

MINUTES OF UNIVERSITY CITY COUNCIL

SPECIAL OPEN SESSION

2nd Floor Conference Room

6801 Delmar Blvd

4:32 p.m.

March 1, 2017

Mayor Welsch called the Special Session of the City Council to order at 4:32 p.m., March 1, 2017, City Hall, 6801 Delmar Blvd., second floor conference room. In addition to the Mayor the following members of the Council were present:

Councilmember Rod Jennings
Councilmember Paulette Carr
Councilmember Steve McMahon
Councilmember Terry Crow
Councilmember Michael Glickert
Councilmember Bwayne Smotherson

Also present were Acting City Manager Charles Adams and attorney John F. Mulligan Jr.

Mayor Welsch asked if there were any changes to the agenda for the meeting. Hearing none, Councilmember Glickert made a motion to approve the agenda as presented, was seconded by Councilmember Jennings and the motion carried unanimously.

CITIZEN COMMENTS:

Jan Adams, 7150 Cambridge Avenue, spoke to address her concern about the contract with John Mulligan, hiring him to serve as Special Counsel in matters related to Lehman Walker and Council actions related to the release of the February 13th resolution to terminate Mr. Lehman Walker. The contract was approved by four members of Council on November 28th. Ms. Adams stated that the Council has provided Mr. Mulligan with a blank check, and is not demanding that he provide monthly invoices for his work. She stated the most flagrant violator of the public trust is Councilmember Paulette Carr, who often takes credit from the state audit of 2011. However, that state audit issued findings and recommendations regarding legal issues related to Mr. Mulligan and the Council agreed to correct those violations. Now, Ms. Carr and Mr. Mulligan are blatantly violating those agreements.

Ms. Adams provided a copy of her comments, and selected portions of the state audit, to be attached to the minutes of this meeting.

There were no other requests to speak.

At 4:45 pm Mayor Welsch asked for a motion to go into CLOSED session according to 610.021(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys and (3) Personnel hiring, firing, disciplining or promoting of particular employee by a public governmental body when personal information about the employee is discussed or recorded.

Roll Call Vote Was:

AYES: Councilmembers Jennings, Carr, McMahon, Crow, Glickert, Smotherson and Mayor Welsch

NAYS: none

LaRette Reese
Interim City Clerk

Jan Adams'

COUNCIL COMMENTS – MARCH 1, 2017

First, all of the scheming by those who sought to withhold the Minutes and the Resolution that terminated Lehman Walker's contract was irrational. I had that Resolution in less than 36 hours and in my litigation you will see proof of that. None of the people you like to blame and no City employee gave it to me. John Mulligan released the Resolution to Mr. Walker and Mr. Walker can give to whomever he chooses. So whoever the chief strategist was for your farcical scheme should be fired. And John Mulligan's legal opinion on this issue is specious.

I am astounded that this "new majority" think they have no check on their authority. Your efforts have resulted in providing to me clear and convincing evidence of blatant Sunshine Law violations. And your Special Counsel, he has the audacity and the incompetence to lie, in writing, about the existence of the Minutes. And Paulette, it seems, can't avoid unwittingly making admissions against the interests of our City.

I refrained from making these comments Monday night out of respect for those who were suffering as a result of the desecration of the cemetery. I also am sensitive to the fact that we had significant media coverage and did not want to distract from what was an opportunity to create a positive image for our City. I don't intend to grandstand for the media, or play to a political base, but I do intend to continue to hold you accountable in my arena, the court room.

It appears to me that you are building a case for firing the City Clerk. But your recent impolitic actions assure that she will enjoy successful litigation against the City if you do so now. Of course, your new Special Council would be pleased. You have given him a blank check, with no oversight and no accountability from him. In addition to paying him \$250/hour, you have put no limit on the expenses he can incur and that you intend to force taxpayers to pay. He can hire expert witnesses, consultants, paralegals, associate lawyers, incur travel expenses, with no regard for the costs. AND you won't even demand that he submit monthly invoices. Unconscionable.

The most flagrant violator of the public trust in this regard is Paulette Carr. Although she takes all of the credit for the State Audit of 2011, in fact she and I worked together to compile and submit all of the evidence of John Mulligan's malfeasance prior to 2010. The Audit Report issued findings and recommendations regarding the Mulligan legal issues and the Council agreed to correct the violations and then fired John. But now Paulette and John, both of whom were fundamentally involved in the entire audit process, and therefore cannot claim ignorance, are blatantly violating those agreements. This will not bode well for you.

