

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
APRIL 25, 2017

On April 25, 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 Mayor White, followed by the Pledge of Allegiance led by Matt Attridge, Boy Scout Troop 111.

COUNCILMEMBERS PRESENT:

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:

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
Curtis Thomason	Assistant Police Chief
Dannie Smith	Fire Chief
Kaitlin Berry	Special Projects Manager
Stuart Barron	Public Works Director

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

1. **ANNOUNCEMENTS OF COMMUNITY INTEREST:** were given.

2. **CONSENT AGENDA:**

Mayor White asked to remove Items 2B and 2C from the consent agenda.

Mr. Fine moved to approve consent agenda items 2A and 2D; Ms. Summerlin seconded the motion, and the motion passed 5-0:

2A. Minutes of the regular meeting of March 14, 2017, and the special meeting of March 22, 2017.

2D. Purchase of one 2018 Freightliner dump truck through BuyBoard Purchasing Cooperative in the amount of \$85,792.00.

**END OF CONSENT AGENDA**

2B. Contract to Freese and Nichols, Inc. for engineering services for the construction of Legion lift station and force main, in the amount of \$734,000.00.

Mayor White questioned if funds were available to move the design forward as it was not in the 2017 budget.

Mr. Hoppe noted the project was identified in the city's wastewater master plan. Funding was not in the original FY17 budget; however, through project savings, there were funds available to move forward with the design engineering only, but not for project construction. Staff planned to go out for bid for the oxidation ditch and water clarifier project in summer 2017, and the Legion lift station project in mid-2018. He confirmed this contract would provide engineering services and administrative management through design and construction of the project.

Mr. Andrew moved to approve the contract with Freese and Nichols; Mr. Ferguson seconded the motion and it passed 5-0.

2C. Contract to Freese and Nichols, Inc. for engineering services for the City of Kerrville's water treatment plant total trihalomethane (TTHM) reduction project, in the amount of \$287,000.00.

Mr. Hoppe explained the city had been exceeding the TTHM limits prescribed by TCEQ. The city was granted a one year extension by TCEQ.

Mr. Barron described efforts taken to bring the city into compliance, looping lines, flushing distribution lines, and repainting storage tanks; this reduced TTHM, but the city was still exceeding state limits. He discussed two options: 1) chloramines; and 2) carbon filtration.

Mayor White suggested waiting to see if the rehab of the water treatment plant clarifier would help. Mr. Barron noted the clarifier removed solids; it did not remove carbon, and when chlorine is added it will continue to generate high levels of TTHM. Mr. Barron noted that initially staff stayed away from chloramine treatment methods; however, it does solve TTHM issues and the city was under enforcement action by TCEQ to control TTHM.

Mayor White noted a water consultant she used in her personal business warned her about chloramines because chlorine mixed with ammonia makes the chlorine last longer but the ammonia remained. She noted that a lady in California attributed her health problems to a byproduct of chloramine.

Richard Weatherly, Freese and Nichols, Inc. (FNI), noted that 80-90% of surface water systems in Texas used chloramine treatment methods. As part of the contract, FNI will be studying carbon filter options vs. chloramine treatment options and the associated infrastructure and operational costs with each type of system. FNI will prepare an action plan for the option the city chooses.

Council also discussed the following:

-The city was researching possibilities; it was not agreeing to a chloramine system at this time. There are no definite facts, studies, tests, or proven health risks associated with chloramines at this time.

-If the city changes to a chloramine system, would it affect TCEQ's requirements for the city's ASR wells, since water is treated with chlorine before it is put into the ASR wells? Mr. Barron stated the water must meet drinking water standards before it is put into ASR. Chloramine was a different disinfection process, and the city would be required to notify TCEQ of any change in treatment.  
-How did FNI arrive at the \$300,000 estimate for services. Mr. Weatherly noted it was 10% of what the water activated carbon filter treatment system could potentially cost.

Mr. Barron noted the city was under directive by TCEQ to bring TTHM under control by December 2016; TCEQ granted a one year extension, and the city had only seven months to bring TTHM into compliance with TCEQ.

