

City of Scottsbluff, Nebraska

Monday, December 7, 2020

Regular Meeting

Item Minutes3

Council to approve the minutes of the November 19, 2020 Special Meeting.

Staff Contact: Kim Wright, City Clerk

Special Meeting
November 19, 2020

The Scottsbluff City Council met in a Special Meeting on Thursday, November 19, 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.

Council Member Schaub 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. Mayor Gonzales asked if there was a second.

Ms. Danielle Prokop, reporter with the Star Herald, approached Council and made an objection. Mayor Gonzales asked again if there was a second. Ms. Prokop then stated she is allowed to object under 84. Legal Counsel Hadenfeldt answered Ms. Prokop by stating actually you are not, you have to make a motion. Ms. Prokop stated, so you have to make a motion first, so the motion was made. Legal Counsel Hadenfeldt explained it had not been seconded, there will be a discussion and then voted on. Ms. Prokop added as a member of the public she is allowed to state an objection. Legal Counsel Hadenfeldt then stated actually you are not allowed to make an objection, I told you that yesterday. Ms. Prokop answered actually I cited the law. Mr. Hadenfeldt stated that is no longer the law.

Mayor Gonzales then asked if there was a second to Council Member Schaub's motion. Council Member McKerrigan seconded the motion.

Mayor Gonzales stated the 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 any discussion.

Ms. Prokop approached Council and stated she has a discussion. She continued by saying, Good afternoon ladies and gentlemen of the Council. Council Member Schaub asked if she would please state who she is, where she is from, and her information. She answered I am Danielle Prokop, I am a reporter with the Scottsbluff Star Herald, my phone number is 308-635-2201 and I am currently employed with the Star Herald. I am here to make a formal objection on behalf of the newspaper and on behalf of the public that these meetings should not be held within closed session because they do not follow the Open Meetings Act and the withholding of these documents and the closing of the sessions to withhold documents does not follow any open records act of Nebraska.

My publisher has submitted a letter to Rick this afternoon, stating his objections as well and I did bring that in case you haven't seen it. I have been using again disposition letters from the Attorney General's office which are based on case laws which have gone to the Supreme Court and have clearly stated on multiple occasions to different boards that the closure of sessions or withholding these documents. Withholding documents regarding finalists, which are people who are in the final pool, for a position under public money, the precedence shows again and again that public meetings are to be that public position be conducted in the open and that closed meetings need to be strictly and narrowly construed. I do not believe that the motion that has been made is strictly and narrowly construed for either the benefit of the public or for the very narrow notions of protection of an individual's reputation.

For example in an interview with an individual if something needs to come up that would injure their reputation then that portion of the meeting should be closed. The entire interview before a quorum of a public board should not be closed. In a proper motion, which was explained in the Ethridge letter which I gave to you yesterday shows I move to go into closed session for an example discussing a pending lawsuit against the board for the protection of public interest. Interviewing candidates for a position does not fall under that. Semifinalist is not a legal term defined in Nebraska statutes; finalist is somebody who is going before the Council to interview for a position. Whether or not you are saying you are going to choose from those things, I don't know, but those interviews need to be held in a public. Public business needs to be held before the public. As my editor said in his letter, his concern is that it can be clearly conceived by citizens of the community, which this government entity serves, that a decision on who the new City Manager is has already been made and that Scottsbluff City Council and the Interim City Manager are simply going through the steps until they weed out the rest. Whether that is accurate or not that is the perception the paper has.

Now I have cited both the Ethridge and the Cossel letters, but I also have letters from 2017 we've sought legal counsel and legal counsel agrees with us that this is not an appropriate way to hold these interviews. That these individuals, whether you call them semifinalists or you call them something else are truly finalists for the position and thus need to be brought into the public light; they are going to be serving as a public member of the community and if they don't want their names out there that is highly concerning for the citizens you are representing. I will quote one more time that public meetings are broadly interpreted and liberally construed to obtain the objective of openness and favor of the public. Do the right thing and hold this in the public. What are you afraid of? As I said previously in the Terry Cossel letter provided to the Council, the focus of public interest, the true public interest of this board is the protection of the public's money and not the confidentiality of job applicants. If there is a portion of their interview that needs to be withheld that would be injurious to their position, which is absolutely viable, which is absolutely protected, these are things that need to be balanced and that portion of the meeting be closed. Otherwise, I ask the Council to hold these in public meetings. Thank you.