In conclusion, I request that this Council hit the re-set button, obtain independent legal opinions and proceed with caution. If the "new majority" cannot be dissuaded from their course of action, I urge minority members to be diligent in creating a public record of their resistance and dissent.

Respectfully submitted,

Jan Adams, 7150 Cambridge Ave.



Thomas A. Schweich
Missouri State Auditor

City of University City

April 2011
Report No. 2011-14



<http://auditor.mo.gov>



CITIZENS SUMMARY

Findings in the audit of the city of University City

Trash Service Billing and Collection	Although the city has made a concerted effort to improve collections, 3,373 citizen accounts for trash service were delinquent as of June 2010, totaling \$1.6 million. Without collection enforcement, customers have less incentive to pay their accounts, which may reduce city revenues and increase the rates charged to paying customers.
Employment Contract	The city paid \$97,400 in severance pay to its former City Manager and included the same severance package clause in the new City Manager's employment agreement. If the former City Manager's termination date had been just 8 days later, the city would have saved \$28,600.
Cost Allocations and Administrative Transfers	The city allocated over \$900,000 in costs to various departments based upon estimates and without adequate supporting documentation. This makes it difficult to determine if the individual department or program is charged the right amount for the benefit it is receiving.
Legal Services	The city paid outside law firms over \$230,000 in fiscal year 2010 (FY10), including \$43,000 for City Attorney services, but it has not done an analysis to determine if outsourcing legal services makes fiscal sense. The city did not solicit proposals for legal services to make sure it gets the best value and does not have written agreements with its legal services providers. The city retained the City Attorney on a contingency fee basis to represent it in a class-action lawsuit, but there is no documentation the City Council formally approved the retainer agreement or had it reviewed by an independent attorney until 5 years after it was signed. To avoid conflict of interest concerns, an independent attorney should review any contracts between the city and City Attorney. The city paid \$146,000, including legal fees, to settle a discrimination case, instead of only paying the \$15,000 deductible, because it failed to notify its insurance company promptly.
Parking Garage Operations	The city does not adequately supervise the operations of the parking facility. Monthly reports of receipts and disbursements do not contain detailed supporting documentation, making it difficult to determine if all receipts are accounted for and all disbursements are necessary. The city has not conducted an analysis to determine whether outsourcing management of the parking facility makes fiscal sense and has not rebid the contract since 1997.
Accounting Controls	The city needs to improve its accounting controls in order to ensure transactions are accounted for properly. When the Collector's Office collects monies from other departments, the amounts are not immediately verified and entered into the system, and receipt slips are not given to the departments. The Community Development Department does not adequately segregate duties, and some departments do not account for the numerical sequence of receipt slips. Bank reconciliations are not performed timely. Services are provided to local businesses without first ensuring there are adequate funds in the businesses' escrow accounts.



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Management Advisory Report - State Auditor's Findings

To ensure restricted funds are spent appropriately and expenditures are allocated to various funds in proportion to the benefits received, the city should ensure the allocation of costs is supported by adequate documentation.

Recommendation

The City Council ensure all expenditures are properly allocated to the various funds and all transfers between funds are adequately documented.

Auditee's Response

The City Council provided the following written response:

The City concurs with this recommendation and will implement this procedure with the fiscal year 2011-2012 budget.

4. Legal Services

Legal services are procured without a competitive process, the city does not have written contracts for legal services provided, and the city has not performed a cost analysis to determine if outsourcing legal services is cost beneficial. In addition, an agreement with the City Attorney was not reviewed by an independent attorney prior to execution, and the city incurred unnecessary legal and settlement costs due to not filing an insurance claim timely. The city employs a City Prosecutor on a full time basis at a salary of approximately \$35,000 per year. This person also serves as City Attorney on a fee for service basis and was paid approximately \$43,000 for City Attorney services during the year ended June 30, 2010. The city paid for additional legal services, totaling approximately \$189,000, during the year.

4.1 Proposals for legal services

The city has not obtained proposals for legal services. The city hires various law firms based on the type of specialized services needed. In addition, the City Attorney is also considered a contracted position and is paid at an hourly rate. However, the city does not solicit proposals for legal services and has used the same individual as City Attorney since 1994 without periodically soliciting proposals for this position.

