

AMERICAN FORK CITY COUNCIL  
AUGUST 3, 2021  
WORK SESSION MINUTES

Members Present:

Kevin Barnes	Council Member
Staci Carroll	Council Member
Ryan Hunter	Council Member
Rob Shelton	Council Member

Members Absent:

Clark Taylor	Council Member (excused)
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Staff Present:

Bradley J. Frost	Mayor
David Bunker	City Administrator
Camden Bird	Community Services Director
Wendelin Knobloch	Associate Planner
Terilyn Lurker	City Recorder
Anna Montoya	Finance Officer
Aaron Brems	Fire Chief
Cherylyn Egner	Legal Counsel
Adam Olsen	Senior Planner
Darren Falslev	Police Chief
Scott Sensanbaugher	Public Works Director

Also present: John Woffinden and Ryan Peterson

WORK SESSION

*The purpose of City Work Sessions is to prepare the City Council for upcoming agenda items on future City Council Meetings. The Work Session is not an action item meeting. No one attending the meeting should rely on any discussion or any perceived consensus as action or authorization. These come only from the City Council Meeting.*

The American Fork City Council met in a work session on Tuesday, August 3, 2021 in the City Administration Office Conference Room, located at 51 East Main Street, commencing at 4:00 p.m.

1. Discussion on the City's Procurement Policy.

Anna Montoya, Financial Officer, began this discussion by stating that the current procurement policy was approved in 2017. She had worked with the various departments, as well as checking with other cities, to develop a proposal that would be both transparent and efficient in light of changes that had occurred over the years. The new proposal was more comprehensive and seemed to be a good fit for American Fork. She outlined the Purchase Approvals section, which compared the current policy to the proposed policy:

Proposed	Current
<\$2,500—no bids, supervisor approvals	<\$1,000—no bids, supervisor approvals
\$2,501-\$5,000—3 verbal bids; department head or designated supervisor approvals	\$1,001-\$10,000—3 bids, department head and finance director approvals
\$5,001-\$25,000—3 written bids; department head, finance director approvals	\$10,001-\$25,000—3 bids, department head, finance director and City administrator approvals
\$25,001-\$50,000—written bids, purchase order, department head, finance director, and City administrator approvals	>\$25,001—same as above, and council ratification
>\$50,001—competitive bid, same as above, and council ratification	

Council Member Barnes asked whether there had to be something in writing to document a bid. The answer was no, though once a verbal bid was accepted, staff would document who they had talked to and what the bid was, through e-mail. Council Member Barnes wondered if there had ever been a problem in accepting a bid that was later disputed by the seller. No one knew of such problems.

Council Member Hunter commented that he loved the bidding process as it gave ownership to those making the decisions, and they had to be accountable. Furthermore, it gave some incentive to look for the best bid. Just because an item was approved to be purchased for \$25,000 didn't mean it couldn't be found somewhere for \$15,000. Though that did not happen often, it could happen.

Every taxpayer dollar was valuable. All budgetary matters would feed back to the City Council. The whole purpose was to accomplish what the Council wanted. It would still come through the Council's door, which was important for the public to understand. It was good to review this policy regularly to make sure it was done correctly.

Ms. Montoya pointed out that she also saw every invoice before payment, so everything went through several reviews.

Ms. Montoya then presented the Competitive Bidding section of the new proposal.

Proposed	Current
Defines competitive sealed bids, invitation for bids, and request for proposals	Bidding times
Sets process for each	Public notice requirements
<ul style="list-style-type: none"> <li>What is included in the bid document</li> </ul>	

<ul style="list-style-type: none"> <li>• Bidding times</li> <li>• Public notice requirements</li> <li>• Acceptance of bids</li> <li>• Negotiations/corrections</li> <li>• Award or rejection of bids</li> <li>• Appeal process</li> </ul>	
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Ms. Montoya commented that the policy protects the City by helping each department understand what was required.

Council Member Barnes asked for clarification on terminology. Explained was the meaning of a sealed bid, which bid came to the City when a company was bidding on something. That usually happened because there had been a request for a proposal. Requests for proposals usually go out for professional services; they define the type of work needed.

Council Member Hunter explained further, stating he worked daily with requests for proposals and bids in his line of work. He pointed out that requesting a bid didn't necessarily mean someone was looking for the lowest cost (though it could mean that). It may be that someone was looking for the most qualified, and the bid proved the qualifications. Also, there were some State codes that came into play requiring that the bidder first be selected, and then a fee would be negotiated.

More discussion followed, with reference to change orders being a way a low bidder can make up some of the money he lost by bidding so low as to win a contract. Choices were often made based on cost, but that could cause problems down the road. It was not unheard of for a finished project to cost three times what the bid was for originally.

Council Member Carroll had noticed that the new policy had addressed several of the problematic features regarding accepting bids.

Scott Sensanbaugher, Public Works Director, pointed out that there were different levels of complexity in projects. Different kinds of projects require different types of tools. The Council should try to match the tool to the need.

