

**TOWN OF HAVANA
EMERGENCY COUNCIL MEETING MINUTES
FEBURARY 22, 2023**

Member(s) Present: Mayor Janice Hart, Mayor Pro Tem Nick Bert, Councilman Dwight Vickers, Councilman Tim Loughmiller, Councilman Decorkus Allen, Councilman Eddie Bass, and Councilwoman Jenny Stone

Member(s) Absent: N/A

Roll Call: Mayor Janice Hart, Mayor Pro Tem Nick Bert, Councilman Dwight Vickers, Councilman Tim Loughmiller, Councilman Decorkus Allen, Councilman Eddie Bass, Councilwoman Jenny Stone, and Town Manager Kendrah Wilkerson

The Town Council Meeting was called to order at 6:00 p.m. by Mayor Janice Hart.

Invocation was led by Minister Harris with the Pledge of Allegiance led by Mayor Hart.

RECOGNITION OF VISITORS: N/A

NEW BUSINESS

ITEM #1: CONSIDERATION OF SUSPENSION OF TOWN COUNCIL MEMBER DECORKUS ALLEN

The Town Manager stated the Town Council has been called for an emergency meeting to discuss the consideration of suspending Councilman Decorkus Allen based on felony arrests on February 17, 2023. This meeting was posted on our outer doors, on our website and on Town social media outlets. Subsections of the charter are referenced and paraphrased within this memo and the full charter was attached for review the sections pertaining to this. So on Friday, February 17, 2023 Councilman Decorkus Allen was charged with DUI which is a misdemeanor and fleeing and eluding police which is a felony by the Quincy Police Department. The Havana Town Charter gives the Town Council power and authority to suspend any member of the Council upon arrest for a felony. The Town Manager contacted Councilman Allen on Monday, February 20th at 12:15 approximately to discuss scheduling an emergency meeting and to notify him he would have the opportunity to be heard to present his defense. Councilman Allen was notified via text and email of that meeting and has been presented with all documentation that other members of the Council have also received. We are required by charter to give reasonable notice and to allow Councilman to present his defense if he so chooses. If the Council elects to suspend Councilman Allen a temporary vacancy will be created which must be filled within 10 days and that day would be March 4th. So, she states she believes it would be business days she assumes. At this time I would recommend that we allow Councilman Allen to speak as to this matter, before the Council discusses any action potentially taking place.

Mayor Hart asks Councilman Allen to approach the Council.

Councilman Allen approaches and states that he was summoned here. Councilman Loughmiller asks Councilman Allen what happened. Councilman Allen states he did not see the Police Officer behind him while he was driving. He had his merchandise in his bus he stated he has pictures to show. He states he was driving down low and there is a platform behind him. As soon as the officer pulls beside him he states he looks down and saw him and he motioned for him to pull over so he did. Councilman Loughmiller asked what about the other half of it, about the DUI. Councilman Allen stated that is not

