

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
SEPTEMBER 28, 2010

On September 28, 2010, the Kerrville City Council meeting was called to order by Mayor Wampler at 6:00 p.m. in the city hall council chambers, 800 Junction Highway. The invocation was offered by Reverend Patty Edwards, Unity Church of the Hill Country, followed by the Pledge of Allegiance led by John David Lipscomb.

MEMBERS PRESENT:

David Wampler	Mayor
R. Bruce Motheral	Mayor Pro Tem
Gene Allen	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT:

T. Scott Gross	Councilmember
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STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Travis Cochrane	Director of Information Technology
Mindy Wendele	Director of Business Programs
Mike Erwin	Director of Finance
Robert Ojeda	Fire Chief
Kevin Coleman	Director of Development Services
Malcolm Matthews	Director of Parks and Recreation
Mike Wellborn	Director of Engineer

VISITORS PRESENT: List on file in city secretary's office.

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

2. **CONSENT AGENDA:**

Mr. Motheral moved for approval of items 2A through 2E; Mr. Allen seconded the motion and it passed 4-0:

2A. Approval of the minutes of the city council meetings held on September 14, 2010.

2B. Resolution No 035-2010 authorizing the transfer of ownership of Kerrville Police Department K-9 Officer "Boy." It was noted that Boy would be retired and transferred to his police trainer.

2C. Resolution No. 031-2010 authorizing the waiver for Hill Country Home Opportunity Council, Inc. of various fees associated with the construction of homes; said waiver to remain in effect through September 30, 2011, or the construction of ten homes, whichever occurs first.

2D. Resolution No. 032-2010 authorizing the waiver for Habitat for Humanity Kerr County Affiliate, Inc. of various fees associated with the construction of homes; said waiver to remain in effect through September 30, 2011, or the construction of nine homes, whichever occurs first.

2E. Authorize the execution of the Administrative Services Contract between the City of Kerrville and the Economic Improvement Corporation for FY11.

END OF CONSENT AGENDA

3. FISCAL YEAR 2011 BUDGET ORDINANCES, SECOND READING:

3B. Ordinance No. 2010-19 adopting the annual budget for the fiscal year 2011; providing appropriations for each department and fund; containing a cumulative clause; and containing a savings and severability clause. Mayor Wampler read the ordinance by title only.

Mr. Erwin noted the total proposed budget was \$44,827,385 including the original proposed budget of \$37,972,742 and the list of recommended items detailed in Schedule A of the ordinance and as discussed in budget workshops. The budget maintained the same FY10 tax rate of \$0.5625, down from the effective tax rate of \$0.5753; revenue exceeded expenditures; and did not include any use of reserve funds. He noted no changes to the ordinance since first reading.

Mr. Allen moved for approval of Ordinance No. 2010-19 on second and final reading; Ms. Keeble seconded the motion and it passed 4-0.

3A. Ordinance No. 2010-20 levying an ad valorem tax for the use and the support of the municipal government for the City of Kerrville, Texas, for the fiscal year 2011; providing for apportioning each levy for specific purposes; and providing when taxes shall become due and when same shall become delinquent if not paid. Mayor Wampler read the ordinance by title only.

Mr. Erwin noted the proposed tax rate was \$0.5625, the same as FY10: \$0.489 was for maintenance and operations; \$0.0735 was for debt service. He noted no changes since first reading.

Mr. Motheral moved for approval of Ordinance No. 2010-20 on second and final reading; Ms. Keeble seconded the motion and it passed 4-0.

4. ORDINANCES, SECOND READING:

4A. Ordinance No. 2010-18 amending the budget for fiscal year 2010 to allocate surplus funds remaining within the main street fund and to make amendments to funding for various capital improvement projects. Mayor Wampler read the ordinance by title only.

Mr. Erwin noted the ordinance amended the FY10 budget by adopting changes detailed in Schedule A including the use of EIC funds in the business programs department, and the reallocation of unspent capital project funds. He noted no

changes to the ordinance since first reading.

