

City of Lafayette
City Council Meeting Minutes
April 8, 2010
6:30 PM

1. CALL TO ORDER: Mayor Chris Heisler called the meeting to order at City Hall at 6:30 p.m.

2. FLAG SALUTE: Mayor Chris Heisler led the flag salute.

3. ROLL CALL: Trena McManus, Asst. to the City Administrator, called the roll.

Present: Mayor Chris Heisler, Nicholas Harris, Leah Harper, Dean Rhodes, Michael Roberts, and Bob Cullen.

Absent: Chris Pagella (excused).

City Staff Present: Justin Boone- City Administrator, Trena McManus – Asst. to the City Administrator, and Cindy Phillips (City Attorney- Jordan Schrader).

Others: Chris Harper, Mary Heisler, Marie Sproul, Al LeMay, Nicole Montesano- News Register, Angela Flood, Darrell Flood, Debbie Schley, Cal Kearns, Andy Rhodes, Renee Rhodes, Linda Lyon, Doug Carpenter, Randy Kashka, Suzi Lorence, Dan Buell, Cindy Buell, Sergeant Brandon Bowdle- Yamhill County Sheriff's Office, Tim Hamel, and approximately 3 others.

4. APPROVAL OF MINUTES:

Michael Roberts made a motion to approve the March 11, 2010 minutes, as presented. Bob Cullen seconded the motion. There was no discussion and the motion passed unanimously.

5. REVIEW PROCEEDINGS AND APPROVE MINUTES OF SPECIAL MEETINGS:

None.

6. ADDITIONS AND DELETIONS:

Dean Rhodes said that he would like to delete agenda item 12(2)- Council Rules (he requested that it be placed on the agenda and no longer wants to discuss this item). The Council agreed. He also asked to add an agenda item regarding non-bargaining unit employees' use of PTO (Paid Time Off), absent and work hour policies and expectations of performance of the City Administrator. He also wanted to discuss the authority to administer the City Administrator's contract by the Mayor. The consensus of the Council (with Leah Harper voting nay) was to add this agenda item. This was added as agenda item 12(2).

Michael Roberts said that he would like to add an agenda item regarding communication between the Council and staff via cell phone/texting (public record). The Council unanimously agreed to add this agenda item. It was added as agenda item 12(3).

Dean Rhodes said that he would like to add an agenda item to request that a thank you letter be sent to the McMinnville School District. The Council unanimously agreed to add this agenda item. It was added as agenda item 12(4).

Nicholas Harris said that he would like to add an agenda item to discuss the recalls of councilors Cullen and Rhodes. The Council unanimously agreed to add this agenda item. It was added as agenda item 12(5).

There were no other additions or deletions.

7.a. PRESENTATIONS:

None.

7.b. PUBLIC HEARINGS:

1. FY10-11 State Revenue Sharing Hearing- Proposed Uses:

Mayor Chris Heisler opened the public hearing for the FY10-11 state revenue sharing funds (proposed uses) at 6:40 p.m. The proposed uses for the FY10-11 state revenue sharing funds that were presented at the April 6, 2010 Budget Committee meeting were: a digital reader board, translation services, street improvements, to pay fees for use of Wascher School (Friday nights at Wascher), downtown beautification, community events, park improvements, planning consultant for downtown visioning, city hall improvements, crosswalk lighting, ADA compliance training, summer recreational activities, and Heritage Days (summer celebration).

Mayor Chris Heisler allowed for public comment on the list of proposed uses at 6:42 p.m.

Public Comment

None.

Mayor Chris Heisler closed the public hearing at 6:43 p.m.

Michael Roberts made a motion to accept the FY10-11 state revenue sharing funds into the general fund.

Nicholas Harris seconded the motion. There was no more discussion and the motion passed unanimously.

8. CITIZEN INPUT ON NON-AGENDA ITEMS:

Angela Flood, 287 Canyon View Drive- said that she has several issues with Justin Boone's performance, and distributed and read a letter to the Council regarding this issue. She said that she submitted a request to the City Administrator requesting to be able to see the faces of the Budget Committee members (ADA compliance) at the Budget Committee meeting, and she received no response. She had concerns about the park bids that were excluded, and the reasons for their exclusions. She said that at this point Justin Boone's contract could be terminated for cause.

Linda Lyon, 1143 N. Madison St.- said that she wanted to invite everyone to attend the spaghetti dinner that will be held on April 10, 2010 at the Community Center. She thanked Justin Boone for solving the house number problem and getting the park projects out to bid. She said that he has been working with Bonnie Pursel and teaching her how to write grants. She said that he has gone to seminars to write for grants, and is doing that to get Lafayette a lot of money to improve the town. She said that he is making sure that code violations are taken care of in a timely manner, and he has Jim Anderson fixing potholes within 24 hours of complaints being received. She said that he has met with the business owners, and the business owners really like him. She thanked him for a job well done.

