

October 3, 2018

Phil Stutzman
Senior Compliance Officer
State of Washington Public Disclosure Commission
711 Capital Way Room 206
Post Office Box 40908
Olympia, Washington 98504-0908

Re: PDC Complaint Kennewick Mayor Don Britain and City Manager Marie Mosley

Dear Mr. Stutzman:

The following is the City of Kennewick's response on behalf of Mayor Don Britain and City Manager Marie Mosley.

I. Violation of RCW 42.17A.555 Use of public office or agency facilities to oppose a ballot proposition.

Complainant asserts that statements made by Mayor Don Britain as well as the City Manager, Marie Mosley during a Council Meeting held on September 4, 2018, violated RCW 42.17A.555 which prohibits the use of public facilities of a public agency directly or indirectly, for the opposition to any ballot proposition. The City disputes Complainant's version of the facts as well as Complainant's interpretation of the law and requests the Public Disclosure Commission to take no action regarding this complaint.

By way of background, on August 1, 2018, a Recall Petition was filed with the Benton County Auditor against Council Member Steve Young. On August 31, 2018, a hearing was held by Benton County Superior Court Judge Bruce Spanner to determine the sufficiency of the Petition for Recall as required by RCW 29A.56.140. At the close of the hearing, the Court provided an oral ruling from the bench. Of the seven charges in the Petition, the Court found only one charge sufficient to go forward and also modified the ballot synopsis to be consistent with this ruling. The Court has yet to enter a final Judgment and Order containing Findings of Fact and Conclusions of Law. A hearing was scheduled for September 26th but the Petitioners showed up unprepared to file with the Court a proposed Judgment and Order as the prevailing party and instead requested a continuance. Per CR 54 a "Judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies." As no

Judgment has been entered to date, and no appeal, there is no final decision, thus the Petition for Recall remains undecided. A hearing to enter the Judgment is currently scheduled for October 18th.

Assuming a Judgment is entered in the near future, Council Member Steve Young has stated he will be appealing the Superior Court's decision which is allowed by RCW 29A.56.140. The appeal is heard by the State Supreme Court. Until a final decision is entered by the Supreme Court, the Petition for Recall remains undecided.

The crux of the complaint pertains to a council meeting held on September 4, 2018. On the agenda for that council meeting was a motion to approve payment for Steve Young's legal expenses in defending the Recall Petition. The motion was brought pursuant to RCW 4.96.041(3) which states:

The necessary expenses of defending an elective officer of the local governmental entity in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW 29.82.023 shall be paid by the local governmental entity if the officer requests such defense and approval is granted by both the legislative authority of the local governmental entity and the attorney representing the local governmental entity. The expenses paid by the local governmental entity may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

The City Manager provided the staff report and read from a coversheet which explained the authority provided by the statute, the status of the recall petition and the court's oral ruling on the sufficiency of the petition. The staff report also provided the total legal fees incurred to date by Council Member Young. Attached to this response as Exhibit A, is a transcript of that council meeting, and attached as Exhibit B, is a copy of the staff report. The City Manager's staff report starts at page 16 of the transcript. During the staff report, the City Manager provides further information about the first allegation in the Petition regarding the Pending PDC violation related to solicitation for a campaign contribution. At the conclusion of the staff report, various council members, including Mayor Don Britain, engaged in a discussion regarding this request. Starting at page 20 of the transcript, Council Member Trumbo discusses his position on the request and during that discussion asserts his support for the pending recall Petition. Starting at page 21 of the transcript, Mayor Don Britain also discusses his position on the pending request, and as a part of the discussion, provides his opinion regarding the merits of the Recall Petition.

As noted above, the Petition for Recall is still a proposed Petition for Recall as a final decision as to the sufficiency has not been rendered. It is only when that final decision has been rendered, that Complainant and the supporters of the Petition can actually pursue signatures. Therefore, it is the City's position that this PDC complaint is premature.

Even if the PDC were to conclude the Petition for Recall was in fact an actual "ballot proposition" it is the City's position that the discussion held by City Council during the September 4, 2018, Council Meeting did not violate RCW 42.17A.555, but in fact falls under one of the exceptions, specifically subsection (3) "Activities which are part of the normal and regular conduct of the office or agency." WAC 390-05-273 defines "normal and regular conduct" and states "Normal and regular conduct of a public office or agency, as that term is

used in the proviso to RCW 42.17A.555 means conduct which is (1) lawful, i.e. specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e. not effected or authorized in or by some extraordinary means or manner.”

In this case, the motion to authorize payment of legal fees in defending a recall petition and the discussion by Council was not only lawful but usual as defined above. The motion to authorize payment was allowed by state statute, RCW 4.96.041(3). The statute authorizes payment of the legal expenses if approved by the legislative authority of the municipality. The legislative authority of the City of Kennewick is the City Council. The process used to approve this motion was not only “usual” but also lawful. City Council approval of a motion occurs at a regular council meeting. Items on the agenda for Council approval are identified by the Mayor, who then requests a staff report, upon conclusion of the staff report, a motion is made, Council discussion ensues and a vote is taken by the Council. *See, KMC 2.04.010 – 2.04.130.* Despite complainant’s assertions, inherent in and necessary by implication to the discussion regarding whether to authorize payment, is a discussion of the merits of the proposed Petition for Recall. This concept was reinforced by the State Supreme Court in the case, *In re Recall of Pearsell-Stipek* where the Court held:

One of the legitimate purposes of the recall statutes is to protect elected officials from being subjected to the financial and personal burden of recall elections based on false or frivolous charges. *Chandler v. Otto*, 103 Wash.2d at 272 (1984). The payment provision of RCW 4.96.041(3) is rationally related to that purpose.

As the transcript shows, the discussion by Council, including Mayor Don Britain, pertained to whether they would vote in favor of the motion to pay the legal fees for the defense related to the Recall Petition. During that discussion, consistent with the holding in *Recall of Pearsell-Stipek*, Council discussed the merits of the proposed petition to articulate why they would or would not vote in favor of the motion. As noted above, the decision to pay the legal fees, voted upon by City Council at an open public meeting, is rationally related to one of the legitimate purposes of the recall statutes.

Based upon the foregoing, the City requests the PDC take no further action related to this complaint as the discussion of Council falls under the exception noted in RCW 42.17A.555(3).

Let me know if you have any questions regarding the City’s response.

