



THE CITY OF WHITTIER

Gateway to Western Prince William Sound

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**WHITTIER CITY COUNCIL
REGULAR MEETING
TUESDAY, JULY 18, 2017
7:00 PM
COUNCIL CHAMBERS
P-12 BUILDING**

MINUTES

1. CALL TO ORDER

Mayor Daniel Blair called the meeting to order at 7:05 p.m.

2. OPENING CEREMONY

Mayor Daniel Blair led the Pledge of Allegiance.

3. ROLL CALL

A. Council members present and establishing a quorum: Monty Irvin, Debra Hicks, Dave Pinquoch, Dave Dickason, Peter Denmark, Victor Shen (telephonic) and Daniel Blair.

B. Council Members Absent:

C. Administration Present:

Mark Lynch, City Manager
Naelene Matsumiya, Acting City Clerk
Scott Korbe, Public Works Director
David Schofield, Director of Public Safety

Kyle Sinclair, Harbormaster
John Li, Finance Officer
Terry Morrison, Public Safety Bldg. Manager
Katie Davies, City Attorney

Others Present: John Campabello, Janet Amor, Ken Hunt, Lindsey Erk, Anna Dickason,

4. APPROVAL OF MINUTES

June 20, 2017 Regular Meeting Minutes and July 3, 2017 Special Meeting Minutes

MOTION: Dave Dickason made a motion to approve the meeting minutes of April 18, 2017 as is.

SECOND: Dave Pinquoch

DISCUSSION: None

VOTE: Motion passed unanimously

5. APPROVAL OF REGULAR MEETING AGENDA

MOTION: Peter Denmark made a motion to amend the Agenda to allow Janet Amor, John Campabello and company to speak under the heading of *Citizen's Comments on Agenda Items Not Scheduled for Public Hearing*.

SECOND: Dave Dickason
DISCUSSION: None
VOTE: Motion passed unanimously

6. PRESENTATIONS

None

7. MAYOR'S REPORT

A. Mayor's Report by Mayor Daniel Blair

Mayor Blair stated that he has been fairly busy the past couple of months, but does recall the negotiations that were made with the railroad about the DeLong Dock. He had no further statements.

B. Vice Mayor Report by Vice Mayor Dave Pinquoch

None

8. MANAGER'S REPORT

A. City Manager's Report- Mark Lynch

See written manager's report in original Council packet.

Mark Lynch encouraged the community to submit their input considering any of the Assistant City Manager candidates. He hopes reviewing the statements will help him choose an Assistant City Manager ideal for the community.

He shared with the Council that Kristie Smithers, a retired Clerk from Wasilla, was hired by the City as an Emergency Hire to consult with the upcoming elections. Mark Lynch also acknowledged Naelene Matsumiya for assisting with several Clerk duties.

The final item the City Manager reported was the rejection of the PILT application the City of Whittier submitted to the State. He claimed there was wording in the document that has been changed from the previous year and therefore the State could not accept it. He stressed that he will get this done.

● Financial Report

See written report in original Council packet.

B. City Attorney's Report

None

C. School District Report

None

D. Director's Reports

None

2. Public Safety Report- Dave Schofield

None

3. Public Works Report- Scott Korbe

None

4. Public Safety Building Report

Council Member, Peter Denmark, asked Terry Morrison about the progress on the Public Safety Building. Public Safety Building Manager, Terry Morrison, said that the first phase of the project is 91% completed and he's looking forward to begin the second phase. He told the Council that the schedule has been pushed

back and predicts the completion will happen towards the end of August. Terry commented that mechanical and electrical inspections were done at the building and that it looks good. Terry also stated that the preliminary design came through around the same time phase 2 was proposed.

He addressed that the recent situation is the rerouting of pipes due to a fire penetration issue. He explained the case thoroughly for the Council. Terry disclosed that in cases like this, it would go back to the owner in deciding between continuing the work or stopping altogether.

