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CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
DECEMBER 12, 2017

On December 12, 2017, the Kerrville City Council meeting was called to order at 6:00 p.m. by Mayor Bonnie White in the city hall council chambers at 701 Main Street. The invocation was offered by Councilmember Warren Ferguson, followed by the Pledge of Allegiance led by Charlie McIlvain.

COUNCILMEMBERS PRESENT:

Bonnie White	Mayor
George Baroody	Mayor Pro Tem
Vincent C. Voelkel	Councilmember
Mary Ellen Summerlin	Councilmember
C. Warren Ferguson	Councilmember

COUNCILMEMBER ABSENT: None

CITY STAFF PRESENT:

Mark McDaniel	City Manager
Mike Hayes	City Attorney
E.A. Hoppe	Deputy City Manager
Brenda Craig	City Secretary
Sandra Yarbrough	Director of Finance
Kim Meisner	Director of General Operations
David Knight	Police Chief
Stuart Cunyus	Public Information Officer
Drew Paxton	Executive Director of Development Services
Sabine Kuenzel	Chief Planning Officer
Dannie Smith	Fire Chief
Guillermo Garcia	Executive Director of Strategic Initiatives

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

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

2. **VISITORS/CITIZENS FORUM:**

2A. Charlie McIlvain encouraged attendance at the Hill Country District Junior Livestock Show Cowboy Breakfast to be held January 12, 2018, 6:00 a.m. at the Youth Event Center.

3. **PRESENTATION:**

3A. Update on the final terms of the General Obligation Refunding Bonds, Series 2017 and presentation of the transaction summary.

Ann Burger Entekin, First Southwest/Hilltop Securities, stated that Standard & Poor's affirmed the city's AA rating. She gave the refunding transaction results noting a net savings of \$1,070,773.

Mr. McDaniel noted as a result of restructuring the debt, the city would have capacity to proceed to finance several major projects, in particular, the Legion lift station and the trihalomethane problem.

4. CONSENT AGENDA:

Mr. Baroody removed Item 4C from the consent agenda.

Mr. Baroody moved to approve consent agenda items 4A, 4B, and 4D; Ms. Summerlin seconded the motion, and the motion passed 5-0:

4A. Approve minutes of the following city council meetings: regular meeting held September 26, 2017; workshop held October 17, 2017; special meeting held October 20, 2017; and regular meeting held October 24, 2017.

4B. Execution of a Joint Election Agreement with Kerr County for conducting the City of Kerrville General Election to be held on May 5, 2018.

4D. Budget and Economic Update ending October 31, 2017.

END OF CONSENT AGENDA

4C. Resolution No. 47-2017 authorizing the abandonment and release of a recreation easement previously conveyed to the City of Kerrville, Texas, and located on the property with an address of 245 Guadalupe Street; and ordering recording.

Mr. Hoppe noted the easement on adjacent property had been rerouted closer to the river, necessitating the abandonment of the existing easement and acquisition of a new easement on the subject tract in order to connect the two segments of the river trail.

Ms. Summerlin moved for approval of Resolution No. 47-2017; Mr. Ferguson seconded the motion and it passed 5-0.

5. PUBLIC HEARINGS AND RESOLUTIONS:

5A. Resolution No. 43-2017, granting a conditional use permit (CUP) for an approximate 0.91 acre tract of land situated in the John C. Sheffield Survey No. 121, Abstract No. 291; located south of and adjacent to State Highway 27 (Junction Highway); and otherwise known as 1327 Junction Highway; said property located within the Guadalupe River Zoning District (GR); by permitting said property to be used for Retail Trade I as that term is defined within the City's Zoning Code; and making said permit subject to certain conditions and restrictions.

Mr. Paxton noted current zoning would allow an auto parts store less than 3,000 sq. ft. in the Guadalupe River District; however, the applicant, O'Reilly's, requested a CUP to increase the store size to almost 8,000 sq. ft. The Planning and Zoning Commission (PZC) recommended approval of the CUP with four conditions: 1) Phase 1 environmental assessment, 2) building elevations; 3) dumpster screening to match building; and 4) prohibit auto repair in the parking lot. Mr. Paxton noted the property was not in the regulated flood way of the river; however, the footprint of the building would have to be out of the floodplain. He noted that the city had abandoned several old flood easements acquired from UGRA on a case by case basis.

