



# CITY OF ATWATER

## CITY COUNCIL

### ACTION MINUTES

**May 14, 2018**

OPEN SESSION: (Council Chambers)

***The City Council of the City of Atwater met in Open Session this date at 5:01 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Price presiding.***

ROLL CALL:

***Present: City Council Members Creighton, Raymond, Vierra, Mayor Pro Tem Vineyard, Mayor Price***

***Absent: None***

***Staff Present: Interim City Manager Waterman, Interim City Attorney White, Deputy City Clerk Bengtson-Jennings***

CLOSED SESSION: (Conference Room A)

***Mayor Price invited public comments on Closed Session items.***

***No one came forward to speak.***

***Mayor Price adjourned the meeting to Conference Room A for Closed Session at 5:03 PM. Closed Session was called to order at 5:07 PM.***

Conference with Legal Counsel – Existing Litigation – Government Code Section 54956.9(a): Name of case: City of Atwater v Shell Oil Company, individually and Dba Shell Chemical Company, Case No. CGC05441058

Conference with Legal Counsel – Anticipated Litigation – Significant exposure to litigation pursuant to Government Code Section 54956.9(2)(d): Number of cases: (4)

Pursuant to Government Code Section 54957(b)(1), Public Employee Appointment. Titles: Interim City Manager, Interim Police Chief, Interim City Attorney, City Attorney

Conference with Labor Negotiator – Government Code Section 54957.6. Agency Negotiators: Interim City Manager Waterman, Interim City Attorney White, and Human Resources Director Del Real; Bargaining Units: Atwater Police Officers Association; AFSCME Local 2703 – Miscellaneous Unit, Clerical Unit, and Mid-Management Unit; and Unrepresented

***Closed Session recessed at 6:03 PM.***

**REGULAR SESSION:** (Council Chambers)

***The City Council of the City of Atwater met in Regular Session this date at 6:11 PM in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California; Mayor Price presiding.***

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

***The Pledge of Allegiance was led by Mayor Price.***

**INVOCATION:**

***The Invocation was led by Police Chaplain McClellan.***

**ROLL CALL:**

***Present: City Council Members Creighton, Raymond, Vierra, Mayor Pro Tem Vineyard, Mayor Price***

***Absent: None***

***Staff Present: Interim City Manager Waterman, Interim City Attorney White, CAL FIRE Battalion Chief Wight, Human Resources Director Del Real, Deputy City Manager/Finance Director Deol, Interim Police Chief Echevarria, Interim Public Works Director Shaw, Recreation Supervisor Rahn, Chief Building Official Pereida, City Clerk Hylar III, Recording Secretary Rasmussen***

**MAYOR OR CITY ATTORNEY REPORT OUT FROM CLOSED SESSION:**

***Interim City Attorney White reported that the Closed Session agenda was not completed and that the City Council will return to Closed Session following the regular meeting.***

***He further reported that the City Council has concluded that there have been leaks of information coming from Closed Session meetings. The City Council has authorized, by a four to one vote, with the Mayor abstaining, the Interim City***

***Attorney to retain a third party independent investigator and to direct the proceedings.***

SUBSEQUENT NEED ITEMS: ***None.***

APPROVAL OF AGENDA AS POSTED OR AS AMENDED:

***MOTION:*** ***Mayor Pro Tem Vineyard moved to approve the agenda as posted. The motion was seconded by City Council Member Creighton and the vote was: Ayes: Creighton, Raymond, Vierra, Vineyard, Price; Noes: None; Absent: None. The motion passed.***

CEREMONIAL MATTERS:

Certificates:

Firefighter and Reserve Firefighter of the Year

***Mayor Price and CAL FIRE Battalion Chief Wight presented certificates of recognition to Firefighter of the Year, Blaine Lopes and to Reserve Firefighter of the Year, Diego Mortera.***

Police Officers and Public Safety Dispatcher of the Year

***Mayor Price and Interim Police Chief Echevarria presented certificates of recognition to Police Officers of the Year, Matthew Vierra (Detective) and Donald Wisdom III and to Dispatcher of the Year, Kathy Mathis.***

