

**MINUTES OF REGULAR COUNCIL MEETING
BASTROP CITY COUNCIL
OCTOBER 11, 2016**

The Bastrop City Council met in a Regular Meeting on Tuesday, October 11, 2016 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 Council Members Peterson, Schiff and Jones. Council Member McAnally arrived later in the meeting. Officers present were Interim City Manager Marvin Townsend, 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. Mayor Pro Tem DeLaRosa was absent. Council approved the absence as excused.

PLEDGE OF ALLEGIANCE

Connie Schroeder led the Pledge of Allegiance

INVOCATION

Council Member Jones gave the Invocation.

PRESENTATIONS

- A. Presentation from Progressive Waste – Steve Shannon
The presentation was given by Steve Shannon.
Council Member Jones asked Mr. Shannon to briefly state some of his recommendations for the Public Education and Awareness Funds. Mr. Shannon stated that Progressive would like to see a recycling program that worked with the business community and bring attention to recycling and help promote it.

PROCLAMATIONS

- A. Community Planning Month
Accepted by Melissa McCollum, Director of Planning and Development

ANNOUNCEMENTS

- A. Update on Comprehensive Plan Steering Committee – Kay Garcia McAnally
Connie Shroeder, Chair of the Comprehensive Plan Steering Committee gave an update. Ms. Shroeder stated that the Committee held its eighth meeting on October 10, 2016 and reviewed and vetted Chapter 9. The final open house is scheduled for October 27, 2016 at City Hall and the Planning and Zoning Commission will hold their review meeting on November 10, 2016. Ms. Shroeder invited the City Council to have a joint meeting with the Planning and Zoning Commission at the November 10, 2016 meeting to provide the required public hearing.

Council Member McAnally read a letter into record and a copy is attached.

- B. Distribution of Items to Council (If Necessary) – Ann Franklin
C. Items Targeted for Future Meetings.
• **Postponed Item D.11 on this agenda to October 25, 2016**
D. Requests by Council Members for items on future agendas and requests for information from City Manager.
E. Announcements by City Manager Marvin Townsend regarding the status of pending lawsuits

Interim City Manager Marvin Townsend gave an update on major lawsuits that have been impacting legal fees. Going forward each monthly financial report will have a specific item that will show the legal fees being paid on the various cases and compare to the last two years. This report will be given as long as there is an interest in the material being provided.

Bastrop vs. VanDiver case, this is the lawsuit about the garage, a lawsuit that the City filed and there has been a counter claim filed and the Council has been provided with copies of the counter claim. Since there has been a counter claim filed the City Attorney is in the process of transferring the case from Mr. Bundren from Frisco to the City Attorney Council will be filled in on further developments as they occur.

Watson vs. Allen case, the red light traffic ticket case. The case went back to a Federal Court in Fort Worth that heard the case removed all of the parties except those who were directly involved in the ticket that was written in Southlake, so the City of Bastrop is temporarily out of the case.

In the case of the Pine Forest Investment group the motion for new trial was denied.

The hearing for the well application has been set for October 12, 2016 at the Convention Center.

7. Discussion with Interim City Attorney concerning Open Meetings Act, its requirements and its exceptions as applied to interviews with independent contractors who are candidates for hiring by the City.

Interim City Attorney David Bragg stated that on September 20, 2016 an executive session was held at which the hiring of the applicant to search for a new city manager was discussed. After the meeting Council Member McAnally received a complaint from a citizen and asked the Interim City Manager and Interim City Attorney to look into the complaint and this report is a result of the inquiry. The meeting was posted by staff for executive session in reliance on the Procurement Act which does allow for executive/confidential sessions for discussion on bid proposals. The Procurement Act does not apply to professional service contracts so exemption for confidentiality is not applicable. Similarly the Open Meetings exception does not apply because an independent contractor is not considered personnel or an officer of the City, that exception to holding an open meeting was not applicable. Mr. Bragg stated that he did not review the posting before it went up but going forward he would be reviewing the agenda prior to it being posted to make sure that the agenda does in fact comply with the law. Mr. Bragg stated the question "was the hiring of the consultant appropriate?" Mr. Bragg stated there are arguments going both ways and authority going both ways. The Council: came out of executive session; discussed what had been discussed in executive session; and took a public vote on the hiring, there are authorities that say those actions cure the situation. Mr. Bragg stated that he could not give a yes or no answer on that particular question.

