

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
JUNE 28, 2011

On June 28, 2011, the Kerrville City Council meeting was called to order by Mayor Wampler at 6:00 p.m. in the city hall council chambers, 800 Junction Highway. The invocation was offered by Reverend Patty Edwards of the Unity Church of the Hill Country, followed by the Pledge of Allegiance led by Kevin West and Jayden, with Big Brothers Big Sisters.

MEMBERS PRESENT:

David Wampler	Mayor
Gene Allen	Mayor Pro Tem
Carson Conklin	Councilmember
T. Scott Gross	Councilmember
Stacie Keeble	Councilmember

MEMBER ABSENT: None

EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Kristine Ondrias	Assistant City Manager
Brenda G. Craig	City Secretary
Travis Cochran	Director of Information Technology
Mike Erwin	Director of Finance
Kevin Coleman	Director of Development Services
Charlie Hastings	Director of Public Works
Tara LaMontia	Assistant to the City Manager
Kim Meismer	Director of General Operations
Mindy Wendele	Director of Business Programs
Robert Ojeda	Fire Chief
Malcolm Matthews	Director of Parks and Recreation
John Young	Police Chief
Amy Ives	Code Compliance Manager

VISITORS PRESENT: List is on file in city secretary's office.

1. VISITORS/CITIZENS FORUM: The following person spoke:

1A. Scott Porter stated that the city had only two city inspectors, and the city could save \$100,000 annually by hiring a third party to provide plan review and inspections. He provided a draft ordinance and requested consideration on the next council agenda. Council gave no instruction to staff.

2. PRESENTATIONS:

2A. Proclamation to honor Clarabelle Snodgrass for receiving the Governor's Award for Historic Preservation for 2010, presented by Mayor Wampler.

2B. Kerrville Police Department's Police Commendation Award to Officer Josh Jureczki for received the Police Officer of the Year Award.

- 2C. Kerrville Police Department's Certificate of Merit Award to Officer David Torres.
- 2D. Kerrville Police Department's Certificate of Merit Award to Investigator John Latham.
- 2E. Kerrville Fire Department's 2011 EMS Person of the Year Award to Paramedic Alexis Hutcherson.
- 2F. Kerrville Fire Department's 2011 Firefighter of the Year Award to Firefighter/ Paramedic Jeremy Hughes.

3. CONSENT AGENDA:

Mr. Allen moved for approval of items 3A through 3C; Ms. Keeble seconded the motion and it passed 5-0:

3A. Approval of the minutes of the regular meeting held June 14, and special meeting held June 16, 2011.

3B. Authorize amendment to the funding agreement between the City of Kerrville, Texas Economic Improvement Corporation and the Hill Country Home Opportunity Council in the amount of \$100,000.

3C. Nominations to the Kerrville Area Chamber of Commerce Board of Directors.

END OF CONSENT AGENDA

4. ORDINANCE, SECOND AND FINAL READING:

4A. Ordinance No. 2011-13 amending the budget for fiscal year 2011 to account for changes in the operating budget and the status of various capital improvement projects; and to amend other city funds to account for balances for approved purposes. Mayor Wampler read the ordinance by title only.

Mr. Erwin noted no change since first reading, and no additional information had been received from TxDOT.

Mr. Gross moved for approval of Ordinance No. 2011-13 on second and final reading; Mr. Allen seconded the motion and it passed 5-0.

5. ORDINANCE, FIRST READING:

5A. An ordinance amending Chapter 58, Article II "food establishments" of the Code of Ordinances of the City of Kerrville, Texas, by adding a new Section 58-33 "mobile food establishments", to establish regulations applicable to mobile food vending and to require a permit for such activities; containing a cumulative clause; containing a savings and severability clause; ordering publication; providing for an effective date; and providing other matters relating to the subject. Mayor Wampler read the ordinance by title only.

Mr. Coleman noted the draft ordinance had been reviewed by the main street advisory board and was recommended by the food service advisory board (FSAB).

Ms. Ives reviewed the proposed changes as recommended by the FSAB:

- Prohibited from selling non-food items

- Restricted from operating in city parks, but may apply for permission
- Prohibited from parking and operating on an unimproved lot or parking overnight
- Restroom (flushable) facilities within 150 feet; no non-flushable portable facilities
- Use of tables and chairs, vendor must comply with parking requirements and restroom facilities for customers
- Route-based vendors limited to 30 minutes in one location
- May not operate within 300 feet of any public or private school one hour before, during or after school hours without written permission
- Comply with separation and distance requirements by city building and fire codes
- Special permit required to operate within central business district.

Ms. Ives noted the FSAB discussed requiring background checks; however, since it was not a food safety issue, the FSAB deferred that requirement to the city council. She also noted that background checks were required for ice cream peddlers. The draft ordinance contained a section that listed certain conditions whereby an applicant may be denied a permit.

