



CITY COUNCIL
City of McLendon-Chisholm, Texas
Special Meeting Minutes
October 3, 2018

The City Council of the City of McLendon-Chisholm convened in Special Meeting on Tuesday, October 3, 2018, at City Hall, 1371 West FM 550, McLendon-Chisholm, Texas, with the following members present:

Keith Short	Mayor (Absent)
Adrienne Balkum	Council Member
Herman Larkin	Council Member
Scott Turnbull	Mayor Pro Tem
Jim Bloom	Council Member
James Herren	Council Member

Staff Present:	David Butler	City Administrator
	Lisa Palomba	City Secretary
	Jim Simmons	Fire Chief/Fire Marshal

1. The meeting was called to order at 6:07 pm by Mayor Pro Tem Turnbull.
2. Mayor Pro Tem Turnbull requested Council Member Herren lead the Invocation and Pledge of Allegiance to U.S. and Texas Flags.
3. Mayor Pro Tem Turnbull stated that the Rules of Decorum are in effect and are to be observed throughout the meeting.

4. Agreement for Fire Protection Services and Integration.

Mayor Pro Tem Turnbull questioned if they had a new offer to discuss.

Ms. Palomba replied there was a new version.

Mayor Pro Tem Turnbull requested a motion to discuss the item.

Council Member Bloom moved to discuss the item. Council Member Larkin seconded. The motion to discuss carried without objection.

Council Member Bloom had reviewed the document prior to the meeting and mentioned they needed to address the station one item that had been changed. They needed to own the station before starting improvements to make it a livable space. He did not understand why that had changed and did not expect it to be an issue to get that item put back in the resolution. The other changes that had been made, except for the station one issue, created a document that he could support. The expenses they would incur by not doing the merger were significant and not defensible in any way.

Council Member Larkin read the contract and shared the same concern as Bloom with the lack of inclusion of an explicit statement of transfer of station one. He had extreme trust in Chief Simmons, Chief Murphy, the City of MCVFD (McLendon-Chisholm Volunteer Fire Department) and the citizens. He believed it would get done expeditiously. He believed that some members of the Council felt the contingent dates were political. He felt that was inconsequential. They were there to serve the citizens, not to serve their own political agendas. If the Council Members were turning down the contract for reasons related to the dates, he believed those Council Members were sitting on the Council for the wrong reasons. They should be there to serve the people.

He believed they needed a department to respond to the calls that came in. There had been a call received the prior day in which a fire was contained and damages to the home had been limited. He felt it was a demonstration of the type of commitment and services they had. He believed that without the use of MCVFD and their resources there may have been a different outcome perhaps with the home being lost. He reiterated the dates were not a reason to turn down the contract. He spoke about the fire equipment holding its value. He believed the contract should be approved as it was written, without concern of their personal political agendas.

Mayor Pro Tem Turnbull questioned Chief Simmons if he had sent the attorney a contract that was told to be an agreement between Chief Simmons and Mr. Murphy.

Chief Simmons replied that was correct.

Mayor Pro Tem Turnbull questioned if that contract contained the original dates for transferring station one and for finalizing the transfers that had been stricken out and replaced.

Chief Simmons replied that they were dealing with the fact that there were many different versions of the contract out there. When he started the process of making changes, he may not have started with the most recent version. However, the changes were regarding four specific sections; 5.1, 5.2, 6.24 and 10.3.

Mayor Pro Tem Turnbull questioned Chief Simmons if he believed Mr. Paschall operated on the position that they were in agreement with all the other items that were not in question.

Chief Simmons commented it was possible.

Mayor Pro Tem Turnbull questioned how many of the items that Chief Simmons and Mr. Murphy had addressed on the 28th came back from Mr. Paschall as not having been granted.

Chief Simmons replied that it appeared that all those items had been addressed and included.

Mayor Pro Tem Turnbull was concerned that after Chief Simmons had received the document back from Mr. Paschall, he then made the decision to change the dates that had been included.

Chief Simmons acknowledged that it had been a mistake. He reiterated the fact that there were many documents in circulation. He was trying to keep the issue moving forward and was unaware that there had been a decision made in executive session that he was no longer to be involved in the process. He had only been focused on the four sections and admitted that he had not looked at the dates. It was an oversight on his part.

Mayor Pro Tem Turnbull commented that it was a mistake that they took as fact.

Chief Simmons agreed that if it was his fault that they were currently delayed due to that version of the contract, he would accept that blame. It was an honest mistake and he felt they could move forward.

Mayor Pro Tem Turnbull questioned if Chief Murphy had reviewed the document that was sent to Mr. Paschall.

