

City of Rigby
Council Meeting Minutes
September 3, 2013

Mayor Smith called the meeting to order at 7:00 pm Tuesday, September 3, 2013. The pledge of allegiance was given by Ryan Day and Councilwoman Hinckley offered the prayer.

Mayor Smith asked the clerk to call the roll.

Councilwoman Hinckley	Present
Councilman Maloney	Present
Councilman Simonson	Present
Councilman Zimmermann	Present
Councilman Olsen	Present
Councilman Sullenger	Present

Also present: Attorney Robin Dunn and Chief Hammon

Misuse of City Funds by City Clerk:

The clerk indicated that during last week's public hearing on the budget, an accusation had been made of him misusing city funds. The clerk explained that he took the accusation as a personal attack on his reputation and honesty. Because of this he has contacted two independent attorneys on how to respond to the accusation. He read a letter from one of the attorney's advising him that in his opinion along with the opinion of Rexburg attorney Stephen Zollinger that there were no substantive basis for the accusation and that any response would only perpetuate the interest in the press. He is responding contrary to legal counsel advice due the public hearing the charge and was due a reply and explanation.

He acknowledged that from the perception of the public and other employees the time he took discussing tax issues during city time was not appropriate and indicated he would refrain from doing so in the future.

He then reviewed the article from which the accusation came; reviewed with the council the city's personnel policy that has classified his office as "exempt" per Fair Labor Standard Act; reviewed the policy for recording time cards and the section wherein the appointing official may allow a secondary job.

He reviewed the FLSA wherein an exempt employee is not paid for the hour's works but for the sufficient to complete their task be it less than 40 hours or in excess of 40 hours. He also stated that he did not use any of the city's computers, printers or other equipment that it only involved times meeting and discussing personnel items.

He noted that the prior clerk had worked as an emergency responder during her employment with the city. He reviewed the number of times which she responded to emergency calls during the weekdays (ignoring holidays and weekends). He noted that she made 30 weekday emergency runs from January to April and an additional 27weekday runs from May through

September. During her employment with the city, no one raised her absences as being a misuse of funds nor did she complete time cards verifying her time.

The clerk reviewed his hour's works versus the hours in which he was paid and for 2012 and 2013. He also reviewed the client listing which recapped the number of clients, those who he had met with in city hall and the approximate time of those meetings took. For 2012 there were six clients and for 2013 there were 10. The time in 2012 totaled less than 4 hours during the four month period and 5 hours during the same four month period in 2013. During the 4 month period for 2012 he reported working 647.5 hours (not including 2 hours noted at tax time on Mar 16) but was compensated for 640 hours. In the first 4 month period for 2013 his time sheets showed him working 653 hours (not including 4 hours noted as personal on Jan 4 and Feb 6) but was compensated 640 hours. The clerk reviewed the worksheet he made showing the clients (identification redacted) whose returns he had prepared for 2012 and 2013. He summarized the clients where the interview and/or delivery of the return were done. Of the 6 clients in 2012 and 10 in 2013, who met at city hall, the majority of the meetings lasted 15 minutes or less in time and on one occasion the meeting was one hour in duration.

He stated the total hours he worked less the time meeting with clients still exceeded the time he was compensated. He contended the prior clerk had done an equal amount of "personal" time doing emergency runs over the nine month period, if not more, than he had and no objections were raised.

The personnel policy allows employees with the permission of the appointing official to work secondary jobs. He had the knowledge and permission of the mayor when he was appointed. Knowing that the personnel policy allowed for such work with the approval of the appointing official he did not attempt to hide or conceal any of the times which he met with clients. All meetings were open and above board.

The clerk stated that the city interest was put first and that the expected work got completed. City affairs were not neglected. There has been no violation of city policy as such "work" was allowed for in the personnel policy with the consent of the appointing official nor has there been any falsification of time cards involving him discussing tax issues with his clients being his hours worked exceeded the time doing so and were still in excess of the minimum 80 hour per pay period.

