

CITY OF MOSIER

small enough to make a difference

**Meeting Minutes
February 1st, 2017**

Mosier Senior Center at 500 East Second Ave., Mosier, Oregon

| | |
|------------|---|
| I | The meeting was called to order by Mayor Burns at 5:30 pm. |
| | <p>Council: Mayor Arlene Burns, Council President Emily Reed, Councilors Peny Wallace, Lacy Gries, Acasia Berry, Marc Berry, Ann Van Osdol Staff: City Manager Kathy Fitzpatrick Community: Lynda and Joe Sacamano, Chief Jim Appleton, Beck Ramirez, Scott Smith, Commissioners Rod Runyon and Steve Kraemer</p> |
| II | Oath of Office: Mayor Arlene Burns administered the Oath of Office to Councilor Emily Reed |
| II | Agenda corrections or additions: None |
| III | Business from the Audience: None |
| IV | BUSINESS |
| 1. | <p>City Attorney Contract: Discussion Mayor Burns had prepared a statement that she read into the record (attached and incorporated into these minutes). She then asked for a motion to issue an RFP to seek proposals for the position of City Attorney. Councilor A. Berry made a motion to put out an RFP for an attorney. Councilor Reed seconded. Mayor Burns asked for discussion. Councilor Wallace expressed concern about making such a quick decision. Councilor Van Osdol also said that she was uncomfortable with putting out an RFP and asked about the 60 days' notice to terminate. She said that Council has a lot of projects in the works. Councilor M. Berry said that he was concerned that the work load on the City Manager has grown with losing the Finance Director just recently and hiring on a brand new Water Operator and the addition of new Councilors to the Council. He said he had read the documents and was very concerned about the Executive Session that Council had entered into with the Friends of the Columbia Gorge attorney. He said that currently there were excellent working relationships among staff. He made a request to defer the decision to January 2018 or even to six months from present. He was concerned about the he-said-she-said nature of some of the discussion. Councilor Wallace asked for clarification about some of the main points. Mayor Burns said that this is not a new issue, that the Council has been discussion this issue for months. She said that she spoke to the Bar Association and that they told her that Dan Kearns had committed ethics violations when he publicly stated that his client had done something illegal. She referenced the emergency meeting during the train derailment incident period and said that Dan was actually on the phone with Council and that that meeting had been noticed. She said that it was not illegal for the City Council to enter into an executive session with another attorney other than the City Attorney. She reported that the Bar Association would not have considered the Executive Session illegal. She said that the City Attorney feeds fear to the City Manager. She said that Dan Kearns had written a hostile email and that it cost the City Council \$1,100.00 to get his opinion. She said that the City Attorney serves at the pleasure of the City Council and the Mayor. She said that Dan Kearns had offered no apology to either Emily or herself at their meeting with him. She stated that she has put a lot of time and energy into her position, that Council does have a lot on its plate, but that this issue is important to address. Councilor Van Osdol agreed that the relationship between Council and Attorney needs to be based on trust. Councilor Wallace asked if Dan Kearns was invited to attend. Councilor Van Osdol said that he had written a good memo in his defense. Mayor Burns said that the Council needs an attorney who has a good relationship with Council, is local, and is collaborative. She said that she didn't think there was much catching up that a new attorney would have to do. (continued next page)</p> |

