

MINUTES

Public Services Committee
Meeting
Sioux Falls City Council

Monday, January 10, 2011
5:31 p.m.
at the 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 Tamara Jorgensen, CMC, Assistant City Clerk

Guests: Cheryl Rath, Jim Entenman, David Pfeifle, Donn Hill, Jeff Weber, Mike Cooper, Bob Litz, and Jonathan Ellis.

1. **Call To Order**

Committee Chair Kenny Anderson Jr. called the meeting to order at 5:31p.m.

2. **Review and approval of minutes dated December 13, 2010**

A motion was made by Brown and seconded by Erpenbach to approve the minutes dated December 13, 2010. Committee Chair Anderson Jr. called for a voice vote on the 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 ½-35, for the complaint procedure for the Board of Ethics.**

Debra Owen, City Clerk/Chief of Council Operations, opened the discussion by stating that the ordinance changes received from the City Attorney's Office had been forwarded via email to the committee members. Copies of the proposed changes have been distributed to the members and are also available on the table for public viewing.

Committee Members Erpenbach and Aguilar appreciated the inclusion of the ability to appoint an investigator to a case. This information was added to Section 12 ½-12. City Attorney David Pfeifle stated that the other change included by his office concerned section 12 ½-23 in Complaint and Investigation procedures. This update contains additional stipulations regarding confidentiality.

Committee Member Brown asked Pfeifle how the members of the Board of Ethics feel about the proposed changes. Pfeifle stated that the members, while they have not reviewed the last two revisions (stated above), respect the City Council and they agree with the changes. Brown thanked Pfeifle and Owen for their joint efforts in improving this ordinance.

Erpenbach asked if any contact has been made with the current investigator to advise him of the proposed ordinance updates. Pfeifle stated that he had not done that but would as soon as possible. Erpenbach also expressed appreciation for the work done on improving this ordinance.

A motion was made by Brown and seconded by Aguilar to present this ordinance to the City Council. Committee Chair Anderson Jr. called for a voice vote on the motion. All members voted yes. **Motion Passed.**

4. Administrative Rules Discussion

Owen was asked to update the committee. She reviewed the following information that had been sent in a previous memorandum:

- The Public Services Committee, in the past year, rejected an ordinance revision which would have allowed a department to promulgate administrative rules for the land-fill regarding recycling. These rules would have carried the same weight and effect as a city ordinance but would not have been approved by council, nor would these rules be subject to a public hearing and vote.
- In those committee meetings, council expressed a concern that the policy setting authority rests with the council and the council did not want to delegate this authority to the administration. The committee expressed support for updating/changing city ordinance if the department deems the changes are necessary. An alternative idea that was supported by the committee, was to have all administrative rules that affect city ordinances and the general public, subject to the final review and approval of the council.
- For discussion purposes, City Ordinance Section 2-35 could be amended to address this issue:

City Ordinance Sec. 2-35. Powers of the mayor.

The mayor shall, by executive order, have the power to prescribe such administrative rules and regulations as the mayor shall deem necessary or expedient for the conduct of departments and administrative agencies subject to his authority, and the mayor shall have the power to revoke, suspend, or amend any rule or regulations dealing with the administration of the city. All executive orders shall be filed with the city clerk.

Proposed Revision for City Ordinance Sec. 2-35. Powers of the mayor.

The mayor shall, by executive order, have the power to prescribe rules and regulations that the mayor deems necessary or expedient for the conduct of departments and administrative agencies subject to his authority, and the mayor shall have the power to revoke, suspend, or amend any rule or regulations, subject to city charter or ordinance. Executive orders that direct the administration of city ordinances, and affect the general public, or exceed the duties and activities of the administration of the employees subject to the mayor's authority, shall go into effect, upon final approval of the council. All executive orders shall be filed with the city clerk.

