

City Council Chamber, City Hall, Monday, November 15, 2010

A Special Meeting of the Houston City Council was held at 10:00 a.m., Monday, November 15, 2010, with Mayor Annise D. Parker presiding and with Council Members Brenda Stardig, Anne Clutterbuck, Wanda Adams, Mike Sullivan, Al Hoang, Oliver Pennington, Edward Gonzalez, James G. Rodriguez, Stephen C. Costello, Sue Lovell, Melissa Noriega, C. O. "Brad" Bradford and Jolanda "Jo" Jones; Mr. David M. Feldman, City Attorney; present. Council Member Jarvis Johnson absent.

At 9:48 a.m. the City Secretary read the descriptions or captions of items on the Agenda.

At 10:00 a.m. Mayor Parker called the meeting to order and stated that the purpose was for canvassing the vote; and called on the City Secretary to call the roll. Council Members Johnson and Jones absent.

- 1) ORDINANCE tabulating the votes cast and canvassing the returns of the City of Houston Special Election held on November 2, 2010, for the purpose of submitting to the qualified voters of the City of Houston, Texas, a proposition to amend the City Charter to provide for the creation of a dedicated funding source to enhance, improve and renew the City's drainage systems and streets; containing various findings and other provisions related to the subject; declaring the official results of the election – was presented. All voting aye. Nays none. Council Members Johnson and Jones absent. ORDINANCE 2010-879 ADOPTED.
- 2) ORDINANCE tabulating the votes cast and canvassing the returns of the City of Houston Special Election held on November 2, 2010, for the purpose of submitting to the qualified voters of the City of Houston, Texas, a proposition to amend the City Charter to change the residency requirement for the November 2011 General Election for District Council Offices from twelve months to six months preceding the election date; containing various findings and other provisions related to the subject; declaring the official results of the election– was presented. All voting aye. Nays none. Council Members Johnson and Jones absent. ORDINANCE 2010-880 ADOPTED.
- 3) ORDINANCE tabulating the votes cast and canvassing the returns of the City of Houston Special Election held on November 2, 2010, for the purpose of submitting to the qualified voters of the City of Houston, Texas a proposition to amend the City Charter relating to the use of photographic traffic signal enforcement systems (red light cameras); containing various findings and other provisions related to the subject; declaring the official results of the election– was presented. All voting aye. Nays none. Council Members Johnson and Jones absent. ORDINANCE 2010-881 ADOPTED.

Mayor Parker stated that she had several things to discuss about Item three, Proposition Three, there had been much discussion around the Council Table about results of the vote on red light cameras and she stated consistently several things; that she absolutely understood the will of the voters that the cameras be turned off and she assumed there would be litigation around this issue; that the City Attorney was clear to Council the contract with ATS required a 120 day termination for convenience under which their expectation the cameras were up and operating and she also said no decisions would be made until today when the election became official and now she could announce that as of a few minutes ago with the last vote cameras were off, but the city had also taken action to protect the city in the inevitable litigation and before each at the table was a copy of a suit the city filed and asked Mr. Feldman to describe

the action being taken.

Mr. Feldman stated that at 10:00 a.m. today, the time notice for the canvas two things occurred and that was one, formal notice was sent to ATS advising cameras were to be turned off at 10:00 a.m. and they had been and in addition at the very same time the City of Houston filed suit in Federal District Court against American Traffic Solutions seeking a declaratory judgment as to the rights and obligations of the parties under the contract, while the city took position the contract would specify 120 days notice required, the fact was the camera company also indicated that they thought the contract could be interpreted such that there was no termination for convenience clause and given all that had occurred with respect to both the vote and confusion created by it, as well as position taken by the camera company, they determined in the best interest of the city to have cameras turned off and protect legal interests of the City of Houston by filing the suit for declaratory judgment; that they did this in federal court because ATS was a Kansas corporation and they were confident a federal judge would determine rights and obligations and at the end of the day the city would be in the best legal position.

Upon questions by Council Member Noriega, Mr. Feldman stated that the best case scenario for the City of Houston would be they pay no money to ATS in terms of damages and the way it would work would be all recordings in devices as of the time cameras were turned off would be processed and they had that obligation, but that be the limitation of the obligation and they owe nothing for terminating the contract; that the worse scenario would be that they owed ATS in damages, though he felt based on facts the City of Houston had a good argument to walk away without paying money; and upon further questions, Mr. Feldman explained a declaratory judgment and stated that revenue to ATS was based on fines paid and if people would not pay fines there would be no revenue and it would be a difficult damage model.

