



CITY OF ATWATER

CITY COUNCIL

ACTION MINUTES

August 27, 2018

OPEN SESSION: (Council Chambers)

The City Council of the City of Atwater met in Open Session this date at 5:00 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Price presiding.

ROLL CALL:

Present: City Council Members Creighton, Raymond, Vierra, Mayor Pro Tem Vineyard, Mayor Price
Absent: None
Staff Present: Interim City Manager Waterman, City Attorney White, Deputy City Clerk Rasmussen

CLOSED SESSION: (Conference Room A)

Mayor Price invited public comments on Closed Session items.

No one came forward to speak.

Mayor Price adjourned the meeting to Conference Room A for Closed Session at 5:05 PM. Closed Session was called to order at 5:08 PM.

Conference with Legal Counsel – Existing Litigation – Government Code Section 54956.9(1)(d): Name of case: Richard Dean Johnson and Lori Johnson v. City of Atwater, United States Eastern District Court, Case No. 1:18-CV-00920-DAD-SAB

Conference with Legal Counsel – Anticipated Litigation – Significant exposure to litigation pursuant to Government Code Section 54956.9(2)(d): Number of cases: (4)

Pursuant to Government Code Section 54957(b)(1), Public Employee Performance Evaluation: Interim City Manager (part 2 of 2)

Pursuant to Government Code Section 54957(b)(1), Public Employee Appointment: City Manager

Closed Session adjourned at 6:05 PM.

REGULAR SESSION: (Council Chambers)

The City Council of the City of Atwater met in Regular Session this date at 6:09 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Price presiding.

PLEDGE OF ALLEGIANCE TO THE FLAG:

The Pledge of Allegiance was led by Mayor Price.

INVOCATION:

The Invocation was led by Police Chaplain McClellan.

ROLL CALL:

Present: City Council Members Creighton, Raymond, Vierra, Mayor Pro Tem Vineyard, Mayor Price

Absent: None

Staff Present: Interim City Manager Waterman, City Attorney White, CAL FIRE Battalion Chief Wight, Finance Director Deol, Human Resources Director Del Real, Interim Police Chief Bessinger, General Services Manager/Chief Building Official Pereida, City Clerk Hyler III, City Treasurer Heller, Interim Public Works Director Shaw, Executive to the City Manager Martin, Recording Secretary Rasmussen

MAYOR OR CITY ATTORNEY REPORT OUT FROM CLOSED SESSION:

City Attorney White reported that unanimously the City Council approved a performance evaluation for Interim City Manager Waterman with an above average score. No other action was taken. The Closed Session agenda was completed.

SUBSEQUENT NEED ITEMS: ***None.***

APPROVAL OF AGENDA AS POSTED OR AS AMENDED:

Mayor Pro Tem Vineyard announced that agenda item #14 under City Council Matters, "Request for Proposals for in-house City Attorney services," appears in the agenda packet incorrectly; it is not the version that he submitted for consideration. Copies of the version he submitted for consideration were distributed to the City Council and were made available to the public. Mayor Pro Tem Vineyard read into the record his version of the request as follows:

"In accordance with our process of fiscal responsibility and the State Audit Committee's comments that we haven't made enough significant changes in our balanced budget I'm requesting a discussion and action taken to reduce our costs in the area of attorney fees by hiring an in-house attorney. I'm requesting three comparisons to be presented to the City Council: 1) Attorney fees from February 2017 - July 2017 with those of an in-house attorney; 2) Attorney fees from February 2018 - July 2018 with those of an in-house attorney; and 3) Attorney fees from February 2017 - July 2017 with those fees from February 2018 - July 2018."

MOTION: Mayor Pro Tem Vineyard moved to replace the request (support documentation) with regard to agenda item #14 with the version he provided and stated above. The motion was seconded by Mayor Price and the vote was: Ayes: Creighton, Raymond, Vierra, Vineyard, Price; Noes: None; Absent: None. The motion passed.

Mayor Price called a recess at 6:17 PM.

The City Council returned to the dais and Mayor Price resumed the meeting at 6:19 PM.

MOTION: Mayor Price moved to amend the agenda by removing agenda item #13 under City Council Matters, "Ratifying City Manager Employment Agreement," in order to notify the State Audit Committee of the City's potential appointment and to solicit their opinion, and to bring this item back to a future City Council meeting. The motion died for lack of a second.

