

**CITY OF COLUMBIA  
WORK SESSION MINUTES  
MARCH 10, 2010 – 9:00 A.M.  
CITY HALL - 1737 MAIN STREET  
2<sup>nd</sup> Floor – COUNCIL CONFERENCE ROOM**



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The Columbia City Council met for a Work Session on Wednesday, March 10, 2010 at City Hall, 1737 Main Street, Columbia, South Carolina. The Honorable Mayor Robert D. Coble called the meeting to order at 9:11 a.m. and the following members of Council were present: The Honorable Sam Davis, The Honorable Tameika Isaac Devine, The Honorable Daniel J. Rickenmann and The Honorable Kirkman Finlay III. The Honorable Belinda F. Gergel arrived at 9:20 a.m. Also present were Mr. Steven A. Gantt, City Manager and Ms. Erika D. Salley, City Clerk.

**CONSIDERATION OF BIDS, AGREEMENTS AND CHANGE ORDERS**

1. \*\*Council is asked to approve Mentor Protégé Project #SS7073; Rehabilitation of Existing 48", 54" and 60" Gravity Sewer Lines, as requested by the Utilities and Engineering Department. Award to McClam and Associates in the amount of \$9,889,405.80. This firm is located in Little Mountain, SC. *Funding Source: SS707301- The CIP budgeted amount for this project is \$17,592,493.00*

Upon a motion made by Mr. Davis and seconded by Mr. Finlay, Council voted unanimously to approve Mentor Protégé Project #SS7073; Rehabilitation of Existing 48", 54" and 60" Gravity Sewer Lines, as requested by the Utilities and Engineering Department. Award to McClam and Associates in the amount of \$9,889,405.80. This firm is located in Little Mountain, SC. *Funding Source: SS707301- The CIP budgeted amount for this project is \$17,592,493.00 – The Protégé for this project is Patriot Construction Company, Inc. Dr. Gergel was not present for the vote.*

- **Council recessed at 9:15 a.m.**
- **Council reconvened at 9:20 a.m. and Dr. Gergel was present at this time.**

**CITY COUNCIL DISCUSSION / ACTION**

2. \*\*Councilmember Vacancy

Mayor Coble explained that we have a vacancy on the City Council for District Two and I've been informed that some citizens would like to address us on the issue this morning. We would ask that you keep your comments to 3-minutes, if possible. We will then receive legal advice in Executive Session and then come back into open session for any vote.

The following individuals appeared before the members of Council to comment on the City Council District II seat that became vacant on March 9, 2010 and whether or not the seat should be filled during the General Election on April 6, 2010 or during a Special Election:

Ms. Kathryn Bellfield, President of the Booker Washington Heights Organization said that they are in support of the election being on April 6, 2010 so that they may select a representative for their area. Without representation our neighborhoods will go down.

Ms. Brenda Oliver, President of the Pinehurst Neighborhood Association said that 90% of the Pinehurst Community lies within District Two and 10% lies within District Three. We are concerned about having no representation from District Two and I would like to see us have the election as expediently as possible. I am concerned about voters getting out during a special election.

Mr. King B.L. Jeffcoat, District II Resident / Retired School Board Member said that any delays will cause District Two not to have a representative at the table in these trying times. He asked that the election be held on April 6, 2010.

Ms. Jean Denman, District II Resident said that she was shocked to hear that the election could come so quickly upon us. I truly believe that one of the responsibilities of citizenship is to educate yourself on the issues and about the people before you go out to vote. I don't think that holding an election on April 6, 2010 gives us a chance to do that.

Ms. Alex Furgess, President of the Jones McDonald Neighborhood Association / Vice President of the Columbia Council of Neighborhoods said that we are all aware of the letter of the law, which says that we should have our election at the earliest possible date and the next election is almost a month away. We cannot ignore the fact that if someone is going to run for City Council, regardless of who that person might be, that person has to meet certain requirements. There should be no reason that we should not have a candidate on the ballot at our next election.

Mr. Durham E. Carter, President of the Martin Luther King Neighborhood Association said that in 1980 he fought for single-member districts and we were successful in bringing that about. The people in District Two are intelligent enough to know who we want to represent us, regardless of their race or their gender. We have been through some dark times and now it is time for this City Council to show us some brighter days by making this election possible on April 6, 2010.

