

MINUTES
CITY COUNCIL WORKSHOP
October 21 10:00 A.M.

CALL TO ORDER 10:00 A.M.
ROLL CALL J. Keller, P. Robustellini, K. Aiello, J. Hammond
ABSENT J. Benson, C. Tyhurst, D. Dunn, Y. Rooker, F. Barber, B. Sims, J. Perham
OTHERS D. Kincade, J. Sprague, K. Brown, D. Scott, R. Fahey, D. Shelden

PLEDGE OF ALLEGIANCE

WORKSHOP AGENDA:

1. Discussion regarding:
 - a) Part-time employees vacation, sick, holiday benefits
 - b) Fire department stipend
 - c) Minor update to employee handbook
 - d) Benefit package

Keller stated that the Employee Handbook was written in 1994 and had not been updated. She said she had never liked it being typed in italics. She stated that the process was not adversarial. This workshop is simply for discussion. Everyone needs to be heard. The City Council has a fiscal responsibility to make sure that everything is still relevant to conducting business today. Kincade made a statement about Tyhurst, President of the Employees Association, and Dunn not being available to attend the workshop because of startup requirements at the new water treatment plant. Sprague talked about Sims, the Library Branch Manager, not being able to be present and Rooker and Barber from the City Clerk's office said they would not attend unless the President of the Employees Association could attend and they would like to have their voices heard. Keller stated that Rooker and Barber could attend and she had no problem closing the City Clerk's office and putting a sign on the door that the employees were in a staff meeting. Sprague said she would go and ask Rooker and Barber if they would choose to do that. Sprague left the meeting.

Brown asked to see a copy of the old Employee Handbook, which she had never seen. Hammond made a statement that as important as this is both to the city and the employees that we really should have the full participation of the council or there would be backtracking. He said the timing is not good because of the election coming up and there will be at least one new councilmember and not all the candidates are in attendance at this workshop. He said he did not see that there was a time rush and that he would like to see this as preliminary because it was pretty important that all the voices be heard.

Keller asked if Robustellini wanted to comment. He did not.

Kincade addressed the last page that stated we did not have an MOU and that comp time was rolled into sick leave, which has never happened, and sick leave was rolled into retirement, which is under contract with CalPERS. Also that CalPERS was going to audit Montague. He said things had been blown out of proportion.

Keller addressed Hammond's statement, saying that Benson was the only one absent and he was an outgoing councilmember. She said the workshop had been scheduled for several months and that it would take three or four workshops before it is ready for negotiation. Keller thinks this meeting should move forward because it's been started and she didn't want it swept under the rug for another twenty years. She talked about annual reviews not being done. Kincade stated that he had asked for annual reviews. Part of this is a lack of awareness of what is in the existing handbook. She suggested putting it in a language that works for

everybody. That may mean retyping the existing handbook if that is what works for everybody. She again said it drove her crazy to read it in italics. Sprague said she had typed in about half the existing handbook.

Keller said she would hate to see this not continued today and turned it over to Aiello to explain and to correct any assumptions she had made.

Aiello addressed that every time anyone asks for anything she gets “We have a contract” and copies of an employee handbook that is not a contract and an unsigned MOU. She said she had suggested re-passing the MOU but it had never been brought before the Council. She said she had been under the impression that the Montague Employees Association was an informal association, but she has since learned that it is not an informal association but would be considered a bargaining unit. This today is not a negotiation but City Council saying what they would like to add and take out before the Council goes into negotiation.

Kincade said everything should be discussed between the employees and the Council. He reiterated that, but Aiello reiterated that the Council needs to determine what they want first. She said the negotiation will be between the Council and the designated representative of the bargaining unit in closed session. She said that maybe the 1994 Handbook was perfect and we should just change the date on it.

Aiello clarified that she had discussed things with Sprague and what she had quoted Sprague as saying. Sprague responded that there had been a misunderstanding and comp time was not rolled into sick. Aiello said she had not requested a CalPERS audit and had been asked by CalPERS if she wanted an immediate audit and she had said no. CalPERS will be auditing everyone within the next three years. Aiello said she had not been getting adequate answers. Sprague responded that she wished Aiello had come back to her for clarification and that the misunderstanding had not had to be worked out in a public forum. Aiello said she had no problem with a public forum.

Aiello then talked about having been told that we were contracted with CalPERS to pay 100 percent, but that she had gotten hold of CalPERS and found out we were only contracted to pay \$16 per month per employee. Sprague said she read the \$16 per employee was an administrative cost to enroll the employee and it does not apply to the health benefit. Sprague said the 100 percent was not a contract with CalPERS, but City’s contract was the MOU with the Employees Association, where the City agreed to pay 100 percent. Aiello said the Council was allowed to review and change it, with negotiation.

