



COMMUNITY HOUSING, NEIGHBORHOOD DEVELOPMENT & PUBLIC SAFETY COMMITTEE

Chaired by Councilman Golden

Committee Members: Golden, Peters, Scarborough, and Williams

April 3, 2018 – 10:00 a.m.

3rd Floor Lobby Conference Room

MINUTES

Present:

Chairman Jeff Golden and Committee Members Monica Peters, Don Scarborough, and Chris Williams

Staff Present:

Randy McCaslin, Deputy City Manager; Randy Hemann, Assistant City Manager; Kenneth Shultz, Chief of Police; Brian Beasley, Police Attorney; JoAnne Carlyle, City Attorney; Jeron Hollis, Director of Communications & Public Engagement; Thanena Wilson, Assistant Director of Community Development & Housing; Lori Loosemore, Local Codes Enforcement Supervisor; Michelle McNair, Community Resource Manager; Sandra Keeney, Deputy City Clerk; and Lisa Vierling, City Clerk

Others Present:

Christopher Brook, ACLU Legal Director

Catherine Clodfelter, Outside Legal Counsel- Parker Poe

Judy Stalder, TREBIC

Brad Lilley, Abby Kerp, Marianne Royle, Marilyn Evans, Lisa Hitch, Sarah Bullard, Lawrence Cormier, Tara Blomquist, Mary McInerney, Glenda Bryant, James Adams, Megan Longstreet, Janet Riley-Wright, Angela Roberson, Steve Bird, Beverly Beard

News Media Present:

Pat Kimbrough, *High Point Enterprise*

1. Discussion- Annual HUD Action Plan

Thanena Wilson, Assistant Director of Community Development & Housing emphasized this is a draft of the Annual HUD Action. The Annual Action Plan will be submitted to HUD before June 26th after a series of citizen participation meetings, a public review and comment period, a public hearing before the Citizens Advisory Council, and a public hearing/approval by the City Council on May 7th.

The Program Year 2018-2019, which is the fourth year of the 5-year Consolidated Plan, describes implementation of activities through the use of federal, state, and local resources to address the following priority needs:

- Affordable housing construction
- Expansion of homeownership opportunities
- Decrease homelessness
- Code Enforcement and neighborhood clean-up
- Core City revitalization
- Job training and employment assistance
- Public Services
- Fair Housing education and awareness

Ms. Wilson advised that assumptions in the Plan include an increase in allocations, although it is uncertain as to how much. This will not be determined until the numbers come in from HUD in the next few weeks. The Plan also assumes continued funding for Operation Inasmuch and continued funding for Core City redevelopment.

As an entitle community, the City of High Point is awarded funds annually from HUD. The breakdown for the proposed funding sources totaling \$3,598,319 is as follows:

- Federal \$2,316,050 (64%)
- Local \$967,269 (27%)
- State \$315,000 (9%)

The Community Development & Housing Department proposes to expend these funds on the following programs:

Program	Amount
Emergency/Urgent Repair/Housing Rehab	\$ 187,100
Operation Inasmuch	\$ 200,000
(Next one is on May 19th- Washington St. neighborhood)	
Community Housing Dev. Operations	\$ 430,000
(currently working with Community Housing Solutions & Habitat for Humanity)	
Homebuyer Assist./Individual Dev. Acct.	\$ 301,000
Infill Housing/Core City Redevelopment	\$ 45,000
Avondale Trace Apartments	\$ 650,000
(Proposed tax credit project. Application to be submitted to the State in next couple of months)	
Cedrow Affordable Housing (infrastructure)	\$ 200,000
Construction Training Partnership	\$ 130,000
Neighborhood Stabilization Program Eligible Activities	\$ 200,000
Public Service Grants	\$ 61,050
(awarded to nonprofits)	
Community Based Initiative	\$ 5,000
Volunteer Income Tax Assistance	\$ 3,050
HUD Section 108 Loan Repayment	\$ 92,000
Affordable Housing Program Delivery	\$ 486,671
Community Capacity Building Program Delivery	\$ 308,701
Program Administration	\$ 298,747
TOTAL	\$3,598,319

Ms. Wilson reviewed the Community capacity building and the Core City Redevelopment activities and pointed out the Core City Homebuyer Incentive Program is the most popular activity. Since July, the city has received 64 applications, and 34 homes have been closed on. Another important piece in the Community Capacity Building is the neighborhood associations that staff works with in the Core City, as well as the Public Service Grants. Included in the Annual Action Plan is the 2018 Public Service Grant recommendations with a total funding recommendation of **\$61,050**. The breakdown and award is recommended to include the following nonprofits:

