

**Troy City Special Council Meeting No. 2**  
**Council Chambers**  
**February 24, 2011**  
**7:00 pm**

The meeting came to order at 7:00 pm. Present: Mayor Banning, Council: Phil Fisher, Fran McCully, Gary Rose, John Clogston, City and City Clerk Sandra Johnson.

**GUESTS:** Nancy Wagner, Shelly Garrison, Payton Norman, David Norman – Public Works Director, Craig Martin, Robert Boren Sr. Robert McLeod – Chief of Police, Sue Cummings, Bob Cummings, Neil Rose, Sandi Sullivan, Scott Sullivan, Linda Rose, Karen Clogston, Marilyn McDougall, Janine Price, Susie Taylor, Clint Taylor, Tracy Rebo, Ron Rebo, Tammy Bragg, and Buck Buchanan.

**DISCUSSION WITH UNION STEWARD ABOUT CEASE AND DESIST LETTER:** Mayor Banning stated; I rule that out of order because a letter was sent to the Mayor and a copy to the council, for your information, to not release any information of private concern of employees to anybody. The Union Steward is not available for that particular purpose. He is assigned to each local unit to process grievances that the union members may have with the city administration. Phil Fisher asked who had sent a letter to the Union. Banning answered; nobody sent a letter to them. Gary Rose stated; somebody had to have complained. Banning answered; there was no letter, and that isn't of anybody's concern. They have individual rights as members of their union. They can call their union at any time and don't have to advise anyone. Gary Rose stated; but we have the right through public knowledge for these time cards, and the Union writes you a letter to cease and desist, and you just do it without a court order? You are violating our rights to public knowledge. Banning answered; the Union said, if there was any information released, they would have their attorneys brought in and I shut it off to council until we have a city attorney so we know how we should proceed. Fran McCully stated; I, as a private citizen can walk into City Hall and ask to see any of that information under the Freedom of Information Act, and if I have to file a lawsuit to get that information, the City is required to pay to me, plus my attorney fees, through the District Court. So, I can walk in tomorrow and ask for this information, and I guess that's just what I'll have to do. I'll just do it as a private citizen. Mayor Banning answered; it depends on what you are looking for. Discussion on the public's right to know. Robert Boren stated as you are aware, there are certain guidelines that you have to follow to get this information, you can't just walk in to the office and say, I want to see this. There has to be a formal written request for this information and the reason you want it, then it is determined whether or not you are able to have the information. The privacy thing can get real sticky, and they take it very seriously. Fran McCully stated to Robert Boren; I thought you would have received those rulings, being the shop steward. Boren answered; I received the rulings, and they are not rulings, they are Attorney General Opinions. Fran McCully reiterated; they are Attorney General Opinions. Boren continued; an opinion is not a ruling. Fran McCully asked; so does it go to the Supreme Court, is that what you are saying. Boren answered; yes, it goes higher. Robert Boren added; and in those papers you gave me, it states the procedure to follow. Fran McCully answered; it says it can be in writing, but it also said, you don't have to give a reason. Phil Fisher stated; in regards to the information. I believe it was November; it was brought up in a Council Meeting when we had a city attorney, and he said the information we were asking for was ok. We weren't asking for private information. We want to know the hours and where they are worked. We need to know how much vacation you are getting, how much you have accrued, because there is a policy that says you can only accrue so much, if that is being over accrued, then we have a right to say you can't do that. Dave Norman- Public Works Director stated; our wages, overtime, and sick leave is for me, as a supervisor, the employee, and the Mayor. He gave an example of a confidential medical reason for privacy. Norman added; in the Montana Constitution, employees have rights, whether they are public employees or private. Discussion followed. Phil Fisher reiterated; we had a city attorney at the time we asked for the time cards. Mayor Banning stated; the letter was received after the first of this year, we did not have an attorney.

