

APPROVED AS SUBMITTED ON JANUARY 16, 2007

MINUTES OF PROCEEDINGS

LITTLETON CITY COUNCIL

January 2, 2007

The Littleton City Council met in regular session on Tuesday, January 2, 2007, in the Council Chambers of the Littleton Center, 2255 West Berry Avenue. The regular meeting convened at 7:00 p.m.

THOSE PRESENT: JAMES A. TAYLOR
Mayor
REBECCA KAST
Mayor Pro Tem
DOUG CLARK
Council Member
PAT CRONENBERGER
Council Member
TOM MULVEY
Council Member
JOHN OSTERMILLER
Council Member

THOSE ABSENT: AMY S. CONKLIN
Council Member

ALSO PRESENT: Jim Woods
City Manager
Larry Berkowitz
City Attorney
Julie K. Bower
City Clerk

1. **ROLL CALL**

Upon a call of the roll, six members were present. Council Member Conklin was absent. The following business was transacted.

2. **PLEDGE OF ALLEGIANCE**

3. **AGENDA**

ACTION: APPROVED

4. **(a) MINUTES - MINUTES OF REGULAR MEETING DECEMBER 19, 2006**

ACTION: APPROVED

5. **INTRODUCE NEW CITY EMPLOYEES** –

Mr. Woods introduced the following new employees:

David Chaffin, Police Dispatcher

Ganna Yuen, part time library page

6. **(a) CITIZEN APPEARANCES** – GUEST CITIZENS – None

6. **(b) CITIZEN APPEARANCES** - SCHEDULED PUBLIC APPEARANCES – None

6. **(c) CITIZEN APPEARANCES** – UNSCHEDULED PUBLIC APPEARANCES –

FRANK ATWOOD

7094 S. COSTILLA ST.

Mr. Atwood invited everyone to attend the Littleton economic growth discussion group on January 10th.

Mr. Atwood had helped elect current Council incumbents and announced he might run for election in November. He asked Council to consider the following when voting on the campaign finance ordinance: incumbent Council members had taxpayer paid advantages. Among the advantages were the Littleton calendar and annual report; the Citizen Guide A to Z; the Littleton Report; and air time on Channel 8. He asked if Council really needed to change the rules to protect themselves from the Gary Suttons of the world and how much did the playing field need to be tilted in favor of incumbents? By unfairly restricting challenger resources, incumbents were further protected and the advantages were that much more significant and unfair.

ELWOOD JOHNSEN

231 W. FREMONT AVE.

Mr. Johnsen had a big gripe with snow removal. He said code enforcement was a big joke. He had to clear the sidewalk within 24 hours and then the city came along and filled them back in. He said the city did not seem to know how to plow the streets.

7. **(a) CONSENT AGENDA** - ORDINANCE ON FIRST READING REGARDING CAMPAIGN FINANCE FOR LITTLETON MUNICIPAL ELECTIONS

ACTION: DEFEATED ON FIRST READING

Mr. Berkowitz read the ordinance by title.

Council Member Clark said Council had received a couple of drafts of the ordinance and he did not know what had been changed. He did not receive any of the emails that were

sent. He wanted an explanation of what was changed on the drafts and which four Council people suggested the changes.

Mr. Berkowitz did not know what Council Member Clark was referring to. He said every Council member received all versions including black-lined versions which showed all of the changes. After the first draft was sent out, Council Member Cronenberger met with Mr. Bailey and himself to discuss questions. Changes were reflected in black-lined version.

Council Member Clark had received a draft on December 14th that contained black-lined and highlighted material. He had a September 28th version that came from the study session. There were whole sections between the two versions that were underlined or crossed out and he had no idea what had been changed.

Council Member Clark said the communication indicated violations were punishable by \$1,000 and/or 90 days in jail but the standard penalty which was one year in jail was discussed by Council at the study session.

Mr. Berkowitz said the penalty would need to be changed.

Council Member Clark had a problem with the ordinance being done in secret with attorney-client privilege. Part of what happened in October was that five Council members sent CML information to board members regarding Amendment 38. While the Council was lobbying the public and the boards against Amendment 38 because it would create personal financial liability for elected officials, a majority of Council had an ordinance that was being kept secret that was making jail time a possible penalty for elected officials. It seemed a little strange to him.

