

MINUTES
CITY COUNCIL

08/07/2019
SPECIAL MEETING

COUNCIL MEMBERS PRESENT: Councilmember Happe
Councilmember Peterson
Councilmember Wallace
Mayor Pro Tem Andrade
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT Douglas Schulze, City Manager
Kevin G. Ennis, City Attorney
Daryl Betancur, Deputy City Clerk
Tom Miller, Electric Utility Director
Art Vela, Public Works Director/City Engineer
Suzanne Cook, Interim Administrative Services Director
Adam Rush, Community Development Director
Laurie Sampson, Executive Assistant
Leila Lopez, Office Specialist

I. CALL TO ORDER

A Special meeting of the Banning City Council was called to order by Mayor Welch on August 7, 2019, at 5:00 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

Mayor Welch commented that the person scheduled to offer the invocation had taken ill and he was in the hospital.

Mayor Welch led the audience in the Pledge of Allegiance.

II. APPROVAL OF AGENDA

A motion was made by Mayor Pro Tem Andrade, seconded by Councilmember Wallace, to approve the agenda as presented. Oral roll call vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch
NOES: None
ABSTAIN: None
ABSENT: None

III. DISCUSSION ITEM

Mayor Welch stated that this special meeting this evening was for discussion of and direction to City staff regarding the June 18, 2019 Riverside County Grand Jury report titled, "City of Banning Council and City Manager Relationship" and that we will be discussing the items listed below A-E.

Discussion of, and Direction to City Staff regarding, the June 18, 2019 Riverside County Grand Jury Report entitled "City of Banning Council and City Manager Relationship"

- A. Summary of Grand Jury Report Findings and Recommendations
- B. Questions from Councilmembers regarding Report
- C. Public Comments on Grand Jury Report
- D. City Council Discussion of Findings, Recommendations and Actions
- E. Direction to Staff on Contents of Draft Response due by September 19, 2019

Mayor Welch stated that this evening we have a single item for discussion; that he would ask that anyone and certainly the public was welcome at that podium at the appropriate time; he urged everyone to be respectful throughout this meeting and that any comments and questions that are made not only from the Council but from the public itself are relevant to this meeting; stated that this was not the time for public comments.

Mr. David Ellis stepped up to the podium out of order and demanded to speak because a note at the bottom of the agenda stated that at any time during the meeting, the public had a right to make a statement.

City Attorney Kevin G. Ennis interjected and stated that the speaker has a right to speak at the time designated on the agenda; that while he does note a notice that allows people to come up, it does provide on the agenda a time for public comments, thus he recommended that the Council take the public comment at that time.

City Attorney Kevin G. Ennis stated that this was a special meeting and that the Brown Act, which is the Act in which we are operating requires public comment. However, that when there's a special meeting, which this is a special meeting, the public comment can be limited and shall be limited to the subjects on the special meeting agenda at a regular meeting. The public can speak on items not on the agenda. Further, Mr. Ennis stated that just for clarification, that the language that was appended to the end of the agenda is language typical for the regular meeting; that the specifics under the Brown act is that when there is non-agenda items, public comment is not required.

Mayor Welch asked City Attorney Kevin G. Ennis to present the findings of the Grand Jury Report.

City Attorney Kevin G. Ennis presented a PowerPoint presentation regarding the findings of the Grand Jury report indicating that there were three significant findings, including: 1) City Council member circumvents City Manager relationship, the 2018 2019 Riverside County Civil Grand Jury investigation discovered recent incidents where one City Council member frequently circumvented the authority of the City Manager and dealt directly with department heads and City employees; that in one example, a Council member directed a Police Officer to open a criminal investigation into the water use activities of a private citizen.”; 2) “Council members, independent actions, one Council members’ actions created a destructive culture within the City government, interviews of Banning employees revealed that several City employees resigned from City employment in response to improper unprofessional and inappropriate contact and actions by this Council member. Another such action was directing and Interim Police Chief on the day to day functions in the police department, this Interim Police Chief regularly adopted these directions as his own and appeared to not make independent decisions; and 3) Low employee retention whereby one Council members, inappropriate actions have contributed to low employee retention and difficulty in filling open positions with qualified personnel and an acting City manager, a department head and several other City employees left City employment following continuous harassment; that the word bully was frequently used to describe this Council members interactions with former and current City employees, this hostile work environment has resulted in litigation settlements from the City of Banning, which totaled nearly \$2 million.”

