MINUTES

FORMAL MEETING OF CITY COUNCIL

Diamondhead, Mississippi
Council Chambers, City Hall
June 3, 2014
6:00 pm CST

I. Call to Order –Mayor Schafer called the meeting to order at 6:00 p.m. CST

1. Invocation – Councilmember LaFontaine

2. Pledge of Allegiance – Councilmember Rech

3. Roll Call –

Present: Mayor Schafer and Councilmembers Lopez, LaFontaine, Knobloch, Sislow and Rech. Absent: None.

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4. Confirmation or Adjustment of the Agenda Order – Councilmember Rech moved, seconded by Councilmember LaFontaine, to accept the Agenda Order with the following addition:

3. Other Actions

c. **2014-3172**: Change terms of suspension for City Manager

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

MOTION CARRIED UNANIMOUSLY

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II. Presentation Agenda

1. Council Comments

a. The next regularly scheduled Council Meeting will be held at 6:00 p.m. CST on Tuesday, June 17, 2014 in Council Chambers located at 5000 Diamondhead Circle

b. Councilmember Sislow announced that he and Councilmember Lopez will be hosting a Ward 1 and Ward 3 Town Hall Meeting on June 11, 2014 at 6:00 p.m. CST in Council Chamber Council Chambers located at 5000 Diamondhead Circle

2. City Manager's Report
Acting City Manager Richard Sullivan and City Attorney Tindell provided an update on the status of Dairy Queen Road acquisition.

3. Public Comments on Agenda Items – None

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III. Policy Agenda

1. **Approval of Minutes** – Councilmember Rech moved, seconded by Councilmember LaFontaine, to approve the May 20, 2014 Formal Meeting Minutes as presented

Ayes: Lopez, LaFontaine, Rech, Sislow and Mayor Schafer. Nays: None. Abstain: Councilmember Knobloch.

MOTION CARRIED UNANIMOUSLY

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2. Resolutions

a. **2014-3170:** Resolution 2014-101- Resolution requesting Department of Defense to Recognize National Defense and Security Value of Keesler Air Force Base and its C-130 Tactical Airlift Mission and to Preserve and Retain that Mission at Keesler During Current Fiscal Re-Organization

Councilmember LaFontaine moved, seconded by Councilmember Rech, to resolve requesting Department of Defense to Recognize National Defense and Security Value of Keesler Air Force Base and its C-130 Tactical Airlift Mission and to Preserve and Retain that Mission at Keesler During Current Fiscal Re-Organization **(RESOLUTION IS REPRODUCED AT THE END OF THESE MINUTES AND MADE A PART THEREOF)**

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

MOTION CARRIED UNANIMOUSLY

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3. Other actions

a. **2014-3168:** Approve to purchase one (1) 2014 Ford Police Interceptor Utility Vehicle for the City of Diamondhead from Gray Daniels Ford in the amount $25,000 (State Contract No.070-32-45310-0)

Councilmember Lopez moved, seconded by Councilmember Knobloch, to approve the purchase of one (1) 2014 Ford Police Interceptor Utility Vehicle for the City of Diamondhead from Gray Daniels Ford in the amount $25,000 (State Contract No.070-32-45310-0)

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

MOTION CARRIED UNANIMOUSLY

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b. **2014-3169**: Budget Amendment 2014-200-1 – Fund reallocation from within Police Department line item Contractual Services-Interlocal Agreement to Capital Outlay-Mobile Equipment in the amount of $25,000 for the purchase of one (1) 2014 Ford Police Interceptor Utility Vehicle

Council member Rech moved, seconded by Councilmember Sislow, to approve Budget Amendment 2014-200-1 – Fund reallocation from within Police Department line item Contractual Services-Interlocal Agreement to Capital Outlay-Mobile Equipment in the amount of $25,000 for the purchase of one (1) 2014 Ford Police Interceptor Utility Vehicle

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

MOTION CARRIED UNANIMOUSLY

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c. **2014-3172**: Change terms of suspension for City Manager

Mayor Schafer stated "At a special meeting of the Council held on April 23, 2014, the City Council voted to remove and suspend Richard Rose from his position as City Manager. Pending Mr. Rose's request for a public hearing, the City suspended him with pay until

such time as said hearing could occur. Given that the City afforded Mr. Rose his substantive due process rights of notice and an opportunity to be heard and given that Mr. Rose's public hearing will commence later in this meeting whereby he will have his opportunity to present his position regarding his removal by the Mayor and City Council the suspension of Mr. Rose should be changed from "suspension with pay" to "suspension without pay".

Councilmember Knobloch moved, seconded by Council LaFontaine that Mr. Rose's status of being suspended with pay be changed to being suspended without pay to be effective immediately.

Ayes: LaFontaine, Knobloch, Sislow and Mayor Schafer. Nays: Lopez and Sislow. Absent: None.

MOTION CARRIED

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4. Tabled Items

a. **2014-3158**: Discussion/possible action regarding appointment of liaison/commissioner to Diamondhead Water & Sewer District

Councilmember Sislow moved, seconded by Councilmember Rech to move in the direction of appointment of Robin Eastman as City's liaison to Diamondhead Water & Sewer District. After further discussion Councilmember Sislow withdrew his motion, Councilmember Rech withdrew his second, allowing for further discussion and consideration at the June 17, 2014 Council meeting.