| | |
|----|---|
| | <p>Councilor Reed said that the process has been hard and that she has been thinking about the issue a lot and has taken it very seriously. She said that the Council has needed the time to talk through the issue and was disappointed that Dan Kearns decided not to attend the meetings and participate in the discussion.</p> <p>Councilor M. Berry said that Council could submit certain standards to Dan Kearns and work with him on the issues raised and then reevaluate his performance in 6 months. He is concerned that Council is basing the discussion on hearsay.</p> <p>Councilor Reed asked what would change in six months.</p> <p>Councilor M. Berry said that he could be introduced to the new Councilors and that Council could determine if Dan Kearns could take more direction from Council. He was amazed that many on Council have not yet met Dan Kearns. He said that he felt Council needs to take some responsibility for the relationship.</p> <p>Councilor Reed said that that would not change the fact that the City Attorney had not consulted the Council or Staff before he sent his email of response to the Friends of the Columbia Gorge Staff.</p> <p>Councilor A. Berry said that the City Attorney had committed ethical violations.</p> <p>Mayor Burns said that if Dan Kearns had felt that he had made a mistake, that things might have worked out differently and that the process of reviewing the attorney situation has already gone on for a long time.</p> <p>Councilor M. Berry asked about the Executive Session that the City Council entered into with the Friends of the Columbia Gorge Attorney Nathan Baker and how and why it happened. Councilor Reed explained that time was of the essence in order to make a decision and that the Council listened to the information presented by the attorney but made no decision besides to ask staff to contact the City Attorney.</p> <p>Councilor Reed said that she feels that everyone was doing their best and that the crux of an issue is not what happened but how you solve it.</p> <p>Councilor Gries said that the relationship hasn't been rebuilt or trust restored, although the City Attorney had strongly urged the Council to decide to let him stay based on his long term relationship with the City.</p> <p>Mayor Burns said that Council could issue an RFP that Dan Kearns would be welcome to respond to and that this was an elegant way to handle the issue, which would not be a termination of the contract.</p> <p>The discussion ended and the Mayor asked for a vote.</p> <p>The motion to put out an RFP for an attorney passed with Councilors Acasia Berry, Emily Reed, Penny Wallace, Ann Van Osdol, Lacy Gries, and Mayor Burns voting in favor and Councilor Marc Berry voting against.</p> <p>Councilor Reed added that it speaks volumes for Dan Kearns that people would attend a City Council meeting in his support.</p> |
| 2. | <p>Councilor A. Berry reviewed examples of Unity Resolutions from other cities such as Minneapolis and Asheville, and gave Council a draft of a Community Unity resolution tailored for the City of Mosier. Councilor Wallace said that the draft was comprehensive and caring. Councilor M. Berry said that the resolution should be reviewed by the City Attorney before adopting. Chief Appleton expressed concern about Sanctuary Cities not being able to receive federal funding. Fitzpatrick said that Sanctuary Cities were those cities who declared that they would not spend law enforcement money on investigating the immigration status of residents. Because the City does not have a law enforcement branch, and the State of Oregon already prohibits law enforcement from asking about a person's immigration status unless they are arrested for a criminal offense.</p> <p>Councilor Wallace made a motion to approve the Community Unity Resolution. Councilor Gries seconded. The motion to approve the Community Unity Resolution passed with Councilors Acasia Berry, Emily Reed, Penny Wallace, Ann Van Osdol, Lacy Gries, and Mayor Burns in favor and Councilor Marc Berry voting against.</p> |

| | |
|-----|--|
| VI | Correspondence/Committee Reports: Fitzpatrick reported that the TSP and the Quick Response projects meetings would be held on February 15 th followed by the City Council meeting. |
| VII | Meeting Adjourned: 8:15 pm |

Approved this 15th day of February, 2017:

Attest:

Mayor Arlene Burns

Kathy Fitzpatrick, City Manager

To City Council re Daniel Kearns
2/1/2017

As an elected official, i have served the City of Mosier for 4 years, two on city council and as council president, and the last two as Mayor. I have tried to also serve the larger community of Mosier, residents outside the city limits, as these folks are part of our community and Mosier is their town too, though we do not collect tax dollars nor can they vote.

I was reelected in Nov to serve another two years as Mayor. It is my honor and duty as Mayor to lead the City, which has been especially crucial and time consuming since the June 3rd derailment.

It is critical in a small town that we have faith and confidence in our contracted advisors and since the derailment, there have been numerous issues with our City Attorney that it is my duty to address, though it is not pleasant.

First of all, i appreciate and acknowledge that Dan has served the City for 15 years, and has been involved in important decisions regarding ODOT/Quarry and writing our city code. He has given us a solid foundation.

