



Mesquite City Council

Special Meeting - Primary Canvass

Mesquite City Hall 10 E. Mesquite Blvd. Wednesday, June 22, 2016 - 5:00 PM

Minutes of a scheduled Special meeting of the City Council for the June 14, 2016 Primary Election Canvass was held on Wednesday, June 22, 2016, at 5:00 P.M. at City Hall. In attendance were Mayor Allan S. Litman, Council members W. Geno Withelder, Rich Green and Kraig Hafen. City Manager Andy Barton, City Attorney Robert Sweetin, City Clerk Tracy Beck, other city staff and approximately 18 citizens.

Mayor Litman called the meeting to order at 5:00 P.M. and Council members Cindi Delaney and George Rapson recused themselves from this meeting. (NOTE: This meeting has been tape-recorded and will remain on file in the office of the City Clerk for four years for public examination.)

Below is an agenda of all items scheduled to be considered. Unless otherwise stated, items may be taken out of the order presented on the agenda at the discretion of the Mayor and Council.
Public comment is limited to three minutes per person and may only address items that are not on the meeting's agenda.

Public Comments

During the Public Comment portion of the agenda comments must be limited to matters within the authority and jurisdiction of the City Council. Items raised under this portion of the Agenda cannot be deliberated or acted upon until the notice provisions of the Nevada Open Meeting Law have been met. If you wish to speak to the City Council at this time, please step up to the podium and clearly state your name. Comments are limited to 3 minutes in length.

1. Public Comments

[5:00 PM] Minutes:

Mayor Litman opened up the meeting with Public Comment.

[5:01 PM] Minutes:

Dave West: I am one of the candidates for City Council in the most recent election. I commend you all on addressing the issue that's coming forth on how we apply an ordinance. In our Mesquite Municipal Code, it's referred to as the 50 plus 1 rule. The way it is written in our code right now, it appears to be copied from another municipality that only has single seat elections, and how we apply it tonight, I will trust your judgment in how you vote and apply that in the past election, but obviously there is a deficiency there as it applies to how we handle our City Council elections. So I would encourage this board and whoever is elected to take the time to correct the language in that ordinance for future elections. Thank you.

Administrative Items

2. Consideration of approval of the Canvass of the June 14, 2016 Mesquite Primary Elections returns and declaration of the result.

- - Discussion and Possible Action

[5:02 PM] Minutes:

Mayor Litman read this item by its title and deferred to Mr. Robert Sweetin.

[5:02 PM] Minutes:

Mr. Sweetin: I will provide for the Council a brief update on the situation where we are at and why this is a little different than just a normal Canvass Meeting. So where we are at essentially is there is Mesquite Municipal Code 1-8-19. That was changed in 2011. What that said prior to 2011 was we looked to the number of voters who vote in the election, and then we looked at candidates and how many votes they received, and if they received a majority of the votes cast by voters, then they would move forward.

In 2011, the ordinance was changed. The critical language is if in a primary City election one candidate receives votes equal to a majority of votes cast in that election for the office for which he or she is a candidate. So what happened is it changed the language of voters, that critical analysis, that number of voters to votes cast for the office.

So what you have before you tonight are essentially two options. The first would be to apply Mesquite Municipal Code 1-8-19 to apply to multi-seat elections, which we haven't necessarily done in Mesquite before. I think it has been assumed, but the Council's never actually made that direct determination, but that 1-8-19 would apply to multiple seat elections, and if that's the case, then the result would be you would count the number of votes that were cast in that election. Because there are three offices that are up, the only reasonable way that we have been able to figure out what the critical numbers are is you would

take the number of votes cast for that City Council at large seat. You would divide it by 3 and then you take that number, 50% plus 1, and I think that number ends up at 1,106 votes. So any candidate that would receive more than 1,106 votes would be seated and not have to fight it out in the general election.

The other option is consistent with the way – now, I would note MMC 1-8-19 is almost identical to the State statute. It is not from another city code; it is NRS 293(c).1754. They are almost identical. The way that the Attorney General, the Secretary of State, and the County have applied that statute in their elections is to apply to only single off selections. So if the Council tonight were inclined to interpret Mesquite Municipal Code 1-8-19 because of how close that language is as applying to only single seat elections, that is, there is only one open seat, not three seats like in this election, then what would happen is 1-8-19 would essentially not be relevant to our analysis, nor would 293(c).1754, and the default provision is 293(c).180, which would allow you to take in our case the top six vote getters. You just take each seat. You take the top two vote getters.

So those are your options. I'll submit to the Council on which way you want to interpret it. That's in your discretion to make that decision, but I'll submit on that, and I am available for any questions.

[5:05 PM] Minutes:

Mayor Litman: Thank you. I might add, by the way, that this evening Council member Rapson is recused along with Council woman Delaney, so these would be the Council people tonight making the decision.

[5:06 PM] Minutes:

Mr. Sweetin: If I can on that, I actually told them and I spaced it -- on behalf of Council member Rapson and Council woman Delaney, I will disclose on their behalf as the City Attorney that they do have a conflict in this or a perceived conflict, because this would essentially determine their fate in this election to some extent, and because of that both of them have chosen to abstain.

[5:08 PM] Minutes:

Council member Hafen: Well, I just wonder if there are any more comments from the public.

Mayor Litman: No, there are not.

