

CALL TO ORDER

Mayor Vanasse called the Council meeting to order at 7:30 P.M.

ROLL CALL

Present: Dale, Feaster (late), Lilienthal, Richardson, Trantham, Vanasse & Wallace.

APPROVAL OF MINUTES

M/M by Richardson, 2nd by Wallace to approve the minutes of 1/29/91 with the following correction: page 5, 1st paragraph, indicate that the money to be available at moments notice would be for purchase of a garbage truck. Voice vote, motion carried.

motion

M/M by Lilienthal, 2nd by Dale to approve the minutes of 2/12/91 with the following corrections: page 1, under Mayor's Report, add 's' to word Harbor and same paragraph indicate that place to hold meetings in Bethel been excluded; and page 7, middle section, add 'discontinue further penalty and interest' and delete 'forgive penalty and interest'. Voice vote, motion carried unanimously.

motion

M/M by Trantham, 2nd by Richardson to approve the minutes of 2/26/91, page 2, under Reports of Standing Committees, change words 'Co-Chair' to 'Vice-Chair'; page 3, under People to be Heard, add word 'attempt' before the words 'to correct actions'. Voice vote, motion carried unanimously.

APPROVAL OF AGENDA

M/M by Dale, 2nd by Richardson to approve agenda with the following addition: add personnel matters regarding City Clerk hours to executive session.

Councilman Dale indicated that there was a letter that Alice Achee had dropped off regarding sales tax and requesting that Council discuss it in executive session. City Manager Earnest indicated he would address this under Manager's report. Mayor Vanasse indicated that there was another letter from another business that had submitted a letter, but that he would like to address them both at the next Council meeting and at the same time wait for an opinion from the Attorney. Madam Richardson commented on the City Attorney's legal opinion, suggested that Council address the City Attorney's legal opinion, before addressing the letters.

Voice vote, motion carried unanimously.

MAYOR'S REPORT

Mayor Vanasse appointed Bruce Nerby and John Hawkins to the Port Commission.

motion

M/M by Trantham, 2nd by Feaster to ratify Mayor Vanasse's appointments.

Madam Richardson asked if letters of interest were provided and if so, requested a copy of both their letters of interest.

Voice vote, motion carried unanimously.

MANAGER'S REPORT

City Manager Earnest reviewed his written Manager's Report on the following subject items:

- federal emergency management agency approved funding in the amount of \$100,000 for emergency rock stockpile for Bethel multipurpose bulkhead, which is a final phase of the 1989 federal declaration of disaster for Bethel and other communities;
- Small boat harbor fingerfloat pipe pile installa-bid awarded to Salzbrun Services and Drilling and work to be completed by April 30, 1991;
- Finance Department calendar events been revised and copy enclosed;
- included in council packet is the draft Auditor RFP for Council to review within the next 2 weeks, and hope to discuss and approve at the March 26th Council meeting and time frame of RFP reviewed with Council at this time;
 - preparation of the FY'92 budget been begun and budget proposal after all the department process, to be submitted to Council by May 1, 1991; and some of highlights of the budget being 5% wage increase, classification and pay plan studies, and to build budget around those factors;
 - also attached are detailed informations provided by the Police Department regarding the Police Department Staff Reconciliation and the police liability insurance;
 - indicated that a letter was recieved from an attorney representing ONC regarding a proposal for deeding ONC's bowling alley leasehold land interest into ownership of the property and in exchange for title of property, ONC to repair the facility at their expense and also provided is Chapter 4.08 of the Bethel Municipal Code regarding acquisition and disposal of land; City Manager requested direction from Council on this since the letter needed to be replied;
 - also attached is copy of City Attorney's legal opinion regarding sales tax appeals and also attached were copies of requests from Kusko Drywall Services and Snack Shack requesting waiver of sales tax penalty and interest;
 - also attached is a report by the Administrative/ Personnel Officer as to the status of the administration projects, ie., personnel rules & regulations, current CALCO retirement system review and review of the Public Employees Retirement (PERS) system, comprehensive long term plans, etc;
 - also announced that on March 14, at 10:00 am that there was a economic development meeting, and primary objective of this Council would be to access future economic liability and direction that City of Bethel can work cooperatively with the business community in promoting/enhancing economic enviornment of Bethel and the region.

