

REGULAR MEETING

CITY COMMISSION

HARLINGEN, TEXAS

May 21, 2014

A Regular Meeting of the Harlingen Elective Commission was held on Wednesday, May, 21, 2014 at 5:30 p.m. in Town Hall, City Hall, 118 E. Tyler Street Harlingen, Texas. Those in attendance were:

Mayor and Commission

Mayor Chris Boswell
Danny Castillo, Mayor Pro-Tem District 1
Tudor Uhlhorn, Commissioner District 2
Michael Mezmar, District 3
Basilio "Chino" Sanchez, Commissioner District 4
Victor Leal, Commissioner District 5

Staff Present

Amanda C. Elizondo, City Secretary
Richard Bilbie, Interim City Attorney
Dan Serna, Assistant City Manager
Gabriel Gonzalez, Assistant City Manager

Invocation/City Commissioner Basilio "Chino" Sanchez

Commissioner Sanchez stated Pastor Edward V. Gonzalez of R.O.C.K Church International would give the invocation on his behalf.

Pledge of Allegiance/ Welcome

Mayor Boswell led the Pledge of Allegiance and welcomed those in attendance.

1) Public Announcement of Events Public Announcements

Dave Ralph, Public Information Officer announced the following events.

- a) City of Harlingen's Community-Wide Trash-Off Day, Soccer Complex, Saturday, May 24th, 2014 from 8:00 a.m. -12:00 p.m.;
- b) City of Harlingen Memorial Day Ceremonies – Veterans Memorial, Pendleton Park, Monday, May 26, 2014 beginning at 11:00 a.m.;
- c) Blues on the Hills Concert Series – McKelvey Park, Saturday, June 13, 2014, 7:00 p.m. - 11p.m.; and
- d) Day in the Park – Fair Park, Thursday, June 19, 2014, 10:30 a.m. - 1:30 p.m.

Mayor Boswell changed the order of the agenda and proceeded with the following item.

7) Consider and take action to adopt a resolution nominating VHS Harlingen Hospital Company, LLC as a Texas Enterprise Project pursuant to the Texas Enterprise Zone Act, Chapter 2303 Texas Government Code.

Mayor Boswell stated staff was not ready to present this item and due to being time sensitive a special meeting would be schedule for Wednesday, May 28, 2014 at 12 noon.

Mayor Boswell returned to the regular order of the agenda and proceeded with the following item.

2) Presentation of Certificates of Recognition to City Employees for excellence customer service in assisting the Pan American Golf Association during the Winter Meeting Golf Tournament at Tony Butler Golf Course.

Dan Serna, Assistant City Manager and Commissioner Sanchez recognized Eddie Medlin and presented certificates of recognition to Zeke Cano, Fred Valle, Victor Moreno, Dave Boughter and Felix Botello Martinez for their excellent customer service and preparation of the Tony Butler Golf Course during the Winter Meeting and Golf Tournament.

Commissioner Sanchez thanked the staff and stated he had received calls from McAllen citizens complimenting the golf course staff.

Mayor Boswell stated the event brought over 300 participants from all over the country. During their stay in Harlingen the participants spent thousands of dollars. He received a nice letter from the President of the Pan American Golf Association stating they were delighted with everything the City of Harlingen had done for them.

3) Neighborhood Clean Sweep held May 10, 2014 between Rose Street and 1st Street, District 1.

Mr. Serna reported the Neighborhood Clean Sweep was held on May 10, 2014, District 1 and stated 2.58 tons of debris and 69 tires were collected. He thanked the Marine Military Academy Cadets, other volunteers and Code Enforcement Staff for their participation. The next Clean Sweep was scheduled for June 14, 2014 at Dixieland Road from Ailani Court to Topaz Street in District 5.

4) Approval of Minutes

a) Regular Meeting - May 7, 2014

Motion was made by Commissioner Uhlhorn and seconded by Mayor Pro-Tem Castillo to approve the minutes as presented. Motion carried unanimously.

