

**FAYETTEVILLE CITY COUNCIL  
SPECIAL MEETING MINUTES  
LAFAYETTE ROOM  
MARCH 18, 2015  
5:00 P.M.**

Present: Mayor Nat Robertson

Council Members Kathy Jensen (District 1); Kady-Ann Davy (District 2); H. Mitchell Colvin, Jr. (District 3) (arrived at 5:10 p.m.); Chalmers McDougald (District 4); Robert T. Hurst, Jr. (District 5); William J. L. Crisp (District 6); Theodore Mohn (District 8) (arrived at 5:25 p.m.); James W. Arp, Jr. (District 9)

Absent: Larry O. Wright, Sr. (District 7)

Others Present:

Theodore Voorhees, City Manager  
Kristoff Bauer, Deputy City Manager  
Rochelle Small-Toney, Deputy City Manager  
Jay Reinstein, Assistant City Manager  
Karen McDonald, City Attorney  
Harold Medlock, Police Chief  
Rusty Thompson, Engineering and Infrastructure Director  
Scott Shuford, Development Services Director  
Jerry Dietzen, Environmental Services Director  
Victor Sharpe, Community Development Director  
Michael Gibson, Parks, Recreation, and Maintenance Director  
Jacques Howard, Economic Development Director  
Tracey Broyles, Budget and Evaluation Director  
Rebecca Rogers-Carter, Strategic Data Analytics Director  
Dwayne Campbell, Chief Information Officer  
Julie Breman, Consultant, Fountainworks, Inc.  
Pamela Megill, City Clerk  
Members of the Press

#### **1.0 CALL TO ORDER**

Mayor Robertson called the meeting to order.

#### **2.0 INVOCATION**

The invocation was offered by Council Member McDougald.

#### **3.0 PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance to the American Flag was led by Mayor Robertson and City Council.

#### **4.0 APPROVAL OF AGENDA**

**MOTION:** Council Member Arp moved to approve the agenda.

**SECOND:** Council Member McDougald

**VOTE:** UNANIMOUS (7-0)

#### **5.0 ITEMS OF BUSINESS**

##### **5.1 Recommendation to the State Delegation regarding Charter amendment**

**MOTION:** Council Member Jensen moved to move this item after Item 5.2; allowing time for two Council members to arrive that were running late.

**SECOND:** Council Member Hurst

**VOTE:** UNANIMOUS (7-0)

##### **5.2 Review and confirm City Council's Strategic Plan Priorities and TFA for FY 2016**

Ms. Julie Breman, Consultant, Fountainworks, Inc., presented this item and stated the Strategic Planning Process consists of four key phases: staff and citizen input, strategic planning retreat, plan development and review, and implementation. Phase I consisted of the Citizen Café Conversations, Citizen Satisfaction Survey, Employee Survey, and Senior Management Team Retreat and Budget Update. The PRIDE program enables the City of

Fayetteville to be an engaged leader in the community for innovation, effective change management, and continuous improvement strategies through evidence based decisions, accountability, and transparency. The Data Analytics Team provides support and guidance, recommends standards and best practices, and performance measure audits. Ms. Breman provided an overview of the Strategic Plan Framework, City's Vision, City's Mission, Core Values, City's Goals, and the top City Council policy priorities.

Council reviewed and confirmed the six top priorities and discussed potential Targets for Action (TFA) for FY 2015-16. The top policy priorities include Crime and Economic Development (tie for first place priority), Parks and Recreation, Customer Service, Homeless Solution, and Comprehensive Land Use.

Discussion ensued.

Consensus of Council was to direct staff to incorporate the top policy priorities and draft Targets for Action when drafting the FY 2015-16 budget.

### **5.1 Recommendation to the State Delegation regarding Charter amendment**

Mr. Theodore Voorhees, City Manager, presented this item and stated on March 17, 2015, via e-mail, he had sent the proposed rewrite of Chapter VI of the City of Fayetteville Charter (that the Council had reached consensus decisions contained in the document) to Representative John Szoka with courtesy copies to the State Legislative Delegation members. Mr. Voorhees stated he had included the Phase V provision as "uncodified" as agreed to by Council. Mr. Voorhees asked if Council wished to make any last minute changes or adjustments to that document, and if so, those changes can be sent to Representative Szoka as an amendment.

Discussion ensued.

