

City Council Meeting

The regular meeting of Mayor and City Council was held **Tuesday, January 24, 2023** at 6:00 P.M. City Hall.

Members Present: Sconyers, Stafford, Parker, Collins, Davis, & Quarterman

Prayer of Invocation: Jonathan Hampton, Life Applications Ministries

Pledge of Allegiance

Councilperson Davis made a motion to accept the January 10, 2022, minutes with the corrections that Councilperson Parker has requested.

Motion by: Davis Seconded: Sconyers

Vote: 6-0

A. Old Business:

1. DDA Chair Anna Gambrell presented the recommendation from the DDA Board to hire Melissa Kirby as the DDA Director. Councilperson Parker asked what's the reason for removing the qualifications for the DDA position? Ms. Gambrell stated that the requirement was removed in hopes that more applicants would apply. Councilperson Parker stated that they had voted on this already and asked how this would come back up again. Ms. Gambrell stated that at the last meeting it was discussed that they had not interviewed and since the last meeting they have done this. Councilperson Parker stated that this question is more of a question for council. Mayor Bennett stated that they have interviewed and are making a recommendation. Councilperson Parker questioned the legality of voting on the nomination presented to them. City attorney Jon Levis addressed the question regarding the concerns council had regarding the recommendation from the DDA board. Levis stated that at the last meeting it was brought to council and the council had voiced concerns to the DDA Chair Anna Gambrell that the council believed the DDA board needed to interview all the applicants that had applied. The DDA in an attempt to satisfy the councils' requirement has gone back thru that process and has interviewed as I understand, all of those people. Levis stated that the DDA has now made a recommendation. Levis stated that from his understanding the issue council had was with the procedure and not the applicant. Levis stated that he did not find anything wrong with the process that the DDA board has done last time nor this time. Councilperson Parker read Section 264 out of the city charter. Levis stated that they are not asking for a reconsideration of the vote that was made at the last meeting. Levis stated that the vote, council's vote, was based on a procedural defect and the DDA board has allegedly cured an alleged defect that was brought up. Levis stated that they have gone thru that process and have made a new recommendation for the same candidate at this point in time. Levis stated that they are not asking for a reconsideration of the vote to essentially change the vote that was done. Levis stated that they are asking for a new vote after a new process. Levis stated that's not a reconsideration in his opinion. Councilperson Stafford made the motion to hire Melissa Kirby as the DDA Director.

Motion by: StaffordSeconded: DavisVote: 4-2For: Stafford, Davis, Sconyers, CollinsAgainst: Parker, Quarterman

2. Mayor Bennett stated that the DDA board had nominated Shaye Davis and Bryant Lewis to fill the two vacant board seats. Councilperson Davis made the motion to approve the two recommendations.

| Motion by: Davis | Seconded: So | conyers | Vote: 4-2 |
|-----------------------|-------------------|------------------|------------|
| For: Stafford, Davis, | Sconyers, Collins | Against: Parker, | Quarterman |