Mayor Pro Tem Kast asked that Council Member Clark be accurate. It was not five members of Council that directed anything. Council Member Conklin made a suggestion and no one on Council had an objection and it went forward.

Mayor Taylor said Amendment 38 had nothing really to do with campaign finance.

Council Member Clark said it had something to do with when you use attorney-client privilege to keep communications secret.

Mr. Berkowitz said that was not the reason and that was explained when Council Member Clark brought the issue up previously. Mr. Berkowitz communicated with Council, as he had in the past 28 years, in this manner when it was something that he wanted to make sure was what Council wanted to be brought forward and that was why it was attorney-client privilege. Council had the ability to waive that privilege at any time.

Council Member Clark said that was different than his understanding of the open meeting law where the city attorney could make anything he wanted secret.

Mr. Berkowitz agreed that was Council Member Clark's misunderstanding.

Council Member Clark said it was worthwhile to look at what was not being covered, such as issues. When the study session was held, Council decided to only address candidates and not address issues. The complaint was that there were large contributions going to Council candidates but Council had no problems with contributions more than twice the size being made to issues. A \$41,000 contribution to an issue was not warping democracy but a \$10,000 - \$12,000 candidate contribution was warping democracy. The ordinance did not cover companies that did business with the city that made contributions to issues. There were five candidates in the last race that received \$5,000 contributions and three of the five lost.

Council Member Cronenberger said Council Member Clark had raised the issue about issues campaigns not being covered. Several Council members had asked Council Member Clark to make a motion or an amendment or a suggestion.

Council Member Cronenberger wanted to raise an issue that got by Council in the current iteration. She said her issue regarded the reporting requirements was that the way the current ordinance was written reporting would happen after the candidate was certified and then not again until the Friday before the election. Council's intention was to add an additional reporting date and to eliminate the long period of time when no reporting was required. She asked what would be the best way to proceed?

Mr. Berkowitz said Council Member Cronenberger had raised the issue earlier and there were a number of ways to deal with it. The intent was not to eliminate any reporting requirement but to add an additional requirement of 21 days. Council could pull it from first reading and wait for an updated version or set the ordinance for a second reading at a later time.

Mayor Taylor suggested Council not approve the ordinance on first reading tonight and instead plan for a study session after the Council meeting on February 6th if it was not too late or if so, schedule it for a study session on February 13th. There needed to be very clear direction from Council and it would allow time for each Council member to convey concerns and/or clarifications to the city attorney prior to the study session.

Council Member Clark asked if the study session would include material addressing issues?

Mayor Taylor said if Council Member Clark wanted to amend the ordinance to include issues, he should meet with Mr. Berkowitz.

Council Member Ostermiller said if Council members had issues regarding terminology, that was one thing, but sending amendments by one Council member to Mr. Berkowitz for incorporation was another thing. There had to be a working document and if there was something such as the 90 days in jail rather than a year, then it should be changed. But he could not support just having Mr. Berkowitz inserting amendments at the request

of one Council member. Council needed to get to a point where a public hearing could be held and another study session did not make sense.

Mayor Pro Tem Kast had a change to page 10 of the proposed ordinance which indicated limitations of a candidate's personal funds did not apply. She wanted that removed from the ordinance. The intent was not to allow someone with an enormous personal bank account to spend their own money. A candidate should be allowed to loan their campaign money which would be paid back by contributions. That would make it a fairer playing field.

Council Member Clark agreed but asked if the campaign could not pay the candidate back, did the candidate go to jail for a violation?

Mayor Pro Tem Kast said the candidate would have to think about what amount they would feel comfortable about lending the campaign. She did not think a candidate should be able to spend as much as they wanted on their own campaign.

Council Member Ostermiller said that was one of the things that should be discussed in a public hearing.

It was moved by COUNCIL MEMBER CLARK and seconded by COUNCIL MEMBER MULVEY TO NOT APPROVE THE CAMPAIGN FINANCE REFORM ORDINANCE ON FIRST READING.

Ayes: Council Members Mulvey, Kast, Taylor and Clark.

Nays: Council Members Cronenberger and Ostermiller.

Absent: Council Member Conklin.

