



Special City Council Meeting - Thursday, September 9, 2021, 6:00 pm **In-Person in Contois Auditorium, 2nd Floor, City Hall ** 9/9/2021

BURLINGTON CITY COUNCIL

SPECIAL MEETING

CONTOIS AUDITORIUM, 2ND FLOOR, CITY HALL

BURLINGTON, VERMONT

MINUTES OF MEETING

September 9, 2021

MEMBERS PRESENT: Karen Paul

Max Tracy

Chip Mason

Joan Shannon

Ali Dieng

Jack Hanson

Perri Freeman

Sarah E Carpenter

Zoraya Hightower

Jane Stromberg

Mark Barlow

Joe Magee

OTHERS PRESENT: Miro Weinberger

Katherine Schad

Jordan Redell

Dan Richardson

Richard Cassidy

Gene Richards



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Pietro Lynn

1. CALL TO ORDER and AGENDA

1.01 Motion to amend/adopt the agenda

The meeting was called to order by City Council President Tracy at 6:03 PM.

Councilor Mason recused himself from the hearing.

MOTION by Councilor Hightower, SECOND by Councilor Paul, to adopt the agenda.

VOTING: unanimous; motion carries.

2. TERMINATION HEARING

2.01 Termination Hearing

City Attorney Richardson noted that this is a Section 129 hearing. He recommended that the Council establish the process they will follow for the hearing, and then conduct the hearing itself. He said that because this is a quasi-judicial hearing, there should be an opportunity for the parties to make objections or modifications to the process that has been laid out. He also recommended that the Council go into executive session to establish said process on the following grounds: for disciplinary hearings, to receive legal advice from counsel, and a deliberative exemption for deliberations made within a quasi-judicial hearing. He noted that because the Council is acting as the City, he will be providing legal counsel and services to the Council.

Richard Cassidy, attorney for Director Richards, noted objection to a number of the provisions laid out by City Attorney Richardson. He said that a reasonable period of time be allotted for this hearing, and that the 15-minute allotment proposed by the City Attorney is unreasonable. He also said that the hearing should be conducted in a similar manner to other quasi-judicial hearings in Vermont, specifically that the matter take in evidence under oath and that the Council take the opportunity to cross-examine witnesses, and that the City Council retain its own independent attorney.

Pietro Lynn, attorney for Mayor Weinberger, noted that the rules established so far are sensible. Under the city charter, the Director is considered an at-will employee and the Council has discretion in how it wishes to proceed. He said that a 15-minute time allotment is in excess of what the law contemplates, and thinks it is fair. He also noted that this proceeding comes after an exhaustive investigation of actions at the Airport, and that there has been a significant amount of due process. Attorney Cassidy replied that his client is not an at-will employee and that his employment is regulated by the



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charter. He also disagreed that adequate due process has taken place.

MOTION by Councilor Paul, SECOND by Councilor Shannon, that the Council go into executive session to discuss a disciplinary or dismissal action against a public officer or employee pursuant to 1 V.S.A. § 313(a)(4)(disciplinary hearing); 1 V.S.A. 313(1)(F) (to receive legal advice from counsel); and 1 V.S.A. 312(e) (deliberative exemption for deliberations made within the context of a quasi-judicial hearing).

MOTION TO AMEND by Councilor Shannon, SECOND by Councilor Hightower, to first find that it would be prejudicial to conduct attorney-client conversation in a public meeting, in accordance with 1 V.S.A. 313(1)(F) (to receive legal advice from counsel).

VOTING ON AMENDMENT: unanimous; motion carries.

VOTING ON MOTION AS AMENDED: unanimous; motion carries.

MOTION by Councilor Paul, SECOND by Councilor Shannon, that based on that finding, the Council go into executive session to discuss a disciplinary or dismissal action against a public officer or employee pursuant to 1 V.S.A. § 313(a)(4)(disciplinary hearing); 1 V.S.A. 313(1)(F) (to receive legal advice from counsel); and 1 V.S.A. 312(e) (deliberative exemption for deliberations made within the context of a quasi-judicial hearing). Executive session attendees to include the Council and City Attorney.

VOTING: unanimous; motion carries.

The City Council entered into executive session at 6:21 PM.

The City Council exited executive session at 7:36 PM.

MOTION by Councilor Shannon, SECOND by Councilor Hightower, that the Council shall give each side up to 45 minutes for presentation, including the option to reserve some of that time for rebuttal. All witnesses shall be put under oath. There will be no cross-examination of witnesses. Afterwards, each Councilor will have up to 4 minutes for questions (including responses). All other requests or objections are hereby denied.

