

REGULAR MEETING

CITY COMMISSION

HARLINGEN, TEXAS

DECEMBER 15, 2010

A Regular Meeting of the Harlingen Elective Commission was held on Wednesday, December 15, 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
Joey Trevino, Mayor Pro Tem
Gustavo C. Ruiz, Commissioner District 1
Robert Leftwich, Commissioner District 2
Kori Marra, Commissioner District 3
Jerry Prepejchal, Commissioner District 4

Staff Present:

Carlos Yerena, City Manager
Roxann P. Cotroneo, City Attorney
Sylvia R. Trevino, City Secretary

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

INVOCATION/PLEDGE OF ALLEGIANCE/WELCOME

Commissioner Leftwich delivered the invocation and the Pledge of Allegiance followed.

At this time the City Attorney read the rules of decorum in their entirety.

BOARD MEMBER RECOGNITIONS

None

CITIZEN COMMUNICATION

Lorraine Woolam introduced a foreign exchange student from Brazil who is participating in an exchange program through the Harlingen Rotary Club.

**SPECIAL RECOGNITION:
HARLINGEN FIREFIGHTERS**

Michael Rinaldi, Fire Chief, gave comments of special recognition to a group of firefighters for their firefighting efforts conducted on a daily basis.

2010 FIVE-STAR LOCAL REGISTRAR VITAL REGISTRATION AWARD

Mayor Pro Tem Trevino presented the 2010 Five-Star Local Registrar Vital Registration Award to the Vital Statistics staff that was present and read the accomplishments that led to the Award.

**PRESENTATION – ANNUAL PROPERTY TAX COLLECTIONS REPORT
JOHN GUEVARA**

John Guevara, representing Linebarger Goggan Blair and Sampson presented his annual property tax collections report for both delinquent and current collections. He distributed a copy of the current & delinquent tax collections percent collection report.

Mr. Guevara indicated that that the delinquent tax collection program continues to emphasize on working with individual taxpayers to collect taxes owed and to keep litigation as the final option. Property inspection visits are aimed at informing taxpayers

of their delinquency and to advise taxpayers of available options to pay all amounts owed. During each property inspection attempts are made to advise taxpayers of their delinquency status and are given information on preventing taxes and collection costs from accruing.

Mr. Guevara went over the delinquent tax collections for base taxes only from October through September that reflected a 31.4% collection rate and base taxes, penalty and interest with a total collection amount of \$872,121 for 2009-2010.

As for lawsuits, Mr. Guevara stated that most lawsuits do not go to tax sales. The firm is currently processing 38 title abstracts totaling approximately \$111,653. Special emphasis will continue to be placed on high dollar accounts and multiple-year delinquency accounts. He reported that 22 properties were sold and two went to administrative review. He explained that property resales where no bids are submitted the properties get 'struck off'. Mr. Guevara indicated that the next property resales would be conducted in March and June 2011. As properties are taken to judgment, they will be reviewed and checked for payment.

Further, the firm is currently monitoring the compliance of 96 payment agreements, totaling over \$48,302. If a default occurs, the taxpayer is sent a notice to cure the default and to re-establish their agreement. If non-compliance with the terms of the agreement continues, litigation will commence.

Regarding bankruptcy, Mr. Guevara indicated that the firm would actively monitor and verify the 190 accounts in bankruptcy for the payment of taxes, penalties, and interest owed to the City. These accounts represent over \$116,266 in bankruptcy claims owed to the City.

Mr. Guevara explained that they have had to change strategies to deal with those people that do not adhere to the payment agreements.

Roxann Cotroneo thanked Mr. Guevara for working together with the City on the properties that are for sale and their relation to the City's demolition program.

**PRESENTATION BY THE PAN AMERICAN GOLF ASSOCIATION
REGARDING THE USE OF A CITY FACILITY (PREPEJCHAL/TREVINO)**

Lyle Garza made his presentation and stated that a few members of the Club are requesting a new lease on the Club House. Mr. Garza continued to give a history of how the Club House came about. He stated that the membership consists of about 45-95 members and that number fluctuates. The members get involved in the community and they award 2-4 scholarships throughout the year. The PAGA hosts 4-6 tournaments that generates outside interest and other golf courses get involved with Harlingen's tournaments.

