



**CITY OF CORNING
SPECIAL COUNCIL MEETING MINUTES**

**WEDNESDAY, JUNE 9, 2010
CITY COUNCIL CHAMBERS
794 THIRD STREET**

A. CALL TO ORDER: 7:37 p.m.

B. ROLL CALL:

Council:	Vacant
	Ross Turner
	Toni Parkins
	John Leach
Mayor:	Gary Strack

All Councilmembers were present with one vacancy remaining on the Council.

C. PLEDGE OF ALLEGIANCE: City Manager Stephen Kimbrough led the Pledge.

D. BUSINESS FROM THE FLOOR: None

E. REGULAR AGENDA:

1. Determination of Need for Closed Session.

Mayor Strack opened the meeting to comments from the floor on items listed for possible discussion in closed session.

Dean Cofer: Questioned the legality of discussion of the proposed two labor contracts (City Manager and Police Chief) in closed session and referred to the Government Codes he believes to be pertinent and supportive of his concerns. He emphasized that he doesn't believe discussion of these contracts in closed session is legal and stated the reasons why.

Bucky Bowen: Mentioned the notices on the website, one stating that the meeting was scheduled at 6:30 p.m., and another, the Agenda, stating it was scheduled for 7:30 p.m. The first notice stated that a meeting is **proposed** for Wednesday at 6:30 p.m. for discussion of the two employee contracts. The other item, **the Agenda**, listed the "Special Meeting" as scheduled to begin at 7:30 p.m. with a closed session before the regular agenda. Items 3 and 4 of the Regular Agenda are listed for a vote to approve the proposed Agreements, not to discuss them, what's going on here? Are provisions of the proposed Agreements to be renegotiated in the closed session? If so, will the public be given some time to review and consider the renegotiated Agreements? The copies attached to tonight's packet are the third drafts that he is aware of and he believes it is unrealistic to expect the public to accept constant changes without time to consider them so they can intelligently discuss them, unless that is the City's plan.

Mayor Strack agreed with Mr. Bowen and Mr. Cofer; stating the proposed contracts should be discussed in public. He then asked the Council for their determination on whether a closed session is needed. Councilor Turner stated absolutely not, that he would not participate in a closed session.

By Council consensus, no closed session will take place and all discussion on the proposed contracts will be public.

Mayor Strack stated that he had received the latest letter from Concerned Citizens and he has read it. There was some discussion between Mayor Strack, Mr. Bowen and Mr. Cofer regarding this letter.

F. ADJOURN TO CLOSED SESSION: No Closed Session held.

CONFERENCE WITH LABOR NEGOTIATORS PURSUANT TO SECTION 54957.6:

Agency Designated Representatives:

Mayor Gary Strack

Vice Mayor Ross Turner

Employees:

City Manager Stephen J. Kimbrough

Police Chief Tony Cardenas

G. RECONVENE REGULAR MEETING AND REPORT ON CLOSED SESSION: N/A

REGULAR AGENDA (CONTINUED):

After some heated discussion between members of the audience, the Mayor and Legal Council as to whether the presentation by the City Manager should be allowed because it was not agendaized and whether it is legal to discuss and take any action, City Attorney Michael Fitzpatrick determined that the presentation was legal as it relates to the items listed on the Agenda for discussion tonight. Mayor Strack stated that this presentation relates to all items listed as savings to the City Budget and shows how we arrived at this point.

Mr. Bowen and Mr. Cofer: Asked if this presentation relates to the three items listed on the Agenda for discussion tonight, and asked if all three items will be discussed at one time and if the individual allotted public statement time limits per item be will be combined, (9 minutes allotted instead of 3)? Mayor Strack stated yes, however he would prefer to discuss each item individually following the presentation.

City Manager Kimbrough narrated a brief PowerPoint presentation illustrating budget actions approved and initiated by Council to date, and the remaining budget items still under discussion for action. He ended the presentation with a total proposed savings of \$724,564.

Councilor Turner stated that the Council, on the Agenda tonight, would ratify the already approved terms of the employee furloughs saving 10% in personnel costs. In that Contract, which he, Councilor Leach, and members of the public have questioned, the savings of \$281,779 will be null and void if we have to lay-off any employees in that calendar year. He stated we would lose every bit of the projected savings. He then stated that he is vehemently opposed to tying the hands of himself and the elected Council and Mayor after the November elections for an agreement like that.

Dean Cofer: Referenced a slide shown while Staff was setting up for the Powerpoint presentation which stated that if the Part-time Agreements for the City Manager and Police Chief were not approved tonight the City would have to go back and lay-off Fire Dispatch. Did you lose that slide? Mayor Strack responded stating that was part of another program.