Agency	Project	Amount
Senior Resources of Guilford	Meals on Wheels	\$ 5,200
Housing Authority	Seeds for Success Reading Enrichment Program	\$ 4,050
United Way of Greater High Point	Backpack Program	\$ 5,400
YWCA of High Point	Community Nutrition and Food Education Classes	\$ 9,750
Piedmont Panthers	Local Community Youth Foot-Ball and Cheer Program	\$ 8,700
Arc of High Point	Arc Access Dental Clinic	\$ 4,500
The MIND Group	Let's E.A.T. Program	\$ 7,800
Helping Hands	Fuel Purchase and Vehicle Repair Project	\$ 7,650
Operation Xcel	Operation Robotics	\$ 8,000
Total Funding Recommendation		\$61,050

Also included in the 2018-2019 Annual Action Plan is an application for another affordable housing development, Avondale Trace. The development will be located at 5206 W. Wendover Avenue and 96 multi-family apartments are being proposed (one, two and three- bedroom units). The size of the parcel may warrant a reduction in the number of units. The estimated cost is \$12,648,710 and the developer has requested a loan from the City of High Point in the amount of \$650,000. The monthly rents proposed range from \$235-\$795. Residents must meet certain income criteria to be eligible.

Ms. Wilson concluded her presentation with some of the comments made during the February 27, 2018 and the March 15, 2018 Public Participation Meetings.

Staff plans to take the 2018-2019 Annual Action Plan to the City Council for approval at the May 7, 2018 City Council Meeting, but because no official award has yet been received from HUD, this date may fluctuate. HUD requires submittal of the Annual Action Plan to them by June 26th.

2. Discussion- Amendments to current Parade/Picketing Ordinance

City Attorney JoAnne Carlyle: Previously this committee considered a proposed ordinance for parades and picketing. At that time, you heard from both me and the police chief. We were working with outside organizations and the ACLU in trying to achieve a document that was in everyone's best interest and was constitutional. Since that time, we did hear back from Chris Brook, who is the attorney representing the ACLU. Chris is actually here this morning. And I asked Catherine Clodfelter from Parker Poe if she would

do some research and check out some case law, etc.... on some of the issues that the ACLU had raised and brought back to our attention.

This morning, what I would like to do is for us to go over those seven points that we revisited based on what the ACLU provided for feedback and just talk to you about those changes. There's some little nuances here and there that we've made. A few of them are just for clarification and there are some, too, that the ACLU felt were not constitutional, not clearly so. So, we've done some tweaking here and there.

Last week the Police Chief and Police Attorney Brian Beasley, Catherine Clodfelter and myself worked together, along with Chris in trying to come together to get some final information before you and a final draft. What I'd like to do this morning is turn it over to Catherine to begin with. Chief, if you and Brian will chime in as necessary and certainly be here to answer any questions. Mr. Brook, you're also welcome to do the same if you would like.

Chairman Jeff Golden: Joanne, real quick, could you just remind everybody how this whole thing came about? What prompted the change in the ordinance in the first place?

City Attorney Carlyle: I'm not sure if I actually know the answer to that question.

Police Attorney Brian Beasley: There were actually two different things that came together for this. On one side you had a growing number of special events that the police were being asked to provide security for, not anything first amendment related there, but your runs, walks, whatever. So, there was a need to address those. At the same time, there was also a need to clarify. Our current ordinance called everything a parade. So, if it wasn't in that definition, there were no rules or guidelines for either side to know what's acceptable and what's not. Because of the events over the last few years with protests, with the tragedy in Charlottesville, the idea was that if everybody knows what the guidelines are it makes it safer for everybody.

So, those two interests kind of converged in wanting to clarify across-the-board both for first amendment protected speech rights, and also for these fun events. Kind of what the rules were. We had several different departments that had a hand in everything and so this kind of delineates who makes the decisions and what happens with that. That was kind of the impetus for both.

City Attorney Carlyle: Thank you, Brian. Also, I have some extra copies, too, if there are individuals that would like a copy. You guys are welcome to share what we have. These are not track changes, copies. I thought it would be much clearer if we could just go ahead and provide what is proposed in the language in the ordinance. Catherine is going to begin pointing out those seven areas that we were talking about that will have changes.

Unidentified speaker: Can I ask a question please? Seeing as we did not get copies of the newest, can it be pointed out what is different than the old copy that was last discussed?

City Attorney Carlyle: The section numbers have not changed, so you'll be able to follow along with that as well.

Attorney Catherine Clodfelter: I'll just start going through in order of the comments we received. I'll do my best to go in order as they had come although we might have to backtrack.

So, the first comment, the first concern we received is on page 6.

City Attorney Carlyle: The page number may have changed, the section is the same.

Section 10-1-275(a)...

Attorney Clodfelter: 10-1-275(a) is on page 4 at the bottom. The real edit comes not to this section, but I'll start with this section to tell you what the concern was.

The concern here is that notice has been extended so you have to give notice of intent for a parade ten days out from an event. The turnaround time for the decision on whether the parade will be permitted is in 10-1-275(a). So, let's start here.

10-1-275(a) requires that the permit official act as expeditiously as reasonably possible, but no later than three (3) working days.

