

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
NOVEMBER 8, 2016

On November 8, 2016, the Kerrville City Council meeting was called to order at 6:00 p.m. by Mayor White in the city hall council chambers at 701 Main Street. The invocation was offered by Bill Blackburn, followed by the Pledge of Allegiance led by Fire Department Division Chief Eric Maloney.

COUNCILMEMBERS PRESENT:

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

COUNCILMEMBER ABSENT: None

CITY CORE STAFF PRESENT:

Don Davis	Interim City Manager
Mike Hayes	City Attorney
E.A. Hoppe	Deputy City Manager
Brenda Craig	City Secretary
Sandra Yarbrough	Director of Finance
Kim Meismer	Director of General Operations
David Knight	Chief of Police
Dannie Smith	Fire Chief
Kaitlin Berry	Special Projects Manager
Eric Maloney	Fire Department Division Chief
David Barrera	Assistant Director of Public Works

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

1. VISITORS/CITIZENS FORUM:

1A. Kerr County Commissioner Tom Moser noted the city and county were in the final phase of a project that would remove 200 properties in Kerrville South from septic systems and place them on city sewer services.

1B. Introduction of Brian O'Connor, Executive Director of the Kerr Economic Development Corporation.

2. CONSENT AGENDA:

Mr. Allen moved to approve consent agenda item 2A; Mr. Andrew seconded the motion, and the motion passed 5-0:

2A. Acceptance of minutes of the regular meeting held September 27, 2016.

3. ORDINANCES, THIRD AND FINAL READING:

3A. Ordinance No. 2016-18, granting to Atmos Energy Corporation, a Texas and Virginia Corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Kerrville, Kerr County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all predecessor ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing a savings clause, a most favored nations clause, and a severability clause; and providing an effective date.

Mr. Hayes noted Atmos had accepted the ordinance and he recommended approval.

Mr. Allen moved for approval of Ordinance No. 2016-18 on third and final reading; Ms. Summerlin seconded the motion and it passed 5-0.

4. CONSIDERATION AND POSSIBLE ACTION:

4A. Resolution No. 27-2016 providing for the city's approval or disapproval of an amendment to the Kerr Central Appraisal District's (KCAD) 2015 fiscal year budget.

Mayor White noted the KCAD surplus totaled \$34,033.00 for FY2015; the City of Kerrville's portion would be \$4,659.12.

P.H. Coates, IV, KCAD Chief Appraiser, and Justin MacDonald, Secretary of the KCAD Board of Directors, provided a letter from KCAD's auditors stating a surplus for FY2015. KCAD requested an amendment to their FY2015 budget to allow KCAD to retain the budget surplus funds for their building reserve fund instead of returning the funds to the taxing entities. The city council previously approved KCAD's purchase of the land, and building design was underway. Mr. Coates noted KCAD would be going out for bids for building construction in December, and KCAD would be making a funding proposal to the taxing entities in February; estimated 10 month completion and move in in early 2018.

Mr. Allen moved for approval of Resolution No. 27-2016 approving the budget amendment; Ms. Summerlin seconded the motion and it passed 5-0.

5. INFORMATION AND DISCUSSION

5A. Report on Phase I, preliminary engineering report for Kerr County Flood Warning System, by John Hewitt, Hewitt Engineering.

Mr. Hewitt noted the county was evaluating whether to seek a federal FEMA grant, which was due in January 2017. The committee had discussed flood warning systems at low water crossings and the type of warning mechanisms. Currently, there are 20 low water crossings monitored in Kerr County; 11 monitored by Guadalupe Blanco River Authority and 9 monitored by Texas Department of Transportation. The committee looked at 69 crossings in the county and narrowed the scope to 20 for evaluation. Since that report, the city

added 22 crossings in the city. The committee would meet in December to go over recommendations and decide what to put in a proposed grant. Any future flood warning system should be coordinated by all agencies. Mr. Hewitt discussed the possibility of participating with San Antonio/Bexar County to add Kerr County crossings to their web-based monitoring system.

Kerr County Commissioner Tom Moser noted the county's workshop would be on December 20.

4B. Interlocal agreement with Kerr County for household hazardous waste collection event to be held December 10, 2016, at the Hill Country Youth Event Center.

Mr. Barrera noted Kerr County was awarded a \$25,000 grant for this event. Under this agreement the city will provide assistance with the application and provide \$10,000 cash match for the application, and the city will cover expenses above \$35,000; \$30,000 was budgeted in the city's budget.

Mr. Fine moved to approve the agreement; Mr. Andrew seconded the motion and it passed 5-0.

4C. Review of Mardi Gras event and consideration of changing the date of the event.

Rose Bradshaw and Melissa Southern, Main Street Advisory Board (MSAB), requested changing the date of the event to April 22; the name of the event may also change, but they planned to keep the Cajun theme. Approximately 750 people attended the 2016 event held in Louise Hays Park. Moving the event to the park was better because streets did not have to be closed, food vendors had more time to set up, and downtown businesses were not affected. They opined that attendance would increase by moving the event from Tuesday to Saturday.

Mr. Andrew moved that the Mardi Gras event be held on April 22; Ms. Summerlin seconded the motion and it passed 5-0.

4D. Resolution No. 26-2016 creating the recovery community coalition and providing for its purpose, membership, roles, and responsibilities.

Mr. Andrew proposed to accept applications through December 2 and appoint members at the December 10 meeting. The committee would set their own meeting date and follow all city rules for boards. All board members must be residents of the city and represent specific stakeholder groups as stated in the resolution. County residents would be encouraged to attend the meetings.

