

REGULAR MEETING

CITY COMMISSION

HARLINGEN, TEXAS

DECEMBER 1, 2010

A Regular Meeting of the Harlingen Elective Commission was held on Wednesday, December 1, 2010 at 5:30 p.m. in Town Hall, City Hall, 118 E. Tyler Street, Harlingen, Texas. Those in attendance were:

Mayor and City Commission

Mayor Chris Boswell
Gustavo C. Ruiz, Commissioner District 1
Robert Leftwich, Commissioner District 2
Kori Marra, Commissioner District 3
Jerry Prepejchal, Commissioner District 4

Absent: Joey Trevino, Mayor Pro Tem

Staff Present:

Carlos Yerena, City Manager
Roxann P. Cotroneo, City Attorney
Elena Garza, Assistant City Secretary

Mayor Boswell called the meeting to order and stated that the meeting notice was duly posted according to law.

INVOCATION/PLEDGE OF ALLEGIANCE/WELCOME

Mayor Boswell delivered the Invocation and the Pledge of Allegiance followed.

BOARD MEMBER RECOGNITIONS

None

CITIZEN COMMUNICATION

Shane Allen, 417 S. 3rd Street, spoke in reference to free enterprise. He reminded the Mayor and City Commission of the responsibilities in any position in the community, whether elected or otherwise. We all have to look at what is best for our community. Sometimes those decisions are hard to make, but in this state and this community these decisions are not suppressed on denying citizens their rights. He asked the Commission to have an open mind when it deals with free enterprise. So don't deny the citizens of this community their rights by telling them what to do. It is the Commission's responsibility as elected officials to keep in mind that it's not your personal agendas, but the agendas of the citizens, of the City and everyone present tonight. He asked the Commission to do what is best for the community.

Maurice Shaw, 2601 Thomas Lane, spoke in reference to free enterprise. He stated the City Commission is taking action on some items tonight. They are not the most positive things for the City of Harlingen, but he would like for them to consider making good decisions to make our City grow.

Robbie Mesa, Youth Football Coach for the TYFA (Texas Youth Football Association), spoke with regards to the football team. He stated that this group of young men worked very hard for this spot. They played in two different leagues, the Harlingen Youth Football League and the TYFA Organization. The team really practiced hard to advance to the state finals. It is not everyday that a Valley team goes this far. He stated that they are very proud of this team's accomplishments.

At this time Mayor Boswell congratulated the football players and their parents.

Mandy Jo Euresti, 1622 Paloma Circle, spoke in reference to the TYFA League. She wanted everyone to know that this group of young players gave it their all during the whole football season. It was extremely hard for the team to play in both leagues. All the hard work paid off and they were invited to play in Waco, Texas on December 12, 2010 at Baylor University. They have held several fundraisers and are in need of funds totaling \$4,000.00. She stated that they are here tonight to request funding from the City of Harlingen.

Joe Rubio, 2309 Hacienda Road, stated that in the past few weeks at least three ethics complaints have been submitted to the City. As stated in Chapter 176 of the Local Government Code government officials must declare business relationships with someone who is making over \$50,000. If not declared, this is considered a "Class C misdemeanor."

He stated that drug cartel activity is in the Treasure Hills area. He suggested that the Police Department start an "Intelligence Data Base" dealing with cartel issues.

Mr. Rubio continued with the Airport issue stating it is not 'free enterprise' as mentioned earlier in the meeting. When you give a business an edge over the existing established business with City funds, there needs to be a stopping point.

CAMERON APPRAISAL DISTRICT PRESENTATION

Frutoso Gomez, Cameron Appraisal District Chief Appraiser, gave a brief report on what the Appraisal District is presently working on and where they are going with reference to property values for Cameron County. They are looking very closely on the economy here in the Valley. They have noticed a decrease in property values and huge amount of foreclosures. The increase in property values was not there due to a decrease of new constructions. There was approximately a 1% increase on values for all of Cameron County. The figures also show a decrease in new subdivisions, especially here in the City of Harlingen.

In 2007 in the City of Harlingen there were over 2,500 properties that had ownership transfers. In 2008 there were 2,139 and in 2010 the City had 1,972 ownership transfers.