Chief Simmons replied they had reviewed those four sections that were in question, per Mr. Paschall and Mr. Dodd, not the document in its entirety.

Mayor Pro Tem Turnbull stated that while he would like to accept Mr. Larkin's belief that trust should be issued, he questioned how many more insights they were going to deal with in the future.

Council Member Bloom clarified that they had a contract in front of them that they were supposed to be reviewing. That was the objective of the meeting, it wasn't a trial.

Mayor Pro Tem Turnbull reiterated that there had been a document submitted to the attorney that had since been changed.

Chief Simmons refuted that most of the document was intact, except for the dates.

Council Member Balkum mentioned that she had received the document 30 minutes prior to the meeting. She questioned if anyone had received the document earlier than that time period.

Council Member Bloom replied that he had not.

Council Member Balkum questioned Ms. Palomba what time she had received the documents to forward them to Council.

Ms. Palomba replied that she had received them the day prior.

Council Member Bloom questioned why it took all day to get them out to the Council.

Ms. Palomba commented that she had not been involved in the negotiations and was unsure if the document was complete. She did not want to forward to the Council something that was still in progress.

Council Member Herren believed that some of document was very good, but the entire section 5.1 had been completely reworded from what they had agreed to at the previous

City Council meeting. He was in favor of the changes in 5.3. He believed the date changes were a political issue. It was about the city going through another situation like they had the previous May. He would suggest it be resolved before they come into the City. He believed it was unacceptable. He agreed getting the contract finalized in a timely manner was the right thing to do.

Council Member Bloom requested that they all make decisions that were in the best interest of the citizens, not dependent on how they feel it may sway the coming election.

Council Member Herren mentioned that none of the votes he had cast as a Council Member had been based upon a political process. Every one of his votes had been based on the merits of the case. He desired to fix the current issue, without regard to the possible outcome of the coming election. His votes on the current issue had always been based upon providing the City with the best fire service possible, based on the historical needs. They had only had three actual structure fires and 32 grass fires in the previous 31 months.

Council Member Bloom pointed out that stopping grass fires prevented structure fires. He did not see how not executing the agreement was financially beneficial in any scenario.

Council Member Larkin mentioned that after the agreement was signed, they could start transferring assets. He believed the dates were inconsequential.

Mayor Pro Tem Turnbull believed that signing the contract as written did not guarantee any asset, other than PPE (Personal Protective Equipment) gear would transfer to the City before June. He acknowledged that the transfer of the station would occur, but the contract would be more palatable if that clause was put back in. He knew that the Council had not had the opportunity to review the contract that had been sent on October 1, but they could look at the October 2 document. There were ten items that Mr. Paschall had questioned. He read Mr. Paschall's comments.

Council Member Larkin added that MCVFD would still need to operate as an entity until the City hired those employees and the personnel transition occurred. He did not believe it was a light switch that could be turned on and off, which is what the document was trying to portray.

Council Member Bloom mentioned that the agreement stated that would happen, as directed by the MCFR Chief. So, MCVFD supported MCFR, as directed by Chief Simmons. He was still in control.

Mayor Pro Tem Turnbull agreed with Council Member Bloom and added that the volunteers that had not signed up with the City would still be part of MCVFD. Their support would be very limited, because they would not have any equipment to fight fire. He continued listing Mr. Paschall's concerns.

Council Member Larkin believed that even though MCVFD was giving MCFR the equipment, MCVFD was trying to dictate how and when they would accept the equipment. He commented that he felt that was a childish approach.

Council Member Balkum questioned Mayor Pro Tem Turnbull how much the City had invested into MCVFD.

Mayor Pro Tem Turnbull replied that he was not going to answer that question, as it was outside of the discussion they were currently having. He added that they had already agreed to honor MCVFD's commitments. The additional requirement to get a contract with the County was unnecessary. He questioned the Council if anyone would be in disagreement with going ahead with the document that included 6.2.1, transferring equipment by November 30, 2018.

Council Member Bloom commented that there was no disagreement from his standpoint.

Council Member Herren did not believe that MCVFD would agree to it.

Council Member Larkin reiterated that he believed MCFR putting a stringent timeline on the transition of the assets from MCVFD was childish.

Mayor Pro Tem Turnbull stated that the document would allow for anything that came up, due diligence or unexpected conditions that would prevent an asset to be transferred to be dealt with individually. They were not forcing them to do anything by any date. He did not feel the dates were arbitrary or they would injure MCVFD legally.

Council Member Larkin commented that Mayor Pro Tem Turnbull had voted down the contract based upon the fact that the dates were not the dates he wanted. He was confused because now Mayor Pro Tem Turnbull said that the dates did not mean anything.