Council Member Carroll wanted flexibility and didn't want too strict an approval process in place. It was then mentioned that if something exceeded the budget, it would have to come forward for specific approval. Also, in some cases, they wouldn't know the dollar amount until several steps into the process. In some types of bids, such as for janitorial work (which was not a professional service), the dollar amount involved would not be high enough for it to meet the threshold for formal approval anyway. Nevertheless, there would be exceptions come up, so they were anticipated and written into the policy.

There was some talk about professional services. A contractor could be used for many similar projects once they were vetted for one. There was consensus that it would be good to utilize such services. Council Member Hunter pointed out that there was a difference between governing and managing. City Councils were governing groups and departments were managing groups. A governing group made sure the rules were followed, and a managing group used the rules to make things happen. It was important to keep the roles defined.

Council Member Shelton stated that some cities had gotten into trouble with their procurement policies when there weren't enough checks in place. Mr. Bunker stated there were processes as to how things had to be reviewed, though the Council could tie it down as tight as they wanted to. Council Member Shelton mentioned that he had never seen an exception given to a whole category of professionals. In this case, they had tried to come up with a policy that fit the needs of American Fork. There were times when an exception would be needed, and other times when it would not be needed. The Council decided to leave the policy as it was written, which included a \$50,000 approval threshold. It could always be re-evaluated as things came up. They decided to put it on the agenda for their next Council meeting.

Below was the section of the purchasing policy that outlined the Exceptions to Bidding.

Proposed	Current
<ul style="list-style-type: none"> <li>• Grants, gifts, bequests</li> <li>• Superior products</li> <li>• Interlocal agreements</li> <li>• State contracts</li> <li>• Required by grants</li> <li>• Emergency situations</li> <li>• Single source</li> <li>• Contractor on site</li> <li>• Inventory replacement/equip maint</li> <li>• Professional service contracts</li> <li>• Less than 3 bids received</li> <li>• Investigatory/confidential services</li> </ul>	<ul style="list-style-type: none"> <li>• Trust obligations/bonds</li> <li>• Single source</li> <li>• Inventory replacement/equip maintenance</li> <li>• Used equipment</li> <li>• State contracts</li> </ul>

Council Member Shelton asked for clarification on the phrase “grants, gifts, bequests.” It was explained that that part of the policy covered gifts coming to the City, not gifts the City might give. He then asked the meaning of “superior products.” He asked how the City could know something was superior if they hadn't taken a look. The answer was that they would rely on staff members with experience to make that decision. It was true that the process then became subjective, but it also would speed things up. If the subjectivity resulted in a problem for the City, then the staff member who made the decision would be held accountable. If they couldn't depend on the experience and institutional knowledge of staff, then they had someone in the wrong seat.

Council Member Barnes commented that they could overburden employees with requests for proposals (RFP's) and all other related business when the answers were already there. He felt it was their responsibility to put safeguards against overburdening in place.

Council Member Carroll asked if they needed to put more in the policy regarding legal fees in case legal counsel was needed for an emergency. It was also pointed out that emergency situations were already covered as an exception. There was some discussion as to whether it was adequately covered since all things that require legal action were not necessarily emergencies. There were differences of opinion on the matter. However, they could go higher than \$50,000 if it was an emergency. In a true emergency, approval could be obtained by the Mayor or City Administrator, until the Council could meet to ratify.

Council Member Shelton stated that he didn't want to tie up their hands, but it only made sense if they had extra clarification regarding emergencies. Mr. Bunker stated they would add appropriate clarifying language and leave the language there that applied.

Ms. Montoya presented the final section, which was titled Additional Sections Proposed.

- Uniform contract clauses
- Change orders
- Prohibited activities include:
  1. Collusions
  2. Gratuities
  3. Conflicts
  4. Personal Purchases
  5. Cost + percentage of contract
- Defines ethical conduct
- E-verify program

Finance Officer Montoya commented that this was additional language to protect the City. It made things more transparent and gave additional direction to departments. The comment was made that change was good and made the operation of the City better all the time. As Montoya concluded her presentation, she invited anyone who wished to do so to call or e-mail her.

## 2. Discussion on legislative policies.

Mr. Bunker stated there was a push among City Managers to reach out to their legislators ahead of the upcoming session. Utah League of Cities and Towns (ULCT) had tracked over 200 relative bills that had gone through the legislature; some of them had gone through very quickly. Mr. Bunker listed several that the League had had concerns with in the past, which included:

- Any billboard could go electronic
- Short term rentals
- Sales tax distribution
- Fee amendments
- Utah Lake Authority

There were many other bills which attacked municipal governments' ability to regulate their own affairs. One reason this happened was that legislators were often jumping right into State government positions without having served on city councils and as mayors, and they had no idea about city codes and how hard municipal governments work on these matters. Because they hadn't the experience, they didn't know how a bill could affect a municipality. They seemed to think that cities were inept. He mentioned a couple more issues that were seeing attention at the State level, which were affordable housing and zoning. Actions at the State level were aimed at forcing cities to do things certain ways. Mr. Bunker proposed talking to legislators in advance so that when bills came up, they knew where their constituent municipality stood. He ended by asking what the American Fork City Council wanted from their legislators.

