

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
MARCH 14, 2017

On March 14, 2017, 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 Councilmember Place Two Glenn Andrew, followed by the Pledge of Allegiance led by Dannie Smith.

COUNCILMEMBERS PRESENT:

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| Bonnie White | Mayor |
| Stephen P. Fine | Mayor Pro Tem |
| Glenn Andrew | Councilmember |
| Mary Ellen Summerlin | Councilmember |
| C. Warren Ferguson | Councilmember |

COUNCILMEMBER ABSENT: None.

CITY CORE STAFF PRESENT:

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| 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 | Police Chief |
| Dannie Smith | Fire Chief |
| Kaitlin Berry | Special Projects Manager |
| Stuart Barron | Public Works Director |
| David Barrera | Assistant Public Works Director |
| Danny Batts | Director of Development Services |

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

1. RECOGNITIONS:

1A. Resolution of Commendation presented to William Morgan for serving on the Planning and Zoning Commission.

1B. Certificate of Recognition to Granger MacDonald for being elected the 2017 Chairman of the National Association of Home Builders.

1C. Proclamation proclaiming April 6, 2017, as Our Lady of the Hills State Champion Boys Basketball Team Day for winning the state championship; this was the first team championship in the City of Kerrville since 1970.

Mr. Andrew motioned to move Item 8 to the first of the meeting. Ms. Summerlin seconded the motion and the motion passed 5-0:

8. ANNOUNCEMENTS OF COMMUNITY INTEREST: were given.

2. CONSENT AGENDA:

Mr. Fine moved to approve consent agenda items 2A through 2E; Mr. Ferguson seconded the motion, and the motion passed 5-0:

2A. Accept minutes of regular council meeting held January 24, 2017.

2B. Resolution No. 06-2017, repealing Resolution No. 40-2012 which established the City of Kerrville Beautification Advisory Committee.

2C. Resolution No. 07-2017, repealing Resolution Nos. 99-230, 37-2009, and 30-2012 which created, reconstituted, and then amended the City of Kerrville Golf Course (Maintenance) Advisory Board.

2D. Resolution No. 08-2017, repealing Resolution No. 002-2005 which created the semi-annual conference for the review of the City of Kerrville Municipal Court.

2E. Renewal of Product Schedule contract with Ricoh USA, Inc., copy machine equipment lease in an amount not to exceed \$20,000 per year for five years.

END OF CONSENT AGENDA

3. ORDINANCE, SECOND AND FINAL READING:

3A. Ordinance No. 2017-08, amending the budget for Fiscal Year 2017 to account for various changes to the City's operational budget to account for the transfer of funds for the landfill expansion project and to accept and allocate revenue from a grant awarded to the city relating to the EMS Trauma Care System. Mayor White read the ordinance by title only.

Mayor White noted no changes since first reading.

Ms. Summerlin moved for approval of Ordinance No. 2017-08; Mr. Fine seconded the motion and it passed 5-0.

4. ORDINANCE, FIRST READING:

4A. Ordinance No. 2017-07, amending Chapter 86 "Solid Waste" of the Code of Ordinances of the City of Kerrville, Texas, concerning the provision of solid waste services, including recycling; regulations applicable to collection and disposal of solid waste; the licensing of solid waste haulers; containing a cumulative clause; containing a savings and severability clause; providing a penalty; and providing other matters relating to this subject. Mayor White read the ordinance by title only.

Mr. Barrera reviewed amendments made to the Republic Services contract in 2015 and recommended revisions to the solid waste ordinance to be consistent with the contract and to enable code compliance to enforce violations:

-Carts: how carts should be placed for collection; proper usage, i.e. recyclable cart only used for recyclable materials; carts be removed from the curb on non-collection days; interruption in service, i.e. vehicle blocking cart.

-Bulky/Yard Waste: placement of items no more than 10 days prior to collection; restrictions listed; littering prohibited in streets and drainage areas such as placing yard waste on city streets, sidewalks, and drainage areas.

-Commercial Solid Waste Haulers: required to have a permit to transport waste in city limits. The permit will require commercial haulers to have insurance,

which was a state requirement. The public must have their items secured as required in state law, but they will not need a city license.

Mr. Barrera noted that the changes to the ordinance would not affect rates, operations, or the current contract with Republic Services. Since the city implemented the cart system in 2015, the diversion rate increased from 16% to 26-27%. He reviewed the bulky waste pickup twice a year and the voucher system whereby persons can take items to the landfill without charge.

