

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
January 12, 2016

On January 12, 2016, 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 Tom Murray, Associate Rector, St. Peter's Episcopal Church, followed by the Pledge of Allegiance led by Fire Chief Dannie Smith.

COUNCILMEMBERS PRESENT:

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| 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:

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| Todd Parton | City Manager |
| Mike Hayes | City Attorney |
| Kristine Day | Deputy City Manager |
| Brenda Craig | City Secretary |
| Sandra Yarbrough | Director of Finance |
| Ashlea Boyle | Special Projects Manager |
| David Knight | Police Chief |
| Dannie Smith | Fire Chief |

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

1. VISITORS/CITIZENS FORUM:

1A. Russell Kemp, President of Kerrville Tennis Association (KTA), noted KTA had over 100 members; their goal was to make HEB Tennis Center a destination venue and bring tournaments and activities to Kerrville. The city had neglected the infrastructure and several courts had become unplayable and hazardous. KTA had two tournaments scheduled in July and anticipate 600-700 participants; they could lose those tournaments and the city could lose revenue if the courts were not repaired. He estimated 50-100 people, not including school students, used the courts daily. KTA offered to be part of the process and help the city with plans. Council noted that 6 of the 14 courts were in good shape.

2. PRESENTATIONS:

2A. Acceptance of a book on Great Western Cattle Trails from Dr. William and Lyndia Rector for the Butt-Holdsworth Memorial Library.

2B. Proclamation for National Law Enforcement Appreciation Day.

3. CONSENT AGENDA:

Ms. White moved to approve consent agenda items 3A through 3C; Mr. Stork seconded the motion, and the motion passed 5-0:

3A. Interlocal agreement between Kerr Emergency 9-1-1 Network and the City of Kerrville, Texas.

3B. Extension of temporary lease agreement requested by Walter and Barbara Schellhase for property located at 529 Water Street.

3C. Resolution No. 01-2016 authorizing the filing of an application with the Alamo Area Council of Governments for a 2016/2017 solid waste pass through grant.

END OF CONSENT AGENDA

4. ORDINANCE, THIRD AND FINAL READING:

4A. Ordinance No. 2015-24 amending Ordinance No. 2006-01, which granted Atmos Energy Corporation a franchise to furnish, transport, and supply gas to the general public within the City of Kerrville, Kerr County, Texas, by extending the term of the franchise ordinance for an additional ninety (90) days through the end of March 29, 2016. Mayor Pratt read the ordinance by title only.

Mr. Hayes noted no changes since first and second readings. He recommended approval of the ordinance, and in the interim staff was working with Atmos to negotiate a new franchise agreement to bring to council.

Mr. Allen moved for approval of Ordinance No. 2015-24 on third and final reading; Mr. Fine seconded the motion and it passed 5-0.

5. ORDINANCE, FIRST AND ONLY READING:

5A. Ordinance No. 2016-01 authorizing the issuance, sale and delivery of up to \$10,000,000 in aggregate principal amount of "City of Kerrville, Texas Combination Tax and Revenue Certificates of Obligation, Series 2016"; 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.

Mr. Parton noted bids were received today; the purpose of the bonds was to fund water and wastewater projects, specifically, the water reuse project.

Ann B. Entrekin, Managing Director of First Southwest Company and the City's Financial Advisor, noted that Standard & Poor's had reaffirmed the city's "AA/Stable Outlook" rating. She discussed the rating process and noted S&P stated their rating reflected the city's very strong management conditions, strong budgetary performance, very strong budget flexibility, very strong liquidity, adequate debt and contingent liability profile, and strong institutional framework.

Six bids were received ranging from 2.470289 – 2.644817 and all bidders met the bid parameters and specifications. The low bidder was Robert Baird & Co., Inc. The total debt service, including principal and interest was \$2,437,091 less than originally projected, and based on an 8 year call option, was 2 years shorter than projected. The project fund deposit was \$9,821,625.

