



GLENDALE

**MINUTES OF THE
GLENDALE CITY COUNCIL
SPECIAL MEETING AND EXECUTIVE SESSION
Council Chambers
5850 West Glendale Avenue
March 27, 2013
4:15 p.m.**

The meeting was called to order by Mayor Jerry P. Weiers. Vice Mayor Yvonne J. Knaack and the following Councilmembers were present: Norma S. Alvarez, Samuel U. Chavira, Ian Hugh, Manuel D. Martinez and Gary D. Sherwood.

Also present were Richard Bowers, Acting City Manager; Jamsheed Mehta, Interim Assistant City Manager; Nick DiPiazza, Acting City Attorney; and Pamela Hanna, City Clerk.

1. DISCUSS AND TAKE POSSIBLE ACTION WITH RESPECT TO THE APPOINTMENT, EMPLOYMENT, POSSIBLE RESIGNATION OR DISMISSAL OF THE CURRENT CITY ATTORNEY

Acting City Attorney Nick DiPiazza presented information about the personnel action. He stated that he received an email from Mr. Tom Rogers who is Mr. Tindall's attorney. The letter stated that Mr. Tindall is exercising his statutory right that the matter be discussed in open session rather than Executive Session. Mr. DiPiazza advised that any discussion be done in open session. He advised that he is there in the capacity of the attorney to the Council and they were entitled to his counsel and entitled to privilege. He advised he could answer a question in Executive Session but no discussion could take place in Executive Session.

Mayor Weiers commented that his understanding was that Mr. Tindall's attorney was not available and that was why this would be heard in open session.

Mayor Weiers asked for comments regarding Mr. Tindall's departure from the city and what he will be afforded as far as his contract.

Vice Mayor Knaack commented on the letter received from Mr. Tindall's attorney dated March 26, 2013, that outlined the items that Mr. Tindall would be afforded if he stepped down as City Attorney which included salary, personal time, benefits, vacation cash out, deferred compensation and the usual things that come forward when someone leaves employment of the city. She believed that what he outlined was reasonable and she supported it.

Mayor Weiers commented that what was being asked was approximately \$27,000 or \$28,000 more than what Human Resources had offered.

Mr. DiPiazza commented that what the letter asked for was \$186,378.14. There was some question as to if he was entitled to full deferred compensation or just nine months of it and there is a question if he was entitled continuing legal education, bar dues, and a conference. The bar dues have already been paid for Mr. Tindall and all the attorneys in the city attorney's office. Maricopa County bar dues have not been paid and other fees have not been paid and Mr. Tindall has not been to a conference. Mr. DiPiazza advised that the professional development fees do not fall within the benefits portion of the contract that they actually fall under another section that is not covered if he separates from the city.

Mayor Weiers asked what was the Human Resources offer.

Mr. DiPiazza advised that the total offer was \$175,682.14.

Mayor Weiers commented that was about \$10,000 difference.

Mr. DiPiazza commented that if counsel took the position that he wasn't entitled to any deferred compensation and not entitled to any professional development then the number would be \$159,341.14.

Mayor Weiers commented that was closer to \$29,000 difference. He continued that to be clear that Mr. Tindall had a contract and if Human Resources comes to the same numbers that Mr. Tindall does, would Council decide what the exact number would be, or if Council should let HR deal with the attorney.

Mr. DiPiazza commented that there were two letters that detail what Mr. Tindall believed his entitlements were. He continued that Mr. Tindall was supposed to meet with HR to go over the numbers. Mr. DiPiazza stated he had attempted to get the parties together to discuss the entitlements. He commented that in respect to now, Council needed to decide if Mr. Tindall was entitled to deferred compensation and professional development.

Councilmember Alvarez asked what was the total amount that Mr. Tindall was asking for.

Mayor Weiers replied \$186,378.14.

She asked if that included the deferred compensation and everything and the six months.

Mayor Weiers replied yes.