Mr. Garza explained that the PAGA built the current Club House and storage shed in exchange for a lease. There is an event center within that is rented out to the public for a low rental fee and this benefits the community. The construction of the Club House dates back to 1972 or 1973. He stated that the lease amount is \$1.00 per year and the insurance costs are \$7,000. The lease expired in 2008 and was not renewed. The fact is that there are a lot of repairs to be done and it is pretty expensive. The roof leaks and the bathrooms need to be upgraded.

Mr. Gabriel Gonzalez pointed out that it would take about \$30-40,000 to repair and the PAGA did receive about \$6,000 from insurance to repair the roof.

Mr. Garza affirmed that they did receive a check but handed it right back to the City. Mr. Gonzalez explained that the building has to be repaired before anyone will insure it.

Mr. Garza stated that because it has not been maintained it is in disarray. He explained that through rentals of the facility the PAGA makes about \$30,000 annually but they end

up clearing only about \$2,000-\$5,000 and it is not financially prudent for them to take it on with a lease. He offered (2) 10-year terms at \$1.00 per year.

Commissioner Trevino asked that the City Manager get involved and work on lease terms to come back to the City Commission with. It was noted that the building was built right after Hurricane Beulah in 1968.

At this time Martin Rodriguez also gave some history of the building and he stated that the building had been gutted out and the City allowed them to fix it up and they had to build another building so the City could store equipment and that is how they were able to get a 20-year lease way back then.

Mr. Garza introduced Jose Luis Garcia, the new president of PAGA.

Mr. Garza stated that part of their vision is to build a score board and host a Jr. Golf school.

**MINUTES FOR APPROVAL – SPECIAL MEETING OF NOVEMBER 29, 2010
AND REGULAR MEETING OF DECEMBER 1, 2010**

Commissioner Leftwich made a motion to approve both sets of minutes as presented. Commissioner Prepejchal seconded the motion and it carried unanimously.

CONSENT AGENDA:

- A. REFUND OF PROPERTY TAXES APPROVED FOR NEIL AND LYNDA HAMAN, ACCOUNT NO. 98-0650-0000-0020-00 (\$707.56) AND TO ELI SANCHEZ, ACCOUNT NO. 19-9800-0030-0120-00 (\$582.86).**
- B. EXTENSION GRANTED ON THE CONSTRUCTION OF IMPROVEMETS WITH AN APPROVED LETTER OF CREDIT FOR CACTUS COUNTRY ESTATES SUBDIVISION, LOCATED AT THE INTERSECTION OF GRIMES AVENUE AND THE COURT PLACE. APPLICANT: FERRIS AND FLYNN, LLC, C/O JOHN FLYNN (PLANNING AND ZONING).**
- C. RESOLUTION APPROVED REQUESTING THE MEMBERS OF THE 82ND LEGISLATIVE SESSION OF THE STATE OF TEXAS SUPPORT LEGISLATION THAT INCREASES FUNDING FOR THE TEXAS RECREATION AND PARKS ACCOUNT LOCAL PARK GRANT PROGRAM AND THE TEXAS PARK SYSTEM. (PARKS DEPARTMENT)**
- D. ORDINANCE ADOPTED ON FINAL READING ABANDONING CERTAIN PUBLIC EASEMENTS ON AND AROUND THE BASS PRO SHOPS PROJECT SITE (CITY COMMISSION)**

Motion to approve consent agenda: Marra

Second: Prepejchal

Motion carried unanimously.

2ND PUBLIC HEARING CONDUCTED AND ACTION TAKEN TO APPROVE ON SECOND READING THE AMENDED MINOR CURFEW ORDINANCE (HARLINGEN POLICE DEPARTMENT)

Chief Castillo explained that there was one adjustment to the ordinance from the first reading. He explained it was with regards to the penalty provision on Page 8 of the ordinance.

Mayor Pro Tem Trevino declared the public hearing open.

There being no comments from the public, Mayor Pro Tem Trevino declared the public hearing closed.

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 final reading with the adjustment as noted by Chief Castillo.

Commissioner Marra seconded the motion and it carried unanimously.