Mayor Pro Tem Turnbull clarified that what he said was exactly opposite of what Council Member Larkin had just said. The dates were not hard, because if there was a legal issue that prevented a transfer, it would be dealt with.

Council Member Bloom commented that a legal issue was typically looked at in terms of damages. They were getting things for free. For example, if they got station one and engine two and then they couldn't get a brush truck, it would make them feel like they were being dealt with unfairly.

Mayor Pro Tem Turnbull stopped Council Member Bloom with that claim and quoted 10.2 of the agreement.

Council Member Bloom stated that the point was they were getting the things for free and agreed with Council Member Larkin that to act like they were exposed on any of it was absurd. Especially with the alternative being spending a great deal of tax dollars, which were not available. They could use the money that was allocated to a stand up department to repair the roads in preparation of 205 being redone. He believed the dates would become less relevant when they looked at the upside, which was 100% for MCFR and none for MCVFD.

Council Member Herren addressed the comment of the June 15 date. He believed they had never been in any of the previous contracts, just in the current version. He agreed that standing up their own fire department would be cost prohibitive. He suggested getting the

equipment sooner to avoid paying MCVFD any additional funding or having to purchase any equipment on their own. He believed sooner dates to be better than later.

Council Member Larkin understood what Council Member Herren was saying, but he believed MCVFD would not delay. He did not feel that putting the date out to June 15, 2018 was a deal breaker. He admitted that he wished an explicit statement about station one being transferred had been included in the contract.

Mayor Pro Tem Turnbull alerted the Council that they were 30 minutes past their time limit on the meeting. He suggested they vote on the contract as it was written or go through the red lined items and determine how they wanted them sent back.

Council Member Larkin attempted to make the motion to accept the contract.

Mayor Pro Tem Turnbull stated there was already a motion on the floor.

Council clarified that the initial motion had been to discuss the contract, not to accept the contract.

Mayor Pro Tem Turnbull clarified that his question was to either vote on it, as it had been sent back, which included issues with station one. Or, go through each item one by one and pick the wording from the two options. There were nine items to go through.

Council Member Bloom commented that because the citizens did not currently have protection, he would prefer to make the motion to vote on the contract as written.

Mayor Pro Tem Turnbull questioned how the other Council Members would prefer to proceed.

Council Member Balkum stated that she did not want to approve the contract as it was.

Mayor Pro Tem Turnbull clarified that it was not about whether to approve it, it was about whether they wanted to discuss the red lined items.

Council Member Bloom commented that there was a motion on the floor and he did not understand what was going on.

Council Member Balkum replied that she believed Mayor Pro Tem Turnbull was questioning if they were going to approve it, and she was not.

Mayor Pro Tem Turnbull stated that he was not asking if it was going to be approved, he would like to know if they wanted to discuss modifications to be sent back.

Council Member Bloom reiterated that there was a motion on the floor.

Council Member Larkin clarified that his point of order was that a motion was made to discuss, which he seconded. They should have voted on that motion, but the vote did not occur. Discussion was opened. He believed they had finished the discussion and now,

Mayor Pro Tem Turnbull was adding something else in. He wished to move on and make a motion to vote on the issue.

Mayor Pro Tem Turnbull believed that the discussion was still ongoing.

Council Member Larkin called for the question.

Mayor Pro Tem Turnbull stated that Council Member Larkin had just interrupted him.

Council Member Larkin agreed that he had and stated that Mayor Pro Tem Turnbull had done that to him as well in the past.

Mayor Pro Tem Turnbull commented that the Council had the right to discuss in the manner that it wanted to and everybody had the right to voice their opinion. He added that he was polling the members to find out which way they wanted to go. Council Member Balkum was questioned if she wanted to discuss the red lined items, or vote.

Council Member Balkum replied that she did not want to vote on the contract.

Council Member Herren reminded Mayor Pro Tem Turnbull that he had earlier suggested going through agreement line by line. Since fire station one was not in the agreement, he did not believe any of Council could approve it. He agreed with Council Member Larkin that they needed to trust, but he felt they also needed to verify.

Council Member Bloom amended his motion to vote on the contract as is, in order to protect the citizens now. Motion seconded by Larkin.

Mayor Pro Tem Turnbull called for the vote.

A vote was cast and the motion failed with 2 in favor, 3 opposed (Herren, Balkum, Turnbull).

Mayor Pro Tem Turnbull requested a five minute recess. At the time the meeting was reconvened, he would entertain a motion for further discussion on a response contract back to MCVFD.

The meeting was recessed at 7:15 p.m.

Mayor Pro Tem Turnbull reconvened the meeting at 7:24 p.m.

