



FAIRBANKS CITY COUNCIL
REGULAR MEETING MINUTES, JANUARY 5, 2015
FAIRBANKS CITY COUNCIL CHAMBERS
800 CUSHMAN STREET, FAIRBANKS, ALASKA

The City Council convened at 7:00 p.m. on the above date, to conduct a Regular Meeting of the Fairbanks City Council at the City Council Chambers, 800 Cushman Street, Fairbanks, Alaska, with Mayor John Eberhart presiding and with the following Council Members in attendance:

Council Members Present: Renee Staley, Seat A
 Perry Walley, Seat B
 Bernard Gatewood, Seat C
 Jim Matherly, Seat D
 Jerry Cleworth, Seat E

Absent: David Pruhs, Seat F (Excused)

Also Present: Warren Cummings, Fire Chief
 Paul Ewers, City Attorney
 Janey Hovenden, City Clerk
 Jim Williams, Chief of Staff
 Stephanie Johnson, Dispatch Center Manager
 Ben Barrio, IT Director
 Barbara Sunday, Director HR/Risk Management/Purchasing
 Randall Aragon, Police Chief
 Jackson Fox, Environmental Manager

INVOCATION

The Invocation was given by City Clerk Janey Hovenden.

FLAG SALUTATION

Mayor Eberhart led the Flag Salutation.

APPROVAL OF AGENDA AND CONSENT AGENDA

Mr. Matherly, seconded by **Ms. Staley**, moved to APPROVE the Agenda and Consent Agenda.

Mr. Gatewood stated that there should be a correction made to the Hotel/Motel Discretionary Fund Committee Meeting Minutes of November 25, 2014. He pointed out that Ms. Carter should be changed to Ms. Crawford on pages three and four of the minutes.

Clerk Hovenden stated that she will ensure that the correction is made and thanked Mr. Gatewood for catching the error.

Mayor Eberhart called for objection and, hearing none, so ORDERED.

Mayor Eberhart stated that he did not request or have prior knowledge of the Executive Session to discuss the Settlement of the Superior Court Appeal in the John Eberhart v. APOC case. He stated that he will waive the right to an Executive Session and requested that the matter be dealt with in public.

Mr. Gatewood asked the City Attorney if there would be any ramifications to discussing the item in a public forum.

City Attorney Ewers stated that the Mayor may waive his right to an Executive Session. City Clerk Hovenden and City Attorney Ewers agreed that the appropriate place for the item would be under Communications to Council, Item 12(e).

Mayor Eberhart called for objection and, hearing none, so ORDERED.

Mayor Eberhart recognized 40-year City employee, Gerald Colp, and congratulated him on his recent retirement from the City of Fairbanks Engineering Department. He presented Mr. Colp with a gold pan to thank him for his many years of service to the City.

Mr. Colp accepted the gold pan and stated that it has been his honor to work for the City of Fairbanks. He spoke briefly to his plans for retirement.

City Clerk Hovenden read the Consent Agenda into the record.

CITIZEN'S COMMENTS

Frank Turney, 329 6th Avenue, Fairbanks – Mr. Turney stated that he is happy to see that the Fact Finding Commission is still an active City Committee. He stated that many citizens are not aware that the Commission even exists because it has not been called upon very often since its establishment. Mr. Turney questioned the cost the City will incur in travel and lodging expenses for two sworn officers to attend the seminar on cannabis regulation happening in Colorado.

Victor Buberger, PO Box 58192, Fairbanks – Mr. Buberger stated that he had the opportunity to speak with some City employees over the holidays about potholes. He stated that the Public Works employees indicated that the new infrared truck can perform pothole repair in temperatures as cold as -20 degrees. He stated that City employees also indicated that one of the reasons there is a pothole problem in the City is because the City Council is not approving funding for adequate and proper materials. Mr. Buberger commended Public Works Director Mike Schmetzer for doing a good job. He advised listeners to complete an officer complaint form at the Fairbanks Police Department and request a written response instead of making a verbal complaint to an officer. He stated that community involvement in the Police Department is very important so that the City of Fairbanks does not develop a Ferguson-style situation. Mr. Buberger spoke to the need for transparency and questioned why the public is banned from attending Executive Sessions. He stated that he has listened to some of the Executive Sessions when Mayor Hayes was in office and indicated that you get a different feel for people when you listen to those sessions.

