

MINUTES
CITY COUNCIL
SPECIAL MEETING
TUESDAY, DECEMBER 15, 2009
4:00 PM

CALL TO ORDER, INVOCATION, PLEDGE OF ALLEGIANCE & ROLL CALL

A special meeting of the Arcadia City Council was called to order at 4:00 PM with the following members and staff present:

Arcadia City Council

Mayor Roosevelt Johnson
 Councilmember Sharon Goodman
 Councilmember Lorenzo Dixon

Deputy Mayor Robert Heine
 Councilmember Keith Keene

Arcadia City Staff

City Administrator Markae Rupp
 City Attorney William Galvano

City Recorder Dana Williams
 City Marshal Charles Lee

The City Attorney briefly covered his procedural recommendations for this hearing as outlined in his memorandum dated December 14, 2009. He then swore in witnesses wishing to testify before the Council in the proceeding. After doing so, the City Attorney asked the Council, individually, to disclose any ex-parte communications they had related to the case. Three members of the Council, Mayor Johnson and Councilmembers Goodman and Dixon each did so, explaining discussion, visits and conversations which had occurred. Those disclosures are printed verbatim below. In addition, Councilmember Goodman submitted her prepared statement for the record.

Councilmember Goodman: "Mr. Tommy Henry came by my office and informed me of a situation whereby there was a, he said a misunderstanding about some property and he talked to my daughter Sharri and asked about a stove on the property. He stated that he was moving the stove but that my daughter-in-law misunderstood and stopped him, that it had been reported to the administrator and that he might lose his job and he asked me if I could do anything to help him not lose his job. So I left my office but before I did, I called my daughter Sharri and asked her if she had indeed told Mr. Henry he could remove the stove on her brother's porch and she told me no and her statement is in the packet. I then called my daughter-in-law to ask her what was going on. She informed me of her position and what had happened and her statement is in the packet. So I did leave the job, talked to the Administrator and asked her about the situation. And she told me what happened. I did ask her if she could do a lesser punishment like a suspension as opposed to firing. She told me that she had to treat all of her employees fairly and at that point I acknowledged to her that that is her duty as the City Administrator to do personnel as her job and that my job, as a Councilmember, is legislative and so I left it in her hands at that point. Mr. Timothy White also came by my house and asked me what was going on with Mr. Henry because he said he had some concern. I told him he could discuss that with my daughter-in-law because it did not involve me. My

daughter-in-law who was there told Mr. Timothy White what happened as outlined in her statement. She also told Mr. White that if anyone else had any questions that they were free to question her and not me as I was not involved."

Councilmember Dixon: "I would just like to say that on the said date, I don't recall the exact date that this incident had transpired with the termination of Mr. Henry that I was at my house, minding my own business, resting, relaxing, and preparing to leave to go out of town. Mr. Henry did stop by my house. We spoke briefly - maybe about 5 or 10 minutes. He expressed to me that there was a bad misunderstanding and that appears that he was being terminated unfairly and I expressed to him, responded to him at that time that I was really at a rush and I would love to sit down and hear what was really happening and maybe as soon as I get back in that I could contact the Administrator and try to get to the bottom of it to see what enlightenment that they could share with me. After that he departed, like I said about five or ten minutes, and when I got back in town, I guess a few days later, I did go by Miss Markae's office to try to do a follow-up to see what was really going on - get to the bottom of it. She expressed to me basically what had transpired and that she felt that she had no other choice but to take some actions - disciplinary actions in terminating Mr. Henry based on the information and evidence she had received. And like manner, I somewhat asked her does it require such harsh punishment or should I say disciplinary actions, of an indefinite termination or suspension and is there any lesser punishment that she could consider due to the fact that we both had consented or coversated as if we both believe that it was not anything maliciously or intentionally done. So she said she would look at it and I told her it was her decision, she was the Administrator, I'm not here to tell her what actions to take or what to do but just look at all the information, look at all the options and do what you think is right. And we basically left it at that. And just for the record on one other incident after that Mr. Henry...I'm supposed to tell it all right? Immediately after that, I think it was maybe that following Sunday, Mr. Henry did stop by my church, it was a little bit too late so I told him I would speak to him after service because I was getting ready to go up shortly thereafter to minister and we spoke briefly again thereafter and he showed me a letter I guess pointing out that he was indefinite suspended and that he was applying for his work...uh unemployment, excuse me, unemployment and that the comments was made also in that letter that the Administrator express that she felt that it was nothing intentionally or what have you and in some form, I don't remember the exact wording of it, that I just, that the termination was not one of those that was based upon of him admitting of any guilt or something along that line, I don't remember the exact words, it was something to that effect. And I advised him, I said to him that we'd hear it all, it'd come before us. You know I want to be fair with whoever and whatever because it is very clear to me and especially after talking with the Marshal briefly, I did talk with him and that there is not only one person here that has an issue or a matter to deal with but there is a victim involved and I want to be fair with all once all the evidence has been presented is what I said to him. And it wasn't probably a ten or fifteen minute conversation that Sunday and that's basically where I stood with it.