Council Member Shaver then made a motion to overrule the objection based on the information which Ms. Prokop gave them yesterday that shows LB389 allows the government entities to get a broad

pool of applicants and avoids causing injury to the non-finalists. At such time when we get the finalists we will be doing open and the public things.

Mayor Gonzales then stated we have a motion and a second on the table already to go into closed session; we probably want to get that voted on. Council Member Shaver commented we need to overrule her objection, not sure when we need to do it. Legal Counsel Hadenfeldt stated you can overrule her objection by voting to go into closed session. Council Member Shaver added it said you had to clearly overrule it, take a vote and note it in the minutes, so that is why I am having it done separately. Mayor Gonzales stated we have a motion and a second to go into executive session and we need to get that dealt with. He then thanked Ms. Prokop for her comments.

Council Member Green asked if we needed to get a second on the overruling. Council Member Schaub stated first off, he was the one who made the motion and like he said last night he would like to hear from legal counsel. Mr. Hadenfeldt explained we have taken the concerns of this young lady seriously, we did our research and we are still standing by the fact that there is not final pool of applicants that we have decided on. We have vetted these applicants down, there will be a final pool at which time the information will be released and the interviews will be conducted in public. So we think there is a legal basis to go into a statutory authority of a closed session.

Mayor Gonzales then stated 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. Please call the roll: "YEAS," Schaub, Green, Shaver, McKerrigan, and Gonzales. "NAYS," None. Absent: None.

Mayor Gonzales then 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 Member Shaver made a motion to overrule the objection of Ms. Prokop based on the fact that these are non-finalist applicants and it will protect those in the broad pool that are not finalists and will not cause them injury by putting the information out there based on LB389 which was submitted by Ms. Prokop. Council Member McKerrigan seconded the motion, "YEAS," Green, Shaver, McKerrigan, and Gonzales. "NAYS," Schaub. Absent: None.

Mayor Gonzales announced at 5:17 p.m. that Council will go into closed session with Interim City Manager Kuckkahn and Patricia Heminover of Baker Tilly Virchow, Krause, LLP.

Council reconvened out of closed session at 8:45 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 Schaub made a motion to come out of closed session. This was seconded by Council Member McKerrigan, "YEAS," Gonzales, McKerrigan, Shaver, Green, and Schaub.

Mayor Gonzales asked Council to provide feedback for any individuals they would consider moving forward. Council Member McKerrigan stated she chose candidates 8, 12, & 13. Council Member Shaver agreed, 8, 12, & 13 were the best options for him. Mayor Gonzales added he would also support candidates 8, 12, & 13. Council Member Schaub confirmed he would support 8, 12, & 13. Council Member Green concurred with applicants 8, 12, & 13.

Council Member McKerrigan moved that Council ask the following applicants 8, 12, & 13 to travel to Scottsbluff for an interview with the City Council, staff and members of the public as finalists for the City Manager position. Council Member Shaver seconded the motion.

Mayor Gonzales stated a motion has been made to ask the following applicants 8, 12, & 13 to

travel to Scottsbluff for an interview with the City Council, staff and members of the public as finalists for the City Manager position. The names of the candidates are Scott McClure, Dustin Rief, and Seth Sorensen. They are listed in the order of 8, 12, &13. He then asked to call the roll, “YEAS,” McKerrigan, Shaver, Green, Schaub, and Gonzales. “NAYS,” None. Absent: None.

Mayor Gonzales then stated they would potentially be looking at the dates of November 30, December 1, and December 2 to bring the candidates forward. He asked Ms. Heminover and Interim City Manager Kuckkahn to work on the details to make that possible.

Council Member Schaub moved, seconded by Council Member McKerrigan to adjourn the meeting at 8:50 p.m., “YEAS,” Green, McKerrigan, Shaver, Schaub, and Gonzales. “NAYS,” None. Absent: None.

Mayor

Attest:

City Clerk

“SEAL”