**MOTION: Council Member Mohn moved to excuse Council Members McDougald and Arp from the remainder of the meeting.**

**SECOND: Mayor Pro Tem Davy**

**VOTE: UNANIMOUS (9-0)**

The following is the proposed local bill language dated March 17, 2015:

#### **Uncodified Local Bill Text**

**Existing Law:** This local bill was drafted with the specific intent of being consistent with existing state law. Any authorities, duties, or obligations included therein are intended to be supplemental to those provided under state law.

**Contracts, Title to Property:** The Commission authorized by this bill is not now, nor has it ever been authorized to execute contracts or hold title to property in its own name. All contracts, agreements, obligations, or title to property of any kind erroneously entered into under or held in the name of the Public Works Commission or derivations thereof shall be deemed to be in the name of the City of Fayetteville and all rights and obligations therein contained shall accrue to the City of Fayetteville.

**Terms of Existing Commissioners:** The City Council shall move immediately to fill the new Commission position authorized hereby in accordance with existing policies and procedures related to appointments by the City Council. Existing Commissioners with remaining terms less than the maximum term established by this bill shall serve out their remaining term. The terms of those with remaining terms longer than the new maximum will be reduced to the new maximum term established by this bill. The City Council may use any reasonable process to establish the staggering of appointments contemplated by this bill. The completion of any full terms on the commission as previously defined shall be counted to determine if an individual is eligible for reappointment.

**Phase V Funding:** The Commission may request a transfer from the City's general fund to the water and wastewater services fund to support the cost of extending water and wastewater service to unserved areas of the City existing at the time of this bill's adoption. The amount of that transfer must be established no later than February 1st of each fiscal year for the following fiscal year provided that;

A) The amount of the transfer shall be as agreed by the City Council and is initially established at three (3) million annually; and,

B) The total amount transferred under this provision from the date of this bill's adoption shall not exceed a total of \$79 million.

If the Commission exercises its option to request a transfer from the City's general fund and the Council agrees with that request, then the Council may establish a supplemental transfer of revenues generated by water and wastewater operations to the City's general fund annually provided that the amount of the supplemental transfer will be specified no later than February 15th for the following fiscal year based on historic financial information and that the amount established by the Council shall not exceed the greater of (i) four point five percent (4.5%) of Net Position for water and wastewater operations as reported in the City's most recent audited Comprehensive Annual Financial Report, or (ii) eight percent (8%) of operating revenues from water and wastewater operations as reported in the City's most recent audited Comprehensive Annual Financial Report.

## **6. Public Works Commission**

### **6.1. Definitions**

When used in this chapter, the following terms shall have the meanings set forth in this section:

6.1.1. "City" shall mean the City of Fayetteville, a municipal corporation existing pursuant to this charter and with the powers and duties prescribed by this charter and by applicable general law.

6.1.2. "Council" shall mean the governing body of the City of Fayetteville as defined by N.C.Gen.Stat. §160A-1(3).

6.1.3. "Commission" shall mean the Public Works Commission of the City of Fayetteville as created pursuant to this charter and operating with the powers and duties prescribed herein. The Commission is a commission of the City of Fayetteville as referenced in the Local Government Budget and Fiscal Control Act at NCGS § 159-7(b)(15) and is only authorized to act in the name of, on behalf of, and for the benefit of the City.

6.1.4. "Utility Operations" shall mean the installation, construction, maintenance, and operation of facilities necessary to provide water, wastewater, electric, and other utility services to retail and wholesale customers as authorized and defined by the Council, as permitted by N.C.Gen.Stat. §160A-312(a). In the discretion of the Council "Utility Operations" may also include any of the additional public enterprises enumerated in N.C.Gen.Stat. §160A-311 that may from time to time be acquired, developed, owned or operated by the City. The term shall include such incidental functions and activities as may be necessary for the provision of said services, provided that it shall not include any function or activity that is a Support Service as hereafter defined.

6.1.5. "Support Service" shall mean administrative services provided on a centralized basis across multiple operations, departments, agencies, boards and commissions of the City, or for which consistent service across multiple operations is beneficial to the City. The determination as to whether any service or operational function is a "Support Service" shall be made by the Council.

6.1.6. "Net Position" shall mean, as currently described in the Governmental Accounting Standard Board's (GASB) Statement 63; assets, plus deferred outflows of resources, less liabilities, less deferred inflows of resources. If there is a change in the definition or terminology of Net Position enacted by future pronouncements from an applicable accounting standards setting body, then Net Position shall maintain to be as defined by GASB on the date this charter was adopted.