Ms. Entrekin confirmed this would raise the city's debt service from \$43 million to \$56 million. The certificates of obligation were deemed as self-supporting debt, and including this issue, the total debt would not go below two times the debt coverage in any one year. She recommended the city approve the bid from Robert W. Baird & Co., Inc. as it optimized the current interest rate environment and preserved future capacity and flexibility.

The following persons spoke:

1. Fred Speck spoke on behalf of the American Youth Soccer Organization and 20 years ago AYSO was the first to use effluent water on their soccer fields. He opined that the reason for borrowing \$10 million was to use \$2 million to purchase soil to help build the dam, but the city wanted to transfer those funds into another project. Mr. Speck opined it was unethical to take money being borrowed for one project to use for another unrelated project, specifically, \$2 million for a batting complex at the new athletic complex. AYSO never opposed the athletic complex; he questioned the city building a batting complex for a private entity. The new fields would double the size of playing fields, if the city kept the old fields also.
2. Bill Morgan questioned the amount of money being spent without citizen input. Council should not obligate citizens without a bond issue having been voted on by the citizens; he did not believe the citizens would vote to fund the issue. He was concerned about the amount of debt the city had incurred and opined that the city needed more commercial development to increase tax money.
3. Mark Bosma asked that council not take \$2 million from the bond issue to purchase dirt already owned by the city. The certificates specifically stated the obligation was for water, wastewater and effluent; however, the city intend to take \$2 million out of the project by purchasing dirt already owned by the city, thus taking \$2 million value out of the bond. He opined that the dirt received did not have the same value as the dirt that had already been paid for and owned by the taxpayer. The stated value of the city dirt was \$3-5 per yard; the dirt from a contractor would cost \$10-15 a yard; a contractor would have to haul it for about \$1.5 million, and the city had to pay interest making this an \$18 million bond overall. It is a revenue bond and has to generate funds to pay for itself; assumably through water and sewer rates; effluent was a good idea but costly. He questioned where the city intended to get \$2 million later when it was needed. The water ad hoc committee was looking specifically at the effluent project, and the bonds stated specifically what the funds were to be used for. As a committee member, if that was specifically what the committee was supposed to do, then he would resign.

4. Carson Conklin noted the effluent project was a good project; he was concerned about the timing of the debt issuance as related to the appointment of the water ad hoc committee as the city had already advertised and received bids and now approving the sale of bonds. The committee's report was due in March so it made no sense to sell bonds before the report was made. The city was intentionally selling more debt than was needed to fund the project. If the city needed \$2 million for D-Bat, it should be paid for from other funds and not with the sale of water/sewer debt.

5. Russell Nemky noted the council was not following its own bylaws and did not follow correct rules for meetings. \$10 million was a huge bond and should be voted on and should not be funded with only one ordinance reading when two were required by City Charter.

Council asked Mr. Hayes if they had ever violated bylaws or taken acts unethical or illegal. Mr. Hayes responded, no and explained that the city was subject to state law; state law provided for only one ordinance reading and that was what the city must follow. The city can, as a home rule city, establish a charter, but the city was still subject to and must conform to state law. First and only reading of a bond ordinance was in compliance with state law.

Tom Spurgeon, McCall, Parkhurst & Horton, LLP and the City's Bond Counsel for over 30 years, noted that state law trumped city charter. When issuing debt bonds have been sold into public markets, purchasers of the bonds make a commitment to buy these bonds at that particular rate. Rates were very fluid and could change daily so the purchasers needed a commitment that the city accepted those rates; waiting for two weeks would create uncertainty in financial markets. This was the reason why the state adopted procedures many years ago in connection with the issuance of public securities.

6. Robert Naman, noted that interest rates fluctuate and may be lower next year. The bond market did not know when first reading was, or if it was first, second, or third reading; the process of putting the bonds out for bid before having a council-approved project did not make sense. People who were buying the bonds only wanted to know the date on which to bid; it did not have to be done tonight.

