

**MINUTES OF REGULAR COUNCIL MEETING
BASTROP CITY COUNCIL
MARCH 28, 2017**

The Bastrop City Council met in a Regular Meeting on Tuesday, March 28, 2017 at 6:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were Mayor Kesselus and Mayor Pro Tem DeLaRosa, and Council Members Peterson, Schiff, Jones and McAnally. Officers present were City Manager Lynda Humble, City Secretary Ann Franklin, and City Attorney David Bragg.

CALL TO ORDER

At 6:30 p.m. Mayor Kesselus called the meeting to order with a quorum being present.

PLEDGE OF ALLEGIANCE

Mayor Kesselus led the Pledge of Allegiance

TEXAS PLEDGE OF ALLEGIANCE

Mayor Kesselus led the Texas Pledge of Allegiance

INVOCATION

Mayor Kesselus gave the Invocation.

PRESENTATIONS

4A. Presentation on “Why I Love Bastrop” Video Collection by Debbie Denny.
Debbie Denny made the presentations. The winner of the “Fan Favorite Video” was Ken Ladd and the winner of the “Overall Video” was Daniel Michalik.

4B. Mayor’s Report
Mayor reported that Seton is bringing a medical center to Bastrop.

4C Councilmembers’ Report
Council Member Peterson stated that the Seton medical center would be a great asset to Bastrop.

Council Member Schiff reported that March 25, 2017 the Friends of Bastrop Public Library and the Lost Pines Garden Club held a joint annual book and plant sale and raised \$11,957 which in part helps fund the Summer Reading program.

Council Member Jones reported:

- Main Street Program will be hosting the First Friday Art Walk on April 7, 2017 from 5:30 p.m. to 8:30 p.m.;
- March 25, 2017 the Inaugural Half Marathon was held and hosted 160 runners;
- The Parks and Recreation will sponsor the YMCA Healthy Kids Day at Fisherman’s Park on Saturday, April 9, 2017 from 11:00 a.m. to 2:00 p.m.;
- The Public Library will hold an Easter Egg Hunt on Wednesday, April 12, 2017, at Bob Bryant Park from 9:30 a.m. to 12:00 p.m.; and
- The YMCA will hold an Easter Egg Hunt on Friday, April 14, 2017 at Bob Bryant Park from 9:00 a.m. to 12:00 p.m.

4D City Manager’s Report -NONE

WORK SESSION/BRIEFINGS

- 5A. Receive presentation by City Manager and provide feedback regarding changes to the Council Agenda and process to provide greater transparency and clarity of policy actions.**
City Manager Lynda Humble explained the new format and contents of the Council agenda.
- 5B. Receive update on meeting with Representative John Cyrier regarding HB 2322 and provide feedback regarding possible future action.**
City Manager Lynda Humble stated that Representative Cyrier called a meeting for March 10, 2017 and she, Mayor Kesselus, Council Member Jones, Trey Job and Shawn Kirkpatrick represented the City and there were representatives from Aqua Water and Judge Pape. There was an agreement between Aqua representatives and City representatives that going forward all of the stakeholders will have a seat at the table for discussion.

STAFF AND BOARD REPORTS

- 6A. Receive update on the process in relation to Council and the Start-Up Board of the DMO and Introduction of DMO Interim Director Dale Lockett.**
City Manager Lynda Humble introduced the Interim DMO Director Dale Lockett. A joint workshop with the Council and the DMO Start Up Board was set for Tuesday, April 4, 2017 at 6:30 p.m.
- 6B. Receive report from Ethics Commission regarding Councilmember Deborah Jones and Councilmember Gary Schiff and receive a statement from Councilmember Jones.**
City Manager Lynda Humble stated that Judge Dugan was unable to attend the Council meeting, but sends his apologies. Judge Dugan asked the City Manager to ask Council to consider a discussion in a future workshop regarding potential changes to the Ethics Ordinance.

City Manager Lynda Humble, the liaison for the Ethics Commission, read into record two letters (Exhibits A&B) submitted by Judge Dugan, Chair for the Ethics Commission of the City of Bastrop.

Council Member Jones read her statement as follows.

“Bastrop is a community in transition and change in this region is inevitable. I was elected to be an agent of change, someone who can guide growth and modernization, while preserving what is great about Bastrop. As expected, a few in this town favor the status quo at City Hall. They oppose my positions on policy and personnel matters, so they stoop to using our Ethics Code as a weapon. The complaint against me was a political ploy. I didn't violate any rule. The complaint was severely defective and incomplete. The true victors throughout this process are the citizens of Bastrop.”

