

**CITY OF CAYCE
Special Meeting
August 29, 2006**

A Special meeting of Cayce City Council was held today at 5:30 p.m. in Council Chambers. Those present included Mayor Avery B. Wilkerson, Jr., Councilmen James Jenkins, Kenneth Jumper, Robert Malpass, and Rick Myers, City Manager John C. Sharpe, and Municipal Clerk, Tammy Barkley. Mayor Wilkerson advised that members of the press and the public were duly notified of the meeting in accordance with the FOIA.

Other

- A. Continuation of Hearing on Appeal of Denial of Business License – Boulevard Café

Mayor Wilkerson advised that this was a continuation of the Hearing which began on June 6, 2006 regarding the city's denial of a business license for Boulevard Café. City Attorney, Danny Crowe, represented the City of Cayce and Attorney Mathias Chaplin represented the Boulevard Café.

Mr. Crowe stated that Mr. Chaplin was in the process of cross-examining Captain Darwin Fulwood when the hearing was closed on June 6. Mayor Wilkerson asked Mr. Chaplin to continue with his cross-examination of Capt. Fulwood.

Mr. Crowe asked if there were no objections, prior to the continuation of the cross examination of Capt. Fulwood, if he could call as a witness, Ms. Angie Charbonneau. He stated Ms. Charbonneau had a previous engagement and would need to leave shortly. There were no objections. Mr. Crowe questioned Ms. Charbonneau on the location of her home in relation to the Boulevard Café and her concerns. She stated her home was behind Boulevard Café and she was concerned with the safety and noise issues. She advised she has lived there for 12 years and has a difficult time with the noise on the weekends to a point of where it interrupts her family's sleep. Mr. Chaplin cross-examined Ms. Charbonneau.

Mr. Myers inquired within the last two or three years, how often Ms. Charbonneau had to call the police. She stated that she has called every

weekend, each night, three or four times a night. She stated that before she spoke with Mr. Rios it was every weekend.

Mr. Myers asked if Ms. Charbonneau had witnessed any violent actions taking place. She stated that she had not seen any violence other than people breaking beer bottles in the parking lot, but was advised by her neighbor that two men were fighting in her front yard. Mr. Myers inquired if she had a fear for her safety or her family's safety. She stated yes to both.

Mr. Jenkins inquired how long on Saturday night the noise continues. Ms. Charbonneau advised that the noise continues well after midnight on Saturdays. Mr. Jenkins asked if she has seen any improvement since she met with Mr. Rios. Ms. Charbonneau advised that it has gotten 50% better since meeting with Mr. Rios.

Mayor Wilkerson inquired if the only time Ms. Charbonneau has problems with the noise was on the weekends. She answered yes. Mayor Wilkerson inquired if the bar was only open on the weekends. Mr. Chaplin advised the bar is open Wednesday through Sunday nights each week.

Capt. Fulwood was then called to the stand. Capt. Fulwood was advised that he was still under oath. Mr. Chaplin continued his cross examination of Capt. Fulwood.

Mr. Crowe examined Capt. Fulwood clarifying incident reports and statistics used in preparing information for the case marked as exhibits. Mr. Crowe inquired if additional reports had been put together since the June 6 hearing. Capt. Fulwood stated that was correct. Mr. Crowe entered the new incident reports into evidence as Exhibit 5.

Mr. Crowe offered into evidence Exhibit 6 which included dispositions of incident reports listed in Exhibit 3. Mr. Chaplin cross-examined Capt. Fulwood on the new evidence presented. Mr. Chaplin stated that the way the information was presented in Exhibit 6 was biased. Mayor Wilkerson noted his objection for the record.

Mr. Myers inquired as to how many violent versus non-violent issues were reported. Capt. Fulwood stated that only a handful were noise complaints and most were incidents involving public drunkenness, fighting, and alcohol related incidents. He stated that approximately 75% were alcohol related. Capt. Fulwood was excused.

Mr. Crowe called Master PSO Mike Stoudemire to the stand. Mr. Crowe questioned Officer Stoudemire regarding incidents that he responded to at the Boulevard Café. Mr. Chaplin cross-examined PSO Stoudemire.