Hearing no more requests for public comment, **Mayor Eberhart** declared Public Testimony closed.

APPROVAL OF PREVIOUS MINUTES

- a) Regular Meeting Minutes of September 8, 2014.

APPROVED on the CONSENT AGENDA.

- b) Regular Meeting Minutes of September 22, 2014.

APPROVED on the CONSENT AGENDA.

- c) Regular Meeting Minutes of October 6, 2014.

APPROVED on the CONSENT AGENDA.

- d) Regular Meeting Minutes of October 20, 2014.

APPROVED on the CONSENT AGENDA.

SPECIAL ORDERS

- a) The Fairbanks City Council, Sitting as a Committee of the Whole, heard interested citizens concerned with the following Appeal of Denied Application for New Chauffeur License:

Appellant: Michael J Mackey

Mr. Cleworth, seconded by **Mr. Gatewood**, moved to GRANT the Appeal of Denied Application for a New Chauffeur License.

Mayor Eberhart called for Public Testimony.

Michael Mackey, 770 Nordale Road, North Pole – Mr. Mackey stated that he has lived in Fairbanks for a long time. He explained that he was denied a Chauffeur’s License because of a fourth degree assault conviction over three years ago.

Mr. Cleworth asked Mr. Mackey if he currently has a pending case in the court system. He asked Mr. Mackey when his last felony conviction was.

Mr. Mackey replied that he does not have any pending felony cases. He stated that his last felony conviction was in Washington around 2008 for property damage.

Mayor Eberhart pointed out that the cover memo from the City Clerk states that the applicant answered “no” to a question pertaining to his criminal history that should have been answered “yes” according to his criminal background report.

Mr. Mackey stated that he misunderstood the question on the application.

Mayor Eberhart stated that it appears that the basis for the denial by the City Clerk was the misdemeanor assault conviction on November 7, 2011. He stated that other offenses of the applicant may be taken into account when the Council considers on a Chauffeur Appeal.

Victor Buberger – Mr. Buberger stated that he does not know either of the appellants but expressed his belief that the business of appeals should be left up to the court.

Frank Turney – Mr. Turney stated that he does not know Mr. Mackey but spoke in support of granting his appeal since the conviction was only for a misdemeanor.

Hearing no more requests for public comment, **Mayor Eberhart** declared Public Testimony closed.

Mr. Cleworth, in response to Mr. Buberger's comments, stated that the City Council could write and adopt regulations that do not allow for an appeal process. He stated that he would rather continue to give applicants the right to appeal.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO GRANT THE APPEAL OF DENIED APPLICATION FOR A NEW CHAUFFEUR LICENSE AS FOLLOWS:

YEAS: None
NAYS: Gatewood, Staley, Cleworth, Matherly, Walley
ABSENT: Pruhs

Mayor Eberhart declared the MOTION FAILED.

- b) The Fairbanks City Council, Sitting as a Committee of the Whole, heard interested citizens concerned with the following Appeal of Denied Application for New Chauffeur License:

Appellant: Jesse R Gabayan

Mr. Gatewood, seconded by **Mr. Cleworth**, moved to GRANT the Appeal of Denied Application for a New Chauffeur License.

Mayor Eberhart called for Public Testimony.

Jesse Gabayan, PO Box 74443, Fairbanks – Mr. Gabayan stated that he also misunderstood the time frame of the question on the application in regard to the offense for which he was denied. He stated that he works for the Laborers Local 942 and commented that he has made some mistakes in his past. He stated that he is hoping to drive a cab until he can get a dispatch from the union because he has recently gone through an expensive custody battle and needs income.

Frank Turney – Mr. Turney stated that citizens do not get to see all the information in a Chauffeur Appeal and commented that it is difficult to speak to an appeal when much of the information is confidential.

