

BOOK 26
May 24, 2023

BURLINGTON CITY COUNCIL SPECIAL SESSION 5-24-2023

City of Burlington Governing Body met in Special Session at City Hall’s address, 1013 N. 4th Street, Burlington, Kansas, at 6:00 p.m. Wednesday, May 24, 2023. Mayor Stan Luke called the meeting to order.

THE PLEDGE OF ALLEGIANCE

ROLL CALL: Stan Luke, Mayor

Council Members present:

- | | | |
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| <input checked="" type="checkbox"/> Jerilyn Curtiss | <input checked="" type="checkbox"/> Maxi Berryman | <input type="checkbox"/> Lewis Lenard (President of Council) |
| <input checked="" type="checkbox"/> Lila Van Horn | <input checked="" type="checkbox"/> Thomas P. Tschantz | <input checked="" type="checkbox"/> Martin Ernst |

Superintendents Present:

- | | | |
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| <input type="checkbox"/> Kevin Boyce (Parks) | <input type="checkbox"/> Alan Schneider (Electric) | <input type="checkbox"/> Mark Davidson (Street) |
| <input type="checkbox"/> Doug Jones (Chief of Police) | <input type="checkbox"/> Danny Hawkins (Water/Wastewater) | |

Also Present:

- | | |
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| <input checked="" type="checkbox"/> Anne Brown (City Clerk) | <input checked="" type="checkbox"/> Mary Mader (Administrative Assistant) |
| <input checked="" type="checkbox"/> Philip Wright (City Attorney) | <input type="checkbox"/> Jimmy Hugunin (Zoning/Grants Clerk) |
| <input checked="" type="checkbox"/> Greg Holmquist (Assistant City Attorney) | <input type="checkbox"/> Kerri Weltha (Deputy City Clerk) |

Media Present:

VISITORS: Jennifer Hill

PERSONNEL POLICIES AND GUIDELINES UPDATE PROJECT

Mayor Luke, “We are novices at this. So, we are calling upon you Jennifer to kind of lead us through this evening on timelines, agendas, schedules, what kind of information you anticipate needing, what kind of an output you expect to have, and you can ask us questions and we may ask you questions as well. I will turn the floor over to you.”

Jennifer Hill, “Sure, that’s fine. I reviewed the documents that currently make up our employment handbook and it looks like it has been a work in progress with amendments and additional policies and rephrasing’s added in. I think the natural place for me to start is to kind of incorporate everything that Philip sent me into one working document. Then step back and sort of say okay, here are the areas that are really needing updated for compliance or legal issues but also turn to you guys and say what is it that is your goal to get out of this handbook. Something that we went over a couple of weeks ago with another community that we are going to work with is generally I am curious to know what is the size of your organization? How many employees do you have? Do you anticipate that changing in the future?

“Who is your, I don’t want to say human resource director, but who is the person that somebody goes to if they have disciplinary questions or benefits questions? So, if we could just kind of walk through some of those basic answers about your organization then that will give me a better vibe on what I’m looking at in terms of revision. So, the first question is just tell me a little bit about your organization. How many employees do you have, what’s the structure, and who is the manager?”

Mayor Luke, “We have 38 employees. We operate with six departments; Police, Streets, Parks, we have our own electric plant, we have our own water supply, and then we have the city clerk on the administration side. The city clerk serves as our human resources person. If there is anything associated with benefits that would be coming through city hall and the city clerk. As far as growth, I wish I could answer that question. Right now, in our county we are looking at two major potential employment opportunities. We have no idea how many of the approximately 3000 potential new workers in the county will be residing within Burlington. If we do receive a large portion of that we will probably have to expand staff in the Water Department and Streets Department and that infrastructure since we may be locating a facility outside of our city limits. The rest of the potential staff will be minimal. We will have some retirements and there will be some replacements. We have an election coming up in November which could impact the number of people sitting around the table here this evening with respect to city council and myself.

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“I know some of the stuff in the policy handbook goes back 25 years or so. Some of it goes back just a couple of years. It’s kind of a hodgepodge. If we can put it into a straight forward thought process that would be our first goal and making sure we have our I’s dotted and Ts crossed moving forward from there.”