Mr. Motheral noted that he had filed a conflict of interest affidavit at first reading on September 14, and he again recused himself and left the meeting.

Ms. Keeble moved for approval of Ordinance No. 2010-18 on second and final reading; Mr. Allen seconded the motion and it passed 3-0-1 with Councilmembers Allen, Keeble, and Wampler voting in favor of the motion; no one voted against the motion; and Mr. Motheral abstained.

4B. Ordinance No. 2010-17 approving a negotiated resolution between the Atmos Cities Steering Committee (“ACSC or “Steering Committee”) and Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or Company”) regarding the company’s third rate review mechanism (“RRM”) filing in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; requiring the company to reimburse cities’ reasonable ratemaking expenses; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; approving Atmos Mid-Tex’s proof of revenues; extending the RRM process for two cycles and adopting a new RRM tariff; ratifying the settlement agreement, including cost recovery for a steel service line replacement program; adopting a savings clause; determining that this Ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; declaring an effective date; and requiring delivery of this Ordinance to the company and the Steering Committee’s legal counsel. Mayor Wampler read the ordinance by title only.

Mr. Hayes noted Atmos had filed a \$70.2 million rate increase in March 2010 and the ACSC had negotiated the rate increase to \$27 million plus an additional \$3.4 million increase for the line replacement program mandated by the state. The negotiated increase resulted in a 3.15% increase or \$1.40 per average residential customer. He noted no changes to the ordinance since first reading.

Mr. Allen moved for approval of Ordinance No. 2010-17 on second and final reading; Ms. Keeble seconded the motion and it passed 4-0.

7C. Accept report from Mayor Wampler regarding the response to and resolution of issues raised by the Kerrville Performing Arts Society (KPAS) for their use of the Cailloux Theatre.

Mayor Wampler stated he had met with KPAS and Playhouse 2000 representatives and city staff to address KPAS’ concerns regarding the management and operations of the Cailloux Theater and KPAS’ use of the theater. He requested council consider those concerns adequately addressed and the matter closed with submission of a letter to KPAS reporting the following:

- Ownership: The theater and real property are owned by the city.
- Management: City had a contract with Playhouse 2000 to be the exclusive manager and operator of the facility. Playhouse had sole responsibility in the facility’s

operation and management; the city was not directly involved in the management or operation of the theater.

- Liability and indemnity: Playhouse 2000 was required to maintain insurance and indemnify the city. A certificate of insurance was provided to the city; however, it did not list the city as additionally insured, and Playhouse was correcting this.
- Merchandising: Playhouse 2000 had sole authority regarding all promotions, concessions, and marketing issues, and such must be negotiated directly with Playhouse 2000.
- Audit: An independent audit would be expensive for KPAS to conduct; however, city staff had reviewed the tax returns of both organizations.
- Fire Inspection: The city did conduct a fire inspection; it was noted that the fire alarm system and the fire extinguisher inspection should be conducted annually.
- Evacuation Plan. Playhouse 2000 had an evacuation plan in place and the evacuation chart would be provided in the letter.

Council also discussed the following:

- Playhouse did maintain two separate books: one for management and one for productions.
- KPAS requested Playhouse provide a statement with the gross amount and invoice them for expenses rather than provide a net amount; this would assist KPAS in applying for grants. Mayor Wampler noted KPAS did not express this as an issue of concern, and Playhouse should treat all renters the same.

Mr. Allen moved to accept the report and letter as presented and to consider the matter closed; Mr. Motheral seconded the motion and it passed 4-0.

5. PUBLIC HEARING AND RESOLUTION:

5A. Resolution No. 034-2010 granting a Conditional Use Permit for an approximate 2.19 acre tract of land, being Lots 134 through 143, inclusive, of Block 2 of the J.D. Brown Addition, a subdivision within the City of Kerrville, Kerr County, Texas, and otherwise known as 620 Main Street (State Highway 27) and located within zoning district 11-C (Central City); by permitting said property to be used for vehicle sales/service-used and vehicle maintenance and repair; and making said permit subject to certain conditions and restrictions.