Councilmember Alvarez clarified that this would take care of it. She continued that he was entitled to something and she didn't see too much difference in the amounts. She stated she wasn't actually agreeing but to get done with this, Council should give him the \$186,378.14 and move on. She commented that going through court would cost more.

Councilmember Martinez pointed out that in the original letter from Mr. Tindall's attorney that he was asking for \$208,848.78. He continued that in this most recent letter the amount was reduced to \$186,378.14. He agreed with Councilmember Alvarez to agree to this and complete

this process. He also stated that since Mr. Tindall is entitled to the six months anyway, and that Mr. Tindall had agreed to assist the city in those areas where he has the experience that the city should accept.

Councilmember Alvarez commented that she agrees completely with the offer and that it would close the business and the city could move forward. She continued that she did not agree that he should be coming back to the city.

Mayor Weiers clarified all the items that Mr. Tindall had requested.

Councilmember Sherwood commented he agreed with the \$186,378.14 and that it would benefit the city to have him available over the next six months. He commented that the disparagement agreement was pretty standard and that he wasn't quite sure what the technology component was mentioned in Mr. Tindall's letter.

Councilmember Hugh commented that if it would bring it to a conclusion today that he could go with the \$186,378.14. He continued that he did not agree with the disparagement agreement and he did not agree with attorney's fees.

Mr. DiPiazza commented that the non-disparagement agreement, according to Mr. Tindall's attorney, that it could be limited to members of Council and department heads. He continued that it leaves the city open to litigation in the future. He stated it benefits Mr. Tindall but it leaves the city exposed to potential liability.

Mayor Weiers commented that regardless of a non-disparagement agreement, a person already has the ability to seek compensation for any disparaging comments.

Mr. DiPiazza said yes however it would be difficult. He continued that at this time the city is not involved in negotiations. Neither Mr. Tindall, nor his attorney, is present to say whether something is acceptable. Council is not in negotiations. He commented that Council could agree to continue negotiation and set the terms for how much he is entitled to and to his other demands or Council could agree to termination at which time Mr. Tindall would be entitled to his contractual payout.

Councilmember Martinez made a motion to accept the latest figure of \$186,378.14 for Mr. Tindall leaving the employment of the city; that he gets those items subject to controversy, the deferred compensation, the professional development, a combined \$27,000; and that he gets the other demands, everything in the letter.

Vice Mayor Knaack clarified that the other demands listed included the technology as his phone and phone number.

Councilmember Martinez stated he wasn't sure if that meant a telephone, but it could be clarified with Mr. Tindall.

Vice Mayor Knaack seconded the motion.

Mr. DiPiazza declared a point of order. He commented that the motion couldn't say whatever else he asked for.

Mayor Weiers stated he was going to have discussion on the motion. He continued he did not agree with the \$186,378.14. He did not believe the city could afford the additional amount. He said it was up to the Council to protect the city.

Mayor Weiers asked for clarification and definition about the items included.

Councilmember Martinez stated that he wanted to include the disparagement condition and that he thought it was standard.

Mr. DiPiazza stated that in his opinion it was not standard and especially since it included other city employees.

Mayor Weiers asked about a timeframe that if someone was no longer a Councilmember and made a comment would the city still be liable.

Mr. DiPiazza stated that if there was a non-disparagement agreement that it was an agreement to not disparage the other and that the details needed to be specified. Liable and slander laws are not contractual, but are torts, and if someone tells an untruth that causes damage, whether they are employees of the City of Glendale, they may be liable for damage caused. The non-disparagement agreement should specify who is included and what is the nature of the disparagement as well as how long that would continue. He continued that if the Council was going to go with the other items, the details need to be specified. He added that details such as technology, that if Mr. Tindall is going to be available for the next six months, that he would guess that it would be the computer. He stated it was a guess since it is not spelled out. He also stated that as far as attorney's fees that it is not stated in the contract but Mr. Tindall is asking for it. He suggested that the Council negotiate the details. He added that if the Council was not going to negotiate it then they would need to terminate him.