He briefed the City Commission on how many departments are within the Appraisal District and the location and hours that they are opened for business. He thanked the City of Harlingen for providing the building permits and stated these documents are very important in determining the property values for the City.

He also wanted to make everyone present to be aware of a company called "Assessors Property Corporation" that is sending out letters to taxpayers and asking for a \$45.00 fee to assist them in applying for a homestead exemption. He stated not to be taken in by this company, because the Cameron Appraisal District processes the exemptions free of charge. He concluded by stating that the Appraisal District is currently conducting a re-appraisal in the City of Harlingen.

MINUTES FOR APPROVAL – REGULAR MEETING OF NOVEMBER 17, 2010.

Commissioner Leftwich made a motion to approve the minutes of the Regular Meeting of November 17, 2010 as presented. Commissioner Prepejchal seconded and it carried unanimously.

CONSENT AGENDA:

REZONING FROM 'RESIDENTIAL, MULTI-FAMILY (M-2)' ZONE TO 'RESIDENTIAL, PATIO HOME (RPH) ZONE FOR LOT 1, BLOCK 1, THE FOUNTAIN VIEW VILLAGE SUBDIVISION LOCATED AT THE NORTHEAST CORNER OF DAVIS AVENUE AND SHADOWBROOK CIRCLE APPROVED.

Motion to approve consent agenda: Leftwich
Second: Prepejchal

Motion carried unanimously.

PUBLIC HEARING HELD AND ACTION TAKEN TO APPROVE ON FIRST READING THE AMENDED MINOR CURFEW ORDINANCE.

Daniel Castillo, Chief of Police, made a power point presentation on curfew statistical data. He stated that the City of Harlingen adopted a Curfew Ordinance in January 2008 establishing a curfew for minors, under the age of seventeen years of age, to prohibit being in any public places during certain night time hours; providing enforcement procedures; establishing criminal penalties for minors and for parents of minors, and adopting certain exceptions. Section 3702.002 of the Texas Local Government Code requires that after a City adopts a juvenile curfew ordinance the city must review; conduct public hearings; and either abolish, modify, or readopt the ordinance every three years. Staff is recommending the adoption of an amended Minor Curfew Ordinance that has been modified to provide for a more efficient and effective enforcement of ordinance.

Mayor Boswell declared the public hearing open.

Joe Rubio, 2309 Hacienda Road, spoke in favor of the Minor Curfew Ordinance. He asked Chief Castillo if there was only one Police Officer assigned in enforcing the curfew. Also, what are the police officer's working hours?

Chief Castillo replied there is one Investigator that has been assigned to work from 8:00 a.m. till 5:00 p.m. with adjusted hours when needed.

Mr. Rubio then asked how many man-hours does it take to get this curfew ordinance enforced.

Chief Castillo replied first the Police Officer identifies the violation and then gets the curfew enforcement out to the scene. Total man-hours are around thirty minutes to one hour.

Mr. Rubio asked what the sanction for the offense is when they go before the Municipal Court Judge.

Roxann Pais Cotroneo, City Attorney replied all minor curfew violations would be going to the newly established "Youth Community Court."

Yolanda Shoffeitt, P.O. Box 697, Harlingen, Texas, spoke in favor of the Minor Curfew Ordinance. The only concern she has is that a Police Officer will be taken away from his regular duties of protecting the citizens of Harlingen for one hour. She suggested that the City hire more police officers.

There being no comments from the public, Mayor Boswell declared the public hearing closed.

ORDINANCE ADOPTED ON FIRST READING ON THE ABOVE.

The caption of the ordinance was read.

ESTABLISHING A CURFEW FOR MINORS UNDER THE AGE OF SEVENTEEN YEARS OF AGE TO PROHIBIT BEING IN ANY PUBLIC PLACE DURING CERTAIN NIGHT TIME HOURS; PROVIDING DEFINITIONS; PROVIDING DEFENSES; PROVIDING AN ENFORCEMENT PROCEDURE; ESTABLISHING CRIMINAL PENALTIES FOR A VIOLATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND ORDAINING OTHER MATTERS PERTAINING TO THE FOREGOING.

