A Special Meeting of the City Council of Haltom City was held on January 21, 2019, at 6:00 p.m. at the Haltom City Hall, 5204 Broadway Avenue, Haltom City, Texas, with the following members present, to-wit:

Mayor David Averitt      Mayor Pro-Tem An Truong
Council Place 1 Jeannine Nunn   Council Place 2 Walter Grow
Council Place 3 Lin Thompson   Council Place 4 Brent Weast
Council Place 5 Bob Watkins    Council Place 6 Ricky Brown

Staff Present: Keith Lane, City Manager; Rex Phelps, Assistant City Manager; Wayne Olson, City Attorney; Alicia Kreh, City Attorney; Art Camacho, City Secretary; Toni Beckett, Human Resources and Risk Management Director; and Brian Jacobs, Fire Chief. Civil Service Commission Chair Cody Elliott was also present.

CALL TO ORDER
Mayor Averitt called the Special Meeting to order at 6:00 p.m.

1. Ethics Complaint – Consideration of Ethics Complaint against Civil Service Commissioner.

City Attorney Wayne Olson addressed the citizens in regards to the agenda item and ethics policy and stated he will brief the Council on their responsibility in Executive Session. Mayor Averitt called for an Executive Session at 6:03 p.m.

EXECUTIVE SESSION

Chapter 551 of the Texas Government Code
Section 551.071 – Legal Advice
The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to seek legal advice from the City Attorney regarding the following matters:
Consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct which may conflict with the Open Meetings Act including seeking legal advice about any item posted on the agenda.

Section 551.074 – Personnel
Deliberation regarding a complaint or charge against an officer or an employee – Ethics Complaint Against Civil Service Commissioner.

The Council reconvened into Regular Session at 6:26. No action was taken.

RECONVENE TO REGULAR SESSION

1. Consideration of sanctions, disciplinary action or additional investigation of a complaint.

City Attorney Wayne Olson stated what the procedure for this will be taken, which would include the reading of the complaint and questions by the Council to complainant Chris Anderson, President of the Haltom City Firefighters Association. He also stated Mr. Elliott would be given time to offer his rebuttal to the charges. Mayor Averitt read the complaint letter and Chris Anderson came forward and stated that prior to the Facebook incident, there wasn’t any doubt concerning Mr. Elliot’s integrity. He also said that Mr. Elliot didn’t contact either the City Manager or the Fire Chief regarding John Summer’s training to make a valid supposition, and in the matter of reconvening to discuss the
length of suspension, or even the probability, he should have known this while serving as Chair of the Civil Service Commission. In addition, Mr. Anderson said the Association respects and abides by the decisions of the Civil Service Commission and because of the impact they make with their decisions, it is imperative they remain impartial and with the Facebook comments made by Mr. Elliott, they believe he can no longer be objective in his decisions. Council Member Nunn asked Mr. Anderson how long he has held his President position (one year), job title with the Fire Department (Lieutenant), if he resides in Haltom City (no – he resides in Hurst), the manner in which he acquired the Facebook screen shots (via Jayson Steele), and the assistance required for the complaint (members of the Association Board). She further inquired if he had an Association meeting concerning the complaint (no, just the seven elected members of the Executive Board met), and also asked if the Civil Service Commission voted for the reinstatement of the city employee (J. Summers), why would the Association complain about Mr. Elliott. Mr. Anderson answered that the complaint was not with the city employee, but with the evidence that Mr. Elliott is no longer impartial and the appeal process needs protecting in securing an unbiased opinion. Council Member Brown asked Mr. Anderson for clarity in that the Association did not file the complaint, but he did as President, and Mr. Anderson stated there was no Association vote, but he filed the complaint. Council Member Brown also asked how the complaint was filed so quickly on the 16th with the evidence found on the 15th. He also inquired if there was any research done in establishing the truthfulness of the Facebook posts (no research was done by the Association) and if Mr. Anderson was on duty either the 15th and 16th (he answered ‘Yes’). Council Member Weast asked Mr. Anderson what are his working hours (48 hours on/96 hours off). Mr. Anderson also stated he was off on the day of the Facebook posting and filing the complaint.