Councilman Trantham indicated that Ms. Pavil had quoted a figure of \$10,000 a few months back, and now being \$20,000; City Manager Earnest indicated that inventorys been done and repairs were higher.

MANAGER'S REPORT
continued

Councilman Trantham also asked how much land ONC had near the Bowling Alley; City Manager suggested that since all the information was not provided, that he put a packet together and present it at the next Council meeting. Madam Richardson asked if the \$20,000 included employee time; City Manager indicated it was basically materials costs and contractual costs. Councilman Trantham also asked if Council received information as to the status of the current City Attorney; City Manager indicated that he did review the contract and per his reading of the contract, that there was no expiration date or terms of the contract, but that it can be terminated by either party at any time.

Mayor Vanasse indicated that he was pleased with the programs like the status of the personnel rules & regulations; strongly supports raises for employees; strongly supports City going into PERS pension program, which he thought was something Council should consider and felt the employees deserve to be on the PERS retirement program. At this time Council further discussed the PERS program, the pay scale study purpose of it and the cost of the study. Madam Richardson asked that the employee committee receive the draft personnel rules & regulations same time as the department heads would receive theirs for the employee committee meeting tomorrow night. Administrative/Personnel Officer Taylor further explained the process and status of the personnel rules & regulations and the reason why copies were going to the department heads. Madam Richardson again requested that a copy be provided to the employee committee. Also asked if the actual pension plan study been completed - Administrative/Personnel Officer Taylor indicated that State A of the study was completed. Madam Richardson requested a copy of what was completed. City Manager Earnest indicated that the plan is to put all the information together regarding both retirement programs and submitting the information packet to Council.

COUNCIL MEMBER COMMENT

Councilman Trantham indicated he had one item in two parts. He indicated that last Thursday he had notified the Mayor that he would ask for the City Manager's resignation at the March 12th Council meeting. He indicated Mr. Earnest was a contracted employee with City of Bethel, completed 22 months of his 30 month contract, with 8 months remaining on the contract. He felt that it was not in City's best interest to retain Mr. Earnest as a contract City employee for remaining 8 months of his contract. He also indicated that Mr. Earnest made a strong commitment during his job interview to keep citizens of Bethel informed and Council fully informed; he indicated that this commitment to the people was not honored. Although Mr. Trantham commented that this past week there had been some improvement. Indicated that people had the right to know about the City and how it operates. Indicated that there had been too

COUNCIL MEMBER COMMENT
continued

many surprises due to lack of dissemination of information. Several examples sited: trip to Juneau last May when City Manager went on official business to lobby for capital grant monies; indicated it was distressing to receive a legislative report from the legislative delegation on that trip. Indicated that it was a big surprise for himself and the community when the City Manager ordered the Police Department to notify citizens to appear for administrative investigations; another big surprise was when City Manager authorized moving expense for Department Heads even tho he had been instructed not to do so; another big surprise was when he transferred \$700,000 from utility enterprise fund to general fund without informing City Council in advance. Indicated Mr. Earnest had made a strong commitment to City employees, that his Management style would be fair and uniformaly consistent, which had not always been the case; indicated that City's greatest resources was the City employees, without their trust and respect, work does not get accomplished. Councilman Trantham felt that the change at the top was urgently and most essential for the betterment of the City of Bethel. Councilman Trantham called on his fellow councilmembers to call for Mr. Earnest's immediate resignation, and paused for a few minutes for any comments from Council or the City Manager before he went into phase 2.

Councilman Feaster indicated that he was told that there were 8 words that Council could not use over the radio due to poor taste.

Mayor Vanasse indicated that he had small correction to make where Mr. Trantham indicated that he notified the Mayor of this action, but instead he notified the City Clerk, whom notified the Mayor.

Hearing no other input, Councilman Trantham, since there was no action on that item, he stated the following: On November 15, 1990, the City Manager and Administrative/Personnel Officer directly violated a City employee's constitutional right to liberty assistance of legal Counsel for his defense and due process of law gauranteed by article 5 and article 6 and article 14, Section 1 of the Constitution of the United States; which was contrary to these articles, therefore which was a crime. Indicated that City Manager misused his position and the authority vested in him, further misused the misappropriated City's resources, personnel and monies for his own personal interest, by questioning a City employee without cause, detaining without reason, and threatened without justification a City employee of the City of Bethel for a non-City related incident.

motion

M/M by Trantham that City Manager's contract be terminated for probable cause for violating constitutional rights to liberty assistance of legal

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COUNCILMEMBER COMMENT
continued

Counsel for a City employee, effective immediately. Hearing no 2nd to the motion, the motion died due to lack of a 2nd.

