

EAST BETHEL CITY COUNCIL MEETING

August 17, 2016

The East Bethel City Council met on August 17, 2016, at 6:00 p.m. for the special City Council meeting at City Hall.

MEMBERS PRESENT: Steve Voss Ron Koller Tim Harrington
Brian Mundle Tom Ronning

ALSO PRESENT: Jack Davis, City Administrator
Mark Vierling, City Attorney
Mark DuCharme, Fire Chief

1.0 Call to Order The August 17, 2016, City Council special meeting was called to order by Mayor Voss at 6:00 p.m.

2.0 Adopt Agenda **Harrington stated I'll make a motion to adopt tonight's agenda. Koller stated I'll second.** Voss asked any discussion? All in favor say aye? **All in favor.** Voss asked any opposed? That motion passes. **Motion passes unanimously.**

3.0 Consider Disciplinary Action Relating to Personnel Matters Davis presented the staff report, indicating under Minnesota Statute 13D.05, subds 1(d), 2(b), the Council must close the meeting for the discussion of the allegations or charges of misconduct against the individual in question. If the meeting is closed and the members conclude discipline of any nature may be warranted, further meetings or hearings relating to the specific charges or allegations that are held after that conclusion is reached must be open. This type of meeting must be open at the request of the individual who is the subject of the meeting.

Request for Open Meeting by James Rogers Davis asked Mr. Rogers, do you want the meeting open or closed. James Rogers answered open. Davis stated thank you.

Davis continued presentation of the staff report, stating on July 20, 2016, Mr. James Rogers met with Fire Chief Mark Ducharme, Deputy Fire Chief Ardie Anderson, and District Chief Dan Berry to discuss performance review matters and a reassignment from Fire Station 2 to Fire Station 1. The reassignment to Fire Station 1 was based on the need to balance the personnel numbers at each station. Fire Station 1 had three less members than Station 2 due to transfers to the Coon Lake Beach Station. Mr. Rogers was among three of the members from Station 2 whose residence was in closest proximity to Station 1 and those are the members that were transferred.

Davis explained that Mr. Rogers agreed to the transfer at the July 20th meeting but on the following day and on July 22, 2016, refused to accept the transfer. These refusals are indicated in Attachments 2.A, 2.C, and 2.D in the meeting packet. These actions constitute a Major Offense, First Offense, per Fire Department Personnel Policies and Rules. As a result, Mr. Rogers was given a 30- day suspension, as indicated in Attachment 1.

Davis stated Mr. Rogers was contacted by Fire Chief Mark DuCharme by phone on August 4th and August 8th and did not recant his refusal to accept the transfer on either occasion, as indicated in Attachment 2. B. Further, On August 12, 2016, Mr. Rogers did not accept his unconditional transfer to Station 1 as indicated in Attachment 8. These actions, in staff's opinion, constitute a Major Offense, Second Offense.

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Davis stated staff is recommending that Council consider termination of Mr. Rogers for insubordination. This recommendation is based on 9.6 of the Fire Department Personnel Policies and Rules and City Personnel Policy 3.1 (4). The Council is requested to review this matter. Mr. Rogers will be provided an opportunity to speak and furnish a written response. At the conclusion of the discussion, Staff is requesting that Council take appropriate action based on their findings.

Voss asked Mr. Rogers if he would like to speak to the Council.

James Rogers, 21025 Davenport Street NE, stated four years ago, when he decided to apply here, he brought a host of things to the table. He has a lot of experience and a lot of training. In a few months, he'll have 30 years in the Fire Service. Rogers stated he is a full-time firefighter EMT in the City of Brooklyn Park in which he runs 24-hour shifts. Basically, ten days out of the month, he is on shift in Brooklyn Park. Rogers stated with that, the remainder of the month he has availability here in this City. He holds several certifications. A few of them are Fire Officer, Fire Instructor, Apparatus Operator, as well as National Registered EMT with variance training. He is also State and FEMA certified as an emergency manager, holds a State Firefighters License, and as a Minnesota State Fire Instructor for over 25 years, has taught several different disciplines within the Fire Service all over the state of Minnesota, North Dakota, Wisconsin, even Nebraska, and those were by request. Some of those classes included leadership tactics, hazardous materials, and big water movement, just to name a few. He has a wide range, in his opinion, of talent when it comes to that.

Rogers stated he has heavy involvement in the Fire Explorer Program and as you may have seen with the recent waterball competition, is one of only two firefighters from East Bethel that actually placed that and had it running for three years. He is also involved with the East Bethel Fire Department retirees group once a month as one of only two firefighters that actually keep that program going that honors the retirees for their service.