CONSENT AGENDA

5a) Second and final reading to approve an adopt an ordinance to rezone from Not Designated ("N") District to General Retail ("GR") District for 41.21± acres of land out of South Portion of Block 182, San Benito Land and Water Company Subdivision located on the north side of Hale Avenue east of Camelot Drive.

b) Second and final reading to approve and adopt a civil service classification ordinance for the Fire Department reaffirming the existing rank structure, establishing the number of budgeted positions in each rank, and establishing recognized assignments under applicable civil service law.

c) Consider and take action to approve the final plat proposed J.R. Palacios Subdivision consisting of 3 lots bearing a legal description of 2.3 acres of land out of Block 6, Black Brothers Subdivision Cameron County, Texas located on the northeast corner of Expressway 83 and Mallory Street.

Motion was made by Commissioner Mezmar and seconded by Commissioner Leal to approve the items under the consent agenda. Motion carried unanimously.

For the record, the caption of the following ordinances read as follows.

ORDINANCE 14-18

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF HARLINGEN; REZONING FROM NOT DESIGNATED ("N") DISTRICT TO GENERAL RETAIL ("GR") DISTRICT FOR 41.21 ± ACRES OF LAND OUT OF THE SOUTH PORTION OF BLOCK 182, SANBENITO LAND AND WATER COMPANY SUBDIVISION LOCATED ON THE NORTH SIDE OF HALE AVENUE EAST OF CAMELOT DRIVE; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATERS RELATED TO THE FORGOING.

ORDINANCE 14-19

AN ORDINANCE REAFFIRMING, MODIFYING, AND CLARIFYING
THE CLASSIFICATION STRUCTURE IN THE FIRE DEPARTMENT
AND ESTABLISHING RECOGNIZED ASSIGNMENTS

PASSED AND APPROVED on first reading on this 7th day of May, 2014
PASSED AND APPROVED on second and final reading this 21st day of May, 2014

CITY OF HARLINGEN
/s/ Chris Boswell, Mayor

ATTEST:
/s/ Amanda C. Elizondo, City Secretary

- 6) Consider and take action to approve an Interlocal Agreement between the Harlingen Police Department and the Harlingen Consolidated Independent School District for a donation of one (1) Surplus K-9 Police Vehicle to be used for the School District K-9 Unit.

Motion was made Mayor Pro-Tem Castillo and seconded by Commissioner Uhlhorn to approve an Interlocal Agreement between the Harlingen Police Department and the Harlingen Consolidated Independent School District for a donation of one (1) Surplus K-9 Police Vehicle. Motion carried unanimously.

- 8) Consider and take action to approve an ordinance on first reading amending Chapter 92; Health Regulations and Hospitals of the Harlingen City Code providing a savings clause; providing a severability clause; and ordaining other matters related to the foregoing.

Gabriel Gonzalez, Assistant City Manager gave a power point presentation on the provisions stipulated in the existing non-smoking ordinance and the proposed amendments to the ordinance. This item was presented to the City Commission April 16, 2014 as first reading. The first reading included amendments regarding to health regulations and hospitals. Due to the many changes, Alan Ozuna, Assigned Counsel recommended that it would be most appropriate to reintroduce the proposed ordinance as first reading.

He highlighted the provisions of the original ordinance which was adopted on March 23, 2005 and amended June 2005 to define the bars and later amended September 2005 to permit smoking in bingo halls and prohibited anyone under the age of 18. Currently, smoking was regulated in retail stores; food establishments; buses, bus terminals, taxicabs, airports, and all public transit and polling places. All areas available to and customarily used by the general public, enclosed and outdoor arenas; wards and semi-private rooms of health facilities; hotels and motels, galleries; libraries; museums; zoo facilities; facilities used to exhibit motion pictures, drama lecture or musical recital; school buildings and any room under the control of the council, commission or agency of the city or any political subdivision, common areas, hallways, lobbies, apartments, condominiums, trailer parks, retirement facilities, nursing homes and other multi-unit residential facilities.

