

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
June 9, 2015

On June 9, 2015, 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 Kristin Mudry, Kerr County Greet Us, followed by the Pledge of Allegiance led by Doyle Malone.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Gary F. Stork	Mayor Pro Tem
Stephen P. Fine	Councilmember
Bonnie White	Councilmember
Gene Allen	Councilmember

COUNCILMEMBER ABSENT: None

CITY CORE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Day	Deputy City Manager
Brenda G. Craig	City Secretary
Sandra Yarbrough	Director of Finance
Ashlea Boyle	Special Projects Manager
David Knight	Police Chief
Trent Robertson	City Planner
Tony Lenard	Fire Division Chief
Malcolm Matthews	Director of Parks and Recreation

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

1. **VISITORS/CITIZENS FORUM:** No one spoke.
2. **PRESENTATIONS:**
  - 2A. Proclamation proclaiming June 15-21, 2015 as Men's Health Week.
3. **CONSENT AGENDA:**

Ms. White requested Item 3B be removed from the consent agenda.

Mr. Stork moved to approve consent agenda item 3A; Mr. Fine seconded the motion, and it passed 5-0:

3A. Minutes of the regular city council meeting held May 26, 2015.

**END OF CONSENT AGENDA**

3B. License agreement for special event, Kerrville's 4<sup>th</sup> on the River.

Ms. Boyle noted the city had been contracting with Kerrville's 4<sup>th</sup> on the River since 2011 and proposed a multi-year agreement for 2015-2017. There was no cash requirement of the city; however, the city would provide staff support.

Ms. White noted that several months ago, the EIC voted to fund the event. She also asked if the certificate of insurance named the city as additionally insured.

Mr. Boyle agreed that EIC did vote to fund the event several months ago; however, the agreement before council tonight is an agreement between the City of Kerrville and Kerrville's 4<sup>th</sup> on the River for them to perform the event. She confirmed that the certificate of insurance named the city as additionally insured.

Ms. White moved to approve the license agreement with Kerrville's 4<sup>th</sup> on the River; Mr. Fine seconded the motion and it passed 5-0.

**4. ORDINANCE, FIRST AND ONLY READING:**

4A. Ordinance No. 2015-06, authorizing the issuance, sale and delivery of up to \$9,000,000.00 in aggregate principal amount of "City of Kerrville, Texas Combination Tax and Revenue Certificates of Obligation, Series 2015"; securing the payment thereof by authorizing the levy of an annual ad valorem tax and a pledge of certain surplus revenues of the city's waterworks and sewer system; and approving and authorizing the execution of a paying agent/registrar agreement, an official statement and all other instruments and procedures related thereto. Mayor Pratt read the ordinance by title only.

Mayor Pratt stated the purpose of the bond issue was to raise funds for a parks-related project and it was not tied to any specific project, location or contract. Such a project would also keep kids off the streets by providing sports and activities, and would better provide for public safety and health.

Mr. Allen suggested the council go into executive session for consultation with attorney prior to discussion and vote as he had several questions. The consensus was not to go into executive session at this time; however, council could do so later in the meeting if consultation with the attorney was needed.

Mr. Parton noted the purpose of the bond sale was to fund the city's portion of a parks improvement project, for example, athletics complex.

Ann Entekin, managing director, First Southwest Company reviewed Standard and Poor's report and key points that resulted in a "AA" rating for the city: very strong management conditions, strong budgetary performance, very strong budget flexibility, very strong liquidity, adequate debt and contingent liability profile, and strong institutional framework. Nine bidders responded ranging between 2.815996% to 2.968721%. The actual par amount was \$8,910,000 at 2.80%, but the city would still be able to make a deposit in the amount of \$9 million because of the premium bid; the total interest would be about \$3,161,000

over an eight year period (standard was 10 years); with a call date of 8-15-2023. Ms. Entrekin recommended the city approve the bid from Raymond James & Associates, Inc., as presented, at 2.815996%.

Tom Spurgeon, legal counsel with McCall, Parkhust & Horton, LLP, noted the ordinance authorized the issuance of \$8,910,000 certificates of obligation (CO) based on information received in the bid and as recommended by Ms. Entrekin. He explained that in order to meet legal requirements, the language of the title authorized a levy of tax revenue and pledge of revenue from the water/sewer system, if needed. CO issued on tax and revenue pledges was a common instrument and would yield the best interest rate. However, Mr. Spurgeon noted that the city had entered into a contract with the economic improvement corporation whereby EIC would provide funding to pay the debt, the city was not actually using tax or water/sewer revenue to pay the debt. Technically, the EIC pledge was not a legal pledge, thus the language in the ordinance pledged tax and water/sewer revenue.