3. Council considered rescinding the vote to hire Chu Lin Ooi as the Interim City Administrator. Levis advised that since council will be rescinding a previous vote there does need to be a motion to rescind it. Councilperson Davis made a motion to rescind the vote. Councilperson Collins questioned what was legal. Councilperson Collins stated that they were told Ms. Kirby had quit. Mayor Bennett stated that we had assumed that she had quit but she had not quit. Mayor Bennett stated that the city has a contract with Ms. Kirby until she puts her resignation in, or the council fires her. City attorney Levis stated that as far as he is aware there is no formal resignation. Levis stated that he sent a formal letter to mayor and council with his opinion. Levis stated that as he indicated in the letter there is an ambiguity as to what happened. Levis stated that the ambiguity is whether there was a vacant position or not at the time in which it was filled. Levis stated that was clarified the next day in an email of a non-resignation. Levis stated that as he indicated in his letter you cannot have two people doing the same job. Levis stated that council needs to formally remove Ms. Kirby or formally remove Ooi. Levis stated that as he saw it there was ambiguity and council need to address that promptly. Levis stated that he advised the city that they need to consider that issue, to have clarity on the issue so there is not ambiguity on that issue. Councilperson Parker questioned how Ms. Kirby came back to work the next day when they voted 5-0 to hire an interim city administrator? Councilperson Parker asked how could you have two people doing the job? Mayor Bennett advised the council that they have a contract with the current administrator. Councilperson Parker questioned whether the contract was valid or not if Ms. Kirby had not signed it. Mayor Bennett asked if the contract was valid if it was not signed. Attorney Levis advised that the question is, is she employed, and the answer is yes. On the December 5th meeting this council voted unanimously to extend her as the interim clerk until the position is filled. Councilperson Parker asked is the contract valid if not signed. Levis advised that is a very loaded question and the answer is it can be. Levis stated that he has provided council with his opinion on this, and council has had that since January 11th or 12th. Levis stated that the issue comes back to the ambiguity of the position. The issue was that at the time in which the city voted to put Chu Lin in that position whether that was an open position or not. Levis advised that if the city wants Chu Lin to continue then there is an issue of fact as to whether or not the position was vacant. Levis stated to clarify that the city needs to take affirmative action in order to terminate any agreement with Ms. Kirby. Levis stated that if the city wants to allow Ms. Kirby to continue until there is a replacement person, then they need to address the issue of the appointment of Chu Lin which at that time of what would then be viewed as a non-vacant seat. Councilperson Davis made a motion to rescind Chu Lin. Councilperson Quarterman stated that you do see how this looks to the public. Levis stated that it looks horrible and I'm not disagreeing with that on any means. Councilperson Quarterman stated, "I'm just wondering if she was another race would we be going thru this?" Mayor Bennett stated that there are two options on the table: 1. To rescind Chu Lin or 2. Not to rescind Chu Lin. Councilperson Davis asked if we could ask Chu Lin if he would accept the approval. Chu Lin stated that he would be happy to serve however they decide. Councilperson Davis stated that he votes to rescind it to save us from lawsuits that are unnecessary. **Motion by: Davis Seconded: Sconvers** Vote: 4-2 For: Stafford, Davis, Sconyers, Collins Against: Parker, Quarterman

B. New Business:

- 1. None
- **<u>C. Committee Reports:</u>**
 - 1. None

D. Executive Session:

Councilperson Davis made a motion to go into executive session to discuss employment
exception pursuant to O.C.G.A. 50-14-3(b)(2).Motion by: DavisSeconded: SconyersVote: 4-1For: Davis, Sconyers, Stafford, CollinsAgainst: Quarterman
Abstained: Parker

CLOSING MEETING AFFIDAVIT

Personally appeared before the undersigned attesting officer, duly authorized to administer oaths, the

undersigned, who, after being duly sworn, depose and on oath state the following:

- (1) The Mayor/ Mayor Pro Tem was the presiding officer of a meeting of the Swainsboro City Council held on the 24th day of January, <u>2023</u>.
- (2) That it is our understanding that O.C.G.A. § 50-14-2 provides as follows:

"This Chapter shall not be construed so as to repeal in any way:

(1) The attorney-client privilege recognized by state law to the extent that a meeting otherwise required to be open to the public under this chapter may be closed in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved; provided, however, the meeting may not be closed for advice or consultation on whether to close a meeting; and

(2) Those tax matters which are otherwise made confidential by State law."

And that O.C.G.A. § 50-14-3 (a) provides as follows:

"This chapter shall not apply to the following:

- (1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;
- (2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition such board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;
- (3) Meetings of the Georgia Bureau of Investigation or any other law enforcement or prosecutorial
- agency in the state, including grand jury meetings;
- (4) Adoptions and proceedings related thereto;
- (5) Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;
- (6) Meetings:

(A) Of any medical staff committee of a public hospital;

(B) Of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function as set forth in Code Section 31-7-15, Articles 6 and 6A of Chapter 7

of Title 31, or under any other applicable federal or state statute or regulation; and

(C) Of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;

- (7) Incidental conversation unrelated to the business of the agency; or
- (8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to Article 4 of Chapter 18 of this title."
- (3) Close Executive Sessions are permitted pursuant O.C.G.A. § 50-14-3(b) for:
 - "(1) Meetings when any agency is discussing or voting to:

- (A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;
- (B) Authorize negotiations to purchase, dispose of, or lease property;
- (C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
- (D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or
- (E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote;

(2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;

(3) Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition;

(4) Portions of meetings during which that portion of a record made exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed; and

(5) Meetings when discussing or deliberating upon cybersecurity plans, procedures, and contracts regarding the provision of cybersecurity services. No vote in executive session to enter into a cybersecurity contract shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the contractor and the terms of the agreement that are not subject to paragraph (25) of subsection (a) of Code Section 50-18-72 are disclosed before the vote."