The proposed amendments defined inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe or any other lighted or heated tobacco or plant product intended for inhalation, the use of an E-Cigarette that creates a vapor. E- Cigarette was defined as any oral device, composed of a heating element, battery or electronic circuit which provides a vapor of nicotine or any other substance for inhalation that simulates smoking and use of E-Pipe or E-Cigar. Proposed areas that would prohibit smoking would include private clubs when the general public was invited, bars and in all enclosed area of places of employment without exceptions, shopping malls; indoor flea markets, child care and adult care facilities. Outdoor areas that would prohibit smoking would include no smoking within 10 feet from outside entrances with operable windows and ventilation system of enclosed areas; playgrounds, parks, stadium, and amphitheaters, bleachers and grandstands for use by spectators at sporting and other public events; outdoor public transit waiting areas; indoor common area of nursing homes except in designated smoking area and outdoor flea markets. The exceptions to the proposed ordinance would include private residences, except when used as childcare, adult care, or healthcare facility; no more than 25% of hotel and motels room rented to guests would be designated as smoking rooms; private clubs, except when the public was invited to the event; retail tobacco

stores and retail E-Cigarette stores; golf courses between the tee of the first hole and the green for the final hole; and outdoor seating restaurants, bars, private clubs and Valley Race Park. A provision was included in regards to the prohibition related to minors that would include the sale of E-Cigarettes to any person under the age of 18 in the city and possession of an E-Cigarette by any person under the age of 18.

The Sunset prohibition would be effective January 1, 2016 prohibiting smoking indoors all private clubs and Valley Race Park. This time frame would allow the private clubs and Valley Race Park to comply with the new regulations.

Mayor Pro-Tem Castillo referred to the Sunset provision and inquired about the thought process in regards to the time frame for Valley Race Park and private clubs.

Commissioner Leal responded as part of the committee that reviewed the changes the date chosen was to allow time for Valley Race Park and private clubs to comply with the changes.

Commissioner Sanchez asked why the sunset period was not offered to everybody.

Commissioner Uhlhorn responded private clubs were non-profit and had been exempted before and Valley Race Park was a gambling facility.

Mayor Boswell announced he would allow citizens to voice their concerns for or against the proposed ordinance. The City Commission would hear comments from both groups to gain insight before they would deliberate the item.

Comments were heard from Belinda Reiniger, Jose Garza, Rachel Gomez, Bertha Cavazos, and other citizens in regards to health issues and the effects of second hand smoke. They stated they were in favor of the proposed amendments.

Comments were also heard from Yolanda Shoffeitt, Stephen Fujan, Jimmie Traylor, Francisco Lozano, Scott Thomas, and Ron Lozano, Ray Turner opposing the amendments to the Non-Smoking Ordinance. The concerns were in regards to discrimination against smokers, freedom of choice, violating the rights of businessmen to inform their customers of what they could or could not do in their establishments, the banning of E-Cigarettes.

There being no further comments, Mr. Richard Bilbie, Interim City Attorney read the caption of the ordinance.

Motion was made by Commissioner Uhlhorn and seconded by Commissioner Leal to approve the ordinance on first reading.

Commissioner Sanchez stated he was not in favor of voting for the ordinance because he thought it would be 100% non-smoking for the whole city.

Commissioner Mezmar stated he had a unique perspective on the issue being that he has a Bachelor and Master Degree in Nursing. He had worked in the cardiac care unit and it was a loss when a person died because of a heart attack when the underlying condition was due to smoking. Tobacco was a horrible thing which caused death and destruction. There had been no extensive studies on the effects of nicotine and it was wrong to include E-Cigarettes in the ordinance because it was not smoking, it was vaporizing. He could not vote for the ordinance due to the manner in which it was written.

Mayor Pro-Tem Castillo referred to the Sunset date of January 1, 2016 and thought the initial intent was to make Harlingen a 100% smoke-free community. He understood the disagreements on both side of the issue, but was not completely informed on the issue of E-Cigarettes to give an opinion. If the true intent was to encourage the private clubs and Valley Race Park to comply with the proposed ordinance then the deadline needed to be more aggressive. In regards to the tobacco issue, he was firm on his opinion and felt one must be fair to everyone on both sides of the issue.

Christine Donatello of the American Cancer Society of Austin, Texas stated there was not a study available that indicated the long term effects of E-Cigarette. Studies have been done, but have not determine to be positive due to the concerns of the vapors and the possibility that people still would be able to inhale second hand vapor. The FDA announced they would put E-Cigarette under the same category as tobacco products which were not healthy. A study conducted by Dr. Long with Travis County Health Department determined that with all the data and research submitted to him by the E- Cigarette manufactures it was not creditable.

