



CITY OF LEON VALLEY
CITY COUNCIL SPECIAL MEETING
Leon Valley City Council Chambers
6400 El Verde Road, Leon Valley, TX 78238
Tuesday, April 16, 2019

MINUTES

8:41 PM Call to Order and Determine a Quorum is Present.

Attendee Name	Organization	Title	Status	Arrived
Chris Riley	City of Leon Valley	Mayor	Present	
Monica Alcocer	City of Leon Valley	Mayor Pro Tem	Present	
David Edwards	City of Leon Valley	Council Place 1	Excused	
Catherine Rodriguez	City of Leon Valley	Council Place 2	Present	
Benny Martinez	City of Leon Valley	Council Place 4	Present	
David Jordan	City of Leon Valley	Council Place 5	Present	

Also present were City Manager Kelly Kuenstler, ACM/HR Director Crystal Caldera, City Secretary Sandra Passailaigue, City Attorney Denise Frederick, Investigative Attorney Ryan Henry, Special Events/Community Center Manager Maribel Mendoza, LVFD Fire Chief Michael Naughton, LVPD Chief Joseph Salvaggio, LVPD Assistant Chief Ruben Saucedo, and various LVPD staff.

Mayor Riley thanked everyone for their patience and apologized for the delay.

Mayor Riley announced that there was not a quorum for an Executive Session and began to read a letter from Councilor David Edwards. The letter from Councilor Edwards explained that he was absent from the meeting due to a family illness and he requested that the Executive Session and Special Meeting be postponed to a time when he would be available to be present.

Investigative Attorney Ryan Henry asked that Councilor Benny Martinez and Councilor Catherine Rodriguez step down from the dais stating that anything discussed on the agenda related to that subject would require that they step down. Mayor Riley expressed her concern to Attorney Henry about the remaining two (2) Councilors constituting a quorum. Attorney Henry responded that there is a quorum present but that the Charter prevents Councilor Martinez or Councilor Rodriguez from deliberating or voting. However, the Charter doesn't exclude them from counting for purposes of a quorum. However, once those members are separated, like in Executive Session, then we would not have the numbers for a quorum because there would only be two (2). So, they count for purposes of the open quorum, they're silence is interpreted as an abstention, not an absence. So, we can proceed with a meeting tonight with just two (2) on the dais.

Mayor Riley said she wanted to put on the record that she has reviewed that Charter and it is silent on quorums if you look at it. There is nothing on quorum. Mayor Riley added that today she received another legal opinion stating that when the Charter is silent on the quorum, like ours is, then you have to rely on the Texas Open Meeting Act.

Mayor Riley said that with all of that said, she would like the City Council to consider Councilor Edwards request to postpone.

Councilor Monica Alcocer replied that what little they know about the family emergency is very recent; but that they did try numerous times for weeks to get a hearing on this matter well before the family illness or emergency. We could never get a commitment or a date from Dr. Edwards to allow the hearing to go forward and even in his comment now he did not give a date. We just need to proceed since we are able and our attorney has advised us to proceed, we need to proceed.

Councilor David Jordan stated that he concurred with Councilor Alcocer.

Mayor Riley said she would go to Agenda Item 5.A.

The City Council Shall Meet in Executive Session to Discuss the Legal Implications and Procedures Involving Complaints Filed by Denise Frederick, Brandon Melland, Yvonne Acuna, Joann Azar, And Jorge Breton Against Benny Martinez Pursuant to Section 551.071 (Consultation with Attorney). As Requested by Councilor David Jordan And Councilor Monica Alcocer.

The City Council Shall Meet in Executive Session to Discuss the Legal Implications and Procedures Involving Complaint Filed by Catherine Rodriguez Against Benny Martinez Pursuant to Section 551.071 (Consultation with Attorney). As Requested by Councilor David Jordan And Councilor Monica Alcocer.

Reconvene into Regular Session and Take Action on Issues Discussed in Executive Session If Necessary.

REGULAR AGENDA

Discussion and Possible Action to Consider Complaints Filed by Denise Frederick, Brandon Melland, Yvonne Acuna, Joann Azar, and Jorge Breton Against Benny Martinez. As Requested by Councilor David Jordan and Councilor Monica Alcocer.

Mayor Chris Riley read aloud the agenda caption and invited those who requested the item to begin discussion but first wanted to preface by saying the following. Two (2) weeks ago we asked the investigating attorney that was hired by Ms. Kuenstler to do additional investigation. So, we haven't gone back into executive session to find out what all that is although I just got about a thirty (30) page memo this afternoon that I haven't been able to go through but I'm sure it gives all your investigation so that's a concern I haven't been able to read it because of the very limited time that I have had. I would like for you all to reconsider that we reschedule it so we can go into executive session and get our questions

answered so that we have a better idea of how the Council should proceed.