City Attorney Kevin G. Ennis further stated that the Grand Jury report then included a series of three recommendations, among these: 1) recommendation number one is entitled City Council member circumvents City Manager relationship and reads as follows, “City Council member must follow article 2.0 8.11 of the Banning Municipal Code, which stipulates that no Council member has the authority to act alone without the concurrence of a Council quorum and an actionable vote. The City Attorney and or designated legal experts should instruct, should instruct city council members of their duties and responsibilities”; 2) the Banning City Manager must, per Banning Municipal Code Article 2.08.110, require department heads to notify him or her of any unauthorized contact by any City Council member; and recommendation 3) the Banning City Council members must strive to eliminate such bullying behavior and implement specific policies and procedures for disciplinary actions against any City Council member or department head who violates city procedures or ordinances; That the City Council should publically censure any of its members who violate standards of civil and ethical conduct, including violations of laws and municipal codes.

City Attorney Kevin G. Ennis then spoke about the summary of findings, which addressed the findings and the recommendations stated in the report.

Mayor Welch asked if there were any questions from Council regarding the report.

Councilmember Peterson stated that he had none.

Councilmember Wallace commented on the reasons why she was compelled to run for City Council and stated that she had seen instances of bullying even before she was elected to Council; that Councilmember Peterson's treatment of colleagues is disrespectful and that she wanted to know the reasons he has to be against the City Manager; that she found the conflict between them very unprofessional.

Councilmember Wallace also stated that she recognized how his actions were making the Council look bad and how he does not say anything when his supporters come to the podium making false claims about the City Council; that she also reads her agenda packet; that Councilmember Peterson makes people look like they were stupid.

Mayor Welch called for a point of order and reminded the Council that at this point in the meeting is to have questions from Councilmembers regarding the report before public comment, and following public comment, the Council will discuss the matter at hand.

Councilmember Happe asked the City Attorney, Kevin G. Ennis to explain for the audience the purpose of the grand jury and what they are tasked with; stated that he was asking this question because there was information out in the community, which claimed that the City Council had something to do with this Grand Jury investigation.

Public Comments

The following residents provided testimony and spoke on behalf of Councilmember Peterson: Don Hagen, Inga Schuler, Edward Miller, Dorothy McClain, Ellen Carr, Rick Pippenger, Cynthia Barrington, Diego Rose, Jerry Westholder, Valerie Westholder, Rita Chaparosa, Sharon Barber, David Ellis, Art Nordquist, Dora Nordquist, and Don Clark stating that Councilmember Peterson was a man of good character and who tell it is like it is; does his homework, knows the issues; was the presumed subject of the report being Councilmember Peterson; was the only one who reports wrong-doing; has attempted to improve the City; he works hard for the City; that someone in the City of Banning with political influence caused the investigation; and that he is a smart man, a decorated veteran, and a valuable member of the Banning City Council

Lisa Schulze, stated that she wanted to say a couple of things, including that at the last Council meeting members of the public spoke disparing her and disparaging members of the City Council, and her husband; stated that this meeting was not about her; that this meeting was about the Grand Jury findings and that was what we needed to concnecrate on; commented that this was not about what Councilmember Peterson had done for the community; instead it was about what Councilmember Peterson had failed to do for the community.

Paul Perkins commented that we can do a lot better; that we have three problems, one deals with City staff, one deals with the City Council and one deals with the audience who do not show up to meeting unless is something controversial; stated that he encouraged more people to attend these meetings.

Unknown speaker stated that she was here with a more positive attitude as a former City employee; that she will continue to be positive even though she had wrong done to her; that we do not need to tear each other apart; she called for unity in the City of Banning.

Brooke Dalhman stated that there was a lot of division on the Council and that for the benefit of the community the Council should put differences aside and do what is best for the people.

Sandra Reed spoke about loving Banning and that she respected the issues being discussed and called for beautification of Banning and that we need to come together.

John Baca representative for IBW members for the City of Banning on the utility side thanked Mr. Peterson for his service as a veteran; spoke of certain instances where employees were berated and disrespected; that Councilmember Peterson has done a decent job but that Councilmember Peterson's actions and treatment were not professional; that Councilmembers should be held to the same or higher standards as management or non-management staff.

Mayor Welch thanked everyone that came to the podium and stated that this was the time for the Council to engage in a discussion of the findings.

Councilmember Peterson presented a long narrative about his tenure on the Council and provided a brief history of his background as a law enforcement officer, as a business person, and an elected official; he defended the allegations by providing some context and history of the allegations; commented that this was nothing but a character assassination by current City Manager, current City Council members and former Councilmembers and staff. In addition, Councilmember Peterson read letters into the record attesting to this character and in relation to the Grand Jury report.

