



**OFFICIAL MINUTES
RINCON CITY COUNCIL
SPECIAL CALLED MEETING
WEDNESDAY, MAY 24, 2023
COUNCIL CHAMBERS
107 W. 17th STREET
6:00 PM**

Councilmember Present:

Reese Browher
Levi Scott, Jr.
Jesse Blackwell, Jr.
Damon Rahn
Patrick Kirkland
Michelle Taylor

Present:

Ken Lee, Mayor
Jonathan Lynn, City Manager – Present by video
Raymond Dickey, City Attorney
Dulcia King, City Clerk
Mike Osborne, Recreation Director

The meeting was called to order at 6:09 PM.

Approval of the agenda:

Motion to approve: Councilmember Scott
Second: Councilmember Rahn
Vote by Council: Unanimous

New Business:

1. Hearing on employee grievance.

Mayor Lee said the purpose of the meeting is to hear an employee grievance. We will hear from the two parties in regard to a reprimand given to Mike Osborne by City Manager, Jonathan Lynn.

Mr. Lynn said on April 25 he provided Mike Osborne with a written reprimand violating the personnel policy. Section 130-113 a, insubordination/uncooperative attitude where Mr. Osborne failed to notify him of extended absences, he did send him an email and it took roughly 25 hours for Mr. Osborne to respond. Also coming back from a worker's compensation incident allowing him to come back to work on light duty, the ability not to lift anything over 5 pounds. Mr. Osborne was observed shoveling and exerting physical effort on Friday April 14. These acts in his opinion violated that. There was a violation of 130-113, b, violation of safety practices, shoveling would be a violation of a safety aspect. There was a violation of section 130-14 e, sleeping during working hours. Mr. Osborne was noticed on April 13 by Elizabeth Cartwright sleeping during our Department Head Meeting, she had to awaken him twice during the 30-minute meeting. In addition to that Mr. Osborne was asleep in his office on Friday, April 14, there is a video of that. He notified Alyx Pitts that he had taken two muscle relaxants while in her office. Violation of section 130-14 h, absence without appropriate notice of two days or more. That is where the reprimand came from. Attorney Dickey asked did he submit the documents that were shared with Council as exhibits, Mr. Lynn said yes and he provided the video of Mr. Osborne shoveling and sleeping at his desk. These records need to be marked as exhibits.

Councilmember Kirkland asked Mr. Lynn about the advance notice of absence, because Mr. Osborne works extended hours, had they had conversation prior to April 17 and 18 about notifying him about being out of the office, Mr. Lynn said no. Had they had the conversation before this date, Mr. Lynn said no, typically all department heads will notify when they are going to be out of the office.

Councilmember Rahn needed clarification on the time frame of the no work period versus the light duty work period. Mr. Lynn said the notice of no work was March 29 – April 10 and he received another notice on April 10 for modified duty, nothing over five pounds. Councilmember Rahn asked was that until the reprimand time correct, Mr. Lynn said yes. Councilmember Rahn clarified no work is not released from your doctor, Mr. Lynn said that is correct.

Councilmember Browher asked what safety rule did he specifically violate, Mr. Lynn said violation of safety practices, including the performance of unsafe acts, failure to comply with safety rules and failure to stay under the five pound limit would be a violation of a safety rules. Councilmember Browher said how do we know the shovel was five pounds. Councilmember Kirkland asked do we know how much the shovel weighs. Mr. Osborne said the shovel weighs 3.6 lbs and asked the City Clerk Dulcia King to confirm. Ms. King said yes, she thinks it was 3.6 lbs.

Councilmember Scott asked Mr. Lynn once he received the limitations did they discuss this, Mr. Lynn said yes. He was glad to have him back and said make sure you follow the order. The return to work did not list any medicine, so he assumed it was not limitation there either.

Councilmember Browher said the progressive part of it as far as discipline, we jumped from, he doesn't know how many write ups he had before, can Mr. Lynn answer that. Mr.

Lynn said he thinks there were two write ups if he is not mistaken. Councilmember Browner said he has concerns about why there was not a reprimand or some type of verbal counseling prior to going straight to suspension. Mr. Lynn said he was not suspended, Councilmember Browner said that is not what you recommended originally. Mr. Lynn said after speaking with Council he moved forward with the written reprimand.

Mayor Lee asked Mr. Lynn how does he describe the insubordination. Mr. Lynn said failure to comply with a directive from the supervisor, the directive from the supervisor "Mike, yes I will allow you to come back to work so long as you follow the order from the doctor". Not following that order was considered insubordination. There was discussion on the definition of insubordination.

Mike Osborne said if the insubordination is the act of him lifting more than 5 pounds, the shovel didn't weight more than five pounds and it did not have any dirt on the shovel.

