MINUTES OF REGULAR COUNCIL MEETING
BASTROP CITY COUNCIL
FEBRUARY 14, 2017

The Bastrop City Council met in a Regular Meeting on Tuesday, February 14, 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 and McAnally. Officers present were Interim City Manager Marvin Townsend, City Secretary Ann Franklin and City Attorney David Bragg. Council Member Jones arrived later in the meeting.

CALL TO ORDER
At 6:30 p.m. Mayor Kesselus called the Meeting to order with a Quorum being present.

PLEDGE OF ALLEGIANCE
Council Member Peterson led the Pledge of Allegiance

INVOCATION
Mayor Kesselus gave the Invocation.

PRESENTATIONS

A. Buc'ee's Kiosk – Director of Bastrop Economic Development Corporation, Shawn Kirkpatrick
Director of Bastrop Economic Development Corporation, Shawn Kirkpatrick gave the presentation.
B. S&P Global Ratings and an update on the savings recognized by the City through the recent bond refunding transaction– Chief Financial Officer, Tracy Waldron
Chief Financial Officer, Tracy Waldron gave the presentation.
C. Distribution of utility bills to customers - Chief Financial Officer, Tracy Waldron
Chief Financial Officer, Tracy Waldron gave the presentation.
D. Announcement of new items on webpage – City Secretary, Ann Franklin
City Secretary, Ann Franklin gave the presentation.

PROCLAMATIONS

A. Black History Month.
Proclamation was read into record by Mayor Kesselus.

ANNOUNCEMENTS

A. Distribution of Items to Council (If Necessary) – Ann Franklin
B. Requests by Council Members for items on future agendas and requests for information from City Manager.

- Pine Forest – Meeting to find a solution to Unit 6. Hold the meeting at the Convention Center.
- Requested that staff look at putting a fence around the Jewel Hodge's Park.
- Staff was asked to call the Muni Golf Course representative responsible for getting the Muni its designation so it could stay to see if it applies to the State Park Golf Course.
- A follow up report on how to control the roosters once they get out of sanctuary.

C. 2017 Annual Council Workshop - Ken Kesselus
Mayor Kesselus stated that the annual Council Retreat is normally held in January of each year and obviously the Council has not had one this year, due to having a new City Manager before this Council ends. He suggested that maybe it would make more sense to have the retreat sometime in July after the new City Manager and new Council Members are on board and possibly having the retreat each year in the Summer going forward.

Council Member Jones arrived at 7:01 p.m.

CITIZENS COMMENTS

Glen Johnson – Congratulated the City Secretary and IT Department on putting a meaning on Open Government. However he was concerned that in his opinion the City Manager interviews were not properly noticed, they were posted on the bulletin board and not on the web.

REPORT FROM DMO BOARD

1. Report from DMO Start Up Board – Anne Smarzik, Chair
   - Austin Attorney familiar with non-profit corporations and 501(c)(6) not for profit associations under the supervision of the City Attorney
   - Other items from the February 13th meeting

   Anne Smarzik, Chair presented the report. Ms. Smarzik stated that during the first meeting the question was raised by the City Manager and City Attorney as to the legality of forming a DMO as a 501(c)(6) organization. The board would like to seek approval from the City to approve funding to hire a tax attorney someone who is familiar with non-profit and 501(c)(6).

   City Attorney David Bragg stated that the IRS publishes an extensive document on each one of the types of tax exempt organizations and for a (c)(6) there are approximately seven criteria and one of the criteria is that you must be a membership organization with dues paying members and you cannot spend the organizations money on the benefit of any individual business and in many cases that is what a DMO does. Mr. Bragg stated that he asked Mr. Geist about the 501(c)(6) in the first meeting (Mr. Geist was attending via telephone.) Mr. Geist stated that he was aware of the prohibitions and the IRS has issued a ruling dealing with the prohibitions of a DMO publishing a visitor's guide that included the name of businesses in it and Mr. Geist said that they were able to get the 501(c)(6) with "a wink and a nod" "those were his words." Mr. Bragg stated that he would never recommend to the City that it deal with the IRS with a "wink and a nod" and therefore Mr. Bragg suggested that a tax attorney be hired because he does not know enough about taxes to be able to do it therefore he suggested hiring a tax attorney who could answer the questions authoritatively. Mr. Bragg's other concern was that each of the board members being asked to serve have thrust upon them a fiduciary duty for the expenditure of those funds and if they do it wrong it is on their backs. Mr. Bragg does not believe it is fair to subject them to that type of risk without having a solid legal basis.
2. Consideration, discussion and possible action in response to the report by the Council, City Manager and City Attorney