While professional services, such as attorneys, may not be subject to standard bidding procedures, the city should solicit proposals for legal services to the extent practical. Soliciting proposals and subjecting such services to a competitive selection process does not preclude the city from selecting the vendor or individual best suited to provide the service required. Such practices help provide a range of possible choices and allow the city to make a better-informed decision to ensure necessary services are obtained from the best-qualified vendor at the lowest and best cost.

4.2 Retainer Agreement

The city did not have an independent attorney review a retainer agreement with the City Attorney until 5 years after the agreement was signed. The agreement related to a class-action lawsuit including several cities against various telephone companies and provided a contingency fee of 25 percent



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of any such recovery, based on various criteria provided in the agreement, be paid to the two lead special counsel (one of whom was the City Attorney) and an associate special counsel. Because the settlement fees are not paid directly by the city, the city did not have the records documenting the total attorney fees. The net amount received by the city from this litigation through June 30, 2010, was approximately \$2.9 million. In addition, there is no documentation in the meeting minutes to indicate this retainer agreement was formally approved by the City Council.

Considering the City Attorney's advisory relationship with the City Council and to avoid the appearance of a conflict of interest, an independent attorney should be retained to review any potential contracts with the City Attorney which provide for legal services in addition to normal City Attorney duties. Additionally, all legal services contracts should be formally approved by the City Council.

4.3 Contracts for legal services

The city has not entered into written contracts with the various law firms providing legal services to the city. While there is some documentation of the fee amounts charged by these firms, there are no formal contracts specifying the terms of service and related compensation. For example, the only documentation of the city attorney's hourly rate is an email dated July 2006 from the City Manager indicating the City Council approved a rate of \$135 per hour.

Section 432.070, RSMo, requires contracts of political subdivisions be in writing. A written contract, signed by the parties involved, should specify the services to be rendered and the manner and amount of compensation to be paid. Written contracts are necessary to ensure all parties are aware of their duties and responsibilities and to provide protection to both parties.

4.4 Cost analysis

The city has not performed a cost analysis to determine if legal services should be performed in-house or continue to be outsourced. All legal services are outsourced including general services provided by the City Attorney. Without a cost analysis, the city cannot ensure the services are obtained in the most economical way.

4.5 Litigation procedures

Due to the failure to inform its insurance company of a claim in a timely manner, the city incurred approximately \$146,000 in legal and settlement fees. A city employee filed a discrimination lawsuit against the city in May 2009. The city was required to notify the insurance company of possible litigation within 30 days after the end of a policy period. The policy period expired on June 30, 2009, but a claim was not filed by the city with the insurance company until September 2009. As a result, the costs of the litigation and settlement were not covered under the insurance policy. The insurance policy would have limited the costs of the litigation and settlement to a \$15,000 deductible.



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To reduce the city's exposure to unnecessary legal expenses, the city should ensure all insurance claims are filed timely.

Recommendations

The City Council:

- 4.1 Periodically solicit proposals for legal services and maintain all related documentation, including reasons for the city's decisions.
- 4.2 In the future, retain an independent attorney to review potential contracts which could result in a conflict of interest for the City Attorney and ensure approval of all legal service contracts are formally documented.
- 4.3 Enter into written agreements for all services.
- 4.4 Perform a cost analysis to determine the most cost effective method of obtaining legal services.
- 4.5 Improve procedures to ensure insurance claims are filed in a timely manner.

Auditee's Response

The City Council provided the following written responses:

- 4.1 *The City concurs with this recommendation and plans to solicit proposals for legal services and document the City's decisions during 2011.*
- 4.2 *The City agrees with this recommendation. Whenever an issue arises regarding legal work outside the City Attorney's normal duties or where a potential conflict of interest might exist with the City Attorney, the City Council will be advised of the situation and will authorize hiring an independent attorney to review the issue. This authorization will be documented in meeting records.*
- 4.3 *All future legal services contracts will be handled through written agreements.*
- 4.4 *The City agrees to perform a cost analysis to determine whether in-house or outsourced services are most cost effective for the City by September 2011.*
- 4.5 *The City has implemented improved procedures to assure the timely filing of insurance claims.*