Atwater PAL Cadet Program

***Mayor Price and Interim Police Chief Echevarria presented certificates of recognition to the Atwater PAL Cadets honoring their 2<sup>nd</sup> Place finish in the recent 5<sup>th</sup> Annual Cadet/Explorer Competition.***

City Track Meet Champions

***Mayor Price introduced City Council Member Creighton who invited Glen Jones and Joe Rivero, of Peggy Heller School, and Recreation Supervisor Rahn to present the annual plaque recognizing Peggy Heller School as the City Track Meet Champions.***

PRESENTATIONS:

Monthly verbal report by Merced County District 3 Supervisor McDaniel

***Merced County District 3 Supervisor McDaniel reported that Merced County has a new quarterly newsletter called the "Merced County Connection." It is available***

*online at the County website, and citizens may also sign up to receive the newsletter via email.*

*He also announced that the County is working with Code Enforcement to address the issues of substandard housing and encampments.*

*He reported that the Merced County Ag Commissioner is monitoring roadside fruit and vegetable stands for product that is not from this area.*

*He also commented that the County has secured letters of support for a \$9 million request for development at Castle Airport.*

*Supervisor McDaniel announced that he is cancelling his mobile office hours on May 24, 2018 in the Atwater City Council Chambers due to a conflict in scheduling; the Atwater City Council will be conducting a Joint Special Meeting on that day.*

*RICHARD D. SHELTON, Atwater, commented that the same kinds of fruits at those roadside stands are sold in the flea markets, and he asked if there is monitoring of those areas as well.*

*Supervisor McDaniel responded that those areas are tracked regularly.*

COMMENTS FROM THE PUBLIC:

*DON LARSON, DANNY HERNANDEZ, JIM BALLESTRA, KEITH PELOWSKI, and ERIC LEE (Atwater residents) stated that they would like to see the issues surrounding Police Chief Joseph resolved.*

*RICHARD JOHNSON, Atwater, and FRANK JOHNSON, Modesto, commented that Police Chief Joseph should resign or be fired.*

*DON LARSON, Atwater, expressed concern for the possibility of having the Merced County Sheriff's office take over policing in Atwater.*

*JEANIE KNIGHT, Atwater, asked if her home has been annexed into the City.*

*Mayor Price responded that the annexation has been completed.*

*CHRIS GIESE, Atwater, commented that the gates at Veteran's Park are not being locked at 10:00 PM, and he wondered why the gazebo had been removed from the Bloss Home grounds.*

*RICHARD D. SHELTON, Atwater, issued a complaint about the sidewalks near his home being in a state of disrepair and presenting a danger to older citizens and children. He also commented on the lack of maintenance of City trees.*

**KYLE LORETO, Republic Services, announced the community Spring Clean Up day of Saturday, May 19, 2018 at Buhach Colony High School between the hours of 8:00 AM and 1:30 PM.**

**GREG McDANIEL, Atwater, announced plans for the upcoming 4<sup>th</sup> of July Celebration. He also commented on the progress being made installing fences and a gate at the Bloss Home.**

**RICHARD D. SHELTON, Atwater, questioned if former Interim City Manager de Werk was from Ceres and what his position was in that City.**

**Interim City Attorney White responded to the questions from the public, stating that there will be no comments regarding any personnel issues. Further, the \$96,000 bill for legal fees is defined in the line item statement and will indicate who is costing the City money. He also stated for the record that reporting in the local newspaper by Beverly Barela has been unfair and false and that he discontinued communicating with Ms. Barela because of her unprofessional behavior.**

**No one else came forward to speak.**

**Mayor Price called a recess at 7:31 PM.**

**The City Council returned to the dais and Mayor Price resumed the meeting at 7:46 PM.**

**CONSENT CALENDAR:**

**Agenda item #1 under Warrants, "May 14, 2018," was removed from the consent calendar for separate discussion and possible action.**

**Agenda item #13 under Ordinances (Waiving Second Reading and Adoption), "Waiving the second reading and adopting Ordinance No. CS 996 repealing and replacing Chapter 5.60 of the Atwater Municipal Code relating to Cannabis Business Pilot Program," was removed from the consent calendar for separate discussion and possible action.**

