



City Council

City Council Chambers ♦ 230 West Stephenson Street ♦ Freeport, IL 61032

MINUTES SPECIAL MEETING Wednesday, September 1, 2010

Note for the record: The special meeting agenda for Wednesday, September 1, 2010 was delivered to the personal residence of the Freeport City Council members (Klemm, Boldt, Bush, DeVine, Endress, Helms, O'Neill and Corbin) and by email. The agenda was posted two places in City Hall on Monday, August 30, 2010 and a mass email was sent to 95 members of Agenda Notice listing including members of the media requesting such notice. This meeting was televised by Comcast on the cablevision network. Present at this meeting were media personnel from the radio station, newspaper, and two television stations.

CALL TO ORDER

The special meeting of the Freeport, Illinois, City Council was called to order by Mayor George Gaulrapp with a quorum being present at 5:00 pm on Wednesday, September 1, 2010, in Council Chambers.

ROLL CALL

Present on roll call were Mayor George Gaulrapp and council members Klemm, Endress, O'Neill, Boldt, and Helms (5). Alderman Bush, Corbin and DeVine were absent. (Alderman DeVine entered at 5:02 see below.) Corporation Counsel Sarah Griffin was present.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Alderman Endress.

APPROVAL OF AGENDA

Alderman Endress moved to approve the agenda as presented, seconded by Alderman O'Neill. Discussion was held regarding if executive session was a debatable item. Corporation Counsel Sarah Griffin stated that she does not read the item to be non-debatable.

At 5:02 pm Alderman DeVine entered the meeting bringing the number of aldermen present to six (6).

The motion to approve the agenda was passed by voice vote without dissent.

PUBLIC COMMENTS - AGENDA ITEMS

There was no one signed on the sheet for public comments at this time.

COMMUNICATION TO COUNCIL

At this time a communication was read into the record from Alderman Ronnie Bush as his opinion on the city manager going to the people for a vote and the second question on the petition as it stands for aldermen. Alderman Bush stated his concern if the second question is wrong or fails and the council would go to "At-Large." Alderman Bush stated in that case, there might not be a minority representation

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on the council and it should stay by wards instead of “At-Large.” Alderman Endress moved to put the communication into record, seconded by Alderman O’Neill. Motion was approved by voice vote without dissent.

PENDING LITIGATION – CITY MANAGER PETITION APPEAL

EXECUTIVE SESSION (CLOSED SESSION)

The following was read into the record by the City Clerk as to the exception for the Executive Session:

- Pursuant to 5 ILCS 120 (c) (11) Litigation, when the action against, affecting or on behalf of the public body has been filed and is pending before court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting

At 5:09 pm, Alderman Endress moved to enter executive (closed) session, seconded by Alderman Klemm. Alderman Boldt asked as to the reason why this needs to go into executive session. Corporation Counsel Sarah Griffin stated this is also listed as being a topic in open session. She stated that some of the specific questions as to procedures and the timing of the process works for the litigation should be discussed in executive session and if the council wants to repeat them in open session after understanding the ramifications of the questions, it will be appropriate.

A roll call vote was taken to enter executive session.

Yeas: Klemm, Endress, O’Neill, (3)

Nays: Boldt, Helms and DeVine (3)

Mayor George Gaulrapp voted yea.

The motion to enter executive session passed by a vote of 4-3.

At 5:48 pm, Alderman O’Neill moved to return from executive (closed) session, seconded by Alderman DeVine. The motion was approve by roll call vote.

Yeas: Klemm, Endress, O’Neill, Boldt, Helms, and DeVine (6)

PENDING LITIGATION – CITY MANAGER PETITION APPEAL (CONTINUED)

Mayor George Gaulrapp introduced Attorney Anthony Jacob of the Law Firm of Hinshaw and Culbertson. Mayor Gaulrapp stated that after he speaks, there will be comment period from the council and then the subject will be open to public comments.