Commissioner Leftwich made a motion to adopt the ordinance on first reading as presented. Commission Prepejchal second the motion.

Under discussion, Commissioner Leftwich explained that the public needs to be made aware that there is less graffiti and juvenile activity in the City. This is a good tangible benefit to the City.

Mayor Boswell commented the curfew ordinance has made a significant impact on juvenile crimes and offenses.

The motion carried unanimously.

**RESOLUTION AMENDING VALLEY INTERNATIONAL AIRPORT'S
AMENDED CAPITAL BUDGET FOR FISCAL YEAR 2010-2011**

At this time Mayor Boswell requested that an executive session be held to continue discussion from the Special City Commission meeting from Monday night to discuss contemplated or pending litigation and to seek legal advice from the City Attorney, Valley International Airport Attorney, and outside legal counsel regarding a Federal Aviation Administration, Texas Airports Development Office complaint filed by Sun Valley Aviation Inc. against the City of Harlingen, Valley International Airport.

Commissioner Prepejchal made a motion to go into Closed/Executive Session pursuant to Chapter 551, Subchapter D, V.T.C.A. Government Code (Section 551.071 to continue discussion from the Special City Commission meeting from Monday night to discuss contemplated or pending litigation and to seek legal advice from the City Attorney, Valley International Airport attorney, and outside legal counsel regarding a Federal Aviation Administration, Texas Airports Development Office complaint filed by Sun Valley Aviation Inc. again the City of Harlingen, Valley International Airport.

Commissioner Leftwich seconded the motion and it carried unanimously.

**CLOSED/EXECUTIVE SESSION PURSUANT TO CHAPTER 551,
SUBCHAPTER D., V.T.C.A. GOVERNMENT CODE (SECTION 551.071) TO
CONTINUE DISCUSSION FROM THE SPECIAL CITY MEETING FROM
MONDAY NIGHT TO DISCUSS CONTEMPLATED OR PENDING
LITIGATION AND TO SEEK LEGAL ADVICE FROM THE CITY ATTORNEY,
VALLEY INTERNATIONAL AIRPORT ATTORNEY, AND OUTSIDE LEGAL
COUNSEL REGARDING A FEDERAL AVIATION ADMINISTRATION, TEXAS
AIRPORTS DEVELOPMENT OFFICE COMPLAINT FILED BY SUN VALLEY
AVIATION INC. AGAINST THE CITY OF HARLINGEN, VALLEY
INTERNATIONAL AIRPORT.**

The Executive Session convened at 6:08 p.m. and concluded at 7:02 p.m. with no action taken in closed session.

Returning to open session, Commissioner Leftwich made a motion to approve the capital improvement budget amendment for Valley International Airport less the construction amount of \$250,000.00 for the parking lot improvements for the eastside development.

The motion failed for lack of a second.

Commissioner Marra made a motion to approve the Valley International Airport amended Capital Budget for fiscal year 2010-11.

The motion failed for lack of a second.

Paul Chapman, 15147 Price Road, thanked the Airport Board for the fine service they provide to the City of Harlingen. He informed the Commission that the Airport Board should be here to help them make these decisions. There are some sticky points on the Sun Valley contract that can be easily overcome. One of those sticky points is the ramp, which can very easily be taken care with a transfer of funds. Another suggestion is to remove the technical aircraft requirement for Gulf Aviation. He advised the Commission to take a close look at what the FAA is saying.

David Garza with Gulf Aviation, 5001 Bodenhamer stated they have been enduring the actions and inactions by the Airport Board and management for several years. They have also been undermining the success of Gulf Aviation. The Airport Board and management have selectively violated State laws, FAA Sponsor Assurances, and even their own policies. He referred to the Atlas & Hall correspondence and the FAA complaint that was submitted to the City Attorney. He has concerns on this amendment to the Airport Budget to aid Sun Valley Aviation. He finds it inappropriate to approve the budget tonight because of the issues discussed in the Atlas & Hall correspondence. Mr. Garza asked to table the resolution until the Commission has had the opportunity to review the Atlas & Hall letter and the FAA complaint.