Upon questions by Council Member Hoang, Mr. Feldman stated that sometimes the best defense was a good offense; that he was not suggesting a federal judge was more likely to rule for the City of Houston than a state court judge and he would never suggest that, but he took it to federal court which took the politics out of the matter and he felt that was important.

Upon questions by Council Member Sullivan, Mayor Parker stated that tickets already issued they did tend to collect aggressively; and Mr. Feldman stated that in terms of the firm collecting the fines they were a subcontractor to ATS so a direct action would not be pursued with or against them and they had no cause of action against the city; that they would welcome the State of Texas as a party to the federal complaint if the Attorney General was listening.

Council Member Lovell stated that the cameras were for safety and now if someone just rolled through they would be injuring and or killing and cameras showed those who had no regard for others safety and that was what concerned her, loss of revenue was secondary and she wanted to know if the most dangerous intersections would be targeted; and Mayor Parker stated that she had the conversation with the Police Chief and it was their intention to enforce aggressively the running of red lights and it would be a more expensive ticket because it would be issued by an officer; that the problem was all money generated by the cameras stayed in HPD for traffic enforcement and the direct impact would be in overtime in the department which may have an impact on the ability for that aggressive enforcement; and Council Member Lovell stated that she would like the Public Safety Committee to do a study on injuries or deaths after the camera were taken down so all could understand the comparison and if they had to beef up officers; that she thought Council would like to know; and Mayor Parker stated that it would take time to get good data.

Upon questions by Council Member Gonzalez, Mayor Parker stated that it did have a 120 day out clause and they did not anticipate ballot action and the contract was done a number of years ago; and Mr. Feldman stated ATS would continue to process citations in the pipeline, he

talked to them and it was in their interests to do that and a duty to do so to mitigate any damages; that the contract was negotiated in 2006 and at that time there was no Charter amendment elections in Texas dealing with such cameras, but there was a clause in the contract regarding the courts ordering the cameras be turned off and there was a liquidated damages clause for that and going forward, if they ever did this again, there would be a clause; and Mayor Parker stated no one felt the City Charter would be used in such a way and many felt it was a perversion of the City Charter, but now they knew.

Council Member Bradford commended Mr. Feldman and the Legal Department for bringing the declaratory judgment action to get necessary questions answered and believed federal court was the place to do so; and upon questions, Mr. Feldman stated that ATS had a number of arguments with respect to the interpretation of the contract, amongst others was with the amendment in 2009 termination for convenience clause essentially was eliminated from the contract so it could not be utilized and he would suspect they would also confront the argument from them in defense, as the mayor eluded to, that the Charter Amendment mechanism was not an appropriate way for the matter to be decided, but fundamentally as for the contract itself their primary argument would be there was no termination clause; that the original contract was worded so the termination for convenience clause could not be exercised for a period of three years from date of execution of the contract and that period ended in August 2009; that he did not think the argument of there being no termination for convenience clause would fly; that the city did have a standard 30 day out clause in all city contracts, this 120 day provision stood alone and he would think it was because of the significant upfront cost and cost of taking them down to the camera company.

Council Member Jones thanked the Administration and Legal for doing this; and stated that she did not think it good policy to disregard the will of the voters for 120 days; that she hear her colleague wanting a study and would question the propriety of spending money to compile that, if there was someone willing to do it at no cost they should do it, but already the city could not do a lot of what was needed; that the lawsuit had a number of exhibits referred to and she would like a copy of all exhibits; and if ATS insist on suing for damages after today at 10:00 a.m. she would like the city to consider in the future debarring them, their operators, owners and lobbyists from doing business with the City of Houston as any money used to fight them was taxpayer money; and if this did come about she wanted to know names of operators, etc.; and Mayor Parker stated that they did track dangerous intersections and that was how traffic enforcement was determined and the information was available at no cost; that ATS was a red light camera company and she was not sure why they would do anything else in the City of Houston so she saw no real purpose in bringing a disbarment action against them; and ATS was only trying to enforce what they thought was in the contract and did not see why any should act in a unprofessional way against them.

Upon questions by Council Member Adams, Mr. Feldman stated that because this was a civil penalty under Texas law technically there would be a four year statute of limitations so recovery of tickets could not occur after a four year period.