**Agenda Item #18 under Informational Items Only (No Action Required), "California State Auditor's High Risk Local Government Agency Audit Program," was removed from the consent calendar for separate discussion.**

**MOTION: Mayor Pro Tem Vineyard moved to approve the consent calendar as amended. The motion was seconded by City Council Member Creighton and the vote was: Ayes: Creighton, Raymond, Vierra, Vineyard, Price; Noes: None; Absent: None. The motion passed.**

WARRANTS:

1. a) April 23, 2018

**ACTION: Approval of warrants as listed.**

1. b) May 14, 2018

***This item was removed from the consent calendar for separate discussion and possible action.***

MINUTES: (City Council)

2. a) Special meeting, September 19, 2017
- b) Adjourned meeting, September 27, 2017
- c) Regular meeting, March 12, 2018
- d) Special meeting, March 26, 2018
- e) Regular meeting, March 26, 2018
- f) Adjourned meeting, March 28, 2018
- g) Special meeting, April 3, 2018
- h) Special meeting, April 5, 2018
- i) Regular meeting, April 9, 2018

**ACTION: Approval of minutes as listed.**

MINUTES: (Community Development and Resources Commission)

3. Special meeting, February 28, 2018

**ACTION: Acceptance of minutes as listed.**

RESOLUTIONS:

4. Approving annual Local Transportation Fund Claim to be filed with Merced County Association of Governments for FY 2018-19 (Interim City Manager Waterman)

**ACTION: Adoption of Resolution No. 3024-18 approving the annual Local Transportation Fund (LTF) Claim to be filed with the Merced County Association of Governments (MCAG) for FY 2018-19 in the amount of \$114,102, and authorizes and directs the Interim City Manager and Finance Director to execute the Claim Form on behalf of the City.**

5. Approving the 2016 Regional Transportation Impact Fee (RTIF) Update Study; and Rescinding Resolution No.2032-05 which approved the Regional Transportation Impact Fee (RTIF) Study and authorized implementation of the RTIF Program (Interim City Manager Waterman)

**ACTION: Adoption of Resolution No. 3032-18 approving the 2016 Regional Transportation Impact Fee (RTIF) Update Study dated December 15, 2016, including the project list included therein; and adoption of Resolution No. 3033-18 rescinding Resolution No. 2032-05 which approved the Regional Transportation Impact Fee (RTIF) Study and authorized implementation of the RTIF Program.**

6. Approving FY 2018-19 Annual SB 1 Road Repair and Rehabilitation Project List (Interim City Manager Waterman)

**ACTION: Adoption of Resolution No. 3027-18 approving the Project List for FY 2018-19 funded by SB 1 (Road Repair and Accountability Act).**

7. Approving Budget Amendment No. 13 regarding FY 2017-18 Affordable Housing Consulting Services (Interim City Manager Waterman)

**ACTION: Adoption of Resolution No. 3028-18 approving Budget Amendment No. 13 amending FY 2017-18 Budget regarding Affordable Housing Consulting Services.**

8. Approving banking services with Chase Bank (Deputy City Manager/Finance Director Deol)

**ACTION: Adoption of Resolution No. 3031-18 approving banking services with Chase Bank.**

9. Authorizing and directing the Interim City Manager to execute any agreements or documents relating to Systemic Safety Analysis Report Program (Interim City Manager Waterman)

**ACTION: Adoption of Resolution No. 3019-18 authorizing and directing the Interim City Manager, or his/her designee, to execute any agreements or documents relating to Systemic Safety Analysis Report Program (SSARP) Project SSARPL-5254(027) on behalf of the City.**

**AGREEMENTS:**

10. Approving Measure V Recipient Funding Agreement with Merced County Association of Governments (Interim City Manager Waterman)

**ACTION: Approval of Measure V Recipient Funding Agreement, in a form approved by the Interim City Attorney, between Merced County Association of Governments (MCAG) and the City of Atwater; and authorizes and directs the Interim City Manager to execute the Agreement on behalf of the City.**

