

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
SPECIAL MEETING
SEPTEMBER 01, 2015
10:00 A.M.

The Council of the City of Ruidoso Downs met in Special Session on September 01, 2015. Mayor Williams called the meeting to order at 8:30 a.m. and lead the Pledge of Allegiance. Mayor Williams asked Carol Virden, City Clerk/Treasurer to take roll call. The following were present:

Councilor Miller
Councilor Morales

Councilor Perry
Councilor Ritter

Carol Virden, City Clerk/Treasurer informed Mayor Williams there was a quorum.

Also present:

Alexandra Bobbit, City Attorney
H. John Underwood, City Attorney
Donna Miller, Payroll/Personnel Clerk

Others present:

Lisa Maue, Ruidoso News
Harrold Mansell, Municipal Judge
Virginia Armstrong, Court Administrator
Doris Roberts, Court Clerk
Dale Graham, Project Manager

APPROVAL OF AGENDA

Mayor Williams stated the next item on the agenda was Approval of Agenda.

Mayor Williams entertained a motion to approve the agenda with those changes.

Councilor Miller moved to approve the agenda. Seconded by Councilor Perry.

Roll call votes: Councilor Perry, Aye; Councilor Morales, Aye; Councilor Ritter, Aye; Councilor Miller, Aye. Motion carried.

Mayor Williams stated the next item on the agenda was – Discussion and Possible Action – Updates to the City of Ruidoso Downs Personnel Policy Manual Chapters 200-1700.

Donna said these are the changes that we discussed in the other Personnel Policy workshops. The only thing that's different is Vehicle Usage 527. Alex helped me with the wording and well, she actually did it.

Alexandra said we had discussed that employees must either live within the corporate limits of the City of Ruidoso Downs or Ruidoso or within fifteen mile radius of which we came to fifteen minutes. Then we had discussed there being possible exceptions. That's going to be your second paragraph where it says 'Employees who reside outside of the allotted fifteen mile radius may request an exception to the City vehicle usage policy. Employees must submit a request to the Mayor and should the Mayor find that the employees' exception is warranted the Mayor shall bring the request for the exception before Council and then the Governing Body discusses and votes on that request.'

Alexandra said over in Chapter 11 we had discussed our evidentiary procedure. I believe it's on page 50 where we're starting. I had multiple discussions with Mr. Van Fleck regarding what other municipalities do. For most the city manager handles the hiring and firing so they would do the predetermination hearing and then the hearing officer is appointed for an evidentiary hearing and then that person has the final say. The Governing Body never touches it but that's in larger municipalities such as Ruidoso. Small municipalities, smaller than ours actually, would be the predetermination hearing is held in front of the supervisor who gave out the discipline and then an evidentiary hearing is held in front of the Governing Body. Because we fall in this weird in between of a small and a large we tapped into a couple of other municipalities that are similar to our size and what they do is they have the predetermination hearing in front of the supervisor who gave the discipline so our predetermination hearing would stay the same. However instead of Council making any decision after the predetermination hearing, because you can't take two bites of the apple as Mr. Underwood would say, so then instead of it going to the Council the employee then would have the opportunity to request the evidentiary hearing. That is then held in front of an independent hearing examiner and then after that process then it goes to Council and then Council has the final say. Basically what we would be changing in ours is that instead of having the predetermination hearing and going to Council at the next meeting then having an evidentiary hearing and then it going to Council again we're going to take out that first Council part of the predetermination hearing where it's supervisor, employee, Personnel/Payroll and then if the employee chooses to have an evidentiary hearing they can request the evidentiary hearing, we hire a hearing examiner, and after that you will have the findings of the predetermination hearing and the evidentiary hearing and then you would make the decision whether to discharge or not. Also it was recommended because it does possibly give us an extended period of time of having an employee on payroll and Mr. Van Fleck recommended that the employee after the predetermination hearing would be put on administrative leave without pay at which point if they either have the evidentiary hearing or went before Council then that would

take care of any discrepancies with having to do any back pay or anything along those lines.