Councilmember Happe commented on the show of support for Mr. Peterson; that with respect to whistleblowing, asked if the proper channels were followed; commented on four lawsuits of the past several years; questioned Councilmember Peterson's role on these lawsuits, and the cost of \$ 2,000,000 that it had cost the City; spoke about being frustrated with what this is costing the City; spoke about the toxic environment in the City and that Mr. Peterson was a contributor to it; expressed concerns with Councilmember Peterson's supporters and how they spread hearsay and lies on social media forums.

Mr. Happe provided a written statement with his answers on the findings of the Grand Jury report, which are entered into the record. He stated that in summary, he called for each member of the Banning City Council to Follow Article 2.0 8.11 of the Banning Municipal Code; stated that If these allegations are true, then he called on City Councilmember Peterson to do the right thing; that if these allegation were true about him that he would resign; and stated that finally, he called on citizens of Banning to hold the Council to the highest standards that they expect and to attend meetings and voice their concerns at the Council and public meetings.

Councilmember Happe added he would encourage citizens to file written complaints regarding any city agency with the appropriate department and vote in your City elections and participate and educate themselves about the process of city governance that would be useful; that most importantly, he asked that the citizens of Banning to remember their tone in public because it translates to the public image and goodwill of this town.

Mayor Pro Tem Andrade refuted what an earlier speaker stated about her calling the Grand Jury incompetent stating that she did not do so; that, that statement was made on social media and as such it had to be right; that what she said about the report was that she was disappointed and she had stated in that meeting that her impression was that everyone on the Council and specifically the parties involved would have been interviewed and questioned by the Grand Jury, which we found out at that meeting that only three council members were interviewed.

She stated that she had not file the Grand Jury report that is the subject of tonight's meeting; that she did not know who filed it; that apparently people in the community know who was interviewed because that information was not given the Council; that they have done a thorough investigation on this; and that she finds sadly that these allegations are true.

Mayor Welch stated that most of this investigation was done by one Grand Jury; spoke item by item of the Grand Jury findings in the report; and stated that what the Council missed sometimes was the benefit of collaboration; that we need to be forthright about our objectives and goals with the City Executive so he or she can do what is possible to help us achieve them; instead of going around the Chief Executive; spoke about consistency in the position of Executive Officer; commented on the recommendations of the Grand Jury including, the Grand Jury recommendations for improvement and collaboration.

Mayor Welch further stated that based on the findings of the June 18, 2019 Grand Jury report, Councilmember Peterson should be censured for his actions; he recommended that a City Council workshop to reference the policies and procedures for City Council members and staff be held; that he suggested the City through the City Manager and the City Attorney cite all Banning Municipal Codes.

Councilmember Wallace stated that for the constituents to sit up here and laugh was totally disrespectful and rude; that she recognized she was new on Council but her efforts were to help the community; Ms. Wallace addressed each of the Grand Jury report findings stating that she felt that had noticed the lack of communication between the City Manager and the Councilmember subject of the report; that he tries to make the rest of the Council look bad in front of the constituents; that she did believe the findings with respect to ordering a Police Chief; talking down to employees and bullying.

Councilmember Wallace further stated that Councilmember Peterson is always bashing people; that he is unprofessional and should therefore be censured; that he attacks

people he disagrees with and that he tries to make himself look good and tries to make the rest of the Council look bad to our fellow constituents; commented that we need to enforce policies and procedures for disciplinary actions against any and any City Council members who violate City procedures or ordinances; lastly, Ms. Wallace stated that upon the findings of the Grand Jury Report, she was initiating a statement of charges to censure Councilmember Don Peterson with the Grand Jury Report.

A motion was made by Councilmember Wallace to censure Councilmember Peterson with the charges as stated in the Grand Jury Report.

A substitute motion was made by Councilmember Peterson, to delay the response for a few minutes and for discussion prior to entertaining the main motion made by Councilmember Wallace. Motion was seconded by Councilmember Happe. Motion carried.

Councilmember Peterson stated that the findings that have come out were not a surprise that it was what he had expected; that he was disappointed because after all the evidence he presented from former employees and others, the Council still concurred with the Grand Jury findings.

Further Councilmember Peterson stated that If the motion for censure did not pass the proceedings, it shall be at the end; that a new motion for censure on the same grounds or violation may not thereafter be commenced against the same legislative body member for a period of one calendar year from the date of the vote; that he had brought a censure against Mayor Welch last year and that it had failed due to a motion; commented that now that the year passed, that if we are going to do a censure on him for these violations, then that he too wanted to have a censure on Mayor Welch on the same agenda for the violation of which the Grand Jury had outlined last year; further stated that he will bring a new set of charges against Mayor Welch, and in turn Mayor Welch will bring the charges against him, and thus, the process will unfold.

