

March 9, 2020 Special City Council Meeting

MINOT CITY COUNCIL – SPECIAL MEETING – MARCH 9, 2020 AT 3:30 P.M.

ROLL CALL

Members Present:

Jantzer, Olson, Pitner, Podrygula, Sipma, Straight, Wolsky

Members Absent:

None

PLEDGE OF ALLEGIANCE

Mayor Sipma presiding and led the City Council in the Pledge of Allegiance.

CONSIDER OUTSIDE COUNSEL TO INVESTIGATE HOSTILE WORKPLACE ACCUSATIONS

Alderman Wolsky moved the City Council retain outside independent counsel to conduct an investigation of an alleged hostile work environment with the following considerations:

1. The investigation include a review of potential civil, criminal and City of Minot policy violations.
2. Direct the City Attorney to evaluate and secure outside counsel and authorize the Mayor to sign any necessary paperwork.
3. Upon securing Counsel, the Mayor shall call a special meeting of the City Council providing additional direction to our legal counsel.
4. Upon conclusion of the investigation, the findings shall be presented to the City Council.
5. Funding for this action should come from the City Attorney's budget for technical expertise.

Motion seconded by Alderman Podrygula.

The Mayor asked the HR Director if any complaints had been filed to her office regarding a hostile working environment, to which Ms. Jundt responded by saying, no formal complaints were filed.

Alderman Olson asked for the definition of a hostile work environment.

Ms. Jundt read from the employee manual, "Workplace harassment is defined as any unwelcome conduct, whether, verbal, physical, visual, or innuendos that are derogatory, abusive, disparaging, bullying, threatening or disrespectful types of behavior, even if unrelated to a legally protected status; when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment."

Alderman Podrygula stated, he supports the investigation into potential allegations. He said, he heard rumors but when City documents became public, he became concerned. If there is a problem, even a potential problem, they should look into it. He consulted with a colleague who said the standard practice is to get legal advice, which is the motivation behind his support for the motion. The legal advice he received was that the issue should be investigated. He emphasized the seriousness of the issue and the potential for the City to be in legal jeopardy. He said, he took an oath as a Councilman to obey the laws and ordinances of the city. His support is not the result of a blog or social media post but rather from an ethical perspective. He explained that he was recently at a conference with workshops focused on ethics and he has been a consulting psychologist on a case of alleged discrimination. The evidence shown here is reasonable cause for action. He further stated, this is not about rehashing a contract negotiation or a performance review. It is a potential legal obligation of the City to investigate this matter.

Upon questioning by Alderman Olson as to where Alderman Podrygula sought legal advice, he replied by saying, the City Attorney.

Alderman Straight stated, he took an oath to the citizens and City employees to legally uphold the responsibilities of the Council. He said it is critical to have outside counsel look at the issue and he doesn't want to wait until a grievance is filed.

Alderman Olson agreed, it is the Council's responsibility to protect and respect their employees. However, if there is no grievance filed, what are they investigating? She said, she would like to hear from employees first.

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Alderman Pitner asked the Mayor and members of Council if the issue was brought to any of them by an employee.

The Mayor, Alderman Olson, and Alderman Pitner said they had not been contacted by employees. Aldermen Wolsky Podrygula, and Straight said they had.

Alderman Podrygula said he began wondering when he heard rumors but rumors can be ignored. It was when the City document was included in the blog's article that raised concerns. Employees have been singled out and accused and if adverse legal action is reasonably predictable, they should be proactive before it legally gets worse. The results of the investigation would outline action if necessary.

Alderman Olson agreed the issue cannot be ignored but said she believes a different process should take place before hiring outside counsel.

Alderman Olson made a motion to create an ad hoc committee to accept anonymous complaints. The committee would consist of Council President Mark Jantzer, Council Vice-President, Lisa Olson, and Alderman Pitner as the Liaison to the Recruitment and Retention Task Force. They would meet from March 11-25 and would review the issue and make a recommendation to the Council. Motion seconded by Alderman Podrygula.

Mayor Sipma raised concerns about appointing a committee which would be subject to open meeting laws.

The City Attorney confirmed, if a Committee was appointed it would be subject to open meeting requirements, but also stated, there is already a motion on the floor so this motion could be made if the first motion fails.

Alderman Olson rescinded the motion, Alderman Podrygula rescinded the second.

The Mayor agreed with Alderman Olson and said hiring someone to look for a problem sounds like it is missing a step and there should be a better process. He said, social media has exploded the issue and it affects morale around the City. He expressed that he feels terrible how this is playing out on social media. He mentioned letters of support that have been submitted. He said, this situation is turning leadership on its head after such great momentum recently making strides in employment by reducing turnover and improving efficiencies.