MOTION CARRIED: 4 to 2

8. (a) SECOND AND FINAL READING ON ORDINANCES AND PUBLIC HEARINGS – ORDINANCE ON SECOND READING INCLUDING THE LILLEY BUILDING, 2529-2559 WEST MAIN STREET, IN THE MAIN STREET HISTORIC DISTRICT

ACTION: CONTINUED TO JANUARY 16, 2007

Mr. Berkowitz read the ordinance by title.

Andrea Mimnaugh, Historic Preservation Planner, said staff was unable to complete public notification required by the Historic Preservation Code on the three ordinances because of the snowstorm. She asked that the ordinances be continued to January 16th.

Council Member Clark asked if Council had a choice since the notices had not been posted?

Mr. Berkowitz said Council did not have jurisdiction to proceed.

It was moved by COUNCIL MEMBER CLARK and seconded by MAYOR PRO TEM KAST TO POSTPONE THE MATTER UNTIL JANUARY 16, 2007.

Ayes: Council Members Mulvey, Kast, Taylor Cronenberger, Ostermiller and Clark.

Nays: None.

Absent: Council Member Conklin.

MOTION CARRIED: 6 to 0

8. **(b) SECOND AND FINAL READING ON ORDINANCES AND PUBLIC HEARINGS – ORDINANCE ON SECOND READING INCLUDING THE BATSCHELET BUILDING, 2569-2579 WEST MAIN STREET, IN THE MAIN STREET HISTORIC DISTRICT**

ACTION: CONTINUED TO JANUARY 16, 2007

Mr. Berkowitz read the ordinance by title.

It was moved by MAYOR PRO TEM KAST and seconded by COUNCIL MEMBER CLARK TO POSTPONE THE MATTER UNTIL JANUARY 16, 2007.

Ayes: Council Members Mulvey, Kast, Taylor Cronenberger, Ostermiller and Clark.

Nays: None.

Absent: Council Member Conklin.

MOTION CARRIED: 6 to 0

8. **(c) SECOND AND FINAL READING ON ORDINANCES AND PUBLIC HEARINGS – ORDINANCE ON SECOND READING INCLUDING 2589 WEST MAIN STREET, IN THE MAIN STREET HISTORIC DISTRICT**

ACTION: CONTINUED TO JANUARY 16, 2007

Mr. Berkowitz read the ordinance by title.

It was moved by COUNCIL MEMBER CLARK and seconded by MAYOR PRO TEM KAST TO POSTPONE THE MATTER UNTIL JANUARY 16, 2007.

Ayes: Council Members Mulvey, Kast, Taylor Cronenberger, Ostermiller and Clark.

Nays: None.

Absent: Council Member Conklin.

MOTION CARRIED: 6 to 0

8. **(d) SECOND AND FINAL READING ON ORDINANCES AND PUBLIC HEARINGS** – ORDINANCE ON SECOND READING AUTHORIZING A CONTRACT WITH SIERRA STEEL FOR CONSTRUCTION OF LITTLETON POLICE DEPARTMENT HOLDING CELLS

ACTION: ORDINANCE NO. 1, SERIES OF 2007

Mr. Berkowitz read the ordinance by title.

Mr. Woods said Council had authorized staff to proceed with a project to renovate the existing holding cells to insure officer safety and compliance with nationally recognized detention facility standards and guidelines. Council approved \$400,000 in the Public Facilities Fund budget for the project. The guaranteed contract price for the design renovation of the holding cells was \$193,470. The total estimated project cost, including design and equipment was \$268,000, well within the \$400,000 budget authorized by Council.

Mayor Taylor opened the public hearing. No one wished to speak.

It was moved by COUNCIL MEMBER OSTERMILLER and seconded by MAYOR PRO TEM KAST THAT THE PUBLIC HEARING BE CLOSED; THAT THE ORDINANCE APPROVING A CONTRACT WITH SIERRA STEEL FOR RENOVATION OF POLICE HOLDING CELLS BE APPROVED ON SECOND AND FINAL READING; ORDERED PUBLISHED IN FULL; THAT THE CITY MANAGER BE AUTHORIZED TO EXECUTE THE CONTRACT; AND THAT THE COUNCIL PRESIDENT BE AUTHORIZED TO AFFIX HIS SIGNATURE THERETO.