The following person spoke:

1. George Baroody asked if people hauling trash for a neighbor would have to have a license. People in code enforcement get scapegoated a lot, and council could help by adopting unambiguous enforceable codes.

Mr. Fine moved for approval of Ordinance No. 2017-07; Mr. Andrew seconded the motion and it passed 5-0.

Council requested staff publicize the benefits of the service provided by Republic Services and the changes that are proposed in this ordinance.

5. PUBLIC HEARING:

5A. Application for variance from distance requirement for a boarding home facility proposed to be located at 316 Jefferson Street.

Mr. Batts noted the property was located in a commercial district and adequate parking was available. The facility would accommodate the number of people requested; however it did not meet the distance requirement for separation as it was within ½ mile of four group homes. According to the ordinance any request for a variance of the distance requirement must be reviewed by city council. Staff notified property owners within 200 ft. and one letter was received in opposition to the variance.

Mayor White opened the public hearing at 6:35 p.m. and the following persons spoke:

1. Brittany Andry, applicant, noted the home was centrally located and residents could walk to work, shop, etc. The property was in a commercial zone and was approved for reasonable accommodations for 15 women; the only unresolved issue was the distance requirement.

2. George Broody noted the ordinance was currently under review by the Recovery Community Coalition (RCC) and opined the item should be deferred until the review was completed. A variance might not be necessary if the ordinance changed. If the appeal is denied, the applicant cannot reapply for 12 months. The fee paid should be returned to the applicant. If the variance is approved, then it would apply to everyone, thus that part of the ordinance would essentially be wiped out. He stated that code enforcement was not easy because of ambiguous ordinances that were in place.

3. Larry Howard noted the variance process for distance was allowed in the ordinance; he requested council grant the variance and not defer it. Of the four homes considered to be within ½ mile, two of the properties were within the ½ mile but the actual structures were outside the ½ mile. He opined that maintaining the ½ mile distance requirement was very restrictive and that no additional homes could be allowed in the city without a variance. The Americans with Disabilities Act stated alcoholism and drug addiction as disabilities and he questioned if the ordinance would stand up.

4. Bruce Stracke noted Ms. Andry asked his company to find a property that would meet certain parameters, i.e. within walking distance of shops, education facilities, and employment. He looked extensively, but currently there were no such properties available.

No one else spoke and Mayor White closed the public hearing at 6:43 p.m.

Council also discussed the following:

- One of the items being discussed by the RCC was the ½ mile distance requirement; even a ¼ mile distance requirement would eliminate a lot of sites.
- The RCC may recommend removing the distance requirement in commercial districts. The majority of existing boarding homes were not in a commercial area, and that was the reason for the variance process in the ordinance.
- The RCC's review of the ordinance may not be completed for several months.

Mr. Batts noted if granted, the distance variance would stay with the property as long as the use remained the same. Mr. Hayes noted if the boarding home ceased operation for 180 days, the variance was void.

Mr. Andrew moved to allow the variance request; the motion was seconded by Mr. Fine and passed 5-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Professional services Agreement with LNV, Inc. to complete Phase III of the landfill expansion permit in an amount not to exceed \$500,000.00.

Mr. Hoppe noted the contract would complete the permit for the expansion project; it was not for the landfill expansion project itself.

Mr. Barrera noted that Phase III of the project was to expand the footprint of the landfill. When the project began, the city anticipated expanding only one area, at an estimated cost of \$500,000; however, the city added more area to the project, requiring additional \$257,000. Mr. Davis noted the original plan did not include the Western Expansion area. A recent study gave several options, and the city chose the Big Hill area and later included the western expansion area, which included the soccer field and radio flying club. Mr. Barrera noted the site development would have a plan for the construction of every cell individually; at this time, staff was only requesting to submit the permit application.

Mayor White noted the project cost increased \$257,000, and Freese and Nichols (FN) was to work with LNV Engineering to reduce cost because some studies overlapped. She noted the Republic Services contract went through 2030 with a 5 year extension, and the only reason for termination was if Republic defaulted. She asked if the city did the studies and received the permit now, would the studies expire, and might there be rule changes at TCEQ. Mayor White opined it would be wise to wait before beginning the design until the city received a response from FEMA on the CLOMR already submitted by FN for the pond.