Attorney Jacob stated that situation before you that provides ambiguity and unintended consequences. The situation is that the petition’s two questions to appear on the upcoming election ballot. The first question is to change to the managerial form of government. The second question asked to continue with the current form of wards system for the alderpersons. Attorney Jacob stated the statutory guidance that the petitioners used in order to rely upon the process to present the petitions on the ballot isn’t the under the section that applies to the City of Freeport. There are some ambiguities and some of those ambiguities need to be presented now. Attorney Jacob stated in great respect to the petitioners and the judge, there isn’t any bad intent they are trying to do the right thing by bringing the questions to the electorate and have the electorate properly decide. Attorney Jacob stated that the concern that he has and, he has advised the city council, that when you read the statute the manner and process in which the petitioners have

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proceeded deal with the city that is organized under municipal section called 20-10. That is not what the City of Freeport is organized under. The City of Freeport is organized under municipal section 20-20. The differences 20-10 talks about the number of alderpersons and the manner in which they are elected and the number under that section would be fourteen (14). In 20-20, you have alderpersons elected in a lower number, in the case of Freeport it would be seven alderpersons plus one at-large.

Attorney Jacob stated the statute that was looked at in this controversy says that you can have that second question if you are talking about a City that was organized under section 20-10. His concern is that because you are not organized under 20-10, but are organized under 20-20 these unintended consequences can result to question your form of government and the manner in which council members are elected and also the number of council members. Attorney Jacob stated that it is his law firm's recommendation to pursue an expeditious appeal of this, to help to resolve the ambiguity that exists. The idea behind it is to help bring this matter before the electorate in the proper way and following the proper procedures. There is a possibility in questioning the manner in which the questions were presented, that the city council can in the future look to in other ways to bring this appropriately on the ballot and maybe talk to the legislators about this ambiguity in the statute that has some real consequences to the City of Freeport.

The aldermen were provided an opportunity to ask Attorney Jacob questions.

Discussion was held regarding the appropriate way to file the petition with the question of the city manager going to the Circuit Court and with the question of the alderpersons question filed with the City Clerk.

Discussion was held regarding what will happen if both the questions pass and it was answered that they could be viewed as not being properly presented for the ballot and the result is that both questions would be invalid. If both questions pass, there is a concern that the form of government that you have may not be authoritative as well as the makeup of the alderpersons. If the first question was just to pass, but not the second, you still have the concern that the first question may not have been put on the ballot because the manner in which the process to place both on the ballot. This could result in these unintended consequences that could affect the composition of the council. The result could be that the council is elected at-large.

Discussion was held regarding if the questions stay as is and pass in November what are the potential consequences this opens the city up to. Attorney Jacob stated that there are questions that could arise as to the decisions that are made by council and some of the agreements for public matters. There are real consequences. What is wanted is an appellate decision to resolve this before an election.

Discussion was held regarding whether the city council could pass the correct version of this for the November election and it was answered that the time had passed for the November election. Another option would be to revisit it at a future election if it is not on this ballot.

Discussion was held regarding the difference between municipal section 20-10 and 20-20. The City of Freeport is a council– mayor form of government. Prior to 2001, there were fourteen alderpersons elected in seven wards. In 2001, the citizen initiated petition was filed with the city clerk to change from a 14 person alderman-council to a seven person plus one. Prior to 2001, the City of Freeport was organized

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under section 20-10. When the petitions were filed in 2001, the organization changed to a government under section 20-20 which is a totally different section.

Alderman Helms stated his concern is that if you appeal this and it goes to the appellate court and they sit on it, then they wait to validate the election results. Alderman Helms asked Attorney Jacob to explain if we did nothing and it passes even though there is a Circuit Court decision out there, how is the City liable and why do we need an appellate decision? Attorney Jacob stated that part of mediation is to seek the appellate court decision expeditiously. If it is dealt with after the election and the question remains, there continues to be a concern over the form of government and the composition of the council. Alderman Helms asked if there any case laws that talks about this dilemma. Attorney Jacob stated there are fewer council-manager forms of government throughout the state than council-mayor forms of government. You could probably track as to how they were organized. The reason there are so few cases is because this is a rare issue.

Alderman DeVine asked if it isn't appealed can it affect the ordinances that we have in place right now. Attorney Jacob stated that it very well could.

Discussion was held regarding the proper way to file the alderman composition question. The proper way to move it forward is to file it with the City Clerk. How the statute reads allows for a question of the City Manager to the Circuit Court and the second question as to the composition of the city council to the City Clerk. At that point the City Clerk is required to send it to the County Clerk for placing it on the ballot.

