

CALL TO ORDER

Mayor Luna called the meeting to order at 6:33 p.m.

ROLL CALL

Councilmember Richard C. Cook, Councilmember Donald L. Johnson, Councilmember John T. Procter, and Mayor Ray C. Luna responded to roll call. Interim City Manager Paul L. Skeels, City Attorney Phillip H. Romney, and Deputy City Clerk Josephine G. Herrera were also present. City Clerk Steven J. Salas was absent. Vice Mayor Laura Flores Espinosa arrived at 6:37 p.m.

PUBLIC COMMENT

Geri Rose Skirvin, 506 E. Santa Paula Street, spoke against the LED sign at Santa Paula High School, and asked the City Council to consider writing a letter to the high school asking them to comply with the City's sign ordinance. A discussion ensued regarding the fact that the City Council does not have jurisdiction over school property.

Jimmy Fogata, 412 Morrison Lane, spoke in support of Gary Marshall, who has served the Santa Paula Police Department for 24 years, and asked that Mr. Marshall be allowed to test for the Police Commander position.

Carlos Juarez, 806 Ojai Road, spoke in support of Gary Marshall, and asked that Mr. Marshall be allowed to test for the Police Commander position

CONSENT CALENDAR

It was moved by Councilmember Johnson, seconded by Councilmember Cook, to approve the Consent Calendar as presented.

Vice Mayor Espinosa asked for a discussion regarding Item C. City Attorney Phillip H. Romney advised that it would be appropriate to pull the item.

Councilmember Johnson withdrew his motion, and moved to approve items A and B on the Consent Calendar. Councilmember Procter seconded the motion.

Under roll call vote, all were in favor, and the motion carried.

A. Closed Session - Approved a Closed Session to discuss: 1) Negotiations with Employee Organizations: Santa Paula Police Officers Association (SPPOA) - Non-Safety Unit (CSO Unit), Santa Paula Police Officers Association/IBPO - Police Commanders Unit,

Santa Paula Public Employees Association (SEIU), and unrepresented employees (management, mid-management, confidential, part-time, temporary, and seasonal employees). Name of Negotiator: Melissa Macias. Pursuant to *Government Code* §54957.6 (118-2); and 2) Conference with Legal Counsel, Existing Litigation. Name of Case: Mike Panah dba NBM Group v. City of Santa Paula. Pursuant to *Government Code* §54956.9(a). (136)

B. Selection of a Hearing Officer - Approved the selection of Hadley Batchelder as Hearing Officer. Assistant to the City Manager Melissa M. Macias' report dated March 6, 2002. (118)

CONSENT CALENDAR - SEPARATE ACTION ITEMS

C. Speaker Timer - (50-6)

Deputy City Clerk Josie G. Herrera's report dated March 6, 2002.

A discussion ensued regarding the unit which will take the burden away from of the Mayor having to rely on a stop watch to keep the time for public speakers, and which would also allow time limits to be applied fairly and equally.

It was moved by Councilmember Johnson, seconded by Councilmember Cook, to approve the purchase of the speaker timer for the Council Chambers and appropriate \$600 for its purchase from the General Fund Reserve to Account No. 100.005.0501.8610.

Under roll call vote, all were in favor, and the motion carried.

ORDER OF BUSINESS

A. Hearing Regarding Complaint of Gary Marshall - (118-2)

A discussion ensued regarding the procedure in order for the complaint to be heard, concerns regarding the fact that Police Chief Robert S. Gonzales was a hearing officer and gave testimony during the grievance hearing, and concerns regarding whether all of the written and verbal documentation had been presented to the City Council.

City Attorney Phillip H. Romney responded to the City Council's concerns by stating that City staff had provided him a briefing of the issue and that it did not appear to be a grievable complaint. Additionally, the City's labor counsel reviewed the matter and concurred that the issue was not subject to the grievance process. Therefore, it was his ruling that this was not a grievance, and that the City Council does not have jurisdiction to

hear the matter. However, if the City Council wishes to receive information about the issue and make an advisory ruling, the ruling would be nonbinding and would have no legal effect.

It was the consensus of the City Council to move forward with hearing the complaint.

Police Chief Robert S. Gonzales provided a verbal report of the requirements adopted in 1993 for the Police Commander position for a two-year degree plus a number of years of experience as a sergeant. He further reported that when he was promoted to Police Chief in 1999, he asked the City Council not fill the Police Commander position, which allowed personnel to attend management courses to prepare for testing for the promotional process. It was during this time that Gary Marshall appeared before the City Council to ask that the City Council reconsider the minimum qualifications for the Police Commander position. Afterward, Mr. Marshall filed a grievance with the Police Department complaining that the qualifications for Police Commander were too high, that he had some education, a vast number of years of experience, and POST certification. Mr. Marshall had further requested that he be allowed to test for the position without his having an AA degree.

