

CITY OF COLUMBIA CITY COUNCIL  
WORK SESSION MINUTES  
JUNE 28, 2011  
8:00 A.M. & 1:00 P.M.  
CITY HALL - 1737 MAIN STREET



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The Columbia City Council met for a Work Session on Tuesday, June 28, 2011 in the City Council Conference Room located on the 2<sup>nd</sup> floor of City Hall, 1737 Main Street, Columbia, South Carolina. The Honorable Stephen K. Benjamin called the meeting to order at 8:12 a.m. and the following members of Council were present: The Honorable Sam Davis, The Honorable Tameika Isaac Devine, The Honorable Daniel J. Rickenmann, The Honorable Belinda F. Gergel, The Honorable Leona K. Plough and The Honorable Brian DeQuincey Newman. Also present were Mr. Steven A. Gantt, City Manager and Ms. Erika D. Salley, City Clerk.

### **EXECUTIVE SESSION**

1. \*\*Receipt of legal advice which relates to a matter covered by attorney-client privilege – *This item was not discussed in Executive Session.*

Upon a motion made by Dr. Gergel and seconded by Ms. Devine, Council voted unanimously to waive attorney-client privilege and to receive legal advice on the proposed curfew ordinance, in public.

### **CITY COUNCIL DISCUSSION / ACTION**

2. \*\*Security within Hospitality Districts

Mayor Benjamin explained that City Council is considering Ordinance No.: 2011-051 and under the City Code of Ordinances, we have the ability to, with one reading and due notice, effect ordinances that we deem important; that would serve as a temporary resolution to the immediate needs of the City. This ordinance imposes a juvenile curfew for the Five Points area. The City has engaged outside counsel to work with our City Attorney to help us craft an ordinance. This morning, we will have a thoughtful and resolute discussion, recognizing that we've had extensive discussion heretofore.

Mr. Kenneth E. Gaines, City Attorney acknowledged that Dr. Gergel has additional whereas clauses and suggested that it be done orally prior to the adoption of the ordinance. Under State law, you are not required to give notice of this ordinance and you can enact it immediately when you have a situation affecting life, health and safety or property of people. Also, under State Law, this ordinance automatically expires on the 61<sup>st</sup> day after being enacted. You would have to repeat this process to enact a permanent curfew ordinance, if that is the pleasure of Council. We felt that it was appropriate to only apply this to the overlay of the Five Points area, because there is no statistical data for the other hospitality areas. We've included Maxcy Gregg Park and Martin Luther King Park.

Mr. Gary T. Pope, Jr., Esq., Associate / Pope Zeigler Law Firm explained that this ordinance is a result of you all having looked at this for quite a long time and the incident that occurred last week. There needed to be a factual basis to satisfy constitutional muster and there have been a variety of violent incidents in Five Points to provide a fair amount of the record. We looked at the context that we have in Five Points and drafted the ordinance based on the Charlottesville, Virginia model, but conformed to SC law involving taking juveniles into custody.

Councilor Gergel asked how the Police Chief would monitor those neighborhoods that are close to the boundaries to ensure that we don't have more intense activity as a result of the curfew.

Chief Randy Scott, Columbia Police Department said that the Police Department will add foot and bicycle patrols to ensure that the area is canvassed and that juveniles aren't being pushed into the neighborhoods.

Councilor Devine inquired about identification and other things that would help the Police Department with enforcement. How do you prove their age if they can't produce identification?

Mr. Gary T. Pope, Jr., Esq., Associate / Pope Zeigler Law Firm explained that Springport allows for you to criminally penalize the non-identification of yourself, if there is other reasonable articulate suspicion. You cannot simply walk up to someone without reasonable articulate suspicion on something else and ask them for identification. We don't have a court decision based on self-incrimination of the 5<sup>th</sup> amendment for bringing identification and criminalizing that into the ordinance. It seems to be too much of a risk to bring the entire ordinance down on that basis. Under enforcement, subsection 3, if a minor refuses to give an officer his or her name and address, refuses to give the name and address of his or her parent(s), or if no parent can be located prior to the end of the applicable curfew hours, or if located, no parent appears to accept custody of the minor, the minor may be taken to a Temporary Care Facility or otherwise to be dealt with in the manner provided for under state law. You would need to be able to describe, at a hearing, whether or not you could reasonably articulate that you thought they were under 17. If they are under 17 and you have reasonable suspicion that they are, you can detain them or you can go through this procedure which provides for calling their parents; if they refuse to call their parents, then take them to the local detention facility and use your discretion to release them or remand them to the Department of Juvenile Justice.

Councilor Newman asked Chief Wiser or Chief Scott to comment on their plans.