Very truly yours,



LISA BEATON
City Attorney

Enclosures

cc: Marie Mosley, City Manager
Don Britain, Mayor

Exhibit A

Verbatim Transcript of Regular Kennewick City Council Meeting

KENNEWICK CITY COUNCIL REGULAR MEETING

CITY COUNCIL CHAMBERS - KENNEWICK CITY HALL

6:30 PM, TUESDAY, SEPTEMBER 4, 2018

Verbatim Transcript of Proceedings

Reported By: Krystal Roe, Deputy City Clerk/Public Records Officer

PARTICIPANTS IN ATTENDANCE:

Don Britain, Mayor
Steve Lee, Mayor Pro Tem
Matt Boehnke, Councilmember
Paul Parish, Councilmember
John Trumbo, Councilmember
Steve Young, Councilmember
Marie Mosley, City Manager
Lisa Beaton, City Attorney
Christina Palmer, Director of Management Services Director
Krystal Roe, Deputy City Clerk/Public Records Officer

ALSO IN ATTENDANCE:

Ken Hohenberg, Chief of Police
Scott Child, Commander, Kennewick Police Department
Vince Beasley, Fire Chief
Dan Legard, Finance Director
Terry Walsh, Executive Director Employee and Community Relations
Cary Roe, Public Works Director
Wes Romine, Development Services Manager

MAYOR BRITAIN: It is 6:30 pm and the meeting will come to order. Mrs. Mosley would you lead us in the pledge of allegiance?

AUDIENCE: (Recites pledge)

MAYOR BRITAIN: Would our City Clerk please read the roll call please?

MS. ROE: Good evening. Mayor Pro Tem Lee?

MR. LEE: Present

MS. ROE: Councilman Boehnke?

MR. BOEHNKE: Here

MS. ROE: Councilman McKay is excused this evening. Councilman Parish?

MR. PARISH: Here

MS. ROE: Councilman Trumbo?

Verbatim Transcript of Regular Kennewick City Council Meeting

1 MR. TRUMBO: Here

2 MS. ROE: Councilman Young?

3 MR. YOUNG: Here

4 MS. ROE: And Mayor Britain?

5 MR. BOEHNKE: Present

6 MAYOR BRITAIN: So good evening ladies and gentlemen and welcome to the
7 September 4, 2018 Kennewick City Council Meeting. Next item on our agenda is Honors
8 and Recognitions. And at this time we are going to recognize Attendance Awareness
9 Month. So I'd like to ask Greg Fancher to please join me at the podium. Mr. Fancher
10 is a member of the United Way Board of Directors and also serves as Kennewick School
District's Assistant Superintendent of Elementary Education.

11 [Unintelligible]

12 MAYOR BRITAIN: Great. So we have a proclamation we'd like to read on
13 behalf of the City of Kennewick and the Kennewick City Council.

14 Whereas, good attendance in school is essential to student achievement,
15 learning and progress toward graduation; and

16 Whereas, chronic absence - missing 10 percent, two or three days a month,
17 or more - is a proven predictor of academic trouble and dropout rates, and weakens
18 our communities and our local economy; and

19 Whereas, the impact of chronic absence hits low-income students and
20 children of color particularly hard and exacerbates the achievement gap that
21 separates these students from their peers if they lack the resources to make up lost
22 time, or face systemic barriers to getting to school; such as unreliable
transportation, lack of access to health care, unstable or unaffordable housing; and

23 Whereas, absenteeism also undermines efforts to improve struggling
24 schools, since it is hard to measure improvements in classroom instruction if
students are not in class to benefit from them; and

25 Whereas, schools and community partners can reach out more frequently to
26 absent students to determine why they are missing school and what would help them
27 attend more regularly; and
28

Verbatim Transcript of Regular Kennewick City Council Meeting

Whereas, all students, even those who show up on a regular basis, are affected by chronic absence because teachers must spend time reviewing for students who missed lessons; and

Whereas, chronic absence can be significantly reduced when schools, parents and communities work together to monitor and promote good attendance and address hurdles that keep children from getting to school, Now there, now, therefore, I Don Britain, Mayor of the City of Kennewick, Washington, do hereby proclaim our city will stand with the nation in recognizing September as "Attendance Awareness Month" in the City of Kennewick and call upon all citizens of Kennewick to commit to focusing on reducing absenteeism to give all children an equitable opportunity to learn, grow and thrive academically, emotional and socially.

MR. FRANCHER: Thank you Mr. Mayor.

MAYOR BRITAIN: Thank you. And here's a proclamation and you're more than welcome to say a few words.

MR. FRANCHER: I just have a couple of things to say. One of them is I think the proclamation is really nice and that it really emphasizes the partnership between the School District in the community and the different organization within the community. One thing that we do with United Way is we have the Attendance Matters Program is we now serve all 18 middle schools throughout the greater Tri City area trying to encourage kids to come to school every day. And it's one of our biggest challenges because if kids can't come to school they obviously can't learn. And it's just this proclamation and that get people to think about attendance and how important it is, is really a big step forward and we really appreciate it. Thank you very much.

MAYOR BRITAIN: So the next item is approval of the agenda. If a councilmember wants an item removed from the Consent Agenda please be recognized by the mayor, state the item number you want moved to the Regular Agenda for further discussion and that item will be put under New Business.

MR. BOEHNKE: Mr. Mayor.

MAYOR BRITAIN: Mr. Boehnke.

MR. BOEHNKE: I move to table the agenda and adjourn the meeting.

Verbatim Transcript of Regular Kennewick City Council Meeting

1 MAYOR BRITAIN: Is there a second.

2 MR. PARISH: Second.

3 MAYOR BRITAIN: It's been moved by Mr. Boehnke, and seconded by Mr.
4 Parish to table the agenda, the agenda and conclude the meeting? Mr. -

5 MR. BOEHNKE: Adjourn the meeting. Yes sir.

6 MAYOR BRITAIN: - adjourn the meeting. Is there any Council discussion?

7 MR. TRUMBO: Mr. Mayor.

8 MAYOR BRITAIN: Mr. Trumbo.

9 MR. TRUMBO: We have kind of a difficult situation -

10 MR. BOEHNKE: - Point of order Mr. Council. I don't think there's a
discussion allowed for this motion.

11 MAYOR BRITAIN: Is that true? Okay. So we'll take a vote then. All those
12 in favor to table the agenda and adjourn the meeting please say "aye".

13 MR. TRUMBO and MR. BOEHNKE: Aye.

14 MAYOR BRITAIN: Those opposed say "no".

15 MAYOR BRITAIN, MR. PARISH, MR. YOUNG, MR. LEE: No.

16 MAYOR BRITAIN: That motion fails with Mr. Boehnke and Mr. Trumbo voting
17 for.

18 MR. TRUMBO: Mr. Mayor.

19 MAYOR BRITAIN: Mr. Trumbo.

20 MR. TRUMBO: We have on our agenda Item 7a which is a recent addition. We
21 have a councilmember who is not present who has expressed to me that he would like
very much to be present for 7a and for that reason I recommend that 7a be tabled.