A discussion ensued regarding the City Council's desire to receive a copy of the job flyer which indicates the dates the recruitment opened and closed. Another discussion ensued regarding a proposal made by the previous Assistant City Manager who had wanted to change the qualifications from a two-year degree to a four-year degree. This change was denied by the previous City Manager. Another discussion ensued regarding the AA degree requirement for the Police Commander position which was established in 1993.

Assistant to the City Manager Melissa Macias responded to a question regarding the AA degree requirement by responding that when the requirement was changed in 1993, a copy was sent to the union for their approval. She further responded to a question regarding whether there were any records to back up this statement by stating that City Manager Peter Cosentini's memorandum dated December 26, 2000 indicates that there was documentation that the City had met with the union.

RECESS TO A BREAK

Mayor Luna recessed the City Council to a Break at 7:23 p.m.

RECONVENE TO REGULAR MEETING

Mayor Luna reconvened the City Council at 7:28 p.m.

A discussion ensued regarding whether witnesses should be sworn in and whether there could be Superior Court action. City Attorney Phillip H. Romney advised that there was no requirement that witnesses be sworn in, and that there would be no Superior Court action

as the issue was not subject to the grievance process. He further responded to a question regarding whether this was a grievance hearing by stating that it was not. He further noted that he did not attend the February 19, 2002 meeting when the date was set to hear this grievance, and that he first heard of this complaint last week and that a final determination on whether this was a grievable issue was not made until this afternoon.

Councilmember Cook stated for the record, "I have known about this because it came up on a public meeting, whether what attorney was sitting here, if you weren't sitting here you should have had ample notice of this because we've discussed this. We've known about it since almost a year ago that this was pending. We kept getting memos. You get the same stuff we get, and I'm getting tired of having everybody tells us they never get anything we get. I mean, I don't know. It doesn't make sense to me. Everybody here has known that something's been in the mill, but Chief Gonzales never came out and said it because it was a personnel issue."

A discussion ensued regarding whether the revised Police Commander job description was sent to the union because Police Commanders were not represented at that time. Assistant to the City Manager Melissa Macias responded that she believed a courtesy copy was sent to the Police Officers Association, but that she would need to research that documentation.

Linda Mouzon, International Brotherhood of Police Officers, representing Gary Marshall, stated that she felt the grievance process had been waived because Mr. Marshall had been through three steps of the grievance procedure, and that previous City Manager Peter Cosentini had proceeded with the grievance hearing.

City Attorney Phillip H. Romney responded to a question regarding who should go first in the hearing process by stating that the City Council could establish its own rules for the hearing, and that it would be reasonable to allow the appellant to go first. He further addressed the issue of the waiver of the grievance process, and stated for the record that the waiver does not apply in a situation such as this.

Greg Palmer, representing the Chief of Police, distributed copies of the transcripts and exhibits he prepared after the grievance hearing was adjourned in lieu of closing oral arguments; a copy of the decision made by Mr. Jonathan Monat, the Grievance Committee Chair; a copy of the dissent by Mr. Nelson; a copy of the comment to the dissent by Mr. Monat; and a copy of City's Exhibit 1 which was a rejected exhibit at the hearing.

Councilmember Cook stated for the record that the package provided by Mr. Palmer states "regarding the matter of grievance", and that it did not state "complaint."

Linda Mouzon addressed the requirement of an AA degree for the Police Commander position and noted Gary Marshall's education, qualifications, and experience.

Gary Marshall stated that if he had known in 1993 of the educational requirements, he would have pursued his educational goals, and that he will earn his degree this May. He further addressed the grievance hearing held with City Manager Peter Cosentini. He responded to a question regarding whether anyone had used the term "complaint" by stating that he had not heard that term prior to today. He further responded to questions regarding whether he knew what a grievance was, given his experience as Association President, and whether he had handled other people's grievances by responding yes to both questions.

A discussion ensued regarding the in-house promotion for the Police Commander position, Chief Walt Adair's announcement of his retirement, and the manner in which the job flyer was distributed. Another discussion ensued regarding whether the letter from Chief Adair is admissible due to the fact that he was not present during the grievance hearing.

RECESS TO A BREAK

Mayor Luna recessed the City Council to a Break at 8:16 p.m.

RECONVENE TO REGULAR MEETING

Mayor Luna reconvened the City Council at 8:21 p.m.

Greg Palmer addressed the transcripts and exhibits he distributed which indicated that Mr. Monat had rendered an opinion that Gary Marshall failed to prove his case and failed to prove any constitutional infirmity. He further stated that Gary Marshall did not pursue his degree between 1979 to 2000.

Police Chief Robert S. Gonzales responded to a question regarding whether there was a timeline to set hearings by stating that there were waivers from both parties, therefore, time was not an issue.