   Council Member Jones made the motion to allow the DMO Start Up Board to hire a tax attorney familiar with non-profit corporations and (501)(c)(6) not for profit associations in order for the board to get the information needed to move forward, seconded by Council Member Schiff. The motion was approved on a 5-0 vote.

<u>CONSENT AGENDA</u> - *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 minutes from regular council meetings of July 26, 2016 and January 10, 2017.

A.2 Appointment by Mayor, subject to confirmation by City Council of Cynthia Meyer to Place 5 on the Planning and Zoning Commission/Impact Fee Advisory Committee fulfilling an unexpired term ending June 2018.

A.3 Appointment by Mayor, subject to confirmation by City Council of Alyssa Halle-Schramm to Place 9 on the Planning and Zoning Commission/Impact Fee Advisory Committee fulfilling an unexpired term ending June 2017.

A.4 Appointment by Mayor, subject to confirmation by City Council of Jamie Creacy to Place 9 on the Parks Board/Public Tree Advisory Board fulfilling an unexpired term ending June 2018.

A.5 Approval of designation of 1005 Hill Street as a Historic Landmark.

A.6 Approval of designation of 1201 Main Street as a Historic Landmark.

Mayor Pro Tem DeLaRosa made the motion to approve the consent agenda, seconded by Council Member McAnally. The motion was approved on a 5-0 vote.

E. EXECUTIVE SESSION

E.1 Pursuant to Texas Government Code §551.071 the City Council will meet in Executive Session to consult with its attorney to seek his advice about pending or contemplated litigation, or settlement offers, discuss legal issues related to the Texas Open Meetings Act and Texas Public Information Act, and pursuant to §551.071(2) to consult on matters in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.

E1. The City Council met at 7:19 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* municipal water supply, McCall Ranch water permit litigation, VanDiver litigation, Hoover claim and Pine Forest Unit 6, and (2) the expenditure of HOT funds and other matters 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, including procedures and policies dealing with open records. **SECTION 551.074 Personnel Matters** – Consideration and discussion of recruiting, evaluation of applications, and possible offer concerning City Manager candidates.

E2. The Bastrop City Council reconvened at 8:09 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.)

Citizens are allowed to sign up for discussion on items proposed for action.

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* municipal water supply, McCall Ranch water permit litigation, VanDiver litigation, Hoover claim and Pine Forest Unit 6, and (2) the expenditure of HOT funds and other matters 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, including procedures and policies dealing with open records. **SECTION 551.074 Personnel Matters** – Consideration and discussion of recruiting, evaluation of applications, and possible offer concerning City Manager candidates.

ACTION

Council Member McAnally made the motion to hire Lynda Humble as the City Manager and accept the contract presented by Ms. Humble and recommended by the City Attorney to the Council with an amendment to section IX: "Severance Pay" as follows, seconded by Council Member Schiff. The motion was approved on a 5-0 vote. The amendment to Section IX: "Severance Pay" in the contract should read as follows: "…9.2 In the event the Employee is terminated in accordance with Article VIII, the Employer shall provide a minimum severance payment equal to nine months' salary at the current rate of pay; provided however that on each anniversary of this contract, one month will be added to the severance payment, up to a maximum of twelve months…."

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

B.1 Public Hearing: Receive public input on a request for a Conditional Use Permit (CUP) to Section 43.4 special height regulations to allow for structures of three (3) stories, 44 feet, for use as the Hunters Crossing Apartments to be located on Home Depot Way, approximately 300' west of its intersection with FM 304, within the city limits of Bastrop, Texas, currently zoned HX-MR in the Hunters Crossing Planned Development, being the equivalent of MF-2, Multi-Family-2, in the Code of Ordinances.
The public meeting was held.