ORDINANCES (WAIVING SECOND READING AND ADOPTION):

11. Waiving the second reading and adopting Ordinance No. CS 997 amending certain sections in Title 8 "Health and Safety" of the Atwater Municipal Code relating to personal cultivation of cannabis and medical marijuana (Interim City Attorney White)

***ACTION: Waives the second reading and adopts Ordinance No. CS 997 amending Title 8 "Health and Safety" of the Atwater Municipal Code, repealing and replacing Chapter 8.52 "Personal Cultivation of Cannabis," and repealing Chapter 8.60 "Medical Marijuana" in its entirety.***

12. Waiving the second reading and adopting Ordinance No. CS 995 amending certain sections in Title 17 "Zoning" relating to cannabis regulations (Interim City Attorney White)

***ACTION: Waives the second reading and adopts Ordinance No. CS 995 amending Title 17 "Zoning" of the Atwater Municipal Code, amending Chapter 17.40 "Light Industrial Zone," Section 17.40.030 "Conditional Uses" and Chapter 17.42 "Industrial Zone," Section 17.42.030 "Conditional Uses" and repealing Chapter 17.75 "Specific Uses, Section 17.75.120 "Marijuana Cultivation, Nursery, Manufacturing, Testing, Transportation and Distribution" in its entirety.***

13. Waiving the second reading and adopting Ordinance No. CS 996 repealing and replacing Chapter 5.60 of the Atwater Municipal Code relating to Cannabis Business Pilot Program (Interim City Attorney White)

***This item was removed from the consent calendar for separate discussion and possible action.***

INFORMATIONAL ITEMS ONLY (NO ACTION REQUIRED):

14. Police Department activities and projects for the month of April 2018 (Interim Police Chief Echevarria)
15. Police Volunteer activities for the month of April 2018 (Police Volunteer Vineyard)
16. Fire Department activities and projects for the month of April 2018 (CAL FIRE Battalion Chief Wight)
17. Water Well Levels for the month of April 2018 (Interim Public Works Director Shaw)
18. California State Auditor's High Risk Local Government Agency Audit Program (Interim City Attorney White)

***This item was removed from the consent calendar for separate discussion.***



WARRANTS:

May 14, 2018

***LINDA DASH, Atwater, questioned the amount paid to Churchwell White over several months and asked if there is a limit on what can be charged to the City.***

***Deputy City Manager/Finance Director Deol explained the individual charges on the Interim City Attorney's bill and added that some work is not yet complete.***

***Interim City Attorney White explained that once some work is completed, the charges can be recouped by the City.***

***DANNY HERNANDEZ, Atwater, questioned the high cost of Churchwell White's billing.***

***Interim City Attorney White explained that copies of the bill are available to the public and that the City Council and the Interim City Manager are informed on all projects.***

***MOTION: Mayor Pro Tem Vineyard moved to approve the warrants for May 14, 2018 as listed. The motion was seconded by City Council Member Creighton and the vote was: Ayes: Creighton, Raymond, Vierra, Vineyard; Noes: None; Absent: None; Abstain: Price. The motion passed.***

ORDINANCES (WAIVING SECOND READING AND ADOPTION):

Waiving the second reading and adopting Ordinance No. CS 996 repealing and replacing Chapter 5.60 of the Atwater Municipal Code relating to Cannabis Business Pilot Program (Interim City Attorney White)

***Interim City Attorney White clarified how the City will govern cannabis businesses in the City of Atwater, including an education component that will be part of the Developer Agreement and Conditional Use Permit procedures.***

***MOTION: City Council Member Raymond moved to waive the second reading and adopt Ordinance No. CS 996 repealing Chapter 5.60 "Outdoor Cultivation of Marijuana" of the Atwater Municipal Code in its entirety and replacing it with "Cannabis Business Pilot Program." The motion was seconded by Mayor Pro Tem Vineyard and the vote was: Ayes: Vineyard, Vierra, Creighton, Raymond, Price; Noes: None; Absent: None. The motion passed.***

INFORMATIONAL ITEMS ONLY (NO ACTION REQUIRED):

