

CITY OF MUSCATINE
SPECIAL CITY COUNCIL MINUTES
Council Chambers – 7:00 p.m. – June 23, 2016

Mayor Broderson called the Special City Council meeting for Thursday, June 23, 2016, to order at 7:00 p.m. Councilmembers present were Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread.

Mayor Broderson introduced City Attorney Matt Brick who will be providing a review and discussion of his opinion on the proposed amendments to the City Code.

Mr. Brick stated that at its April 21, 2016 meeting City Council directed him to research amending its current appointment process. He stated appointments are currently made by the Mayor and approved by City Council. He stated he was asked to research what method can be undertaken where City Council appoints and approves members to most of the boards and commissions as well as the method of appointments of the Police and Fire chiefs by the City Administrator subject to City Council approval.

Mr. Brick stated his purpose tonight his threefold. He stated he would provide his feedback on the appointment process for the city's boards and commissions, provide an update on outstanding city claims and appeals, and participate in two closed sessions concerning pending or actual litigation against the city. Mr. Brick pointed out that the closed sessions have nothing to do with City Council's motion to change the appointment process for the city's boards and commissions. He further pointed out that there will be no action taken by City Council at tonight's meeting.

Mr. Brick stated his legal opinion deals with those boards and commissions identified in the City Code expressly created by state law which include the Airport Advisory Commission, Art Center Board of Trustees, Civil Service Commission, Historic Preservation Commission, Library Board of Trustees, Recreation Advisory Commission, Planning & Zoning Commission, Board of Water, Electric, and Communications Trustees, and Zoning Board of Adjustment. He stated there is nothing in the law preventing City Council from taking over the entire appointment process. If that is the route City Council chooses to take, the change would be done by ordinance and not under your City Council rules. He stated that under state law, any changes made to the Library Board of Trustees appointment process must be put before the voters.

Mr. Brick stated there are some boards and committees not requiring approval by City Council and gave CIAT as an example. He stated those committees in existence were formed under the old City Code and City Council may want to consider updating them to bring them in line with the City Code that was updated in July of 2015.

Mr. Brick stated that under state law, City Council also has the power to revise the City Code by ordinance changing the appointment process for the Police Chief and Fire Chief positions. He stated that for everything but the Library Board the City Council can direct him via changes to the ordinance to vest the power in to City Council for both approval and appointment of board members.

Mr. Brick stated another issue raised was the idea to create a formal appointment meeting where City Council and the Mayor would meet to discuss, appoint and approve board members. He stated this is something that could be done via ordinance; however, he stated it would make more sense to update the City Council rules to include a meeting specifically for board appointments. He stated it could be done by ordinance; however, it would be easier to modify the City Council rules.

In summary, Mr. Brick stated that except for the Library Board and the positions for Police and Fire Chief, City Council could take away the Mayor's appointment authority and give themselves or the City Administrator the appointment/approval authority. He stated City Council could create a formal committee that meets in January for all of the elected to discuss the appointment and approval process which can be done via ordinance or by modifying the City Council rules.

Mr. Brick stated that depending on the timeline, he could provide draft documents to the City Code and/or modifications to the City Council rules in July.

Councilmember Fitzgerald asked if City Council could design the makeup of the committee that would make the appointments or would it be done at a City Council meeting.

Mr. Brick stated that generally, if you are vesting both the appointment and approval process to City Council, it would need to be done by a quorum of City Council voting on it. He stated if it is done at a regular meeting, no issues can come up.

Councilmember Fitzgerald stated he thought it would be possible for a subcommittee to make the recommended appointments which would then be acted upon at a regular City Council meeting.

Mr. Brick stated he could provide language for changes to the City Code if appointments/approval are made at a regular meeting, modification to the City Council rules to include a special meeting, and possible City Code changes if City Council wants to have less than a full City Council involved in the process.

Councilmember Rehwaldt asked if the Mayor must be included in a full City Council meeting.

Mr. Brick stated that if it is done as part of a regular meeting, the Mayor would be in attendance.

Councilmember Harvey stated the problem he sees with holding a meeting in January is the fact that many of the appointments expire on June 30th.

Councilmember Fitzgerald stated that perhaps meetings could be held a couple times of a year which is why he felt a subcommittee would work.

Mr. Brick stated that when he provides a draft of proposed revisions, he will see if a subcommittee is allowable and if not, he will explain why it cannot be done.

Councilmember Bynum stated he feels City Council must listen to their constituents. He recommended the appointment power stay with the Mayor and that City Council try and improve their communications with her.

Councilmember Natvig stated he would like to avoid the stalemate City Council is experiencing with appointments not being made.

Councilmember Fitzgerald, speaking in reference to the Police Chief and Fire Chief positions, stated the City Administrator currently evaluates all department heads and that both of these positions are department heads. He then asked the City Administrator if he does do the evaluations for all department heads.

City Administrator Mandsager stated he does not provide evaluations for the Library and Art Center directors.

Councilmember Fitzgerald stated he does not feel these two positions should be any different than any of the other department heads.

Councilmember Harvey stated he does not mind if the Mayor appoints the Police Chief or Fire Chief as long as the appointments are approved by City Council.

Mayor Broderson stated that is how it is done now.