PUBLIC HEARING HELD TO HEAR COMMENTS FOR OR AGAINST THE REZONING FROM ‘NOT DESIGNATED (N)’ ZONE TO ‘GENERAL RETAIL (GR)’ ZONE FOR A 2.54± ACRE TRACT OF LAND OUT OF BLOCK 54, DAVID AND STEPHENSON SUBDIVISION, LOCATED ON THE NORTH SIDE OF LOOP 499 WEST OF BRIGGS COLEMAN ROAD. APPLICANT: JOHN W. DRENNAN AND THE CITY OF HARLINGEN (PLANNING & ZONING)

Joel Olivo, Planning Manager, explained that this property is located on the north side of Loop 499 and that most of the surrounding properties are vacant. The request is consistent with the City of Harlingen Vision 20/20 Comprehensive Plan.

Mayor Pro Tem Trevino declared the public hearing open.

Steve Gano, general counsel for the applicant, stated that the applicant is asking for approval of the zoning for the expansion of self-storage units (facility). They will also be asking for annexation in the following item.

There being no further comments from the public Mayor Pro Tem Trevino closed the public hearing.

ORDINANCE ADOPTED ON FIRST READING ON THE ABOVE REZONING

AN ORDINANCE AMENDING THE ZONING ORDINANCE (ORDINANCE NO. 07-27) OF THE CITY OF HARLINGEN: REZONING FROM ‘NOT DESIGNATED (N)’ ZONE TO ‘GENERAL RETAIL (GR)’ ZONE FOR 2.54± ACRE TRACT OF LAND OUT OF BLOCK 54, DAVID AND STEPHENSON SUBDIVISION, LOCATED ON THE NORTH SIDE OF LOOP 499 WEST OF BRIGGS COLEMAN ROAD; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

Commissioner Leftwich made a motion to adopt the ordinance on first reading. Commissioner Prepejchal seconded the motion and it carried unanimously.

PUBLIC HEARING HELD TO HEAR COMMENTS FOR OR AGAINST THE PROPOSED ANNEXATION AND THE INITIAL ZONING TO ‘GENERAL RETAIL (GR)’ FOR A 0.425± ACRE TRACT OF LAND OUT OF BLOCK 54, DAVID AND STEPHENSON SUBDIVISION, LOCATED ON THE NORTH SIDE OF LOOP 499 WEST OF BRIGGS COLEMAN ROAD. APPLICANT: JOHN W. DRENNAN (PLANNING AND ZONING)

Joel Olivo explained that the subject tract of land is currently being processed as a resubdivision with the existing Lot 1, Block 1, Replat of Lots 1, 2 and 4, Stone Subdivision Phase II and the request meets the requirements of the Texas Local Government Code, Section 43.028 “Authority of Municipalities to Annex Sparsely Occupied Area on Petition of Area Land Owners”. Mr. Olivo indicated that the developer would be responsible for all improvements.

Mayor Pro Tem Trevino declared the public hearing open.

There being no comments from the public Mayor Pro Tem Trevino declared the public hearing closed.

ORDINANCE ADOPTED ON FIRST READING ON THE ABOVE

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF HARLINGEN THROUGH ANNEXATION AND ESTABLISHING THE INITIAL ZONING TO 'GENERAL RETAIL (GR)' ZONE CONSISTING OF THE FOLLOWING: A 0.425± ACRE TRACT OF LAND OUT OF BLOCK 54, DAVID AND STEPHENSON SUBDIVISION, LOCATED ON THE NORTH SIDE OF LOOP 499 WEST OF BRIGGS COLEMAN ROAD; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

Roxann Cotroneo stated that the City had already surpassed the 30-day petition review as required by the Texas Local Government Code. She asked Mr. Gano if the applicant was waiving that requirement. Mr. Gano replied yes.

Commissioner Leftwich made a motion to adopt the ordinance on first reading. Commissioner Prepejchal seconded the motion and it carried unanimously.

PUBLIC HEARING HELD TO HEAR COMMENTS FOR OR AGAINST THE REZONING FROM 'NOT DESIGNATED (N)' ZONE TO 'RESIDENTIAL, SINGLE FAMILY (R-1)' ZONE FOR A 29.6± ACRE TRACT OF LAND OUT OF BLOCK 95, HARLINGEN LAND AND WATER COMPANY SUBDIVISION, LOCATED ON THE NORTH SIDE OF RIO HONDO ROAD WEST OF MORGAN BOULEVARD. APPLICANT: HARLINGEN CISD/OSCAR TAPIA (PLANNING AND ZONING)

Joel Olivo explained that the request is consistent with the land use plan. The applicant is requesting to rezone the subject property from 'not designated (N)' zone to 'residential, single family (R-1); zone to allow for a proposed middle school on the subject property. The request rezoning requires approval by the City Commission before the specific use permit can be processed.