Aiello said both CalPERS and Nationwide requested that there be at least two or three admin per account. Sprague responded that we do have that in the office. CalPERS and Nationwide had both told her that there was only one person listed and that was it and they didn’t like it. They wanted at least two or three.

Aiello talked about reading the 1994 Employee Handbook and that it made her head hurt. And that she began to realize there were things in the Handbook that are no longer legal, and things that she did not understand. So she contacted a law firm and asked for assistance in building a new handbook that was 2014. And it was now all digital.

Hammond asked who was the author, the law firm or her. She said it was her and the firm working together; she wanted it in a proper format; she had presented the law firm with the original handbook. She said Policy 1 was now Section 2.9. She wanted to make sure that every single thing that was in the handbook transferred over. She said she had identified where to “discuss a change” rather than “make a change”. Hammond asked, “So this draft, then has an overview of an attorney’s office?” Aiello said, “Right.” Hammond then asked if it was borrowed from another city or drafted by the attorney. She responded that it was a generalization of the State of California’s multiple employee handbooks. She noted that there were quite a few times that the new handbook refers the employee to the City Clerk.

Hammond said he had not gone through it cross-referencing it with the old one and that he assumed the Council would need to do that. Aiello talked about having had problems finding things between the Municipal Code and the Handbook. Keller said she would add that resolutions changing things made it more difficult.

As an example, Keller brought up comp time and the limit of 240 hours carryover where the Handbook still says 160. Aiello said hers said 100 but that it could be 160. Keller said anything that had been changed should have a resolution changing it. Sprague said Rooker was looking for resolutions. Kincade explained the amount of comp time that happened this year. For example, putting in the sewer line at the water plant, which had saved the city \$60,000 with a lot of overtime. He explained how on weekends they had to manually start and stop the water treatment plant during the construction. Every time they get called in on the weekends, it is comp time and it adds up.

Keller said she understood. She said comp time means you have to work extra and if it is an extraordinary circumstance, that is one thing. But if you are consistently working the same amount of comp time every week, that means your job description is inaccurate or the city does not have enough employees. Another factor is that 240 hours is six weeks of pay and she asked if that was accounted for in the budget. Sprague answered that comp time that was paid out during the year was accounted for in the budget, but the rolled over comp time was not. Keller said it was an unbudgeted liability. Sprague said it could be set up to be accounted for and explained how the budgets were developed. Keller said we could cut the limit down. Kincade pointed out that 240 hours could be two or three years' accumulation. Keller said there was also a safety issue of the city working the employees too hard. And she said that the employees could cut their accumulated time by taking time off. Kincade said he was not at the max because he had used or cashed his out. He also said that it would not be possible to bring in another employee because they did not have time to train them.

Keller said again that the Council as managers needed to look at whether the staff was adequate for the workload. Kincade said he was hiring another employee this year to train as Maintenance II because we were looking at a transition coming up when Tyhurst retires and Dunn takes over the water and sewer plants.

Hammond asked if there was a figure for comp time in the last few years. Sprague responded that she had accrued extra hours throughout the twelve months. She said hers had been exceptional this year and explained why. Hammond said we acknowledge that this year was an exceptional year and asked what would be an average for a normal year. Sprague and Kincade agreed that 100-150 hours would be a normal year. Hammond said the question then would be whether it would be worth it to pay time and a half or to hire more employees. Both Kincade and Sprague responded that it would be too time-consuming to train another person. Keller pointed out that would be short-term. Sprague said maybe an additional part-time person could share some of the work. Keller said maybe then we could change the office hours.

Aiello asked that the comp time really be looked at because of the 240 cap. Sprague explained the cash out of the excess on December 31 and rolling over the remaining 240. She said we could figure the 240 extra into the budget. Keller asked that it be a line item and Hammond pointed out that it was a liability as it was owed to the employees.

Aiello commented that she had never heard anything bad about Public Works and that they were cordial and got things done. She then suggested starting with page one.

Aiello suggested that the word "Draft" be added to the cover page. Sprague asked if the Council wanted the City Attorney to review it. Aiello responded, "When it's all done." Hammond said, "I think so." Keller said, "Not yet, not at this point."

