

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
JANUARY 10, 2017

On January 10, 2017, the Kerrville City Council meeting was called to order at 6:00 p.m. by Mayor White in the city hall council chambers at 701 Main Street. The invocation was offered by Councilmember Mary Ellen Summerlin, followed by the Pledge of Allegiance led by Police Lieutenant Mary Krebs.

COUNCILMEMBERS PRESENT:

Bonnie White	Mayor
Stephen P. Fine	Mayor Pro Tem
Glenn Andrew	Councilmember
Mary Ellen Summerlin	Councilmember

COUNCILMEMBER ABSENT:

Gene Allen	Councilmember
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CITY CORE STAFF PRESENT:

Don Davis	Interim City Manager
Mike Hayes	City Attorney
E.A. Hoppe	Deputy City Manager
Brenda Craig	City Secretary
Sandra Yarbrough	Director of Finance
Kim Meismar	Director of General Operations
David Knight	Chief of Police
Dannie Smith	Fire Chief
Trent Robertson	City Planner
Kyle Burow	City Engineer

VISITORS PRESENT: List on file in city secretary's office for the required retention period.

**1. VISITORS/CITIZENS FORUM:**

1A. Robert Naman noted the mayor represented all the people of Kerrville and was elected by a majority; two councilmembers were appointed and two were elected by plurality. If any public servant was in violation of the law it should be reported to the proper authorities. He opined that two previous staff members distorted facts regarding the reuse pond project. Council should question staff regarding the reuse pond, its cost, and financing method. Freese and Nichols were paid to design the project, and they did not provide a cost benefit analysis.

1B. Peggy McKay stated the city's debt was high compared to other cities our size and cited the State Comptroller's Office, Texas Bond Review, Texas Tribune and the city. Most of the city's debt was certificates of obligation (COs) which did not have voter approval and the projects were not needed. Most cities used general obligation bonds which required voter approval.

**2. RECOGNITION:**

2A. Lieutenant Phil Engstrom upon his graduation from the FBI National Academy in Quantico, Virginia, presented by Police Chief David Knight.

**3. CONSENT AGENDA:**

Mr. Fine moved to approve consent agenda item 3A through 3C; Mr. Andrew seconded the motion, and the motion passed 4-0:

3A. Acceptance of minutes of the regular meetings held November 8 and December 13; workshop held November 15; and special meetings held October 28, November 14, November 15, and December 15; and Kerr County workshop on flood warning system held December 20, 2016.

3B. Resolution No. 01-2017 ordering that a General Election be held on May 6, 2017, for the election of two city councilmembers; appointing election judges; adopting an electronic counting system; establishing a central counting station; appointing a central counting station manager; appointing a tabulation supervisor; appointing the central counting station presiding judge; and authorizing the early processing of ballots.

3B. Resolución No. 01-2017 que decreta que las elecciones generales se lleven a cabo el 6 de mayo del 2017 para elegir dos concejales municipales; nombrar a los jueces electorales; adoptar un sistema electrónico de conteo de votos; establecer una estación central de conteo; nombrar a un administrador(a) de la estación central de conteo; nombrar a un supervisor(a) de tabulación; designar al juez presidente de la estación central de conteo; y autorizar el procesamiento temprano de los votos electorales.

3C. Response to Texas Department of Transportation letter regarding surplus property on the northwest corner of State Highway 16 and G Street South declining offer to acquire.

**END OF CONSENT AGENDA**

**4. ORDINANCES, SECOND AND FINAL READING:**

4A. Ordinance No. 2017-01 amending the City's "Zoning Code" by changing the zoning district for an approximate 0.4832 acre tract of land located adjacent to Clay Street, between its intersections with Schreiner Street and Barnett Street, and otherwise known as 601 Clay Street; by removing the property from the 11-C Central City Zoning District and placing it within the Central Business Zoning District (CBD); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); ordering publication; and providing other matters relating to the subject. Mayor White read the ordinance by title only.

Mr. Fine filed a conflict of interest affidavit and recused himself from the meeting at 6:12 p.m.