Council Member Schiff read his statement. (Exhibit C)

Mayor Kesselus recessed the meeting at 7:30 p.m.

Mayor Kesselus called the meeting back to order at 7:31 p.m.

Council Member McAnally attempted to read a statement (Exhibit D); however, the Mayor ruled that Council Member McAnally's statement was out of order.

Council Member McAnally made the motion to override the Mayor's ruling. The motion died for lack of a second (See Exhibit D).

ITEMS FOR INDIVIDUAL CONSIDERATION

- 9C. Consideration, discussion and possible action concerning reimbursement of Councilmember Deborah Jones for legal expenses incurred in defending against an ethics complaint filed against her that was dismissed.**

Resolution No. R-2017-14 was approved on a motion made by Mayor Pro Tem DeLaRosa, seconded by Council Member Peterson. The motion was approved on a 3-0 vote. Council Member Jones recused herself. Council Member McAnally was off the dais.

- 9D. Consideration, discussion and possible action concerning reimbursement of Council Member Gary Schiff for legal expenses incurred in defending against ethics complaints filed against him that were dismissed.**

Resolution No. R-2017-13 was approved on a motion by Mayor Pro Tem DeLaRosa, seconded by Council Member Peterson. The motion was approved on a 3-0 vote. Council Member Schiff recused himself. Council Member McAnally was off the dais.

STAFF AND BOARD REPORTS CONTINUED

- 6C. Hear presentation of the unaudited Monthly Financial Report for the period ending February 28, 2017.**

Presentation was given by Chief Financial Officer Tracy Waldron.

Mayor Pro Tem DeLaRosa made the motion to approve the unaudited Monthly Financial Report, seconded by Council Member Schiff. The motion was approved on a 4-0 vote. Council Member McAnally was off the dais.

- 6D. Receive report from Bastrop Economic Development Corporation (BEDC).**

BEDC Executive Director Shawn Kirkpatrick gave the report.

CITIZEN COMMENTS

Anne Beck – Ms. Beck asked the Council for the good of Bastrop to not get hung up on all of the negative.

David Perkins – Mr. Perkins announced an online language learning program where eight languages may be offered on line and it will be free of charge. The program should be up by next fall. Mr. Perkins also offered ideas for TV shows. He announced that he would be filming two scenes in Bastrop and would like to use local people.

CONSENT AGENDA

A motion was made by Mayor Pro Tem DeLaRosa to approve items 8A, 8B, 8C, 8D and 8E, listed on the consent agenda after being read into the record by City Secretary Ann Franklin. Seconded by Council Member Schiff, motion was approved on a 5-0 vote.

- 8A. Consider action to approve minutes from the March 14, 2017 meeting.**

- 8B. Consider action to confirm appointment by the Mayor of Lynette Philpot to Place 7 on the Bastrop Art in Public Places with the term ending in June 2019.**

- 8C. Consider action to accept and approve the FY 2018 Hotel Occupancy Tax Funding Calendar and the FY 2018 Community Support Funding Calendar.**

- 8D. Consider action to approve a resolution amending authorized representatives for Texpool/Texpool Prime local investment pool by adding City Manager Lynda Humble as an authorized representative of the City.**
- 8E. Consider action to confirm appointment by the Mayor of City Manager Lynda Humble to Place 1 on the Hunters Crossing Local Government Corporation Board.**

ITEMS FOR INDIVIDUAL CONSIDERATION CONTINUED

- 9A Consider action to approve the first reading of Resolution No. R-2017-12 of the City Council of the City of Bastrop, TX approving a project to conduct a comprehensive drainage study of the Pine Forest Unit 6 Subdivision using funds provided by the Bastrop Economic Development Corporation in an amount exceeding \$10,000 in accordance to Section 505.158(b) of the Local Government Code and move to include on the April 11, 2017 agenda for a second reading.**

Resolution No. R-2017-12 was approved on a motion by Mayor Pro Tem DeLaRosa, seconded by Council Member Peterson. The motion was approved on a 5-0 vote.

