

SEPTEMBER 11, 2012

CITY OF TRINIDAD
TRINIDAD, COLORADO

The City Council of the City of Trinidad, Colorado met in Special Session on Tuesday, September 11, 2012 following the work session at 1:30 p.m. in City Council Chambers at City Hall pursuant to the following call:

CITY OF TRINIDAD
TRINIDAD, COLORADO

SPECIAL MEETING

There will be a Special Meeting of the City Council of the City of Trinidad, Colorado, on Tuesday, September 11, 2012, following the work session at 1:30 p.m. in the Council Chambers at City Hall

The following item is on file for consideration of City Council:

1) Consideration of City Manager selection procedures

The meeting was called to order at approximately 3:00 p.m.

Roll call was taken.

There were present:	Mayor Pro-Tem	Shew, presiding
	Councilmembers	Baca Gonzalez, Bolton, Bonato, Mattie, Velasquez
Also present:	Acting City Manager	Gagliardi
	City Clerk	Garrett

The pledge of allegiance was recited.

Consideration of City Manager selection procedures. Mayor Pro-Tem Shew called upon Terry Sears who signed in to speak. Mr. Sears told Council that when you terminate an employee there are liability issues and when one is hired there are as well. There are questions that are against Federal and State law to ask a prospective employee. There are general questions that would be against the law but can be framed in specific language to be permissible and then all of the applicants have to be asked that same question. He said he hoped that Council will receive coaching before they get to the place where they interview. Mr. Sears said race, national origin, maiden name, age, disabilities, religion, reason for military discharge, if they belong to organizations and bankruptcy questions are prohibited. However within a question they can ask a version of the question. For instance you can't ask national origin but you can ask if they are eligible to work in the United States. He reiterated the need to ask each applicant the same questions. They can't ask if they belong to any organizations but can ask if they are a member of the Bar Association. They can't ask if they've ever been arrested but can ask if they have any felony convictions. He said these can be landmine issues. If someone thinks they've been asked questions contrary to federal law they can sue. He reiterated that he hoped they have a group coaching session. The information is easily accessible. Make sure you each have the same list of questions and are on the same page in terms of protecting the City from liability. Mr. Sears continued that he's not sure if the former City Manager applied or not but suggested it could potentially be a win - win for the City. He referred to what the unemployment judge said about his termination and said he thinks the City still faces severe liability. He said the former City Manager has the credentials, and suggested if the City re-hired him his contract could contain language that stipulates he foregoes the right to sue for the previous termination in exchange for an 18-month contract. Also the city wouldn't have to hire a superintendent at \$60,000 to \$100,000 a year including benefits because he has the credentials and everyone can work on better ways to get along. He concluded that it would be a win-win for the City and save hundreds of thousands of dollars from a wrongful termination suit. Mayor Pro-Tem Shew opened the floor to each Councilmember for their opinions of the selection procedures. Councilmember Bolton said she would recommend they use both the Application Screening Form and the Score Sheet provided using a yes or no process, as opposed to a numeric or percentage grading process. She opined that a percentage method is more tedious and opens them up to more scrutiny, although they will be under fire regardless of their selection. Even though they need to go through this expeditiously, they need to provide substantiated reasons for their selections. Councilmember Mattie agreed but pointed out that if they use the Application Screening Form it suggests they use 'meets or exceeds requirements' for education and work experience, for which Council has identified requirements. However for areas such as 'supervising others' and the other job disciplines such as 'leadership skills' they have to rely on the information provided in the application and resume and Council hasn't set forth any requirements. Therefore, he suggested they change the form from 'Supervising Others' through the end of the form to 'strong evidence, moderate evidence, or little to no evidence'. He said it will give Council a way to document what they read in the resumes. He also suggested that they could quantify it with a 3-2-1 scoring. Councilmember Bolton said they should instead use a yes-no-maybe scoring. Councilmember Mattie added that if they do not have the numbers, it makes it a subjective evaluation and they will have to be able to justify their reasoning. He said when he worked for the State Patrol it was their position that numbers eliminate the need for the evaluators to make justifications. Councilmember Baca Gonzalez said she liked the suggestion about modifying the Application Screening Form from 'Supervising Others' down but suggested it be just two options, strong or limited or none. She also stated that she was not in favor of a numerical scoring system. She said it begs the issue of why they would give a person a two scoring and someone else a one scoring. She said she thought it would be better to articulate that an individual showed strong evidence, for example because of his achievements with a community reorganization plan and revitalization of the downtown area, whereas the other individual had experience in involvement in coordinating with a college to bring a new program. If you look at it that way, one appears to have broader, diverse experience than the other one. She reiterated her strong hesitation in using a number scoring system. Councilmember Velasquez agreed with the comments. Councilmember Bonato likewise agreed and recommended that they do a strong background investigation because he is worried about things happening with that. He pointed out that some of the applicants lacked the release for the

