

A. MIN2023-004 Approval of the December 9, 2023 Special Called Meeting Minutes.

Special Called Meeting Agenda - FINAL MAYOR AND COUNCIL



A Max Bacon City Hall
ADMIN CONFERENCE ROOM
2800 King Street SE
Smyrna, GA 30080

Derek Norton, Mayor
Tim Gould, Mayor Pro Tem (Ward 6)
Glenn Pickens (Ward 1)
Latonia P. Hines (Ward 2)
Travis Lindley (Ward 3)
Charles "Corkey" Welch (Ward 4)
Susan Wilkinson (Ward 5)
Lewis Wheaton (Ward 7)

City Attorney Scott Cochran
City Administrator Joseph Bennett
City Clerk Heather K. Peacon-Corn

January 09, 2023
6:00 PM

THIS MEETING WAS PROPERLY NOTICED AND POSTED AT THE FOLLOWING LOCATIONS IN ACCORDANCE WITH THE NOTICING STANDARDS AS OUTLINED IN O.C.G.A. 50-14-3:

**The City of Smyrna website – www.smyrnaga.gov
City Hall, 2800 King Street SE, Public Notice Boards**

Roll Call

Present: 8 – Mayor Derek Norton, Councilmember Glenn Pickens, Councilmember Latonia P. Hines, Councilmember Travis Lindley, Councilmember Charles Welch, Councilmember Susan Wilkinson, Mayor Pro Tem / Councilmember Tim Gould, Councilmember Lewis Wheaton

Also Present: 2 - Scott Cochran and Tom Cauthorn

Staff: 7 – Joe Bennett, Jennifer Bennett, Penny Mocerri, Heather Peacon-Corn, Kristin Robinson, Carl Sicard, Andrea Worthy

1. Call to Order

Mayor Derek Norton called to order the January 9, 2023 Special Called Council Meeting held at A. Max Bacon City Hall in the Administration Conference Room at 6:00 PM.

2. Enter into Executive Session

Councilmember Latonia P. Hines made a motion at 6:03 PM to enter into Executive Session to discuss the following:

A. 2023-001 Land Discussion

B. 2023-002 Legal Discussion

2023-003 Personnel Discussion; seconded by Councilmember Charles Welch.

The motion to enter into Executive Session carried unanimously.

3. Close Executive Session / Enter Public Meeting

Councilmember Latonia P. Hines made a motion at 6:39 PM to exit Executive Session and re-enter Regular Session; seconded by Mayor Pro Tem/Councilmember Tim Gould.

The motion to exit Executive Session and re-enter Regular Session carried unanimously.

4. Other Business

Mayor Norton introduced the topic of discussion concerning the ethics complaint filed by Councilmember Wilkinson against three employees – City Attorney Scott Cochran, City Administrator Joe Bennett, City Clerk Heather Peacon-Corn – which claims harassment, bullying, and hostile work environment with each claim alone potentially constituting a fireable offense.

Councilmember Wilkinson stated she would like to have an attorney present. She thought this meeting was to allow her to obtain clarity on the process and further thought that a mediation effort would take place at a future date. Mayor Norton stated that there is no mediation process scheduled; rather, at the last Committee of the Whole meeting it was decided and voted on that Judge Tom Cauthorn would investigate the claims as an independent hearing officer for the ethics complaint filed against Councilmember Wilkinson as well as the ethics complaint filed against the three aforementioned employees.

Mayor Norton asked Councilmember Wilkinson to explain the main issue she has as to why she filed the complaint against the three appointed employees. He asked if the issue was because the complaint filed against her was not discussed in executive session and that she felt that Mr. Bennett and staff had not told her about the complaint prior to the meeting. Ms. Wilkinson stated that she went to the HR Department to file her own complaint because the citizen complaint against her was placed on the agenda and made public, and she confirmed that someone should have discussed the complaint with her beforehand. City Attorney Scott Cochran

explained why the citizen ethics complaint filed against Councilmember Wilkinson was not supposed to be heard in executive session:

- The Mayor and Council can address a complaint in one of two ways: ignore it or address it.
- When a complaint is filed with the Mayor and Council and the City Clerk's Office, it is entered into public record.
- Because it was filed with the City Clerk's Office, it had to be addressed.
- Then a decision has to be made as to how the complaint can be addressed: executive session or open session.
- There are only two potential ways this could be heard in executive session: Legal Exception or Personnel Exception.
 - Legal Exception – an active lawsuit has to be ongoing.
 - Personnel Exception – Councilmember Wilkinson is an elected official, not an employee.
- His advice to Mr. Bennett and Ms. Peacon-Corn was that this complaint had to be in open session and be subject to open records.
- Mr. Cochran spoke to the Attorney General's Office previously. The AG's Office stated that the default should be open session unless the narrow exceptions are met.
- Mr. Cochran's advice was to address the complaint and default to open session and include topics that could likely come up during the meeting on the agenda.
- Mr. Cochran emphasized that Mr. Bennett and Ms. Peacon-Corn were following legal advice.

Councilmember Latonia P. Hines asked if Councilmember Wilkinson could provide more details as to why she filed a complaint against staff. Ms. Wilkinson stated that she understands that when something is submitted to the Clerk's Office that it is public record. She was contacted by Mayor Norton to tell her about the complaint filed against her and that it would be discussed at the next Committee of the Whole meeting. When the agenda was published, she was very upset when she read the complaint and that it was out in the public, and she felt she did not have an opportunity to address it and explain her side. She wanted to get a copy of the letter, and she explained that she came to City Hall the next morning. She asked both Christy Ullman (Executive Assistant to the Mayor & Council) and Jill Head (Deputy City Clerk) if they had the letter, but neither knew about the complaint filed against her. She walked to Mr. Bennett's office but thought he was not there, so she left City Hall for another appointment. Mr. Bennett stated he was, in fact, in his office in a meeting with Public Works.

