

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – OCTOBER 29, 2013
VETERAN’S MEMORIAL HALL – 10:00 A.M.

AGENDA NO: A-5
MEETING DATE: 11/12/2013

Mayor Irons called the meeting to order at 10:00 a.m.

PRESENT:	Jamie Irons	Mayor
	Christine Johnson	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Rob Schultz	City Attorney
	Jamie Boucher	City Clerk
	Susan Slayton	Administrative Services Director
	Rob Livick	Public Services Director
	Amy Christey	Police Chief
	Steve Knuckles	Fire Chief
	Joe Woods	Recreation & Parks Director

- I. ESTABLISH QUORUM AND CALL TO ORDER
- II. MOMENT OF SILENCE
- III. PLEDGE OF ALLEGIANCE

Mayor Irons stated that this does not preclude the RFP process currently underway.

IV. PUBLIC COMMENT

John Barta stated he is suffering from Special Meeting/Closed Session overload. This meeting was again noticed with short notice. It is being held at 10am when many members of the community can't afford to be out. He wanted to let Council know that many of us are frustrated.

Mayor Irons closed the public comment period.

V. CITY COUNCIL TO DISCUSS AND DIRECT STAFF TO OBTAIN IMMEDIATE, SHORT-TERM, INTERIM CITY ATTORNEY SERVICES

Mayor Irons polled the Council on their support or objection to this item.

Councilmember Leage objects stating we are here talking about another lawyer, how many do we need?

Councilmember Christine Johnson supports this meeting today based on developments over the weekend.

Councilmember Nancy Johnson again voiced her objection to this illegal, unethical and unprofessional process. She stated that the termination process isn't until Friday's closed session and this is putting the cart before the horse.

Councilmember Smukler is in favor as we are in negotiations for a separation agreement with our current City Attorney and it's important to maintain legal coverage for the City.

Mayor Irons asked Administrative Services Director Susan Slayton questions about possible options for services as well as funding sources.

Ms. Slayton hasn't contacted anybody to date. She hopes to contact Liebert Cassidy Whitmore who is a group of attorneys and is one that the City uses for training purposes. They have also provided legal services for us in the past. As far as funding sources, there is approximately \$20-25,000 in savings out of the City Attorney budget. There is approximately \$350,000 that is unbudgeted in the Risk Management fund but she cautions using this as we will probably be using this for the City Attorney and possibly City Manager. There is 3.1 million in the Emergency Reserve.

The public comment period for Item V was opened.

Homer Alexander stated that on September 24th, the Mayor was authorized to engage in hiring a law firm to deal with the City Attorney and City Manager personnel issues. According to the minutes, Mr. Smukler stated that time was very important. Mr. Simas's contract was retroactive to October 7th. He doesn't understand why the full Council didn't have the full opportunity to review the proposals/contract at the meeting on Oct 8th, only one day later. This is day 49 of the Rob Schultz saga; you could have waited to sign the contract, why wasn't it brought forward to the October 8th City Council meeting? While he doesn't believe that the Rob Schultz termination was an emergency, in this case, you now have an emergency - all City business that requires a City Attorney has stopped. Now you are going through the correct process so that all Council can be involved in selecting an interim attorney. Why a completely different approach from the meeting on the 24th?

Rick Grantham asked what the balance of the Risk Management Fund was a year ago. He also stated that the Emergency Reserve Fund sounded low.

John Barta has obviously not been privy to the instructions given to Mr. Simas. It appears he was invested with the authority to place Mr. Schultz on administrative leave. Is this the case? We have a perfectly good City Attorney if we would only use him. He went on to say that emergency funds are to be used for things outside of our control; we have control here. He counted that there could be 5 different City Attorneys that the City may be dealing with in a period of 6 months, that's a "man created" problem. He is dismayed that this hasn't worked out better and in a more adult fashion.

The public comment period for Item V was closed.

Mayor Irons answered some of the questions posed during public comment: the contract was signed on the 7th and the agenda for the 8th had already been set. He asked Ms. Slayton to answer the financial questions. She stated that the Risk Management fund was much healthier but only had \$300,000 unencumbered funds available. The Emergency Reserve Fund is something that the Council can decide what to do with.

Councilmember Nancy Johnson has heard several questions asked in public comment and feels that Council is not answering those questions. Mr. Alexander asked why Council has changed direction, this is day 49 and it could have been taken care of much quicker; Mr. Barta asked about Mr. Simas's role, how many attorneys will we end up with between now and June; and there was a question about backdating the contract.