Mr. Coleman noted the applicant currently operated a vehicle sales center on SH 16 and SH 27, and requested to expand that operation, allow used car sales and include vehicle maintenance and repair, to additional property he had acquired on Jefferson Street, thereby requiring a CUP. He noted the planning and zoning commission recommended the CUP with the restriction that auto body repair not be allowed.

Mayor Wampler declared the public hearing open at 6:26 p.m.; no one spoke; Mayor Wampler closed the public hearing at 6:26 p.m.

Mr. Motheral moved for approval of Resolution No. 034-2010; Ms. Keeble seconded the motion and it passed 4-0.

6. ORDINANCE, FIRST AND ONLY READING:

6A. Ordinance No. 2010-21 authorizing the issuance of City of Kerrville, Texas general obligation refunding bonds, Series 2010, authorizing the execution of an escrow or deposit agreement, a paying agent/registrars agreement, a purchase contract and other instruments and procedures related thereto, delegating authority to certain city officials to select outstanding obligations to be refunded and approve all final terms of the bonds, approving an official statement, and calling certain obligations for redemption. Mayor Wampler read the ordinance by title only.

Ann Burger Entrekin, First Southwest Company, the city's financial advisor, proposed issuing general obligation refunding bonds Series 2010 in the amount of \$4.7 million to refinance existing outstanding bonds, resulting in an overall savings of approximately \$200,000 over several years. She anticipated an interest rate of approximately 4% and a maturity date not to exceed 2017. Approval of the ordinance would authorize staff and FSC to proceed with preparation of documents and delegate authority to the city manager and mayor to approve the final amount and rate, and authorize the mayor to sign the related bond refinancing documents. She recommended the motion also establish parameters, such as: par amount not exceed \$4.9 million, maturity date not exceed February 15, 2017, interest rate not more than 4.0%, and debt service savings not less than 3% net present value benefit. If the bond is issued, she will brief the council at a future meeting.

Mr. Motheral moved for approval of Ordinance No. 2010-21 on first and only reading; Mr. Allen seconded the motion and it passed 4-0.

7. CONSIDERATION AND POSSIBLE ACTION:

7A. Request to review and approve abandonment of a portion of Rodriguez Street between Main Street (State Highway 27 and Water Street and a portion of an alley adjacent to Crenwelge Motors. Jeff Carroll, Matkin Hoover Engineering, representing Crenwelge Motors (CM), requested conceptual approval of the feasibility of abandoning two sections of roadway: Rodriguez Street between Highway 27 and Water Street, and that portion of the alleyway that is owned by CM on both sides; the remainder would remain a public alleyway. The purpose of the two abandonments was to allow Crenwelge Motors to expand use of their property. Mr. Crenwelge understood that utilities were located in the right of way and any rerouting of utilities would be at his expense. He requested preliminary approval by the council before proceeding with an appraisal of the property and formal request for abandonment.

The council also discussed the following:

- Conditional approval of the request to abandon the right of ways was no guarantee of approval of the pending development site plan.
- Construction would not be allowed over the utilities, and any rerouting of utilities would be at CM's expense.
- Property value would have to be established in order to determine payment.
- City requested a traffic analysis. Mr. Carroll noted that primary traffic was associated with CM but they were willing to do a traffic analysis.

- The city should help local businesses that wanted to expand.
- More information was needed before a decision could be finalized.

Mr. Motheral moved to move forward including the following steps: 1) submittal of a concept plan showing all proposed improvements to the site, including utility relocation or extensions, drainage mitigation, planned fire access, and TxDOT approved access points on SH27; 2) surveys of alley and street; 3) appraisal of alleys and street; 4) preliminary approval of abandonment from council; 5) submission of subdivision plat and any utility/drainage relocation plans; 6) final council approval of abandonment; and 7) plat approval by the planning and zoning commission. Further, the project should address fire lane access concerns and provide a traffic impact analysis. Mr. Allen seconded the motion and it passed 4-0.