Council also discussed the following:

- City Council and staff had not acted in any way that was unethical or illegal.
- Years ago this same project was estimated at \$21 million, and it was felt that water was a high priority for the city. In order to have sustained growth and a stable economy, the city needed dependable and sufficient water source; have to spend money to get water.
- The plan was to borrow \$10 million this year and \$8.5 million next year for phase I of the effluent project.
- Section 3.06 of the city charter required two readings for each ordinance except for an emergency measure. Mr. Hayes noted that state law required only

one ordinance reading, and state law trumped the city charter with respect to one reading of an ordinance with regard to the issuance of certificates of obligation.

- The general fund assets of the city belong to the citizens of Kerrville; the water and wastewater system was funded by utility rates from customers. Paying for the value of an asset from one fund to another was not stealing from taxpayers.
- Exhibit B (ii) of the ordinance stated that funds would be used for the purpose intended. Further, the summary statement stated the city would use the funds for water and wastewater system improvements. Ms. White stated that \$2 million of the bond issue was not going into water and sewer projects; it was being moved to the general fund for the athletic complex project to build a facility for a private entity. If \$2 million went into the athletic complex, was that the use intended?

Mr. Parton confirmed that \$2 million of the \$10 million bond issue included the purchase of soil material from the general fund to the utility fund to construct the effluent reuse project.

Mr. Spurgeon noted if the intended use was to fund water and sewer improvements, including construction costs and purchase of materials; as long as the proceeds were being used to purchase an asset that was going to be used for the project, it would be proper use of the proceeds.

- The purpose of the water ad hoc committee was to evaluate the effluent project. The summary statement stated the debt would be used “specifically for construction of a storage pond, pump station, gravity pipeline from the wastewater treatment plant, pipeline connections to the existing reuse system, and distribution mains for the delivery of reuse water”; it did not leave any room for modifications. The city already specified what the bonds would be used for, and by passing the bond issue before their report was in would make committee members feel their report was irrelevant; council should wait until after the committee’s report was in.
- The bond issue stated the bonds were for water and wastewater projects; if the committee report supports the reuse project, or another project, as long as the funds were spent within the water and wastewater system the bonds could still be used; there were numerous capital projects for which the funds could be used.
- Economic development funds could be used for the project.

Mr. Stork moved for approval of Ordinance No. 2016-01 on first and only reading, accepting the bid of Robert W. Baird & Co., Inc. as presented by Ms. Entrekin; Mr. Allen seconded the motion and it passed 4-1 with Councilmembers Stork, Allen, Fine, and Pratt voting in favor of the motion and Councilmember White voting against the motion.

6. ORDINANCE, FIRST READING:

6A. Ordinance No. 2016-02 amending the budget for Fiscal Year 2016 to account for various changes to the city’s operational budget, including additional revenues and allocations for capital improvement projects. Mayor Pratt read the ordinance by title only.

Mr. Parton reviewed the budget amendments and recommended approval:

- Additional donations to purchase memorial bench on river trail and allocation.
- Reimbursement grant for training from Texas A&M Forrest Service.
- Transfer \$161,000 from reserve fund to general fund for design architectural for the indoor facility at the athletic complex.
- Garage fund upgrade for maintenance and diagnostic equipment.
- Cailloux Theater \$108,500 grant EIC funds for maintenance issues.
- Main Street allocation of \$10,000 for installation of the Guadalupe Bass sculpture previously approved by city council on September 22, 2015.

