

**Troy City Special Council Meeting
Council Chambers
February 24, 2011
6:30 pm**

The meeting came to order at 6:30 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, James Reintsma, and Buck Buchanan.

Mayor Banning advised that he, Phil Fisher, and Chief of Police Bob McLeod had a conversation regarding the back and forth noise in past meetings. He asked McLeod to advise everyone. McLeod stated; I wanted to bring to everyone's attention, I think we all can agree that some of these meetings have gotten out of control. I've had people from both sides approach me asking that we do something different to be able to control that so people feel safe when they are in the meetings. McLeod continued; there were a couple papers left at the office. I took advantage of that and also looked more that I'm going to read regarding conduct of public meetings. McLeod advised that the Sergeant of Arms has to be a police officer. McLeod read aloud the duties of the Sergeant of Arms. He would assist the Chair as to maintain order and decorum in all meetings. Any of the following shall be sufficient cause to remove any persons from the Council chambers from the duration of the meeting if such conduct in the opinion of the Sergeant of Arms rises to the level of misconduct. He read aloud the list and from Montana State Statutes regarding disorderly conduct. Chief McLeod read paragraph 3.3.2 of 48-8-101 regarding fines and 45-8-102 failure of disorderly person to leave. Gary Rose brought up a case file that fighting words are unprotected by the right of free speech. McLeod read from "Disorderly Conduct" If person feels they are being attacked then that is an assault, not disorderly conduct, but could be both. He added; we all need to act accordingly.

RESOLUTIONS SUBMITTED BY COUNCIL: Mayor Banning asked if these were submitted before, have they been acted on at one time. Phil Fisher stated; no and Fran McCully stated; we need to have the first discussion on them. Mayor Banning read what the resolutions were about. There were five total. 1) City Council will hire an attorney to negotiate the city union contract. 2) The mayor must give a 48 hour notice if he/she will not be physically located within the city limits for more than 24 hours; president of Council shall then become acting mayor. 3) City Council will submit a newsletter to the City Clerk who shall have five days to print and mail to citizens. 4) The chief and officers of the Troy Police Department shall maintain log books and submit them to City Council. 5) A copy of all policies shall be given to each member of the City Council by February 18, 2011 or as soon as this Resolution is effective, whichever is earlier. Mayor Banning stated; these were ruled out of order on February 18, 2011, and they are ruled out of order again. He continued; we have to submit them to an attorney to make sure everything is legal and we cannot do this. Phil Fisher made a **Motion** to appeal the Mayor's out of order ruling. Fran McCully seconded the motion. Phil Fisher asked; on the question, shall the decision of the Chair be sustained. Mayor Banning asked if there was any discussion. None. Mayor Banning called for the vote; all in favor to sustain the Chair's overruling. None. All opposed. **Motion carried.** Phil Fisher – N, Fran McCully – N, Gary Rose – N, and John Clogston – N

Banning stated; the decision of the Chair is overruled by Council. He continued; according to the City Code Book Section 2-12-101 Special Meetings; Special Meetings may be called on a reasonable notice in writing by the Clerk to all members of the Council when ordered by the Mayor or any two members of the Council, but the reason for the special meeting must be set forth in the call for the same and preserved in the Minutes of the Special Meeting. These two

meetings tonight were not called under those restrictions. Phil Fisher stated; two members of the council requested it. Banning answered; no, you came here Saturday morning and requested a police officer to come witness you putting up the public notice of the agenda. They were not submitted to the Clerk or submit anything to each Council member and Mayor to let them know there was a special meeting called. Mayor Banning also read from the City Code Book the duties of the City Attorney are to attend all regular and special meetings of the City Council, and give such legal advice to the Council or any Councilman, the Mayor, City Clerk or any other city official that shall be requested of him or her on appropriate legal matters as they arise; to prepare all Ordinances and Resolutions that may be required or desired, and to be available for conciliation to the Mayor, Councilman, or any other city official. Mayor Banning stated; until we get a City Attorney, we cannot follow those rules, so I still rule those out of order until we get a City Attorney. Fran McCully stated; we just passed a Resolution and an Ordinance without a City Attorney. She continued; we passed the one written by the Judge, and the Ordinance to repealing the 4th of July Ordinance and we didn't have a City Attorney for either one of those. Banning answered; the Resolution that the Judge wrote came from the office of the Attorney General, and it is clearly written in the book how to repeal an Ordinance. Discussion followed regarding procedure. More discussion regarding the legality of the Resolutions followed.