Rogers stated he is in front of the Council wondering why he is up for termination or for that matter, even suspended. For the time he has been in the Fire Service, he knows what an order or directive is and never once took that from the discussion that Mark DuCharme had placed. The Chief's directive or an order is not out at an emergency scene. Rogers stated basically what he is saying is if it wasn't out on an emergency scene, it can't be taken as a verbal directive or order. He received no such documents stating that it was a directive or an order.

Rogers stated he did agree to go to Station 1 at first. He stated to me that we needed the expertise, the knowledge, and the leadership down at Station 1. All this while saying we need the numbers down there. As luck, or unluck, would have it, there was an incident that occurred not even a day later and it reminded him of the problems that are going on down at Station 1. So the reason he backed down is for one simple reason. It is a hostile and toxic environment down at Station 1 that has not been taken care of in over a year. He felt this put him in some sort of jeopardy. Rogers stated after the incident, within that day of discussing it with Chief DuCharme, moving to Station 1, he could see how bad it was going to be moving there and he decided to state to him that he would not go there based on those reasons.

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Rogers stated instead of a meeting that he thought he was going to get, and discussion, what he got was a suspension. The meeting that he had, he sat next to him (Chief DuCharme) at

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a table and all he (Chief DuCharme) did was slide a piece of paper to him that was unsigned that said you have a 30-day suspension and this is all I'm saying. He (Chief DuCharme) wouldn't discuss it any further.

Rogers stated he filed a grievance with the City Administrator and was later told that grievance would stand with further disciplinary action of termination, recommending termination. Rogers stated he received no due process to investigate this grievance. He did request his employee file, by letter, and found no other issues or documents noted. This is why he is dumbfounded in the process taken with no explanation in which he believes he's been targeted by Chief DuCharme.

Rogers stated he has an exemplary record on the job here, in which firefighters have stated they like him on their team. He stated he may speak up at times but never compromise the job as a firefighter. Policies that are being spoken of, that you've heard so far tonight, he is only going by the only policies and by-laws. There's policies and by-laws that by consent agenda, according to what he's finding on line with the Council's meeting minutes, back in January 20 of this year, they were approved under that consent agenda. He has yet to receive those policies. Rogers stated it was promised by e-mail but he could not follow any of the new policies due to the fact they were not provided so he has no idea if what he is saying here is legit or what Davis is saying is legit because he could not find some of those things.

Rogers stated the other thing he looked at was response times. He is a little less than 2.5 miles from Station 2. When you look at the drive time, and he did it several times in the middle of the night, morning, and rush hour traffic in the afternoon, the most time it took him to get here was 4.5 minutes from where he lives. To go to Station 1, it would have taken, at worst, almost 14 minutes and at best it was almost 9 minutes.

Rogers stated he is standing here in front of the Council saying that he was willing to put his life on the line for you to protect you in this City and now because of what he was willing to do and because he wanted to protect his best interest from going to Station 1 where it was, in his opinion, very toxic, is now up for termination. He stated he doesn't understand it. He doesn't get it. Rogers stated if there was a due process there, if they would have discussed with him certain things that would have been in play to move down to Station 1, he even had a Chief Officer say, 'We're going to talk to a firefighter about you moving down there so this doesn't happen.' Rogers asked if that's recognized, why is he not being recognized for his concern?

Rogers stated he has been through this a ton with management and would never come forward to a firefighter and treat them this way. Not once. He stated he doesn't know how the Council feels, but he was willing to sign up for less than \$11 an hour to come and protect the citizens of East Bethel and to use his skills and knowledge. Rogers stated in some cases, there have been incidences where, like in one case a 12-year-old girl is living because he was able to cut her out of a car. Very difficult stuff to deal with. He stated he does not think this is just. He does not think he was heard and he does believe that he has been targeted. He stated he does not know why or what people are afraid of. All he wants to do is do the job and that's it. Rogers asked the Council if they have any questions.

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Ronning stated Rogers mentioned due process and asked if he has a collective bargaining agreement in Brooklyn Center and is represented by the union. Rogers answered yes, he

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does have a union in Brooklyn Park and the due process he is referring to is not necessarily by union but by policy. Rogers stated when looking at policy, depending on what you read, after filing a grievance there is a meeting set up afterwards and that never happened. So that is what he is going by. Rogers stated, again, he has old by-laws and policies that he's following. Everyone in the Department has the old ones and we have never received the new passed by-laws.