22 MAYOR BRITAIN: You want to, you're making a motion to -

23 MR. TRUMBO: - I'm making a motion to table 7a.

24 MAYOR BRITAIN: It's been moved by Mr. Trumbo to remove 7a and table it
from the agenda. Is there a second?

25 MR. BOEHNKE: Second.

26 MAYOR BRITAIN: It's been moved by Mr. Trumbo and seconded by Mr. Boehnke
27 to remove Item 7a and table it from the agenda. All those in favor please say "aye".

28 MR. TRUMBO, MR. LEE AND MR. BOEHNKE: Aye.

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1 MAYOR BRITAIN: Those opposed say "no".

2 MR. PARISH, MR. YOUNG, MAYOR BRITAIN: No.

3 MAYOR BRITAIN: Could we have a voice vote again on the, on the "ayes"?

4 MR. TRUMBO, MR. LEE AND MR. BOEHNKE: Aye.

5 MAYOR BRITAIN: And on the "noes"?

6 MR. PARISH, MR. YOUNG, MAYOR BRITAIN: No.

7 MAYOR BRITAIN: That motion is three to three which I believe is a
8 failure.

9 MAYOR BRITAIN: Okay we'll go back to the next item on the agenda is
10 approval of the agenda. Councilman -

11 MR. TRUMBO: - Point of order if I may.

12 MAYOR BRITAIN: Yes Mr. Trumbo:

13 MR. TRUMBO: I would like to make a change in the agenda before we
14 approve it. And that is to place 7a subject matter into an executive session. A
15 motion to that effect if that's necessary. Although I think -

16 MAYOR BRITAIN: - Mrs. Mosley wanna -

17 MRS. MOSLEY: I, under, we would need to find under what executive
18 session item this would be able to go to Exec Session - under what RCW allows this to
19 go into Exec Session.

20 MR. TRUMBO: This would be in reference to performance of a member of
21 City Council.

22 MRS. BEATON: The matter before Council does not address performance. The
23 matter before Council 7a is a request under state statute for Council to approve the
24 payment of legal fees.

25 MR. TRUMBO: I'm not done. Mr. Mayor

26 MAYOR BRITAIN: Mr. Trumbo.

27 MR. TRUMBO: If that is the case then that makes it not possible then I
28 would ask that we have an executive session on the subject that I mentioned at this
Council meeting.

MAYOR BRITAIN: Mrs. Mosley do we need a motion on that, or?

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1 MRS. MOSLEY: When would we want to put that on the agenda for executive
2 session?

3 MR. TRUMBO: It might be more useful to have it before the scheduled 7a
4 occurs.

5 MAYOR BRITAIN: Mrs. Beaton I want to ask your legal opinion. Does that
6 fit the criteria for an executive session?

7 MRS. BEATON: Under 42.30.110(1)(f) an executive session can be held to
8 receive and evaluate complaints or charges brought against a public officer or
9 employee. However upon the request of such officer or employee a public hearing or
10 meeting open to the public shall be conducted upon such complaint or charge. 7a is a
11 request for legal fees. A separate motion from Councilmember Trumbo would address
12 (1)(f). But I don't know what the charge would be.

13 MAYOR BRITAIN: So Mr. Trumbo I suggest if you're making a motion that
14 you put that in the wording of a motion to accept a second.

15 MR. TRUMBO: I would make the motion to enter into executive session to
16 consider a matter of the performance and complaints, of that relating to a member of
17 the City Council member, the City Council. I don't know if that's sufficient enough
18 or if more verbiage is needed I'll appreciate guidance.

19 MAYOR BRITAIN: My, my take on that is that is not what we're voting on,
20 on 7a.

21 MR. TRUMBO: This is not 7a. This is something new.

22 MR. PARISH: Mr. Mayor.

23 MAYOR BRITAIN: Mr. Parish

24 MR. PARISH: What are the ground for this? I don't see any grounds.

25 MAYOR BRITAIN: That's a good point Mr. Parish. I don't see any grounds
26 for this either.

27 MR. TRUMBO: May I respond to that?

28 MAYOR BRITAIN: Mr. Trumbo go ahead.

MR. TRUMBO: I think everyone at this dais is aware that a councilmember,
Steve Young, has been involved in matters of legal activity pertaining to his conduct
in the community as a public figure and at the time a, the Mayor of Kennewick. This

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1 matter, these subjects, have not been considered or addressed by this Council at any
2 time that I'm aware of in executive session. And I believe that given the import of
3 this matter and our community now, timing is appropriate to take this discussion
4 behind closed doors. There may be appropriate action necessary on the part of the
5 Council.

6 MAYOR BRITAIN: I would like to remind Mr. Trumbo that this actually has
7 been before in a court and before a judge and I believe six of the seven were not
8 held factually accurate so I'm really not sure what you're asking us to go into
9 executive session for.

10 MR. TRUMBO: With, with all respect to the Mayor I believe the term was
11 "not sufficient" I don't believe the term "accurate" was used. But I could be wrong
12 about that. I also don't believe that any of this has been discussed by the Council
13 behind closed doors. As a comment - not on point but nonetheless perhaps worth
14 considering - the Council, this Council was very perturbed by the conduct of a former
15 city councilmember and it was discussion about considering action against that
16 councilmember. But this is a different matter. I don't think that it is inappropriate
17 to make a request to go behind closed doors in executive session to consider the
18 subject that I've mentioned as it would be allowable under the RCW cited by Lisa
19 Beaton.

20 MAYOR BRITAIN: Well I think that that request can come, can come at a
21 later time. I don't know how that relates back to our agenda tonight.

22 MR. TRUMBO: I think that it would be easy to see the relationship
23 between an executive session on the subject and the request of this sitting Council
24 to vote on paying legal fees. There is most definitely a connection.

25 MAYOR BRITAIN: Well that is, entitled -

26 MR. PARISH: - Mr. Mayor.

27 MAYOR BRITAIN: - to your opinion Mr. Trumbo.

28 MAYOR BRITAIN: Mr. Parish.

MR. PARISH: I think the big problem is here that we have one
councilmember not present and that is his choosing. This this is more about how the

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1 vote is going to go I think rather than it is an executive session that isn't going
2 to change anything, John.

3 MR. TRUMBO: Paul I appreciate your comment and although it was not
4 connected as official phone call I did have communication with Bill McKay who is
5 presently at the Tri Cities Airport awaiting a flight and he made it very clear to me
6 that he asked the City Manager on Tuesday when he met with the City Manager if there
7 was anything of import on the agenda - because if there was - that was a week ago,
8 referring to tonight - he would not make the trip which is a business trip. He was
9 very clear in expressing to me tonight by phone that had he known this was going to
10 be on the agenda he would have not made the business trip but he is now locked in.

