

The City of Galena Park

City Commission Meeting

Date: July 7, 2014

An Executive Session of the City Commission of the City of Galena Park was held at City Hall in the Council Chambers, Monday at 4:00 P.M. on July 7, 2014.

Present were:	Esmeralda Moya	Mayor
	Danny Simms	Commissioner
	Lois Killough	Commissioner
	Maricela Serna	Commissioner
	Juan Flores	Commissioner
	Wendy Villarreal	Administrative Secretary
	Jim DeFoyd	City Attorney
	John Hightower	Special Counsel
Absent:	Mayra Gonzales	City Secretary
	Robert Pruet	City Administrator

Mayor Moya called the meeting to order and asked for Ms. Phyllis Flores to give the invocation.

Mayor Moya stated that in accordance with the laws of the State of Texas she will not go into executive session due to the fact that the agenda does not meet the statutory requirements of the Open Meetings Act; however she would like to continue the meeting in open session to discuss the items on the agenda. Danny Simms, Commissioner/Mayor Pro Tem moved to engage Mr. John Hightower an attorney of the Law Firm Olson and Olson, LLP. as special counsel to advise the commission of Galena Park on the legal issues raised by Mayor Moya's recent actions and unilaterally terminating of city employees and giving controlled access to city hall. Commissioner/Mayor Pro Tem Simms requested a motion as Mayor Pro Tem of the City of Galena Park duly elected for the previously stated. Commissioner Killough moved to make the motion to engage John Hightower as special counsel to the commission; Mayor Moya stated that she was not going to discuss any legal debate with anyone at that time. Commissioner Serna, 2nd... Vote: Commissioner/ Mayor Pro Tem Simms asked for all in favor of the motion to say aye: 4 Ayes; Commissioner/ Mayor Pro Tem Simms asked for all opposed. Mayor Moya stated this is not going to take place today. Commissioner Simms/Mayor Pro Tem asked the Mayor if she was opposing to the motion, Mayor Moya stated to let her go thru this first. Commissioner/ Mayor Pro Tem Simms stated to Wendy Villarreal, Administrative Secretary, if she would please apply that the Mayor must make a motion and that he is assuming that the Mayor is opposing to the item. Wendy Villarreal stated to the Mayor that she would have to say that she opposes. Commissioner/ Mayor Pro Tem Simms stated that there are 4 Ayes for the motion and that all 4 of the Commissioners voted for the motion that he brought forward as Mayor Pro Tem within his legal rights; and he is assuming that the Mayor is opposing the motion that he brought forward. Mayor Moya stated that she was not in attendance when Commissioner Simms became the Mayor Pro Tem. Commissioner/ Mayor Pro Tem Simms stated that he became Mayor Pro Tem as part of a regular meeting and it is a six month period that each council member will rotate in and it was his turn to be Mayor Pro Tem and it was voted in by everyone that was on the council. Mayor Moya stated again that she was not in that session, and Commissioner/ Mayor Pro Tem Simms stated that she was not Mayor then. Mayor Moya stated that she was not going to talk about that. Commissioner/ Mayor Pro Tem Simms asked Mayor Moya if things didn't happen just because she wasn't Mayor at the time. Mr. John Hightower, special counselor stepped in asked if he could help and explains that the governing body of the City of Galena Park has a city charter which is like the Constitution of the United States. Citizens in the 40's decided what they wanted their government to look like and they decided on the charter

