

City of Scottsbluff, Nebraska

Monday, December 7, 2020

Regular Meeting

Item Minutes2

Council to approve the minutes of the November 18, 2020 Special Meeting.

Staff Contact: Kim Wright, City Clerk

Special Meeting
November 18, 2020

The Scottsbluff City Council met in a Special Meeting on Wednesday, November 18, 2020 at 5:00 p.m. in the Council Chambers of City Hall, 2525 Circle Drive, Scottsbluff, NE. The meeting was requested by a written call therefor by Interim City Manager Kuckkahn. A notice of the meeting had been published on November 15, 2020 in the Star Herald, a newspaper published and of general circulation of the city. The notice stated the date, hour and place of the meeting; that the meeting would be open to the public and that anyone attending was encouraged to wear a mask and to respect social distance guidelines. It also stated that anyone with a disability desiring reasonable accommodation to attend the council meeting should contact the city clerk's office and that an agenda of the meeting kept continuously current was available for public inspection at the office of the city clerk in City Hall; provided, the city council could modify the agenda at the meeting if it determined that an emergency so required. A similar notice, together with a copy of the agenda, also had been delivered to each council member, made available to radio stations KNEB, KMOR, KOAQ, and television stations KSTF and KDUH, and the Star Herald. The notice was also available on the City's website on November 17, 2020. Mayor Raymond Gonzales presided and City Clerk Wright recorded the proceedings. Mayor Gonzales welcomed everyone and informed those in attendance that a copy of the Nebraska Open Meetings Act was available for the public's review. The following Council Members were present: Raymond Gonzales, Jeanne McKerrigan, Scott Shaver, and Terry Schaub. Nathan Green participated by video conference via Zoom. Council Member Green was able to participate via video conference due to Executive Order No. 20-34 Coronavirus-Public Meetings Requirement Limited Waiver Order for Alternative Participation for Elected Officials issued by Governor Ricketts; answering yes to City Clerk Wright's question if he had been ordered to quarantine and isolate by a local public health agency due to exposure of COVID-19. Also present were Interim City Manager Rick Kuckkahn and City Attorney Kent Hadenfeldt. Patricia Heminover with Baker Tilly Virchow Krause, LLP participated by teleconference, via Zoom. Absent: None.

Mayor Gonzales stated no other business shall be transacted at the special meeting unless all Council Members are present to consent and the City Council declares the existence of an emergency. He then asked if there was such an emergency. There was none.

Regarding the item of Council to question and interview semifinalists for the City Manager position, Mayor Gonzales stated he would like a motion to go into Executive Session. Ms. Danielle Prokop, reporter with the Star Herald, approached Council and objected. She presented Council with a packet with the Attorney General's opinions, commenting she had a brief statement to make.

City Attorney Hadenfeldt responded to Ms. Prokop by stating, members of the public do not get to object to go into closed session. Ms. Prokop answered Mr. Hadenfeldt, by stating, she was told to make a statement.

Ms. Prokop then started her statement with; Hello ladies and gentlemen of the City Council. My name is Danielle Prokop and I am a reporter with the Scottsbluff Star Herald. I am here to formally object to the closure of this meeting under the Nebraska Open Meetings Act and request that all interviews with the candidates occur in open session and that records regarding City Manager candidates be provided to the Star Herald under the Nebraska Public Laws. The Attorney General's office has been clear on the procedures for conducting closed sessions and the Scottsbluff City Council's reasons for closing Friday's meetings and these meetings today and tomorrow do not fall into the Act's requirements. I have been told time and time again from the Attorney General's office that opinions do not meet these standards. In the handouts is the letter I received regarding the public records request from the City and (inaudible). Public Meetings are broadly interpreted and construed to obtain the objective of openness in favor of the public