Council member Hafen: First of all, I thank the attorney for the analysis and his legal opinions. I believe, though, that as stated that Municipal Code 1-8-19 and NRS 293(c).1754, that is talking about single seat elections, I think we have blown this thing way out of proportion. I sit on the Council, and I had to go back and I went and pulled the tapes, I pulled the minutes, and I still do not know how I voted on something like this ordinance, because it is bad. It is terrible. It is un-American, and I can tell you that when I listen to the tape of the meeting, the

intent of what we passed that night was because there was a ballot question that I think it was like 55/45 of changing the election cycle, which at that time myself, Council member Rapson, and Mayor Litman, we were elected as Council people and Mark Witter won it outright in the primary, but that changed the number of years we sat on this seat. It added like a year and 6 months. I voted against that. That was the reason this item was put on the agenda back in September of 2011. The whole discussion of that item lasted probably less than 2 minutes, maybe one minute and a half. There was absolutely nothing that talked about this problem that we got into, so I am still – I don't know why it was ever changed. I'll take the blame, because somewhere I was asleep at the switch, because I did not look at this, and if this was in there, which apparently it was, that was totally something that was terribly done. So if nothing else, too, I want to hear what the other Council members say. If not, I will make a motion, but I would ask that as soon as we can get it back on the City Council agenda that we correct this thing. Just because we have a bad ordinance doesn't mean we continue to do things the wrong way. So I want this corrected so that it gives everybody that walks through the door to vote or mails in a vote, that they get that vote counted. It is done the fair way and the right way. So I am asking our City Manager and City Attorney to get that on the agenda. You can say that I am the sponsor. I don't care. I want that done because this ordinance is terrible. It needs to be changed. I will make a motion after I hear from everyone else.

[5:09 PM] Minutes:

Council member Green: I believe in substance over form here, so I believe that MMC 1-8-19 is not applicable in our situation. I am looking to how we serve the best interest of the voters of Mesquite, and I think having six candidates on the ballot for three seats at a November election when the turnout will be high because of the national election versus having two of those seats filled with the mid-June election with the voter turnout ratio of about 30% does not reflect the best interest of the voters of the City of Mesquite.

[5:10 PM] Minutes:

Council member Withelder: I must concur with the other two Council members and their comments. I especially agree with Mr. Hafen, and I was part of that process, and I apologize, because I think I cast the motion to approve that measure, and looking back on it, it was probably the wrong thing to do. I think we have to absolutely write a new ordinance to correct those shortcomings, and again I am going to agree with Craig and have the City Attorney and the City Manager draft a new ordinance. I do believe that to serve the best interests of the people of Mesquite and to carry forward in the general election, I think we have to change the outcome of what has recently transpired. Thank you.

[5:11 PM] Minutes:

Mr. Sweetin: One thing I want to note for Council that I omitted from my prior remarks is that I have spent the better part of my week on this and last week making sure we get the right answer, because there is no more critical issue

than elections in a democracy, and we want to make sure we have the right answer in our City. I went back and looked at every minute that I could find, every note that I could find from those prior meetings and it was never raised that this ordinance change was part of that package. I think Council member Hafen referenced that and so did Council member Withelder. When this was presented, it was presented as a change of date for elections to be held, not a change of calculating the elections, and that was never raised by any staff member, which to me was very surprising. I also note that I agree 100% this needs to be changed, and I will get to work on that. I have actually already been working on it, so it will be on the next agenda.

[5:12 PM] Minutes:

Council member Hafen: This is not part of the canvass motion, but just as a point, there has never been any candidate, whether it was a Mayor or Council person, that has gone forward out of the primary that did not have 50 plus 1% of the actual people, that means mail in ballots, early voting and the day of the election. Never happened, okay. So the intent of this whole thing is to respect the right of the voter, and this is just my opinion, the only fair way to do it, is the six people go forward because nobody got 50 plus 1% of the actual people that went through the door to cast a vote. Now that is just for me, but as we discussed with Municipal Code 1-8-19 and NRS 293(c).1754, the intent of those it's a one seat election. It's not three different seats and one person can cast three votes. That's why -- and I appreciate our attorney. He gives us good advice. He gives us both the arguments, both sides of it, and lets us decide, and that is what he has done today. As he said, he is already working on an ordinance that is legally right, because I mean anybody can take this one that we have and spin it upside down inside out, but the intent of it is 50 plus 1.

Council member Hafen moved the Council canvass the June 14, 2016 Mesquite Primary Elections based on the submittals from the City Clerk and that the six (6) candidates move forward in the General Election.

Passed For: 3; Against: 0; Abstain: 2 (Delaney and Rapson); Absent: 0

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3. Public Comments

[5:14 PM] Minutes:

Mayor Litman opened the meeting to Public Comments.

[5:14 PM] Minutes:

Mike Benham: I want to thank you for what I believe is doing the right thing. I especially want to thank Mr. Hafen. I know we have had some run-ins in the past, but I think you have all stood up and did a great job. For someone to admit that you made a mistake, that is huge to me, because I have made mistakes in the past, too, and you just own up to them and say, hey, I made a mistake. I am going to put it right. We are going to move on. And I think you will gain a lot more respect from the public doing it this way than it was the other way. So thank you very much. I appreciate it.

Adjournment

4. Adjournment

[5:15 PM]

Minutes: Mayor Litman adjourned the meeting.

Allan S. Litman, Mayor

Tracy E. Beck, City Clerk