



City of Greensboro

Melvin Municipal Building
300 W. Washington Street
Greensboro, NC 27401

Meeting Minutes - Draft Public Safety Committee

Monday, April 11, 2016

5:00 PM

Council Chamber

Call to Order

This Public Safety Committee meeting of the City of Greensboro was called to order at 4:30 p.m. on the above date in the Council Chamber of the Melvin Municipal Office Building with the following members present:

Present: 4 - Chairperson Marikay Abuzuaiter, Vice Chair Tony Wilkins, Councilmember Mike Barber and Councilmember Yvonne J. Johnson

Also present were City Manager Jim Westmoreland, Assistant City Manager Chris Wilson, City Attorney Tom Carruthers, and City Clerk Elizabeth H. Richardson. Councilmember Justin Outling was also present.

Council Procedure for Conduct of the Meeting

Councilmember Abuzuaiter explained the Committee procedure for conduct of the meeting.

I. CONSENT AGENDA (One Vote)

Moved by Councilmember Wilkins, seconded by Councilmember Barber to refer the Consent Agenda to Council . The motion carried by voice vote.

1. [ID 16-0261](#) Ordinance in the Amount of \$69,000 Amending the Federal, State, and Other Grants Fund Budget for the 2016/2017 Hazardous Materials Regional Response Team Program
2. [ID 16-0262](#) Ordinance in the Amount of \$45,000 Amending the Federal, State, and Other Grants Fund Budget for the FY 2015 Homeland Security Grant Program
3. [ID 16-0265](#) Ordinance in the Amount of \$175,000 Amending FY 15-16 General Fund to Appropriate Additional Funding for Greensboro Police Department's Expenditures Pertaining to the Mutual Assistance Agreement With Cleveland Police Department or 2016 RNC Assistance
4. [ID 16-0282](#) Ordinance in the Amount of \$250,000 Amending State, Federal and Other Grants Fund Budget for a Federal Forfeiture Grant for GPD's Service Side Arm Grant
5. [ID 16-0275](#) Motion to Approve the Minutes of the Public Safety Committee meeting of March 7, 2016

Motion to approve the minutes of the Public Safety Committee meeting of March 7, 2016 was adopted.

II. GENERAL BUSINESS AGENDA

6. [ID 16-0230](#) Body Worn Camera Policy Discussion

City Manager Westmoreland spoke to information provided to Council at the April 5th meeting; stated that City Attorney Carruthers had reviewed and provided a modified policy proposal to Council today; and recognized City Attorney Carruthers to present the item.

Councilmember Abuzuaiter stated the Committee would hear from City Attorney Carruthers prior to hearing from the speakers.

City Attorney Carruthers thanked Lewis Pitts and Roch Smith for their contributions to the discussion; referenced the proposed policy provided by Mayor Vaughan and Councilmember Outling; comments by the American Civil Liberties Union (ACLU) and community members; verified he reviewed the policies and made one consistent with law; spoke to how the City could enact its policies and procedures; confirmed that the best solution would be to obtain additional legislation from the General Assembly that would allow greater transparency while protecting the privacy rights of individuals; provided highlights of the proposed policy; and spoke to persons who may wish to view the video. City Attorney Carruthers referenced the North Carolina personnel law statute 160A-168; emphasized North Carolina was a strong public records law state; outlined the process for personnel records to be disclosed; referenced public records request laws; provided an overview of information collected by police records that was not considered public record; spoke to protecting the privacy rights of all individuals; reiterated that no information should be released in a way that would jeopardize the right of a defendant to receive a fair trial; and added that staff could draft a policy to allow those involved in the interaction to view the footage in a way that complied with the law. City Attorney Carruthers provided examples of the process for releasing information on the disciplinary action of an officer; stated there were other methods of approaching the personnel law that allowed greater disclosure; that the law gave the City ways to make good faith arguments when working within the personnel law; and spoke to movement on the issue in the Legislation. City Attorney Carruthers verified that Officer Justin Flynt had spoken to the Legislative Committee as well as the ACLU; that the ACLU's and City's views were in accord; that he believed the City was in the right spot at this time; and stated that he was trying to put the policy in a position that was defensible under the law, met the goal of expanding the viewing of the footage and was headed in a similar direction of the Legislature.