The concern that was pointed out was that it could be extended to five (5) days, given that a working day is a day of the week and not the weekend. So, there's concern that when we have this ability to have a spontaneous response that you see down the page. You have to file a permit application within ten days from the event, unless it is a spontaneous response, and that can be within that ten-day period to give leeway for spontaneous events that arise as needed.

The spontaneous event didn't expressly have a turn-around time. Meaning that could potentially be read to be as long as three days to five days after a spontaneous event. I think the way to clarify that is simple and that's been done at the end of this paragraph, *to state that the permit official or the city manager shall notify the applicant in writing of the decision and basis of the decision within 24 hours of a spontaneous event application.* Meaning you still have that ten-day permit application period, ten days from the event, three-day turn-around time can be as long as five days if it's on a weekend, but in the event the parade is applied for as a result of a spontaneous event, and within that ten-day period, the turn-around time is 24 hours.

Police Attorney Brian Beasley: I just want to make it clear that this section is talking about what we would call *parades*. These are events that happen in the street. When the ordinance talks about *pickets* later on, those are things that don't happen in the street. So, there's less requirements for those. Once it gets out on the street and we're marching in the street, or we're taking up a street, obviously that raises more safety concerns and reasonable, time, and place, and manner where restrictions can be placed on that. For the

picket, for the protests....I know we've probably got some Indivisible folks in here who are demonstrating on a property outside of the street. The only requirement in here is that if you have a group of more than 15 people, that notice be given. There's no additional approval requirements necessary for that. I just wanted to keep those separate in folk's minds.

City Attorney Carlyle: Right. And following that same line of thought is just what he said. There was no responsibility on the city's behalf of saying we're going to get back with that person within a certain amount of time. And, Chris, I don't want to put words in your mouth, but I think that was the purpose of this change.

ACLU Legal Director Chris Brook: Yeah, and one of the concerns that we've dealt with.... First, I'm Chris Brook, I'm Legal Director of the American Civil Liberties Union of North Carolina. We're a membership organization with approximately 30,000 North Carolinians who are a member of our organization devoted to protecting everyone's civil rights and civil liberties in the State of North Carolina. I've been Legal Director for around six years and during the course of that six years, very frequently people want to parade or picket in response to an event that occurred and that was newsworthy. In Catawba County a few years back, which was Hickory, there was some LGBT comments that were made by a local pastor. LGBT support groups in the area wanted to be able to respond to that and respond to that quickly that weekend, so that they could push back against that and depict Hickory the way they understood the community, as an inclusive community. So, we want to make sure that everyone has that First Amendment right to respond quickly.

You know, the best national example, and you certainly saw it here in North Carolina as well. More recent than that were the travel ban protests that sprang up around the Trump Administration's promulgating travel ban last year. We want to make sure that folks don't have to wait three, five, ten days to be able to respond to those recent events. And, this has a much more expeditious turnaround. I believe the Police Attorney's comments in regards to the distinction between parades and pickets are well understood and we understand that if you're going to be closing down the street that there are city resources and police resources that need to be devoted to that. But I appreciate both JoAnne and Ms. Clodfelter being very responsive in regards to the concerns that we had about the notice.

City Attorney Carlyle: We've been really pleased with feedback because it's always good to have somebody else put eyes on a document and let you know if there's something that needs clarification, or if there's some issue that needs to be addressed.

Chairman Golden: Question, JoAnne. This number 15. If you get a permit and it says 15 people are allowed or whatever, and then somebody is riding up the street and they see the protest, picket, or whatever, and they agree with the cause and they decide to get out of their car and that number grows to 50, then what? Are they okay with the permitting or what?

City Attorney Carlyle: They are. And I'll let the Chief address that as well. We kind of talked about that a little bit before. They're going to use reasonable expectations in those types of situations.

Police Chief Kenneth Shultz: We're basing it on best plans. If you're planning on 14 people being there, then that's what we expect you to put in your information to us. And then if three other people show up, we understand that plans change. But it's what you know at that time. My concern, obviously, is I've got a limited number of people that I protect in the community, and if it is an event that requires manpower to be shifted, we need notice so that we can appropriately plan for that so that we can continue to protect the community and provide for the safety of the picketers.

City Attorney Carlyle: The next point has to do with indigent application, so I'll let Catherine pick up from there.

Attorney Clodfelter: The case law as it stands is unclear as to whether a city has to require a *waiver for an indigent* applicant. This is, once again, just in parades. So you'll notice there are costs and fees required and the time, the place, and the manner that a parade can take place. This ordinance has an exception, a waiver in 10-1-274(b) for indigent applicants. The original concern was the way that the ordinance combined both the thought of a waiver for an indigent applicant with a city sponsorship of a parade. That's one issue.

The separate issue is defining when an *indigent waiver* is appropriate. The language as it now stands, the permitting official has no discretion. The waiver shall be granted when an applicant is indigent. And the definition for indigent that has been used here, there are three things. It's a person who: *(1) receives or qualified to receive state or federal electronic food and nutrition benefits; (2) qualified to receive Work First Family Assistance; or (3) qualified to receive Supplemental Social Security income.*

That is the same indigent definition that is used for when a civil indigent requests court assistance and representation. Different instances, but it is a very concrete method for a permit official to determine a person's ability to pay without exposing the person to having to turn over basically all of their information.