Mayor Pro Tem Trevino declared the public hearing open.

Gail Moore, 709 Town Lane, asked if letters were required to be sent to affected property owners. Mr. Olivo replied that notices were sent to property owners within the 200 ft. radius as required by statute. There were only two people that attended the Planning and Zoning Commission and one phone call was received by the Planning staff regarding the rezoning. Mr. Olivo explained that the concerns that were expressed were addressed by the School District.

Commissioner Ruiz asked about the drainage problems. Mr. Olivo replied that the plans have not been submitted yet because the zoning needs to have approval first.

Jerry Moore expressed concerns over the access to emergency vehicles on a road that is pretty narrow (Rio Hondo Road). He indicated that traffic would be held if not addressed accordingly.

Commissioner Marra pointed out that Rio Hondo Road has four lanes and the property will be designated as a school zone so this would increase safety on Rio Hondo Road.

Yolanda Shoffeitt expressed concern over the notices that are sent out and felt that maybe if the notices are sent also in Spanish it might generate more responses.

Gail Moore expressed concerns with the drainage in the area. She asked that the Commission not consider the rezoning unless the City is going to install underground tanks for drainage.

Oscar Tapia, representing the School District, explained that this is a rezoning request only. He still has to file a subdivision plat and he will be meeting with the Engineering Department. Right-of-way has to be dedicated. He stated that the School District also owns the adjacent property for future use and the property will have retention ponds. The School District will work with Harlingen Waterworks as well regarding the lift station that is on Rio Hondo Road and he stated that this property would be used for a new middle school.

There being no further comments from the public Mayor Pro Tem Trevino declared the public hearing closed.

ORDINANCE ADOPTED ON FIRST READING ON THE ABOVE REZONING

AN ORDINANCE AMENDING THE ZONING ORDINANCE (ORDINANCE NO. 07-27) OF THE CITY OF HARLINGEN: REZONING FROM 'NOT DESIGNATED (N)' ZONE TO 'RESIDENTIAL, SINGLE FAMILY (R-1) ZONE FOR 29.6± ACRE TRACT OF LAND OUT OF BLOCK 95, HARLINGEN LAND AND WATER COMPANY SUBDIVISION, LOCATED ON THE NORTH SIDE OF RIO HONDO ROAD WEST OF MORGAN BOULEVARD; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

Commissioner Leftwich made a motion to adopt the ordinance on first reading. Commissioner Trevino seconded the motion and it carried unanimously.

RESOLUTION APPROVED AUTHORIZING THE SOUTH TEXAS AGGREGATION PROJECT, INC. (STAP) TO NEGOTIATE AN EXTENSION TO THE CURRENT ELECTRIC SUPPLY AND NECESSARY RELATED SERVICES AGREEMENT WITH NEXT ERA FOR A FIXED PRICE PER KWH THAT IS LOWER THAN CONTRACT RATES FOR 2011-13, SAID EXTENSION TO CONTINUE UNTIL DECEMBER 31, 2018. (ADMINISTRATION)

Carlos Yerena, City Manager, explained that STAP is asking the City to consider extending its current 'blend and extend' contract. If approved by the City Commission this action could result in additional savings for electricity per kilowatt-hour. This could generate a savings of about \$300,000 per year. Currently, the contract expires in 2013 and STAP is asking that it be extended to continue until December 31, 2018.

Mr. Yerena pointed out that other cities that have approved and passed resolutions are the Cities of Corpus Christi, Mission, Victoria, and McAllen.

Commissioner Prepejchal asked if the kilowatt per hour would increase. Mr. Yerena explained that by extending the contract a fixed rate would be locked in.

Rich Newman asked if the City were to build windmills would the City get back penny for penny for these types of savings and suggested that this provision be included in the contract.

Commissioner Leftwich stated that would be a stand-alone contract for electric generating devices. The City currently is implementing a solar project which will generate revenue to the City but would not affect this contract that is being considered but indicated that such a provision could be included in the contract.

Asked about a timeline, Mr. Yerena replied that STAP would not commit to a specific price until they have 75% commitment from other cities and right now they are at 70% but their goal could be reached by next week. It could be that they might have only 48 hours to 'pull the trigger' and if need be a Special City Commission could be called.