Victor Buberger – Mr. Buberger again commented that the courts should deal with appeals because they are better equipped and trained for that type of work. He stated that the court system is difficult to go through and that it is even more challenging for applicants to have to go through City appeals after dealing with their court cases.

Mr. Cleworth asked Mr. Buberger if he believes that the only recourse for a denied Chauffeur application should be through the court system. He asked Mr. Buberger to speak to what he is envisioning.

Mr. Buberger stated that most Chauffeur appellants who come before the Council have a case that they have already been through the court system to resolve. He suggested that the City leave it to the court to make an appropriate sentence and let that be the end of the issue.

Mr. Cleworth asked Mr. Buberger if he believes the City should license a Chauffeur applicant who has been convicted of a sexual offense and has served the sentence imposed by the court system.

Mr. Buberger replied affirmatively. He stated that fulfillment of a court sentence should be enough.

George Thompson, 1232 26th Avenue, Fairbanks – Mr. Thompson stated that he had a City Chauffeur's License about six years ago. He stated that he did not feel that he had a great deal of responsibility as a cab driver other than getting people home safely at the end of the night. He questioned the reasoning as to why the City's criminal record look back period is so lengthy.

Hearing no more requests for public comment, **Mayor Eberhart** declared Public Testimony closed.

Mr. Cleworth asked what an access device is in reference to the criminal background report.

City Attorney Ewers provided the Council with the legal definition of "access device."

Mr. Cleworth stated that he does not have a problem in having Mr. Gabayan come forward to elaborate on the issue.

Jesse Gabayan – Mr. Gabayan stated that the conviction pertaining to an access device was related to the use of a credit card that he found on the sidewalk. He explained that it was a tough time when his income was not covering his living expenses and he had exhausted all resources available to him. He stated that he used the credit card one time to buy \$260 worth of food for him and his family. He acknowledged that the reason why he used the card does not justify his actions and stated that it was a hard lesson to learn.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO GRANT THE APPEAL OF DENIED APPLICATION FOR A NEW CHAUFFEUR LICENSE AS FOLLOWS:

YEAS: Cleworth
NAYS: Gatewood, Walley, Matherly, Staley
ABSENT: Pruhs
Mayor Eberhart declared the MOTION FAILED.

MAYOR'S COMMENTS AND REPORT

Mayor Eberhart welcomed everyone back in the New Year. He commended past Councils and the present Council Members for putting the City of Fairbanks in a good financial standing. He expressed his condolences in the recent passing of Isidore "Joe" Guttenberg. **Mayor Eberhart** thanked Deacon Damario, a high school student participating in the Work Study Program, for his work in the Mayor's Office. In reference to Mr. Buberger's earlier comments on written complaints to the Police Department, **Mayor Eberhart** stated that he will begin meeting with Chief Aragon to discuss the idea of an Office of Professional Responsibility. He stated that such an office may receive citizen complaints and investigate cases internally, whenever necessary.

UNFINISHED BUSINESS

- a) Ordinance No. 5962 – An Ordinance Ratifying a Labor Agreement Between the City of Fairbanks and the AFL-CIO Joint Crafts Council. Introduced by Mayor Eberhart.
SECOND READING AND PUBLIC HEARING.

Mr. Gatewood, seconded by **Ms. Staley**, moved to ADOPT Ordinance No. 5962.

Mr. Gatewood, seconded by **Mr. Matherly**, moved to SUBSTITUTE Ordinance No. 5962, as Amended, for Ordinance No. 5962.

Mayor Eberhart called for Public Testimony.

Lake Williams, 945 Senate Loop, Fairbanks – Mr. Williams spoke on behalf of the AFL-CIO Joint Crafts Council as the President. He thanked all those involved in AFL-CIO negotiations for a smooth and friendly process. He spoke in support of Council ratification of the proposed labor agreement.

Mr. Cleworth thanked Mr. Williams and his team for their work in keeping AFL-CIO grievances at a minimum.

Mr. Williams stated that he does not recall any grievances being filed since he has been with the AFL-CIO.

Hearing no more requests for public comment, **Mayor Eberhart** declared Public Testimony closed.