Mr. Robertson noted public hearings were held on December 1 by the planning and zoning commission (PZC) and approved 5-0, and by city council on December 13 and approved 5-0. Staff recommended approval; there were no changes since first reading.

Mr. Andrew moved for approval of Ordinance No. 2017-01; Ms. Summerlin seconded the motion and it passed 3-0-1 with Councilmembers Summerlin, Andrew, and White voting in favor of the motion; no one voted against the motion; and Mr. Fine abstained due to conflict.

Mr. Fine returned to the meeting at 6:14 p.m.

4B. Ordinance No. 2017-02 amending the Comprehensive Plan for the City of Kerrville, Texas, pursuant to Chapter 213 of the Texas Local Government Code, by revising the future land use plan for an approximate 3.07 acre tract of land located adjacent to Singing Wind Drive North and between its intersections with Meadowview Lane and Loop 534 (Veterans Highway); and changing the future land use of this area from low-density residential to high-density residential.  
Mayor White read the ordinance by title only.

Mr. Robertson noted public hearings were held by PZC on December 1 and approved 5-0, and by city council on December 13 and approved 5-0. Staff recommended approval; there were no changes since first reading.

Mr. Andrew moved for approval of Ordinance No. 2017-02; Mr. Fine seconded the motion and it passed 4-0.

4C. Ordinance 2017-03, amending the city's "Zoning Code" by changing the zoning district for tracts of land consisting of an approximate 3.07 acres and located adjacent to Singing Wind Drive North and between its intersections with Meadowview Lane and Loop 534 (Veterans Highway), and otherwise known as the 2500 block of Singing Wind Drive North; by removing the property from the residential cluster zoning district (RC) and placing it within the 28-E zoning district; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); ordering publication; and providing other matters relating to the subject.  
Mayor White read the ordinance by title only.

Mr. Robertson noted there were no changes since first reading, and staff recommended approval.

Mr. Fine moved for approval of Ordinance No. 2017-03; Ms. Summerlin seconded the motion and it passed 4-0.

4D. Ordinance No. 2017-04, abandoning and vacating all right, title, and interest in a public right-of-way, consisting of an unimproved portion of Meeker Street, as located between and intersecting with both Locust Street and Singing Wind Drive; being an approximate 0.19 of one acre tract of land out of the Samuel Wallace Survey No. 113, Abstract No. 347, and the Sendero Ridge Subdivision Unit 1A, a subdivision within the City of Kerrville, Kerr County, Texas, according to the plat thereof recorded in Volume 7, Page 99 of the plat records of Kerr

County; finding that said portion is not required for future use as a public street; reserving a public utility easement; making the effective date subject to certain conditions; and ordering recording. Mayor White read the ordinance by title only.

Mr. Robertson noted public hearings were held by PZC on December 1 and approved 5-0, and by city council on December 13 and approved 5-0. Staff recommended approval; there were no changes since first reading.

Mr. Fine moved for approval of Ordinance No. 2017-04; Mr. Andrew seconded the motion and it passed 4-0.

**5. PUBLIC HEARING AND RESOLUTION:**

5A. Resolution No. 02-2017 granting a conditional use permit (CUP) for an approximate .2181 acre tract of land located west of and adjacent to Broadway (State Highway 27); being Lot 1, Block 18 of the JA Tivy Addition, a subdivision within the City of Kerrville, Kerr County, Texas, and otherwise known as 1217 Broadway; said tract located within the 17-C zoning district; by permitting said property to be used for business services II purposes (Refrigeration/Air Conditioning Service and Repair) as that term is defined within the City's Zoning Code; and making said permit subject to certain conditions and restrictions.

Mr. Robertson noted the current land use designation was mixed use; the applicant was not requesting to amend the base zoning district; the request was for a CUP for refrigeration/air conditioning service and repair to be located within an existing structure. The use would have little or no impact on adjacent properties and many of the surrounding property uses were non-conforming. Any additional use in the future above what was proposed would have to come back to council for consideration. He recommended approval of the CUP.

Mayor White declared the public hearing open at 6:21 p.m.; no one spoke and Mayor White closed the public hearing at 6:22 p.m.