Chief Charles McNair, Director of Cayce Public Safety, was called to the stand. Mr. Crowe questioned Chief McNair. Mr. Chaplin cross-examined Chief McNair. Mayor Wilkerson inquired if the Boulevard Café had hired their own security noting that

incidents were still taking place. Mr. Chaplin stated that Mr. Rios had hired security for the bar. Mr. Malpass inquired if anywhere during this process the Cayce Public Safety Department tried to assist Mr. Rios. Chief McNair stated that Officer Joel Griffin and other officers have met with their staff. Mr. Jumper inquired if when these incidents occurred, Mr. Rios' security assisted the city's officers in any way. Chief McNair stated that he had no information showing where they did assist the officers. He stated that security did assist in requests to lower the noise level.

Mr. Jenkins inquired if it was normal procedure to ask those involved in the incidents if they were inside the club or coming from other places and parking in the parking lot. Chief McNair advised this was not normal procedure as incidents are based on the location where they occur. Mr. Myers inquired if Mr. Rios is responsible for not only the bar proper but the parking lot as well. Chief McNair advised that Mr. Rios was responsible for both areas. Mr. Myers inquired if Chief McNair felt that the bar's security had any control of the crowd. Chief McNair stated that he did not think that was the case. Mr. Myers inquired if the trend continues, would the city experience very serious incidents. Chief McNair stated that he was surprised that the city has not had more serious incidents than current reports. Mr. Myers inquired if Chief McNair or his staff has tried intentionally to create a situation or create crime statistics that would contribute to the denial of a business license to Mr. Rios. Chief McNair stated no.

Mr. Crowe stated that this concludes the business license official's case. Mr. Chaplin stated he had no witnesses to call. Mayor Wilkerson asked if either attorney wanted to introduce any further evidence. Both attorneys stated no.

Mayor Wilkerson declared the evidence portion of the hearing concluded and asked each side to present a brief closing statement. Mr. Chaplin entered a directed verdict that Council rule in favor of Boulevard Café and asked that it be in favor of the Boulevard Café against the City of Cayce. Mr. Crowe stated that the directed verdict was out of order since this was an appeal.

Mr. Crowe provided a closing statement in favor of the city. Mr. Chaplin provided a closing statement in favor of the Boulevard Café.

Mayor Wilkerson stated that in accordance with the guidelines of the Hearing, the decision of City Council would be by majority vote of those Council members present for the hearing and the vote. He stated that following its decision by vote, the City Could would render a written decision as described in Section 12-51(b) of the City Code. He advised that Council has several options to consider as follows (1) deliberate and discuss in open session and then vote on a decision to affirm or rescind the decision of the License Official; (2) deliberate and discuss in open session and then request that proposed written decisions from both attorneys be submitted by a future date before voting; or (3) without deliberation and discussion of the appeal, decide to request that proposed written decisions from both attorneys be submitted by a future date. He stated that if Council votes on the appeal immediately after the hearing, it may request

that the attorney for the prevailing side submit a proposed written decision by a certain date and Council then will schedule a meeting for open public session for the purpose of approving and signing a written decision.

Mr. Myers stated he was prepared to vote and made a motion to affirm the decision of the License Official on the denial of a business license for Boulevard Café. Mr. Malpass seconded the motion. Mr. Myers stated he felt the documentation that has been provided clearly meets the definition of a public nuisance. Mr. Jumper stated that he did not think that they objected to Mr. Rios running the Boulevard Café, but that Mr. Rios failed to manage both the bar and the parking lot for the quality of life for the Cayce community. Mr. Malpass stated that Council certainly could not condone the operation of the Boulevard Café based on the information provided by staff and he supports the decision of the License official. Mr. Jenkins stated that he felt the situation would not get any better and there is no basis to show an effort on the part of the owner to eliminate the incidents that continue to occur. He stated he agrees with the decision of the License Official as well. After discussion, the motion was unanimously approved.

Mayor Wilkerson asked that the prevailing side prepare the proper document to be approved by Council. He inquired if the document could be provided for the September 5, 2006 Council Meeting. Mr. Crowe stated it would be very difficult to get it to Council by that date. He stated he could have the document prepared and sent to Council within about two weeks for Council's approval which would provide Council with the opportunity to review it prior to approval. Mayor Wilkerson stated that on or around September 12, 2006, Council would call a Special Meeting to review and approve the document and proceed forward with the process.

There being no further business, the hearing adjourned at 7:55 p.m.

Avery B. Wilkerson, Jr., Mayor

ATTEST:

Tammy P. Barkley, CMC, Municipal Clerk

When received, a complete copy of the Court Recorder's transcript of the Hearing will be placed on file at Cayce City Hall.

