

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
APRIL 22, 2014

On April 22, 2014, the Kerrville City Council meeting was called to order at 6:00 p.m. by Mayor Pratt in the City Hall Council Chambers at 701 Main Street. The invocation was offered by Reverend Stockton Williams, Rector with St. Peter's Episcopal Church, followed by the Pledge of Allegiance led by Fabiola Mendoza, Captain of the Tivy Air Force Junior Reserve Officer Training Corps.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Carson Conklin	Mayor Pro Tem
Gene Allen	Councilmember
Stacie Keeble	Councilmember
Justin MacDonald	Councilmember

COUNCILMEMBER ABSENT: None

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Deputy City Manager
Brenda G. Craig	City Secretary
Sandra Yarbrough	Director of Finance
Ashlea Boyle	Special Projects Manager
Jason Lutz	City Planner
Robert Ojeda	Fire Chief
John Young	Police Chief
Stuart Barron	Public Works Director
Trina Sanchez	Code Enforcement Manager

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

1. **VISITORS/CITIZENS FORUM:** No one spoke.

2. **RECOGNITIONS AND PRESENTATIONS:**

2A. Presentation and Recognitions of the Neighborhood Improvement Program. Ms. Sanchez reported that March 29 about 200 volunteers, organized by Partners In Ministry and including 150 Schreiner University students, worked to help property owners in the Legion Hills area clean their property, and cleaned trash along Holdsworth Drive. The street department picked up 19.62 tons of brush, 51.05 tons of trash, 1.05 ton of scrap metal and electronics, and about 300 tires.

2B. Resolution of Commendation to Susan Sander for service on the Parks and Recreation Advisory Board.

2C. Proclamation designating May as National Preservation month was received by Scott Bolton, representing the Main Street Advisory Board.

3. CONSENT AGENDA:

Mr. Conklin moved to approve consent agenda items 3A through 3E; Mr. MacDonald seconded the motion, and it passed 5-0:

3A. Minutes of the city council regular meeting held March 25, 2014 and the special meeting held 5:30 p.m. on April 8, 2014.

3B. Contract with Zimmerman Construction Co., Inc. for the construction of the river trail project from Louise Hays Park to G Street in the amount of \$724,419.18 and authorize the city manager to execute additional change orders as necessary in an amount not to exceed the total contract amount of \$760,650.00.

3C. License agreement with Kerrville Kayak and Canoe, for operation of boat, tube and raft concession.

3D. Purchase of a New Holland tractor and Alamo Industrial boom mower through BuyBoard in the amount of \$125,664.00.

3E. Resolution No. 10-2014 amending Resolution No. 01-2014 that ordered the holding of a general election to be held on May 10, 2014, by changing the presiding judge of the central counting station.

3E. UNA RESOLUCIÓN 10-2014 QUE ENMIENDA LA RESOLUCIÓN NO. 01-2014 QUE ORDENÓ LA CELEBRACIÓN DE ELECCIONES GENERALES A COMO LLEVARSE A CABO EL 10 DE MAYO DEL 2014 PARA CAMBIAR AL JUEZ PRESIDENTE DE LA ESTACIÓN CENTRAL DE CONTEO.

END OF CONSENT AGENDA

4. ORDINANCES, SECOND AND FINAL READING:

4A. Ordinance No. 2014-07 amending Chapter 18 "Animals" of the City's Code of Ordinances by deleting Section 18-2 "Bird Sanctuary" and amending Section 18-79 "Domestic Pigeons"; containing a savings and severability clause; providing an effective date; and providing other matters relating to the subject. Mayor Pratt read the ordinance by title only.

Mr. Hayes noted the ordinance would remove the bird sanctuary provision and change another section regarding protection of pigeons. There had been no change since first reading on April 8.

Mr. MacDonald moved for approval of Ordinance No. 2014-07 on second and final reading; Mr. Conklin seconded the motion and it passed 5-0.

4B. Ordinance No. 2014-08, amending the zoning district boundaries of the western portion of Lot 17, Block 1, Oak Hill Addition subdivision, otherwise known as 512 Barnett Street and located within the City of Kerrville, Kerr County, Texas, from the "R1-A" residential district to "RT" residential transition district; containing a cumulative clause; containing a savings and severability clause; and ordering publication. Mayor Pratt read the ordinance by title only.

Mr. Lutz noted the public hearing was held by council on April 8; there was no change since first reading.

Mr. Allen moved for approval of Ordinance No. 2014-08 on second and final reading; Mr. MacDonald seconded the motion and it passed 5-0.

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Use of 380 agreements with tax deferrals in connection with the Kerrville Gateway Retail Center.

