter Denmark said “the proceedings to get this done have been highly irregular and he hopes that council can find their way to conducting business on an open basis in the future, it did not occur here.”

Dave Goldstein said “the entire process seems flawed to me and I just hope as a community that we can move forward.”

Peter Denmark said “there has been a lot of swirl about this process and one of the issues that had been pointed out is that the previous city manager has yet to be officially terminated and the motions and actions of the meeting prior to this would indicate that he is still unofficially terminated and the terms of his contract have been violated by that he had a 30 day termination clause.’

Peter Denmark asked “is that true?”

Mayor Lunceford said “I cannot comment on that because you are exactly right his contract has not been terminated yet.”

Mayor Lunceford said “it is still under legal review.”

Suzanne Eusden asked Mayor Lunceford “so do we essentially have two city managers then?”

Mayor Lunceford turned the floor over to the city attorney, Brooks Chandler.

Brooks Chandler replied “you have approved a contract with Mr. Bolen and you still have an existing contract with Mr. Prunella.”

Peter Denmark asked the council “how could you land us there?” “I’m sorry but that is just some kind of stupid.”

Dan Blair knowing that Brooks Chandler represents other communities asked “does this happen very often, where you have two city managers under contract?”

Brooks Chandler replied “no.”

Dan Blair asked “having two open contracts, does this type of action open us up for litigation?”

Brooks Chandler replied “as long as you follow both contracts, no.”

Dan Blair said “we just have that kind of money anyway.”

Peter Denmark said “as the council and their wisdom landed us with two city managers at the same time, my question is, Are we within municipal code?”

Mayor Lunceford said “I will answer that this way, regardless of whether the community or you Mr. Denmark want to accept, often times when a council has a majority of the vote, often times we pass ordinances, we pass motions with a minimal of 4 votes when there are 7 of us on here, rarely do we have an unanimous vote on everything.”

Peter Denmark asked “are we within code? “

Mayor Lunceford said “well you tell me when you have four people voting to hire an individual and then you have another motion after that to retain the previous city manager on a month to month basis but that motion fails, what’s left to do.”

Peter Denmark replied “what’s to do is to find another motion to find a conclusion to that relationship before starting a new one.”

Mayor Lunceford said “rest assure that legal counsel has been consulted on two different levels regarding this and I believe that the process whether you believe it’s fair or not, is legal.”

Peter Denmark said “I apologize for my concerns; I know that I am not the brightest bulb on the tree and I’ll leave it to you guys.”

7. EXECUTIVE SESSION

None

8. ADJOURNMENT

MOTION: Becky Cotner moved to adjourn the meeting at 6:20 pm.

SECONDED: Larry Bussman seconded the motion.

VOTE: Motion passed unanimously.

Attest:

Brenda Krol
City Clerk

Lester Lunceford
Mayor