California State Auditor's High Risk Local Government Agency Audit Program (Interim City Attorney White)

*Interim City Attorney White provided a power point presentation describing the High Risk Local Government Agency Audit Program. He commented that Atwater is in the initial assessment stage and that if a designation as a High Risk Agency is declared, it will negatively impact the City's credit rating and bond issuance ability.*

PETITIONS AND COMMUNICATIONS:

Request from Atwater Pentecost Association for assistance with annual procession

*Dario Avila, President of the Atwater Pentecost Association, spoke describing the event and requesting assistance with the parade route.*

*Interim Police Chief Echevarria commented that staffing levels may present some challenges in the current parade route, and Mayor Pro Tem Vineyard suggested that perhaps a safer route could be used for the parade.*

*Interim City Manager Waterman suggested that Interim Police Chief Echevarria meet with President Avila and Mayor Pro Tem Vineyard to review the route and return this item to the May 30, 2018 regular City Council meeting.*

**MOTION:** *City Council Member Creighton moved to continue the item to the regular City Council meeting of May 30, 2018. The motion was seconded by Mayor Pro Tem Vineyard and the vote was: Ayes: Creighton, Raymond, Vierra, Vineyard, Price; Noes: None; Absent: None. The motion passed.*

FUNDING AND BUDGET MATTERS:

Treasurer's Report for the month of March 2018 (City Treasurer Heller)

**MOTION:** *Mayor Pro Tem Vineyard moved to approve the Treasurer's Report for the month of March 2018. The motion was seconded by City Council Member Creighton and the vote was: Ayes: Vierra, Vineyard, Raymond, Creighton, Price; Noes: None; Absent: None. The motion passed.*

Resolution approving the adoption of the Public Agencies Post-Employment Benefits Trust Program to be administered by Public Agency Retirement Services (PARS) and U.S. Bank; and approving Agreement for Administrative Services with Phase II Systems (PARS) for Trust Administrator to the Trust (Deputy City Manager/Finance Director Deol and Human Resources Director Del Real)

*Rachel Sanders, PARS, presented a power point program describing how their pension prefunding program works and how it can benefit the City.*

*City Council Member Vierra stepped down from the dais at 9:16 PM and returned to the dais at 9:19 PM.*

***MOTION:*** City Council Member Creighton moved to adopt Resolution No. 3030-18 authorizing the establishment and participation in the PARS Post-Employment Benefits Trust Program to be administered by Public Agency Retirement Services (PARS) and U.S. Bank, appointing the Finance Director as the City's Plan Administrator, and authorizing the Interim City Manager to execute the documents to implement the Program; to approve an Agreement for Administrative Services with Phase II Systems, doing business as Public Agency Retirement Services and PARS, in a form approved by the Interim City Attorney, for Trust Administrator to the Trust; and to authorize and direct the Interim City Manager to execute the Agreement on behalf of the City. The motion was seconded by Mayor Price and the vote was: Ayes: Raymond, Creighton, Vineyard, Vierra, Price; Noes: None; Absent: None. The motion passed.

INTERIM CITY MANAGER REPORTS/UPDATES:

Approving Agreement for City Attorney Services with Churchwell White, LLP

***Interim City Attorney White stepped down from the dais at 9:26 PM prior to consideration of this item.***

***Interim City Manager Waterman spoke in favor of retaining Churchwell White as City Attorney stating that it brings stabilization and expertise to the City.***

***City Clerk Hyler III stepped down from the dais at 9:34 PM to comment on this item. He stated that retaining Churchwell White as City Attorney may give the impression of moving too fast. He urged the City Council to keep Churchwell White as Interim City Attorney and to issue an RFP at the end of their current contract. City Clerk Hyler III returned to the dais at 9:40 PM.***

***Mayor Price commented that he agreed it may seem that the City Council is moving too fast and preferred that the City utilize regular order and issue an RFP at the end of Churchwell White's current contract.***

***DANNY HERNANDEZ, Atwater, commented that he is opposed to the City Council approving staff's recommendation.***

***MOTION:*** City Council Member Creighton moved to approve an Agreement for City Attorney Services with Churchwell White, LLP, Sacramento, California and to authorize and direct the Mayor to execute the Agreement on behalf of the City. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Creighton, Raymond, Vierra; Noes: Vineyard, Price; Absent: None. The motion passed.