Mayor Blair asked Terry Morrison if he had heard back about the grant for the clinic. Terry answered by saying they're tight lipped about it. He stated that he has called a few times, but he hasn't heard anything yet.

9. COMMISSION/COMMITTEE REPORTS

A. Planning Commission

No report.

B. Port & Harbor Commission

No report.

C. Parks & Recreation Committee

Council Member, Victor Shen, pointed out an error in the Parks and Recreation budget. The City Manager stated that there was a misprint in the report and he will correct the error.

Dave Dickason summarized the latest Volunteer Day and enclosed that it was a success. He described the trail and the work that still need to be done along the trail.

Mayor Blair commented that the trail is a really great thing for the City.

D. Prince William Sound Aquaculture Corp.

None

E. Regional Citizen's Advisory Council

None

10. CITIZENS COMMENTS ON AGENDA ITEMS NOT SCHEDULED FOR PUBLIC HEARING

John Campabello started by saying his only goal is to transfer his lease to Janet Amor. He stated that he doesn't think there is anything negative about the lease and that he has followed the rules for 26 years. Council Member Denmark held up a packet that he had received from Mr. Campabello and said it was not included in the Council Packet. The City Manager commented that Mr. Campabello's packet was submitted after the official packet had already gone out.

Janet Amor asked if there was anything she could do to help with the execution or the rewriting of the leases to expedite the process. She stated that she has reviewed Mr. Campabello's lease and would like to work with the City to correct all that needs to be corrected. Ms. Amor clarified that she's purchasing both the building and the condominium in the Whittier Manor. She explained that once she has approval, she can close her transaction.

Mayor Blair explained the situation and said that there was a change in square footage that was signed off by City Manager at the time, Rick Honhbaum, and thought the change was accurate because it was done by the Planning and Zoning Commission. Mayor Blair stated that the lease seems functional enough for a business to operate.

Council Member Denmark reminded everyone that during the July 3rd meeting, the issue was presented. He explained that ultimately, none of the buildings were moving and that the lot line issue exists, not with Mr. Campabello's lot, but with neighboring lots. Mr. Denmark spoke of the erosion problem in the area. He believes that the lease transfer could be transferred smoothly with the help of some language amendment. He stressed that he does not understand why it needs to be held up for another day.

Holly Wells, the City Attorney, replied to Mr. Denmark saying she understood where he was coming from, but that some objections will possibly arise with entering the agreement because Ms. Amor is expecting a clean title.

Mr. Denmark stated that there was no title because it's a lease transfer. Ms. Amor clarified that the Condo is where the title lies and that she can't buy the building if she's not going to have the condo and vice versa. Mr. Denmark explained that since the title is with the condominium, a simple lease transfer for the building with the City of Whittier was all that was needed.

Ms. Wells reminded Mr. Denmark that the property still legally has description inaccuracies. She added that it was important to preserve the authenticity of the lease for the buyer's interest and that if the process is successful (the lease transfer with language amendments, etc...), the City may be protected, but the buyers will have a lease that isn't genuine and as described. She told Ms. Amor and Mr. Campabello that she understands how important it was to them, and assured that she has been working very hard at it. She advised, as the City's attorney, for Council to not lease property that is already leased to someone else.

Mr. Denmark proposed changing and redrawing the lot lines. Ms. Wells clarified that it is the descriptions that need revising, not the lot lines.

The City Manager explained that it will be a bigger job to change a recorded plat than it will be to fix the four leases. The City Attorney stressed that she has been working on this solution to make is the fastest solution.

Vice Mayor Pinquoch supported Ms. Wells and honored her for a job well done. He understands that the City Attorney is doing her best and working really hard to get this corrected. He continued and suggested that a possible solution is to have the buyer's Council approve the lease pending the actions to get the legal descriptions corrected. That way the lease could be finalized upon the action they were taking.

Ms. Wells said she was okay with that, but elaborated that the only problem is that it may take some time and will possibly not be ready for the Council meeting in August. Mr. Denmark pointed out that the item is listed under *Old Business* in the agenda and stated that Council could act on it at their leisure. The City Attorney said that when taking action for these items, a resolution needs to be on the agenda as an action item.

