

**NOTE: These minutes are considered DRAFT until approved by the committee at the next Public Services Committee meeting.

MINUTES

Monday, January 9, 2012

* 5:00 PM

Public Services Committee Carnegie Town Hall

235 West 10th Street

Members Present: Council Member Sue Aguilar, Council Member Kenny Anderson Jr., Council Member Vernon Brown, and Council Member Michelle Erpenbach

Members Absent: None

Staff Present: Sue Roust, Interim City Clerk and Tamara Jorgensen, CMC, Assistant City Clerk

Guests: Rich Oksol, Cheryl Rath, Jeanne Gerken, Jim Entenmann, Dean Karsky and Rex Roling.

1. Call To Order

Committee Chair Anderson Jr. called the meeting to order at 5:00 p.m.

2. Review and approval of Minutes dated Monday, December 12, 2011

A motion was made by Council Member Michelle Erpenbach and seconded by Council Member Sue Aguilar to approve the minutes. Anderson Jr. called for a voice vote and all members present voted yes. Motion Passed.

3. Deferred from 12/12/11 PSC Meeting: Alarm Ordinance Update by Chief Doug Barthel

Anderson Jr. stated this item will be deferred to a future Public Services Committee Meeting.

A motion was made by Council Member Vernon Brown and seconded by Council Member Sue Aguilar to defer this item. Anderson Jr. called for a voice vote and all members present voted yes. Motion Passed.

4. Fraud Control Policy by David Pfeifle, City Attorney

Pfeifle requested that Items 4 and 5 be heard together. He has received input from Council Members and members of the Board of Ethics regarding the proposed changes. There are two main issues regarding complaints that go to the Board of Ethics: When complaints should be made public and how to handle "frivolous" complaints.

There is a concern about balancing the public's right to know vs. the accused's right to privacy regarding when items are to be made public. Discussion was held on how complaints against elected officials are handled.

Discussion was held regarding frivolous complaints. Pfeifle stated that, in most states, Ethic Commissions have been granted the authority to dismiss a complaint if it is determined to be "frivolous" meaning "lacking a basis in fact or law". Discussion followed.

Pfeifle reviewed his memorandum dated December 22, 2011. Pfeifle requested that the Board of Ethics have jurisdiction over Chapter 14-Elections regarding complaints received against current elected officials. He stated that the Board of Ethics met on Friday and reviewed these proposals. A suggestion was made by the Board that they would like to receive additional time between when a complaint is received, scheduled and processed. The existing timeline of two business days is not enough time to schedule the volunteer board, handle the mailings, etc. Discussion followed.

Pfeifle included a request that the City Attorney can be recused if an ethics complaint is received against any of the nine elected city officials. He feels it creates a conflict for the City Attorney position and that it would be better for arrangements to be made to retain an outside attorney.

Pfeifle stated that the fraud control proposals are from meetings between Rich Oksol, Lead Internal Auditor, Bill O'Toole, Director of Human Resources and him. This item has been before the Fiscal Committee. Pfeifle recommended that complaints received through the Fraud Hotline against an elected official would be first reviewed by the Ethics Board and then, if there is merit to the complaint, sent to the City Council for further review. Pfeifle also recommended that there should be a requirement that if a complaint is made against an elected official, that the person registering the complaint needs to identify themselves.

Erpenbach asked if the Fraud Control Policy has been distributed. Pfeifle stated a working draft would be made available to the committee for their review.

Brown asked for clarification regarding a complainant remaining anonymous on the Fraud Hotline. Pfeifle stated it is up to the Council's discretion. Pfeifle would like to create a requirement that the complaining party has to identify themselves, as is the case with other complaints before the Board of Ethics. Pfeifle stated that the accused has a "right to confront the witnesses against him/her". The elected official has the right to know who is complaining against them.

Brown asked about the proposed amendments to Section 12 1/2-8 regarding changing the number required for a quorum from 4 to 3. Pfeifle discussed the difficulties in finding a convenient time for members of a citizen board to convene for a meeting. He also stated that, as the authority of the Board is now in an advisory role, the need for a higher quorum is less. Erpenbach asked if the board needs to be increased to seven instead of five. She asked if three people would be enough to handle any future situations adequately.

Anderson Jr. asked what format the Ethics Board would use to give an advisory opinion to the City Council. Pfeifle stated that Advisory opinions are done in a confidential format unless the requesting party wants it to become public. Pfeifle stated the Ethics Board can redact information in an Advisory opinion to show general guidance on a situation and their recommendations. The redacting would cover any confidential information.

Anderson Jr. asked about the timeline for an item becoming public and who makes

the decision about going public. Pfeifle said their procedures state that it stays confidential unless the requesting party wants to make it public.

Anderson Jr. asked about the process for the City Attorney to recuse himself. Pfeifle stated that if an elected member were accused of something, he would recuse himself immediately. Pfeifle stated that the board chair would need to make arrangements with an outside attorney for representation. It would be the responsibility of the Board of Ethics to interview, hire and retain an attorney. Discussion was held regarding the availability of funds in the budget for this purpose and the need to communicate that information to the Chair of the Board of Ethics in advance.

5. Ethics Ordinance Amendments by David Pfeifle, City Attorney

Brown asked about the timeline for the ethics and fraud ordinances. Pfeifle stated he would like to see them approved and in place prior to the Election on April 10, 2012. Discussion was held regarding whether or not the items were ready for review by the full Council. Discussion was held regarding the election timeline.