7B. Resolution No. 033-2010 adopting the Lytle Park site Master Plan.

Mr. Matthews gave a brief history of the property, noting it was originally given to the city in 1890 by Joseph A. Tivy, Kerrville's First Mayor for the purpose of a public park. He described existing conditions at the park and reviewed proposed renovation and amenities estimated to cost approximately \$100,000. Playground equipment would meet ADA requirements. Meetings had been held to receive public input on the plan and the parks and recreation advisory board recommended approval.

The council questioned why no parking had been requested on two sides of the park. Mr. Matthews noted two streets were neighborhood streets, two streets were heavy traffic areas and there had been accidents.

Ms. Keeble moved for approval of Resolution No. 033-2010; Mr. Allen seconded the motion and it passed 4-0.

7C. Accept report from Mayor Wampler regarding the response to and resolution of issues raised by the Kerrville Performing Arts Society (KPAS) for their use of the Cailloux Theatre. (Occurred earlier in the meeting following Item 4B)

7D. Authorize the execution of a Construction Contract with Huser Construction Co., Inc. for construction of the waste water service facility building in the amount of \$460,000.

Mr. Wellborn recommended approval of the contract and noted the building would house expensive critical equipment for the wastewater treatment plant, e.g. vehicles that contained television equipment.

Mr. Allen moved to authorize execution of the contract as presented; Mr. Motheral seconded the motion and it passed 4-0.

7E. Authorize the execution of a Radio Antenna Tower Lease Agreement between the Grand Lodge of Hermann Sons and the City of Kerrville.

Chief Ojeda noted the tower provided public safety radio communications to the area, and Hermann Sons had provided the lease at no cost to the city since 2006; he

recommended approval of the two year lease.

The council discussed the possibility of longer lease terms in the future; Chief Ojeda will discuss this with Hermann Sons when the lease expires in 2012. Chief Ojeda noted funding for the radio equipment had been provided through a federal grant.

Mr. Motheral moved to approve extension of the lease as presented; Ms. Keeble seconded the motion and it passed 4-0.

7F. Authorize the City Manager to intervene in the Wiedenfeld Water Works, Inc. application to amend its Water Certificate of Convenience and Necessity (CCN) No. 12052. Mr. Hastings noted WWW filed an application to amend its CCN to provide water utility service in the same area that the city had filed to extend its CCN area earlier in the year. He noted the deadline to intervene in WWW's CCN was October 17 and recommend city council authorize the city manager to oppose and intervene in the portions of WWW's CCN 12052 that conflicted with the City's CCN application.

Ms. Keeble noted this area had requested to opt out previously, and she felt that request should have been granted.

Mr. Motheral moved to authorize the city manager to intervene in the WWW's application to amend it CCN No. 12052. Mr. Allen seconded the motion and it passed 3-1 with Messrs. Motheral, Allen, and Wampler voting in favor of the motion and Ms. Keeble voting against the motion.

8. INFORMATION AND DISCUSSION:

8A. Library renovation project.

Victoria Mosty Roberts reported on activities of the Mary Elizabeth Holdsworth Library Foundation: 1) received notification that the foundation would be the recipient of a grant of at least \$50,000 from Charity Ball for playground equipment; 2) received 501(c)3 designation; 3) hired Dini Partners as fundraising consultants; 4) Jeana Krause was selected to Leadership Kerr County 2011 and the Leaders Circle (a cooperative fund raising group of executive leaders in Kerr County); and 5) attended several meetings and public hearings of the Kerr County Commissioners' Court and building relationships.

8B. Sign regulations in the proposed Central Business Zoning District.

Mr. Coleman noted with the adoption of the new Central Business District (CBD) into the zoning ordinance, signage regulations should be adopted for the CBD. He presented a list of proposed sign regulations, and following council's review, those regulations would be presented to downtown stakeholders for their input before an ordinance was prepared for council's adoption.

The council discussed how to balance the need to protect the uniqueness of the downtown area and have signage that was visible and encouraging. The council discussed the proposed changes, in particular: sign size, height, material, internal

lighting, street frontage, and the use of temporary banners. The public input process should also involve sign makers and designers.