Council also discussed the following:

- Why did council have to approve the transfer of funds in the budget? Mr. Parton noted the budget was adopted by ordinance approved by the city council; therefore to amend the ordinance, staff is required to bring changes to council via ordinance. Staff can adjust line item allocations within departmental budgets as long as that department's budget does not increase; however, any increase in revenue or expenditure had to be approved by a budget amendment. Any transfer of funds between accounts had to go through city council. Some revenues were limited as to how they can be used.
- Regarding the transfer of \$161,000 from the general fund to the capital improvement fund for architectural and design services for a \$2 million indoor athletic facility, the council had not voted on the building and the city did not have a design for the building; how did the city know what was being designed? Mr. Parton noted the letter of intent with BTP stated that BTP needed to provide input on the types of items they needed for the facility; BTP provided that information and staff met with the architect and put together a scope that included the items specified for a 30,000 sq. ft. building in accordance with the lease agreement.
- The design and plans for the building were not available. Mr. Parton noted the \$161,000 would provide funding for architectural services to design the buildings. A scope and contract would come before the council for those architectural services after the budget amendment was approved and funds were available.

Ms. White moved to adopt all of the budget amendments except the \$161,000 until the requested information was available. The motion failed for lack of a second.

The following person spoke:

1. Steve King questioned why this item had two readings when Item 5A only had one reading. Council noted the difference was that state required only one reading for a bond ordinance.

Mr. Stork moved for approval of Ordinance No. 2016-02 on first reading authorizing city staff to make all necessary entries and adjustments to reflect the changes presented; Mr. Fine seconded the motion and it passed 4 to 1 with Councilmembers Stork, Allen, Fine, and Pratt voting in favor of the motion and Councilmember White voting against the motion.

7. INFORMATION AND DISCUSSION:

7A. Main Street National Program.

Philip McKeon, Kerrville citizen, proposed an ordinance that would make Main Street and Water Street one way boulevards from Center Point to Hunt. Further, that TxDOT turn off signal lights on Main Street, particularly at Five Points. This plan would allow driving for five miles without a signal light.

8. CONSIDERATION AND POSSIBLE ACTION:

8A. Posting agendas for the possible quorum of City Council at Water Reuse Advisory Committee (WRAC) meetings.

Councilmember White stated she did not ask to have this item on the agenda; Mr. Parton placed it on the agenda. If more than two councilmembers attend any meeting, it would be a quorum and a violation of the open meetings act unless a council agenda had been posted. She previously asked Mr. Parton to post the WRAC agendas for all councilmembers to attend and listen, not participate, in WRAC discussions. Mr. Parton told her that council had appointed two members to be liaisons to the WRAC and as such he understood that it was not the intent of council that the WRAC meetings be posted for all councilmembers to attend. She questioned why two councilmembers were appointed since the board rules and procedures stated that one councilmember be appointed as liaison to any committee. She stated that TML's legal office advised her that she was within her right to ask that WRAC meetings be posted and she could attend and participate in WRAC meetings. She contacted an attorney in Austin who informed her if the city council voted on this, it would be a violation of her first amendment right.

Mayor Pratt noted that council appointed two liaisons to the WRAC, similar to other city boards where only one or two councilmembers attended.

Council noted that all WRAC meetings were recorded and if she wanted to listen and gain information, she could listen to the recordings. Ms. White said the issue was not about listening, it was about not being allowed to attend the meetings.

Council also noted the following:

- The WRAC was created to be an independent advisory board, not to be influenced by councilmembers.
- The WRAC's charge was to gather information and make recommendation to city council.
- Councilmembers received the same information as WRAC members.

The following persons spoke:

1. Spencer Hart noted when many liaisons attend committee meetings, the independence of the advisory committee could fall to the side and committee members could feel they were not being heard.
2. John Harrison, WRAC member, noted that members were all independent thinkers and were not going to be influenced by councilmembers. They were charged with reviewing the water reuse proposal and making recommendation as to what was best for the city in the long term; they may come back with answers

council does not like. The bond issue was a separate issue from what WRAC was charged with.