11 MAYOR BRITAIN: Mrs. Mosley would you like to respond to that?

12 MRS. MOSLEY: Yes, you are correct Councilmember Trumbo I did have a
13 meeting with Councilmember McKay. We talked about what was on the agenda. That is
14 what got advertised on Friday. However, on Friday things changed when the hearing
15 occurred in front of superior court. And so at that point we received information and
16 that's why we modified the agenda. That is also why we made sure that the media was
17 notified and I notified all of Council as well that there was a change in the agenda.
18 But it was due to change in circumstances. I did not mislead Councilmember McKay when
19 I met with him. I did not have these facts at the time I met with Councilmember McKay.

20 MR. TRUMBO: I want it clear that I did not say that Mr. McKay - nor did
21 he say - that he felt that he was intentionally misled. He said that had he known
22 this was coming he would not have put himself in the position to make the business
23 trip and miss tonight's meeting. I would like to have an, an executive session at
24 some point tonight preferably before we consider 7a.

25 MAYOR BRITAIN: We cannot, I believe, have an executive session without
26 proper notice. Is that right?

27 MR. TRUMBO: I believe that is not correct.

28 MRS. MOSLEY: What is the proper notice for Exec Session? I know we have-

MS. ROE: -Mrs. Beaton does the advertising that we were adhering to
today, the eight hours in advance of the meeting, would that address this change in
the agenda as well, to allow proper notice?

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1 MRS. BEATON: Yes.

2 MR. TRUMBO: Mr. Mayor.

3 MAYOR BRITAIN: Mr. Trumbo.

4 MR. TRUMBO: I would like for us to take a moment, whatever is necessary
5 in time, for Lisa Beaton to research the RCWs regarding closed sessions and confirm
6 or deny that a closed session can be conducted at any properly noticed meeting
7 without need for specifying the reason unless it was done, it can be done at the
8 meeting itself. In other words, I'm saying is, you don't have to publish the reason.
9 You have to state the reason before you go into executive session at the public
10 meeting.

11 MS. ROE: My comment-

12 MR. TRUMBO: -To reiterate a public, an executive session can be held at
13 any properly noticed regular meeting of the City council. Am I, am I right or wrong
14 on that?

15 MRS. BEATON: I'm pulling up the statutes it's taking a moment.

16 MS. ROE: I'm sorry my comments were addressed to the Council rules less
17 than the RCW.

18 MAYOR BRITAIN: What was that Krystal?

19 MS. ROE: I was referring to a conversation this morning where we were
20 trying to make sure that we were in compliance with Council rules on advertising. And
21 so those, my remarks, were limited to that and not the RCW.

22 MAYOR BRITAIN: Which were properly met?

23 MS. ROE: Yes.

24 MRS. BEATON: 42.30.110(1) says, "nothing contained in this chapter may
25 be construed to prevent a governing body from holding an executive session during a
26 regular or special meeting". So meaning the 24-hour notice by state statute as well
27 as our code you can still hold, hold, an executive session based upon a motion of
28 Council if it's approved by the majority.

MAYOR BRITAIN: So a motion has to be made -

MRS. BEATON: -Yes-

MAYOR BRITAIN: -to hold an executive session -

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1 MRS. BEATON: -Yes because you're-

2 MAYOR BRITAIN: -and it has to be approved by the majority -

3 MRS. BEATON: -Yes.

4 MAYOR BRITAIN: Mr. Trumbo are you making a motion to hold an executive
5 session tonight?

6 MR. TRUMBO: Yes, Mr. Mayor I would like to make the motion that an
7 executive session be held at this meeting for the subject to discuss performance of a
8 public employee or member of the Council, whichever term is the one you prefer, and
9 that it be regarding the performance and any actions that may be considered as a
10 result of that performance.

11 MR. BOEHNKE: Second that.

12 MAYOR BRITAIN: So it's been moved by Mr. Trumbo and seconded by Mr.
13 Boehnke to hold an executive session to discuss the performance - see if I got this
14 right - the performance of a sitting councilmember is that accurately -

15 MR. TRUMBO: - That would be fair thank you for that -

16 MAYOR BRITAIN: - you had a long motion Mr. Trumbo.

17 MR. TRUMBO: I guess I did.

18 MAYOR BRITAIN: Okay. Those in favor to hold an executive session to
19 discuss the performance of a sitting councilmember please say "aye".

20 MR. TRUMBO, MR. LEE AND MR. BOEHNKE: Aye.

21 MAYOR BRITAIN: Those opposed say "no".

22 MR. PARISH, MR. YOUNG AND MAYOR BRITAIN: No.

23 MAYOR BRITAIN: That motion fails with a three to three vote. So I'll go
24 back to our regular scheduled agenda. The next item is the approval of the agenda. Do
25 we have a motion for the agenda?

26 MR. PARISH: Mr. Mayor.

27 MAYOR BRITAIN: Mr. Parish.

28 MR. PARISH: I move to approve the agenda as presented.

MR. BOEHNKE: Second.

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1 MAYOR BRITAIN: It's been moved by Mr. Parish and seconded by Mr. Boehnke
2 to approve the agenda as presented. Is there any discussion? Those in favor of the
3 motion to approve the agenda as presented please say "aye":

4 COUNCILMEMBERS: Aye.

5 MAYOR BRITAIN: Those opposed say "no".

6 MAYOR BRITAIN: Motion passes unanimously. Next item is the approval of
7 the Consent Agenda. All matters listed within the Consent Agenda have been
8 distributed to each councilmember of the Kennewick City Council for reading and study
9 and are considered to be routine and will be enacted by one motion of the Council
10 with no separate discussion.

11 MR. PARISH: Mr. Mayor.

12 MAYOR BRITAIN: Mr. Parish.

13 MR. PARISH: I move we approve the Consent Agenda as presented.

14 MR. LEE: Second.

15 MAYOR BRITAIN: It's been moved by Mr. Parish and seconded by Mr. Lee to
16 approve the Consent Agenda as presented. Is there any further discussion? Those in
17 favor of approving the Consent Agenda as presented please say "aye"

18 COUNCILMEMBERS: Aye.

19 MAYOR BRITAIN: Those opposed say "no".

20 MAYOR BRITAIN: Motion passes unanimously. Next item on the agenda is
21 visitors. This is an opportunity for anyone who would like to speak about any issue
22 not covered under a public hearing. Please come to the podium and state your name and
23 address for the record. Each speaker will have three minutes. The time prompt light
24 will turn yellow when you have 30 seconds left.

25 We have a pre sign-in, Chuck Torelli. Would you like to come to the
26 podium and state your name and address please?

27 MR. TORELLI: Chuck Torelli, 3314 South Dennis Court, Kennewick,
28 Washington. I had no plan to speak today. I saw the change in the agenda. I wanted to
speak in support of Item 7a and I realize it's going to be up later. I support the
fee, the legal fee, the city helping with the legal fees for Councilmember Young.