Mr. Andrew moved for approval of Resolution No. 02-2017 approving the conditional use permit; Mr. Fine seconded the motion and it passed 4-0.

**6. PUBLIC HEARING AND ORDINANCE FIRST READING:**

6A. Ordinance No. 2017-05 abandoning and vacating all right, title, and interest in a portion of a public right-of-way, consisting of an unimproved portion of "H" Street, as located west of and intersecting with Water Street; being an approximate 0.396 of one acre tract of land out of the Thomas Hand Survey No. 115, Abstract No. 193, as shown on the plat of J.A. Tivy's First Addition, a plat recorded in Volume "P", Page 16 of the Real Property Records of Kerr County, Texas, and within the City of Kerrville, Texas; finding that said portion is not required for future use as a public street; making the effective date subject to certain conditions; and ordering recording. Mayor White read the ordinance by title only.

Mr. Hayes noted that a public hearing was not a legal requirement for the abandonment; however, staff chose to publish a notice and set a public hearing.

Mr. Hoppe noted the request was to abandon and vacate a right of way easement that was originally indicated on an 1890's plat; H Street was never constructed. Title research was conducted and there was no definitive ownership. Staff recommended replacing the right of way easement with several utility easements for public infrastructure located in the right of way. The well site would be dedicated on the replat of the property, and the city would continue to have access to the well from Water Street and the area south of the site. He confirmed that the city would retain the sanitary easement and drainage easement.

Mayor White declared the public hearing open at 6:28 p.m., and the following person spoke:

1. Jerry Wolff noted the property to the left and right of the city property had been cleared, and he questioned why the city's land was being cleared prior to a change of ownership?

Mr. Hoppe noted the city did not own the property that was being cleared; the property owner was clearing his own property.

Mr. Hayes noted that all the city had was the right to put a right of way through the property. The ownership of the property was not being changed.

No one else spoke and Mayor White closed the public hearing at 6:32 p.m.

Ms. Summerlin moved for approval of Ordinance No. 2017-05 on first reading; Mr. Andrew seconded the motion and it passed 4-0.

## **7. ORDINANCE, FIRST READING:**

- 7A. Ordinance No. 2017-06 amending the budget for Fiscal Year 2017 to account for various changes to the city's operational budget, including additional revenues and allocations for capital improvement projects. Mayor White read the ordinance by title only.

Ms. Yarbrough noted three transactions were included in the budget amendment that would modify the existing FY17 budget to validate decisions made a year ago and accept and allocate a recent donation:

1. Purchase of 185,000 cubic feet of earthen fill material for the reuse pond, purchase to come from a general fixed asset property (landfill area) for a proprietary fund project (reuse water and pump station project). The amount of earthen fill materiel was based on Freese and Nichols' (FN) final design along with projected costs based on quotes from local contractors and suppliers, i.e. \$11 per cubic yard, \$2,035,000. This amendment would set up the transfer from the project fund to the general fund to pay for the purchase of the dirt.

2. Funds received by the general fund for purchase of earthen fill material for the reuse pond and pump station project was to be transferred to the general capital projects fund for future capital projects, including an indoor athletic facility.
3. A donation received from an estate to the library and allocated part of those funds for an electronic message sign at the library.

The following persons spoke:

1. George Baroody acknowledged documentation supporting the legality of transferring funds from one asset to another within the budget; however, he opined that these transactions represented a double payment for the same dirt, and this item was to pay for the indoor baseball facility at the athletic complex and was stealing \$2 million from the water/sewer (w/s) fund. He asked if the dirt being excavated on the pond site was being excavated for the berm?

Mr. Hoppe noted there were two separate land areas being excavated to accumulate the 185,000 cubic yards needed, and both areas were general fund assets. Auditors had confirmed this method was accepted accounting practice.

2. Peggy McKay stated she remembered auditors letters she had seen in the past had signatures of a person; the signatures in this issue had no one's signature, just BKD. Staff advised this was standard practice.
3. Fred Speck said it was ridiculous to charge taxpayers \$2 million for dirt the city already owned. He opined that the city could only borrow \$10 million for the project; but needed \$2 million to build a building, and if the city borrowed \$12 million it would have had to be voted on by the citizens, so the city had to keep it under \$10 million. He accused staff of running a \$2 million Ponzi scheme, sham, and kiting. Regarding certificates of obligation, House Bill 1378 stated this type of thing was not a good idea.