Mr. Cleworth stated that, unlike some other unions, the AFL-CIO has consistently worked with the City over the years to solve problems. He thanked everyone involved for their work in the negotiation process.

Mayor Eberhart thanked Mr. Williams and the other union representatives for a reasonably quick and smooth negotiating process.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO SUBSTITUTE ORDINANCE NO. 5962, AS AMENDED, FOR ORDINANCE NO. 5962 AS FOLLOWS:

YEAS: Walley, Matherly, Gatewood, Cleworth, Staley

NAYS: None

ABSENT: Pruhs

Mayor Eberhart declared the MOTION CARRIED.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT ORDINANCE NO. 5962, AS AMENDED, AS FOLLOWS:

YEAS: Matherly, Cleworth, Walley, Staley, Gatewood

NAYS: None

ABSENT: Pruhs

Mayor Eberhart declared the MOTION CARRIED and Ordinance No. 5962, as Amended, ADOPTED.

NEW BUSINESS

- a) Resolution No. 4653 – A Resolution Allocating Discretionary Funds from Hotel/Motel Tax in the Amount of Two Hundred Seventy Thousand Dollars (\$270,000). Introduced by Mayor Eberhart.

PASSED and APPROVED on the CONSENT AGENDA.

- b) Resolution No. 4654 – A Resolution Awarding a Contract to Kinney Engineering, LLC for Design Work for the Cushman Complete Street Project in the Amount of \$269,572.00. Introduced by Mayor Eberhart.

PASSED and APPROVED on the CONSENT AGENDA.

- c) Resolution No. 4655 – A Resolution Awarding a Contract to DOWL, LLC for Design Work for the Gateway Subdivision Improvements Project in the Amount of \$250,020.00. Introduced by Mayor Eberhart.

PASSED and APPROVED on the CONSENT AGENDA.

- d) Ordinance No. 5963 – An Ordinance Amending FGC Section 2-396 Regarding the Fact Finding Commission. Introduced by Council Member Staley.

ADVANCED on the CONSENT AGENDA.

DISCUSSION ITEMS

Committee Reports

Golden Heart Parking Services (GHPS) Board of Directors – **Ms. Staley** stated that Marcus has stepped down as the Executive Director of GHPS and indicated that the board is currently receiving applications for a new director.

FMATS Policy Committee – **Mr. Walley** stated that he forgot to bring his notes. He stated that he would give the Council a complete report at the next Council Meeting.

Hotel/Motel Discretionary Fund Committee – **Mr. Matherly** stated that the Hotel/Motel Discretionary Grant Presentation Meeting went very well and commented that he enjoyed the process.

COMMUNICATIONS TO COUNCIL

- a) Recommendation for Appointments to the FNSB Planning Commission

APPROVED on the CONSENT AGENDA.

- b) Chena Riverfront Commission Meeting Minutes of November 12, 2014

ACCEPTED on the CONSENT AGENDA.

- c) Hotel/Motel Discretionary Fund Meeting Minutes of November 25, 2014

ACCEPTED on the CONSENT AGENDA.

- d) Hotel/Motel Discretionary Fund Meeting Minutes of December 10, 2014

ACCEPTED on the CONSENT AGENDA.

- e) John Eberhart v. Alaska Public Offices Commission (APOC), Superior Court Appeal, to Discuss Settlement

NOTE: This item was moved from the Executive Session agenda to Communications to Council, Item 12(e), per Mayor Eberhart's request during the Approval of the Agenda.

City Attorney Ewers stated that Mayor Eberhart's attorney, Mr. Walleri, has requested to telephone in for the discussion.

Clerk Hovenden tried unsuccessfully to reach Mr. Walleri on the telephone. She left him a voicemail message.

City Attorney Ewers suggested that the Council move further down the agenda and come back to the item later in hopes that Mr. Walleri would call back.

No members objected to moving on and returning to the John Eberhart v. APOC discussion.

COUNCIL MEMBERS' COMMENTS

Mr. Gatewood expressed his condolences in the recent passing of long-time Fairbanks resident Bev Fantazzi. He spoke to his working relationship with Ms. Fantazzi and to her ties with and involvement in the community. He stated that he hopes 2015 is a good year for the City of Fairbanks

Mr. Walley stated that he had no comments.