The following person spoke:

1. Polly Rickert stated her concerns: 1) the ordinance gave the chief of police broad authority to do background checks and should be more specific; 2) two sentences in the ordinance seemed to be in conflict and were confusing with regard to what constituted denial of issuance of a permit; 3) targeted one group of vendors to comply with background checks and not all, resulting in unfair requirements and opportunities between competitors.

Mr. Hayes noted background checks would also be recommended for door-to-door peddlers and salespersons. The criminal data base could only be used for law enforcement purposes. He stated there was not a conflict in the ordinance; the background checks allowed the police chief to look for active warrants, convictions, and felonies. Denial of a permit can be based on a conviction for certain felonies as listed in the ordinance.

Council also discussed the following:

- Ordinance should not hurt market days events. Ms. Ives noted market days fell under special events or temporary vendor and this ordinance would not affect it.
- Would the ordinance affect vendors from other cities? Ms. Ives stated their commissary would have to be permitted and regulated by the city of Kerrville.
- If ordinance was later found to be too restrictive, the council could amend it.
- Need to ensure public safety.
- Should be consistent in requiring background checks; not a requirement for other city permits and licenses.

Mr. Gross moved for approval of the ordinance on first reading as presented with the exception of the requirement for background checks and with a six month review; Mr. Conklin seconded the motion and it passed 5-0.

6. CONSIDERATION AND POSSIBLE ACTION:

6A. Review current concept plan for 413 Main Street, Crenwelge Motor Sales expansion, including acceptance of the third party appraisal of the right of way (Rodriguez Street) to be abandoned with the project and direction to staff to initiate the abandonment process.

Mr. Coleman noted on January 11, 2011, the council granted preliminary approval of the abandonment, but requested additional information and staff review of the appraisal. Tim Crenwelge provided staff a two-phased conceptual plan; the first phase did not require the abandonment of Rodriguez Street or right of ways within the perimeter of the Crenwelge property; abandonment will be a requirement in Phase 2. Staff believed the third party appraisal as provided by Crenwelge was a fair assessment of the land and requested clarification from council on the appraisal.

Council also noted the traffic on Rodriguez Street was negligible and most was attributed to Crenwelge Motor's use.

Tim Crenwelge proposed to do the project in phases, noting a July deadline to submit construction documents to General Motors.

Mr. Allen moved to accept the appraisal as presented; the motion was seconded by Mr. Conklin and passed 5-0.

6B. Authorize the execution of a construction contract with JM Lowe & Company for the renovation/expansion of the Butt-Holdsworth Memorial Library in the amount of \$1,478,000.00 and authorize the execution of additional change orders in an amount not to exceed \$200,000.00.

Mr. Conklin filed a conflict of interest form and left the meeting at 7:02 p.m.

Ms. Ondrias noted city staff and the city's architect, Peter Lewis, had developed the plans and specifications for the project and bids were received on June 16. HEB's facility alliance division was also involved in the design process. A pre-bid conference was held and ten general contractors attended; two addendums were issued prior to the bid opening. On June 16 four bids were received; one was deemed non-responsive at the bid opening; the apparent low bidder, Vertex, was later deemed non-responsive. She reviewed the process and noted staff held an evaluation conference with Vertex, including a conference call with the city attorney and city manager, and followed up with a letter to Vertex; in correspondence and discussions with Vertex, staff and the architect were led to believe that Vertex did not include the fire alarm system and the security system in its bid. Ms. Ondrias referred to the letter response from Vertex dated June 23 that specifically stated that the fire alarm system was not included in their bid. She noted there were two separate security systems: 1) building security, which was outside of the contract; and 2) life safety/fire alarm system which was part of the actual building, and as such it was a code compliance issue, and that was why the city included the fire alarm system in the bid specifications. Staff recommended the bid be awarded to

the next low bidder, JM Lowe & Company, in the amount of \$1,478,000 with additional change orders not to exceed \$200,000.

Mr. Hayes stated the bottom line was, when asked whether the security alarm system and the fire alarm system were included in the price of their bid, Vertex's answer was no. He had no doubt that Vertex would do the work and honor their bid; however, there was a provision in the bid document that stated when bidding a city project, the bidder was bidding on the entire scope of work, and they admitted they did not. If Vertex was awarded the contract, it would be setting the stage for an adversarial relationship, and Vertex could attempt to make up the difference elsewhere through change orders. Mr. Hayes noted the process of bidding was through a sealed bid process and that another bidder had been deemed non-responsive based on a minor issue at the bid opening. During the due diligence process, Mr. Lewis and staff deemed the Vertex bid to also be non-responsive.