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1 I tell you what, I, I started coming here about two years ago. I was
2 really tired of politics and I wanted to see good governance. And tonight I saw a lot
3 of politics and it's really discouraging. I don't know what the agenda is. I don't
4 know what the hidden "we want something" is. But it comes out. And it comes out mean.
5 It comes out nasty. And it comes out in a way that makes governance look secondary to
6 dogma, ideology.

7 I don't believe the issue between Councilmember Young and the Office of
8 Public Disclosure raises to a level that the city needs to concern itself with that
9 other than to defend it. I don't know who the four people are who brought this issue
10 up, or want to do a recall. I have no idea. Maybe there is valid reasons that I'm
11 just ignorant. I haven't seen anything in the paper. I haven't seen anything from any
credible source. And I find myself more and more frustrated with this.

12 I find it ironic the person who wants to discuss Ms. Mosley's
13 performance appraisal in public or wants open negotiations wants an executive session
14 to discuss his issues with Councilmember Young. That's real transparency. I'm feeling
15 it. Right? I'm disappointed that it got to this point.

16 I think when you have a councilman who has helped with Bridge to Bridge,
17 River to Rail, Vista Field, Bob Olson Parkway - and these are just the things I know
18 about. And I realize no one person does it. But leadership was shown there. I don't
19 know where the ideology or the dogma is coming from. I'm disappointed. I'm, I'm
20 saddened by this because you guys, you really had a chance to be an example of what
good governance is and tonight was a display of just base politics at its worst.

21 MAYOR BRITAIN: Thank you Mr. Torelli. Is there any other visitors who
22 would like to address the Council please come to the podium and state your name and
23 address for the record? Moving on, Item 5a, under Ordinances and Resolutions, may we
24 have staff report please?

25 MRS. BEATON: Thank you Mayor Britain and members of City Council.
26 Ordinance 5760 is in response to complaints we've received over the, over most of
27 2018 and part of 2017 related to issues in and around Day Spring Ministries. There's
28 a Council meeting that occurred - I don't know a month or so ago - where we had a
number of concerned business owners and citizens come and testify at Visitors Section

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1 before Council about what they were experiencing in front of their businesses on the
2 sidewalks, in the alleyways in and around that area of Kennewick. As well as out on
3 the on the sidewalks along Clearwater, Kennewick Avenue and 395.

4 Based upon those complaints Council asked, that, asked staff to look
5 into some of the options that we had. I know the police department, the Chief,
6 discussed one of the options was to remove these encampments that were occupying the
7 sidewalks and we've been doing that ever since that meeting.

8 Tonight is another option for Council to consider. Staff presented at a
9 previous workshop the particulars of a sit-lie ordinance. And what this is, is it
10 gives Council an opportunity to designate certain commercial business areas of the
11 city where we're experiencing areas where people are literally occupying the
12 sidewalks, preventing pedestrians and people going to and from the businesses in that
13 particular defined boundary. And, making it illegal for them to just lay down or just
14 sit down and just occupy those access points to our businesses in that defined
15 boundary under certain circumstances.

16 So what the sit-lie ordinance before you tonight will do is designate
17 those boundaries. They're consistent with the testimony you heard at the Visitor's
18 Section at the previous meeting. In addition it adopts the standard notice
19 requirement that before we would enforce this we give the individual notice that you
20 can't lie and occupy the sidewalk. We'd also take into consideration certain
21 exemptions and that would be if the person has a disability, if the person is
22 experiencing a medical emergency, if the person is actually occupying say a bench
23 provided by the City, or if the person is waiting for the bus. Or if the person is
24 there on some kind of, like, what we're proposing in downtown Kennewick - the
25 Streatery - where they're there with the permission of the business owner to occupy a
26 portion of the sidewalk. Those exemptions would apply under the Sit-Lie Ordinance.

27 So if the conduct doesn't fall under that exemption, if the person's
28 already been given notice that they need to get up and move on and not occupy the
sidewalk, only then after having been given notice would law enforcement enforce the
sit-lie ordinance. And it would be limited to the geographical boundaries that we've
designated in this proposed ordinance.

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1 If we get to the point where person's just refusing cooperate and
2 already been given notice and refuse to get up from occupying the sidewalk, then
3 under the proposed ordinance before Council it would be enforced as a misdemeanor.
4 And part of the discussion during the workshop was at about this issue of what level
5 do we want to enforce it? And in hearing from our Police Department and then also
6 from our office's standpoint, when you have a person who's kind of reached that point,
7 they don't have an address and infraction's really not gonna make that great of an
8 impact. And it would really be a last resort for an officer to actually put someone
9 under arrest for, for violating this ordinance.

10 It's really about notice and giving individuals an opportunity to know
11 that we're not going to allow them to occupy these rights of ways and sidewalks in
12 our commercial areas because it is impacting the businesses in, in the areas that we
13 designated.

14 The ordinance can always be amended in the future if there are other
15 areas that we have, that we end up having problems. But we picked certain areas where
16 I think we've had the most calls for service. So staff recommends adoption of
17 Ordinance 5760 and I'd be happy to answer any questions.

18 MAYOR BRITAIN: Does Council have any questions of staff?

19 MR. TRUMBO: Mr. Mayor?

20 MAYOR BRITAIN: Mr. Trumbo.

21 MR. TRUMBO: The sit or lie, would this ordinance then prohibit people
22 from sitting cross-legged on a sidewalk within one of these designated zones holding
23 a sign that says "I need help please give me food or money"?

24 MRS. BEATON: Yes.

25 MR. TRUMBO: Thank you.

26 MAYOR BRITAIN: Any additional questions of staff? Will the Clerk please
27 read Ordinance 5760 by title please?

28 MS. ROE: This is an ordinance related to offenses against public order
and adding a new section 10.08.140 to the Kennewick Municipal Code.

 MR. BOEHNKE: Mr. Mayor.

 MAYOR BRITAIN: Mr. Boehnke.

Verbatim Transcript of Regular Kennewick City Council Meeting

1 MR. BOEHNKE: Move to adopt ordinance 5760.

2 MR. PARISH: Second.

3 MAYOR BRITAIN: It's been moved by Mr. Boehnke and seconded by Mr. Parish
4 to adopt Ordinance 5760. Is any further Council discussion?

5 I just want to, Mrs. Beaton, to appreciate your efforts in, in coming up
6 with some sort of a solution to a problem that isn't going to, isn't going to go away
7 any time soon. It is an issue that is in our community. Not just Kennewick, in every
8 community, some heavier than others. But, we really have to be protective of our
9 safety of our citizens and our businesses. And so I think this is, this is a good -
10 it's not a, it's not a solution - but it's a, it's a way, a way to deal with
11 something that can't be completely eradicated. So thank you.