B.2 The first reading of an ordinance granting a conditional use permit to allow for structures of three (3) stories, 44 feet, for use as the Hunters Crossing Apartments to be located on Home Depot way, approximately 300' west of its intersection with FM 304, within the City limits of Bastrop, Texas, an area zoned HX-MR in the Hunters Crossing Planned Development, being the equivalent of MF-2, Multi-Family-2, in the Code of Ordinances; setting out conditions; and providing an effective date.
Council Member Jones made the motion to approve the first reading of the ordinance, seconded by Council Member Schiff. The motion was approved on a 3-1 vote. Council Member McAnally voted nay. Mayor Kesselus was off the dais.

C. OLD BUSINESS

C.1 Second reading of an ordinance revising the City Code of Ordinances, Chapter 4 of the Code of Ordinances of the City of Bastrop, "Bastrop Regulations", Article 4.03 "Taxicabs, Shuttles and Touring Vehicles," to add definitions of terms, add exemptions from coverage, add regulations pertaining to pedicabs, horse-drawn carriages, low speed vehicles ("LSV"), neighborhood electric vehicles ("NEV"), providing additional remedies for violations; and amending Appendix A4.03.001 – "License" of the code of ordinances of the City of Bastrop, concerning inspection and drivers' fees for same; providing for penalties; and establishing an effective date.

Ordinance No. 2017-03 was approved on Mayor Pro Tem DeLaRosa's motion, Council Member Schiff's second. The motion was approved on a 5-0 vote.

C.2 Consideration, discussion, and possible action approving a 75-year lease with Bastrop County for a 2.35 acres of land located at Mayfest Park to be used as an emergency shelter and multiuse facility of approximately 12,000 square feet with approximately 150 all-weather parking spaces. Compensation for the 75-year lease is $102,366. The City responsibility includes removal of the existing radio tower and delivery of the property within 30 days of the agreement commencement.
Council Member Schiff made the motion to approve the 75-year lease with Bastrop County, seconded by Mayor Pro Tem DeLaRosa. The motion was approved on a 5-0 vote.

C.3 Second reading of an ordinance contractually annexing Tract 1 and Tract II, Trinidad Business Park to the City of Bastrop and providing an effective date. (January 10, 2017 Council meeting Item D.8: Recommendation that the annexation process be completed regarding Trinidad Business Park Phase I, Lots 1 AND 2, being an approximately 8 acre Tract on the south side of highway 71 west of its intersection with FM 20. Public hearings were held on September 27, 2011 and October 11, 20111. On October 24, 2011, Mr. Richard Welch and Mr. Jason Alleyas the owners of the above described property, presented an executed contract for voluntary annexation with such voluntary annexation to occur no sooner than 3 years after the 2011 annexation was completed. The 2011 annexation was effective on November 8, 2011, the service plan presented in 2011 is still timely.)
Ordinance No. 2017-04 was approved on Mayor Pro Tem DeLaRosa's motion, Council Member Schiff's second. The motion was approved on a 5-0 vote.

D. NEW BUSINESS

D.1 Consideration, Discussion, and possible action recording a request from the Bastrop Homecoming Committee regarding possible funding.
No action was taken.

D.2 Consideration, discussion and possible action to retain DP Consulting to conduct a hotel feasibility study for the Bastrop Convention and Exhibit Center. The Bastrop EDC has been approached by developers with interest in developing a full-service hotel in conjunction with the Bastrop Convention and Exhibit Center. A hotel feasibility study is recommended by both the potential developers and staff. The EDC and Main Street staff solicited three proposals from CBRE Hotels, DP Consulting, and HVS, all highly recommended and respected as hotel and convention center consultants. After evaluating the proposals, the recommendation is to select DP Consulting at a cost of $19,500 plus fees for the project. Funding for the study has been previously allocated in the current Hotel Occupancy Tax budget and is an eligible expense.
Mayor Pro Tem DeLaRosa made the motion to retain DP Consulting to conduct a hotel feasibility study, seconded by Council Member Schiff. The motion was approved on a 5-0 vote.

