

April 20, 2020 Regular City Council Meeting

MINOT CITY COUNCIL – SCHEDULED MEETING – APRIL 20, 2020 AT 12:00 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.

RECEIVE AND FILE THE FINAL REPORT OF THE CITY'S INDEPENDENT COUNSEL'S INVESTIGATION INTO ALLEGATIONS OF A HOSTILE WORK ENVIRONMENT – APPROVED

The Mayor explained that a special Council meeting was called this morning to receive and file the report conducted by independent counsel. He stated, On March 9, 2020, the Minot City Council voted 5-2 to hire independent counsel to investigate whether a hostile work environment exists within the City, primarily among the department heads, also referred to as the executive team, and the City Manager, Tom Barry. The concerns were investigated in a 24-page report, including three exhibits which was finalized this morning and sent to the City Council at 10:51 that morning. It was received by the Alderman and forwarded to the City Clerk to file. There were two recommendations included in the final report.

Alderman Wolsky moved the City Council receive and file the report conducted by independent counsel, Patricia Monson investigating allegations of a hostile work environment. Motion seconded by Alderman Straight.

Alderman Podrygula asked why the final draft of the report wasn't released until this morning. He said he found out that the report was delivered to the Mayor on Wednesday but was only distributed to him after he requested it from the Mayor on Friday.

Mayor Sipma explained, the final report was sent this morning. Ms. Monson sent an initial draft to the Executive Team to review, followed by a conference call which also took place that morning. It was then after the phone call that a final draft would be released to the full Council under the assumption that some time would be taken to review the report.

A vote was taken on the above motion by Alderman Wolsky, seconded by Alderman Straight and carried by the following roll call vote: Jantzer, Olson, Pitner, Podrygula, Sipma, Straight, Wolsky; nays: none.

CONSIDER THE RECOMMENDATIONS OF THE INDEPENDENT COUNSEL REPORT INCLUDING THE EMPLOYMENT STATUS OF THE CITY MANAGER

Alderman Podrygula moved the City Council consider the recommendation included in the report and handle the situation discreetly by offering a conciliatory solution. Motion seconded by Alderman Wolsky.

Alderman Podrygula said, the report is probably the most distressing thing he has read on his 20 years serving on Council. He divided his comments into categories on the process as well as on the content and recommendations. He began by listing several comments on the process:

1. The problems were evident for a long time in terms of management style and behavior of the City Manager, as far back as 2017.
2. The issues weren't shared with all members of the Council.
3. It appears many of the issues were actively concealed.
4. The particular problems came to a head at the time of the contract renewal for the City Manager last November. The report asserts that complaints were made by staff to two members of the governing body but they were not passed along and apparently nothing was done. He said, he voted in favor of the contract but believes it was under false pretenses.
5. Keeping things from the entire Council has continued until the present time, as recently as this weekend, whether it be deliberate or accidental.

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Alderman Podrygula continued by elaborating on the content of the report. He said, the findings in the report are damning and reflect poorly on a particular City employee and on the Council. He listed seven of the findings included:

1. There clearly was a hostile work environment with harassment of several employees.
2. There were efforts to conceal this behavior rather than disclose it.
3. There are serious violations of City policies.
4. There are serious violations of constitutional rights including free speech and free association.
5. There are violations of State Law in terms of treatment of employees.
6. The City is vulnerable to lawsuits and they must respond to threats to mitigate their liability.
7. He explained that he has been a public supporter of the City Manager and how he repeatedly argued for the chain of command and the need to follow procedures. The specific recommendation included in the report states, "termination is the only appropriate solution."

Alderman Podrygula continued by saying, he is hesitant and uncomfortable with the recommendation but the information described in the report is disturbing and cannot be ignored. He said he would like to offer a face-saving way out. The City Manager is aware of the situations, although he may not have read the report, he was there. Alderman Podrygula said he would like to offer a motion to provide a conciliatory solution, by giving the City Manager the opportunity to resign from his position effective immediately. He said, the option would be the best way out of the situation to avoid a negative struggle that will reflect badly on the City Manager as well as the City and cost the taxpayers money. He recognized the positive impacts Mr. Barry has had on the city but said, to avoid embarrassment, he would prefer to put this matter to an end and part ways.

At the suggestion of Alderman Wolsky, Alderman Podrygula amended his motion to clarify, the City Council consider the recommendation included in the report by giving City Manager Barry the opportunity to resign from his position, effective immediately. Alderman Wolsky, as the second, agreed.

The Mayor commented that Mr. Barry did not receive the report until after 11:00 that morning at Ms. Monson's request.