City Attorney Carlyle: Also, remember, too, that we discussed prior the importance of removing the discretion from the city official in making decisions. So, we can go back and use that statute as far as the definition for indigent. Again, it removes that discretion and that decision-making power from their responsibility.

One thing that I would point out too, and I pointed this out before, but I think it's important for you to remember, that does not apply to the nominal permit application fee, so they are still responsible for making that payment.

Unidentified speaker: How much is that?

City Attorney Carlyle: I think it's \$10 or \$15.

Attorney Clodfelter: It's \$10.

Unidentified speaker: So, I don't see under Section 10-1-274.....I see cost and fees, but I don't see....

City Attorney Carlyle: Yeah, the permit, the nominal permit application fee is in another section.

Unidentified speaker: Okay, what section is that?

City Attorney Carlyle: I'm looking for it now.

Attorney Clodfelter: It's 10-1-272(b)(7). *The Permit Application must contain the following if applicable: (7) Payment of a nonrefundable application fee as set out in the city's Special Event Policy.*

Unidentified speaker: I still don't see a cost. I don't see an amount.

Attorney Clodfelter: As set out in the city's Special Event Policy. My understanding of that policy is.....

Police Chief Shultz: We've got a separate committee that is looking at expenses. They are considering several things. One is if it is a city-sponsored event. What are they going to do with nonprofit groups. What are they going to do for profit groups. And all that fee structure is being looked at by the Prosperity & Livability Committee. So, they are reviewing that. The fee applications and everything will be concluded, I assume, at that point as we are trying to resolve it.

And I know one of the things that group is doing is strictly comparing ourselves to other local agencies around us in looking at the expense. But, again, trying to determine what's going to be a city sponsored function. How they are going to handle nonprofits and how they are going to handle for profit events.

A big point that you have to keep in mind is that the parades, like a holiday parade, which requires hundreds of city employees, are some of the types of events that we're talking about for this as well.

Unidentified speaker: So, again, under the cost and fees, 10-1-274, unless I'm reading it wrong and I will admit that I've not read it in its entirety, but it seems like we did a deal afterward?

Police Attorney Brian Beasley: No, that'll all be upfront as this committee plans. Again, this is just for a parade, so this is just in the street. This is not for your....

Police Chief Shultz: An example is that the Parks & Rec has a big trailer platform stage that they bring out. There's an expense for that. They're looking at the expense for the city departments that bring out the cones and the barricades to block off roadways. They will have an expense for the firefighters that have to be out there for safety. EMS, police officers, and all those types of events is what that fee structure will be concluded on.

Chairman Golden: One other question in regards to the fee. I see you guys were using a statute they use in the courts, but what about when an organization is doing the application?

City Attorney Carlyle: I'm so glad that you asked that question. An organization will not be deemed an indigent under this policy, under this ordinance. And ma'am if that answered your question about the application fee. It's not actually in a section in this document. It will refer to the other one that's adopted.

Chairman Golden: And that meeting is Thursday at 4:00 p.m. if anybody's interested in attending.

Deputy City Manager McCaslin: No, it's tomorrow at 9:00 a.m.

Unidentified speaker: Is the Special Event Policy on the city's website?

Police Attorney Beasley: It's still being worked out.

Police Chief Shultz: Which is why we're here trying to get the details worked out.

Committee Member Monica Peters: But the picketing will be totally separate?

City Attorney Carlyle: Yeah.

Committee Member Monica Peters: So right now, we're just talking about Special Events and parades where you need police and stuff.

Police Attorney Beasley: There's not a fee with that.

City Attorney Carlyle: No fee for it, but picketing is addressed in here.

The next one is tied directly to what she just discussed and that is in regards to trying to make some clarification changes on making sure that city sponsored events, there will not be a fee that's applied to them, and if I understand correctly that's the whole purpose.

Attorney Clodfelter: That's the city sponsorship.

City Attorney Carlyle: Right. So, we have a fee waiver for indigents and we have a fee waiver for city sponsored events. And that was the next clarification change that was made there.

Catherine, do you want to talk about number 4?

Attorney Clodfelter: Now this change is from the parades that we've been talking about and using the public streets for picketing. And picketing does not call for shutting down the streets, just the sidewalks.

So, the next concern came from Section 10-1-283(a). I believe that's on page 7.

So, just a little background on how the picketing ordinance is written now. It is a group of 15 or more persons that shall give notice of intent to picket to the Police Chief or designee. So, if you're fewer than 15, you can give notice, but there's no requirement and that's expressly written. There are some items of notice that you have to give, but the notice does not have to be in writing. It just has to be provided. So, you can use a lot of channels for communicating that.

