

MINUTES
CITY COUNCIL MEETING
March 5, 2012
5:30 PM
Council Chambers

MEMBERS PRESENT: Mayor Stiehm. Council Members Brian McAlister, Jeff Austin, Steve King, Roger Boughton, Judy Enright, Marian Clennon and Council Member-at-Large Janet Anderson.

MEMBERS ABSENT: None

STAFF PRESENT: Jim Hurm, Tom Dankert, Jeanne Howatt, Craig Hoiium, Jon Erichson, David Hoversten, Mickey Healey, Kim Underwood and Brian Krueger.

OTHERS PRESENT: Post Bulletin, Austin Daily Herald. Marv Repinski. Public.

Moved by Council Member Austin, seconded by Council Member King, approving the agenda. Carried.

Moved by Council Member Boughton, seconded by Council Member King, approving the minutes of February 21, 2012. Carried.

Marv Repinski, 1005 4th Avenue NE, passed out a draft proclamation and asked Council to consider its approval which recognizes St. Olaf Pastor Ron Barnett who is leaving Austin. Mayor Stiehm noted there are two ministers leaving but is hesitant to approve this as Council has not done this previously. Council Member-at-Large Anderson asked that this be discussed at the work session. In the spirit of fair play, stated Council Member King, we would be going down a slippery slope if we approve this. Council Member Boughton also suggested this be discussed at the work session level.

Mr. Repinski said he has been in discussions with the owner of G&R Trucking, and while he was criticized for his statement that the owner was lacking in managerial skills, Mr. Repinski said he has received phone calls from people saying he was correct. Mr. Repinski said he has been working with DCA Director John Garry, who has funds available from the HRA and the Hormel Foundation, and Jon Erichson so that Austin does not lose this business.

Moved by Council Member King, seconded by Council Member-at-Large Anderson, approving the consent agenda as follows:

Licenses:

Cab Driver: Stephen Voogd, 1408 3rd Avenue SW, Austin
Concrete: H&L Brothers, Blooming Prairie, MN
Concrete: Hutch & Sons Builders, Austin
Excavation: H&L Brothers, Blooming Prairie, MN

Master Plumber: C&C Mechanical, 3514 110th Street, Oronoco, MN
Master Plumber: Ellingson Plumbing, Heating, Air Conditioning, Alexandria, MN
Sign Installer: Theissen Sign Company, 611 10th Drive SE, Austin

Claims:

- a. Pre-list of bills.
- b. Credit card report.
- c. Troy Nelson. This claim was forwarded to the city attorney to protect the city's interest.
- d. John Karnes. This claim was forwarded to the city attorney to protect the city's interest.

Carried

The City has acquired the former Budget Oil at 501 Oakland Avenue East as part of the flood mitigation program. As part of the acquisition, the City retained \$25,000 for environmental issues when the building was razed. The soil was tested and the MPCA has requested further investigation to determine the extent of contamination from the underground storage tanks. The City has received the following proposals for additional testing:

Contractor	Bid Amount
West Central Environmental	\$6,382.25
Widseth/Smith/Nolting	\$9,985.25

Council Member Clennon asked if this funding could be used for the other gas station site (Sinclair on North Main Street). City Engineer said that would be an eligible site, but we are not at that point yet.

Council Member Enright asked if the petro fund could be used for actual clean-up. Mr. Erichson said it could. Mr. Erichson further explained that the petro fund is supplied through a one-cent gas tax.

Moved by Council Member Boughton, seconded by Council Member Enright, adopting a resolution awarding the bid to West Central Environmental. 7-0. Carried.

Moved by Council Member Austin, seconded by Council Member King, setting a public hearing for Lansing Township annexation area sanitary sewer assessment for two properties, Project 1-B-07. 7-0. Carried.

In conjunction with the street project on 4th Street NW, Council is requested to approve a resolution restricting parking on that street. The resolution is required when accessing Municipal State Aid Funds. Parking will be restricted on both sides.

Moved by Council Member Austin, seconded by Council Member Enright, adopting a resolution restricting parking on 4th Street NW. 7-0. Carried.

Mayor Stiehm stated the City-of-the-Whole has discussed the next issue on the agenda at a work session, that being the clarification of the chain of command for the city administrator as the department heads' immediate supervisor.