Council Member Dickason asked if this will be resolved by the end of July.

Ms. Wells replied that it was the goal. She reassured Council that she and her team are moving as fast as they can. Mr. Dickason asked if there will be enough time in case a Special Meeting were to be held in the first week of August.

Mr. Lynch expressed his concern about this process and said that if it was going to be done this way, Council would be changing its long-standing policy.

Council Member Dickason explained that at this point, it's almost too late and that Council won't actually accomplish anything by rushing through this issue.

Ms. Wells reported that she had spoken with Janet and her broker and said they wanted this to be dealt with appropriately. They want a clean title, and this is the best solution to get a clean title. Janet Amor's broker stated that the parties that join the two properties (the lease and the condominium) – he was unintelligible due to Council Member Shen accidentally speaking through the conference phone. Mr. Pinquoch asked if there was a way to transfer the lease temporarily until the lease is corrected. Ms. Wells told Mr. Pinquoch that the approach he described was similar to sub-leasing which she said was the closest thing to a lease transfer.

Brenda Tolman addressed that there have been 40 lease transfers in the Harbor and there has never been a problem with a transfer. She said that she doesn't see any purpose for dragging it out for this long.

Ms. Amor stated that she will be paying with personal cash. She mentioned that the title company attempted to search the building, but there was no match because there wasn't a proper description of the property. She said that with the cash, she was hoping to close within the week, but sudden conditions aren't allowing her close as quickly as she had expected.

Mayor Blair reminded Ms. Amor that the City Council is doing the best they can to clear those conditions. He thanked Ms. Amor for her enthusiasm and her helping develop business in Whittier. Ms. Amor expressed her appreciation for the City and the Council by thanking the Council for shedding light on this issue and reassured that she is still very interested in growing her business in Whittier.

Holly Wells summarized, "What it really comes down to, legally speaking, the City cannot transfer land it does not own or land that is leased already to somebody else and that is what is happening-- *unintelligible* --without fixing the descriptions legally-- *unintelligible* The other option is to do an approval Contingent Upon. But really at the end of the day that doesn't get us any further than those documents getting finalized and completed, which I think focusing all our attention on that will get you the cleanest, best and quickest response or answer because I don't think we're anticipating a lot of objections from the landowners. What Mark has done is just presume that everything is in their favor. There's no push or conflict. I received a message from the title company that said there was nothing we could do without a clean title. It was to my understanding that they were not interested in closing a deal until they had an accurate property description and a clean transfer. So we have been exercising under that presumption, and we have spent a lot of time—*really*—and a lot of effort that will get you where you want to get in a legal way where you're not acting as a governing body approving a land transfer for land that you've already given to somebody else."

Council Member Dickason asked Ms. Amor what her preference was.

Ms. Amor said that she is also a realtor, so she needs it done the right way. She does not feel comfortable moving forward until everything across the board is clean. Mr. Campabello agreed.

Mayor Blair thanked Ms. Amor for her patience and understanding through this process.

11. PRESENTATIONS

None

12. CONSENT CALENDAR

None

13. ORDINANCES (Non-Ordinance)

A. Introduction (2nd reading)

1. #03-2017 – An Ordinance Amending WMC Chapter 2.70, to repeal and reenact code provisions pertaining to personnel.

MOTION: David Pinguoch made a motion to open the public hearing for Ordinance #03-2017.

SECOND: Dave Dickason

DISCUSSION: None

VOTE: Motion passed unanimously

William Earnhart from the City's Attorney Office was there to answer questions for the public. Chief of Police, David Schofield, pointed out the revision in 2.170.570 Accrual that stated, "Leave shall be due and usable upon completion of probationary period, generally following 180 days of employment."

Mr. Schofield clarified that probation period for Police Officers is one year. The revision wouldn't allow them to take leave for a whole year.