Police Chief Randy Scott, Columbia Police Department cited a recent example where a person had a knife on him, we arrested him, he said he was 18 years old, we arrived at the jail and once he was booked and identified we had to turn around, because he was 16.

Mr. Kenneth E. Gaines, City Attorney said there's no requirement for an 18 or 25 year old to have identification. I understand the idea of it, but it's problematic. You must understand that there will be some risk to the City and the Officers on an individual basis to include unlawful arrest with no limit of liability.

Councilor Davis further inquired about the requirement of identification.

Mr. Kenneth E. Gaines, City Attorney said that there is no requirement; I don't know if a 13 year old can be issued a State ID.

Councilor Devine noted that most schools issue student identifications.

Councilor Gergel asked Chief Scott to outline the level of training that will be required for Officers.

Police Chief Randy Scott, Columbia Police Department said that we must ensure that we lawfully secure a juvenile until we can reach a parent or guardian and have them sign a parent release form; if the parent refuses to accept the child, then we have to notify the state agency to come in and take custody of the juvenile until such time.

Councilor Gergel noted that there will be challenges for the Police Department, because sometimes people look older than they are and sometimes people look younger than they are. That is something that we must pay close attention to as we implement this. Secondly, if you see a young person who doesn't have a parent that will come and pick them up, putting them under emergency protective custody is an option that the Police Department has by placing a call to DSS; it is a 24/7 telephone coverage and they take over at that point.

Police Chief Randy Scott, Columbia Police Department explained that if it is on a weekday, they would have an immediate probable cause hearing for the detention of the juvenile at 1701 Main Street.

Councilor Gergel asked how we get the word out about this curfew as quickly as possible to parents.

Police Chief Randy Scott, Columbia Police Department said that we have an obligation to ensure that we do a very big public relations campaign, because a parent can knowingly drop a child off in a hospitality area without the understanding that there is a curfew in place. We will have to use printed media and a large scale outreach campaign, because we have students from all over South Carolina that we are finding in this hospitality area.

Councilor Davis expressed concern for the Officers being weighed down in the protective custody process. He suggested that they take advantage of the assistance offered by church advocacy groups. He asked that they provide the Council with recommendations on how this process should be so that some of this burden can shift where it should be.

Councilor Rickenmann expressed concern for what steps will be taken to hold the guardians accountable; they brought these children into the world and they need to be responsible for them.

Councilor Devine asked Attorney Pope to consult with someone like Karen Fryar, Esquire / Juvenile Drug Court Program and before the 61 days expire to make sure that we have everything in place logistically as far as the police are concerned. Emergency Protective Custody cases can turn into very serious DSS cases and our Officers will have to continue to be a part of that process, because they will have to testify as to what initially brought that child into care. I am concerned about the liability and I would like to have someone that works specifically in that system to help us grapple with how to implement this.

Councilor Rickenmann said that his biggest concern is that everybody is focused on the hospitality institutions as the problem; the problem is not from the bars to the youth; it's the youth to the bar patrons. Every instance of a major crime involved kids that are unsupervised or youth on youth.

Councilor Devine said that she has never been opposed to the curfew; I think the curfew is good, but I don't think it solves our bigger issue of youth violence. This same incident could've happened in Belvedere or some other neighborhood and it's not covered. There is that bigger issue of suitable parental guidance. If we are going to put the money into law enforcement to lock these kids up, then we need to find the money to put into some really successful programs to keep these kids from being on the street. She asked that Mr. Baker, Mr. Gantt and Ms. Wilson look at where we are with our alliances and building up our programs, because until we can really see some real results from there, we will continue to put money into law enforcement and it will not solve the overall problems.

Councilor Rickenmann said that he agreed with Councilor Devine to a certain point, but at the same time we are giving people an excuse that the City is going to handle that. We have to tread very lightly.

Councilor Davis said that as a broader public relations effort, we need to encourage church groups, other neighborhood organizations and youth groups to take an active role in communicating and identifying other activities. Somebody has to be held accountable and responsible for young folks. Other than that, the weight is on us and the weight is on law enforcement.

Councilor Devine said that we must determine the audience we are trying to reach. We need to be mindful that news outlets may not hit some of the demographics of the parents that we need to reach.