Ms. Staley stated that she had no comments.

Mr. Matherly wished everyone a Happy New Year. He read aloud a recent correspondence from Marc Marlow, owner of the Polaris Building, which indicated that the intent is to start renovation of the building in 2015. **Mr. Matherly** stated that he appreciates the Chauffeur Appeal process and spoke to the background information the Council takes into consideration when hearing an appeal.

Mr. Cleworth requested a list of all the grievances filed by any union across all City staff within the past five years. He spoke to City Council representation at Borough Assembly Meetings and suggested that it may be wiser to select one Council Member to consistently attend the meetings on the Council's behalf.

The Council returned to Item (e) of Communications to Council: John Eberhart v. APOC, Superior Court Appeal, to Discuss Settlement.

Clerk Hovenden attempted to contact Mr. Walleri telephonically but was again unsuccessful.

City Attorney Ewers stated that he would prefer if the matter was postponed so that Mr. Walleri may be present for the discussion.

Ms. Staley, seconded by **Mr. Gatewood**, moved to POSTPONE the John Eberhart v. APOC discussion until the Regular City Council Meeting of January 19, 2015.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO POSTPONE THE JOHN EBERHART V. APOC DISCUSSION UNTIL THE REGULAR CITY COUNCIL MEETING OF JANUARY 19, 2015 AS FOLLOWS:

YEAS:	Staley, Gatewood
NAYS:	Matherly, Cleworth, Walley

ABSENT: Pruhs
Mayor Eberhart declared the MOTION FAILED.

City Attorney Ewers referenced the letter from Mr. Walleri sent to the City Attorney's Office earlier in the day. He provided clarification that he does not have the authority to settle the matter and that only the Council has the ultimate control of spending public dollars on litigation issues. Attorney Ewers stated that early on he was tasked with negotiating with both parties to try and settle the appeal but was not successful. He stated that he has outlined three terms that he believes to be acceptable if he were authorized to make that offer to APOC to settle the appeal. He explained that while the Council cannot force a settlement upon the Mayor without his approval, the Council may propose a settlement if they believe it is reasonable and not adverse to the Mayor's interest. Attorney Ewers further stated that if the Mayor and his attorney rejected the Council's settlement proposal and elected to move forward with the appeal, the City would no longer be liable for the defense in the case. Attorney Ewers stated that it would be helpful to have Mr. Walleri present to answer questions and possibly explain why the terms outlined in the memo are not reason enough to settle.

Mr. Cleworth asked the Mayor if the settlement recommended in the memo from the City Attorney is agreeable to him.

Mayor Eberhart stated that he has not seen the memo. He stated that he was at work for two days preceding the meeting and finds it extraordinary that the memo was not provided to him prior to the meeting.

Mr. Cleworth referenced the letter from Mr. Walleri, specifically the portions speaking to conflicts of interest for Mr. Ewers and himself.

City Attorney Ewers commented that he does not agree with Mr. Walleri's claim that Mr. Cleworth has a conflict of interest in the case. He stated that if Mr. Cleworth feels that he has a conflict of interest, it would be his responsibility to declare it.

Mr. Cleworth spoke to an earlier letter from Mr. Walleri that spoke against Mr. Cleworth having met with individuals in his office who may have discussed politics when he was City Mayor. He commented that he had an open door policy when he served as the City Mayor. He asked if the legal fees are up to \$15,866.00.

Attorney Ewers replied affirmatively.

Mr. Cleworth compared the Eberhart v. APOC case to a hypothetical situation with the actions of a City employee and the Environmental Protection Agency (EPA) where the EPA accused a City employee of wrongdoing. He stated that the City would defend the actions of the employee if the Council believed that the City was not in the wrong and if it was compelling to do so. He suggested that if the penalties were miniscule in the hypothetical situation, the City may choose to pay the penalty instead of entering into litigation. **Mr. Cleworth** asked the City Attorney if that would be how the City would handle such a situation.