MOTION: City Council Member Creighton moved to approve the agenda as posted, and to include the support documentation as presented by Mayor Pro Tem Vineyard regarding agenda item #14. The motion was seconded by City Council Member Vierra and the vote was: Ayes: Raymond, Creighton, Vineyard, Vierra, Price; Noes: None; Absent: None. The motion passed.

COMMENTS FROM THE PUBLIC:

Notice to the public was read.

JOHN RIIS-CHRISTENSEN, Atwater, commented that having the Sheriff's Department take over the City of Atwater Police Department is a very bad idea

because the Sheriff's Department is currently understaffed and their response times to Atwater will be unsatisfactory.

MIKE AKERS, Atwater, stated that the State Audit Committee did not give Atwater a good report. He further expressed that the City needs to consider pursuing an in-house attorney to reduce expenses. He also questioned the wisdom of appointing a new City Manager at this time.

ERIC LEE, Atwater, commented on the overall dryness of Atwater's landscape areas, particularly the gateways. He asked that more attention be paid to watering and upkeep. He also asked about the process for placing an item on the agenda.

BARBARA RIIS-CHRISTENSEN, Atwater, questioned the meeting of three City Council members with the City Attorney in Sacramento prior to his hire. She asked if a background check was done before the City Council hired Churchwell-White as City Attorney. She also asked if their fee schedule was reviewed prior to hiring Churchwell-White.

KEITH PELOWSKI, Atwater, raised a question for Interim City Manager Waterman as to why his request for an agenda item to be placed on the agenda for this meeting was not approved, and asked what the criteria is for placing items on the agenda.

LINDA DASH, Atwater, commented on the high cost of paying two Police Chiefs and the cost of the investigation. She encouraged the City Council to hire an in-house attorney to reduce the cost of the current City Attorney. She also asked that an item be placed on the next City Council meeting agenda considering bringing the Police Chief Joseph investigation to a close.

FRANK JOHNSON, Modesto, responded to community questions as to why he comes to Atwater, stating that he has been asked to come and expose the wrongdoings in the Police Department and in City Hall. He praised the reporting of the Merced Sun Star and expressed disapproval of the reporting of the Atwater Winton Times.

DANNY HERNANDEZ, Atwater, stated that he regretted hearing of Mayor Pro Tem Vineyard's decision to leave the Atwater Volunteers In Police Service program and his decision to not seek re-election. He thanked Mayor Pro Tem Vineyard for his service to the community. He criticized speakers who come to the podium and defame others, and he suggested that such speakers be barred from City Council meetings. He also asked that the City Council be more transparent in their dealings.

GREG MCDANIEL, Atwater, announced the upcoming Bloss Historical Society Installation Dinner, September 15, 2018 at 6:00 PM at the Bloss House and asked City Council members to attend and possibly bring a raffle item. He thanked

Atwater Winton Times reporter, Beverly Barela, for her consistent reporting of Atwater events.

No one else came forward to speak.

City Attorney White responded to questions regarding the process for getting items on the agenda and stated that a citizen does not have the right to place items on the agenda; however, they may request that a City Council member bring an item to the agenda. He clarified that items come to the agenda following review by the City Manager and the City Attorney. He also responded to a question regarding the ongoing investigation of Police Chief Joseph stating that this is a personnel issue and therefore cannot be discussed and cannot be placed on an agenda.

CONSENT CALENDAR:

MOTION: *City Council Member Creighton moved to approve the consent calendar as listed. The motion was seconded by City Council Member Vineyard and the vote was: Ayes: Vineyard, Vierra, Creighton, Raymond, Price; Noes: None; Absent: None. The motion passed.*

WARRANTS:

1. August 27, 2018

ACTION: *Approval of warrants as listed.*

MINUTES: (City Council)

2. July 23, 2018 Regular meeting

ACTION: *Approval of minutes as listed.*

RESOLUTIONS:

3. Re-adopting Conflict of Interest Code (City Clerk Hyler III)

ACTION: *Adoption of Resolution No. 3051-18 re-adopting the City of Atwater's Conflict of Interest Code.*

4. Approving Regional Surface Transportation Program Exchange Funds Claim for Fiscal Year 2017-18 (Interim Public Works Director Shaw)

ACTION: *Adoption of Resolution No. 3057-18 authorizing and directing the Interim City Manager to execute and file the Regional Surface Transportation Program (RSTP) Exchange Funds Claim for Fiscal Year 2017-18; and adoption of Resolution No. 3058-18 approving Budget Amendment No. 2 amending Fiscal*

Year 2018-19 Budget regarding RSTP funds.