Jennifer Hill, “That makes sense. Where do the majority of questions or issues that need to be addressed in your handbook, what’s the topics that come up? Is it vacation pay or leave of absences, or retirements? Where do you find that most of your concerns generate from?” City Clerk Brown, “I would say, the major thing lately, has been HR issues, retirement leave, and how it’s paid out. But there is a lot of stuff in here that I think just needs to be cleaned up and taken out so that so that it’s easier to read and understand. There are a lot of things in there that have just been marked through and it’s been replaced. I think if that stuff was taken out it would be a lot easier to read.”

Jennifer Hill, “Right. Well, that was kind of my thought when I saw how it was structured, I thought okay maybe the first thing we need to do is put a working document together that has all of the changes incorporated and it takes out the provisions that you’re are not using anymore and kind of see where that leaves us and that’s starting point. Do you know what I’m saying?” City Clerk Brown, “Yes.” Jennifer Hill, “It seems like that would make the most sense to me. I think there is a real need for these handbooks to benefit managers and employees. I think it needs to answer questions clearly. If I am you, the city clerk, I’d be thinking we need to make sure we follow our policy here and oh, wait, what’s our policy? It needs to be really easy to consult and review.

“Similarly, if you are an employee and you have questions of how the city is going to handle this issue if it comes up, they need to be able to go to it and answer it. I think we are all on the same page for what you are needing. I do think that this needs some general updates and it needs to look prettier. I know that sounds silly but it does matter. It matters to your employees and it needs to be something that everyone feels comfortable consulting before they ask questions, if that makes sense? That is always important to me, if they have a document that they are confident in and they can look for answers there first before they come in and ask questions. That way everybody is on the same page. Oh, hey I think it says this how do you guys want to apply that?

“And in the main thing is, if you think that there are provisions that we need to delete, we need to make sure that the city is currently following all of its own polices. That’s a concern that I always have when you have a really old handbook like what we are working with here. We need to make sure that the city isn’t doing something that is against, whether it’s intentional or not, it might be something that is just a customer practice where over the years we don’t follow that policy anymore. It’s out of date, it doesn’t apply to how we work. We need to identify those for sure and make sure that our new handbook is going to follow what we are already doing. Maybe we have to readjust what we are practicing and managing our employees. I think this is probably a project that takes three to four months simply because it’s a lot of give and take and back and forth. Philip, do we need to have the city council vote on whatever our new handbook is or is it something that we finish it and then show it to them and say hey project that you guys authorized?”

Attorney Wright, “I think traditionally the city council would vote to adopt the manual and that is how it has been done in the past and that is what I would suspect that we would do on this one.” Jennifer Hill, “Okay, so it might make sense if after you have what you, me, and the clerk believe is a final draft maybe it would make sense to have me go to Burlington and just present it to you guys and walk you through it and say this is what I believe that the city needs and the policies. That way you guys have and understanding of what you are voting on. That makes the most sense.” Attorney Wright, “That makes the most sense to me. There is also a committee that has a couple of council members that want to give their input as well.” Jennifer Hill, “Oh, great. That’s fine.” Attorney Wright, “I think that’s a very prudent way to approach it. Mayor, do you disagree or does anyone disagree?”

Mayor Luke, “No. That’s the reason I put that committee together so that they could assist and be the key people with the particular input bringing it back to the entire governing body.” City Clerk Brown, “And I’m also working on the budget right now so that is taking a lot of my time.” Jennifer Hill, “Oh sure. Something I have done with some success with other organizations is that we will set up a bi-weekly phone call and we will kind of sketch out that these are the benchmarks we are going to meet and it kind of holds us honest. That way in between the phone calls we can do the work of editing and writing. At the phone call we can say today we are going to talk about disciplinary policy and how we want our disciplinary policy to read. So, we will have a 30-to-45-minute

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phone call where all we do is focus on disciplinary policy, making sure it's tight and says what we want it to say. Then two weeks later it's we are going to focus on the different kinds of leave that is available to employees. Stuff like that. We can do something like that. That way it is bite size pieces and it's not just, here you go Mary, here is a 75-page document you need to review in the middle of budget season, right? That might be a more manageable way to approach it. What do you think about that?"

City Clerk Brown, "That sounds good to me." Council Member Curtiss, "That sounds good." Attorney Wright, "I think with everybody's time demands, it makes it into bite size pieces so we can focus on that and then it also keeps everybody on task and moving it forward which I think is going to be important especially considering I think the time frame is going to butt up against an election and who knows what will happen after that. This certainly needs to be taken care of and I don't want this to be kiboshed by a new body coming in or something else. I think that sounds pretty reasonable and honestly that would help everyone stay on task and hopefully helpful to the process. I think I cut you off Anne, I'm sorry if I did."

