

MINUTES

LANCASTER CITY COUNCIL REGULAR MEETING OF DECEMBER 14, 2020

The City Council of the City of Lancaster, Texas, met in a called Regular Meeting in the Council Chambers of City Hall on December 14, 2020, at 7:00 p.m. with a quorum present to-wit:

Councilmembers Present (City Hall & Zoom):

Mayor Clyde C. Hairston
Carol Strain-Burk
Deputy Mayor Pro Tem Stanley M. Jaglowski
Marco Mejia
Keithsha C. Wheaton
Mayor Pro Tem Racheal Hill
Betty Gooden-Davis

City Staff Present (City Hall & Zoom):

Opal Mauldin-Jones, City Manager
Fabrice Kabona, Deputy City Manager
Carey Neal, Assistant to the City Manager
Keturah Barnett, ICMA Fellow
Andrew Waits, Public Works Director
Dori Lee, HR Director
Jermaine Sapp, Equipment and Facilities Services Director
Kenneth Johnson, Fire Chief
Kim Hall, Director of Finance
Lisa Wube, Director of Parks and Recreation
Sam Urbanski, Police Chief
Shane Shepard, Economic Development Director
Vicki Coleman, Director of Development Services
Alton Dixon, Purchasing Agent
Charley Miller, Assistant Police Chief
Crystal Cloud, Utility Billing Manager
John Melton, Library Manager
Kellen, Benbrook, Airport Manager
David T. Ritter, City Attorney
Sorangel O. Arenas, City Secretary

Call to Order:

Mayor Hairston called the meeting to order at 7:02 p.m. on December 14, 2020.

Invocation:

Bishop Clyde C. Hairston of Miracle Temple Fellowship Church gave the invocation.

Pledge of Allegiance:

Deputy Mayor Pro Tem Stanley M. Jaglowski led the pledge of allegiance.

Public Testimony:

There were no speakers

Consent Agenda:

City Secretary Arenas read the consent agenda.

1. Consider approval of minutes from the Regular Meeting held on November 9, 2020.

MOTION: Councilmember Strain-Burk made a motion, seconded by Deputy Mayor Pro Tem Jaglowski to approve consent item 1. The vote was cast 7 for, 0 against.

2. Reading of a notice of censure against Councilmember Strain-Burk; the Councilmember's response; and consideration of whether good cause exists to set a formal hearing on the merits of the notice.

City Attorney Ritter shared the procedure for the censure.

City Secretary read the notice of censure.

Notice of Censure
Mayor Pro Tem Hill Email

To: The City of Lancaster Texas City Secretary
From: Mayor Pro Tern Racheal Hill, District 5
RE: Request to Censure Councilmember Carol Strain-Burk
Date: October 28, 2020

City Secretary,

I would like to formally request the censure of Councilmember Carol Strain-Burk. After the City Council made a 6-1 vote to have the Confederate Arms Monument removed, Councilmember Strain-Burk intentionally advocated for the monument to remain up and was in contact with the Texas Historical Commission. Councilmember Strain-Burk dismissed the desires on the council and acted in a manner that violates our Code of Conduct and Code of Ethics. Councilmember Strain-Burk's behavior is reprehensible. After a very definitive vote Councilmember Strain-Burk invalidated our existence as a governing body and failed to support the decision of the council.

Areas of Violation from the City Council Rules and Procedures

House Rules: Code of Conduct

- 5. Once a decision is made, support the City decision, but state your reservation.
- 13. Be a positive ambassador for the City.

Code of Ethics

G. Recognize that public and political policy decisions are ultimately the responsibility of the City Council;

Racheal Hill, M.B.A.
The City of Lancaster, TX
Mayor Pro Tem
Councilmember, District 5
Certified Municipal Official

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Notice of Censure
Councilmember Mejia Email

Date: October 28, 2020
To: Mauldin-Jones, Opal, Arenas, Angie, Hill, Racheal
From: Mejia, Marco
Subject: Request for Censure: Carol Strain-Burk

Opal and Angie,

I would like to be the second council member to request this issue be placed at the soonest council meeting.