**EMPLOYEE ACTIONS (possible closed session):** Mayor Banning read aloud the Council Etiquette: *No Council member will ever chastise, denigrate, or criticize anyone during an open Council Meeting. If attempts to deal with these problems in a private tw-way conversation fail, then a council member may petition a Mayor to convene a full council executive session to deal with the problem. In no case shall a council member deal with any city employee personnel problems except through the city administrator (mayor). The chain of command must be observed.* Phil Fisher stated; that is what we've done. We asked for an executive session, is that not what we've asked for. Closed or unclosed, it is up to the employee. Employee Tracy Rebo stated that she would like it to stay open. Mayor Banning said okay, and asked what the charge was. Phil Fisher stated; at a City Council meeting, I asked a question and the clerk walked over and threw the papers on the desk and referred to me not listening in a smart remark. Tracy Rebo replied; I tossed them on the table, and what I said was, "if you would have just listened." Rebo added; I was reprimanded for that in writing. I responded to it. I apologized to the Mayor and I apologize to you, too. Mayor Banning stated; it was taken care of through the personnel policy procedures. Phil Fisher stated. well this is the first that we have heard of it. Fisher added; the Mayor was not the one that had the papers tossed to was he. Rebo replied; no, but I just apologized to you. Fisher asked Rebo; have I ever come and chastise you or do anything to you? Rebo replied; I'm not going to answer that. Fisher asked why. Rebo answered; because I don't have to. That is a personal thing, whether I feel you have chastised me, and I don't have to tell you. I can keep my opinions of you to myself. I've said I won't speak badly to you anymore. Mayor Banning stated; she has had an interview with her supervisor about it, she understands what she has to do, and the case is closed. Rebo brought up that you, the council, have stated that many employees have spoke unkindly toward you at these meetings, but if you get punched down enough times you're going to fight back. None of us want to be in your bad graces, we all want to get along. I loved coming to work, but lately it has gotten so bad that it is affecting our personal lives with our families. I can't take it anymore; I'm about ready to break down. Fran McCully added; we are all frustrated. Tracy Rebo replied; but we shouldn't have to work under these conditions, and then take it home with us. Mayor Banning stated; in the personal policy, it explains exactly what is supposed to go on here. The City Council has no authority over employees, except to okay the budget. Phil Fisher asked Rebo; how many times have we tried to come and make you do anything, how much, do we come to you every day and try to make you do something, did we do this every day? The city clerk stated; right now you are attempting to make her say something that she doesn't want to say. Fisher stated; no, I asked her a question. Johnson replied, I think we all just need to drop it, and go on from here. I think it is the best thing for all of us. I don't think its right to continue to push her to do things she doesn't want to do. It's just not right. Phil Fisher stated; I didn't direct the question strictly at Tracy, I directed it to the city employees. Johnson answered; well then, it's not the way to do it, to keep pushing, saying did I ever do this, did I ever do that. What do you want from us? Phil Fisher replied; you're pushing the other side, the other way right now. Johnson replied; I'm just saying; we need to stop this. Mayor Banning stated; I'll say this one more time, and you all have copies of the personnel policy that tells you the relationship of the employees and the administration. In order to understand it, read it and learn how it is handled. It is not handled by the City Council. Fran McCully stated; the personnel policy is actually a policy, that on a periodic time frame, we should be looking at to see if it needs revisions. A personnel policy isn't made one day and lasts for 20 years. That is another policy that needs to be looked at and be reviewed. And, that is part of our job.

**PUBLIC COMMENTS:** Dennis Dupuis stated; you guys sit here and argue and fight all the way, and somebody comes up and says, you better be on the right side, when it hits. We feel this in our job every day. I'm not saying you are coming down daily directing us, we feel it. I was one of the people that said, is this legal? What does the union say? Immediately after that, you guys say, we are going to change this and negotiate, and you want to hire someone to negotiate, all because of one little thing. We get the feeling that when something happens; retaliation is going to happen to whoever did it, whether it is employees or someone in the audience. Fran McCully stated; truthfully, it is perception, and perception isn't always fact. There has been a discussion for quite some time about how other cities do things. It may be timing. Now you're assuming that because of this letter, the attorney thing came up. That is just an assumption on your part. Dave