Councilor Ritter asked what's the period of time between the predetermination hearing and the evidentiary hearing that the employee might be without income?

Alexandra said it would be over a month because for the evidentiary hearing we actually need to be able to have thirty days to prepare for that. We need to find a hearing examiner and then we have to prep it like it's a trial. They would have five days to request it from the predetermination hearing and then we have thirty days from the predetermination hearing so twenty five I guess to prepare and hold the evidentiary hearing. Then at that point with it all depending on when that evidentiary hearing falls whenever the next Council meeting is.

Councilor Ritter said it might even be forty five days.

Mayor Williams asked for more explanation on overtime and compensation time and also on probationary employees.

Donna said I can't remember exactly what we decided on the probationary employee. I know that Dale Graham had talked about using their leave time as soon as they accrued it even while they were on probation. I personally feel they should work at least six months before they can take their vacation time and go through a couple of evaluations to make sure they are performing correctly. It shouldn't just be given to them when they start to work and that they should have something to work for.

Councilor Morales asked what chapter that was?

Alexandra said yes, it was changed and it was changed the year before employees could use their vacation leave time. It's a year before they can. We both had very mixed things in our notes. I had written down immediately, three months, and six months.

Mayor Williams said a probationary employee is supervised by the Department Head and the supervisor gives them the quarterly evaluation to determine the ability of the employee to continue in the job. The first one is usually to see if the employee is getting oriented to the job and can perform his job. The second one is to say if he's getting proficient on these valuable assets and will move forward. I think that accumulating the leave and after six months being able to use it would be a viable option to allow the employee and the supervisor to determine if this employee is what he really wants to have and where he places in the department.

Alexandra said it is Chapter 418.

Donna said it's also Chapter 1212.

Mayor Williams asked if they were let go after six months they would still be paid for their leave compensation.

Councilor Morales said I think six months would be good to start accumulating annual leave because I think if you start it when they are first hired it's like what the heck. I think six month is a good time to start them. I don't think starting it immediately is good but any longer than six months isn't good either.

Donna said they could still have their personal day after three months if they needed a day off.

Councilor Morales said they would also have their sick leave and holidays and insurance.

Alexandra said they are actually accumulating the annual leave from the day they started they just can't take it for six months.

Donna said annual leave equals almost one day a month. It's like 3.8 hours per pay period.

Councilor Miller said on 1211 it says one day for each year of service to a maximum of thirty vacation days.

Donna said that's after they've been here fifteen years and that's above what they already get.

Mayor Williams asked what Council's response is on this annual leave?

Councilor Morales said I think we should have it as is and after six months of employment and after that the employee will be eligible to take annual leave. As it's written is how it should stand.

Alexandra said on overtime/compensatory we discussed that basically this was pulled from the Ruidoso overtime policy and then I believe on compensatory time because there are departments that don't have budget allotted for the overtime pay that is was necessary to keep compensatory time in there and Mary also came in an discussed the pay benefits to that as well. It had been that they changed the time on that.

Donna asked are you talking about the number of hours?

Alexandra said yes.

Donna said I think it was to accrue to eighty hours under comp time. It's on page twenty eight.

Councilor Morales said wasn't that the one that was ridiculous like two hundred forty hours?

Alexandra said yes. It was changed to eighty hours.

Mayor Williams said just one thing on compensatory time that is paid out. It's paid at time and a half.

Alexandra said that way at keeping it at eighty hours it keeps you from paying, should they accrue over eighty, the employee would actually lose that time and it keeps you from paying more than eighty hours in overtime.

Mayor Williams said at this time I would like for Council to review that page.

Councilor Miller said I wish I had time to read this. I just got it this morning.

Councilor Ritter said on the comp time they are getting paid time and a half. How does this effect their overtime? Let's say there is a water break on a Tuesday night and they come in and work three hours and then they work Monday through Friday and work their regular forty hours. In addition to that they've worked three hours on the water break that they are getting time and a half for. Are they also going to get time and a half for the forty three and the three hours over and above?

