

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
JANUARY 24, 2017

On January 24, 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 Father Tom Murray, of St. Peter's Episcopal Church, followed by the Pledge of Allegiance led by Asst. Police Chief Curtis Thomason.

COUNCILMEMBERS PRESENT:

Bonnie White	Mayor
Stephen P. Fine	Mayor Pro Tem
Glenn Andrew	Councilmember
Mary Ellen Summerlin	Councilmember
Gene Allen	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 Meismar	Director of General Operations
Curtis Thomason	Asst. Chief of Police
Dannie Smith	Fire Chief
Kyle Burow	City Engineer
Kaitlin Berry	Special Projects Manager

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

**1. VISITORS/CITIZENS FORUM:**

Ms. Summerlin moved to move the visitors/citizens forum to Item 7B. Mr. Andrew seconded the motion and it passed 4-1 with Councilmembers Summerlin, Andrew, Fine, and Allen voting in favor of the motion, and Mayor White voting against the motion.

**2. CONSENT AGENDA:**

Mayor White removed Item 2A from the consent agenda.

Mr. Andrew moved to approve consent agenda item 2B; Mr. Fine seconded the motion, and the motion passed 5-0:

2B. Microsoft Enterprise enrollment agreement authorizing the City's use of Microsoft products and services.

**END OF CONSENT AGENDA**

2A. Amendment to Property Listing Agreement for the property located at 800 Junction Highway (old city hall site).

Mr. Davis stated the only change to the agreement was the name of the brokerage firm. Mayor White noted the effective date would remain the same, September 13, 2016, to September 30, 2017.

Mr. Andrew moved to approve the amendment; Mr. Fine seconded the motion and it passed 5-0.

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

3A. Ordinance No. 2017-05 abandoning and vacating all right, title, and interest in a portion of a public right-of-way, consisting of an unimproved portion of "H" Street, as located west of and intersecting with Water Street; being an approximate 0.396 of one acre tract of land out of the Thomas Hand Survey No. 115, Abstract No. 193, as shown on the plat of J.A. Tivy's First Addition, a plat recorded in Volume "P", Page 16 of the Real Property Records of Kerr County, Texas, and within the City of Kerrville, Texas; finding that said portion is not required for future use as a public street; making the effective date subject to certain conditions; and ordering recording. Mayor White read the ordinance title.

Mr. Hoppe noted the ordinance was approved on first reading January 10, 2017.

Mr. Fine moved for approval of Ordinance No. 2017-05; Ms. Summerlin seconded the motion and it passed 5-0.

3B. Ordinance No. 2017-06 amending the budget for Fiscal Year 2017 to account for various changes to the city's operational budget, including additional revenues and allocations for capital improvement projects. Mayor White read the ordinance by title only.

Mr. Davis noted the ordinance was approved on first reading January 10, 2017; no changes since first reading.

Mayor White read a section of the November 10, 2015, council minutes regarding the purchase of dirt from the general fund. She questioned if the dirt would be excavated from both the general excavation site and the soccer field site? Mr. Davis stated yes, from both sites.

The following person spoke:

1. George Baroody opined that the city was double paying for the dirt and charging the water fund twice. Later in this meeting council will approve a bid for a project for \$1.7 million; he opined that the city did not have funds in the budget to pay for what was being approved.

Council noted this simply reflected the cost of the dirt and if the city did not buy the dirt from the general fund, it would have to buy dirt from a vendor and have it

transferred. The method being used was a straight forward and honest way to recognize the cost of the dirt in the project.

Mayor White noted the city did not go out for bid on that portion of the project, and the budget amendment would also fund \$2 million for a building for a private entity.

Mr. Andrew moved for approval of Ordinance No. 2017-06; Mr. Fine seconded the motion and it passed 4-1 with Councilmembers Andrew, Fine, Summerlin, and Allen voting in favor of the motion and Mayor White voting against the motion.