Ronning asked if Rogers is aware of the term 'at will employee.' Rogers stated yes, he is familiar with that. Ronning asked if he is an at will employee at the Fire Department. Rogers stated everyone here is unless they are under a collective bargaining agreement.

Ronning noted Rogers stated something he didn't quite get relating to a hostile environment at Station 1 and that he felt threatened for some reason, but he didn't catch the reason. Rogers stated what he is referring to was a little over a year ago when there was an incident where a particular firefighter at Station 1 was very bullying in his way of doing things. Rogers stated he'll just leave it at that, he's been very verbal about disliking certain firefighters, certain people. Rogers stated in general talk, when you look at certain ways that things are being handled at Station 1, it is a toxic environment, a huge negativity that Station 2 never had. Rogers stated in essence what he is telling the Council is we were a good working machine at Station 2 versus Station 1. That is his (Rogers) opinion on what he observed. Rogers stated there are firefighters at Station 2 that actually work things out if there's a disagreement. That doesn't happen at Station 1. What happens down there is a lot of backstabbing, a lot of going behind closed doors, a lot of storytelling, and he did not want to be involved in that environment. Rogers stated if things had changed it would be a different story. He is not saying he wouldn't have helped at Station 1. What he is saying is he didn't want to be involved in that toxic environment.

Voss stated Jim, you mentioned that happened a year ago. Rogers answered yes it did. Voss noted but your first response to the Chief was that you'd agree to the transfer. Rogers answered yes, because it was perceived things were quiet, you didn't hear anything going on. So the perception was maybe this will work out. Rogers stated I swear to you less than 24 hours it just blew up again and he could not believe what he was reading. Voss asked if there was another incident in his mind. Rogers answered yes. Voss stated he just wanted to make sure he was clear on that.

Ronning stated he assumes you must have a copy of an e-mail from Rogers at JimmyRogers194@gmail.com. Rogers stated that is correct. Ronning stated nobody else can originate that. It is to Mark DuCharme and indicates: *'After talking on Tuesday about relocating to Station 1, I didn't like the idea but was open to help where needed. That was until yesterday. Tammy sent an e-mail that, like it or not, was full of concern. Some things I already spoke to you about so this should be of no surprise to you. It was Jeremy's response to that e-mail, both openly and privately, that I have a problem with it when... After consideration of what was asked of me, I will not switch stations because I will not stand in the middle of his personal attacks and a play on his personal issues.'*

Ronning asked Rogers whether by refusing to transfer he would put himself right in the middle. Rogers answered no sir. If anything it is protecting him from being in the middle of that. Ronning asked Rogers wouldn't he have been away from it. Rogers answered no, he would have been right in the middle of it. Voss clarified it is a transfer from 2 to 1. Ronning asked and 1 is where the perceived issue is? Voss answered yes. Ronning stated okay, my mistake. Pardon. Rogers stated no worries.

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Harrington stated to Rogers you talk about this bullying. I've read this packet five or six times and I don't see anything about bullying. Jeremy Shierts made one little comment and it had nothing to do with bullying. Maybe you have a different definition of bullying than I do. Rogers stated he will explain that there is a lot of things you don't see that's in writing or on video. It's as simple as that. There's a lot of behind the scene things that go on as simple as, I'll give you a good example. An officer from Station 1 thought that Station 2 was lazy. Why are we being called lazy? Because he said we didn't want to do anything. Rogers stated he sat back for a moment and thought about it as that's completely untrue. If anything, we keep our Station 2 pretty clean and pretty in order. To say what he said, and basically spread it around the Fire Department does no good for anybody here. Zero. Rogers stated proper leadership would have stopped it. Would have said, 'You need to stop now.' And that is what he is referring to when it comes to that stuff. If it was stopped, there would be no issue and we would not be sitting here right now. There wouldn't be an issue.

Harrington asked Rogers if he went to his District Chief, which is the first thing you're supposed to do if bullied. Rogers stated you are supposed to go to the person. Harrington stated oh, to the person and then to the District Chief, I'm sorry. Rogers stated yes, according to what he was told, he's supposed to go to the person and when you tell the person just that, he thinks it a joke, an absolute joke. Harrington asked Rogers if he didn't get satisfaction, did he take it to the District Chief. Rogers stated he took it to the Lieutenant and she brought it forward and it was basically caboshed, it ended, because it had to do with 'personnel issues, we're not going to talk about it.'