### **6.2. Commission: Composition, Terms, Appointment**

The Council is authorized to appoint a Commission to be known as the "Public Works Commission" with the delegated duties and responsibilities as defined herein and composed of five (5) commissioners. Each commissioner shall have a term of three (3) years. The terms will be staggered such that no more than two (2) positions will expire in any calendar year. No

individual shall serve more than two (2) full terms. Appointments shall be made consistent with Council established procedures. Any commissioner holding over after expiration of his term shall continue to serve until his successor is appointed and has taken office.

### **6.3. Commissioner: Qualifications, Compensation, Officers**

6.3.1. The members of said Commission shall be residents of the City of Fayetteville, and shall be active and thoughtful members of the Fayetteville community who, in the opinion of the Council, can and will perform their official duties in the best interest of said City and its inhabitants.

6.3.2. The members of said Commission shall receive a salary as set by the Council on an annual basis.

6.3.3. The Commission shall annually elect as officers a Chairman and Vice-Chairman, each of whom shall be a different person. No person shall serve more than two consecutive years as an officer of the Commission. The duties of each officer shall be such as is prescribed by said Commission from time to time, not otherwise inconsistent with the provisions of this charter or generally applicable law.

### **6.4. Commission: Duties**

The Commission shall have the following duties:

6.4.1. To appoint, supervise, and remove or replace an operations manager charged with the management of Utility Operations and the performance of such other duties assigned by the Commission as may be necessary to assist the Commission in the performance of its duties hereunder;

6.4.2. To establish all rates, and fees for service to customers of Utility Operations, provided that such rates and fees shall at all times be sufficient, when combined with available and committed grants, loans, borrowings, and intergovernmental transfers to fully fund the Commission's responsibilities as set out herein and under generally applicable state law;

6.4.3. To collect all revenues attributable to rates and fees levied or assessed for utility services;

6.4.4. To apply for and to receive grants or awards available to the City for the purpose of financially supporting Utility Operations;

6.4.5. To recommend an annual budget and capital improvement program for Utility Operations to the Council at a time and in a format establish by the Council and consistent with generally applicable state law;

6.4.6. To establish operational and employment policies and procedures for Utility Operations not inconsistent with organizational policy and procedures established by the Council by ordinance or resolution;

6.4.7. To ensure Utility Operations comply in all respects with federal, state, and local laws, rules and regulations applicable to such activities;

6.4.8. To coordinate Utility Operations with other functions and activities of the City as may be necessary in connection with any Support Services provided by the City to the Commission or by the Commission to other City operations;

6.4.9. To implement economic development incentive programs established by the Council and to satisfy all terms of development agreements or similar commitments relating to Utility Operations made by the Council;

6.4.10. To manage any Support Service assigned by the Council to the Commission for the benefit of identified City operations in conformance with policies, procedures, and service standards established by the City Manager and the Council with respect to such Support Service.

### **6.5. Commissioner: Removal**

A Commissioner may be removed immediately upon an affirmative two thirds vote of the Council finding that said Commissioner is ineligible to serve due to:

6.5.1. Failure to maintain residency in the City;

6.5.2. Commission of a crime involving moral turpitude;

6.5.3. Dereliction of duty, which shall be defined as;

6.5.3.1. Failure to attend meetings consistent with standards established by the Council and generally applicable to the City's boards and commissions; or,

6.5.3.2. Failure to cure a violation of or repeated violation of this charter, Fayetteville City Code, or Council policy established by resolution thereof related to service on the Commission.

#### **6.6. Utility Operations: Scope of Service**

6.6.1. The Commission shall be charged with the provision of Utility Operations throughout the corporate limits of the City of Fayetteville, as they may be extended or expanded from time to time, consistent with the minimum standards established for each Utility Operation by the Council, and by generally applicable law. Nothing herein will require the Commission to overbuild or duplicate utility services already available in conformance with minimum standards or to take any action prevented by generally applicable law.

6.6.2. The Commission is authorized and empowered to provide Utility Operations and any other public enterprise outside the corporate limits of the City as may be allowed under NCGS § 160A-312 et seq. and as authorized by the Council.

#### **6.7. Budget Approval Process**

6.7.1. The Commission shall annually submit on a schedule specified by the Council recommended budget ordinance language relating to Utility Operations in a form and level of detail defined by the Council for inclusion in the City budget ordinance. This submission shall be accompanied by supporting budget plan documents in a form approved by Council, and the Commission and staff under its management will be made available to respond to any questions related thereto.