Councilmember Smukler stated that Mr. Simas was hired to help Council work through personnel issues; this is separate to the City's need for legal counsel for our operations and business. As far as the amount of time this has taken, this is a very challenging situation and they are trying to respect Mr. Schultz's needs as well as the City's needs.

Councilmember Nancy Johnson asked how well we, as the entire Council, is being represented by Mr. Simas. She has complete confidence in our City Attorney to conduct day to day business.

Councilmember Christine Johnson thinks that Mr. Barta's questions are fair. She agrees that this is complex and she agrees that it is very important to clarify for the public the following: the Council is negotiating with the City Attorney on a settlement agreement; to do this, we had to hire an attorney with personnel experience in employment law; then the RFP process is needed to hire an interim City Attorney; and then we needed to obtain immediate short term interim City Attorney services – this list does take on a bit of the absurd. We are talking about 4 separate processes and 4 different needs for legal services. The City Council priority today is to protect the City of Morro Bay; we are in the middle of negotiation with key people, that responsibility falls directly on the shoulders of the Council. They need to find a way to ensure that all residents and employees are legally covered.

Councilmember Leage stated that our City Attorney has been protecting this town for a long time and he believes he would carry on. He doesn't see any need to bring in another attorney. Citizens are getting very tired of this. While this process is going on, Mr. Schultz can do his job and he believes he will do it as he is above reproach.

Councilmember Nancy Johnson totally and completely agrees with Councilmember Leage; our City Attorney has offered to work with an interim attorney for a smooth transition. She doesn't see a conflict of interest to conduct City business while you work on a termination agreement.

Mayor Irons asked Ms. Slayton, that with direction from Council, how long it would take to obtain Leibert Cassidy Whitmore services. Ms. Slayton stated that if that were the direction from Council, she would make contact, they would draft a contract/proposal and we should have something from them fairly quickly. She went on to say that she would need to know the scope, length of time, expectations, etc. Mayor Irons stated that the City Attorney's contract as well as municipal code should lay out the score of work that we are looking for. Ms. Slayton would also need to know the length of time you would want this person involved. She is also aware of some local City attorneys who provide municipal law: Tim Carmel and David Fleishman.

Councilmember Nancy Johnson requested the following be put into the minutes: the first time the Mayor spoke, he did not refer to the contract but instead he referred to Mr. Schultz's agreement which she understands is confidential. Mayor Irons responded that when he restated it, he stated employment contract for language.

MOTION: Mayor Irons moved to direct Susan Slayton, through the City Manager to obtain short term interim City Attorney services immediately and to report back to City Council at the next available meeting. The scope of services has been laid out in the City Attorney contract and municipal code. The time would be for 60 days. The motion was seconded by Councilmember Christine Johnson.

Councilmember Smukler wanted to make a suggestion to the motion. Regarding the 60 day timeline he would rephrase it to say until the conclusion of the RFP process, that contract is signed and the attorney is brought on board. He doesn't feel the motion gives Ms. Slayton the right amount of direction in reviewing options. He suggests that Ms. Slayton review and invite responses from firms that will include costs to ensure getting a fair price. He requested that Mr. Carmel and Mr. Fleishman not be included in the request, not due to quality of their services but due to possible conflicts of interest.

Councilmember Nancy Johnson asked that if we go out today or tomorrow in search of this interim attorney, what do you plan on doing with our current City Attorney sitting here today. She sees no conflict of interest in his serving the City of Morro Bay while working on the settlement agreement.

Councilmember Leage feels this is getting out of hand; we have a capable attorney here that can take us through to when we get an interim City Attorney on hand.

Councilmember Christine Johnson stated that 60 days seems too limiting. She also stated that she did a Google search for San Luis Obispo municipal law firms and both Grover Beach and SLCUSD/Port San Luis have contract attorneys that would be worth contacting. She suggested trying to find a local attorney without a direct connection to the City of Morro Bay.

AMENDMENT TO THE MOTION: Replace the "60 days" with obtaining the Interim City Attorney to ensure transition overlap of this firm with the firm that is selected via the RFP process. Councilmember Smukler seconded the amendment and it carried 3-2 with Councilmembers Nancy Johnson and Leage voting no.

Councilmember Nancy Johnson asked, we have a legally hired paid City Attorney sitting in this room, what will you be doing with him?

Mayor Irons responded that those answers will be discussed in Thursday's meeting.

VI. ADJOURNMENT

The meeting adjourned at 10:51 a.m.

Recorded by:

Jamie Boucher
City Clerk