Ron Lozano pointed out that the first speaker on citizen communication suggested that free enterprise can't have favorites. He stated that favoritism is nothing new in this community. There is a 25-year history of certain individuals that have self-serving interest as their daily goal. He asked the Commission: "is it fair that only one party is constantly being given funds?"

David Moran, lawyer with the Dallas firm of Jackson Walker stated he is here representing the City of Harlingen and the Airport Board on a formal complaint that has been filed in Washington D.C. with the FAA by Sun Valley Aviation. Sun Valley is alleging that the City and the Airport have violated the City's promises to the FAA and the federal Government. His responsibility is to do his best on behalf of the City, his client, and the citizens of Harlingen.

Mayor Boswell, addressing Mr. Moran, asked if he was certified in board aviation law.

Mr. Moran replied he has no board aviation certification. He has been practicing law for 26 years and his field has been aviation law. He has represented quite a number of Airport cases.

Mayor Boswell asked if he had ever represented someone in this community prior to being hired by the Airport Board.

Mr. Moran stated he has no dog in this fight. He had never met anyone with Gulf Aviation or Sun Valley until he came down here for the first Board meeting.

Mayor Boswell asked Mr. Moran to summarize the letter that was submitted to the Airport by the FAA Official.

Mr. Moran stated that the City of Harlingen and the Airport Board had requested guidance from the FAA and Mike Nicely with respects to the issues that are being discussed. There is a letter that was sent to Michael Browning, the Director of the Airport, from Mr. Nicely dated November 4, 2010 indicating that it's important to the City and to the FAA that the City move forward with the pending negotiations and leases. He also directed that the City has an obligation to negotiate in good faith with Sun Valley Aviation. That is a very important obligation and, if the City were not to follow the FAA's direction, that could impact the City's entitlement or qualification for future grant funding. That letter has also been provided to the Mayor and Commission. Mr. Moran stated that he has provided advice to the Commission and the Airport Board, under Executive Session with regards to those issues.

Mayor Boswell asked for an explanation on the consequences from the FAA if they decide the City is in violation.

Mr. Moran explained the City is not in violation of its Grant Assurances and the FAA has made no such findings. It has been requested by Sun Valley Aviation on their formal complaint in Washington that the FAA make such a finding, but it has not happened. If that were to happen it could have significant consequences for the Airport and the City. A finding of non-compliance is problematic for an Airport. If the FAA were to find the Airport and the City in non-compliance the Airport may not be able to qualify for Federal funding. What it means is that the Airport would not be able to get Federal dollars from taxpayers in Dallas, Oklahoma, California or New York that are the ones that provide the

federal funding that go into public airports such as Valley International Airport. Those funds depend on whether the Airport is being kept in compliance. Sun Valley has alleged that the City has not kept their promises to the FAA and has asked that a non-compliance finding occur. That is the principal issue in this case. This is a serious matter and you would need to be in compliance with your promises to the FAA.

Roxann Pais Cotroneo explained that the FAA stated that the City has an obligation to provide opportunities to an Aviation related business; regardless of whether if that business or any individual related to that business has past or future criminal indictments.

Mr. Moran stated that language is contained in the November letter.

Commissioner Leftwich mentioned that the letter also stated that the City was not obligated to provide taxpayers money; it just instructed the Commission to participate in good faith to continue to negotiate a lease.

Mr. Moran answered that is correct. The language says we have a duty and to negotiate in good faith. The City doesn't have an obligation to finance or incubate, but it goes on to say to treat tenants or applicants in a similar manner.

Commissioner Leftwich commented the Finance aspect of this meeting opposed to the actual lease agreement with Sun Valley has made these meetings very lengthy. This meeting is to determine the level of taxpayer participation in the Sun Valley business.

Mr. Moran stated his understanding of what is being presented tonight is whether or not to add money to the Capital Airport Improvement Budget. The decision made tonight could affect the FAA proceedings one way or another.

Commissioner Leftwich stated they are not obligated to incubate, for instance this would be an FPO business, if it does develop at the Airport. The FAA is not mandating that the City participate with taxpayer money, it is giving the City the option as to what level of extent the City wants to participate with taxpayer money in these private enterprise.