Ronning noted Rogers mentioned the proper authority to correct it and asked Rogers if he sees himself as part of that proper authority. Rogers stated he has his opinions and sometimes if he has a gripe, sometimes it's just griping. But he will say he comes forward with some sort of solution, he tries to do that very much so. Rogers stated what he was hoping with his e-mail refusing to go to Station 1 is that it would actually spark another meeting to discuss what his concerns were. It never went that way and actually it was like crickets were out, he never heard a word until he got the phone call to actually go and meet with Chief DuCharme. What he mentioned was the leadership. With strong leadership, a lot of this would be curtailed and it wouldn't even fester. It's festered for over a year and that's what he doesn't understand. The operation of the Fire Department is to work as a team and there's been a wedge driven into this Fire Department that is so deep it's unprecedented. Rogers stated yes, he chose to back off from moving to Station 1 for good reason. Some of the stuff he already discussed with the Chief saying, 'These are the problems that are out there.' And his response was, 'We need your leadership, we need your expertise, we need your talent down here.'

Voss asked Rogers he would disagree with any of that, your leadership, your talent. Rogers stated he wouldn't disagree with that at all and thinks he can be as much controversial as he can help but he also would say as controversy comes up it is because he is speaking the truth. Rogers stated he would tell the Council he has experienced enough to where he can bring solutions and different ways of doing stuff.

Voss stated Rogers had commented there's a lack of leadership at Station 1 and one of the reasons why, for the transfer, was to bring his leadership there. And yet, it has the appearance that Rogers is backing away from a leadership challenge. Rogers stated what he is speaking to is not so much the challenge as he can take the challenge. What he said was

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'you need strong leadership.' We don't have that strong leadership as there are very few and far in between when it comes to that strong leadership.

Rogers stated to actually control what is going on in the Fire Service, you're never going to get 30 people together and have them agree on one single thing. There's going to somebody that's going to disagree, not going to like what's going on. He stated he is a part of that, there are things he doesn't agree with, but he goes forward because that's what the group decided to do. When you have that disagreement and it festers and it festers so bad like a lump of cancer that it goes out of control, that's what he is referring to. Rogers stated it's not that they can't have controversy, you have it all the time and in everyday life. It's the fact that without strong leadership, he was not going to make a huge difference. As a matter of fact, he would have felt going to Station 1 at this time that he would have been targeted down there too.

Ronning stated this is not a trick question but this is a matter of chain of command and following directions. He stated he has gone through all of the e-mails and threatening and bullying and things with no description. Ronning stated he is a retired UAW union guy so he is sympathetic with some of these things and how it goes but you can't just say, 'It was no good. That guy didn't like me or something.' Ronning asked what happened and stated if you don't have facts, dates, times and things, it's kind of an empty complaint. He felt that is lacking in what he is relying on in the package for the Council. Ronning noted Rogers mentions a group decision that he would follow through but he chose not to follow through from the top of his leadership.

Rogers stated he would refer to the incidents that he was basically stating there without anything backing it up is what happened a year ago. From that point on, it has not been a good atmosphere around here. He stated he has tried to make due. He stated to have you read it, to be honest, it would have been a thick packet and he thinks the Council would not have read the whole thing. He thinks the Council would have gone for the CliffsNotes part of it. Rogers stated he focused on what was current. To have an incident come up like that and explain it, he honestly doesn't know if everybody would completely understand. Rogers stated he has to live it.

Ronning asked Rogers if he brought those concerns up to Chief DuCharme? Rogers answered yes, several times. Ronning asked on the day that you rejected the assignment? Rogers stated the day he rejected the assignment, that was to stir a meeting. He asked the Council to keep in mind this was supposed to be done August 1st. All of this had transpired before that date so there's nothing that said he wouldn't have changed his mind to go back down to Station 1 by August 1st. Rogers stated it surprises him how fast this process took to go from a suspension and termination. He stated a Major Offense is all in interpretation and if you look at the by-laws that he has, it really refers to life safety.

Davis noted it also says insubordination, Jim. Rogers added with life safety. Davis stated no, that's separate from life safety. Rogers stated basically the way it's reading is it is supposed to protect what? Davis stated it's supposed to protect things where you're given a directive and assignment and you refuse to do it. That's a gross dereliction of duty, I think, in the opinion of most people that have read this. That's the incident that we're really discussing. If there's insubordination here, it may occur again.

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Rogers stated with all due respect, Mr. Davis, where's the other insubordination noted in my file. Davis stated there is no previous insubordination and there really doesn't have to

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be because once you start the pattern, where does it end. That's the question that you have to convince us or the question we have to have answered, in my opinion.