Mayor Benjamin said that we are all on point recognizing that there are several other issues in play here that we don't have a role in. We've taken a more expanded role, because we have the Prime Time in the Parks effort under the Parks & Recreation Department. We open up 3 parks every week until late night trying to give young people some more positive activities. We are doing some things, but we are talking about some serious issues of policy development and implementation that we need to have. One missing piece is that every place that we've seen a curfew implemented successfully, there has been a significant period of an education campaign. We're going to have to wrap that up significantly; it's something that we are all willing to be involved in, but I'd like to defer to the City Manager, the Police Chief and Public Relations Department to go ahead and get that word out as aggressively as we possibly can with public service announcements. This is a relatively significant issue, but we are deferring significantly to our Officers' judgment. Chief, we have to make sure that our guys are ready. This is a very different and unique challenge and we must be willing and prepared to defend our Officers, because someone will challenge us at some point. We all agree that there is no reason for a child to be in Five Points in the middle of the night. One very important point that we need to make is that Five Points is a unique business district, cultural village where everyone is invited to come, live, work and play during the daytime; at night, when most of the restaurants are shut down, it's a bar entertainment district, where children have no place. There are no bowling alleys, there are no movie theaters, there are no arcades; this is not a place for kids. People will push back and say what about this part of town or that part of town. The reality is that the challenge we're facing in Five Points now is a very unique challenge and I think it requires a very unique approach as to how we deal with this. Chief, we trust your department, we trust your judgment, but we're going to need for the Officers to be on point.

Councilor Plough agreed that mentoring and other services are needed, but the City of Columbia cannot pay for all of these services. We are charged with the safety of those that live and play in Columbia. This has to be a cooperative effort and we need to develop those collaborations during this interim time for others to join us to address the far reaching issues that affect our families. I would hope that's how we would approach that. She inquired about how repeat offenders would be addressed.

Police Chief Randy Scott, Columbia Police Department explained that repeat offenders will be taken to Family Court. If we can articulate that it's not the parenting, but the child is making the decision to act out, you can bring that child into Family Court for incorrigibility and have them evaluated at DJJ.

Councilor Rickenmann asked why a ticket or citation wouldn't be issued.

Police Chief Randy Scott, Columbia Police Department said that you can issue a citation to the parent as outlined under Section (8) (c) of this ordinance.

Councilor Plough confirmed that the curfew is from 11 p.m. until 6 a.m. She sought clarification of the age.

Police Chief Randy Scott, Columbia Police Department said that at age 17 you are an adult. If you commit a criminal act at the age of 17, you can be arrested and sent to the Alvin S. Glenn Detention Center, not DJJ; at 17 you are not a juvenile.

Councilor Plough inquired about the cost for implementation of this ordinance.

Mr. Steven A. Gantt, City Manager said that he would prefer to sit down with the Chief and discuss his requirements in order to get some good numbers.

Mayor Benjamin suggested that the Hospitality Tax Fund would be an appropriate funding source for the Hospitality Districts.

Councilor Gergel agreed that the use of the Hospitality Tax would be appropriate for this and for the Hospitality Public Safety Team that was recommended by the Hospitality District Taskforce. We've asked that the Chief begin pulling together information on costs and implementation.

Police Chief Randy Scott, Columbia Police Department said that it could be one in the same.

Councilor Plough asked how that would be handled in the short-term with an already challenged budget for the Police Department. Are you making sure that he has resources for the balance of this year?

Mr. Steven A. Gantt, City Manager said that the Police Department's budget will show a deficit, if they spend additional dollars, but you will understand the reasoning for that and then we will make a budget adjustment in next year's budget to add the additional dollars that we think are appropriate.

There was a consensus of Council to authorize the City Manager to designate the remaining balance of the fiscal year 2010/2011 Hospitality Tax collections that exceeded the budgeted amount along with the fiscal year 2011/2012 reserves from the Hospitality Tax Fund for increased Public Safety expenses within the Hospitality Districts.

Councilor Newman stated that this is not a knee-jerk reaction; we've been working on a curfew for a long time and making sure that we have one that's going to be constitutional. We are close to that point, but it still opens us to a great deal of liability if we have Officers that just decide to stop somebody randomly in Five Points for whatever reason to create that articulate suspicion that we're talking about. I think there are some remedies that we can put into place ahead of time. He suggested that Attorney Pope brief the Columbia Police Officers. There has to be a way they can document these cases to plainly state their articulate suspicion so that we don't get sued down the line.

Mr. Gary T. Pope, Jr., Esq., Associate / Pope Zeigler Law Firm said certainly there are some things we should discuss.

Councilor Devine suggested that a checklist be provided.

Mr. Kenneth E. Gaines, City Attorney said that as the Police implement it, they may come back to City Council with logistical changes to the ordinance. There is no guarantee that somebody can successfully challenge the ordinance, but we patterned it after the Charlottesville, Virginia ordinance, which was found constitutional by the Fourth Circuit

Court. We think it's defensible at this point. Mr. Gaines cited the findings (*whereas clauses*) that City Council needed to adopt in passing the ordinance.

Mayor Benjamin said that he would like to add an *whereas* clause that speaks primarily to the point of juvenile safety and the challenge to our children being on the streets at that hour of night; it is unsafe for a 13 year old to be on the streets of Columbia at 1a.m. or 3 a.m.

