

CITY OF BOX ELDER COMMON COUNCIL SPECIAL MEETING MINUTES
Tuesday, March 26, 2019
6:00 p.m. – 2nd Floor Council Chambers Room, 420 Villa Drive, Box Elder

Meeting called to order by Mayor Larson at 6:02 p.m.

Mayor Larson called for short recess at 6:03 p.m.

Mayor Larson called meeting back into order at 6:10 p.m.

Roll taken. Present were Mayor Larson, City Attorney Kristi Vetri, Council Members Scott Allen, Dawn Beltran, Steve Cowley, Michael Hanson, Michael Knight, and Rick McPherson. Also present were City Administrator/Finance Officer Nicole Schneider, Attorney Marty Jackley, Attorney John Rusch, and City Clerk Jermyer Washington.

Motion by Knight to approve agenda. Seconded by Hanson. Vote: Aye. Unanimous. Motion carried.

City Attorney spoke and commented on special situation; reason for inviting Mr. Jackley. She asked that Mr. Jackley take seat with Mayor and Council for meeting. Mr. Jackley took seat.

Mayor Larson handed floor to Mr. Jackley.

Mr. Jackley thanked opportunity to serve as counsel for Council. He gave background; complaints needed looked into; process put in place, and at end of process came report. He said recommended that they [Council] do this evening (he said wanted to make clear that just recommendations, and that Council makes ultimate decisions, including on process, and any action). He said recommended by nature of what occurring and what set forth in notice, he suggested take opportunity to go into Executive Session, and take opportunity to talk little more about process. He reminded Council that when in Executive Session, can't take any action. He recommended that take opportunity to review report; when in Executive Session, he said like to talk about some things that he and Mr. Rusch and conversation about, and to receive Council's blessing to share information with Mr. Rusch; then discuss legally what some options are, and he can answer any questions that Council has. He recommended at this point, if nothing for open, for everyone to go into Executive Session, other than Alderman Allen who should have opportunity to go meet with Mr. Rusch for few minutes; and then upon making some initial thoughts regarding report, he [Mr. Jackley] can come out and meet with Mr. Rusch, if fair with everybody. Mr. Jackley asked if anyone had questions. He recommended making motion to go into Executive Session.

Motion by Cowley to go into Executive Session [Pursuant to SDCL 1-25-2 (1) for purpose of discussing employee grievance and official misconduct allegations]. Seconded by McPherson. Vote: Aye. Unanimous. Motion carried.

Executive Session entered at: 6:14 p.m.

Out of Executive Session at: 9:42 p.m.

Motion by Hanson based on initial findings, to suspend Scott Allen until April 16th, in that time he may submit any information he chooses in writing by April 10th, he may not contact any City staff or Council except through his legal counsel, he will also not be allowed on premises or have access to City email; based upon initial findings, we have found evidence of misuse of

power, disorderly conduct, conflicts of interests, intimidating and threatening behavior, and Pursuant to the authority given to the Council by SDCL 9-8-5, I [Hanson] make the motion to suspend until April 16th. Seconded by Knight. Roll Call Vote: Beltran-Aye; Cowley-Aye; Hanson-Aye; Knight-Aye; McPherson-Aye. Motion carried.

Mr. Jackley spoke and said from legal standpoint in relation to due process, Mr. Allen has been given opportunity to participate in interview but has declined (Mr. Rusch responded that was incorrect); Mr. Jackley continued and said that his understanding that he was given opportunity and requested on February 28, 2019 to be interviewed, on March 4, 2019 interview was set up and on March 8, 2019 an interview was declined (Mr. Rusch responded that was incorrect); Mr. Jackley continued and said that there has been a notice of meeting, purpose of notice of tonight's meeting was discussing employee grievances and official misconduct, that investigation report been provided to Mr. Allen and his attorney, both Mr. Allen and attorney been presented with opportunity to appear in front of Council to be heard, Mr. Allen's attorney did take opportunity in limited fashion (what he considered in legal stance of limited appearance) to discuss process primarily; part of that taken into consideration and ultimately Mr. Allen, through his counsel, being given opportunity through April 10th to present additional information, whether by affidavit, notarized, or written statement by Mr. Allen for Council to ultimately consider in a final decision.

Mr. Rusch asked if he could be heard.

Mayor Larson gave floor to Mr. Rusch.

Mr. Rusch spoke and said for purposes of the record, he made a request to Council upon being presented with information he received tonight that his client be afforded opportunity to present his side of the information; he did not decline the interview, he suspended the interview when an attempt was made to get his financial records; he said they did not decline interview; he also said that procedures set forth in *City of Rapid City v Bill Clayton* indicates that board is to determine if basis to go forward with complaint, and if there is it's at public hearing; that is procedure he said that they're requesting pursuant to that decision and that they're asking for hearing, opportunity to be heard.

No other discussion/action taken.

Motion by Knight to adjourn. Seconded by Hanson. Vote: Aye. Unanimous. Motion carried.

Seal:

Attest:

Larry Larson
Mayor

Nicole Schneider
City Administrator/Finance Officer