Alexandra said it would be the three hours they would get the overtime pay for because that exceeds the forty hours.

Councilor Ritter said but if they come in and work on non-scheduled time then wouldn't you get paid time and a half already?

Donna asked are you talking about comp time?

Councilor Ritter said call back time outside the regularly scheduled shift hours will be paid at premium pay. The premium pay shall be at one and a half times the employees' regular hourly wages for those call back hours. My question is if they do that in addition to working their normal shift they are going to get paid time and a half for what they did Tuesday night but then also that's going to put them into an overtime situation because they worked forty three hours total for that week.

Alexandra said so what you're saying is would that be double?

Councilor Ritter said right. Otherwise you're really not compensating them the time and a half for being called back.

Councilor Miller asked if call back was considered overtime?

Councilor Ritter said it was fine the way it was written and basically what you're doing is you're also saying okay boss, I worked three hours last night and I'm not coming in until 11:00 so it doesn't affect their forty hours but if they get to the point where that call back time puts in over forty hours in that work week they are also entitled to that overtime pay for those additional hours over and above forty. My point is that I think they should be compensated for that call back time because that's over and above but you should also compensate them for the overtime as well. What it says is it's basically double dipping but I think it's okay in my opinion but it needs to be explained in here so that people understand because they worked three hours on Tuesday night fixing the water leak that doesn't prevent them from getting overtime for the forty three hours total.

Alexandra asked how that would go on the time sheets? Would it just be written with a total at the end? Does it show up that they got paid on Tuesday but then also overtime?

Councilor Ritter asked is that correct. Does that meet what the rules are for overtime pay?

Donna said anything worked over forty hours should be paid as overtime.

Councilor Miller asked if they would get paid double, for call back and again?

Councilor Ritter said they would get time and a half for what they worked Tuesday night and in that week they worked more than forty hours and whatever those excess hours were they would get paid time and a half for those hours. Technically they're accumulated on Friday afternoon because that's when they get to the forty. It really doesn't have anything to do with the Tuesday night hours it's just total hours. It's two different things. Is that right?

Alexandra said I guess it's just on your time sheet. If you are wanting them to double dip on their time sheet it would actually have to say this is call back and they get overtime. The only thing that she's going to see is forty three.

Councilor Ritter said for the Tuesday night hours technically they are going to get an extra half time and then at the end of the week if they run over forty hours they are going to get time and a half for those over and above.

Alexandra said whereas someone who would work the three hours that night and then take off in the morning it would only show up as forty but then they're entitled to the overtime for Tuesday. I'm going to guess on the time sheet we're going to have to specify this was call back. Then do you want something in there saying that should overtime and call back time . . .

Councilor Ritter said is that necessary?

Councilor Miller said that could get expensive.

Councilor Ritter said then let's do the call back time and if that's at premium pay why should everybody work more than forty hours and why should they not be paid overtime?

Councilor Miller said it looks to me like they're getting paid twice for the same hours that way.

Donna said right now we have on-call pay.

Councilor Miller said has it just been call-back pay or has it been overtime pay?

Donna said this is how it's handled. Somebody is on call. So they get their on call pay which is straight time. But, if they had to work overtime they put it under overtime and it counts for hours that they actually had to go out and work.

Councilor Miller said so they haven't been getting time and a half for call back.

Donna said no, they have always gotten straight time but they're on call and don't always go out.

Councilor Ritter said but if there is a water leak or something like that and three guys go out there and they've left their families or whatever it might be I think they should be compensated the time and a half like it's written in here today. I don't think that should take away from the overtime situation that's been created within that week.

Mayor Williams said categorically there is one person that is on call. To fix a water leak he has to call in two more. The employee that's on call obviously gets his one or two hours depending on if it's a weekend or weekday. Any more than that he gets paid overtime. The employees that come out with him get overtime from the time that they come out. Only one employee gets the on call hour.