Rogers stated the question to him, as Davis is stating it, there wouldn't be an issue. The issue is that toxic environment and basically his safety. He asked so what does it come down to? If he's given a direct order to go into a fully involved house that's burning and he's told that somebody's inside of it but he knows deep in his heart it's a recovery, do you think I can refuse that? Or does he risk his life? Rogers stated that is what he is getting at. There are differences. This is not a full scale that he completely and absolutely will never listen to an order again. It's not there. Rogers stated he has been in this too long to know that out on a fire scene, an emergency scene of any sort, when an order's given, you have to make that educated level of decision. If his safety is at risk, you have to throw up a flag. If it's explained to him different and he understands then he will go forward with it.

Ronning stated just so you understand, that policy says 'and or' and each one is separated by an apostrophe. That makes each one individual. It is an 'and or' so you don't have to have all of them. You can have just one of those fit the target. Rogers stated what he would say to that is never once in that conversation at that meeting with the three Chiefs did he ever, ever take it as a directive or an order. It was almost like a gentlemen's agreement. It was this is what we're thinking about doing and I sat there for a moment and I thought about it and then this whole list was given to me about why and I agreed to it. What occurred after that, I had no control over but then I started to see what kind of a situation that would put me into. That's why I stopped it. If there would have been a meeting that I could have talked to Chief DuCharme about this directly and been very up front with him about my concerns, I think something could have been worked out. There's no doubt in my mind.

Ronning asked would Station 1 be similar to a burning house with a directive to go in when you know it's a recovery instead of a rescue? He also asked what endangerment were you in? What harm were you facing by Station 1? Rogers answered no support, no backing, having no idea if I was going to go into a situation that somebody would be there. Ronning asked and you knew that before you got there? Rogers answered yes, undoubtedly. There is attitude down there that is unprecedented when it comes to the safety of others.

Voss stated can we pause for a moment because you've shifted your discussion from one individual and your concern over your safety because of one individual's actions to what you just said is the entire Station 1. That's exactly what you just said Jim. Rogers stated okay, well, one person that I'm referring to actually has a following. He stated he is not saying it's the whole Station, he can't. Rogers stated Voss is right and he apologizes for that. But it's the feeling that you go down there without that support. Rogers stated he knows for a fact Station 2, when he is there, they are all in it together. There is no individualism, nothing, and that's by, in his opinion, strong leadership. We do have it at Station 2 but what he doesn't understand is when he has a concern, when he said he didn't want to go down there, that there was no discussion. It was like somebody licking their chops at a steak and just dove into it. Rogers stated he does not understand why this couldn't have been discussed.

Voss asked, with what Rogers just said about being concerned for his safety, how much concern do you have for safety of others at Station 1 if that's the situation? Rogers answered you will never ever catch him saying that he will not be there to back up a brother or sister firefighter, never once. He stated he took an oath, a very deep oath, and there is no

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way he would ever back down on that. Voss stated okay.

Ronning stated for an example and nothing else, he did arbitration and represented the union in arbitration for ten years. So, they'd have an arbitrator and if he was that arbitrator listening to what Rogers said, he would ask why didn't he just ask for the meeting? Why did he put himself in harm's way instead of asking for the meeting? The arbitrator would have asked that. Rogers agreed an arbitrator would have. Ronning asked what would your answer be? Rogers stated his answer would be that he would be at that meeting. Ronning stated the question is, why would you put yourself in harm's way by rejecting, refusing the instruction, and then say you did that to create a meeting? Rogers answered because with the process that's put forth in our by-laws, it would spark a meeting. Ronning asked what process is there in the by-laws that says if he wants a meeting he just refuses something? Rogers stated it's a grievance. Ronning stated it's probably called a grievance but you don't have a grievance procedure without a contract. Rogers stated it does state it in our by-laws and policies. Ronning stated okay and it is a good way to address it. It is a good outlet, a good tool.

Mundle stated he was curious about proper procedure, noting Rogers did agree to go to Station 1. Rogers replied yes. Mundle stated and you refused by sending an e-mail. He asked what would have been the proper procedure? To say, 'No, I don't want to go to Station 1?' Would it have been to, perhaps, approach Chief DuCharme and ask him, 'Can we talk about my transfer to Station 1. I don't know if I agree with this anymore.' Rather than flatly refusing. Rogers stated for what occurred, it was probably emotion that drove that e-mail. Rogers stated he is not denying what Mundle is saying would have been the proper thing. He explained when he says it would have sparked a meeting, that would have been somebody going, 'Hey, let's talk this out. We really do need you down here.'

