

The City of Galena Park

City Commission Meeting

Date: August 20, 2015

A Special and Executive Session of the City Commission of the City of Galena Park was held at City Hall in the Council Chambers, Thursday at 4:30 P.M. on August 20, 2015.

Present were:	Esmeralda Moya	Mayor
	Danny Simms	Commissioner
	Cruz Hinojosa	Commissioner
	Maricela Serna	Commissioner
	Juan Flores	Commissioner
	Mayra Gonzales	City Secretary
	Jim DeFoyd	City Attorney
	John Hightower	Special Counsel
Absent	Robert Pruett	City Administrator

Mayor Moya called the meeting to order at 4:30 p.m.

Mayor Moya stated that the invocation was not on the agenda but she would like for someone to do the invocation. Mayor Moya called on Commissioner Simms for the invocation.

Item # 1- Pursuant to Chapter 1, Section 551.071 of the Texas Open Meetings act, the City Commission of the City of Galena Park, Texas, will meet in a closed session to seek the advice of legal counsel about pending litigation filed against the City of Galena Park at the conclusion of the closed session the City Commission will return to open session and announce any action taken at said closed meeting. Commissioner Flores made a motion to go into closed session. Commissioner Serna, 2nd...Vote: 5 Ayes...Motion Carried.

Mr. John Hightower stated that prior to the adjournment, Commissioner Serna asked the question of whether or not the Mayor could participate in closed session. Mr. Hightower stated that based on the fact that the Mayor has appeared to align herself with the plaintiff in the lawsuit, it appears that there is a conflict and the council has the option of excluding her from executive session. Mr. Hightower stated that was his advice to them. Mayor Moya stated that she can always ask under open records for what transpired and she is part of the lawsuit. Mr. Hightower stated that he understood, in her official capacity which means, the suit against one of them in their official capacity is the same thing as the suit against the city. Mr. Hightower stated that her being in the lawsuit stands for the city being in the lawsuit. Mayor Moya stated that was right, so shouldn't she be in... Mr. Hightower stated that they are not in there individually. Mr. Hightower stated that the Mayor appeared to, and she could correct him if he is wrong, to have aligned herself with the plaintiff in the lawsuit. Mr. Hightower stated that the Mayor believes that the city ought to have the charter amendment election in response to what the plaintiffs say in the lawsuit. Mr. Hightower stated that the majority of the council, at least in the past, has had a different position. Mayor Moya stated that was fine, and since she is not going to be participating in the lawsuit, they all know that he filed an appeal. Mayor Moya stated that she wants to know why it was filed before it went through the commission. Mr. Hightower stated because it was required to take timely action and the city attorney directed him to do so. Mr. Hightower stated that pending a decision by council, he can either confirm or easily withdraw the notice of appeal. Mayor Moya stated that Mr. Hightower said he got notice from Mr. Defoyd, he still did not go through Mayor and Council. Mr. Hightower stated that his job is to protect the city's interest in litigation. Mr. Hightower stated that if action is required, council can't meet any shorter than two hours' notice and that requires an emergency. Mr.

Hightower stated in other words, it requires seventy two hours' notice and the appeal was filed about the same time this meeting was scheduled. Mayor Moya asked if it was in accordance with the opens meeting act to do so. Mr. Hightower asked to file an appeal. Mayor Moya stated to file an appeal without going through council. Mr. Hightower stated that had nothing to do with the opens meeting act. Mr. Hightower stated that the open meetings act has to do with when council can discuss things and take action, it has nothing to do with if a lawyer files an appeal or not. Mr. Hightower stated that it is his understanding that he probably has authority based on representing the city without councils approval, but he was certainly going to ask council when they came out of executive session if they desire to continue the appeal. Mr. Hightower stated that they can either direct him to withdraw the appeal or confirm the file of the appeal. Mayor Moya stated that based on what he is telling her he has some type of contract, not with the Mayor and Council, but with the city attorney. Mayor Moya stated that if he did have some type of contract with the city and Olson and Olson and himself, then they should, as Mayor and Council have an opportunity to view that contract. Mr. Hightower stated that he didn'tMayor Moya stated or any other information that was transpired between him and the attorney that her herself or the commissioner have not yet seen. Mr. Hightower stated that he did not say anything about a contract, he stated that the city attorney, someone, has to look out for the city's interest, and that is a 24/7 job. Mr. Hightower stated that council can only do that kind of thing when it is in meetings and between the meetings someone has to look out for the city's interest and that is the city attorney. Mr. Hightower stated that if he is hired to represent the city in litigation and there is an important deadline that is going to occur before council can act on something, it it's his responsibility to preserve council's options. Mr. Hightower stated that he did that by filing the appeal, but if it is council's desire is to withdraw the appeal, then he can withdraw the appeal when they get out of the meeting. Mayor Moya stated that she was just a little confused since Mr. Defoyd is hiring him to look after the city. Mayor Moya stated that when Mr. Defoyd hires him to look after the city there is some type of paperwork that is being signed between him and Mr. Defoyd or him and the city. Mayor Moya stated that is all she wanted to see and she wants the commissioners to also have that opportunity. Mr. Hightower stated that Mr. Defoyd recommended that the city hire him to assist him, he did not hire him, the city council hired him. Mayor Moya stated ok they hired him, but that is the piece of paper that she wants to see, because she does not remember being in that meeting. Mr. Hightower stated that he did not know if it was a piece of paper or not, but there is no requirement that it be a piece of paper, but there is a requirement that council takes some kind of action to say that they want to be represented by him. Mr. Hightower stated that it is his understanding that they have taken that action on numerous occasions, in any event it is his recommendation that once they have heard his advice when they go back into the meeting to make a decision one way or another, whether to pursue the appeal. Mr. Hightower stated that council will be making that decision today assuming that they take his advice to make that decision. Commissioner Simms stated that it would have been sometime a year ago that they decided to do that. Commissioner Flores stated that they did hire Mr. Hightower months ago when they decided to pursue this. Mr. Hightower stated that the proper for discussion is how they conduct the executive session and out of all fairness he will try to..... Mayor Moya stated that she appreciated it and thanked him. Mayor Moya stated that what she needs from the madam secretary, Ms. Gonzales, is all letters or contracts or information about the case that they are going to discuss. Mayor Moya stated that if Ms. Gonzales could please provide that for her information and if the commissioners would like to see that, she would be more than happy to share it with them. Mr. Hightower stated that somebody needed to note the time they were going into executive session. Mayor Moya stated it was 4:37 p.m. and they will be dismissed for executive session. Mr. Hightower, Mr. Defoyd, Commissioner Simms, Commissioner Hinojosa, Commissioner Serna, and Commissioner Flores went into executive session.