background check. He opined that the criminal background is the most important thing they are looking at. They should stick with what they are saying about a background check. Anyone who didn't sign a release shouldn't be looked at. Councilmember Mattie asked specifically what he was referring to by saying background check. Did he mean criminal background check? He asked what he wanted beyond that. Councilmember Bonato answered that he's referring to criminal history and records being sealed – stuff like that should be a red flag. Councilmember Mattie argued that sometimes there are good reasons for records being sealed and sometimes not. We have to identify what we want. He asked if they want to do one of the Application Screening Forms on each of the 44 applicants or separate them into red, yellow and green categories and just do the form on the green category of applicants. Councilmember Bolton said she felt they needed to have substantiated reasons with each application. She said she realized it is a big job but they will be under fire with whatever decision they make. She reiterated the need for substantiation for their decisions. Councilmember Baca Gonzalez added that they need to make the investment of time. She said she called Sam Mamet, the Executive Director of the Colorado Municipal League, regarding background checks. Mr. Mamet provided a four-page document titled "Finding the Right Match," containing information about screening and reference checks, and preparing and conducting interviews, a copy of which was provided at Council's seating places. She encouraged Council members attending the CML District Meeting tomorrow evening to meet with Mr. Mamet. She said one issue that Council will need to tread very carefully is the criminal background check through the state system and NCIC federal system, which she said is absolutely needed. Regarding sealed records she voiced her concerns about whether that is a fair issue to inquire about because she's concerned about running afoul with the Fair Credit Reporting Act and federal legislation that protects against different kinds of inquiries. Even bankruptcy laws protect individuals from having a bankruptcy used against them discriminatorily. She said they should not go too far afield from what is clearly legally permissible. The handout says they should focus their background check on the applicant's work experience, verify the positions held and work completed that is listed on the resume, talk to people who worked with them, and verify educational credentials. She spoke of an experience she had whereby an employee where she worked had falsified their educational credentials and the resulting fall out. If there are blanks or gaps in the employment history it should be explored. The document also talks about staying in touch with the applicants. She suggested before they get too many inquiries that might run afoul with the law that they get direction from Tami Tanoue at CIRSA who is the insurance expert and can assist in the appropriate release necessary and appropriate for doing the background checks. Councilmember Mattie asked if making contact with references is a Council function. Councilmember Bolton recalled that City Attorney Beatty did it the last time but they should narrow the field first. Councilmember Mattie said if they were to use the green, yellow, red system some people may not make it based on education and work experience. He suggested the each come up with five 'green' applicants and come together and agreed on who those top people are then they could look into references of the new top five applicants. He added that it would be cumbersome and a waste of time to do criminal histories on all of the applicants. Councilmember Baca Gonzalez said Sam Mamet told her that knowing the situation that Trinidad is in, in terms of City Attorney Beatty's resignation, that he's willing to assist Council in any way possible including helping with background and reference checks. She added that it is logical because he has connections in the industry. Also, the national organization would give him access to informed opinions that maybe the City would not be able to access. Since he's gracious enough to offer the assistance and the City pays CML membership dues, we may as well take advantage of their expertise to the extent we are able. Councilmember Mattie suggested they each come up with their top five using the applicant screening forms and then meet to go over those applications. Council concurred to hold a special meeting on September 25th for an executive session for that purpose and keep the work session agenda light.

Mayor Pro-Tem Shew noted the change to their schedule for the executive session with legal counsel regarding the ARPA litigation from Thursday, September 13th, to a special meeting at 5:00 p.m. on Wednesday, September 19th, prior to their regular meeting.

Acting City Manager Gagliardi informed Council that the Federal Mineral Lease payment was received in the amount of \$183,921, which is 8.7% more than what was received last year, \$169,166. Along with that the City didn't expect a Severance Tax payment in the amount received. He said that last year the City received \$311,000 and this year we received \$344,758, representing a 10.8% increase. However, he said the June, 2012 sales tax decreased from that of June, 2011 by 3.3% or about \$15,000 less than last year. The sales tax is still reflecting an increase to-date of 2.8% or about \$68,000.

Councilmember Mattie recalled that at the last Council meeting David Grugel questioned financial reports, which is a function of being a good citizen. Finance Director Rose Blatnik was able to address his questions and that is a better function of government, to be responsive to citizen inquiries and to demonstrate that we are doing things right.

A motion to use the Applicant Screening Form, amended from 'Supervising Others' throughout the end of the form to indicate 'strong evidence, moderate evidence, or little or no evidence' for rating, and to hold a special meeting at 1:30 p.m. on September 25, 2012 for an executive session to discuss each Council member's top five applicants using said form was made by Councilmember Baca Gonzalez. The motion was seconded by Councilmember Bonato and carried unanimously upon roll call vote.

There being no further business, Councilmember Bolton moved to adjourn the special meeting and Councilmember Baca Gonzalez seconded the motion. The motion carried unanimously upon roll call vote.

ATTEST:

FRANKLIN SHEW, Mayor Pro-Tem

AUDRA GARRETT, City Clerk