Council Member Clark said at a Council meeting a year ago, he had brought up the only document that delineated a number of criteria why the city could not use the current holding cells. A number of the criteria seemed to be nonsensical and meaningless. Since Council did not know why the existing cells could not be used, there was no way of knowing whether the contract would address it. Once the contractor went away, there was no way of knowing whether or not the city would be able to use the cells and whether or not the cells would meet the criteria. Council Member Clark would prefer to

see a list of criteria requirements the contractor had to meet and a design for the contractor and then he would prefer to put it out to bid. The disadvantage was there would be a slight delay. The advantage would be a cheaper solution and the city would get what it needed. It would not be the first time the city has gone down the path of trying to build or buy something that turned out not to be usable or acceptable in the future.

Council Member Mulvey did not see much in the contract about the cameras or toilet facilities in the cells. Were those items included in the price?

Mr. Woods said toilets were included. The cameras would be included in the camera package approved earlier by Council.

Mayor Taylor said a study session discussion was held about going with a single source contract and the concerns were addressed at that time. Council sometimes had to have faith in city staff and their ability to look at the criteria needed to meet the federal standards for holding cells. The discussion held at the study session had to do with separation of men and women and separation of juveniles and adults. All of that would be taken care of in the contract with Sierra Steel.

Council Member Clark was afraid that was not true. He was not sure the city knew what the standards were and that there would not be sight separation. He said this would be a step backwards regarding sight separation. There was nothing listed in the contract about sound. There were a bunch of ASTM standards but nothing about attenuation of sound from cell to cell and what the requirement was for that. There ought to be something in the contract about sound between cells.

Bruce Beckman, Acting Police Chief, had searched for anyone in the business of building cells and after speaking with colleagues, he came up with Sierra Steel. Chief Beckman participated in site visits to Weld and Adams Counties. Adams County had cells under construction and he saw the finished product in Weld County. After going through the process of designing a new building, he felt staff was pretty well informed. He said sight and sound issues were critical and the current reconstruction took care of them. The issue was communication between cells, not necessarily the noise. One of the limitations was that the existing footprint had to be used. He was comfortable that the reconstruction was a solution, not the ultimate solution, but given the constraints a good solution.

Mayor Taylor asked if the department knew what the federal standards were for holding cells?

Chief Beckman said the standards all had to do with liability and best practices. There was no federal or local code for holding cells. There were certain things the city could not do but beyond that it became subjective. The holding cells were a two hour facility and not a jail.

Council Member Clark preferred to split it up into design and then a competitive bid for construction. If the city was going to a sole source, there ought to be a performance clause that stated if the city could not use the cells because the cells did not meet standards, the city did not have to pay for them.

Mayor Pro Tem Kast said that sounded so vague and she could not imagine why any business would sign it.

Mayor Pro Tem Kast called for the question.

The vote on stopping debate was:

Ayes: Council Members Mulvey, Kast, Taylor Cronenberger, and Ostermiller.

Nays: Council Member Clark

Absent: Council Member Conklin.

MOTION CARRIED: 5 to 1

Council Member Mulvey asked for a blueprint of the plans.

Mr. Woods said a copy would be included in Council packets.

The vote on the motion was:

4-2 (Clark & Mulvey)

Ayes: Council Members Kast, Taylor, Cronenberger, and Ostermiller.

Nays: Council Members Mulvey and Clark.

Absent: Council Member Conklin.

MOTION CARRIED: 4 to 2

9. **(a) GENERAL BUSINESS** – None

10. **(a) CONSIDERATION OF COMMITTEE, COMMISSIONS AND BOARD MATTERS** – None

11. **(a) ORDINANCES ON FIRST READING** – None

12. **(a) RESOLUTIONS** – None

13. REPORTS -

- (a) **CITY MANAGER** – Mr. Woods reported during the snowstorms, the city set up a hotline with information regarding plowing operations. During storms, emergency dispatch was inundated with storm calls and he had received positive feedback that the hotline had provided relief for the emergency dispatchers. He had also received emails regarding the city's performance during the storm and it was evenly mixed between criticism and complimentary responses. Another issue was people who insisted that a plow had not been on their street and the perception that if a street had been plowed, it should be down to asphalt. The residential streets were being plowed down to snow pack. Information was available on the hotline, Channel 8 and the website. The first priority was safety. Crews would be addressing snow piles and drainage pans and there would be 3-4 weeks of follow up operations. The city did call in private contractors to help deal with the second storm and because of the state of emergency declaration the city might be eligible for some reimbursement of those costs.

