

REGULAR MEETING

CITY COMMISSION

HARLINGEN, TEXAS

NOVEMBER 21, 2011

A Regular Meeting of the Harlingen Elective Commission was held on Wednesday, November 21, 2011 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
Jerry Prepejchal, Mayor Pro-Tem, District 4
Gustavo C. Ruiz, Commissioner, District 1
Robert Leftwich, Commissioner District 2
Joey Trevino, Commissioner District 5

Absent:

Kori Marra, Commissioner District 3

Staff Present:

Carlos Yerena, City Manager
Amanda C. Elizondo, City Secretary
Roxann P. Cotroneo, City Attorney
Gabriel Gonzalez, Assistant City Manager
Roel Gutierrez, Director of Finance

Mayor Pro-Tem Prepejchal called the meeting to order, a quorum was established. He stated a notice of the meeting had been duly posted according to state law and the following proceedings were held.

Invocation/Mayor Pro-Tem Jerry Prepejchal

Mayor Pro Tem Jerry Prepejchal gave the invocation.

Pledge of Allegiance/Welcome

Mayor Pro-Tem Jerry Prepejchal led the pledge of allegiance and welcomed everyone in attendance.

1) Special Recognition

- a) City of Harlingen neighborhood Clean Sweep – November, 2011, Lela and D Streets, District 2.

Mayor Pro-Tem Prepejchal presented certificates of special recognition to Sydney de la Cruz, Amber Maldonado and James Loera for volunteering in the Neighborhood Clean Sweep.

2) Proclamation – proclaiming the month of November, 2011 as Caregiver SOS by Well-Med Charitable Foundation.

No one was present to accept the proclamation. Commissioner Trevino read the proclamation proclaiming the month of November, 2011 as Caregiver SOS by Well-Med Charitable Foundation.

3) Citizen Communication

Jose Rubio, Jr. 2309 Hacienda Road spoke in regard to ethics issues within the City. He recognized Roxann Cotroneo, City Attorney for the efforts taken during this ethics complaint. Mr. Rubio stated public service should be held at the highest standard. He pointed out he had

two outstanding complaints and hoped that eventually they would be reviewed. He would like for the Commission to look into the Ethics Policy to include some type of protection for citizens who filed complaints from individuals who were challenged.

4) Approval of minutes – Regular Meeting of November 2, 2011.

Motion was made by Commissioner Trevino and seconded by Commissioner Leftwich to approve the minutes as presented. Motion carried unanimously.

5a) Second and final reading of ordinance approving a Specific Use Permit “SUP” to allow a bar/lounge in a general retail “GR” zone located at 1105 S. Tamm Lane, bearing a legal description of 3.474 acres out of Block 33, Stuart Place Survey 139/297/298.

b) Second and final reading of ordinance approving a Specific Use Permit “SUP” to allow for a parking lot in a Multi-Family Residential “M2” District located at 1518 E. Monroe Street, bearing a legal description of the west forty-eight (48) feet of Lot 5, Block C, East Park Terrace Subdivision.

c) Second and final reading of an ordinance approving a Specific Use Permit “SUP” to allow an adult business (Tattoo Parlor) in a General Use “GR” zoned located at 1418 E. Tyler Street, bearing a legal description of 0.6428 acres comprised of Part of Lots 9-12, Block 4, Windsor Place Subdivision.

d) Second and final reading of an ordinance establishing the protection of Green Parakeets and Red-Crowned Parrots by preventing the capture, preventing the killing or injuring of these birds within the corporate city limits of Harlingen, preventing the willful destruction of their native habitat on government property of public right-of-ways and prohibiting the taking of nestlings or un-hatched eggs.

e) Consider and take action to close “A” Street between Monroe Street and the alley for the upcoming Harlingen Farmers Market Events.

Motion was made by Commissioner Leftwich and seconded by Commissioner Trevino to approve all the items under the consent agenda with the exception of Item 5(C). Motion carried unanimously.

Ken Clark, Planning & Development Manager stated at the previous meeting there was a concern regarding the hours of operation and the impact it would have on the residential area. Mr. Clark stated the proposed business was located at a “Strip Commercial Mall” and there was no entrance at the rear of the business. Staff inspected the location and it was confirmed that there was no activity at the rear of the building. This would allow the protection of the residential area behind this business. The hours were by appointment only. Mr. Clark recommended that staff monitor the activity of the business for six months instead of having her pay another application fee. Staff would report to the City Commission if there were any concerns.