Mayor White suggested issuing a request for qualifications for other firms that offer alternative water treatment options that might be available. Mayor White opined that TCEQ was lenient about extensions.

Mr. Weatherly stated that FNI, in the process of developing the proposal for the city, focused on the two most proven methodologies to eliminate TTHMs. He understood that the city was under a critical timeframe to meet the TCEQ extension.

Ms. Summerlin moved to approve the FNI contract; Mr. Andrew seconded the motion and it passed 5-0.

### **3. ORDINANCES, SECOND AND FINAL READING:**

3A. Ordinance No. 2017-09, amending Chapter 26 "Buildings and Building Regulations", Article VIII "Building Board of Adjustment and Appeals" of the Code of Ordinances of the City of Kerrville, Texas, by amending the membership qualifications for said board and ending the term limits; containing a cumulative clause; containing a savings and severability clause; establishing an effective date; and providing other matters related to the subject. Mayor White read the ordinance by title.

Mr. Andrew moved for approval of Ordinance No. 2017-09 on second and final reading; Mr. Ferguson seconded the motion and it passed 5-0.

3B. Ordinance No. 2017-10, amending Chapter 66 "Library," of the Code of Ordinances of the City of Kerrville, Texas, by amending Article II "Library Advisory Board" to remove the requirement of ex officio members and to require quarterly meetings; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to this subject. Mayor White read the ordinance by title.

Mr. Fine moved for approval of Ordinance No. 2017-10 on second and final reading; Mr. Andrew seconded the motion and it passed 5-0.

3C. Ordinance No. 2017-11, amending the budget for Fiscal Year 2017 to authorize the transfer of a portion of the unassigned fund balance within the general fund to the general asset replacement fund. Mayor White read the ordinance by title.

Mr. Fine moved for approval of Ordinance No. 2017-11 on second and final reading; Ms. Summerlin seconded the motion and it passed 5-0.

#### **4. ORDINANCE, FIRST READING**

4A. Ordinance No. 2017-12 amending Chapter 74 "Parks and Recreation," of the Code of Ordinances of the City of Kerrville, Texas, by amending Article II "Parks and Recreation Advisory Board" to increase the number of members from eight to nine and to clarify the responsibilities and expectations of the board; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to the subject. Mayor White read the ordinance by title only.

Mr. Davis reviewed the proposed changes to the ordinance:

- Change meetings from monthly to quarterly;
- Increase the number of members from eight to nine;
- Remove the councilmember ex-officio;
- Revise the duties and powers to reflect the needs of the department; and
- Added expectations section identifying specific expectations of board members.

Mr. Ferguson read the board expectations section, which was developed by the board members.

Mr. Andrew moved for approval of Ordinance No. 2017-12 on first reading; Mr. Fine seconded the motion and it passed 5-0.

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

5A. Application to City of Kerrville, Texas Economic Improvement Corporation (EIC) for funding to renovate the Doyle Community Center.

Mayor White made a point of order: The city's economic development process established guidelines and procedures regarding how to apply for funding from EIC. Items first must be presented to EIC. She suggested the matter be referred to EIC, and if approved, then brought back to city council in accordance with the policy. To proceed would violate city policy and circumvent the established process. She noted that in April 2014 Mayor Jack Pratt objected to the Gateway project circumventing the economic development process for a 380 agreement. Mr. Pratt was advised by Mr. Davis that the matter should go through EIC first. She also noted that under Rule 3.4, items submitted should be forwarded to city council at the time the request is submitted, and this was not done.

Mayor White moved that on a point of order, because of city policy and rules and procedures, that council refer the matter to EIC, and if approved by EIC, it come back to city council for consideration. The motion died for lack of a second.

Council also discussed the following:

- Procedural Rule 3.3 stated the deadline to submit an item for the agenda; the item was submitted within the deadline. Mayor White noted it was submitted by the deadline; however, under Rule 3.4 staff did not forward the item to the city council at the time the request was received.
- The request was for the city to apply to EIC. The city was not a co-applicant; a co-applicant had ownership or involvement in a project.
- The DCC Board of Directors was working on its own application to EIC;
- If the city sponsored the application, it might suggest that the city was the owner. The DCC Board should apply because they are the owner.

