

CITY OF AMARILLO

On this, the 7TH day of November, 2012, the Civil Service Commission of the City of Amarillo convened in a regular session at 8:30 a.m. in the City Commission Chambers of City Hall, 509 S.E. 7th Street, Amarillo, Texas, with the following present:

	Present Today	Number of Meetings Held Since Appointment	Number of Meetings Attended Since Appointment
DeDe Reynolds, Commissioner	Yes	107	100
David Hurt, Chairman	Yes	16	14
Lawrence Walker, Vice-Chairman	Yes	7	7

Also in attendance were the following City of Amarillo officials:

- Viola Frausto, Recruitment Coordinator, City of Amarillo
- Lori James, Director, Civil Service, City of Amarillo
- Alesia Grist, Assistant Director, Human Resources, City of Amarillo
- Rick Cognasi, Solid Waste Superintendent, City of Amarillo
- Steve Fisk, Assistant Solid Waste Superintendent, City of Amarillo
- Jimmy Chavez, Supervisor, Solid Waste, City of Amarillo
- Bryan McWilliams, Attorney II, City of Amarillo
- Van Hagen, Assistant Director, Public Works, City of Amarillo
- Michael Rice, Director, Public Works, City of Amarillo
- Robert Davis, former Commercial Equipment Operator, Solid Waste, City of Amarillo

David Hurt, Chairman, called the meeting to order at 8:30 a.m. and a quorum was established.

ITEM I: First on the agenda was review of the previous meeting minutes.

DeDe Reynolds, Commissioner, moved to approve the minutes as written for the Civil Service Commission meeting held on October 10, 2012. Motion seconded by Lawrence Walker, Vice Chairman. The minutes were approved as written.

ITEM II: The lists of new employees, step increases, transfers, promotions, demotions, bypasses, temporary assignments and disciplinary actions were reviewed and considered.

ITEM III: Appeal of termination of employment filed by Robert D. Davis.

Bryan McWilliams, Attorney II, introduced himself as representing the City of Amarillo in the matter. Mr. McWilliams was sworn in by David Hurt, Chairman of the Civil Service Commission. Mr. McWilliams indicated that he intended to present several exhibits during the course of the hearing and Mr. Davis has agreed that each of the items is, in fact, authentic.

Mr. Davis was a City of Amarillo employee for 7 years. On 10/10/2012 he was indefinitely suspended. History indicates that:

- 10/4/12 Mr. Davis was a no call, no show. He had been off on approved leave on 10/3, but had not asked for leave on 10/4/12.
- 10/5/12 Mr. Davis pulled down two electrical poles at Tisdale Siding, 5101 Canyon Drive. Power was lost and damage was done to the business and the City of Amarillo truck. The incident was not reported to the supervisor.
- 10/10/2012 Indefinite Suspension (Termination) paperwork was given to Mr. Davis.

Mr. McWilliams called Steve Fisk to the stand. Mr. Fisk was sworn in by David Hurt, Charmin of the Civil Service Commission.

Mr. Fisk established for the record: His name is Steve Fisk and he is the Assistant Solid Waste Superintendent for the City of Amarillo and has been for 12 years. His responsibilities include overall management and supervision of the Solid Waste Collection and Solid Waste Disposal Departments of the City of Amarillo. He spent 15 years doing similar work for another city. He has 27 years of experience including accident investigation.

Mr. McWilliams introduced Exhibit 1 – Notice of Indefinite Suspension of Robert Davis and Exhibit 2 – Contemplated Termination of Robert Davis. Mr. Fisk indicated these were the correct documents for this case.

Mr. Fisk testified that Mr. Davis was scheduled to work on 10/4/12, but that he did not report for work. His immediate supervisor, Jimmy Chavez, tried to contact him but there was no answer nor a response to a message left on Mr. Davis' cell phone. Departmental policy indicates that an employee must be available by phone if they are away from work during working hours. Additionally, another policy indicates that an employee who is not intending to come work a scheduled shift must call in 20 to 30 minutes prior to the shift's start time (see Exhibit 2, item (4)). Mr. Davis did not do this.

On 10/5/12, according to Mr. Fisk, Robert Davis did come to work his scheduled shift.

Mr. McWilliams asked Mr. Fisk to describe the incident on 10/5/12. Mr. Fisk indicated that the Tisdale Siding business called the Solid Waste office to report that their power poles were knocked down and all power and cable service to the business had been disrupted. Jimmy Chavez went out to the business to investigate and confirmed that there had been major damage.