VOTING: unanimous; motion carries.



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Attorney Lynn (counsel for the Mayor) began by noting the law that will govern this process. He said that the City Council governs the appointment and termination of department heads, that the Mayor has the power to appoint department heads with confirmation from the Council, and that the Council may remove any department head at its pleasure with a two-thirds vote.

Attorney Lynn laid out the facts of the case, noting that the Airport is a Department of the City of Burlington, that Mr. Richards was appointed as Director of Aviation in 2012 (and subsequently reappointed on a yearly basis), that the position reports directly to the Mayor, that the Director is responsible for enforcement and application of the City's policies at the Airport, and that the Director is the leader at the Airport and must demonstrate sound leadership. He outlined the Director's job at the Airport when it comes to Airport employees, noting that he directly supervises 6 employees and is responsible for management of the rest of the Airport workforce. He said that the City is committed to establishing a harmonious workplace and that it is important for employees to feel that they are valued members of the team (according to the City's policy manual). He said that it is the Director's responsibility to administer these policies at the Airport, and it is the Council's responsibility to determine whether these policy standards have been met at the Airport. He reviewed the City of Burlington's leadership rules.

Attorney Lynn then outlined the timeline of events related to this case. He noted that the Mayor placed Mr. Richards on administrative leave on June 30 on the basis of complaints regarding his use of City resources and other complaints, that the City began an independent investigation with an outside investigator, and that Mr. Richards received full pay and benefits during that time. He outlined the activities of the independent investigator, who looked into whether there had been misuse of City resources and whether Director Richards mistreated Airport employees. He said that the investigator concluded that there was a serious violation of the City's policies regarding treatment of employees, which was corroborated by multiple witnesses. He outlined examples of the mistreatment of employees by Mr. Richards. He noted that Mr. Richards denied mistreating employees, and that the investigator found Mr. Richards' denial to not be credible. He said that the investigator also found misuse of City property, including the use of gasoline and car washes for his personal use. He emphasized that the Director had ample due process during this investigation.

Attorney Cassidy (counsel for Director Richards) began by pointing out shortcomings in Attorney Lynn's presentation. He said that the presented facts and conclusions were the determination of the investigator, but underlying facts have not been presented to all parties. He said that the Council has not heard witness testimony or notes taken related to their testimony and that it is relying on the investigator's determination. He said that the Mayor has continued to pursue the resignation of Mr. Richards without providing the documentation of underlying facts and pieces of evidence used in the investigator's conclusions. He said that terminations can only occur with just cause. He said that they cannot fairly judge the conclusions of the investigator. He stated that the human resources department has failed to support Mr. Richards and other managers by not allowing him to address his mistakes.

City Attorney Richardson swore in Director Richards. Director Richards apologized to the individuals he offended and that he has learned from his experience and is disappointed that his actions have cast negative light upon the Airport. He took issue with the fact that he was issued the findings of the report and asked for his resignation at the same time, without allowing him to review the report. He noted his efforts over the years to improve the airport both physically and financially.



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He noted that his personnel file does not contain any grievances, complaints, or other areas of concern over his 9 years of tenure as Director of Aviation.

Attorney Lynn noted Director Richards' apology, saying that he has failed to acknowledge his mistakes around the mistreatment of his employees. He noted that Director Richards engaged in bullying and other negative behaviors. He disagreed with complaints around the way the Mayor handled the issue.

City Attorney Richardson swore in Mayor Weinberger. He said that department heads are different from other employees, and that they are given a substantial amount of independence and organizational authority. He noted that they are appointed by the Mayor and confirmed by the Council, and serve at the joint pleasure of both. He said that they represent the values of the City. He noted that he did not demand the Director's resignation at their initial meeting but arrived at that decision after further contemplation. He said that putting the Director back into a supervisory role would condone the mistreatment of his employees.

Attorney Cassidy noted that different people have different perceptions of communication and that human interactions are subjective. He said that this is the central theme of this issue, and that no efforts were made to verify that the statements made in the report were true prior to asking for Director Richards' resignation.

3. COUNCIL DELIBERATION **expected executive session**

3.01 Council Deliberation

Councilor Carpenter asked about the letter from HR Director Durfee and when in the process it was written. Attorney Lynn replied that the date of the document was June 29th, Director Richards was put on paid administrative leave at that time, and that the investigation occurred until late August. Councilor Carpenter said that the Council is to opine on whether or not Mr. Richards can effectively run the airport, but this is not a just cause hearing, and there is no obligation on the Council's part to validate the allegations. She said that the Council is not here to opine on the allegations but on the relationship and the end result of what may have been a failed relationship. Attorney Lynn confirmed that the Council is charged with determining whether the employee is going to continue to effectively serve the City.