The concern was that this ordinance also requires immediate notice back from the Police Chief or designee that notice was provided and that is called a *receipt of notice*. The concern was making sure that is not discretionary, you can't wait at all or anything like that. And at the bottom of page 7, Section (d) says "*upon the giving of notice of intent to picket, properly provided as hereinabove set out, the chief of police or designee shall immediately issue a receipt of notice.*" So, there's no room for deciding who gets notice. There's no room for determining when it happens. It shall immediately happen. And I think that addressed the concern.

City Attorney Carlyle: It gives the applicant evidence that they did provide the notice. So you can't come back later....and they would be in a position where they wouldn't be able to prove that they did if there was a question that was received.

Unidentified speaker: Could that possibly be done by email?

Attorney Clodfelter: The way it's written, yes. It does not have to be in writing. It can be on the phone.

The next concern is Section 10-1-283(c), it's just above the provision that we were just looking at. Previously as you last saw the draft, the draft prohibited picketing against a private residence. The language was picketing at a location directly targeted or focused at a particular private residence. The concern there is you could have picketing focus at a residence, but not where near the residence. That you can interpret the word "focus" to say I don't like that person and what they do, but I'm going to picket in the park instead. And that's a difficulty just in how particular words are defined and a lot of times the concern is on parade and picket statutes and making sure that each word is very clear to anyone intending to picket. So, the concern is actually addressed in a North Carolina statute. North Carolina has a pretty robust statute and that's N.C.G.S. 14-277.4A. It defines residence targeting picketing and states it shall be unlawful for a person to engage in targeted picketing when the person knows or should know that the manner in which they are picketing would cause a reasonable person to do any of the following:

Fear for the person's safety or the safety of the person's immediate family or close personal associates, or substantial emotional distress. And emotional distress is also defined in the statute.

The ordinance now reads under 10-1-283 is that "*it shall be unlawful for any picketer to engage in the activity that's prohibited*" under this statute. So, in essence, the city's ordinance will rely on the state statute that outlaws the same thing.

Chairman Golden: I'm not an attorney so I'm not going to use the same language that you used, but the problem with elected officials....is it okay for people to picket outside of my home because it sort of goes with the territory?

Attorney Clodfelter: So, as I'm reading it, you would read under the State Statute that if they are not engaging any targeted picketing of your residence, then, yes. They can picket out in front of your residence.

Unidentified speaker: Could you give me that statute number again?

Attorney Clodfelter: Absolutely. It's N.C. General Statute 14-277.4A.

City Attorney Carlyle: We've got the N.C. G.S. 160A-175 referenced in the ordinance, so that will be changed to reference that Chapter 14 statute. I think that 175 is a general police power or something, but that will be something that will have to be changed for that to be a correct reference.

I'll just point out something. Just like we did with the indigent definition, we're trying to do the same thing here by taking out language where we've tried to define something and if there's a general statute that we can rely on, then we just rely on that. And then if it is challenged, we'll stand behind the AG when that happens.

ACLU Legal Director Chris Brook: That's the point I was going to raise. Again, I appreciate Ms. Carlyle and Ms. Clodfelter in being responsive to the concern that we had here about some terms that were not self-defining and could have been deemed vague or hard to follow by people who are trying in good faith to follow the provisions here. I don't know if I want to call it a compromise, but incorporating the statute by reference, we at the ACLU might have some concerns about the State Statute, but the State Statute is there and it has not been challenged in the courts yet. It's unclear whether it would survive a challenge in the courts because the law in many of these areas is not crystal clear. But, at the very least, High Point has now stepped back from adding any further confusion to the law. And, it's instead, just pointing at another source of law that already does exist. And, as Ms. Carlyle just referenced if there are concerns about that State Statute, then those, as a matter of course, will be threshed out in the judiciary at some point.

City Attorney Carlyle: Right, and better it be them than the city that's being challenged directly.

Attorney Clodfelter: Number 6. So the next concern deals with Section 10-1-285(a). This section of the ordinance previously did much of the same thing about what we just discussed in trying to define an activity by not a picketer, but someone watching the picketers that would be harmful, threatening. And there are, of course, protections for First Amendment rights, but not, of course, for some fighting language such as violence and things like that. So, the issue here was the words chosen were, again, not clear to anyone, or might not seem clear to someone who was watching a picket and wanted to express however they felt about the picket.

So, again, what the ordinance now does is instead of creating it's own words to describe that action, but now references State Statute and that State Statute reference is the disorderly conduct statute. So, that would be N.C. General Statute 14-288.4A(1) and A(2) which those two subsections of the statute say that disorderly conduct is a public disturbance intentionally caused by any person who does any of the following:

1. Engages in fighting or other violent conduct when conduct creating a threat of imminent fighting or other violence;
2. Makes or uses any utterance gesture display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace.

So, again, much like picketing against a private residence, the ordinance now just points to state law.