Mr. Grant Robertson, At-Large Candidate agreed that an election needed to take place for District Two, because they need representation, but I would ask why you would go into Executive Session about this.

Councilor Devine said that Council would go into Executive Session to receive legal advice; our legal counsel does not want to offer legal advice in public. Any deliberations by Council would be in public session.

Councilor Gergel said that they have not taken a vote yet on whether or not to go in Executive Session.

Mr. Grant Robertson, At-Large Candidate said that for the sake of transparency he would urge the Council not to take an Executive Session.

Mr. Laddie Howard, District II Resident said that there is some room in the election law for Council to act differently. I really think that it is wrong to hold this election on April 6, 2010; three weeks is not enough time for the people of District Two to vet their candidates in order to get the best representative possible for them.

Mr. Paul Denman, District II Resident asked what would have happened if Mr. Cromartie resigned on March 30, 2010. Would you then want to have an election on April 6, 2010? It is too much of a hurry.

Mr. Aaron Johnson, Mayoral Candidate said that running for the election was a very difficult decision for him to make. As a candidate, I would personally like to have more time to prepare and make that decision. A special election should be held very soon, but I don't think that less than 30-days is enough time.

Mr. Steve Morrison, Mayoral Candidate said that as a lawyer when the State statute requires 60-days minimum notice for an election, the intent of that law is clearly to provide for the opportunity for the people to understand what is on the ballot. When you have a City statute that says 90-days notice is required, it's because you or others decided that 90-days is what is required for a due and orderly election process for filing and for getting the message out. I would suggest that you read your notice provisions in harmony with the provisions for a vacated seat. You cannot spend more than 180-days without an empty seat and you can't spend less than 60-days with an empty seat. As a candidate, it took me a while to decide whether to run; I needed that time to deliberate, to do soundings in the community and to understand whether I could be a viable candidate.

Mr. Steve Benjamin, Mayoral Candidate said that denying the people of District Two representation for a significant period of time amounts to disenfranchisement and you should ensure that whatever you decide to do, you follow the law. The majority of the residents from District Two who stood up here have spoken to that effect. In the interest of transparency and open and accountable government, I would urge you to deliberate this issue in public and to not go into Executive Session.

Ms. Bessie Watson, President of the Columbia Council of Neighborhoods asked the Council to take into consideration the neighborhood leadership that has responded here today.

- **The public comment period closed at 9:47 a.m.**

3. \*\*Election Resolutions

[Resolution No.: R-2010-027](#) – Authorizing Notice of Election to add City Council District 2

[Resolution No.: R-2010-029](#) – Authorizing Notice of Special Election for City Council District 2

Mayor Coble said that the issue is that the statute says that if it's less than 180-days then you have it at the general election. It would be better if the statute had more definitions so that if it was within 30 or 60-days until the general election then you could have a decision as to whether or not it would be at the general election. The statute could be better drafted and give us more leeway in that it could be more specific.

Councilor Devine said that she would agree with Mr. Robertson and Mr. Benjamin's comments; is there anything specific that Mr. Ken Gaines, City Attorney has to tell us about the statute that cannot be discussed in open session. I would advise that we review that portion now.

Mr. Ken E. Gaines, City Attorney clarified that when he gives attorney-client privileged advice he is bound by the ethical rules of the SC Bar not to disclose those communications. If you would like to waive the privilege by four (4) votes then I would be more than happy to give you legal advice.

Upon a motion made by Ms. Devine and seconded by Dr. Gergel, Council voted unanimously to waive the attorney-client privilege and to receive legal advice from the City Attorney in public session.

Mr. Ken E. Gaines, City Attorney explained that he has given this a lot of thought; he has consulted the former City Attorney; and there is a provision under §7-13-1170 in which the Governor can set the election.

There was a consensus of Council to recess while the City Attorney obtains copies of the various statutes and code of ordinances for distribution to Council.