Mr. Barry came forward to address the Council. He said, he has intentionally remained silent on the matter and emphasized that personnel matters are typically handled with discretion in sensitive situations. They do not involve a public display like they are doing now. He said he finds it highly suspect and extraordinarily disconcerting. He continued by saying, certain members of the Council launched an investigation without any complaints being filed or expression of concerns. He said he was not aware of any employees filing a grievance with him, the HR Director, the Civil Service Commission, the Mayor or Council. He was never informed of any grievance or given the opportunity to address or correct those situations, which is the City's process. He was provided an exceptional performance evaluation in December and offered a five-and-a-half-year extension to his contract. He stated, he has not had the opportunity to read the report and is speaking without knowledge of what it says. He has not had time to process any allegations presented and finds the situation out of process and rushed.

Alderman Straight said he was incredibly supportive of the City Manager during the contract negotiations but was frustrated with the process. He believes they need to address the structure that led to the situation. He then said that in his opinion, if the Executive Team doesn't act then it is up to the rest of them to lead. He raised concerns that the Executive Team had the report but said the Council has a right to call a special meeting to take action.

The Mayor reiterated, during the interview with Ms. Monson, her advice was for the draft to be sent to the Executive Council. He agreed because there would be time for the final draft for consideration. He believed there would be ample time for review of the final draft after it was released to the full Council.

Alderman Wolsky responded to the City Manager's comments by saying, there were no grievances filed because of the environment that existed. Employees did not feel comfortable filing a grievance which is an extraordinary sign of why they are in this situation and why the recommendations were made.

Alderman Podrygula said Ms. Monson provided a lot of context about the situation during a conversation they had. The report is a very tame version of what she found. The impression he had was that employees were terrified, bullied, belittled and that no one in their right mind would speak up. He said it is critical to remember that even though a complaint hadn't been filed, it can be made now and they cannot be blind to it. He had ignored the rumors and blog posts until City documents were posted but he admitted that maybe they should have dug into the accusations when they were first brought up. They asked the investigator to specifically identify, was there a hostile work environment? The answer is yes. Is the City liable for it? The answer is yes. He stated, for the safety of the staff and for Mr. Barry's reputation, he wants to offer a solution for everybody to part ways amicably. There is a lot more here than meets the eye. The City is subject to liability even without a formal complaint and he is not comfortable with that continuing.

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Alderman Olson stated, she did not receive the report until late Friday and the final report was only received this morning. She said, she needs time to review the report. The independent counsel performed the job they asked her to do but they have not had a chance to consult with their legal counsel on how to procedurally move forward. If they take action immediately, then they don't know what the City looks like this afternoon because they haven't had that discussion. She would prefer to put Mr. Barry on a leave of absence for five to ten days so they can complete any other investigation they need in order to have all information necessary before making a decision.

Upon questioning by the Mayor, the City Attorney provided clarification on a motion. She said, since a motion was already on the floor, it would be appropriate to table for a time certain.

Alderman Olson moved the City Council table this for ten days. Motion seconded by Alderman Podrygula and failed by the following roll call vote: ayes: Olson, Sipma; nays: Jantzer, Pitner, Podrygula, Straight, Wolsky.

Alderman Pitner asked if there were any substantial changes between the draft and the final report.

The Mayor said, there was one paragraph referencing a comment made by Margie Zietz to Alderman Olson which was removed because it did not provide substance.

Alderman Pitner continued by saying, he cast a vote in support of an outside investigation into allegations of a hostile work environment. After reading the report multiple times over the weekend it is clear there has been the development of a hostile and inhospitable working environment. He said, he believes they need to act in the best interest of the city and its citizens. He asked himself what message it would send to potential recruits to the City of Minot if they maintain the status quo; what message this would send to Legislators if they are accepting of this type of working environment; and what message does it send to staff that have been subject to this environment. He pointed out his support for Mr. Barry and all of the accomplishments made. He questioned whether the relationship can be fixed however, he concluded that it is too damaged and cannot be repaired.

Alderman Olson asked if the motion for the City Manager's resignation is for a time certain, to which Alderman Podrygula clarified, it would be immediate.

Upon further questioning from Alderman Olson regarding who would take over as acting City Manager, the Mayor said, it has been the Finance Director during previous situations.

The City Attorney said, City ordinance states the Finance Director is Acting City Manager when the City Manager is out of town.

Whereupon a vote was taken on the above motion by Alderman Podrygula, seconded by Alderman Wolsky and carried by the following roll call vote: ayes: Jantzer, Olson, Pitner, Podrygula, Sipma, Straight, Wolsky; nays: none.

Mr. Barry stated, he is not ready to make a decision until consulting with his own legal counsel. He said, since he was hired, he has focused on improving the organization but at every turn criticism and resistance has gotten in the way. They have had to make tough decisions which were met with challenges and conflict. He said he can empathize with those on the team who were unhappy with the decisions that have been made. He said he found it disturbing that he was never provided this kind of feedback and was not given the opportunity to correct it. He said, it is the obligation of the employees as stated in the personnel manual to speak out and report complaints, but it never happened. He continued by saying, he needs time to review the report. He told the Council he was sorry if they felt let down and he's sorry if the staff feel he has let them down, but his departure will not solve the disfunctions that exist within the team. There is an enormous amount of work yet to be done and he hoped that is covered inside the report. He concluded by saying, he will not make a decision yet.