and that charter prescribed the powers and duties of the very specifics of the city and again governing bodies, the Commission, which consists of 4 Commissioner and a Mayor. The commission operates by majority vote. The commission can only act on things that are on a properly posted agenda. Mr. Hightower then states that there is an agenda posted, there was a motion made and there was a motion taken. Effectively that action has been taken regardless of whether Mayor Moya opposed to it or not; and the Mayor is only one vote out of 5 on the commission under the charter and that we have to operate under the rule of law. Mr. Hightower states that all of the elected officials took an oath of office to uphold the laws of the Constitution of the United States and the laws of the State of Texas, which include the charter; so all the Council Members including the Mayor are obligated to act within the powers given under the charter and the charter says that governing body is the 5 of them together, being the 4 Commissioner and the Mayor, they operate together and by majority vote. Mr. Hightower included that the Mayor does not get to decide whether or not votes are taken or what the effect of the votes are when the charter provides the majority vote control. Commissioner/ Mayor Pro Tem Simms makes a motion that the meeting be adjourned to a closed executive session under sections of the law 551.071 Consultation with an Attorney and 551.074 Personnel to discuss the items on the agenda. Mayor Moya says that as a presiding officer Commissioner Simms was going against the codes. Commissioner Killough moved to adjourn into a closed executive session under sections of the law 551.071 Consultation with an attorney and 551.074 personnel to discuss the items on the agenda. Mr. Hightower advised that it is proper to have some discussion and that the Mayor has her right to make her position known prior to their vote on it. Mayor Moya stated that she will continue with what she had said. Mayor Moya further states that certain matters have come to her attention in terms of mismanagement and misappropriation of public funds. At that time she asks Commissioner Simms if certain Commissioners were on the City's medical insurance and if he was aware of those allegations. Commissioner Simms replies that he was aware. Mayor Moya states that clearly that goes against the charter. Mr. Hightower explains that the Mayor does not have the power of the commission to discuss matters that are not on the agenda and the previously stated was not on the agenda. Commissioner Flores, 2nd the motion to adjourn into closed executive session under sections of the law 551.071 Consultation with an Attorney and 551.074 Personnel... Vote: 4 Ayes... Motion Carried.

The entire Commission returned from closed session, except for Mayor Moya who did not participate in closed session, and took their place at the table and waited for Mayor Moya to return from her office to the Council Chambers. A citizen in the audience asked Mr. Hightower if he could speak to him; to which Mr. Hightower replied if you pay my fee. A citizen stated that if the city was to be compliant then what was the Mayor Pro Tem doing taking over the meeting when in deed the Mayor was not absent. Mr. Hightower announces that the Mayor was in her office and that he suggests that they wait a couple of minutes until Mayor Moya returned. A citizen asked Mr. Hightower who he represented, Mr. Hightower responded the City, sir. The citizen then states that he asked if he could speak to Mr. Hightower and he responded so he assumed that Mr. Hightower would speak to him. Mr. Hightower responded no sir I am not. At this time Mayor Moya returned to take her seat at the council table. Attorney Hightower explains to Mayor Moya that after a brief discussion in closed session, his advice to the council was that it was most appropriate to have this discussion in public as she desired. Mr. Hightower said that he agreed with the Mayor's desire to have the discussion in public, but not being a member of the body all he could do was advice. Commissioner Flores asked if there needed to be a motion to reconvene and then proceeded with the motion to reconvene with the City Council. Commissioner/ Mayor Pro Tem Simms 2nd... Vote: 4 Ayes... Motion Carried.

Commissioner Simms stated to Mayor Moya that as Mayor Pro Tem he would like Attorney Hightower to explain some of the situations to the community concerning some of the legalities that were being addressed; to which Mayor Moya responds that she would not address anything that was not on the agenda. Mr. Hightower said it was his understanding that the council had a question in regards to the Mayor having the authority to unilaterally and on her own motion terminate employees. Mr. Hightower also said that he read the City's Charter cover to cover and there is not a single word in there that says or suggests that the Mayor has the authority to