The clerk concluded his statement by citing Section III subsection A-3 of the city's personnel policy which directs employees that their primary efforts are to the city and any secondary effort of time is subject to the approval by the appointing official. To which he acknowledged his work was allowed per the personnel policy and he had the mayor's consent. And last, his time cards indicated the hours worked exceeded the time that he was compensated for. He admitted, in hindsight, he used a lack of judgment in meeting with clients in city hall but there had been no misuse of city funds, no malfeasance or falsification of time on his reporting of his time and find the accusation to be baseless and without merit.

Councilman Maloney stated that he had talked with several employees who confirmed the clerk did not use city computers but they confirmed the clerk had met with clients in city hall. He

recommended the practice should end to which he acknowledged the clerk has agreed to refrain from doing in the future.

The Mayor stated he was aware of his work and in hindsight maybe it should not have been done.

Ryan Day (who requested to be heard) felt the clerk had used city equipment while talking with clients in that the lights, heat and air conditioning were on in city hall during those meetings. It was no different than an employee taking a piece of city equipment and digging a foundation. Day stated he had discussed the issue on three different occasions with the mayor. He also stated he felt the clerk has done a good job for the city.

Councilwoman Hinckley concurred that the practice should be discontinued.

Councilman Simonson felt the clerk has done a commendable job and the city has benefited from his efforts.

After brief discussion, Councilwoman Hinckley moved that the council give the clerk a vote of confidence seconded by Councilman Simonson.

The Mayor asked for a voice poll: All in favor none opposed.

Police Declaration of Surplus Property:

Chief Hammon came forward and wants to declare two vehicles as surplus and be authorized to dispose them. The two vehicles are: 2001 Chev Impala and a 2007 Chev Lumina.

Councilman Simonson questioned the procedure for disposal. The Chief said they would be advertised twice in the paper using Kelly Blue Book.

Councilman Olsen asked about the number of vehicles in the department. Each officer has a car plus the reserve vehicle and Humvee.

The sale proceeds will go to the police department on the sale of the Lumina and to the capital improvement fund on the Impala.

Councilman Olsen moved to declare the two vehicles as surplus and authorize the chief to advertise and sell the two vehicles seconded by Councilman Sullenger.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Upgrade of Police Computers:

Chief Hammon reviewed the condition of the computers and wanted to replace three of the older computers. He estimated the cost to be \$600 each to upgrade. He reviewed the history and the condition of the computers.

Motion made by Councilman Simonson to allow the chief to purchase three computers up to a maximum amount of \$3,000 seconded by Councilman Maloney.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Acceptance of Material Testing and Inspection Contract:

The clerk told the council the issues that were encountered with the work done on the Annis Hwy. The main concern was where the company hired through the general contractor for quality assurance when issues were raised by the city we had to contact the general contractor who contacted the inspection company who responded back to the general contractor who in turn responded back to the city. The clerk indicated that he wanted to pull the inspection out of the contract issued to the general contractor dollar for dollar and the city hires and pays the inspection company. The inspection company is hired to protect the city's interest that the compaction is being done according to code. By hiring the company directly they will more responsive to the concerns of the city.

Following open discussion, Councilman Zimmermann moved to accept the contract seconded by Councilwoman Hinckley.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Amendment of Abatement of Dangerous Buildings - #2013-562:

Councilwoman Hinckley reviewed the changes made in the draft copy that was discussed during last council meeting.

Councilwoman Hinckley moved to accept Ordinance 2013-562 seconded by Councilman Simonson.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Approval of 2013 Budget Appropriation Ordinance 2013-563:

The clerk stated the council approved the budget at last council meeting. The next step is to create and publish the appropriating ordinance for the 2013 budget. The ordinance will be published and after publication the council will approve.

Councilman Simonson moved to accept Ordinance 2013-563 with suspension of the reading, seconded by Councilman Sullenger.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Repealing Section 11.5.1.C of City Code – Roll Back Curbing:

The clerk reviewed the section of the code which allowed for roll back curbing and noted the deletion of that section. Stating the preferred curbing would be 6 inches in back height.

Councilman Zimmermann moved to repeal section 11.5.1.C of the code relating to roll back curbing as stated in Ordinance #2013-564 seconded by Councilman Olsen.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Amending City Code 7-5-6 – Allowing for Refunds of Reservations Fees – Ordinance 2013-565:

The clerk read through the changes as discussed at last council meeting allowing for refunds on reservations fees if paid and cancelled prior to fourteen days.