11 MR. PARISH: Mr. Mayor.

12 MAYOR BRITAIN: Mr. Parish.

13 MR. PARISH: Good ordinance but I think it's fairly, it's needed at this
14 time but there's a huge, huge, more problem that I think we should be addressing more.
15 And, and how are we going to, how are we going to handle this problem because it's
16 only to get to get bigger and bigger as time goes on as the population raises so
17 maybe down the road we start looking at some workshops for on some ideas where we
18 house these people and get them off the sidewalks and work with other agencies and so
19 on. Thank you.

19 MR. BOEHNKE: Mr. Mayor.

20 MAYOR BRITAIN: Mr. Boehnke.

21 MR. BOEHNKE: Yeah, I want to thank Chief Hohenberg and Chief, Commander
22 Guerrero, I think taking the lead on some of the issues I've discussed with them last
23 month or so. And echoing Councilman Parish because there were some homeless people
24 that came to my attention. And, and Chief, and Commander helped me out with that. But
25 I agree. I think this is a bigger issue. I do think it's a systemic thing we need to
26 look at now more than later. It's one of those we can't punt. We need to deal with
27 sooner than later. At a taskforce or some kind of workshop should be something that
28 we do sooner now. But, thanks.

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1 MAYOR BRITAIN: Any further discussion? Those in favor of the motion to
2 adopt Ordinance 5760 please say "aye".

3 COUNCILMEMBERS: Aye.

4 MAYOR BRITAIN: Those opposed say "no".

5 MAYOR BRITAIN: The motion passes unanimously. Next item is Public
6 Hearings. There are none. Next item under New Business is Item 7a. We're here
7 considering item 7a Legal Fees Defending the Recall Position, Petition. May we have
8 staff report please?

9 MRS. MOSLEY: Thank you Mayor Britain and City Council. Tonight you, we
10 have -

11 MR. YOUNG: - Mr. Mayor, Mr. Mayor.

12 MAYOR BRITAIN: Mr. Young.

13 MR. YOUNG: I'm going to go ahead and recuse myself and I'll step out of
14 the Council Chambers.

15 MAYOR BRITAIN: Mr. Young, Mr. Young has recused himself from the
16 discussion and voting on this matter.

17 MRS. MOSLEY: So tonight we have before you a request received from
18 Councilmember Young for you to approve payment of the legal fees incurred by him in
19 preparing for the judicial hearing and appeal which will be determined, which will
20 determine the sufficiency of the recall petition that was filed on August first of
21 2018.

22 So the RCW states: "the necessary expenses of defending an elective
23 officer of the local government entity in a judicial hearing to determine the
24 sufficiency of a recall charge as provided by RCW 29.82.023 shall be paid by the
25 local government entity if the officer requests such defense and approval is granted
26 by both the legislative authority of the local government entity and the attorney
27 representing the local governmental entity. The expenses paid by the local
28 governmental entity may include costs associated with an appeal of the decision
rendered by the superior court concerning the sufficiency of the recall charge."

So to provide you a little bit of background on this topic and why it
has come before you tonight. Just wanted to give you an update, on August 31st, which

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1 was last Friday, a judicial hearing was held before the Honorable Judge Spanner to
2 determine the sufficiency of the petition, the recall petition. Judge Spanner held
3 that of the six allegations, five were factually insufficient to support the petition.
4 Judge Spanner determined the only, that only one of the allegations was sufficient to
5 support the petition.

6 Councilmember Young is represented by Attorney Bob Thompson and has, and
7 has incurred legal fees in defending this petition and intends to appeal the Superior
8 Court decision to the State Supreme Court. To date Councilmember Young has incurred
9 approximately eight thousand, five hundred and twenty-five in legal fees.

10 The one item that Judge Spanner determined to have sufficient legal
11 cause to proceed is related to a violation of campaign law when Councilmember Young
12 forwarded an email to me relating to a luncheon for Representative Dan Newhouse.

13 It was stated "by forwarding the email that can be interpreted as
14 soliciting from the City of Kennewick employee" - in that case that's me - "a
15 contribution on behalf of Dan Newhouse". Judge Spanner further, further stated that
16 it would be up to the voters to determine the truth of the charge.

17 So I want to clarify the facts associated with this event. Councilmember
18 Young forwarded an email to me in June of 2014 inviting me to sit at his table for a
19 lunch for Representative Newhouse. I replied that I would be out of town and would
20 not be able to attend the luncheon but I would be happy to pay for a seat and have
21 someone else sit in my place.

22 So subsequently, and not documented in an email, Councilmember Young and
23 I had a verbal conversation where he let me know that he was not asking me to pay for
24 a seat at the table or contribute to Representative Newhouse's campaign. He was just
25 inviting me to attend the luncheon. He had indicated to me that he had paid for the
26 table and he wanted to fill the table. At no time did Councilmember Young solicit a
27 contribution from me, for Representative Newhouse's campaign or any other campaign.
28 Based on the conversation with Councilmember Young and in contrast to what has been
reported in the Tri City Herald, I did not send a \$100 donation to Councilmember
Young nor did I send a \$100 donation to Representative Newhouse.

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1 The allegation that there was a violation of campaign law is really not
2 factual. So as you can see any one of you could be subjected to a recall petition
3 based on allegations even if the facts do not support the recall. So it is my
4 recommendation that the City pay the legal fees to defend this unsubstantiated recall
5 petition. If you have any questions I'm happy to answer those.

6 MAYOR BRITAIN: Okay at this point does Council have any questions of
7 staff?

8 MR. BOEHNKE: Mr. Mayor.

9 MAYOR BRITAIN: Mr. Boehnke.

10 MR. BOEHNKE: Does, so full disclosure - I asked several of these earlier
11 to Marie Mosley. But first, foremost, is it true the legal fees incurred eight
12 thousand five hundred twenty-five but may continue?

13 MRS. MOSLEY: That's correct.

14 MR. BOEHNKE: And that is more than just the 30 days because we don't
15 know when Judge Spanner is going actually gonna hear this.

16 MRS. MOSLEY: I believe, well -

17 MR. BOEHNKE: [unintelligible] -

18 MRS. MOSLEY: - Judge Spanner has already heard it so now it goes to
19 State Supreme Court and I believe that has to go within fifteen days, is that -

20 MRS. BEATON: - Yes -

21 MRS. MOSLEY: - correct -

22 MRS. BEATON: - that file the appeal within fifteen days of his decision.

23 MR. BOEHNKE: And do we know when, and again procedural issues, we know
24 when they're going to see that afterwards? And we have to pay every time they read
25 this, or? My concern is the cost to the bearing on the citizens of Kennewick that
26 we're going to continue down however long this legal thing goes kinda concerns me.