6.7.2. The Council shall have the option of approving the Commission's recommended budget ordinance language without change by simple majority or to direct the Commission to consider specific revisions thereto. If the requested revisions are accepted by the Commission, then the Council may approve the revised budget ordinance language by simple majority. If, however, the Commission disapproves of the changes requested by Council by unanimous vote, then adoption of a budget ordinance including those revisions may only be approved by a two-thirds majority vote of Council.

6.7.3. Once adopted, and upon entering into the fiscal year, the Council may not amend the portion of the annual budget ordinance relating to Utility Operations during its effective fiscal year except upon the request of the Commission, said approval requiring a simple majority, or without a request of the Commission upon a two-thirds vote of Council.

#### **6.8. Contracts; Ownership of Assets**

The Commission may authorize the execution of contracts for goods and services consistent with City financial policies generally applicable to City operations and generally applicable state law. The Commission may acquire interests in real property in the City's name as authorized in the annual budget and consistent with City financial policies and state law. All contracts shall be executed in the name of the City of Fayetteville, and the Commission shall have no other power to contract than as provided in this chapter. All contracts entered into by the Commission shall be approved as to form by the City attorney or designee. The title to all property managed by the Commission, real or personal, shall be held in the name of the City of Fayetteville. The Commission is not authorized to sell, transfer, trade, vacate, or otherwise dispose of the assets of the City without the express authorization of the Council.

#### **6.9. Financial Reporting and Management**

6.9.1. The Commission shall provide the Council a financial report relating to all Utility Operations, in a form and scope specified by the Council after consultation with the Commission, on a quarterly basis and on such other non-periodic basis as may be reasonably requested by the Council from time to time. The Commission will ensure that all financial records are maintained in accordance with provisions of generally applicable state law and that financial information relating to Utility Operations is consistently and expeditiously made available to the City to ensure the City's compliance with all applicable regulatory requirements including the completion all required financial reports and audit activities including the annual

audit to be completed under the direction of the Council and for any other purpose upon reasonable notice.

6.9.2. The Commission shall collect and receive all rates, fees, charges, and other revenues attributable to Utility Operations and shall remit all such funds collected available for investment pursuant to N.C. Gen. Stat. §159-30 to the City's finance officer upon receipt for management and investment together with the similar cash balances of the City. Such cash balances may be commingled with the City's funds for purposes of investment, but shall not otherwise lose their character as enterprise funds for the benefit of Utility Operations and shall at all times be accounted for in the manner specified by N.C. Gen. Stat. 159-26.

#### **6.10.Reserves for Utility Operations; General Fund Transfers**

6.10.1. The Commission shall establish rates necessary to maintain operating reserves, apart from any project reserves or funds held in trust, to support Utility Operations equal to a minimum of 90 days budgeted operating expenses, with a target of 120 days budgeted operating expenses, which target shall not be exceeded by more than 10%. Reserves shall be managed and invested as provided by Section 6.9 above subject to the requirement that funds shall be held in a form allowing them to be drawn for emergent operational needs.

6.10.2. The Council may establish a transfer of revenues generated by Utility Operations excluding water and wastewater operations to the City's general fund annually provided that the amount of the transfer will be specified no later than February 1<sup>st</sup> for the following fiscal year based on historic financial information and that the amount established by the Council shall not exceed the greater of (i) four point five percent (4.5%) of Net Position from Utility Operations reported in the City's most recent audited Comprehensive Annual Financial Report, exclusive of water and wastewater operations or (ii) eight percent (8%) of operating revenues from Utility Operations reported in the City's most recent audited Comprehensive Annual Financial Report, exclusive of water and wastewater operations.

#### **6.11.Retirement System**

All employees of the City shall participate in the North Carolina Retirement System administered by the Department of State Treasurer and authorized by state law provided, however, that any retirement system heretofore created for the employees of the City managed by the Fayetteville Public Works Commission and in existence on the date of the ratification of this act shall continue in existence and remain in full force and effect after the date of the ratification of this act until all participants have left that system.

**MOTION: Council Member Crisp moved to ratify the proposed rewrite of Chapter VI of the City of Fayetteville Charter that was sent by Mr. Voorhees to Representative John Szoka on Tuesday, March 17, 2015.**

**SECOND: Council Member Colvin**

**VOTE: PASSED by a vote of 6 in favor to 1 in opposition (Council Member Mohn)**

#### **6.0 ADJOURNMENT**

There being no further business, the meeting adjourned at 6:52 p.m.