The consensus of the council was to proceed with the initial vetting process and receive direction and input from downtown stakeholders, including the Main Street Advisory Board and the Downtown Business Association and bring back results of those meetings.

8C. Update regarding Lower Colorado River Authority Transmission Services Corporation's application for the proposed McCamey D to Kendall to Gillespie CREZ project (PUC Docket No. 38354).

Mr. Hayes reported the following: currently over 2,000 documents had been filed; the city had filed as an intervener and participated in discovery; and Mayor Wampler may be called to testify at the hearing in Austin in October. ERCOT was tasked with relooking at the proposed transmission line routes and the "need" for the transmission lines. ERCOT issued a study on September 24 that made three findings: 1) the Kendall to Gillespie portion of the CREZ line may be unnecessary, particularly if another transformer station is installed at the Kendall substation; 2) the McCamey D to Kendall line is needed, there is not an alternative, and that line will move forward; and 3) ERCOT had studied the private line between Kerrville and Fredericksburg and decided it was not a viable alternative.

8D. Consider conceptual community events. Ms. Wendele reported on plans for the Fourth of July event. A committee had been meeting to explore ideas, and those persons will have discussions with the non profit groups they represented regarding commitments for participation and bring those ideas to a meeting on October 13. She noted that concern had been expressed regarding how much assistance the city could realistically provide considering city staff reductions and budget cuts. She will report on the meeting at the October 26 council meeting.

Mr. Motheral presented a list of possible activities that could be part of the event.

The council also discussed the following:

- Would like a list of specific things that each organization was willing to commit to do for the event.
- Could contact foundations to help with funding.
- Look at events that energize central city and focus on river trail.
- The city should be cognizant of the city's limitations with regard to staffing and budget, even with assistance from volunteers.

The consensus of council was that Ms. Wendele would provide a full report with the whole plan laid out at the October 26 meeting.

8E. Kerrville budget/economic update.

Mr. Erwin noted unemployment remained 6.2%; the fund balance from FY10 was carried over to FY11; and staff's targeted goal for FY11 was 95% of the original FY11

budget. He noted the water meter replacement program resulted in more accurate meter readings and increased water revenue.

9. BOARD APPOINTMENTS:

9A. Appointments to the Parks and Recreation Advisory Board.

Ms. Keeble moved to appoint Dana Cardwell and Stephen Roberts to fill unexpired terms due to expire on March 31, 2011; Mr. Motheral seconded the motion and it passed 4-0.

9B. Appointment to the Planning and Zoning Commission.

Mr. Motheral moved to appoint Tony Roberts to the unexpired regular position with term due to expire January 1, 2011, pending his completion of open government training; Mr. Allen seconded the motion and it passed 4-0.

Further, Mr. Motheral moved to appoint Chastan McRae to the unexpired alternate position with term due to expire January 1, 2012; Mr. Allen seconded the motion and it passed 4-0.

10. ITEMS FOR FUTURE AGENDAS: None.

11. ANNOUNCEMENTS OF COMMUNITY INTEREST: None.

12. EXECUTIVE SESSION:

Ms. Keeble moved for the city council to go into executive closed session under Section 551.071 (consultation with attorney), and 551.072 (deliberation regarding real property) of the Texas Government Code; the motion was seconded by Mr. Allen and passed 4-0 to discuss the following matters:

Section 551.072:

- Discuss the purchase, exchange, lease, sale, or value of real property for use as a City facility, the public discussion of which would not be in the best interests of the City's bargaining position with third parties.

At 7:45 p.m. the regular meeting recessed and council went into executive closed session at 7:49 p.m. At 8:25 p.m. the executive closed session recessed and council returned to open session at 8:26 p.m. The mayor announced that no action had been taken in executive session.

13. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION

ADJOURNMENT. The meeting adjourned at 8:27 p.m.

APPROVED: _____

David Wampler, Mayor

ATTEST:

Brenda G. Craig, City Secretary