***Interim City Attorney White returned to the dais at 9:46 PM.***

INTERIM CITY ATTORNEY REPORTS/UPDATES:

Approving First Amendment to Interim City Manager Employment Agreement

*Interim City Manager Waterman stepped down from the dais at 9:47 PM prior to consideration of this item.*

*City Council Member Vierra commented that she believes Interim City Manager Waterman is well respected in the community and among City staff. She believes that having Interim City Manager Waterman in place until February 2019 will bring stability to the City.*

***MOTION:*** *City Council Member Raymond moved to approve a First Amendment to Interim City Manager Employment Agreement, in a form approved by the Interim City Attorney, with Lori Waterman; and to authorize and direct the Mayor to execute the Amendment on behalf of the City. The motion was seconded by City Council Member Vierra and the vote was: Ayes: Vierra, Vineyard, Creighton Raymond, Price; Noes: None; Absent: None. The motion passed.*

Discussion regarding options to address the Power Purchase Agreement with CGY Atwater I LLC

*Mayor Pro Tem Vineyard requested a breakdown of solar costing per site for the June 11, 2018 regular City Council meeting.*

***MOTION:*** *Mayor Pro Tem Vineyard moved to not take any action regarding the Power Purchase Agreement with CGY Atwater I LLC at this time. The motion was seconded by City Council Member Raymond and the vote was: Ayes: Raymond, Creighton, Vineyard, Vierra, Price; Noes: None; Absent: None. The motion passed.*

CITY COUNCIL MATTERS:

City Council comments

*City Council Member Raymond reported that he observed a CAL FIRE training exercise in downtown Atwater and was very impressed. He stated that he participated in the One Voice trip to Washington DC and said the trip was a good opportunity to acquire more information.*

*City Council Member Vierra commented on the upcoming meeting with the State Controller's office and suggested that as many City Council members as possible attend. She further admonished those who attack and complain without a suggestion for resolving a problem.*

*City Clerk Hyler III suggested, due to the length of meetings, that the City Council return to limiting public comments to a maximum of three (3) minutes per*

**speaker. He also suggested using speaker cards to facilitate preparation of the minutes of the meeting.**

**City Council Member Creighton thanked Police Officer Jantz for his work with the Atwater Police Cadets. He encouraged everyone to participate in the 4<sup>th</sup> of July Celebration. He also praised the Rescue Mission's recent event and the sponsorship of Google at the event. He stated that he would like to see more control over the public comment portion of the agenda.**

**Mayor Pro Tem Vineyard announced that he has had communication from City employees who would like to form a focus group to discuss how to improve the City. He also praised the students and staff at Mitchell K6 for their program of having a "word for the day". This month the word was "tolerance," and Mayor Pro Tem Vineyard stated that it created a positive school environment.**

**Mayor Price announced that the City is responsible for nominating one representative for appointment to serve on the Merced County's Measure V Citizen's Oversight Committee, and he encouraged citizens to apply. He stated that he also rode the new Amtrak train route to Sacramento with staff. He encouraged everyone to support the 4<sup>th</sup> of July Celebration and the events on the 3<sup>rd</sup> of July honoring first responders.**

CLOSED SESSION:

**Mayor Price adjourned the meeting to Conference Room A for continuation of Closed Session at 10:34 PM. Closed Session resumed at 10:37 PM.**

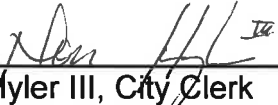
**Closed Session adjourned at 11:14 PM.**

MAYOR OR CITY ATTORNEY REPORT OUT FROM CLOSED SESSION:

**Interim City Attorney White reported that no action was taken and that staff was given direction.**

ADJOURNMENT:

**The meeting adjourned at 11:17 PM.**

  
\_\_\_\_\_  
Don Myler III, City Clerk

By: Lesa Rasmussen,  
Recording Secretary