The seventh issue....this issue is in reference to Section 10-1-284, which previously read while the police chief or designee to apportion certain amounts of sidewalk if there are dueling picket groups that are picketing different topics or opposing topics, but want to occupy the same space. The concern with the previous language was that apportionment would somehow be based on the number of items of agenda, number of concerns of the picketers. That's a difficult thing, and you also might wade into some content-based issues in that. So, to stay away from all those concerns, we have drafted now a provision that states that the second in time picketers shall maintain a minimum of 20 feet from the first in time picketers. That separation creates the safety and allows the police to make sure that not only the picketers be heard on either side and be able to express themselves, but there's the safety element and concern to picketers in the same space.

City Attorney Carlyle: It's making sure that they are allowed to exercise their rights, but also the PD is able to do their job.

I know it's a lot to swallow, and I just thank you. I've seen some expressions around the table, but I thank you for bearing with us. You know, as lawyers, it's so important. I've been so grateful for all of the players and the product that we wound up with at this point in time. I don't think....I don't see except for that one reference to the General Statute that needs to be corrected in there and maybe some fonts and indentation and that sort of thing. I don't really see any other changes that need to be made if you are interested in moving this forward. If you want some more time to digest, I would understand that as well.

Committee Member Chris Williams: Just one question. Should it move forward, are we talking immediate action on this, or are we talking like time to educate? I mean that's my concern. Time to educate our people on what the statute is.

City Attorney Carlyle: It also has to be tied into the Events Policy. Since we've got that reference in here, we'll have to watch that timing because we can't adopt this without having that in place.

Chairman Golden: And you can't separate them for the purpose of educating the public to the changes when it comes to picketing?

Police Chief Shultz: More specifically what we're looking at is the Council approved July 1 budget because I need to know how much money you're going to give me to operate over these things. So, it's all tied to a July 1 start. If you're saying that we're not going to do anything until then and that we're going to be responsible for covering and paying for all the employees at that time, then that's going to be a funding issue that you guys would have to address as a Council. So, I'm looking at a July 1 start date because that is hopefully when the fee structure and the decisions on what's going to be city sponsored, those nonprofit and for-profit aspects. It's also for Parks & Rec., Street Department, Fire Department, and the entire city structure that's involved in a lot of these bigger events.

Committee Member Peters: I wish we could see picketing totally separate, a totally separate entity. I think it's totally different from the other.

Police Chief Shultz: If I may, the problem I see is, again, I tried to mention this last time. I've had lots of groups that get together. They have rallies, they have speakers, they have prayers, they have discussions. Then, they go out and march in the streets carrying signs. They do a parade, and then they end at a different location and have speeches, prayers, press release events and stuff like that. I don't know how you separate the two because they blend so much together in those particular instances.

Committee Member Peters: But if they're doing stuff in the street and they didn't get permission, wouldn't that be considered disorderly conduct?

Police Attorney Brian Beasley: Disorderly conduct is pretty high. You can get away with a lot before you cross that criminal statute.

Committee Member Peters: I agree that if they're going to be moving in the street, they should get permission. I totally get that.

Police Chief Shultz: It's a safety issue there because, again, the picketing on private property or on sidewalks, that doesn't impact us. But once they leave that and take to the streets, then I've got to shut down traffic and we've got to pull officers in and block off roadways for that. It gets complicated, and trust me, a lot of our events start off as rallies and they move out to designated marches and then they end with a rally. So, I still can't

see how you can separate the two. They are two different ones, but there are some that combine the two combinations there and that's why we opted to put the picketing, parade, and special events. We didn't talk about the block parties and stuff, but they also have the element to stopping traffic and blocking that off.

Chairman Golden: I'm feeling what she's saying and that's the dilemma we have because we understand what we need to do when it comes to parades and special events. That's easy. And then you put picketing in there, we can't pass this or push this on the Council, I don't feel with the mixing together. But I still have some other questions and guess they're for you Chief. Certain words scare me.

ACLU Legal Director Chris Brook: I just want to refer him to the previous comments from the council member about the importance of communication. Written policy is a wonderful first step. It's also a first step. And, whether intended or not, if written policy is not communicated and clearly communicated to the public, it can have a chilling effect because people who are not lawyers say well there's been a policy put in place and I'm not allowed to do this anymore, or a game of telephone takes over and they don't understand what the rules are.

So, I am very much heartened by the real robust conversation that's going on around this policy, but to pick up the council member's point, this to me is the first step. The second step and an on-going step is to make sure that whatever is adopted is readily accessible, but is also communicated clearly by the city so that people understand it and there's not an unintentional chilling of people's free assembly petitioning rights.

Committee Member Williams: I think we do a really good job in marketing. The city is well connected with the community and neighborhood associations as far as getting that information out. I think that once we make a decision to move on that, I think that's important. And just to speak on the educational piece, I'm just going to give you an example of why I see it as both. Good intentions, two good ministries wanted to do a peace rally walk. They started in one area with prayer. Then they marched through a neighborhood, crossing and walking down public streets, across heavy traffic roads, went to another area and prayed. They said a few words, and then they reversed the march. They had not notified anyone. That was spontaneous and so forth. I just think the educational piece of this....it's necessary to be in place for that purpose. But the educational piece is something that we need to focus on in getting it out to them and I think we have the capability of doing it even with the timeframe. We can do it. It's just got to be something that we make a decision on and start to educate our people quick on the statute.