Commissioner Prepejchal made a motion to approve the resolution. Commissioner Marra seconded the motion and it carried unanimously.

ACTION TAKEN TO AUTHORIZE THE EMPLOYMENT OF A PART-TIME MUNICIPAL COURT CLERK

Roel Gutierrez, Director of Finance, stated that currently the Municipal Court has one part-time court clerk for magistrate warnings and arraignments that are processed only in the morning hours. The employment of an additional part-time court clerk will allow the Court to process cases for the late afternoon magistrate warnings and arraignment proceedings. The part-time clerk will cost the City an additional \$10,360 in salary and benefits and \$750 in training for this fiscal year.

Staff recommended approval.

Mr. Gutierrez stated that the following item would amend the City's budget to accommodate this additional expense.

Commissioner Prepejchal made a motion to authorize the employment of a part-time Municipal Court Clerk. Commissioner Marra seconded the motion and it carried unanimously.

RESOLUTION APPROVED TO AMEND THE DEVELOPMENT CORPORATION OF HARLINGEN, INC. BUDGET FOR FISCAL YEAR 2010-11

Roel Gutierrez stated that the amended budget was approved by the EDC on November 29, 2010. The amended are for contractual contracts where the money was not spent and those funds need to be reprogrammed for FY 2011. The budget adjustments include the RACH (\$198,142); the 585-acre Industrial Park Certification (\$55,000), Aloe Laboratories, Inc. (\$40,000); Rental World (\$75,000) and the Harlingen Industrial Foundation, Inc. (\$50,000).

The University Articulation and Career Center budget adjustment of \$1,312,715 represents a rollover from FY 2010 that was not fully spent. The Targeted Infrastructure budget adjustment of \$433,878 represents a rollover from FY 2010 to complete the Tennessee/Treasure Hills Road and the Dixieland Railroad crossing extension projects.

The Arroyo Grande Retail, LP budget adjustment of \$103,768 represents an increase to the current FY 2011 budget for the anticipated incentive payments to the V-line drainage connection and for two retail establishments.

Commissioner Prepejchal made a motion to approve the resolution amending the EDC budget. Commissioner Marra seconded the motion and it carried unanimously.

ORDINANCE ADOPTED ON FIRST READING TO AMEND THE CITY'S 2010-11 FISCAL YEAR BUDGET

Roel Gutierrez stated that this is the first amendment to the 2010-11 budget and contains three types of amendments. The first are budget requests to fund a part time court clerk (as previously approved earlier in the meeting). The second are prior year encumbrances, which are purchase orders budgeted and encumbered in the prior year but remained outstanding as of September 30, 2010. These are basically items and services ordered last year but were not received or completed until this year and are scheduled to be paid in the current year. These unused budgeted amounts dropped in the fund balance and need to be carried over to the 2010-11 budget. The third type is grants awarded to the City that were not originally budgeted for either revenues or expenditures. These adjustments will increase revenues by \$658,587 and increase expenditures by \$1,112,120.

Staff recommended approval.

The caption of the ordinance was read.

AN ORDINANCE AMENDING THE REVENUE AND EXPENDITURE BUDGET FOR THE CITY OF HARLINGEN, TEXAS, FOR THE FISCAL YEAR OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011. TOTAL BUDGET REVENUES WILL INCREASE TO \$63,553,628

AND TOTAL BUDGET EXPENDITURES WILL INCREASE TO \$65,637,484 RESPECTIVELY; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

Commissioner Leftwich made a motion to adopt the ordinance on first reading. Commissioner Marra seconded the motion and it carried unanimously.

RESOLUTION APPROVED TO AMEND THE HARLINGEN DOWNTOWN 2010-11 FISCAL YEAR BUDGET

(Note: Commissioner Marra signed an affidavit of conflict of interest and exited the meeting during this item discussion).

Roel Gutierrez explained that this budget amendment is to carry over prior year funds into the current year for various sign and storefront grants expenditures. These grants were started in fiscal year 2009-10 and will be completed and paid out in fiscal year 2010-11. This adjustment will increase expenditures by a net \$26,520.

Staff recommended approval of the budget amendments by resolution.