2. Adopt Resolution 06-09-10-01 to Ratify Sideletters Accepting the Furlough Plan for Each of the Individual Employee Bargaining Units and Set Office Furlough Closure Days.

Mayor Strack thanked everyone for coming tonight and introduced this item by title. He publicly stated he is proud of the City Employees and their ability to stay together as a group, these people have stuck together and put a proposal together that will save the City money. He stated that he doesn't like it; and stated that Councilor Turner and he had worked together on this and have not agreed on all aspects of the agreement. They do not endorse the agreement, however it is not written in stone and the Council can make changes tonight. The Council wants to hear suggestions and work it out because two of the people, well three, because the Council has already discussed and taken action on John Stoufer's and he has taken more of a hit than we first thought. He has since found out he cannot work for 60-days following retirement and that the City cannot guarantee him of a contract. Both Steve and Tony have proposed this so that with their help hopefully the City won't have to lay-off employees. Mayor Strack stated again that he wanted to thank all of the employees.

Councilor Turner: Stated that we have a \$500,000 reserve, inadvertently the Community or the City would be wise to flow into the reserve in lieu of having to sacrifice that projected

savings. Mayor Strack agreed with Councilor Turner stating that the City needs to protect the \$500,000 reserve.

Dean Cofer (As representative of Concerned Citizens): Stated that the City Manager was presumptuous in stating that the Council will ratify the Agreements tonight. He referred to Section 2.44.070 of the City Municipal Code covering the duties of City Manager, Item "P" regarding the City Manager's role in labor negotiations, specifically that he is not authorized to enter into any Agreement that will bind the City, and that all Agreements reached will be conditional upon final written approval by the City Council. He noted that the City Manager, City Clerk and Contract Labor Negotiator May have already signed the sideletters and they have been posted on the webpage.

Mr. Cofer noted also that some of us have been old time negotiators, and that there is no disclaimer shown on the signed sideletters stating they were signed conditional of approval of the City Council. He asked whether the Union was aware that these Agreements are not yet final and does the Union accept that as legal and binding? Or are they going to do as I did and pull it off the Internet and say we don't care what the Council said, we're going to hold your feet to the fire and go to court. Frankly, he stated that these provisions are ridiculous, if economic conditions worsen in the next year and it becomes necessary to lay-off employees, then the reported savings of \$281,779 will go away because the remaining employees will no longer be required to take furlough days. In addition the laid off employees will receive one months severance pay, this was not shown on the Powerpoint. The public needs to know that what you're saying is you can't guarantee no lay-offs, but in case we do lay-off anybody, the furloughs go away, 10% savings automatically goes away, and why would we have a lay-off, because times are tough. If the City lays-off one employee the 10% savings goes away and any employees laid off receive one-month severance pay. He asked if this was a proposal from the Cities Labor Negotiator or the Union? He called on the City Council to vote against ratification of these provisions.

City Manager Kimbrough: Stated that the City Manager would never present a proposed Contract or Sideletter for ratification by the City Council unless the City Council had directed the City Manager to place it on the Agenda for approval. The City Manager does not adopt Contracts.

Bucky Bowen: Clarified that if an employee of one Bargaining Unit were laid off, the furloughs would end for all four contracts, or just for the contract that that employee was covered by? Mayor Strack stated that he believed it was for all four Bargaining Units. Mr. Bowen asked, so the contracts don't cover just the employees of that Bargaining Unit? You have the right to bind the members of another Bargaining Unit? I don't think so. Mayor Strack responded stating that he was not a negotiator, however, it is his understanding that all of the Bargaining Units are standing together, there are separate contracts, however they are all standing together and they all met at the same time. Mayor Strack stated that he doesn't plan on laying off any employee, we have looked at a lot of things, we have a plan, however there are no guarantees, if it doesn't work then we'll have to start all over in regards to the budget.

Mr. Bowen asked if the City Attorney if he agrees that these contracts all stand alone, and one contract cannot affect the employees in another Bargaining Unit. City Attorney Mike Fitzpatrick stated that all of the employees agreed on the language stated in each of the individual contracts. Mr. Cofer respectfully disagreed with the determination of the City Attorney. Again Mr. Fitzpatrick stated that all of the employees agreed to the identical language as was stated in all four contracts.

Frank Walker: Asked if what the Mayor is assuming is in writing; Mayor Strack stated yes.