Ms. Hesseltine, LNV Engineering, noted some of the studies, such as wetlands and endangered species might have to be renewed out in the future; however, the archeological study would not have to be renewed because it would not change.

Council also discussed the following:

- The project expansion would increase the life of the city's landfill potentially 100 years; this was a very reasonable cost for the city's future.
- It would be much more costly to permit a new location for a landfill.
- As Kerrville continued to grow, there would be more opposition to a landfill and it would be more difficult to get a permit in the future.
- The contract stated, work to include coordinate the meetings between the city and consulting engineers to discuss the two FEMA CLOMR submittals. The entire CLOMR submitted by LNV totaled only \$6,000.

Mr. Fine moved to give the city manager authority to negotiate the contract with LNV, Inc.; Mr. Andrew seconded the motion.

The following persons spoke:

1. Jerry Wolff stated the expansion of the landfill was very much needed. He was concerned about coordination between FN and LNV. He opined that LNV filed the wrong document and the CLOMR was declined by FEMA in 2015. LNV and FN used two different data bases for floodplain elevations; both entities claimed they cooperated, but there was discrepancy. FN used 2003 data. The city was now evaluating digging up the east side of the flying field to include the western landfill expansion, a complex topology and hydrology area. He asked how this would factor into the CLOMR already filed by FN, and how LNV could do their study and models for the floodplain analysis. He suggested council wait and submit one CLOMR for entire project area.
2. Carolyn Lipscomb noted at previous council meetings it was stated that the cost to close the landfill was \$12 million. Now it is stated that to expand the landfill for over 100 years would cost \$750,000 for studies and design; she asked what the estimated construction cost of the landfill expansion would be.

Mr. Barron noted the original cost estimate included only one side of the hill. The plan now was to permit both landfill expansions. As far as cost projections, it would be too difficult to estimate costs over the next 100 years.

Council noted that closing the landfill would cost \$12 million; after that, the city would have no alternative for a landfill. The city needed to secure the landfill for the city's future.

As far as phases for construction, Ms. Hesseltine recommended starting with the western expansion first. She noted there were other tasks that LNV could proceed with until the city received a response from FEMA.

Mayor White noted the city was not beginning construction immediately and design would not begin until the city heard from FEMA on the pond CLOMR.

The motion passed 5-0.

6B. Appeal of a request for a reasonable accommodation from a boarding home facility located at 829 Earl Garrett.

Mr. Batts noted the property was located in a Residential Transition (RT) zone, which allowed a maximum of 10 residents. Based on 3600 sq. ft., the facility could accommodate 12 residents if the facility was in a commercial district. The Earl Garrett area had a mix of uses, residential directly adjacent to the subject property and commercial uses closer to downtown. In 2013 the previous owner requested reasonable accommodation for 12 persons, and staff granted 11. The square footage and configuration of the facility would allow up to 14 residents if the home was located in a commercial zoning district, but not in an RT zone.

Mr. Batts noted a complaint was made that there were more beds than allowed (10). After investigation, the current property owner was asked to come into compliance. The owner removed the additional beds and filed an application for reasonable accommodation to allow 15 residents. That request was denied by staff, and the applicant requested to appeal that decision to the city council. In summary, the previous owner requested 12 in 2013 and staff granted 11; the current applicant requested 15; the RT zone maximum was 10 residents.

Council also discussed the following:

- The request was a 50% increase in reasonable accommodation.
- The applicant should have known how many beds were allowed before she purchased the facility.
- The conflict was with zoning not with the ordinance.
- The Earl Garret area will develop more toward commercial and not residential.

Mr. Ferguson moved to approve reasonable accommodation for 14 residents. Mr. Fine seconded the motion.

The following persons spoke:

1. Whitney Welch, owner/applicant, noted that boarding home facilities needed to be centrally located so residents can walk to businesses. The facility is in an RT zone but she opined that the area would develop more toward commercial. If the property were in a commercial zone, more beds would be allowed; fewer

people were approved for this facility because of the property's zoning. When she purchased the facility in 2015 there were more than 11 living in the home. This home had not been a single family residence for many years. She charged residents \$550 per month and it was hard to break even with only 11 residents. Boarding homes were not a profit making business and insurance was high.

2. Bruce Stracke noted his firm was involved in the property transaction, and at the time of purchase there were 12 occupants.

