

Tuesday – March 5, 2018 - 5:30 p.m.

Special Meeting - Use of Force Incident Involving Former Asheville Police Senior Officer Christopher Hickman

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Gwen C. Wisler; Councilman Brian D. Haynes; Councilman Vijay Kapoor; Councilwoman Julie V. Mayfield; Councilwoman Sheneika Smith; Councilman W. Keith Young; City Manager Gary W. Jackson; City Attorney Robin T. Currin; and City Clerk Magdalen Burleson

Absent: None

Mayor Manheimer opened the meeting at 5:30 p.m.

On behalf of City Council, Mayor Manheimer apologized to Mr. Johnnie Jermaine Rush for his experience with Asheville Police officers on August 24, 2017. She expected to reach out to Mr. Rush personally, beyond a written apology.

Regarding the Asheville Police Department (APD) excessive use of force incident, there is a hotline for anyone to call who wants to share comments, thoughts or feelings about the August, 2017, APD use of force incident. All recorded documents will be mailed to the Citizens-Police Advisory Committee members before their meeting on Wednesday, March 7, 2018, at 6:30 p.m. at the Dr. Wesley Grant Sr. Southside Center.

Mayor Manheimer said that today the City Attorney filed a lawsuit on behalf of the City Council seeking to make public any additional videos of the incident involving Mr. Rush. There are other body-cam videos worn by other officers and under state law City Council can't view them nor can they make them public unless we get a court order.

She said the purpose of the closed session will be to enable City Council to make public personnel matters that until this point they have not been able to. There is a statutory process we can use, under circumstances like this, to make this information public. Immediately following the closed session, City Manager Jackson will make a statement and provide everyone with a copy of a memorandum which gives a very detailed timeline of events concerning this matter. The information provided will be made available on the City's website. Hopefully it will address a lot of questions heard in the community.

She said that City Council will not take public comment at this time but most of City Council will be at the Citizens-Police Advisory Committee meeting on March 7 so they will be able to hear directly from our community. City Council will be taking further action on this matter. City Council will adjourn from closed session.

At 5:37 p.m. Councilwoman Smith moved to go into closed session (1) To consider the qualifications, competence, performance, character, fitness, or conditions of appointment of an individual public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. The statutory authorization is contained in N.C. Gen. Stat. §143-318.11 (a)(6); and to prevent the disclosure of information that is confidential pursuant to N.C. Gen. Stat. § 160A-168, the Personnel Privacy Act. The statutory authorization is contained in N.C. Gen. Stat. § 143-318.11(a)(1); (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of this State or the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S.

143-318.11(a)(1); and (4) To plan, conduct, or hear reports concerning investigation of alleged criminal misconduct. The statutory authorization is contained in N.C.G.S. 143-318.11(a)(7). This motion was seconded by Councilman Young and carried unanimously.

City Manager Jackson then read the following memorandum dated March 5, 2018, from himself to the Asheville City Council: (note: exhibit attachments can be found in the City Clerk's Office files)

"On February 28, 2018, the Asheville Citizen-Times published body-worn camera footage, recorded shortly after midnight on August 25, 2017, which showed an APD officer, Christopher Hickman, using excessive and dangerous force to arrest a man named Johnnie Rush who Hickman and an officer in training, Vinero Ruggerio, had stopped near Biltmore Avenue. The use of force shown in the recordings is, understandably, a source of great anger and concern within the community.

"I am concerned that the public does not presently have access to all of the information necessary for it to judge the City's response to this officer's actions, and that absent that information, this matter will continue to negatively impact the community's perception of its police department and the way which the City responds to misconduct by its employees. The City Council has also directed that all information about this matter that can lawfully be shared should be provided to the public immediately. It is, therefore, my conclusion, with City Council's agreement and support, that the following information concerning this matter, provided to me by the APD, should be made available to the public.

"On August 25, 2017, the Asheville Police Department ("APD") received a complaint by Johnnie Rush alleging that an APD Officer used excessive force during his arrest the previous evening. That same day, upon reviewing the same body-camera footage of the arrest that the public has now seen, Chief Hooper ordered that Hickman's law enforcement authority be suspended, and that he be taken off the street and placed on administrative duty. Hickman was ordered to turn in his badge and gun, and had no further interaction as a police officer with the public. Also that same day, Ruggerio, the trainee in the recording, was reassigned to a different training officer. Chief Hooper informed John Maddux from the City Attorney's Office about the incident on August 25, 2017, and within days informed Interim Assistant City Manager Jade Dundas as well.

"On September 15, 2017, the APD took a copy of the recording to District Attorney Todd Williams for review. Upon reviewing the recording, Mr. Williams agreed with the APD that all charges then pending against Mr. Rush should be dismissed. A copy of the voluntary dismissal filed with the court is attached as Exhibit 1. At that time, Mr. Williams was informed that the APD's Professional Standards unit was conducting an administrative investigation into the matter.

"In addition to ordering an administrative investigation regarding Hickman's use of force against Mr. Rush, Chief Hooper also ordered a review of all available footage captured by Hickman's camera during all other encounters with the public. This was a substantially more comprehensive review than is typically required by the APD's auditing process, whereby a supervisor reviews only a random sample of an officer's recordings each month to ensure they are following policy. This more comprehensive review of Hickman's recordings, which required personnel to review more than fifty-eight (58) hours of footage, revealed four other instances where Hickman displayed discourteous and rude conduct to members of the public, although no complaints had been filed related to those instances. The Professional Standards unit, in turn, initiated an additional administrative case focused solely on whether Hickman's rude and discourteous behavior in those other instances constituted a violation of the APD's policies requiring that officers treat members of the public with respect and courtesy, and avoid any action which might bring discredit on themselves or the department.