The following persons spoke:

1. Patricia Bryant, owner of Vertex, noted Vertex had been deemed as non-responsive based on the premise that they did not include an item in their proposal and had tried to change their bid. Vertex never changed their proposal and never asked for an increase in their bid; they agreed to enter into a contract for the amount submitted in their proposal for all work to be performed as stated in the specifications.
2. Bob Barrett, estimator and project manager for Vertex, noted staff questioned Vertex's proposal and whether the fire alarm system was included in their estimate. They had stated no because they had information that it was to be bid directly to the city, noting the city had contracted directly with roofers and other people.

Peter Lewis, city's architect on this project, noted he had received 10-12 requests for information on this project. He also noted that the bid rejected at the bid opening was due to not including a list of subcontractors. During the bid review process, he discovered that the difference between the two lowest bidders was the value of the fire alarm system. He met with Mr. Bennett of Vertex, and he acknowledged that he had omitted the fire alarm system, which was a requirement of the bid.

The council also discussed the following points:

- Questioned how the information technology department was involved in the process. Ms. Ondrias noted the IT department had been involved from the beginning to help identify conduit that may need to be run for the systems.
- Discussed whether the fire alarm system was to have been included in the bid, and whether the bid should be deemed non-responsive.
- The issue was not about the cost of the alarm system, but about the bid process and proper management of that process. The city had a bid process and should adhere to that process; bid specifications were part of the bid process.

Mr. Gross moved to authorize the execution of a construction contract with JM Lowe & Company for the renovation/expansion of the Butt-Holdsworth Memorial Library as presented; the motion was seconded by Ms. Keeble and passed 4-0-1, with Councilmembers Gross, Keeble, Allen, and Wampler voting in favor of the motion; no one voted against the motion; and Mr. Conklin abstained.

Mr. Conklin returned to the meeting at 7:37 p.m.

6C. Building Board of Adjustment and Appeal's (BBAA) recommendation to amend the City plumbing code to allow grey water reuse systems in the City of Kerrville.

Ms. Keeble requested council reconsider the BBAA's previous recommendation to amend the plumbing code to allow grey water reuse systems in addition to continuing to encourage rainwater catchment systems and water conservation. She noted that according to the Center for Disease Control, there had been no documented case of any health problem attributable to grey water use; also, Headwaters Groundwater Conservation District encouraged the installation of grey water systems. Ms. Keeble recommended adoption of the State of Texas Health and Safety Code; which would allow, not require, homeowners to install grey water systems. Permitting and inspecting could be handled with existing city staff. She opined that the systems would not be widely used and would likely only affect new housing as it would be cost prohibitive to install in existing homes; therefore, it should not inhibit the city's ability to supply effluent in sufficient quantity to meet the current city contracts.

The following persons spoke:

1. Bruce Stracke supported rainwater catchment systems, but they were dependent on rainfall. Grey water systems would allow as much as 40% of household water to be reused and recycled back into the aquifer. He noted the cost could be \$250 up to a few thousand dollars depending on the type of system and the number of drains installed.
2. David Lipscomb noted county residents had the ability to install grey water systems.
3. Polly Rickert stated the city should do a model/benefit analysis and determine the potential impact. Also, TCEQ had draft ordinances and regulations available.
4. Rusty Hendrickson, President of the Texas Rainwater Catchment Association, noted that TCEQ defined grey water and its use. He had done grey water systems and products that allowed efficient use of grey water. TCEQ defined grey water and broke it down into different categories.
5. Ruth Spradling questioned how many contractors could install systems, and once a system was installed if it was a continuous process. Mr. Stracke responded that any plumbing contractor could install a system, and it was a code requirement that systems have a transfer connection between the grey water reuse system and the city sewer system.

The council also discussed the following:

- Water was a precious resource that should be used wisely; grey water systems could provide options to homeowners for irrigation.
- Clarified that the city was not discussing reuse of black water.
- Requested staff prepare a water analysis, estimate the amount of effluent that could be reduced, and evaluate the effect on the city's wastewater system and the city's ability to meet existing effluent contracts.
- Expressed concern about odors. Mr. Stracke noted if grey water was placed on landscaping or a mulch bed immediately, there would not be any odor problem. If a holding tank was used in a system, TCEQ required that holding tanks without a disinfectant system be evaporated or emptied in less than 24 hours to prevent odors from accumulating. He recommended tankless systems.
- If the city had a shortage of water to fill effluent contracts, consider allowing condensate drains to be tied into the city's sewer system.

Mr. Parton noted staff would prepare a draft ordinance that would allow the installation of grey water systems and prepare information for council to review, e.g.: the effect of grey water reuse and low flow fixtures on the city's wastewater system, the effect reuse would have on raw water supply and the city's ability to meet existing contracts, the types and functionality of grey water systems, and potential health and safety concerns.

6D. Naming policy for City property and facilities.