Chairman Golden: From the funding aspect, you need to know so you'll know how to plan for the upcoming year. So, if we add the educational piece and not start implementation for six months or whatever, then that's six months he goes without funding to handle anything that may arise.

Police Chief Shultz: It also involves the Parks & Rec., the Street Department, and everybody that's involved in these types of events and it's pretty taxing on the city. That organization or that committee has received the estimates on what we are spending each year on these things and that's why it's gone to the committee asking them to make decisions as to how to move forward.

Unidentified Speaker: May I ask a question for what Councilman Williams just said. What you said was the rally and the march, are you putting that together with the picketing?

Committee Member Williams: Well, it had those elements in it. That was my point. Don't get lost in the picketing word. It's just what makes the rally itself. It was a rally not against a political issue, it was against violence. So that's fine. It's still the fact that it's there and it's good for our city employees to know that's there. My concern with that was when they moved and they moved into traffic and they had the elderly, they had children walking with them and they hadn't called anyone. They didn't call the city. They didn't call the police. They hadn't done anything. They were just not educated to know that.

Unidentified Speaker: That's what I was talking about. Picketing to me is in one location. Once you move, if you're moving, then that was never picketing.

Committee Member Williams: We've had both. We had just a rally, and then they moved. There was nothing in place or an understanding that you were to stay where you were as you picket. They didn't know that they couldn't move. They just said we're going to go to the next stop. We're going to go somewhere else. We're going to go to that neighborhood, so they just moved. That's my point. And when you have that in there I think the definition of the two and clearly expressed to the populous would help keep us and them safer. That's my point. It needs to be in place because we're talking about it. For me, the issue wasn't what they were talking about, it was the safety factor of it because the changing of the mind spontaneously created an issue with safety.

Unidentified speaker: I understand what you're saying, but for me and my definition, picketing is in one place and a march....what you're describing is a march and I can understand having safety issues there and the requirements. But if it's picketing, it's picketing. I don't see where you can say they were picketing and it's a march and moved to picketing. To me, it was a rally and a march.

Unidentified speaker: So, are you saying that we need to expand definitions? In other words I see article, I think it's "O" as in octopus. Parades, Picketing and Special Events.

Unidentified speaker: I agree, I just think the two should be separated.

Committee Member Peters: Stationery picketing and then rallies, marches, parades, and all those. Then maybe you just define that it has to be in one space, that it has to be stationery. Would that make everyone happy?

Police Chief Shultz: There's a distinct difference between a holiday parade which blocks off all S. Main Street and goes all the way up to Main/Montlieu. What Indivisible High Point does is they go once a week in the Main/Lexington area. Those are distinctive differences, but what Councilman Williams is talking about, we've had numerous occasions. That was one that I got a call on a Sunday when I'm very short-staffed and said they need cars to stop the traffic so people don't get run over. Black Lives Matter did a large march which started off as a rally and marched up to Green around Centennial back down MLK and back up Brentwood Street. It starts off with the presentations, the speeches, whatever the prayers and stuff and moves into the street, then it ends with that and a lot of times with a press conference. There are some that are distinctly different. There are some that combine the two and if you want to make them apply for a permit for the parade, and then have a picketing on top of that, I think that's complicated. I'd rather just do it all at one time. But that's your decision. There are some that distinctly combine the two events like Councilman Williams was saying.

Chairman Golden: I think Councilman Williams' scenario, I think that was the public not knowing what they needed to do for the event they had. They didn't know that they needed to call the police, which created a problem. And I don't think doing this is going to necessarily resolve that because there are still going to be people out there that don't know. So, we're still going to have those incidents.

Police Chief Shultz: We're still going to scramble to try to keep them safe, but anything that we can do to educate the mass number of people. That does not give me time to pull any cars, so, again, I'm not having to abandon neighborhoods and say that we need you down here to protect these marchers in the roadway.

Chairman Golden: I guess this question is for Chris Brook. I'm sure you've seen cities go through this process before. Are we in line with what other cities are doing? Are we pretty close?

ACLU Legal Director Chris Brook: That's probably a better question for Ms. Carlyle and Ms. Clodfelter. But what I will say is there are a number of elements here that are very plainly reflecting what a number of other cities of similar size have done. You know one of the things that is a complicated nuance to convey is, well a couple of nuances to convey.

First, the law is not necessarily always crystal clear about what it and what's not constitutionally permissible in these areas. So, the attorneys surrounding you today are not punting when we say we're not entirely sure. The courts just have not addressed some of these issues. And then there's the issue of what is constitutionally permissible on occasion is not always sound policy. Right? So, you need to take the knowledge you have of your city, what can work in your city, and create good policy. It needs to be constitutional, but just because it's constitutional does not mean that it's sound policy. I don't know if that was helpful. You learn in law school that the answer to every question is, it depends.