Mr. Osobrne said in response to the written reprimand that he received on April 24, before he was reprimanded, he had no communication with Mr. Lynn as far as any of these issues. He was not called in, up to this reprimand, he was not aware of any of this and did not have a chance to address any of this with Mr. Lynn. On the violation of failure to notify the City Manager of my absence, in the email Mr. Lynn said he came by the office twice Mr. Osborne said he checked the videos and did not see any videos where Mr. Lynn came by the office. He spoke with Alyx Pitts, Caitlyn and Ashton, these are all full time employees, and asked them did Mr. Lynn come by. They said no. On Tuesday he knows Ashton was in the office because Councilmember Taylor and Mona Underwood came by around 10:00 AM and Ashton was there with the door locked. He saw where the inmate comes up and he saw where he had a key and the video shows where Councilmember Taylor and Mrs. Underwood came back. He doesn't know why, if he is reprimanded for that, why he didn't receive a phone call. It states he respond 25 hours later; he did not see the email because he was not at the office. He was in the office on Monday, not the whole entire day, but he has never been told that he has to give and report his work schedule. If he was going to be out the whole entire day, he has always let Mr. Lynn know. Mr. Osborne said that this was a common practice for him to have different working hours (work a couple of hours a day if he is over 40 hours). This has always been on his timesheet and it has never been brought to his attention that his work schedule needed to be presented. Monday he worked 2 1/2 hours Tuesday he worked 3 hours. The way the Recreation Department work is not like everybody else. He was never told if he was working part of the day he needed to notify Mr. Lynn. Mayor Lee asked was this type of schedule common practice for him, he said yes if he works his 40 hours. Councilmember Blackwell asked were there any other salaried employees in the Recreation Department, Mr. Osborne said no. He asked did they all clock in and out or self-report to Mr. Osborne, he said yes. Mr. Osborne said from a standpoint there is going to be times where you need rest especially if you work eight days in a row, 65 hours a week. Councilmember Taylor said is that between your working and the pain pills or whatever they were, is that why he was sleeping. Mr. Osborne asked her to repeat that word for word, Councilmember Taylor said your work hours and the pain medication or whatever they were is that the reason why he was sleeping in the office. Mr. Osborne said

he is going to get to that, but he would appreciate if she did not address that he was taking pain pills.

Councilmember Rahn asked about the pay periods. Mr. Osborne said the Wednesday of the fair started a new pay period.

The response to the email 25 hours late was because he did not see the email. His work email is on the computer at his office that is how he response. Councilmember Taylor asked did he check his email at home, Mr. Osborne said no. Mr. Osborne said he sent an email that he would be out to Council and during the reprimand Mr. Lynn told him that he is not to do that but should report to him. He needs clarity on this. He said the Charter, 2-162 states he is directly responsible to the Mayor and Council. He handed out that information to Council. Attorney Dickey said this is an ordinance, law of the City. The Ordinance says the City Manager is to do the day to day operations but it also goes on to say that Mayor and Council can create laws and ordinances to address other issues. Councilmember Kirkland said that he recalls when Mr. Lynn came on board that Council talked about that. Council would handle everything through Mr. Lynn however if they needed something from a Department Head, they would contact said Department Head but make Mr. Lynn aware of what they requested. There was discussion on the Charter. Attorney Dickey will look into this. He said the Charter was written that the City Manager is responsible for the day to day operation, but the law can be created to changed and to assign duties and obligations.

Mr. Osborne said regarding the shovel, Mr. Lynn did tell him to make sure he follows the doctor's order with the modified limits. Ms. King did confirm the weight of the shovel. Staff came to him and said they could not find the base anchor, they got the shovel and met him in the field he did not see where they had disturbed the dirt. So, he scraped the dirt to find the anchor. As far as physically exerting himself, he doesn't think he did that. The shovel was brought into Council Chambers. He didn't feel he was going against any restrictions that the doctor gave him. Two hands were used not one. Someone is out to get him why would they be taking videos. He doesn't understand that. He does not see where scrapping the dirt was an unsafe act.

Mr. Osborne said as far as sleeping at work, he has a copy from his doctor of all his medications. They are not addictive or a narcotic. Mr. Lynn and Kim Hesling were both aware he had these medications, he told them. He was never told that it was a problem. In the written reprimand it was said that 'Mr. Osborne told Alyx Pitts that he took two muscle relaxants while in her office following this he was reported sleeping in his office', again why are there videos being taken of him. It feels like someone is out to get him. He has never taken two muscle relaxants at one time. Councilmember Taylor said one of the side effects is drowsiness if it was making you sleepy in meetings why didn't you stop taking it. Mr. Osborne said if you were in a lot of pain, Councilmember Taylor said why didn't you say you couldn't work that you were in a lot of pain and it was making you sleepy. Mr. Osborne said the Recreation Staff have taken naps during their lunch breaks, as he has stated to them that he is taking his lunch and going to sleep, once again why is someone taking videos of him. He stated has never taken two muscle relaxants. Councilmember Kirkland