Commissioner Mezmar stated certainly E-Cigarettes were not healthy, but there was no second hand smoke and no danger to the public only to the individual using the product.

Thomas Scott, Smoke Shop Owner stated Ms. Donatello's comments were partially correct. All the flavorings that were used with the device were FDA approved. Several studies showed that during the exhale of the vapor there was no second hand danger only to the smoker.

Commissioner Uhlhorn stated he and Commissioner Leal worked with staff after the first proposal was presented to improve some of the things in the ordinance. This year (2014) was the 50th anniversary of the Surgeons General Report on tobacco and there should be no debate on the effects of second hand smoke. In regards to E-Cigarette, he did not know if they were safe or not, but the different scents could be offensive to people. There were other cities around the country that had already considered and approved measures that the City of Harlingen was proposing. There was a cartridge in the device that contained variable levels of nicotine that other people would not be aware of. This was strictly a public health issue. There were people who work in bars because that was the only job they could get.

Commissioner Leal stated most municipalities had adopted a smoke free environment ordinance and the bar businesses had actually gotten better. The only issues were in gambling casinos because people tended to stay longer in the casinos. He spoke to the Race Park officials in Corpus Christi, Texas and they reported that business had gotten better. In regards to the Sunset clause, this would allow Valley Race Park and private clubs to comply. He met with E-Cigarette business owners to educate himself about the device and no one has been able to inform him about the transfer rate on the level of nicotine transferred to the body. The rights of bar employees should be respected because studies showed that second hand smoke killed individuals. His last concern was that children would see an adult with the device and it could become a toy to them.

Mayor Boswell stated this was not the elimination of cigarette and E-Cigarette sales in the City of Harlingen. The existing ordinance eliminated smoking in approximately 85% of the venues around the community. The question that remained was if the rest of the population and employees would now be included as part of the proposed ordinance. He placed the item on the agenda because he was concerned about the people who had no choice about where they might work or how they would be affected in a smoking environment with second hand smoke. The proposed ordinance was similar to the measures as that of the nuisance ordinance when doing something that affected another person causing potential health problems or invading their space. The majority of the community favored the ordinance because it was the right thing to do and would like to see the ordinance passed on first reading and recommended that the Sunset clause be changed to six or nine months by the second reading.

There being no further discussion, motion carried as follows: FOR: Mayor Pro-Tem Castillo, Commissioners: Uhlhorn and Leal. AGAINST: Commissioners: Mezmar and Sanchez

- 9) Consider and take action to authorize the Mayor on behalf of the City of Harlingen, to enter into an Inter-Local Cooperation Agreement with the City of Brownsville and the County of Cameron, Texas for grant funds made available through the U.S. Department of Justice under the Edward Byrne Memorial Justice Assistant Grant (JAG) Program – FY 2014 Local Solicitation.

Motion was made by Commissioner Uhlhorn and seconded by Commissioner Mezmar to authorize the Mayor on behalf of the City of Harlingen to enter into a an Inter-local Cooperation Agreement with the City of Brownsville and Cameron County for grant funds made available through the U.S. Department of Justice under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. Motion carried unanimously.

- 10) Consider and take action to approve the City Manager's recommendation to reappoint the Municipal Presiding Judge for the City of Harlingen for a two (2) year term.

Mr. Serna stated Carlos Yerena, City Manager was recommending approval to reappoint Robert Guerra, Municipal Presiding Judge for an additional two (2) year term at the current rate.

Motion was made by Commissioner Leal and seconded by Mayor Pro-Tem Castillo to approve the City Manager's recommendation to re-appoint Judge Robert Guerra for another two year term at the same rate. Motion carried unanimously.

- 11) Board Appointments

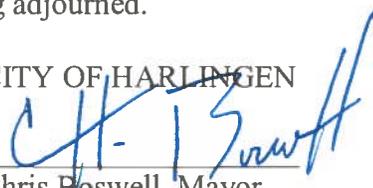
None

- 12) Citizen Communication

For the record, all the citizens that signed up for citizen communication spoke in regards to the smoking ordinance, Item No. 8.

There being no further business to discuss the meeting adjourned.

CITY OF HARLINGEN


Chris Boswell, Mayor

ATTEST:


Amanda C. Elizondo, City Secretary