Police Attorney Beasley: I'll just say that one of the advantages in doing all of this at once is that you create one spot for people to go. If they want to have an event and they're

not sure exactly what they want to do, the notices....obviously if it's going to be a picket, that notice goes to the chief. All these other special events, parades, whatever, it will all be in one place on the webpage. The other point, too, is that right now we have an ordinance that our department can't really follow because whether it's Indivisible and what they're doing, whether it's Black Lives Matter march, everything under our current ordinance is a parade. There's supposed to be an application fee and some other requirements that simply can't be applied to a First Amendment type thing. So right now, there's absolutely no.....the Indivisible folks have been great to work with. We've had no problems with them, but if you had a group that was more concerned with pushing the envelope in a malevolent way, we'd have some serious issues.

Unidentified speaker: I just want to say that I think in terms of terminology, the general population is familiar with....we know the term "picket". But in the policy it does not seem to address, and I've not read the policy all the way through, I will admit that on the front end. But it does not seem to address a march.

Police Attorney Beasley: A march is a parade. So anything....the difference is a picket is something out of the street and a parade is anything in the street. So, a parade will cover a First Amendment march like the Black Lives Matter march, or the holiday parade, or a car show parade, etc.... All of those are in the street because we have to do similar things law enforcement wise to protect safety and those things and constitutionally the courts have seen that once it gets into the street obviously there's a different balance there that's struck. Whereas a group that's not in the street, it's a lot more hands off.

Unidentified Speaker: And when the general population hears the word, "rally", what they should look at in the policy is "picket". When the general population hears the word "march", they should look under "parade".

Police Attorney Beasley: That's correct. If everyone understands that a rally is stationary and not in the street. It's semantics.

City Attorney Carlyle: Two quick comments on two different issues. One, about breaking out picketing from parade. You know from a legal drafting standpoint, it probably doesn't really matter, but whatever you put in place, you always want to look at your department that's enforcing it and make it workable for them. So that was another reason it was drafted the way it was.

And on the other issue, first wave of anything that comes through my office generally speaking, I start doing the research. I look at what other cities are doing because we don't want to be the outlier and we also immediately check to see if there's any case law that applies and how that impacts. That was when I first called in Parker Poe, Catherine here, was during the first wave to double check some of those cases out there and then on the second wave, when Mr. Brook got more involved, to double check our position in regards to the Constitutional issues.

Chairman Golden: I don't know if I speak for the other board members or not, but if we're going to push this to Council, I just think that when we present it to them, we present it as two separate issues and that picketing stands alone and let Council have their discussions and do whatever they're going to do from the dais.

Committee Member Peters: Absolutely.

Chairman Golden: So, can we have it presented that way?

Police Chief Shultz: I don't want to arrest a church member, so we need to make sure that we've got it covered that they are applying for two different events and we can make them do that extra work for that.

Chairman Golden: Well, if they're picketing, then they can just address the picketing and not address parades if they are not going to move. I don't see why they would have to deal with the parade stuff if they're not going to picket and vice versa. And if they don't understand that, then it's back to you arresting some church folk.

Police Chief Shultz: If they're just picketing, they apply for the picketing which is just giving us notice. If they're doing a parade, then they apply for a parade. I guess you're saying that if they're doing both we'll have to apply both aspects. Which is fine. It's just extra work.

Chairman Golden: Well if they are going to do both, then they need to apply for both.

Committee Member Williams: If they are going to do both, if they are going to rally and then move, then it's both.

Chairman Golden: I'm just talking about for our conversation, we need to treat them separately.

City Attorney Carlyle: As an ordinance. So, yeah, we'll go back and pull that out and separate it and double check and make sure that everything that's supposed to apply to one is done the way it's supposed to. So we'll break that out. When do you want to bring that back?

Deputy City Manager McCaslin: Do you want it to come back to this committee one more time?

Chairman Golden: Yeah. Come back here one more time to make sure we've got it right, and then we'll forward it to Council.

Deputy City Manager McCaslin: Which means you won't be able to take it to Council until mid-May.

Chairman Golden: As long as we make that July 1st deadline, we should be okay?

Committee Member Peters: Can we have a special meeting so we can do it before May 7th?

City Attorney Carlyle: There is a possibility that rather than relying on the entire Special Events Policy to be completed to just get the portion that applies to this done and then add on to complete that.

Deputy City Manager McCaslin: I think it'll be completed tomorrow.

City Attorney Carlyle: Then never mind. Sounds great.

Deputy City Manager McCaslin: It'll come back to the Community Housing, Neighborhood Development & Public Safety Committee on May 8th.

[end of transcript]

There being no further business to be discussed by the Committee, the meeting adjourned at 11:20 a.m. upon motion duly made and seconded.

Respectfully Submitted,

Lisa B. Vierling, MMC
City Clerk

Jeffrey J. Golden, Chairman