Mayor Banning stated; this agenda is completed. We are adjourned from Special Council Meeting number one. Phil Fisher stated; point of order, I Move to suspend the rules and appoint the Council President to serve as chairman pro-tem for the duration of this meeting. Fran McCully seconded the motion. City Clerk Sandra Johnson asked; exactly what rules are being suspended. Fran McCully answered; Robert's. Sandra Johnson stated that she had something to present. Phil Fisher continued reading his motion. Mayor Banning gave the floor to Johnson. Fran McCully stated; we're in the middle of a motion. Mayor Banning stated; your motion is out of order. Phil Fisher continued; all those in favor of suspension of the rules and appoint the Council President as Chairman pro-tem for the duration of this meeting please stand. Mayor Banning stated; it cannot be done. John Clogston stated; yes it can. Banning continued; Robert's Rules of Order is not law, it is simply a guideline. Gary Rose stated; it is our law. John Clogston added; we're in council. You no longer are relevant in this meeting. Phil Fisher read; Our Council President has been appointed to serve as Chair pro-term for the duration of this meeting. Mayor Banning stated; that is out of order. John Clogston stated; no. Banning recognized Chief of Police McLeod. He read aloud; before this can be done, one would need to be an expert of the Rules of Robert's Order in order to pull this off. McLeod asked; what would constitute an expert on Robert's Rules of Order. John Clogston answered; good common sense will be good for rules of order. Fran McCully stated; I don't think there is any test to qualify. Mayor Banning stated; the chairman of a meeting cannot be replaced by president of council unless he is absent. Gary Rose stated; not according to Robert's Rules. John Clogston stated; he has just been. Mayor Banning stated; Robert's Rules are not law. Gary Rose states; we passed a Resolution. We adopted Robert's Rules and we abide by Robert's Rules. Mayor Banning stated; with no more discussion, this meeting is adjourned. John Clogston stated; it's not adjourned. Phil Fisher stated it's not adjourned; Clogston stated; we are a Council. McLeod read aloud; the pro-tem serves in place of the chair when that person is absent. Mayor again declared the meeting adjourned. Phil Fisher read aloud the Resolution adopting Robert's Rules. Mayor Banning reiterated; you are in violation of State law. John Clogston stated; then let them come tell us. Banning continued; the meeting has been adjourned. Phil Fisher stated; the Mayor cannot adjourn a meeting without a majority of the vote. Mayor Banning stated; either the Mayor can adjourn the meeting or a majority of the Council. John Clogston stated; you are just a Mayor, you are only a Mayor, you're not King, we are a Council. Mayor Banning stated; I'm going to appeal to the Sergeant of Arms, that this meeting has been adjourned by the call of the Mayor. Fran McCully stated; you cannot adjourn the meeting because you have not allowed the public to participate in the meeting. The meeting cannot be adjourned by the Mayor until all the agenda items are taken care of. The Council can adjourn in a meeting with a privileged motion, but you can't adjourn until the public has participated. She added; it would be really simple to read these, discuss them, and vote on them because they are going to be passed sometime. I don't understand why it is put off and put off again, they are simple resolutions. Mayor Banning answered; they are resolutions for this body that must be gone over by the City Attorney to

assure that there is nothing illegal or against the State law in them. That is to protect the citizens of this town and the administration and City Council. Gary Rose stated; we've had a lawyer look at all of them, and they are fine. Fran McCully stated; I guess if a lawyer found them illegal down the road, they can always be rescinded. Discussion followed regarding the Council's ability to hire their own attorney. Bob McLeod stated; there are so many play books out there, maybe we could hire an attorney to help us all until we can get one to help us with the legal issues. The way it is now, everyone is interpreting things differently. Mayor Banning stated; there is nothing in the MCA that says that the Mayor can be removed from his task as the Chairman of a Council meeting. More discussion on Robert's Rules followed. Mayor Banning stated to the Sergeant of Arms, Chief McLeod that this meeting is being disrupted, maybe it's not by the people I the audience, but it is by the Council. John Clogston stated; we run this Council. Gary Rose stated; take us in. Fran McCully added; you'll need four sets of cuffs.

PUBLIC COMMENTS: Tammy Bragg stated; I, as a citizen of Troy, would like to have a City Attorney go over and be present at every one of these meetings. Mayor Banning answered; we've been trying to get one hired for awhile. Dave Norman stated; maybe if the issue is truly over hiring a City Attorney to interoperate these codes and Robert's Rules, and the council is unable to do that by holding a special election with the two candidates for City Attorney. Mayor Banning answered; State law stipulates how you get a city attorney. Fran McCully asked what the deadline was for the advertisement in the paper now. Banning answered; the 11th of March, at 5:00 p.m. There is a lot of interest, you'll find out on the 11th of March. Linda Rose stated; Robert's Rules were passed and they just did it legally, so I think you should abide by it and leave. If we are going by Robert's Rules, all of these guys were not recognized to be able to speak, so nobody is going by Robert's Rules right now.

Mayor Banning stated; if there are no more comments, the meeting will stand adjourned. John Clogston asked Phil Fisher if he wanted to go on with this. Gary Rose answered; no, we'll just file a suite. Phil Fisher answered; no, we'll just file a writ and get it taken care of.

Meeting adjourned at 7:20 p.m.

Donald C. Banning, Mayor

ATTEST:

Sandra Johnson, City Clerk/Treasurer