Councilmember Sherwood clarified that vacation and personal time were included. He offered in addition to the motion on the floor, the press release, the mutual release, and no non-disparagement agreement, personal recommendations by Councilmembers and city officials, no technology, no attorney's fees, stay on staff six months, which allows the city to have access to him.

Mayor Weiers commented he could agree to everything except keeping Mr. Tindall on staff for six months. He stated it was more than he wanted to pay but to get it done he would be agreeable.

Councilmember Alvarez stated the \$186,378.14 which includes the conference, the bar dues, and the deferred compensation is all that she would agree on.

Vice Mayor Knaack asked if Councilmember Alvarez would agree to the non-disparagement agreement.

Vice Mayor Knaack commented she believed the technology being referenced was the phone.

Mayor Weiers stated that if that was all it was, then he believed there was no cost to the city for that.

Vice Mayor Knaack stated the phone itself wasn't worth much at this point. She stated the city wouldn't pay the phone bill, but they would allow him to keep the phone.

Mr. DiPiazza offered that there was a motion on the floor and the motion had a second. He continued that there is a need for clarification for what exactly would be included in the motion and then Council needed to vote on the motion, unless the person who made the motion withdraws it.

Vice Mayor Knaack stated that if Mr. Tindall stays in the system, then the amount does not have to be out in one lump sum, that it could be paid out over several months. She continued that the city would have access to him since he had the expertise in the parking agreements among other things.

Mr. DiPiazza offered that at this point Mr. Tindall is an employee of the City of Glendale and is, in fact, the City Attorney. He continued that although Council asked for his resignation, it has not been tendered.

Vice Mayor Knaack clarified the motion; agree to the \$186,378.14; agree to a press release; agree to the CLE, IMLA, bar dues and deferred compensation; not the non-disparagement; agree to a mutual release; personal recommendations from Councilmembers and city officials; use of technology clarified as the use of his phone; no attorney fees; and stays in the system for six months and the city would have access to him regarding contract advice.

Councilmember Martinez said he agreed to the additional information except for the disparagement agreement.

Mr. DiPiazza commented that what they just outlined is the city's position for the purpose of further negotiation. He continued that the motion should be to offer Mr. Tindall the following in exchange for his resignation. He added Council could then instruct Mr. DiPiazza to make that offer to Mr. Tindall.

Councilmember Martinez stated he wanted to stick with his original motion. He added he wanted Mr. Tindall to be available for six months.

Mr. DiPiazza said that Mr. Tindall has communicated that in exchange for his resignation he wanted certain things. Mr. DiPiazza also advised Council that they should be setting up the terms of negotiation at this time. He added he takes no position as to what is offered to Mr.

Tindall or the position Council takes today. Council needs to either negotiate the resignation or terminate.

Councilmember Martinez disagreed and said that Mr. Tindall has clearly stated what he wants. He added that the only thing that he thought needed to be negotiated was the non-disparagement part.

Councilmember Sherwood stated he would go with the advice of the City Attorney that if the non-disparagement agreement is problematic then Council shouldn't agree to it.

Mr. DiPiazza stated there was a motion and a second and that at this time there can be an amendment to the motion.

Vice Mayor Knaack stated she did it once but she would do it now.

Vice Mayor Knaack moved that Mr. Tindall be given \$186,378.14 to include his benefits, CLE, IMLA conference, deferred compensation, bar dues and agree to a press release, mutual release, personal recommendations by Councilmembers and city officials, technology clarified as his phone, that he stay in the system for six months and that does not exhaust his vacation or personal time, that the City can pay over six months and not one lump sum, and he will offer his resignation and Council directs Mr. DiPiazza to negotiate. There will be no attorney's fees and no non-disparagement.

Mr. DiPiazza clarified that the motion is for him to make the offer to Mr. Tindall in exchange for Mr. Tindall's resignation.