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IV. Routine Agenda

1. Docket of Claims

Councilmember Rech moved, seconded by Councilmember Knobloch to approve the Docket of Claims as presented

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

MOTION CARRIED UNANIMOUSLY

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2. Net Payroll, including benefits and taxes, May 28, 2014 - $41,734.29

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V. Public Comments on Non Agenda Items – None

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EXECUTIVE SESSION

Councilmember Rech moved, seconded by Councilmember Sislow, to go into closed session to determine the necessity for an Executive Session.

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

The motion carried unanimously to go into Closed Session at 6:22 p.m. CST.

Councilmember Rech moved, seconded by Councilmember Knobloch, to enter into Executive Session for matters involving potential litigation.

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

MOTION CARRIED UNANIMOUSLY

Councilmember Rech moved, seconded by Councilmember Lopez, to come out of Executive Session.

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

MOTION CARRIED UNANIMOUSLY

The motion carried and the regular meeting reconvened at 6:48 p.m. CST.

RETURN TO REGULAR SESSION

The City Attorney announced that potential litigation matters were discussed in Executive Session and no official action was taken while in Executive Session.

VI. Public Hearing Regarding City Manager Removal

At 6:53 p.m. CST, Mayor Schafer called for the Public Hearing requested by Richard Rose. He then summoned for Mr. Rose or a representative on behalf of Mr. Rose to appear before Council. Having done so on 3 occasions without response from Rose or a representative thereof, Mayor Schafer deferred to City Attorney Sean Tindell for comments. Mr. Tindell for the record stated the he had numerous verbal communications as well as written confirmation sent on May 29, 2014 to Mr. Rose's attorney, James Halliday, establishing the public hearing at the June 3, 2014 Council Meeting. After such notice Mr. Halliday, responded by email objecting to the form in which the public hearing was to be held. Mr. Tindell then read his email response sent to Mr. Halliday. The email read as follows:

Dear Mr. Halliday:

The City is not attempting to deny Mr. Rose any rights afforded to him under the Law. As I mentioned to you previously, if there is any authority that supports your position, please provide it so that the City can take action accordingly. I would also like to know what your proposed parameters of a full and complete hearing are so that I might present them to the Council.

Mr. Tindell then noted no direct correspondence was received from Mr. Rose or Mr. Halliday in reponse to the aforementioned email and that Halliday did elect to file a complaint for a declaratory judgment in Hancock County Circuit Court. He further elaborated that as of 4:55 p.m. June 3, 2014, there were no other actions, judgments or orders from the court preventing this matter from proceeding before the Council as previously scheduled. Prior to this hearing another letter was received directly from Mr. Halliday objecting to the form of the hearing, alleging a potential liability exposure and a violation of Mr. Rose's rights to a hearing under Mississippi Law. Mr. Tindell then cited §21-9-27 stating "the City Manager upon removal, if he so requests , is entitled to a public hearing" and further that "Mississippi Law is clear that substantive due process is provided by way of public hearing by providing notice and an opportunity to be heard". Mr. Tindell further advised Council that he is of the opinion the City is in full compliance of the Law, having provided proper notice of the hearing to Mr. Rose's attorney and having received no objections made as to the timing established for the hearing. City Attorney Tindell also for the record noted it was apparent Mr. Rose nor a representative thereof was present after

having been given proper notice and the hearing will proceed as scheduled and during such the general public will be allowed to comment on the matter.

Mayor Schafer then proceeded with comments from members of the Council. Councilmembers Lopez and Sislow had no comments. Councilmembers LaFontaine, Rech and Knobloch along with Mayor Schafer sighted their opinions that sufficient reasons existed for Rose's removal were overall job performance, lack of effective communication, adverse working relationships with other agencies, failure to report during an emergency and absenteeism as well as recollecting specific incidents not conducive to the proper overall operation and success of the City.

Mr. Tindell then for the record stated "Mr. Rose had initially contacted him and offered to resign, waive his right to a public hearing and not disclose audio tapings he had made surreptitiously of members of the Council, in exchange for the City continuing to pay his salary with benefits for nine months or a one-time annual salary lump sum payment. Mr. Tindell advised the City that payment of salary is not authorized by State Law and would constitute payment for services not performed. Also, subsequent to his removal the City has become aware that Mr. Rose continued to make contact with City employees insisting they were going to be fired. Finally, it was noted that Mr. Rose has failed to comply with Mr. Tindell's request to return by April 29th the city-owned laptop and keys in his possession.

Mayor Schafer called for public comments: Mr. Pete Kolf addressed the Council with recollection of instances where, in his opinion, Mr. Rose did not follow proper government practices or State Law.
Mr. Hank Holcomb, former Councilmember, then came forward to the address the Council stating he wanted the record to be clear. He rebutted statements made by Mr. Kolf regarding sole source purchases and stressed to the Council that Mr. Kolf was inaccurate in some of the allegations made.

Mayor Schafer then called to members of Council for a motion to reinstate Richard Rose as City Manager; no motion was made.

At 7:14 p.m. CST, Councilmember Lopez moved, seconded by Councilmember Knobloch, to close the public hearing in the matter of Richard Rose's removal as City Manager for the City of Diamondhead.

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

MOTION CARRIED UNANIMOUSLY

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VII. Adjourn

Councilmember Lopez moved, seconded by Councilmember Lafontaine, to adjourn the meeting at 7:14 p.m. CST.

Ayes: Lopez, LaFontaine, Knobloch, Rech, Sislow and Mayor Schafer. Nays: None. Absent: None.

MOTION CARRIED UNANIMOUSLY

Thomas E. Schafer, IV
Mayor

Kristin Ventura
City Clerk