

SUMMARY OF MINUTES

PUBLIC SAFETY COMMITTEE

5:30 P.M., MONDAY, MAY 11, 2009

COMMITTEE ROOM

ROOM 239, CITY HALL

MEMBERS PRESENT: Council Member Vivian H. Burke, Chair
Council Member Molly Leight, Vice Chair
Council Member Nelson L. Malloy, Jr.
Council Member Wanda Merschel

OTHERS PRESENT: Council Member Joycelyn V. Johnson

Chair Burke called the meeting to order and stated that without objection, the Committee would first consider the Consent Agenda and asked if any items needed to be removed for discussion. She requested to pull Item C-2. No other items were removed for discussion.

Council Member Merschel made a motion to approve the balance of the Consent Agenda. The motion was duly seconded by Council Member Malloy and carried unanimously.

CONSENT AGENDA

- C-1. ORDINANCE AMENDING SECTION 42-122(f) OF THE CITY CODE RELATING TO 25 MILES PER HOUR SPEED LIMITS ON CITY STREETS - *Valleystream Road; Neighborhood Limits: Westhill Place, Martha Court, Cambridge Farm Court, Vernon Farm Boulevard, Brimmer Place Drive, Brimmer Place Court, Pickney Court, Hancock Drive, Vernon Circle, American Drive, and Washington Manor.*
- C-3. APPROVAL OF PUBLIC SAFETY COMMITTEE SUMMARY OF MINUTES - *April 13, 2009.*
- C-2. RESOLUTION AWARDED CONTRACT FOR TASERS AND ACCESSORIES - *Lawmen's Safety Supply, Inc. - \$549,920.39.*

Chair Burke stated that she would abstain from voting on this item.

Council Member Malloy made a motion to approve the item. The motion was duly seconded by Council Member Leight. The motion carried on a vote of three in favor and one abstaining. Those voting in favor of the motion were Council Members Malloy, Leight and Merschel, with Chair Burke voting in abstention.

GENERAL AGENDA

G-1. ORDINANCE AMENDING CHAPTER 38 ENTITLED, "MISCELLANEOUS OFFENSES AND PROVISIONS."

Mrs. Angela I. Carmon, City Attorney, stated that this item would amend Chapter 38 of the City Code to address safety concerns affecting solicitors. Solicitation locations will be limited to detract from solicitors interfering with traffic, it will establish that solicitors must be 14 years of age or older, it will require a seven day notice prior to the proposed date of solicitation, and will permit solicitation on State roads if compliant with State statutes.

Council Member Leight stated that the proposed amendments seem reasonable yet contradictory.

Mrs. Carmon stated that the amendments were carefully drafted in light of recent legislation regarding solicitation. In response to Council Member Johnson's question, Mrs. Carmon stated that one can solicit on State roads with proof of liability insurance, but no one under the age of 14 will be allowed to solicit on City roads.

Council Member Johnson expressed concern with that amendment as most of the local sport and school groups who solicit will have many participants under the age of 14.

In response to Chair Burke's question, Mr. Scott Cunningham, Police Chief, stated that officers observe solicitors and follow up if a complaint is received, but each individual group is not monitored.

Chair Burke suggested that more supervision could be provided as the process seems unstructured and unorganized, and expressed concern that all groups who solicit may not be legitimate.

Mr. Lee Garrity, City Manager, stated that the proposed amendments came at the request of the Winston-Salem Police Department (WSPD), due to enforcement and safety issues. He noted that these requirements will apply to local firefighters during the upcoming Fill the Boot campaign.

In response to Council Member Johnson's question, Mrs. Carmon stated that the staff will place this information on WSTV-13 and the City's website to communicate to the public.

Mr. Garrity stated that a new brochure will be created to provide to new solicitors and those groups who have previously solicited.

Council Member Johnson requested that the brochure be provided to local organizations and community groups, such as little league baseball, football and basketball teams.

Council Member Malloy questioned if input would be obtained from interested parties prior to adoption of the changes.

Mr. Garrity noted that the Fill the Boot campaign is coming up in June and the amendment to allow for solicitation on State roads will be needed for the Fire Department's campaign to be successful.

Council Member Merschel stated that if the recommendations come at the suggestion of the WSPD,

it will be best to adopt the changes, then request that whomever is issued a permit must also sign that they have received the new brochure of information.

Council Member Leight stated that she is less apprehensive if children are not allowed to solicit.

Council Member Leight made a motion to approve the item. The motion was duly seconded by Council Member Merschel. The vote carried on a vote of three in favor and one abstaining. Those voting in favor of the motion were Chair Burke, Council Members Leight and Merschel, with Council Member Malloy voting in abstention.