Kincade brought up Government Code 3500-3511 that shows that the employees and the City Council work together on everything. Kincade apologized for having been upset the day before. He said that when the email came out that the Council was going to have a meeting without employees because that was not right, even at a workshop and that Government Code 3500-3511 says that employees needed to be here. Aiello said that was part of the Brown Act and that decisions were not being made. Kincade said that in a discussion atmosphere we still needed to all be together. Sprague said absent employees might have relevant concerns or suggestions to make on sections and pages being discussed. Aiello asked if employees who can not be here put their concerns in writing or that someone represents them. Kincade said he would represent Tyhurst and Dunn. Sprague suggested that future workshops be at an hour when the other employees could attend. Hammond asked that the next meeting be held after the election and stated there was a major voice who was not here.

Brown then asked about the part-time employees and asked to clarify their position because they were not part of the Employees Association. Kincade said they were in the draft of the new Handbook. Aiello said that no one could be forced to be in an employees association and that no one could be forced to be out. Keller asked if the Association had bylaws. Kincade responded that Hoag had never done that. He said dues were \$3 a month for Christmas dinner and birthdays. Keller said, "So it really is an informal..." Kincade said that it was an informal association. Brown pointed out that Council and the Association would be dealing with each other in an official capacity. Aiello said she thought the part-time employees voices were equally heard, whether or not they were paying dues. Kincade said they did not have to pay dues and that if they were paying dues the Association would be more of a union, which it is not. Sprague said that even though it was an informal association, the Council recognizes it, according to the MOU. Kincade made a comment that "Which we've already been hit up to be in a union, but we won't go there."

Shelden, a candidate for City Council, asked for clarification. Aiello said that the City of Montague recognized that the Montague Employees Association is a bargaining unit. Keller said it was by the MOU that is out there but there was no signed copy of it. Sprague said she had emailed the City Attorney, who was a signatory to it, to ask if he had a copy in his files. Hammond asked if part-time employees were included in the Employees Association. Kincade and Sprague said, "Yes." Keller said that when part-time employees being included might have gone askew was when Brown was first hired for only three years, so the employee handbook only referred to temporary part-time employees.

Keller said that the old Employee Handbook did not address permanent part-time employees and only referred to temporary part-time and were never covered in the old Employees Handbook, which is another reason we need to look at it because some employees are not covered.

Brown clarified that legal bargaining back and forth would include the part-time employees. Kincade said, "Yes." Hammond asked about the Youth Coordinator and the Librarian. Kincade noted that Perham was seasonal. Keller said that she starts in January; Kincade said he thought that would be considered seasonal.

Aiello then jumped to the employee performance appraisal. Kincade said he thought that should be limited to one page. Aiello said it was important that all five councilmembers evaluate an employee. Aiello said it would be just department heads, therefore only Sprague and Kincade. Sprague and Kincade clarified that it would also include Tyhurst, Brown, Scott and Sims. Sprague asked if it meant that the individual would come before the whole council. Keller said she thought the employee performance appraisal would be handed out to all five councilmembers but that the financial commissioner would be the personnel person and sit down with the individual. Brown said that in the past the police commissioner had done her evaluation and had sat down with her. Keller said it would be the other way around and Sprague asked if there would then be no one-on-ones sitting down with the individual. Keller and Aiello said it would be all five having one-on-ones. Kincade said that after Tyhurst retires he would do Dunn's performance appraisal. Keller said then Public Works would become all Public Works; that Kincade would be over everything.

Aiello said that all five would fill out the papers and give them to the commissioner that was going to sit down one-on-one with the employee. Aiello said, "So everyone likes this one?" All agreed.

Aiello went on to the Table of Contents and asked if everyone agreed. Sprague said she did not like it; she said she did not like the structure. Aiello asked if it was because it was different. Sprague said she has not had a chance to absorb everything with only a day to look at it and other employees had not had a chance to have their opinion. Hammond had objections to the way the sections were set up.

Kincade said he had a problem with § 1.2. He said the Government Code 3500-3511 applied and that where it says, "The City Council reserves the right to modify, rescind, delete, or add to the provisions of this Handbook from time to time in its sole and absolute discretion," it should include the employees. Aiello agreed immediately that it needed to include the Employees Association.

Keller said that the old Handbook had included a sentence about not being a contract. Aiello said it was under "at-will employment" and on the last page where they sign. Sprague said it was not a contract for employment but questioned whether the MOU is tied to the Handbook because the MOU is an agreement or a contract and the MOU refers to the Handbook, so therefore doesn't that incorporate what is in the handbook as part of the agreement. Aiello explains that the Handbook is just a basic "This is what is expected"; the MOU defines it—the benefits, the pay. The Handbook is just an overview. It needed to be separated. Sprague said the MOU ties the two together. Aiello said it should not. Sprague asked why the attorney set it up that way and would that be a question to ask the City Attorney. Keller said she did not know why we needed to get him involved at this point. Keller said the Handbook should be the general, the specifics of pay and benefits should be in a contract.

