

Tuesday – July 11, 2013 – 9:00 a.m.

## **SPECIAL MEETING**

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell (arrived at 9:10 a.m.); Councilman Jan B. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; Interim City Attorney Martha Walker McGlohon; and City Clerk Magdalen Burleson

Absent: Councilman Marc W. Hunt (planned vacation)

Mayor Bellamy announced that this special meeting is to consider a matter relating to an employee of the City of Asheville. After closed session, she said that the meeting would adjourn in the open meeting. It is also anticipated that at the meeting, Council may take action by adoption of a resolution under 160A-168 (c) (7).

### **Closed Session**

At 9:00 a.m., Councilman Pelly moved to go into closed session (1) to receive a final report on the investigation of a complaint, charge, or grievance against an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); (2) to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); and (3) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is contained in G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Smith and carried unanimously.

At 9:51 a.m., Councilman Bothwell moved to come out of closed session and return to the formal meeting. This motion was seconded by Councilman Davis and carried unanimously.

Interim City Attorney Martha McGlohon said that on June 25, 2013, Lt. William Wilke held a press conference concerning allegations of an incident involving Police Chief William Anderson's son that occurred on March 9, 2013. As a result of those allegations, Lt. Wilke filed two grievances with the City Manager's Office. The City Manager then asked City staff to conduct an internal investigation. City staff interviewed at least 7 individuals and invested over 20 hours of the investigation. The investigation is now complete and in closed session City Council was updated on the results of that investigation. All personnel information of a City employee is considered confidential unless there is an exception. There is a statute that allows City Council, upon a written determination by the City Manager that releases certain personnel information is essential to the public confidence in a city service that would allow City Council to release limited personnel information. The City Manager has asked City Council to concur with his determination that certain information from the final investigation be allowed to be released so as to ensure the public confidence is maintained in an essential city service - the Police Department. A resolution has been prepared for City Council consideration with an Exhibit "A" which is the City Manager's written determination.

### **RESOLUTION NO. 13-147 - RESOLUTION CONCURRING IN THE CITY MANAGER'S RELEASE OF PERSONNEL INFORMATION**

Vice-Mayor Manheimer read the following resolution and moved for the adoption of Resolution No. 13-147 concurring in the City Manager's release of personnel information. This motion was seconded by Councilman Bothwell. Said resolution reads: WHEREAS, a Lieutenant with the Asheville Police Department held a press conference on June 25, 2013, wherein he alleged that he felt coerced by his superiors to "submit to a set of facts and circumstances that were clearly false and misleading"; and WHEREAS, the Lieutenant also alleged that that statements from his superiors were not in an investigative file; and WHEREAS, the City Manager has conducted a thorough administrative investigation into the allegations made by the Lieutenant, and the City Manager has determined that the

release of certain information covered by N.C.G.S. 160A-168, the Personnel Privacy Act, is essential to maintaining public confidence in the administration of City Services, as set forth in Exhibit A, attached hereto; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: Pursuant to N.C.G.S. 160A-168 (c) (7), the Asheville City Council hereby concurs with the City Manager's release of certain personnel information contained in Exhibit A, attached hereto; and, to the extent of any prior release of such information, ratifies and concurs in said release.

When Mayor Bellamy asked if any member of the public would like to comment, no one spoke.

The motion made by Vice-Mayor Manheimer and seconded by Councilman Bothwell carried unanimously.

Mayor Bellamy then read the following Exhibit "A" which is the statement of the City of Asheville regarding allegations of coercion, cover-up, management and employment related concerns within the Asheville Police Department:

"The Asheville City Council ("City Council") takes tremendous pride in the men and women of the Asheville Police Department (Department). They are a group of highly trained professionals and dedicated public servants, reporting for duty around the clock, frequently risking their lives in service to this community. On Tuesday, June 25, 2013, a Lieutenant with the Department held a press conference wherein he alleged that he felt coerced by Chief William Anderson and Captain Stony Gonce to "submit to a set of facts and circumstances regarding the accident involving his (the chief's) son that were clearly false and misleading." The Lieutenant went on to allege that statements from Chief Anderson and Captain Gonce regarding the accident were not in the investigative file. The Lieutenant also stated that the City Manager and Deputy City Manager failed to act on his June 17 and June 24 complaints. The City Manager, as the City's chief administrator in charge of directing and supervising the administration of all City departments and making all employment related decisions, has conducted a thorough investigation into the Lieutenant's allegations.

In accordance with the advice from the Interim City Attorney, the City Council is satisfied that: (1) any and all allegations made by the Lieutenant regarding the SBI interview or missing documents from the SBI file are criminal matters, regarding which the City defers to the judgment of the Buncombe County District Attorney; and (2) that any and all allegations made by the Lieutenant regarding specific employees is confidential personnel information within the meaning of NCGS §160A-168 and may not be disclosed except as allowed by law. Additionally, the City Manager has satisfied the City Council that: (1) the Lieutenant's grievances were handled timely and in accordance with City Personnel Policies; and (2) that as it pertains to the Lieutenant's allegations of general operational and administrative concerns within the Department, an action plan has been developed to work towards moving the Department forward. The City Manager will share an overview of this plan.