Council questioned Mr. Spurgeon whether anything in the process caused him to question the legality of the ordinance or sale. Mr. Spurgeon replied no.

Ms. White noted the funds from the CO were tied to a contract that had been contemplated by a previous city council, and she had questions regarding that contract. She noted that staff had sent correspondence to the attorney general's office (AGO) to request an opinion as to the legality of the contract that was tied to the CO. Ms. White asked Mr. Spurgeon if the AG rendered an opinion negative to the city and the other party to the contract, would that affect the underwriters' opinion about the certificates. Mr. Spurgeon replied no; the notice stated that if for any reason money was not provided by EIC to pay the debt, the city had the legal obligation to levy a tax to fund the debt. The underwriters look at it as a tax pledge; however, the city had an agreement with EIC to use another funding source. Ms. White restated, if EIC did not pay the debt, the city would be obligated to find other sources to fund the obligation, and that could be a tax levy.

Mr. Entrekin noted that the language in the ordinance stated that the proceeds from the sale would be used to acquire, construct and equip an athletics complex which would be considered part of the parks and recreation department, and to pay for the cost of issuance and services related thereto. Should council approve the ordinance, Mr. Spurgeon would prepare the documents and submit them to the AGO for review. The bond proceeds would go into a project fund, and before any funds were spent, the city would have clarity about the project and how those funds could be spent. Ms. Entrekin and Mr. Spurgeon agreed that if the bonds were approved by the council tonight, such action would not bind the city until the proceeds were spent, and proceeds would not be spent until after approval by the AGO. Mr. Spurgeon further noted that the city would not receive any funds until after it had been approved by the AGO. The council's adoption of the ordinance would authorize closing of the CO; however, closing was contingent upon

receiving the AG's opinion and his firm's opinion and there was no legal obligation on the city until the opinions were received.

Ms. White questioned if the council voted to issue bonds and received money for building an athletics complex as stated in the public notification, and if that contract was found to be void in the AG opinion that had been requested by the city regarding the contract with the foundation, would the city have to start the process over? She noted the city had advertised to the public to borrow money for a specific project, i.e. athletics complex. The contract was passed by a previous council, and that council, nor the public, had the correct document in hand at the time it was adopted. Ms. White opined that the bond issue, according to the public notice, was tied to that prior contract.

The following statements were made by councilmembers:

- The item on this agenda was whether to approve the ordinance authorizing issuance of CO; the contract with the foundation and how the funds were to be spent were not items posted for discussion at this meeting.
- If the contract was found to be void, the city simply would not accept the funds.
- Interest and principal would be paid from EIC; no money from the general fund would be used to pay the debt unless EIC no longer existed.
- Pledging tax and water/sewer revenue as collateral assured lower interest rate.

Ms. White stated that according to council procedural rule 3.5 which would take priority over any other actions by council, and that this item was intimately tied to the contract that was now in question, and as it was public knowledge that the city manager and the city attorney had requested and received confirmation, and that this same contract was submitted to the AGO for an opinion as to the legality, and that the AG opinion may take up to 180 days, and the constraints tied to the funding of this project; and it had come to council's attention that there may be legal consequences to the city and the councilmembers past and present if council knowingly proceeded with approval, and should the contract be found to be invalid, under Rule 3.5 she moved to defer any action on the agenda item until the AG opinion could be rendered. The motion failed for lack of a second.

Mr. Stork moved for approval of Ordinance No. 2015-06 authorizing issuance of certificates of obligation in the amount up to \$9 million on first and only reading; Mr. Allen seconded the motion.

The following persons spoke:

1. Carolyn Lipscomb clarified that if for any reason EIC did not have adequate sales tax revenue to provide the 4B funds to pay the debt, then the city would be obligated to pay the debt through ad valorem tax? Mr. Parton noted the statement was correct; however, the amount of principal and interest was only 5-6% of EIC's annual revenue.
2. George Baroodly noted the notice in the newspaper stated the CO was for the building of the complex. The contract was for a land purchase with improvements.