The council returned from executive session. Mayor Moya stated it was 4:48 p.m. and the meeting is now called to order.

Mayor Moya stated that the question was to pursuant to Chapter 1, Section 551.071 of the Texas Open Meetings act, the City Commission of the City of Galena Park, Texas, will meet in a closed

session to seek the advice of legal counsel about pending litigation filed against the City of Galena Park at the conclusion of the closed session the City Commission will return to open session and announce any action taken at said closed meeting. Commissioner Flores made a motion to go into closed session. Commissioner Serna stated that they have made a decision by majority that they are going to pursue....Mr. Hightower stated that they had to make their decision in the voting meeting, so somebody has to make a motion. Commissioner Flores stated that he makes a motion that they accept and pursue the appeal. Commissioner Simms, 2nd... Mayor Moya stated they knew that was going to happen. Mayor Moya called for the Vote: 3 Ayes... Mayor Moya stated that she would like to exercise her power to Veto. Commissioner Hinojosa stated that he did not vote, he abstains. Mr. Hightower stated that the legal effect of the Mayor's action is for someone else to decide. Commissioner Serna asked if they need to make a motion....Mr. Hightower stated they have confirmed the appeal and that they want him to pursue the appeal that was filed a few days ago. Mr. Hightower stated that the next question is whether or not there is any action to take at the second meeting scheduled in 10 minutes to call the election. Commissioner Serna stated that since they have decided to appeal there is no reason they should have the other meeting, since they were going to call for the election. Mr. Defoyd stated to move to adjourn.

Commissioner Simms made a motion to adjourn the special meeting. Commissioner Flores, 2nd... Mayor Moya asked Mr. Defoyd to please not take over her meetings. Commissioner Flores stated for the Mayor to do her job. Mayor Moya stated to Commissioner Hinojosa that she thought he was going to talk to them. Mr. Sergio Moya stated that the city does not have money to fix the fire hydrants, but they have... Commissioner Flores asked Mayor Moya if she could please continue the meeting. Mr. Defoyd and Commissioner Flores asked Mayor Moya to call for a vote. Mayor Moya stated that the thing is that they take over her meetings, so why should she control the citizens when they take over her meetings. Mr. Defoyd stated that she is not conducting the meeting. Mayor Moya stated to Mr. Defoyd that he is telling people to adjourn the meeting. Mr. Defoyd stated there was a motion on the floor. Commissioner Serna stated that Mr. Defoyd was their legal advisor. Mayor Moya stated that she was the presiding officer. Commissioner Hinojosa asked if he can call for the question. Mayor Moya stated she would call for the question. Mayor Moya stated that the question was on pursuing the appeal. Mr. Hightower and Mr. Defoyd stated that had already been done. Commissioner Serna and Mr. Sergio Moya were speaking in Spanish to each other. Mayor Moya stated that everything was going out of...Mr. Hightower stated that if she wanted to do that again to confirm, there is nothing wrong with that. Mayor Moya asked for a motion to adjourn.

Commissioner Simms made a motion to adjourn the special meeting. Commissioner Flores, 2nd...Vote: 5 Ayes...Motion Carried.

Meeting adjourned: 4:53 P.M.


MAYRA GONZALES
CITY SECRETARY


APPROVED