27 MRS. BEATON: There's only one stop and it's the State Supreme Court -

28 MR. BOEHNKE: - okay

 MRS. BEATON: - the appeal has to be filed within fifteen days. Supreme
Court has to decide, hear it, and decide it within thirty days of the Superior
Court's decision. So literally within 30 days of Friday.

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1 MR. BOEHNKE: We should know everything within 30 days?

2 MRS. BEATON: Yes.

3 Mr. BOEHNKE: Great. Thanks.

4 MAYOR BRITAIN: Any additional questions? Mrs. Beaton, if, I had a
5 question. If, if this recall somehow makes it through and, and signatures are
6 obtained and it, IT goes to the, who incurs the cost to put that on the ballot?

7 MRS. BEATON: The City of Kennewick.

8 MAYOR BRITAIN: By taxpayer funded, basically?

9 MRS. BEATON: Yes.

10 MAYOR BRITAIN: Okay. And about how much are - I, I know there's
11 different costs for special elections and general elections and about how much does
12 that cost to put an item on a ballot.

13 MRS. PALMER: We did ask them that and it really depends on what, how
14 many other things are on the ballot. So what they do is they'll take however many
15 items are on the ballot for that timeframe and, and distribute that based on
16 population to each one of the cities that had something on that ballot.

17 MAYOR BRITAIN: And I know when we put the re-

18 MRS. PALMER: -On average, I mean if you have several things on there,
19 what we've seen is, you know, anywhere from, you know, eight to twenty thousand
20 dollars, you know for, a cost for, for an item.

21 MAYOR BRITAIN: Could be higher if there isn't -

22 MRS. PALMER: -could be even higher if it was one of the only things on
23 there. I've seen them much higher than that.

24 MAYOR BRITAIN: Okay. I remember our, our regional PFD when we went to
25 the voters I, I think that it was like forty-five thousand dollars. So, okay -

26 MRS. PALMER: - especially if it's the only thing on there.

27 MAYOR BRITAIN: - okay. Thank you. Any addition questions of staff? Yep.

28 MR. PARISH: Mr. Mayor.

MAYOR BRITAIN: Mr. Parish.

MR. PARISH: I move that the Council approve paying the legal fees to
defend the recall petition for councilman young.

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1 MR. LEE: Second.

2 MAYOR BRITAIN: It's been moved by Mr. Parish and seconded by Mr. Lee to
3 pay the legal fees of Councilman Young defending the recall petition. Is there any
4 further discussion?

5 MR. TRUMBO: Mr. Mayor.

6 MAYOR BRITAIN: Mr. Trumbo.

7 MR. TRUMBO: Thank you. There is no question in my mind that things could
8 have been set up for this vote a little differently and more appropriately. I'm not
9 blaming anyone but we do have a councilmember who is not here. And I am confident
10 that that councilmember would not support paying attorney's fees but that's my
11 opinion. That vote will not be voiced tonight.

12 And we have as a Council at times past given the courtesy to allow a
13 councilmember who has a keen interest in a subject the opportunity to cast their vote
14 when, for reasons that were not entirely within their control, they could not be
15 present at that meeting when the vote was scheduled. We have made accommodations to
16 do that in the past.

17 I, I'm troubled by that. I'm also troubled by the fact that we've not
18 had an adequate discussion amongst members of this Council as to the merits of this
19 matter as it pertains to the recall petition itself. My efforts to put that into a
20 closed session or executive session were not supported. I have no doubt that the
21 councilmember who is not here would have indeed supported that as a matter, too. And
22 he was foreclosed on being present for that as well.

23 The steps taken this evening literally have been set up so that a
24 councilmember who has high interest cannot participate in any of the votes on this
25 subject be they legal fees or a closed session. That bothers me a great deal. And
26 finally, I am troubled by the fact that I do not know if any of the councilmembers
27 here - I do not know firsthand - if any of the councilmembers here - or city staff
28 for that matter, have even availed themselves of the opportunity to read the
testimony of Councilman Young that was the initial basis, the facts as presented in
the trial that he was a defendant in. Who's read the record? And you're voting
without reading the record? I ask.

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1 Oh and one other thing while I'm at it. There is a distinct difference
2 between a public employee such as an executive administrator in the City and an
3 elected official. Elected officials are subject to a higher level of scrutiny than
4 employees of the executive group. That is spelled out in the RCW and I have little
5 choice to discuss a matter of a city councilmember in public session. The option is
6 closed session. I have little choice there.

7 MAYOR BRITAIN: Is that everything Mr. Trumbo?

8 MR. TRUMBO: That is all.

9 MAYOR BRITAIN: Any further Council discussion? Seeing none, I'll speak.

10 I think all of us that run for elected office and are public figures are
11 subject to frivolous accusations that we must defend ourselves or find ourselves in a
12 situation where we have to. So I ask all of our councilmembers sitting up here right
13 now are you willing to fork out, at this point eighty-five hundred dollars if
14 somebody was to make a untrue accusation?

15 And we're, we do this job to benefit the citizens of the City of
16 Kennewick in a very transparent way which is happening tonight. And it bothers me
17 when comments are made up here on the dais suggesting - at least in my perception and
18 what I heard - that our Council and our City Manager were doing things in a non-
19 transparent and unscrupulous way which is the furthest thing from the truth. Our City
20 Manager does not know, she doesn't have a crystal ball. She doesn't know what's going
21 to happen.

22 I believe these legal bills are, are due. And we have to be prepared,
23 the City does, to defend us as elected officials. Now some of us may not like it.
24 Maybe that's personally not how they would do things. But it is legally available and
25 there is nothing wrong with asking to have it paid.

26 I didn't run for City council and run to be Mayor to have untrue
27 accusations made against me to continually defend myself just as I'm sure Mr. Young
28 didn't. Now Mr. Trumbo may believe that all these are facts. And no, I have not read
the entire transcript from that trial. Fifty thousand pages or whatever it is. I have
business of the City to do. However, I was at the hearing. I sat through the hearing.
I heard the evidence - so to speak - that was presented. And watched a Superior Court

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1 Judge determine that it was factually insufficient on all but the one item that our
2 City Manager just clarified.

3 So with that, I just wanted to remind Council, any one of us at any time
4 could have something - an accusation against us that we may want to have defended and
5 paid for by the City of Kennewick. So consider that in your vote tonight.

6 MR. TRUMBO: Mr. Mayor.

7 MAYOR BRITAIN: Mr. Trumbo.

8 MR. TRUMBO: I'm sorry but I need to point out again -

9 MAYOR BRITAIN: - go right ahead -

10 MR. TRUMBO: - to this council that there has been no determination of
11 facts. Judge Spanner said so himself. There has been no determination of fact. Only a
12 determination of sufficiency. And that is a big difference. He said - I was at the
13 same hearing you sat at - he said -

14 MAYOR BRITAIN: - we heard two different things -

15 MR. TRUMBO: - he said that it's the public will determine the facts
16 should the petition go forward. And he said that before he made his announcement
17 about charge one being sufficient. That's an important distinction. We're not talking
18 facts here. So please don't say things like, "it's untrue". There is no determination
19 of that.

