

Special Meeting Minutes – February 4, 2011

EXECUTIVE CONFERENCE ROOM, 215 SE 7th Street, City Hall, Topeka, Kansas, Friday, February 4, 2011. The Councilmembers of the City of Topeka met in a special meeting at 4:00 P.M., with the following Councilmembers present: Councilmembers Hiller, Alcalá, Woelfel, Swank, Archer, Preisner and Harmon -7. Mayor Bunten presided -1. Absent: Councilmembers Ortiz and Wolgast -2.

Mayor Bunten called the meeting to order. He announced the meeting was scheduled for informational purposes only regarding the recent scrap metal theft involving City employees. He reported the City Manager would be given the opportunity to provide information to the Council. He stated it was unfortunate the public was made aware of the issue before the Council and quoted the City Manager as saying, “The theft was a personnel matter which he believes was his obligation to deal with internally.” He stated he did not believe they should wait another six days before discussing the issue at the regular February 8, 2011 City Council meeting. He reported initially the matter was to be discussed in an executive session; however, the City Manager has proposed the meeting remain in open session to allow everyone the opportunity to be aware of the facts related to the incident. He stated during the meeting the City Manager would answer questions from the Council, and no action would be taken by the Council. He announced the City Manager would be available for questions from the media after the meeting. He stated as public officials it is their obligation to know what happened.

Norton N. Bonaparte, Jr., City Manager stated he is aware of the seriousness of the matter and understands the issue should have been conveyed to the Council prior to the public. He reported he responded to a call he received last week from the media relating to the incident, then in replying to an email he received from Councilmember Alcalá, it was indicated to the Council

the matter would be discussed in an executive session following the next Council meeting. He distributed a handout (*Attachment A.*) outlining the events relating to the scrap metal taken by a Water Division repair crew, including the reasoning behind the discipline that was administered, and actions taken by the Division to improve compliance with how scrap metal is discarded. He reported the incident was clearly a violation of City policy and that is why it was handled as a personnel matter rather than a criminal matter. He stated the employees believed the scrap metal was of no use to the City because it would have been throw away or buried in the ground.

Councilmember Harmon asked who offered the anonymous information to the Human Resources Director; why did the employees consider the scrap metal to be abandoned; and was there any direction given to the employees by a supervisor that would make them think they could take the scrap metal. He questioned if the property (scrap metal) was officially abandoned by the City than how could the City claim ownership; and if the theft occurred after business hours there may be a potential loop hole in the policy. He asked for an itemized list of the combined economic loss (in excess of \$11,750) to the disciplined employees.

Norton N. Bonaparte, Jr., reported he believed it was important to share what the employees told personnel. He stated the employees involved in taking the pipe believed the scrap metal was considered abandoned and had no further value to the City. He reported the employees believed this because they were not given a specific directive by a supervisor regarding disposal of the scrap metal and they assumed the scrap metal would simply be buried; therefore, they saw no reason why they could not take it. He noted the theft took place after hours; and the offense is listed in the current union contract.

Councilmember Alcalá asked why the incident was not reported to the Topeka Police Department immediately; who recommended the City Manager not treat the incident as a crime;

was the internal investigation report conducted by former City employee Dennis Taylor forwarded to the City Manager immediately; what was the finding in the report and was the recommendation based on that finding. He requested a copy of the report be distributed to the Council. He stated what concerned him the most about staff's recommendation was that it was solely based on the word of the employees and did not involve any person outside the City related to the incident. He questioned why staff did not check with Langley Recycling of Topeka employees to see if more checks have been issued prior to this incident. He stated he was not surprised City employees did not know the process because there was a similar incident last year as referenced in an article by the Topeka Capital Journal Newspaper. He reported there was a discrepancy in the amount reportedly received by the employees and he was told they received a check not cash. He referenced a letter dated May 25, 2010 sent by Don Rankin to all Water Division employees informing employees they are not allowed to collect scrap metal materials for their personal gain. He stated the current union contract states the employer has the right to terminate employees for the violation of any rules outlined in the contract, including theft of City property. He referenced the duties of the City Manager as outlined in the current union contract and asked the City Manager if he felt he had carried out those powers and duties.

Norton N. Bonaparte, Jr., City Manager stated by the time staff was made aware of the incident it made it difficult to verify some of the events related to the theft. He reported based on the investigation as a whole, it would be highly probable a judge would rule the employees had done nothing wrong. He reported the recommendation was based on the opinion of the Legal Department, the Human Resources Director, and the City Manager; however, ultimately it was the call of the Human Resources Director. He reported employee interviews were conducted separately and each employee made the same statement in regards to the events surrounding the

incident. He stated each employee reported they received \$400 in cash for the scrap metal.

Mayor Bunten asked if the metal was going to be disposed of as scrap; what is the policy in regards to when the Council and Mayor should be advised of an incident of this nature; and have there been other similar instances that have not been brought to the Council's attention. He suggested if an employee is stealing it should be considered a very serious offense and the Council should be notified as soon as staff is made aware of the issue.

Norton N. Bonaparte, Jr., reported employees were not directed to dispense the scrap metal in the recycle bin. He stated generally the Council is not involved in personnel issues and that is why he did not notify them of the incident.

Councilmember Hiller asked if it was common to leave a large water pipe buried in the ground. She stated if there are no instructions to remove scrap metal from worksites, then why wouldn't employees think it was permissible. She reported she is aware of other instances regarding theft at worksites and referenced the disappearance of bricks at a worksite located in Council District No. 1. She stated she believes she has not received straight answers from staff regarding the scrap metal theft or the removal of bricks from worksites.

Norton N. Bonaparte, Jr., stated in this case he believes it is an isolated situation due to the employee interviews. He also stated he believes employees thought it was permissible to remove scrap metal from worksites until recently when they were directed otherwise. He stated in his opinion if bricks are being taken from worksites without permission then this would clearly be considered theft; however, he was not aware of this happening.

Councilmember Woelfel stated he questions if this has been a recurring problem because of the letter referenced by Councilmember Alcalá. He asked how long the employees have worked for the City, and why it appears to be permissible in this instance and not other times.

He asked if the employees would be suspended and why their actions were not grounds for termination.

Norton N. Bonaparte, Jr., stated it was his understanding as soon as Water Division management became aware of the incident where an employee took a small copper pipe the letter was distributed to employees. He reported the employees involved in the scrap metal theft have returned to work, and based upon the information received in the interviews it was determined by staff that termination of the employees would probably be overturned in the grievance process.

Councilmember Archer asked the City Manager if he understands or realizes the damage this incident has done to the reputation of City Administration and the Council. He asked why the employees were not fired and believes this incident is the result of a serious culture problem with City employees. He stated he believes the employees should be fired, and by not firing the employees it sends a message to other employees that they are allowed to steal from the City and get away with it. He questioned why the City laid off hard working employees and keeps those employees who steal.

Norton N. Bonaparte, Jr., stated he understands the Council's anger and disappointment; however, the employees did receive disciplinary action consistent with the provisions of the bargaining unit agreement.

Councilmember Preisner stated it would be in the best interest of the City to confirm the statements made by employees and if the employees have not been completely honest than they should be terminated. He noted any theft worth over \$1,000 is considered a felony.

Councilmember Alcalá questioned why staff's recommendation was solely based on the information provided by the employees with no follow up from outside sources to make sure the information they provided was correct. He referenced an email he received from Terry Bertels,

Parks & Recreation Department Director relating to a scrap metal theft near 2nd and Golden Streets. He stated he is not aware of the details relating to the incident; however, if City employees are involved they should be terminated.

Councilmember Alcalá moved to forward all information relating to the scrap metal theft incident to the Shawnee County District Attorney for investigation.

The Mayor ruled the motion out of order and reminded the Council the meeting is for informational purposes only. He stated he believes an investigation would be helpful to everyone involved and encouraged the Council to take action at a regular Council meeting.

Councilmember Alcalá withdrew the motion to forward all information relating to the scrap metal theft incident to the Shawnee County District Attorney for investigation. He stated in his opinion the Council has the same authority in this meeting as they would at a regular Council meeting. He stated he would submit a request for investigation to the Deputy Mayor.

Councilmember Hiller stated she concurred with Councilmember Alcalá. She stated she believes there is a mixed message being sent to the public that incidents such as this are of common practice with City employees. She questioned if there has been a cover up relating to the disappearance of bricks from worksites in Council District No. 1. She stated she also believes there is a misunderstanding of what contractors believe they have the right to take from worksites, as well as, City employees.

Norton N. Bonaparte, Jr., City Manager stated he agrees stealing is wrong and the actions of the employees were inappropriate. He reported additional employee training has been conducted so there are no more misunderstandings or excuses by employees regarding City property.

Councilmember Swank asked if the matter should be discussed in an executive session

due to the personnel issues involved or at a regular Council meeting.

Mayor Bunten stated if the Council intends to take action on the matter then it should be discussed at a regular Council meeting.

Norton N. Bonaparte, Jr., City Manager suggested Councilmember Alcala prepare a resolution outlining the Council's intent.

Councilmember Alcala stated he would forward his request to the Deputy Mayor.

Councilmember Swank stated she was under the impression residents were removing bricks from worksites, not City employees. She stated there are a number of questions that need to be answered or clarified before this matter is forwarded to the Shawnee County District Attorney's office for investigation. She stated they must be thorough or the ruling could be overturned and the City would have to provide retroactive pay to the terminated employees.

Councilmember Hiller expressed concern with the overall practice or policy of handling scrap materials at worksites by City employees. She stated she believes the public has the opinion there has been a cover up.

Councilmember Swank stated the issue needs to be researched and evaluated on a broader sense to ensure it does not happen again.

Norton N. Bonaparte, Jr., Bonaparte stated it was not his intent for it to appear there had been a cover up by City Administration.

Councilmember Alcala stated because citizens have lost trust in City Administration they need to hire a third party to investigate the incident, find out what really happened, and begin rebuilding trust in the community.

Mayor Bunten stated he understands each of the four employees received disciplinary action which included being demoted, as well as, not being eligible for promotion; however they

need to reimburse the \$400 stolen from the City.

Councilmember Harmon stated the policy needs to use the term “scrap materials” not “scrap metal” and should specify that no scrap materials are to be left behind, the City should receive all profits from scrap material, and City property should not be abandon in any way shape or form. He reported the anger of the Council stems from learning of the incident second hand. He stated he fully understands there are a lot of personnel decisions made on a weekly basis; however, it needs to be understood when a personnel issue is this serious and has the potential to receive media headline attention the Council needs to be informed. He stated he would have rather heard about the incident at the time it happened and is unsure at this point how the Council will restore creditability, as well as, the reputation of the City as a whole as been very seriously damaged. He noted a lot of this could have been avoided if it would have been handled differently.

Councilmember Archer stated in his opinion it is very clear City Administration tried to cover it up and none of the actions taken in the incident display transparency in government.

In closing, Norton N. Bonaparte, Jr., stated as staff we have learned from this incident in regards to relaying information to the Council. We have to do better in making judgment calls in what should or should not be made public and take a proactive approach even if it deals with sensitive issues. He stated he apologizes for not being more forthcoming to the public and realizes because of the communication breakdown this small matter was blow out of proportion and initially, more information should have been sent to the Council. He stated he takes transparency in government very serious and will work hard to keep the Council and public better informed.

Mayor Bunten stated he believes this meeting was a good start in resolving this very

serious matter. He stated it is imperative that every question is answered. He questioned if the employees have been forthcoming with the right amount of money they received for the scrap metal. He stated above all the money should be returned to the City; however, if it is discovered in the investigation the employees were not honest, then all deals should be off and the employees should be fired.

NO FURTHER BUSINESS appearing the special meeting was adjourned at 5:05 p.m.

Brenda Younger
City Clerk



CITY OF TOPEKA

February 4, 2011

Information about Scrap Metal Incident

The following is an account regarding scrap metal taken by a Water Division repair crew, some reasoning behind the discipline that was administered, and actions taken by the Division to improve compliance with how scrap metal is discarded.

- On September 21, a Water Division crew comprised of four employees responded to a waterline break at 17th and Tyler. They returned during their off duty hours and took broken scrap iron water pipe to Langley's Recycling for which they have indicated they received \$400.
- On November 22, the Human Resources director, received an anonymous information that scrap iron pipe was taken from a water main break near 17th and Topeka. In follow up to the anonymous tip, the matter was discussed on November 30 and December 3.
- On December 10, the initial investigation was made by the acting director of the Office of Utilities and Transportation, a management analyst, and a water division manager. Individual meetings were conducted by department management with each implicated employee. Also on December 10, an employee was suspended pending further investigation.
- The four employees admitted that they were involved in taking the pipe, which they considered abandoned, having no further useful value by the City, and had gotten \$400 which they split among themselves.
- On December 13, a pre-termination hearing was conducted by the Human Resources Director for an employee. Also on December 13, Human Resources began investigation meetings directly with employees. Those meetings included the Human Resources director, the acting director of the Office of Utilities and Transportation, and a water division manager. Union representation was present throughout the investigation
- On December 15, a second pre-termination hearing was held for terminating a second employee.
- On December 17-20, the discipline was administered.

Attachment A. - Page 2

- **Based on the investigation, each of the four employees received disciplinary action consistent with the provisions of the bargaining unit agreement pertaining to City employee conduct, specifically "Removal of any City property from City premises for the employee's personal use and/or the disposal of any property without the written approval of Management". The discipline varied for the employees based on the level of involvement revealed through the investigation and included suspension, demotion and other financial penalties. The combined economic loss to the disciplined employees was in excess of \$11,750.00.**
- **As stated above, termination was considered but was determined to be more effective to handle it administratively as a personnel matter. The purpose of discipline is to correct conduct so that it is not repeated. The goal was in this case to correct conduct and send a message to all employees that this sort of conduct will not be tolerated and the management involved in this situation feels this was accomplished through the measures taken in this situation.**
- **Under the circumstances, this matter was handled as a personnel action rather than a criminal one. There was considerable discussion about what should be done. Consideration was given to turning the investigative part to the police. However, because the information from the tip was corroborated by the employees and the value involved was \$400, it was determined to be most effective and expedient to handle it as a personnel matter. It was a policy decision.**
- **Water employees have been made aware that this type of behavior is not acceptable. The Water Division has taken steps to ensure more accountability of disposition of scrap material.**
- **The steps taken in general terms include:**
 - **Employee education and training on expectations as they relate to scrap material**
 - **Increased supervision oversight of employee practices on work sites**