City Manager Earnest responded to what he thought was a rather serious and perhaps statements which were not totally accurate. Felt it was an interesting way to deal with personnel matters. He indicated that on authorization of relocation costs, according to the personnel rules and regulations that he had on hand indicated that City shall reimburse relocation costs up to \$3,000 for department head, and that he did not recall direction from City Council suggesting to that contrary and since personnel rules were by Resolution, and even the motion would not supercede the personnel rules. City Manager did not want to get into the trust and respect by employees, but did want to find out precisely what percentage of Councilmembers time spent either on phone or in person with City employees during regular working hours trying to turn City employees against Administration. Indicated that he happen to be in one of the City offices when one of the employees received phone calls from Councilman Trantham, and that they were in a delicate position of having to feel obligated to have to listen to Mr. Trantham's statements, which were derogatory in nature and directed towards Administration. Which they felt intimidated and threatened by trying to suggest that this was not an appropriate time or that they were not interested in discussing those matters with Mr. Trantham. City Manager also indicated that employees have approached him indicating that Mr. Trantham was continuing to show up at offices at regular City business hours to discuss matters whether they be personnel matters or derogatory in nature towards himself or Administration. City Manager further pointed out that what Mr. Trantham failed to point out to the public was, the 6th amendment to the U.S. Constitution states that quote "... that in all criminal prosecutions, the accused shall enjoy the assistance of Counsel for his defense...", further indicated that it was for criminal proceedings; further continued on with the 6th amendment, article 1, of section 11 of Alaska Consitution by their terms apply for only criminal prosecutions and protect only those accused of crime with respect to preparation defense. Indicated this was personnel matter, and beg to defer with him, that it was a city business. Another point made was the 5th amendment, due process, generally speaking attaches when a person's liberty interests were at risk; at which this was a City employee's interest in their job, therefore a property interest which qualifies for a due process, and no where in the conversation was a request for Attorney denied, but what was denied was an Attorney be provided at a City's expense, which that whole issue had been resolved by Council's action. Indicated that he appreciated Mr. Trantham's position, respected him

as

COUNCILMEMBER COMMENT
continued

as a Councilmember, respected him as an individual, and thoroughly enjoyed his presentation and exactly 28 days ago at this very table, he had commented that how differences needed to be set aside and start working together. Felt it was a very informative and passion speech, which he appreciated. He assured Councilman Trantham and Councilmembers that we will work together to the best of their abilities to do the best jobs as possible, and involved in alot of projects. Encouraged Councilmembers and anyone from the public to come in and see how hard employees work at their jobs. Felt Council and employees get together and find common solutions.

Councilman Feaster indicated that couple of meetings ago, Council had discussed coming up with a uniform evaluation form to use for evaluations. Mayor Vanasse agreed with Councilman Feaster that a uniform evaluation form needed to be formed; after discussion, Councilman Feaster would draft one and present it to Mayor for consideration. Madam Richardson indicated what BNC did was to gather all kinds of evaluation forms from different organizations and drafted one from those. After discussion, it was suggested that all Councilmembers gather any information they can and present them to the Mayor at the next meeting for consideration possibly in April.

Mayor Vanasse asked if the JTPA grant deadline was in early April, since City in the past had turned the paperwork late. City Manager Earnest briefly indicated that since he's been on the past 2 years, felt it had some limited benefit for some young folks here in the community; felt it was not one of high paying positions that high school students were looking for, low paying salary, has some household limits restricting eligibility of participants, but that it is a very valuable program for certain aspects. Indicated that there may be others that they may be looking at. Felt participation with City of Bethel was very small, but successful.

Madam Richardson felt it was good to see Ms. Taylor's report, requested that she would like to see a copy of City Manager's contract.

