

**CLOSED SESSION GENERAL ACCOUNT**

Present: Vice-Mayor Brownie W. Newman, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Others: Ms. Betty Coulter, Director of Risk Management; and Ms. Rendi Mann-Stadt, attorney

Absent: Mayor Terry M. Bellamy

**Closed Session**

At 7:09 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) 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, including a lawsuit involving the following parties: Cherie Byrd, City of Asheville, Asheville Police Department and Eric Lauffer. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, 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. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

**Resolution No. 11-80 – Resolution authorizing settlement of the Cherie Byrd Lawsuit**

City Attorney Oast said that Council has been advised of the details of this case in a previous memorandum (copy attached), and some information regarding the settlement has been reported to the media. He introduced Ms. Rendi Mann-Stadt (outside counsel) and Risk Manager Betty Coulter. After a day-long mediation, also participated in by Ms. Martha McGlohon of the City Attorney's Office, the parties agreed to a settlement of \$48,000, plus payment of the mediation fee.

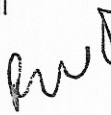
Councilman Russell moved to authorize the negotiated settlement of the Cherie Byrd sexual harassment lawsuit in the amount of \$48,000 (representing back wages) and \$4,100 (mediation fee). This motion was seconded by Councilman Smith and carried unanimously.

At City Attorney Oast's request, Council authorized the City Attorney to confirm the terms of the settlement to the news media.

Ms. Rendi Mann-Stadt, attorney representing the City of Asheville, said that one of the terms of the mediated settlement was that the protective order that covers the case remain in effect, which means that all of the documents that the City provided to the other side will have to be returned. We are trying to maintain as much confidentiality as this is a personnel matter.

PRIVILEGED AND CONFIDENTIAL

MEMORANDUM

TO: Mayor and City Council  
FROM: Robert W. Oast, Jr.   
DATE: April 1, 2011  
RE: Cherie Byrd v. City of Asheville

Council will recall that the City was sued by former Asheville Police Officer Cherie Byrd for alleged violation of her civil rights, based on a hostile work environment. This was covered in my "Legal Update" memo to you of December 14, 2010 (excerpt attached). Ms. Byrd was a recipient of text messages from her supervisor, Eric Lauffer, reported in the media earlier this year, and this was part of the basis of her claim. Other conduct was also alleged.

Late last week, following a mediation that lasted all day, the City tentatively agreed to a settlement of \$48,000, representing back wages and lost compensation. This settlement is subject to approval by City Council, which we will seek in closed session on April 12, 2011.

We learned earlier this week that information regarding this tentative settlement has been provided to the news media, and that the media has begun contacting City officials.

If you are contacted about this matter, please refer any questions to our office, or Risk Manager, Betty Coulter. We will have a full report for Council prior to the April 12 closed session.

Attachment

cc: Gary W. Jackson, City Manager  
Betty Coulter, Risk Management Director  
Dawa Hitch, Public Information Officer

From 12/14/10 LEGAL UPDATE memo:

**Cherie Byrd v. City of Asheville.** Cherie Byrd was an officer in the City's Police Department. She filed a discrimination claim with the EEOC, based on offensive text messages from her supervisor, and other behavior that she claims created a hostile work environment. The EEOC issued a "right to sue" letter but did not determine the merits of the claim. After A FMLA and maternity leave, Ms. Byrd has refused offers to return to work, and has now separated from her employment. She has filed a lawsuit in federal district court seeking damages for violations of her civil rights and other employment-based claims. This matter is being defended vigorously through ACC by Rendi Mann-Stadt of McGuire, Wood & Bissette as lead counsel. At this time, the City appears to have several strong defenses, but the matter is still in the discovery phase, so the strength of the case and the potential damages (which could include attorney fees) are difficult to estimate at this time.