

MINUTES

Tuesday, July 5, 2011

* 5:20 PM

Fiscal Committee Carnegie Town Hall

235 West 10th Street

Members Present: Council Member Sue Aguilar, Council Member Vernon Brown, Council Member Greg Jamison, Council Member Rex Rolwing,

Members Absent: None

Staff Present: Debra A. Owen, City Clerk/Chief of Council Operations and Jamie Palmer, CMC, Assistant City Clerk

Guests: Don Kearney, Mark Cotter, Trent Lubbers, Dave Pfeifle, Scott Rust, Tracy Turbak, Cheryl Rath, Kenny Anderson Jr., Jim Entenman, Rich Oksol, Jeanne Gerken, Michelle Erpenbach, Mike Cooper

1. Call To Order

Committee Chair Vernon Brown called the meeting to order at 5:20 p.m.

2. Approval of Minutes

A motion was made by Council Member Sue Aguilar and seconded by Council Member Greg Jamison to approve the minutes from Monday, May, 2, 2011.

Brown called for a voice vote on the motion and all members voted yes.

Motion Passed.

3. Reports and Updates

A Discussion of the authorization of city contracts (SDCL9-1-5 and Sec. 34 1/2-1).

Brown asked Debra Owen to give an update on the research that she was asked to do on behalf of the committee. Owen reviewed her memo dated July 1, 2011, which was a brief summary of information previously provided and a description of how contract authorization is accomplished in other South Dakota cities, as well as, in other cities with Mayor-Council Form of Governments.

Brown welcomed Councilor Karsky as the newest Fiscal Committee Member and stated that he and Councilor Aguilar met with Dave Pfeifle, City Attorney, Mark Cotter, Director of Public Works, and Tracy Turbak, Director of Finance, to discuss the contract authorization process and Pfeifle is here to share his proposal.

Pfeifle opened by reviewing the Fiscal committee's goals for the contract authorization process which were transparency, oversight and council awareness. He

stated their proposal would provide the council with all bid request forms which accounts for 60%-90% of all city contracts/agreements. The bid request forms

would be provided to the council 5 to 7 days before it is publically released, giving the council sufficient time to review the information. He said that the information on the bid request form is often the same information that is placed in the actual contractual agreement.

Pfeifle spoke about the changes made to the State competitive bid process in 2010.

He referred to SDCL 5-18a-1(21) which defines a purchasing agency as any agency either, a governing body or public officer, authorized by law to enter into agreements. He referred to City Charter Sections 2.11(c) and 5.10 and said that when these two sections are read together, it is his opinion that the current

process is following Charter. He spoke about administrative versus legislative decisions and shared a list of administrative type decisions. City Charter Section

3.01 states that the Mayor has administrative and executive power.

Jamison asked where the \$250,000 threshold came from. Pfeifle answered there was no magic to the threshold but that the number was substantial and kept coming

up as a good threshold number. Brown communicated to Jamison that when Councilor Aguilar and Brown attended the meeting, they clearly communicated that

the \$250,000 threshold was too high. Jamison then asked Pfeifle again to explain why the proposal has the \$250,000 threshold when two members of the committee said that amount was inappropriate. Pfeifle stated he has met with both

council and the administration and the number \$250,000 kept coming up from others.

Jamison said he recalls that the committee was struggling with approving all contracts or finding a threshold and \$250,000 wasn't even on the radar.

Jamison then asked the chair to reiterate the initial purpose of the contract discussion. Brown stated this discussion has been going on for years concerning which contracts the council approves and which contracts the council doesn't approve. This group has made this discussion a priority and that is what has brought these discussions to the level they are today.

Aguilar stated that much of the draft ordinance that is being presented today by Pfeifle has to do with purchasing. The proposal has quite a few changes and it

isn't all just renumbering. Pfeifle explained that it was included because they are

all part of the same chapter and purchasing and this affects public works. The two

main generators of contracts are public works and purchasing. Aguilar asked Pfeifle if the ordinance as proposed by the committee would be considered illegal.

He said that he feels it would be violating City Charter. Discussion included that the Charter has changed since its first draft and that the city has changed in

the last 18 years since it was adopted. Aguilar added that when the Charter was adopted, they thought council members would only be working 10 hours a week which is a fallacy.

Brown asked if state law overrides City Charter and Pfeifle argued that it would not under Article 9 of Section 2 of the State Constitution, because it states that our Charter can establish any executive, administrative, or legislative structure as long as it doesn't violate the state constitution.