Councilwoman Hinckley moved to accept Ordinance 2013-565 seconded by Councilman Maloney.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Amending Weed and Shrub Ordinance #2013-566:

The clerk reviewed the changes in the ordinance that Mr. Clark had recommended. The only change made was eliminating the date of May 25 to read as the on or before the 4th Monday in May.

Councilman Olsen moved to accept Ordinance 2013-566 seconded by Councilman Zimmermann.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Amending 2012 Budget:

The clerk reviewed a number of line items that require correction due to spending higher than budgeted or from the receipt of unanticipated revenues. He noted the overall change in the general fund is \$62,250; change in library is \$750; and in park/rodeo committee is \$1,500. He noted that none of the changes will be funded from savings.

Councilman Maloney moved to accept and amend the 2012/13 budget as presented seconded by Councilman Simonson.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Transfer of \$10,000 from General Fund to Utility Assistance Fund:

The explained the council had established an assistance fund to aid homeowners who qualify for the state property tax reduction can qualify for assistance with their city utilities. The amount being requested to be transferred is for the 2013 budget year which begins October 1, 2013.

Councilman Olsen asked about the number individuals participating in the program and the dollar amount of assistance. The clerk indicated for the current year there were 21 individuals and the dollar assistance was \$43.05. The sewer bond assessment of \$32.75 was not available for assistance.

Councilman Simonson moved to transfer the \$10,000 per budget seconded by Councilwoman Hinckley.

The mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Lease of Water Tower Space to Verizon Telephone:

The clerk presented the council with an offer from Verizon Telephone to lease space on the water tower for their antennas. We have a similar lease with AT&T. This is in the preliminary stage and to see if the council had any opposition to the lease.

Public works director commented he had no problem with the lease and would like to have the lease funds dedicated to the tower maintenance.

Council discussion would like to have the Verizon lease coincide with the AT&T lease term of lease.

Other Council Business:

- Councilman Zimmermann asked if any action was being done on the trees and shrubs blocking street signs. Chief Hammon indicated that a list has been prepared with letters being sent to the homeowners.
- Councilwoman Hinckley asked about the status of the sewer lift project. The mayor indicated the engineer is still working on a solution but at the present nothing has been worked out.
- Councilman Maloney asked if the process of the city election dates and the number of seats up for election could be reviewed. The clerk indicated those wishing to run for the position of mayor or city council needed to turn in petition to his office by 5:00pm September 5, 2013. Prior to turning the petitions in the individuals signing the petition needed to be verified by the county election clerk as registered voters. Or there is a non-refundable option of paying \$40.00 and the petitioner would not need to obtain the minimum five signatures. There are four open council sets up for election with the top three votes receiving the three four-year terms and the fourth highest receiving the two year term along with the office of mayor.
- The Mayor reminded the council and the public the last city wide clean up would be September 21.

Approval of Bills:

Council reviewed the bills with Councilman Zimmermann questioning the billing due the county sheriff office for dispatch services. The clerk indicated the bill is usually sent quarterly to the city but the sheriff failed to bill quarterly and the current bill was for the full year of 2013.

Councilman Zimmermann moved to authorize the payment of the bills seconded by Councilman Simonson.

The Mayor asked the clerk to poll the council:

Councilwoman Hinckley	Yes
Councilman Maloney	Yes
Councilman Simonson	Yes
Councilman Zimmermann	Yes
Councilman Olsen	Yes
Councilman Sullenger	Yes

Review of the Minutes:

The council reviewed the minutes and Councilwoman Hinckley moved to approve the minutes seconded by Councilman Simonson.

The Mayor asked for a voice poll: All in favor none opposed.

Public Comment:

- Deanna Dinsdale – Commented that West 1st North has become a speed zone and would like some patrol in slowing down the traffic along that section of road.

Adjournment:

Having no further business, Councilman Simonson moved for adjournment seconded by Councilman Zimmermann.

The Mayor asked for a voice poll: All in favor none opposed.

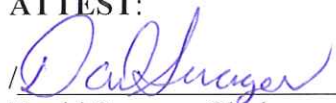
Meeting adjourned at 8:20pm.

CITY OF RIGBY



 Keith Smith, Mayor

ATTEST:



 David Swager, Clerk