Council Member Cronenberger said the hotline was a terrific idea but wanted to know who to call if people had questions that the hotline did not address. She also wanted staff to talk about addressing sidewalks, especially on Littleton Boulevard. Private businesses had their parking lots plowed but ignored the sidewalks. It was not acceptable when day after day, people had to be walking in the streets especially with small children.

Mr. Woods said staff was concentrating on safety and high-pedestrian areas and was aggressively contacting business owners regarding sidewalks.

Council Member Cronenberger said the city needed to educate businesses. It was not just this snow storm because it was typical that parking lots were the priority but sidewalks were equally important.

Council Member Clark had received emails from people about concerns regarding policy issues such as whether or not residential streets were plowed. It would be a good idea to have an agenda item at the January 16th meeting to talk about the snow storm and invite citizens to come down and speak.

It was moved by COUNCIL MEMBER CLARK and seconded by COUNCIL MEMBER MULVEY TO SCHEDULE AN AGENDA ITEM ON JANUARY 16TH REGARDING THE SNOW STORM.

Mayor Pro Tem Kast said it would not hurt to look at plowing residential streets but it sounded more like a study session topic than a public hearing.

Council Member Clark said after Council heard from the public, a study session could be scheduled. Council was responsible for setting policy.

Council Member Cronenberger asked how citizens would be informed of the ad hoc public hearing. There was no way to provide uniform notification and she was not sure how productive it would be if all citizens could not be informed.

Mayor Pro Tem Kast said it would be helpful to have a little time pass. There were some things to discuss but she did not know if a hearing in two weeks was right.

Council Member Clark said the longer it was from the event, the less likely citizens would appear to speak. Snow storms did happen with some degree of regularity and there was always way to improve.

Council Member Ostermiller said until the city knew what plowing all streets cost in the last event, it was premature to hold a meeting. Citizens might feel differently if they knew how much it cost. He had learned from Mr. Blosten that this last storm was only the 3rd time since 1980 that the city had plowed residential streets. He asked if it was even necessary to plow residential streets. Council Member Ostermiller wanted to know what the cost was and did policy need to be changed if residential streets had only been plowed 3 times in 26 years. He wanted to wait until there was more information.

Council Member Mulvey said the crews did a wonderful job. He said cul de sacs were a problem. He asked if there would be a pothole patrol?

Mr. Woods said there would be cold patching of potholes.

Council Member Mulvey said the city needed Channel 8 so people would know what to do.

Mayor Pro Tem Kast was in favor of a study session but not in two weeks.

Council Member Clark asked if January 16th was too soon to get cost information?

Mr. Woods said it depended on what type of information was needed. The private contractors' costs would probably be available.

Mayor Taylor said it would be more appropriate for a study session discussion as opposed to a regular Council meeting. Council could allow public comment at a study session.

Council Member Clark said there would be more people hearing what the process was at a regular meeting.

Mayor Taylor suggested the public hearing be set after the next Littleton Report was issued.

Council Member Cronenberger said if the intent was to inform citizens, why not put the information in the Littleton Report because every household received the Littleton Report.

Council Member Clark agreed to change the date to the first meeting after the Littleton Report was sent out. Council Member Mulvey agreed to the change.

The vote on the motion was:

Ayes: Council Members Mulvey, Kast, Taylor, Cronenberger, Ostermiller and Clark.

Nays: None.

Absent: Council Member Conklin.

MOTION CARRIED: 6 to 0

Mr. Woods said Council had received a copy of the letter from the Lockheed Martin representatives regarding the mutual aid contract for Trailmark and going back to the previous agreement of providing backup service primarily along Highway 121. He asked if Council wanted staff to include the item at next week's study session?

Council agreed.

Council Member Clark wanted the item to include information on a permanent station, paramedics at Station 16, an agreement with West Metro, and a private contract.

Mayor Pro Tem Kast also requested a map of the region of who was providing service where and the response times.

Council Member Ostermiller also wanted CAD reports included.