I thank him for his service to our community, and i did not have any issues with him until the June 3rd derailment.

I have spoken to many experts with vast experience in municipal law, including the Attorney General's Office as well as the State Bar Association, and feel confident that my concerns are valid and that a course correction is in order.

Dan has overstepped his authority and has acted in ways adverse to the interest of the city.

A few things that Dan has done that are ethics violations:

He has publicly stated (twice) that his client (the City of Mosier) held illegal executive session meetings, once within a hostile and threatening email.

This is a violation as his comments about his own client are adverse to the best interest of the city.

According to the Bar association as well as other experts his claims that our EC meetings were illegal are not valid or accurate, by the way.

to refresh your memory, we came out of EC and made three decisions.

1. to get advice from our attorney
2. to get advice from the TM attorney

3. to contact the County wrt options.

That ask for advice, which sabotaged the offer, cost us \$1140!!

Twice he has written hostile and threatening letters, including prohibiting contact with the mayor and/or the council, (gag orders) without the knowledge or consent of the Mayor or City Council.

These are to people that are friends, members of the community, and people that i/we have working relationships and partnerships with. Dan had no right to do this under the umbrella of the city. Period.

In the case of the second letter, to Nathan Baker at Friends of The Gorge(FOG), his unauthorized action resulted in FOG's offer (to join them, Riverkeeper, and Physicians for Social Responsibility in an appeal to protect us from UPRR double tracks at no legal cost) being rescinded. Dan had no right to send that letter, and its result was detrimental to the city.

Dan has overstepped his authority and feels no remorse.

His memo to me and the community is overreaching and assuming authority that is not his..

He said on the first page of his memo that he is the only one legally responsible for representing the city.

This is just not true!

We are responsible.. We have taken an oath of office and have sworn to defend the charter. His authority comes from us. He is our advisor, and is NOT allowed to action without our permission. Dan has ignore this.

Dan serves at the pleasure of the Mayor and city council

we need:

attorney who is collaborative vs litigious

attorney who is local, so can come to meetings without such expense

attorney who takes direction from the counsel vs acting on his/her own

attorney who offers sound guidance

attorney who makes sure that we are impeccable in our legal matters but is not trying to pick fight

attorney who is a legal advisor not an active participant in the decision process

attorney who understands the role of public servants and particularly volunteer elected

officials

i do not have confidence in our City Attorney going forward.
there is a time that change is needed and i believe that this is the time.

I ask for a motion to put out an RFP/RFQ for a renewed contract for City Attorney.

Arlene Burns
Mayor of Mosier
541-399-6780
arlene.burns@cityofmosier.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF WASCO

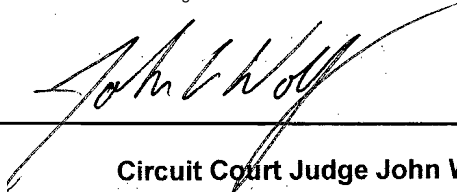
| | | |
|-------------------------------|---|------------------------------------|
| DANIEL KEARNS, an individual, |) | Case No. 17CV16144 |
| |) | |
| Plaintiff, |) | STIPULATED GENERAL JUDGMENT |
| |) | OF DISMISSAL |
| v. |) | |
| |) | |
| ARLENE BURNS, an individual, |) | |
| |) | |
| Defendant. |) | |

STIPULATED GENERAL JUDGMENT OF DISMISSAL

Based of the signatures of the parties and their lawyers indorsed hereon reciting that this action has been fully settled and compromised based on the mutual release by plaintiff and defendant and the retraction by defendant appearing below,

IT IS HEREBY ORDERED AND ADJUDGED that this action and all claims and counterclaims between the parties relating to the subject matter of the Complaint, including claims raised in a draft amended complaint, are hereby dismissed with prejudice and without attorney fees or costs to any party.