Councilor Alcocer replied to Mayor Riley that she didn't think it made any difference because I believe we are here to schedule a 3-12 Hearing, not have a 3-12 Hearing, so this won't keep starting and stopping and starting and stopping. Councilor Alcocer then asked the attorney for this issue to give us some idea on how this will proceed.

Investigative Attorney Henry replied that if Council were to do a 3-12 Hearing, and on what matters or on whether you will do it at all. Attorney Henry said he could not give too much advice in open session but that if they want to move forward, the Council could set a 3-12 Hearing but to decide first with what subject matter and then the date.

Councilor Monica Alcocer stated that she would like to have a hearing because the charges that were brought, or the complaints not charges, the complaints that were made were made by six (6) different individuals and none of them, to my knowledge, have spoken publicly and I personally, have never spoken to any of them about their complaints; but at the last meeting, when we did have an executive session, Councilor Martinez was specifically directed not to talk prior to the termination of the executive session. And it is my understanding and I heard it from numerous people, that the moment we walked back there, he "ran" to the press to tell his side of the story and then began denigrating other people. Because of this, I think everybody should have a chance to tell his or her own story and then a decision can be made. Some people consider we have a bully pulpit up here and I don't like that consideration and I think we should not be using it as a bully pulpit. Nothing like this has ever happened here to my knowledge, at least not in my tenure, and we haven't had an opportunity to do this. As I stated before, we tried for weeks to get a date certain from Dr. Edwards who was repeatedly asked by the City staff, and even the Mayor, to give us a date when he could be available and that just never happened. So, we are here tonight to try to pick a date, hopefully it will work. I don't even know how to pick a date but I do think we need to have a hearing.

Councilor David Jordan agreed with Councilor Alcocer and added that we have attempted to address this matter way before now. I'm not sure what the delay was or the unfortunate family incident. I'm praying for Dr. Edwards and his family. Allegations of sexual harassment and allegations of hostile work environment and allegations of potential violations of the City's Charter from a Councilman are very serious and I believe the staff has to have an opportunity to be heard. We represent the City at large; we represent the citizens of Leon Valley. So, if we truly represent the citizens of Leon Valley then we represent the staff that takes care of the City of Leon Valley. I think it is important that we proceed with this process, after multiple attempts to have it heard. We have a quorum. Thank you.

Mayor Riley said she wanted to address the difficulty in scheduling with Dr. Edwards. He works full time. He is a full time PhD, psychologist, he does social security disability claims, he travels across the state, and he's gone for a week at a time. Mr. Henry, I told you that it would be very difficult to get anything other than the City Council meetings scheduled. He does his schedule but he is always here for the Council meetings. Y'all know that, you

know he is out of town and he works. He is trying to make a living for his family. So please consider that. It's not that he doesn't want to be here, it's because he's got a commitment. I don't know how the family emergency is going to affect his schedule. So, let me just clarify, the 3-12 hearing, if that is what these two (2) councilors want to do, can go on just with them?

Attorney Henry replied, yes as long as one of the other councilors is in the room, yes.

Mayor Riley said, alright, I have an issue with the 3-12 Hearing as far as the procedure and again, I'm relying on the Home Rule Charter. Mayor Riley asked Mr. Henry if he had issued Councilor Martinez written notice in accordance with the Charter. Mr. Henry replied, "No because a hearing has yet to be set; therefore, no notice has been initiated.

Mayor Riley also asked about the ordinance adopting the procedures stating that the City has not had two (2) readings on it.

Attorney Henry stated that in Chapter 1 of the Code, there is mention of Special meeting which a 3-12 Hearing falls into. The 3-12 Hearing Protocol are simply that but yes, ordinances in Leon Valley do require two (2) readings. Mayor Riley and Attorney Henry agreed to disagree on this point.

Councilor Alcocer offered up the chance that two meetings could be held to adopt the 3-12 Hearing Protocols by ordinance back to back in order to have the two (2) readings as required by Charter.

Councilor Alcocer asked Attorney Henry to explain why it is important to not wait until July. Attorney Henry replied that some of the allegations basically trigger that an employer takes proper remedial action if such is necessary. If you are going to decide that such is necessary, you have to do it promptly and the longer you wait, the less effective that legal defense is. You just want to handle these types of allegations promptly. Councilor Martinez being a councilmember naturally slows this down because he is elected and the hearing is held by Council. If he were an employee, this would have been taken care of a long time ago. These complaints originated in December and we are now in April. So, the timing is kind of being stretched out now and that concerns me.