Thanks,
Marco Mejia.

Response to Notice of Censure

November 9, 2020 Response to Censure

November 9, 2020
Honorable Mayor and Councilmembers City of Lancaster
211 N. Henry St.
P.O. Box 940 Lancaster, TX 75146

Re: Notice of Censure

Dear Mayor and Councilmembers:

I am in receipt of the written Notice of Censure filed by Mayor Pro Tern Racheal Hill, and a separate email by Councilmember Marco Mejia. Let me be clear and unequivocal: The assertions in the notice are false. I have done nothing to undermine the decision or position of the City Council.

Like each of you, I serve at the pleasure of the citizens and strive to represent their interests. We all have an obligation to ensure the records of our deliberations are as complete and accurate as possible. The minutes were amended with a more complete memorialization of our deliberation and approved by Council. These minutes were supposed to be included in the packet provided to the Texas Historical Commission ("THC") along with the City's request that the historical marker is removed. When those minutes were omitted from the packet, I sent them myself with a cover letter explaining the omission. Nothing in my transmittal letter contradicts the City's request. Indeed, the minutes themselves, as amended, were approved by the Council. I did not advocate against the decision of the Council, nor encourage the THC to refuse our request. Any allegations to the contrary are simply false.

Threats of censure are beneath us. While strongarm tactics intended to silence differing views may be commonplace in national politics, I expect better from this City Council. Any attempt to silence a Councilmember from representing the legitimate interests of Lancaster citizens should not be tolerated.

Before I address the substance of the notice, I raise a procedural due process objection. The City's Censure Policy requires that two Councilmembers must submit a single written notice of censure, setting forth the alleged violations. As of this date, this has not happened.

Two or more City Councilmembers may file a written notice of censure against another City Councilmember with the City Secretary. The written notice shall set forth the allegations(s) of conduct and City Charter, Code of Ethics, or Rules and Procedures provisions which the accused Councilmember shall have allegedly violated

Any form of censorship infringes on First Amendment rights. The City's censure policy was designed to protect a Councilmember's guaranteed right of self-expression by providing fundamental due process rights. The policy refers to "a" notice and "the" notice, clearly contemplating a single notice where two or more Councilmembers set forth specific allegations. The policy could have employed a process where a single Councilmember could issue notice, subject to a second by one or more Councilmembers, as happened here. Such a process, however, would allow a single Councilmember to drive the censure process with mere passive involvement of others. By requiring that two or more Councilmembers present a single notice setting forth the alleged violations, the policy serves a gatekeeping function against politically motivated notices of censure filed by individual Councilmembers.

Here, two Councilmembers did not present a single written notice of censure. Indeed, Councilmember Mejia has made no assertions whatsoever. He simply requested the item be placed on the agenda. This process does not comply with City policy. Certainly, any accusers alleging violations of City policy should themselves follow City policy.

Because the censure policy has not been properly invoked, my ten (10) day period in which to respond has not started, and this matter is not ripe for inclusion on the City Council agenda or for Council action. Arguably, proceeding contrary to City policy could itself be the subject of a Notice of Censure.

Nevertheless, I will take this opportunity to frame the issues from my perspective.

The underlying issue involves the vote regarding the Confederate Arms Monument and its potential removal. I cannot begin to understand the hurtful nature of these monuments. I was personally moved by the depth of emotions expressed during our deliberations. I felt then, as I do now, that through education and discussion we can learn from the mistakes of the past and forge a future of equality for our children. With that perspective in mind, I offered several alternatives, modifying the messaging of the historical marker and/or relocating the marker to the State Auxiliary Museum.

The issue was debated and the decision of the Council was to request that the marker be removed. While I did not concur with the outcome, I did not oppose it. The minutes of our deliberation were later amended with a more complete memorialization of our deliberation. These amendments were approved by City Council. The amended minutes were supposed to be provided to the THC along with the City's request that the marker is removed. When the minutes were omitted from the packet, I sent them myself with a cover letter explaining the omission. I did not advocate against the decision of the Council, nor encourage the Commission to refuse our request. My transmittal letter is factually accurate and does not contradict the City's request or the amended minutes approved by the Council. I attach a copy of my letter to the THC as Exhibit "A".