If the contract was found to be invalid, there would not be any need for the funds. He opined that because there were several outstanding issues, he questioned council's voting on it in its current state knowing that the debt was tied to a contract that could not be defended and may or may not be a legal use of funds.

3. Richard Ellison questioned several issues:

- Did anyone on council receive an appraisal of the property before signing the contract; if so when? The Local Government Code required that any municipality proposing to use public money or tax dollars should get an independent appraisal before buying real estate. He asked if the city had an independent appraisal of the market value of the property that the city was contemplating purchasing with the revenue from the bond issue? He opined that the council at the time the contract was approved did not know the appraised value. Mayor Pratt noted there had been an independent appraisal on the property and it was provided to the council. He asked Mr. Ellison if he was aware of any other appraisal for the subject property. Mr. Ellison responded that he was not; he asked the city for a copy of the appraisal and what he received was the appraisal paid for by the Cailloux Foundation (CF) and it stated that no one but Cailloux could rely on it. He asked if the city was the client of Valbridge (appraiser) or the seller.
- He opined that when the contract with the Cailloux Foundation was signed, no one on council knew what the appraised value was. Council noted that the contract for land purchase was not an item on this agenda; the item on the agenda was to discuss the issuance of CO.
- The public announcement put out by the city stated that the bond funds were for this contract; therefore discussion of the contract was appropriate at this time. He asked if the city was looking at alternative sites.
- He asked if attorneys had reviewed the document and who paid them. Mayor Pratt stated four attorneys, including Mr. Hayes, the city's attorney, and he had outside legal counsel review the legality of the contract with regard to competitive bidding of construction, and requirement for an independent appraisal.

Upon question by council, Mr. Ellison stated he was not representing anyone but himself and he was not getting paid for his work related to this issue.

Mayor Pratt noted that Mr. Ellison had threatened to sue the city and the city should not answer further questions due to possible future legal proceedings. Mr. Ellison said he did not threaten to sue the city, he just stated that any taxpayer or resident could sue the city because the city did not get competitive bids and was not in compliance with state law, i.e. the city was buying land without getting an outside independent appraisal.

Mr. Hayes noted that funds received from the bond issue could be spent on a project anywhere, not necessarily on Holdsworth Drive, and the city could contract with any party for the project. The contract was reviewed by four different attorneys and he was confident it was a legally binding contract.

Ms. White asked if the council was aware of a reversionary clause in the contract that in the event the property did not continue to be used as an athletic field for 99 years, the property would go back to the CF? Mayor Pratt noted that was a standard clause in any contract, for example Tivy Stadium, and the same clause as in other city projects.

The motion passed 4-1; with Councilmembers Stork, Allen, Fine, and Pratt voting in favor of the motion and Councilmember White voting against the motion.

**5. PUBLIC HEARING AND ORDINANCE, FIRST READING:**

5A. Ordinance No. 2015-12, amending the city's "Zoning Code" by amending Article 11-I-10 "Residential Zoning Districts", subsection (F) "RT" – residential transition district with respect to the uses of "Schools" and "Churches", as those terms are defined, within this district; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2000.00); and ordering publication. Mayor Pratt read the ordinance by title only.

Mr. Robertson noted the amendment would exclude churches and schools from certain development regulations in the RT zoning district, such as eliminating the maximum 3,000 square footage building requirement for churches and schools. On June 4 the planning and zoning commission (PZC) voted to recommend approval of the change, and voted to amend the development regulations for churches and schools in the RT district by adding stucco and cement fiber board to the list of acceptable building materials. Staff was in favor of the request and recommended holding a public hearing and taking action on the ordinance.

Mayor Pratt declared the public hearing open at 6:54 p.m.; no one spoke and the public hearing was closed at 6:55 p.m.

Ms. White stated that it was unclear at the PZC meeting exactly what was included in the change. PZC members may have thought that Item 4 eliminated III, IV, and V; however, it actually eliminated square footage requirements and amended building appearance and material. She believed that PZC members understood those were the only two items being changed; however, III, IV, and V were actually still included; i.e., off-street parking on side and rear, front yard requirements, and sign restrictions would still apply, and she believed that PZC members did not understand that.