unilaterally terminate employees; that in fact what the charter made clear is that the governing body of the city makes that decision. Mr. Hightower also explained the Mayor is a governing body of the city and as a member she has the right to propose the termination of an employee, place it on the agenda to discuss it and vote on it just as any of the 4 Commissioners have the right to do so. He added that the Mayor lacks the authority to unilaterally terminate employees and that the reported actions in terminating employees and officials are of no affect because she does not have such authority. Mr. Hightower goes on to another question that has arisen as to whether or not the Mayor has the authority to control access to city hall. He responds to the question by stating that he read the charter; the charter is like the Constitution of the city, it was voted on by the voters and is the law; and the entire Council took an oath to enforce and comply with that law. Mr. Hightower explains that the law states that the City Administrator, based on an ordinance the Council adopted back in the 1990's, controls access to city hall, but he has no right to bar any of the Council from city hall; and on the same bases the charter does not give the Mayor the right to control access to city hall. However, the Mayor does have the right to control access to her office, but not to city hall because the charter does not give the Mayor administrative responsibilities. Mr. Hightower added that the administrative responsibilities were given to the City Administrator by the Council's predecessors. Mayor Moya pointed out that the City Administrator position was not in the city's charter to which Mr. Hightower replied that the City Secretary was the only position in the charter and all other positions are created by Council. Mayor Moya said that in this case the City Administrator position was not created by council, but was nominated by council and created by the Mayor and she had the agenda for that time. Mr. Hightower said that he received information from the City Secretary's office on the ordinance adopted by the council and believes that information is accurate. Mayor Moya replies that the ordinance clearly stated "appointed"; that if in fact the Commissioners had appointed the position then she as Mayor would have no say-so in the matter, but she reinstated that the position was appointed by the Mayor, therefore she does have a say-so. Mr. Hightower then explained to Mayor Moya that the charter clearly stated that in order to appoint officials to vacant office as Mayor she makes the appointment subject to confirmation by the Council and it does not have a similar provision for terminating someone who is in an office. Mayor Moya said if you read the ordinance it does say that whoever appointed the position does have the right to dispose of the position. Then Mr. Hightower ask for her to reference that part in the charter that indicates that the Mayor has the right to appoint and dispose of in an official in office. Mayor Moya then tells Mr. Hightower if he turned to page 28, section 17 of the second paragraph he would find what falls under the commission and page 29. Mr. Hightower asked the Mayor to give him the article and section number since their charter books were not in the same page numeration. Mayor offers her book to Mr. Hightower and asks him to read page 29. Mr. Hightower reads the following: and the Mayor shall have further such powers, prerogatives and authority as may be conferred upon to him by the City Commission, not inconsistent with general purposes and provisions of this Charter, and shall have the power to administer oath and also the right and privilege of veto; he then told the Mayor that there was nothing in there... Mayor Moya explains that it states that if the position was created by the Mayor... Mr. Hightower apologizes because it does not say that and offers to read it again so that everybody in the audience and the Council would know what she is talking about, but the Mayor declines. Mr. Hightower says that maybe the Mayor thinks it's implied, but the Mayor disagrees and says it is not implied it is in there. Commissioner Serna points out another implication because the charter never mentions a "she", it always a "he"; and asked the Mayor if she thought that the Council was not in compliance with the Charter for that reason. The Mayor responds that the Charter needed to be amended because back in 1949 it was only he, he, he; so yes she thinks it should be changed. Commissioner Serna said that in order to amend the Charter the whole Commission had to get together and make changes. Commissioner goes on to tell the Mayor that she has tried to approach her several times and she'd say wait and she even closed the door on her and there was no way that they would agree on anything if there was no communication. Mayor Moya said that things did not transpire as Commissioner Serna explained. Mr. Hightower expressed that the Council could only discuss items on the agenda which were personnel, questions on the authority of the Mayor and the controversy that had occurred over the last few days. The Mayor said that the agenda does not state that; to which the attorney made clear that it is personnel and it involves terminating people, reporting to terminate people and locking people out of their offices, that was personnel. Mayor Moya stated the reason she had to change the locks was to avoid certain