Darrell Flood, 287 Canyon View Drive- said that he put in a waiver of fees request for public documents to Justin Boone and has not received a response. He said that he has put a committee together and wants to put all city documents online.

Kenny Schweiger, 710 Water St.- said that Justin Boone welcomed him into his office and took the time to listen to him. He said that he thinks that Justin Boone is an asset to the community.

Debbie Schley, 1512 Jefferson St.- said that she wants to give Justin Boone a chance and see how he does. She said that for some reason, no one in this town likes the City Administrator, no matter who it is.

9. DEPARTMENTAL REPORTS:

1) Sheriff's report:

Sergeant Brandon Bowdle introduced himself to the Council and asked if anyone had any questions.

Dean Rhodes said that he recently had a resident pass on a concern to him and the staff and Deputy Donahoo responded very quickly and had the issue resolved within two days. He thanked the staff and Deputy Donahoo for their attentiveness to the issue.

2) City Administrator report:

Justin Boone said that he has been working on the budget and getting bids on playground equipment for the park(s).

Dean Rhodes asked Justin Boone which grant writing seminars he has attended and Justin Boone said that he went to a grant writing workshop through the Oregon Department of Fish and Wildlife that was held back in February.

3) Accounts payable report:

There were no questions on this report.

4) Public Works report:

Dean Rhodes asked when the crosswalks in town get re-striped, because the crosswalk at Bridge/14th Street needs to be re-done. The Council asked staff to check with Jim Anderson on the crosswalks that need to be done and put this on the next agenda.

Leah Harper asked Justin Boone if he meets with Jim Anderson on a regular basis to discuss his report and Justin Boone said yes.

The consensus of the Council was to ask Justin Boone to have Jim Anderson in attendance at the Council meetings from now on.

Mayor Chris Heisler asked about the trees that are overhanging Hwy. 99W on the east end of town. The Council asked for a copy of any correspondence from Jim Anderson to the ODOT representative.

5) Fire Department report:

There were no questions on this report.

10. LEGISLATIVE ACTIONS:

None.

11. ACTION ITEMS:

1) Approve Council newsletter for distribution:

Leah Harper and Dean Rhodes submitted newsletters for consideration this month. Dean Rhodes said that Leah Harper's newsletter was well written, so he would be supportive of either newsletter being distributed.

Leah Harper said that she felt that either newsletter would be fine, too. Nicholas Harris made a motion to approve Leah Harper's newsletter for distribution in the water bill. Bob Cullen seconded the motion. There was no discussion and the motion passed unanimously.

2) Planning Commission resignations:

Dean Rhodes made a motion to accept Chad Gooch and Dwayne Brittell's resignations from the Planning Commission. Bob Cullen seconded the motion. Discussion- Michael Roberts asked staff to send a thank you letter to both gentlemen thanking them for their service to the City of Lafayette. Staff will take care of this. There was no more discussion and the motion passed unanimously.

3) Reader Board/Water Bill Content and Comm. Center Use:

Mayor Chris Heisler said that he asked for this to be placed on the agenda so that these responsibilities can be given back to the City Administrator, as these are administrative decisions. Dean Rhodes said that he agrees that this should be an administrative function, and there should be a policy put in place so that everyone is treated the same. Dean Rhodes suggested that if someone is denied their request, the appeal board would be the City Council. The Council asked Justin Boone to propose a policy for this at the next meeting. This item will be placed on next month's meeting agenda.

4) Protest of contract award on Joel Perkins and Veteran's Park projects:

A protest of contract award on Joel Perkins and Veteran's Park was received on March 22, 2010 from AR Landscaping.

Dean Rhodes said that the protest letter states that "I visited Lafayette City Hall on Friday, March 19 and was told that all bids were refused because all bids came in over \$100,000". Dean Rhodes said that the Council awarded the contract on March 11, 2010, and asked Justin Boone to explain why AR Landscaping was told that. Trena McManus said that she told AR Landscaping that because she consulted Justin Boone and that was what he said to relay to AR Landscaping. Justin Boone said that he didn't recall saying that. Dean Rhodes said that the City received the notice of protest on March 22, and the Council didn't find out about it until the packet was distributed (April 2) and he said that he would appreciate being notified sooner.

Mayor Chris Heisler said that he is wondering about the validity of these concerns, because the City Attorney advised that the other bids could be thrown out because not all of the required information was provided.

Justin Boone said that he asked the attorney (John Hickey) to review the bids and he agreed that only one contractor (C&D Landscape) was in compliance with the bid requirements.

Renee Rhodes (co-owner of AR Landscape), 2775 NW Mt. Meadow Ln., McMinnville- asked if the City followed the ORS (Oregon Revised Statutes) on accepting/rejecting bids (ORS 279), and this project would fall under prevailing wage requirements and it was not advertised that way. She wanted to know if the City rejected or accepted their bid, because there supposed to be 3 complying bids before a contract is awarded.

