

The special meeting of the Lake Wales City Commission was held on January 27, 2011 at 7:30 p.m. in the Commission Chambers at the Municipal Administration Building. The meeting was called to order by Mayor L. Jack Van Sickle.

PLEDGE OF ALLEGIANCE

COMMISSIONERS PRESENT: Terrye Y. Howell; Jonathan Thornhill; John Paul Rogers; Michael S. Carter; Mayor L. Jack Van Sickle.

COMMISSIONERS ABSENT: None.

CITY REPRESENTATIVES PRESENT: Judith H. Delmar, City Manager; Albert C. Galloway, Jr., City Attorney; Clara VanBlargan, City Clerk; Jacquie Hawkins, Deputy City Clerk.

Agenda Item 1. Roll Call

Agenda Item 2. Consideration of Agreement with PAL regarding Burney Hayes

The full staff memo is incorporated into the minutes.

[Begin agenda memo, prepared by Judith H. Delmar, City Manager]

RECOMMENDATION

It is recommended that the City Commission approve the agreement with PAL.

BACKGROUND

Friday, January 28, is the date scheduled for the hearing to reconsider the termination of Burney Hayes that occurred on September 22, 2010.

The City is interested in a pre-hearing resolution of the matter in order to avoid further legal fees and other complications for both the City and Burney.

The matter of Burney's termination has created a divide in this community unlike anything I've witnessed in my 25 years with the City. Without going into detail about the strongly felt and loudly expressed concerns on each side of the issue, all of us need to understand that no matter what the decision turns out to be after the hearing, half of the city will be outraged by the outcome. Unity in this community will suffer a setback that may not be overcome for several years.

If this matter goes to hearing, by necessity, we will be faced with a "win/lose" outcome. I believe we have identified a compromise solution that will put both the City and Burney in a "win/win" position.

The City has made and Burney has accepted the following offer:

1. Burney Hayes will resign effective the date of his termination, September 22, 2010. The Chief will withdraw the termination. Burney will receive payout of \$12,777.33 for his accrued sick leave, vacation, and comp time in accordance with City policy. Burney Hayes will execute a full and complete release of the City, its elected officials, employees and agents, waiving any and all rights he has or may have through the date of the settlement.
2. The City will enter into an agreement with the Lake Wales Police Athletic League, Inc. (PAL) that will begin on February 1, 2011 and terminate on January 31, 2016 wherein PAL will establish and manage a recreation program with a primary focus on serving the youth of the community. PAL

will create a recreation manager position to implement the program, and the City will contribute funding for five years as follows:

- \$55,000 in Years 1 and 2
- \$36,000 in Years 3 and 4
- \$18,200 in Year 5

The details of this agreement have been approved by PAL, a non-profit organization that provides recreation programs for the community's young people. PAL is not sponsored by or run by the City or its police department. It is a totally independent organization with its own board of directors, and Linda Kimbrough currently serves as president.

FISCAL IMPACT

In the current fiscal year, \$88,410 has been budgeted to cover the cost of salary and benefits (FICA, workers' comp, pension, insurance) for Burney Hayes. Additional monies have been budgeted to cover the cost of uniforms, fuel, and other operating items to support his position. This position has remained vacant since October 1, 2010 and none of these budgeted dollars have been spent.

The contract with PAL, if approved, will go into effect on February 1, 2011. This will require sufficient dollars to fund 8 months of the contract in FY10'11, or \$36,666.64. This entire cost is covered by the original salary and benefit costs budgeted for Burney.

Subtracting the cost for the 8 months remaining in this fiscal year from the \$88,410 we have budgeted, leaves \$51,743.36 to be set aside for funding the agreement in FY11'12. This leaves a balance of \$3,256.64 to be funded.

Using the monies budgeted for Burney's salary and benefits to fund the PAL agreement in FY10'11 and FY11'12 requires that this position remain vacant through 9/30/2011; however, that position can be filled again on or after October 1, 2011. The difference between salary and benefits over the next four years for Burney Hayes (\$88,410) and a starting officer (\$53,230) is a payroll savings of \$35,180 per year. This savings will fund the remaining cost of the agreement with PAL.

At the same time, we do not give up a police position except for the remainder of this fiscal year.

Thus, the agreement with PAL represents no additional cost to the City because the entire agreement would be funded by the savings in this year's budget and reduced payroll costs for the next four years.