Mr. Hayes noted that when UGRA built the dam several years ago they had to purchase property for flood indentations on those properties, and subsequent city councils had vacated the property easements on a case by case basis when requested. After the construction of the dam and lake, FEMA maps and floodplain restrictions took over the need for the flood easements.

Ms. Kuenzel identified properties adjacent to the subject property and noted all were in the Guadalupe River District and adjacent property to the west was zoned PD.

Mayor White opened the public hearing at 6:29 p.m. and the following persons spoke:

1. Tim Guillot, engineer with Esterly, Schneider and Associates Architects, representing O'Reilly's Auto Parts Store, noted they received approval from PZC with conditions, and they had no issues with those conditions. O'Reilly's had already provided all of the additional information requested, including the Phase I environmental assessment. The Phase I was to determine if the site had any existing hazardous conditions; it did not have anything to do with the future use of the property. The O'Reilly's project would be substantially similar and consistent with surrounding development.

Council asked Mr. Guillot if he knew that a CUP would be required for the subject property. Mr. Guillot replied yes, the zoning was made clear; however, a CUP was a viable option, thus they proceeded. A 3,000 sq. ft. building would not allow O'Reilly's to hold enough product to make the store sustainable.

2. Bruce Stracke noted the #1 complaint he receives from residents is that buildings have their backs to the river. He asked that the city at least require buildings to be perpendicular to the river.

3. Jim Leavell discussed a survey he did based on the question, "Was an auto parts store at this location consistent with their vision for the river." The results of the survey were: 181 votes, 163 no and 18 yes.

4. Fred Henneke, attorney for the adjacent property owners, was concerned that a tract of land on the river could be developed without a phase I environmental assessment and noted that fill had been placed in the area of the property closer to the highway. His client had requested an environmental assessment, and O'Reilly Auto Parts provided a clean report. The applicant proposed to build an 8,000 sq. ft. structure on less than one acre, of which 2/3 was not developable due to floodplain issues; this was a lot of construction for one location.

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

Council also discussed the following points:

-One of the city's goals was to preserve and protect the river.

-O'Reilly's knew about the zoning classification so the city was not changing the rules.

Mr. Baroody moved to deny Resolution No. 43-2017; Mr. Ferguson seconded the motion and it passed 5-0.

5B. Resolution No. 46-2017, for a conditional use permit to convert an office complex into a three-plex multi-family housing unit in accordance with Chapter I, "the City of Kerrville Zoning Code" Article 11-1-10 (Residential Zoning Districts) for an approximate 0.23 acre tract. Legal description Oak Hill 1 Subdivision, Lot 4-pt & 5, Block 1, located at 714 Clay Street North; on the northeast side of Barnett Street North, between Barnett Street North and Myrta Street North.

Mr. Paxton noted the applicant requested a CUP to convert an existing office building to multi-family housing. He discussed uses allowed by right and conditional uses. He presented a site plan and noted 8 parking spaces and 1 handicap parking space. PZC recommended approval.

Jeremy Itz, applicant, noted the property was commercial, but had been vacant for several years so he proposed converting the property to multi-family residential. Each unit would be about 660 sq. ft.; the driveway was narrow and would be one-way.

Mr. McDaniel noted the property use exceeded the parking requirement.

Mayor White opened the public hearing at 6:52 p.m.; no one spoke, and Mayor White closed the public hearing at 6:52 p.m.

Mr. Ferguson moved for approval of Resolution No. 46-2017; Ms. Summerlin seconded the motion and it passed 5-0.

6. PUBLIC HEARING AND ORDINANCE, FIRST READING:

6A. Ordinance No. 2018-02, amending the City's "Zoning Code" to designate the Central Business District, the Gateway District, and the Guadalupe River District as "Design Districts" in accordance with Senate Bill 1004; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication.