Attorney Ewers replied affirmatively. He spoke to how cases may be handled when there is a conflict of theories. He stated that he did not have to determine whether Eberhart acted as a Council Member or a mayoral candidate. He stated that an entity has a duty to defend when one of the theories in the case falls within the indemnity coverage.

Mr. Cleworth asked what the Council has the power to do in the case. He asked fellow Council Members if they knew the litigation expenses had occurred until after the money was spent.

Attorney Ewers explained that early on, there was the hope that APOC would reject the complaints. He stated that when the complaints were accepted, he determined that the City had a duty to defend. He stated that he also determined that the City Attorney's Office would have a conflict in the case which is why Eberhart was able to select independent counsel. Attorney Ewers explained that at the time, the only proceeding was the APOC hearing and there was no way to resolve the case until APOC could make a determination on whether there was a violation. He stated that the APOC hearing was held and the determination was made in early May, after which the City Council did not have a regular meeting scheduled for nearly four weeks. He explained that the appeal filing deadline occurred before the Council was scheduled to meet again on June 9. Attorney Ewers stated that after that, there was a lull in the case where there was no activity. He stated that the fees incurred at the outset of the case were based on his determination that the City had a duty to defend Mayor Eberhart.

Mr. Cleworth asked if it would be better to try to change a law through litigation or by going through state legislators.

Attorney Ewers commented that the absurdity of some of APOC's rulings is not a question. He stated that the problem with trying to affect change by way of appeal is that there is no guarantee that the court will address the bigger issues. He stated that if the Mayor Eberhart does receive a favorable ruling from the Superior Court, he has doubts that APOC would appeal to the Alaska Supreme Court since its ruling would have precedential value statewide. Attorney Ewers indicated that attempting to make changes to the law by way of appeal can be cumbersome and awkward.

Mr. Gatewood asked Attorney Ewers to speak to the difference in the language of a prior settlement versus the one he is proposing.

Attorney Ewers stated that there have been various versions of settlement language. He stated that some of the prior settlements would have required APOC to rewrite its order. He explained that the proposed settlement would cause both parties to agree that the finding cannot be used as an admission of wrongdoing in any other forum for any other purpose.

Mr. Walley asked Attorney Ewers to estimate the City's litigation costs if the case continued on to the Supreme Court.

Attorney Ewers estimated that an administrative appeal in the Superior Court would cost \$30,000 more dollars and that a Supreme Court appeal may cost an additional \$60,000 - \$90,000.

Mr. Cleworth asked what actions the Council has the authority to make in regard to the appeal.

Attorney Ewers replied that the Council could modify or authorize the settlement proposal he provided. He stated that he would then have to discuss the settlement terms authorized by the Council with Mayor Eberhart and Mr. Walleri to see if they find the settlement terms agreeable. He explained that if Mr. Walleri and Eberhart did not find the terms to be agreeable, the City could then relieve itself of the obligation to defend.

Mr. Gatewood asked if the City would still be obligated if either party did not agree to a settlement authorized by the City Council.

Attorney Ewers explained that the first step after the Council authorizes a settlement would be to present it to APOC for approval, then to Mr. Walleri and Mayor Eberhart.

Mr. Gatewood asked what would happen if APOC does not agree to the settlement terms.

Attorney Ewers stated that if APOC wished to modify the settlement, he would bring it back to the Council for consideration.

Mr. Gatewood stated that the reported litigation costs of \$15,800 are likely higher and will continue to increase until both sides accept a settlement.

Mr. Matherly stated that Mr. Walleri's letter suggests that Mr. Matherly abstain from casting a vote on the issue. He asked Mayor Eberhart if he agrees with Mr. Walleri's opinion that Attorney Ewers and Mr. Cleworth have a clear conflict of interest in the case. He commented that the Eberhart v. APOC case is a public relations nightmare for the City of Fairbanks. He suggested that the City stop spending money on the appeal immediately.

