

MINUTES  
FAIRVIEW CITY COUNCIL SPECIAL MEETING  
FAIRVIEW CITY HALL  
1300 NE VILLAGE STREET  
FAIRVIEW, OREGON 97024

---

August 31, 2005 – 6:00pm

I. CALL TO ORDER/  
ROLL CALL

Mayor Weatherby called the meeting to order at 6:00pm.

PRESENT: Mayor Mike Weatherby  
Councilor Darrell Cornelius  
Councilor Barbara Jones  
Councilor Steve Owen  
Councilor James Raze  
Councilor Ken Quinby

ABSENT: Councilor Jim Trees

STAFF PRESENT: Jan Wellman, City Administrator  
Paul Elsner, City Attorney  
Ken Johnson, Chief of Police  
Laura Zentner, Finance Director  
Tamara DeRidder, Community  
Development Director  
Tammy Shannon, IT Tech

II. CITIZEN  
COMMUNICATIONS

Mayor Weatherby called for persons wishing to speak on non-agenda items. As there was no response, the session continued.

III. POSSIBLE EXECUTIVE  
SESSION  
ORS 192.660 (2) (f)  
Document exempt from  
Public Disclosure

Mayor Weatherby called for a motion to discuss City Attorney Elsner's August 15, 2005 memorandum in Executive Session. As there was no response, the public session continued.

Mayor Weatherby called for questions and comments regarding items listed on the Agenda.

Councilor Cornelius requested that there be an open and frank discussion amongst the Council members, City Attorney and City Administrator in relation to their respective roles at the City. Additionally, Councilor Cornelius asked that the City Attorney, on the subject of his legal memorandum dealing with a number of issues regarding the termination of employment of the former City

Recorder Caren Huson, address each item on the Agenda and provide an explanation of his opinion.

Attorney Elsner addressed each item on the Agenda as follows:

1. *Authority to eliminate City Recorder or any other position.*

Attorney Elsner stated that a distinction should be made between a charter and non-charter position and that his opinion was that Administrator Wellman did not have the authority to eliminate a charter position. As an example, Attorney Elsner acknowledged that Administrator Wellman had no authority to eliminate the position of Fairview Municipal Judge because the charter states that the Municipal Judge position is appointed by Council. Attorney Elsner noted that as the City Recorder position is mentioned in the Charter, Administrator Wellman could not eliminate the position itself although he did have the authority to eliminate the person from the position. Attorney Elsner also remarked that Administrator Wellman did have the authority to eliminate non-charter positions.

Councilor Cornelius asked if Attorney Elsner's opinion was based on the City Charter. Attorney Elsner responded that he based his opinion on the Charter, the city code and the Personnel Manual. Councilor Cornelius quoted the city code, stating, "The personnel officer shall develop and make recommendations as to job descriptions within job titles as established by the Council. These job descriptions shall be approved by the City Council", and asked that if the job classifications were created by Council approval, how could the City Administrator eliminate a position. Attorney Elsner responded that while Council approved job descriptions for positions, if Administrator Wellman felt it was best to eliminate a position; he could in fact do so. For clarification, Attorney Elsner stated that Administrator Wellman could eliminate a person from the City Recorder position as opposed to eliminating the position.

Councilor Cornelius asked Attorney Elsner whether he meant terminating the position or terminating the employee from that position. Attorney Elsner responded that since the Charter made Administrator Wellman the administrative head of the government, he did have the authority to lay off or fire a person from a particular position.

Councilor Cornelius acknowledged that he did not have an issue with Administrator Wellman's power to terminate employment or discipline an employee; however, the reason given to him in an email regarding the termination of Caren Huson had been that the

position had been eliminated. Attorney Elsner replied that Administrator Wellman did not have the authority to eliminate the City Recorder position but did have the authority to eliminate the person from that position.

Councilor Cornelius commented that in the release dated August 1, 2005, signed by Ms. Huson, the last paragraph read, “Unfortunately, due to budget constraints, I was forced to eliminate Caren’s position”, and then asked about the settlement sum of approximately \$30,000 paid to Ms. Huson. Attorney Elsner responded that Ms. Huson had not received settlement money; she was given severance pay. The city had contributed approximately \$14,000 towards Ms. Huson’s severance package and the remaining portion was paid by the city’s insurance carrier, City County Insurance Services (CCIS). Attorney Elsner again stated that Administrator Wellman had not eliminated Ms. Huson’s position- the City Recorder position was still extant in the City of Fairview- he had eliminated the person from that position. Councilor Cornelius remarked that he had noticed Administrator Wellman had assigned the position of City Recorder to himself on the city’s website.

*2. Authority to eliminate the job duties of the City Recorder or any position without Council consent.*

Attorney Elsner stated that the allocation of the functioning of the job duties of City Recorder was dispersed between a number of individuals. Attorney Elsner also noted that Administrator Wellman did not eliminate the City Recorder’s duties and that those duties imposed by statute were still attached to that position.