AGREEMENTS:

5. Approving Memorandum of Understanding with Merced County Office of Education regarding School Resource Officer (Interim Police Chief Bessinger/Human Resources Director Del Real)

ACTION: Approval of Memorandum of Understanding, in a form approved by the City Attorney, with Merced County Office of Education regarding School Resource Officer; and authorizes and directs the Interim City Manager to execute the Memorandum of Understanding on behalf of the City.

6. Approving Professional Services Agreement with VVH Consulting Engineers for the Wastewater Treatment Plant Drying Beds Expansion Project (Interim Public Works Director Shaw)

ACTION: Approval of Professional Services Agreement, in a form approved by the City Attorney, with VVH Consulting Engineers in an amount not to exceed \$23,750 for the Wastewater Treatment Plant Drying Beds Expansion Project; and authorizes and directs the Interim City Manager to execute the Agreement on behalf of the City.

CLAIMS AGAINST THE CITY:

7. Claim No. 2018-10

ACTION: After consideration and investigation, it is staff's recommendation that Claim No. 2018-10 be rejected.

PETITIONS AND COMMUNICATIONS:

Request from Yosemite Church for joint community outreach event (Don Borgwardt, Campus Director)

MOTION: City Council Member Vierra moved to approve the request from Yosemite Church to co-sponsor a community outreach event, "Movie in the Park Night," on September 29, 2018 at Ralston Park from approximately 7:30 PM to 9:45 PM. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Vierra, Vineyard, Raymond, Creighton, Price; Noes: None; Absent: None. The motion passed.

Request from Weight Watchers, Central California territory, for use of Community Center at reduced rate (Matthew Karres, Representative)

Susan Hunter of Weight Watchers, Central California, summarized the request on behalf of Matthew Karres.

MOTION: City Council Member Vierra moved to approve the request, as recommended by the Community Development and Resources Commission, from Weight Watchers, Central California territory, for use of the Community Center on a once a week basis at the reduced rate of \$35.00 per hour for a period of six months. The motion was seconded by Mayor Pro Tem Vineyard and the vote was: Ayes: Raymond, Creighton, Vineyard, Vierra, Price; Noes: None; Absent: None. The motion passed.

FUNDING AND BUDGET MATTERS:

Treasurer's Report for the month of July, 2018 (City Treasurer Heller)

MOTION: Mayor Pro Tem Vineyard moved to approve the Treasurer's Report for the month of July, 2018. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Creighton, Raymond, Vineyard, Vierra, Price; Noes: None; Absent: None. The motion passed.

INTERIM CITY MANAGER REPORTS/UPDATES:

Discussion and possible action to establish a policy addressing should there become an unscheduled vacancy on the City Council as a result of the upcoming November 6, 2018 Gubernatorial General Election

City Clerk Hyler III announced that this item shall be removed from the agenda upon advice from the City Attorney; however, public comments or questions will be taken.

Four (4) people spoke with questions regarding whether the appointment would be made based on the district or at large, how many possible candidates are allowable, whether the City Council votes will be secret ballot, and why it was placed on the agenda in the first place.

City Attorney White responded to the questions.

CITY ATTORNEY REPORTS:

Resolution adopting City Officials' Handbook

City Attorney White summarized the components of the Handbook that include discipline for the City Council members and for the public.

Two (2) members of the Community Development and Resources Commission spoke in opposition to adopting the City Officials' Handbook and asked for a joint meeting with the City Council.

One (1) person spoke in opposition to adopting the City Officials' Handbook and asked why there are no legal citations in the document.

City Attorney White responded to the questions.