- **Council recessed at 9:54 a.m.**
- **Council reconvened at 10:21 a.m.**

Mayor Coble reported that Ms. Teresa Wilson Florence, Director of Governmental Affairs informed the Council during the recess that Representative Todd Rutherford, Chairman of the Richland County Legislative Delegation asked for an Attorney General's opinion on the setting of the election date. The request is for a current opinion about what we are doing here today.

Ms. Teresa Wilson Florence, Director of Governmental Affairs added that Representative Todd Rutherford as Chairman of the Richland County Legislative Delegation also asked Mr. Patrick Dennis, Staff Attorney for the House Judiciary Committee to provide an opinion on the Code of Laws related to establishing election dates. She stated that they asked for the opinion to be expedited and they are faxing a memo to the Office of Governmental Affairs stating the position of the Richland County Delegation.

Mayor Coble said that one solution would be to set the date as April 6, 2010. The Attorney General's opinion has been requested and if it says that you can't do it then that's the end of it. If they say that you can do it then you have complied with the law and no one can argue with that. I would like to further discuss that.

Ms. Teresa Wilson Florence, Director of Governmental Affairs further clarified that he is polling the members of the Delegation, but their policy would be to fall back on that of the House Attorney's position to them and that they are in no way trying to weigh in unnecessarily on the matter; they want to see what you all do, but they want it to be on record as an opinion that they have.

Councilor Rickenmann clarified that the Council will be receiving an opinion from the Staff Attorney for the House Judiciary Committee, the City Attorney and the Attorney General.

Councilor Finlay said that a different interpretation from the one I may have heard from the City Attorney is going to be de facto until we are told otherwise. I would suggest that we go forward and debate the issue of what the law says right now.

Mayor Coble said that we would normally ask for an Attorney's General opinion, but this is not normal. Getting an Attorney General's opinion would be the guiding light for what's legal. What if we can't get an opinion in the next few days?

Councilor Gergel asked Ms. Florence if the Delegation already requested the Attorney General's opinion and when was it requested.

Ms. Teresa Wilson Florence, Director of Governmental Affairs replied that the Attorney General's opinion was requested within the last hour.

Councilor Gergel asked that the Council direct Ms. Florence to communicate back to the appropriate individual that the sooner we receive the opinion, the better.

Councilor Davis said that he doesn't have a problem with the steps towards an ultimate opinion. What is the starting point this morning? Is it the opinion from the Attorney General?

Mr. Ken E. Gaines, City Attorney stated that his starting point is a policy argument.

Mayor Coble suggested that they find out the likelihood and a timeframe of an Attorney General's opinion, because that is going to have a great impact on this issue. The most important thing is that people believe that we have fairly set the time for the election.

Councilor Devine suggested that they go through the litany of information that was provided so that everyone can understand what we're faced with, what the challenges are, what the law is and then try to come to a conclusion at that point.

Councilor Davis concurred, adding that the conflict is with the general election versus a special election. I fully understand what would constitute a special election and when that would be appropriate.

Councilor Gergel stated that whatever date is established would require pre-clearance by the Justice Department. In the event that we move forward as the Mayor suggested, I would ask that we immediately notify the Justice Department.

Mayor Coble stated that if the Justice Department doesn't pre-clear it, then you don't have an election.

Mr. Ken E. Gaines, City Attorney noted that we are currently pre-cleared for the April 6, 2010 Election and before we can submit a request for pre-clearance to the Justice Department, you would need to enact a Resolution setting forth the filing dates for the candidates, the date of the election and other required information. There is no guarantee that the Justice Department will expedite the matter.

Councilor Rickenmann asked the City Attorney to start explaining the statutes and codes and to incorporate how we handled the resignation of former Councilman Hamilton Osborne, Jr.

Mr. Ken E. Gaines, City Attorney stated that he thought that Mr. Osborne did not offer for reelection based on a perceived conflict of interest, but in the 2006 Election, Mr. Finlay and Mr. Osborne were candidates. On February 17, 2006, Mr. Osborne tendered his resignation as a Councilmember. I was not the City Attorney at that time. I am sure that Mr. Meggs could explain why we did not do so. I believe that we did not offer or move under §5-7-200 to fill the vacancy, because we already had a candidate and a pre-approved election and it might have fallen under the 180-day rule.