Mayor White requested a motion for council to hear the presentation.

Council consensus was that a motion to hear the presentation was not necessary as the item was listed on the agenda.

Jack Pratt noted he was not a member of the Doyle Community Center (DCC) Board of Directors, but he had been working on the project for two years. He provided a list of the board of directors. Mr. Pratt gave a history of the Doyle School and noted the Community Center opened in August 2003. The DCC was a 501c3 non-profit organization and served many organizations and citizens' groups. The facility was in dire need of renovation to bring it to code and make it a functional facility. He requested the city apply to EIC for funding in the amount of \$600,000. The information he provided was from the DCC Board. Mr. Pratt also requested the city waive all city fees for the project.

The following person spoke:

1. Dannie Smith, DCC board member, noted the DCC Board was in the process of getting updated cost estimates and scope of work from a local architect.

Mr. Andrew stated that the Doyle Community Center Board go to the Economic Improvement Corporation first and present the item and hold the public hearing; then the board and EIC should bring the project back to city council to hear. Ms. Summerlin moved that motion. Mr. Andrew seconded the motion and it passed 5-0.

5B. Resolution No. 10-2017 amending the Ethics Policy for Elected and Appointed Officials – City of Kerrville, Texas as previously adopted by Resolution No. 40-2013; said amendments concerning the meeting preparation, communications, and the confidentiality of specific information.

Mr. Davis noted following council discussion at the February 21 work session and council action on April 11, staff prepared four items to be placed in the city's ethics policy:

1. Councilmembers to submit questions to staff prior to meetings to allow time to research.

2. When staff provides information, conversations, emails, etc. to council, such should be considered privileged information until city council takes action on the subject. It is inappropriate to provide such information to citizens or the media.
3. If a councilmember quotes a document or receives information on an agenda item, they should provide a copy of the documents/information to all councilmembers prior to the meeting.
4. Council attendance at board meetings should be avoided.

Regarding Item 4, Council noted:

- Councilmembers should be allowed to attend meetings and speak when they have a personal issue before a board, such as ownership or notification that something was happening near their property.
- Councilmembers should be allowed to attend advisory boards since they have no legislative authority.
- Discussion at the workshop was to discourage regular attendance by councilmembers at any of the city's board and commission meetings so as not to provide undue influence on independent boards.

Council also discussed the following:

- When attending board meetings, councilmembers should listen and not participate in discussions or interact in the process. Council appointed persons to boards and should not attempt to influence their decisions. Policies were in place that state that council should not have undue influence.
- Staff should provide regular reports to councilmembers regarding board meetings, i.e. issues, member attendance, etc.
- Council should not be lobbying members of any of the boards. Lobbying was covered in the procedural rules for city boards and in the City Charter. Mayor White stated lobbying should be addressed in the council procedural rules, but it should not be in the ethics policy.

Mr. Hayes noted the issue was about due process, particularly with quasi-judicial boards. Council's attendance at planning and zoning commission (PZC) and zoning board of adjustment (ZBA) meetings could unduly influence the process. It could be questioned whether a councilmember's attendance influenced a decision; that could violate due process. He noted that state law allowed councilmembers to be a member of EIC; however, state law did not allow councilmembers to be members of PZC or ZBA.

Section I: Mayor White requested the statement be deleted: "a reasonable person would understand to be confidential from the totality of the circumstances surrounding how the member is made aware of the information." The statement was unclear, subject to interpretation, and might not be enforceable. The statement should not be in the ethics policy, but in the council procedural rules. Ms. Summerlin noted that Section I would set a basis for one councilmember to address another councilmember that a certain behavior was unethical; for example, two councilmembers discuss a matter, then a news reporter contacts a councilmember about what had been discussed.

Mayor White noted she spoke with a county commissioner and he thought a lot of the policy violated rights of free speech. She opined that some of the policy superseded a person's Constitutional rights and if the policy was challenged, the city would lose.

