

Councilperson Anthony F. Hershey  
101 W 8th St.  
Glenwood Springs, CO 81601

May 20, 2020

City Council  
101 W 8th St.  
Glenwood Springs, CO 81601

Fellow City Council Members:

I write to you concerning the special meeting held on May 14, 2020 and your subsequent call for my resignation (May 18). One thing we can all agree on is the executive session highlighted tensions amongst council as well as with the city manager and attorney. Where we disagree is what went wrong. As for your call for my resignation, in the words of General McAuliffe almost 75 years ago during the Battle of the Bulge: "Nuts."

I'm sure you all have grown weary of hearing about Colorado's Open Meetings act, but it seems this council may need a refresher. Colorado's Open Meetings act, specifically C.R.S. 24-6-402 lists topics that may be discussed during Executive Session. By omission, anything not on that list may not be discussed during Executive Session. By state law, only the following matters may be discussed during Executive Session:

- (a) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the local public body has a personal interest in such purchase, acquisition, lease, transfer, or sale;
- (b) Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to satisfy the requirements of this subsection (4).
- (c) Matters required to be kept confidential by federal or state law or rules and regulations. The local public body shall announce the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.

(d) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(e)(I) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.

C.R.S. 24-6-402(4) et. al.

Interestingly, the agenda for May 14 (special meeting) only listed 27th Street for executive session. Covid-19 was a separate non-executive session item that was added to the discussion. I don't believe it was properly noticed. Regardless, as you all recall in the aforementioned executive session we took up the exceedingly broad topic of "COVID-19." While this is an important issue and is certainly ripe for discussion, all discussion should be public as it does not fit any of the enumerated topics for an executive session. More importantly, the public has a right to know our positions on these issues and be directly involved in this process. Not only does that create buy in, it is also the right thing to do. There is no need, and it could violate the law, for the council to exclude the public from these discussions.

Had the executive session truly been limited to the city's response to COVID-19 there would have been less of a problem. Instead, what occurred was a shocking display of partisanship, acrimony, and disparagement. Here is just a small sample of what I am referring to:

1. At least one local business was disparaged.
2. Multiple individuals stated the Board of County Commissioners (hereafter, "BOCC") was doing nothing related to the variance request (despite the newspaper and the meeting clearly indicating otherwise).
3. Multiple individuals challenged the integrity of, and levied false accusations against, the Chairman of the BOCC, who is up for reelection this year. He was also personally attacked by a member of council.
4. A member of council openly asked how "we" could force the duly elected Garfield County Sheriff to do what we wanted.
5. The City Manager inappropriately injected her political views into the discussion.
6. The City Attorney, who is currently running for public office, engaged in this partisan display instead of advising to restrain the meeting's content.

7. I was removed from the zoom video meeting without any vote or other sort of due process, and if I wasn't intentionally removed then the meeting should have been suspended until I was able to rejoin.

On May 15 I learned from several sources that the City Manager and City Attorney were upset that they could not help the County draft the requested COVID-19 variance, an issue clearly beyond this Council's authority. It is my understanding that our attorney emailed the County Attorney on May 14 and leveled an accusation that the County's plan was to "do nothing." He was asked what he was talking about. I am concerned that the issue of a county variance is far beyond the purview of this Council's authority.

Doing "nothing" was clearly not the BOCC's plan as on May 15, 2020 the County requested a variance from Governor Polis. Any implication that the County or its Commissioners planned to do nothing is concerning because it means either the people who should have had the information apparently failed to read the local newspaper or listen to a BOCC meeting just days before. After I was removed from the meeting I called a representative of the County and asked what the plan was: as you were all bickering, speculating, and jockeying for political power, the County was drafting their letters and taking action to protect all the citizens of Garfield County.

This council has accused me of violating our "Executive Session" on May 14 by making this inquiry of the County. I would like to clarify several points. When I questioned the County what their plan was I was not part of the meeting. I had been "thrown out" or disconnected electronically by the Mayor who was hosting the meeting. Secondly, I take significant offense that the council thinks I violated executive session rules when the discussion occurring during that session was far afield from what is allowed under state law, nor was the topic, in my opinion, properly noticed as required. I understand the importance of executive session(s) and to keep information confidential if we comply with the limited subject matter noticed and under the guidelines enumerated above. But in this case, if anyone should be ashamed, it is the members of council that are allowing discussions like the one on May 14th to happen in secret.

On May 16, 2020, the Mayor contacted me and told me I should resign. He then threatened that if I did not do so the rest of the council would write a letter, publish that letter in the newspaper, and my real job would be in jeopardy. Threatening my career and livelihood to get me to resign is not appropriate, and it borders on something far more serious. He even admits this in a later email.

On May 18th (late at night) I received an unsigned vitriolic letter apparently drafted by council and sent by the mayor demanding my resignation. This letter sets out your subjective grievances about my service as an elected official. There is no statutory right of removal, and you cite none; I serve the People of Glenwood Springs who elected me. Further, the assurance that the council has unanimously made this decision seems to violate Colorado open meeting laws, and you have some explaining to do.

Your accusations are frankly nonsense. I have only missed one scheduled City Council Meeting because I was ill, and, as for board meetings held during the day, I have a real job and can't make myself available during every workday, especially when the discussion is about another spending project instead of fixing our streets. Yes, I disagree with the majority of council on multiple issues, yes, I often argue those issues passionately. I am straightforward and blunt, and maybe that is why I was elected. Unfortunately for you the People elected me to the City Council, and only they can remove me. So, in response to your nasty letter threatening me to resign: NO! Not in your wildest dreams.

Here is my plan of action as to how to more properly restrain executive sessions: (1) the city attorney should immediately resign due to a conflict of interest and dereliction of duty; (2) until such time as a new attorney can be hired, council should suspend all executive sessions and should consider a plan to limit the content of executive sessions if they ever resume in the future. It is important that this City is run under the "bright lights" of public scrutiny. "Coffee with Council" is a poor substitute for actually governing this city in accordance with state law and the transparency which we owe our citizens. Open meetings, by their nature, are a safeguard against bias or misconduct of those entrusted with the public good.

The citizens of Glenwood Springs and the rest of this country face the challenges of COVID-19. During these unprecedented times, we owe it to our citizens to navigate city governance with as much transparency, honesty, and integrity as possible. While we may disagree about many things, we should engage wholeheartedly in our mission, not infighting or kibitzing from an exclusive clubhouse. Let none of us lose sight that we were elected to represent all of the citizens of Glenwood Springs. It seems six people represent half the public view and one person represents the other half. People want you to fix the streets and figure out a way to deal with the partially self-inflicted \$6,000,000 budget shortfall. Instead of trying to get me to resign, please try listening to the other half of the public opinion. We owe that to the citizens of Glenwood Springs.

Sincerely,

Anthony F. Hershey

Anthony F. Hershey  
GLENWOOD SPRINGS CITY COUNCILPERSON