Councilor Ritter said what I'm saying is Monday through Friday they work eight hours per day creating forty hours. In addition to that they were called out to fix a water leak on Tuesday night for three hours. At the end of the seven day pay period they have accumulated forty three hours of work. Three hours are call back but the total is still forty three. So, my question is and my statement is, are they paid overtime because they worked forty three hours and does that effect the call back time? My thinking is that it shouldn't. But, my question is how do we have it written today?

Donna said they would get paid the forty hours with three and a half hours of overtime. Plus they get their comp pay.

Mayor Williams said also on your sheet you get your on call. If there were any additional hours that they worked overtime during that week would be the overtime hours. The on

call hours would have already been paid. I don't think you could actually pay them again for additional hours within the forty three hours. I think if the employee worked another two or three hours overtime during that week he would get paid overtime. I think the on call has already been paid and I don't think you can pay it again.

Councilor Ritter said that's my question. What is right?

John Underwood said I think at the moment it provides for both. I think what Donna is saying is the current practice is to pay both.

Councilor Ritter said I think there would be a strong argument from the employee side that would say I worked forty three hours and you owe me three hours of overtime. The question needs to be asked is if we have an answer to it tomorrow so we know what to do. The Mayor makes a valid point and I make a valid point but they're opposite.

John Underwood said it's going to be a policy decision. What I hear is call back time is to be compensated at time and a half premium pay and then you have the provision for overtime. As you've acknowledged that appears to be double dipping. Being paid twice for the same activity.

Councilor Ritter said it doesn't matter to me what we decide to do. I'm going to vote my way and I've already said what I'm going to do. I think we need to have a clear cut policy so that payroll knows what to do tomorrow.

John Underwood said what concerns me is that the current practice has been what we said and are we changing basically the terms of employment.

Councilor Miller said I understand you as saying they are getting paid for the call back time and then paid again as overtime on that same time.

Donna said if they work overtime yes.

Councilor Ritter said but today call back time is straight time. So, when you get to the end of the week those three hours are going to be overtime. There's really not a question there because there has not been a premium pay. My question is because they have been paid a premium pay are they also entitled to overtime pay for those same hours because at the end of the week they have forty three hours.

John Underwood said the way it reads now would support your proposition. The way that it reads the way the Mayor and Judy are talking about is that unless previously compensated for overtime for those hours on call back would not be included in the call back.

Mayor Williams quoted: the premium paid shall be a one and a half time the employees regular hourly wage for those call back hours plus payment of the appropriate FLSA level for all additional hours worked.

Mayor Williams said by that statement there wouldn't it say he gets paid for his time and a half for his hour that he works on call back but any other overtime hours over and above would be paid time and a half. So, he gets his call back but he has to work the whole forty hours to get his additional overtime hours not including the call back.

Donna said so you're asking if the call back pay make it over forty hours a week so that they get overtime?

Councilor Ritter said my question is if they work forty hours a week. In addition to that on Tuesday night they went out for three hours on a water break. Then at the end of the work week they've worked forty three hours. How are they paid for the forty three hours?

Donna said so what you're saying is would they be paid overtime for the three hours and overtime for the comp time?

Councilor Ritter said for the premium pay? Because they've worked forty three hours are they entitled to overtime pay because they've already gotten premium pay.

John Underwood said you have two different modes of compensation and they're not exclusive of each other.

Councilor Ritter said I think at the end of the year you have an employee that's worked twenty or thirty premium hours but then they haven't been given overtime for anything over and above forty hours. I think they could probably hire an attorney and get overtime pay. There needs to be an answer

Councilor Miller said look at 609 A & B on weekday on call and weekend days and holidays on call. The last sentence does say 'call out on the same day shall be paid at overtime for hours worked.' It's talking about on call and overtime compensation. To me it sounds like the same thing unless they took some time off of course.

Councilor Ritter asked if this happens very much? I was going to say if they worked ten hours on a water leak do they normally take the next day off or something?