Mr. Fisk indicated that there had been a witness to the accident. See exhibit 5. Mr. Mike McCoy is an employee of the neighboring business, BSA Health Systems. Mr. McCoy was not an acquaintance of Mr. Fisk prior to the accident.

Mr. McWilliams asked for permission to approach the bench and was granted same. He presented each of the Commissioners a loose leaf notebook containing the set of Exhibits to which he was referring.

Mr. Fisk, in speaking to Mr. McCoy, asked if the driver had ever exited the truck and the witness stated in his written statement that he did not see that the driver ever got out of the truck.

To Mr. Fisk's knowledge, Mr. Davis did not contact:

- Solid Waste
- Risk Management
- Law Enforcement
- Tisdale Siding

Mr. Mc Williams next referred to Exhibit 8, City of Amarillo Code of Safe Practice – Vehicle Accidents. Mr. Robert Davis had signed this document on September 19, 2008. The document specifically talks about reporting vehicle accidents to supervisors, Risk Management and Law Enforcement.

It was reiterated the Mr. Davis did not report the accident to any of the above.

Mr. Fisk described the document as an outline for courteous and safe operation of City vehicles. Asked about the importance of doing that, Mr. Fisk said it was fair because we are employed by the City and the citizens. Mr. Fisk was asked if Mr. Davis had brought discredit to City service. He responded, "Yes. The City didn't look very good that day. The accident was bad enough but not reporting it made it much worse. We expected him to report it at least to the supervisor if not to the business owner."

He also indicated that the action was insubordinate because he didn't follow orders.

Exhibit 10 was introduced as City of Amarillo Code of Safe Practices – Driving Safety. One of the points in this document is that a driver should avoid backing up if it is at all possible. Mr. Fisk said that to access this dumpster using the side loader, the truck would be in a position that it had to back up to position itself to leave the parking lot. On a side loader, it is loaded from the driver's side. Mr. Davis had run this route previously many times.

Mr. McWilliams asked if Mr. Davis gave a statement. Mr. Fisk replied that when he was confronted they asked if he was aware of anything and Mr. Davis said he was unaware of doing it. He said he didn't have any knowledge of hitting a 6' to 8' wooden pole with enough force to break it and pull down another pole.

Mr. Fisk said based on his experience it would not be possible that a driver wouldn't have known that he did it. With his experience with side loaders and Mr. McCoy's statement, the impact could have been heard and felt inside the truck.

Exhibit 10 refers to the Circle of Safety that every driver should perform. Steve Fisk described this task in that if you are unaware of what is in the area, get out and walk around the vehicle. Robert Davis signed this document. Based on the eyewitness account, he did not do this. Mr. Davis never left the vehicle. He did not use a spotter even though he was aware of the lot and the obstacles therein.

When Mr. Fisk was asked what he would have done, he indicated that he would have used his mirrors to look, would have walked the circle of safety around the truck and would have been very aware of his surroundings.

Mr. McWilliams had finished questioning Mr. Fisk.

Mr. Davis had no questions of Mr. Fisk.

Lawrence Walker, Civil Service Vice-Chairman, asked which pole was down and Mr. Fisk indicated it was the one in the middle of the lot by referencing the aerial photograph.

There being no other questions for him, Mr. Fisk was excused.

Mr. McWilliams called Jim Chavez, Assistant Solid Waste Services Coordinator with the City of Amarillo.

Mr. Chavez was sworn in by David Hurt, Chairman of the City of Amarillo Civil Service Commission.

When explaining what his job entails, Mr. Chavez indicates that he oversees Commercial Drivers and the billing of Commercial properties. He has 11 years of service with the City of Amarillo. 5 of those years were driving and almost 7 in his current role. He does investigate accidents.

Mr. McWilliams introduced aerial photographs at this time.

Mr. Chavez testified that he was called on 10/5/12 to an accident at Tisdale Siding at 5101 Canyon E-Way. He took photographs while conducting the accident investigation. When asked to describe what he saw at the scene, Mr. Chavez said there were 2 poles down – one facing north and one facing South. There were power lines everywhere. The business lost power all day Friday and most of the day on Saturday and could not do any business that required electricity.

Mr. Chavez described the photos he took. Photo 1 is the main pole laying down facing south. This is the pole Mr. Davis backed into. Asked if he was certain, he said that there was no other way the pole would have been down. There was physical evidence on the truck. The signal light bar had wood chips embedded in it. There was dirt and grime that had been wiped away. The yellow flashing lights were broken and there was wood inside of them.