Rogers stated as much as he could dig in his heels, he can forgive also. He explained some of the things he has been through, he would have figured it would have sparked a meeting or at least a discussion. Not necessarily with all three Chiefs but at least with Chief DuCharme. He felt there's a different way of actually handling the rapprochement, he gets that, but it's a two-way street also. This was all before August 1st when it was supposed to happen and if something would have been put into play, one Chief told him directly that they were going to talk to Jeremy about this whole thing to prevent anything from going on, which in his opinion is recognition that something is going on. That's the only way he can describe it. Rogers stated he doesn't expect any one of the Council to understand completely where he is coming from. That would be ludicrous to even assume. Rogers stated he does live it and this is how he feels. When he brings this forward and when he's mentioned things down the line about little things that are going on, disrespect, a lot of things and it goes unheeded, that's troublesome to him, very troublesome.

Mundle stated I understand what you're saying but we may be getting into two separate issues. One of possible insubordination and second of other issues that Rogers may have. So, we're here to ask questions and try to find out if insubordination did occur, not why it did.

Rogers stated if it was a directive, a true directive, a true order, we would not be standing here right now. I will assure you of that. I did not take that as a directive or an order. The reason I didn't take it that way is because it was like a gentlemen's agreement.

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Mundle stated but you had an assignment and you agreed to it. Rogers stated if you had

been in the meeting, I feel you probably would have taken it the same way. It wasn't anything of this is what is going to happen. It was this is what we're thinking about doing by August 1st because we need the numbers here. And, the spin-off to that was after all of this occurred, I started thinking about response times. Rogers asked what good is he, 14 minutes out from Station 1 and all the trucks are gone?

Mundle stated he doesn't know but that's not what we're here to talk about either. Rogers stated I get that but I have to look at the total scope of what is occurring and that is what I was trying to do. I was trying to look at that total scope. Rogers stated he doesn't know if any due diligence was done to figure out his response times. Mundle stated they are all excellent questions to ask but not at this hearing. Rogers stated he has to throw it out there because that's where he's sitting.

Davis stated let me address that real briefly and maybe we can get this off the table. He stated he has been told the response times were evaluated and they were made to the ones to get there the quickest. There's nothing perfect. Davis stated the other question to be asked is what does Station 1 do? How do they respond when they're down in manpower needs? If you're short and you can't answer the calls, another five minutes could make a big difference if you've got extra personnel there.

Koller stated he has been hearing a lot about Station 1 but nothing really specific about what's going on there. Rogers stated it's such a deep issue there he doesn't know if he can bring it up here, to be honest. This is something that occurred over a year ago and it should have been caboshed then but it hasn't been caboshed. He stated he has been trying to focus just on his thing and it just starts to spread. You start looking at every little thing and then you start wondering why it is being done the way it is. Rogers asked so, we need the numbers down at Station 1 so it made sense to suspend one person and then terminate him? I don't get that if you need the people.

Ronning stated you have to go back to the cause when you're making that comment. The cause you are aware of. Rogers stated what he is referring to is that he never ever interpreted it as a directive or an order.

Voss asked was there ever a time you weren't clear what the meaning of the statement was to transfer from 2 to 1? You talk about it not being a directive whether it's in a letter or form or whatever. I assume you are clear right away it is a transfer from 2 to 1. Rogers answered yes, he was clear about that but like he said it was just like a gentlemen's agreement. 'We would like. We are thinking.' Those are the words.

Voss stated then the next day that was communicated, or the next time? Rogers stated the next day it wasn't communicated. Actually, his communication that came out saying, 'Whoa, I am not going to be in the middle of this,' to summarize it, there was no communication after that. It was zip.

Ronning stated there were three instances here. One where you were in some fashion or other recommended, advised, instructed to go to Station 1. That's the first one. The second one is when you contacted and refused. The third one is your second meeting, I believe. I'm not hearing anything about any meetings or discussion about the need for meetings. Ronning stated Rogers is kind of making this tough for finding a way out.

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the meeting where he suspended me, I thought there would be discussion. The only thing he (Chief DuCharme) would do is slide this unsigned document to me and said, 'This is all I'm saying.' And, basically walked out of the room. Ronning asked who is 'he?' Rogers replied Chief DuCharme and that is not a discussion.

Ronning asked did you say, 'Can we talk about this?' Rogers stated he (DuCharme) said that's all he was going to say so he knew it wouldn't have been prudent to try to press the issue. Not at that time but he knew he could file a grievance against that suspension.