Discussion was held regarding other municipalities having the City-Manager form of government and the scenario of how different municipalities could have come to be formed that way. Corporation Counsel Sarah Griffin stated that most of them have six plus the mayor and they are elected at large. She also stated for outside legal counsel line item there is \$43,079 left and \$45,000 in contingency. Discussion was held regarding how statutes allow for the question.

Alderman Boldt stated that the council wants people to have the ability to have question on the ballot in one form or another. Assuming that it went to the appellate court and they took it off the ballot, could the council then choose to put it on the ballot in the next election, at which point in time the aldermen would be elected for their terms but it could be enacted to address the question of the mayor because it would be two years before that actually take place. Corporation Counsel Sarah Griffin stated yes it takes effect at the next election where any city-wide elected official, such as mayor, city clerk, and treasurer election becomes effective.

Alderman Boldt asked should we find out that the questions are inappropriate, illegal or unjust, could we put this back on the spring ballot ourselves should we choose. Corporation Counsel Sarah Griffin stated the theory that we are working under and, it may not be this term or this fall, but it could be prior to that time of the next mayoral election. Corporation Counsel Sarah Griffin stated in essence two years from this spring the City Council has the home rule authority under their broader constitutional powers to frame questions differently than what is allowed under the statutes. The council may very well have that authority to ask the questions in the manner that they are currently on the ballot if it is proposed by the City Council because of their home-rule authority. Attorney Jacob stated the council may end up working in a collaborative way with the petitioners to accomplish this.

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Alderman Endress left council chambers during this discussion bringing the number of aldermen present to five (5).

It was requested to have leave of the council to ask for public comment at this time.

PUBLIC COMMENTS (AGENDA ITEMS)

Dave Fonda, 1143 W. Donald Drive, Freeport, IL, spoke as a representative of Freeport Citizens for Professional Government and provided a timeframe for filing the petitions for City Manager. Mr. Fonda stated that Corporation Counsel raised no objection to the initiative in 2008 and that he felt that the mayor opposed the initiative. Mr. Fonda stated that in 2008 over 3,000 City of Freeport voters approved of the initiative. The same language approved by Judge Jeffrey in 2008 is in the 2010 petition. He spoke in favor of the initiative and provided sample municipalities who have chosen to adopt the managerial form of government.

Alderman Helms asked Mr. Fonda if he knew if any of the sample municipalities are organized under section 20-20 or 20-10 and Mr. Fonda answered that he did not know for sure.

Alderman Helms asked Mr. Fonda if he knew if the questions on the ballot put through by the municipalities were done the same way through the Circuit Clerk or if they were filed through the City Clerk and Mr. Fonda answered that he did not know.

Nickee Bender, 542 N. Hunt, Freeport, IL, stated that in all the years that she served on the council she has never seen an attorney do anything that has just been done without the approval of the City Council. Ms Bender stated in her opinion she is not acting on behalf of the constituents who elected you people here. Ms. Bender stated you need to know that you are her boss; she is not your boss. With all the problems in Freeport today, the mayor and the attorney both have plenty more important things to do than to worry about something as minor as this. Ms. Bender stated that her feeling is that 3,000 people voted this in the past election what is the problem with letting them vote for it again if that is what they feel they want. Ms. Bender stated that years ago when they went back to the seven aldermen, it was when they were getting ready for a city manager form of government. But it never got off the ground. Ms. Bender stated that she does not want to see tax dollars wasted on hiring an outside attorney.

Alderman Helms asked Ms. Bender about 2001 when she was on the council and when she said that they were prepping for the managerial form of government and yet council form of government moved from section 20-10 to 20-20; has something changed in the law that was different in 2001 with 20-10 but would not work with 20-20. Ms. Bender answered she is not sure.

Jim Gale, 1436 S. Blackhawk, Freeport, IL, spoke against the corporation counsel stepping forward in this as an employee of the City and paid for by the taxpayers.

