

MINUTES – MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
OCTOBER 21, 2013
CITY HALL CONFERENCE ROOM – 5:00PM

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Jamie Boucher	City Clerk

ESTABLISH QUORUM AND CALL TO ORDER

SUMMARY OF CLOSED SESSION ITEMS - The Mayor read a summary of the Closed Session items.

Councilmember Nancy Johnson questioned whether we can legally proceed with holding this meeting and requested the ability to ask a question of Contract Attorney, Mr. Simas. She asked Mr. Simas if he obtained a City of Morro Bay business license as Municipal Code Section 5.04.050 requires he have one – any contractor doing business in the City of Morro Bay is required to obtain a business license before doing business in the City of Morro Bay.

Mr. Simas respectfully disagreed with Councilmember Nancy Johnson’s interpretation of the code stating that he did have a business license in both San Luis Obispo and Sacramento which is where he has his physical offices. He appears in courts and administrative hearings throughout the State of California and there aren’t business license requirements where you aren’t domiciled or have a place of business and he has no place of business in the City of Morro Bay.

Prior to the opening of Public Comments, Mayor Irons read the rules for decorum for public comment.

CLOSED SESSION PUBLIC COMMENTS - Mayor Irons opened the meeting for Public Comment.

Keith Taylor questioned the purpose for terminating the City Attorney; is it to eliminate good advice and throw caution to the wind?

Dorothy Cutter stated there are a lot of angry people here who don’t understand what is really happening. She supports the Mayor and hopes that everybody can be cordial.

Lynda Merrill supports the Mayor and Council in whatever decision they make. She thanked all of Council.

Jeff Jones urged Council to use great caution. He has personally worked with both the City Attorney and City Manager. The City Attorney has worked tirelessly on the City’s behalf. The cost of these actions could reach \$500,000 which is money spent needlessly. He stated that the Council are part time advisors to the City and are here for only a short time, these are the

professionals that serve the City. The majority of the votes on Council are the votes that set policy and both the City Manager and City Attorney follow that majority. Before taking action, think of the end result.

Bridgett Kessler stated this is her third time speaking and is not going to ask again for your reconsideration as she feels like she's just talking to a wall. She is very disappointed. She took the opportunity to thank Rob Schultz for all of his hard work and for what he has done for the City and wishes him well in his future endeavors.

Tim Crowley stated that for the first time in his memory, the majority of the City Council reflects his point of view; he supports the actions being taken regarding the discipline, dismissal, release or termination of the City Attorney's contract. He doesn't support the misguided attempt to recall the Mayor. He honestly thought that would have ended after the Tribune reported the Brown Act violation that occurred back in November.

Dan Costley stated that based on his past experiences, it is evident that Council has a different definition of the concept of transparency than he does. He asked Council to be more tolerant, more compassionate, and ultimately more responsible in your actions.

John Barta stated that good leadership would approach a change in the City Attorney position with a plan before, not after, action is taken. You first need to define the role of the City Attorney; the role of the City Attorney needs to be an expert in the following issues: harbor district, California Coastal Commission, Federal Boating and Waterways; Army Corp of Engineers; Federal Fish and Wildlife; State Fish and Game; ground water rights; desalination plant; State Water Board; State Energy Commission; ocean water intake and outfall issues; State Tidelands Trust; lease management; code enforcement, State Parks, US Coast Guard; personnel, and litigation as well as a deep knowledge of the municipal code. They would need to be available when needed, ie: an office in city hall and they need to be affordable. He feels that Rob Schultz is the only person in the State of California that can do this.

Dede Alexander stated that granted, California is an at-will state. And you have stated that neither Rob Schultz nor Andrea Lueker have committed any wrong doings. Since neither has been placed on administrative leave, we can only assume they haven't been accused of any maleficence. Can you enlighten us on your zeal in terminating them?

Dan Glessman stated that on September 12, 2013, in the public comment period prior to closed session, the City Attorney exercised his right to request disclosure of the cause that would justify that action. No cause was given but it was stated there were reasons; if you care about uniting this City, these reasons need to be explained to the public; "we are waiting".

Janice Peters stated that Mr. Simas doesn't have a contract with the City of Morro Bay as it won't be approved until tomorrow night. She stated that the motion for the contract was for one not to exceed \$12,500 and the submitted contract doesn't mention that at all. The contract is for 1 year and was retroactive back to October 7th, she wondered if he had been giving advice since then. She also stated that there were only 2 signatures on the contract, Mr. Simas's and the Mayors, there was no signature provided for the City Clerk or City Manager. She questioned previous comments made about how the protest happened after the closed session was announced in 24

hours being an organized protest. She stated that this has been the most spontaneous coming together of citizens that she has seen in 22 years. She ended by telling Mr. Schultz that she is very proud to have worked with him.

John Gajdos stated that people have said that Mayor Irons was elected by an overwhelming majority of the voters. He refuted that by saying that 51.9% of the voters who voted, voted for the Mayor which is still less than a third of registered voters. He questioned why this meeting was called at a time that most public can't make it.

Homer Alexander stated that to the best of his knowledge, no single member of any City Council in the town's history has ever independently requested proposals from contractors and then without consultation with the City's professional staff, or City Council, selected one of those contractors to provide tax payer services. He wondered if the Mayor was planning on being the sole decision maker for other actions in the future.

Karen Croley understands that Council isn't at liberty to be transparent and doesn't understand why that argument keeps coming up. Under confidentiality laws, Council is unable to say what is going on and she respects that and trusts you. What's going on in this town is based on the result of the unknown, and people respond to the unknown in 2 ways, either they trust or they fear and she sees a lot of fear going on.

