

**MINUTES
SPECIAL MEETING
OF THE
CITY COUNCIL
CITY OF ARCADIA
TUESDAY, JANUARY 11, 2011
6:00 PM**

CALL TO ORDER, INVOCATION, & PLEDGE OF ALLEGIANCE

The meeting was called to order at approximately 6:00 PM with the following members and staff present:

Arcadia City Council

Mayor Robert Heine
Deputy Mayor Keith Keene
Councilmember Sharon Goodman

Councilmember Martha Craven
Councilmember Roosevelt Johnson

Arcadia City Staff

City Administrator Lawrence Miller
Asst. City Administrator Judi Jankosky
Public Works Supervisor Jerry Cordes

City Recorder Dana Williams
City Attorney William Galvano

Councilmember Goodman gave the invocation, which was followed by the Pledge of Allegiance.

Step 3 Termination Hearing

The City Attorney explained this proceeding was the step 3 appeal of the City Administrator's decision to uphold the termination of employee Dwight Smith by his supervisor, Jerry Cordes. He went on to say it is simply a review procedure based on the documentation and transcripts provided with no new evidentiary material or witnesses to be provided. The City Attorney added that according to the Personnel Policy, the Council may entertain a brief presentation of no longer than 30 minutes, with equal time being afforded to each side and that if no decision is reached this evening, the Council must render one within 15 days hereafter.

The City Attorney stated any action by Council would be to affirm the 2nd step decision of the Administrator, to modify it, remand it back to him for further action or to reverse it entirely. He also cautioned that in reviewing the previous transcripts, Mr. Smith had designated his sister, Tammy Smith, as his representative, but that the provision within the Code which states "or representative" should be interpreted as legal representation whether as guardianship or through an attorney-client relationship; and that he didn't want the Council to be in a tribunal such as this where the question of someone practicing law without a license could be construed.

Mr. Galvano further explained this 3rd step was an opportunity for the Council to review the Administrator's decision and in doing so, review on an appeal capacity as opposed to a conducting a new trial on the matter; and that from the transcripts of the previous hearings, there are no factual disputes with alleged violations having been admitted throughout the course of those hearings.

The City Administrator began to explain the reason for Mr. Smith's dismissal; but then deferred to the department supervisor to relay the incident in question. The PW Supervisor recounted the events of November 10th, similar to those in his written statement dated November 23rd which was included with the meeting materials. The City Administrator then discussed disciplinary problems of Mr. Smith prior to November dealing primarily with tardiness and attendance; and that during a meeting with the PW Supervisor and Mr. Smith in August 2010, the City Administrator had reversed a termination decision with the stipulation of Mr. Smith's understanding any further infraction of the personnel rules would result in "automatic and immediate termination." The City Administrator added Mr. Smith had signed the letter agreeing to such conditions but when the most recent incident occurred, he had essentially terminated himself. The City Administrator also noted that when Mr. Smith was asked why he had lied and taken money, his primary response was that another employee had done the same rather than to take ownership of his actions.

Mr. Smith spoke next referring to himself as a "dedicated, career service employee of 18 years". He then relayed his version of the November 10th incident, saying the pick up was not for miscellaneous trash but rather for several "black bags of garbage". He described how the owner of the property handed him an envelope containing \$40 with the explanation that "this was a tip" but that neither he, nor Mr. Brady, had charged anyone for picking up garbage. Mr. Smith added that he feels the termination is wrong for someone with 18 years of service to the City.

The Mayor addressed Mr. Smith, saying there were many incidents throughout his tenure with the city including tardiness, vehicular accidents, lying, etc., that he had been warned several times; and for which each is not the kind of behavior expected from City employees.

Councilmember Craven read the applicable section of the employee manual then added it is very clear on accepting gratuities. The Deputy Mayor agreed it clearly states no gratuities are to be accepted and that Mr. Smith has acknowledged doing so; he then read the disciplinary action related to the violation; but added that he "struggled" and "toiled" with the decision because he has known Mr. Smith and his family for many years. Councilmember Goodman emphasized the Council had put in a lot of time and workshop sessions updating the manual a few years ago and had tried to make it fair for the employees.

The City Administrator stated, for the record, that he takes no pleasure in someone losing their job, but that "you do what you have to do". He wished things could have been different in this respect particularly had Mr. Smith taken full responsibility for his actions rather than diverting attention to the fact that someone else was also involved. The City Administrator concluded that he was comfortable with having made the decision he did.

In the interest of affording each party equal time, Mr. Smith spoke again on his behalf but this time addressing the reason for his numerous doctor's appointments saying he makes them on Wednesday's so he doesn't miss a garbage route, and that since his agreement for reinstatement from August, he has not been late, clocked out early or missed a day of work.

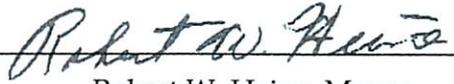
On motion of Councilmember Keene, and seconded by Councilmember Goodman, the Council voted unanimously, 5-0, to affirm the City Administrator's decision of termination for Dwight C. Smith.

ADJOURN

Having no further business at this time, the meeting was adjourned at 6:35 PM.

APPROVED THIS 18th DAY OF JANUARY 2011.

By:



Robert W. Heine, Mayor

ATTEST:



Dana L.S. Williams, CMC, City Recorder