Mayor Weiers asked if Mr. Tindall would get the buyout in addition to a regular salary.

Mr. DiPiazza restated Council wants Mr. Tindall to remain in the system and to collect the \$186,378.14 by his continued employment and his payout of the sick and personal time. He added that Council may want to clarify it within the motion.

Vice Mayor Knaack added to the motion that Mr. Tindall would not get a regular paycheck in addition to the \$186,378.14 that it is the intent of Council that he only receive the \$186,378.14.

Councilmember Martinez seconded the addition to the motion.

Council discussed a time limit as to when they would like a response from Mr. Tindall.

Councilmember Hugh asked Mr. DiPiazza if there was a recommended time.

Mayor Weiers commented that Monday by noon, and asked if that sounded fair to everyone. Council agreed to the April 1st deadline.

Councilmember Alvarez asked if someone didn't want the six months of expertise, would someone vote no.

Mayor Weiers stated that members needed to vote on the motion and that if staff didn't feel a need to contact Mr. Tindall there was no obligation to contact him.

Mr. DiPiazza agreed.

Mayor Weiers clarified that it's the telephone the city provided and the city would not be paying the bill any longer.

Councilmember Martinez stated he thought originally that was part of it.

Mayor Weiers stated that there was a motion, a second, an amendment and a second to the amendment.

Mr. DiPiazza summarized that there was an offer for Mr. DiPiazza to communicate with Mr. Tindall that in exchange for his immediate resignation, that he would continue to be employed by the City for six months, Council was offering six month's pay plus benefits totaling \$186,378.14 which includes pay, benefits, CLE, bar dues, IMLE conference, deferred compensation, and additionally, a joint press release, and Mr. Tindall may approach Councilmembers and city officials for recommendations, he is entitled to keep the city phone and phone number and he will remain in the system an additional six months and not exhaust his vacation or sick time. The offer will be made and Mr. Tindall has until noon on Monday to accept the offer and the offer would expire at that time.

Mayor Weiers clarified that Mr. Tindall would continue to get his health insurance.

Mr. DiPiazza stated he would keep all benefits.

Mayor Weiers stated that the health insurance and other benefits would increase the \$186,378.14 amount.

Mr. DiPiazza clarified that it would not, that all benefits normally paid, were included in the \$186,378.14. He added that the dollar amount would be subject to verification by HR.

**The motion carried. Ayes: Chavira, Hugh, Knaack, Martinez, Sherwood
Nays: Alvarez, Weiers**

Mayor Weiers explained his vote stating that when there is a separation of employment it should be quick and not go on for six months.

Councilmember Martinez thanked Mr. Tindall for his service; he served 8 years as City Attorney and prior to that was Acting City Attorney for some time. Mr. Tindall is one of the finest gentlemen that he'd met in his working career. He is a man of high principles and high moral character. He believed a great injustice had befallen Mr. Tindall who was forced to leave due to

the need to go in a different direction, innuendoes, and comments he was not respectful. He believes our loss will be someone else's gain.

Councilmember Alvarez explained her no vote stating there was a financial need in other areas of the city.

Vice Mayor Knaack commented that this was forced upon some of the Council and that it could have been in a much different matter. She stated Mr. Tindall grew up in Glendale and that it meant a great deal to him. She stated that he was an asset to the City and was very knowledgeable.

Councilmember Sherwood commented that he had an opportunity to work with Mr. Tindall and that he was disappointed in the route that was taken and thanked Mr. Tindall for his service.

Councilmember Chavira wished Mr. Tindall the best and thanked him for his years of service.

2. CALL TO ENTER INTO EXECUTIVE SESSION

There was no need to go into executive session as all items were heard in open session.

CITIZEN COMMENTS

There were no comments.

COUNCIL COMMENTS AND SUGGESTIONS

There were no comments.

ADJOURNMENT

There being no further business, the meeting was adjourned at 5:32 p.m.

Pamela Hanna

Pamela Hanna - City Clerk