

CITY COUNCIL MINUTES
REGULAR MEETING

KERRVILLE, TEXAS
SEPTEMBER 25, 2012

On September 25, 2012, the Kerrville City Council meeting was called to order by Mayor Pratt 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 Cadet Captain Katrina Hisey of the Tivy Air Force Junior Reserve Officer Training Corps.

COUNCILMEMBERS PRESENT:

Jack Pratt	Mayor
Stacie Keeble	Mayor Pro Tem
Gene Allen	Councilmember
Carson Conklin	Councilmember
Justin MacDonald	Councilmember

COUNCILMEMBER ABSENT: None

CITY EXECUTIVE STAFF PRESENT:

Todd Parton	City Manager
Mike Hayes	City Attorney
Brenda G. Craig	City Secretary
Charvy Tork	Interim Director of Information Technology Systems
Mike Erwin	Director of Finance
Robert Ojeda	Fire Chief
John Young	Police Chief
Mindy Wendele	Director of Business Programs

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

1. VISITORS/CITIZENS FORUM No one spoke.

2. PRESENTATIONS AND RECOGNITIONS:

2A. Proclamation proclaiming the month of October as Crime Prevention Month presented by Mayor Pratt.

2B. Proclamation proclaiming October 27 as Halloween Safety Night.

Mayor Pratt stated he had received phone calls from teachers requesting that Halloween be moved from October 31 to Saturday, October 27; he supported the date change and cited various reasons: keep kids home on school night so they may be fully rested for school the next day, place a greater importance on education, and included several safety points. He noted that Halloween was not a national holiday, and the proclamation asked citizens to observe the date.

Ms. Keeble noted that Halloween traditionally was celebrated on October 31 and people may not be in favor of changing the day to October 27. She felt that

parents had responsibility for their children's safety and used common sense. Changing the day of Halloween was a policy change, and she requested the council vote whether to adopt the proclamation changing the day Halloween is celebrated.

The proclamation died for lack of a motion.

3. CONSENT AGENDA:

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

3A. Minutes of the Kerrville City Council regular meetings held August 14, 2012, and August 28, 2012, and the special joint meeting of the Kerrville City Council and the Kerrville Public Utility Board held on August 20, 2012.

3B. Resolution No. 36-2012 authorizing the waiver for Hill Country Home Opportunity Council, Inc. of various fees associated with the construction of homes; said waiver to remain in effect through September 30, 2013, or the construction of ten homes, whichever occurs first.

3C. Resolution No. 37-2012 authorizing the waiver for Habitat for Humanity Kerr County Affiliate, Inc. of various fees associated with the construction of homes; said waiver to remain in effect through September 30, 2013, or the construction of nine homes, whichever occurs first.

END OF CONSENT AGENDA

4. ORDINANCES, SECOND AND FINAL READING:

4A. Ordinance No. 2012-11 adopting the annual budget for the fiscal year 2013; providing appropriations for each department and fund; containing a cumulative clause; and containing a savings and severability clause. Mayor Pratt read the ordinance by title only.

Mr. Erwin noted no changes since first reading; staff recommended approval.

Mr. Allen moved for passage of Ordinance No. 2012-11 on second and final reading; Mr. Conklin seconded the motion and it passed 5-0.

4B. Ordinance No. 2012-10 levying an ad valorem tax for the use and the support of the municipal government for the City of Kerrville, Texas, for the fiscal year 2013; providing for apportioning each levy for specific purposes; and providing when taxes shall become due and when same shall become delinquent if not paid. Mayor Pratt read the ordinance by title only.

Mr. Erwin noted no changes since first reading; staff recommended approval.

Mr. MacDonald moved for passage of Ordinance No. 2012-10 on second and final reading; Mr. Conklin seconded the motion and it passed 5-0.

4C. Ordinance No. 2012-09 amending in part Ordinance No. 99-18, as amended by Ordinance No. 2000-23, by adopting revised rate schedules for residential services, miscellaneous service charges, and outdoor area lighting for electric service administered by the Kerrville Public Utility Board; containing a cumulative clause; containing a savings and severability clause; and establishing an effective date. Mayor Pratt read the ordinance by title only.

Tracy McCuan, KPUB General Manager/CEO, noted no changes since first reading. He noted the new rates were approved by the KPUB board.

Council asked: 1) If the question regarding reliability of one of the electric service providers, CPS of San Antonio, as posed by a citizen, had been adequately answered; and 2) If CPS purchased power from LCRA.

Mr. McCuan noted the proposed ordinance was regarding rates for electric utility service, which must be approved by city council; contracts with providers are the sole responsibility of KPUB. In his opinion reliability with CPS Energy of San Antonio would be as good as with LCRA; KPBU had been purchasing as much as 52% of energy from providers other than LCRA for many years, including as much as 38% from CPS during the last six years. Mr. McCuan stated it was possible that LCRA purchased electricity from CPS, but that was privileged information between those entities.

Mr. Conklin moved for passage of Ordinance No. 2012-09 on second and final reading; Ms. Keeble seconded the motion and it passed 5-0.