Mr. Chavez felt that slack from the line could have pulled the second pole down or the line could have snagged on the truck when it left and pulled it down. He wasn't sure which.

There was a lot of slack in the cable line and actually was probably caught in the rear door as it hangs lower than the rest of the truck.

When asked if it would be possible to drive away from the scene and not realize you had caused a downed power pole, Mr. Chavez said, "No. He would have felt it or heard or seen something."

Mr. Chavez said if someone was walking in the yard it could have been a very serious accident or injury.

Mr. Chavez met with Mr. Tisdale and there were no witnesses from his business. Mr. McCoy was the only

witness discovered during the accident investigation.

Exhibit 6 was introduced. This is a pre-trip inspection form dated October 5, 2012. It is signed by Bob Davis. When asked whether Bob Davis and Robert Davis, the Plaintiff, was the same person, Mr. Chavez said that they were. Mr. Chavez also reported that the Vehicle # was changed on the accident report due to the fact that this was the 2nd truck of the day assigned to Mr. Davis because the first truck had broken down.

Exhibit 7 – Motor Vehicle Accident report. This is a standard report and was completed by Mr. Jimmy Chavez. Mr. Chavez drew a sketch on the form documenting and detailing the proximity of the dumpster, the truck and the utility poles. Specifically noted is that the accident could have been prevented by being more observant and the correction section detailed “As always when exiting private property especially backing, make sure all obstacles, gates, appliances and men working and utility poles are clear.”

Mr. Davis had run this route many times and was aware of the immovable object in the yard. He signed this report on 10/10/12. This is standard procedure. Mr. Chavez also took photographs.

On Exhibit 4 Mr. Davis states there is a utility pole in the yard, so he knew it was there. He would have had to use side mirrors to ensure he was clear to leave. There is a spot mirror that shows your dumpster going into the hopper. It will also show the back of the truck so you could have seen the power lines and the pole fall. Mr. Chavez stated that he would have felt it and heard it in addition to seeing it.

Mr. Davis put in his statement that he was going less than 5 miles per hour but there is no way he could have known that even if looking at speedometer instead of the mirror, because they don't register when the truck is moving in reverse.

Mr. McWilliams turned over the witness to the plaintiff. Mr. Davis had no questions for Mr. Chavez.

Mr. Chavez was dismissed.

Mr. Rick Cognasi was called to testify. He was sworn in.

Mr. Cognasi is the Solid Waste Superintendent of the City of Amarillo and has held the job for 12 years. He was the Assistant Solid Waste Superintendent for 8 years prior. He described his role as being in a Supervisory capacity over Mr. Robert Davis since Mr. Davis started with the City of Amarillo.

Mr. McWilliams reminded the Commission that all of the documents in evidence have been stipulated to being the true document and that Mr. Davis agrees.

Exhibit 3 – Mr. Davis indicates in his request for a hearing that he wouldn't have left the scene if he had known of any damage.

Mr. McWilliams asked Mr. Cognasi if Mr. Davis had ever left the scene of an accident before without telling anyone. Mr. Cognasi answered that he had.

Exhibits 1 & 2 document that there have been two incidents where damage was done and Mr. Davis left the scene without reporting the accident.

Mr. McWilliams made the following points with Mr. Cognasi's agreement: Mr. Davis further states in his appeal that this is the first time he was ever cited. He had been given written write-ups previously but states in his appeal that he has never been disciplined. He also says he takes his job seriously and is responsible but not coming in / not calling and not reporting accidents is in no way serious and responsible. He is not what we want to see in a City employee.

Mr. Cognasi said that someone could have been killed by the falling pole or electrocuted by the power lines. A fire could have been started. Mr. Cognasi said he has never seen an accident this bad that wasn't reported. Again, it was agreed that Mr. Davis did not report the incident to:

- His Supervisor
- City of Amarillo Risk Management

- Law Enforcement
- Business owner

Regarding the previously unreported incident, Mr. Cognasi said Mr. Davis tore the drivers' mirror off truck and didn't report it. These mirrors are very sturdy and are much more heavy duty than those on a pickup truck. He was given a written warning. On the warning, it indicates that he could receive a suspension for further incidents. Mr. McWilliams asked Mr. Cognasi why he didn't suspend rather than terminate.

Mr. Cognasi said the two incidents were not comparable. This time the driver tore two utility poles down and left the scene. He could not, in Mr. Cognasi's opinion, have done this type of damage without his knowledge.

Mr. McCoy was 60-100 yards away and heard the crack of the pole. There is no way Mr. Davis didn't know. On the previous incident he pulled the driver's side mirror off.