Madam Lilienthal reported that she received a call from an individual regarding a school bus that got stuck in Subdivision, and students had to get out of the school bus not at their normal bus stop, and kids got wet; another call received was that a lady called the Public Works Director, but the lady answering the phone indicated that she was directed to receive calls on behalf of the Public Works Director that the roads would not be plowed in subdivision, until the weather cleared up. Felt concerned of the situation, if an emergency had had occurred, the public works were not plowing roads just because the weather was bad. Public Works

COUNCILMEMBER COMMENT
continued

Director at this time discussed with Council the situation that had occurred. City Manager further indicated that he had received the same call and he had notified the Police Department, who had sent out a Patrol Officer to that area and that it was also reported that there was a tow truck there too at the site.

Councilman Dale asked if the Streets & Roads Foreman was a working foreman position or sitting office type foreman. Public Works Director Martins indicated that it was a working foreman. Councilman Dale reiterated that it should be a working foreman.

COUNCIL BREAK.

REPORTS OF STANDING

Madam Lilienthal indicated she did not have a Port Commission report, but did thank the Mayor for appointing new members to the Port Commission and that regular meeting were normally held 3rd Monday of each month.

Madam Richardson reported that the Employee Committee is scheduled to meet March 13 at 5pm and the Public Safety Committee was scheduled to meet March 6th but cancelled due to the storm, but been re-scheduled for March 13, 7PM at the Fire Station.

Mayor Vanasse reported that Parks & Recreation Committee met last night with a subject item of the acquisition of a swimming pool; also discussed was possibly forming a non-profit corporation and looking at differences. Next meeting scheduled for April 1st at Log Cabin if not conflict with other committees.

Councilman Feaster reported that Planning Commission was scheduled to meet March 14th, 7:30 PM at the City Conference room and the report on the Finance Committee, that Warren Loschky was present to report on the Finance Committee meeting. Mr. Loschky passed out copies of his written report to Council at this time, read his letter to Council, which basically stated that Council should do the job which they were elected to do which is: act as board of directors, a court of last resort and a legislative body; felt Council was too involved with day to day operation of City; felt that a City Manager was hired to do those daily tasks. Felt out of the 4 recent actions to forgive penalty & interest on sales tax owed, felt 1 out of 4 was justified, while others were not. Felt for Council to forgive penalty and interest, was like ignoring the work of the Finance Committee and hard work of Finance Department in trying to collect current and past sales taxes owed. Felt the 1st amnesty period was suppose to happen once, and felt one more amnesty would mean no more taxes; indicated Finance Committee was against another amnesty. Further discussed with Council in further detail.

REPORTS OF STANDING
COMMITTEES cont.

Councilman Trantham reported that the Public Works Committee was scheduled to meet next Tuesday night.

Councilman Wallace reported that there had not been a meeting since the last Council meeting, and the next one being in the process of being scheduled.

PEOPLE TO BE HEARD

Stuart Greydanus thought it was excellent that Port Commission was full again and that he was wondering who had what seats, since some seats had different number of terms to serve. Mayor Vanasse indicated he can work the situation out with Port Director.

Tom Warner reiterated Finance Committee Chairman's comments and added the following: referred to previous Council action to forgive penalty and interest on sales tax, felt council should rectify tonight and state on record to say that they were sorry that they did not have the authority to do what they did and will not be done again. Referred Council to the sales tax ordinance, where it did not state that Council had authority to forgive sales tax penalty and interest. Felt the public were not well served by Council's recent actions regarding forgiveness of penalty and interest. Felt if Council was going to continue forgiving penalty and interest, that those who have been paying their penalty and interest would have the right to come in and ask for a refund.

Madam Richardson at this time felt that she was the best one to make the motion since she was not at the meeting when an action was taken regarding the Long Branch Restaurant. Felt Council did go beyond their authority and maybe Council should rescind their action.

motion

M/M by Richardson, 2nd by Feaster to rescind the action of Council in regards to Long Branch Restaurant during the 2/12/91 Council meeting and to follow legal advice of City Attorney as provided in the Council packet.