#### **4. CONSIDERATION AND POSSIBLE ACTION**

4A. Resolution No. 03-2017 designating the official newspaper for the City of Kerrville, Texas, providing authority for the City Manager to act as may be appropriate; providing for an effective date; and repealing all other resolutions in conflict herewith.

Mr. Davis noted both the Kerrville Daily Times (KDT) and the Hill Country Community Journal (HCCJ) met the legal requirements to be designated as the official newspaper for governmental entities.

The following persons spoke:

1. Neice Bell, KDT Publisher, requested the city move publication of notices to the KDT. She noted the KDT had been in publication for 106 years and had been the newspaper of record for the city most of that time except for the last two years. She noted many changes at KDT since the city had moved to the HCCJ. KDT was the newspaper of record for the county and school district, and KDT's circulation was four times larger than the HCCJ. Ms. Bell stated that the biggest issue to be resolved was that KDT can better accommodate timing and meet deadlines as a daily paper, which would make it easier for city staff, and KDT's higher circulation would reach more people.

2. Tammy Prout, HCCJ Publisher, stated that former City Manager Todd Parton told her that HCCJ had been overlooked as a community newspaper in the past, and he proposed that the city would run notices in the HCCJ for a few years and then alternate between the newspapers. Mr. Parton recently emailed her confirmation of this agreement. She opined that the number of responses from the public had not decreased since the city began publishing legal notices in the HCCJ, and she was not aware of any timing issues that had caused any delay. The HCCJ's rates were less than KDT's; HCCJ was a locally-owned newspaper; and KDT's circulation was double, not four times, HCCJ's circulation. Ms. Prout questioned why a change was being made in the middle of the fiscal year.

Mr. Fine moved to designate both newspapers as official newspapers and give each an equal amount of advertising funds throughout the year. Mr. Andrew seconded the motion.

Mr. Hayes noted that legally the city could appoint both as the city's official newspapers; however, the city would have to publish all notices in both newspapers.

Council also discussed the following:

- The newspaper of record should be the one with the greatest circulation; however, more people would be reached if both newspapers were used.
- Using a daily newspaper may lessen delays.
- Resolution 97-186 designating the KDT as the official newspaper had not been repealed. Mr. Hayes noted the proposed resolution would repeal all previous resolutions, including 97-186.

Mr. Fine rescinded his motion, and Andrew rescinded his second.

Mr. Andrew moved to alternate rotation of newspapers on October 1 of each year, coinciding with the city's fiscal year; the motion did not receive a second.

Ms. Summerlin moved to approve Resolution 03-2017 and designate the KDT as the official newspaper; the motion died for lack of a second.

Mr. Fine moved to:

- Approve Resolution 03-2017 with HCCJ through the end of this fiscal year;
- Add a Section 5 to alternate back and forth annually at fiscal year end with HCCJ in odd years, and KDT in even years;
- Add a Section 6 in the event of an emergency timing issue whereby the HCCJ cannot accommodate a publication date, the city may use KDT.

Mr. Andrew seconded the motion. Mr. Fine amended the motion to withdraw Section 6; Mr. Andrew agreed to withdraw Section 6 from the motion. The motion passed 4 to 1 with Councilmembers Fine, Andrew, Summerlin, and White voting in favor of the motion; and Councilmember Allen voting against the motion.

4B. Project funding agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas for the design of and improvements to the City's H-E-B Tennis Center, in an amount not to exceed \$1,500,000.00.

Mr. Hoppe reviewed the project components and noted the project was included in both the city's and EIC's budgets over two fiscal years. The project had been approved by EIC, and if the funding agreement was approved by council, staff would prepare a request for qualifications and a design contract for council's consideration at a future meeting. He estimated the cost of design/engineering at \$100,000-200,000 and noted that grants and donations may also be available in the future.

Council suggested KISD be contacted for input into the design and for possible financial participation.

