

Council met in a **SPECIAL MEETING**. The President of Council called the meeting to order at 8:10 a.m., the Clerk of Council offered the opening prayer, and the Pledge of Allegiance was cited.

Member(s) Present: Mrs. Ann I. Stranman, (Ward 3)
Mr. Richard F. Balog, (Ward 1)
Mr. August A. Pugliese, (Ward 2)
Mr. Christopher J. McClure, (Vice President)
Mr. J.P. Ducro IV, (President)

Member(s) Absent: Mrs. Julie A. Lattimer, (Ward 4)
Mr. James M. Trisket, (Ward 5)

Officer(s) Present: City Auditor Dana D. Pinkert, Clerk of Council LaVette E. Hennigan

Officer(s) Absent: City Manager James M. Timonere, City Solicitor Michael Franklin
(attendance not required)

SUNSHINE LAW CERTIFICATION: The Clerk of Council certified conformity to the Sunshine Law.

PURPOSE: The Vice President announced the purpose of this Special Meeting was to permit City Council to discuss and vote on extending the City Auditor's employment contract.

WELCOME: No visitors were present.

DISCUSSION

President: Apologized for misunderstanding his role in ensuring action was taken by the whole of Council prior to the City Auditor's employment contract expired. He provided Payroll & Human Resources Specialist (P&HRS), Carolyn Sheldon a statement extending the same benefits to the City Auditor that are afforded to all non-contractual, non-union, permanent employees. His understanding was that the signed statement transitioned the City Auditor from a contract employee to permanent status; however has since found out otherwise. Therefore this meeting was called to vote to extend the City Auditor's current employment contract, and will be followed up by more discussion at the Thursday, May 16 Finance & Personnel (F&P) Committee meeting. The Committee's recommendation will be presented to the full Council, to vote on, prior to the deadline of the contract extension.

Ward 3 Councilor: Suggested the City Solicitor's recommendation/legal opinion be obtained due to the City Auditor initially being hired as a contract employee. And, if he advises that the position remains contracted should it be for a longer period of time (e.g., two years vs. a year).

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Ward 1 Councilor: His understanding was Council is moving towards ending the contract by making [this] City Auditor a permanent department head appointed by Council, with the same benefits as other City department heads.

Ward 3 Councilor: This is the first time a department head was placed under contract. The understanding was the position would not be afforded the same benefits other department heads receive, (some of which was taken care of with the renegotiation of union contracts where benefits (e.g., retirement buyout, etc.) would be different for new hires vs. those who were long term employees.

Clerk of Council: One of the primary reasons the current City Auditor was placed under contract was to allow she or the City Council to terminate employment, without cause, if the employment relationship was just not working out.

Ward 1 Councilor: Concurred with the Clerk of Council and said his understanding was that the contract acted as a probationary period.

President: The contract allowed Council to have a little more freedom to evaluate and act rather than going through "ordinance form".

Clerk of Council: Yes, because the Charter says Council shall appoint a City Auditor, City Treasurer and Clerk of Council. In the absence of a "contract", before said officers may be discharged, written charges of malfeasance, misfeasance, or nonfeasance in office shall be filed with Council. The officers shall be afforded a copy of the written charges and may request a public hearing be conducted on said charges.

Ward 2 Councilor: Asked why not just make the permanent appointment at this meeting.

President: An ordinance is required.

Clerk of Council: And, the purpose of this meeting is to address the expired contract. Furthermore all members of Council have not had the opportunity to discuss how they would like to proceed. Extending the contract will afford Council that time.

President: It is an appropriate courtesy to allow the other members of Council to weigh in.

Ward 1 Councilor: Given the outcome of next Tuesday's primary election, the City Auditor may no longer be the City Auditor but the Finance Director.

President: Even if it passes, the change becomes effective January 1, 2014.

City Auditor: The primary ballot language specifies that all references to City Auditor will change to Finance Director. It was my understanding it would roll over that way come January 1, 2014, that another appointment would not be required.

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NOTE: The Vice President acknowledged his presence at the meeting.

Clerk of Council: The ordinance allowing to be put to the electorate on May 7, 2013, the question of consolidating the Treasurer and Auditor Departments into one Department of Finance, establishes the effective date of the change (if approved) as January 1, 2014. This was done to allow time for transitioning. The departments will remain separate until then, but will begin the consolidation process in order to function as one department come next year.

Ward 3 Councilor: If today's goal is to extend the expired contract that should happen. The F&P Committee must discuss, at length, how to proceed so a final vote may be taken prior to the extension expiration.

Clerk of Council: Placing it before the F&P Committee will afford the Ward 4 Councilor the opportunity to be present for the discussion, which I know she would want to me. Mr. President, what exactly was given to P&HRS Sheldon?

President: I gave her a letter stating "that it was an oversight in her (the Auditor's) contract; that it did not address what her benefits would be pertaining to – mirroring the benefits that non-union employees would have as established by Ordinance No. 2013-17 (attached).

Clerk of Council: Was the letter intended to establish this Auditor as a permanent employee instead of a contract employee.

President: Yes. Then I thought she would become an employee who gets the benefits that everybody else has.

Clerk of Council: A vote of Council is required to enact a change in the contract. The President did ask Council to send their comments to him to be presented during the Auditor's review session; and Council agreed to allow the President and City Manager to conduct the review. A vote of Council is also required to ratify various items agreed upon in the review session. Am I to understand that what was given to P&HRS Sheldon is different than what is in the current contract?