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Opposition to the Aqua Texas, Inc. (AT) utility rate increases implemented on February 21, 2012.

Mayor Pratt noted at the September 11 meeting he asked the city attorney to look into hiring a third party to represent the city citizens affected by the rate increase.

Mr. Hayes reported that the city had authority to enter into the case to represent the approximate 150 citizens in the city who were AT ratepayers. In February the city council found that the rates were unreasonable and unfair, and staff sent council's motion to TCEQ and AT. AT was appealing that finding, and the city could become a party to AT's appeal. AT will reimburse the city for all costs with respect to legal representation and consultants, and then pass those costs on to AT's customers within the city limits in a future rate increase.

Mr. Hayes confirmed that the city could recoup cost incurred by the city in representing the citizens who were AT customers; however, AT could claim retainage and refuse to pay up to 20% until the end of the case. He had no estimate of the cost or when the case would be finished.

Council asked if the appeal was not successful, if the cost incurred by the city and reimbursed by AT would be spread among all AT ratepayers system wide, or only to those who joined the appeal?

Mr. Hayes stated his understanding was if the city entered the case, the city would be creating a separate class of the 150 AT customers inside the city of Kerrville, because those were the only AT customers that the city council could represent, and any cost incurred by AT could then be passed back to those 150 city citizens; however he would investigate this further.

Mayor Pratt noted that currently AT was before TCEQ regarding the city's appeal in February. The city had the option of acting as a point of original jurisdiction and could hire consultants and legal representatives to represent the citizens of Kerrville through the TCEQ process.

Larry Westfall stated he was a board member of the Kerrville South Citizens Action Group and spokesman for the Hill Country Aqua Texas Rate Case Dispute group appointed by the administrative judge to represent the people of Kerr and Gillespie counties, and they were seriously involved in the litigation representing AT customers outside city limits to oppose the AT rate increase. He noted increases ranged from 65%-100%, and rates inside the city were higher. AT had done nothing in Kerr County to justify a rate increase, but Kerr customers were being robbed to pay for improvements and services in other counties. The two groups he represented offered to assist the city in entering the dispute.

The council questioned Mr. Westfall on several issues:

- Did the people he represented have complete understanding of the risks involved? Mr. Westfall responded that AT customers were aware that they could be charged for all legal expenses incurred by AT for fighting the case, i.e. consultants and legal cost of defending against a corporate industry.
- How many AT customers are in Kerr County, and what were those customers doing to fight the increase? Mr. Westfall estimated 2,000 in Kerr County, including the 150 inside the city limits. He noted that 10% had filed the protest necessary to enter the litigation and protest, and they were proceeding with that process. They attended the administrative hearing in Austin a few months ago, at which time the administrative judge designated the litigation groups. They were meeting with the state representative. They were challenging AT's information and seeking an informal settlement with AT; if they were unsuccessful in working out an agreement, they would have to decide whether to proceed with the hearing scheduled for April 2013.
- What legal representation did the AT customers outside the city have? Mr. Westfall noted that customers outside the city had no legal representation, and their group operated solely on donations and they were incapable of raising \$25,000-35,000 required for the case. He acknowledged that all of the legal expenses incurred by AT could be assessed back to ratepayers on their water bills. In a similar rate case in 2004 the process lasted three years and AT won on all points, and more than \$3 million in attorneys' fees were assessed to users at the rate of \$9 per customer per month for two years.

Council also noted the following:

- The 150 AT customers inside the city would be taking the full hit for the cost of the appeal, since AT could assess legal fees and costs incurred back to those ratepayers who were represented in the appeal.
- Of the 150 in city AT customers, some were commercial.
- AT could withhold retainage for several years, and AT may not reimburse the city the full amount.
- Staff time would be taken away from other projects to manage the appeal; the question was how to spend city funds and resources. Mr. Hayes estimated the appeal would require several hours a week of staff time. He noted the docket had already been set; mediation was scheduled for the end of October, and the hearing was set for April 2013. If the city entered the case, he noted that the discovery process would begin immediately.
- Council had responsibility to represent citizens in the rate case.

Mayor Pratt recommended the city engage consultants and legal consultants necessary, and to oppose the AT rate increase appeal under consideration by Aqua Texas, Inc.

Mr. Conklin moved that council take action to enter the appeals process on behalf of Kerrville residents who were Aqua Texas customers. Mr. Allen seconded the motion and it passed 4 to 1 with Councilmembers Conklin, Allen, MacDonald, and Pratt voting in favor of the motion and Councilmember Keeble voting against.

6. **ITEMS FOR FUTURE AGENDAS:** None.

7. **ANNOUNCEMENTS OF COMMUNITY INTEREST:**

- October 4, 2012, 9:00 a.m. special meeting with Freese and Nichols regarding wastewater utilities master plan.
- October 11, 2012, 11:00 a.m. dedication of new city hall, 701 Main Street.

8. **EXECUTIVE SESSION:** None.

ADJOURNMENT. The meeting adjourned at 6:43 p.m.

APPROVED: _____

Jack Pratt, Jr., Mayor

ATTEST:

Brenda G. Craig, City Secretary