City Clerk Brown, "No, that's okay. I think Jerilyn and I both agree and Maxi. That sounds good to us too." Council Member Curtiss, "Because there is so much in here and it is repetitive in places and if we can condense it down into smaller..." Council Member Van Horn, "Employees might actually read it if it wasn't too thick." Attorney Wright, "I know we have had an issue with regard especially with the disciplinary stuff in my opinion I think we have been having issues with employees not understanding things. Also, chain of command. Those sort of issues come up. Quite honestly, we need to get this thing to brochure size where you can read a three by five card and pretty much get the gist of it." Council Member Berryman, "We don't need all of this stuff."

Jennifer Hill, "The other thing I think is important for me to know there are some communities, I've worked with cities all over the state of Kansas and it's funny how some things become part of the culture of that work place. I worked with a community that had comp time and it was this bizarre amalgamation of PTO and it was sort of a vacation time but it was this bizarre thing. I've never seen anything like it. And the way they used it I honestly researched it to make sure it wasn't a violation of FLSA the Fair Labor Standards Act and it was fine. The way they were using it was legal but I said this is a lot of work for you guys to track it. I just think we need to dump everything into a PTO bucket and there was massive push back. No, we are not changing. This is something that is precious to the people that have been here for 20 years. We can't let it go. We can't change. When I heard that then we just have to make sure that the policy is clear and everybody understands it. So, if there is anything like that culturally and really important to you or your city employees, I need to know that. I have to be able to draft a document that accommodates those issues that are important."

Attorney Wright, "We had a little bit of an issue with comp time, didn't we Anne?" City Clerk Brown, "Yes." Attorney Wright, "Quite honestly the city's policy I don't think is very clear. We just need to define it a little bit better. We attempted to do that a little bit. I can't think of anything that is a sacred cow like that. I would defer to Stan and Anne and council members if there is anything that you can think of on that." Mayor Luke, "I don't know of any really sacred cows. I guess part of what we were thinking is that the policies that we have are outdated. With society changing yes there are people that have been here 20- 25 years and on their last few years before retirement but we could implement a new form of things with new employees. If that is appropriate for what most communities or companies are going to."

Jennifer Hill, "Okay. Well, who are my committee members?" Mayor Luke, "We have Lewis Lenard who would be the chair, Jerilyn Curtiss, and Maxi Berryman. Then of course you would have city hall which would be Anne and I'll try to stay out of it." Jennifer Hill, "Anne, what's your last name?" City Clerk Brown, "Brown." Attorney Wright, "So, what I can do Jennifer is I'll send you an email with everybody's contact information and name so that makes it easy. I guess it might be nice maybe you could just submit a syllabus with a time frame on it or something like that or scheduling order. Just something with time frame and the topics and we could get that circulated as individuals with input on that if they'd like things different or a different order then we can accommodate that and go from there. I think that would be very helpful."

Jennifer Hill, "Sure and then I'll send an engagement letter. Philip, do you want me to send it to you or to the mayor or how do you want me to do that?" Attorney Wright, "If you forward that to me, I'll forward that to the

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mayor. You probably need to talk about your compensation and in this situation we probably ought to have city council go ahead and vote to retain you if that is their desire and authorize the mayor to go ahead and sign a retainer agreement based upon the representations you made with regard to your billing practices.” Jennifer Hill, “So, I am going to charge \$200 an hour for this work. It’s more specialized than just general municipal work so when I do employment specific work, I do charge \$200 and above for that. I think on a project like this you are going to be out of pocket \$4,000 - \$5,000 to be perfectly frank. By the time we have all these meetings and we go through everything and I travel down to Burlington, I mean that’s just going to be the nature of the project.

“My typical billing practice, and I’ll have an engagement letter that outlines all of this, it is very normal attorney practices from the perspective that I bill in 0.1 increments for the hour. I send out bills monthly. Everything is pretty detail oriented in terms of you are going to know what I did when you read the bill. This is something where the expense of it is going to get spread out over four to six months. So, hopefully that isn’t something that is too big of hit for you guys. It is just a project that takes time. The cost comes from the back and forth and me really drilling down on your organization and making sure the policies are tailored to you. If you have any other questions about my billing practices you are more than welcome to ask. You’ve hired lawyers before you know how we work.”