(4) The subject matter of the closed meeting or closed portion of the meeting held on the 24th day of January

2023, which was closed for the purpose of:

_____ ATTORNEY-CLEINT PRIVILEGE REGARDING PENDING LITIGATION

O.C.G.A. § 50-14-2(1)

- _____ TAX MATTERS PURSUANT TO O.C.G.A. §50-14-2(2)
- _____ STAFF MEETING HELD FOR INVESTIGATION PURSUANT TO O.C.G.A. §50-14-3(a)(1)
- _____ DELIBERATION AND VOTING OF THE STATE BOARD OF PARDONS AND PAROLE PURSUANT TO O.C.G.A. §50-14-3(a)(2)
- LAW ENFORCEMENT AGENCY OR PROSECUTIONSL AGENCY O.C.G.A. §50-14-3(a)(3)
- _____ MEDIATION EXCEPTION PURSUANT TO O.C.G.A. § 50-14-3(a)(5)
- _____HOSPITAL MEETINGS EXCEPTION PURSUANT TO O.C.G.A. § 50-14-3(a)(6)
- INCIDENTIAL CONVERSATION EXCEPTION PURSUANT TO O.C.G.A. § 50-14-3(a)(7)

- _____ SETTLEMENT EXCEPTION PURSUANT TO O.C.G.A. § 50-14-3(b)(1)(A)
- PROPERTY NEGOTIATIONS PURSUANT TO O.C.G.A. § 50-14-3(b)(1)(B)
- _____ APPRAISAL EXCEPTION PURSUANT TO O.C.G.A. § 50-14-3(b)(1)(C)
- _____ CONTRACT EXCEPTION PURSUANT TO O.C.G.A. § 50-14-3(b)(1)(D)
- _X____ EMPLOYMENT EXCEPTION PURSUANT O.C.G.A. § 50-14-3(b)(2)
- _____ PUBLIC RETIREMENT SYSTEM PURSUANT TO O.C.G.A. §50-14-3(b)(3)
- PROTECTION OF EXEMPTION PORTIONS OF RECORD PURSUANT TO O.C.G.A. § 50-14-3(b)(4)
- _____ CYBERSECURITY EXCEPTION PURSUANT TO O.C.G.A. § 50-14-3(b)(4).
- (5) This affidavit is being executed for the purpose of complying with the mandate of O.C.G.A. 50-14-4(b) that such an affidavit be executed.

This 24th day of January, 2023.

Greg Bennett, Mayor

Julian Sconyers - Council Person

Johnny Ray Stafford – Council Person

Bobbie Collins – Council Person

John E. Parker – Council Person

D. J. Davis – Council Person

Gregory Quarterman– Council Person

Sworn to and subscribed before me this

24th day of January, 2023.

NOTARY PUBLIC

| - | de a motion to return to regu Seconded: Quarterman | | | |
|---|---|--|--|--|
| Mayor Bennett requested a motion to advertise the three applicants for the city administrator position. Councilperson Sconyers made the motion advertise Chu Lin Ooi, Herman Middlebrooks and Brad Hooks. | | | | |
| Motion by: Sconyers | Seconded: Davis | Vote: 6-0 | | |
| moving the February meeti | ing from February 6 th to Febr | | | |
| Motion by: Davis | Seconded: Sconyers | Vote: 6-0 | | |
| · | · | Vote: 6-0 ruary meeting from February 6 th to | | |
| Councilperson Davis made | · | ruary meeting from February 6 th to | | |

Submitted: Melissa Kirby, City Administrator