

SPECIAL MEETING

January 3, 2024

The Bessemer City Council met in special session on Wednesday, January 3, 2024 at 3:30PM in Council Chambers. Proper notice was given.

Members Present

Mayor Becky Smith, Council Members: Michael Brooks, Nellie Floyd, Allen Hook, Brenda Boyd, Brent Guffey, and Donnie Griffin. Also present were City Manager, Josh Ross, Attorney, David Smith, Public Safety Director, Tom Ellis, and Operations & Special Projects Director, Jamie Ramsey.

Call to Order

Mayor Smith called the meeting to order and explained that this meeting was to discuss the Charter and the Fire Department staffing per the request of Council Member Brent Guffey and recommendation of City Manager Josh Ross

Charter Review

City Manager, Josh Ross addressed Council with provisions in the Charter in relation to Council Members also serving as employees per Manager Ross and Attorney Smith, City staff members are not permitted to serve on Council. Specifically, Section 2.12 of the Bessemer City Charter does not permit City Council Members to be employees or serve in any other capacity with the City. Attorney Smith stated that this issue was discussed with the North Carolina League of Municipalities (NCLM) Attorney last fall and they concurred with the same opinion. After which, Attorney Smith wrote an opinion letter to Mr. Brent Guffey informing him that he could not remain in the fire department as an employee. This is considered a conflict of interest and violation of the City Charter

In December, Mr. Guffey requested City Staff and Attorney Smith to explore the matter again since this provision now impacted two Council Members. Manager Ross and Attorney Smith consulted with the North Carolina League of Municipalities (NCLM) Attorney again and also received an opinion from the North Carolina School of Government (SOG) which both align with the original opinion provided that the City's Charter prohibits Council Members serving in other capacities with the City. Mr. Guffey stated that the Charter provision conflicted with North Carolina General Statutes and the North Carolina State Constitution. Attorney Smith explained his opinion, the NCLM, and SOG, all agree that this Charter provision does not conflict with the State Constitution. Attorney Smith also explained that NCGS allows City's to permit Council Members to serve as employees in certain circumstances with boundaries given if the City chooses to allow this; however, the City's Charter, which is an effective General Statute itself, prohibits Council Members serving in other capacities with the City.

Article VI, Section 9 of the State Constitution was explored. Results showed that the dual office holding provision did not violate one's constitutional right. A city firefighter is not an "office" for the purpose of constitutional and statutory provisions of dual office holding. NCGS 14-2334 prohibits a city official (such as a member of the city council) from being on both sides of a contract. It would prohibit, for example, the city council voting to award a construction contract to a member of the city council, since that member of the city council would be on both sides of

that contract (even if that member does not vote for awarding the contract). The same reasoning applies to an employment arrangement. If a council member is also an employee of the city, then that council member is both employer and employee, the council member is on both sides of the employment agreement. That is a violation of NCGS 14-234.

Mr. Guffey stated that some municipalities in Gaston County allow their City Council members to be firefighters as well. Namely, High Shoals was mentioned. City Staff and Attorney Smith stated that there are two kinds of exceptions that apply in some situations. The first one applies to cities that operate under the mayor-council system, meaning that they do not have a city manager. For those cities there is a special statute, NCGS 160A-158, that applies if the city has a population under 5,000. That statute allows the city to employ a council member as an employee, despite NCGS 14-234. Bessemer City has over 5,000 residents. That statute does not apply to Bessemer City because we have council-manager system.

Council Member Guffey stated that he was under the impression that city employees could serve on Council, as this was done in the 1980s with another firefighter. There was a question whether or not this firefighter was also a Council Member at the same time. Manager Ross stated that regardless of what happened in the 1980s, that should not dictate how the current situation is handled or interpreted especially of multiple legal opinions express that Council Members service in other capacities with the City is a violation of the City Charter.

Additionally Council Member Guffey inquired about if a volunteer capacity was the same as an employee. Attorney Smith informed him that it was. Council Member Guffey also inquired about why this was not brought to his attention during his initial installment on the board in 2021. Mayor Smith informed him that it was brought to the previous City Manager's attention, but he did not move forward with enforcing the Charter. City Manager, Josh Ross informed City Council that there is no personal motive to have anyone removed from the fire department. Manager Ross informed Council Member Guffey of the provision when it was discovered in the Charter, which was August of 2023. Manager Ross worked with Attorney Smith to convey this matter to Council Member Guffey then. Manager Ross said it had been previously stated that he was "kicking people off the fire department". He stated this is not true; instead, this is being done to be in compliance with the City Charter, prevent future conflict, and protecting the best interest of the City. In order to allow Council Members to serve as employees, City Council would have to amending the City Charter and the North Carolina General Assembly would have to approve. City Manager, Ross advises highly against this for numerous reasons including to prevent conflicts of interest and to ensure that Council Members voted by citizens have the ability to vote on all matters without having to recuse themselves for conflicts of interest This would also ensure that Council Members are representing the interest of citizens by voting on all matters.

During the Meeting, Council Member Michael Brooks requested the status of a letter from Attorney Smith outlining why he could not serve on the Fire Department as a Council Member. Attorney Smith explained that he and Manager Ross felt it was best to wait on providing this correspondence in light of the special meeting taking place. Council Member Brooks understood and agreed with the opinion provided by Attorney Smith.

Council Member Guffey stated that the City Charter referenced that the fire chief answers to the City Council and that it should be revised to match how the current organizational structure is setup with the Fire Chief ultimately answering to the Manager like all other staff except for the City Attorney. Attorney Smith pointed out that the Charter does not mention the fire department; rather, there are references throughout the ordinances that mention the fire department. Manager Ross advised Council that staff would be thoroughly reviewing all ordinances and provide Council with recommended changes. There are other ordinances that are out of date or that no longer apply that should be revised, appealed, or amended. Council agreed that they would like to see these ordinances reviewed.

Public Safety Staffing

City Manager Ross advised Council that he would be presenting a budget amendment at the January Regular City Council Meeting to amend the fire department budget for the current year (2023-2024). Manager Ross said the purpose of the recommendation is to provide additional funding for 24/7 coverage at the fire department with part-time firefighters. This was the original plan discussed by Manager Ross, Public Safety Director Ellis, and Fire Chief Gordon last year; however, due to funding shortages in the budget, this was not originally possible. Manager Ross explained that revenue projections are expected to be higher than anticipated, specifically for ad valorem and sales tax. This additional revenue was planned to help build back the City's fund balance but will now be directed for fire department staffing if Council approved the budget amendment next week. Manager Ross stated that recent changes to the fire department staffing is requiring an acceleration of the already adopted plan to provide more funding for the fire department.

City Manager, Josh Ross informed Council that in the next budget year (2024-2025) he will be recommending another increase in the fire department budget as current demands grow and the City prepares for growth.

Council General Discussion

Mayor Smith opened the floor for Council discussion. Council Member, Donnie Griffin inquired about the new stormwater fees. City Staff informed him that these fees will be implemented in the next fiscal year starting July 1, 2024. Council Member, Brent Guffey inquired about the referral process for citizens needing assistance paying their water bill

Adjourn

By motion of Brenda Boyd and unanimous vote, the meeting was adjourned at 4:52 PM.

Becky S. Smith, Mayor

Hydeia Y. Hayes, City Clerk