

# MINUTES

Public Services Committee

Tuesday, July 27, 2010

4:02 PM

Carnegie Town Hall

235 West Tenth Street



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

**Members Absent:** None

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

**Guests:** Mari Robbenholt, Howard Paulson, Michael McKnight, Robert Swanhorst, Bill O'Connor, City Attorney David Pfeifle, Assistant City Attorney Shawn Tornow, Chief Assistant City Attorney Gail Eiesland, Bob Jamison, Jeanne Gerken, Gerald Gerken, Kermit Staggers and Ann Byrd

## 1. Call To Order

Committee Chair Anderson Jr. called the meeting to order at 4:02 p.m.

## 2. Review and approval of minutes dated July 12, 2010

A motion was made by Council Member Erpenbach and seconded by Council Member Aguilar to approve minutes dated July 12, 2010.

Committee Chair Anderson Jr. called for a voice vote on that motion. All members 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.

Anderson Jr. introduced the item for discussion. Brown asked Owen to give a brief summary of the committee's recommended revisions discussed at the meeting held on Monday, July 12, 2010. Owen stated that the changes are not in final form as they were only recommended revisions to bring clarity to the ordinance. She stated that the recommended revisions are best outlined in the July 12<sup>th</sup> meeting minutes. Copies of the minutes were shared with the Board of Ethics members.

Brown asked former Council Member Bob Jamison to speak on this item. Jamison gave a brief history of the Ethics Ordinance and explained that the initial ordinance was modeled after an ordinance from the National League of Cities. It was

written to provide a code of ethics for the employees, City Council Members and the Mayor. It was not intended for use by the citizens of Sioux Falls. He continued to state that a few years back, an amendment to the original ordinance was written so that only employees and City Council Members could request an advisory opinion. It allowed citizens the ability to file a complaint with the Board of Ethics. If the complaint was valid it went forward to the City Council so they could enforce the Ethics ordinance. Jamison stated that the Board of Ethics didn't agree with the amendment because it didn't allow for a citizen to ask for an advisory opinion.

Brown asked for clarification on what the amendment changed. Owen explained that the amendment clarified that advisory opinions were meant for those that had a duty to comply (employees, Council Members, and Mayor) with the ordinance and the definition for an advisory opinion was also changed at that time.

Anderson Jr. asked Jamison for his interpretation on how and when an advisory opinion was meant to be used. Jamison stated that it was his interpretation that only a city employee or a city council member could ask for an advisory opinion; which gave them the ability ask if their conduct was ethical and to protect them. Discussion followed.

Brown further clarified that an advisory opinion is requested before any action takes place and a complaint is filed after an action takes places.

Brown asked for the history of the confidentiality policy. Jamison responded that it was his interpretation that all items were to remain confidential until all investigations were complete and both parties agreed to make it public.

McKnight asked Jamison if there was discussion about advisory opinions being anonymous or if there was ever talk about a database of previous requests submitted so that someone could see if the question had already been asked of the Board of Ethics. Jamison stated that the council used to receive a year-end report with non-identifying summation of the questions and opinions that had been asked of the board. Discussion followed.

Brown asked the Board of Ethics to talk about their complaint and investigative process. McKnight gave an overview of their process. Discussion followed.

McKnight suggested that the ordinance should clarify scope of investigation and caution should be made so that it isn't too narrow a definition. He believes that the Board of Ethics should be able to investigate other areas of concern that may arise in the process of investigation. Discussion followed about the discipline process and who has the authority to enforce the ordinance. McKnight explained that the Board's interpretation of the Charter is that the Board of Ethics has the authority to discipline. He pointed out that the Charter and ordinance can be interpreted differently.

Erpenbach wanted to make it clear that the intent of this meeting was to work together with the Board of Ethics to help clarify the ordinance. She said that she is grateful to the Board for their time and service. She asked if it would be beneficial to better align the ordinance and Charter so that it clearly specifies which body has the authority to discipline. McKnight believes that the Board of Ethics should be the investigative body for the Council which makes the initial determination that a violation has or has not occurred. Once determined, the Board of Ethics would forward that on to the council for

further investigation or action. Erpenbach asked the Board of Ethics to review the recommended revisions to the ordinance and offer their suggestions for change. McKnight said that they would be happy to do so.

McKnight spoke about the importance of confidentiality and the importance that the accused and complainants have the right to confidentiality. Brown asked for ways or ideas to help maintain that confidentiality. Anderson Jr. said that it seems unfair to make someone that is falsely accused remain silent when it is important for them to clear their name. McKnight stated that it is his interpretation that a complaint is to remain confidential unless the Council chooses to make the item public.

Jamison stated that, historically, when the Council received a report, the accused could make the information public.

Staggers spoke about his recent experience before the Ethics Board and he explained the importance of his ability to speak publicly about this complaint especially since it occurred at such a critical time in his Mayoral election campaign.

Staggers spoke about a private letter of reprimand from the Board of Ethics. He stressed the importance to state that reprimands be done by the City Council, not by the Board of Ethics.

Erpenbach stated that the purpose of this meeting is to make the ordinance better going forward. Staggers was asked to offer input which he believes would help clarify the ordinance and Charter. He said that an accused should have the opportunity to make the complaint public if they so choose.

Erpenbach asked for clarification on the Board's interpretation of the Charter violation language. Owen read sections of Charter that were referenced in this discussion.

Jamison said that there was never intent to distinguish between a Charter Violation and a Code of Ethics Violation. The process was such that a violation would come before the Council for a final determination.

Owen and Eiesland spoke about adding language that would bring the provisions of both the Charter and ordinance violations together.

Anderson Jr. proposed that the Public Services Committee members share their recommended revisions to the Ethics Ordinance with the Ethics Board Members so that they can review and make any recommendations they feel are important for clarification.

Bill O'Conner spoke about serving as a volunteer on the Board of Ethics and stated that the code and Charter must be clarified to eliminate the questions of interpretation. He feels that confidentiality can be difficult when the issue has to be shared with the Council. At one time, Owen stated that generalized information about complaints were shared with the Council and Erpenbach stated that she would like to see that process return. Discussion about a database that would contain a generic list of complaints filed with a summary of the result.

Tornow spoke about a city-wide Ethics training program that was held approximately two years ago. Discussions have occurred about this training being offered again. He said

that summaries are completed except on requests that are to remain confidential. The items that are not confidential can be summarized and shared. Tornow stated that if someone opts for a confidential request, the item remains totally confidential. He stated that they could explore the idea of redacting identifying information but this has not been done in the past.

Anderson Jr. thanked the Board of Ethics Member for coming to the meeting and stated that suggestions made by the Public Services Committee members will be shared with the BOE Members for their input. He said that a follow up meeting will be scheduled at a later time.

**4. Open Discussion**

There was none.

**5. Adjournment**

A motion was made by Council Member Aguilar and seconded by Council Member Erpenbach to adjourn the meeting at 5:08 p.m.

Committee Chair Anderson Jr. called for a voice vote on that motion. All members voted yes. **Motion Passed.**

Jamie L. Palmer

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Assistant City Clerk