3. Russell Nemky stated that transparency was a huge deal; Ms. White was simply asking that WRAC agendas be posted. He believed that only four council meeting videos were posted on the website; this was not transparency. On December 15, Ms. White asked that all 21 applicants who applied be appointed to WRAC; her motion was not seconded. Some city boards had vacancies and persons had not been appointed to others. Ms. White talked to the public and that was not a bad thing. City should fix the website and be transparent.

4. Justin MacDonald's letter was read; as a committee member he urged council not to direct staff to post council agendas for WRAC meetings as he felt it could have the appearance or reality of a rubber stamp process. Let the committee do the work it was charged to do.

Mr. Fine moved to instruct staff to post agendas for possible quorum of the city council for all WRAC meetings only, not other city boards and committees; Ms. White seconded the motion and it passed 5-0.

8B. Authorization to make application to the City of Kerrville, Texas Economic Improvement Corporation (EIC) in the amount of \$500,000 for Interstate 10 Highway schematic and environmental studies.

Mr. Parton noted city staff was working with TxDOT regarding the I-10 project to:

1. Lower the pavement section of I-10 beneath Harper Highway bridge in order to increase the clearance to 16 ft.;
2. Complete the balance of the improvements as described in the LNV engineering report.

TxDOT identified #1 of the I-10 project as a public safety issue and was trying to raise its priority on TxDOT's 10 year highway improvement program for possible construction in 2017 to be completely funded by TxDOT. Oversized loads were currently being routed through Kerrville; lowering the pavement would alleviate 15-20% of oversized loads coming through town. The larger fix would be a diamond interchange at Harper and I-10, which would include two bridges. The city requested TxDOT incorporate #2 into their 10 year rural plan. Projects for the next three years were already established and were proceeding toward funding, which included #1. Projects for inclusion in the 4-10 year plan need to be evaluated by TxDOT now along with specific funding plan.

Mr. Parton requested authorization to apply to EIC for up to \$500,000 to fund the schematic design and environmental assessment for 1 and 2 of the I-10 project. The schematic design had a long life span. The environmental assessment, a study of the flora and fauna, wetlands and other issues, had a shelf life depending on changes in species and evolution over time; however, it could be updated and extended as long as there was forwarded movement on the project. The service roads to connect the interchange to Loop 534 had a 5-7 year time line and would be jointly funded between the state, city, and landowners.

TXDOT considered #2 of this project to be economic development type of project rather than a life safety or transportation project, and they may incorporate it into their 10 year plan; at that time, TxDOT would require more local participation. In order to elevate the project priority, the project must be ready for the next step of construction; this may require local contribution. TxDOT staff suggested as part of the city's local commitment the city look at funding the schematic design and environmental assessment; TxDOT staff further suggested the city do the entire schematic at one time because it would give flexibility and identify how best to phase in the entire project. The schematic and environment documents could take three years to complete and get final authorization from the state. Some of this project might not occur for 7-10 years; however, TxDOT staff recommended the entire project scope be included in the environment assessment and schematic design instead of having to do each one individually. Without commitment from the city to fund these improvements, the #2 projects probably would not get in to the 10 year plan.

Mr. Parton noted the LNV report also contemplated: 1.) parkway on east end and 2.) 2-way feeder and over ramps at I-10 and Harper. TxDOT told him they would not do a two-way roadway; they would only do one-way access roads on either side. TxDOT was contemplating a third overpass between Hwy. 16 and Harper Road along I-10; however, that was not part of this project.

The following persons spoke:

1. Bill Morgan stated that the city was not the only benefactor of this project; property owners who benefited from the access road should participate in funding. He asked how long the study would take.
2. Robert Naman stated that staff's recommendation lacked evidence of the need for a \$16-20 million project and had no economic justification. A similar project was proposed years ago by ex-councilmember Coleman, who had interest in the property. Mr. Coleman failed to justify expenses and presented growth projections and tax revenues from future development; city council rejected that project. Mr. Naman opined that the road project was not in the best interest of a majority of residents and would incur large debt. Many streets were in need of repair, and he recommended staff's request be denied. He asked what was the cost of the LNV engineering estimate and executive summary? Council noted the LNV study cost \$48,500.