President: The Auditor's contract does not address personnel days at all.

City Auditor: Believed the document stemmed from her request to take two days (with or without pay) before her one year anniversary; which is the same time period in which she and the President met.

Ward 1 Councilor: So the letter given to P&HRS Sheldon is actually moot because Council did not vote on it.

Clerk of Council: Right.

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Ward 3 Councilor: Read the following contract statement: DURATION OF APPOINTMENT/
LIMITED CONTRACT: "Any modification of any term of this contract must be in writing and signed
by both parties, and ratified by a vote of a majority of Council at a public meeting."

Clerk of Council: Reiterated that the signed statement the President speaks of was initiated after
the Auditor asked for two days off prior to her one year anniversary, because her employment
contract does not address personnel days.

City Auditor: And, because the contract says two weeks' vacation is awarded after one year of
service; the trip was April 12.

The contract was reviewed. It was surprising that it does not address, therefore does not permit,
personal days. It addresses medical benefits, vacation, and sick leave.

City Auditor: Part of the discussion was that the Auditor's contract does not address paid
holidays, but has been paid for such. In Ordinance No. 2013-17, (5) personal days are listed last
under the Holiday heading. (NOTE: *P&HRS Sheldon reports they are "Personal Holiday"*).

Clerk of Council: Suggested Council take a vote today to accept the President's February 15
signed statement.

Ward 3 Councilor: Was opposed to taking action at this meeting; and wanted it to go through
committee. "The whole point was instead of automatically giving everybody the benefits that
everybody else gets, across the board, no matter what – without question. The whole thing is we
have to start looking at cost savings. And, new employees, maybe they shouldn't get everything
everybody gets."

Clerk of Council: I think holidays are standard paid days off; personal days are not.

Ward 3 Councilor: Right. In the real world no private employer gives personal days any more.

Ward 1 Councilor: Some employers combine personal and sick days.

Ward 3 Councilor: The last few companies I worked for did not give official sick time.

Vice President: There is some ambiguity.

Ward 3 Councilor: I do like the contract because situations may arise with permanent employees
who, after a long time on the job, began to slack. They know nothing may officially be done to
terminate them without proof of malfeasance, misfeasance, or nonfeasance. The position may
be taken for granted and if there is no method to terminate, you are stuck.

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President: If Council chooses to keep the Auditor position contractual, it should be extended for longer than one year. It is not fair to have a person wonder if, from year-to-year, they are going to have a job.

Vice President: Both issues may be addressed in the contract by stating "subject to annual review and favorable results, it would [evergreen and endure] until the following year's annual review." Typically contracts that evergreen have to have a 30 or 60 day written notification acknowledged by both parties.

Ward 3 Councilor: Wondered if language may be placed in an ordinance subjecting a contract employee to the same disciplinary policy as all other employees; and if they are written up so many times it is ground for termination.

Clerk of Council: The Auditor took a 2% salary decrease which is not reflected in the contract, but is reflected in payroll Ordinance No. 2013-55. Therefore, when Council votes to extend the contract the salary should be in commensurate with the payroll ordinance.

Ward 3 Councilor: Expressed her "personal concerns" today since she is not a member of the F&P Committee.

Clerk of Council: Offered to present the Ward 3 Councilor's concerns to the F&P Committee, if placed in writing.

FORMAL LEGISLATION REQUEST

Mr. Ducro moved, Mr. Pugliese seconded to formally request ORDINANCE NO. 2013-64 AN ORDINANCE AUTHORIZING THE EXTENSION OF THE APPOINTMENT OF THE CITY AUDITOR FOR AN ADDITIONAL THIRTY (30) DAYS EFFECTIVE APRIL 22, 2013, WITH THE SALARY COMMENSORATE WITH THE PAYROLL ORDINANCE, WHICH IS A 2% REDUCTION OVER THE \$60,000 SHE WAS ORIGINALLY ALOTTED. The Clerk asked if a holiday was schedule prior to May 20. It was noted Memorial Day is at the end of the month. The motion CARRIED.

LEGISLATION READING

ORDINANCE NO. 2013-64 AN ORDINANCE AUTHORIZING THE EXTENSION OF THE APPOINTMENT OF THE CITY AUDITOR FOR AN ADDITIONAL THIRTY (30) DAYS EFFECTIVE APRIL 22, 2013, was presented. Mr. Balog moved, Mrs. Stranman seconded to waive the reading of the ordinance; motion CARRIED. Mrs. Stranman moved, Mr. Pugliese seconded to waive the Charter requirement of two readings. On the roll call to waive the Charter requirement of two readings: Mrs. Stranman, Mr. Balog, Mr. Pugliese, Mr. McClure, Mr. Ducro voted yea; motion CARRIED. On the roll call to adopt the ordinance: Mrs. Stranman, Mr. Balog, Mr. Pugliese, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

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Adjourn

Mr. Pugliese moved, Mr. McClure seconded to adjourn the meeting at 8:34 a.m.

DATE APPROVED: **May 6, 2013**

ATTESTED BY: _____

J.P. Ducro IV
President of Council

ATTESTED BY: _____

LaVette E. Hennigan, MMC
Clerk of Council