

# MINUTES

Monday, July 12, 2010

Public Services  
Committee

5:20 p.m. at Carnegie Town  
Hall  
235 West Tenth Street



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**Members Present:** Kenny Anderson Jr., Vernon Brown, Michelle Erpenbach and Sue Aguilar

**Members Absent:** None

**Staff Present:** Debra Owen, City Clerk/Chief of Council Operations and Jamie L. Palmer, CMC, Assistant City Clerk

**Guests:** Jeanne Gerken, Cheryl Rath, Ayn Bird, Kermit Staggers, Shirley Wieman, Gail Eiesland, Megan Luther, Bob Litz, Greg Jamison, Jim Entenman and Rex Roling

## 1. Call To Order

Committee Chair Anderson Jr. called the meeting to order at 5:20 p.m.

## 2. Review and approval of minutes dated June 28, 2010

A motion was made by Erpenbach and seconded by Aguilar to approve said minutes. A voice vote was taken and all members present voted yes. **Motion Passed.**

## 3. [Referred Ordinance \(from 6/7/10 City Council Meeting\): AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE REVISED ORDINANCES OF THE CITY BY REVISING ARTICLE III, SECTION 12 1/2-35, FOR THE COMPLAINT PROCEDURE FOR THE BOARD OF ETHICS.](#)

Debra Owen, City Clerk/Chief of Council Operations, gave a brief overview for this item. She stated that each of the committee members reviewed the Ethics ordinance individually and added their comments/suggestions for changes. Owen compiled those comments into one document which she will review today for additional input.

**Section 12 1/2-2 Qualification and Board Composition.** Owen asked if a provision should be added to state that the Board of Ethics members are volunteers, who do not receive compensation from the city,. Discussion occurred about adding a section to clarify how the Board of Ethic's investigating officer is designated. Erpenbach asked why school district employees cannot qualify to serve on the Board of Ethics and if that stipulation could be removed. Brown

stated that Owen and Eiesland should work together to find the best section to place the no compensation sentence. Discussion followed.

**Section 12 1/2-4 Terms.** Owen reported that committee members all agreed to add language regarding term limits such as: Board of Ethics member may only serve two 4-year terms.

**Section 12 1/2 -8 Quorum.** One of the committee members would like to increase the number of Board of Ethics members that are required for a quorum or even require that all board members be present when making a decision. Discussion followed.

**Section 12 1/2-10. Powers and duties of the Board of Ethics.** Under subsection 4, Owen reported that there was input to change the language with this intent: to conduct preliminary investigations concerning matters covered by Board of Ethics Article III and Charter Article II and that the council will receive a full report of investigations conducted by the Board of Ethics. Anderson Jr. asked that Owen and Eiesland work together to try to find the best language for clarification. Discussion followed.

**Section 12 1/2-10 Subsection 6.** Under Article II, the board may subpoena persons or documents. It was questioned if the accused should also be allowed to subpoena persons or documents. Discussion followed.

**Section 12 1/2-10 Subsection 10.** To carry out such educational programs as it deems necessary to effectuate the policy and purpose of Article II. The committee is in agreement to delete this section because they feel that Human Resources and the City Attorney's Office can teach the employees about this code.

**Section 12 1/2 Subsection 11.** To promulgate any rules and regulations for the conduct of the Board of Ethics activities not inconsistent with the intent of Article II or the City Charter, including procedural rules consistent with the requirements of due process of law. The committee agrees that this section should be deleted.

**Section 12 1/2 Subsection 15.** To offer recommendations with respect to remedies for violations of Article II. Owen stated that there was committee agreement to change the language to state: To offer recommendations with respect to remedies for violations of Article II Section 12 1/2-24 and Article III recommendations shall follow provision 12 1/2-36.

**Sec.12 1/2-11. Records.** Owen stated there was agreement by committee members to require copies of the minutes be filed with the City Clerk's Office. In Section A, language should be added to clarify that the vote of each member shall be recorded in the minutes. Eiesland said in section 12 1/2-7 it states that the Board of Ethics may meet in executive session but SDCL 1-25-1.1 states that

the vote or official action has to take place in public. Therefore, she believes that section already clarifies that but adding the additional language would be appropriate. Discussion followed.

**Section 12 1/2-12. Staff.** There was consensus by the committee to change the language to read: The person appointed as city attorney shall serve as legal counsel to the Board of Ethics. When necessary, the city attorney shall consult with outside legal counsel as needed. If the Mayor is charged with a violation of this chapter or charter then an outside attorney, not employed by the administration, should serve as legal counsel to the Board of Ethics. Discussion followed.