Council Member King objected to the wording in the draft resolution and suggested: “**NOW, THEREFORE, BE IT RESOLVED**, the City Administrator is hereby granted the authority to manage, direct and supervise employees of the City of Austin ~~either directly or through department heads and their subordinate supervisors~~ *in cooperation with or in the absence of the department head or supervisor.*” Mayor Stiehm noted the wording in the draft resolution is from the position description. Council Member King said usually department heads have more expertise in their area and could cooperatively work together.

Council Member Boughton cautioned using the term “in cooperation” as that might confuse the issue.

City Attorney David Hoversten agreed with Council Member Boughton. He noted that the point of the resolution is for depicting the city administrator’s duties of supervision of the activities of all departments. He stated that there are times when the city administrator has to adopt policy or bring policy to fruition through direction to the department heads. In that case it would be a matter of direction. Mr. Hoversten acknowledged the history of cooperation between the department heads and the city administrator – it is inherent within the city – but sometimes the chain of command is lost in the dust. The resolution lays out who has authority, and Council will need to decide who has that ultimate authority. Mr. Hoversten acknowledged that the Council has the last say, as they have the power and authority to direct the city administrator.

Council Member Clennon stated that the City Code section on the city administrator does not discuss supervision. Mr. Hoversten answered that Section 2.08, Subd. 2 does give authority “as the Mayor and Council may grant him or her, consistent with the Charter and City Code.” This ordinance grants the authority from the Mayor and Council to adopt the proposed resolution.

Council Member Clennon said she agreed with Council Member King, i.e., that the city administrator should direct department heads directly, and then the employees but only in the absence of the department head. She stated that the proposed resolution as is allows the city administrator to step past the department head. It is confusing, she believes, to the employees: Do they report to Jim Hurm or to the department head?

Mayor Stiehm believes this lays out a clear path of who the department heads answer to. He stated we are addressing this as there have been some abuses of authority. There have been some incidents when council members have intervened and chastised the department heads. We are trying to de-politicize this.

Council Member King suggested crossing out “either directly or” in the draft resolution to read: “**NOW, THEREFORE, BE IT RESOLVED**, the City Administrator is hereby granted the authority to manage, direct and supervise employees of the City of Austin ~~either directly or through department heads and their subordinate supervisors.~~”

Council Member Austin stated that if Mr. Hurm undercuts the department heads, we (Council) will hear about it and we can then correct it.

Mayor Stiehm said he did not have a problem with Council Member King’s suggestion of removing “either directly or”.

Council Member Clennon questioned if Mr. Hurm would have no way to discipline without coming to Council, to which Council Member-at-Large Anderson said the action *would* give him the authority to discipline. Council Member Clennon stated Council cannot give him that authority per state statute. Mr. Hoversten answered that he does not believe that is the law. The city administrator is generally charged with supervisory functions which includes discipline, but discipline is regulated in the Fire Department by the Fire Civil Service, discipline measures are in the labor union contracts, and there is public employment law. And there are many levels of discipline: warning letters, letters of reprimand, suspension, and termination. Council Member Clennon said she read this (that Council cannot give the city administrator this authority) in the League of Minnesota Cities Handbook, and read the section. Mr. Hoversten respectively disagreed. He believes that section is referring to salaries, working conditions, benefits – items requiring action by City Council. He stated those items cannot be delegated, but Council may delegate the right of supervision to the department heads. And currently employees do go to their department head. This is the same situation, only increased a level.

Mayor Stiehm noted that discipline happens routinely within departments that the Council is never aware of. Mr. Hoversten added that disciplinary actions that become public are very few. Day-to-day disciplinary actions happen on a frequent basis. When you have this many employees, people make mistakes. The purpose of the resolution is to correct those mistakes, to get people acting consistently and comply with the policies of the City. This would make for more efficient personnel administration.

Mayor Stiehm asked if Council would have recourse if a majority disagreed with a disciplinary action. Mr. Hoversten said they always would. There is no appeals process. He stated that if a rogue city administrator acted arbitrarily or capriciously in punishing employees, the City Council could always take appropriate action.