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what the meeting is about today it is about the felony. The Town Manager states the issue at hand is whether or not he may be suspended for a felony arrest. Councilman Bass asks the question by our Charter does he have to be formally found guilty of the felony or being charged with the felony? The Town Manager states the Charter reads the Town Council shall have the power and authority to suspend without pay any member of the Council for any cause sufficient for removal upon arrest for a felony and she states there are several other reasons someone could be suspended. Councilman Allen says they give you the discretion of whether you want to or not. He then defers his comments to his attorney Aaron Wayt. Mr. Wayt approached the Council and states he is an attorney here in the 2nd Circuit Court and he states he believes Mr. Allen has been charged right now with fleeing and eluding a police officer which is the reason we are here today. He states the Town Manager has indicated this is discretionary whether or not you suspect Councilman Allen. I would ask you to lean on the presumption of innocence and we do have evidence for you today if you care to view it. But the felony charge in this case is being reviewed. We do have the police report that the police officer was behind Mr. Allen for a period of time and this is day time which is tougher to see. You usually do not see police lights during the day rather than at night when it would be more apparent they are flashing. We have videos and we even have the body cam footage of the officers that shows there was a large table in the aisle way of this 16 passenger bus blocking the view of him outside of the rear of the vehicle which we are disputing. From this police report immediately upon this officer getting up to the side of him and motioning for him to pull over, what does Councilman Allen do, he immediately pulls over to the side of the road. So 316.1935 of the Florida Statutes is what is referred to as a specific intent crime in Florida you have general intent crimes where it doesn't matter whether the person intended to commit that crime or not. But this felony is specific in intent in the State of Florida and in prosecution they have to prove that he specifically intended to flee and elude this police officer. Let's look at the rest of his report and lets look at the evidence of what is before us to see whether or not this is someone with common sense that is trying to flee the officer. We have body cam pictures and pictures to show that there was something blocking the rear view of the 16 passenger bus view. After he is pulled over is this someone that is trying to flee or run away from the officer. Mayor Pro Tem Bert asks if the police officer had his lights flashing and his siren on? Mr. Wayt said he believes the lights were flashing. Mayor Pro Tem asked Councilman Allen does he have mirrors on the side of his vehicle? Councilman stated he does. Mr. Wayt states he simply did not know there was an officer behind him. We have the facts that someone shows no specific intent of fleeing and eluding an officer. We ask that you lean on the discretion that you do have because not every case is the same. There is a difference from someone trying to speed away, cutting down streets, trying to evade the officer, avoiding stops you probably have heard about those cases. Then you have cases like this where just mistakenly he did not see the officer behind him. He states he believes from the police report and from the body cam the footage that we have indicates that. He states that in the Constitution it states everyone is innocent until proven guilty. Please use that discretionary act until he is proven guilty in court of fleeing and eluding. He urges the council members to use their discretion. Mayor Pro Tem asked how soon would his case be settled? Mr. Wayt stated the felony part of this should be relatively simple based on the evidence we have. It is up to the State Attorneys office how we are going to proceed with the charges. He said he would come in and negotiate with the Prosecutor and see if they want to proceed forward. There have been many cases where they have not proceeded forward and they brought it down to a misdemeanor. What is interesting to note that in their report during the one leg stand related to the field sobriety exercises related to the DUI case and I know we are

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not hear for the DUI part. When we are talking about what we are going to see in your report it says regarding sobriety exercises that they had Councilman Allen put his leg on the line ready to do the walk and turn. We have the video today and are prepared to show you where that never happened. Councilman Allen never got into the instructional stance or that walk and turn and was just standing there asking questions and he decided to exercise his right to not do a sobriety test. What we are seeing on the video is something that is contrary to what is in the report that is related to that. He states that is why he urges you to see the evidence he has today to show his innocence. We do ask again that you use your discretion and wait to see if the state attorneys office is going to proceed. Mayor Hart asked if the Town Manager had any video footage that had been submitted. The Town Manager stated she did not. Councilwoman Stone asked can we talk about the DUI part or not? She states she was told we could not talk about it and now there is talk about it. The Town Manager specifically stated that again we are talking about a charge a law enforcement agency has made with a felony arrest and the Council is making a decision based on the Charter based on the fact. She states we are not the judge and jury we are not hearing the criminal case. The Council may do whatever you wish but in terms of viewing the evidence it does not change the fact that he was arrested for a felony and that is what we are here to deal with whether or not it was a good arrest we are not in a position to make that determination. So she states she will just say that the issue at hand is per the Charter the Council does have the authority to suspend him based on the felony arrest if you so choose. That is what we are focusing on. Mayor Pro Tem Bert states suspension is not removing if he is cleared, he is reinstated. Councilman Allen asked what was the purpose in being here. Mayor Pro Tem Bert stated you are here to defend yourself. Mr. Wayt asked for permission to clarify I would like to present a picture as your charter states in order to defend whether or not it is a good arrest or not that is not within the purview of this council. You do have that discretion to suspend him or not suspend him and he believes the Charter does not mandate the suspension because of the discretion. In some cases there are mandates because of the facts is this a case like that? He did stop his vehicle when the officer pulled up beside it and he did not flee. Councilwoman Stone stated that it was up to Mr. Wayt and Councilman Allen to use discretion on what they decide to use in his defense. Councilman Loughmiller asked if there was dash cam video because that would be more relevant. Unfortunately, Mr. Wayt stated he believes there is no dash cam footage of the vehicle. Councilman Loughmiller stated the body cam is not going to show us the fleeing and eluding. Mr. Wayt said the only video that was made available from the Quincy Police Department was the body cam footage. He also stated that the Sergeant and the other two officers did have theirs on as well but did not download it and turn anything into Quincy Police Department and we do not have dash cam footage as well. Councilman Bass asked how many officers participated? Mr. Wayt stated he believed there was at least 3 police officers on the scene. Mayor Pro Tem Bert asked if there was a timeframe on this? Do we have to do it tonight? Can we delay it? The Town Manager states from the way it reads in the Charter she states she does not see a time requirement. Mayor Pro Tem asks does one need to be before the other? He says it does not really say that. The Town Manager says it says that the Council has the power and authority to suspend upon arrest. Councilman Vickers asked Mr. Wayt when do you think you will get more footage or if there is not any more footage. Mr. Wayt states based on our request I do not believe there will be any more footage or whether or not the State Attorney is going to move forward. I believe I can get an answer in a couple of weeks. He states in a couple of weeks he should have a better answer. Mayor Pro Tem asked Councilman Allen if he heard a siren or did he see lights flashing? Councilman Allen stated he did not. He stated he did not see him