Owen was asked to update the committee. Discussion was held regarding the definitions of administrative rules and the following points were made:

- In the South Dakota State Legislature, SDCL: 1-26 the legislative branch has procedures for legislative research with the rules committee overseeing the research. This committee is comprised of legislatures.
- Both St. Paul, MN and Omaha, NE, are “strong mayor” forms of government. St. Paul adopts their administrative codes by resolution and they have this information added to their appendices. Their City Council has final authority on those rules.
- Omaha, NE allows for executive orders. These are restricted only to the personnel that are subject to that mayor's authority.
- Owen and Erpenbach stated that the proposed revision includes language that would incorporate these same concepts. It makes sense to give the Mayor authority to govern procedures for employees in his/her authority, but the ruling should be different in respect to what affects the general public.
- Brown asked for feedback from Pfeifle. Pfeifle gave a breakdown of the differences between an ordinance and a rule/regulation stating that ordinances are codified and allow for a specific criminal penalty if violated. Rules and regulations do not have that same power. He further stated that the Charter stipulates the divisions of power in section 4.01 and describes the functions prescribed to the mayor. Pfeifle has had conversations with city directors and department personnel and has been told that the directors are willing to bring any type of administrative rule before the city council for review. There would be a limit on the amount of time to review the administrative rules. Pfeifle stated that the departments would prefer council approval prior to implementation. The only administrative rules (departments) that he is aware of are the Waste Water department and the fact sheet that the Fire Department maintains.
- Fire Rescue Chief Donn Hill gave a brief overview of their fact sheet that is kept for reference. Code violations are reviewed by a group to determine the ‘intent’ of the code and that reference is kept for future situations.

Anderson Jr. stated that, since these discussions started last year, the council has heard from builders, rental businesses, etc. regarding how the administrative rules work and how they are being used. Anderson Jr. thanked the departments for continuing to work with citizens and the Council to ensure that the citizens understand what the codes are and that they are being used properly and uniformly. Hill added that if a citizen has a concern about a code, they have the right to file an appeal to make a final determination on the interpretation.

Erpenbach also expressed appreciation to the department directors for their assistance. She stated it is important for the citizens to understand the code interpretation. Erpenbach asked if the fact sheet from Fire Rescue is available online and whether or not the code books are available online for citizens. Hill stated that, if the information was not already there, that he would check into it.

Discussion was held regarding Executive Orders and the following points were made:

- Erpenbach asked if Executive Orders were available online for public viewing. Owen explained the procedure for receiving Executive Orders and that they are available online for employees only to review. Owen stated that, with the future availability of a document imaging system, there could be a link for Executive Orders to the public.
- Executive Orders are maintained in the Human Resources Department. A memorandum received from the Director of Human Resources was reviewed and discussed. The main point in the memorandum indicated that Executive Orders pertain to in-house procedures which apply to city departments and agencies, not the general public.
- Brown stated that the state of South Dakota has come a long way in making information available to the public and he could not understand how Executive Orders are not considered public documents. Erpenbach discussed an Executive Order which stipulates rules concerning concealed weapons on city owned property.
- Erpenbach and Owen reiterated that some Executive Orders reference the general public but are not discussed in public sessions. Erpenbach reiterated that, if the Executive Order references the public, then it is public record/information and should be available to the public for review.

Council Chair Anderson requested that City Council staff work with the City Attorney's office and come up with some suggested for the next Public Services Committee Meeting. He stated that he understands why Executive Orders that pertain to employees and administration are not available to the public, but that items that do pertain to the public should be available for the public to see.

5. Pawn Shop Policy Discussion

Anderson Jr. stated that the Police Department and the City Attorney's Office were working on some revisions to the pawn shop ordinance. He requested that this item be tabled until the revisions are received from the administration.

A motion was made by Erpenbach and seconded by Aguilar to table this item until the revised ordinance is received from the City Attorney's Office. Committee Chair Anderson Jr. called for a voice vote on the motion. All members voted yes. **Motion Passed.**

6. Open Discussion

There was none.

7. Adjournment

A motion was made by Brown and seconded by Erpenbach to adjourn the meeting at 6:02 p.m. Committee Chair Anderson Jr. called for a voice vote on the motion. All members voted yes. **Motion Passed.**

Tamara Jorgensen, CMC
Assistant City Clerk