Mr. Paxton proposed amendments that would add language for "design districts" to protect corridors. He noted that Senate Bill 1004 allowed cities to adopt development standards in designated design districts in order to regulate telecommunication network nodes and poles. The next step would be completion and adoption of the design manual. PZC recommended approval of the ordinance.

Mayor White declared the public hearing open at 7:00 p.m.; no one spoke, and Mayor White closed the public hearing at 7:00 p.m.

Ms. Summerlin moved to approve Ordinance No. 2018-02 on first reading; Mr. Voelkel seconded the motion and it passed 5-0.

7. ORDINANCES, FIRST READING:

7A. Ordinance No. 2018-01 amending Chapter 10, "Alcoholic Beverages" of the Code of Ordinances of the City of Kerrville, Texas; by amending Section 10-3 "Licensing Requirements; Fees"; by reducing the applicable fee for a brewpub license; containing a

cumulative clause; containing a savings and severability clause; providing for an effective date; ordering publication; and providing other matters relating to the subject. Mr. McDaniel noted the city's current ordinance stated that the maximum the city could charge was half of what the state charged; under the current fee schedule, that would be \$500 for two years for a Brew Pub License and \$1,500 for two years for a Brewer's Permit license. He proposed to amend the fee to be equal to restaurants, \$150.

Ms. Summerlin moved to approve Ordinance No. 2018-01; Mr. Ferguson seconded the motion and it passed 5-0.

7B. Ordinance No. 2018-03 amending Chapter 66, "Library," of the Code of Ordinances of the City of Kerrville, Texas; by amending Article II "Library Advisory Board" to change the composition of the Library Advisory Board to allow Kerr County to make an appointment; containing a cumulative clause; containing a savings and severability clause; and providing other matters relating to this subject.

Mr. McDaniel noted the amendments were consistent with the new interlocal agreement with Kerr County. The ordinance would designate a position on the library advisory board for a representative from Kerr County Commissioners' Court.

Mr. Ferguson moved for approval of Ordinance No. 2018-03 on first reading; Ms. Summerlin seconded the motion and it passed 5-0.

8. ORDINANCE, SECOND AND FINAL READING:

8A. Ordinance No. 2017-21, annexing an approximate 7.95 acre tract of land into the City of Kerrville, Texas, said property generally located south of and adjacent to State Highway 27 East and west of Colvin Ranch Road East; said property being out of the F. Rodriguez Survey No. 72, Abstract No. 280, being located adjacent to the corporate limits of the City of Kerrville, Texas, and more commonly known as 5263 Highway 27 East; further describing the property to be annexed; adopting a service plan for the property annexed; and establishing the zoning for the property annexed.

Mr. Voelkel filed a conflict of interest and recused himself from the meeting at 7:06 p.m.

Mr. McDaniel noted no changes since first reading.

Mr. Ferguson moved for approval of Ordinance No.2017-21 on second and final reading; Ms. Summerlin seconded the motion and it passed 4-0-1 with Councilmembers Ferguson, Summerlin, Baroody, and White voting in favor of the motion; no one voted against the motion; and Mr. Voelkel abstained.

9. CONSIDERATION AND POSSIBLE ACTION:

9A. Reappointment of Municipal Court Judges M. Patrick Maguire and Mark Prislovsky for two year terms to expire December 31, 2019.

Mayor White moved to defer this item to executive session; Ms. Summerlin seconded the motion and it passed 5-0.

9B. Administrative Services Contract between the City of Kerrville, Texas and the City of Kerrville, Texas Economic Improvement Corporation in the amount of \$83,300.

Mr. Hoppe noted that EIC compensated the city \$100,000 for services provided throughout the year. The City and EIC approved a 60 day interim contract for \$16,700. The proposed contract would authorize payment of the remaining balance of \$83,300, and amend the contract to clarify EIC's ability to hire outside legal counsel if needed.

Council noted it was a unanimous vote of EIC to budget for special legal services; however, it did not obligate EIC to use the money for outside legal counsel. Council also discussed situations whereby a conflict might exist between Council and EIC.

Mr. Hayes confirmed that the contract had always stated it was possible for EIC to hire outside counsel.