asked did someone mention anything to him about addiction and narcotics he is just curious as to why he was providing this information. Mr. Osborne said in the reprimand it says that 'he can return to work when he successfully passes a City drug screen to demonstrate that he is no longer using the aid of pain medications or any other substances. Mr. Osborne will receive a mandated referral to the Employee Assistance Program (EAP) that is to be completed as well during his paid administrative leave...'. Mr. Osborne said that during his reprimand Mr. Lynn had said that what is going on, staff is worried about him, you are talking two muscle relaxants, you are falling asleep in meeting I am worried. He was given a pamphlet on the EAP for Counseling by Mrs. Hesling. Mr. Osborne asked was she saying he needed counseling was she saying that he was an addict. He asked is that what Mr. Lynn was thinking, and Mr. Osborne said Mrs. Hesling said yes. Mr. Osborne said you shouldn't accuse anyone of being an addict. There was discussion on policy.

Councilmember Kirkland said when they talked about this particular situation they did not talk about the EAP, he wanted Mr. Lynn to clarify. Attorney Dickey said the City does have a policy on substance abuse and drugs and read the policy. Councilmember Rahn said asked are employees allowed to take muscle relaxants while on duty, Attorney Dickey said is nothing in the policy that prohibits that.

As far as sleeping in Department Head meeting, he did not fall asleep. Never once did Mr. Lynn bring it to his attention or talk to him to let him explain things to him. He has never been given a chance to explain anything. Things are being said to Mr. Lynn. He did an open records request of any statements in regard to his reprimand and the only ones he received were from Mrs. Cartwright and Mr. Lynn, there were no statements from these other people that are going to Mr. Lynn about all of this, is this word of mouth. Mr. Lynn said there were no written statements related to Mr. Osborne's written reprimand withheld from his open records request. Mr. Osborne said what is provoking someone to take videos of him and for this to happen. He has noticed other people fall asleep in meetings, but he gets it put in his reprimand. Mr. Osborne discussed some of his health issues and his history with the City of Rincon. He stated that three people have called him about this reprimand the day he got it, it should have never gotten out. It is not fair. He then passed out information from the doctors. He is asking Council to remove this from his file.

Councilmember Kirkland asked has he gotten the all clear to return to work, he said modified duty only.

Mr. Lynn said the return to work that he had there is no medications. The end goal was not to accuse him, but it is something we would do for every employee now that we have the EAP. There is nothing that we would know.

Mayor Lee asked about the dates that he was not able to talk to Mr. Osborne, the 17th and 18th, did he try to call Mr. Osborne, Mr. Lynn said no he did not. Did he ask the staff that was working to have Mr. Osborne call him, Mr. Lynn said no. Mr. Lynn said Mr. Osborne was right he did not go into the building but he did a drive by the building and you can clearly see who is at work. Mr. Lynn said on the email from Mr. Osborne on April 19 where he stated he had 65 hours for the first week of the pay period, he was not supposed to be

working that week he was on full worker's compensation. He was on full worker's compensation from March 29 through April 10. There was discussion on the dates and when he worked.

Attorney Dickey spoke on the progressive correction plan.

Mr. Osborne said it is obvious that someone is out to get him. If this is released from his file until he hears from his doctor, he would like to continue the leave because he does not want this to come about again.

Councilmember Browher asked about the people coming up to his family and what kind of questions are they asking. Mr. Osborne said the day he got this reprimand people had started coming up to him. He felt like the staff already knew when he went to get something out of his office, that same day he received three phone calls.

Someone from the audience asked to speak. Attorney Dickey said this is a hearing public comments are not normally involved. Rob Collum spoke on Mr. Osborne's behalf. He said Mr. Osborne is out on Saturday mornings dragging fields sometimes to 8 at night. He is a good director and he had never had an issue with him, he is a good friend of his.

2. Executive session to discuss personnel, pending litigation, attorney client privilege, and real estate.

Motion: Councilmember Kirkland
Second: Councilmember Browher
Vote by Council: Unanimous

Motion to return to meeting: Councilmember Rahn
Second: Councilmember Blackwell
Vote by Council: Unanimous

Take any action that is needed on the items from the executive session.

Dismiss the written reprimand for Michael Osborne.

Motion to approve: Councilmember Scott
Second: Councilmember Kirkland
Vote by Council: 5 yes votes, Councilmember Taylor abstained

Executive session to discuss personnel, pending litigation, attorney client privilege, and real estate.

Motion: Councilmember Kirkland
Second: Councilmember Scott
Vote by Council: Unanimous

Motion to return to meeting: Councilmember Blackwell
Second: Councilmember Rahn
Vote by Council: Unanimous

Take any action that is needed on the items from executive session.

No action taken on second executive session.

3. Follow the statutes of both (2) executive sessions, to put on file an executive session affidavit and resolution.

Motion to approve: Councilmember Scott
Second: Councilmember Kirkland
Vote by Council: Unanimous

Adjourn:

Motion: Councilmember Browher
Second: Councilmember Blackwell
Vote by Council: Unanimous