Council also discussed the following:

- Questioned if \$500,000 for the schematic design and environmental study was for the entire project? Mr. Parton noted the \$500,000 included: diamond interchange; one-way service roads, access and exit ramps, and a potential third overpass. The parkway between I-10 and Harper Road was not part of this project.
- State Proposition 7 approved by the voters could make some funds available for highway projects in the future. If the state received additional funds, such as Proposition 7, city participation may not be necessary.
- Mike Coward (TxDOT) said that TxDOT would not consider projects in #2 in less than 4-10 years, and studies would take 2-3 years.

- Since the study would take 2-3 years and had a shelf life, the project should be put off until next fiscal year and EIC funds be used for tennis courts.
- After #1 is completed, there is no guarantee from TxDOT that the projects in #2 would be completed, and the city would have already paid for the studies.
- In a meeting, a TxDOT representative stated if the city did not “put skin in the game” the projects would not be on TxDOT’s radar for state funding.
- Holdsworth Drive took 25 years to accomplish. Mr. Parton noted that Holdsworth Drive began as a state project and was funded by a federal pass through loan that the city paid back to the state.
- EIC debated funding the project and decided not to postpone; do it now. If the studies were done as requested by TxDOT, there was hope that TxDOT would complete the projects in# 2; if the studies were not done, then it was guaranteed that nothing would be done. EIC decided to take a chance on future growth and development and supported using sales tax dollars for highway improvements. If the city did not spend the money, it was guaranteed to get nothing.

Mr. Stork moved to authorize staff to submit an application to EIC as presented; the motion failed for lack of a second.

Mr. Fine moved for council to look at the projects again in six months to one year and reconsider, and in the meantime keep in contact with TxDOT. Mr. Allen seconded the motion and it passed 5-0.

8C. Initiation of annexation proceedings on approximately 194.79 acres of land out of the William Watt Survey No. 69, Abstract No. 367 and the W.T. Crook Survey No. 70, Abstract No. 113, Kerr County, Texas, and being generally located on the south side of SH-27 and located between Oak Way Street and Splitrock Road.

Mayor Pratt noted the airport and area along Hwy. 27 East was a vital element of current and future economic development. The city did not have any zoning regulation authority outside of the city including in the ETJ (extraterritorial jurisdiction). The city should strive to protect public health and safety and ensure that development along Hwy. 27 did not negatively affect water, environment, and air quality. The city should also mitigate potential hazards and not put the airport at risk with the FAA. Therefore, he recommended the city begin annexation proceedings in order that the city may have standing in the permit proceedings.

The following persons spoke:

1. Aleisha Knochenhauer, regional environmental manager for Martin Marietta (MM), owner of property in question, stated their opposition to annexation. MM had the property for some time and had made significant investment in time and money in the property. MM performed due diligence and evaluation prior to property acquisition and purchased the property in an attempt to relocate their current operation from further east on Hwy. 27; however, they were not looking to close their existing facility in Center Point. MM had started the entitlements and permitting process. MM would provide economic growth for the community. MM had a strong culture of doing the right thing; they would operate in accordance with

environmental permits. MM opposed annexation; in their experience, annexations eventually fail and the better direction was to work together to address concerns. MM had already started preparation of applications for health studies in preparation of the permit application. MM's operations were highly regulated by Texas Commission on Environment Quality (TCEQ) and the Environmental Protection Agency (EPA) and they would have to meet stringent requirements regarding water and air quality, floodplain mitigation, and other requirements.

Council asked if MM would agree to voluntary annexation. Ms. Knochenhauer stated she did not know, but MM would be willing to talk to the city, and she invited councilmembers to tour their current facilities.