Mayor Johnson: "My information, first of all I met Ms. Rupp at the post office and she informed me that she had to terminate an employee and at first she didn't say who and I asked her and she said I know you're going to hear probably about this in the community so she informed me who it was. Several days later I spoke with Mr. Henry and he informed me he had been terminated. He felt like it had been, he felt that he had been terminated unfairly and I did talk to him. I said 'well, there is in your employee handbook, if you look in that if you have one,

there is a procedure that you would have to follow if you are interested in pursuing the termination and want a hearing for it. You'd first have to go to the Administrator and try...I cannot remember exactly everything that is in the employee's manual but I do know we worked on that manual and there was a procedure. So if you will look in that manual you will find your procedure to follow. And that is what you should do.' But he was pretty much informing me as the Mayor and so I understand that he said he would do that and that is what he has done."

The appellant, Tommy Henry, presented his version of the events, stating it was not his intention to steal the stove in question though he may have been "overzealous in trying to help" but that essentially it was a misunderstanding. Mr. Henry also stated his "only guilt" was that he did not have permission from the homeowner or a work order from the City. However, he clarified that work orders are regularly carried in the truck and written, to be submitted, after the fact. He added he had been a good employee, this was all a misunderstanding and that he not only needs his job but is ready to return to work.

Councilmember Goodman, acknowledging the possible confusion over the references to three separate "Mrs. Goodman's" (Sharon, Camilla, and Shari) asked that the record reflect Mrs. Shari Goodman was not in attendance at this hearing due to illness but that her statement was included in the packet of materials and stands as written.

Mr. Henry added his witness, Mr. Delshaun Williams, was also not in attendance this afternoon, and similarly his statement was included also. Mr. Henry added that since Mr. Williams was with him at the time of the incident, he was confused as to why disciplinary action had not been taken against Mr. Williams also.

Councilmember Dixon requested Mr. Williams' statement be read into the record aloud. The City Administrator did so.

The City Administrator gave her account of the incident from inception beginning with a citizen's call through the grievance procedures actions, including meetings with the appellant, the appellant's supervisor and Marshal. She added Ms. Shari Goodman had provided her with a notarized statement and that following her meeting as step 2 in the process, she had received an un-notarized and uncertified typed statement from the appellant's witness, Mr. Williams. The Administrator then called the Marshal, Charles Lee, as a witness.

The Marshal, answering direct questions related to the case, stated that the written statement provided by Mr. Williams was false and inconsistent with statements he made in person during their meeting. He also relayed that Mrs. Camille Goodman had filed an official police report but had not signed an affidavit and therefore no arrest had been made. The Marshal added the report would remain on file in his office for a period of one year; but that the case would not be turned over to the State's attorney unless Mrs. Goodman proceeded to sign an affidavit.

Mrs. Camille Goodman, 5 W. Owens Avenue, came forward and testified to her account of the incident. Mrs. Goodman stated that as she arrived home, she saw the stove from her porch loaded into the garbage truck and Mr. Henry walking towards the truck with the stove

drawer in his hands. Mrs. Goodman testified that Mr. Henry had stated her sister-in-law, Mrs. Shari Goodman, had given permission to remove the stove. Mrs. (Camille) Goodman also stated that Mr. Williams had admitted to his role although he didn't know the particulars about the stove and was very apologetic; but that Mr. Henry has "told story after story." Mrs. Goodman referred to "several petit theft" charges of Mr. Henry and felt he is a liability.

Mr. Henry refuted Camille Goodman's comment about Shari Goodman having given permission and added that Mrs. Camille Goodman's attitude has changed significantly "between the hearing and today".

The Mayor then closed the hearing to public input and allowed the Councilmembers to question witness and/or make comments.

Councilmember Keene asked Mrs. Goodman if it was her intent to file charges to which Mrs. Goodman responded it was.

Councilmember Dixon asked the Marshal if there was a statute of limitations for filing charges. The Marshal responded that he will retain the police report on file for a period of one year but that "time is not ticking" until an affidavit is filed. He continued that were that to occur, the investigation would be forwarded to the State's Attorney to determine if there is sufficient evidence to file charges.

