

City of West Columbia, SC

Special Council Meeting

July 17, 2014 at Noon

Members Present:

Joe Owens, Mayor
Casey Jordan Hallman, Mayor Pro-Tem
Eric L. Fowler
L. Dale Harley
Boyd Jones
Temus C. "Tem" Miles, Jr.
Tommy G. Parler
B.J. Unthank
Teddy Wingard

Members Absent:

None

Others Present:

Jenny Cunningham, City Administrator
Mardi Valentino, City Clerk/PIO
Members of the Public and Press

Myron Corley, Deputy City Administrator
Brian Carter, Assistant City Administrator

Agenda Item I – Call to Order

Council Chairperson B.J. Unthank called the meeting to order at 12:15 p.m. *The State, Free Times, Lexington County Chronicle, Cayce-West Columbia News, The Columbia Star, COLADaily.com* and radio and television stations were notified of the meeting by e-mail on July 15, 2014.

Agenda Item II – Determination of Quorum

Chairperson B.J. Unthank determined that a quorum of council members was present to conduct business.

Agenda Item III – Invocation

Council Member Harley gave the invocation.

Agenda Item IV – Pledge of Allegiance

All attendees at the meeting recited the Pledge of Allegiance before the flag of the United States of America.

Agenda Item V – Announcements by the Mayor

Chairperson Unthank recognized Mayor Owens who thanked citizens for attending the meeting.

Agenda Item VI – New Business

- A. Chairperson Unthank entertained a motion to consider setting a date for a special election for citizens to vote on a referendum to change the form of government in West Columbia from the Council Form to Mayor-Council Form. Council Member Miles made a motion to set September 30, 2014 as the election date for the referendum to change the form of government in accordance with the language specified by Section 5-5-40 of the SC State Code and also to provide that the effective date of any change in the form of government would be one year after the vote to be rendered effective on September 30, 2015. Council Member Jones seconded.

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Agenda Item VI – New Business (continued)

Chairperson Unthank recognized City Clerk Mardi Valentino who provided a packet of information on the process of the referendum. Ms. Valentino explained the first step is for council to accept the petition signed by citizens requesting a referendum on the form of government for the city. She presented the certified petition to council and said the Lexington County Registration and Election Commission certified the petition did meet the standards of Section 5-5-20 of the SC Code that required 15 percent of the qualified electors in the city to sign the petition. She said council must formally take action to set the date of the special election for the referendum and noted that a motion already was on the floor for that purpose. Ms. Valentino quoted from § 5-5-20, *Petition or ordinance calling for special election to determine form of government after date of official council action*, "... the municipal governing body shall conduct a special election not later than ninety days nor earlier than thirty days after the receipt of the certified petition." She said since council received the petition on July 17, 2014 that all the timetable references would be based upon the date of receipt. She said the range of time to hold the special election would be from August 15 through October 15, 2014, which means the date of Tuesday, September 30 is within the range. She noted that the special election for the referendum is somewhat different from a special election to fill a vacancy on council. Ms. Valentino quoted from § 7-1-20 (2), *Definitions*, "Special election means any other election including any referendum provided by law to be held under the provisions of law applicable to general elections." She said after council officially sets the date the process for the election would be the same as for a special election.

Ms. Valentino referred to § 5-5-40, *Preparation of election ballot; majority of votes cast by qualified electors required to effect change in form of government*, and said the section sets the language and says specifically how the question to change the form of government must be asked on the ballot as statutorily approved by the SC General Assembly. The ballot language follows:

"Shall the municipality of the City of West Columbia change its form of government from Council Form of Government to Mayor – Council Form of Government?"

Yes []

No []

Those in favor of the question shall deposit a ballot with a check or cross mark in the square after the word 'YES', and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word 'NO'."

Ms. Valentino noted that the language for the ballot question has been reviewed by the city attorney to ensure it meets the required language under state law. Ms. Valentino quoted from § 5-5-40, "To effect a change in the form of government a proposed form must receive a majority of the votes cast by the qualified electors of the municipality in the election." She said that majority in a city election would mean plurality.

Ms. Valentino referred to a timetable distributed to council and said she based the dates on a September 30 election. She said Friday, August 15, 2014 is the deadline to submit the referendum question to the Lexington County Registration and Elections Commission for ballot setup. She stated the deadline for voter registration is Saturday, August 30, 2014, which is 30 days prior to the election per § 7-5-150, *Closing registration books; registration of persons coming of age while books closed*.