It might be argued that in the event we go to a hearing and Burney Hayes is not reinstated, this savings would free up dollars to be used elsewhere in the city budget. On the other hand, if Burney Hayes is reinstated, this is \$229,130 that will be spent on his salary and benefits over the next five years. Compared to the latter outcome, this agreement represents a \$29,000 savings for the City

OTHER OPTIONS

The Commission may choose not to approve the agreement with PAL. This will result in taking our settlement offer off the table and returning us to the position of having to hold a full-blown hearing on the matter

[End agenda memo]

Ms. Delmar reviewed Agenda Item 2.

OPENED TO PUBLIC COMMENTS

Ed Bowlin, Circle Drive, said the agreement was a form of extortion and disagreed with it for the following reasons:

- As a terminated employee, Burney Hayes should not get special treatment, but be treated like any other employee who was terminated.
- The claim of racial discrimination is invalid as both black and white police officers have been fired by the Police Chief in the past and no one else was given this special treatment.
- Racial equality will never happen in Lake Wales if its government gives in to false claims of racial discrimination, showing favoritism to certain individuals.
- There will be community outrage when they learn that taxpayer dollars are going to be spent on a fired employee. It may lead to calls to the State Attorney's Office for an investigation and possibly law suits.
- A terminated employee should not be rewarded with eight months pay, having another job created for him, or with having the city subsidizing him for years.

Mike Dailey, 425 East Sessoms Avenue, was against the agreement. He said the officer was fired and he should not come back. If the officer was indeed discriminated against then the Police Chief and those under him should be fired but he did not think the City should sponsor a fired police officer.

Howard Kay, 1550 Country Oaks Blvd., said this would not be an issue if the officer had been white. He did not believe that this was a racial issue but two sides who disagreed. He was in favor of the proposal and said it was a win/win situation for both the City and Mr. Hayes.

Ruth Dampier, 1154 South Lake Shore Blvd., wondered why this was an issue at all or why it went on this long. An employee was fired for not doing his job, just like any other employee who did not do his job so she did not want her tax dollars going to reward someone who had not done his job. She asked why the special meeting had not been advertised in the newspaper. Ms. Delmar said the details had just been worked out and they could not get the notice out any sooner.

Police Chief Herb Gillis said he was in favor of this agreement for the following reasons:

- The issue has been a distraction in the Police Department.
- Approximately twelve members of his department were scheduled to appear at Mr. Hayes' hearing, adding more stress to an already stressed department with police officers who are already working long hours.
- This issue is and has been a distraction in the community and needs to be resolved so the community can move forward.
- One of the main objectives of the City has been to work together with the Community to improve the quality of life for all its citizens, an objective that he believed could **not** be accomplished by either the City or the Community alone.
- He supported the settlement and said that as a win/win situation, he believed it was what was best for both the City and Mr. Hayes.

CLOSED TO PUBLIC COMMENTS

Commissioner Rogers said he had not heard evidence for or against Mr. Hayes' termination so he did not know if he should have been fired or not, but his innocence or guilt was not what was being brought before the Commission. He said the City Charter states that the hiring and firing of employees was done by the City Manager and Human Resources Director and not the Commission. He said he was against the proposed agreement for the following reasons:

- There would be a cost to the city, that of one less police officer.
- Employees have been fired in the past, none of which have been found a job, so a precedent would be established with future employees expecting the same treatment.
- The taxpayers would be asked to find a job for a fired employee and then would make his payroll.

- He believed doing so would be totally unethical, and could possibly be a violation of the law.
- It would be discrimination against past fired employees as well as future ones because he does not believe the city will do this for anyone else.

Commissioner Rogers said that if Mr. Hayes dropped the suit, he would agree to his severance, accrued sick leave and vacation pay, because that was how other employees would be treated. He asked that the other Commissioners do the right thing and vote against the proposal.

Commissioner Howell said she did not think the issue with Burney Hayes should ever gotten this far. She believed the lawsuit was over the handling of a situation and not about discrimination. She said the Special Commission meeting was not called to decide if Mr. Hayes was discriminated against or even if he should be fired as that was the responsibility of the City Manager. She believes that ideas and attitudes in Lake Wales need to be changed but they were not there to decide that either. The proposal before them was about hiring someone who lives and pays taxes in Lake Wales for a recreation position in the PAL organization. She thought the position was a good fit for Mr. Hayes because his niche is working with children. She thought that he should have been head of the Recreation Department all along. She thought the proposal was a win/win situation and a great compromise for the City, for the children of Lake Wales and for the community.