MOTION: *Mayor Pro Tem Vineyard moved to set a joint meeting of the Community Development and Resources Commission, the Citizens' Oversight Committee for Public Safety Transactions and Use Tax, and the Atwater City Council to review the Handbook within two (2) weeks and to bring this item back for possible adoption at the regular City Council meeting of September 24, 2018. The motion was seconded by City Council Member Creighton and the vote was: Ayes: Vierra, Creighton, Vineyard, Raymond, Price; Noes: None; Absent: None. The motion passed.*

CITY COUNCIL MATTERS:

City Attorney White responded to a previous request from Mayor Pro Tem Vineyard to have former Interim City Manager de Werk's background check brought to the City Council. He read investigator Fred Freeman's statement for information only and advised the City Council that requesting a partial report puts the City at significant liability.

Mayor Price called a recess at 7:52 PM.

The City Council returned to the dais and Mayor Price resumed the meeting at 8:07 PM.

Ratifying City Manager Employment Agreement (City Council Member Vierra, presentation by: City Attorney White)

Interim City Manager Waterman left the dais and the chambers prior to consideration of this item at 8:08 PM.

City Attorney White clarified that the proposed contract is for three (3) years, and if the City Manager is terminated at any point, a lower position in the City will not be offered. He further stated that the contract calls for compensation at the lower range of the salary scale, at step two (2).

Five (5) people spoke against approving the City Manager Employment Agreement and raised questions regarding at-will employment and whether a background check will be done.

City Attorney White and Human Resources Director Del Real responded to the questions.

One (1) person spoke in favor of approving the City Manager Employment Agreement.

MOTION: *City Council Member Creighton moved to ratify the City Manager Employment Agreement, in a form approved by the City Attorney, with Lori*

Waterman pending a background check; and authorize and direct the Mayor to execute the Agreement on behalf of the City. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Creighton, Raymond, Vierra; Noes: Vineyard, Price; Absent: None. The motion passed.

Interim City Manager Waterman returned to the dais at 8:59 PM.

Request for Proposals for in-house City Attorney services (Mayor Pro Tem Vineyard)

City Attorney White left the dais and the chambers prior to consideration of this item at 9:01 PM.

MOTION: Mayor Pro Tem Vineyard moved to direct the City Manager to conduct an in-house research project to identify possible in-house attorney services with the results brought back to the City Council for consideration within 45 days. The motion was seconded by Mayor Price and the vote was: Ayes: Vineyard, Price; Noes: Vierra, Creighton, Raymond; Absent: None. The motion failed.

City Attorney White returned to the dais at 9:19 PM.

Destruction of abandoned building at Veteran's Park (City Council Member Creighton)

MOTION: Mayor Pro Tem Vineyard moved to direct staff to proceed with the process for destruction of an abandoned building at Veteran's Park. The motion was seconded by Mayor Price and the vote was: Ayes: Vierra, Vineyard, Raymond, Creighton, Price; Noes: None; Absent: None. The motion passed.

City Council comments

City Council Member Raymond announced that today is his wife's birthday and wished her a Happy Birthday.

City Council Member Vierra stated that while the City Council does not always agree, all five members have the best interest of the City at heart. She commented that she believes the City is moving forward and congratulated City Manager Waterman on her appointment.

City Council Member Creighton commented that it is good to see improvements happening around the City. He also mentioned that the Super Target is due to partially re-open on September 2, 2018. He also congratulated City Manager Waterman on her appointment.

Mayor Pro Tem Vineyard expressed concern for the impact of negative comments made during City Council meetings on City staff. He emphasized that while the City Council has no control over what people say during the meetings, the City Council fully supports City staff. He commented that local media is doing their

best but that they cannot always report good news. He asked that everyone try to keep things in perspective.

Mayor Price commended Public Works staff for all their work preparing the streets prior to school starting up again. He also informed the public that Measure V funds are being used to repair sidewalks around the City. He questioned City Attorney White about current water conservation restrictions.

City Attorney White responded that all state mandated restrictions are still in place.

Mayor Price stated that the City is weak on enforcement of those water restrictions and that there is too much water waste going on in the City. He urged citizens not to put leaves into the streets or gutters because when the rains come the leaves cause major problems with flooding.

CLOSED SESSION:

Continuation of Closed Session was not necessary.

ADJOURNMENT:

Mayor Price adjourned the meeting at 9:50 PM.



Don Hyler III, City Clerk

By: Lesa Rasmussen,
Recording Secretary