Council Member Austin read wording in the resolution that grants authority and actions “in accordance of all state and federal laws, the city’s personnel policies, employee handbook, labor agreements and civil service rules & regulations as appropriate based on the affected employee.” The disciplinary action is spelled out. Mr. Hurm would be “handcuffed” to go beyond these regulations.

Council Member King said he preferred to see some protocol, a flow chart.

Council Member Boughton moved to accept the proposed resolution as is, i.e., no deletions. Motion seconded by Council Member Enright.

Council Member Clennon said she has heard numerous times employees complaining about the city administrator but when asked if she could report the situations to Council, employees say no because the repercussions would be worse. Council Member Clennon said the complaints are not from just one department but pretty much all but one department. And she has heard from the general public on issues that are then discussed in private meetings, and they are discouraged from discussing the issue further.

Council Member Enright told Council Member Clennon that employees need to go somewhere else other than her. Employees have their department head they can speak to, and also their union. In my opinion, Council Member Enright told Council Member Clennon, you’re the only one they’re talking to. “You cause a lot of problems, and I’m getting tired of it.” Council

Member Enright said Council Member Clennon sticks up for one department and one department only. Council Member Enright said Council Member Clennon cannot be objective with respect to that one department. “It is making it harder for us to all work together. I think that you have got to start working together with us as a team.” She stated that there is nothing that Mr. Hurm can do to an employee that’s not covered by a document. The employees should be working with their supervisors; that’s the chain of command. Council Member Enright thought that perhaps that is the message we need to get out to the employees.

Mayor Stiehm thanked Council Member Enright for her comments and thought that needed to be said. He told Council Member Clennon that Council is taking action on this because in the past she has told department heads they do not need to answer to Mr. Hurm. Mayor Stiehm referred to the 2009 Margaret Skelton report on the Fire Department which stated that Council needed to stay out of the day-to-day operations of that department. The previous fire chief is gone, he said, but we’re dealing with the same issue.

Council Member Clennon reiterated that not just department but all but one department has come to her about issues; she is not going to them. Council Member Enright told Council Member Clennon that they should be advised to follow the proper chain of command.

Mayor Stiehm acknowledged the normal adversarial relationships between union negotiating teams and the city administrator. He was once on the other side of the table as a union head and disagreed with Mr. Hurm, but now he is very much in favor of granting this authority.

Council Member Clennon said that when she was first elected, employees told her they were not to talk to council members. It took a long time for the employees to gain trust and talk to her, she said. But she can’t bring the complaints to Council because she’ll “get shot down”. Council Member Enright asked what good that is if she holds information but can’t do anything with it.

Council Member-at-Large Anderson asked Council Member Clennon if she had any respect for the Margaret Skelton report. The employees are to follow the proper channels. Council Member Clennon asked about the rest of the (Margaret Skelton) report. Council Member-at-Large Anderson answered that in 2009, Council went through the report thoroughly. Acting otherwise, she stated, is detrimental to the healthy functioning of our city and the individual departments. Most employees understand the proper chain of command, but the purpose of the resolution is to clarify the duties of the position. Council Member-at-Large Anderson noted that we are talking about a position, not an individual.

Council Member King stated that he would be passing on the proposed resolution because, though he understands the history of cooperation in the city, he is uncomfortable with wording which would have the city administrator circumventing the department heads in managing the departments. He feels the wording is too strong.

Mayor Stiehm added that the intent of the resolution is for the city administrator to supervise the department heads.

Roll call: 5-2. Council Members King and Clennon voted nay.

Moved by Council Member Austin, seconded by Council Member King, authorizing the hiring process for Parks & Recreation mechanic. Carried.

Moved by Council Member Enright, seconded by Council Member-at-Large Anderson, approving an electronics recycling event for June 9th in partnership with Mower County. Carried.

Included in the CIP for 2012 are some repairs to City Hall. The repairs include replacing stained ceiling tile throughout City Hall, the main floor unisex bathroom, the lower level south wall and the lower level men's bathroom. Bids were as follows

Joseph Company	\$10,100
JD Driver	\$10,805.