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

BIDS ACCEPTED FOR THE RE-ROOFING AND RE-CLADDING OF THE HARLINGEN RECYCLING CENTER BUILDING UNDER BID NO. 2011-04

Dan Serna, Director of Public Works, stated that the project scope calls for the replacement of the corrugated metal roof and wall panels with new material. It also calls for the repair of any damaged or deteriorated sections of roof purlins and wall girts. The bid requests were broken down into a base bid, alternate bid, unit price per linear foot of purlin and wall girt replacement and unit price per square foot to wire brush and coat all of the rusted roof purlins and wall girt. This was done in an effort to stay within the allocated budget for the project.

Mr. Serna recommended accepting the low base bid submitted by H2O Construction in the amount of \$29,995.00 including the unit price bids of \$20.00 per linear foot to replace damaged sections of all girts and roof purlins and \$3.00 per square foot of wire brush and coat all rusted all girts and roof purlins. Staff also recommended accepting the alternate bid submitted by H2O in the amount of \$11,995.00. The total combined cost for the project would be \$41,990.00. The combined cost does not include the cost to replace, repair or cat the wall girts and roof purlins.

Commissioner Leftwich made a motion to accept the low bid from H2O Construction as per staff recommendation. Commissioner Prepejchal seconded the motion and it carried unanimously.

BOARD APPOINTMENTS

Commissioner Leftwich appointed Ron Lozano to Harlingen Proud and Debby Ingram to Harlingen Proud also.

Commissioner Prepejchal appointed Lori Davila to the Municipal Auditorium Advisory Board and Juan Garza to the Veterans Board. Commissioner Prepejchal also appointed Alex Trejo to the Veterans Advisory Board.

Commissioner Leftwich made a motion to approve the appointments as made. Commissioner Prepejchal seconded the motion and it carried unanimously.

Commissioner Leftwich 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 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 complaint filed by Sun Valley Aviation, Inc. against the City of Harlingen, Valley International Airport (*City Attorney*)

CLOSED/EXECUTIVE SESSION PURSUANT TO CHAPTER 551, SUBCHAPTER D., V.T.C.A. GOVERNMENT CODE (SECTION 551.071) 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 COMPLAINT FILED BY SUN VALLEY AVIATION, INC. AGAINST THE CITY OF HARLINGEN, VALLEY INTERNATIONAL AIRPORT (*CITY ATTORNEY*)

The Closed/Executive Session convened at 6:54 p.m. and concluded at 7:45 p.m. with no action taken in closed session.

Present in Executive Session were: Mayor Pro Tem Trevino, Commissioners Ruiz, Leftwich, Marra, Prepejchal, Michael Browning, Gene McCullough, Bryan Wren, Carlos Yerena, Gabriel Gonzalez, Roxann Cotroneo, David Moran; Terry Chase; Sylvia Trevino.

RESOLUTION APPROVING VALLEY INTERNATIONAL AIRPORT'S AMENDED CAPITAL BUDGET FOR FISCAL YEAR 2010-11 (*CITY MANAGER/CITY ATTORNEY*)

Mayor Boswell stated that he would allow 2 minutes for those that wished to speak on this item.

Jeff Kohlman approached the podium and asked what is the Airport's requested budget amendment based on? He asked is it the need for additional FBO services? He replied no. He asked is it the liability for Sun Valley Aviation's plan? He replied no. He asked is it the ban (?) capacity analysis that wasn't done to determine the need for additional apron? He replied no. The injustice discriminatory terms that Sun Valley Aviation's draft agreement? He replied No.

Mr. Kohlman stated that in fact it was his understanding that at last week's meeting and possibly here today there was no one present from Sun Valley Aviation to represent their request for monies. The only discussion at last Wednesday's meeting was the possibility of losing FAA monies. That was the focus---FAA monies. Mr. Kohlman continued by stating that in 1996 when the Park's 16th complaint process was established, there have been about 110 complaints filed with the FAA against airports. Over 75% of those were found in favor of the airports and those that weren't, the typical action of the FAA in conjunction with the Airport, was to implement a corrective action plan. Mr. Kohlman pointed out that only two airports lost FAA monies but that was at the airports' choice, not the FAA. The FAA does not go out and impose fines. They do not require repayment of monies and they do not go out withholding future funding. Their goal is to work with the airport moving forward. Referring to attorney Moran's comments, Mr. Kohlman stated that the airport is not in violation of their grant assurances today. From his professional experience voting against this budget amendment associated with the apron would not put the airport in violation tomorrow. The FAA does not use the term same or equal when talking about treatment. Mr. Kohlman stated that he has identified about 22 points where it takes Sun Valley Aviation.... (timer rings). Thank you for your time.

