CITY OF BELLEVUE
OFFICE OF THE CITY ADMINISTRATOR
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October 30, 2019

Members of Media of Nebraska Steering Committee

Allen Beerman. Executive Director
Nebraska Press Association

Dave Bundy, Executive Editor
Lincon Journal Star

Paul Goodsell, Executive Editor
Omaha World Herald

Jim Timm, President/Executive Editor
Nebraska Broadcasters Association

VIA US Mail

Dear Committee Members:

The City of Bellevue is in receipt of your written correspondence dated October 21, 2019, and received by our offices on October 25, 2019. The hereinafter is our response.

Thank you for the time and talent you have shown to the City of Bellevue in drafting your correspondence in opposition to Policy Resolution 35 and Ordinance #3978. It is our hopes that after the committee members review our response, it will dispel any rumors, misunderstandings and show that both the ordinance and policy resolution allow the opportunity to show more transparency with this current administration than has ever been shown with past administration.

Nebraska Revised Statute § 16-217 specifically states that "A city of the first class by ordinance may provide for the removal of elective officials of the city for misconduct." It then explains that any vacancy in the office of the mayor or the city council shall be filled as provided in section 32-568. We also have statutes that explain how an official commits official misconduct, how an official is removed from office and how an official violates his/her oath of office.

Section 16-217 allows the citizens of Bellevue and City officials an avenue aside from recall to hold an elected official accountable for his/her actions that constitute misconduct. In other words, Section 16-217 affords the people, the voters, the taxpayers, as the constituents of this great City the opportunity for greater transparency of the government and to alleviate any concerns of distrust of the government. It holds a person accountable his/her actions/choice both positive or negative. Accountability as a virtue, is seen as a quality in which a person displays a willingness to accept responsibility, a desirable trait that we as citizens require in all elected officials, public officials and government agencies; hence, in this use, accountability is a positive feature. As a mechanism, accountability is when that desirable trait also creates an obligation of elected officials to explain his/her actions; hence in this use, most times it is seen as positive, but also creates a negative for those officials who do not want to be held accountable for what could be considered wrongful actions, i.e. misconduct and malfeasance.

The City of Bellevue is not the only City and has chosen the option to enact a City Code to show more transparency. Fremont has a city code that specifically states that any elected official of the city may be removed from office for misconduct of malfeasance. Their process outlines that written charges may be filed, a hearing before the council will be set, the charged member has the right to present their side of the story at the hearing and be questioned by the City Attorney. If after hearing the council by three-fourths vote finds that the officer is guilty of misconduct rendering him or her unfit to hold office, the council may declare such office vacant and the office would then be vacant. Grand Island has an identical ordinance. The differences between their ordinances and the ones proposed before this council are essentially that we have outlined what constitutes misconduct, have outlined a progressive sanction standard, and are requiring a unanimous vote for removal of office.

The City has and maintains decorum and misconduct rules as outlined in Policy Resolution 35, but there was no enforcement of the same should they be violated. Nebraska law specifically allows a city of the first class to implement an ordinance that calls for the removal of an elected official for misconduct, these ordinances comply with Nebraska Law. They are not designed to ousts individuals who are not liked or hinder a member's ability to vote and voice their opinion and concerns, that will remain encouraged. These are meant to set up a standard of decorum and hold individuals accountable for continually violating the same.

Further, closed sessions are allowed pursuant to Nebraska Revised Statute § 84-1410 and are often utilized by public bodies. Closed sessions can be utilized to protect the public interest or for the prevention of needless injury to the reputation of an individual. Closed sessions can be held for strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent. It can be utilized to discuss deployment of security personnel or devices, for evaluation of the job performance of a person and other items as outlined in the statute. There must be a vote to go into closed session. The discussions in closed session are restricted to the matters set forth in the motion for going into closed session.

The meeting will be reconvened in open session BEFORE any formal action may be taken. No votes or discussion on how individuals will vote can take place in closed session. If a matter is an action item (i.e. voting on the purchase agreement) the vote will occur during open session and members of the council are free to discuss the matter during the discussion period, there would be

no sanctions for them discussing items that become public by a vote on the item. There are already rules in place in Neb. Rev. Stat. 84-1410 that state that any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion, the challenge and disposition shall be recorded in the minutes. The ordinances currently proposed would not hinder a member's ability to do this as it is a right afforded pursuant to law. If there is fear of a crime or "whistleblowing" there are laws that would protect any member if that information were disclosed, the ordinances proposed currently before the council would not infringe on any rights afforded by law.

Closed sessions are a normal and necessary function of any public body and items that are not made public by a vote or action item should remain confidential, otherwise it impairs the functioning of the public body and the entire intent and purpose of a closed session. Our City Code 2-28 already outlined the procedure for executive sessions and already stated that no party to a closed session shall disclose to any person the content or substance of any discussion which took place during such executive session unless the city council shall authorize the disclosure of such information by a majority vote. This is in the code, the issue is, there was nothing in the code to account for a situation wherein this code was violated. The new 2-28 before the council outlines that any dissemination or disclosure could be considered misconduct and then handled according to 2-208. If there is a rule that specifies how things should operate, it means nothing if there is no enforcement ability.

In summary, we invite the entire committee to attend our upcoming City Council meeting scheduled for November 5th at 6:00 p.m. At this meeting, the public is encouraged to attend and voice any concerns, so that we may make clear the transparency that this affords the citizens of Bellevue of their current and future administration of elected officials.

Sincerely,

Jim Ristow,
City Administrator