**Article II. Section 12 1/2-15 Definitions.** The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: There is committee agreement to delete "except where the context clearly indicates a different meaning" because it creates a question. After some discussion, it was decided that the language will remain as it is currently written. The same would be for Article III Section 12 1/2-29.

**Section 12 1/2-15.** Advisory opinion means a written opinion offering the board's advice to the requestor in conjunction with its interpretation of the City Charter or ordinances and state law on a matter submitted for that purpose. Discussion followed regarding removing "and state law" from that definition. Eiesland stated that she is currently reviewing a request for an advisory opinion that deals with state issues and therefore believes that the language should remain. The committee was in agreement. Discussion followed.

**Section 12 1/2-23. Complaint Procedure.** Owen read the section and said that the consensus of the committee was to add language so that the city officer or employee has the right to clear their name publicly. One possible change is "all complaints shall remain confidential until such a time that the Board of Ethics completes their investigation and determines that they shall be made public or until the person(s) against whom the complaint was filed consents or the person against whom the complaint was filed requests a public hearing, whichever comes first."

**Section 12 1/2-23 Complaint Procedure.** Owen clarified that this section pertains to city employees or officers, not public officials. There were several suggestions from committee members regarding the last sentence. It currently reads: All complaints shall remain confidential until such a time that the Board of Ethics determines they shall be made public or until the person(s) against whom the complaint was filed consents or requests a public hearing, whichever may occur first. The committee would like to add language so that the public employee or officer has the right to clear their name publicly. A recommendation for change is: All complaints shall remain confidential until the Board of Ethics

completes their investigation and determines that they should be made public or until the person(s) against whom the complaint was filed consents or the person whom the complaint was filed requests a hearing, whichever may occur first. Discussion followed. Eiesland suggested that research be done to see how other municipalities handle the complaint procedure.

**Section 12 1/2-24 Penalty.** Request by HR in 2009 that the provision “to fire the employee” be removed and changed to “contrary to the collective bargaining agreement”. Owen stated that there were several comments by committee members on this section but all were in agreement to change the language to reflect that the Board of Ethics may make recommendations to the appropriate entity but they would not have the final authority or impose the penalty. Discussion followed. Eiesland agreed with the change.

**Section 12 1/2-26. Judicial Review.** Pursuant to Article IX of the South Dakota Constitution, any action taken by the Board of Ethics in response to a filed or initiated complaint is subject to judicial review as provided by SDCL Ch. 21-31 within 20 days of the board’s final action in the matter. The "initiated complaint" language gives the Board of Ethics, by Charter, the authority to conduct or start their own investigation of their own accord.

**Section 12 1/2-28 Construction.** The article shall be liberally construed to protect the public interest in full disclosure of conflicts of interest and promoting ethical standards of conduct for City Council members. Owen stated that the committee members would like "and mayor" to be added to the end of that section. Eiesland agreed.

**Section 12 1/2-34. Advisory opinions - Elected officials and candidates.** In 2009, at the request of the Board of Ethics, the committee wanted people that are running for public office to be able to request an advisory opinion. Discussion occurred if this statement should remain. After discussion, it was the consensus of the committee that the language shall remain.

**Section 12 1/2-35. Complaint Procedure.** (b) The Board of Ethics shall have all the powers of investigation as are afforded the City Council by the Charter. The Board of Ethics performing the review shall report to the City Council in writing no more than 30 days after the day of the assignment unless an extension is granted by a majority of the eligible council members. Discussion followed about clarifying what should be included in the "report". Brown agreed that "report" should be defined so the board knows exactly what they need to send to the council. Also, change the sentence - If however, the board of ethics determines by a "majority vote" to read "a vote of all of its members". Discussion followed.

**Section 12 1/2-35 (c).** All complaints shall remain confidential until the City Council determines they shall be made public. The City Council shall maintain

confidence until the accused consents to release or request a public hearing, whichever occurs first. A possible modification should read - "All complaints shall remain confidential until the City Council has finished its review of the alleged violation or until the accused consents to the release or until the accused requests a public hearing, whichever occurs first. Discussion followed about using slightly different verbiage with the same intent.

Kermit Staggers spoke about his recent interaction with the Ethic's Board. Discussion followed about the accused having the ability to break the confidentiality and speak about the item in order to clear their name.

**Section 12 1/2-36. Violations.** Discussion occurred about removing the language "private reprimand".

**Section 12 1/2-36 subsection b.** There was discussion about deleting subsection B but, it was decided that the language would remain as written.

**4. Open Discussion**

There was none.

**5. Adjournment**

A motion was made by Brown and seconded by Erpenbach to adjourn. Committee Chair Anderson Jr. adjourned the meeting.

Jamie L. Palmer, CMC

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Assistant City Clerk