§ 1.3 Changes in Policy. Add the Employees Association. Sprague said there would be other changes and she was not speaking for her staff and that in future workshops there would be items that they would want to review. Keller said, "Exactly"; Aiello said, "Not a problem."

Hammond questioned § 1.5, Arbitration, and that commonly there was an intermediate step for mediation. It was agreed that this should be added. Aiello pointed out that there is an arbitration/appeals procedure in the Montague Municipal Code, § 2.32.100.

§ 2.1 Employee Classifications. Keller explained some of the provisions of the Fair Labor Standards Act and the difference between exempt and nonexempt. Scott questioned the classifications not including part-time temporary and part-time permanent as the old Handbook had. After some discussion, Scott then asked what she was. Sheldon said she thought regular employee would include both full-time and part-time. After some more discussion, it was agreed that regular employees would be called permanent and that full-time and part-time would be indented subsets. Temporary employees would refer to limited duration. Hammond asked about Perham and would she be a temporary employee. Keller said she would be probably be temporary, but her position had been established as a year-round position, but that from August through January she does not do anything. She said she was definitely part-time, as was Library Branch Manager Sims.

§ 3.1 Paydays are the 16th and the 1st.

§ 3.3 The 10 minute break was questioned because the old Employee Handbook said 15. There was some discussion about what California law required and Aiello said she would look it up.

§ 4.3 Discipline and Standards of Conduct. Aiello said she believes just about all of these came directly out of the old handbook.

§ 4.6 Substance and Abuse. Keller asked if any of the employees were subject to random drug testing and Kincade said that the maintenance staff was.

§ 4.7 Workplace Searches. Sprague noted that it was illegal; Kincade said he had a serious problem with it and read out loud the paragraph that says employees may be required to submit to searches of their personal vehicles, parcels, purses, etc. Aiello explained that this was a “what if”, in case a situation ever arose when an employee was suspected of having taken city property. Kincade said the City would need a search warrant. Brown said this was her area of expertise and that she had researched it, particularly in the civil employment area. She said a search warrant was not necessary but that the employer would ask the employee to sign away their expectation of privacy. She said that second paragraph did not take the place of a contract signed by the employee. Hammond suggested striking that paragraph.

Kincade said he had no problem with the first paragraph. Keller and the others agreed to strike both the second and third paragraphs.

§ 4.8 Internet, Email and Computer Use Policy. Aiello noted that this subsection is new. Kincade asked for clarification on paragraph c. Aiello said it meant there is no expectation of privacy when using the City’s electronic communication. Sprague asked about the City overriding personal passwords and who would do that. Aiello said that the administrator would and there should be more than one admin. Kincade relayed how much trouble he had when Hoag died and he did not know any of his passwords. Sprague said she has a master list of all passwords and all agreed the City could hire their IT guide to change/override passwords.

Kincade brought up paragraph f and that there would be sensitive information transmitted through a secure line on the City iPad to operate the new water treatment plant. It was decided that the last sentence was redundant with the section on confidentiality and should be eliminated.

§ 4.9 Social Media Policy. Aiello stated that this section was not the policy that was adopted by the City Council but a vague overview. Keller said it should be the policy that was adopted by the Council. Aiello will replace it with the City’s Social Media Policy. Aiello questioned leaving the last sentence in about monitoring employee use of social media but said the staff did not do that anyway.

§ 4.10 Cell Phone Policy. Keller asked if we really needed this subsection. Aiello said she thought the employees already complied but in the future somebody might not. Keller pointed out that the pool staff might be talking or texting on cell phones. In the second paragraph, Hammond suggested clarifying by saying “cell phones and/or allowances”.

§ 5.1 Employee Benefits and Services, Generally. Kincade suggested adding “with the Montague Employees Association”. In the second paragraph, he suggested adding a referral to the current MOUs and resolutions and that the MOUs should go with the packet when it is handed out.

§ 5.2 and 5.3 Add the referral to the current MOUs and resolutions.

§ 5.8 Additional benefits. After an explanation of the Verizon Wireless Discount, Brown commented that she now had a benefit and Aiello said she had told Rooker and did not know why Rooker had not passed the information on.