Gena Bowen: Asked if she worked in the office doing clerical work and was layed-off, would the entire furlough for all employees be ended? She was informed that under the proposed Sideletters, yes it would.

John Richards: He stated that the Council is here to protect the City. In business, in tough times if it's lay-offs, then it is lay-offs. With these contracts if somebody has to get laid off these contracts are going to hurt the City. Mr. Richards stated the City would lose all of the savings. Mayor Strack asked how the Council would hurt the City should they approve these contracts; he stated that without the contracts there is no savings.

Dean Cofer: Stated that the Mayor claims he is an old Union Man, however he stated that he has said on numerous occasions what your people are telling you is not factual. You are saying that the only way to get furloughs is to agree if there were any lay-offs they would get their furloughs taken away and then they would get a months pay, that's factually not true. Labor Law is very clear, all you have to do is go to the Union and say that we have to have this, here is the budget problem that we have and we are going to have furloughs next year! When they say no, then you say in that case we are at impass and we are going to implement, and you implement. Then they can appeal to the State Labor Board and you show them the figures and the State Labor Board is going to throw their case out, that's the law.

Mayor Strack responded stating what Mr. Cofer just said, in the law, the procedure that you can follow, what you assume is not what happens all the time. To avoid an impass, we are trying to get a budget in place by July 1st so that we know where we are going in the next year and we can track that. Mr. Cofer stated that you are making lay-offs so expensive. Mayor Strack asked him how are they expensive? Mr. Cofer responded stating you would have to pay one month's severance pay to anyone laid off, that's number one, and secondly you would lose the \$281,000 savings. Mayor Strack stated that we have to pay the 30-days no matter when we lay off a person, if we lay them off at the beginning of this fiscal year, every person who gets laid off gets that 30-days. So that is not a new cost, right, he asked Mr. Cofer is that not a new cost, you just said it was. Mr. Cofer responded stating he wasn't aware of this; that he just found out that you gave some more generous money away; he didn't know that was in the contract. Mayor Strack responded stating oh, Union Negotiator, you negotiated for our Police Department at one time too. Mr. Cofer responded stating no, that didn't happen (Section 39:11 of recording). Mayor Strack then stated that we need to move on.

Gena Bowen: She stated that she helped negotiate at the school, and the people that work at the City are friendly and nice, however there comes a time when you have to become the employer and you have to watch for our money, the taxpayer's money, the best interest of the taxpayer's money. It would be great if we could give them back the money that they gave up, however we are in tough times and this is way too generous. Renegotiate.

Linda Hohenstien: Stated that this is her first time at one of these meetings. She stated she thought that the employees would love it if one of the employees got laid off; they would get their money back.

City Attorney Michael Fitzpatrick: Explained that with the proposed furloughs, should an employee get laid off, the furlough's would end from that point on, however the savings accrued up until that time would remain a savings. The employees would not get retroactive pay for the time prior to the lay-off.

Bernadette Pryatel: Stated that it appears that the Mayor is for the City Manager and what he wants and is not thinking for the taxpayers.

Jesse Lopez: Stated that Mr. Cofer explained about impass with the Unions; what would that cost the City? He mentioned the various hits the City is proposing to take such as the part-time City Manager and Police Chief, the part-time Planning Director. If it saves the City money we have to do what we have to do. He stated that he supports the City on this issue.

Councilor Parkins moved to ratify the Sideletters to the Memorandum of Understanding with the four City Employee Bargaining Units and adopt Resolution 06-09-10-01 implementing a

reduction in employee compensation and hours of work by the closure of City Hall and the City Yard every other Friday during the period of July 1, 2010 through June 30, 2011. Councilor Turner seconded the motion in order to vote. **Roll call vote taken: Mayor: Yes, Turner: No, Parkins: Yes, Leach: No. Absent/Abstain: None. Motion not approved due to a 2-2 vote with one vacancy remaining on the Council.**

Mayor Strack stated that if the furloughs don't happen the City now won't have the \$281,000 savings back in the budget. He also stated that it amazes him that we can have 40 people in the room and we can't get things passed. He would like to thank all the people that called him with their support and how they thought that the decision that he made would be right. He further stated that one of the reasons we can't get things passed is because we can get 40 people here and some Council people and some citizens decided that we shouldn't have a fifth Council member to make a decision. We could make a decision if we had five Council members, irregardless of who the other person was, whether I agreed or not, a decision could be made. I feel like I have been slapped in the face.

Mayor Strack at this time then called for public comments on the two contracts agendized for approval tonight.