Councilmember Conklin stated that the city attorney advised him that he did not have a conflict of interest under state law regarding the discussion of creating a 380 agreement for the Gateway Center. The action he proposed was to direct staff to create a 380 agreement for city council to consider at a later date; since there was not an agreement to be considered now, and he would not benefit financially from his opinions and presentation, there was not a conflict of interest. He worked for JM Lowe Company, and they did not have a contract with the developer; he did put together cost estimates and understood the financials and dynamics of the project, and he wanted to bring that information to the council and make citizens aware of the project. If a 380 agreement moved forward, or his company received a contract in the future, he would recuse himself and would not participate in the council's vote.

Mr. Hayes opined that there was not a conflict of interest for Mr. Conklin for the reasons stated.

Ms. Keeble opined that Mr. Conklin's discussion about a 380 agreement was a conflict of interest because he worked for a company that might financially benefit from the Gateway development in the future. The council stressed several times in the past year the importance of not having even the appearance of a conflict.

Mr. Conklin responded to questions asked by Mayor Pratt as received from citizens:

-Have you received any compensation in relation to the project? No.

-Do you know anyone who received compensation, direct or indirect, from Gateway or Mr. Walker in relation to this project, and are you or anyone in your firm representing Mr. Walker or Gateway at this point? No.

-If you are not representing Gateway or Mr. Walker, are you presenting this from an official point of view? He was presenting information he knew as a result of being involved in the project. Mr. Walker hired Briscoe Hall and Attorney David Jackson to represent them and they were in attendance.

Mr. Conklin described a 380 agreement as a contract that would mutually benefit a developer and the city by using tax deferrals to reimburse the developer for items e.g. capital infrastructure. As a development generated ad valorem or other tax revenues, e.g., sales tax and hotel occupancy tax (HOT) if the project has a hotel, a portion of the taxes was returned to the developer to help fund the project. A 380 did not take tax dollars from city coffers, it was a self-funding tax that used revenue created by a development to pay for a project; a developer was reimbursed only after the full development was completed and constructed. The risk was to the developer if the project did not generate revenues as projected. A 380 instrument is the developer generating money that is returned to him by something he created, and the city, county, EIC, and HOT realize the full taxable value of the project when it is paid back; in the meantime, entities realize all of the direct and indirect impact from the construction of the development and the benefit of retail sales.

Mr. Conklin stated that the Gateway developer had binding letters of intent with multiple tenants, and in order to meet those agreements, they must break ground for the development by August 1; therefore, there was not sufficient time to work a 380 agreement through the KEDC process and then bring that to city council for consideration. All that was needed to create a 380 was to direct staff to create the document, similar to what the city did in the past for two other projects.

Mr. Conklin reviewed the study by Impact Data Sources of Austin, which projected the project would: create 575 jobs; \$26 million in capital investment; would generate \$860 million direct and indirect revenue; generate \$16 million per year in direct revenue and economic impact. When the concept was presented to KEDC the developer requested \$7 million in 4B funds from EIC over a 10 year period. The return on investment was 17% and would pay off in 6.6 years. Kerrville had a retail leakage problem to San Antonio and Gateway was a prime location for retail economic development, and it would broaden the city's tax base. A 380 agreement was the right funding source to incentivize retail development.

Jonas Titas, executive director of the Kerrville Economic Development Corporation (KEDC), answered questions by council:

-Why do some cities incentivize projects and others do not? The dynamics of every city is different and cities responded according to their circumstances.

-Did KEDC consider a 380 for Gateway? A 4B (Economic Improvement Corporation) application was received and KEDC discussed the merits of that application; there were no alternatives presented so KEDC did not consider any other options. KEDC would meet on May 1 and may discuss it at that meeting.

-How did this project meet the strategic planning goal of providing skilled jobs? The KEDC board was going through a strategic planning process with focus on skilled jobs, not on retail sales. The goal should be to maximize the return on the public's investment; should consider things such as the multiplier effect of primary jobs and the ripple effect on the local economy. KEDC drafted a 380 policy that was currently being evaluated by the city. Chapter 380 of Texas Local Government Code empowered municipalities to enter into various types of agreements; such can be used to recapture a portion of sales tax or property tax abatement on the enhanced value of a property.

-The city did not have a formal agreement from the developer to consider; was it normal procedure for a city to initiate a request or should the request come from the developer? Mr. Titas noted that no formal policy or application process was currently in place for 380 agreements. Mr. Conklin stated the direction he was seeking was to enter into conversation with the developer to establish criteria for a 380; a 380 policy was currently being drafted and that policy should continue to be considered and adopted by council later.

-Why would a city incentivize one project and not another? Mr. Titas noted that cities weighed their options; the dynamics of every city was different and cities responded according to their circumstances. He noted that KEDC received a 4B application for this project and they discussed the project based on the merits of

that application; there were no alternatives presented so KEDC did not consider any other options.