Council noted the ordinance was established to balance the needs of the neighborhood with the needs of the recovery community, and approval of this request could set precedence.

Mr. Ferguson withdrew his motion; Mr. Fine withdrew his second.

Council noted if the request was denied, under council meeting procedural rules, the item could not be brought back to council by the applicant for one year.

Mr. Fine moved to defer the request; Ms. White seconded the motion.

Mr. Hayes noted there was no need to defer the matter as the ordinance would overrule the meeting procedures.

Mr. Fine rescinded his motion and Ms. White rescinded her second.

Mr. Ferguson moved to approve the request for 14 residents; Mr. Fine seconded the motion. The motion passed 4 to 1 with Councilmembers Ferguson, Fine, Andrew, and White voting in favor of the motion; and Councilmember Summerlin voting against the motion.

6C. Amendments to the Procedural Rules for Meetings Kerrville City Council.
Mr. Davis noted the changes had been made to the procedural rules for meetings, as instructed by council at the February 21 workshop.

Council noted that Rules 4.5 and 6.2 were in conflict.

Mr. Andrew moved to adopt the changes as drafted and to instruct Mr. Hayes to bring back changes to clarify Rules 4.5 and 6.2. Ms. Summerlin seconded the motion and it passed 5-0.

6D. Change the order of the agenda to move the "Announcements of Community Interest" section to be before the "Consent Agenda" section.
Mr. Davis noted at the previous meeting council discussed moving the announcements section to the front of the agenda and the visitors section to the end; however, the actual motion just stated to move the visitors forum and did not address announcements.

Mr. Andrew moved to move announcements to be before the consent agenda; Ms. Summerlin seconded the motion and it passed 5-0.

6E. Develop an ordinance regulating the use of portable electronic devices while driving.

Councilmember Fine noted the state legislature discussed prohibiting the use of portable devices while driving in the past but no legislation had passed and many cities were adopting their own ordinances.

Chief Knight noted that Texas was 1 of only 4 states in the US that did not have a state-wide ban on texting while driving. Out of 1200 municipalities in Texas 120 had some type of municipal ordinance prohibiting the use of electronic communication devices or texting while driving. Not having a consistent state-wide law created a patchwork of different ordinances throughout the state and drivers did not know what was in effect in each municipality. Distracted drivers posed a significant risk to the public.

Mr. Hayes noted if the city passed an ordinance it would make distracted driving a criminal offense.

The consensus of council was to direct staff to prepare an ordinance prohibiting the use of handheld devices while driving; hands free devices would be allowed.

6F. Amendment to the smoking ordinance to include E-cigarettes and vaping devices.

Chief Knight noted two concerns regarding electronic vaping devices:

1. Used to ingest illegal narcotics or some other type of material. Law enforcement had the ability to file charges for possession of drug paraphernalia.
2. Health and sanitation issues. The city could include the use of electronic vaping devices in the city's smoking ordinance; enforcement of the smoking ordinance was through code compliance, not law enforcement.

The following person smoke:

1. Bill Morgan noted the health risks of electronic vaping devices, stating the solvent used had 20% times more carcinogens than cigarettes. The FDA had no controls as to what was in the solvent used. He recommended that the same rules in the smoking ordinance be applied to vaping devices.

The consensus of the council was to amend the smoking ordinance to include vaping devices in public places.

7. APPOINTMENTS TO BOARDS AND COMMISSIONS:

7A. Appointment to the Library Advisory Board.

Ms. Summerlin moved to appoint Stephen Burch to the library advisory board with term to expire November 22, 2018. Mr. Ferguson seconded the motion and it passed 5-0.

8. **ANNOUNCEMENTS OF COMMUNITY INTEREST**: were given after 1C.

9. **VISITORS/CITIZENS FORUM**: None

10. **ITEMS FOR FUTURE AGENDAS**

-Add "sunset rule" to board and commission rules whereby non-required committees are reviewed annually for repeal.

-Opposition to transporting high levels of radioactive wastes from the East Coast through Kerrville to a proposed waste site in Andrew County in west Texas.

11. **EXECUTIVE SESSION**: None.

12. **ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION, IF ANY**: None.

ADJOURNMENT. The meeting adjourned at 8:16 p.m.

APPROVED: 04/25/2017

/s/

ATTEST:

Bonnie White, Mayor

/s/

Brenda Craig City Secretary