Jesse Lopez: Stated his opinion that in light of the vote on the furloughs, he believed that the others should not be penalized and the offers be taken from the table. The City should remove from discussion the two proposed contracts and also recommended that the City's Planning Director not retire.

Councilor Turner stated that only the Council could make a decision like that. Mayor Strack stated that only seeking a Request for Proposal for Planning Director has been approved, not Mr. Stoufer retiring. City Attorney Fitzpatrick concurred.

3. Approve Part-time Employment Contract for Police Chief Tony Cardenas.

Bucky Bowen asked how many bargaining sessions occurred, Councilor Turner and Mayor Strack stated 4 to 6. Mr. Bowen also asked who was in attendance at these meetings; he was informed that on two occasions Councilor Turner and Strack were present and at the others it was the appointed Council members (Strack and Turner), the two employees (Kimbrough and Cardenas) and the City Attorney Michael Fitzpatrick. He confirmed that the City Attorney did not advise the two employees on the contents of their proposed Contracts, Mr. Kimbrough prepared the employee contracts, and emphasized that Mr. Fitzpatrick represented the City only. He also asked if the City Attorney reviewed the contracts as to form; yes. He then asked if the City Attorney approved the contracts; he was informed no, nothing has been agreed upon. Mr. Bowen then asked for copies of the bargaining proposals. Mayor Strack asked Mr. Fitzpatrick if this was privileged information, the City Attorney stated yes it is privileged information.

Mr. Bowen and Mr. Cofer both stated their strong opinions that the proposed compensation listed in both contracts for the City Manager and Police Chief were too generous and deserve no consideration by the Council. Mr. Cofer stated that he and Concerned Citizens believe that part-time employees should not receive benefits and indemnification greater than what they are entitled to under the law, or greater than what they are now entitled to as full-time employees. We recommend that the Council reject these agreements and accept their offer to go to 20 hours per week with FICA and Medicare paid for by the City.

Mayor Strack asked Mr. Cofer if he was aware of Government Code Section 995995.2 or Section 82598. These contracts are not written in stone and can be changed and in regard to indemnification all they are asking for is what is allowed under Government Code. More conversation ensued between Mr. Cofer, City Attorney Fitzpatrick and Mayor Strack relating to these proposed contracts.

Mayor Strack stated that the City has received proposals from Councilmen Turner and Leach as well as Concerned Citizens. The City has tried to work with all of these and has even

incorporated some of these suggestions. He stated that he is at a loss as to why the people can't come together and meet on something this important to the City of Corning.

Valanne Cardenas: Stated that her husband Tony Cardenas is willing to make the sacrifice in order to not lose any of his Officers. He will be giving up 9% of his retirement for a lifetime in his retirement by retiring early. She asked if the Council will refuse a contract that will save the City \$106,000 a year over \$6,500 in health insurance benefits for one year? She stated that this is a good plan if you would accept this. She further stated that most part-time employees don't receive these benefits; however this is a full-time employee that is willing to go to part-time to benefit the City, there is no comparison.

Councilor Turner: Stated that the City is experiencing severe budget problems, we have heard that many times tonight. No one knows or can predict when the financial situation will improve, or if and when it will. We must tackle the problem head on by exercising our responsibility, the four of us (Council) as elected officials by taking steps to get the budget under control which should have been done months ago, the financial advisor at that time did not bring us up to date on many of the financial situations we were facing. City Manager Kimbrough and Police Chief Tony Cardenas have indicated that they can perform their jobs in a 20-hour week and I applaud and appreciate their dedication to the City of Corning to reduce their employment to a part-time status. To that end, I make the following motion, that effective July 1, 2010 City Manager Steve Kimbrough and Police Chief Tony Cardenas be reassigned as part-time employees not to exceed 20-hours per week and that the City pay only benefits required by law for part-time employees, in other words FICA and Medicare contributions. Councilor Leach seconded the motion. **Mayor: No, Turner: Yes, Parkins: No, Leach: Yes. Motion was not approved by a 2-2 vote with one vacancy remaining on the Council.**

4. Approve Part-time Employment Contract for City Manager Stephen J. Kimbrough.

See above "Item 3".

George Freeman asked if budget suggestions would be accepted between now and the next meeting; he was informed yes.

Mayor Strack announced that Second Chance Pet Rescue will be holding a "Corning in the Evening" tomorrow night at 5:30 p.m. at the shelter for those interested. It was also stated that the Rodeo Mixer is tomorrow night at 9:17 p.m.

H. ADJOURNMENT!: 9:17 p.m.

Lisa M. Linnet, City Clerk