

CITY COUNCIL MINUTES  
REGULAR MEETING

KERRVILLE, TEXAS  
MARCH 13, 2018

On March 13, 2018, 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 Mayor White, followed by the Pledge of Allegiance led by Walt Koenig.

COUNCILMEMBERS PRESENT:

|                      |               |
|----------------------|---------------|
| Bonnie White         | Mayor         |
| George Baroody       | Mayor Pro Tem |
| Mary Ellen Summerlin | Councilmember |
| Warren Ferguson      | Councilmember |

COUNCILMEMBERS ABSENT:

|                 |               |
|-----------------|---------------|
| Vincent Voelkel | Councilmember |
|-----------------|---------------|

CITY CORE STAFF PRESENT:

|                  |   |
|------------------|---|
| Mark McDaniel    | City Manager                                |
| Mike Hayes       | City Attorney                               |
| Brenda Craig     | City Secretary                              |
| E.A. Hoppe       | Deputy City Manager                         |
| Cheryl Brown     | Deputy City Secretary                       |
| Sandra Yarbrough | Director of Finance                         |
| Kim Meismar      | Director of General Operations              |
| David Knight     | Police Chief                                |
| Stuart Cunyus    | Public Information Officer                  |
| Drew Paxton      | Executive Director of Development Services  |
| Dannie Smith     | Fire Chief                                  |
| Guillermo Garcia | Executive Director of Strategic Initiatives |
| Charvy Tork      | Director of Information Technology          |
| Ashlea Boyle     | Director of Parks and Recreation            |

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. Rose Bradshaw, representing the Citizens Police Academy Alumni Association, gave their 2017 annual report on the projects participated in and activities.

2B. Sandra Garcia requested council consider budgeting for MYAC members so they could attend summits, and assigning staff persons to MYAC members for training.

3. PRESENTATIONS

3A. Proclamation declaring March 2018 as American Red Cross Month.

3B. Report from Mayor's Youth Advisory Council was given by Roman Garcia, Chair. He spoke of MYAC's activities, projects, events, and tours.

**4. CONSENT AGENDA:**

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

4.A Minutes of the regular city council meeting held February 13, 2018.

**END OF CONSENT AGENDA**

4.A Minutes of the regular city council meeting held February 13, 2018.

Mr. Baroody requested to see more quotes and the names of councilmembers making the statements, discussion and explanations in the minutes. Periodically he may suggest adding statements to the minutes.

Mr. Baroody moved for approval of the minutes of the regular city council meeting held February 13, 2018; Ms. Summerlin seconded the motion and it passed 4-0:

**5. ORDINANCES, FIRST READING:**

5.A Ordinance No. 2018-07 amending Chapter 74 "Parks and Recreation", Article I "Rules and Regulations for City Park and Recreation Areas" of the Code of Ordinances of the City of Kerrville, Texas, by amending various sections to address the operation and use of the Kerrville Sports Complex; containing a cumulative clause; containing a savings and severability clause; providing a penalty; and providing other matters relating to the subject. Mayor White read the ordinance by title only.

Ms. Boyle stated that on March 9 the parks and recreation advisory board discussed the recommended amendments and voted to approve the ordinance with regulations specific to the sports complex. She noted that D-Bat would set their own operating hours.

Council also discussed the following: enforcement of abusive language, ban on noise makers, hours of operation, use of roller blades and bicycles, and prohibition against climbing trees, operating drones, and smoking or vaping in city parks.

The following persons spoke:

1. Roman Garcia asked how abusive language would be controlled. Ms. Boyle reviewed enforcement and noted that parks staff, and police officers when necessary, would enforce the rules and issue citations when necessary.

2. Sandra Garcia asked how citizens could get involved to change the rules and what the consequence was for using roller blades on the trail. Mayor White stated that a person could address the parks board and council about any proposed amendment, or do a petition.

Mr. Baroody moved for approval of Ordinance No. 2018-07 on first reading; Ms. Summerlin seconded the motion and it passed 4-0.

5.B     Ordinance No. 2018-10 Amending Chapter 102 "Traffic and Vehicles", Article IV "Operation of Vehicles", Division 1 "Generally", by adding a new section 102-118 to regulate the use of hand-held portable electronic devices while operating a vehicle; providing exemptions; providing affirmative defenses; providing an increasing penalty for subsequent offenses; containing a cumulative clause; containing a savings and severability clause; ordering publication; providing an effective date; and providing other matters related to the subject. Mayor White read the ordinance by title only.

Chief Knight noted that on February 13 council instructed staff to develop a distracted driving ordinance that would be more restrictive than the regulations in the Texas Transportation Code that went into effect September 2017. The proposed ordinance provided a complete ban on the use of portable electronic devices while operating a vehicle unless the device was used in conjunction with a hands-free device; this would remove the device as a distraction in the vehicle. A driver may dial numbers, end a call, or operate a navigation system as long as the device was not held in the driver's hand. He could not quantify the number of accidents attributed to the use of devices; however, he opined that distracted driving was a safety hazard that resulted in serious injuries.