Council also discussed the following:

- Mayor White stated this was a clever scheme and she did not understand how the city could award a bid to MGC that included furnishing dirt for the pond berm, and fund a separate line item to purchase dirt for \$2 million. She opined that the city was purchasing the same dirt twice. She noted in a letter from Tom Spurgeon, city's bond counsel, he advised that the proceeds from the \$10 million certificates of obligation could not be used to purchase the dirt from the general government and that he had an issue with using the cash on hand to make the purchase. She questioned why Mr. Spurgeon was not in attendance. She asked why the city could not use proceeds from the \$10 million CO to purchase the fill dirt. Mayor White noted that the city was ultimately responsible for the information provided in the \$10 million bond ordinance. She questioned the origin of the \$4.2 million.

Ms. Yarbrough noted the FY2015 budget transferred \$2 million from cash; the FY 2016 budget transferred \$2,241,862 cash for the reuse project.

- Mayor White noted previous statements were made that the general fund owned the dirt, the w/s fund did not own the dirt, and one fund could not subsidize another fund because people who paid ad valorem taxes but were not on city w/s would be disenfranchised.

Council noted there were quite a few properties in city limits that did not have city water and sewer.

Mr. Burow stated the general fund owned all of the city land in that area. The city proposed to provide the soil it owned to the water/sewer fund at a discounted rate.

- Mayor White questioned if the general fund owned all of the property and the city had to purchase that dirt from the general fund, would the w/s fund have to purchase the land for the distribution lines and the pump station on the 115 acres?

Mr. Hoppe noted the city general fund purchased 209 acres where the soccer field and landfill were located. The portion where the pond was proposed was in the tract by Spur 100. The WWTP was located on general fund land and did not purchase that land from the general fund; however the WWTP did not utilize the assets, i.e. dirt, from that area for facility construction. This was not a purchase of land, it was a transfer of assets, the assets would be in the reuse water berm and could no longer be used by the general fund or sold to another entity.

- Mayor White questioned if the city had to go out for bids to purchase the dirt if the city was selling the dirt to itself?

Mr. Burow noted Freese and Nichols (FN) contacted soil suppliers in the area who could supply the quantity of soil needed, 185,000 cubic yards, which met the specifications. The standard retail market price was up to \$40 per yard. The general fund proposed to provide the dirt wholesale for \$11 per cubic yard to the utility fund. FN did a soils study and determined that the material had adequate supply of clay and soil. The contracts for the reuse project detailed what each contractor was responsible for. The plans included a designated borrow area for the clay and soil because it was available and the city would not incur additional cost associated with transporting the material and paying higher retail costs. MGC's contract included furnish and install line item, which was a procedure that included excavation, compaction, embankment, everything necessary to get the dirt out of the ground, transferred to the site, and compacted into the pond dam. The numbers varied during the estimate process because of unknowns.

- Mayor White stated the city was purchasing dirt for \$2,035,000 and transferring it into general capital project and then dedicating the funds to the indoor baseball facility.

Mayor White suggested Mr. Baroody meet with city staff and maybe MGC to go over the bid.

Ms. Summerlin noted staff had thoroughly researched the whole project and knew what they were doing, and the auditors knew what they were doing. All the ordinance was about was moving taxpayer owned assets from one line item to another; nothing was being lost.

Ms. Summerlin moved for approval of Ordinance No. 2017-06; Mr. Andrew seconded the motion and it passed 3-1 with Councilmembers Summerlin, Andrew, and Fine voting in favor of the motion and Mayor White voting against the motion.

## **8. CONSIDERATION AND POSSIBLE ACTION:**

8A. Interlocal agreement between Kerr County, Upper Guadalupe River Authority (UGRA), and the City of Kerrville for submitting an application for a Hazard Mitigation Action Flood Warning System Grant.