2. Spencer Hart supported MM as it would provide road materiel, gravel, asphalt, and sand for local construction at the cheapest cost possible and with the least transportation cost. TCEQ would do a great job enforcing regulations. MM was one of the largest facilities in the world, and they could move their operations to Medina county if they wanted to. There was a lot of property between the city and MM that had not been annexed, including Guadalupe Heights. Annexing the MM property would increase the city's expenses. It was dangerous for the city to start proceedings in the nature of targeting.

Mr. Parton confirmed that the annexation as proposed applied only to the 195 acres owned by MM.

3. Tom Moser, Kerr County Commissioner, noted the county discussed potential annexation with members of the city several years ago, probably before MM purchased the property. He assumed the city proposed to annex the property in order to provide some type of restrictions. He had not spoken to anyone who was in favor of a gravel quarry pit at this location other than MM. The county did not have authority that the city could have if it annexed the property. He invited council and the public to a town hall meeting at the Hill Country Youth Exhibit Center on January 27 at 6:00 p.m.; representatives from MM, TxDOT, and TCEQ will explain the project, processes, requirements, and MM's property rights.

4. Ed Livermore, airport board member, supported annexation and stated the city needed to have a position with valid reasons; the airport board also had concerns.

5. Chris Alvarez stated he had been working with adjoining property owners and they vehemently opposed the quarry. He asked council to oppose the quarry, to fight it, and do anything in the city's power to stop it. The river is the heart of our community; protect it and keep it natural, do not let MM destroy the beauty of the river. He would support anything the city could do. The economic impact of MM went beyond money, it was a quality of life issue.

6. John Lovett stated his personal experience with annexation issues, growth, and quarry development. The county had very little restrictions. The only way to

control this operation was through annexation; city should annex the property as fast as it can; the city cannot control unless it is annexed. The city's rules in the ETJ were very limited and the county did not have rules to do anything. TCEQ did not have any requirements that would satisfy the people who lived next door. Time was of the essence; MM could start a bulldozer now and create a pre-existing condition. The city had authority to annex with special dispensation to owners, i.e. provide utilities, defer taxes, etc. If and when this went before TCEQ, any elected official could make it a contested hearing case. Currently, no permits had been applied for at TCEQ for the subject property.

MM confirmed that no permits had been applied for at TCEQ for the subject property at this time.

Council noted that MM had a lawsuit about their San Antonio quarry with regard to zoning codes. MM won that suit, but it did not apply to Kerrville, it had to do only with SA's zoning codes. MM had filed a registered statement of non-conforming use before it was annexed, so the use was already established. If the city annexed property that already had an existing use what jurisdiction would the city have on the property annexed and the pre-existing use? If the city annexed the property would the city be able to zone out, limit or restrict the use?

Mr. Parton stated it was unknown at this point; the facts would determine if there was a pre-existing use. He did not know all the facts of the SA case, and what may or may not apply to Kerrville. The city of SA confirmed that MM was a pre-existing use with an established operation prior to annexation in 1998; it was considered a pre-existing condition that was non-conforming and that non-conformity could not be increased. In 1997 there was state legislation that changed some vesting rights. The citizens adjacent to the SA MM facility filed suit claiming the facility did not have a vested right to exist because it was not in operation, and that MM was only leasing the property and planning to use it in the future. Through the appeals process, it was determined that the use was a valid non-conforming use.

EXECUTIVE SESSION:

Mr. Stork moved for the city council to go into executive closed session under Sections 551.071 of Chapter 551 of the Texas Government Code; the motion was seconded by Mr. Allen and passed 5-0 to discuss the following:

8C. Initiation of annexation proceedings on approximately 194.79 acres of land out of the William Watt Survey No. 69, Abstract No. 367 and the W.T. Crook Survey No. 70, Abstract No. 113, Kerr County, Texas, and being generally located on the south side of SH-27 and located between Oak Way Street and Splitrock Road.