Councilmember Spread stated the Police Chief and Fire Chief do have Civil Service protection. He stated the city has a strong City Council/City Administrator form of government. He stated he wants to be part of the decision making process when recommendations are being made. He stated it has never been his intent to keep the Mayor out of the decision making process but he does want to see an inclusive process which is why he made the recommendation he did at the April 21, 2016 City Council meeting.

There was discussion between City Council and the Mayor concerning the matter being discussed tonight being voted on by the people.

Councilmember Natvig stated he was concerned about the impasse the City Council is experiencing concerning appointments to the boards and commissions.

Mayor Broderson explained why she feels no one wants to serve on the city's boards and commissions.

City Administrator Mandsager stated it was his understanding the proposed January meeting would be held to discuss and make appointments to the various boards and committees that City Council members are appointed to, and Mr. Brick told him he was correct.

Mayor Broderson then called for a motion to allow people in the audience to speak.

#23458. Councilmember Harvey moved the motion be approved. Seconded by Councilmember Bynum. All ayes; motion carried.

Residents who spoke in favor of leaving the Mayor's powers as they are were as follows:

Shellie Van Winkle, 313 W. 3rd Street, Ava McBride, 903 Newell Avenue, John Dabeet, 2515 Lucas Street, Susan Cory, 603 E. 10th Street, Roger Roth who resides at the Clark House, Chris Clark, 2420 Longhurst Court, Matt Starkweather, 1013 Wier Street, and Andrea Wilford, 1035 Orchard Avenue.

Mark LeRette, 716 W. 3rd Street, stated he feels the power to make appointments to the city's boards and commissions should remain with the Mayor; however, he feels the filling of the Police Chief and Fire Chief positions should be handled by the City Administrator with approval by City Council.

Mayor Broderson then explained why she feels the Mayor should retain the responsibility of hiring or firing the Police Chief and Fire Chief.

City Administrator Mandsager stated comparable cities to the City of Muscatine who have been contacted for union negotiations and hiring purposes have these two positions hired by either a City Manager or City Administrator with City Council approval.

The final item on the agenda was an update by City Attorney Matt Brick.

Mr. Brick stated that on April 15, 2016 the city filed an appeal on the decision made by Louisa Drainage District #13 to annex approximately 1/3 of the city into the drainage district. He stated an appeal

was filed on May 4, 2016 in the Muscatine County District Court by the Kent Feed Corporation and other affected companies. He stated the appeal is being handled by the attorney representing the Kent Feed Corporation. He stated the appeal has been granted which will allow more time for the grunt work. He stated the hearing will be held on July 27, 2016 but he does not anticipate City Council being called into the process. He stated it is great that we have an attorney willing to do the leg work at no cost to the city.

Mr. Brick stated that on May 11, 2016 the IPERS Board received an anonymous complaint about the city's hiring of a retired employee who came back to work as an independent contractor to assist staff while a position was being filled. He stated the city has provided information that the allegations were without merit. He stated he will update City Council when a response is received back from the IPERS Board.

Mr. Brick stated that on May 11, 2016 the State Auditor's office received an anonymous request that the city's fiscal year 2014/2015 be re-audited. Nothing has been done to date but the state has been notified the city is ready to assist them when necessary.

Councilmember Fitzgerald asked what the cost would be to the city and taxpayers.

Mr. Brick stated there would be no cost to the city.

Councilmember Rehwaldt asked if the taxpayers would be taking the hit on this, and Mr. Brick answered yes.

Mr. Brick then stated that a few months ago three separate complaints were filed with the Iowa Public Information Board concerning alleged violations made by the city concerning open meetings and open records. He stated the first two complaints were dismissed because there was no basis to the complaints and the third dismissed for being legally deficient.

At 7:50 p.m. Mayor Broderson called for a 15 minute recess prior to entering Closed Session.

#23459. Councilmember Rehwaldt moved to go into Closed Session at 8:10 p.m. per Iowa Code 21.5.1.c to discuss strategy with Counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation. Seconded by Councilmember Spread. All ayes: Councilmembers Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread. Motion carried.

Mayor Broderson called the Closed Session to order at 8:11 p.m. Councilmembers present were Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread. Also present were City Administrator Gregg Mandsager and City Attorney Matt Brick.

#23460. Councilmember Fitzgerald moved to leave Closed Session at 8:27 p.m. Seconded by Councilmember Spread. All ayes: Councilmembers Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread. Motion carried.

#23461. Councilmember Fitzgerald moved to go into Closed Session at 8:28 p.m. per Iowa Code 21.5.1.c to discuss strategy with Counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation. Seconded by Councilmember Harvey. All ayes: Councilmembers Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread. Motion carried.

Mayor Broderson called the Closed Session to order at 8:29 p.m. Councilmembers present were Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread. Also present were City Administrator Gregg Mandsager and City Attorney Matt Brick.

#23462. Councilmember Fitzgerald moved to leave Closed Session at 9:13 p.m. Seconded by Councilmember Rehwaldt. All ayes: Councilmembers Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread. Motion carried.

Under comments, Councilmember Saucedo stated that the City of Muscatine's elected officials do their best to work together to make our community a better place to live.

Councilmember Spread moved the meeting be adjourned at 9:17 p.m.

Gregg Mandsager, City Administrator