Andy Rhodes (co-owner of AR Landscape), 2775 NW Mt. Meadow Ln., McMinnville- said that he was told by a city staff member that, in the future, the City would be able to call and ask for supplemental information in order to bring the bid into compliance.

Cindy Phillips, City Attorney- reviewed the formal procurement procedures and stated that the City has established a LCRB (Local Contract Review Board) and those rules state that if the project is estimated to be under \$100,000 for a public improvement, then formal procurement procedures are not required (three competitive quotes would be acceptable).

Bob Cullen said that there should have been an engineer's estimate on this project.

Justin Boone said that estimated the cost of the project and he used the Parks Master Plan figures and added 20% for inflation costs.

Discussion ensued.

A short break was taken at 7:45 p.m.

The meeting was called back to order at 8:01 p.m.

Mayor Chris Heisler said that the RFP (Request for Proposal) states that the City reserves the right to reject any and all bids. There was discussion about rejecting all of the bids and starting the process over. However, Leah Harper pointed out that the contract has already been awarded, so rejecting all of the bids is not an option. City Attorney Cindy Phillips agreed.

Bob Cullen said that he is unhappy with the entire process.

Nicholas Harris said that he has learned a lot through this process, but would like to see the project continue moving forward.

Angela Flood, 287 Canyon View Drive- said that if the Council decides to uphold the decision to award the contract to C&D Landscape, the contractor who protested the award could appeal that decision to the next level.

Marie Sproul, 1282 Third St. #1- said that asking for bond information up front is very simple and should have

been done. Since they didn't conform to the requirements, the contract was awarded to C&D Landscape. Andy Rhodes, 2775 NW Mt. Meadow Ln., McMinnville- asked why all of the contractors weren't invited to the meeting when the bids were considered.

Cal Kearns, C&D Landscape- said that he wasn't invited, he saw the item on the Council agenda and decided to attend.

Nicholas Harris made a motion to deny the protest submitted by AR Landscape on the Joel Perkins and Veteran's Park projects. Leah Harper seconded the motion. There was no more discussion, and the motion passed, with Michael Roberts and Bob Cullen voting nay.

5) Approve playground equipment contract:

Justin Boone said that he invited the playground equipment representatives to the meeting tonight to make a short presentation on the equipment they have proposed. He said that he does not expect the Council to make a decision tonight.

There were four bids received on the playground equipment RFP that was sent out for structures at Joel Perkins Park and Tract F Park. Precision Recreation (Wildwood Playgrounds), Northwest Playground Equipment, Cascadian Landscapers (NW Recreation of Oregon), and ArchiteCreation (Columbia Cascade Company) gave presentations to the Council regarding the playground equipment they are proposing. Doug Carpenter, 1447 Cramner St.- said that he lives right next to Tract F and he is opposed to a playground structure being placed there.

Debbie Schley, 1512 Jefferson St.- said that she is concerned with having closed slides on the play structures. Al LeMay, 1155 N. Madison St.- asked how much detailed information will be available with each poster for people to look at.

Nicholas Harris suggested that the poster boards that have been presented tonight be displayed up at Wascher Elementary School, and ask for input from parents. Staff will take care of this, and put this agenda item on the next meeting agenda for further Council consideration.

12. DISCUSSION ITEMS:

1) City Administrator Weekly Update:

Dean Rhodes said that the previous City Administrator provided the Council with weekly updates on what she had worked on that week, and asked that Justin Boone provide the Council with the same weekly updates. The rest of the Council agreed.

Mayor Chris Heisler said that Council President Chris Pagella has requested to be included by phone on any personnel matters. It was attempted, but he was unable to hear or take part in the conversation. A short break was taken at 9:01 p.m. The meeting was called back to order at 9:06 p.m.

2) PTO (Paid Time Off) Use, Authorization of Mayor to administer contract:

(Added by Dean Rhodes under 'Additions and Deletions'.)

Dean Rhodes said that this issue came up on March 31, when the Council was informed that Justin Boone was in the negative on his PTO. Dean Rhodes said that Justin Boone's contract does not provide an option for going into the negative on his PTO. He said that he thinks there is a lack of communication because he understood that Mayor Heisler has approved the negative PTO twice, and the rest of the Council was not informed. The Mayor has no more authority to supervise the City Administrator over any other Council member. Mayor Chris Heisler said that his experience at other companies was that there was not an issue with going into the negative on PTO. If someone left before the PTO was earned, then it was just deducted from the last check. He didn't see an issue with it, because to him it was a normal standard. There wasn't anything in his contract or employee handbook that addressed the issue one way or the other.

