

Session 10-18 a Special Meeting of the Homer City Council, convening as the Board of Ethics, was called to order on June 7, 2010 at 5:13 p.m. by Mayor Pro Tempore Beth Wythe at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: HOGAN, HOWARD, LEWIS,
ROBERTS, WYTHE, ZAK

STAFF: CITY CLERK JOHNSON
CITY ATTORNEY KLINKNER (telephonic)

AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

LEWIS/ROBERTS - MOVED TO APPROVE THE AGENDA.

HOGAN/ROBERTS – MOVED TO AMEND THE AGENDA TO ADD COMMENTS OF THE AUDIENCE AND COUNCIL COMMENTS.

There was no discussion on the amendment.

VOTE: (amendment) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VOTE: (main motion as amended) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

A. Decision on Board of Ethics – Complaint #2009-01

Mayor Pro Tempore Wythe stated the Council has convened in this special meeting as the Board of Ethics to place on the record its decision on Ethics Complaint 2009-01. All Board members who participated in the investigation of this complaint are present. Mayor Hornaday did not participate in the investigation, and so is excused from attending this meeting.

The Board has deliberated on the evidence that it received during its investigation of the complaint. As required by HCC 1.79.055, the Board deliberated in executive session. The Board's deliberations are complete, and the Board now reconvenes in open session as required by HCC 1.79.055(c).

1. Whether the board finds by a preponderance of the evidence one or more violations within the jurisdiction of the board; and
2. Whether the board recommends further administrative or remedial actions; and

3. What specific sanctions, corrective actions or referrals, if any, the board recommends pursuant to 1.79.070.

4. If the Board does not find a violation under HCC Chapter 1.18, the Board shall prepare a confidential statement of closure listing the complainant and respondent, the assigned identification number, the allegations, the hearing date, and the finding that no allegation was substantiated by the Board in whole or in part, and the date of board closure. At the sole discretion of the respondent, the Board may release the statement of closure as a public document.

Mayor Pro Tempore Wythe called for a motion that the Board finds by a preponderance of the evidence that the respondent violated HCC 1.18.030(g), "No city official or the City Manager shall seek office or position or use their office or position for the purpose of obtaining anything of value for himself, an immediate family member or a business that he owns or in which he holds an interest, or for the purpose of influencing any matter in which he has a financial interest."

HOWARD/LEWIS – SO MOVED.

VOTE: YES. HOGAN

VOTE: NO. ROBERTS, WYTHE, ZAK, HOWARD, LEWIS

Motion failed.

Mayor Pro Tempore Wythe called for a motion that the Board finds by a preponderance of the evidence that the respondent violated the first sentence of HCC 1.18.030(h), "No city official or the City Manager shall use the implied authority of office or position for the purposes of unduly influencing the decisions of others, or promoting a personal interest within the community."

HOWARD/LEWIS – SO MOVED.

VOTE: YES. HOGAN

VOTE: NO. LEWIS, ROBERTS, WYTHE, ZAK, HOWARD

Motion failed.

Mayor Pro Tempore Wythe called for a motion that the Board finds by a preponderance of the evidence that the respondent violated the second sentence of HCC 1.18.030(h), "City officials and the City Manager will refrain from using their title except when duly representing the city in an authorized capacity."

LEWIS/HOWARD – SO MOVED.

VOTE: YES. HOGAN

VOTE: NO. LEWIS, ROBERTS, WYTHE, ZAK, HOWARD

Motion failed.

Specific Sanctions

ROBERTS/HOWARD - MOVED THAT THE BOARD DOES NOT RECOMMEND FURTHER ADMINISTRATIVE OR REMEDIAL ACTIONS (PURSUANT TO HCC 1.79.070).

VOTE: YES. HOWARD, HOGAN, LEWIS, ROBERTS, WYTHE, ZAK

Motion carried.

Further Administrative or Remedial Actions

ROBERTS/HOWARD - MOVED THAT THE BOARD DOES NOT RECOMMEND SPECIFIC SANCTIONS, CORRECTIVE ACTIONS OR REFERRALS PURSUANT TO HCC 1.79.070.

VOTE: YES. ZAK, HOWARD, HOGAN, LEWIS, ROBERTS, WYTHE

Motion carried.

Mayor Pro Tempore Wythe stated this concludes the Board's decision on this complaint. Since the Board found no violation under HCC Chapter 1.18, HCC 1.79.065(d) requires the Board to prepare a confidential statement of closure listing the complainant and respondent, the assigned identification number, the allegations, the hearing date, and the finding that no allegation was substantiated by the Board in whole or in part, and the date of Board closure. The Board has prepared such a statement of closure and will provide copies to the complainant and the respondent. At the sole discretion of the respondent, the Board may release the statement of closure as a public document.

COMMENTS OF THE AUDIENCE

Mike Kennedy, city resident, asked why the public is allowed to comment when something is confidential. Since there was no violation found, there is nothing to keep confidential. The "no decision" should allow the complainant to take whatever public action he deems necessary, as the complainant is not held to any standard of confidentiality. Mr. Kennedy asked for the City Attorney's comment.

City Attorney Klinkner answered the Board prepares a confidential statement of closure in which the respondent must agree to make it public. The minutes shall record the vote of each member, and the public record is open to inspection by any member. It appears the closure remains confidential unless the respondent chooses to make it public. HCC 1.79.080 applies in the case where a violation is found and the Board recommends some remedial action should be taken. It is up to Mr. Kennedy how he reads the ordinance.

COMMENTS OF THE COUNCIL

Councilmember Hogan appreciates the attorney's recommendation, but there are difficulties with the ordinance. Council has given themselves authority as the Board of Ethics that exceeds the authority as granted by legislature. Council can sit in quasi judicial boards; this is a judicial action and the Council has no right to give itself the authority. At the same time the ordinance was adopted Council gave itself exclusive jurisdiction on violations of HCC 1.18. We should do away with Board of Ethics procedures; violations should be handled in the court.

ADJOURNMENT

There being no further business to come before the Council the meeting was adjourned at 5:35 p.m. by Mayor Pro Tempore Beth Wythe. The next Regular Meeting is scheduled for Monday, June 14, 2010 at 6:00 p.m. The next Committee of the Whole is scheduled for Monday, June 14, 2010 at 5:00 p.m. A Worksession is scheduled for Monday, June 14, 2010 at 4:00 p.m. All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, CMC, CITY CLERK

Approved: _____