Councilmember Hines spoke about some of the specific language Councilmember Wilkinson used in her complaint against staff. She explained that sometimes there are "buzz words" that are used when standards of those accusations are not met, for example hostile work environment. Ms. Wilkinson stated that the complaint was not personal. Councilmember Lewis Wheaton stated that as he understands it, the

complaint is more about an expectation that something should have been discussed in executive session, but that does not necessarily legitimize an ethics complaint against staff for simply doing their jobs. (At 7:01 PM, Councilmember Charles Welch left the meeting to attend a previously scheduled appointment.) Ms. Wilkinson said when she went to HR, she was feeling like it was a hostile work environment after reading the complaint and realizing it was public, and she wished she had been able to speak to Mr. Cochran. Mr. Cochran stated that he texted her and told her she could call him when she had a chance, to which Ms. Wilkinson stated she was sitting in HR when she received that text. Both Mr. Cochran and Councilmember Wheaton expressed that that moment would have been a good time to call Mr. Cochran before filing the complaint. Ms. Wilkinson further stated that Mayor Norton had previously said that there is no policy on how to handle a complaint like this, so she questioned why the agenda item was the ethics complaint itself rather than a discussion on the process for handling this type of complaint. Councilmember Hines stated that on some level that was the agenda item because the merits and specifics of the complaint were not discussed. She stated that it feels more that Ms. Wilkinson is frustrated that the complaint was made public and that she could not get the answers she was looking for. A hostile work environment signifies that she was being targeted and it had been going on for a long time.

Mayor Norton stated Ms. Wilkinson spoke to Mr. Bennett before going to HR. He asked that the conversation be discussed. Mr. Bennett stated that there was incomprehensible screaming and that he informed Ms. Wilkinson that the decision was made by the City Attorney and the Mayor on how to place this item on the agenda. He also stated that he has several witnesses as to how Ms. Wilkinson spoke to Mr. Bennett. Ms. Wilkinson stated that she was very upset. Councilmember Wheaton expressed that he understands how upset and frustrated Ms. Wilkinson was from first hearing about the complaint to seeing it published, but he still does not understand how that then leads to filing a complaint against staff.

Mayor Norton stated that Ms. Wilkinson had expressed that it is not easy to have a complaint filed against her and that it is not lost on him that Ms. Wilkinson, in turn, has done exactly that same thing and filed a complaint against staff. He asked if the City Clerk Heather Peacon-Corn would like to say something. Ms. Peacon-Corn stated that after the Committee of the Whole meeting on December 15, 2022, she approached Councilmember Wilkinson to ask how she wanted to submit her read statement for purposes of the minutes. Ms. Peacon-Corn paraphrased that Councilmember Wilkinson said that she hoped that she knew it was not personal. Ms. Peacon-Corn replied that it was personal and it was very hurtful. She then stated that Ms. Wilkinson said, "I know you were just doing your job." Ms. Wilkinson expressed that she does not remember saying that. She explained that she understood that the City Clerk was required to accept the letter of complaint, but she did not understand why it had to be on the agenda with her name specifically called out and then it be posted on the City website. Ms. Peacon-Corn explained that she does not have the authority to decide what goes on agendas. Her job is to facilitate the agenda and move forward with items that are selected by the City Administrator, the City Attorney, and Department Heads after City Administrator review.

Councilmember Hines stated that as difficult as it is for Councilmember Wilkinson to be told that she is not acting in the best manner that a council member should, staff also does not want to be told they are unethical. Councilmember Wheaton stated that the conversation is difficult, but it has also been good. To have a discussion about the process in a public setting is positive. He asked, if based on everything that has been said and explained, does she still want to file this ethics complaint? Mayor Pro Tem Tim Gould stated he recognizes how hard Councilmember Wilkinson works for her constituents and has done so for a long time, but in the end, staff was simply just doing their jobs. Ms. Wilkinson stated she would consider withdrawing the complaint, but she wants to speak to her attorney. She further expressed that what happened at the Committee of the Whole meeting was also difficult. Dr. Wheaton reminded everyone, however, that though Councilmember Wilkinson was upset how the Committee of the Whole meeting took place, the ethics complaint filed against three appointed staff members was logged prior to the meeting, so they are two separate issues.

Judge Cauthorn recommended that unless the complaint is withdrawn, the Mayor and Council need to act on the complaint within a reasonable period of time, approximately 30 days. Councilmember Hines suggested that Ms. Wilkinson make a decision by January 17, 2023 and submit her decision in writing. Mr. Cochran added that what should be clear is that Mr. Bennett and Ms. Peacon-Corn were relying on legal advice, and that it bothers him that his advice potentially led to the complaint filed against the two of them. Mayor Norton reiterated that the discussion that took place at the Committee of the Whole meeting was not to address the merits of the initial citizen ethics complaint; it was to determine how best to move forward. It was not intended as a personal attack. Judge Cauthorn asked if the complainant withdraws or moves forward with the complaint, will the written decision be submitted before the meeting so it can be placed on the agenda? Mayor Norton stated they can just add this as an item to the Pre-Council agenda.

5. Adjournment

Mayor Derek Norton adjourned the January 9, 2023 Special Called Council Meeting at 7:25 PM.