A discussion ensued regarding the City Council's desire to receive: 1) information on whether a courtesy notice was given to the Police Officers Association on the 1993 change of the job description; 2) a copy of the job description for the Police Commander's position prior to 1993; 3) a copy of the City Council Minutes of the City Council's review of the change in the job description made in 1993; 4) information regarding whom City Manager Peter Cosentini spoke during the grievance hearing regarding whether the issue was a grievance or a complaint; and 5) information on the date the recruitment opened. Another discussion ensued that the City Council not have any personal inquiries of people or parties for the remainder of this hearing.

Another discussion ensued regarding having the City Attorney prepare a written report on whether this issue is grievable or not. City Attorney Phillip H. Romney stated that his written report will also deal with the issue of the waiver.

It was moved by Vice Mayor Espinosa to return this in four weeks.

A discussion ensued regarding setting a date to review the additional documentation.

It was the consensus of the City Council that staff provide the additional research to the City Council in a written memorandum, with copies provided to all the parties, as soon as possible in advance of a future hearing.

Police Chief Robert S. Gonzales responded to a question regarding how this will affect the recruitment process by stating that the test was to have been conducted a year ago, and if we wait until June, this will no longer be an issue because Mr. Marshall will have earned his AA degree. However, if we go back to the date that was first announced in the test, and depending on the City Council's decision, Mr. Marshall would not have qualified as of November 1, 2001.

It was the consensus of the City Council to bring back this item at the April 15, 2002 meeting, and that the date could change if not all of the information is received.

A discussion ensued regarding there being no additional testimony regarding this issue; that additional information will be provided to the City Council prior to the April 15, 2002 City Council meeting; that during the April 15 meeting the City Council will do deliberation in public and make a final decision; and that any Public Comment made during that meeting will not reflect on the City Council's decision.

Vice Mayor Espinosa rescinded her prior motion and moved that the City Council return the item on April 15, and that the requested documents or information be submitted to the Council prior to the meeting of the 15th. Councilmember Johnson seconded the motion.

Under roll call vote, all were in favor, and the motion carried.

CITY COMMUNICATIONS

City Manager Paul L. Skeels reminded Mayor Luna and Councilmember Procter that they are scheduled to meet with the high school board for the Joint High School/Council Committee Meeting on March 12, 2002, at 5:30 p.m, at the high school district office.

FUTURE AGENDA ITEMS

It was moved by Councilmember Cook for a verbal report from the City Attorney on what is a grievable item. A discussion ensued regarding the fact that it was the City Council's consensus to have the City Attorney provide a written report. Councilmember Cook withdrew his motion.

It was moved by Councilmember Cook, seconded by Councilmember Johnson, for a report on how hard it would be to have Building & Safety take payments for permits and inspection fees. A discussion ensued to include Planning and the Fire Department. Under roll call vote, all were in favor, and the motion carried.

It was moved by Councilmember Cook, seconded by Councilmember Johnson, for a report on the sign ordinance and whether it is not legal, and if so, how long has it been illegal and what we can do to correct it. A discussion ensued regarding the fact that the entire code is being updated, particularly the Development Code.

Councilmember Cook rephrased his motion that he would like to have come back as soon as possible the sign ordinance. Councilmember Johnson seconded the motion. Under roll call vote, all were in favor, and the motion carried.

COUNCIL CONSENSUS TO EXTEND THE MEETING

As business had not concluded at 9:30 p.m., and pursuant to Section 11 of the City Council's Rules of Procedure, it was moved by Councilmember Cook, seconded by Councilmember Johnson, to extend the meeting for 30 minutes.

Under roll call vote, all were in favor, and the motion carried.

CLOSED SESSION

City Attorney Phillip H. Romney announced that the Closed Session was to discuss: 1) Negotiations with Employee Organizations: Santa Paula Police Officers Association (SPPOA) - Non-Safety Unit (CSO Unit), Santa Paula Police Officers Association/IBPO - Police Commanders Unit, Santa Paula Public Employees Association (SEIU), and unrepresented employees (management, mid-management, confidential, part-time, temporary, and seasonal employees). Name of Negotiator: Melissa Macias. Pursuant to *Government Code §54957.6* (118-2); and 2) Conference with Legal Counsel, Existing Litigation. Name of Case: Mike Panah dba NBM Group v. City of Santa Paula. Pursuant to *Government Code §54956.9(a)*. (136)

Mayor Luna recessed the City Council to a Closed Session at 9:32 p.m., and reconvened into Open Session at 10:20 p.m.
No action was taken during the Closed Session.

ADJOURNMENT

There being no further business to come before the City Council, Mayor Luna adjourned the meeting at 10:20 p.m.

ATTEST:

Josephine G. Herrera
Deputy City Clerk