Mr. Robertson stated there may have been some confusion at the PZC meeting since only items I and II were discussed and members may have thought the amendment would also change III, IV, and V; however, the intent was to leave in those requirements in order to keep the appearance of a transitional zone between residential and commercial properties. State law did not require the city to notify individual churches since the ordinance affected all churches city wide.

Ms. White moved to approve Ordinance 2015-12 as amended to eliminate the off-street parking requirement.

Mr. Hayes noted that PZC previously voted to approve the ordinance with amendment to the development regulations regarding building materials only and PZC did not make a recommendation on the specific changes that Ms. White suggested. He recommended council take action on the ordinance as recommended by PZC. PZC could consider the item again and come back later with a recommendation regarding additional amendments as suggested by Ms. White in a subsequent ordinance.

Ms. White withdrew her motion.

Ms. White moved to defer action on the ordinance and refer it back to PZC for consideration of proper amendment.

Mr. Robertson noted that the amendment was first brought up in August 2014.

Mr. Dustin Coon, representing Kerrville Apostolic Church, noted that delaying action on the ordinance would not be a burden to his church.

Ms. White withdrew her motion.

Ms. White moved to accept Ordinance 2015-12 as written, eliminating Section III, off-street parking.

Mr. Hayes noted that eliminating Section III had not been considered or recommended by PZC.

Mr. Parton questioned if the request was that PZC should consider the removal of Section III from the RT district altogether, or just as it pertained to churches and schools. Ms. White proposed it be removed from the RT district altogether from Item IV churches and schools only. She stated that PZC discussed only I and II, square footage and building appearance, PZC did not discuss III, IV, or V and she believed that PZC members did not understand that III, IV, and V would remain.

Councilmember Stork noted Items III, IV, and V were not posted or advertised for this meeting.

Ms. White withdrew her motion.

Ms. White moved for approval of Ordinance No. 2015-12 as presented on first reading; Mr. Stork seconded the motion and it passed 5-0.

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

6A. Ordinance No. 2015-10, approving a negotiated settlement between the Atmos Cities Steering Committee ("ACSC") and Atmos Energy Corp., Mid-Tex Division regarding the company's 2014 and 2015 rate review mechanism filings; approving a settlement agreement with attached rate tariffs and proof of revenues; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement; finding the rates to be set by the settlement tariffs to be just and reasonable and in the public interest; requiring the company to reimburse ACSC's reasonable ratemaking expenses; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; adopting a savings clause; declaring an effective date; and requiring delivery of this ordinance to the company and the ACSC's legal counsel. Mayor Pratt read the ordinance by title only.

Mr. Hayes noted the rate increase for 2014 and 2015 requested by Atmos and negotiated by ACSC would result in rate increases of 1.59%, or average \$1.14 for residential customers; and .96%, or \$2.69 for average commercial customers. He recommended approval.

Mr. Stork moved for approval of Ordinance No. 2015-10 on second and final reading; Mr. Fine seconded the motion and it passed 5-0.

6B. Ordinance No. 2015-11 authorizing the closure of a portion of Legion Crossing Street which intersects and is located between Veterans Highway (State Highway Loop 534) and Riverside Drive; making a finding that this portion of street is not required for public vehicular access or use; providing for the terms and conditions of closure; authorizing the city manager to take all necessary actions to effectuate the closure; providing an effective date; and providing other matters related thereto. Mayor Pratt read the ordinance by title only.

Mr. Matthews noted no changes since first reading and no comments had been received from the public; he recommended approval.

Mr. Allen moved for approval of Ordinance No. 2015-11 on second and final reading; Mr. Fine seconded the motion and it passed 5-0.

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

7A. Reject all submitted contractor bids for construction of the Lowry Park trail improvements.

Ms. Day noted bids were received for that portion of the trail west across Town Creek to Lowry Park at Lowry and Guadalupe streets. The bid process issued an addendum and all bidders were required to acknowledge the addendum. Three bids were received, two bidders did not use the bid tabulation form as stated in the addendum, which was acknowledged by all bidders; therefore, staff recommended rejecting all bids and rebidding the project.

Mr. Allen moved to reject all bids and authorize staff to move forward to rebid the project; Mr. Fine seconded the motion and it passed 5-0.



7B. Update on the river trail and Louise Hays/Lehmann Monroe Park projects and direction to city staff.