Chair Burke requested that any questions or concerns regarding the amendments be documented in the City Secretary's Office.

G-2. CONSIDERATION OF A REQUEST FROM THE SILK PLANT FOREST CITIZEN REVIEW COMMITTEE.

Mr. Barry Lyons, 948 Academy Street, stated that the Silk Plant Forest Citizen Review Committee (SPFCRC) is requesting that Ms. Phoebe Zerwick, former Winston-Salem Journal (WSJ) reporter, speak with the committee and produce the notes from her interview with Detective D.R. Williams. The SPFCRC made two separate requests of the WSJ, which it refused both times citing First Amendment rights. He also stated that the SPFCRC is not asking for additional information or sources, rather just information pertinent to what was printed in the WSJ article. He further stated this request will need to be in the form of a subpoena to the WSJ and Ms. Zerwick.

Mr. Guy Blynn, P.O. Box 20383, stated that the request is a matter of fairness to Detective Williams and the WSPD who both stand accused of withholding information in Mr. Kalvin Michael Smith's case. He also stated that he has taken many depositions over 40 years of practicing law, and noted that the request is simply to speak with Ms. Zerwick and verify information.

In response to Chair Burke's question, Mrs. Carmon stated that what is being requested is a question of whether or not the subpoena being requested is consistent with State statutes. She stated that it could be argued that the request may exceed the scope of the statute. She also stated that the WSJ may argue that there is a qualified privilege of information and that they should not be made to adhere to the subpoena.

Council Member Merschel made a motion to deny the request.

The motion died for lack of a second.

Council Member Leight expressed concern that if the request for subpoena is granted, it may be non-productive and a violation of the First Amendment right.

Council Member Malloy questioned if there was a method of obtaining the information from Ms. Zerwick short of a subpoena.

Mr. Blynn stated that the SPFCRC simply wants to see what notes Ms. Zerwick took during her

interview of Detective Williams and whether or not any quotes are contained therein.

Mr. Alan Andrews, Assistant City Attorney, noted that the investigator assigned to the SPFCRC requested Ms. Zerwick's participation, but she stated her notes are owned by the WSJ, and she will cooperate if the WSJ will allow.

In response to Chair Burke's question regarding if there have been any similar requests where information was obtained from a newspaper, Mr. Andrews stated that he was not aware of a similar request within the municipal setting. He also stated that the First Amendment is not absolute, but he is unaware of a successful Council subpoena for a similar request.

In response to Council Member Malloy's question, Mr. Andrews stated that the owners or Board of Directors for the WSJ will probably take the same stand as the staff. He also stated that in his opinion, he agrees with Council Member Malloy's statement that media does not typically respond favorably to requests for information.

Mr. Blynn noted that major media sources, such as the Washington Post and New York Times have cooperated for information requests, and the SPFCRC is simply looking for contemporaneous documentation that will confirm or deny what was previously printed in the WSJ.

In response to Chair Burke's question, Mrs. Carmon stated that the Council will have to issue a subpoena for the documents, which will be served on the appropriate person at the WSJ, and she suspects that personnel for the WSJ will file a motion to preclude them from complying, so it may take a while. She also stated that the SPFCRC has been given until June 30 to submit a final report.

Council Member Johnson questioned if the subpoena is granted and executed, and documentation is received, what difference would it make in the final outcome of the report.

Mr. Blynn noted that it will go a long way in proving that the WSPD withheld evidence, and Mr. Smith's constitutional rights were violated. In response to Council Member Johnson's question of whether or not what is contained in the documentation is a quote, Mr. Blynn noted that the record is subject to doubt, but the documentation will help to judge the credibility of the witness.

In response to Chair Burke's question, Mr. Blynn noted that the SPFCRC voted five in favor, two against, one abstention, and one absence for the request. He also noted that his nay vote signified that it took the Council so long the last time a subpoena was issued, that he would not vote in favor of issuing another.

Mrs. Carmon questioned why Ms. Zerwick's documentation was not subpoenaed by Mr. Smith's attorney.

Mr. Lyons noted that the thought of evidence being deliberately manipulated was disturbing. He also noted that the District Attorney's office addressed the issue of subpoenaing Ms. Zerwick's documentation but did not because it would be difficult.

In response to Council Member Johnson's request, Mrs. Carmon noted that defining the subpoena

process for the Council was lengthy because it involved great deal of research, since only one previous case of a Council issuing a subpoena could be found. That case did not involve any of the issues the current City Council is facing, such as federal issues, the drafting of a subpoena, serving the subpoena, the process of non-compliance and enforcement, limited case law on the subject, and which division of the court has jurisdiction.