Ken Bohnsack, 1154 W. Logan, Freeport, IL stated a question for the corporation counsels that if the appellate court upholds the petitions do you go to the next higher level. He stated his concerns about it. Corporation Counsel Sarah Griffin stated she will not comment on pending litigation. He then asked if the appellate court upholds the decision of the Circuit judge what would be the danger. Attorney Anthony

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Jacob was asked to answer. Attorney Jacob stated that he had advised the council that there is ambiguity in the statute and one way or another it hopefully would be resolved by the appellate court prior to the election. Attorney Jacobs stated there is no process to trying to get people to stop from trying to vote on this; it is to insure that it is done in the right manner so there isn't any question about the form of government and the manner in which alderpersons are elected.

Mr. Bohnsack asked if the appellate court upheld it prior to the election, voters would be able to feel confident that this is going to be ok then. Attorney Jacob stated that the appellate court's decision provides more authority with respect to the matter. Mr. Bohnsack asked what could be done by the spring to fix this and what could be done by the council. Attorney Jacob stated that Alderman Boldt had discussed some of the issues. Alderman Boldt stated that if we work together we can get it worded the way it needs to get it on the ballot in the spring that was legal for all parties and then it could be voted on.

Mr. Bohnsack asked about the timing and having to have it laid over to the next mayoral election and it was clarified by Corporation Counsel Sarah Griffin that at that time would be when it would take effect versus when it would be voted on.

Attorney Jacob stated if these questions are on the ballot and they fail the statute limits when they can next be presented on the ballot as they have done two years ago. Mr. Bohnsack asked would that limitation would not limit us from trying in the spring. Attorney Jacobs answered if is not on the ballot.

Alderman Boldt clarified when he gave his scenario it was if the questions were not on the ballot this November, we could then work to get it on the spring ballot. Alderman Boldt stated that if it is on the November ballot and it voted down, we would not be able to bring it up again in the spring.

Robert Nickels, 2645 East Drive, stated he does not reside in City limits but he is a member of the Pro-Government Group because of his belief that the managerial form of government has a better way of dealing with the complexity and ambiguities and all the nuances of running an enterprise the size of the City of Freeport. He stated this is not about the current mayor or administration; it is about what is best for the City.

Peter Lepka, 736 Alamo Drive, Freeport IL stated his favorable opinion for the managerial form of government. He stated no one has the right to block the initiative and they are working for what they feel is the best for the community.

EXECUTIVE SESSION (CLOSED SESSION)

The following was read into the record by the City Clerk as to the exception for the Executive Session:

- Pursuant to 5 ILCS 120 (c) (2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees;

At 6:40 pm, Alderman O'Neill moved to enter executive (closed) session, seconded by Alderman DeVine. The motion was approved by roll call vote.

Yeas: Klemm, O'Neill, Boldt, Helms, and DeVine (5)

Nays: None

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At 6:52 pm, Alderman O'Neill moved to return from executive (closed) session, seconded by Alderman Klemm. The motion was approved by roll call vote.

Yeas: Klemm, O'Neill, Boldt, Helms, and DeVine (5)

Nays: None

PENDING LITIGATION – CITY MANAGER PETITION APPEAL (CONTINUED)

Alderman Helms asked for leave of council to revisit item #3 on council agenda, Pending Litigation – City Manager Petition Appeal.

Discussion was held regarding if the council did not move forward with the appeal of the petitions, how it would affect the liability of the city, and the timing that the appellate court could rule.

Alderman Helms made a motion to remove the appeal, seconded by Alderman Boldt.

Alderman O'Neill clarified that a "yes" vote would be to remove the appeal. It was answered by Corporation Counsel Sarah Griffin that yes that is the case.

A roll call vote was taken to approve the motion

Yeas: Boldt, Helms, and DeVine (3)

Nays: Klemm and O'Neill (2)

Alderman Boldt made a motion to release the tape from the discussion in closed session this evening, seconded by Alderman Helms. It was stated by Corporation Counsel Sarah Griffin that the minutes of the closed session would need to be approved and then the tape could then be released after that. City Clerk Meg Zuravel stated she would work to have the minutes ready for review in council packets for the next meeting. Alderman Boldt retracted his motion and Alderman Helms retracted his second.

There being no further business, the meeting was adjourned at 7:00 pm.

s/ Meg Zuravel

Meg Zuravel, City Clerk