Council Member McAnally asked Mr. Bragg if this meant that the search team the Council has been talking to will remain the search team or what is going to be done about the situation. Mr. Bragg stated that the selection was not void, the selection is voidable if a citizen did the appropriate complaining there could be an issue to be discussed as to whether the selection could go forward or not. As of yet no one has raised that complaint as to the validity of the selection.

8. CITIZENS COMMENTS

Glen Johnson – Stated that he left a copy of the Texas Attorney General Open Meetings Act Handbook 2016 with the City Secretary for each of the Council Members, the Interim City Manager and the Interim Attorney. He stated that this book was given in order for every member dealing with the agenda for the City Council may know the contents of the Texas Open Meetings Act and the interpretations. Mr. Johnson feels that this handbook is important because he feels that there was a disregard to the open meetings act by the City Council during the September 27, 2016 meeting.

CONSENT AGENDA - *All the following items are considered to be self-explanatory by the Council and will be enacted with one motion; there will be no separate discussion of these items unless a Council Member so requests.*

A.1 Approval of the statutory denial for a period of 180 days from the date of Council action on the Replat of Don A. Stewart Subdivision Amended Plat of Lots 1G and 1H being +/-0.703 acres located south of Old Austin Highway and north of Highway 71 West within the city limits of Bastrop, Texas.

Council Member Schiff made the motion to approve the statutory denial for a period of 180 days, seconded by Council Member Peterson. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.

B. PUBLIC HEARINGS, ORDINANCES & OTHER ITEMS ELIGIBLE FOR CONSIDERATION AND/OR ACTION

B.1 PUBLIC HEARING: Receive public input on Variances to the Subdivision Ordinance, Suburban Subdivision Standards Section 7.10.2 Layout Requirements A. Minimum lot width shall be one hundred and twenty-five feet and Section 7.10.2 G. Lot depth to width ratio shall not exceed 3 to 1. The proposed 512 House Group Subdivision is +/-0.997 acres within the Stephen F. Austin Survey Abstract No. 3 located on Phelan Road within the City of Bastrop, Texas One Mile Extra Territorial Jurisdiction (ETJ).

The public hearing was conducted.

B.2 Consideration, discussion and possible action on Variances to the Subdivision Ordinance, Suburban Subdivision Standards Section 7.10.2 Layout Requirements A. Minimum lot width shall be one hundred and twenty-five feet and Section 7.10.2 G. Lot depth to width ratio shall not exceed 3 to 1. The proposed 512 House Group Subdivision is +/-0.997 acres within the Stephen F. Austin Survey Abstract No. 3 located on Phelan Road within the City of Bastrop, Texas One Mile Extra Territorial Jurisdiction (ETJ).

Council Member McAnally made the motion to approve the variances to the subdivision ordinance, seconded by Council Member Schiff. The motion was approved on a 3-1 vote. Council Member Jones voted nay. Mayor Pro Tem DeLaRosa was absent.

B.3 Public Hearing: Receive public input on a request to designate 1201 Main Street, the First United Methodist Church and Memorial Bell Tower as a Significant Landmark.

The public hearing was conducted.