Council Member Malloy made a motion that the City Attorney compose a letter to the WSJ and its representatives, appealing to fairness and justice, to comply with the request of the SPFCRC and to respond by producing documentation pertinent to the interview of Detective Williams. The motion was duly seconded by Council Member Leight.

In response to Council Member Merschel's question, Mrs. Carmon stated that she received a letter from the WSJ attorney declining to speak on the matter.

Council Member Merscel noted that she has no reason to believe that response to the aforementioned letter will be any different than the response to a subpoena and would be voting in opposition.

The motion carried on a vote of three in favor and one opposing. Those voting in favor of the motion were Chair Burke, Council Members Malloy and Leight, with Council Member Merschel voting in opposition.

G-3. UPDATE ON THE 2008 BYRNE JUSTICE ASSISTANCE GRANT PROGRAM AWARD.

Chief Cunningham stated that no agreement has been reached with Forsyth County Sheriff Bill Schatzman. He stated that he posed numerous options to the Sheriff, but the grant application is due in one week and a decision needs to be made as \$1.1 million in funding is at stake. He recommends that the City make an arrangement that the community will receive at least half of the \$1.1 million and will continue to work toward an agreement with the Sheriff.

Chair Burke commended Chief Cunningham for making a recommendation in the best interest of the community.

In response to Council Member Leight's question, Chief Cunningham stated that the informal agreement was made four to five years ago that the City and County would split the funding 50/50.

Council Member Leight suggested that the City not take any of the funding so as to break the informal agreement so it will not happen in the future.

Mr. Garrity noted that there have been several discussions with the County Manager regarding alternative uses for joint benefit, but the Sheriff is uninterested. He also noted that this summer, there will be a review of functions and opportunities of savings and efficiencies, such as jail intake processing. Currently, no matter which law enforcement agency makes the arrest, the City processes all inmates.

Chair Burke requested that any agreement made be put in writing.

Council Member Merschel suggested that funding for any joint efforts be taken off the top of the

amount and then split the remaining balance 50/50. She expressed her appreciation to Chief Cunningham for his efforts, patience and willingness to reach an agreement beneficial to the City.

Council Member Malloy requested that verbiage be developed for the future so there is no backslide, and base the funding split on crime rate, population, and other determining factors.

In response to Council Member Johnson's question, Chief Cunningham stated that the net value of services provided was \$320,000 annually.

Mr. Garrity noted that the 50/50 funding split was initially agreed to so that the County could convert to the same computer system as the City, but the conversion never took place.

Council Member Johnson requested to know the ratio of reported crime versus actual crime.

Council Member Merschel noted that the \$320,000 is mainly for personnel expenses and questioned if the agreement should be considered as part of the budget.

Mr. Garrity noted that staff is working on formal notification to turn certain responsibilities over to the County by the end of this calendar year and to notify the County that those responsibilities it will be a part of the City's budget and no longer funded.

In response to Council Member Johnson's question, Chief Cunningham stated that certain prison personnel are also trained crime scene technicians so they may be transferred to that department as well as various other departments.

Council Member Malloy made a motion that the City agree to the 50/50 funding split if necessary and to direct Mr. Garrity to continue discussions with the County Manager to develop workable solutions between the two entities and to sunset the current agreement. The motion was duly seconded by Council Member Merschel. The motion carried on a vote of three in favor and one opposed. Those voting in favor of the motion were Chair Burke, Council Members Malloy and Merschel, with Council Member Leight voting in opposition.

ADDITIONAL ITEMS

Council Member Malloy stated that he has received phone calls from citizens regarding break-ins and disturbances at Morningside and Cheshire Drive, that a citizen says he was told by an officer he could stop a motorist with no due cause, and that citizens are being given citations for walking on railroad tracks.

Chief Cunningham stated that he would look into the comments and concerns and noted that even though crime is slightly down, police personnel need to be continually focused on crime and safety. He also stated that it is a State law to cite anyone seen walking on railroad tracks.

Council Member Johnson stated that at the request of Ms. Mattie Young and Ms. Marva Reed, that staff further examine information regarding juvenile crime between the hours of 2:00 p.m. and 7:00 p.m., and to review what programs can be put into place.

Mr. Garrity noted that Mrs. Martha Wheelock, Assistant City Manager, is reviewing summer youth

programs and will bring a report to next month's Committee meeting on curfews.

Chair Burke requested that the community be surveyed to see what curfews are already in place.

Council Member Malloy requested that staff contact Ms. Young to let her know the status of this request.

ADJOURNMENT: 6:51 p.m.