Mr. Moran explained the letter says the proposal to add money to the Capital Improvement Budget comes from Airport money and not non-airport money. It is his understanding that the money is not coming from the General Fund. There is an important principal that says to treat all individuals coming unto the Airport with equal treatment.

He continued stating it is his understanding that there are some differences between the existing fixed base operator, Gulf Aviation, and the proposed lease transaction with Sun Valley. One of those critical differences is that Gulf Aviation is an existing building that has been there for twenty or more years and it is a proposed lease with Sun Valley. That is one of the fundamental differences between the transactions.

Mayor Boswell asked Mr. Moran if it was his opinion that the Commission adopt the amendment to the budget. Mr. Moran replied yes.

Bonnie de la Rosa Villarreal, Chairwoman of the Airport Board, explained why the Board opted to go forward with this lease. As a Board we hold the future of our Airport and we want it to maintain a fabulous reputation. Mr. Nicely is basically our boss; the FAA helps dictate how the Airport receives the funding. In that letter FAA basically states that the Board can't say who can do business at the Airport. The opinions come from the FAA and that is why the Airport came forward with this lease to be in compliance with the FAA. Ms. Villarreal stated if we are found in non-compliance with the FAA, the Airport could lose their funding. She wanted to make it clear that the funding is not City money.

Mayor Boswell asked Ms. Villarreal if, based on her opinion, would the City jeopardize potentially \$20 million if the Commission did not approve the amendment.

She replied yes and we could also be fined per day and lose money in the process.

Commissioner Leftwich reiterated his motion to approve the capital improvement budget amendment for Valley International Airport less the construction amount of \$250,000.00 for the parking lot improvements for the eastside development.

Mayor Boswell stated the \$250,000 is the part of the budget that supports the offer of the lease to Sun Valley Aviation.

Commissioner Leftwich stated that is only a portion of the lease. The amount that is on the capital improvement for the new projects is closer to a million and half.

Mayor Boswell asked for a second to the motion on the floor.

Mayor Boswell explained that a failure to act on the motion is taking an enormous risk in jeopardizing the future of the Airport.

The motion failed for lack of a second.

Commissioner Leftwich addressed Commissioner Marra and asked if she would reconsider seconding his motion.

She replied, no. "I am asking you, Commissioner Leftwich to second my motion and do what the Airport Board is asking us to do."

Commissioner Leftwich stated no one has been able to explain his concerns about the terms of capacity of Gulf Aviation's parking lot compared to what the new parking lot has. He commented that would not vote for something that no one could provide technical data for him to review and compare.

He continued to explain that this is taxpayers' money. The Airport is owned by the citizens of Harlingen and he referred to the City's website where the organizational chart is located. He commented that any funds that are mismanaged that will cause the Airport to run in the red are guaranteed funds of the City of Harlingen taxpayers. It will be the taxpayers who will bail out the Airport. Both the Airport and the Harlingen Waterworks are guaranteed by the City of Harlingen taxpayers. That is a fact, it is taxpayers' money.

BOARD APPOINTMENTS

Commissioner Leftwich appointed Kenneth Pruneau the Parks Advisory Board.

Commissioner Leftwich made a motion to approve the board appointment.
Commissioner Prepejchal seconded the motion and it carried unanimously.

CLOSED/EXECUTIVE SESSION PURSUANT TO CHAPTER 551, SUBCHAPTER D., V.T.C.A. GOVERNMENT CODE (SECTION 551.074) PERSONNEL MATTERS, TO DELIBERATE THE EVALUATION, DUTIES, AND PERFORMANCE OF THE CITY ATTORNEY FROM DECEMBER 1, 2009 – DECEMBER 1, 2010 TABLED.

Commissioner Leftwich made a motion to table the evaluation, duties, and performance of the City Attorney until the full Commission was present. Commissioner Marra seconded the motion and it carried unanimously.

There being no further business the meeting adjourned at 7:18 p.m.

Chris Boswell, Mayor

Attest:

Elena Garza, Assistant City Secretary