The Deputy Mayor asked Mr. Henry if the stove had actually been place on the truck. Mr. Henry answered it had not.

The Mayor asked the City Administrator to address the procedures for work orders since Mr. Henry had testified he did not have, and often does not need, a work order to pick up bulk items. The Administrator stated requests for bulk pickup are called in to the Public Works Department then taken to the curb for collection and then nominally charged on the customer's utility bill. Mr. Henry refuted the Administrator's account of the process, saying the worker's are told what to get, go pick up whatever it is, then fill out the work order to be submitted for billing.

The Mayor then asked why the Administrator had opted for termination as opposed to probation or suspension, citing a similar situation having occurred under the previous administrator. The Mayor noted that a review of that person's personnel file had included several reprimands, but that he had been given the opportunity to correct his actions. The Administrator responded she did not feel she could place the City in a liability situation noting that were charges to be filed, she believed a lawsuit would occur. The Mayor then asked if, rather than basing the termination on administrative judgment, was she basing it on Mrs. Goodman's report. Again the City Administrator answered she felt it was her job as administrator to protect the City from potential liability.

Councilmember Dixon questioned Mrs. Camille Goodman as to her intentions on signing the affidavit. Mrs. Goodman responded it was her intention to proceed. Mr. Dixon then, referring to a comment made by the Marshal earlier, stated it was noted that Mrs. Goodman had not wanted Mr. Henry punished, which is why the affidavit was not completed

initially. Mrs. Goodman answered that was a correct statement initially because she wanted "everything to come out" but that Mr. Henry's story "keeps changing" and she intends to press forward. Mrs. Goodman continued that she will do what she can and the State will do their job, but that she believed the Mayor and Councilmember Dixon were biased and had been "coaching" Mr. Henry. Point/counterpoint between the parties continued briefly with Councilmember Dixon calling this a sad day in our community and adding he believes a 30 day suspension is more than fair but that the City should not take away [Mr. Henry's] livelihood.

As part of her closing argument, the City Administrator offered documentation of the proceedings, her rationale for the decision and her belief that a liability situation continues if Mr. Henry is reinstated; adding that even if he is not found guilty by the State, there is still the potential for charges and their associated expense.

Mr. Henry, in conclusion, felt the entire matter was based on "he said/she said" and hearsay. He continued that his version of the events is written and has not changed; and that his intentions were not to steal the stove but rather to do something good. He referred to the matter as a misunderstanding.

The matter was then discussed and deliberated by the Council. Councilmember Goodman asked that Ms. Shari Goodman's statement be read into the record. The City Recorder did so.

Councilmember Dixon asked the City Attorney if a termination as opposed to a suspension would resign the City of responsibility. The City Attorney explained that both a criminal and a civil suit could be filed and that the State's Attorney would only be involved with a criminal proceeding. However, in relation to a civil suit, the City is now on notice for a propensity of activity related to this employee and therefore a potential for the City to be sued is viable. In addition, the City has a duty to mitigate.

Councilmember Keene acknowledged this was a tough situation because of the liability issue and therefore was inclined to uphold the judgment of the City Administrator. The Mayor cited a few past though similar incidents and reminded the Council that while "we are in a new day", they have the power to uphold or overturn the Administrator's decision. Councilmember Goodman agreed it was a "sad day" and acknowledged that other employees in similar circumstances had also come to the individual Councilmembers for intervention; however Dr. Goodman also pointed out the Council hired the Administrator to handle the day-to-day operations while it was the Council's job to legislate. She added she does not want to incur liability for the City or to micromanage the staff. The Deputy Mayor agreed it was sad for anyone to lose their job, but reiterated the need to support the Administrator's decision. Councilmember Dixon, believing termination was too harsh a punishment, pointed out that while the Council should not micromanage, the Administrator does have employers and that good employers oversee and manage their employees.

The individual member of Council continued to present their points of view for a few moments before the Deputy Mayor made a motion to uphold the actions of the City Administrator in terminating the employment of Tommy Henry. Councilmember Keene provided a second to the motion and a roll call vote recorded 3-2 approval. The Mayor and

Councilmember Dixon cast the dissenting votes.

Councilmember Goodman reiterated this was a sad day but cautioned that continuing libelous or slanderous comments may spawn other, additional legal recourse.

Having no further business at this time, the meeting was adjourned at 5:30 PM.

APPROVED THIS 19th DAY OF JANUARY 2010.

By: Roosevelt Johnson, Ed.D.
Roosevelt Johnson, Ed.D., Mayor

ATTEST:

Dana L.S. Williams
Dana L.S. Williams, CMC, City Recorder