Alderman Podrygula said, the report documents there was at least one conversation between the Mayor and City Manager regarding complaints. Mr. Barry is aware of the postings on the blog which have been substantiated. The City Manager may feel blindsided but the behavior has been going on for a long time. He was present and is responsible and the relationship between him and his subordinates has evaporated. The Council relies on the City Manager to carry out their directives but that can't be done effectively. Alderman Podrygula brought up the comments made by employees, Margie Zietz and David Lakefield. He agreed, there is a lot to be done, but Mr. Barry cannot treat people that way or assert that Council allowed him to do so. Alderman Podrygula said, Mr. Barry claimed that members of the Council authorized him to do these things.

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Mr. Barry responded by saying, he appreciates the sensitivity on the matter but there are things they are unaware of. He said, he has worked with the Executive Council as well as the HR Director and an HR Consultant on the issues that were brewing in the November/December timeframe. He was working in good faith to correct the situation.

Alderman Podrygula then addressed the issue of the Executive Council and said he does not believe three members should be able to speak for all seven on the Council. The structural issues were included in the report as one of the recommendations to consider.

The Mayor commented that the City Manager's report on the internal review was being looked at. The Executive Team met with the HR Director to look at potential violations in the employee manual. They were then asked if the process should proceed in a manner that many internal reviews happen within the City. Those typically don't go to the Mayor or Executive Team but because this is so public it was brought to them to determine if it should proceed, not in what manner but whether it should proceed.

Alderman Straight mentioned the conversations during the contract renewal. He said he appreciates Alderman Olson's suggestion but believes they need to act immediately. Mr. Barry's actions have jeopardized the Council and put them as fiduciaries in the position in which they now find themselves.

Alderman Straight moved the City Council follow the recommendation of their independent counsel to terminate City Manager Barry's employment with the City of Minot with cause, effective immediately and direct staff to review the employment contract terms for early termination. Motion seconded by Alderman Wolsky.

Alderman Podrygula thanked Alderman Straight for his ability to step back from the situation and apologized for letting his emotions get the best of him. It is a matter of leadership and trust and needing to do what's best for the city. The relationship between the City Manager and staff is irreparable and he needs to be effective as a City Manager. It would have been in his best interest to take the face-saving way out but he chose not to do so. Ms. Monson presented a straightforward conclusion without other viable options. To prevent the risk of litigation, they cannot allow this to go further.

Alderman Olson responded to the previous comments made that cast a shadow on the Executive Committee which assume they had somehow been covering or encouraging negative behavior. She stated, the information given to them was framed as an opportunity for team building and the support she gave was in an effort to build the team back up, which obviously did not occur. She said, she believes she has always supported employees and she hoped they know going forward that they have that support.

Alderman Wolsky said that during his interview with Ms. Monson he shared with her what he was hoping to get out of this process. He said, he requested an opinion and clarity on what they can do moving forward. He hoped there would be something to salvage but the conclusions are clear, it is not salvageable. He said he does not believe time will change anything and the best thing to do now, is to act.

Mayor Sipma said, due to the nature of the report, there is substantial damage they have to fix. Moving forward they will have to come together as a community and as a staff and build off of this. He said he was hoping to see building come out of this rather than removing top leadership and starting new. He said he will support the motion but hopes staff understand that they are taking this to move forward to rebuild trust and ensure the community understands they are looking out for the best interest of the community.

Whereupon a vote was taken on the above motion by Alderman Straight, seconded by Alderman Wolsky and carried by the following roll call vote: ayes: Jantzer, Olson, Pitner, Podrygula, Sipma, Straight, Wolsky; nays: none.

The Mayor directed the City Attorney to review the contract and move forward with early termination and asked HR for the proper steps for contract cancellation. He then looked to the Finance Director and other leadership and said they would come together in the near future to discuss next steps.

Alderman Wolsky said the other recommendation in the report is important but he does not believe it needs to be taken up at this juncture. Since they will be discussing interim leadership later on, they should have an opportunity for further discussion.

Alderman Podrygula agreed and said they have more opportunity to discuss interim leadership later. He suggested the Executive Committee structure be looked at.

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Mr. Barry came forward to reinforce Alderman Olson's comments that the Executive Committee always acted in the best interest of the City Council, the staff, and the community. He then thanked the Council for the opportunity to serve there. He said, he learned a lot and evidently has a lot more to learn. He has appreciated the opportunity to learn and grow in his position. He said, they have done some amazing things and wished the Council and the staff the best success in all of their endeavors.

ADJOURNMENT

There being no further business, Alderman Jantzer moved the City Council meeting be adjourned. Motion seconded by Alderman Pitner and carried unanimously. Meeting adjourned at 1:02 pm.

ATTEST: _____
Kelly Matalka, City Clerk

APPROVED: _____
Shaun Sipma, Mayor