Mayor Eberhart stated that he agrees with Mr. Walleri's opinion. Specifically in regard to Mr. Walleri's mention of Mr. Matherly in the letter, **Mayor Eberhart** indicated that a potential witness in litigation should abstain from involvement. He explained that Ms. Gilbert contacted him and Mr. Matherly in regard to the garbage ordinance and clarified that it was not him contacting Ms. Gilbert, allegedly soliciting her support for his mayoral campaign. He stated that Ms. Gilbert's only allegation relating to City resources had to do with an email address that was used during his campaign. He clarified that her allegation was not sustained by APOC, but chose to go on a "fishing expedition" by requesting all of his sent emails over a period of about six months. **Mayor Eberhart** stated that he and his attorney believe that Ms. Gilbert's complaint should have been dismissed when the allegation was not sustained. He stated that APOC has focused on one email in which he requested the legislative records of both him and his opponent, Ms. Stiver. He explained that he requested the information because supporters of Ms. Stiver were starting to bring the voting records of the two candidates into City business and into the public forum. **Mayor Eberhart** stated that APOC determined that his request could have influenced the election, although they did not prove that it did. He expressed his opinion that APOC's position is a dangerous one and that it tramples the First Amendment right to Freedom of Speech. He stated that he has offered to settle the case many times under the condition that APOC withdraw the finding of a violation, a violation which could be construed as quasi-criminal.

Mr. Matherly stated that City taxpayers see the litigation as wasteful. He expressed fear that if the City keeps moving forward with the appeal only to lose the case, the damage to Mayor Eberhart may be greater than if he had just paid the \$37.50 APOC fine.

Mayor Eberhart stated that the City Attorney's Office "came late to the party." He stated that he felt that he was prejudiced by the 3-2 decision at the APOC hearing because the City Attorney was not present to argue on behalf of the City. He stated that later the City Attorney's Office was authorized to settle the case with APOC under the conditions that they withdraw the finding of any violation with no admission of wrongdoing on his part. He stated that he believes his request for legislative records is something that a legislator should be allowed to do. **Mayor Eberhart** objected to the Council trying to force a settlement and added that Mr. Ewers has been unsuccessful in his attempts to settle the case. He stated that he and Mr. Walleri intend to continue the appeal unless APOC becomes more reasonable. He spoke to the City's duty to defend and indemnify and spoke to other cases in the past where the City has had similar obligations. He stated that it is the Council's prerogative to decide on whether to continue to fund the litigation.

Mr. Gatewood asked Mayor Eberhart to speak to his earlier statement that the City Attorney "came late to the party."

Mayor Eberhart stated that he told the City Attorney as early as February about the complaint and the APOC hearing. He stated that APOC did not act right away and expressed his belief that the City Attorney's Office would have been abreast of the situation and could have intervened and argued on his behalf. **Mayor Eberhart** stated that it was only after the APOC hearing and the finding of violation that the City Attorney took action. He suggested that the lack of action on the City Attorney's part may be partly due to the conflicts of interest perceived by the City Attorney. **Mayor Eberhart** again made it clear that he, as the litigant, would object to any Council attempt to force a settlement in the Eberhart v. APOC case. He stated that he intends to seek attorney's fees from the state after he prevails in the case. He expressed his opinion that it would be a violation of the ordinance for the Council to cut off funding for the litigation, but again stated that it will be up to the Council to decide.

Mr. Cleworth stated that the whole issue is a travesty. He commented that he agrees with Mayor Eberhart on many of his points regarding APOC rules and regulations but added that the absurdity of the case goes beyond that. He spoke to how the whole issue came about, starting with an APOC complaint filed by North Pole resident, Mr. Arnold, against Ms. Stiver for not reporting in-kind campaign contributions with a request for an expedited hearing. **Mr. Cleworth** stated that the very next day Eberhart's campaign issued a press release reacting to the "questionable conduct of the Stiver campaign" and circulated a copy of the APOC complaint. **Mr. Cleworth** stated that the actions of the Eberhart campaign give the impression that Eberhart supported Mr. Arnold's APOC complaint regarding the very same issue that Eberhart himself is currently in litigation over. He shared that it came to light later that Mr. Arnold had worked with Eberhart's campaign manager on the formation of the APOC complaint against Stiver. **Mr. Cleworth** stated that Mr. Walleri speaks poorly of him and the City Attorney in the letter. He stated that Mr. Walleri was against the sale of the Municipal Utility System years ago and filed a lawsuit against the City of Fairbanks. He commented that he does not appreciate the way Mr. Walleri operates, discouraging teamwork and putting everyone on the defensive.