information from leaving city hall. Mr. Hightower described that in every organization there is a question as to who has the authority to do what and is in charge of what; and certainly there are cities where the Charter might give the Mayor the authority to decide who goes into city hall, but he can't imagine why they would allow to keep the Commissioner out, although he understood that was not her intention; but in any event that is not in the city's Charter and as Mayor she is not given a great deal of administrative responsibilities in the Charter. Furthermore, Council a long time ago decided to fill that vacuum by appointing a City Administrator and there is an office of a City Administrator. Mr. Hightower informs the Mayor that she has a lot of power as a Mayor like veto power, power over the formation of the budget, but the charter does not give the Mayor the power to unilaterally fire people from the city. Mayor Moya asked Mr. DeFoyd what kind of government ruled the City; he replies that it is in the charter. Mayor Moya reminds him that when they met he told her it was strong Council weak Mayor, type of government, to which he responded that maybe that is what she interpreted. Mr. DeFoyd described that what he explained to her was that she does not have the authority to take certain actions without the consent or confirmation of the City Commission; which includes all four commissioners. Mayor Moya replies that Mr. DeFoyd did not tell her the previously stated and that she had a witness and as the City's Attorney he stated to her, when she requested advice, that he did not know where the rumor started that is was a strong Council and weak Mayor, type of government and that she as Mayor was at the mercy of the Council and the City Administrator. Mr. DeFoyd then tries to explain to her that in any case she cannot take unilateral action on anything without the consent of the... Mr. Hightower then intervenes by saying that there are 2 common forms of government strong Mayor and City Manager form of government and there is also true Commission form of government, which the City does not have and was used in the old days. Nevertheless, Mr. Hightower explains that it didn't matter what the type of government was called, but what does matter is what was written down by the citizens of Galena Park in the charter that has been adopted; Galena Park has a unique government and there is no city that has a charter like the City of Galena Park. He explains that the Mayor and each of the Council Members took an oath of office to uphold the law and one of the most important laws for a city is the City's Charter, because it's like the Constitution for our Federal Government or our State Government. Mr. Hightower tells the Mayor that the city's Charter is the Constitution for the city. It describes the Mayor's powers and authorities which are lots of them, but not the particular ones the Mayor performed to exercise that brought this controversy. The Mayor then asked why she was informed by Mr. DeFoyd that the city's form of government was strong Council weak Mayor. Mr. Hightower responds by saying that he's been in this business for thirty-something years and that her comment was kind of a meaningless distinction. The Mayor then addressed Mr. DeFoyd by saying that she went to him as the city's attorney working for the city and not a specific person, and weak Mayor, strong Council was the response to her question. Mr. DeFoyd stated that the answer to her question was very simple and that the Mayor was governed by the Charter of the City of Galena Park; however she could have misinterpreted or misunderstood. Commissioner Serna asks how the "he said, she said" discussion between the Mayor and Mr. DeFoyd was relevant to what had to be discussed and that they weren't getting anywhere. A few comments from the audience were made in regards to the Commissioners forgetting who elected them. The Mayor then states that someone would like to take the floor and that the meeting was about the people and would allow the people to talk. The Commissioners then state that there is an order of business that needs to be followed. The citizen then proceeds to with her speech in Spanish and Commissioner Killough stated that she was not going to be a part of that. In an attempt to structure the meeting Attorney Hightower conveys that the meeting was of the Commission of the City of Galena Park, not a Town Hall meeting. He adds that if the Mayor is not willing to bring the meeting to order then one of the Commissions had too. Commissioner/Mayor Pro Tem Simms ask Mayor Moya if she intends to have the meeting back to order given that he had some things he wanted to address; and if not then by law being Mayor Pro Tem he'd have the right to bring the meeting back to order. Mayor Moya requests a recess. Commissioner/Mayor Simms reiterates the Mayor's motion to recess and asks if she would like to recess the meeting with the Council to discuss something with them or address something with Council. Mayor Moya replies she just wants to recess. Commissioner/Mayor Pro Tem Simms states that he had just been informed by the city attorney... to whom Mayor Moya intervenes and states that she believed Mr. DeFoyd was no longer the city's attorney and Mr. DeFoyd replies the he was still the city's attorney. Then Mayor Moya stated for the record.

Commissioner/Mayor Pro Tem Simms states that as Mayor he had a couple of things he would like to direct to the council.