Mayor Pro Tem Turnbull entertained a motion to go through the contract to discuss the red lined items only.

Council Member Herren, seconded by Balkum, moved to discuss the red lined items. Motion carried without objection.

Mayor Pro Tem Turnbull read all the red lined items in question. He requested discussion and then a vote on each of the items.

Council Member Bloom stated that the essence of the clause was intact. It was different wording, but the Chief would still be in command. He believed it was an easy one to approve as it was because it didn't change the essence of the clause.

Council Member Larkin agreed with Council Member Bloom.

Council Member Herren accepted it the way that it was, if they added back in the last sentence that had been stricken out.

Council Member Balkum agreed with Council Member Herren.

Mayor Pro Tem Turnbull agreed with adding the sentence back in, but also believed the last two sentences should be stricken, as they would put the City on the hook for operational expenses and integration expenses, including those which were stated as a sole responsibility of each entity. There was conflicting language in 5.3

Council Member Balkum questioned how they made sure that MCVFD would not send MCFR an invoice for whatever the attorney may bill for past due billings.

Mayor Pro Tem Turnbull replied that it wouldn't matter based upon the wording in 5.3, or the sentence that Council Member Herren suggested adding it back in.

Council Member Bloom questioned Ms. Palomba if they had received any invoices from MCVFD's legal counsel up to that point.

Ms. Palomba replied they had not.

Council Member Bloom clarified that 5.3 dealt with legal expenses and 5.1 dealt with operations.

Mayor Pro Tem Turnbull stated that Council Member Bloom was correct, but that integration expenses could include legal, which was the reason he was suggesting that sentence be stricken.

Council Member Larkin commented that it was a merger, all the assets move over, which would include the bank accounts. Invoices could be submitted and MCFR could pay them and MCVFD's cash reserves would be larger, or MCVFD could pay them from their cash reserves and when it was taken over, the cash reserves would be less. The net value would be zero. He believed it did not matter. It was all assets. It would be a consolidated fund.

Council Member Balkum clarified that it was an integration, not a merger. She questioned if a timeline was mentioned that MCFR would have access to MCVFD's bank accounts.

Mayor Pro Tem Turnbull replied that it was in 6.2.2.

Council Member Balkum questioned how the transfer would take place.

Mayor Pro Tem Turnbull replied that was a question for legal. He clarified the two options in question.

Council Member Bloom questioned if something did not fit neatly into a bucket, but it was involved in the operations, would they have to pay for that as part of the integration. He commented that being very specific was a good thing and a bad thing.

Council Member Herren believed that those concerns were covered under 5.2.

Council Member Bloom thanked Council Member Herren for the clarification.

Mayor Pro Tem Turnbull suggested they keep MCVFD's wording down through fire district 22 and before the sentence that began with "the City". They would insert, at that point, "MCVFD is solely responsible for any expense incurred by MCVFD that was not directly related to MCFR's day to day operations. They would strike "the City shall pay the operating and integration expenses" and leave the following sentence in.

Ms. Palomba read back the verbiage.

All Council Members agreed with that language.

Mayor Pro Tem Turnbull moved on to 5.3.

Council Member Bloom was fine with MCVFD's language.

Council Member Larkin was fine with MCVFD's language.

Council Member Herren was fine with MCVFD's language.

Council Member Balkum agreed with the other Council Members.

Mayor Pro Tem Turnbull stated that the vote was 5:0 to stay the way it was written.

He moved on to 6.1.1. He questioned why Chief Simmons needed the additional days to complete the items.

Chief Simmons replied that he had not put that in there, but he would appreciate a few extra days to get it completed.

Mayor Pro Tem Turnbull clarified the original language gave him until November 1, and he was requesting until 45 days after the effective date of the agreement.

Council Member Bloom did not believe that the extra 15 days effected the contract.

Council Member Larkin did not agree with 45 days.

Council Member Herren was fine with the language.

Council Member Balkum was fine with the language.

Mayor Pro Tem Turnbull showed 3:2 in favor of the language, as he believed it should stay November 1, 2018.

He moved on to 6.2.1. Discussion had already been made that they needed to add back in station one. He recommended that they reinsert their language.

Council Member Bloom agreed that station one needed to be addressed.

Mayor Pro Tem Turnbull clarified the language that would be added regarding station one.

Council Member Larkin agreed that station one needed to be included, specifically. Although, he did not know if it was necessary to redefine all the wording, as they had it in 16.2. He added that if they were going to list the date in 6.2.1., they did not need to list it again in 6.2.2. He suggested specifically naming station one in 6.2.1 and the 6.2.2 would say any and all other assets.

