

OPEN LETTER TO CITY OF BASTROP RESIDENTS
from Council Member Kerry Fossler, Place 4



LISTEN UP BASTROP

ADVOCACY

ALERT *for* **CITY OF BASTROP RESIDENTS**

3 of 5 Council Members are currently discussing city business **OUTSIDE** of public meetings.

ARE YOU OK WITH THIS? *I am not!*

KEEP THE PEOPLE'S BUSINESS IN FRONT OF THE PEOPLE

Sign up to Speak at July 23rd meeting to oppose Agenda #9P or submit your comments by 7/23 at 4pm

The people's business should be kept in front of the people. At the July 23rd City Council meeting, we will continue the most important, foundational discussion that's ever happened in the City of Bastrop, in my opinion. PLEASE READ!

The current Bastrop City Council is interpreting the Texas Open Meetings Act differently than Councils of years past, and a majority of voting Council Members (3 out of 5) are meeting outside of public meetings to deliberate city business. That's right – that's a voting block. And they are fighting to keep it. At the July 9th City Council meeting, I proposed adding a provision to our Rules of Procedures to prohibit this and it got shot down by the 3 Council Members who are enjoying this voting block.



7/9 CITY COUNCIL MEETING SUMMARY



If you'd like to hear this discussion, here are the timestamps for easy reference:

July 9th City Council meeting:
<https://fb.watch/tpGZti8TpP/>

2:35:08 - Quorum Discussion Begins

2:39:34 - Council Member Kerry Fossler - *"At the moment, 4 members can call a meeting in our charter. And in Rules of Procedures, 4 members is a quorum. So the effect of this is that 3 Council Members can absolutely talk outside of a meeting and have a voting block. And make decisions outside of this room, and come back with a voting block and not have any discussion in front of the public. That is possible because our charter is written like that, and our Rules of Procedures are written like that. Is that true?"*

2:40:11 - City Attorney Alan Bojorquez - *"Yes that is true."*

2:40:14 - Council Member Fossler - *"Okay is that that what Y'ALL want? (Points to the public)"*

2:41:40 - Council Member Fossler - *"So is there language available that would allow 4 voting members to (still) call a meeting, but 3 NOT be able to decide, 3 NOT be able to have an outside discussion? That's the language I'm interested in."*

2:42:14 - City Attorney Bojorquez - *"Yes Council Member Fossler, I believe the Council could put its own rules in place that say it's a violation of the City Council's procedural rules for 3 Council members to discuss items of city business outside of a City Council meetings... If the City Council wants to have its own procedural rule, ethical rule, rule of conduct that says, we've decided in addition to whatever the Open Meetings Act might say, that we are going to say 3 Council members can't discuss an item of city business outside of a meeting, and you're going to choose to adopt that rule, police it, enforce it, you're allowed to do that if that's what the City Council chooses to do."*

2:43:51 - Mayor Lyle Nelson - *"So in other words, enhance the possibility of having an open format and with citizen participation?"*

2:43:50 - City Attorney Bojorquez - *"That's a likely result, yes."*

2:44:05 - Council Member Fossler - *"I support this language. Can I add it to the list?"*

2:47:46 - City Attorney Bojorquez - *"Mayor, Council, let me know if I'm capturing the wording you discussed. Perhaps what would be added onto 2.10 is "3 OR MORE CITY COUNCIL MEMBERS SHALL NOT DELIBERATE AN ITEM OF CITY BUSINESS OUTSIDE OF A PROPERLY POSTED CITY COUNCIL MEETING."*

4:00:51 - Council Member Kevin Plunkett - *"Going back to the 2.10 quorum question, I don't think it's a great idea to limit the discussion more than a quorum....I am not so okay with having more restrictions than what TOMA (Texas Open Meetings Act) puts on us to begin with."*

4:02:12 - Mayor Nelson - *"So you're suggesting that Council Member Fossler's addition to 2.10 is not acceptable to you?"*

4:02:25 - Council Member Plunkett - *"Yes."*

4:02:54 - Mayor Pro Tem Kirkland - *"I think that we should NOT change this section or the quorum section, pending next steps."*

4:03:15 - Council Member Fossler - *"Could I ask for more explanation? (to CM Plunkett) Why would you like to preserve this right of 3 Council Members being able to speak to each other outside of a meeting?"*

