

RESOLUTION NO. R-2017-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TX AUTHORIZING REIMBURSEMENT OF LEGAL FEES TO COUNCIL MEMBER GARY SCHIFF INCURRED IN HIS DEFENSE AGAINST ETHICS COMPLAINT NO. 2016-2; PROVIDING A PRECEDENCE FOR FUTURE REIMBURSEMENTS OF LEGAL FEES RELATED TO ETHICS COMPLAINTS OF COUNCIL MEMBERS OR STAFF WHERE THERE ARE NO VIOLATION(S) FOUND; REPEALING RESOLUTION R-2017-13; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, under Article 1.15.130 (a) of the Code of Ethics states that the City Attorney shall serve as legal counsel and staff liaison to the Ethics Commission; and

WHEREAS, when complaints related to the violations of this article are filed relating to the Mayor, City Councilmembers, City Manager, City Attorney, City Prosecutor, or Municipal Court Judge, independent legal counsel may be utilized to advise the Ethics Commission; and

WHEREAS, Article 1.15.130 (b) states that the City Attorney shall serve as ethics advisory, only, to city employees and city officials, and shall not represent employees or city officials before the Ethics Commission and may not represent any person or party in any proceeding, as legal counsel, to the Ethics Commission.

WHEREAS, Council Member Kay McAnally filed an ethics complaint with the City of Bastrop Ethics Commission against Council Member Gary Schiff, which complaint were assigned case numbers 2016-2 by the Commission; and

WHEREAS, Council Member Schiff hired personal legal counsel for representation during the proceedings of the Ethics Commission; and

WHEREAS, the Commission ruled that the conduct alleged in Complaint No. 2016-2 was not illegal conduct and that there was no violation of the Ethics Ordinance by Council Member Schiff and that the complaint was not brought in bad faith or for the purpose of harassment by Council Member McAnally; and

WHEREAS, the City Council finds that a very significant public interest is served by this resolution because without it, individuals who may desire to run for Mayor or the City Council or accept an appointment to any of the City's Boards and Commissions will be reluctant to consider such service because of the risk of having to pay for personal legal counsel to defend against ethics charges; and

WHEREAS, under Section 3.07 of the Bastrop City Charter, “[c]ouncil members may receive reimbursement for necessary expenses incurred in the performance of their duties of office;” and

WHEREAS, the Attorney General of Texas has ruled repeatedly that the legal expenses of city officials and council members may be reimbursed under the common law when there is no violation found against the city official or council member; and

WHEREAS, the City Council finds that Council Member Schiff has incurred legal fees defending against the ethics complaints in the amount of \$3,362.50 and that these fees are reasonable; and

WHEREAS, the City Council finds that the legal expenses incurred by Council Member Gary Schiff were necessary expenses incurred in the performance of his duties of office;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. The City Manager is authorized to cause a reimbursement check to be issued, payable to Council Member Gary Schiff in the amount of \$3,362.50 for his necessary legal fees in defending against Ethics Complaint No 2.

Section 2. Resolution 2017-13 is repealed and replaced with this Resolution, which will serve as precedence for future reimbursements of legal fees.

Section 3. The provisions of this Resolution are intended to be and are severable which means that if any part or provision is found to be illegal or improper, all other parts and provisions will remain in full force and effect.

Section 4: This resolution shall take effect immediately from and after its passage, and is duly resolved.

PASSED AND APPROVED this 9th day of May, 2017.




Kenneth Kesselus, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



David F. Bragg, City Attorney