

FAYETTEVILLE CITY COUNCIL

SPECIAL MEETING MINUTES

NOVEMBER 30, 2007

4:30 P.M.

CITY HALL COUNCIL CHAMBER

Present: Mayor Anthony G. Chavonne

Council Members Keith A. Bates, Sr. (District 1); Charles E. Evans (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Lois A. Kirby (District 5); Paul Williams (District 6); Curtis Worthy (District 7); Juanita Gonzalez (District 8); Wesley A. Meredith (District 9)

Others Present: Dale E. Iman, City Manager

Doug Hewett, Assistant City Manager

Karen M. McDonald, City Attorney

Tiffanie Sneed, Police Department Attorney

Tom Bergamine, Chief of Police

B.E.(Benny)Nichols, Fire/Emergency Management Chief

Robert T. Hurst, Council Member-Elect

William J.L. Crisp, Council Member-Elect

Valencia A. Applewhite, Council Member-Elect

Theodore W. Mohn, Council Member-Elect

Candice White, City Clerk

Members of the Press

1. CALL TO ORDER

Mayor Chavonne called the special meeting to order.

Karen M. McDonald, City Attorney, requested a closed session for consultation with attorney.

MOTION: Council Member Kirby moved to go into closed session for consultation with attorney.

SECOND: Council Member Bates

VOTE: UNANIMOUS (10-0)

The regular session recessed at 4:35 p.m.

The regular session reconvened at 4:46 p.m.

MOTION: Council Member Gonzalez moved to go into open session.

SECOND: Council Member Worthy

VOTE: UNANIMOUS (10-0)

2. APPROVAL OF THE AGENDA

MOTION: Council Member Haire moved to approve the agenda.

SECOND: Council Member Worthy

VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Meredith)

3. UPDATE ON THE INDEPENDENT INVESTIGATION OF THE TRAFFIC ACCIDENT ON OCTOBER 25, 2007

Mrs. McDonald stated as she had advised earlier by a memorandum to Council and pursuant to Council's direction at their November 13, 2007 meeting, the State Bureau of Investigation (SBI) and Highway Patrol were contacted and both declined to undertake the investigation of the October 25, 2007 traffic accident.

Mayor Chavonne opened the floor for questions.

Council Member Williams asked whether Police Department policy considered a ticket issued when someone refused to sign the ticket. Tiffanie Sneed, Police Department Attorney, responded there is a requirement to sign a state citation when it is issued and the ticket issued to Diana Knight indicates she chose not to sign it. Mr. Williams asked whether a ticket that is considered issued can be voided. Ms. Sneed responded it is not the policy of the Fayetteville Police Department to give officers the discretion to void tickets after they have been issued.

Council Member Gonzalez inquired about the steps an officer would take when someone refused to sign a ticket. Ms. Sneed responded the officer would write “refused to sign” on the ticket. Council Member Gonzalez asked whether Diana Knight was given a copy of the ticket. Ms. Sneed responded in the negative and stated the ticket remained in Officer Rodriguez’s book with the explanation “void pending traffic unit follow up”. Council Member Gonzalez posed further questions about who contacted the Highway Patrol and SBI about undertaking the accident investigation, timeframes involved therein and references made during the conversations. Ms. Sneed responded by referring to letters forwarded to Council Members confirming conversations with the Highway Patrol and SBI.

Council Member Worthy asked why the second ticket was not signed. Ms. Sneed stated she had not spoken with Sgt. Dow who issued the second citation and therefore could not respond. Additional questions followed and Ms. Sneed explained once tickets are issued, they are not typically rescinded but are voided depending on the circumstances. Council Member Worthy asked if the ticket to Diana Knight had been voided because she refused to sign. Ms. Sneed responded the ticket was voided because of a miscommunication between the officer involved and Chief Bergamine who at that time did not realize the ticket to Diana Knight had been issued.

Council Member Worthy asked Chief Bergamine how often he became involved with officers in the field. Chief Bergamine responded not often.

Council Member Kirby asked where the first ticket was voided. Ms. Sneed responded at the hospital.

Council Member Evans asked when and where the second ticket was issued. Ms. Sneed responded Sgt. Dow would be the appropriate party to respond as he conducted the investigation. Council Member Evans asked if the ticket issued to Jamal Jones could be rescinded. Ms. Sneed responded rescinding the ticket based on the results of Sgt. Dow’s investigation would not be prudent.