4:03:44 - Council Member Plunkett - *"It's really alot about this. It's extremely difficult to tear a document apart, like a contract or ordinance or the more technical things we are asked to decide on. And it is, I found it, extremely helpful over the last couple of years, to be able to informally discuss things, you know, not in front of a microphone, to tear it apart, figure out why it wouldn't work, suggest stupid ideas, just to test the process. And I think we've fixed alot of things that way. That's the main reason, I'd say."*

4:04:44 - Council Member Cheryl Lee - *"I am in agreement with Council Member Fossler... If half of the Council is meeting to discuss an item, you're basically forming your opinion before we get to Council... You guys come here to hear what we have to say. And if I've talked to every Council Member or half the Council before I get here, I don't have any questions to ask and you guys don't know what we're talking about or what we're voting on. I look at every Council packet as if I'm sitting at home or sitting in an audience just like you, and I have these questions. Something that the normal, average, everyday person doesn't know. But if I've already had a conversation with 3 Council Members and formed my own opinion, then there's no open discussion. We're just basically coming and voting how we've already decided to vote prior to the meeting. I don't know why we WOULDN'T want to protect that by going down to 3 is a quorum to protect the integrity of the city, so there is more open discussion during our Council meetings."*

4:06:37 - Council Member Cynthia Meyer - *"So that would only be if a Council Member spoke to other people, with the intent to form a consensus. And when I speak to - If I speak to Kerry, which I have on issues; or Kevin, because he's got great business sense; or John, because he knows everything inside and out. It's for me to get a perspective. It's not for me to get agreement and consensus. It's for information that I talk to them about."*

4:07:16 - Mayor Nelson - *"I think, as a Council, we need to make a decision on whether or not we want to JUST abide by the letter of TOMA (Texas Opens Meeting Act) or the spirit of TOMA. I think that's where Council Member Fossler is going but I don't want to speak for you, and I also don't want to speak to the concept of intent because intent is often difficult to achieve."*

4:04:44 - Council Member Fossler - *“At the very moment that this Council started enjoying the protections of those 3 people having conversations was the VERY moment that I was sitting in that audience HORRIFIED at where the conversation went. I didn’t know where it went. It went AWAY. But it wasn’t happening RIGHT HERE anymore (points to Council Chambers) and that’s the reason I ran. So I DON’T believe that 3 Council Members should be able to discuss things outside of a posted meeting. And that’s the way previous, several City Managers ran it, they asked for each City Council person - you could only speak to one other Council person and that’s the way everybody did it, even though charter said otherwise. It was a Gentlement’s Agreement. So it is only with THIS Council that it’s been acted out otherwise, and I think it’s to the great misfortune of the citizens that it’s being interpreted this way.”*

4:08:48 - Council Member Meyer - *“Alan, has it only been with this Council that we’ve had discussions of 3? Wasn’t it previous Councils that still had this rule in place of a quorum?”*

4:09:06 - City Attorney Bojorquez - *“Mayor and Council, I don’t know of a formal rule or a written rule but YES in my experience with the previous City Councils, they refrained from meeting or talking in groups of 3. It was not a law or rule that required that. I don’t know where that tradition or custom came from.”*

4:09:25 - Mayor Nelson - *“It was certainly a practice when I was on Council PRIOR that we avoided having that 3rd Member in that discussion.”*

4:09:34 - Mayor Nelson - *“We have an issue set before us on 2.10. There had been a suggestion that we add some additional language subsequent to our discussion. There appeared to be a thought to REMOVE that prior additional language. I’m still looking for consensus before we go to a vote. What I have seen at this point in time is that while we’re looking to abide by the legal portion, the written portion of the TOMA act, my opinion is we’re bypassing the spirit of it. However, y’all are the ones that hold the vote on this. I’m noticing 3 members of this Council are looking to remove the language as requested by Council Member Fossler that would prohibit a 3 Council Member discussion outside of an open session, while only 2 would like to keep that in. Council Member Fossler I really appreciate those comments and concerns from when you were in the audience and when you placed them back here on the dais.”*

7/17 CHARTER REVIEW COMMISSION SUMMARY

The Citizen Charter Review Commission on July 17th just discussed this topic at length as well. Here are the timestamps for easy reference:

July 17th Charter Review Commission Meeting:
<https://fb.watch/tpGUVJGz6w/>

2:35:23 - Quorum Discussion

2:45:29 - Voting Block Discussion

2:45:45 - Former Mayor Ken Kesselus - *"When I was Mayor, we had a different interpretation about the quorum and the illegal meetings, and something different has happened since then. We had a deal where we could only have 2 Council Members sit together the whole time..."*