Donna said they usually take overtime because the way it's written now is any hours over eight hours during the day they get overtime.

John Underwood said on the other hand if you're in Public Works and you get called out at midnight and work until 3:00 that's a different situation of continuing to work after 5:00 at the same thing. It still amounts to the same thing.

Councilor Ritter said maybe the easiest way to do that is to change premium to overtime. The premium pay shall be one and a half times over those hours. Take the word premium out and replace it with overtime so that the verbiage already says that they get overtime.

John Underwood said except that if that employee gets overtime pay for those hours and then turns in a forty three hour work week does that employee also get overtime pay for overtime? We can fix the ambiguity of it all with guidance of the Council of what the policy is.

Mayor Williams said one thing is in that second paragraph in 608 it says the premium pay is one and a half time them employees hourly wage for call out so for those three hours of call back and gets paid time and a half. The next sentence says plus payment at the appropriate FLSA overtime guidelines for additional hours worked. Which when you say additional hours even though it's under call back additional hours would be hours that he's worked for eight hours possibly on a weekday. So, if he works his eight hours and say he came in at midnight and at 3:00 he gets call back time which is time and a half and then comes in to work at 7:30 and goes around and works his eight hours and an hour later he comes in for an additional two hours. The thing about this is because he again had call back hours at time and a half and then over eight hours of the work day because he did additional overtime.

John Underwood said for the eight hours over eight hours is no longer applicable under this change. I hear what you're saying because when you read that second paragraph that premium pay shall be at one and a half times the hourly. So premium pay and overtime pay are really separate things and it provides for double payment. For those call back hours plus payment at the appropriate FLSA level for all additional hours worked which would I guess Donna mean overtime. That's the way that it's written. It provides for both call back pay and overtime pay if they work over forty hours that week.

Mayor Williams said so he works eight hours and has call back for two more hours but works forty hours for the week. So he gets those two hours as call back then he's already been paid the time and a half. Then if he was called back again would that again be call back?

John Underwood said the only thing that's going to go on overtime numbers as I understand it is anything over forty per week. So, if they take the call back time but don't work over forty per week they're not going to get but one payment for time and a half. The way this is written if they worked three hours of call back and they work their usual forty hour work in addition to the three hours they are going to get three hours of call back time and a half and three hours of overtime. I think that wording in the second paragraph refers to overtime so it's plus overtime.

Mayor Williams said if they were on the Street crew that wouldn't be call back time it would be overtime. Normally the only ones on call is the Water Department. They would just get three hours of straight overtime.

John Underwood said there would be employees in the Street Department that would be on call back to remove snow.

Councilor Miller said on A and B it says whether they go out or not they still get one hour for being on call and two hours on weekends.

Mayor Williams said I would like to ask Council to on this particular item listed as a possible action item to allow staff to come back to Council at the regularly scheduled meeting of September 14th with language.

John Underwood said you may if that's Council's desire.

Mayor Williams said if we could please postpone action on this until staff has ensured the changes by Council to be made.

John Underwood said to clarify, and Donna and Dale I may need your help on this, that on call is a very different thing than call back. You get compensated for being on call whether you are called out or not for one hour each week.

Dale Graham said it's one hour each day and two hours on the weekend.

John said so, a person who is on call this week would work a regular forty hour week. In addition to that they will be compensated for one hour each day and if they are on call on the weekend that's basically seven days a week and they are entitled to seven hours at time and a half.

Dale said it would be nine hours.

John said that nine hours is in addition to the forty hours but they are being paid time and a half for that hour each day plus the weekend.

Dales said that's right and they can't leave town or can't do anything because they're on call.

John said a fix to that should provide that if that person is on call on Saturday getting two hours of compensation and if they are called out that call out time is payable at time and a half also right?

Dale said right.