Section 6 Employee Leaves of Absence and Time Off. Scott asked if the rumor was true that part-time employees may have sick leave and other leave in the future. Keller said, “Yes, because you’re a regular employee.” Aiello looked for the section where it was addressed in the old handbook, saying part-time employees had sick leave and other leave. Keller read the section from the old handbook, Policy 21.4, and said that because neither Code Enforcement nor Animal Control was considered permanent, the policy had not applied to them. Brown said that she had been temporary for two three-year terms but the funding had dried up and she was then converted to permanent.

§ 6.2 and 6.3 Sick Days and Vacation Days. Keller suggested changing the description of regular part-time employees to permanent part-time employees in line with the changes made in § 2.1. Kincade and Aiello added to both sections “see current MOUs and resolutions”. After some discussion of the specific situations of Brown, Scott and Sims, it was agreed that part-time employees be paid on a pro-rata basis and that common sense should apply. Keller suggested taking the vacation allowance/monthly accrual section of the old handbook and incorporating it into the new handbook. The accumulation of no more than 232 hours was changed to 240 hours.

§ 6.4. Holidays. Aiello explained that when she pulled the holidays, she picked the top nine federal holidays, “That was it. I picked the top nine.” Kincade asked what the reason was for taking days away. Keller said that currently the employees had fifteen paid holidays, which is three weeks worth. She said that she had never seen anyone who had fifteen days. Kincade had researched and said ours were average. He said in the late 70s/early 80s holidays used to include voting day and birthday and three floating holidays and they exchanged those for the day after Thanksgiving and the days before and after Christmas. He also pointed out that taking holidays away was not a savings to the City because the employees were paid. Keller said, “No, not from financially,” but said that some years the City is shut down for five days. Kincade said the City was covered; Aiello and Keller responded that maintenance was covered, but the office was not open. Aiello said people needed to pay their water bill and dog licenses. Scott brought up the federal law that banks could not be closed more than three days. Keller said we need to talk about this. Aiello said this was something we needed to revisit with all the employees here. Kincade reiterated that it was nice to have enough time off to visit family.

Keller said she would be the bad guy and point out that someone who has been here for over fifteen years and gets twenty days a year vacation time, which is four weeks, and you add another three weeks of paid time and you now have someone you are paying to not be at work for nearly two months. Kincade said, “But that never gets used.” Keller repeated that for two months we are paying an employee to not work. Brown said that it never happens, but Keller said that the potential is to pay every single full-time employee seven weeks to not be here. Brown said so far only she and Tyhurst qualified. Keller said we needed to look at the number of vacation days. She said she knew that in the past there had been budgetary restraints and negotiations had given the employees holidays in lieu of pay raises and that the City was back in that boat and had continued to give every employee raises all along. She said the City was actually at the point where the City was going to have to say we can not afford to give raises because we do not have the income.

Scott wanted to make a comment on the meaning part of it, asking if we were in the job of banking vacation (when they never use the vacation they are earning)? Keller said, “Yes, you can carry over” and Don said that vacation rolls into sick and sick rolls into retirement. Hammond noted that it was still a liability to the City. Keller said she was not devaluing any employee, that if the City could pay the employees the top dollar somebody in San Francisco gets, she would do it in a heartbeat. Kincade said he understood that, but that other things were getting pulled more, like 25 percent of medical and that employees could not afford that.

Aiello wanted to cover the rest of the handbook and quickly asked for comments on § 6.5 Family and Medical Leave (she said it was boilerplate), § 6.6 Workers’ Compensation Leave, § 6.7 Jury Duty, § 6.8 Voting Time. She said we needed to talk about holidays when everybody could be present.

Aiello said that CalPERS had had their meeting and they were raising their rates January 1, 2015 by \$100 per person per month. She said that was an employee impact and a City impact. Sprague pointed out that the current resolution that was attached to the MOU and that adjusted the benefit premiums in June of 2013 would still cover the additional premiums. Aiello responded that that was not set in stone and the Council still had the opportunity to talk about it and discuss it. Sprague said those numbers were already budgeted and we have a balanced budget. Aiello said “We almost have a balanced budget.”

Keller turned the discussion to when to schedule another meeting. She suggested that it be in November. Sprague said the new Council would be seated at the December meeting, but that she would be conferring with the County Clerk. Aiello pointed out that these are public meetings and the new Councilmembers could say that it looks like they have been elected and attend the meeting. The meeting was scheduled for 3 P.M. on Wednesday, November 12. Hammond asked if there would be revised draft. Keller said that all remaining topics would be moved, carried forward.

The meeting adjourned at 12:15 P.M.

ADJOURNED: 12:15 P.M.

ATTEST:

CITY OF MONTAGUE:

Janie Sprague, City Clerk

Jayne Keller, Mayor