Mayor Welch sought clarification from City Attorney Kevin G. Ennis asking that if the motion was made at this meeting for censure and it is seconded and it passes, that is the starting of the process of the censure and it would not become due sometime until September, is that statement correct?

City Attorney Kevin G. Ennis stated that he wanted to be clear about it commenting that the process is initiated by a member of the City Council; that it says only a sitting member of the Banning City Council may initiate proceedings for a censure of one of its members; that proceedings shall be commenced by the presentation of a written statement of charges to the subject Councilmember by the Councilmember initiating the charge; therefore it doesn't require a motion; that any one member of the Council can initiate the process by presenting a written statement of charges to the subject Councilmember.

Mr. Ennis further stated that once that has occurred, the statement of charges shall be given and there's a discrepancy between what's in the Municipal Code and what's in your rules of procedure; that the Municipal Code says statement of charges shall be given at least two Council meetings prior to that at which the central motion is proposed to be brought. So if it were to be presented, you have a Council meeting in August on August 27th, you have one on September 10, that would be the second meeting, If the charges are presented tonight, however, if not presented tonight, it'll push it to a future meeting; he stated that once the charges have been presented, then the person receiving the charges has an opportunity to present a written a response and that has to be delivered to the other members of the body, and then at the meeting at which the censure would be considered, there is to be a hearing.

City Attorney Kevin G. Ennis went on to state that the statement, the reading of the statement and the rebuttals, both are read; that after reading the charges, each member may present witnesses if they want, and then there has to be a vote and the vote is to be by the three non-party members to the Council. He cited an example, if there's an initiator and a respondent, it's the other three on the Council who vote for the censure; that this is to be done in open session, and that's a summary of the procedures on the censure.

Mayor Welch asked about what Councilmember Wallace had just done by introducing a motion.

City Attorney Kevin G. Ennis responded that no, a motion was not necessary; that she she can initiate the procedure by presenting a written statement of the charges and she has to decide if she's going to present those charges in writing tonight or some other time because that will be the point at which the charges are presented and the process is initiated.

Councilmember Wallace stated that with her statement, she will initiate the process. City Attorney Kevin G. Ennis stated that in that case, Councilmember Wallace statement would need to be copied and delivered to Councilmember Peterson if that's who you want to serve.

Councilmember Peterson stated that he in turn would deliver this to Mayor Welch; he stated that a member of the Grand Jury report stated that he directed the City Manager to spend an ungodly amount of money and utilize City employees and placing them at risk, sending them out on the I-10 Freeway to clear bushes, thus, he stated that he was censuring Mayor Welch as well.

Councilmember Peterson presented Mayor Welch with a copy of the charges.

City Attorney Kevin G. Ennis stated that as soon as the Clerk returns with the copy and hands it to Councilmember Peterson, then that central process will commence; he noted that copies had been provided to all Councilmembers and that it was presented to Mr. Peterson personally.

City Attorney Kevin G. Ennis stated that while we are waiting, there is another item of business which is the issue of the Council providing direction to staff too in terms of a draft response back to the Grand Jury; he commented that this would be an opportunity for the Council to give direction; that we had heard the Council's individual comments, but that if there was any other direction you wanted to give to staff in preparing a draft response, and when you want that draft response back not on the censure issue, but on the response to the Grand Jury.

Mayor Welch stated that based on all the comments and discussions tonight, we all have given you copies of what we have.

City Attorney Kevin G. Ennis stated that he had not received copies of your comments; only some perhaps one.

Mayor Welch stated that he would like to ask the City Manager and City Attorney using the information provided to come back with a recommendation.

City Attorney Kevin G. Ennis asked if the Council want them to come back with that draft response that your August 27th meeting? Mayor Welch stated that yes.

Mr. Ennis commented that because according to the procedures, then we'll have a draft response to you on August 27th with respect to the censure under the Municipal Code; commented that will occur at the September 10th meeting because it has to be the second meeting after the presentation of the statement of charges and this applies for both of the censures provided to Councilmember Peterson and Mayor Welch.

Mayor Welch clarified that everyone was given copies; stated that having no further business to discuss, the meeting was adjourned.

IV. ADJOURNMENT

By consensus, the meeting was adjourned at 8:44 p.m.

CITY COUNCIL – Next Regular City Council Meeting, August 27, 2019, 5:00 p.m.

Minutes Prepared by:


Daryl Betancur, Deputy City Clerk

These Minutes reflect actions taken by the City Council. The entire discussion of this meeting can be found by visiting the following website: <https://banningca.gov/ArchiveCenter/ViewFile/Item/2141> requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.