and I am standing here today as a member of that public. The establishments, deliberations and discussions regarding the hiring of public positions should be done in public and in compliance with the Open Meetings Requirements. One of the best examples of that is the opinion of 94-025 of the Nebraska Public Records and Public Meeting Statutes against the Nebraska Department of Education and State Board. (Inaudible) Some circumstances may require brief closed sessions to discuss topics which could injure someone's (inaudible) reputation however, quote; the bulk of those interviews conducted by a quorum of the board should be done in an open session of a public meeting. However, a closed session of, so while there may be sometimes when interviewing individual applicants should be closed, the bulk of those interviews should be done in a public setting. Just because matters require a closed (inaudible) session may arise does not mean the entire session can be closed. For last week's meeting the AG's office had not found that the whittling down of candidates a sufficient reason for closing public meetings. I have found the slight discomfort of experience by closing the meeting is far away by policy an air of openness in meetings of the public body. A good faith motivation for closing the meetings, rather that's entering for example the injuring of someone's reputation is not a defense to cure a noncompliance with the open meetings act. For example, in the Terry Fossel letter that I gave to you it's found that apparent reasons for closing the meeting to discuss a superintendent candidate to whittle the number of candidates from twelve to four does not fall underneath the statutory reason of protecting the public interest or the protection of needless injury to the reputation of an individual. The Attorney General's office has found that this is not sufficient statutory reasons to close the meeting. Finally when it comes to finalists and the use to semifinalists in rejection to both my public records requests and other reasons, it is found that a finalist is any applicant who has offered to accept an interview by a public body or its agents, representatives or consultants for any public position including numbers more than four.

At the end of the day public business needs to be conducted in public. There is no shame in opening the process; there is a lot of shame having to do that process over again. The Attorney General has found that public sessions that are closed improper for no statutory basis reasons are an argument and find that those sessions are going to be improper as found in the Patrick Ethridge letter I gave to you. Finally, the public interest in this is protecting the public's money. This person is going to be hired by you, the City Council, using public money. The public interest is not the prevention of needless injury to an individual. If those come up in meetings, if that specific prevention of a needless injury to a reputation comes up then portions of that meeting can be closed, otherwise they need to be conducted in the public.

Council Member Schaub then asked to hear from Legal Counsel Hadenfeldt. Mr. Hadenfeldt stated under 84-1410 it allows both to protect the public interest and needless injury to a person's reputation to go into Executive Session or Closed Session. We think that is applicable in this case, although the opinions that she cited are not the case law in Nebraska and they say that you may do this in open session if you want, but you can also go into Closed Session under Statutory requirements under 84-1412 are present which is in the motion here. We have been asked not to release this information because we don't want to harmlessly injure the reputation of the individuals we are interviewing. The finalist pool issue, this may not be the final pool. We have already gone through this once and we rejected all the applicants and so now we've thinned it out and reviewed it, were going to talk to them and if we decide that this is the final pool of candidates they will be brought in for application and interview in an open session and the public will meet them. So we think we have met not only the closed public records law, but also the closed session's law. He then stated to Council, it is up to you whether or not you want to go into closed session.

Council Member Schaub then made a motion to go into closed session for the reason that it is clearly necessary for the protection of the public interest and for the prevention or needless injury to the reputation of individuals for the purpose of discussing job application materials and job performance submitted by applicants, other than finalists, who have applied for employment with the City of Scottsbluff. Council Member McKerrigan seconded the motion.

Mayor Gonzales then stated a motion has been made to go into closed session as it is necessary to protect the public interest and for the prevention of needless injury to the reputation of individuals, other than finalists, who have submitted job application and performance materials for employment with the City of Scottsbluff. He then asked if there was discussion. There was none.

Mayor Gonzales then explained the pending motion is to go into closed session as it is clearly necessary to protect the public interest and for the prevention of needless injury to the reputation of individuals, other than finalists, who have submitted job application and performance materials for employment with the City of Scottsbluff. He then asked to call the roll. "YEAS," Schaub, Gonzales, McKerrigan, Shaver, and Green. "NAYS," None. Absent: None.

City Clerk Wright announced the motion has been adopted.

Mayor Gonzales stated a motion to go into closed session as it is necessary for the protection of the public interest and for the prevention of needless injury to the reputation of individuals, other than finalists, who have submitted job application and performance materials for employment with the City of Scottsbluff has been adopted. Council went into closed session with Patricia Heminover with Baker Tilly Virchow Krause, LLP and Interim City Manager Rick Kuckkahn at 5:11 p.m.

Council reconvened out of closed session at 8:08 p.m. as stated on the record. The following Council Members were present: Raymond Gonzales, Jeanne McKerrigan, Scott Shaver, Nathan Green, and Terry Schaub.

Council Member McKerrigan moved to come out of closed session. This was seconded by Council Member Schaub, "YEAS," Gonzales, McKerrigan, Shaver, Green, and Schaub. "NAYS," None. Absent: None.

Council Member Schaub moved, seconded by Council Member McKerrigan to adjourn the meeting at 8:09 p.m., "YEAS," Schaub, Green, McKerrigan, Shaver, and Gonzales. "NAYS," None. Absent: None.

Mayor

Attest:

City Clerk

"SEAL"