Mayor White noted the city previously voted to fund \$10,000 for Phase I, of a \$50,000 engineering study for a flood warning system grant; the County participated at 40%, UGRA 40%, and City 20%. Meetings were held and 69 locations were identified in the county and 22 locations identified in the city as potential flood locations.

Kerr County Commissioner Tom Moser noted the engineering study was conducted by John Hewitt. The scope of work for the total project was not to exceed \$980,000. The 75/25 matching grant would be through FEMA and Texas Department of Emergency Management; the application had to be submitted by January 20. The proposed agreement to fund the 25% match was between three parties: County, UGRA, and City. The commissioners' court took action on January 9: 1) Approved letter agreement with GrantWorks to administrate and prepare the grant; 2) Designated John Hewitt as the consulting engineer; 3) Reviewed cost; and 4) Approved the interlocal agreement contingent upon approval by the attorneys for all parties. UGRA voted unanimously to approve the agreement at up to 40% participation or equal to the county but not to exceed 50%. The county would provide the project engineer and run the system. The purpose of the interlocal agreement was only to submit the application, it was not to implement the project. The question was, did the city want to participate and to what extent.

Council also discussed the following:

- The city's cost would be approximately \$50,000.
- City residents also pay county and UGRA ad valorem taxes. The city was already participating through county and UGRA taxes.
- City had only ½ of one crossing designated as a high water monitoring site and only one gauge.
- Flood warning system was a county-wide project. When city council approved a motion to fund the engineering study it was clear that the city was not committing to fund the project.
- If the city was not a financial participant, would the city be part of the agreement? Mr. Moser said the city probably would not be a party to the agreement.

- Was there benefit of having the city named in the grant? Mr. Moser stated no.

Mr. Andrew moved that the city not participate in the in flood warning system; Mr. Fine seconded the motion and it passed 4-0.

8B. Response to the letter from Kerr County concerning the floodplain around Third Creek.

Mayor White noted the November 15 letter received from Kerr County Commissioners' Court (KCCC) requested the City of Kerrville not submit a CLOMR concerning the 100 year floodplain in the area of Third Creek until KCCC had the opportunity to survey and verify the accuracy of the elevation in the area of the Hill Country Youth Exhibition Center (HCYEC) estimated to be 60 days.

Commissioner Letz noted the current FEMA map showed that the county's areas of concern in Third Creek were not currently in the floodplain. The Freese and Nichols (FN) study contracted by the city as part of the reuse pond project showed that some county property would be located in the 100 year floodplain, including part of the new HCYEC building. The FN study was incorrect with regard to county and VA property, in particular, the elevations were not accurate around the HCYEC, and information was based on older 2016 LIDAR data. He stated that all of the buildings on the county property were out of the 100 year floodplain when they were built; the only building that may be in the 100 year floodplain was the concession stand. He stated the County was not trying to stop the City's project, and the reuse concept made a lot of sense.

Mr. Letz requested a joint meeting be held with city and county officials and engineers to discuss KCCC concerns, and noted KCCC sent a letter to the City requesting the city cease work on the pond until survey work was completed by the county and information provided:

1. Show base flood elevations and location of floodway.
2. LNV and FN studies had significantly different results.
3. FN needed to calibrate the model.
4. List and quantify the impact to adjacent property.
5. Requested computer models for both the LNV 2016 landfill CLOMR and the FN 2016 CLOMR.

Mr. Letz noted differences between the FN model and the LNV engineering study using the same drainage area on Second and Third creeks. He opined that the assumptions in the FN study were not accurate, noting in 2002 Kerrville had a major flood event, with Town Creek and Third Creek termed as a 500 year flood event, and Quinlan Creek as great as a 1,000 year flood event. This evidence should be put into the FN and LNV models. If the assumptions in the model were changed, it would change the floodplain. He requested FN and LNV calibrate their models based on actual information and see how accurate the models were and determine where the floodplain should be; further, to have meetings with the county so they can better understand the models. He opined that the FN model was not accurate, and the county did not understand why the city did not want to calibrate

the model. He noted when the city submits the CLOMR, the county would have to conduct a new hydrological study to prove the city's study was wrong.