Councilor Gergel asked if the Council made that decision.

Councilor Devine recalled that they didn't discuss it. When Mr. Osborne resigned there was already a pending general election; it wasn't a similar situation, because that seat was already on the ballot for the election. Mr. Finlay started coming to and participating in the meetings although he did not have a vote.

Councilor Finlay said that there has been a precedent for 105-days. We had an unfilled seat for an extended period of time. Let's just run through and understand where Mr. Gaines thinks we are, because there are a lot of moving parts to this.

Councilor Devine asked Mr. Gaines to start with the statutes.

Mr. Ken E. Gaines, City Attorney said that the policy is in the statutes. I was speaking to the Attorney General on yesterday about the other issue that you requested an opinion on and they indicated that they would like to receive any kind of research that I've done on the issue. If it's the will of Council, I'd be glad to communicate with the Attorney General's Office to see what documentation they want and to share my thoughts.

Mayor Coble said that we should get the information to them sooner rather than later.

Mr. Ken E. Gaines, City Attorney reviewed the following Sections from the SC Code of Laws: **§7-13-1170** Ordering of new election by Governor; **§7-13-35** Notice of general, municipal, special and primary elections; **§7-13-190** Special elections to fill vacancies in office; **§5-7-200** Grounds for forfeiture of office of mayor or councilman; filling vacancies in office; and **§5-15-50** Establishment of municipal ward lines and time for general and special elections; public notice of elections. He also reviewed **Section 6** Elections of the City of Columbia Code of Ordinances. He recommended that the Council adopt a Resolution to schedule a Special Election on June 15, 2010 for City Council District 2. The notice of election will be published on Sunday, March 14, 2010 and the filing period would open on Monday, March 15, 2010 through March 19, 2010.

Ms. Marci Andino, Executive Director of the State Election Commission read a letter that she faxed to the City Attorney on March 9, 2010 in response to an inquiry about a potential vacancy. She stated that the City of Columbia is already in compliance with the general election notice requirements. She reported that no absentee votes have been made from constituents within City Council District 2 and that the paper ballots have not been printed. She stated that from an operational standpoint, it is possible to move forward on April 6, 2010.

Upon a motion made by Dr. Gergel and seconded by Mr. Finlay, Council voted unanimously to recess at 11:50 a.m. for Mayor Coble to contact the Attorney General to request an expedited opinion.

- **Council recessed at 11:50 a.m.**
- **Council reconvened the meeting at 1:06 p.m.**

Ms. Marci Andino, Executive Director of the State Election Commission stated that she spoke with someone in the Attorney General's Office and was told that they had not received a request for an opinion on this matter, but they will respond as soon as possible upon receipt of such request.

Upon a made motion by Mayor Coble and seconded by Ms. Devine, Council voted unanimously to approve Resolution No.: R-2010-027 – Authorizing Notice of Election to add City Council District 2; to direct the City Attorney to request an opinion from the Attorney General; the request should include the research already done by the City Attorney; to meet with the Attorney General if there is a delay in issuing an opinion; and to schedule a Special Election for an appropriate date, if the Attorney General determines that April 6, 2010 is not appropriate.

## **PRESENTATION**

4. \*\*Efficiency Study Results – Mr. S. Allison Baker, Senior Assistant City Manager - *This item was deferred and tentatively rescheduled for March 24, 2010.*

## **EXECUTIVE SESSION**

5. Receipt of legal advice, which relates to a matter covered by attorney-client privilege
  - Efficiency Study - *This item was deferred.*

## **PRESENTATION**

6. Report from the External / Internal Auditors – Ms. Jackie Breland, Jackie Breland and Associates and Ms. Holly Scofield - *This item was deferred and tentatively rescheduled for Wednesday, March 24, 2010.*
  7. Central Midlands Regional Transit Authority Update – Ms. Mitzi Javers, Executive Director of the Central Midlands Regional Transit Authority - *This item was deferred and tentatively rescheduled for Monday, March 15, 2010 at 4:00 p.m.*
- **Council adjourned the meeting at 1:28 p.m.**

Respectfully submitted by:

Erika D. Salley  
City Clerk