Mayor Vanasse indicated that he had made his opinion fairly clear, felt it was a mistake on Council's part to make that action in the first place. Felt it would be appropriate to take that action, but would also like to see Administration or Finance be flexible with payment plans for individuals that can afford to pay it back; and as far as rescinding Council action, with information received, that would be appropriate. Councilman Feaster indicated that he did not vote in favor of that motion either, felt if that action is to be tampered with, that Council better get legal advice before hand. Councilman Trantham indicated he did not support the motion as stated by Councilman Feaster, and all the information was not provided to Council, which Council should have. Mayor Vanasse felt it would be appropriate to get legal opinion on rescinding an action already taken. After further Council

PEOPLE TO BE HEARD
continued

discussion, Madam Richardson withdrew her motion and made the following motion.

motion

M/M by Richardson, 2nd by Feaster that present and any future requests for sales tax penalty and interests forgiveness requests, that City follow the sales tax ordinance and/or legal advice of City Attorney.

Councilman Feaster felt that next week's sales tax item was taken care of with tonight's action, for those that had recently submitted letters. After further discussion, Madam Richardson withdrew her motion and reiterated that Council should still follow the sales tax ordinance and/or legal opinion for any present or future requests. After further Council discussion, Council did a poll vote on the motion.

Poll vote

Poll vote, motion carried. 6--yes; 1--no(Trantham).

Mayor Vanasse strongly felt that this should be an agenda item for the next agenda. Tom Warner asked for clarification of the proposed sales tax agenda item for next meeting, when this action took care of the situation. Mayor Vanasse said the agenda item addresses the issue from the past amnesty in 1986 and the legal opinion received and more legal opinion might be received. But no action might not be taken. Tom Warner further indicated that what just happened that Council is to say they will obey own ordinance, when they were sworn in to do just that. Mayor Vanasse indicated that it was a re-assurance.

NEW BUSINESS:
Item A: Intro.
Amend 5 to Ord 195
motion

INTRODUCTION AMENDMENT #5 TO ORDINANCE #195-FY'91
BUDGET

M/M by Feaster, 2nd by Richardson to introduce Amendment #5 to Ordinance #195 for public hearing to be held March 26 Council meeting. Voice vote, motion carried unanimously.

Item B: Yup'ik
Cultural Center
Land Proposal
Discussion

YUP'IK CULTURAL CENTER LAND PROPOSAL DISCUSSION

City Manager Earnest further rebriefed Council and the public about the Yup'ik Cultural Land Proposal which was a continuation from last Council meeting, and reviewed the proposed site and also further explained the USS 4000 entitlement in detail.

After further discussion it was pointed out that the City needed to make an effort to pursue this and work cooperatively with BNC. Council also discussed in detail the 1.5 acres requested by BNC in return for the additional 2 acres requested for the Cultural Center on top of the 2 acres that was originally requested. Tom Warner felt Council could not take action tonight since Council had land disposal ordinance to go through.

Item B continued

Tom Warner further felt Council should carefully consider the public benefit in the long run, and secondly the U of A in it's initial appropriation of this was it was a site acquisition only, unless the original appropriation had been amended, having the University buy the 2 acres would not impact construction at all. Mayor Vanasse felt with discussion with Mr. Bivins on this item was that if City were not to convey the 1.5 acres, the cause and effect would be to sell the University the additional 2 acres, which would be an option for BNC. After further discussion, Councilman Wallace asked City Manager to get more background on this, like can the College afford to purchase the land and why was original acres requested raised by 2 more acres. City Manager Earnest indicated he was meeting with the College tomorrow and that he would provide information to Council. Councilman Dale suggested going onto the next agenda item.

Item C: Executive Session

EXECUTIVE SESSION - LEGAL MATTER & PERSONNEL MATTER

Hearing no objection, Council went into executive session at 10:15 PM to discuss legal matters: City vs Nelson Brown and Personnel Matter: City Clerk hours.

Motion

M/M by Richardson, 2nd by Feaster to come out of executive session (time was not stated in tape). Voice vote, motion carried unanimously.

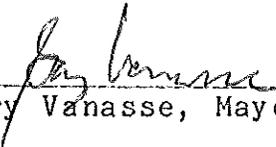
Motion

M/M by Feaster, 2nd by Richardson that City reject the offer made by Nelson Brown and direct City Attorney to reach a favorable settlement agreement. Voice vote, motion carried unanimously.

ADJOURNMENT

M/M by Richardson, 2nd by Feaster to adjourn at 11:15 PM. Voice vote, motion carried unanimously.

PASSED AND APPROVED THIS 26 DAY OF March, 1991.



Gary Vanasse, Mayor

ATTEST:



Anna McGowan, City Clerk