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until he pulled up beside him and then he pulled over. Councilwoman Stone asked how long was he behind you? Councilman Allen stated he did not see him at all. He stated that in the report that the police officer stated he was behind him at the light before turning onto Pat Thomas parkway. Mayor Pro Tem Bert asked if we can continue this in 2, 3, or 4 weeks he is asking again. The Town Manager stated the Council has the discretion to do whatever. Councilwoman Stone asks what does 2 or 3 weeks get us? Councilman Loughmiller stated that it gives the Prosecutor time to charge. Councilwoman Stone stated because right now he is not charged. Mr. Wayt says he has been arrested and charged by the Police. Councilwoman Stone states if we do not do anything tonight and decide like in two weeks we are not any further and at some point if he is convicted can we at that time meet to discuss removal. It is not like suspension now and then its nothing. She states she is just talking about options here. Councilman Vickers asked Mr. Wayt when do you think you will have a date? Mr. Wayt stated he could have a decision within two weeks. He believes he can make that happen.

The Town Manager does want to add that this is uncharted territory dealing with this issue for the Havana Town Council. So whatever you decide to do tonight will be setting the precedence for how the Council handles an issue like this going forward. If there is a felony arrest of a Council member in the future you are not only deciding this specific issue but also setting the precedent for how the Council will have to barely deal with another issue in the future. So just keep in mind that if you get into a situation where Council has to start making a judgment call versus across the board if we are doing it or not doing it that puts you in a more precarious position to make that judgment call versus just following to the letter of the Charter exercising the power you have been given to suspend. I would only caution you on some felonies they are more serious or more grigious whatever you do tonight you will now have set the precedence for how you handle them across the board or in the future.

Councilman Bass asks if we suspend him tonight he would miss the meeting next week and if the State's Attorney does not agree to prosecute then he can come right back on. For the sake of what our Charter is and if it happens to another one he thinks our best idea is to suspend tonight knowingly that he will miss one meeting hopefully things will change and he can be back for the March meeting. Mayor Hart asked if this was a motion. Mayor Pro Tem asked that they discuss it some more before motioning. Mr. Wayt states he understands you want to use consistency, but consistency is using discretion creating one size fits all. The Charter gives you discretion because citizens are innocent until proven guilty. The Charter gives you discretion because all cases are not the same. I can argue that the precedence you are setting today is showing the Town of Havana can use discretion and look at each case on a case by case description. So we ask the Council to please use that discretion that the Charter grants you and if it arises again you can use your discretion again which should be done on a case by case basis. Councilwoman Stone asked what suspension would look like for the purpose of the election? A suspended Council member runs to keep their seat. Councilman Vickers states he still has every right to run. Councilwoman Stone asks even if he is suspended? Councilman Vickers stated absolutely until proven guilty. Mayor Pro Tem Bert stated he did not think the Council was setting precedence. Each of these type cases would stand alone with each severity. Some would be way more complicated and serious, eluding law enforcement. Councilman Bass stated that he hoped if it was him until he was formerly charged he would hope that if he was being taken to court to be tried I would want discretion for myself. Councilman Vickers asked if we could postpone this for three weeks and we could get a date

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set. Councilwoman Stone state that in three weeks if there is no date then what? Why not just suspend him now let him miss one meeting and then if he is not charged he comes back. Mayor Pro Tem Bert stated he does not want to see him charged. He said he is still innocent until proven guilty. That is just the American way. He was arrested and we do not have a formal charge yet. Councilman Vickers asked if the postponed meeting could be reset for Wednesday, March 22nd? Motion was made by Mayor Pro Tem Bert to postpone or continue the meeting until March 22nd, motion was seconded by Councilman Eddie Bass. Motion passed.

Motion made by Mayor Pro Tem Bert to adjourn the meeting seconded by Councilman Vickers. Meeting adjourned at 6:34 p.m.



Kimberly J. McMillan
Town Clerk



Presiding Town Council Member