

Session 17-11 a Special Meeting of the Homer City Council was called to order on May 2, 2017 at 4:00 p.m. by Mayor Bryan Zak at the Homer City Hall Conference Room located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

**PRESENT:** COUNCILMEMBERS: ADERHOLD, ERICKSON, LEWIS, REYNOLDS, SMITH, STROOZAS

STAFF: CITY MANAGER KOESTER  
CITY CLERK JOHNSON  
CITY ATTORNEY WELLS (telephonic)  
ATTORNEY SANDERS

Mayor Zak ruled that Councilmembers Aderhold, Lewis, and Reynolds have a conflict of interest since they are the plaintiffs in the lawsuit against the City.

Councilmember Lewis requested that the meeting be public instead of an Executive Session. The issue before the Council is whether the resolutions (17-019 and 16-121) are political in nature and if they should have been brought up. By limiting ideas that are brought forth by individuals we will limit ideas and solutions to our problems. What one person says is political another may say is social. All ordinances and resolutions should be brought forward and live or die on their own merits; that is democracy.

Councilmember Lewis questioned what constitutes the rule of necessity and if the Mayor would be allowed to participate if there were just three councilmembers.

Councilmember Reynolds recognizes her conflict of interest and asked about the conflict of the councilmembers who verbally support the recall and their spouses signed the recall petition.

City Clerk Johnson said the rule of necessity comes into effect when there is less than a quorum for a vote on a motion. If three councilmembers are excluded and just three remain, the rule of necessity would apply. It would not include the Mayor voting, it would just be a limited vote of three instead of a quorum.

Councilmember Reynolds understood that the rule of necessity meant there would not be a conflict of interest. Those members who may have had a conflict were included in decisions rather than allowing less than a quorum to vote.

City Attorney Wells joined the meeting via telephone. She advised the rule of necessity is used to mandate the participation of a conflicted councilmember. If we need a vote or direction on something we may need to allow conflicted councilmembers to participate using the rule of necessity. It is alarming in this case as the councilmembers are in a lawsuit against the City. In this case we do not have an issue that requires Council authority. When we get to decisions that pertain to money, she will need to have a more clear answer from case law as to how to

proceed. The questions that we will be posing to the non-conflicted councilmembers at this time will be for guidance, but not for full council support.

Asked about the conflict of councilmembers supporting the recall and spouses signing the recall petition, City Attorney Wells advised we have to separate the legislative issues surrounding the recall process versus a lawsuit naming the City filed by three Councilmembers. There is most definitely a conflict of Councilmembers Aderhold, Lewis, and Reynolds because of the ACLU action. The right to sign and sponsor a recall petition is not a conflict of interest.

Mayor Zak restated his ruling that Councilmembers Aderhold, Lewis, and Reynolds do have a conflict based on City Attorney Wells' advice.

Councilmembers Aderhold, Lewis, and Reynolds were excused from participation and joined the audience.

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

Mayor Zak called for a motion for the approval of the agenda.

ERICKSON/STROOZAS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- A. **Memorandum 17-068**, from City Clerk, Request for Executive Session Pursuant to AS 44.62.310 (A-C)(1 & 5) Matters, the Immediate Knowledge of Which Would Clearly Have an Adverse Effect Upon the Finances of the Government Unit and Attorney/Client Privilege (Donna Aderhold, David Lewis, and Catriona Reynolds vs. City of Homer Lawsuit).

ERICKSON/STROOAZS – MOVED FOR THE APPROVAL OF THE RECOMMENDATIONS OF MEMORANDUM 17-068 TO MEET IN EXECUTIVE SESSION TO DISCUSS ADERHOLD, LEWIS, AND REYNOLDS VS. CITY OF HOMER LAWSUIT.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

SMITH/ERICKSON – MOVED TO ADJOURN TO EXECUTIVE SESSION.

There was no discussion.

VOTE: YES. SMITH, ERICKSON, STROOZAS

Motion carried.

Mayor Zak, Councilmembers Erickson, Smith, and Stroozas, City Manager Koester, City Attorney Wells, and Attorney Sanders adjourned to Executive Session at 4:15 p.m.

Mayor Zak reconvened the meeting at 5:17 p.m.

Councilmember Smith stated they met with the City's legal representation of the lawsuit brought against the City by the ACLU on behalf of Councilmembers Aderhold, Lewis, and Reynolds. It was transferred from City Attorney Holly Wells to Attorney Eric Sanders and they discussed the status of the case.

Attorney Eric Sanders stated he is an attorney in Anchorage who has practiced there for a long time. He became involved after Attorney Holly Wells concluded it presents a conflict of interest for her to be representing the City adverse to councilmembers that she works with. Council doesn't take a position on the recall. By advocating on behalf of a client no one is suggesting the three councilmembers be recalled. There is a process. The Clerk is given a recall petition and based on advice of legal counsel makes a decision whether the petition should proceed. The councilmembers subject to the recall have every right to contest the decision. We now have the three councilmembers who have brought an action forward. That is their only recourse to stop the recall.

There is now another group that has intervened. Attorney Sanders does not know what their status will be. The decision to proceed with the recall was made by the Clerk with the advice of legal counsel and he will be defending that position. The councilmembers were not asked to vote on that. There probably is the perception that there are three councilmembers on one side and three on the other, but the way the procedure works is that it does not allow the councilmembers to vote on the issues of whether or not there should be a recall. Perceiving

that there is advocacy of the councilmembers for the recall to go one way or the other is not a correct perception that council is driving this. The matter is now before a superior court judge and there will be a decision made soon. People have a right for their day in court and he hopes to have a decision everyone is happy with.

### **COMMENTS OF THE AUDIENCE**

Ron Keffer, city resident, learned about freedom of speech and due process in a government class. He became aware of the ACLU and their mission to help citizens protect themselves against violations of their rights. While the ACLU was defending a person's constitutional rights, someone on the other side didn't think they had the right. The three councilmembers subject to the recall have a right to do what they have done and it is their job to do that. That is what legislation is about. The right decision for the Council is not to contest that.

Larry Slone, city resident, offered a counterpoint. He agrees of the right to free speech, but not the absolute right to do what you want when representing thousands of other people. There are laws to confine them from doing antagonistic things to a significant portion of their constituency. We all have different opinions that can be offended by the issue of free speech. Councilmembers do not have an unlimited right of free speech.

Michael Hawfield, Anchor Point resident, agrees with the importance of our freedom to speak and would err on the side of that freedom. The councilmembers who have spoken out had a duty to bring the resolution to the table and it was acted upon. They were elected to do that. It bothers him what the recall does to the sanctity of the election that put the councilmembers in place. What happens to their voice? If the recall is successful that goes away. There are enough problems with the way elections are manipulated and results circumvented that we need to take a stand for the sanctity of the election. People have an opportunity to vote in the fall election. To help mend the community he recommends not fighting the lawsuit.

### **ADJOURNMENT**

There being no further business to come before the Council, Mayor Zak adjourned the meeting at 5:32 p.m. The next Regular Meeting is Monday, May 8, 2017 at 6:00 p.m., Committee of the Whole 5:00 p.m., and Worksession 4:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

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JO JOHNSON, MMC, CITY CLERK

Approved: \_\_\_\_\_