Mayor Luke, “We have Phil, we know.” Jennifer Hill, “We cost way too much money. An ounce of prevention—.” Inaudible. Mayor Luke, “The salary is keeping us out of jail, so I guess that is probably good.” Jennifer Hill, “That’s the hope, right?” Mayor Luke, “Our next council meeting will be the first Wednesday of June. If we could have the engagement letter by that time, we could take care of it right there at that first meeting.” Jennifer Hill, “So, June 7th?” City Clerk Brown, “Yes.” Jennifer Hill, “Gotcha, okay. I’m taking notes as we go here.” Attorney Wright, Just Jennifer so you know the council has to approve your bill so you have to get it submitted in time before a council meeting so that can be approved. The city has been very good about paying timely as long as you get the bill in. I haven’t gotten my bill in a couple times and that was my fault.”

Jennifer Hill, “My bills usually unfortunately aren’t mailed until the 9th or 10th of the month. So, I’m probably going to most likely miss that council meeting so it will always end up on the next cycle is how that would work.” Attorney Wright, “I email mine and I think that would be acceptable as well. The mail between Wichita and Burlington is just sometimes not ideal. The United State Postal Service sucks.” Mayor Luke, “We have two council meetings a month on the 1st and 3rd Wednesday,” Jennifer Hill, “Oh, okay.” Attorney Wright, “So, you have two shots.” Mayor Luke, “You have two so if you had it on the 9th that would normally be ample time so we could cover it in the 2nd meeting of the month.” Jennifer Hill, “That’s probably what you could anticipate.”

Jennifer Hill, “Do you have any other questions for me?” Mayor Luke, “You have been doing policy stuff for years?” Jennifer Hill, “I have. I probably started working...let’s see. I kind of became outside council to help with employment issues maybe first about 10 years ago. I was out helping a small community in western Kansas. They didn’t want to pay me to drive out there so we just did everything on email and phone and it worked fine. They had a lot of issues in their EMS Department actually. And that was kind of my first big municipal employment client. Now, I have been probably the chief outside council for the city of Wichita, we have 2700 employees at the city of Wichita, and I am the primary outside litigation and consulting council for employment matters for the city. I have been in that position since about 2017. I have worked with cities. I’m the official city attorney for two small cities of the third class in Sedgwick County but I do the more specific employment work for Manhattan, Emporia, Larned, Bel Aire, all kinds of towns. You kind of get these weird situations where your kind of like well I need an employment lawyer and that is the gap I have been able to fill. So, I am very confident that you probably don’t have anything I haven’t seen before but I always say that and then I’m surprised.”

Mayor Luke, “We may surprise you.” Attorney Wright, “I really hope that Burlington doesn’t have anything you haven’t seen yet. I don’t think that they will. It is a very, I think, well run city. We don’t really have a whole heck of a lot of issues other than what other cities have. I think a lot of cities are dealing with a lot of employment issues as far as terminating employees that don’t want to work anymore and just retaining employees that are good. It is just the quality of the employees suck right now. I think that’s the problem. I don’t think we have really had any extravagant issues that are different from other peoples.” Mayor Luke, “And the mayors’ meetings that I

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go to I hear the same thing there as we have here, same issues, same type of stuff.” Jennifer Hill, “I have them in my law firm. I mean there is no industry I don’t think that is impacted by the labor market struggle right now.”

Attorney Wright, “Anyway, we definitely appreciate your willingness to jump into this.” Jennifer Hill, “Sure.” Attorney Wright, “I don’t know if anyone else has any other concerns or questions. Better speak now or forever hold your peace, at least for now.” Mayor Luke, “Any questions?” Council Member Curtiss, “I don’t have any.” Council Member Ernst, “I’m good.” Mayor Luke, “We are good for now.” Jennifer Hill, “Great, it was nice to meet all of you.” Council Member Curtiss, “Thank you.” Attorney Wright, “Thank you for taking your time to do this.”

Mayor Luke, “Any discussion that we need to have?” Council Member Berryman, “I think it’s a good approach just based on what she was saying with bite sized chunks rather than getting over whelmed.” Council Member Curtiss, “Yes, I agree with that, completely.” Council Member Van Horn, “I really don’t see why she would need to drive all the way here for presenting it when we could just do it over Zoom just as well. We are talking, what, three hours labor for her to drive down.” Council Member Curtiss, “When we get to that point then it will be quite a while.” Mayor Luke, “Yeah, if we look now, we are looking at June, July, August, September, October, November.” Council Member Curtiss, “It’s going to take a while. There is a lot of crap in here. I’m sorry.”