This is negligence and insubordination in both cases.

Due to the nature of the incident on 10/5/12, Mr. Tisdale has indicated he doesn't want t this driver back on his property. Furthermore, he was disappointed that we had an employee who would act like that at the City of Amarillo.

According to Mr. Cognasi, the failure to report is the key here. We simply can't trust a driver who doesn't report an incident of this magnitude.

Exhibit 13 – Driver's Orientation – section 16 reads 'it is your responsibility to report any damage you cause to private property (fence, gas meter, overhead wires, eaves of shed, etc.) to supervisor. This had been covered in a safety meeting in the department early on the same day of the incident involving pulling off the driver's side mirror and it was discussed how to report an accident. Mr. Davis signed the document the morning prior to the incident.

Again Mr. Cognasi reiterated that in his opinion there is no way Mr. Davis didn't know about the mirror in 2010 : about the utility pole in 2012.

Section 93 of the City of Amarillo hand book is cited on Exhibit 1, the notice of indefinite suspension (termination) and covers all of the infractions Mr. Davis committed.

Bryan McWilliams was finished questioning Mr. Cognasi. Mr. Davis had no questions for him.

Mr. Walker, Vice-Chairman of the Civil Service Commission asked Mr. Cognasi how the damage was found in 2010 if not reported by Mr. Davis. It was discovered the following day when the next driver was assigned the damaged vehicle.

David Hurt, Chairman of the Civil Service Commission asked if the trucks had air conditioning. Yes, they do, so the window could be up but the driver would still be able to hear.

There being no further questions for Mr. Cognasi, he was dismissed.

Mr. McWilliams called Mr. Robert C. Davis to the stand. He was sworn in by David Hurt, Chairman of the Civil Service Commission.

Mr. Davis said he would like to make a statement and was granted permission to do so. He said that in the accident where the mirror was pulled off, it was reported to Pete Young. Mr. Young was not in attendance.

Mr. Davis stated that he had "no clue" what was going on. He didn't hear or feel anything. He indicated that a lot of factors could have played into the severity of the accident such as the age of the pole as it could have deteriorated. He is in shock over losing his job. He reiterated that he had no clue what happened.

He also said that the spot mirror doesn't show anything except the side of the truck. There is no back up camera on this truck and he couldn't see anything. Nothing looked unusual. Mr. Davis said he'd successfully run that route for over a year but then said that the lot is so crowded there is no way to back a truck up in the lot.

As for the unapproved absence on the 4th, he thought he was off. He had been off on the 3rd.

When he finished his statement, Mr. McWilliams asked Mr. Davis to take the stand for rebuttal.

Exhibit 12 – This is the disciplinary report dated 3/26/2010 related to the mirror incident – The description of the violation was read. Mr. Davis signed the document which discloses the procedure to appeal a disciplinary action. Mr. Davis did not appeal the action.

Mr. McWilliams asked Mr. Davis if it was true the accident at Tisdale Siding occurred unaware to him. Mr. Davis said, "Yes."

Mr. McWilliams reminded Mr. Davis about his statement involving the backup camera and then asked why he didn't walk around the vehicle in the circle of safety. Mr. Davis said he had dumped that trash every Friday for a year and didn't think he needed to do so.

He then said he would have reported any accident that he thought was major. Mr. McWilliams asked him how bad it would have to be for him to consider it 'major'.

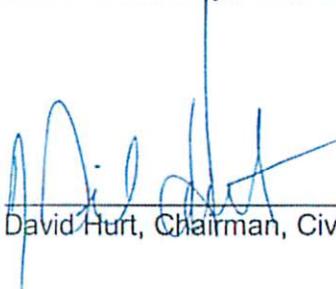
Mr. Davis indicated that he was leaving the hearing and that he wasn't prepared for it. He left the room at 10:16 a.m.

Mr. McWilliams, in his closing statement, said that the City of Amarillo believes in progressive discipline and that is the way we handle almost all disciplinary actions. However, if it is significant enough, it only takes once. The incident wasn't small. There had to be something done.

The Civil Service Commission and Lori James, Human Resource Director, left the room for deliberations.

Upon their return Commissioner DeDe Reynolds moved to uphold the City's position. Lawrence Walker, Vice-chairman, seconded. All were in favor.

There being no further business, DeDe Reynolds, Commissioner, moved to adjourn the meeting. The motion was seconded by Lawrence Walker, Vice-Chairman. The meeting adjourned at 10:28 a.m.



David Hurt, Chairman, Civil Service



Lori James, Director, Civil Service