Mayor Parker stated that no Council Members were in the queue and called on the City Secretary to call on speakers. Council Member Sullivan absent.

Mr. Randall Kallinen, 511 Broadway, Houston, Texas 77012 (713-320-3785) appeared and stated that he thanked the city for taking a stance for the city and filing the declaratory action in federal court; and if he could assist in anyway he would; that he did not think any would have paid tickets as he and many others would have entered into a campaign stating they did not believe anyone was entitled to pay it so the damages question was a good one; that on the issue of safety, almost from the beginning many had been talking about short yellows as some were below legal standard; that when the Texas Standard Institute stated yellow signal

timing was effective in improving safety at intersections and if they were serious about improving the safety they could increase the yellow light time, it would decrease accidents; and thanked Council Members Jones and Sullivan for standing against cameras and Council Member Bradford for sticking up for the peoples right to vote; and the Charter Amendment was written so that no money could be collected from any recipient of a notice of violation issued in whole or part in connection with the use of a photographic traffic signal enforcement system. Council Members Sullivan and Lovell absent.

Mayor Parker stated that if anyone thought there was a short cycling yellow light she would encourage them to call 311 to report the intersections. Council Members Sullivan and Lovell absent.

Mr. Paul Kubosh, 1619 Lubbock, Houston, Texas 77007 (281-850-0171) appeared and stated that he too thanked all for placing the item on the ballot and it was inevitable this vote would occur; that the lawsuit being filed was a great idea and took away all he was going to say on what he thought needed to be done; that he did not know why 120 days was not placed on the ballot, but in his opinion if he was ATS he would be very careful on how to go from here as this was not just a legal issue, but a political issue and the legislature was going in session and they did not like cameras; and Linda Harper Brown was now in indictment for the little twist of the legislation she did. Council Members Sullivan and Lovell absent.

Council Member Adams stated that Mr. Kallinen read something about collection; and upon questions, Mr. Feldman stated that it was their position the collections, with respect to violations recorded as of 10:00 a.m. this morning could continue, but he had no doubt the issue would be addressed in the federal proceeding. Council Members Sullivan and Lovell absent.

Mr. Michael Kubosh, 1701 Lubbock, Houston, Texas 77007 (713-632-6006) appeared and stated that he thanked Mr. Feldman for what he did and did not think Houston taxpayers should have to pay any of this; that if they continued to sue he thought all would find he and his brothers at the legislature talking to senators and representatives about what was going on; that the Charter amendment said the City of Houston would not use signal enforcement systems to enforce any state law or city ordinance against an owner or operator of a vehicle and the violation of a traffic control signal specified by Section 544.07(d) of the Transportation Code nor would it collect money from any recipient of a notice of violation issued in connection with the use of a photographic traffic signal enforcement system; that he said that so many times, the notices of violation were in violation of state law and people had been scared into paying \$44 million they never had to pay at all, they never had to pay because they were unenforceable; and Ed Emmett said they could not deny renewal of a license plate if someone was ticketed in Harris County and anyone could go to their website and see where he said it, the tickets were never enforceable; and thanked Mayor Parker. Council Members Sullivan and Lovell absent.

Council Member Jones stated that she was against Proposition Three for a number of reasons, but one reason was after it failed all were saying, "what about the money" and she heard no one saying "what about the accidents"; secondly the camera showed the license plate and not who was driving; thirdly she thought as the government they should not send out inaccurate or misinformation that your registration may be suspended; that at a Public Safety Committee Meeting she asked the question if it was being sent out and was told a law firm was doing it; that they should walk the high road and be honest in how they collected money and if the government was not honest in all aspects how on earth could they say citizens should have to be, they should set high standard. Council Member Sullivan absent.

Mayor Parker thanked Mr. Kubosh and stated that she hoped the Council Member thought they could still issue tickets without knowing who was driving the vehicle; and Council Member

Jones stated that if an officer stopped you, they knew you; and Mayor Parker stated that she was speaking of parking tickets; and Council Member Jones stated that she did not speak of parking tickets; and Mayor Parker stated that she was trying to follow her chain of logic, but that was okay. Council Member Sullivan absent.

There being no further business before Council, the City Council adjourned at 10:46 a.m. Council Member Johnson absent. Council Member Sullivan absent.

DETAILED INFORMATION ON FILE IN THE OFFICE OF THE CITY SECRETARY.

MINUTES READ AND APPROVED

/S/Anna Russell

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Anna Russell, City Secretary