Council Member Shelton brought up the issues of secondary water metering and COVID. Timing, in terms of making legislators aware, could help a lot on those issues. There were several

comments on the drought. Ryan Peterson stated that if cities were partnering with other cities on legacy projects, they could be presented to GoEd for help, but that legislative action in the past had been taken without money to fund it. The State had made unfunded mandates. Now that there was money, projects could be presented.

Council Member Shelton suggested asking the State to match funds for water conservation projects such as secondary metering. The top three or four conservation offenders in the community would be easily identified by a meter. Mr. Bunker stated they could at least apply for matching dollars, though Council Member Shelton stated those funds had been limited in the past and some kind of State appropriation would be great. It would be best if the State gave the cities the autonomy to do what's best for their city. Council Member Carroll felt the State was too broad in their assessment of what was and was not going on at the local level.

Mayor Frost cited the Utah Lake Authority as indicative of the disconnect between local and State leaders. He mentioned the so-called "toilet tax" which was a fee to be levied on any city that entered into that sewer district. They were so casual about it, and had no idea of the outcry that would happen if that was put into place.

Council Member Shelton described the legislature's action as a shotgun approach. They would do better by a sniper approach. If the cities could inform the legislators where they needed help, it could be much better.

Ryan Peterson suggested combining voices of communities. A lot of communities support the water metering. He felt the ULCT should take the lead on that. Council Member Carroll asked how that affected American Fork in specific ways. Mr. Peterson asserted that one could tell which legislators had not been informed. They kept their heads down, and they got steamrolled. American Fork may have to be the tip of the spear on some of these issues.

Council Member Barnes felt the biggest problem with the State legislature was unfunded mandates. Perhaps they could help the State understand that problem by calling to their attention how they felt about unfunded Federal mandates. He suggested it would be wise to identify specific legislators from the north end of the county, and then decide who would be the point of contact for those specific people.

Ryan Peterson added that American Fork could have those people come to a meeting; they could ask them to come for about an hour so it was not overwhelming to them. They could tell them why something mattered, and why it was important. For example, they hadn't understood the problems with high density apartments in the corridor. They would come as they were good people and wanted to hear from their constituents.

Council Member Shelton brought up proposed re-districting, and how it could affect the effort to contact the right legislators. Ryan Peterson was not sure of the impact re-districting could have on American Fork. The last time re-districting was proposed, some maps were drawn up, and a lot of people were alarmed. He knew from a senator that they were getting close on some maps to show the current proposed changes.

There was a discussion on the State's mandate to upgrade all fire radios. This technology was very expensive, and there would be some cities that just could not afford it, though there was hope

of some State funding coming in for those. It was reported that some cities may have to join together to afford these.

Mr. Bunker felt qualified immunity was an issue, stating that cities wanted to be able to do their own building inspections. Also in question were the fees that were charged for inspections. The city had a formula for the fees, but the State had another formula. The State felt the cities charged exorbitant fees. Another element of this problem was the timeline cities set for getting these inspections completed. If a city can't do it within the stated time frame, builders wanted to say, "Fine, I'll do what I want." Legislators needed to understand that cities must govern themselves on this matter.

Council Member Carroll brought up the fact the property tax was the only funding source for road work. People who don't own property were still using the roads. She felt strongly that there needed to be another funding source. She pointed out that in Utah there were a lot of churches that don't pay property tax, and Provo had a university that did not. There may be some hope for this problem with an odometer tax.

It was stated that the utility fee that the State wanted for storm drains. This one had gone to the Supreme Court, where the briefing process can take months.

Council Member Hunter mentioned ranked choice voting and wondered if that was an issue. There seemed to be a push on it from lobbyists.

Council Member Carroll saw protecting sales tax as an important issue. The ULCT had opposed action on that topic, and it did fail. However, it would come up again. Homebuilders felt cities gave businesses preferential treatment. Council Member Carroll felt that all budgets were based on current structure, and if changed it could cause a lot of problems.

Mr. Bunker asked what the most important subject (of all that had been discussed) would be to target with State legislators. Ideas that came forward were protecting zoning; secondary metering; and the Utah Lake Authority. The latter generated a lot of discussion. There had been a lot of negative reaction from American Fork on that issue, mainly because the State had not figured out a good way to pay for it. Mr. Bunker emphasized that local elected officials were much closer to the constituency than State legislators and were in the best position to advocate. The State legislators that served American Fork had all proved to be responsive. They just needed to know. He praised the ULCT for their valuable work. He suggested a meeting in September to which the legislators would be invited, and another meeting in January, just as they were going into session.

Mayor Frost praised Governor Spencer Cox as someone who understood all branches of government. Cox had his chief of staff call Mayor Frost twice to talk. Mayor Frost ended with "It's not us against them."

### 3. Adjourn.

The work session adjourned at 5:50 p.m.



Terilyn Lurker, City Recorder