Councilor Hightower asked why Mr. Richards was reappointed 8 times and why none of this was elevated to a supervisor if he presented obvious and ongoing leadership issues. Attorney Lynn replied that this investigation unearthed a pattern of behavior over time that came to the attention of the Mayor, and he did not previously realize that despite the Director's accomplishments at the airport, there was an area of his performance that was significantly below the standard set by the City. Mayor Weinberger added that the serious mistreatment of employees was brought to him during this investigation and he immediately took action that has ultimately led to this termination hearing. He said that had he known sooner he would have acted upon it sooner.

Councilor Barlow asked how many complaints were filed against Mr. Richards with regard to his behavior and treatment of employees in the past 9 years (prior to the current complaints). Attorney Lynn replied that the Mayor had not been made



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aware of any issues until now, and that ultimately the Mayor is responsible for triggering termination actions. Attorney Cassidy said that Mr. Richards was never made aware of any complaints or issues, and noted that the investigation suggested that some complaints made it to human resources (though none are on file).

Councilor Shannon asked what was happening at the time of June 29 when Director Durfee issued this report and how the City launched the next investigation which was not consistent with the recommendations of the report. Mayor Weinberger replied that what launched this investigation was the issue with misuse of gasoline by Director Richards. He noted that an FAA employee had come forward to complain about this.

Councilor Dieng said that the Mayor is responsible for the overall evaluation of employees, but noted that Director Richards had had trouble accessing the Mayor and was never evaluated. He asked if the Mayor had thought of implementing a performance improvement plan. Mayor Weinberger replied that he makes one-year appointments so that there can be frequent evaluations of department heads when they are considered for reappointment. He said that when the report was complete to a sufficient degree, he was able to discuss the allegations point-by-point with Mr. Richards. He said he concluded that these allegations warranted something more serious than just a performance improvement plan. Attorney Cassidy noted the lack of process around the Mayor's appointment and evaluation of department heads.

MOTION by Councilor Shannon, SECOND by Councilor Paul, to find it necessary to enter into executive session to discuss deliberations made within the context of a quasi-judicial hearing, according to 1 V.S.A. 312(e) (deliberative exemption for deliberations made within the context of a quasi-judicial hearing).

VOTING: unanimous; motion carries.

MOTION by Councilor Shannon, SECOND by Councilor Paul, to enter into executive session.

VOTING: unanimous; motion carries.

4. POTENTIAL COUNCIL ACTION

4.01 Potential Council Action

MOTION by Councilor Stromberg, SECOND by Councilor Carpenter, that the Council remove Gene Richards from his position as Director of Aviation under the terms of Section 129 of the Burlington City Charter.

VOTING (by roll call): Councilor Hightower – aye, City Council President Tracy – aye, Councilor Magee – aye,



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Councilor Carpenter – aye, Councilor Paul – aye, Councilor Dieng – nay, Councilor Stromberg. – aye, Councilor Freeman – aye, Councilor Hanson – aye, Councilor Barlow – aye, Councilor Shannon (10 ayes, 1 nay); motion carries.

City Council President Tracy read the following statement on behalf of the City Council: "We recognize and acknowledge the contributions that Gene Richards has made as Director of Aviation for the City of Burlington. We further recognize that the current situation is untenable to retain Mr. Richards as Director of Aviation. The evidence and testimony tonight shows that the relationship between Mr. Richards and Mayor Weinberger is broken, and that the relationship between Mr. Richards and his staff is also broken. We further recognize that processes in the City are broken and have let everyone down. Section 129 provides a method for the Mayor and City Council to remove a City officer or department head when it is determined that the individual can no longer effectively serve the City in their current position. We have reached that point tonight and our vote tonight reflects that determination. We take this action with the gravity and seriousness that the situation requires. We stand behind our City employees and believe that our City should be a safe and positive workplace. While our findings tonight do not cast blame or aspersions on one or more individuals, we recognize that the situation brought before us requires much work beyond this decision and we encourage each of the parties before us tonight to begin that process. As both legislators and public officials, we commit ourselves and our resources to this task as well."

5. ADJOURNMENT

5.01 Motion to adjourn

The City Council meeting adjourned without objection.

RScty: AACoonradt