Mr. Cody Elliott came forward and began with a brief review of his family history and their relationship with Haltom City. He then addressed the complaint issue with a statement that included criticism of the Haltom City Firefighters Association, stating it has been used as a platform by its President to attack Trae Fowler, John Summers and himself, and he stands behind his statements as a Civil Service Commissioner and citizen. He continued speaking about his service with the Crime Control Prevention District appointment in 1996, and that he uses information given to him as a reference for his decisions with the Civil Service Commission and doesn’t rely on personal feelings. He also stated his volunteer service has cost him with financial losses from work and his comment on the Facebook page was interpreted to be anti-city, which he said he is not. His Facebook comments were derived from a conversation he had with Mr. Summers and actions he personally witnessed, and he also stated the following: he was wanting to get the change in the no-pay penalty after he met with HR Director Toni Beckett and was told that the Charter only allows a six-week maximum suspension without pay or 240 hours. The intent of the Civil Service Commission was that the city could not afford to lose a twenty-two year firefighter veteran and that he was and could still be an asset to the Fire Department after receiving re-training and leadership skills. It was also the intent of the Commission for Fire Chief Bynum to administer these courses and place Mr. Summers back into the position of a working Lieutenant of a fire squad. After four and a half months, Mr. Summers is still taking courses, some voluntary, and had received several training books and tests from City Manager Keith Lane, of which Mr. Elliott stated that nowhere was it stated that the City Manager was to be involved in the retraining efforts, but that task was given to Fire Chief Bynum. He concluded by stating this process has gone on far too long, spiraled out of control, costs the city tens of thousands of dollars, and should have never reached the point currently. He did not believe the
Civil Service Commission has been given the authority to enforce its rulings, but only the City Council has that authority. He requested the City Council put an end to this situation, place Mr. Summers back to work in his position and would entertain any questions regarding himself or the Commission’s ruling.

Council Member Grow pointed out in the City Charter, Article 11 – Civil Service – Sec. 11.26 – Disciplinary Suspensions – “The Department Head may suspend any Sworn Employee under his/her jurisdiction or supervision for disciplinary purposes, not to exceed two-hundred forty working hours (240). The Department Head shall provide to the employee and file with the Commission by delivery to the Director a written statement of action within five (5) business days.” – and also included - “The Commission shall have the power to, uphold, modify, or reverse the decision of the Department Head.” – to indicate a possible misleading of the hours of suspension given to Mr. Summers. Mr. Grow also questioned Mr. Elliott in how the Commission would rehear the case and that Article 11 – Civil Service – Sec. 11.33 – Appeal to a District Court – determines that Mr. Summers, if he was not satisfied with the decision of the Commission – must then file an appeal with the District Court and not the appellate body (the Commission). Mr. Elliott stated that he has reviewed Article 11 of the Charter and has been “walked-through” with the city attorney in regards to procedure, relying on the guidance of the attorneys present during the employee’s appeal to the Commission. Council Member Grow then inquired of the time Mr. Summers approached Mr. Elliott regarding his displeasure with the training and Mr. Elliott stated he first met Mr. Summers in the parking lot of the city library when during a promotion, Mr. Summers was passed over. Mr. Elliott also stated that he tries to maintain a distance from public safety personnel in order to be able to render a Commission decision without an established personal relationship. He said Mr. Summers had visited his sister, Allison Roach, in December 2018, and it was then he talked with Mr. Summers over the training situation. Council Member Grow questioned why Mr. Elliott posted the Facebook comment while knowing he is an appointed official. Mr. Elliott responded that he, as a citizen under the First Amendment, is vocal and opinionated when he feels there is an injustice. Council Member Grow inquired of how Mr. Summers is overloaded with the training and Mr. Elliott responded that it was the Commission’s intent that only two or three courses would be given Mr. Summers and then he would be reinstated to a fire squad. After three and a half months, Mr. Summers is still taking training classes in an office with his work hours set from 8:00 a.m. to 5:00 p.m., which was not the intent of the Commission. He also stated the Commission should have been more specific in setting the parameters of the training, but that they felt the city would have been fair and set only the needed training and tests. Council Member Grow then asked why does he think the city is trying to make Mr. Summers quit. Mr. Elliott stated he didn’t know why, but that through the appeal hearing deliberations, it was very obvious to him the Fire Department did not want Mr. Summers there, but they were unable to convince the Commission that there was a cause for dismissal. In addition, Mr. Elliott stated that the Commission dismissed the first charge, but sustained the second charge.