Karsky asked for clarification from Pfeifle on the length of the proposed ordinance and why the \$250,000 threshold is legal but the threshold of \$20,000 is not legal. Pfeifle first explained the reason for the length of the document. Pfeifle said the meat of the document satisfied the council's intent. Brown said the proposal has no checks and balance because the provision of notice doesn't satisfy council's desire to have oversight into this process. Discussion ensued.

Brown inquired about several changes to the ordinances in Pfeifle's proposal which were beyond formatting changes. Discussion ensued about removing the provision of the Parks Board to approve contracts. The Parks Board was not consulted about this change but this would be discussed in a subsequent Parks Board meeting.

Brown inquired about the notice of contracts threshold being changed from \$20,000 to \$25,000. Pfeifle said this change was made to make it simple for Public Works to more easily follow because it relates to State Bid law amounts. Brown then questioned why the new proposal also takes away approval of multi-year contracts from the council. Pfeifle stated that the administration wanted flexibility regarding these contracts and requiring the council to approve multi-year contracts could put the city in a bad negotiating position. Discussion occurred about a multi-year contract that was a concern of Council Member Anderson Jr that was entered into without council knowledge.

Brown also questioned Pfeifle about deleting the phrase, "subject to council approval," in another section of ordinance that is in the new proposal. Pfeifle stated this authority belonged to the Mayor and the provision was contrary to Charter. Brown asked additional questions about new language in provisions in this new proposal that had to do with purchasing.

Aguilar expressed her frustrations about not knowing which is new language and which is only new numbering in this proposed ordinance. She said that while the renumbering and review of purchasing ordinances is important, but it is beyond the scope of this committee. The current proposal is impossible to understand. Pfeifle briefly reviewed the new language in the proposed ordinance for the committee members.

Brown asked the committee how they would like to proceed because the focus of the committee is contracts and not purchasing. Jamison asked Pfeifle for the specific language that was previously stated as "violating charter" and breaking the law. Pfeifle said that he would prefer not to use that phrase and reiterated that the proposed ordinance before them satisfies the committee's

original goals while also complying with City Charter. He reiterated that negotiating and awarding contracts is an administrative function. Pfeifle also added that when the council approves the budget they are approving those contracts and those contracts become encumbered. Brown stated that the contracts are issued without council oversight and notice does not provide council oversight. Brown stated the train is too far down the track so there would be

no council oversight on the contracts.

Jamison spoke of a recent budget appropriation of the council to a specific capital project and the administration moved the money to another capital project with no council oversight or input. Jamison said this new proposal would only provide awareness but the council couldn't stop the transfer of appropriated funds. Discussion followed. Vernon stated there is a difference between asking permission [of the council] rather letting them know you are going to do it. Discussion followed.

Brown asked for public input. Kenny Anderson Jr. said he feels that the committee should continue to work through this issue and get more oversight over

the contract process and service contracts. Anderson Jr. would like more council oversight and a public approval process to engage the public. Anderson Jr. would like the approval process to be more transparent and encouraged

the council that they are on the right track. Mark Cotter spoke about how the contract approval process would affect his department because the construction season is so short. Michelle Erpenbach said that she supports bringing back the contract approval process back to the city council. Aguilar said that she is sensing a lot of protesting on this topic which raises a lot of questions in her

mind and that she does not agree with the \$250,000 threshold.

Brown proposed that the committee meet again on this topic within the next two weeks so that a decision can be made at the regularly scheduled meeting on August 1, 2011. Brown will work with the members and clerks to get a meeting scheduled.

B Discussion on Sewer/Water Rate Increase Freeze for Elderly and Low Income Families

Jamison introduced the item and explained how the idea arose. Cotter spoke regarding this idea and gave examples of the differences in rates if this plan were to be implemented. He said that the savings for a household would be very minimal. Cotter gave a brief overview of the rebate and conservation programs that the City currently offers. He said that it not only rebates the cost of the item but it also offers a reduction in water consumption. Discussion followed.

C Discussion on Sewer/Water Rate Increase Cycle of 3 or 5 years

Item C was not discussed due to time constraints.

4. Open Discussion

There was none.

5. Adjournment

Committee Chair Vernon Brown adjourned the meeting at 6:43 p.m.

Jamie L. Palmer, CMC

Assistant City Clerk