Debra Goetz, with Atlas Hall, representing Gulf Aviation, asked that the Commission think about exactly what they're doing and the timing with respect to how they're doing it. She stated that as Jeff Kohlman alluded to the Airport appears to be in compliance with the FAA as far as Sun Valley is concerned. However, there are many concerns about their compliance with respect to Gulf Aviation most of those were outlined in a letter and a draft FAA complaint, which was sent to the City Attorney and the Airport Attorney at the end of November. She stated that they are still waiting on a response from that. She added that today they found out that the Airport Attorney does not expect to get back to them until the end of this week. She stated that to act on the current amendment, which

arguably is going to put the Airport into further violation of the FAA before addressing the existing concerns. It puts the City and the Airport at further risk to the extent you have concerns about the current compliance of the FAA. Going further with this is the exact opposite of what we would expect the City to actually do if you are looking at the City's interest. Furthermore, she asked that the City address the existing violations now with Gulf Aviation--- 2 of the existing problems and then look into whether or not there are further things that could be done to enhance competition in the manner that the FAA allows, which is without any unfair discrimination against any of the parties involved. Ms. Goetz thanked that the Commission for its consideration.

David Garza, with Gulf Aviation, thanked the Commission for listening to him and stated that it has been a long battle that he has been fighting. He recalled that four years ago he approached the Airport Board and asked for an extension to his contract after being here for 25 years and the Airport Board declined his request. When he asked why he was told that they had to go out for RFQs. We asked why? He stated that they had done everything they were told to do and questioned why the RFQ process. Mr. Garza stated that the reply was that the FAA was requiring the Airport to go out for RFQs. Mr. Garza stated that the Airport did not ask Sun Valley to go out for RFQs. After we asked for reasoning they changed their mind and the Airport stated that they had talk to the FAA and then the negotiations started. The Airport said we want you to invest so we invested and we need more investment so we did more investment and this went on and on. Mr. Garza stated that when he finally satisfied the Airport's entire investment requirement, he then found out that the Airport started negotiations with another FBO. Mr. Garza was of the opinion that this was unfair to him. He commented that he was not aware that he was going to have to enter into competition. Mr. Garza commented that now the Airport is asking Gulf Aviation to compete in an unfair environment. Mr. Garza felt that he should have known ahead of time. He stated that the Airport is not following the minimum standards that require that any new investor put out their own aprons and their own parking lots. Mr. Garza commented that for the Airport not to follow those standards that protect our investments is a violation of his rights. Mr. Garza stated that he is turning to the Commission to enforce those regulations----otherwise his investments are in jeopardy. He stated that the Airport Board is refusing to honor their rules.

Dr. Bonnie de la Rosa Villarreal, Chairwoman of the VIA, stated that she was representing the interest of the Airport and the entire community. The Airport administration and the board have been working diligently over the years to stay economically viable and the positive light of our City. The Board voted unanimously in favor of continuing negotiations with the second FBO. The first time this came about was in 2008. The economy, mainly aviation economics took a big hit. All major commercial airlines were suffering and general aviation may have suffered as well. Today is a different story with different numbers. We are upswing and now is the time to take advantage of it. The Airport wants to grow and outshine our neighboring cities. This can be done with competition, that's basic. The FAA realizes this as well. FAA has said that we cannot inhibit competition and we plan on complying with that notion. The FAA has also said that we must work in good faith. Dr. Villarreal stated that the Airport Board plans to comply with that notion as well. The attorneys and staff have worked diligently to make sure we work accordingly. Dr. Villarreal stated that there are two global issues here and it has nothing to do with sides or anyone's private business or pocket book. One, our vendor such as Fed Ex, DHL overnight, some major airlines just to name a few, are very interested in the discussion of competition. Competitive fees will cascade into better service. Competition will create new services, which are not currently in place. With these new services we can get new vendors. In this regards both FBOs can flourish with hard work and great attention to their business. She commented that this is a "win, win" for our City. Secondly, the FAA realizes all of this (bell rings) (Mayor Boswell allowed her extended time). Dr. Villarreal stated that the Airport is in non-compliance now but we do not want to be in the future. She stated that the Airport does not want to go through an FAA lawsuit or the legal channels and in the end have a second FBO by force with extreme loss of funds in legal fees and, most importantly, complete community heart break. Dr. Villarreal felt that this issue would break the community more and more if it continues. A failure to act as the Airport Board has recommended may end in a "lose, lose" scenario for our great Airport and community. Dr. Villarreal stated that it is her

extreme recommendation to bury this issue so that the Airport Board and staff can continue to work on all the other aspects of our great airport.