Councilor Gergel suggested that the ordinance state *whereas* young people and children have been involved in public safety incidents in Five Points throughout this period.

Mr. Kenneth E. Gaines, City Attorney said that the purpose of the ordinance is to promote the general welfare and to protect the general public through the reduction of juvenile violence and crime within the Five Points area; promote the safety and well-being of the City's youngest citizens, persons under the age of 17, whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful violence and drug activities; and to being victimized by older perpetrators of crime.

Mayor Benjamin asked that the purpose be added as a clause, as outlined by the City Attorney.

Councilor Gergel asked that an incident from October 2010 wherein a female from the University of South Carolina was severely beaten, be added as a clause.

\*\*Ordinance No.: 2011-051– An Emergency Ordinance Imposing a Juvenile Curfew for the Five Points Area

Upon a motion made by Dr. Gergel and seconded by Mr. Davis, Council voted unanimously to accept the findings as outlined by the City Attorney and to approve Ordinance No.: 2011-051 - An Emergency Ordinance Imposing a Juvenile Curfew for the Five Points Area, as amended.

Upon a motion made by Dr. Gergel and seconded by Mr. Davis, Council voted unanimously to recess at 9:14 a.m.

- **Council reconvened the meeting at 1:14 p.m.**

### **EXECUTIVE SESSION**

Upon a motion made by Mr. Davis and seconded by Mr. Newman, Council voted unanimously to go into Executive Session at 1:15 p.m. for the discussion of **Item 3.** through **5.** as outlined.

3. Discussion of release of an employee – *This item was discussed in Executive Session. No action was taken.*
4. \*\* Receipt of legal advice which relates to a pending, threatened or potential claim – *This item was discussed in Executive Session. No action was taken.*
5. \*\*Receipt of legal advice which relates to a matter covered by attorney-client privilege – *This item was discussed in Executive Session. No action was taken.*

- **Council adjourned the Executive Session at 2:25 p.m. to reconvene the Work Session at 2:28 p.m. Councilor Davis joined the Work Session at 2:30 p.m. and Councilor Plough joined the Work Session at 2:36 p.m.**

## **CITY COUNCIL DISCUSSION / ACTION**

6. Fiscal Year 2011/2012 Accommodations Tax and Hospitality Tax Funding Recommendations – Ms. Cynthia Hardy, Chair of the Hospitality Tax Advisory Committee

Ms. Cynthia Hardy, Hospitality Tax Advisory Committee Chair introduced the board members that were in attendance and noted that everything is going well so far. She reminded the Council that the committee had \$2.55 million to disburse; received over \$7 million in requests; and wanted to maintain a contingency fund for the consideration of applications on a quarterly basis. She noted that the committee is proud of the City's success stories and would like to spread the funding to other areas. There isn't a scientific equation for the funding allocations, but we wanted to maintain a mantra of fairness.

There was an in-depth question and answer segment among the members of City Council and the members of the Hospitality Tax Advisory Committee.

There was a consensus of the Council to schedule a Work Session with the Hospitality Tax Advisory Committee to formulate guidelines for the strategic use of Hospitality Tax funds in the future.

Upon a motion made by Ms. Devine and seconded by Dr. Gergel, Council voted unanimously to approve the Fiscal Year 2011/2012 Accommodations Tax and Hospitality Tax funding recommendations.

Upon a motion made by Mr. Rickenmann and seconded by Mr. Newman, Council voted unanimously to meet in August to consider the disbursement of surplus Hospitality Tax funding to the centers of Hospitality within the City of Columbia.

Upon a motion made by Mr. Davis and seconded by Mr. Newman, Council voted six (6) to one (1) to remove the condition placed on funding allocated for the construction of the 9/11 Memorial as approved on June 21, 2011: *Upon a motion made by Ms. Devine and seconded by Mr. Newman, Council voted five (5) to one (1) to allocate up to \$50,000 from the Hospitality Tax Surplus Fund for the construction of a September 11<sup>th</sup> Memorial at the Columbia Metropolitan Convention Center, contingent upon Richland County and Lexington County participating in funding the project. Voting aye were Mr. Davis, Ms. Devine, Dr. Gergel, Ms. Plough, Mr. Newman and Mayor Benjamin. Mr. Rickenmann voted nay.*

There was a consensus of Council to empower the City Manager to ensure that proper funding is set aside through the Hospitality Tax Fund or some type of effort to make sure we can accommodate this year's Gamecock Baseball Parade and to work closely with the University of South Carolina, City Center Partnership, Greater Columbia Chamber of Commerce, Midlands Business Leadership Group and others to help fund the parade.

Upon a motion made by Dr. Gergel and seconded by Mr. Davis, Council voted unanimously to adjourn the Work Session at 3:46 p.m.

Respectfully submitted by:

Erika D. Salley  
City Clerk