

**Special City Council
Meeting Minutes
June 30, 2004**

A meeting of the Fayetteville City Council was held on June 30, 2004 at 5:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Alderman Reynolds, Thiel, Cook, Marr, Rhoads, Davis, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Mayor Coody called the meeting to order.

NEW BUSINESS:

A discussion of the Fayetteville Housing Authority Board

Mayor Coody: I have only done this once in the last four years. We wanted to call a Special City Council meeting so we could go into an Executive Session to discuss an issue that we have. Since we haven't done this in three years now you are going to have to hold me by the hand and go through the process because it has been so long. Do we just adjourn to the next room to go into an Executive Session?

City Attorney Kit Williams: Let me read you what the statutes say Mr. Mayor. It says *"Executive Sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, discipline or resignation of any public officer or employee. The specific purpose of the Executive Session shall be announced in public before going into Executive Session."* As I stated in my memo to you of June 14th I believe the Public Housing Commissioners are public officials covered by this particular act and therefore it would be appropriate if you so desire to go into Executive Session to discuss disciplining a public official. However I think to do that there would need to be a motion and a second and a vote to actually go into Executive Session with a clear purpose expressed in that motion. Then all of you would retire into Executive Session, I would not go there the City Clerk would not go there. No firm decision obviously would be made there, you can just discuss this and then you would need to reconvene back out here, any motions would be appropriate at that point in time.

Mayor Coody: I would entertain a motion for someone to if so interested to move for an Executive Session and express the purpose thereof.

Alderman Reynolds: So move.

Mayor Coody: And the expressed purpose would be to discuss disciplinary actions of one of our public officers?

Kit Williams: You would probably want to say of the Fayetteville Housing Authority.

Mayor Coody: Of the Fayetteville Housing Authority.

Alderman Reynolds: The remaining members of the Housing Authority.

Mayor Coody: We have a motion is there a second?

Alderman Thiel: Second.

Mayor Coody: We have a motion and a second to adjourn into Executive Session to discuss the Fayetteville Housing Authority situation.

Alderman Rhoads: Is that discussable?

Mayor Coody: Yes, that would be discussable wouldn't it?

Alderman Marr: I just have a question, the public officials, I guess is what we call them that would be discussed, are they allowed to present their case in Executive Session to the Council?

Kit Williams: They can when requested by the Council. They are one of the few people that can go back into Session with you. I cannot and other people cannot but the person that you are discussing can go as well. They talked about immediate supervisors and stuff which is not really the case in this circumstance, but they could go back there. I really think it is the right of the Council to determine if they wish them to be back there.

Alderman Marr: Do we have anywhere or can we get a copy of, if we go into Session, the memo that you gave us a while back about what the criteria is for evaluating.

Kit Williams: I have a copy of it, if you want me to make more copies I can or else I can just give you my original.

Mayor Coody: We can just look at the original and take it back in there with us if that is alright. Any other questions?

Alderman Davis: Do we allow for public comment before we go into Executive Session to discuss the Fayetteville Housing Authority or not?

Mayor Coody: I guess that will be for us to determine if we want public comment on the item or not.

Kit Williams: Normally I think most things that come before you before you vote you usually do. It is really pretty much up to you it's not required that any city allow public comment, we normally do.

Alderman Rhoads: Swifty your motion was to do what now? Was to consider....

Alderman Reynolds: The members on the Housing Authority.

Alderman Rhoads: The three remaining and to consider their performance?

Alderman Reynolds: Yes.

Alderman Rhoads: I presume in considering their performance whether we believe that their performance merits them to be off or continue performing the role of commissioners. Am I capturing the essence of the motion?