Council Member Enright pointed out the JD Driver bid clarifications which include the building permit and no prevailing wage rates. Administrative Services Director Tom Dankert stated that this is not a federal job so there are no prevailing wage requirements. A building permit is not required, nor is a bond due to the small size of the project. Mr. Dankert pointed out that JD Driver added two boxes of extra ceiling tiles as opposed to one box in the Joseph bid. Also, Joseph Company included the P-lam whereas JD Driver added it as extra cost.

Council Member Clennon asked the reason for the stained tiles, to which Mr. Dankert said it was due to leakage from rainstorms. The roof was replaced over the Engineering Department and the roof over the HR office was patched a couple of years ago.

Council Member McAlister asked what was being done to the men's bathroom. Mr. Dankert replied that there will be new ceilings, lights, walls and partitions. The heating issue and the sinks would come be taken care of separately.

Moved by Council Member King, seconded by Council Member Austin, adopting a resolution accepting the bid from The Joseph Company for City Hall repairs. 7-0. Carried.

Cities above 5000 population are eligible for Municipal State Aid. City Engineer Jon Erichson said there are many requirements to the Municipal State Aid Street System but also financial incentive. (The City receives approximately \$1 million per year.) The City of Austin can designate up to 20% of city mileage as part of this system, and our goal, said Mr. Erichson, is to maximize that percent. With the Lansing area annexation, the City is able to designate .36 miles to add to the system. The Engineering Department has recommended designating 8th Street NW from 17th Avenue to 18th Avenue (0.13 mi.) and 17th Avenue NW from 4th Street to 8th Street (0.26 mi.). The total of those sections is .39 so a further recommendation is to revoke 11th Avenue NE from North Main Street to 455 LF east (0.09 mi.)

Moved by Council Member Enright, seconded by Council Member McAlister, adopting a resolution revising the Municipal State Aid Street System as recommended. 7-0. Carried.

The City has received a petition for the vacation of public right-of-way. Council is requested to set a public hearing for the vacation for April 2.

Moved by Council Member Boughton, seconded by Council Member Enright, adopting a resolution relating to a vacation of public right-of-way petitioned by Austin Public School District and setting a hearing for April 2. 7-0. Carried.

Moved by Council Member Austin, seconded by Council Member Enright, setting a public hearing for March 19th for a variance requested by the Austin Public School District. Carried.

Moved by Council Member King, seconded by Council Member Austin, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 710 2nd Avenue SW, Hollerud property. Carried.

Moved by Council Member King, seconded by Council Member Austin, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 405 6th Street SW, Oman property. Carried.

Moved by Council Member Austin, seconded by Council Member King, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 805 6th Avenue SW, Nowels property. Carried.

Moved by Council Member Austin, seconded by Council Member King, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1104 2nd Avenue NW, Kirkpatrick property. Carried.

Moved by Council Member Boughton, seconded by Council Member Austin, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 308 6th Street SW, Turtle Land Co., LLC property. Carried.

REPORTS

Council Member McAlister reported that the Library Board had just met. Most of their business was routine. They are updating the Library Board's job description and conduct.

Council Member King said the CVB Board has met. They will be making their annual presentation to the Council. He has suggested that they report during a work session.

Council Member Enright watched a recent League webinar on legislative issues. While the State has a surplus \$323 million, all of it is earmarked. The State will use the excess to replenish the cash flow, budget reserve and school shifts. They believe there will be no significant cuts to LGA or the property tax funding to the amount already certified for 2012, nor would there be additional funding. The legislature has reviewed one bill on voter identification. The League is not opposed to the bill, but there would be costs involved with training and personnel. Since the bill could go into effect before funding, the effective date for the bill would be 2014.

Council Member Clennon has been involved with the Humane Society's last two fundraisers. She requested they be invited to a work session to give a presentation on their ideas. In reference to Marv Repinski's noting the departure of Pastor Barnett, Council Member Clennon said she would also like to wish Andy Lindahl and his wife good luck in their new church in Oregon.

Police Chief Brian Krueger handed out the 2011 Police Department Annual Report.

Community Development Director Craig Hoium requested the discussion with the Humane Society take place at a work session in April as he has been working on a development for the joint Human Society/animal pound project.

Moved by Council Member Austin, seconded by Council Member King, adjourning the meeting to March 19, 2012.

Adjourned: 6:28 pm

Approved: March 19, 2012

Mayor: _____

City Recorder: _____