D.3 Recommendation that the proposal from HALFF Associates to carry out a Drainage Study for Pine Forest Unit 6 for $75,100 be accepted. The first 3 tasks at a cost of $39,307 are proposed to be advanced from the General Fund. The actual expenses for the first 3 phases are proposed to be reimbursed by the Bastrop Economic Development Corporation if the Corporation approves the necessary steps to undertake the project. The Corporation would then authorize

tasks 4 through 6 at a cost of $35,793 for a total cost of $75,100. All tasks should be completed within 4 months.
Council Member Jones made the motion to accept Interim City Manager Marvin Townsend's request for the drainage study, seconded by Council Member McAnally. The motion was approved on a 4-1 vote. Mayor Pro Tem DeLaRosa voted nay.

D.4 Consideration, discussion and possible action by the City Council for approval and adoption of a Resolution expressing official intent to reimburse certain expenditures for initiation of a drainage master plan for Pine Forest Unit 6 Subdivision.
Resolution No. R-2017-10 was approved on Council Member Schiff's motion, Council Member McAnally's second. The motion was approved on a 4-1 vote. Mayor Pro Tem DeLaRosa voted nay.

D.5 Consideration, discussion and possible action on a Resolution approving amendments to the Bastrop Economic Development Corporation bylaws.
Resolution No. R-2017-09 was approved on Mayor Pro Tem DeLaRosa's motion, Council Member Jones' second. The motion was approved on a 5-0 vote.

D.6 Consideration discussion and possible action approving a mural design including approval to enter a contract for $4,300. The project is located in Fisherman's Park on the north wall of the restroom. This is a budgeted project.
Mayor Pro Tem DeLaRosa made the motion to approve a mural design including approval to enter a contract for $4,300, seconded by Council Member Jones. The motion was approved on a 5-0 vote.

D.7 Consideration discussion and possible action approving the (Art Fund). The fund will be used to stabilize budgeting for major purchases, ensure funds are available for future maintenance, and ensure adequate funds are available to fund the replacement of art work and increasing the collection.
This item was withdrawn.

D.8 Consideration, discussion, and possible action granting a variance to Mr. Frank Wise at 1410 Willow Street to drill a well for the purpose of irrigation as provided in Article 4.09 Drilling or Mining and in accordance with Sec. 4.09.002 Variances.
Council Member Schiff made the motion to grant a variance to Mr. Frank Wise at 1410 Willow Street to drill a well, seconded by Council Member McAnally. The motion was approved on a 5-0 vote.

D.9 Consideration, discussion, and possible action granting a variance to Mr. Billy Davis at 303 B Cedar Street to drill a well for the purpose of irrigation as provided in Article 4.09 Drilling or Mining, and in accordance with Sec. 4.09.002 Variances.
Mayor Pro Tem DeLaRosa made the motion to grant a variance to Mr. Billy Davis at 303 B Cedar Street to drill a well, seconded by Council Member McAnally. The motion was approved on a 5-0 vote.

D.10 Consideration, discussion, and possible action approving the replacement of a submersible pump for well (i) located at Bob Bryant Water Treatment Plant. The replacement will increase water production by approximately 400 gallons per minute. The cost of replacement is $29,030.
Council Member Schiff made the motion to approve the replacement of a submersible pump for well, seconded by Council Member Jones. The motion was approved on a 5-0 vote.

F. Observation/final comments by Council on matters listed above.

G. ADJOURNMENT

Council Member McAnally made the motion to adjourn the meeting at 9:30 p.m., seconded by Council Member Schiff. The motion was approved on a 4-0 vote. Mayor Kesselus was off the dais.

APPROVED:

Mayor Ken Kesselus

ATTEST:

City Secretary Ann Franklin

Minutes were approved on February 28, 2017 by Mayor Pro Tem DeLaRosa's motion, Council Member Schiff's second. The motion was approved on a 5-0 vote.