Ronning stated I don't think this is peripheral but the City puts a lot of money into training and has the highest regard for everything you do and thank you for your service every day. So, it's not something that's taken lightly for us to even have to consider this but I don't see any way out. It's about authority. Ronning stated how many levels of authority you have I don't know. He asked what authority do you specifically have in the Fire Department? Rogers stated as a firefighter EMT just that, firefighter EMT.

Ronning asked are you part of the decision making process? Rogers answered at times. Ronning asked are you part of the authority in the decision making process? Rogers answered not in the authority, only as an advisor. Ronning stated that's kind of it in a nutshell. You have authority to run businesses, to run cities, Fire Departments, and what have you and you just don't have the right to say, 'no.' You go and do what you're supposed to do and then you question it, or say, 'I'd like to discuss this,' or maybe you can get a discussion ahead of time.

Ronning stated the first action isn't to refuse. He asked Rogers do you disagree? Rogers answered he does. Ronning asked if the first action is to refuse? Rogers stated he is not saying that is necessarily the action but he disagrees with how Ronning is saying it. The reason why is because, the best way to put it is when it comes safety or something to your person, even the newest firefighter has a say. If they say, 'Stop. Time out. I don't understand something. Something isn't right here. You're ordering me to do something maybe that I don't even know how to do.' You have to speak up. What you're referring to is no matter what, military-wise, you have to do an order. In some cases, you know what, I agree with you. Especially with my level of training expertise, you don't have to explain a lot to me. Get this done. This is what I need. And, I have the tools and the knowledge to get it done without any direction. In a way, what scares me is that kind of what you're describing to me, in my opinion, is almost an abuse of power. That is doing what he did to this point really is. I'm beside myself. Rogers stated he sits back and I tries to look at it from that side. He even talked to other Chiefs that point blank said, in one case, 'I would be in trouble if I handled it that way.' Rogers stated he was trying to see it from that side. He had asked, 'Why would you be in trouble?' 'Because HR wouldn't allow it. I would be viewed upon as somebody that was targeting or trying to remove somebody for no good reason.' Rogers stated he asked for him to explain and he said, 'There is a process and you have to follow a process and if you had no idea that it was a directive or an order, I would have made sure in a contact after that. You would have been well aware that it was a directive or an order.'

Ronning stated I have a 'what if' for you. I know Chief DuCharme but don't know him really well but if I was him and gave you an instruction and you refused it, I wouldn't know where you'd be the next time I gave you instruction at a fire location or anyplace. One was just a simple reassignment to a different Station. Ronning asked Rogers what happens to your credibility? Rogers answered it is always on the situation. What is the situation? In

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this case, it was a gentlemen's agreement to go to Station 1 just to help them out. He even said it would be temporary and from that point it was like, you know, I can do this. I can help out. Rogers stated he didn't think it was a big deal until all of that stuff occurred by e-mail from a firefighter. That is the center of where he has a problem.

Ronning stated I'm looking at your July 26th letter/note to East Bethel City Administrator, *'Tuesday, July 18th, 5 p.m. I was asked to be at a meeting by'...oh, no, second paragraph: 'DuCharme stated this, 'We would like you and one other firefighter from Station 2 to Station 1 because we are low on numbers at Station 1.'* Ronning stated Rogers did agree, according to the note, and asked what happened with the other person? Did they go? Rogers stated he was unaware but knew he (Chief DuCharme) spoke of one other person at the time but he was unaware of who that person would be.

Harrington stated there were two other guys that went down to Station 1 that were at Station 2. There was supposed to be three of them. Two other guys reported to Station 1. Voss stated and the other two agreed to the transfer. Harrington stated yeah.

Harrington stated Mark's the boss and can tell you what to do. That's plain and simple. He tells you to go to Station 1, you go to Station 1. Harrington stated he has been there every week almost for being the liaison and does not see any toxic environment. They might not want to talk to him but you can tell if something is going on and there's nothing going on down there. Harrington stated he does not think there's a toxic environment but that might be the way Rogers feels.

Rogers stated what he would tell Harrington is that he doesn't see it because he is a person of authority with another person of authority. Rogers stated he can tell you from experience being down there, it is all hush-hush, everybody is on their best behavior; they're walking on egg shells. It happens. Harrington stated the first week he was down there he was jumped by one of the firefighters so don't say it's because he is an authority. He stated it kind of threw him for a loop so don't say 'authority.'

Voss stated the Council needs to bring this back to the matter at hand and that is the issue of the Major Offense related to insubordination. He stated he has never been in the military but understands a little bit about order and structure in an organization and the minute that insubordination is not a Major Offense in any organization, you are dooming yourself because that is what structure is. He felt for Rogers to say insubordination is not a Major Offense is wrong because if you had orders and just didn't follow orders, why do you have an organization then.