Council Member Williams asked Chief Bergamine what he would have done had he known Diana Knight refused to sign the ticket. Chief Bergamine responded the ticket would have stood and a review of the accident would have followed.

Council Member Gonzalez asked Mr. Iman how often he had been involved with a traffic accident and the writing of a ticket. Mr. Iman responded he had not had any involvement in his thirty-one years in local government.

Chief Bergamine responded to questions posed by Council Member Haire regarding the conflicting testimony of witnesses and stated based on information he received, witnesses were recanting their statements, which made Officer Rodriguez uncomfortable.

Council Member Worthy asked Chief Bergamine how often post accident investigations are conducted. Chief Bergamine responded traffic accident investigations happen quite often when there are concerns expressed about the accident.

MOTION: Council Member Williams moved that City Council direct the city management team to issue or rescind traffic tickets.

SECOND: Council Member Worthy

Ms. Sneed advised council to be aware that criminal matters are involved and that the motion was not within the purview of Council as it undermined the evidence involved.

FRIENDLY AMENDMENT: Council Member Evans moved to rescind the ticket issued to Jamal Jones.

Council Member Williams did not accept the friendly amendment.

Council Member Evans asked whether probable cause existed when the first ticket was issued. Ms. Sneed stated probable cause initially existed in Officer Rodriguez’s mind. Council Members offered additional comments and discussion followed.

Council Member Williams asked why the ticket could not stand as issued by Officer Rodriguez. Ms. Sneed replied it would not adhere to the legal standards or procedures of the Fayetteville Police Department. Ms. Sneed advised that given the fact Sgt. Dow had probable cause to believe the ticket should be issued to Jamal Jones, he cannot arbitrarily void that ticket

and reissue another ticket. Ms. Sneed cautioned Council against the proposed motion.

Council Member Williams stated he would like to rescind his motion as it relates to rescinding the ticket to Jamal Jones but not to Diana Knight.

RESTATED MOTION: Council Member Williams moved that the City Council direct the city management team to reissue the original ticket issued to Diana Knight.

SECOND: Council Member Worthy

Mr. Iman requested clarification that the motion was to direct him to have the Chief of Police issue a ticket that was voided without facts to support the issuance of the ticket. Mayor Chavonne confirmed that was the case with the motion as stated.

VOTE: PASSED by a vote of 6 in favor (Council Members Gonzalez, Williams, Massey, Evans, Kirby and Worthy) to 4 in opposition (Council Members Chavonne, Bates, Haire and Meredith)

MOTION: Council Member Williams moved that there not be an independent investigation of the traffic accident of October 25, 2007.

SECOND: Council Member Worthy

Council Member Williams stated not moving forward with an investigation by an outside entity would save tax dollars and eliminate the possibility of a biased investigation.

VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Chavonne)

4. CONDUCT AND ACTIONS OF THE MAYOR, MANAGER AND POLICE CHIEF REGARDING THE TRAFFIC ACCIDENT ON OCTOBER 25, 2007

MOTION: Council Member Evans moved to ask the City Attorney to contract with the appropriate organization to review the actions of the Mayor, City Manager and Police Chief regarding the traffic accident on October 25, 2007.

SECOND: Council Member Worthy

Mayor Chavonne asked Mrs. McDonald for her opinion of the motion as it relates to protecting the interests of the city. Mrs. McDonald responded she and Ms. Sneed believe there would be increased liability and exposure if an investigation were undertaken.

Council Member Massey asked if the motion would place the city in additional jeopardy. Mrs. McDonald stated an investigation of this nature would significantly increase the city's liability.

Brief discussion ensued as to who could undertake the investigation as stated in the motion. Mrs. McDonald stated should the motion pass, a process similar to the one regarding the traffic accident investigation would be undertaken.

FRIENDLY AMENDMENT: Council Member Gonzalez moved to ask the Attorney General to investigate the conduct and actions of the Mayor, City Manager and Police Chief regarding the traffic accident on October 25, 2007.

Council Member Evans and Worthy accepted the friendly amendment.

VOTE: PASSED by a vote of 7 in favor (Council Members Gonzalez, Haire, Williams, Massey, Kirby, Evans and Worthy) to 3 in opposition (Council Members Chavonne, Bates and Meredith)

5. ADJOURNMENT

There being no further business, the meeting adjourned at 5:50 p.m.