Alderman Reynolds: Yes

Alderman Rhoads: The remaining members are not here and I am not sure if I am comfortable with even having a conversation without them being, I mean I guess you can have conversation in Executive Session without them and then you can ask them to come to your Executive Session, which if they are not here, I don't know how that's going to happen and then have another special meeting to do that. When I first heard of this desire to have an Executive Session and discuss this issue, one of the things that I mentioned was that I thought we should have them present, notified about this. Notified what we intended on doing so they could come in and chat with us and tell us why we're right or why we're wrong in whatever thinking and whatever thoughts that we have about the subject of their performance. Without them here I am not in favor of even going into an Executive Session just to preliminarily discuss it.

Alderman Marr: Where they notified, where the Housing Authority notified of this meeting?

Sondra Smith: The Final Agenda for this meeting was published in the Northwest Arkansas Times.

Kit Williams: I have spoken with the attorney for one of the commissioners and they're will aware of this particular meeting. I should note that at the Executive Session and if you come back into session later you will not be allowed of course at that point in time to remove anyone. If you look at the statue which I enclosed with my memo and which you will take out with you, removal can only occur after the commissioner has been given a copy of the charges at least ten days prior to the hearing on the charges and the commissioner has had an opportunity to be heard in person. The only thing that this council could do at this point in time, the most extreme action you could take would be to basically instruct me to draw up certain charges that would then be presented to this commissioner; she would then have a right to a hearing before this City Council before any official action could be taken. You would have to be informed of the various facts publicly about why she might be removed for cause.

Mayor Coody: Does that answer your question? Are there any other questions?

Alderman Thiel: So basically we would have to have this meeting this discussion, either we could do it right publicly or we could go into the Executive Session which I think would be preferable since we are talking about a person, an individual, or individuals but we would have to

do this anyway right, is that what you are saying? We would have to have this discussion before we could so we won't be making....

Kit Williams: The City Council needs to give me direction if the City Council desires that you present charges to the commissioner about why this commissioner should be removed from office. I won't do that on my own, I'll do that only if the City Council instructs me to. You don't have to go into Executive Session for that, you could vote it right now if you wanted to without any further discussion.

Alderman Thiel: What are we going to be voting on?

Kit Williams: Your vote would be in relation to Arkansas Code annotated 14-169-210 which is called removal of commissioners and you would say pursuant to that statute you wish that I present charges based upon one of the three criteria or two of the three criteria in order to remove this commissioner and then she would have to get formal notice of that. At a later date then there could be something kind of like a trial in front of the City Council where the evidence would be presented to substantiate the charges if there was sufficient evidence and then it would be up to you to decide by vote whether or not to remove this commissioner.

Mayor Coody: Wow.

Kit Williams: It's a somewhat painful process.

Mayor Coody: So this is different than the memo that was, I mean more detail I guess than the memo that came out a little while back about meeting in Executive Session for the purpose of discussing employment.

Kit Williams: The Executive Session I understand today is simply to discuss what you want to do. Do you want to go forward or not.

Mayor Coody: Alright we have a motion and a second to meet, yes sir.

Alderman Rhoads: I am trying to refresh my memory, I know when we talked about this in open council meeting before we discussed that, to some degree we had sort of the same range of things that we could do that the City Attorney described for us. I think were we finally ended up was to look at the Fayetteville Housing Board a little closer by us attending meetings. I have attended two meetings, I attended the one I think it was Monday, again with the idea of trying to determine whether it's a functional or dysfunctional group. We also I think at least this was discussed when we voted on it to wait to see if the criminal charges panned out. Now we see that one person has plea and we have seen people resign from the board. We will see people I presume brought in to interview, because as a matter of fact I know of someone that is going to interview for a position on the board. I'm wondering if we are going about this in maybe somewhat the wrong order. Before I vote to do something that some folks are facing criminal charges for doing, I would really like to make sure it's absolutely necessary and I don't know if I think it is absolutely necessary at this point. I would love to hear my fellow aldermen tell me why I am wrong or right or what ever.

Alderman Thiel: I would just like to point out one thing you mentioned that the commissioners are in the process of getting applications to replace the two that have left and there are currently three remaining commissioners, one of those has still got the pending trial. Those three as long as there is a quorum will be appointing the replacements.