- B.4** Consideration, discussion and possible action to designate 1201 Main Street, the First United Methodist Church and Memorial Bell Tower as a Significant Landmark.
Council Member Peterson made the motion to designate 1201 Main Street, the First United Methodist Church and Memorial Bell Tower as a significant landmark, seconded by Council Member McAnally. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.
- C. OLD BUSINESS**
- C.1** Discussion regarding update on the City of Bastrop Shelter Project that will be located at 1209 Linden Street Bastrop Tx.
Report was given by the Director of Public Works, Trey Job.
- C.2** Second reading of an ordinance requesting parking modifications along Main Street, converting parking from angle to parallel on the west side of Main Street between Pine Street and Chestnut Street.
Council Member Schiff made the motion to approve the parking modifications along Main Street, seconded by Council Member Peterson. The motion was approved on a 3-1 vote. Council Member Jones voted nay. Mayor Pro Tem DeLaRosa was absent.
- D. NEW BUSINESS**
- D.1** Request that the City Manager initiate research regarding possible annexations that will be beneficial to the City.
Council Member McAnally made the motion to instruct the Interim City Manager to investigate annexation and bring back the report to Council as soon as possible, seconded by Council Member Peterson. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.
- D.2** Consideration, discussion and possible action regarding first reading of an ordinance requesting traffic modifications along Alley A and B, limiting vehicles traveling south on Alley A to right turns only and Alley B, traffic heading north right turn only.
Council Member Schiff made the motion to approve the first reading of the ordinance, seconded by Council Member Peterson. The motion passed on a 3-2 vote. Council Members Schiff and Peterson voted aye. Council Members Jones and McAnally voted nay. Mayor Kesselus voted aye to break the tie. Mayor Pro Tem DeLaRosa was absent.
- D.3** Consideration of a resolution approving the County prepared Bastrop Local Mitigation Plan. FEMA has granted tentative approval, subject to approval of each involved jurisdiction, including Elgin, Smithville and Bastrop.
Council Member Jones made the motion to approve the resolution, seconded by Council Member McAnally. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.
- D.4** Consideration, discussion and possible action regarding the request of Bastrop County Judge Paul Pape for a long term lease of approximately 1.78 acres at Mayfest Park for a site for a shelter/multi use facility of approximately 12,500 square feet with approximately 158 paved

parking spaces, payment by Bastrop County will be deposited in the Park trust fund for acquisition of park land adjacent to Mayfield Park.

Council Member Schiff made the motion to approve the long term lease of approximately 1.78 acres at Mayfest Park, seconded by Council Member McAnally. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.

- D.5** Consideration, discussion and possible action on the Final Plat for Pecan Park, Section 3A being +/-12.181 acres within the Mozea Rousseau Survey A-56, located west of Childers Drive (proposed extension) and south of the 100' wide LCRA easement within the city limits of Bastrop, Texas.

Council Member Schiff made the motion to approve the final plat for Pecan Park, Section 3A, seconded by Council Member Jones. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.

- D.6** Consideration, discussion and possible action on the Final Plat for Pecan Park, Section 6A being +/-10.961 acres within the Mozea Rousseau Survey A-56, located east of Childers Drive (Childers Drive to be extended) and south of the 100' wide LCRA easement within the city limits of Bastrop, Texas.

Council Member Schiff made the motion to approve the final plat for Pecan Park, Section 6A, seconded by Council Member McAnally. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.

- D.7** Consideration for approval of the proposed repair & reprogramming work by Trac-N-Trol Inc. on the SCADA System for the water and wastewater system for \$98,330.

Council Member Schiff made the motion to approve the proposed repair and reprogramming work by Trac-N-Trol, Inc. on the SCADA System, seconded by Council Member McAnally. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.

- D.8** Consideration for approval of the renewal of the contract with Trac-N-Trol to provide SCADA repair services for the Water and Waste Water Department on an hourly basis as needed for non-warranty work.

Council Member Jones made the motion to approve the renewal of the contract with Trac-N-Trol, Inc. to provide SCADA repair services, seconded by Council Member McAnally. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.

- D.9** Consideration for approval of a change order for the amount of \$35,297 to Excel Construction Services to include repairs to the central lift station piping. Excel is currently performing lift station repairs at three locations under a \$897,099 contract. This needed work became apparent while the contracted repairs were underway.

Council Member Schiff made the motion to approve a change order for the amount of \$35,297 to Excel Construction Services, seconded by Council Member Jones. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.

- D.10** Consideration, discussion and possible action concerning closing the City's Refuse Disposal Transfer Station at 1209 Linden Street on October 31, 2016 and encouraging potential customers to use the Bastrop County facility at 601 Cool Water Drive.

Council Member Schiff made the motion to close the City’s Refuse Disposal Transfer Station at 1209 Linden Street, seconded by Council Member Jones. The motion was approved on a 4-0 vote. Mayor Pro Tem DeLaRosa was absent.