(b) **CITY ATTORNEY** – Mr. Berkowitz had no report.

Mayor Taylor asked that Mr. Berkowitz research if a vote of reconsideration would be necessary prior to a motion to discuss the campaign finance ordinance at a study session.

(c) **COUNCIL MEMBERS** -

COUNCIL MEMBER CONKLIN – Absent

COUNCIL MEMBER CLARK – None

COUNCIL MEMBER MULVEY – None

MAYOR PRO TEM KAST – Mayor Pro Tem Kast was glad Mayor Taylor would be raising the campaign finance issue again because her intent was not to kill it but to have a study session.

Mayor Pro Tem Kast said the city crews did a tremendous job with the snowstorm and asked that Council's thanks be relayed to them. She said individual citizens also stepped up and helped out people in their neighborhoods. She thanked people for being good citizens and good neighbors.

COUNCIL MEMBER CRONENBERGER – Council Member Cronenberger thanked staff for the commercial motor vehicle report. It was a very busy year and it was a program that yielded good results where safety was concerned. It was still shocking to see the kinds of trucks that were traveling through the community.

She was encouraged by the comments of Mayor Pro Tem Kast and Mayor Taylor regarding campaign finance reform because she was very baffled by what had happened earlier in the meeting. Whatever the position on campaign contribution limits, most people did believe that money had a very insidious affect on the electoral system. The proposed ordinance did not just address that issue. It also addressed reporting requirements and donations by unions and corporations. She said transparency and openness inspired confidence and she was glad to hear it was not being killed out of hand. Council Member Cronenberger said there had been plenty of time for Council to comment and there were no secret meetings or communications.

Council Member Clark clarified that he had brought up issues at the study session but Council decided to pursue only candidates. The only alternative that existed was for each individual Council member to send changes to Mr. Berkowitz and there was no chance for the rest of Council to see what was being set. It was ludicrous to say there was a chance to change it and put in issues.

Council Member Cronenberger said at any time Council Member Clark could have suggested a proposal.

COUNCIL MEMBER OSTERMILLER – Council Member Ostermiller also thanked the street crews. He had no problems getting anywhere on the Friday after the storm. Council Member Ostermiller received comments from two downtown business owners, asking him to give their thanks to the street crews. The crews' work had not gone unnoticed.

(d) **MAYOR TAYLOR** – Mayor Taylor asked for Mr. Berkowitz' report.

Mr. Berkowitz said Council rules stated a motion to reconsider must be made prior to adjournment of the meeting at which the vote was taken. He said tonight would be the appropriate time and a motion could be made by any Council member.

It was moved by MAYOR TAYLOR and seconded by MAYOR PRO TEM KAST TO RECONSIDER THE VOTE AND DISCUSSION ON THE CAMPAIGN FINANCE ORDINANCE.

Ayes: Council Members Mulvey, Kast, Taylor, Cronenberger and Ostermiller.

Nays: Council Member Clark

Absent: Council Member Conklin.

MOTION CARRIED: 5 to 1

It was moved by MAYOR TAYLOR and seconded by MAYOR PRO TEM KAST TO HOLD A STUDY SESSION REGARDING CAMPAIGN FINANCE ON FEBRUARY 6TH FOLLOWING THE REGULAR COUNCIL MEETING OR ON FEBRUARY 13TH.

Council Member Clark wanted background material addressing issues not just candidates such as what existing law applied to issue committees and what was Council's ability to change it.

Ayes: Council Members Mulvey, Kast, Taylor, Cronenberger and Ostermiller.

Nays: Council Member Clark

Absent: Council Member Conklin.

MOTION CARRIED: 5 to 1

Mayor Taylor said the fact that Police dispatch was being called regarding snow

storm information was another reason for the city to look at a 311 system in cooperation with other jurisdictions. A report to Council would be made sometime this spring.

Mayor Taylor also gave his thanks to the snow removal crews. They did an outstanding job.

Mayor Pro Tem Kast also expressed appreciation for the work police and fire personnel did during the storms.

(e) **DRCOG** – None

14. **ADJOURNMENT** - There being no further business, Mayor Taylor adjourned the meeting at 8:49 p.m. on Tuesday, January 2, 2007.

Julie K. Bower, City Clerk/Recording Secretary