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The referendum election is Tuesday, September 30 and all polls will be open from 7 a.m. to 7 p.m. On Thursday, October 2, 2014, the Municipal Election Commission would meet at 9 a.m. with the Lexington County Registration and Elections Commission officials to receive preliminary election results. At 7 p.m. on the same day the Municipal Election Commission would review any challenged ballots and certify the results of the election. She said under § 5-15-120, *Vote counting*, and §5-15-130, *Procedures for contesting results of election*, there is a 48-hour deadline after the certification to contest the election results and submit a protest to the Municipal Election Commission. If a protest of election results does occur then a protest hearing would be conducted on Saturday, October 4, 2014 at city hall.

Ms. Valentino reviewed the expense of the referendum election. She quoted § 5-5-50, *Notice, expenses and conduct of elections*, “The municipality shall pay all expenses incurred in the conduct of any election. Elections shall be conducted in accordance with the provisions of general law regulating special elections as they apply to referendums in this State.” She gave an approximate cost of the election, based upon the November 2013 general election with all polls open, as follows:

Approximate cost for Lexington County Registration and Elections Commission to handle election-day process:	\$4,695.00
Approximate cost to publish Notice of Special Election	\$1,445.28
Municipal Election Commission compensation	<u>\$540.00</u>
Total anticipated cost	\$6,680.28

Mayor Pro-Tem Hallman asked if the Leaphart Road poll would be transferred to another precinct due to small number of voters. Ms. Valentino responded she had spoken with Mr. Dean Crepes, executive director of the Lexington County Registration and Elections Commission, who said the Leaphart Road precinct may be combined with another precinct. She explained anytime there are less than 50 voters in a polling place the County Commission tries to combine it with another polling place. She said most likely there are not enough voters in the Leaphart Road precinct to sustain the polling place, but it is the discretion of the County Commission to make that determination. She said if Leaphart Road precinct is combined then the County Commission will notify the public and send letters to all registered voters in the precinct to inform them of where they should vote.

Chairperson Unthank recognized Council Member Miles who said he wanted to explain the effective date. He stated, “In the event that this referendum and upcoming vote passes, West Columbia will be changing its form of government that it has recognized and utilized since 1974. If that occurs then we have 30 years of law to go back and undo and redo into a new system of government that is vastly different. For that reason, the attorney generals, and they have been asked to address this in the past, they have come back and said that home rule, which originally created the rights of cities and citizens to choose their form of government, allowed up to 15 months for implementation of a rule change. I have gone back after a citizens’ forum with the South Carolina Municipal Association, which was conducted a couple of months ago, when they advised that any time period for a delayed implementation after a vote to change the system of government up to one year would be advisable and they believe would be permissible to allow for cities to go back and change their ordinances and their codes of ordinances that have been enacted.”

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Council Member Miles stated, “While we could extend it out under the attorney generals’ rulings for up to 15 months, which would put this past the next election for mayor, I certainly understand that Joe Owens and his supporters have been pivotal in bringing this proposed change about. I saw no reasoning in recommending delaying it beyond what the recommendation from the South Carolina Municipal Association was, which was 12 months, but we do need that time to go back and revise the code of ordinances to make sure we have an orderly procession over to a new form of government if one is chosen by the citizens. So that is the reason why we have, in the motion that I made, that I included reference to a delayed effective date one year after the date of the election.”

Chairperson Unthank asked if there were any other comments. He recognized Mayor Owens who stated, “If you will, by a five vote majority, history was changed by this council. A precedent, lasting ever since we have been a city, is the mayor has been the mayor. He has presided meetings and he has done the things that a mayor should do. So in absence of that, me and my people decided that if the mayor was actually going to ever get the duties, because y’all already have it set up for the first of the year to name another chair. This could go on forever. You can’t run any kind of business this way. You can’t govern by committee ‘cause quite honestly I’ve got a whole bunch things I’m working on and I’m loathe to try to talk to anybody about it because they probably wouldn’t understand or it would not be approved. This 12 months to re-implement, is probably, we will probably have a legal challenge to that because I don’t believe that is something that has to be done. Obviously, you would like to draw it out for 20 years if you could, but I don’t think the law is going to permit it. I thank all the people here that did not like the way the city was being run by committee and future plans to keep it that way. I was perfectly happy with the old form of government. So you guys changed it. There were even remarks from the dais up there when people complained, a council member said they were not concerned about the voters, but I am. I am concerned about the voters because I know the lion’s share of the people in West Columbia, this is not what they want and this is not what they’re going to get. I’m certainly happy with the fact that we need 1200 and 30 some odd votes and we didn’t know who all was out there working petitions, but the first time we got together for a count it well over 1600. So, I think that bodes well for the people of West Columbia who, I do believe, want some kind of government that is not chaotic and the mayor is the mayor. We have right now, ... we have at least one defacto mayor, maybe two, at least one. I think the people will approve the mayor being the mayor and God bless you all. Thanks for the support that I’ve gotten.”