Mr. Matthews noted the city did not have a policy or procedure for naming and renaming city property or facilities, and such opportunities may exist in the future, for example, the library. He reviewed common practices and items that could be considered, and noted a policy would establish consistency when requests were received.

Mr. Conklin moved to direct staff to draft a policy for council's review and adoption for naming city properties; the motion was seconded by Mr. Gross and passed 5-0.

6E. Discussion and direction to City staff regarding parking strategies for the Central Business District.

Mr. Parton noted a downtown property and business owner expressed concern about the lack of vehicle parking during certain hours. He proposed that staff investigate the issues and prepare a parking strategy for the CBD. He also suggested meeting with downtown organizations and getting input from merchants and owners, and better advertising to inform the public of available free parking at the former hospital parking garage.

The following persons spoke:

1. Jon Wolfmueller stated he was the downtown business owner who met with Mr. Parton. He offered several solutions, i.e. enforcement of the two hour

parking limit and installation of parking meters. The issue was compounded by downtown merchants and their employees who used on-street parking; also, he opined that property owners should provide off-street parking for their tenants.

2. Bruce Strahke noted the parking garage was a good solution, but it was two blocks away from Earl Garrett Street. He suggested the city get input from downtown business owners.

3. Carolyn Lipscomb noted current construction in the downtown area made it difficult for pedestrians to get from the parking garage to Earl Garrett Street; once construction was finished it would be easier and safer. She suggested street signage for parking.

The city council also discussed the following points:

- Downtown merchants cited parking as their #1 concern.
- Parking had been an issue in downtown for many years; part of the problem was merchants and owners who used on-street parking.
- Need better marketing and signage for the parking garage to advise the public that it was available for free.
- Need police enforcement of the two hour parking limit.
- Encourage input from downtown stakeholders before establishing a parking strategy.

The consensus of the council was that staff should meet with downtown stakeholders to gather more information and report back to council.

6F. Update regarding 2011 Texas Legislative Session.

Mr. Hayes reported on bills adopted in the 2011 Texas Legislative Session which may impact the city, in particular, SB100 which will impact city elections. In order to comply with federal election schedules, Texas cities may not be able to hold elections in May of every year due to the fact that counties' voting equipment may still be in use for federal elections. He will keep council informed and offer options for city elections in the future.

6G. Update regarding Lower Colorado River Authority Transmission Services Corporation (LCRA-TSC) application for the proposed McCamey D to Kendall to Gillespie CREZ project PUC Docket No. 38354; City of Kerrville, Kerrville Public Utility Board, and City of Junction v. PUC, Cause No. D-1-GV-000324, in the 98th District Court of Travis County.

Mr. Hayes noted the city was proceeding toward the trial on August 2, 2011, in Travis County. Kerr County was filing their own complaint with PUC, but would be supportive of the city's efforts. The reply brief was due on July 1. He noted there had been no reply from TxDOT on the letter sent.

7. INFORMATION AND DISCUSSION:

7A. Budget and economic update.

Mr. Erwin reported local unemployment was unchanged. Local sales tax increased 15% in May and 2% in June. Hotel occupancy tax decreased 2% in June. General fund revenue was at \$16 million; expenditures at \$12.7 million. Water/sewer fund revenue was at \$6.2 million; expenditures at \$5.9 million, which included \$300,000 from the fund balance used in February for capital projects. He reported that slippage, the amount of water produced but not billed, to date decreased 22% from FY10.

8. ITEMS FOR FUTURE AGENDA: None.

9. ANNOUNCEMENTS OF COMMUNITY INTEREST:

9A. Library opening Tuesday, July 5 at the History Center.

9B. Kerrville's 4th on the River events all day downtown and concert beginning at 4:00 in Louise Hays Park followed by fireworks. Council appreciated all of the volunteers and sponsors for the event.

9C. Mayor Wampler was elected to the Alamo Area Council of Government Board of Directors.

10. EXECUTIVE SESSION:

Mr. Gross moved for the city council to go into executive closed session under Sections 551.071 (consultation with attorney), of the Texas Government Code; the motion was seconded by Mr. Allen and passed 5-0 to discuss the following matters:

Section 551.071:

- Consult with attorney about pending or contemplated litigation or settlement of same relating to Janet Holmes vs. City of Kerrville, Texas, No. SA10CA0970 OG (U.S.D.C. Western District, San Antonio Division).

At 8:52 p.m. the regular meeting recessed and council went into executive closed session at 8:53 p.m. At 9:14 p.m. the executive closed session recessed and council returned to open session at 9:15 p.m. Mayor Wampler announced that no action had been taken in executive session.

11. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION: None.

12. ADJOURNMENT.

The meeting adjourned at 9:15 p.m.

APPROVED: _____

David Wampler, Mayor

ATTEST:

Brenda G. Craig, City Secretary