The following person spoke:

1. Robert Naman, EIC member, stated he saw no harm and did not object to the change, but he felt it was unnecessary. Ultimately, the Council can deny any project approved by EIC. According to the state comptroller, it was very rare that an EIC would sue a city.

Ms. Summerlin moved for adoption of the contract; Mr. Ferguson seconded the motion and it passed 5-0.

9C. Review and possible action concerning Economic Improvement Corporation board appointments.

Mr. Baroody stated EIC was accountable to the council and he expected board members not to antagonize or disparage city council from the dais. Since early September James Wilson had made escalating and discouraging remarks during EIC meetings to the effect that the city did not know how to do economic development and had made belittling and disparaging comments about the authorizing unit. Also, at an EIC meeting, during discussions about the administrative services contract, Mr. Wilson had stated publicly that he anticipated conflict with the city council. He confirmed that Mr. Wilson was attending EIC meetings so there was not an attendance issue.

Ms. Summerlin questioned if council was contemplating making it a qualification that board members must agree with the majority of council and why Mr. Wilson should be removed now when his term was up in June. She opined that such action could put all board members at risk of being replaced if they disagreed with a councilmember. She did not hear any remarks by Mr. Wilson in the EIC recordings that was disparaging or antagonizing toward council or threatened a lawsuit; anticipating conflict did not mean a lawsuit. She noted that Mr. Baroody had stated that he thought the open meetings act had been violated and that it was grounds for action by the district attorney.

Mr. Baroody stated his comments were intended to be cautionary and to protect EIC.

Mayor White stated she was disappointed at the perceived hostility at EIC meetings. It was over the line when a board member threatened a lawsuit, which precipitated a

change to the administrative services contract and a budget revision. To state over and over, that a conflict with the governing body was anticipated, was not a good working relationship. Replacing one position might put an end to the hostility.

Mr. Baroody moved to remove and replace James Wilson from EIC, and not for the reasons stated; and open it up for applications to be submitted as quickly as possible, and preferably replace him before the next EIC meeting. Mr. Voelkel seconded the motion and it passed 3-2 with Councilmembers Baroody, Voelkel, and White voting in favor of the motion and Councilmembers Summerlin and Ferguson voting against the motion.

11. BOARD APPOINTMENTS

11A. Appointments to the Food Service Advisory Board.

Mr. Ferguson moved to reappoint Gary Aamodt and Ruben Molina, and to appoint Martino Ortega with term to expire December 1, 2019. Mr. Voelkel seconded the motion and it passed 5-0.

11B. Appointments to the Planning and Zoning Commission

Mr. Ferguson moved to defer appointment to the first meeting in January; Mr. Baroody seconded the motion and it passed 5-0.

12. ITEMS FOR FUTURE AGENDAS

- January 9, 2018 meeting: appointment to the Economic Improvement Corporation; accept applications through Wednesday, January 3.

13. EXECUTIVE SESSION:

Mr. Baroody moved for the city council to go into executive closed session under Section 551.074 (personnel/officers) of Chapter 551 of the Texas Government Code; Mr. Voelkel seconded the motion and it passed 5-0 to discuss the following matters:

13A. Section 551.074:

Reappointment of Municipal Court Judges M. Patrick Maguire and Mark Prislovsky for two year terms to expire December 31, 2019.

13D. Section 551.074:

Conduct performance review of City Manager Mark McDaniel.

At 7:43 p.m. the regular meeting recessed. Council went into executive closed session at 7:51 p.m. At 8:22 p.m. the executive closed session recessed and council returned to open session at 8:23 p.m. No action was taken in executive session.

14. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY

Ms. Summerlin moved to: 1) Reappoint Municipal Court Judges Mark Prislovsky and M. Patrick Maguire on terms as discussed, and to authorize personnel action forms; and 2) Authorize a personnel action form for City Manager Mark McDaniel. Mr. Ferguson seconded the motion and it passed 5-0.

ADJOURNMENT. The meeting adjourned at 8:25 p.m.

APPROVED: January 23, 2018

ATTEST:

Bonnie White, Mayor

Brenda G. Craig City Secretary