Council discussed amending: Section Two from "may" to "shall" appoint a secretary to make a record of their minutes; and Section Three remove "A".

Mr. Andrew moved to approve Resolution No. 26-2016 with changes stated, and Mr. Fine and Mr. Andrew interview applicants. Mr. Fine seconded the motion and it passed 5-0.

4E. Approve hiring of an outside attorney.

Mayor White stated she had asked Mr. Hayes to place an item on the agenda for council to discuss and approve the hiring of an outside legal counsel and he did not. Mr. Hayes also did not request this matter be discussed in executive session.

Mayor White noted she requested information from Mr. Hayes in September regarding the July incident with late Councilmember Gary Stork. She cited council's fiduciary responsibility and obligation to protect citizens and their safety and well-being; she opined that council should have been informed. Several other open record requests also were submitted to the city; Mr. Hayes denied those requests and suggested if council wanted information they should place an item on the agenda.

Mayor White stated her issue was that Mr. Hayes hired a San Antonio law firm to represent the city in filing a brief with the Attorney General's Office (AGO) to deny the six public information requests (PIR) related to the incidents. Since the matter in the 198th District Court had been dismissed, she opined that the information should be public. Mr. Hayes had told her that because of the number of submittals and time it would take to review records, and his relationship with Mr. Stork, he hired a firm.

Mayor White noted that City Charter Section 7.01 allowed city council to approve special legal counsel. She opined that in accordance with the Charter the city council was to approve whether or not a legal expense was made for outside legal counsel. The council was to engage special counsel, not the city attorney, or the city attorney could do so at the request of the council. She questioned why the city attorney had retained outside counsel for the preparation of the briefs for the AGO since PIRs were rather routine.

She asked council to consider the reasons given by Mr. Hayes and seek clarification to the questions: what was the scope of the work expected; was this just for the specific item of preparing the brief to the AGO; what was the expected budget and length of service; whether such matters as providing a denial of a PIR required expertise above the city's in-house counsel; and did this mean that Mr. Hayes was removing himself from these matters due to his relationship with Mr. Stork.

Ms. Summerlin stated she read the Charter quite differently, Page 16 stated the city attorney had authority to appoint one or more assistants subject to the approval of city council. The city attorney's budget, as approved by council, included \$20,000 set aside to farm out legal matters. She questioned if it was standard practice of the Kerrville City Council to approve expenditures after the budget had been adopted, because that was not typical in her opinion. Ms. Summerlin noted if anyone wanted to withhold anything they had to ask the AGO. This specific situation involved a juvenile. She noted there were 9 information requests. Mr. Hayes noted a 10th request had been received. Ms.

Summerlin asked if one of the PIR had been submitted by Ms. White's attorney; Ms. White replied yes. Mayor White opined that assistants were employees.

Councilmembers also noted the following:

- The city attorney was given authority through approval of the budget to spend funds as needed; this was in keeping with past practice.
- If such legal expenditures required council approval, it should be budgeted in council's budget and not the city attorney's budget.
- The council did not micro manage expenditures in other department budgets.
- Gary Stork and Bonnie White were both clients of Mr. Hayes; this was a perfect example of when an outside firm should be hired; Mr. Hayes did the right thing.
- Council performed its fiduciary responsibility when it passed the budget; they did not want to set a precedence of approving expenditures that were in the city attorney's budget; if they did so with the city attorney they should do so with all staff/departments.
- If the Charter needed clarification for the future, this could be discussed during the next charter review.
- Mr. Hayes had the duty and authority to use his budget as he deemed necessary.

The following persons spoke:

1. Lucy Silva spoke for the victim and encouraged council to answer the public information requests; there was no follow up to answer questions about public safety. The city should reply to the PIRs to protect citizens, and there may be other perpetrators. There was no justice for the victim.

Council noted that the privacy of the juvenile was a paramount consideration, and that was why things needed to be sorted through, and it was appropriate to hire outside counsel to do that.

2. James Craft stated that no information had come out about the matter, and he encouraged council to honor the PIRs. If the information was published, there would not be so many PIRs. The Charter stated the city attorney had authority to appoint assistants, but specifically subject to approval of the city council.

5. INFORMATION AND DISCUSSION

5A. Report on Phase I, preliminary engineering report for Kerr County Flood Warning System, by John Hewitt, Hewitt Engineering. Report given earlier in the meeting following Item 4A.

5B. Budget and economic update.

Ms. Yarbrough gave the financial report year to date for the period ending September 30, 2016: general fund revenues totaled \$24,544,625 and expenditures \$23,933,204; water and sewer fund revenues totaled \$11,574,350 and expenditures \$11,096,569; hotel/motel fund revenues totaled \$1,109,233 and expenditures \$960,474; 73 permits for new residential construction and commercial new/remodel construction totaled \$31,132,014. She provided budget information

for six major capital projects: athletic complex, library campus-history center; reuse project design, reuse project construction, river trail, and utility construction building. She noted this was the year end; however, the numbers had not been audited. She discussed year end transfers and encumbrances.

6. APPOINTMENTS TO BOARDS AND COMMISSIONS:

6A. Library Advisory Board. Mr. Allen moved to reappoint Marty Lenard with term to expire November 22, 2018. Ms. Summerlin seconded the motion and it passed 5-0.

7. ITEMS FOR FUTURE AGENDAS: None.

8. ANNOUNCEMENTS OF COMMUNITY INTEREST were discussed.

ADJOURNMENT. The meeting adjourned at 7:14 p.m.

APPROVED: 01-10-17

ATTEST:

Bonnie White, Mayor

Brenda Craig City Secretary