The City Manager was not sure why the change was made. He asked Mr. Earnhart if there was a legal reason this was changed. Mr. Earnhart replied that there was no legal reason, it was changed to establish the different probation periods. He urged that there shouldn't be any worries.

Mr. Lynch clarified that he had no objection to police officers using leave after 180 days.

Mr. Earnhart suggested leaving the language as is, and allow Police Officers to use leave after the 180 days probation period.

Mr. Pinguoch believes the language would be more understandable if it read, "Leave shall be due and usable following 180 days of employment." The City Manager agreed.

There were no further public comments.

MOTION: David Pinguoch made a motion to close the public hearing for Ordinance #03-2017 and open it up to Council for discussion.

SECOND: Dave Dickason

DISCUSSION: None

VOTE: Motion passed unanimously

The City Manager discussed the Grievance Process with the Council. Mr. Lynch distributed copies of the flow chart to the Council and discussed it for a while.

Mr. Earnhart explained the process heavily by saying, "Basically, as a public employer, not a private employer, we don't have employees at will other than high-level officers. All public employees are entitled due process before losing their job or having significant disciplinary action. Generally speaking, most governments pile that with other policy violations. It's not the same as a due process like we think in a criminal context; it can be a minimal procedure. It has to be a process where they are made aware of the allegations against them and the evidence, and they get to argue their case. That could go to the City Manager or the Mayor if he is the last in line. In the past, you had the Council last in line. Some entities have a personnel board to do that."

He continued, "There are some downsides. With the personnel board, if you have local members of the community you have to rule on whether or not somebody in their community must be fired. Instances like these don't come up often. The grievances are few so you may have to reconstitute a void every time you want to do one. Ending with the City Manager doesn't work very well too because the City Manager is the person who ultimately decided to fire this person. Due process doesn't seem to be protecting the City or the City Manager, and it can get difficult for the Council. The City Attorney will appoint a Hearing Officer."

Council Member Irvin asked if the Hearing Officer was the same as a Human Resources officer. He then asked the City Manager if he was the Human Resources officer.

Mark Lynch answered that under City code he is the Personnel officer, but some of the Human Resources tasks are delegated to the Executive Assistant such as insurance, workman's compensation, and hiring procedures. He clarified that ultimately, the hiring and firing of employees and disciplinary actions are reserved for the City Manager.

The City Council discussed this further.

Mr. Earnhart explained that if there is a director that consistently makes bad decisions, it goes to the City Manager. He told the Council that it is common for employees to approach Council, but it has to go to the City Manager.

Council Member Denmark recited section (2.70.)040 saying, "No employee shall identify himself or herself as representative of the City on matters of policy, by any means whatsoever." He said that this has come up before and recounted that City employees are not permitted to talk to Council Members of day-to-day City business. He indicated that it is common for grievance issues to become fire for conversation.

Mr. Earnhart clarified for Council Member Denmark saying that City employees are not allowed to go in front of legislature or any form of media (cameras, newspapers, etc.) to represent the City without consent from the City Manager.

Vice Mayor Pinguoch stated that information was brought to him second hand by an employee who'd like a workshop on the code and its revision since it affects them. He had no further comments.

Mr. Denmark informed the Council and the audience that the ordinance that permitted firearms was removed. He commented that firearms in the workplace were one of the seven deadly sins and the whole removal was crazy. Mr. Denmark said that there are some high strung people out there and reminded everyone of how crazy the launch ramp could be. He stressed, "There is no way that this should be removed from this ordinance. Firearms and weaponry should be prohibited immensely."

City Manager admitted that he was responsible for the removal because he believes that the second amendment was put in the Constitution to protect people and to give him the right to protect himself. He doesn't think that should be taken away from anyone just because they're at work. He told the Council that it can be put back in the code if they wanted it.

Council Member Denmark disclosed that it is dangerous. Council Member Monty Irvin agreed with Mr. Denmark.