Alderman Straight said, they owe it to the employees to hire outside counsel and take a step back from the situation. There was City of Minot letterhead used in the documentation posted online which implicates all of them as City of Minot representatives. He disagreed with the idea of an ad hoc committee and said it looks like they are just sweeping the problem under the rug.

Alderman Podrygula disagreed with the statement that they are looking for a problem. He wants the momentum of the City to continue but believes this situation casts a shadow that must be dealt with. There need to be clear procedures for filing grievances and he said he has a list of improvements he hopes to get out of this. He hopes to mitigate risks and look for solutions.

Alderman Olson suggested her motion would accomplish that. She said, until they know there is a problem, they don't need to spend funds and cause anxiety for the employees.

Alderman Pitner said, the anxiety is going to continue until this is concluded and he does not want to dilute the accusations. If there is a hostile relationship it may be difficult for employees to come forward. They may not feel like they can make a complaint for fear of what consequences there could be. He said, he is disappointed it got to this point and that none of the employees felt they could talk to him as an Alderman.

Alderman Wolsky said it is their legal responsibility to look into the accusations. He emphasized that he is not suggesting it is true but they need to get to the bottom of the situation effectively.

Mayor Sipma asked about the cost, to which Attorney Hendershot stated, she had not researched the potential costs but is aware of similar investigations of about \$300/hour. She further stated, there are funds in the budget for ongoing litigation and a budget amendment could be approved if additional funding is necessary.

Mayor Sipma said, he would be voting no on the motion because he believes they are missing steps in the process which are outlined in the employee manual. He said, he prefers the idea of an ad hoc committee to collect complaints before bringing a motion forward. He believes social media has caused the issue to be exaggerated.

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Margie Zietz, Code Enforcement Officer, said she has done two tours as a City employee and even taught workplace hostility in her career. The reason employees do not speak up is exactly what Alderman Pitner mentioned, they are afraid of the consequences. She felt it was her obligation to speak on behalf of the employees who wouldn't come forward. She also compared the situation to child bullying and asked how Alderman Olson, who works in the school system, could be opposed to the investigation.

Alderman Olson responded by saying, she wasn't going to address bullying but with her experience on the topic, bullying is repeated ongoing occurrences. A student may make a mistake one time and it wouldn't be considered bullying unless it becomes persistent. This situation appears to be an isolated incident, unless complaints are filed with the HR Director.

Aaron Moss submitted a letter of support on behalf of the Fraternal Order of Police, Souris Valley Regional Lodge #7. He said, he has spent his entire life in public service. He respects the process and if people are fearful of retaliation, the state entity can address the issue. This motion would enact a new process when one already exists which is a misuse of taxpayer dollars. Also, if it leads to some kind of discipline, there is no mechanism for appeal in place. There are rapidly moving opinions which are jumping to conclusions when they should refer to the existing due process.

Alderman Podrygula said, no one is being accused or put on trial but he is afraid the City is liable for legal action. He feels obligated to protect employees and tax dollars while also avoiding any conflict of interest. He said he wants to protect the entity and avoid any biased investigations.

Moss responded by saying he understands the need to mitigate liability. As a union representative, if one of his members were investigated by an outside agency without having a process in place or means of appeal, he would have a valid concern. He raised concerns that the City Manager could be disciplined based on this process that wasn't in place prior to this situation.

Alderman Podrygula brought up another point for potential improvement to promote talking openly under a whistleblower policy.

The Finance Director, David Lakefield addressed the Council. He said, he is in a difficult position because he reports directly to the City Council. He is loyal to the City but wants to do what is in the best interest of the employees. He admitted he did not follow the prescribed process when the situation took place but he reached out to Council President Jantzer with his concerns. He said, this needs to be put to rest one way or another because it is embarrassing to the City and as a staff. There is potential liability if this is not taken head on and he would request outside counsel if it were up to him.

A member of the public rose to speak but Mayor Sipma reminded him, the public comment is limited to employees only.

Whereupon a vote was taken on the above motion by Alderman Wolsky, seconded by Alderman Podrygula and carried by the following roll call vote: ayes: Jantzer, Pitner, Podrygula, Straight, Wolsky; nays: Olson, Sipma.

ADJOURNMENT

There being no further business, Alderman Pitner moved the City Council meeting be adjourned. Motion seconded by Alderman Jantzer and carried unanimously. Meeting adjourned at 4:27 pm.

ATTEST: _____
Kelly Matalka, City Clerk

APPROVED: _____
Shaun Sipma, Mayor