Council also discussed the following:

- Reviewed affirmative defenses.
- The state law had only been in effect since September so there was not a lot of data.
- How would a violation of the proposed ordinance affect insurance rates? Chief Knight stated it would not be a moving violation so it should not affect insurance rates.
- Would a violation of the ordinance go on a person's driving record? Chief Knight stated it would be a record with DPS, but it would not be considered a moving violation.
- How many drivers were pulled over for a texting violation while driving? Chief Knight stated he did not have data city-wide; however, he offered to provide information previously gathered regarding the number of violations in school zones.
- Could the ordinance be put on the ballot? Staff would research if such an item could be placed on the ballot and the process to do so.
- How do judges determine the amount for a violation based on a range? Mr. Hayes stated that the judges would have discretion in setting a fine for violations.
- Devices were a serious distraction and allowing their use while driving was not fair to other persons on the road.

The following persons spoke:

1. Carolyn Lipscomb described several near accidents and bad driving incidents she had witnessed.
2. Mario Garcia stated he was a provider of IT services. He discussed other types of distractions and noted some people were biased by technology. He requested the item be put to a vote and let the citizens decide.

Ms. Summerlin moved for approval of Ordinance No. 2018-10 on first reading; Mr. Ferguson seconded the motion and it passed 4-0.

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

6.A Ordinance No. 2018-08, an Ordinance approving a tariff authorizing an Annual Rate Review Mechanism ("RRM") as a substitution for the Annual Interim Rate Adjustment Process defined by Section 104.301 of the Texas Utilities Code, and as negotiated between Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") and the Steering Committee of Cities Served by Atmos; requiring the Company to reimburse Cities' reasonable ratemaking expenses; adopting a savings clause; determining that this Ordinance was passed in accordance with the requirements of the Open Meetings Act; declaring an effective date; and requiring delivery of this Ordinance to the Company and Legal Counsel for the Steering Committee. Mayor White read the ordinance by title only.

Mr. Hayes noted no changes since first reading and recommended approval.

Ms. Summerlin moved for approval of Ordinance No. 2018-08 on first reading; Mr. Ferguson seconded the motion and it passed 4-0.

6.B Ordinance No. 2018-09, an Ordinance 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 alcoholic beverage licenses; 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. Mayor White read the ordinance by title only.

Mr. Baroody stated that no changes had been made since first reading. He noted that TABC established a wide range of fees depending on the type of license, and the city could collect a fee ranging between \$12.50 and \$3,500. He recommended the city establish a maximum fee of \$500 for all sellers of alcohol; all license holders would pay the set fee or \$500, whichever was lower. This would give an incentive and make fees less arbitrary. Distilleries and brewpubs would still have the largest discount as they were paying \$1,500 previously and would pay \$500 under this ordinance.

Council also discussed the following:

- The purpose of the ordinance passed in January was to reduce the fee for breweries, distilleries and brew pubs in order to encourage craft agriculture businesses and make their fee more equitable to the mixed beverage fee.
- In the past, the city was charging half of what the state charged for TABC licenses, as per state law. In January the fee was adjusted down for brewpubs and breweries. It did not make sense to change the fee for all license holders.

The following persons spoke:

1. Jeremy Walther, Pint 'N' Plow Brewing Company, noted the original intent was to promote and support craft agriculture businesses; the proposed change would eliminate that support and simply incentivize liquor distributors and establishments selling liquor by lowering the fee. For example, the city's current fee for a mixed beverage permit was \$3,000; under the proposed ordinance that fee would be reduced to \$500. The

proposal would give a blanket discount to up to 46 permit holders in the city that have nothing to do with craft agriculture; rather, are just serving or distributing alcohol. The intent in January was to recognize and promote craft agriculture.

Mr. Hayes noted that when changes were made on second reading there is a risk that the ordinance can be challenged.

Mayor White appointed Mr. Baroody and Mr. Ferguson to work with staff and bring back a recommendation to council.

Mr. Baroody moved for approval of Ordinance No. 2018-09 as is on first reading; the motion died for lack of a second; therefore, the ordinance failed on second reading.

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

7A. Resolution No. 06-2018 authorizing the waiver of various fees and authorizing a nonexclusive license and funding agreement regarding the use of the city's downtown pavilion for the Kerrville Farmers Market (KFM) to be held in downtown Kerrville each Friday between April and October.

Ms. Boyle reviewed the support the city provided as a co-sponsor for the KFM event and noted it was expanding to every Friday from April to October. KFM requested the city provide \$3,000 cash sponsorship for expenses and promotional merchandise, and allow alcohol. Staff recommended approval.

Mr. Baroody stated he was contacted by an anonymous private donor who offered to fund the same \$3,000. He requested the agreement be modified to remove Section 2 about city payment of \$3,000, and to amend Section 5 regarding possible reimbursement. He had contacted the KFM people and they were okay with this proposal. Mr. Baroody requested the donor's \$3,000 be used first and if additional funds were requested then KFM could come to the city. The city was already supporting the KFM, and using the donor's \$3,000 would show community support.