As you know, the City Council has no authority to remove the historical marker. It is owned by the State of Texas, under the sole jurisdiction and control of the THC. Council can only make a request that the

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marker is removed. At no time did I advocate against the official position of the Council, nor encourage the THC to refuse our request. Simply put, there has been no violation of any City policy upon which a censure could be based.

In summation, the key assertions in Mayor Pro Tern Hill's notice are false. I did not undermine the decision or position of the City Council. I did not advocate against the decision of the Council, nor encourage the THC to refuse our request. Any allegations to the contrary are simply false.

The citizens of Lancaster expect us to conduct the business of the City in a collaborative manner that puts their needs over Councilmember bickering. I respectfully submit that the attempted use of a baseless censure to exact personal retribution is below the dignity of this Council and any further attempts should cease.

Sincerely,

Carol Strain Burk
Lancaster City Council District 1

With Exhibits attached:

- A. September 17, 2020 correspondence stamped as received by Texas Historical Commission on September 25, 2020;
- B. Draft City of Lancaster Minutes -August 24, 2020;
- C. September 14, 2020 memo from City Secretary to Mayor and Council re: amendment of August 24, 2020 minutes.

December 9, 2020 Supplemental Response to Censure

December 9, 2020
Honorable Mayor and Councilmembers
Re: Notice of Censure

Dear Mayor and Council:

I am writing to supplement my earlier response to the request to censure me (Appendix "B" to this one). As a result of the alleged charges of censure, I sought legal advice. At the recommendation of my attorney, I am providing an update to my previous letter to provide to provide more information about the law that should guide us here, and suggest a constructive way forward.

Before discussing the controlling cases, I want to clearly identify the relevant facts. My action related to this censure issue was caused by the lack of process by the City Secretary's Office to provide a complete and true record of the discussion as it had been directed to do at the Aug. 24th, 2020 meeting ("that the minutes, discussion, and the vote be part of the documents submitted for removal of the monument")

I was totally unaware the City Secretary's office had neglected to record the complete discussion as directed until reading the Sept. 14, 2020 agenda. Approving the minutes of Aug. 24th was on the Consent Agenda. I asked the City Secretary's office to provide the rest of the conversation, which

included the omitted comments and staff directions. The City Council approved and accepted the amended corrections to the Aug. 24- 2020 meeting minutes on Sept. 14, 2020.

Before September 14, 2020 I took no action in any way until I received and reviewed the THC packet. I found the Agenda minutes did not provide the complete discussion. It was only then that I sent a copy of a public document (the corrected minutes) to the Texas Historical Commission), as they had been prepared by the City Secretary, and had been approved as to content by the City Council.

The impact of the omission of my comments by the City Secretary's office was one of disrespect and invalidation to my elected position. I took this very personally and reacted out of frustration toward the City Secretary's office not performing the job that was asked. Following Council Rules and Procedures to resolve conflicts, I asked through our City Attorney to have a meeting arranged to resolve this situation but this request was denied.

I never engaged in any advocacy to minimize the council decision. I do not even know any members of the Commission personally.

The action I took is out of character for me in all the years I have served my city. I apologize to my council colleagues on this matter.

That background that I just provided makes clear that as for the law, the recent case of *Wilson v. Houston Community College System*, 955 F.3d 490 (5th Cir. 2020), is controlling. (Appendix "B" to this letter). David Wilson, a trustee of the Houston Community College System, voiced several public criticisms of the board of trustees (which I did not do). The board voted to censure him, he sued, and the Fifth Circuit found that he stated a viable case against the board for infringing his First Amendment right of free speech: "Elected officials are entitled to be free from retaliation for constitutionally protected speech "

Wilson clearly states the controlling law in Texas at the present time. The Texas Association of School Boards weighed in during that case, filing a brief that summarized every case in the country that it thought could support the position of the Houston Community College System. The Fifth Circuit rejected those authorities in favor of its own, earlier opinions that recognize and defend the First Amendment rights of elected officials:

- *Jenevein v. Willing*, 493 F.3d 551, 556 (5th Cir. 2007) (identifying a valid First Amendment claim, against the same Commission, for a reprimand about a judge giving a public press conference);
- *Scott v. Flowers*, 910 F.2d 210, 213 (5th Cir. 1990) (identifying a valid First Amendment claim when the Texas Commission on Judicial Conduct reprimanded a justice of the peace for criticizing the procedures of county courts); and
- *Smith v. Winter*, 782 F.3d 508, 511 (5th Cir. 1986) (identifying a valid First Amendment claim about a recall election against board of education members, allegedly begun in retaliation for their votes in certain matters).

There can be no serious dispute that my actions, targeted by the current request for censure, are far less extreme than David Wilson's conduct with the Houston Community College System. (When the Fifth Circuit declined to take that case en banc, the dissenters aptly called him a "gadfly legislator." *Wilson v. Houston Community College System*, 966 F.3d 341, 341-42 (5th Cir. 2020) (Jones, J., dissenting)). On one occasion, I forwarded a public document based on a legitimate concern about us following our own rules. If a censure resolution was an "actionable First Amendment claim" on the facts

of Wilson, it certainly is for me in this situation. That holds true no matter how the process is handled or how carefully any resolution may be phrased-censure is censure, under the controlling First Amendment law.

But Wilson also shows us a constructive way forward from here. In reviewing the controlling law, the Fifth Circuit noted that a key goal of the First Amendment is to encourage elected representatives to freely work together so they may best represent their constituencies. See Wilson, 955 F.3d at 497 & nn. 29-30. That is what we should do here. We should work together toward what is best for our City, rather than looking backward with acrimonious discussion about punitive measures. That is particularly so where the City's written procedures for conducting a censure proceeding are so vague and subjective that they also raise serious Constitutional due process considerations.

I look forward to a chance to discuss productive and positive ways forward.

Regards,
Carol Strain Burk

With Exhibits attached:

- A. Wilson v. Houston Community College System, 955 F. 3d 490 (5th Cir. 2020);
- B. November 9, 2020 Response to Censure, with exhibits attached as previously noted."

Mayor Pro Tem Hill asked City Attorney Ritter to read Councilmember Strain-Burk letter to Texas Historical Commission Exhibit "A".

City Attorney Ritter read Exhibit "A".

Sept. 17, 2020

EXHIBIT A

Re: 6655 Site of Confederate Arms Factory/ draft minutes vs final minutes of meeting

I just received a copy of the packet that was sent to the THC regarding the 1936 marker. I had requested that all of council receive this when it was sent to the state. The minutes were to reflect the entire discussion regarding this topic and it did not capture more detail inquiry prior to the council vote.

1. Were there any other letters or communication received on this manner. NO
2. Did the person who sent the letter (email) a resident of Lancaster- NO
3. My request to have the discussion included with the packet. (it was not)

These corrections were added to the minutes and approved as part of the minutes.

I believe it is important that the State know there was only one email (letter). To my knowledge no one had any conversation with the person who sent the email. No one called in to make comments pro or con, the person who sent the email did not call in. After the vote was taken citizens found out about it and I have suggested they contact the Texas Historical Commission regarding this topic to let them

know their thoughts regarding the removal of the marker as citizens found out about the action after the vote.

Actual recording of the work session on August 1th and meeting August 24th may be viewed online at www.lancaster-tx.com

Regards
Carol Strain Burk
214 957 9666

Attachments:
Draft Minutes of August 24, 2020
Memorandum of August 24, 2020 Minute amendment

MOTION: Councilmember Mejia made a motion, seconded by Mayor Pro Tem Hill to approve item 2 and move forward with the censure. The roll call vote was cast 6 for, 1 against [Strain-Burk].

MOTION: Councilmember Mejia made a motion, seconded by Councilmember Wheaton to adjourn. The vote was cast 7 for, 0 against.

The meeting was adjourned at 7:32 p.m.

ATTEST:



Sorangel O. Arenas, City Secretary

APPROVED:



Clyde C. Hairston, Mayor