Ms. Craig noted a quorum of the city council (Mr. Allen, Mr. Fine, and Mr. Stork) had filed a conflict of interest affidavit for this item; therefore, all councilmembers were eligible under state law to participate in discussion and vote.

Council noted the river trail from Lowry Park to Kerrville Schreiner Park totaled 4.2 miles. EIC had authorized \$6 million for six miles; however, with potential condemnation issues and land acquisition, the consensus was to stop at Lowry Park at this time, but not to preclude future discussions about the trail extension west or other segments.

Mr. Parton noted about \$1 million remained in the river trail project budget.

Mr. Allen moved to direct staff to cease current activities in trying to determine property owners in the proposed route and to defer any further action until a joint meeting could be held with EIC to discuss the route and funding from Lowry Park west. Mr. Stork seconded the motion and it passed 5-0.

**8. ITEMS FOR FUTURE AGENDA:**

- Schedule a joint meeting with EIC.
- Zoning issues around courthouse.

**9. ANNOUNCEMENTS OF COMMUNITY INTEREST:**

- June 9, approximately 6:00 p.m., Wounded Warrior Parade, several families participated.
- City residents were mailed information packets regarding the new fully automated solid waste services, schedule, and guidelines for issuance of new carts; delivery of carts would begin June 15, and the new services collection and schedule would begin June 29.
- Recognition to the Cailloux Foundation for the Chalk Festival event held June 6 and 7.
- June 13, 8:00 a.m. grand re-opening and ribbon cutting for river trail, Louise Hays Park, and Lehmann and Monroe Park.
- Kerrville's 4<sup>th</sup> on the River, Saturday, July 4.

Discuss City of Kerrville, Texas vs. Rio Robles, Inc., 198<sup>th</sup> District Court of Kerr County, No. 13698B (Condemnation).

The following members of the public were allowed to speak regarding this matter prior to council going into executive session:

1. Londa Peterson noted that the city required owners to keep their property mowed. In the past the city mowed the land adjacent to the fence on the east side of Lehmann and Monroe Park. In 2009 a parks supervisor informed her that the city did not have money in the budget for mowing that part of the park. She was concerned about unsightly fuel for fires and poisonous snakes. If the city did not have money in the 2009 budget, how will the city be able to maintain it now.

2. Barbara Jordon stated that on Saturday the city would be celebrating opening of the park and river trail on property that the city took from Rio Robles, and the city was holding the funds in escrow to pay for the property; this was unfair.

3. Ron Blevins stated that members of a community live within a shared system of law and had natural rights recognized in the Declaration of Independence. Government receives authority from the people and assumes the obligation to secure peoples' rights, including property rights. He stated that council had been remiss in protecting his property rights. He opined that the council's acquisition of a facility by a land contract was to circumvent the process of protecting the people's property through a competitive bidding process. The city had taken possession of property that belonged to Rio Robles by eminent domain and had not resolved its fiduciary obligation of compensation.

4. Nita Porter noted that several property owners along the river trail had been compensated for their land, and Rio Robles had not received compensation. She asked for a list of river trail owners who had been compensated, either with cash or by having utilities provided.

#### **10. EXECUTIVE SESSION:**

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

##### **Section 551.087:**

Discuss economic development negotiations for a business prospect(s), the public discussion of which would not be in the best interests of the City Council's bargaining position with third parties.

##### **Section 551.071 and 551.072:**

Discuss City of Kerrville, Texas vs. Rio Robles, Inc., 198<sup>th</sup> District Court of Kerr County, No. 13698B (Condemnation).

At 7:35 p.m. the regular meeting recessed and council went into executive closed session at 7:44 p.m. At 8:12 p.m. the executive closed session recessed and council returned to open session at 8:13 p.m. The mayor announced that no action had been taken in executive session.

#### **11. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION**

**Discuss City of Kerrville, Texas vs. Rio Robles, Inc., 198<sup>th</sup> District Court of Kerr County, No. 13698B (Condemnation).**

Mr. Stork moved to direct staff to finalize negotiations with Rio Robles with respect to the award of the special commission; Mr. Allen seconded the motion and it passed 5-0.

**ADJOURNMENT.** The meeting adjourned at 8:14 p.m.

APPROVED: 08/11/2015  
ATTEST:

/s/  
Jack Pratt, Jr., Mayor

/s/  
Brenda G. Craig, City Secretary