As expressed by the City Manager, there is concern about the accuracy and completeness of the information included in the Lieutenant's public statement on June 25, 2013. More specifically, the City Manager has indicated that the absence of a detailed response from the City to the specific allegations made by the Lieutenant during the June 25, 2013, press conference will force the citizens of Asheville to accept the statements made by the Lieutenant, as representative of the manner in which the City manages its employees and provides essential City services. Based upon the foregoing, the City Manager has concluded, and the City Council concurs, that disclosure of certain personnel information surrounding the administrative investigation into the written allegations made by the Lieutenant, in accordance with NCGS §160A-168(c)(7), is essential to maintaining public confidence in City services, in particular the services provided by the Police Department. Due to the constraints of said statute, the City is not able to release a more detailed response; however, the following account should provide those citizens that have expressed concern about the allegations made by the Lieutenant at the June 25, 2013, press conference, and others, a more accurate depiction.

Between June 27, 2013, and July 9, 2013, City staff invested over twenty (20) hours, interviewing a number of City employees including but not limited to Lieutenant William Wilke, Chief Anderson and Captain Gonce. The following limited findings of fact were derived from the interviews:

1. On March 14, 2013, did Chief Anderson and Captain Gonce attempt to manipulate or coerce Lieutenant William Wilke to "submit to a set of facts and circumstances regarding the accident involving Chief Anderson's son that were clearly false and misleading?"

**FINDINGS:** No. Additionally, the City Manager concurs with the District Attorney's determination that no criminal laws were violated in the course of the investigation of the accident.

2. On March 14, 2013, when the Chief of Police ordered Lieutenant Wilke to his office, did the Chief of Police violate any City or Departmental policies or procedures?

**FINDINGS:** While there are no City or Department policies or procedures that address this issue, the conduct was not appropriate, and this issue has been addressed with Chief Anderson by his supervisor.

The City acknowledges that the administrative investigation revealed that there are concerns within the Department regarding general management practices, some of which commenced prior to the March 9, 2013, incident. Subsequent events following the March 9, 2013, incident exacerbated those concerns. In closing, the City takes very seriously its obligations to comply with the personnel privacy laws. Therefore, the City must refrain from disclosing additional information pertaining to the administrative investigation. It is hoped that the foregoing information will give the citizens of Asheville, who have expressed concerns about the allegations made by the Lieutenant at the June 25, 2013, press conference, sufficient information to make a more informed opinion regarding the same, thereby causing the public to maintain confidence in the City's administration of City services, particularly those services provided by the Police Department."

City Manager Jackson said that the goal of his report is to (1) address concerns of public confidence in City services by sharing findings and conclusions, within the limitations of the law, of the administrative investigation regarding allegations of coercion, cover-up, management and employment related concerns with the Asheville Police Department; (2) outline the timeline of events involving the City's response to the grievance; and (3) assure City Council and the general public that management fully supports the men and women of the Asheville Police Department and plans are in place to move the department forward.

Allegation that Chief William Anderson and Captain Stony Gonce attempted to manipulate or coerce Lt. William Wilke to "submit to a set of facts and circumstances regarding the accident involving Chief Anderson's son that were clearly false and misleading." Statements from Chief Anderson and Captain Gonce regarding the accident were not in the investigative file. Findings (1) any and all allegations made by the Lieutenant regarding the SBI interview or missing documents from the SBI file are criminal matters, regarding which the City defers to the judgment of the Buncombe County District Attorney; and (2) While there are no City or Department policies or procedures that address the Chief of Police's action of ordering Lt. Wilke to his office on March 14, the conduct was not appropriate, and this issue has been addressed with Chief Anderson by his supervisor.

Allegation that of operational and administrative concerns pertaining to specific employees. Findings: Allegations made by the Lieutenant regarding specific employees is confidential personnel information within the meaning of NCGS 160A-168 and may not be disclosed except as allowed by law.

Allegation of general operations and administrative concerns within the Department. Findings: Organizational performance is guided by Council's Strategic Operating Plan and accompanying department business plans which contain specific goals for department management to achieve. In light of the findings of the administrative investigation, we will task Command Staff, supported by outside expertise, to review and modify goals accordingly. An overview of the plan will be made public.

In summary, between June 27, 2013, and July 9, 2013, City staff invested over 20 hours interviewing a number of City employees including but not limited to Lieutenant William Wilke, Chief Anderson and Captain Gonce. The information shared today, in accordance with NCGS 160A-168 (c) (7) is essential to maintaining public confidence in City services, in particular the services provided by the Police Department. Due to the constraints of this statute, the release of personnel records is limited. Aggressive and effective steps are being taken to address the operational and administrative concerns within the Department with a focus on unity, cohesion and integrity. Changes originating with new or long standing department leadership invariably result in organizational stress and conflicts. New department director appointments, new operational emphasis and priorities, reallocation of resources, staff reassignments, and greater accountability for performance may all add stress to the relationships between supervisors and the employees whose work they are responsible for managing. Additionally, budget and fiscal challenges, cost saving strategies and reengineering, as well as economic and legislative trends can all compound the friction between employees and supervisors. These effects are common during periods of change in both public and private organizations and are not unique to APD. City management is committed to providing the resources to better equip employees with the tools to manage the change that is needed to succeed as an organization.

In closing, City management has complete confidence in the Police Department's ability to move forward. This is staff's best effort to closely examine all facts made available at this time. All staff members are strongly encouraged to share information with their supervisors and/or other leadership, including the City Manager, when concerns arise about operational and administrative decisions.

City Manager Jackson then provided a brief report card of the major recent Asheville Police Department accomplishments, which included a decrease in crime; Public Housing Unit; Downtown Unit; Partnerships - Changing Together; and Building Relationships with Youth.

**RESOLUTION BOOK NO. 35 - PAGE 370**

**Adjournment**

At 10:22 a.m. Mayor Bellamy adjourned the meeting.

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CITY CLERK

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MAYOR