Aguilar would like to see the items again when all of the items have been added to the draft proposals. Anderson Jr. recommended holding an additional Public Services Committee meeting on Tuesday, January 17, 2012, following the Informational Meeting.

6. Election Ordinance Amendments by Sue Roust, Interim City Clerk and David Pfeifle, City Attorney

Roust reviewed proposed amendments to the election ordinances relating to campaign finance. She reminded the committee that the proposed changes are going to occur during an election cycle. She stated, that if the items are approved, she would recommend that the items be "walked in" as a first reading ordinance at the City Council Meeting on Tuesday, January 17, 2012. The second reading would be on Monday, February 6, 2012. Per conversations with the City Attorney's office, this ordinance would be effective on Thursday, March 1, 2012, 20 days after the publication date. The same timeline would apply to the fraud policy updates.

Roust reminded the committee that candidates for the April 10, 2012, election can begin circulating petitions on Friday, January 27, 2012, and the deadline for filing is Friday, February 24, 2012.

Roust reviewed a single page document distributed today. The pages reflect Chapter 14, Elections - Sections 14-78, 14-79 and 14-80. The proposed amendments are shown below:

Roust reviewed proposed amendments to Chapter 14, Elections. Roust stated that she has reviewed the following items in preparation for the 2012 Election: Chapter 14, the City Ordinances on Elections and compared it to State Law, and the Public Service Committee Meeting minutes from 2007-2009 (during which time substantial changes were made in the campaign finance area). She noted that there were major changes made in 2007 with a clear desire that the changes were done with the intent to mirror state law. Stronger restrictions were made on donations and stronger campaign finance reporting requirements were included. In 2008-2009 there were additional changes to the city ordinance to bring them into conformance with state law.

Roust stated that significant changes made to state law in 2010 and 2011 were not incorporated into our election ordinances. The 2010 changes were primarily in response to a Supreme Court decision in "Citizens United vs. FEC". The Supreme Court ruled that corporations can now make independent expenditures for election related communication.

Roust explained the changes made in 2011: The South Dakota Legislature passed a new law allowing corporations to contribute to Political Action Committees. Roust has reviewed the hearings on the Legislative Research website hearings. The 2010 laws were brought forward by then Secretary of State Chris Nelson to bring state law into conformance with the Supreme Court case. In 2011, the reasons given were to allow small businesses organized as corporations to participate in the political process. It was sold as a bill to allow small businesses that were corporations to have the same rights as small businesses that were organized as partnerships. This bill was sponsored by: the South Dakota Chamber of Commerce, the South Dakota Retailers Association, the South Dakota Truckers Association, the South Dakota Auto Dealers Association, and the Associated General Contractors.

Roust stated that now that these laws have been passed, there is a difference between our city ordinances and state law. State laws allow corporations to give to PAC's but our current city ordinances state that corporations cannot give to PAC's. Roust stated it is the function of the City Clerk's Office to receive, but not to investigate, the reports. She thought that council level races may not show a lot of independent expenditures by corporations, but this could happen in an Mayoral race.

Roust stated that she has identified outside individuals who have participated in previous meetings regarding this topic and she has sent a copy of the proposed amendments to them requesting their feedback. She sent copies to: De Knudson, Kermit Staggers, Joel Rosenthal, Dick Gregerson, and Georgia Hansen. Rosenthal has responded stating that he does not see the need to change the ordinance right now but also that he does not have any concerns with the proposed changes.

Brown stated that he was uncomfortable moving these items through before the election. He suggested revisiting the modifications after the election and taking the time to review the proposed changes. Anderson Jr. agreed stating that with the election coming up, maybe they should not be voting on the changes at this time. He also expressed concern that there may be a conflict of interest for current council members voting on this item when they may or may not be running for re-election. Pfeifle stated that it would not be a conflict for the Council Members as they would be following what state law has recognized from a recent Supreme Court ruling. Aguilar asked what would happen to the candidates if the changes would not be made. Pfeifle stated there would be ordinances in the book that are unconstitutional. Aguilar asked if the City Attorney's Office has reviewed the changes. Pfeifle stated that he has and that he recommends that the changes be made now. Erpenbach stated this is not new information to the public and she would like to see the changes implemented.

A motion was made by Council Member Erpenbach and seconded by Council Member Aguilar to recommend that the proposed election ordinance amendments and the information distributed today regarding Sections 14-78, 14-79 and 14-80 move forward for presentation to the City Council. Anderson Jr. called for a voice vote and all members present voted yes. Motion Passed.

7. Recodification by David Pfeifle, City Attorney

Karen Leonard, Assistant City Attorney, reviewed the proposed changes stating that they remove archaic language, change language to be gender neutral, and include some crossreferencing. Leonard reviewed the following sections with the committee: Section 19-50, 26-8, 26-26, 26-27, 40-258, 41-1, 41-110, 43-50, and Appendix A.

Leonard stated that a lot of information was being deleted from Section 41-110. Erpenbach asked if this portion could be submitted with substantive changes as so many pages were being deleted. Leonard stated they would pull this section out of their recodification review.

Leonard discussed the signature changes in Appendix A. The committee requested further explanation on this section before the changes are approved.

Erpenbach asked for clarification on the following sections: 15 1/2 (3), the title of the Director of Community Development; 27-16.6, the hours parks are open to the public. Discussion followed.

At the request of the committee, recodification will be added to the Public Services Committee Agenda for Tuesday, January 17, 2012.

8. Open Discussion

There was none.

9. Adjournment

Anderson Jr. adjourned the meeting at 6:15 p.m.

Tamara Jorgensen, CMC

Assistant City
Clerk