Norman stated; it's obvious. Fran McCully replied; no, it's not obvious. Dave Norman replied; the Resolution to hire an attorney before you even know what or if we are even going to negotiate anything in our contract. We aren't even to that point yet. You're willing to spend tax payer's money to hire a high pricey attorney to negotiate our contract when we haven't even told you what we are interested in, if anything; we understand what the economy is like. This came right on the heels of the Cease and Desist letter. Right away you slam this thing down and then you wonder why we are angry. This is obvious, blatant, harassment, and intimidation. And there you go, the reason why we are not passing it as a resolution, you'd probably get sued for it. Fran McCully replied; oh, I don't think so. Dave Norman replied; well then maybe we should get an attorney to tell us that. Sandi Sullivan stated; I'd like to address a little bit more about what Dupuis said about fear of retaliation. When you guys had your special meeting the day before yesterday, because I stood up for myself on a couple points, I was in fear of retaliation. We do fear these things. My question to you guys, as a whole, is; if you are all of one mind, what is to prevent you from passing any law you want and taking over if there are no checks and balances. You are all of one mind, a council is supposed to have some diversity. All I hear is you as a whole, against the Mayor and the Mayor against you. You can't be all of one mind or you could do anything you want. Fran McCully replied; you can't say that you have to have three people that think one way and two the other. It so happens, that on some issues, we totally think alike. I can't help the fact that you may fear retaliation, but I thought we made you feel comfortable being there by saying "join the discussion". Sullivan replied; you did, and that part went over well; however, you guys missed a crucial point that I was trying to make. I really wish a lot more of the public would have been there for the simple reason that it was mis-posted as an information session on Robert's Rules. The only Robert's Rules you discussed was what to do when the Mayor over ruled your Resolutions. So, I thought it best to excuse myself and not hear things that I may have to testify to later. Fran McCully asked; don't you think that we are where we are because we have this divide and wall and it was reinforced tonight, saying we are not to speak to city employees? Sullivan replied; I'm not aware of that, so you can't ask me that question. McCully replied; a simple conversation sometimes would be easier. Dave Norman replied; you were never told you couldn't speak to the employees. You were just asked to let the Mayor know first. That is what he said. He never said you couldn't talk to me. You can tell him anytime you want that you want to talk to me and the door is open. I'll make time to talk to you any time you want. McCully asked; so if we meet you in the alley, and we have a question, we need to go ask the Mayor first, then come back? Norman replied; well, if it is just a simple question, then there is no problem, but if you want to sit down with me and have a meeting with me over a bigger issue and talk for a length of time, then you go through the Mayor. Fran McCully replied, I totally agree with you, and actually have done it. John Clogston read aloud from the City of Troy Charter section 2-03 Powers and Duties: the Council shall be the legislative and policy determinating body of the City. All powers of the City shall be vested in the City Council except is otherwise provided by law or this Charter. The council may override the Mayor's veto with a two-thirds majority vote. Mayor Banning asked; what's your point on that. Clogston replied; the point is, the council as it says here, is the legislative body and determines the body of the City and all powers of the City shall be vested in the Council. That is where the power is, is with the council. Banning replied; not as far as employees are concerned. Clogston stated; not employees, but we can talk to the Mayor about employees. Banning replied; yes, and the reason I ask you to meet with me first is because I meet with them every morning, so I know what they are going to be doing every day. Discussion followed. Marilyn McDougall made comments about mayor and council working together. Discussion followed. Neil Rose stated; it states right in here that you are supposed to meet with council. Banning replied; I've asked them to come talk to me and they haven't. Rose asked; why don't you follow the City Charter, you owe it to the council. Linda Rose asked; is your phone broke? Does it work? You know their phone numbers; you could call and talk to them. John Clogston read aloud from the Charter No. 5 Powers and Duties of the Mayor; report to the Council, the financial condition of the Local Government, and then there are 13 more. Mayor Banning stated; the answer to No. 5; you get every month on the financial report. Fran McCully added; that is the financial report but not the affairs, not the goings on. Banning replied; you get a report from the Department Head every month, that's the same as coming from me. They are the ones that are hired to do the job, and they do it great, they don't have to get in arguments with the Council. A guest brought up that some of the Council members visited and had conversations

with the employees long before they were Council members. She asked Banning; Don, why don't you think you need to work with the council. Banning replied; I do need to work with the council, we've understood that all along, and I've asked them and asked them and asked them to come to the office if they have something they want to talk about. Linda Rose stated; once again, is your phone out of order, it's a two way street. A guest from the back stated; it is a two way street, so why don't they call him. Gary Rose stated; because he is the executive, that is why.

Meeting was adjourned at 8:05 p.m.

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Donald C. Banning, Mayor

ATTEST:

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Sandra Johnson, City Clerk/Treasurer