The following persons spoke:

1. Justin Graham, director of KFM, asked that the city continue to support this event by providing equipment and funding. He encouraged new donors and encouraged anonymous donors to be identified. He confirmed there were other things that KFM could do with an additional \$3,000. Downtown merchants were supportive of KFM and momentum was building.

2. Jeremy Walther, Pint 'N' Plow, read a statement in support of KFM and encouraged the city to contribute the \$3,000 and continue to support KFM events, which stimulated vibrancy in downtown.

Council also discussed the following:

- Mr. Ferguson and Ms. Summerlin stated that the city's \$3,000 should be used first to show the city's support. They also encouraged the anonymous donor to continue to make his donation; however, the donor's donation should not be substituted for the

city's \$3,000 donation.

- Were pets allowed at the events? Ms. Boyle stated yes, if on a leash.
- Smoking was not allowed at events; did that include vaping? Ms. Boyle said yes.

Ms. Summerlin moved to approve the resolution.

Mr. Baroody asked if discussion of the item could be moved to executive session. Mr. McDaniel stated it could if the discussion met the requirements of state law. Mr. Baroody stated he was the private donor. His idea was to show there was community support for KFM. The city was already supporting KFM by providing a list of things.

Mr. Baroody moved to modify the contract to not state publicly who the donor was and to take out the Section 5 reimbursement clause. Mayor White seconded the motion.

Ms. Boyle asked if the motion included the amendment to allow alcohol.

Mr. Baroody amended his motion to approve Resolution No. 06-2018 to allow alcohol to be served.

Ms. Summerlin requested the motion be divided into two motions.

Mr. Baroody moved to amend Resolution No. 06-2018 to allow alcohol. Ms. Summerlin seconded the motion and it passed 4-0.

Mr. Baroody moved to amend the agreement to the resolution by removing Section 2 about the \$3,000 payment from the city, and to remove Section 5 reimbursement; the motion was seconded by Mayor White. The motion failed 2-2 with Mr. Baroody and Ms. White voting in favor of the motion and Ms. Summerlin and Mr. Ferguson voting against the motion.

Ms. Summerlin moved to approve the resolution as presented with the addition of alcohol; Mr. Ferguson seconded the motion.

Mr. Hayes suggested if the council wanted to support KFM, the motion should include the change to the non-exclusive license and funding agreement. Ms. Summerlin stated that was included in her motion.

Mr. Hayes clarified that there were two amendments offered to the agreement: 1) to allow alcohol; that motion passed; and 2) to use the private donor's contribution; that motion failed. The resolution, which had not been addressed, would waive the fees.

Ms. Summerlin restated her motion to approve Resolution No. 06-2018 as amended to allow alcohol; Mr. Ferguson seconded the motion and the motion passed 3 to 1 with Ms. Summerlin, Mr. Ferguson, and Ms. White voting in favor of the motion and Mr. Baroody voting against the motion.

**8. BOARD APPOINTMENTS**

8A. Appointments to the Parks and Recreation Advisory Board. Mayor White requested the appointments be deferred at the request of Mr. Voelkel until he could be present to vote on the appointments. Council consensus was to defer the item.

8B. Appointment to the Recovery Community Coalition. Ms. Summerlin moved to appoint Leigh Ann Fitzpatrick to replace Julie Wood with term to expire December 31, 2018. Ms. White seconded the motion and it passed 4-0.

8C. Appointment to Mayor's Youth Advisory Council. Mayor White nominated Kayla Buck to replace Jonathan Traylor; Ms. Summerlin seconded the motion and it passed 4-0.

**9. CITY MANAGER'S REPORT**. Mr. McDaniel reported on the following:

- Recognized Sandra Yarbrough on her retirement after 34 years of service to the city.
- He was planning an annual council retreat in late May.
- Discussed the capital improvement report.

**10. ITEMS FOR FUTURE AGENDAS**

- Housing development on Loop 534.

**11. EXECUTIVE SESSION:**

Ms. White moved for the city council to go into executive closed session under Sections 551.087 (deliberation regarding real property) of Chapter 551 of the Texas Government Code; the motion was seconded by Ms. Summerlin and passed 4-0 to discuss the following matter:

**11A. Section 551.087:**

Deliberation regarding economic development negotiations in accordance with the Texas Open Meetings Act, Section 551.087, discussion regarding commercial or financial information received from a business prospect(s) and/or to deliberate the offer of a financial or other incentive to a business prospect(s).

At 8:12 p.m. the regular meeting recessed. Council went into executive closed session at 8:14 p.m. At 8:34 p.m. the executive closed session recessed and council returned to open session at 8:34 p.m. No action was taken in executive session.

**12. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY:** None.

**ADJOURNMENT**: The meeting adjourned at 8:34 p.m.

APPROVED: 04/24/2018

ATTEST:

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Bonnie White, Mayor

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Brenda G. Craig, City Secretary