John said so, any on call time or call back time compensated as provided herein should not also be included in overtime for that week because that nine hours that week that employee does not turn in forty nine hours. That employee turns in nine hours of on call and a forty hour work week. If that employee got called out during that period of time and worked three hours that employee would be paid for the call back provision but not the overtime provision. I'm just trying to make sure I have it covered in order to make it fit in my rewrite. Basically what you are saying and what you are asking me to do is provide that any hours that have previously been paid by on call provisions or call provisions there should not be additional compensation for those hours for overtime pay.

Councilor Miller said yes and that's what needs fixing.

John said just to go along with that we will check if there are any federal requirement for that.

Mayor Williams entertained a motion for - Discussion and Possible Action - Updates to the City of Ruidoso Downs Personnel Policy Manual Chapters 200-1700 and I would ask for a postponement for Council to consider for staff to update language on discussions on overtime, compensatory time, and vehicle usage and postpone to the regular meeting of September 14th for possible action.

Councilor Morales moved to postpone for update of language on discussions on overtime, compensatory time, and vehicle usage and postpone to the regular meeting of September 14th for possible action. Seconded by Councilor Ritter.

Roll call votes: Councilor Morales, Aye; Councilor Miller, Aye; Councilor Perry, Aye; Councilor Ritter, Aye. Motion carried.

CLOSED SESSION

Limited Personnel Matters Pursuant to Section 10-15-1, H2, NMSA 1978 for the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee. Any action taken as a result of the Closed Session will be brought back into Open Session.

Mayor Williams entertained a motion to go into Closed Session for Limited Personnel Matters Pursuant to Section 10-15-1, H2, NMSA 1978 for the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee. Any action taken as a result of the Closed Session will be brought back into Open Session.

Councilor Ritter moved to go into Closed Session for Limited Personnel Matters Pursuant to Section 10-15-1, H2, NMSA 1978 for the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints

or charges against any individual public employee. Any action taken as a result of the Closed Session will be brought back into Open Session. Seconded by Councilor Miller.

Roll call votes: Councilor Perry, Aye; Councilor Miller, Aye; Councilor Morales, Aye; Councilor Ritter, Aye. Motion carried.

Mayor Williams closed the regular meeting at 9:35 a.m. and invited John Underwood, City Attorney, and Carol Virden, City Clerk/Treasurer and called for a five minutes recess.

Mayor Williams entertained a motion to go back into Open Session.

Councilor Morales moved to go back into Open Session. Seconded by Councilor Miller.

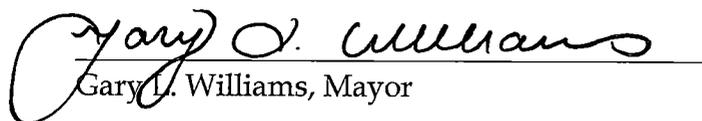
Roll call votes: Councilor Morales, Aye; Councilor Perry, Aye; Councilor Miller, Aye; Councilor Ritter, Aye. Motion carried.

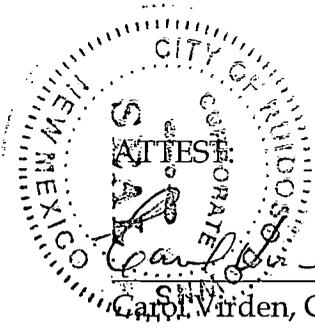
Mayor Williams called the regular meeting back to order at 10:48 a.m. and asked that a member of the City Council attest to the fact that the only items discussed in Closed Session were Limited Personnel Matters Pursuant to Section 10-15-1, H2, NMSA 1978 for the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee. Any action taken as a result of the Closed Session will be brought back into Open Session.

Councilor Morales attested to the fact that the only items discussed in Closed Session was Limited Personnel Matters Pursuant to Section 10-15-1, H2, NMSA 1978 for the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee and that no action was taken.

ADJOURNMENT

There being no further business to attend to Councilor Ritter moved to adjourn at 10:48 a.m. Seconded by Councilor Perry.


Gary L. Williams, Mayor



Carol Virden, City Clerk/Treasurer