- 9B. Consider action to approve the first reading of ordinance No. 2017-10 amending the budget for the Fiscal Year 2017 in accordance with existing statutory requirements, appropriating the various amounts herein; repealing all prior ordinances and actions in conflict herewith; and providing for an effective date and move to include on the April 11, 2017 agenda for a second reading.**

Chief Financial Officer Tracy Waldron gave the presentation.

Ordinance No. 2017-10 was approved on a motion by Council Member Schiff, seconded by Mayor Pro Tem DeLaRosa. The motion was approved on a 5-0 vote.

EXECUTIVE SESSION

The City Council met at 8:30 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551, *et seq*, to discuss the following:

- 10A. City Council shall convene into closed executive session pursuant to Section 551.071 of the Texas Government Code to discuss and deliberate litigation matters with the City Attorney regarding City of Bastrop vs. Vandiver and Hoover claims.**
- 10B. City Council shall convene into closed executive session pursuant to Section 551.071 of the Texas Government Code to discuss and deliberate litigation matters with the City Attorney regarding Pine Forest 6, et al vs. City of Bastrop, et al.**

The Bastrop City Council reconvened at 9:07 p.m. into open (public) session.

- 11. TAKE ANY NECESSARY OR APPROPRIATE ACTION ON MATTERS POSTED FOR CONSIDERATION IN CLOSED/EXECUTIVE SESSION.**

No Action was taken.

- 12. ADJOURNMENT**

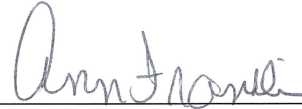
Council Member Schiff made the motion to adjourn the meeting at 9:08 p.m., seconded by Council Member Peterson. The motion was approved on a 5-0 vote.

APPROVED:

ATTEST:



Mayor Ken Kesselus



City Secretary Ann Franklin

Minutes were approved on April 25, 2017 by Mayor Pro Tem DeLaRosa's motion, Council Member Peterson's second. The motion was approved on a 4-0 vote. Council Member Schiff was absent.

EXHIBIT C

March 28, 2017

Statement of Council Member Gary Schiff regarding the recent Ethics Commission activities:

I learned at a young age that if you did not have something good to say about someone, you should not say it. So when I was asked by the Mayor if I wished to make a statement about the false charges made against me by Council Member McAnally, I declined the offer.

However, since then I have meditated on the situation and on a passage from the bible: Matthew 18:15. Paraphrased, it states that if a brother sins against you, you are to bring it to their individual attention and if they hear you, you have gained a brother. If he does not hear you, take it to him in the presence of two or three others. If he still does not hear, take it to the church.

I think this passage is very applicable here.

On October 11, 2016 when Council Member McAnally first brought her charge against me, I was devastated that she would do such a thing when surely she knew that I was authorized to do what I did. It wasn't until months later after great anguish to me that I realized Ms. McAnally was absent at the Council executive session when I was encouraged by City Manager Marvin Townsend, with all other Council Members present, to discuss with the party to a City lawsuit, an architectural solution that I devised for settling that case.

When I realized that Ms. McAnally was not present at that executive session, I requested and received from the City Manager a sworn and notarized affidavit stating that I was encouraged during that executive session to help settle the case by talking to the parties involved in the lawsuit. On January 26, 2017 I sent the affidavit to Ms. McAnally, then a day later asked her if she would drop her complaint and she said "No." I asked her why she would not drop her complaint and she said she was "still digging." I wanted to but did not ask "digging for what?" when my evidence was so clear and irrefutable.

On March 7, after almost six weeks of more anguish and legal fees expended by me, Ms. McAnally finally sent me the following email:

Dear Gary,

As previously discussed with you on the telephone I have been collecting information and evaluating the situation surrounding your discussions with representatives of the Vandivers' about which I made a complaint to the Ethics Commission. While I am still very unhappy about Councilmembers getting personally involved in City litigation, I accept the explanation that you were encouraged to do so by the City Manager and have withdrawn the complaint.

Kay

Let the public record state that I believe it was very unfair and unkind for Ms. McAnally to draw out this painful episode that was so clearly settled upon her receipt of the City Manager's affidavit.

I also want to add that the filing of unfounded complaints against council members as a means of political retribution has become a favorite tool of those who could not prevail at the voting booth.

These actions result in public embarrassment to the entire Bastrop community and the attendant necessity of hiring lawyers has become a hurdle which will without a doubt deter many good candidates from serving this city.