20 And the second thing I wish to say is that expenses that could be laid
21 upon the City are unfortunate and the person who controlled at the very beginning the
22 imposition of those expenses is not this Council. It is one person on the Council and
23 that decision was made some time ago.

24 MAYOR BRITAIN: Thank you for your opinion Mr. Trumbo.

25 MR. PARISH: Mr. Mayor.

26 MAYOR BRITAIN: Mr. Parish.

27 MR. PARISH: I'll concur with one thing John said. It it is up to the
28 people not up to this Council. That's what a recall election's about -

MAYOR BRITAIN: - correct -

MR. PARISH: - we should not be judging Mr. Young as a Council that's up
to the voters. And as far as Mr. Young making this happen, I don't believe that.

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1 I read a lot of that, sat in part of it, listened to it. The case that
2 started all this was, it was done before it started. It was government picks on
3 little person. End of conversation. And out of that there was no charges against Mr.
4 Young, and there still hasn't been. So, the recall election is the recall election.
5 It's up to citizens, not this Council, to chastise Mr. Young. Thank you.

6 MAYOR BRITAIN: Thank you Mr. Parish. 'Kay, it's been moved by Mr. Parish
7 and seconded by Mr. Lee to pay the legal fees defending Mr. Young's recall position.
8 All those in favor please say "aye".

9 MR. PARISH, MR. LEE, MAYOR BRITAIN: Aye.

10 MAYOR BRITAIN: Those opposed say "no".

11 MR. BOEHNKE and MR. TRUMBO: No.

12 MAYOR BRITAIN: The motion passes three to two with Councilmembers
Boehnke and Trumbo voting "no". Thank you, Council for a spirited discussion.

13 We don't have any unfinished business. Next item is Council Comments.
14 We'll start with Mr. Parish.

15 MR. PARISH: I don't have anything Mr. Mayor. Thank you.

16 MAYOR BRITAIN: You bet. Okay, Mr. Trumbo.

17 MR. TRUMBO: I think I've said enough.

18 MAYOR BRITAIN: Mr. Boehnke.

19 MR. BOEHNKE: Yeah, nine eleven is coming up next week so don't forget. I
20 won't forget. And I appreciate our city staff and people that are coming together
21 throughout whether people agree or disagree with debates go on in our city government
22 that we still recognize the men and women who've died for our freedoms to allow us
this debate to happen and the freedoms we have today. So don't forget. Nine eleven.

23 MAYOR BRITAIN: Mr. Lee.

24 MR. LEE: Yeah, on a lighter note I just wanted to give my second City
25 Council shout out to the Sunset at Southridge event that is now over for the year.
26 You know, it's, it was a spectacular success. Tons of people came out. Lots of people
of all ages.

27 It wasn't just families with kids it was, you know young couples and old
28 couples. My seventy-five-year-old parents - I caught them there on date night. It was

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1 just a, just a raving success and so if you missed it this year, that's fair. But
2 know next year it's coming up and that when you see that advertised that make some
3 time out of your schedule to go check that out and spend some money at small business
4 owners' businesses and get to see your community in a, in a different context. It was
5 a, it was a great time.

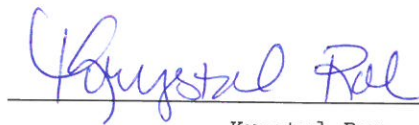
6 MAYOR BRITAIN: The largest food truck in the Tri Cities event, I believe.
7 Up to fourteen food trucks. So, [unintelligible] I agree with you Mr. Lee. That was a,
8 great, they did a great job the second year and next, it's just gonna keep, keep
9 getting better. I don't have really have anything to add other than I appreciate
10 everybody coming out to our Council meeting tonight. And those that chose to come up
11 and speak I appreciate your honesty and, and the comments. And I wish everybody a
12 good evening. It is now 7:23 and this meeting is adjourned.

CERTIFICATE

13
14 STATE OF WASHINGTON

15 COUNTY OF BENTON

16
17 I, Krystal Roe, Deputy City Clerk and Public Records Officer for the City of
18 Kennewick, do hereby certify that the foregoing transcript is true and accurate to
19 the best of my knowledge, skill and ability.

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21 
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28

Krystal Roe

Exhibit B

Council Agenda Coversheet



Agenda Item Number	7.a.	Council Date	09/04/2018
Agenda Item Type	General Business Item		
Subject	Legal Fees Defending Recall Petition		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Manager		

Consent Agenda	<input type="checkbox"/>
Ordinance/Reso	<input type="checkbox"/>
Public Mtg / Hrg	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

Recommendation

Staff recommends that Council approve paying the legal fees to defend the recall petition for Councilmember Young.

Motion for Consideration

I move that Council approve paying the legal fees to defend the recall petition for Councilmember Young.

Summary

A request has been received from Councilmember Steve Young for City Council to approve payment of the legal expenses incurred by him in preparing for the judicial hearing and appeal which will determine the sufficiency of the recall petition filed on August 1, 2018. Per RCW 4.96.041(3):

The necessary expenses of defending an elective officer of the local government entity in a judicial hearing to determine the sufficiency of a recall charge as provided in *RCW 29.82.023 shall be paid by the local governmental entity if the officer requests such defense and approval is granted by both the legislative authority of the local governmental entity and the attorney representing the local governmental entity. The expenses paid by the local governmental entity may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

On August 31, 2018 a judicial hearing was held before the Honorable Judge Spanner to determine the sufficiency of the Petition. Judge Spanner held that of the six allegations, five were factually insufficient to support the Petition. Judge Spanner determined that only one of the allegations was sufficient to support the Petition. Per RCW 29A.56.140 and RCW 29A.56.270 an appeal of the sufficiency decision shall be filed in the Supreme Court. The appeal to the Supreme Court must be filed and perfected within fifteen days of the decision in Superior Court. Per RCW 29A.56.270, the Supreme Court will hear the appeal and make a determination within thirty days after the decision of the Superior Court. Council Member Young is represented by Attorney, Bob Thompson and has incurred legal fees in defending this Petition and intends to appeal the Superior Court decision to the State Supreme Court. To date Council Member Young has incurred approximately \$8,525 in legal fees.

Alternatives

None Recommended.

Fiscal Impact

To date the legal fees incurred are \$8,525 and additional legal fees may be incurred to appeal to Supreme Court and any additional legal proceedings.

Through

Dept Head Approval

City Mgr Approval

Marie Mosley
Sep 04, 09:19:19 GMT-0700 2018

Attachments:

☐ Recording
Required?