Councilor Cornelius remarked that the Fairview Municipal Code provided, in section 2.10.010 (a), that all job descriptions and job titles be approved by Council. Councilor Cornelius asked Attorney Elsner if the City Administrator had the authority to change job descriptions of employees without the Council’s approval. Attorney Elsner responded by stating that in looking at the entire provision and not just discrete phrases and also by reviewing the most recent personnel policies adopted in 2002, his opinion was that the Council had a very limited role concerning personnel issues. Attorney Elsner also stated that a lot of authority had been delegated away from the Council via the personnel rules. Attorney Elsner noted that under the terms of the Fairview Municipal Code, section 2.10.010 (a), the City Administrator acts as the appointing authority for all department directors and other employees of the city and therefore had the authority to remove Ms. Huson from the position of City Recorder.

3. *Authority to change the job descriptions of any city position without Council approval.*

Councilor Cornelius asked Attorney Elsner if, for example, Administrator Wellman could transfer the duties of the Police Chief or Public Works Director to himself. Attorney Elsner responded that if the job functions could be combined, Administrator Wellman did have the lawful authority to transfer the job functions. Attorney Elsner noted that there might be exceptions to this- for example, if Administrator Wellman did not meet the statutory requirements of the Police Chief position.

Councilor Cornelius remarked that he was trying to understand the roles of the City Administrator and City Council with respect to both policy and ordinance matters. Councilor Cornelius stated that he believed a strict reading of the City Charter gave the Council greater powers than the City Administrator. Councilor Cornelius commented that he was concerned because he and two other Councilors had not been informed in advance of the termination of Ms. Huson's employment as City Recorder.

4. *Authority to reassign job duties from one position to another without Council approval.*

Council noted that this item had been sufficiently covered earlier in the meeting.

5. *Authority of the City Administrator to settle claims made against the City without Council approval.*

Attorney Elsner reported that claims made against the city on the basis of tort liability were typically handled by the city's insurance carrier, CCIS, as it had been given the authority to settle such claims. Councilor Cornelius asked about employment law claims and Attorney Elsner responded that Ms. Huson's severance package was not a claim and that no lawsuit had been filed. Additionally, Attorney Elsner commented that many jurisdictions and private companies give severance packages to employees and that many of those employees enlist the assistance of an attorney, as Ms. Huson did, to make sure their rights were being protected.

Councilor Cornelius asked Attorney Elsner if Administrator Wellman had the authority to settle claims against the city without the Council's approval. Attorney Elsner responded that there was no claim; Ms. Huson had been offered a severance package in recognition of the years she had given the city. The severance package was based on a formula used by a number of public agencies. Attorney Elsner noted that the severance package was

based on one week's severance pay for each year of service and as Ms. Huson had been employed by the city for 12 years, she had been offered 12 weeks of severance pay.

Councilor Cornelius stated that because Ms. Huson had been required to sign a release, it should not be called a severance package. Attorney Elsner responded by saying he never gave public money away without getting something in return and in this case, that something in return would be a signed release and thus it was still a severance package.

*Remainder of Memorandum.*

Council had no additional questions regarding this item.

IV. SECOND OPINION  
REGARDING SUBJECT  
MATTERS CONTAINED  
IN ATTORNEY ELSNER'S  
AUGUST 15, 2005  
MEMORANDUM

Councilor Cornelius moved and Councilor Quinby seconded the motion to: *Engage the services of an attorney to render an opinion regarding Agenda item IIIA. The attorney to be engaged shall be a member of a law firm currently not representing the city. The attorney shall be selected by Councilors Owen, Quinby and Cornelius.*

Mayor Weatherby called for discussion on the motion.

Councilor Cornelius stated the following reasons for wanting a second opinion:

1. Attorney Elsner had given a philosophy as opposed to an opinion, and that while Attorney Elsner's philosophy was that the Charter be liberally construed, Councilor Cornelius' philosophy was that the Charter be strictly construed;
2. No case law had been cited;
3. A second opinion might agree with Attorney Elsner and put an end to the matter.

Councilor Cornelius also stated he felt that important matters required second opinions and that he would not have brought the matter forward unless he was extremely concerned about whether or not he was fulfilling his duties and responsibilities as a City Councilor. He noted that three of the seven Councilors disagreed with Attorney Elsner's opinion. In terms of the costs involved, Councilor Cornelius reported that \$4,000 had been spent on one band for the Fairview *Summer on the Green* Festival and that he did not believe a second legal opinion would cost more than that.

Councilor Raze commented that he believed this was the first year that the City had broke even on the Festival costs and that even if a

band cost \$20,000 he would not care as long as the Festival broke even. Additionally, Councilor Raze stated that he didn't understand what Festival costs had to do with the current issue and that he felt Councilor Cornelius was making comments that contained half-information.

Councilor Raze also stated that Councilor Cornelius had previously said publicly that the city needed to cut personnel costs and now that the City Administrator had taken action to save the city approximately \$85,000 per year, it had become a big issue with Councilor Cornelius. Following this, Councilor Raze stated that he felt that Councilor Cornelius' grandstanding was a tax on everyone's time and money and that if the Council felt that the City Administrator was not doing the job expected, Council had the responsibility to make a change. Councilor Raze stated that he has always found Administrator Wellman responsive and that he was very satisfied with Administrator Wellman's performance.