The following person spoke:

1. Kirk Kniffen, representing Kerrville Tennis Association, stated he looked forward to all that can be accomplished in the project and offered advice and assistance with KTA members.

Ms. Summerlin moved for approval of the agreement; Mr. Andrew seconded the motion and it passed 5-0.

4C. Project funding agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas; and Schreiner University; for the construction of a reclaimed water distribution line to be owned by the city and used in conjunction with the provision of reclaimed water to Schreiner University for irrigation purposes, in an amount not to exceed \$900,000.00.

Ms. Summerlin filed a conflict of interest affidavit and recused herself from the meeting at 6:43 p.m.

Mr. Hoppe noted the overall construction project totaled \$3 million over two years, and was bid as one project. The project funding agreements allocated certain portions of the overall project to specific entities; this part of the project with Schreiner University (SU) was proposed at \$900,000. EIC approved the agreements.

Mayor White noted the project was presented for 4B funding under Section 505.152 of the Local Government Code which addressed public parks; she opined that the project did not meet the requirement of public use. She opined that at the current effluent rate the return on investment payout would be 800 years for the entire project. The letter of intent with SU was for 20 years with a 7 year price freeze. She questioned if SU understood that if the city was required to use the effluent supply for direct potable reuse, this resource might not be available to them.

Mr. Allen moved for approval of the agreement; Mr. Fine seconded the motion and it passed 3-1-1 with Councilmembers Allen, Fine, and Andrew voting in favor of the motion; Mayor White voting against the motion; and Councilmember Summerlin abstaining due to a conflict of interest.

Ms. Summerlin returned to the meeting at 6:47 p.m.

4D. Project funding agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas; and Riverhill CC, LP; for the construction of a reclaimed water distribution line to be owned by the city and used in conjunction with the provision of reclaimed water to Riverhill Golf Club for irrigation purposes, in an amount not to exceed \$600,000.00.

Mr. Hoppe noted this was part of the same construction project as in Item 4C; this agreement was specific to Riverhill.

Mayor White noted the project was defined as a business development project under Section 501.103 of the Local Government Code for infrastructure improvement defined as being for new or expanded business; Riverhill was not a new or expanded business.

The following person spoke:

1. Peggy McKay stated that the extension of effluent lines to Riverhill was classified in the agreement as a business development project and quality of life project. A requirement of eligibility for EIC funding is that the business is new or expanding, Riverhill was neither. Riverhill was not open to the public; it was open to members and other special events controlled by Riverhill Country Club. She contacted the Comptroller's Office and asked if the project would be eligible for 4B funding, and they reported no if the country club was not open to the public. She had the name of the person she spoke to at home.

Mr. Hayes stated that all funding agreements state the specific provisions that the agreement complies with and the type of projects for which the project qualifies. This project was a business enterprise; the manager of Riverhill informed him that water supply would help expand their business. In the past drought, Riverhill had to close a portion of their golf course due to a lack of water for irrigation. EIC also found that the project was a legitimate expenditure of 4B funds as the facilities were suitable for use for professional and amateur sports, i.e. golf course. Mr. Hayes stated the proposed agreement met the legal requirement for expenditure of 4B funds.

Mr. Summerlin moved for approval of the agreement; Mr. Fine seconded the motion and it passed 4-1 with Councilmembers Summerlin, Fine, Allen, and Andrew voting in favor of the motion; Mayor White voting against the motion.

4E. Project funding agreement between the City of Kerrville, Texas, Economic Improvement Corporation and the City of Kerrville, Texas for the construction of a reclaimed water distribution line used for the provision of reclaimed water to the City's Kerrville Sports Complex, in an amount not to exceed \$1,500,000.00.

Mr. Hoppe noted this was part of the same construction project as in Item 4C; this agreement was specific to the City of Kerrville Sports Complex. EIC approved the project at \$1.5 million.