Councilmember Wilkins asked for clarification on the application of the Declaratory Judgment piece.

City Attorney Carruthers outlined what was protected under the North Carolina personnel laws; provided an overview of the statute that indicated a potential Class II misdemeanor should information be released outside of the statute; spoke to what he would give legal advice on; outlined what the Declaratory Judgment would entail; the process used in obtaining a Declaratory Judgment; and spoke to the right to request that a Superior Court Judge give a Declaratory Judgment.

Councilmember Abuzuaiter reminded speakers the Committee would hear comments regarding the policy at hand; and asked speakers to stay focused on the proposed policy.

Brian Watkins, 1902 Taylor Street spoke to a shooting incident involving the Police Department; asked that the video of the shooting be public; spoke to the need for transparency; the current law; and to police misconduct.

Lewis Pitts, 129 Tate Street spoke to why the issue was gaining support; referenced statements of the Supreme Court; reminded the Committee that, anything made or received that is part of the transaction of City business was public record, unless there was a law that said it was not; spoke to the general rule of open government that could have exceptions; provided examples of exceptions; referenced the peoples ordinance he submitted at the last council meeting; spoke to the revised proposal presented today; voiced concern with the presumption that the video was secret; and referenced the State Constitution. Mr. Pitts voiced the importance of the preservation of liberty; spoke to information being secret; to statutes being misinterpreted; and to open government.

Councilmember Outling entered the meeting at 4:57 p.m.

Mr. Pitts outlined the proposal he had provided to Council; stated Council should decide whether to release information; spoke to the release of personnel records; the need for balance; and reminded the Committee of the reason body worn cameras were approved.

Councilmember Barber complemented Councilmember Outling on his effort on the issue; referenced a

conversation with City Attorney Carruthers regarding Greensboro wanting to be cutting edge; spoke to exceptions established under the North Carolina Statutes; and added that he hoped the Legislature would take action. Councilmember Barber requested that an initial paragraph be established that said the presumption was the information was public record and then outline legal prohibitions; added that the City did not have a mechanism to achieve this; that technology had outpaced the ability to provide information to the public; referenced varying positions throughout the country; oaths taken by officers and Councilmembers to uphold the State Constitution; and reiterated his request that the language be modified to make the presumption that the information was a public record subject to legal prohibitions.

City Attorney Carruthers respectfully disagreed; voiced agreement with the desire of several members of Council that those with interaction on the police video to have the right to review it; stated there was a good faith question of third party rights to review the video subject to the normal criminal investigative constraints; continued that the proposal he had presented did not include that, the law did not prohibit that as a goal and a concept; it was a question of policy and costs and in the Council's province to debate. City Attorney Carruthers referenced Mr. Pitts' proposing that everything was public unless two-thirds of the Council voted that it not be released flipped the existence of criminal law; emphasized that proposal would open the door to many concepts that had not been discussed that protected the due process and emphasized the need to protect the victims.

Councilmember Barber clarified that he recommended the City presume the records were public, then follow the law; verified that the law distinguished criminal investigative, personnel, all of which would continue to be prohibitions; that the policy would say the information was a public record except for those instances where the law prohibited; stated the two-thirds vote was not his purpose; and emphasized he wanted to make the presumption that it was a public record unless the law prohibited it and that further policy would be up to Council to decide.

Mayor Pro-Tem Johnson entered the meeting at 5:08 p.m.

Councilmember Outling spoke to the distinction of the legal categorization of a record; voiced the need to ensure whatever policy was developed complied with the law; spoke to public disclosure; to the framework that had been developed not being consistent with North Carolina law; asked how much public disclosure was necessary; referenced the review time and cost for the Police Department; consistency with North Carolina law: stated that the question for Council would be how much third party disclosure there would be; he would be interested to hear the degree to which Council felt comfortable for any third party to view the record; and added that he had heard some hesitation from the community for allowing anyone to obtain the information.