A motion was made by Councilor Monica Alcocer and seconded by Councilor David Jordan to set a §3-12 Hearing to investigate and consider all complaints against Councilor Benny Martinez that he improperly interfered with, gave orders to, and undermined the authority of #1 the legal department i.e.: the City Attorney's Office; #2 the Community Development Department; #3 the City Manager Office/and or staff; #4 the Police Department; #5 the complaint by Councilor Catherine Rodriguez.

Mayor Riley asked Attorney Henry when he planned to give his recommendation. Attorney Henry said he has already provided that to Council. Mayor Riley asked if Council could give out that information during the 3-12 Hearing to which Attorney Henry replied, yes.

There was more discussion between Mayor Riley and Investigating Attorney Henry regarding her concerns.

A motion was made by Councilor Monica Alcocer and seconded by Councilor David Jordan to set the §3-12 Hearing on or before April 30, 2019. If the City Secretary and Investigating Attorney are unable to coordinate the date before April 30, 2019 then I am moving that the ultimate date be April 30, 2019 at 6:00 p.m.

Mayor Chris Riley objected due to the lack of an ordinance not being in place and we need two (2) hearings to have that in place.

Attorney Henry reminded Mayor Riley that it is entirely up to the Council as to whether or not they adopt the rules of Protocol for a §3-12 Hearing.

A motion was made by Councilor David Jordan and seconded by Councilor Monica Alcocer to adopt the suggested §3-12 Hearing Protocols as written up by Mr. Ryan Henry in reference on how to conduct the 3-12 Hearing all-inclusive of what his instructions are in the three (3) page document;

Councilor Monica Alcocer asked to make an amendment to Councilor David Jordan's motion and that the suggested §3-12 Hearing Protocols be circulated to all of the complainants, the City Manager, the City Secretary and Councilor Benny Martinez before the §3-12 Hearing. Councilor David Jordan accepted the amendment.

A motion was made by Councilor David Jordan to adopt the suggested §3-12 Hearing Protocols as written up by Mr. Ryan Henry in reference on how to conduct the 3-12 Hearing all-inclusive of what his instructions are in the three (3) page document.

Mayor Riley restated that a motion was made by Councilor David Jordan and seconded by Councilor Monica Alcocer to adopt the suggested §3-12 Hearing Protocols as written up by Mr. Ryan Henry in reference on how to conduct the 3-12 Hearing all-inclusive of what his instructions are in the three (3) page document; and that the suggested §3-12 Hearing Protocols be circulated to all of the complainants, the City Manager, the City Secretary and Councilor Benny Martinez before the §3-12 Hearing.

Mayor Riley stated again that she firmly believes that these protocols should be adopted by two (2) readings by ordinance.

Councilor Monica Alcocer again offered to move forward and schedule two (2) readings of an ordinance to adopt the §3-12 Hearing Protocols and asked Mayor Riley if that would satisfy her before the 30th. Mayor Riley responded that she didn't know if there was enough time. Councilor Alcocer replied that there is always time if we need it and Mayor Riley agreed and said we would look into it.

Discussion and Possible Action to Consider Complaints Filed by Catherine Rodriguez Against Benny Martinez. As Requested by Councilor David Jordan and Councilor Monica Alcocer.