Ms. Summerlin moved to eliminate the last bullet point on the Statement of Commitment; Mr. Fine seconded the motion and it passed 5-0.

Mr. Fine moved to approve Sections F and H; Mr. Fine rescinded his motion.

Mayor White moved to amend the procedural rules to strike the last sentence in "O" from the ethics policy and add it to council procedural rules: "O. Similarly, City Council should not attend meetings of Boards, as doing so may work to cause improper or even undue influence no matter how well-intentioned, and may raise an issue of due process." Ms. Summerlin seconded the motion. Mr. Davis clarified the intent of the motion was to remove the sentence in Section O from the ethics policy and add it to the council procedural rules. Mayor White and Ms. Summerlin confirmed it was part of the motion. The motion passed 5-0.

Mayor White suggested a new section be added: "There should be no discussion with staff or other councilmembers about how a future vote might result, or how an election or appointment could affect the outcome of an issue. It would be improper for city council to discuss with staff how a future vote might affect the outcome of an issue; such should be decided when council deliberates and votes." She unintentionally overheard a conversation outside of an open door in city hall between staff and a councilmember about "how we are going to get around Bonnie." Mr. Fine opined that it was not ethical of the Mayor to eavesdrop on a personal conversation, which neither he nor former staff remembered happening.

Mr. Andrew moved for approval of the ethics policy as modified. Mr. Fine seconded the motion and it passed 4 to 1 with Councilmembers Andrew, Fine, Ferguson, and Summerlin voting in favor of the motion and Mayor White voting against the motion.

## **6. INFORMATION AND DISCUSSION:**

### **6A. Budget and economic update.**

Ms. Yarbrough gave the financial report year to date for the period ending April 25, 2017: general fund revenues totaled \$19,391,011 and expenditures \$13,827,391; water and sewer fund revenues totaled \$5,550,146 and expenditures \$5,636,339; hotel/motel fund revenues totaled \$504,508 and expenditures \$500,200. 25 permits for new residential construction and commercial new/remodel construction totaled \$13,921,950 year-to-date.

Mayor White asked where the \$2 million for the dirt was in the reuse project. Ms. Yarbrough noted it would be transferred out and be shown on the April report.

**7. VISITORS/CITIZENS FORUM:**

1. Robert Naman noted on April 11 a councilmember indicated that persons who questioned or opposed projects were against progress. He stated that asking questions was not being against progress but for financial responsibility; destroying soccer fields and ignoring the work of volunteers was thoughtless; seeking money from both EIC and KPUB for the same project and borrowing money when the city had in excess of the 25% reserve was not progress; using sales tax and water/sewer revenues was a regressive tax on citizens.
2. Carolyn Lipscomb noted that dogs running loose created hazardous situations.
3. Stephen Fine stated appreciation to Mr. Davis for serving as interim city manager for the third time.
4. Mr. Davis noted Justin MacDonald, the city's representative on the Kerr Central Appraisal District Board of Directors, had resigned effective May 31. Applications were being accepted from persons interested in being appointed to KCAD.

**8. ITEMS FOR FUTURE AGENDAS**

- Enforcement of loose animals.
- Appointment to Kerr Central Appraisal District Board of Directors.

**9. EXECUTIVE SESSION:**

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

**9A. 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:

- 800 Junction Highway, former city hall.

At 7:39 p.m. the regular meeting recessed. Council went into executive closed session at 7:43 p.m. At 7:58 p.m. the executive closed session recessed and council returned to open session at 7:58 p.m. No action was taken in executive session.

**10. ACTION ON ITEM DISCUSSED IN EXECUTIVE SESSION, IF ANY:**

Mr. Fine moved to authorize the city manager to update the appraisal of the property located at 800 Junction Highway. Ms. Summerlin seconded the motion and it passed 5-0.

**ADJOURNMENT.** The meeting adjourned at 7:59 p.m.

APPROVED: 05/09/2017

ATTEST:

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Bonnie White, Mayor

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Brenda Craig City Secretary