Marilyn Glessman stated that the last time a senior executive was fired in Morro Bay; it took 1 hour and the time before that, less than a 1 day. It has taken 41 days since the Mayor walked into Mr. Schultz's office and announced you wanted to fire him and the City Manager. She has never heard of any manager at any level taking 41 days to terminate an employee. She wondered if you got bad advice or were you just unprepared.

Bob Keller stated that our Council is very transparent. He supports the Mayor and the Council to do what is in the best interest of the City. Sometimes tough decisions have to be made. This is not an issue of personalities. He urged Council do to their fiduciary duties with due diligence and not act with emotion.

John Weiss stated that he is sad because our community is divided. And he is sad because serious consideration to terminating 2 fine employees is being considered and he would ask you not to take that action. He asked you to support the City Attorney and the City Manager as they are the best we have ever had.

Barbara Doerr is very unhappy to be here again today. She declared she voted for Mayor Irons and Councilmembers Christine Johnson and Smukler. She has full confidence that they are doing things professionally, legally and to the best of their ability to do it. She thanked them for serving and she knows you care about the community. She reiterated that this is not a personality contest.

Garry Johnson stated that even though the municipal code allows it, you must be confident that the contract you signed with Mr. Simas won't be considered void or illegal. He went on to say that he has sent multiple letters to the editor at The Tribune and they have been rejected each time and is concerned about the paper's slant. There is a difference between corporate America and how the government runs.

Jim Hayes asked Council if they were planning to replace the City Attorney with another in-house attorney or use outside counsel to work on the City's day to day legal actions.

Dick Cleeves asked that if you terminate Mr. Schultz today, who will handle City's duties of Risk Management and Code Enforcement?

Joan Solu questioned the Council as to what is the reason for termination; where is the transparency; explain what your vision and ideas for the future of the City of Morro Bay and what vision you have that requires such an extreme action – how does that action meet the guidelines for openness and transparency. She ended by saying this is very concerning and a lack of factual answers are very disruptive and destructive to our small community.

Bill Weatherford supports the whole board stating that they are responsible for the City that he loves so much. He feels fortunate that as a community we are able to get together and talk to the Council. He feels the Mayor should be applauded for taking the heat for this situation because what you are doing is guaranteeing the legal process.

David Burton said it would be great and everybody would love to know why you are doing this but understands that information is confidential. He trusts that the Council will make the right decision and understands that a lot of the information will not and cannot come out.

Phil Kispersky questioned the previous speaker saying that there was a lot of contention with the previous board. He has always considered the current Council to be open and honest people until this point in time. He is surprised that Councilmembers Smukler and Christine Johnson are supporting this kind of action so blindly without some kind of reasoning. He is looking for an open and honest reason as to why. He questions the reason for wasting all of this money and wondered where the money was going to come from, since it's the taxpayers, he feels he has the right to ask why.

Rick Grantham was cold and had to put his jacket on today; then stated that that must pale in comparison to the ice that must lie in anybody's heart that wants to get rid of anybody like this. He told Mr. Schultz that he is a wonderful person and is very against what is going on here. This is ruining people's lives for no good reason.

Jeannie Fry proposed an alternative idea. Instead of spending money on recalls or investigations for cause, why not use these funds to let the voters of Morro Bay vote on the issue of keeping or firing these employees.

Harry Franklin stated that he has never seen Morro Bay be so divided with what's going on in the City. He feels that Council has brought this about themselves as they haven't given reasons for the action and since it has drug out for so long. This falls on your shoulders and as a citizen, is asking the Mayor to resign your position.

Brahm Phillips Webb stated that the City Manager has worked for the City for over 20 years. He said that she supported him in returning to school and getting his degree. He can't understand that for all the things she has done for the City over time that you would ever think of getting rid of her.

The public comment period was closed.

Mayor Irons answered some of the questions posed in public comment stating that this is a confidential matter and there are questions and answers that won't be discussed, if and when there is information that can be discussed/disclosed, they will; he has viewed other City contracts and notes that several only have 2 signatures; at the September 12th meeting, the premise of "no cause and no claims", was a statement made for that meeting and at that time; until we get thru this closed session, then we will be able to discuss what legally we can about claims and charges.

Councilmember Nancy Johnson stated that not only do we have an illegal contract; she has also been completely through the City records and the municipal code and the only reference to the award of contracts she was able to find stated that the City Manager or designee is authorized to award contracts. She questioned how we can be consulting with Mr. Simas without a valid contract. She also has asked repeatedly to speak to the \$3500 spent on legal counsel back in April which wasn't reviewed in open session. As a member of this board, she wants to know what the facts are and even she doesn't; we are all supposed to serve with the same powers up here.

The City Council moved to Closed Session and heard the following items:

CS-1 GOVERNMENT CODE SECTION 54956.9(b) –CONFERENCE WITH LEGAL COUNSEL –ANTICIPATED LITIGATION - Exposure to litigation exists based upon existing facts and the advice of legal counsel as to one matter. Under Government Code Section 54956.9(c), the name of the possible litigation is withheld as disclosure of it would jeopardize the City's ability to conclude existing settlement negotiations to its advantage.

CS-2 GOVERNMENT CODE SECTION 54957(b) -- PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE/TERMINATION OF CONTRACT
Review of contract of City Attorney.

CITY COUNCIL CONVENED TO OPEN SESSION – The City Council convened to open session; Mayor Irons reported that Council made recommendations to our outside legal counsel to negotiate a separation agreement with our current City Attorney; we will proceed for a Special Open Session City Council Meeting for October 25, 2013 at 9am to discuss an RFP for an interim outside contract City Attorney.

ADJOURNMENT

The meeting adjourned at 7:39pm.

Recorded by:

Jamie Boucher
City Clerk