Mayor Coody: We will have to ratify them.

Alderman Thiel: We would ratify them but that's what it is ratification, we do not appoint them, whereas with them not having a quorum then the Council would be in the position of replacing the members. I think this is kind of a pivotal point because of them making the decision. The existing commissioners one of who might, if they are sentenced with the charges they have gotten through the judicial system; I think there is an issue there with that that concerns me. I would rather see the Council appointing the replacements at this point in time because I have attended these meetings for several years off and on. Even though there have been some replacements all the way through this process it has not been, they are not functioning like they should be, they never have. I would like to see maybe the City Council get in and make these appointments, not that we are any smarter or better than they are but obviously there have been some poor choices. There have been some improvements but they have actually gone back in some ways too. We really, to me it is quite embarrassing, other cities do have very, very good public housing commissions, very effective and even though we are doing a lot, you know they have a voucher program, but it's been stagnant for so many years.

Alderman Rhoads: Is our desire to look at the remaining members on the board or to just look at one unparticular and determine whether that person is not meeting up to the standards that Mr. Williams puts in his memo.

Alderman Thiel: Well I think the way the motion was said that we were going to discuss the remaining the members.

Alderman Rhoads: Members.

Alderman Thiel: I will leave it based on the motion that was made.

Mayor Coody: I know we are talking about personalities here and with personalities using personalities none of us, I am speaking for myself here, I don't feel comfortable talking about people who are trying to do something for the community in public and pointing out their flaws and weaknesses. I would rather do this in Executive Session where everybody could feel comfortable to say what they think and we could all come to a conclusion about whether we want to move forward and have Kit do his work or we can leave things as they are. I think that for a fair airing of our concerns, I think that an Executive Session is probably called for.

Alderman Davis: I am glad to hear what Robert just said because from the previous discussion it appeared that we were only going to look at one individual from the way the discussion had been lead. As Brenda said they've been dysfunctional for some time and haven't carried out their responsibilities the way they should have to be the best board they could be. I agree that we

shouldn't look at just one we need to look at all of the members and reevaluate if we are going to go into Executive Session.

Alderman Thiel: That is the motion.

Alderman Reynolds: That's the motion.

Alderman Davis: Okay, but the discussion has been....

Mayor Coody: The motion is to discuss all.

Alderman Marr: I guess to your point of whether it's the right timing, we got the memo April 30th, we had our first discussion about this board our first meeting in May, we've had almost 60 days or close to it for people to go and access it. Personally I was the one descending vote I think last time about whether we took a more lenient action. The reason was at the time because I thought the item that was hit was more misconduct related, which we have three areas, inefficiency, neglect or misconduct and I thought of it as misconduct. Since that time and in observing and hearing what's happening I am more concerned about inefficiency of all of the remaining members. So understanding that the process is around we are going to have to have a hearing, we can't just remove them based on what the City Attorney has said. At some point we need to indicate whatever process that we are going to use if we still continue to believe that it is inefficient and I think that's where I'm at. I would like to have that discussion and determine whether the things I think are inefficient are things that the rest of you think or vice versa.

Alderman Rhoads: I understand and definitively believe that inefficiency is the area that we should hone in on. I also know how serious it is to ask our City Attorney to lay these charges at someone's feet. If it's permissible to have them come in and talk to us the first time we go into Executive Session before we, that's what I said Brenda before, we might not make a decision to bring charges against somebody if we had a chance to talk to them and hear their side of the story or hear what they have to say about efficiency versus inefficiency. Therefore saving that person the pain and trouble of having charges of inefficiency and a desire of this Council to have them removed brought against them. I 'm just trying to, unless I see that Council as not functioning at all and things going array then I'm not real keen on rushing to an Executive Session. That's what I specifically asked and if anyone desires who I've asked I would be glad to tell you who I've asked, but I asked before this meeting that those people be present so they could be notified and be present right here in this forum be able to say, yes I would like to be with you the first time you talk about me and my potential inefficiencies. That's my point.