2:46:19 - Former Mayor Connie Schroeder - *"We too followed no more than 2 Council Members because 3 Council Members is a voting block. And so, no more than 2 Council Members could ever discuss something that was going to be voted on. Not that they're not gonna have a great discussion, but public business gets discussed in public."*

2:47:25 - Joe Grady Tuck - *"I wish somebody would tell me. Today, I thought 3 Council people could get together and talk about it. Am I told no? That's not true?"*

2:47:45 - Former Mayor Schroeder - *"Today, if 3 Council Members want to come visit with you in your office, that is ALLOWED by the verbiage in the charter (speaking to Joe Grady Tuck). And what Mayor Kesselus and I are saying is recognizing that 3 voting Council Members is a voting block. We had always adhered to 'Don't get together in a voting block regardless of what the charter says (and talk about city business.)'"*

2:48:15 - Joe Grady Tuck - *"Well if today, if 3 Council Members can get together and talk about city business, I would like to see that remain the same."*

2:48:24 - Former Council Member Jimmy Crouch - *"Is that illegal, Alan?"*

2:48:26 - Debbie Moore - *"We've got precedence, in that the City Attorney said at the last Council meeting that in all previous Councils, 3 was a quorum, only 2 could get together and talk about it. It's only the current Council that has changed that. And we also have the spirit of the Open Meetings Act, which 2 being able to talk about it, definitely meets the spirit of the Open Meetings Act. When you go to 4 (for a quorum), it violates both."*

2:48:58 - Joe Grady Tuck - *"Well the Spirit aside, if 3 people can talk today, I would like to see that remain."*

2:54:10 - Former Council Member Crouch - *"Alan, is it against the law right now for 3 Council Members to get together and speak or is it an open meetings violation to do that?"*

2:54:29 - City Attorney Bojorquez - *"Mr. Crouch, it's not against the law for 3 Council Members to get together outside of a meeting and talk about city business because our charter sets the quorum at 4."*

2:54:44 - Former Council Member Crouch - *"In saying that, I found it very helpful to be able to talk to 2 other Council Members while I was on the Council with the 4 person quorum... It's alot easier to make decisions or gather information if you can speak to other people. And not just necessarily go off all of your expertise or the things that you know. So it was very helpful for me to call (other Council Members), knowing that I had some people that I could visit with about specific things. And if you limit that, to even just 1 person, it limits your amount of knowledge*

on a topic that you can research... I called (different citizens) several times just to have other people to talk to. And if you take 1 person away, I think that's 1 person's knowledge that you need to make decisions. And I think it's helpful, and if it's not violating any law or open meetings act, I think we should just leave it alone."

2:56:11 - Debbie Moore - *"No one is saying that you shouldn't confer, but we're just saying you should confer IN PUBLIC about things that you will vote on that will have an impact on the public. And once again I say, there's been a precedent set up for umpteen years, an agreement of previous mayors that 3 would be a quorum. This has changed. I think it's caused some problems. And I am wholly WHOLLY in favor of this and I will make a motion that it's adopted."*

2:58:52 - Former Mayor Ken Kesselus - *"What we have is a weird loophole or something that just flies in the face of the open meetings act of the legislature, and it's one of the foundations of a modern democracy, and we've got to stop it. And this is the way to do it (by reducing the quorum in our charter from 4 to 3 voting members)."*

(The supermajority required to reduce to the Quorum from 4 to 3 voting members then failed to get supermajority vote.)

ACT NOW >>

I ran on a platform of "Community First" and this would put YOU back in FIRST! Where you rightfully belong.

If this is important to you, please fill out the "REQUEST TO SPEAK" form online with your OPPOSITION to 9P. You can either speak at the mic, or log your opposition, or both! You can send it in anytime between now and 4:30PM on Tuesday, July 23rd.

Request to Speak Form: https://www.cityofbastrop.org/page/cc.request_to_speak

In the box, write something like this:

Agenda Item 9P - I do NOT want a majority of my City Council Members to be able to discuss city business outside of a public meeting. This needs to STOP IMMEDIATELY.

Add the provision "3 or more City Council Members shall not deliberate an item of city business outside of a properly posted City Council meeting."

Thank you for taking the time to read. I look forward to hearing what YOU want on July 23rd and ongoing! Please reach out anytime.

**Respectfully,
Kerry Fossler
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