Mr. Cleworth, seconded by **Mr. Matherly**, moved to CEASE SPENDING any City funds on the John Eberhart v. APOC case effective immediately.

Mayor Eberhart argued that the issues surrounding his dealings with APOC are not the same as the issues Ms. Stiver had with APOC. He stated that the only commonality is that Ms. Gilbert admitted in so many words that the complaint she filed with APOC was in retaliation to her assumption that he was behind the complaint against Ms. Stiver. He stated that he was not aware of Mr. Arnold's complaint before it was filed. **Mayor Eberhart** stated that when it gets back to the basics, the appeal is about the First Amendment, the deliberative process, and the alleged finding of a violation of law.

Mr. Gatewood asked what the City Attorney's role would become if the motion on the floor were to pass.

Attorney Ewers stated that he could still pursue settlement unless the motion specified that the City Attorney's Office must also stop seeking settlement of the case. He confirmed with Mr. Cleworth that the intent of the motion was to strictly prohibit City spending on outside counsel and would not exclude the City Attorney's Office from participating in the settlement if Mr. Walleri and Mayor Eberhart were agreeable.

Mayor Eberhart stated that with all due respect, Attorney Ewers is not the attorney on record. He stated that Mr. Ewers does not represent him in the case. He stated that the motion on the floor is only intended to reject City funding for outside counsel. He strongly objected to any attempt by Mr. Ewers to independently settle the case without the authorization of Mr. Walleri or himself.

Attorney Ewers clarified that he did not envision attempting to independently settle the case. He stated that if the opportunity arose or some movement was made that would give him a clear role in the settlement, he would then participate.

Mr. Matherly expressed confusion with why the City is paying for outside counsel when the Mayor and Council have their own attorney on staff.

Attorney Ewers stated that in order for him to provide representation in the case, Mayor Eberhart would have to sign a waiver of the conflict. He again clarified that if the motion is approved, he would not take any further action in the case without the consent of Mr. Walleri and Mayor Eberhart.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO CEASE SPENDING ANY CITY FUNDS ON THE JOHN EBERHART V. APOC CASE EFFECTIVE IMMEDIATELY AS FOLLOWS:

YEAS: Cleworth, Walley, Staley, Matherly, Gatewood

NAYS: None

ABSENT: Pruhs

Mayor Eberhart declared the MOTION CARRIED.

Mr. Matherly, seconded by **Ms. Staley**, moved to go into Executive Session for the purpose of discussing Public Safety Employees Association (PSEA) and International Brotherhood of Electrical Workers (IBEW) Labor Contract Negotiations.

Mayor Eberhart called for objection and, hearing none, so ORDERED.

Mayor Eberhart called for a five minute recess.

EXECUTIVE SESSION

- a) Labor Contract Negotiations – PSEA and IBEW
- b) John Eberhart v. APOC, Superior Court Appeal, to Discuss Settlement

NOTE: This item was discussed during the Regular Meeting under Communications to Council, Item 12(e,) per Mayor Eberhart's request during the Approval of the Agenda.

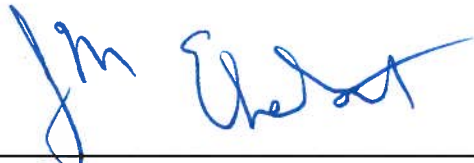
The City Council met in Executive Session to discuss PSEA and IBEW labor negotiations. Direction was given to the negotiating team and no action was taken.

ADJOURNMENT

Mr. Matherly moved to ADJOURN the meeting.

Mayor Eberhart called for objection and, hearing none, so ORDERED.

Mayor Eberhart declared the Meeting adjourned at 10:05 P.M.



JOHN EBERHART, MAYOR

ATTEST:



D. DANYELLE, CMC, CITY CLERK

Transcribed by: DS