Mayor White stated that according to the FN study, the current FEMA map of Third Creek was not correct, and it was critical that the study have accurate information pre-project. She questioned why historical data was not used. She was also told by city staff that the county would not be given copies of the actual model; they would only be given data and information, but not the model.

Mr. Davis noted the city did not own the model; FN owned the model. FN used the FEMA approved criteria for developing the model and FN ran the model several times and stamped those results. FN assured the city that the pond will not have any negative impact on the floodplain.

Mr. Hoppe noted the FEMA requirement for floodplain development was to use the best information available and the 2009 LIDAR was the best available data at the time of the study. The floodplain in the area of the county's concern in Third Creek was considered by FEMA as an unstudied area.

Council also noted the following:

- The city had the FN study prepared in order to meet the requirements of FEMA. The CLOMR has to prove to FEMA that the city's project was not changing the floodplain, and the conclusion was that the reuse pond will not affect the floodplain.
- The city had not yet submitted the CLOMR, at the county's request.

The following persons spoke:

1. Jerry Wolff stated that pre-project maps prepared by FN in June 2014 placed the HCYEC, and the soccer fields and flying fields at the city landfill in the floodplain; he opined that was illogical. Also, the Texas Professional Engineering Magazine listed engineers whose stamps had been revoked. He stated that models were owned by the Corps of Engineers and were available free. The FN model data was property of the city, and the county wanted the data that went into the model. He questioned what it was that FN was not willing to provide, the data, model, or software.

Mr. Hoppe stated FN created the software program for the hydrologic and hydraulic model that the data went into. He also noted that the city already provided the data and elevations to the county.

2. Vincent Voelkel asked if someone provided historical flood elevations on Third Creek, would the city use that information?

Mayor White asked if it would be possible for the city to enter historical data into the FNI model?

Mr. Burow noted there was a strict set of instructions that had to be followed; Information/documentation/photographs, etc. were not considered historical data. In order to be considered, water from the entire watershed area must have gone through a USGS gauge, and there was not a USGS station in the area. The only information available was the 2009 LIDAR. He also noted that the same data requested and provided to the county was also provided to Mr. Wolff through an open records request; all 500 pages; however, the city did not have the software model, which belonged to FN.

Mayor White moved that city staff and representatives of Freese and Nichols meet with county commissioners and their appointees to discuss their concerns about the pond. Mr. Fine seconded the motion and it passed 4-0. Further, information should be brought back to city council.

**9. INFORMATION AND DISCUSSION:**

9A. Budget and economic update for period ending November 30, 2016.

Ms. Yarbrough gave the financial report year to date for the period ending November 30, 2016: general fund revenues totaled \$3,230,531 and expenditures \$3,811,005; water and sewer fund revenues totaled \$2,040,289 and expenditures \$1,826,464; hotel/motel fund revenues totaled \$212,805 and expenditures \$246,450; 10 permits were issued for new residential construction and commercial new/remodel construction totaled \$3,023,000. She provided budget information for six major capital projects.

**10. APPOINTMENTS TO BOARDS AND COMMISSIONS:**

10A. Recovery Community Coalition. Mr. Andrew moved to appoint the following: Richard Stolzman, Dale Trees, Ross Robinson, Claudia Richner, Steve Paultner, Shawn Driggers, Walter Brown, Kory Kohler, Laura Godwin, Blair Geisler, Pam Peter, Julie Wood, Stephen Fine, and Glenn Andrew. Mr. Fine seconded the motion and it passed 4-0.

Mr. Andrew noted one position remained vacant, owner of a men's sobriety home, and that would be filled at a future meeting. He recommended the police department and school district also be invited to participate in meetings.

**11. ITEMS FOR FUTURE AGENDAS:**

- Arrange a workshop this month to review meeting procedures with the goal of making meetings more efficient; possibly include a consultant from TML.

**12. ANNOUNCEMENTS OF COMMUNITY INTEREST:** were given.

**13. EXECUTIVE SESSION:** None.

**14. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION:** None.

**ADJOURNMENT.** The meeting adjourned at 8:26 p.m.

APPROVED: 01/10/2017

ATTEST:

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Bonnie White, Mayor

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Brenda Craig City Secretary