Council Member Herren agreed with Council Member Bloom's suggestion for 6.2.1.

Council Member Balkum requested clarification of the exact verbiage.

Mayor Pro Tem Turnbull provided clarification.

Mayor Pro Tem Turnbull questioned if the Council was clear on the language and requested a vote.

All Council Members voted in favor.

Mayor Pro Tem Turnbull moved on to 6.2.2. and suggested it be accepted as stricken.

Council Member Herren mentioned that there was a portion of 6.2.2. that was not red lined, the statement "time is of the essence".

Mayor Pro Tem Turnbull replied that in a discussion he had had with Mr. Paschall, as a show of good faith, they would remove it. He moved on to the new 6.2.2., as the previous one had been stricken. He questioned which dates the Council would prefer.

Council Member Bloom revisited the thoughts that both parties felt strongly about the dates and there was no downside that he could see of the date being set at June 15th. He suggested they keep that date in there to expedite the agreement.

Council Member echoed Council Member Bloom's comments. He believed that whether they saw the date as being an issue, MCVFD saw it as something that they wanted to stand by.

Council Member Herren was inclined to change the wording on 6.1.1 from a specific date to 45 days after the effective date of the agreement, giving an additional 15 days there. He did not know why any specific date was better than another. If the date was the only thing that was holding it up, he would not hold it up over that date. He would like to see it back to what it was but was okay with it being what it was.

Council Member Balkum would have preferred all the dates to have been earlier in the fiscal period, but if they had to choose between one of the two dates, she would go with April 30. It was just a matter of paperwork at that point.

Mayor Pro Tem Turnbull recommended the language to read the transfer of any all remaining assets, including apparatus, tools, equipment, excluding station two by June 15, 2019. The reason why he was making the recommendation was the change to 6.2.1 required apparatus that was not otherwise encumbered to have already been transferred. He requested a vote on that language.

Balkum voted in opposition. All other members voted in favor.

Mayor Pro Tem Turnbull stated the vote carried in favor, 4:1.

He moved on to 6.2.3. The only change was the numbering scheme. He would direct a question to the lawyer about 6.2.4. and requested that Council allow the lawyer to answer the question. He questioned the change of the word each from either. The language had been included so that if one party was aware of something that they did not make the other party aware of, that could not be used as an unforeseen condition. He added if using the word each was okay with Mr. Paschall, he was fine with it. If he said it needed to be either, he would like approval from the Council to go with the recommendation of Mr. Paschall.

All Council Members agreed they were okay with going with Mr. Paschall's recommendation.

Mayor Pro Tem Turnbull requested that they accept the language as written, pending Mr. Paschall's recommendation on each or either. He called for the vote.

All members voted in favor.

Mayor Pro Tem Turnbull commented the vote was 5:0.

He moved on to 6.2.5. He had earlier clarified with Mr. Paschall that complete execution was when both parties signed the agreement, not at the time the entire contract had been executed. Because they were already obligated by previous sections of the contract to honor the agreements, he felt the last line could be stricken. He believed it was redundant. **He suggested they agree to the date of the agreement, leave the original wording and strike the red inclusion.**

Council Member Bloom agreed that it was redundant. He was bothered that they didn't have control of that, as it was an unknown. He believes that 4.3 covered MCFR, MCVFD, the citizens in fire district 22 and McLendon-Chisholm. He was okay with striking that inclusion.

Mayor Pro Tem Turnbull added that they could not force the County to do anything for them.

Council Member Larkin agreed.

Council Member Herren suggested that they add language that would point back to 4.3.

Council Member Balkum agreed that they should remove it.

Mayor Pro Tem Turnbull suggested that Mr. Paschall draft the language to reference 4.3.

Council Member Larkin believed that the intent was that they weren't going to hang on to the \$67,500 if they were going to assume the responsibility.

Mayor Pro Tem Turnbull appreciated Council Member Larkin's comment.

Ms. Palomba read back what she had for 6.2.5.

Mayor Pro Tem Turnbull requested a vote.

All members voted in favor.

Mayor Pro Tem Turnbull stated the vote passed 5:0.

He believed they had created a clear statement as to where they stood. It showed that they were willing to work, had accepted most of the changes and were asking for a couple of their own. He pointed out that the phrase "time of the essence" was stricken and clause 10.9 was stricken, which the attorney recommended that they keep. He believed there had been abundant good faith. **He directed Ms. Palomba to get the contract to Mr. Paschall.**


The meeting was adjourned by Mayor Pro Tem Turnbull at 8:14 p.m.

ATTEST:



Lisa Palomba, City Secretary

APPROVED:



Keith Short, Mayor