Councilor Raze followed by reporting that he would vote against the motion as an inordinate amount of time second guessing the City Attorney had already been spent.

Councilor Owen reported that he was not in favor of engaging a second opinion because the city had been provided with excellent counsel by the firm of Beery & Elsner. Additionally, Councilor Owen reported that based on the questions asked by Councilor Cornelius and the responses by Attorney Elsner, he felt comfortable with how the issue had been handled and that he supported the opinion of the City Attorney.

Councilor Jones stated that she felt that if the city enlisted a second opinion, they would just be getting another firm's philosophy on the matter. She also stated that she has faith in Attorney Elsner and his firm and that she felt Administrator Wellman was running the city in a very positive and productive manner. Councilor Jones indicated that she would be voting against a second legal opinion.

Councilor Quinby reported that although the official statement made about the issue was that Ms. Huson's position had been reassigned due to budgetary constraints, the first email he received, along with the letter of recommendation for Ms. Huson, had stated that the position had been eliminated. Because of this, Councilor Quinby was concerned about the matter and about the future. Councilor Quinby stated that although it appeared to be lawful under the City Charter, there appeared to be a discrepancy that the Council should review as to who has what authority in the city.

Councilor Quinby also reported that the reason he agreed with calling a special meeting was because he wanted to get the matter out in the open to find out what was going on. He felt the quickest way to put the matter to rest would be to get a second opinion.

Councilor Cornelius stated that the issue had been raised because of his concerns about whether or not the Council was fulfilling the obligations of elected office.

Mayor Weatherby noted that the issue before the Council was major and that he had full faith in the opinion given by City Attorney Elsner. Mayor Weatherby stated that with Fairview's City Manager type of government, things were being carried out as they were supposed to be. Mayor Weatherby noted that if there were ever an issue of lack of faith in the City Administrator or Attorney, the Council could fire them and get someone else. Mayor Weatherby felt that getting a second opinion on the issue at hand would not be logical.

AYES: 2 (Cornelius, Quinby)  
NOES: 4 (Weatherby, Owen, Jones, Raze)  
ABSTAINED: 0

V. SOURCE OF CITY FUNDS  
TO PAY SETTLEMENT OF  
CAREN HUSON CLAIMS  
AGAINST THE CITY

Attorney Elsner stated that funds paid to Ms. Huson were a severance package and not a claim. Administrator Wellman reported that the funds came from the city's General Fund, personnel line item, and that money received from City County Insurance Services had been receipted into the General Fund.

VI. COMMUNICATIONS

The following items were discussed regarding communications:

1. Communications between the City Administrator and Council.
2. Communications between City staff and Council.
3. Communications between Council Members to each other.
4. Communications between the City of Fairview and other cities.

Councilor Quinby wanted to note that communication needed to be open and honest and felt that past events could have been prevented by proper communication. He felt it was important that the Council be considered the boss and that all Councilors should have been told about Ms. Huson's termination ahead of time. Councilor Quinby also noted that in past administrations, he had been told that specific Department Directors were told not to talk to Council. He felt that as a Councilor, he would have no way to

judge the performance of the City Administrator without the ability to communicate with both Department Directors and employees.

Both Councilors Jones and Raze noted that they were not aware of any such rule and that they had always been able to communicate with the various Department Directors.

Councilor Quinby also reported that he would like to be kept up to date with issues involving the surrounding jurisdictions. As an example, Councilor Quinby cited an issue involving Wood Village. City Administrator Jan Wellman responded, noting that per his conversations with Wood Village City Administrator Sheila Ritz, Wood Village was fully aware of the issue.

Councilors Quinby and Cornelius asked that communications between Council members be more respectful and that each person should listen whether they agreed with an opinion or not.

Both Councilors Quinby and Cornelius asked the Mayor for updates regarding the meetings he attends. Mayor Weatherby reported that he would provide updates at each meeting during the Mayor/Council reports segment.

## VII. COUNCIL CONCERNS

Councilor Cornelius inquired as to when he could expect a financial report regarding the Summer on the Green Festival. Finance Director Zentner responded that the report was scheduled to be presented at the following Council Meeting.

Councilor Jones commented that the City Attorney, City Administrator, Department Directors and staff were the best the City of Fairview could have and that she felt privileged to work with all of them.

Councilor Owen questioned whether or not Councilors Quinby and Cornelius had derived any benefit from the questions asked and answers given in regard to items on the agenda. Both Councilors Quinby and Cornelius responded that the future would tell. Additionally, Councilor Quinby felt the discrepancies between the City Charter and code should be addressed at a future date.

Councilor Owen commented that he appreciated the efforts of City Administrator Wellman and City Attorney Elsner and that he was pleased with the services provided by both.

Mayor Weatherby commented that he had full faith in the staff, Administrator Wellman and City Attorney Elsner.

VIII. ADJOURNMENT

Councilor Owen moved and Councilor Jones seconded the motion to adjourn. The meeting was adjourned at 7:48pm.

---

Mayor Mike Weatherby

---

Dated:

---

Jan Wellman, City Recorder

---

Dated: