

City of Oronoco
Special City Council Meeting
August 5, 2020 @ 6:00 PM

I. CALL TO ORDER

Mayor Ryland Eichhorst called Meeting to order at 6:02PM

II. ROLL CALL

Mayor Ryland Eichhorst, Councilor Lori Novak, Councilor Carl Krause, City Attorney Chelsea Bodin, Councilor Trish Shields, Councilor Nancy Quimby

III. APPROVE AGENDA

Councilor Trish Shields motioned to approve, Councilor Nancy Quimby second. All in favor 5-0. Motion approved.

IV. Evaluation of Performance of a City of Oronoco Employee under Minn. Stat.13D.05, subd. 3(a)

513D.05 MEETINGS HAVING DATA CLASSIFIED AS NOT PUBLIC

Mayor Eichhorst - The agenda item is an evaluation of the performance of a City of Oronoco employee under Minnesota Statutes, section 13D.05, subdivision 3, clause a. The employee is Rebecca McGuire. Ms. McGuire received written notice of this meeting and has requested an open meeting.

Mayor Eichhorst - Pursuant to Minnesota Statutes, Section 13D.05, subdivision 2, Rebecca McGuire requested that this portion of the meeting be open.

Mayor Eichhorst - As I specified, we are evaluating the performance of Rebecca McGuire as an employee of the City of Oronoco primarily because such evaluation includes a recommendation from the Personnel Committee to the City Council to discharge Ms. McGuire from employment with the City. The process and potential options of actions to take were described in Flaherty & Hood, P.A.'s memorandum to the City Council of August 3 and August 5, 2020.

Mayor Eichhorst - Council members, I recommend that we do the following:

- Give Ms. Bodin time to give us background on this matter.
- City Council members discuss Ms. McGuire's performance and options of actions to take, if any, as described in Flaherty & Hood, P.A.'s memorandum to the City Council of August 3 and August 5, 2020.
- Give Ms. McGuire and/or her representative(s) an opportunity to respond to the written correspondence from the Personnel Committee of August 1, 2020, addressing Ms. McGuire's performance and recommending she be discharged from employment with the City.
- After Ms. McGuire and/or her representative make their presentation, Council members may respond or ask questions of Ms. McGuire and/or her representative.
- Ms. McGuire and/or her representative may reply to the responses or questions.

- After the discussions are concluded, the City Council will deliberate.
- If we are going to take any formal action on this matter, we would do that at the conclusion of the deliberations through a motion and vote.

Mayor Eichhorst - City Council members, do you have any comments on the proposed process?

Mayor Eichhorst - Ms. Bodin, please provide us some background on the memorandum provided to City Council on August 3 and August 5, 2020.

Attorney Fred Schuler, Ms. McGuire's representative, interjected saying he had not seen Memorandum and inquired about this being unfair. Mayor Ryland Eichhorst explained that if he can be patient, he will provide proof in the process coming up. The Memorandum was an Attorney-client memorandum between our attorneys and the Mayor/Council members. Sorry for not mentioning that at the beginning.

Chelsea Bodin stated she submitted correspondence August 3 and again August 5th, 2020 Attorney-Client Memorandum. She would like to give a brief background on these issues on why a termination is recommended for Ms. McGuire. There was an Employee Evaluation on July 16th and following there were issues and concerns. There was a request to review Ms. McGuire's timecards when the pay raise was discussed at the last City Council meeting July 21, 2020. There was a letter sent to Ms. McGuire August 1 notifying her of this Meeting and the subject of the meeting The termination procedure states that the policy requires the Personnel Committee to take action. They recommended termination be administered and place Ms. McGuire on administrative leave. Ms. McGuire has ten days to request a termination hearing, from the date of the request a hearing and it has to be held 15 days per the City Personnel Policy. Chelsea wants to make sure everyone is on the same page. Chelsea Bodin did give the City a few options to review and consider. There are a number of items that the City would like to address. We need to adhere to this process and give her a chance to respond. The City Council will now review and discuss.

Mayor Eichhorst - City Council members, we will now discuss Ms. McGuire's performance as a City employee, and what, if any, action we would like to take.

Attorney Fred Schuler said he is curious as to when we will be able to respond. Chelsea responded that it is necessary to follow the policy as outlined in the Cities Personal Policy. You and/or Rebecca will be able to respond one time later in the process.

Mayor Ryland Eichhorst started the discussion by talking about the issues outlined in the August 1 letter to Rebecca that discussed the office hours prior to May 20 and the new hours that changed on May 21st, 2020. Mayor Ryland Eichhorst stated part of the Personnel Committee had discussed her tardiness before and after May 21. Councilor Carl Krause stated Jerilyn was coming in at 7am and Rebecca was coming in at 8am. Mayor Ryland Eichhorst stated if you saw the timecard information we sent out you will see the time variations. Mayor Ryland Eichhorst stated there was issues with tardiness as you can see in the spreadsheet. As an example, after the May 20 office hour change, Rebecca punched in late after 7 AM at least 10 times in 8 ½ weeks. Councilor Lori Novak asked about how late we were open 4 or 5? 4 PM.

Mayor Ryland Eichhorst said there were times that she was supposed to work 8 AM - 5 PM Monday-Thursday and Friday 8 AM - 1 PM. There were a few times she didn't work the full 40 hours. If you are working strictly office hours, 9-3:30 Monday - Thursday and 9 AM to 1 PM, on Friday, you are working 30 hours. You had to work other hours to get your 40 hours. If you worked from 8-3:30 PM, Monday - Thursday and 8 - 1 PM, you

would have worked 35 hours, more than 32 hrs. as required, but less than 40 hours. To work 40 hours, you would have to work from 8-4:30 PM and 8-2 PM to get 40 hours. So you had to start work early before 9 AM. If you worked 9 – 5:30 PM Monday – Thursday and 9 – 3:30 PM on Friday, you could get 40 hours. Within the 16 weeks of time cards, Rebecca only punched out 2 times after 5:30 PM. Basically, had to start at 8:30 AM before we changed the hours the office was open less, so she had to work extra hours to get their 40.

Mayor Ryland Eichhorst stated Rebecca used the rounding hours version. She worked a variety of hours. As an example, she punched in at 8:43 AM and punched out at 4:42 PM and got in 8 hours. With the new hours you have to work in line with the office hours. Councilor Carl Krause feels she came and went as she pleased, she was not dependable and did as she pleased. Councilor Carl Krause stated we are running a Professional Office and you cannot come and go as you please. Councilor Lori Novak stated her hours are across the board and range all over the place. Councilor Lori Novak wants to know why the variation of hours and why isn't she following her schedule. We don't have salaried employees. Councilor Lori Novak feels she should be held accountable. Councilor Carl Krause stated it's an ongoing issue and it's been in all her reviews. It's an ongoing issue and zero consistency. Councilor Trish Shields would like to state in the last 8 ½ years, that they have never taken a lunch and have always done a working lunch at their desk. Councilor Lori Novak asked about lunches and taking time for lunches. Councilor Trish Shields stated working lunches are good because we can keep the office open. Carl Krause about the maintenance works. Ryland said that they do punch out 20 minutes for lunch.

Mayor Ryland Eichhorst stated there was some discussion on the PFA reports before she went on vacation. Mayor Ryland Eichhorst stated that the personnel committee had a meeting on June 20th, 2020 with Rebecca and Jerilyn to discuss cross training and a layout plan. Watching Rebecca do the water billing training and Jerilyn trying to learn the process caused some issues for effective learning from the standpoint of the City Clerk. Cross training as in water billing, permits, and elections were all a struggle to get going even though we have discussed and met few times over this. Councilor Lori Novak stated at the last meeting she did bring up the cross training piece at the last meeting.

Mayor Ryland mentioned the attorney talked about violations in Group I and II which are in our personnel policy.

A landowner called all this week and all last week saying there was supposed to be a lot split Public Hearing sent out for a public hearing August 13, 2020. Rebecca failed to comply and do this before she called in sick July 24th, resulting in inefficiencies. The landowner left a Lot Split application July 15 with Rebecca. Rebecca failed to post the Public Hearing before July 24, when she was out of the office sick. The Public Hearing is now pushed out due to her completing this process she started.

Mayor Ryland Eichhorst stated there was negative impact on our City with things being done in a timely manner. He stated in all reviews, July 2017, July 2018 and July 2019 they discussed with Rebecca about punching in on time and getting here on time multiple times in the last three to four years.

Councilor Lori Novak stated there was a message about Zoom Meetings from Rebecca stating we were only having Zoom Meetings going forward. It caused issues at our July Council Meeting when some Council members didn't show up because they weren't notified that it was a live Meeting. Councilor Lori Novak feels there isn't follow through and communication from Rebecca.

Ms. McGuire, you or your representative Attorney Fred Schuler, may now respond to the Personnel Committee's recommendation to discharge you from employment. Please only address specific matters already raised at this meeting or within the correspondence issued to you on August 1, 2020.

Attorney Fred Schuler stated it's pretty obvious where this is a situation where I have some knowledge of the City as to what has happened in the past, as I have worked here many years. He knows what has gone on before in our City and with Rebecca. He feels it's obvious to him that Oronoco has had multiple violations with Open Meeting Law here. There was a Personnel Committee member was approached by someone that is breaking violations and much misconduct and he feels this a violation of Open Meeting Laws. He feels Ms. McGuire, a loyal employee for 9 years does not need an Attorney and has adequately proven in her findings that she hasn't performed any misconduct. He feels any misconduct that has happen or alleged apparently has happen very recently, 2-3 months vs the last 9 years. He said compare that to all her Employee Evaluations in past. Her 2019 evaluation was very glowing. Neither he or Rebecca have not seen the spreadsheet showing the misconduct. He stated you don't fire people, if they are not hurting someone. He feels she did nothing wrong. He feels her tardiness didn't hurt anyone. He feels due to the virus and craziness that is going on are very understandable. He doesn't feel she should be losing her job. He feels we should work with them and counsel them. He is urging counsel to let this be a lesson to Ms. McGuire and not fire her the first time and give her a chance. You don't fire her for doing something simple.

Councilor Carl Krause said that he came in and asked if he can legally see the timesheets. Carl and Nancy agreed a meeting was necessary and reached out to have a council meeting after talking to Trish Shields the Vice-Mayor.

Ms. McGuire then commented to the Council - as far as inconsistency she's been here 8.5 years and been through a couple different councils. The way that I have always done it was that 32 hours is considered full time. Rebecca said that with different council they would not want us to work 40 hours to keep the costs down. This Council did not make motions to say what hours she had to work 40 hours. Rebecca said Ryland it was her courtesy to come in before 9am her hours have always been. She felt if there was workload, she could stay late or leave early. She feels there was options to come in earlier and options to stay later. The council should make motions to identify the work and office hours from Council to Council. She feels there is no dispute. As far as cross training, she feels there needs to be more training and better qualified training. I can train what I know. Usually when you are dealing with the permit process, on average takes 2-3 years for the City Clerk to learn her position. Between myself and Jerilyn keeping the office open between sick, family members and the loss of my two family members its been difficult. She said that she did place the posting in the newspaper for the Public hearing. Rebecca feels she is working two peoples workloads and training at the same time, it is difficult to do and takes time. As far as the water billing, she is struggling with doing two workloads. The Zoom communication was not discussed with the Personnel Committee, because the meeting had not occurred.

Part of this is lack of communication with Personnel Committee. Councilor Lori Novak stated she didn't communicate back in email about Zoom Meetings, and therefore nobody showed up for the Meeting. Ms. McGuire blames Personnel Committee. Councilor Lori Novak stated Ms. McGuire should have followed up with email to Council, so they knew what was going on. Councilor Lori Novak feels there is no follow through and Rebecca had an idea about emails and then never got back to anyone and two Council members did not show up at the Council meeting, so Mayor Eichhorst had to call them. The meeting started late due to lack of communication to the Council back from Ms. McGuire.

Mayor Eichhorst - City Council members, you may now respond or ask questions of Ms. McGuire and her representative, Attorney Fred Schuler, which they may reply to.

Councilor Lori Novak stated she doesn't agree with McGuire's Attorney that you do not fire someone, if you don't follow the rules and you didn't hurt anyone. We are on a different page here. She feels we need to follow rules and be held accountable.

Councilor Carl Krause asked if she let Jerilyn know she got tested for COVID-19. Rebecca communicated with the Mayor and said that the Mayor had required her to get tested. Mayor Ryland Eichhorst read from a text Rebecca sent to Mayor Eichhorst, July 28 at 5:12 PM - I have a sinus infection and I'm running a fever. She (the doctor) questioned whether I should have tested for COVID. I don't think it is a good idea to come in tomorrow. I think I should maybe run to a fast clinic just in case? Mayor Eichhorst text response - Sorry to hear about the fever. Testing might be a good idea. Keep us up to date. Rebecca text Ryland that following Friday that the results were negative.

Councilor Trish Shields felt it was a wise choice for her to test so it doesn't affect us. Councilor Carl Krause felt you should of notified everyone working here so they can get checked.

Mayor Eichhorst - Ms. McGuire and Mr. Fred Schuler, thank you for your time and coming today.

Mayor Eichhorst - Council members, we must now deliberate over any conclusions and course of action to take related to Ms. McGuire's performance evaluation, if any. Let's proceed.

Councilor Carl Krause motions for dismissal of lack of showing up to work on time and considering she came and go as she pleases.

Mayor Ryland Eichhorst intervenes and says that he would like to make a more properly worded motion as such;

Councilor Carl Krause, I make a motion to approve the recommendation to discharge per the following points

- 1. That City Council proposes to terminate Deputy Clerk Rebecca McGuire from employment with the City of Oronoco.**
- 2. That Rebecca McGuire be terminated from employment, effective August 16, 2020, if she does not elect to have a termination hearing. A termination hearing, if desired, must be requested in writing and personally served on the City Attorney by August 15, 2020. If a termination hearing is requested, it will be held fifteen business days from the date the request is received.**
- 3. That Rebecca McGuire will remain on administrative leave [with pay] through the later of the date a hearing is requested, or August 15, 2020.**
- 4. That Ryland and Trish, of elected official(s), consult with legal counsel to draft and provide Rebecca McGuire with any appropriate notices and directives related to this decision.**

Councilor Nancy Quimby second the motion.

Mayor Ryland Eichhorst and Councilor Trish Shields will consult with Legal Staff on this decision.

Councilor Trish Shields feels Ms. McGuire has explained herself well and sees now why her hours are inconsistent and look so sloppy.

Councilor Carl Krause would not have a job any other place by coming and going, as she did.

Councilor Lori Novak feels full time hours are to be 32 hours or more. She stated the hours she would of done would have been 30 hours. Councilor Lori Novak feels this is a toxic environment and it feels, as though she doesn't want to be here. Councilor Lori Novak feels she would rather resign then go through all this. Councilor Lori Novak feels she wouldn't want to hold anyone hostage in their job.

Mayor Ryland Eichhorst stated he feels there is some reconciliation and the importance of Rebecca's work and the need to be on time and it's a learning lesson. He feels there is something to be gained from this to make her a better employee. He feels we have never went this far before in our reviews and to be constructive and it's a wakeup call. I am concerned about the toxic environment. Mayor Ryland Eichhorst the Personnel Council can do better job of communicating at setting policies and goals.

Councilor Trish Shields I also feel very much that during the time period after Sandy left this woman has stepped up and do it all in her working hours. Then we pile onto her training, and no skill set for that. Honestly, what were we expecting? Councilor Trish Shields feels she is not allowed to be human.

Councilor Nancy Quimby gave her two years she needs to improve on her time. And yet you (Trish Shields) continue to give her chances. I get twice per year to be late at my job.

Councilor Carl Krause feels she's abused it and she's been talked to.

Councilor Lori Novak thinks another thing we need to realize that we are not here all day to look, and she said if you as an Employee came in every day consistently late, coming and going and allow this to continue for this long. Councilor Lori Novak feels they have mentioned it over and over again and no more excuses. Enough is enough.

Councilor Nancy Quimby feels she's had multiple chances and that if she's late twice she is fired on spot.

Mayor Ryland Eichhorst said that someone asked for her timecards to initiate the process. Mayor feels the Personnel Committee could have done a better job at discipline and been better at communication and caught up in the emotion of the issue. He recognizes both Councilor Lori Novak and Councilor Nancy Quimby comments and he understands where they are coming from. He feels we need to work as family and a team of 2-people. Rebecca's letter pointed out some weaknesses. It keeps coming back to tardiness and lateness and being dependable. He feels the Personnel Committee have neglected documenting this outside of the annual review.

Councilor Trish Shields said they didn't review timesheets ever and they were stunned of what they should have caught long ago and didn't and they are guilty of it.

Councilor Lori Novak stated it was the employees job to get to work on time without being babysat. My job is to be there. You shouldn't have had to keep telling her when

she was told 2 years ago to be on time. She doesn't feel they should have caught it she should of took initiative.

Councilor Trish Shields feels they should of make sure Personnel Policy book is where it should be and it's obviously needs to be updated.

Councilor Lori Novak feels they knew they weren't paying attention to it and she took advantage of it and she knew it was wrong and kept doing it. Councilor Lori Novak feels Rebecca knew this wasn't acceptable and she kept doing it. Councilor Lori Novak feels she should be terminated for this. She continued to abuse it until Councilor Carl Krause asked for timesheets when the City council wanted to give a 10% raise.

Mayor Ryland Eichhorst stated that there was other options discussed but we have a motion here we have to handle first.

All in favor 4-1. Councilor Trish Shields was a naye. Motion carried'

Mayor Ryland Eichhorst - There is a time frame for Rebecca to respond to (regarding a request for a hearing).

V. Request to advance pay increase for Clerk/Treasurer from 1 January 2021 to 1 August 2020

Councilor Carl Krause stated he makes motion to advance City Clerk 8.3% increase from 1 January 2021 back to 1 August 2020. Councilor Lori Novak seconded the motion.

Discussion regarding the timing of the August date resulted in making it effective 5 August 2020. Chelsea mentioned that the City cannot have pay be retroactive. Motion was changed to 5 August 2020 pending the termination date of Ms. McGuire.

All in favor, 5-0. Motion carried.

VI. Adjournment

Councilor Carl Krause motioned to adjourn at 7:28PM, Mayor Ryland Eichhorst second; All in favor, Motion carried 5-0. Meeting adjourned.