“The APD’s new use of force policy, which went into effect in April of 2017, requires that a supervisor respond to every use of force by an APD officer and conduct a preliminary investigation. That preliminary investigation should include, at a minimum, obtaining, or attempting to obtain, a statement from the subject of the force or injury and all witnesses at the scene; and, when applicable, photographing all areas of contact located on the subject to document the injuries or lack of injuries. During the course of its investigation into whether Hickman had used excessive force, the APD’s Professional Standards unit learned that a supervisor responded to the scene that night to initiate a review of Hickman’s use of force as required by APD policy. That supervisor, however, despite being told by Hickman that he struck Mr. Rush in the head with his Taser, and despite Mr. Rush saying that he was choked, did not immediately forward any information or complete notes of those interviews with Hickman and Rush, and did not review the body camera footage that evening. Because of conduct related to this incident, that supervisor ultimately received discipline for unsatisfactory performance, and was ordered to undergo additional training.

“The administrative investigation into Hickman’s arrest of Rush concluded that Hickman had engaged in excessive force in violation of APD policy, as well as unbecoming conduct and failing to meet the responsibilities of duty. The additional administrative investigation, which was initiated following review of all other available body-worn camera footage recorded by Hickman, also concluded that Hickman had engaged in rude and discourteous behavior on four other occasions. Both administrative cases were complete and sent to the Division Commander for review on or about December 15, 2017, followed by a Deputy Chief’s review which was complete on December 17, 2017. After reviewing the administrative cases, Chief Hooper ordered that the Professional Standards unit contact Hickman to schedule a pre-disciplinary conference, which is required by City policy. Hickman received notification of that pre-disciplinary conference on December 27, 2017, and per standard procedure, was placed on investigative suspension that same day. Hickman’s pre-disciplinary conference with Chief Hooper took place on January 2, 2018. Following that pre-disciplinary conference, it was Chief Hooper’s decision that Hickman’s employment would be terminated. On January 5, 2018, Chief Hooper met with Hickman to inform him of her decision to terminate his employment, however, at the beginning of that meeting, Hickman elected to resign before Chief Hooper provided Hickman with her written decision to terminate. A copy of the termination notice, which was drafted but not presented to Hickman, is attached as Exhibit 2.

“The APD’s administrative investigation of Mr. Rush’s complaint complied with all required steps and procedures set forth in APD and City policies governing allegations of employee misconduct, including those policies which apply to claims of excessive force. Per APD policy, the department makes every effort to fully investigate all complaints within sixty (60) days of reception of the complaint. More complex investigations handled by the Professional Standards unit may, and often do, require additional time beyond the sixty days to complete. The investigation of this matter, due to its complexity, took approximately three and a half months to complete. Failure to follow the City’s internal policies could result in substantial risk, including reinstatement by the Civil Service Board, if the officer is terminated.

“Prior to Hickman’s resignation, on December 19, 2017, Chief Hooper requested that District Attorney Williams review the recording a second time, together with an additional recording captured by another officer’s camera, and provide an opinion about whether Hickman’s conduct rose to the level of a criminal offense. After his further review, on January 10, 2018, Mr. Williams requested that the APD ask the SBI to initiate a criminal investigation as to whether Hickman had committed assault. A copy of District Attorney Williams’ request to the APD is attached as Exhibit 3. On January 11, 2018, Chief Hooper sent the SBI a letter making that request. A copy of the APD’s letter to the SBI is attached as Exhibit 4. On January 12, 2018, the SBI wrote the APD an email stating, in part, that, “The SBI is going to respectfully decline the request based on the completion of your four month internal investigation which has led to the

resignation of Officer Hickman.” A complete copy of the SBI’s email is attached as Exhibit 5. Following the SBI’s refusal to investigate, Mr. Williams then requested that the APD conduct the criminal investigation instead. By law, information gained through an administrative investigation cannot be used to prosecute someone for a criminal violation. For that reason, on January 18, 2018, Chief Hooper assigned the criminal case to a detective in the APD’s criminal investigations division to conduct a separate inquiry that could be used to charge Hickman with a criminal offense if the District Attorney so chose. That investigation is now nearly complete. Barring any unexpected developments, the APD expects to submit the case to the District Attorney within the next week to determine whether Hickman should be criminally prosecuted, which is the District Attorney’s decision.

“The community deserves to know that the City takes Hickman’s misconduct seriously, and that APD employees who engage in excessive force will be held accountable. For that reason, per N.C. Gen. Stat. § 160A-168(c)(7), I have determined that the release of the information contained in this document is essential to maintaining public confidence in the administration of city services, and request that the City Council concur in this decision. This fully accords with the strong direction I have received from the City Council that in all matters, especially those involving police, the City should be as transparent as possible to its citizens. City Council’s concurrence includes that if I determine, at a later date, that the release of additional information is necessary to clarify or explain the reason for any personnel action described in this document, such information may be released pursuant to this written determination without further City Council action.”

At 8:45 p.m., Councilman Young moved to come out of closed session. This motion was seconded by Vice-Mayor Wisler and carried unanimously.

At 8:45 p.m., Mayor Manheimer adjourned the meeting.

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City Clerk

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Mayor