Rogers stated he understands that but to be ordered to, for example, sweep the floor and then something got busy and you didn't do it, does that mean you defied the order? Voss stated we are not talking about that. Rogers stated in a say we are because it's the situation. That's what he is trying to convey and, again, he does not believe the Council will completely understand where it's coming from. He will never say they will completely understand because he would be in a tough seat if seated where the Council is.

Voss stated he appreciates the fact that none of the Council can understand what goes on within the Department. The Council is not part of the Department and not there every week or a number of nights a week. The Council is not involved so the best we can do as Councilmembers is gather information, talk to as many people as we can, get enough of a broad perspective as we can, which I believe many or all of us have done. Voss stated the

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Council is not going to say they understand the ins and outs either but the point that matters seems to be fairly clear. It is that Rogers refused to follow a direct order twice. And, I guess we don't see you disputing the fact that you didn't follow those orders.

Rogers stated no, he's not disputing that because of what the environment is down there. Voss asked because you feel it is an unsafe environment down at Station 1? Rogers replied yes and stated if assurances, he is not saying a contract or anything like that, but if assurances that something would have been put into place to prevent some of those things, it never would have been an issue. Not once.

Voss stated okay and asked if there are other questions for Mr. Rogers from Council? Hearing none, Voss stated okay, thanks Jim. Discussion?

Mundle asked do we have a definition of 'orders?' I would like to see a definition of what an order is being given just so that's clear. Mundle asked does it have to be a written statement? Or, is what transpired between them absolutely an order? Ronning stated if it isn't defined, it isn't as far as what type. Voss stated I think it's whether the communication is clear. It's not hearsay. It's a direct statement, noting eventually it was written.

Mundle stated he does understand that there's an offer and acceptance between the two that the superiors made a suggestion, he (Rogers) agreed to it, and so now that constitutes an order that they both understand clearly. Ronning stated it would be tough to acknowledge and say, 'Okay, I'll be there,' and then on the way decide that no, I'm not going to be there. There's no reference to any contact or anything.

Voss stated the other thing too, with regard to the statement, and I can kind of picture the situation, is when you're in management and you want to move people around. You don't present it to them like, 'You're going there and you're leaving tomorrow.' That's maybe the old way of doing things but you do it in a personal manner and that's what it sounds like the first conversation was. It was in a personal manner.

Mundle stated yeah, ask, see if they had any concerns, no major concerns were brought up, and both parties agreed. Koller stated that's the same as saying, 'Do it.' Voss stated it is but a nice way of doing it so he thinks the message was clear at the first meeting. Koller stated in his position where he works, he deals with a lot of people he doesn't like but he is required to. Voss asked anything else? Staff is looking for direction to the recommendation.

Ronning stated in reference to military stuff, it takes him back and reminds him of some instances where that insubordination might get you shot. When you're taking incoming and you're told, 'Get out and man the guns.' You do it. You don't say, 'I feel threatened.' You get out there and stand out in the open and do what you're supposed to do. That's one piece of it but it's all the same. Ronning stated when authority instructs you to do something, you do it and then you question afterwards. You try to resolve it after.

Harrington asked Jack, what do you need a motion? Davis answered yes. We need a motion or some direction to act on this personnel matter. Mr. Rogers' suspension is up on the 21st or the 22nd so we need some resolution to the matter going forward.

3.0
Consider

Harrington stated I'm going to make a motion to consider termination for Mr. Rogers for insubordination. Voss stated I'll second the motion. Voss asked discussion?

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Vierling asked Harrington if by 'consider' he means to terminate now. Harrington stated to terminate.

Voss asked discussion? Ronning asked is there any option? Voss stated there's always options. Ronning stated I'd look for some options but I don't see any regret or anything about it. Voss stated I think a big part of this is integrity to the entire Department. When a reasonable order is made and not followed, that can't be continued or tolerated. If we don't have that we don't have order in the Department.

Voss asked is there any more discussion? To the motion, all in favor say aye? **All in favor.** Voss stated any opposed? That motion passes. **Motion passes unanimously.**

**4.0
Adjourn**

Harrington stated I'll make a motion to adjourn. Mundle stated I'll second. Voss asked any discussion? All in favor say aye? **All in favor.** Voss asked any opposed? Motion adjourned. **Motion passes unanimously.**

Meeting adjourned at 6:58 p.m.

Submitted by:

Carla Wirth

TimeSaver Off Site Secretarial Inc.