Commissioner Carter said it is the right solution at this time and he supports it. He said he realized there were divided opinions among the Commissioners, the citizens, and possibly among city staff but asked that the following things be kept in mind:

- The City has an opportunity to completely and finally put the issue behind it, closing this chapter in Lake Wales so it can focus on what lies ahead.
- The solution has no negative impact and is actually about \$30,000 on the positive side.
- The City Manager, the Director of Finance, and Chief of Police supports the solution.

Commissioner Thornhill said it has been a contentious issue since it began but because Florida is a "Right to Work" state there should be no issue. If an employee is terminated, he or she is terminated no matter who they are because the rules apply to everyone. He gave an example of how it works in the insurance business where he is employed. He said that many opinions have been published in the newspapers including that we're discriminating, that we're placating, and that we're accepting fault when none exists and he believes the City is being bullied.

Commissioner Thornhill said this should be a business rather than a personal decision and he was against the proposed amendment for the following reasons:

- He said the city does not have the finances to hire a recreation director though as a parent he would like the city to have one and hopefully one day it will. But, if and when the City hires a Recreation Director it should be done through normal channels and go through the regular budget process. Otherwise, half the community will see it as showing favoritism.
- He said it is a tough decision but it never should have gotten this far in the first place.
- He agreed that it may set a precedent.
- He personally thought that Mr. Hayes received bad advice in not resigning. None of the Commissioners seemed to have an issue with offer #1: "Burney Hayes will resign effective the date of his termination, September 22, 2010. The Chief will withdraw the termination. Burney will receive payout of \$12,777.33 for his accrued sick leave, vacation, and comp time in accordance with City policy. Burney Hayes will execute a full and complete release of the City, its elected officials, employees and agents, waiving any and all rights he has or may have through the date of the settlement." He said he wished they could split it down the middle and vote only on that.

Mayor Van Sickle said he tried to make it a financial decision because Commissioners should not be dealing with personnel issues. He reminded them that since he has been on the Commission, there have been terminated employees who lost all their sick leave, and one who was terminated for criminal

reasons lost her retirement. He said the option for Mr. Hayes to resign versus termination had been open for a period of time and then had been extended over the last few months because Ms. Delmar wanted a solution that would not hurt Mr. Hayes by taking away earned sick leave.

The Mayor said when they went through the budget process several months ago, they cut funding for Kimbrough and Associates, B Street Community Center, and the Depot Museum. Property values are dropping and the projections of another drop of 15.6% are close to reality, meaning that out of the General Funds we'll have \$400,000 less next year. Property values may not go up for the next few years which means we will continue to have less money to work with unless taxes are raised, which they do not want to happen as many people are barely making it now with the downed economy. He said that money is not being put aside to fix roads or for emergency equipment repairs and we are short staffed. If the PAL agreement passes we would not be able to hire another police officer this year, which disturbed him because of increased crime caused by desperate citizens. We are asking the police department to protect us with fewer officers and they are overworked which may result in some other issues. If we did not have the money in the budget three months ago for a Recreation Director, it is not the time to hire one now. He said he would love PAL to hire Burney Hayes as Recreation Director, but the City does not have the money to do it. He agreed that this would create a precedent of finding and funding positions for fired employees. He said he would support a counter offer of \$12,000 for the sick leave etc. if Mr. Hayes resigns but would not support obligating the city for five years when we don't know how we will even get through next year, if the projections are correct.

City Attorney Chuck Galloway commented that until there is a final decision made by the City Manager on this issue, the severance package was still available.

Commissioner Carter made a motion to approve the agreement between the City of Lake Wales and PAL as presented. The motion was seconded by Commissioner Howell.

By Roll Call Vote:

Commissioner Carter	"YES"
Commissioner Howell	"YES"
Commissioner Thornhill	"NO"
Commissioner Rogers	"NO"
Mayor Van Sickle	"NO"

The motion failed 3-2.

For the record City Manager Judith Delmar said that they could not assume that Mr. Hayes would not be reinstated. She has to proceed with the hearing with an open, objective mind as there may be evidence presented by Mr. Hayes and his attorneys that will convince her that he should be reinstated. Just because this proposal was not approved does not mean the issue is over.

There being no further business the meeting was adjourned.


City Clerk


Mayor/Commissioner