Moving on, Mr. Denmark noted that a uniform allowance has been removed for Police Officers even though they are mandated to dress accordingly. He mentioned that they are the only department of the City that is required to wear a uniform. He concluded by saying, "Let the guys have the opportunity to take pride in their work."

Mr. Lynch pointed out that it wasn't removed; it had just been moved to the fees schedule so that the City could give them more if it were needed.

Mr. Denmark brought up the grievance issues. He pointed out a misprint in the word "Any." The City Manager corrected, saying the y in "eligibiley" was stricken because it was printed in between Any. Mr. Denmark addressed that the verbiage does what the City Manager predicted; it removes exempt employees from any access to a grievance process. Mr. Lynch replied that it does not remove them because they're already not in it, but if it is preferred that they were added in, it can be amended. He reminded Mr.

Denmark that it would be a significant change to the City's current code.

Mr. Earnhart explained the grievance process to Council Member Denmark. Mr. Denmark replied that he still does not understand the argument for the language in the code as it reads now. He added that it is not reflected correctly in the document. Mayor Blair explained that the slash in the Y was from the word *Any*. Mr. Denmark stated that it was simply just a typo, but the current ordinance does allow at-will employees access to some grievance process. Mayor Blair replied that somewhere else in the code, it states that they are not. Mr. Denmark reported that the City of Whittier has close to 20 employees and 6 of the entire City staff are at-will employees and 25% of the staff is exempt employees who do not have access to any grievance policy. He continued saying that he does not see any fairness in the fact that at-will employees do not have recourse at all given the small nature of our community. Mr. Denmark pointed out the stricken "Exempt" under the City Manager's Responsibility and Authority of the code. He said that this allows the City Manager to take action for rank and file employees and that the word exempt offers a perception of a buffer of their immediate supervisor and the City Manager. He concluded that he sees this as an expansion of power for the City Manager and he is not comfortable with exempt employees having no recourse because they may need it to protect their jobs. He believes that the misplacement of one letter changes the focus of the whole document.

Mr. Lynch said that the original plan was to make this section of the code compatible with the rest of it.

Mr. Earnhart added that dropping the Y in *any* and changing it to *an* does not modify the meaning of the term, but it does provide a little less confusion.

Council Member Denmark replied that he would like to see codifying protection for exempt employees. Mr. Earnhart and Ms. Wells took turns discussing the process to Mr. Denmark.

Mayor Blair suggested a workshop for this issue to continue working on the code. He scheduled the workshop for August 22nd at 6:00 pm.

MOTION: David Pinquoch made a motion to postpone the second reading for Ordinance #03-2017 until the September meeting.

SECOND: Dave Dickason

DISCUSSION: None

VOTE: Motion passed unanimously

15. EXECUTIVE SESSION

A. Legal Counsel Advice and Discussion, Freddie Sue Miller v. City of Whittier – Matters which by law are required to be kept confidential. AS 44.62.310(3)

MOTION: David Pinquoch made a motion to enter executive session for legal counsel advice and discussion for Freddie Sue Miller v. City of Whittier.

To Discuss the Legal brief union petition. Matters which by law, municipal charter, or ordinance are required to be confidential. AS 44.62.310(3)

To Discuss the Manager's evaluation and contract extension discussion – Subjects that tend to prejudice the reputation and character of any person and matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity. AS 44.62.310(1) and AS 44.62.310(2)

SECOND: Monty Irvin

DISCUSSION: None

VOTE: Motion passed unanimously

Council entered into Executive Session at 8:45 pm

MOTION: David Pinguoch made a motion to end the executive session and return to the regular meeting at 10:00 pm.

SECOND: Monty Irvin

DISCUSSION: None

VOTE: Motion passed unanimously

16. UNFINISHED BUSINESS

A. Lease Transfer Update/Orca Cafe

Discussed under Citizens Comments on Agenda Items Not Scheduled For Public Hearing

B. Shotgun Cove Road Project

Nothing new to report.

C. ARRC/COW Land Swap

Nothing new to report.

D. Improve Salmon Sport Fishing in in Northwest PWS

Nothing new to report.