-What was Kerrville's retail leakage rate to San Antonio, and what was the tax base of residential versus commercial? Mr. Titas noted KEDC lacked resources at this time to perform a formal study. Mr. Parton noted that the city tax base was 30% commercial/70% residential; the ideal benchmark was 50/50.

Mr. Conklin responded to questions from council:

-The city had established economic development policies and processes that had been developed and approved by KEDC and approved by EIC and city council; was this project presented to KEDC? Yes, but only under the concept of 4B funding.

-Does a 380 agreement have to go before KEDC as part of the economic development process? Not necessarily; a 380 could be structured in other ways.

-Was a 380 approved by KEDC? A 380 was not considered by KEDC because Gateway only proposed 4B funding through EIC.

-The city had a process in place and since a 380 agreement had not been considered and approved by KEDC and/or EIC first, would the city be usurping its own policy? No, because a 380 agreement would ultimately come before the city council. To place a 380 agreement back on the KEDC agenda, and then bring it to council for action, would take more time, and the developer would not be able to meet his deadline.

-The original economic impact report and economic summary was dated February 28, 2014; why was city council now forced into a time crunch to make a decision on a matter that required a lot of consideration and review by other entities first, e.g. KEDC and EIC, as well as city council? KEDC had been involved since the 4B request was placed on their agenda; a 380 agreement had not been considered.

Council's review of the economic impact study and summary raised questions:

-The direct impact would be \$9.36/hr. \$19,468 year average for jobs; indirect impact was \$6.59 per hour \$13,707 per year; did that meet the specified target for creating skilled jobs?

-Base on the figures provided, there would be a net loss to the citizens of Kerrville of about \$1.3 million.

-The figures included HOT revenues, assuming the project had a hotel and HOT could be assessed HOT went to the convention and visitors bureau, not the city.

-The net increase of 73 citizens over 10 years was an increase of only 7 persons per year. Mr. Conklin noted this was based on the city's projected growth rate of 2% per year.

-Sales tax figures did not take into consideration the current sales tax generated that would be duplicated in the new center; what would be the net effect of new sales created over existing sales currently being generated? Mr. Conklin stated that retail begets more retail; bringing in more retail would bring in more people from a larger area and create more opportunities for retail sales; does not re-tread the same retail sales.

-It had been stated that the project needed \$7 million or it would not proceed, and the return on investment was estimated at 17%; the project totaled \$26 million, so the developer wanted the city to put in \$7 million, or 35% of the project. If the return was 17%, why did the developer need city money? Mr. Conklin reviewed the developer's expenses: \$1 million for realignment of the exit ramp at SH16 to align with the entrance into the project as required by TxDOT; expensive property to develop due to physical aspects of the property, that is, it was trapped between a ridge, interstate, state highway, and creek; a bridge would be necessary to cross Quinlan Creek, estimated at \$1 million; \$1.6 million in utilities and storm drainage; \$300,000 to build retaining walls, and 300,000 cubic yards of dirt had to be moved.

Council also discussed the following points:

- The appropriateness of a councilmember presenting this item to city council; should be a representative of KEDC.
- Mr. Conklin was also chairman of KEDC.
- The city had a 380 agreement with Fox Tank; Mr. Titas noted it was capped at \$150,000.
- Issue of skilled jobs; Kerrville was trying to build a base of skilled workers and places for them to work, such as the 380 agreement with Fox Tank.
- Gateway would not compete with downtown and existing business; downtown shops were more upscale and "boutiqish," and should be able to co-exist.
- Some things were just not available and competition would bring more variety to Kerrville.
- The proposed retail center was 200,000 sq. ft.; the existing mall was 180,000 sq. ft. and six retail spaces were vacant. The two centers were not comparable as the existing mall was an older building, had not been maintained to modern conditions, and the rent was above market for the product.
- The current priority list of projects for economic development did not include incentivizing retail.
- Issues about competition i.e. incentivizing one company that could result in closing existing businesses that were self-sufficient and did not receive tax funds.
- Would like to see another retail center, but on private funds and not tax dollars.

Mr. Parton noted several reasons why a city would incentivize a project, and based on the 4B funding application and the developer's economic impact study of the project, and the lack of an established 380 policy, he would not recommend the Gateway project for funding based on the information staff had at this time. He noted in order to receive the full benefit of a tax investment, criteria had to be developed and benchmarks set; for example, establish time lines for completion of construction, implement benchmarks and performance criteria, and require certain levels of occupancy. KEDC, EIC, and city staff were finalizing a 380 policy, which would establish criteria that would be essential in evaluating applications. A 380 could also provide loans and other mechanisms; such matters had not been discussed with the developer.