Council Member Nunn asked Mr. Elliott how many Civil Service cases that he has been involved and Mr. Elliott answered he recalled two major cases, the first one involving an officer being fired because the city was guilty of gross negligence, and the officer was reinstated. He said that most of their cases involves testing, or appeal cases that are resolved prior to a Commission hearing. Ms. Nunn inquired if he had ever been accused of an ethics violation or reprimanded prior to this and he responded that he never has been accused or reprimanded.
Mayor Averitt asked if Mr. Elliott was able to review the training that would be given Mr. Summers and he responded with an affirmation, with the review showing training that Mr. Summers had previously taken and that one course didn’t correlate with the test he was given. Mr. Elliott stated the Commission was concerned with the number of courses and the surety of having a leadership course. Mayor Averitt inquired if his personal relationship with Mr. Summers could have caused him making a partial decision and Mr. Elliott responded by saying that no personal relationship existed prior to the decision of the Commission. Mr. Elliott was then asked by Mayor Averitt whether he would think it would be odd that Mr. Summers went to him regarding his problem rather than appealing to the chain of command. Mr. Elliott stated Mr. Summers had approached Fire Chief Perry Bynum and City Manager Keith Lane, but was not satisfied after the meeting.

Council Member Nunn asked Mr. Elliott if anyone approached him after the Mr. Summers appeal hearing and Mr. Elliott stated no one had met with him on that. Council Member Thompson read from the appeal transcript, quoting Commission member Bill Lanford, who said “Fire Chief Bynum and the city will be ordered to put together a training program for appropriate leadership skills for the Fire Department…and that they will notify the Commission when it is done.” She also mentioned a modification by Commissioner Lanford regarding the training for Mr. Summers, which indicated the city was inclined to develop a training program. Mayor Pro Tem Truong asked Mr. Elliott how many courses Mr. Summers was assigned and was told it was two to three courses. Mr. Elliott was also asked if Mr. Summers was specific in his complaint regarding the number of courses and how many he had completed. Mr. Elliott answered that Mr. Summers was assigned seven courses and he believed he has finished five. Mayor Pro Tem Truong asked if Mr. Elliott ever went to Fire Chief Bynum or City Manager Lane to discuss this and Mr. Elliott answered he had little faith in asking someone to correct a problem if they are creating the problem and it was costing him business-wise, also adding that he had considered resigning prior to this hearing, but that he felt it was such an important case, he had to stay on the Commission. Mayor Pro Tem Truong stated that board/commission members and citizens need to take the proper steps toward those in charge to correct their problems rather than ending up in a hearing that is costly.

Council Member Grow stated that as a City Council Member, he stayed clear of the Civil Service hearing because it was not in his scope and that also as an elected official, there is an adherence to particulars in regard to open speech. In addition, he stated Mr. Summers had a mechanism to use concerning his complaint. Council Member Thompson asked Mr. Elliott that concerning his desire to reconvene in regard to the six weeks (suspension time), did he inquire of either the Human Resource Director, City Manager, or City Attorney? Mr. Elliott replied he was not familiar with the process of contacting the right person, but believed that after speaking with Ms. Beckett, a future session concerning this suspension would be scheduled. Council Member Thompson then asserted the training courses were not specifically included in the Commission’s decision and Mr. Elliott confirmed that by stating that there was no discussion of specific courses other than their intent. Council Member Thompson also stated that the roles of elected and appointed members are difficult at times, especially when dealing with people, but that having a knowledge of the process and acting on it is the right thing to do. Mr. Elliott listed several difficulties he has encountered in acting in his role as a Commission member, but believed he was doing the best job he could.