Commissioner/Mayor Pro Tem Simms moves that the Commissioners A) direct the Mayor to reframe from any attempts to unilaterally terminate officers or employees of the City on her own authority; B) to limit the Mayor's actions in connection with purposed termination of officers or employees of the City, to placing a recommendation to the City Council's Agenda participating in any discussion by the Commission and voting on the action the Commission might take. Commissioner Killough moved to approve said motion. Commissioner Serna, 2nd... Mr. Hightower advised that there should be some discussion about the motion. Commissioner/Mayor Simms expressed that the people voted for all Commissioners and the Mayor positions; that he's worked for the school district for 34 years and has seen a lot of administrations; and he stated that the Council sends a message to the workers and when they see all of these attempted terminations, the worker might wonder if he/she is next. Furthermore, he states that when he came into council 12 years ago he learned a lot and listened to the people. He was willing to work with the Mayor even though he did not know her or had ever met her until the day she was sworn in. Commissioner/Mayor Simms addressed the Mayor saying that if she was willing to work with the City she should get along with everyone, then if there was a problem and reason for terminating an officer or employee of the City it should be discussed as Council. Mayor Moya asserts that Commissioner/Mayor Simms is a pastor, works for the school district and cares for the people, then proceeded to ask why then did Commissioner/Mayor Pro Tem Simms that take money from the tax payers to which he replied that he did not take tax payers money. Mayor Moya asked Commissioner Simms how he was helping the people by taking the tax payers money when he could have gotten on the school districts insurance. She then proceeds to ask Commissioner Simms if he had seen the amount of money that one Commissioner had taken to which he replies yes and he will address that. Mr. Hightower states that the discussion regarding Mr. Simms health insurance was not pertinent to the motion on the floor which was to direct the Mayor not to unilaterally terminate employees, but to use the process that is available which is to put a recommendation on City Council Agenda to discuss and vote on with authority that all Commissioner and Mayor have, and the motion was to restrict her to that authority. Commissioner/Mayor Simms reiterates that motion has been made and seconded. Vote: Ayes 4... to which Mayor Moya says she would like to exercise her power to veto and she is not for the motion. Mr. Hightower clarifies to the Mayor that if a motion is passed by unanimous vote it is not subject to veto, but if the Mayor has a three to one vote she clearly has the right to veto. Vote: Nay 1... (Mayor Moya) Motion Carried.

Commissioner/Mayor Pro Tem Simms moves that the Commissioners direct the Mayor to reframe from taking any actions to limit the access of city staff or Commission Members from any portion of city hall or any other city facility other than her office at city hall. Commissioner Serna moves to approve that the Mayor be reframed from taking any actions to limit the access of city staff or Commission Members from any portion of city hall or any other city facility other than her office at city hall. Commissioner Killough, 2nd ... Vote: 4 Ayes... Vote: 1 Nay... (Mayor Moya) Motion Carried.

Commissioner/Mayor Pro Tem Simms moves that the Commissioners direct the Mayor to reframe from directing or attempting to direct the city staff in the performance of their duties and to remind the Mayor, the city staff and the Commission as delegated to the City Administrator the duty to supervise and control each of the departments of the City. Commissioner Killough moved to approve the motion. Commissioner Serna 2nd ...Vote: 4 Ayes...Vote: 1 Nay... (Mayor Moya) Motion Carried.

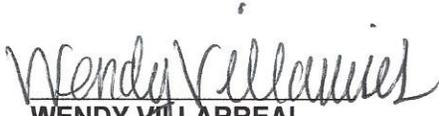
Commissioner/Mayor Pro Tem Simms moves to affirm the continued employment of the employees and officials the Mayor decided to terminate including: the City Administrator, Chief of Police and City Attorney. Commissioner Serna moved to approve the motion to affirm the continued employment of the employees and officials the Mayor decided to terminate including: the City

Administrator, Chief of Police and City Attorney. Commissioner Killough 2nd ...Vote: 4 Ayes... Vote: 1 Nay... (Mayor Moya) Motion Carried.

Commissioner/Mayor Pro Tem Simms moves to authorize the Mayor Pro Tem to sign any checks for any payments approved by the Commission. There is uproar from the audience and the motion has to be repeated. Mayor Moya states that there will be another meeting and that none of the motions would be passed. Commissioner Serna moves that the Mayor Pro Tem is to sign any checks for any payments approved by the Commission. Mayor Moya then leaves the meeting and is not present for the final vote. Commissioner Killough 2nd ... Vote: 4 Ayes.... Motion Carried.

Commissioner/Mayor Pro Tem Simms asks for a motion to adjourn the meeting. There is uproar from the audience and they start chanting "No more corruption", at the same time Commissioner Serna moves to adjourn the meeting. Commissioner Flores 2nd... Vote: 4 Ayes... Motion Carried. Then Mayor Moya returns to the meeting and states that the meeting was illegal, therefore it was not going to happen because it was against the code.

Meeting adjourned: 4:45 P.M.


WENDY VILLARREAL
ADMINISTRATIVE SECRETARY


APPROVED