Michael Roberts said that he assumed that when Justin Boone went on vacation the first time, he wasn't getting paid for any time that he hadn't earned PTO for.

City Attorney Cindy Phillips suggested amending the employee handbook to address these concerns.

There was some discussion regarding developing a policy for PTO use, including: requests should be made in writing in advance, no PTO granted unless there is PTO earned (in the positive), etc.

City Attorney Cindy Phillips said that unless the charter, council rules, or the Council as a whole has made a decision to delegate authority to one individual, that one individual cannot make a decision for the whole Council.

There was some discussion about Justin Boone's absences that have caused him to be in a negative PTO situation.

The Council asked staff to draft a policy on PTO use for consideration at the next meeting.

Dean Rhodes requested that an executive session be scheduled at the May 13, 2010 Council meeting, under 192.660 (2) (b) regarding Justin Boone.

Mayor Chris Heisler said that the topic of discussion is PTO and the Mayor's authority to administer the

contract, and asked the Council to stay on the topic.

Bob Cullen made a motion to continue the current discussion. Dean Rhodes seconded the motion. There was no discussion and the motion passed, with Leah Harper voting nay.

City Attorney Cindy Phillips said that Justin Boone has to be given the opportunity to have this discussion in open session, if he chooses to. She also suggested that the Council's concerns be given to Justin Boone ahead of time. Discussion ensued.

Darrell Flood, 287 Canyon View Drive- said that Diane Rinks' contract stated that anything not addressed in her contract, fell to the City's employee handbook, and he asked if the same provision is in Justin Boone's contract. City Attorney Cindy Phillips said that Justin Boone's contract does not contain the same provision.

Al LeMay, 1155 Madison St.- said that he never saw Diane Rinks come before the Council to get vacations approved. He asked if this approval process is going to be incorporated into the new policy.

Debbie Schley, 1512 Jefferson St.- said that she would rather see these concerns be brought up behind closed doors rather than humiliate someone in a public meeting.

Patricia Rhodes, 257 W. 14th Street- asked if the original intent of scheduling an executive session, was to keep the concerns private and not have everything out in the open, and Dean Rhodes said yes.

The Council decided that they need to have their concerns regarding the City Administrator's performance submitted to the City Attorney by May 2, to allow time to have them compiled and presented to the City Administrator in advance of the next meeting.

3) Communication with Council/Staff via texting:

(Added by Michael Roberts under 'Additions and Deletions'.)

Michael Roberts said that he is concerned with communications on private cell phones (text messaging) between staff and Council. City Attorney Cindy Phillips said that those communications could be subject to public record disclosure. Discussion ensued.

Nicholas Harris said that the easiest solution is to make a decision that texting City staff is not allowed.

The consensus of the Council was that texting should not be used as a form of communication with City staff.

4) Thank you letter to McMinnville School District:

(Added by Dean Rhodes under 'Additions and Deletions'.)

Dean Rhodes asked that a thank you letter be sent to the McMinnville School District regarding the joint meeting that was held on March 15, 2010. Justin Boone asked if he needs the entire Council's approval to do something like this, and Mayor Chris Heisler said that if it not related to contracts or employee issues, he doesn't see a problem responding to the request. Dean Rhodes said responses to requests should be given to everyone on the Council, and if someone has an issue with the request, they then have an opportunity to respond.

5) Recall of Councilors Cullen and Rhodes:

(Added by Nicholas Harris under 'Additions and Deletions'.)

Nicholas Harris distributed copies of the recall petitions of Councilors Rhodes and Cullen to the Council. He said that he realizes that not everyone in the City is going to see eye to eye, but the original intent of recalls was for someone who has committed a heinous crime or done something that would bring discredit upon the City of Lafayette. He said that if you don't agree with someone's decisions, then that is what elections are for. He said that recalls take away valuable resources from the City.

13. EXECUTIVE SESSION AS ALLOWED BY ORS 192.660 (2)(h) re: to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

Trena McManus said that the Lafayette City Council will now meet in executive session for the purpose of consulting with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed, consistent with ORS 192.660(2)(h). Representatives of the news media and designated staff are allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session except to state the general subject of the session. No decision shall be made in executive session. At the end of the executive session, Council will return to open session.

The Council went into executive session at 10:17 p.m.

The Council returned to open session at 10:28 p.m.

14. COMMITTEE REPORTS:

None.

15. MAYOR'S REPORT:

None.

16. REVIEW OF HANDOUT MATERIAL:

None.

17. ADJOURNMENT:

Bob Cullen made a motion to adjourn. Nicholas Harris seconded the motion. There was no discussion and the motion passed unanimously. The meeting was adjourned at 10:29 p.m.

Minutes approved on this 13th day of May, 2010.

APPROVED:

ATTESTED:

Mayor Chris Heisler

Justin Boone, City Administrator