D.11 Report from the Bastrop Main Street Program regarding Council direction on the 1832 Farmer’s Market and lot adjacent to the Convention Center.
This item was postponed to October 25, 2016.

E. EXECUTIVE SESSION

E1. The Bastrop City Council met at 8:29 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551, *et seq.*, to discuss the following:

- A. SECTION 551.071(1)(A)(B) & SECTION 551.071(2) – Consultation with Attorney concerning: (1) potential, pending, threatened, and/or contemplated litigation, claims, and/or settlement/mediation, including (*but not limited to*) the following: municipal water supply, pending and/or potential code enforcement, litigation related to subdivision development, Pine Forest Unit 6 Lawsuit and Vandiver Lawsuit, and/or (2) matter upon which the Attorney(s) have a duty and/or responsibility pursuant to the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas to report to the governmental body, concerning these matters, and/or any other matters posted on the agenda.

E2. The Bastrop City Council reconvened at 8:47 p.m. into open (public) session to discuss, consider and/or take any actions necessary related to the executive session(s) items noted herein, or regular agenda items, noted above, and/or related agenda items.

ACTION ITEMS FROM EXECUTIVE SESSION (If any are needed.)

- E2.A SECTION 551.071(1)(A)(B) & SECTION 551.071(2) – Consultation with Attorney concerning: (1) potential, pending, threatened, and/or contemplated litigation, claims, and/or settlement/mediation, including (*but not limited to*) the following: municipal water supply, pending and/or potential code enforcement, litigation related to subdivision development, Pine Forest Unit 6 Lawsuit and Vandiver Lawsuit, and/or (2) matter upon which the Attorney(s) have a duty and/or responsibility pursuant to the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas to report to the governmental body, concerning these matters, and/or any other matters posted on the agenda.


NO ACTION

ADJOURNMENT

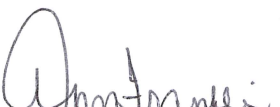
Council Member Schiff made the motion to adjourn the meeting at 8:48 p.m., seconded by Council Member McAnally. The motion was approved on a 5-0 vote.

APPROVED:

ATTEST:



Mayor Ken Kesselus



City Secretary Ann Franklin

Minutes were approved on November 22, 2016 by Council Member Schiff's motion, Mayor Pro Tem DeLaRosa's second. The motion was approved on a 5-0 vote.

The comprehensive plan Steering Committee continues to do its excellent work. Thank you for such great leadership, Ms Schroeder.

But I'm afraid, tonight, that I may no longer be able to attend as representative of our city Council. For some time now, I have been extremely troubled by what's going on in this city. Since being elected seven and a half years ago I have sat with several changes of council members and to the best of my ability, I've represented the citizens of Bastrop ethically, legally and honestly. Since Councilmember Kessulus became Mayor, however, it has become progressively more difficult to do this. And, unfortunately, since this latest Council lineup came to power in May, it has become pretty much impossible! Every single day, I worry not ONLY if what is going on in the City is ethical, but if it is actually legal.

While honest ethical and professionally astute people like Mike Talbot, Steve Adcock and JC Brown were our City Managers and City Attorney, I felt that there were checks and balances. Through the actions of this council we no longer have a qualified Municipal Attorney to keep council on track, avoid mistakes and to protect the City. Members of the public seem to know more about Municipal law, and regularly admonish Council for its failure to conduct itself. Even the local newspaper has had to tell the Mayor and Council that what it was doing was actually illegal.

Before Mr. Kessulus became Mayor we had a functioning. City. It wasn't perfect, but it functioned pretty well. Under his leadership we now seem to have chaos and confusion, headlines every other week in the newspaper, sensation after sensation.

I believe that one of the reasons we don't appear to move forward is because the Mayor does not take responsibility for the many dysfunctional things that council has done under his leadership. He and I have never really seen eye to eye on ethics, but according to him things that he has done or things that he has said that appear to be irregular, have just been misconstrued or misrepresented or misunderstood by those of us who have questioned him. He must be the most misunderstood man in Bastrop History!

