



September 29, 2014  
City Council Special Session  
Willamette Activity Center- Room 8  
47674 School Street  
7:00 p.m.



# MINUTES

---

## 1.0 CALL MEETING TO ORDER / PLEDGE OF ALLEGIANCE

Council Present: Gerald Shorey, Mayor  
Rayetta Clark, Council President  
Glenn Fortune (absent)  
Jim Coey  
Les Biggerstaff  
Christine Slaven

Staff Present: Louis Gomez, City Administrator  
Albert Alcalde, Fire Chief  
Jackie Taylor, Assistant Planner / Public Works Secretary  
Susie LaDuke, Finance Director/City Recorder  
Kevin Martin, Acting Police Chief

## 2.0 PUBLIC COMMENT

None

## 3.0 MAYOR AND COUNCIL COMMENTS

None

## 4.0 ADDITIONS, CORRECTIONS, OR ADJUSTMENTS TO THE AGENDA

None

## 5.0 CONSENT AGENDA

None

## 6.0 ADMINISTRATIVE SERVICES

6.1 Take action on current litigation or litigation likely to be filed

**ADJOURNMENT:** The Council adjourned at 7:01 p.m. for Executive Session

**Executive Session per ORS 192.660 (2) (h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.**

Adjourned Executive Session 7:31 P.M.

Resume open meeting 7:31 P.M.

Louis stated that we are here in regards to a review of a wage and hour litigation settlement between James McKee and the City of Oakridge. A Tort claim was initiated back in March 2014 and through months work and effort between the Council, Staff and City Attorney we have come up with a settlement agreement, before we go any farther he would like Susan to read the background on this.

Susan read the statement from the City. (Attached)

**Motion:** Councilor Coey moved that we approve the settlement agreement with Mr. James McKee and authorize City Administrator Louis Gomez to sign the settlement agreement in the amount of \$97,614. Councilor Slaven seconded the motion.

J. Coey (Aye), R. Clark (Aye), Mayor Shorey (Aye), C. Slaven (Aye), L. Biggerstaff (Aye). Motion carried 5-0

**7.0 COMMUNITY SERVICES**

None

**8.0 POLICE SERVICES**

None

**9.0 EMERGENCY SERVICES**

None

**10.0 REPORTS FROM BOARDS AND COMMITTEES**

None

Meeting adjourned at 7:35 P.M.

Respectfully submitted before the City Council October 16, 2014

Signed:   
Jerry Shorey, Mayor

Signed:   
Susan LaDuke, City Recorder

A claim for unpaid wages was filed against the City in March of 2014 by James McKee, who was employed within the Fire Department for Recruitment/Retention of volunteers.

As you know, neither the City Administrator, the Fire Chief or the Finance Director held their current positions at the time this employee was hired or during most of the time the employee was providing services for which he has asserted claims for compensation. No communication was made to the current administration seeking resolution of the issue prior to the claim being filed.

The federal Fair Labor Standards Act contains strict limitations on the circumstances under which employees may volunteer for uncompensated time for public employers. The rules prohibit the employee from performing the same or similar duties as the employee performs for pay. In this case, Mr. McKee was hired as the Recruitment and Retention Officer, but it appears that there was some degree of "mission creep." Unfortunately, some of those duties were the same or similar to the duties he was performing as a volunteer, so the law requires that he be paid for that overlap time. The purpose of that law is to prevent employers from pressuring employees to volunteer additional uncompensated time. There is no indication here that Mr. McKee was ever pressured, but the law says he must be paid if the duties were the same or similar.

In addition, the courts and the Department of Justice have been inconsistent regarding exactly when the employees must be paid for "on-call "or "standby" time, which includes things like "duty officer" time. Generally, if the courts deem the employee's activities to be too restricted, by virtue of the fact that the employee is required to respond to all calls during such time, or to monitor the radio during such time, then at least some courts have held that the time must be compensated.

Mr. McKee did not write down that time on his timesheets. He was paid for all time that he did write down. Nonetheless, the law requires that employers pay unless the time truly qualifies to be treated as volunteer time.

In addition, the Fair Labor Standards Act provides that if an employer fails to pay as required, then the employer is required to pay liquidated damages in an equal amount to the uncompensated time.

This settlement agreement reflects an honest attempt to determine the number of hours that Mr. McKee worked as closely as possible. If the city were to deny the claim and take the case to trial, it is extremely likely that the city would have to pay an amount close to or in excess of the settlement amount. It is also probable that the city would be required to pay McKee's attorney's fees. It is very likely that the attorney's fees would exceed the amount of the settlement.