Mayor Coody: I know that you spoke with me about this and of course I know that one of the subjects has been apprised of this situation through their attorney that we are meeting today about this very subject. Another one is in New Jersey right now and the third I don't know about. I still think that we need to have the Executive Session so that we can discuss some of the issues that are going on; even Little Rock knows that we are having this meeting and would like to know the outcome of it.

Alderman Cook: My comment Robert would be that we are only going in Session to discuss. We may come out and vote not to do anything. To me if we do that then the follow up would be to bring those commissioners forward and talk to them at that time because we may not feel like the charges are serious enough to levy against them but we do feel strongly enough about the Housing Authority Board that we want to see some change there. We may decide in our discussions that we want to just move on as it is, replace the members that are on there and move forward from there. I don't see the problem with us going in there and discussing it because we may come to a decision that it may not be that we levy charges against them.

Alderman Davis: If we decide to go into this Executive Session and we decide to bring charges up against the three individuals that remain, when we come out of Executive Session what do we have to state at that point in time before the public?

Kit Williams: You would certainly need to have a motion and a second and vote on it, but I would also like some explanations about why you believe it is appropriate to bring these particular charges against any of the three remaining members that you might be considering. You don't have to lay out everything but obviously there are three different factors to look at and they are not applicable to all this individuals either. Two of those individuals were not there when they improperly went into Executive Session and so certainly misconduct could not be alleged against them only inefficiency. Another one of the members is almost brand new and it would be very difficult I think to establish reasonable grounds. You might know better than I because you have been going to their meetings but with a brand new member, I don't know if there is any kind of a track record to establish anything at this point in time. I would like some explanation. As Alderman Cook said you can come back and say that you decided not to take any action at this time, you want to look at something else. You are not committed to take any action just by going back in there and discussing this.

Alderman Rhoads: May I follow up with that point please Bob. Suppose we go in and decide that we don't want to levy any charges do we then have to come out and vote on that?

Kit Williams: No, you do have to come back out and reconvene but there is no motion that has to be done.

Alderman Rhoads: But we can't vote on anything in Executive Session on this issue?

Kit Williams: No you do not vote in Executive Session, so any motions would need to be made publicly.

Alderman Rhoads: Sounds very productive. Okay thank you.

Mayor Coody: Anyone from the public want to public want to address us on this, yes madam.

Ann Vaughn, Vice President of the Tenants Council at Hillcrest Towers: I know you don't name names and I am not going to either but the one that is left that was in that illegal meeting, I was there for that meeting and I heard exactly who said what to Mr. Couch and what he replied. That's just an example of her conduct for a year every since she was on the board. The reason

they had to hire a facilitator or mediator was because of the contentiousness that was caused by her. The new commissioner she is in law school, doing summer school and she has already missed several meetings and she may even resign. Janet Richardson, I like her, I don't have anything against her. We need a Housing Board that can really do come work, there is so much that needs to be done and it can be done.

Mayor Coody: We have a motion and a second to go into Executive Session. Shall the motion pass?

Upon roll call the motion to go into Executive Session passed 6-2. Alderman Thiel, Cook, Marr, Lucas, Jordan and Reynolds voting yes. Alderman Rhoads and Davis voting no.

The Council went into Executive Session.

The Council returned from Executive Session.

Alderman Marr moved to make no appointments to the Housing Authority Board until the City Council could hold a Special City Council meeting and go into Executive Session with the members of the Housing Authority Board present. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

When the Special City Council meeting date is scheduled the City Council requested that the City Clerk send certified letters to the commissioners of the Housing Authority Board requesting them to attend the meeting.

Meeting Adjourned at 6:15 pm

Sondra Smith
City Clerk

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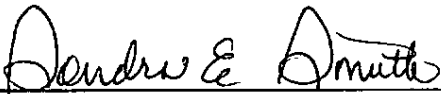
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