Signed: 5/25/2017 08:24 AM

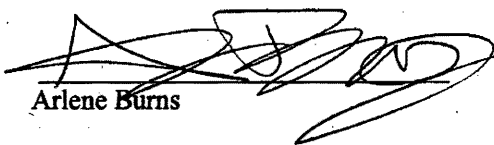



Circuit Court Judge John Wolf

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MUTUAL RELEASE:

Plaintiff on the one hand, and Defendant on the other hand hereby release each other and each other's principals, agents, employees, attorneys, insurers, heirs and assigns from any and all claims, suits, demands, or damages, known or unknown, which may exist between them as of the date of this Judgment, including, without limiting the generality of the foregoing, the disputed claims that gave rise to the execution of this Stipulation.


Arlene Burns


Daniel Kearns

RETRACTION


At the February 1, 2017 Mosier City Council meeting I presented a letter to Council that publicly asserted concerns I had at the time about the long-standing city attorney, Daniel Kearns, including possible ethical violations and other breaches of duty to his client, the City of Mosier. I now know that many of those concerns arose from miscommunications or misunderstandings about Mr. Kearns' authority as the City Attorney to unilaterally act and differences of opinion about what strategic steps were best for the City during a fluid series of events. These comments were made within the confines of a proposal I made as mayor of the City of Mosier that the City Council consider issuing a request for proposal for the mayor appointed position of City attorney. To the extent these comments could be construed to call into question Mr. Kearns' ability to serve as the City's attorney, I hereby retract them.


Arlene Burns

1 SO STIPULATED AND APPROVED AS TO FORM:

2 LAW OFFICE OF GERALD L. WARREN

TARLOW NAITO & SUMMERS, LLP

3
4 



5 Gerald Warren, OSB No.814146
6 gwarren@geraldwarrenlaw.com
7 Attorney for Arlene Burns

Brent G. Summers OSB No. 8240607
brent.summers@tnslaw.net
Attorney for Daniel Kearns

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UTCR 5.100 CERTIFICATE OF READINESS

I hereby certify that this proposed order or judgment is ready for judicial signature

because: I complied with UTCR 5.100 with respect to the Order or Judgment to which this certificate is attached by doing the following:

1. Each party affected by this order or judgment has stipulated to the order or judgment, as shown by each party's signature on the document being submitted.

2. Each party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.

3. I have served a copy of this order or judgment on each party entitled to service and:
a. No objection has been served on me.

b. I received objections that I could not resolve with the party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.

c. After conferring about objections, [Role and name of objecting party] agreed to independently file any remaining objection.

4. Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.

5. This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (5) of this rule.

6. Other: _____

DATED: May 24, 2017

/s Brent G. Summers
Brent G. Summers, OSB No. 824060
Brent.summers@tnslaw.net

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Of Attorney for Plaintiff **CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **STIPULATED GENERAL**

JUDGMENT OF DISMISSAL on:

Gerald Warren
Law Office of Gerald L. Warren and Associates
901 Capitol St. NE
Salem OR 97301
Email : gwarren@geraldwarrenlaw.com
Attorney for Arlene Burns

By the following indicated method or methods:

- by **mailing** a full, true and correct copy in a sealed first-class postage prepaid envelope, addressed to the attorney(s) listed above, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below.
- by **hand delivering** a full, true and correct copy in a sealed envelope, addressed to the attorney(s) listed above, on the date set forth below.
- by **sending via [overnight] courier** a full, true and correct copy in a sealed postage prepaid envelope, addressed to the attorney(s) listed above, on the date set forth below.
- by **faxing** a full, true and correct copy to the attorney(s) listed above, at the fax number(s) indicated above, on the date set forth below.
- by electronically serving through the **ECF/CM** system, a true and correct copy to all attorneys registered to receive electronic service.
- by electronically serving through the **OJD e-Filing using Odyssey File & Serve** system, a true and correct copy to all attorneys registered to receive electronic service.
- by **email** of a, true and correct copy to the attorney(s) listed above, at: gwarren@geraldwarrenlaw.com

DATED: May 24, 2017

TARLOW NAITO & SUMMERS, LLP

/s Brent G. Summers
Of Attorneys for Plaintiff