E. Paddle Craft Launch

Nothing new to report.

17. NEW BUSINESS

A. Discussion and Direction to Manager Concerning WERFA Funds

City Manager, Mark Lynch, explained the fund and gave a brief history. He reported that the potential use for the funds will either go to EMS for CPR equipment or to the school. He told Council how the funds should be distributed was up to them.

Lindsey Erk stated that the School wrote a letter requesting the funds and that it will go to the school's Education Advisory Commission (EAC). Mr. Lynch suggested the money go to a Student Account. Ms. Erk replied that the EAC could write a letter requesting the money go into the Student Account. Mr. Lynch explained the WERFA Fund further.

Holly Wells said that the City Manager's guidance is best and that the Council should go forward with what they think is best.

Council Member Denmark stated that he believes the money should go to EMS and they can donate to the school if they choose to.

Mayor Blair suggested a resolution to be written up for this. Council agreed.

B. Discussion and Direction to Manager Concerning Municipal Waste Disposal

Mark Lynch talked about the ways the City handles the waste that comes out of the City. He stated that the City is spending more on trash than it is taking in revenue of all the harbor leases combined. Mr. Lynch explained what it would be like if the City had its own garbage truck. He presented a chart with information about revenue and distributed copies to the Council. Mr. Lynch told the Council that in January, 23 garbage bins were emptied and they billed the City. Mr. Lynch said that the garbage issue is something he is trying to monitor. He continued to explain the revenue to the Council. The City Manager then talked about the cost if the City had its own garbage truck. He believes that the City will save a lot of money if we were to do our own trash. He asked the Council if they wanted to keep pursuing this issue or if they wanted to purchase a truck for the City.

Council Member Shen suggested negotiating rates at Alaska Waste, but Mr. Lynch said that even so, the cost would be outstanding. Mr. Shen asked if a commercially licensed commercial driver needed to be hired if the City had their own garbage truck. Director of Public Works, Scott Korbe, stated that finding a driver wouldn't be a problem as there is staff that could do the job.

Council Member Denmark stated that former Harbormaster, Cole Haddock, used to lock full garbage bins to prevent people from filling it further, giving them the opportunity to dispose their trash in other trash bins that had room. David Pinquoch replied to Mr. Denmark that the current Harbormaster is working on that as well.

Mr. Lynch said that he will talk to the Harbormaster about keeping the dumpsters closed. He stated that he will continue to crunch the numbers.

18. COUNCIL DISCUSSION

Council Member Denmark asked if the vending machine operators pay sales tax. The City Manager replied that they are.

Mr. Denmark also asked if a small branch of the Police Department could stay in the building for quick and accurate response. David Schofield, Whittier's Chief of Police, stated that they will be moving only 2 blocks away from the building. He believes response time will not be affected if they moved to the new Public Safety building. He concluded that moving away from the building will eliminate the disturbances for residents.

Mayor Blair reported that he is still looking for volunteers to open up the gym other days during the week. Lindsey Erk clarified that the school does not employ any staff in the summer to open the gym and monitor those who come into it. She informed the Council that the gym is open in the winter 3 days a week. Ms. Erk stressed that the concern lies with who has the key.

Mr. Blair informed the Council of the money that is donated to the museum (\$10,000) and acknowledged Ted Spencer for his phenomenal work in maintaining and improving the museum. He reported that Mr. Spencer hauled a treasure trove of artifacts from Whittier's past that was delivered to him personally. Mayor Blair asked Council if they were open to the stipend for the improvement of the museum as he believes it is an asset to the City. Council members said they will consider it depending on the budget.

19. CITIZEN'S DISCUSSION

None

20. COUNCIL AND ADMINISTRATION'S RESPONSE TO CITIZEN'S COMMENTS

None

21. ADJOURNMENT

All were in favor of adjourning the meeting at 10:53 p.m.

ATTEST:



Naelene Matsumiya
Acting City Clerk



Daniel Blair
Mayor