The Council went into Executive Session at 7:26 p.m. They reconvened into Regular Session at 7:48 p.m.
Mayor Averitt asked City Manager Keith Lane to provide a document that was signed by all of the Civil Service Commission concerning the three-month suspension, which was allowed by the Commission, and not just six weeks. In addition, City Manager Lane asserted that he was included in regard to providing leadership training for Mr. Summers, through the statement from Mr. Lanford, and that Mr. Elliott had made the motion for Charge #2 (several violations listed in regard to ethics and behavior) to be sustained. City Manager Lane also quoted Commission Member Lanford – “I want it to be known publicly that it is with great trepidation, John, that we send you back to the fire department because there is, I thought, a fairly substantial pattern of inappropriate conduct and leadership. And John, I hope you take this opportunity to avoid the Commission like the black plague and help yourself.” City Manager Lane then addressed Mr. Elliott in that he said “Chief Bynum, I want you to know that we all support the ideas that you and Chief Lane have for the city and the progress…we are in complete support and I just wanted you to know that all three of us are supporting you and Keith Lane in the direction you want to go because we believe that and know that there is a transition period and we just really felt that maybe John got a little bit left behind in the transition period.” Mr. Elliott agreed with the statements and City Manager Lane reminded him that there was a lot of change going on with the leadership of the Fire Department and that he had met with Bill Lanford the week following the decision to clarify the Commission’s expectations. Mr. Elliott responded he was mainly concerned with the intent and believed that the training courses would come through Chief Bynum. City Manager Lane replied he took direction from the Commission’s decision which would mean he would be assisting with the leadership training. Mr. Elliott again stated he wished the Commission had been more specific in determining the training, but the uniqueness of the case was something new for the Commission. City Manager Lane stated he met with Chief Bynum and Assistant Chief Jacobs to direct the training and testing for Mr. Summers, and also agreed the case was unique to them, and again met with Bill Lanford to assure they were following the Commission’s direction. He further stated the first two books he gave to Mr. Summers addressed organizational change, and he had another regarding leadership, but Mr. Summers has not finished the first two yet. Mr. Elliott said he wished he could have been more specific about the training Mr. Summers was to receive, but with that, he still feels that four and a half months is too much time for the training and being restricted to an office.

Council Member Nunn read a quote from Commissioner Bill Lanford: “I want it to be known publicly that it is with great trepidation, John, that we send you back to the fire department because there is, I thought, a fairly substantial pattern of inappropriate conduct and leadership, but I didn’t think it was just with John Summers, okay? I think that there was quite a bit of evidence in what we show here is that there are others in, and I am talking about the leadership ranks of the fire department, that need to learn how to make appropriate corrections to people that are under them and to each other that are more useful…I want to make it clear that you are on the right track and we support you, but we could not in good faith have John Summers take the fall for everybody. We just didn’t think it was fair.” She understood the Commission couldn’t do training for the whole department, but for Mr. Summers only, which indicates a bit of confusion that happened during the short bit of time regarding the matter, so the Commission wouldn’t really have that much influence in the training. Mr. Elliott concluded he has enjoyed serving the city, holds no ill will or will exhibit any vindictiveness, and is in agreement with the decision of the Council. Council Member Weast asked if there was any training available to board and commission members.
City Secretary Camacho replied there are classes available, but nothing required except the Open Meetings and Public Information online training. Council Member Nunn inquired if there was also a Social Media policy and City Manager Lane said a committee has been assigned for this matter. Council Member Weast moved, seconded by Council Member Grow, that on the matter of Haltom City Code of Ethics (Policy), Standards of Conduct, Sec. 2-452-Delcaration of policy, Mr. Elliott did not knowingly violate these, but he has been an excellent volunteer and city businessman, and he felt that he does need to receive and review the Code of Ethics policy, but no action needs to be taken on this tonight. He also said that he needs to stay on the Civil Service Commission, but be very aware of the change in social media. The vote was unanimous. Motion carried.

ADJOURNMENT
Mayor Averitt adjourned the Special Meeting at 9:30 p.m.

RESPECTFULLY SUBMITTED BY:    APPROVED BY:

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Art Camacho, City Secretary    David Averitt, Mayor