At 9:12 p.m. the regular meeting recessed. Council went into executive closed session at 9:13 p.m. At 9:27 p.m. the executive closed session recessed and council returned to open session at 9:27 p.m. Mayor Pratt announced no action was taken in executive session.

7. Trevor Hyde, Comanche Trace, noted that Avery's had invested a lot of money in their property near the MM site. The city would annex Avery's just as it had annexed Fox Tank, so it should also annex MM. The Our Lady of the Hills School was directly across the highway and 391 feet from the MM site. MM would continue to be problematic even with TCEQ's restraints; look at the operation in Center Point. The MM site is on the approach to the airport runway and was directly on the river. MM stated that initially they would mine in the middle of the property and later move toward the river; MM cannot get the rock crushing permit; initially, MM will just truck gravel to their existing facility in Center Point. The city should begin looking at all areas around the city for potential annexation.

8. Steve King, Chairman of the airport board, noted the airport board would meet on this subject next week. He noted that the approach to the main runway crossed directly over the subject property. FAA's main concern was air space above 300 ft. The Aviation Division of TxDOT had spent a lot of money on the Kerrville Airport, and they will address this issue with TCEQ. Also, Highway 27 cannot be widened on the north side as it was already maxed out on the limit of the approach to the airport runway, any improvement to Hwy. 27 would have to be on the river side. Previously, the state looked at putting in an ILS instrument approach landing system at the airport; however the highway was too close; FAA would allow on GPS approach.

Mayor Pratt moved to authorize the mayor and staff to immediately initiate the annexation process as presented and then begin talks with various parties as necessary.

Council discussed beginning discussions with the parties at the same time as the annexation process.

Mayor Pratt restated the motion to authorize the mayor and staff to immediately initiate the annexation process as presented and then begin discussions with various parties, as necessary, after we begin annexation. Mr. Allen seconded the motion and it passed 5-0.

9. APPOINTMENTS TO CITY BOARDS AND COMMISSIONS:

9A. Food Service Advisory Board. Ms. White moved to appoint Ruben Molina and Becky Tolle all with terms to expire December 1, 2017; Mr. Fine seconded the motion and it passed 5-0.

9B. Main Street Advisory Board. Mr. Stork moved to appoint Bob Couch with term to expire May 31, 2016; Ms. White seconded the motion and it passed 5-0.

Mr. Stork moved to appoint T. David Jones with term to expire May 31, 2017; Mr. Fine seconded the motion and it passed 5-0.

9C. Planning and Zoning Commission. Mr. Stork moved to appoint Don Barnett and Doyle Malone with terms to expire January 1, 2018; Ms. White seconded the motion and it passed 5-0.

10. ANNOUNCEMENTS OF COMMUNITY INTEREST:

- February 13, Daddy Daughter Dance, at the Dietert Center.
- Mardi Gras, February 9, beginning at 6:00 p.m. in Louise Hays Park.
- City hall will be closed January 18 in observance of Martin Luther King Day.

10. EXECUTIVE SESSION:

Mr. Stork moved for the city council to go into executive closed session under Sections 551.071 and 551.072 of Chapter 551 of the Texas Government Code; motion was seconded by Mr. Allen and passed 5-0 to discuss the following:

Sections 551.071 and 551.072:

Discuss the purchase, exchange, lease, sale, or value of real property, the public discussion of which would not be in the best interests of the City's bargaining position with third parties, regarding property interests related to the following:

- River trail.

At 9:42 p.m. the regular meeting recessed. Council went into executive closed session at 9:43 p.m. At 9:53 p.m. the executive closed session recessed and council returned to open session at 9:54 p.m. Mayor Pratt announced no action was taken in executive session.

ADJOURNMENT. The meeting adjourned at 9:56 p.m.

APPROVED: _____

ATTEST:

Jack Pratt, Jr., Mayor

Brenda G. Craig, City Secretary