Councilmember Abuzuaiter called on Police Chief Scott.

Police Chief Scott voiced concern that there would be video that would not be protected; emphasized he was comfortable with transparency but did not want to diminish public trust; verified there were privacy concerns; and stated the department was very comfortable with transparency but did not want to diminish the public trust.

Mr. Pitts voiced disappointment with Councilmember Outling's comments.

Councilmember Outling clarified that the City needed to decide to what degree third parties would be able to access the records; and reiterated the need for Council to receive additional input from the public.

Barton Parks, 1107 McDowell Drive referenced a prior committee he had been on; to a study done and submitted to a previous Council with regard to the Police Department that had been turned down; voiced appreciation for the work Mr. Pitts had done; and support of the policy proposed by Mr. Pitts.

Anna Fesmire, 1400 West Cornwallis Drive spoke on behalf of the League of Women Voters; to the League's commitment to the idea of representative government that must be accountable to the public; to the release of the video; to her perspective of a low level of public confidence; and voiced the need to stay at the drawing board and continue to work on a policy that would provide information to maintain public trust.

Janice Siebert, 10 Indigo Lake Terrace provided an overview of what the National League of Women Voters believed; the definition of public records; spoke to the policy of the state for persons to obtain copies of public

records; and to the belief that the City had something to hide.

Roch Smith, Jr., 3605 Wilshire Drive voiced appreciation for City Attorney Carruthers and Council taking their time to discuss the issue with the public; taking the effort to tweak the proposal; referenced whether the information was public or confidential; to problematic results with only allowing those on the video to view it; spoke to the disposition of records; made reference to the City not following the law with regard to the retention of records; voiced the need for further discussions; and stated that the Peoples Plan articulated that the City follow the law.

Councilmember Outling clarified what he had articulated; emphasized the need to state how much disclosure third parties or the public would have; to find out what the goal was and how to achieve said goal without violating the law; the need for the policy to state what needed to be done; stated it would be helpful to obtain an opinion whether or not the policy proposal by Mr. Pitts would provide the City with a good faith argument; and spoke to the City subjecting itself to injury.

City Attorney Carruthers voiced the need for a distinction to be made between first and third parties; verified that criminal investigative records were not public records; spoke to the role of privacy and when it would need to be protected; stated that the public records law did not protect the privacy of the employees; spoke to criminal investigative records; and added that if everything was public, it would open the door, destroy privacy and would hinder the privacy rights of defendants and victims.

Reverend Nelson Johnson, 2115 Murrayhill Drive referenced discussions that had taken place around body worn cameras; stated this discussion was a betrayal of public trust; was a legalistic argument; voiced the need to stand for the personhood and for the proper treatment of people; spoke to the history of the Jim Crow laws; read from a letter from the Nixon Chief of Staff; and requested Council come together to be a lead City in the nation on the issue.

Michael Roberto, 317 South Chapman Street spoke to the revised proposal; asked why the citizenry would not have access to a video prior to the start of any legal process; referenced the dysfunction of the former Complaint Review Committee; affirmed that the citizens wanted the police to be responsible; emphasized the need for Council to put a policy into place; and spoke to when citizens should be able to receive the video for viewing.

Discussion took place regarding delivery of what qualified as public record; referenced development of the City's public information records policy (PIRT); revising the language of the proposed policy; costs that would be involved in the process; ability to provide the information; technology outpacing the City's ability to deliver a public record; the need for the public to see information it deserved to see before any legal process; the need to operate within the confines of the law; need for the Legislature to move forward; the role of the CRC; and third party disclosure.

Councilmember Barber confirmed Council was being asked to adopt a policy; voiced the need to figure out a way to deliver said policy; spoke to challenges to figuring out how to deliver the information to the public; and that City Attorney Carruthers had acted under the direction of Council.