Ms. White moved for approval of the agreement; Ms. Summerlin seconded the motion and it passed 5-0.

4F. Execute a construction contract with Qro Mex Construction Co., Inc. for the reuse distribution mains project in the amount of \$4,790,240.25 and authorize the city manager to execute additional change orders which will not exceed a total contract value of \$5,500,000.00.

Ms. Summerlin filed a conflict of interest affidavit and recused herself from the meeting at 6:58 p.m.

Mr. Hoppe noted four bids were received to construct 30,000 linear feet of distribution lines, including 4C, 4D, and 4E herein; the lowest qualified bidder was Qro Mex. He recommended approval of the contract at \$4,790,240.25, not to exceed \$5.5 million with contingency.

Mr. Burow noted Qro Mex Construction's experiences checked out and he reviewed past projects constructed by Qro Mex in Kerrville. He also noted that Freese and Nichols had worked with them on various projects.

Mr. Andrew moved for approval of the contract; Mr. Fine seconded the motion and it passed 4-0-1 with Councilmembers Andrew, Fine, Allen, and White voting in favor of the motion; no one voted against the motion; and Councilmember Summerlin abstained due to a conflict.

Ms. Summerlin returned to the meeting at 7:01 p.m.

4G. Execute a construction contract with JM Lowe & Company in the amount of \$1,701,500.00 for the indoor athletic facility project and authorize the city manager to execute additional change orders which will not exceed a total contract value of \$2,035,000.00.

Mr. Hoppe noted the project would construct an almost 18,000 sq. ft. unfinished building and approximately 12,000 sq. ft. outdoor multi-use space. Ten bids were received; JM Lowe & Company was the lowest qualified bidder at \$1,701,500, not to exceed a total of \$2,035,000 with contingency.

Mr. Fine moved to approve the contract to JM Lowe & Company in the amount of \$1,701,500, not to exceed a total of \$2,035,000; Ms. Summerlin seconded the motion.

Mayor White noted the building would be owned by the city and the city had a contract with a private entity to manage the facility whereby the contractor would pay nothing for two years and after that they would pay nothing if they had 20 or more tournaments.

The motion passed 5-0.

4H. Scheduling a work session to discuss meeting procedures.

Ms. Summerlin moved to ask the city manager to look into having a work session to discuss meeting procedures and how to make more efficient use of meeting time, and invite a TML representative or a consultant, at a reasonable rate, to facilitate the discussion; specifically to bring council a date, names of facilitators, costs, and a recommendation for council's consideration. Mr. Andrew seconded the motion. The motion passed 4 to 1 with Councilmembers Summerlin, Andrew, Allen, and Fine voting for the motion and Mayor White voting against the motion.

## **5. INFORMATION AND DISCUSSION:**

### **5A. Report on meeting with Kerr County regarding the proposed floodplain revisions along Third Creek.**

Mr. Davis noted city staff and Freese & Nichols met with Kerr County representatives and explained the city's position and discussed the county's concerns. He noted that FEMA had recommended the study be limited to the area between city limits and the confluence of Second and Third creeks. Staff asked the county representatives if they had other concerns and they said they did not but would discuss it with other commissioners. Kerr County Commissioners Court (KCCC) appeared to be satisfied and withdrew their two letters.