Even though all complaints against me and Deborah Jones were dismissed by the ethics commission, I fear the public will remember only their filings, as announced by Ms. McNally very inappropriately from the dais. In the future, I hope we can deter persons from using the ethics committee for political purposes by:

1. Encouraging complainers, before filing a complaint, to have open and honest discussions with any public official whom they feel has violated the ethics ordinance. This is especially applicable to Council Members who have a public responsibility for keeping order on the dais.
2. Enforcing the rules of decorum that state that Council Members not demean other Council Members from the dais.
3. Requiring complainers to be counselled as to the legal merits of their claims prior to filing. This counselling would not prevent complainers from filing anyway but would at least expose obvious flaws in their complaints before filing.
4. Requiring the Ethics Commission to act more expeditiously in resolving ethics cases so they are not tried and retried in the public forum to the detriment of innocent people. These simple cases took five months to resolve.
5. Drafting and enforcing meaningful sanctions against those who file unfounded complaints.

EXHIBIT D

March 28, 2017

Statement of Council Member Kay McAnally regarding the recent Ethics Commission activities:

Defending Ethics Complaints

From my first Council meeting 8 years ago to now I have believed that what happens in Executive Session is confidential and should not be spoken about outside of City Council. That's what I was told by our previous City Attorney. That's what I was told by our previous City Manager. The Ethics Training we got from the City reinforced that belief.

I understood that the reason we went into Executive Session was to protect the City and the taxpayers. We could only meet behind closed doors in very limited circumstances to talk about things that required attorney client privilege, to discuss litigation by the City or against the City, to discuss buying or selling property. That information was to be kept confidential in order to protect the taxpayer's money.

Over the years there have been times when it appeared individual Council Members spoke about what happened in Executive Session to members of the public. When that happened we got serious warnings from both the City Attorney and the City Manager. In fact I remember we were told that Council Members who broke that rule were putting the City at risk and could possibly even go to jail.

When we got to this council things changed. A member of this council openly talked about disclosing what had been discussed in executive session to people with whom the City was engaged in a lawsuit. The Council member was warned by the previous City Attorney, the previous City Manager, the litigator we hired, and by our current City Attorney to stop doing it.

What has gone on in closed session at times would shock this city. Had I chosen to talk about it, the reasons I have been so frustrated and at times so angry on the dais would have been clear to the public. But I didn't. I finally decided that no amount of talk would make a difference and I chose to go to the Ethics Commission. It was a last resort. I hated having to do it. I'm hating each and every moment of this. The stress and emotional turmoil has been making me physically ill.

I could have withdrawn the complaints at any time, that's true. And I would have, in a heartbeat, if at any stage they said, "OK I get it, we shouldn't be doing this and it's going to stop". But that didn't happen, far from it. They justified their behavior and still do. So the cases went forward and have been adjudicated. The INTENTION of the Ethics Ordinance was pretty clear: Council Members should not disclose Confidential Government Information. Now we discover, however, that nothing a Council Member hears in Executive Session is Confidential Government Information. NOTHING! It's the Wild West.

The Ethics Commission ruled that the behavior I was complaining about was not unlawful and was not a breach of the Code because the way Confidential Government Information is defined in the Ethics Ordinance. The definition of Ethics I have relied on was the one I was given in City training; "Ethical behavior is doing the right thing when no one else is watching – even when doing the wrong thing is legal."

I don't regret bringing these cases but I'm truly sorry I had to. Now the ordinance has been tested and in my opinion it has been found wanting. The public has no protection from it. The City

remains at risk from the behavior of individual council members who can sit in an executive session and then go directly from there to people litigating against the city and tell them what was said, reveal the legal strategy, tell them what each council member thinks about settling or fighting the case. If the City is considering buying or selling a piece of property, a Council member can go out and tell anyone they like. Its crazy.

If the Mayor and members of this Council believe that a Council member is acting in good faith when they do something they have been specifically told not to do by two City Attorneys, a specialist litigator, a City Manager and other Council members because it would hurt the city, then we have a major difference in values. Everyone on this dais was there. Everyone on this dais heard those warnings. Everyone up here knows what went on.

I fell in love with Bastrop when I arrived here. That's why I first agreed to run for council. I have tried, to the very best of my ability, to serve the people who elected me honestly and ethically. Loving Bastrop has meant standing up for what I believed was right and standing against what I believe was wrong. Some of what's going on may be lawful but it's awful and the people shouldn't stand for it.