Chairperson Unthank asked if there were any other comments. He then said he wanted to make one himself. Chairperson Unthank stated, “You know, the city is governed by a committee we call council. In the council form of government each council member and the mayor has one vote and that has worked since we established this form of government and the only thing that has changed is the chairmanship of the meetings. So the mayor is still the mayor and I still refer to you as the mayor.” Mayor Owens stated, “I can kiss babies and cut ribbons. That’s about all I can do.” Chairperson Unthank responded, “And you are very good at that.” Chairperson Unthank stated that council had heard all the arguments and called for the vote. Mayor Owens stated, “Discussion. Obviously I’m going to vote against the 12-month time to incorporate, don’t believe that is part of the law and of course we’ll obviously be looking at that through the legal system.”

Chairperson Unthank recognized Mayor Pro-Tem Hallman who asked if the city attorneys gave any feed back as to the implementation and what their recommendation was for a time line. Ms. Valentino responded to her knowledge the city attorney was not asked that question.

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Agenda Item VI – New Business (continued)

Ms. Valentino said the city attorney basically made certain that the process was correct and that the question was in the proper form. She stated that the city could ask the city attorney to provide that information unless Council Member Miles had information on that.

Council Member Miles stated, "I'd like to address that. Yes, the city attorney was [unintelligible] the proposed language including the proposal to include the effective date. His response back was simply to say that the statute governed the language of the actual question itself." Council Member Miles quoted City Attorney Joseph Vasquez, Esq., "Otherwise the language as proposed is the same as the statutory language as approved by the General Assembly. If you have any questions feel free to call." Council Member Miles said, "He made no exception, noted no problem with the inclusion of the effective date. It has been before and a decision, an opinion from Bob Cook, who the mayor himself has sung the praises of in all these discussions. Ken Gaines with Steve Benjamin, the mayor's predecessor in this push, when Steve Benjamin went forth, Ken Gaines took the question to the attorney general. Bob Cook wrote back and said it was fine, include an effective date."

Mayor Pro-Tem Hallman asked, "When did that information come from our city attorney?" Council Member Miles responded, "The date on this is July 15, 2014." Mayor Pro-Tem Hallman asked, "Who sent it to you?" Council Member Miles responded, "Jenny Cunningham." Mayor Owens asked, "Why didn't we all get a copy if this? Why didn't I get a copy of it?" Chairperson Unthank responded, "Mr. Miles, ... Councilman Miles was the only one that pursued the answer to that question." Mayor Owens asked, "Is that transparency?" Council Member Miles responded, "If I was trying to hide it, Joe, I wouldn't have brought it up out here today." Mayor Owens asked, "Why didn't everybody get a copy of it." Council Member Miles responded, "I didn't send the e-mail."

Chairperson Unthank stated that the motion was on the table, properly seconded. He said he wanted to call for the question and asked council members to raise their right hands to vote. Chairperson Unthank recognized Council Member Fowler who stated that he wanted to know what the law says on the delay. Mayor Owens responded, "That's not law. I checked with the Municipal Association. They said anything over six months would probably be too long." Council Member Miles responded, "That's a bald-faced lie. They said twelve months." Mayor Owens stated, "You were there when he said it." Council Member Miles responded, "I was. I talked to him yesterday on the phone to confirm it's up to 12 months."

Chairperson Unthank stated that the motion was on the table, properly seconded. He said he wanted to call for the question and asked council members to raise their right hands to vote. Council Members Fowler, Harley, Jones, Miles, Parler and Unthank voted in favor of the motion. Mayor Owens, Mayor Pro-Tem Hallman and Council Member Wingard voted in opposition. The motion passed six votes to three votes.

Agenda Item IX – Adjournment

Chairperson Unthank entertained a motion to adjourn. Council Member Harley so moved and Council Member Parler seconded. The motion passed unanimously. Council adjourned at 12:40 p.m.

Respectfully submitted,

Marta M. Valentino, CMC
City Clerk/Public Information Officer