1. George Baroody stated KCCC agreed to accept the city's offer, with reservation. He stated that Mr. Letz said he was not sure the numbers were as accurate as could be, but he was willing to accept the line being drawn prior to the city starting the project, and the floodplain line needed to be determined. KCCC had reservations, but they did not have money to study the area. The city had a study done prior to the project being built, and he questioned why the city paid for a study that it never used. He urged the city to submit the LNV study to FEMA. He asked the city to cease the project until the study was done and it was known what impact the project would have off site. It was mandatory that our engineers certify there was no impact off of city property. He had met with city staff regarding base flood elevation, and he questioned why the city had not obtained a LOMR (Letter of Map Revision); he opined that the city was not doing that, but just building a project and saying the city was not changing anything. The city's ordinance stated a LOMR must be done prior to the project and staff was misreading the ordinance. He noted the city received funding through the federal insurance program and if the city mismanaged it, the city would be at risk of losing that funding.
2. Brian McCarthy, adjacent property owner on Spur 100 adjacent to the VA Hospital and Cemetery and the county road and bridge property, was concerned that the area of study was very limited and conveniently cut around his property. The contour lines showed his property lower than the study area. The 2002 flood was at least a 100 maybe 500 year flood, and water came down Third Creek and through his property and the VA cemetery. He opined that with construction of the pond water would be intensified and create a funnel effect through his property, but his property was not include in the study. The city's project would have a disastrous impact on his property, the VA Hospital and Cemetery, and Kerr County Road and Bridge. He opined that the project should be stopped and a thorough study completed and submitted to FEMA for their approval.

Mr. Hoppe noted the CLOMR has been produced and reviewed by the city's floodplain administrator, who is designated by FEMA. Third Creek was an unstudied area that would likely be designated AO, an area that receives a certain amount of inundation that crests over the top of Third Creek where Mr. McCarthy's property was located. FEMA requested the city not include that area in the study. The city was providing everything FEMA has asked the city to

provide within the mapped area. The engineering study indicated no pre- and post-project difference or negative affect to adjacent property owners. The city withheld the filing of the CLOMR as a courtesy to the county. The county rescinded the letter Monday and the city intended to file the CLOMR as soon as possible.

Council also discussed the following:

- As a courtesy to the county, the city had offered twice to adjust the CLOMR study to stop at Spur 100, the boundary of the city.
- The Freese & Nichols study had been completed and city had done what it was required to do by FEMA.
- The county's questions had been answered and their property was not included in the study area. The county could do another study on their property if desired.
- The LNV study used a different set of criteria than the FN study, which resulted in different volume and velocity numbers.

**5B. Budget and economic update.**

Ms. Yarbrough gave the financial report year to date for the period ending December 31, 2016: general fund revenues totaled \$5,970,349 and expenditures \$6,208,273; water and sewer fund revenues totaled \$2,937,395 and expenditures \$2,839,916; hotel/motel fund revenues totaled \$297,981 and expenditures \$258,950; 14 permits for new residential construction and commercial new/remodel construction totaled \$3,523,000. She noted that sales tax and ad valorem tax were coming in faster than in prior years.

The following person spoke:

1. Peggy McKay questioned if the balance remaining in the river trail fund, over \$976,000, was left over from current construction, and if it was dedicated for future extension or if the river trail was complete where it ended today. Further, is \$976,000 enough to complete the planned river trail west extension, and if not, did the city anticipate issuing new bonds?

Mr. Hoppe noted the design engineering for the construction of the western portion of the trail had not been completed.

**6. APPOINTMENTS TO BOARDS AND COMMISSIONS:**

**6A. Recovery Community Coalition.**

Mr. Andrew moved to appoint Amos Valles; Mr. Fine seconded the motion and it passed 5-0.

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

**7B. VISITORS/CITIZENS FORUM:**

- Bruce Stracke said he was excited about what was going on in Kerrville recently and more people were coming here because Kerrville was a great community to live in. He recognized two examples of local people receiving national and international recognition:

1. Granger McDonald was recently elected Chairman of the National Association of Home Builders.
2. Pope Francis recently elected Father Mike Boulette to be the Auxiliary Bishop of the Archdiocese of San Antonio.

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

9. **EXECUTIVE SESSION:** None.

10. **ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION:** None

**ADJOURNMENT.** The meeting adjourned at 7:38 p.m.

APPROVED: 03-14-2017

ATTEST:

\_\_\_\_\_  
Bonnie White, Mayor

\_\_\_\_\_  
Brenda Craig City Secretary