The Mayor didn't really try to appoint his boss to the Economic Development Board, he didn't really try to appoint his boss's wife to a City board, he didn't really try to get rid of the head of the Ethics Commission because they advised he could not do either of those two things, he didn't really mount a long, savage and sustained campaign against our City Attorney because she referred those things to the Ethics Commission, he didn't really lead the charge to pressure City Manager Mike Talbot into resigning, he didn't really sit and have a beer with his boss and a former council member and discuss strategy about how Bluebonnet Electric could buy Bastrop's Electric Company, he didn't really allow his boss 45 minutes of speaking time at a Council Meeting to discuss funding the Bastrop Fine Arts Guild to the tune of \$300 to \$500,000 without having the issue posted as an agenda item so that the public could weigh in and offer their views before taking action. He didn't really do any of these things, it seems. They were all just misunderstandings.

It appears that I sit on a council where confidential information is being disclosed by Councilmembers, where the City's Ethics ordinances are being violated, where the Bastrop City Charter is being violated, where the laws of Texas are not being honored. I serve on a council where one particular council member has told me that some people deserve different treatment because they are, well, "more special than others". That because they are "artistic" or "have contributed much to the City", they should not be required to follow the same rules as everyone else. (That's pretty much a direct quote)!

I serve on a council, it seems, where bullying is the norm, where abusing and admonishing City staff on camera for political points is the order of the day. I believe that I serve on a council where there have been attempts to use public funding to serve private business interests...or those of friends or clients. I serve on a council that lost its excellent City Manager because, he said, certain members of council continuously cross the lines of our City Manager/City Council form of Government. I can't do this anymore.

This is one of the saddest days of my life. I never thought it would come to this but I feel that I no longer have options. I have, tonight, submitted Ethics Violation Complaints with the Interim City Attorney, against Council Member Gary Schiff and Council Member Deborah Jones. The only way left that I can honestly serve the citizens who elected me, is by tendering my resignation and telling people these things that I believe to be true.

To save the City the cost of an additional election, I am making my resignation effective November 5th and in accordance with the City Charter, I will remain at my post until an election is called and I can be replaced.

I have spoken with candor and sadness about the situation at City Hall. In SHARP contrast, however, Bastrop has a real TREASURE at City Hall, which must be acknowledged...our City Staff. The people who work at City Hall are made of steel...and brains...and heart! Thank you to you all for your support, professionalism and the kindness you have shown when I have asked much of you. Working with staff will be remembered fondly when I think of the good things accomplished during my council years because YOU and our amazing VOLUNTEERS took my small dreams and ideas and turned them into valuable City assets.

We worked hard to get

- The Vision Task Force
- Bastrop Arts in Public Places
- Bastrop Film Commission
- The Destination Marketing Organization
- A new comprehensive plan
- A state law to allow HOT funds for regional recreation facilities
- Affordable apartments after the Bastrop Complex Fire
- Handicapped access in historic downtown and Fisherman's Park
- A big public access computer bank in the library
- The wonderful culture walk that will be built in Bob Bryant Park
- Financial help for people who were hit by the recent floods with reductions in their electric bills.
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There's much more to do and I hope to continue working with Vision Task Force and the County to realize a Rural Lifestyle Complex.

I'm proud of what has been accomplished in the last seven years. And love 'em or hate 'em I'm proud of the Historic Chicken Sanctuary. It has drawn attention to our community nationally and internationally and has undoubtedly added to our tourism dollars.

Good things have been accomplished and I don't want them to be tarnished by the questionable behavior of this particular council. That's why I have been forced to take this action tonight.

One last thing: I don't want a Kay McAnally day. I don't want a reception down the back of City Hall. What I do want is for Citizens to be very careful whom they are voting for and what they stand for. Listen. Pay close attention. Yes we are all volunteers but this is a good community and it deserves the highest standards of public representation, people who are committed to following the Laws of Texas, the City Charter and the Ethics Ordinance.

Be especially vigilant when it comes to water. In the words of a former council member whom I respect, "It's a long game...and it's ALL about the water for some of these people."

Bastrop is our home – please be careful whom you ask to take care of it.

Thank you! I ask that this speech be attached to the minutes of this meeting.