City Attorney Carruthers outlined what the City had requested of the General Assembly in the last session; confirmed his goal was to work within the realms of the existing law; spoke to the goal of the policy proposal brought forth by Mayor Vaughan and Councilmember Outling; and outlined his understanding of the law with regard to the release of body worn camera footage.

Councilmember Outling asked City Attorney Carruthers to expand upon the degree with which other municipalities and the ACLU agreed with his interpretation of the law on privacy; and suggestions on the proposals offered up.

Councilmember Abuzuaiter made reference to a report from the Department of Justice (DOJ) regarding a conference with police departments regarding community policing and body worn cameras; highlighted several points in the report that included the need for a policy to be in place prior to body worn cameras being on the streets, for continued community input on a policy; importance in figuring out where personnel records should be released; Fourth Amendment rights; provided an overview of matrixes in the report; and spoke to those in attendance at the conference. Councilmember Abuzuaiter further emphasized that additional discussion needed to be had to ensure that the rights and privacy of all of the City's citizens were protected; referenced PIRT

requests and emails; thanked those who had contacted Council regarding the issue; and voiced the need for respect to reach an agreement for transparency and accountability.

Mayor Pro-Tem Johnson stated she wanted the community to receive what they believe they deserved; that there was neither a rush or a need to drag the issue along; added that the City needed to have additional discussion; suggested a study committee made up of a diverse community representation be formed; and reiterated the need to get the citizens what they wanted.

City Attorney Carruthers informed the Committee that the Legislature would take the issue up this week; that the City would have two minutes to speak; stated he had heard there was a draft to be presented; referenced an awareness about the personnel constraints; stated he would report back to Council; and that the Legislative Agenda would be presented to Council in May.

Reverend Johnson suggested that Council not vote on the issue until July; spoke to the need for additional discussion; referenced the City's community history; and the need to do the best it could with the law.

Discussion took place regarding the item coming before Council May 3rd; polling Council to see if an additional meetings would be needed; the community request to have additional discussions prior to voting; the possibility of an additional Public Safety meeting; what the City Attorney would state at the Legislature; this being a short session to the Legislature; information provided in the 2015 Legislative Agenda; and diminishing the position to allow greater viewing of body worn camera video.

Mr. Pitts voiced the need for presumption of openness; concern with the misrepresentation of the City's view to the Legislature; spoke to what would be shared around the state; and emphasized that open government would not be represented at the Legislature.

City Attorney Carruthers verified that the Legislative committee had reserved two minutes for the City to speak; that he had invited individual Councilmembers to speak; confirmed that Officer Flynt had previously spoken to the Legislative committee; spoke to what he would speak to in Raleigh; and confirmed it was in the interest of the City to move forward and make some progress.

Councilmember Outling emphasized the need for people to understand the legal constraints of the law; and interpretations of other municipalities as well as the ACLU on the issue.

Councilmember Barber left the meeting at 6:05 p.m.

City Attorney Carruthers provided an overview of other municipalities' policies; affirmed that the City and the ACLU's positions were in accord; and stated that the City continued to lead in the state and country on the issue.

Matters to be discussed by the Members of the Committee

There were no items for discussion by the Committee members.

Matters to be presented by the City Manager

Assistant City Manager Wilson recognized Guilford Metro 911 Emergency Communication Administrative and Operations Manager Christine Moore and Deputy Fire Chief Graham Robinson for updates.

Ms. Moore announced the upcoming Telecommunications Banquet on Thursday, April 13th at 2:00 p.m.; and invited the Committee to attend.

Deputy Chief Robinson informed the Committee that the Department would begin testing the fire hydrants throughout the City beginning Monday, April 18th.

Matters to be presented by the City Attorney

There were no items for discussion by the City Attorney.

Adjournment

Moved by Mayor Pro-Tem Johnson, seconded by Councilmember Wilkins, to adjourn the meeting. The motion carried by voice vote.

THE PUBLIC SAFETY COMMITTEE MEETING ADJOURNED AT 6:08 P.M.

ELIZABETH H. RICHARDSON
CITY CLERK

MARIKAY ABUZUAITER
CHAIR