Mayor Luke, “There is a lot that can easily be thrown out.” Council Member Berryman, “We are at-will when we hire, correct? So, wouldn’t that eliminate some of this stuff too being an at-will employer?” Mayor Luke, “Yes and no. We are at-will with respect to mainly our superintendents, clerk, and the appointed positions. I am not sure about all of our other employees. Maybe the police officers. I am not sure on that. It’s an at-will state but we have some exempt employees and some non-exempt employees. I don’t know exactly which ones totally are at-will.”

Council Member Van Horn, “So do I understand this that you are going to take a section at a time and the committee is going to say we don’t think this is necessary or we want this change and then she goes over it? Or does she go over it and say I don’t think this is necessary--.” Council Member Curtiss, “I’m thinking the committee could get together and discuss that area and then discuss it with the council even before we say yea or nay to her.” City Clerk Brown, “And she might give some direction too. We would go to her with this is what we want to do and what we are looking at, yes, we can take it out, no we can’t take it out.” Mayor Luke, “She may go through -” Council Member Curtiss, “But I think we need to let the whole council know what we are going to say yea or nay to her to.”

Mayor Luke, “From what I understood is she would take a look at it up front at start and kind of come up with suggestions with the plan on how it should be and then take each of those sections and we determine as a group whether we agree or if we think something else should be put back in or if all of that should be out.” Council Member Berryman, “And I agree with what you said it should be just about brochure sizes. I read it. I didn’t understand it. I found it repetitive. I had a hard time working through this. Basically, when I start working on something, I’m a good employee, you tell me to read this, I will read it; but it took me almost two weeks because it was so tedious.” Mayor Luke, “And everything crossed back from this section back to this section.”

Council Member Curtiss, “It’s confusing as can be. You go here.” Council Member Berryman, “And the roman numerals. There was one thing I had to laugh every time, train-up. What ever happened to probation. Any business or organization it has always been probation. So, if somebody says what are you doing and they say I’m on my train-up period and they say well what does that mean – you know, I had to chuckle at that.” Mayor Luke, “Basically, that’s the first six months.” Council Member Berryman, “Which is probation.” Mayor Luke, “They called it train-up because that is what they called it 25 years ago.” Council Member Berryman, “I had to chuckle because then they used the word punishment in there one time. Later on, they use disciplinary action.” Council Member Curtiss, “Yeah, it’s a mess.”

City Clerk Brown, “I totally agree too that when you look at something like when it’s talking about funeral leave and it’s talking about immediate family, well if it’s back here in this section in the definitions, it should be

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right there so you don't have to go look for it." Council Member Berryman, "I ran into that with the five year because they use it under the definitions but I didn't run into that until halfway through." Council Member Curtiss, "One place they list family members but yet they don't list all of them that are appropriate." City Clerk Brown, "I added to that too." Council Member Curtiss, "What was it, daughter in law or son in law or something like that wasn't in there." City Clerk Brown, "But they have everybody else. I made that note in mine too." Council Member Curtiss, "Of course I could not tell you where it is right now." City Clerk Brown, "I've got flags on all of mine." Council Member Berryman, "It's under one of the colored tabs."

Mayor Luke, "Mine is a section setting here and a section setting here." Council Member Berryman, "It's hard to pull out sections." Council Member Curtiss, "I don't even know if there are legitimate sections." Council Member Berryman, "And that was my thing. If I want discipline, I can't pull out just discipline." Council Member Curtiss, "So, I went by the table of contents and then I thought well no that doesn't --." Council Member Berryman, "Because it has the roman numerals." Council Member Curtiss, "Well, I've looked at that and I was looking for something and I went to that page and it wasn't there. It's really --." Council Member Van Horn, "Sounds like the manual from Keith's car." Council Member Berryman, "That's probably easier to read."

City Clerk Brown, "So, you are wanting something more like this?" Council Member Curtiss, "Yes." Council Member Berryman, "Yes, this was more user friendly." City Clerk Brown, "But this is pretty generic too." Council Member Curtiss, "It is." Council Member Berryman, "So, I can see why our employees don't read this." Mayor Luke, "Or why they question what--." Council Member Berryman, "What does it mean? That will cut your job in half Anne." City Clerk Brown, "It will make it easier to find things and I'll have to reflag the new one. It should be a lot easier to read so I'll know right where to go when I look at it. I don't have to have it flagged."

Mayor Luke declared the meeting adjourned.

Approved by Governing Body and signed by Anne C. Brown, City Clerk