Dr. Villarreal commented that her complete interest here and the interest of our Airport Board is solely on the betterment of your airport.

Ron Lozano commented that that there is documentation that could very well jeopardize through non-compliance by this current Airport Board. The way they have dealt with Sun Valley Aviation. People that are in collusion through business partnerships with them have, in fact, utilized their insider roles to try to effectuate these favorable terms, whereas, in 1988 when his Dad appointed everyone, as is now the current fashion on the Airport Board, they initially did what is suggested here-----let them build their own. Regardless of what transpired the following year the Airport Board reversed course and forced the lease on Gulf. So there's that despair of treatment that Ms. De la Rosa is familiar with. Mr. Lozano continued to state that it's been suggested, pie in the sky. That new services are going to be created but it's not a given. The given is the history that is there. The differential treatment, which the law does not want, neither does the FAA as a regulatory body. Therefore, the community will suffer if you (the Commission) abide and ratify this decision for the apron. Gulf's is a common apron for everybody; Sun Valley's will be different.

Mayor Pro Tem Trevino asked what are the wishes of the Commission?

Commissioner Prepejchal made a motion to accept the amendment to the Airport budget with exclusions of the apron, which is the \$75,000 that we had to put up for the grant and also the parking lot.

Commissioner Ruiz seconded the motion and it carried by the following vote:

Aye: Prepejchal, Ruiz, Leftwich
Nay: Marra

The motion carried 3 to 1.

Commissioner Leftwich made a motion to go into Closed/Executive Session pursuant to Chapter 551, Subchapter D., *V.T.C.A. Government Code* (Section 551.087) regarding commercial and financial information from business prospects with which the City seeks to have located, stay or expand in or near the territory of the City and with which the City is conducting economic development negotiations and/or to discuss or deliberate financial or other incentives to a business prospect known as Project Green.

Commissioner Marra seconded the motion and it carried unanimously.

**CLOSED/EXECUTIVE SESSION PURSUANT TO CHAPTER 551,
SUBCHAPTER D., V.T.C.A. GOVERNMENT CODE (SECTION 551.087)
REGARDING COMMERCIAL AND FINANCIAL INFORMATION FROM
BUSINESS PROSPECTS WITH WHICH THE CITY SEEKS TO HAVE
LOCATE, STAY OR EXPAND IN OR NEAR THE TERRITORY OF THE CITY
AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC
DEVELOPMENT NEGOTIATIONS AND/OR TO DISCUSS OR DELIBERATE
FINANCIAL OR OTHER INCENTIVES TO BUSINESS PROSPECTS KNOWN
AS PROJECT GREEN (ADMINISTRATION)**

The Closed/Executive Session convened at 8:01 p.m. and concluded at 8:25 p.m. with no action taken in closed session.

Present in Executive Session were Mayor Pro Tem Trevino, Commissioners Ruiz, Leftwich, Marra, Prepejchal, Carlos Yerena, Roxann Cotroneo, Gabriel Gonzalez, Rick Rodriguez,

Commissioner Prepejchal made a motion to go into Closed/Executive Session pursuant to Chapter 551, Subchapter D., *V.T.C.A. Government Code* (Section 551.074) personnel

Regular Meeting
12/15/10

matters to deliberate the evaluation, duties, and performance of the City Attorney from December 1, 2009 through December 1, 2010. Commissioner Marra 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. (LEGAL)**

The Executive Session convened at 8:25 p.m. and concluded at 9:15 p.m. with no action taken in closed session.

Present in Executive Session were: Mayor Pro Tem Trevino, Commissioners Ruiz, Leftwich, Marra, Prepejchal and City Attorney, Roxann Cotroneo. Both Carlos Yerena and the Director of Human Resources, Efren Fernandez were called in later during the Executive Session.

There being no further business the meeting adjourned at 9:15 p.m.

Joey Trevino, Mayor Pro Tem

Attest:

Sylvia R. Trevino, City Secretary