CITIZENS TO BE HEARD

- Benny Martinez stepped to the podium to speak.
 - Councilor David Jordan asked Investigating Attorney Henry if it was appropriate for Councilor Benny Martinez to speak at this time. Attorney Henry said that in his legal opinion, he is against it, but it is at the discretion of the presiding chair. Attorney Henry said he would recommend that neither Councilor Martinez nor Rodriguez speak at this time to protect them. It is not a problem for the body but a problem for them individually. It is highly recommended that it not be allowed. Councilor David Jordan asked Mayor Riley to not allow Councilor Benny Martinez to speak to protect him. Mayor Riley said she would ask Councilor Martinez what he wanted to do.
- Councilor Benny Martinez stated that he would prefer to continue with his statement
 - Attorney Henry, Mayor Riley and Councilor David Jordan cautioned Councilor Benny Martinez that anything he stated in this statement could be used against him during the 3-12 Hearing and encouraged Councilor Martinez to hold off speaking at this time; stating that they wanted to protect him.
- Councilor Benny Martinez stated that his statement does not mention any of the complainants or any of the allegations against him. Councilor Martinez wanted to know what the urgency was in getting this done. "Is it the election?" Mayor Riley asked one more time and reminded Councilor Martinez that he had five (5) minutes to speak. Councilor Martinez began by saying he was innocent and said he was part of a "witch hunt". Councilor Martinez continued to speak on complaints he had toward the City Manager.
- Will Bradshaw spoke said, and he was running for City Council Place 5. It was obvious and disgraceful what was going on with the Council and said it was embarrassing to our City and that people would stoop so low as to come up with these allegations.
- Tina Chasan said she wanted to clear something up regarding Councilor Martinez reporting to the media at the last Council meeting saying he didn't run up to them, they came to him; that she has known Mr. Martinez for years and he is intense and listens and makes his own decisions; and doesn't think Mr. Henry should set any ordinances-we do.
- Pat Martinez said she does not accept Attorney Henry's remark about this being "fun."
- Lyn Joseph said she was embarrassed for the City and she doesn't believe the allegations she read saying they were very "fictitious sounding"; it's a waste of money; "and Monica (Councilor Alcocer), you are not nice!"; "and you (to Councilor Jordan), I believe it is a conflict of interest for you to work in Dilley and you have missed several meetings. You need to choose one or the other or step down."
- Darby Riley said it looked like an open meetings violation because of two councilmembers agreeing on an entire matter; "it is clearly political and abuse of the new Charter and we have definitely got to repeal article 3 because this is a terrible abuse of our political system; this was orchestrated by the staff with the cooperation of the two councilmembers and its not gonna work".
- Donna Charles wanted to clarify that these charges are not the charges of the Council but charges from staff. The Council is just in the position to have to act upon them; and added that she "wouldn't be pointing out anybody missing Council meetings because Dr. Edwards has missed a lot."


- Irene Baldrige said she was shocked and astounded at the way we are all treating each other and reminded everyone that no one is perfect and that we should all work together; “I hope you all can decide what is best for all.”
- Maria Gamboa asked why the City Manager didn’t notify the Mayor about the allegations before notifying an outside attorney?
 - Attorney Henry responded that the Personnel Policies that are in place give guidance to the City Manager in respect to employees. So, the City Manager went to the City Attorney for guidance who referred her to Texas Municipal League (TML) who told her to get outside legal counsel which is what she did.
- Will Bradshaw asked the Investigating Attorney why, if he was acting as the City Attorney, why is he acting like the City Manager is his client.
 - Attorney Henry replied that releasing Attorney Client Information is not permitted except in executive session.
 - Councilor David Jordan added that “the accusations came to them as City Councilors from staff and the Mayor. Two other Councilors and myself had nothing to do with this. However, due to the process, we are the only two that are left to make the decisions. I am a man of integrity and I am not going to take an accusation that is not true”. “This came to us; we didn’t come to them. We have repeatedly requested a meeting, for months. This has nothing to do with the election. I take this very seriously. The staff has a right to be heard, Councilor Rodriguez has a right to be heard and Councilor Martinez has a right to be heard. That’s the facts and I want on that I the record as the facts.”
 - City Manager Kelly Kuenstler responded to Ms. Gamboa by saying that she “agreed with everything Attorney Henry said. The only thing that got left out was that as soon as I was advised to hire Mr. Henry for pre-litigation investigation, I was advised to notify the Mayor and that is exactly what I did. So, the Mayor and I knew exactly what was going on but there were reasons the rest of the Council did not know, that I guessed would be disclosed later. I did not have this knowledge alone.”
 - Mayor Riley stated that she was notified after TML was notified but wished that “we would have sat down as a group and worked it out”; and “before the Charter when you had a dispute with another councilor, you would have filed a law suit outside the City, that’s what you did. Now, the citizens are bearing the cost of this 3-12 Hearing and we need to ask ourselves if maybe there is a better way to handle it next time” I have been torn up, I can’t sleep. Our City is imploding on itself and I have never seen this in fifteen years as your mayor.
 - City Manager Kuenstler replied that when “someone comes to you, as a city manager with a 1986 Civil Rights violation you don’t mediate that away, you investigate it, you take responsibility for it and you make sure that not only are your complainants protected, but the accused are protected as well.
 - Pat Martinez said it was strange that all six (6) complaints against Benny (Councilor Martinez) came at the end of the year; one even two (2) years after it allegedly happened.
- Councilor Benny Martinez concluded saying that he is a technology professional and then pointed out that he helped with the hook up the podium mic this evening.

ADJOURNMENT


Mayor Riley announced that the meeting adjourned at 9:58 PM.

These minutes approved by the Leon Valley City Council on the 7th of May, 2019.

APPROVED



CHRIS RILEY
MAYOR

ATTEST: 
SAUNDRA PASSAILAIGUE, TRMC
CITY SECRETARY