The following persons spoke:

1. David Vinyard stated he was a compensated representative of Gulf Coast

Commercial and a member of the development team as marketing and public relations. 380 agreements were standard practice across the state and can be initiated by either the city or the developer. Gulf Coast was a development that most cities competed for, and they were under consideration by retail tenants because of their reputation. He questioned tabling the item when all that was being asked was to create an instrument for the beginning of a discussion.

2. Heath Gregory had the feeling that city council was saying that 600 jobs at \$19,000 a year was not worth it; he knew a lot of people who wanted those jobs, and council should represent those citizens. Councilmembers knew it was on tonight's agenda and he felt they had sufficient time to review it.

Mr. Allen noted that more information and research was needed and less than one week was not enough time to make a decision on spending \$7 million of tax funds.

No motion was made and no action was taken.

5B. Adoption of Water Master Plan Update prepared by Freese and Nichols, Inc.
Ms. Ondrias noted the proposed integrated capital improvement plan was based on direction received during several council meetings and would guide the city in design, construction and financing of infrastructure facilities through 2032. Staff recommended approval of the plan.

Ms. Keeble moved to adopt the water master plan prepared by Freese and Nichols, Inc. as presented. Mr. Conklin seconded the motion and it passed 5-0.

6. INFORMATION AND DISCUSSION:

6A. Quarterly report by Playhouse 2000, Inc.

Jeffrey Brown, executive director of the Cailloux Theater, reported on activities January through March, noting 13 separate events, 25 nights, total attendance 9,643, ticket face value of \$172,765 not including sponsorships, and helped raise \$39,000 for Hill Country Youth Orchestra. The total available operating cash was \$86,284, which included donations and grants. Mr. Brown noted the Cailloux Theater was selected to be the beneficiary of the 2014 Hill Country Charity Ball, and he anticipated the proceeds from that event at \$45,000. He noted that all of the actors involved in performances were local volunteers, and paid staff was comprised of two full time and two part time employees. He reviewed upcoming events and three construction projects funded by the economic improvement corporation. Fund raising was underway for construction on a new support facility, and groundbreaking was anticipated in October 2014.

6B. Budget update.

Ms. Yarbrough reported current revenues and expenditures as compared to prior year to date totals for the period ending March 31, 2014. Permits for new residences were 28 as compared to 19 for the same period 2013.

7. ITEMS FOR FUTURE AGENDAS: None

8. ANNOUNCEMENTS OF COMMUNITY INTEREST:

- The Kerrville Public Utility Board tree giveaway was scheduled for April 26.
- The quarterly beautification day was April 26.
- Persons needing to dispose of prescription drugs were asked to bring them to the Kerrville Police Department on April 26.
- Early voting in the city election would be held: April 28 and 29, 7:00 a.m. to 7:00 p.m.; April 30, May 1, May 2, May 5, and May 6, 8:00 a.m. to 5:00 p.m.; and election day May 10, 7:00 a.m. to 7:00 p.m. all at the Cailloux Theater.

9. EXECUTIVE SESSION:

Mr. Conklin moved for the city council to go into executive closed session under Sections 551.071, 551.072 and 551.073 of the Texas Government Code; motion was seconded by Mr. MacDonald and passed 5-0 to discuss the following matters:

9A. Section 551.071:

- City of Kerrville, Texas, Plaintiff, v. C&C Groundwater Services, LLC; Old Republic Insurance Company; and CH2MHILL, Inc., Defendants, Cause No. 12276A, in the District Court of the 216th Judicial District, Kerr County, Texas.

9B. Sections 551.071, 551.072 and 551.073:

- Discuss the purchase, exchange, lease, sale, or value of real property; and a negotiated contract for a prospective gift or donation because deliberation in an open meeting would have detrimental effect on the position of the city in negotiations with a third person, related to the development of municipal facilities.

At 7:39 p.m. the regular meeting recessed and council went into executive closed session at 7:47 p.m. At 8:21 p.m. the executive closed session recessed and council returned to open session at 8:22 p.m. The mayor announced that no action had been taken in executive session.

10. ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION:

9A. Section 551.071: City of Kerrville, Texas, Plaintiff, v. C&C Groundwater Services, LLC; Old Republic Insurance Company; and CH2MHILL, Inc., Defendants, Cause No. 12276A, in the District Court of the 216th Judicial District, Kerr County, Texas.

Mr. MacDonald moved to authorize the city manager to sign any documents required in the matter: City of Kerrville, Texas, Plaintiff, v. C&C Groundwater Services, LLC; Old Republic Insurance Company; and CH2MHILL, Inc., Defendants, Cause No. 12276A, in the District Court of the 216th Judicial District, Kerr County, Texas. Mr. Allen seconded the motion and it passed 5-0.

ADJOURNMENT. The meeting adjourned at 8:23 p.m.

APPROVED: May 13, 2014

/s/

Jack Pratt, Jr., Mayor

ATTEST:

/s/

Brenda G. Craig, City Secretary