Motion was made by Commissioner Leftwich and seconded by Commissioner Trevino to monitor the business for six months and waive any additional application fee for the specific use permit. Motion carried unanimously.

For the record, the captions of Ordinance No. 11-52, 11-53, 11-54, and 11-55 read as follows:

ORDINANCE NO. 11-52

AN ORDINANCE AMENDING THE ZONING ORDINANCE (ORDINANCE NO. 07-27) OF THE CITY OF HARLINGEN: TO ISSUE A SPECIFIC USE PERMIT TO PATRICIA NORA RODRIGUEZ TO ALLOW A BAR/LOUNGE IN A “GENERAL RETAIL (GR)” DISTRICT LOCATED AT 1105 S. TAMM LANE, BEARING A LEGAL DESCRIPTION OF 3.474 ACRES, OUT OF BLOCK 33, STUART PLACE SURVEY 139/297/298, SUBJECT TO: (1) MAINTAIN THE REQUIRED OFF STREET PARKING SPACES; (2) PROVIDING A SECURITY GUARD IN THE PARKING LOT DURING PEAK HOURS OF OPERATION ON THURSDAY, FRIDAY AND SATURDAY FROM 9:00 P.M. TO 2:00 A.M.; (3) MUST MAINTAIN ADEQUATE

LIGHTING IN THE PARKING AREA; (4) MAINTAIN THE SURVEILLANCE VIDEO AND (5) APPLICANT MUST OBTAIN AND MAINTAIN TABC LICENSE; AND (6) COMPLY WITH REQUIREMENTS ADMINISTERED BY THE PLANNING, BUILDING, HEALTH AND FIRE DEPARTMENTS; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

ORDINANCE NO. 11-53

AN ORDINANCE AMENDING THE ZONING ORDINANCE (ORDINANCE NO. 07-27) OF THE CITY OF HARLINGEN: TO ISSUE A SPECIFIC USE PERMIT ("SUP") TO SALVADOR LUGO, TO ALLOW A PARKING LOT IN A "MULTI-FAMILY RESIDENTIAL (M2)" ZONE, LOCATED AT 1518 E. MONROE, BEARING A LEGAL DESCRIPTION OF WEST FORTY-EIGHT (48) FEET OF LOT 5, BLOCK "C", EAST PARK TERRACE SUBDIVISION WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST PAVE AND STRIPE IN ACCORDANCE WITH CITY OF HARLINGEN REGULATIONS; (2) THE APPLICANT MUST PROVIDE AND MAINTAIN REQUIRED LANDSCAPING; (3) THE APPLICANT MUST PROVIDE AND MAINTAIN REQUIRED PRIVACY FENCE ON THE EAST AND SOUTH SIDES OF THE PROPERTY; (4) THE APPLICANT MUST COMPLY WITH REQUIREMENTS ADMINISTERED BY THE PLANNING AND ENGINEERING DEPARTMENTS PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

ORDINANCE NO. 11-54

AN ORDINANCE AMENDING THE ZONING ORDINANCE (ORDINANCE NO. 07-27) OF THE CITY OF HARLINGEN: TO ISSUE A SPECIFIC USE PERMIT ("SUP") TO CHARLENE TORRES, TO ALLOW AN ADULT BUSINESS (TATOO SHOP) IN A "GENERAL RETAIL (GR)" ZONE, LOCATED AT 1418 EAST TYLER SUITE 5, BEARING A LEGAL DESCRIPTION OF 0.6428 ACRES COMPRISED OF PART OF LOTS 9-12, BLOCK 4, WINDSOR PLACE SUBDIVISION, WITH THE FOLLOWING CONDITIONS: (1) THE APPLICANT MUST MAINTAIN THE REQUIRED OFF STREET PARKING SPACES; (2) THE APPLICANT MUST OBTAIN AND MAINTAIN PROPER PERMITS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES; (3) THE APPLICANT MUST COMPLY WITH REQUIREMENTS ADMINISTERED BY THE PLANNING, BUILDING, AND FIRE DEPARTMENTS PRIOR TO THE ISSUANCE OF THE CERTIFICATE OF OCCUPANCY; AND (4) CITY STAFF SHALL REVIEW THIS SPECIFIC USE PERMIT FOR SIX (6) MONTHS, AND REPORT BACK TO THE CITY COMMISSION CONCERNING ANY VIOLATION OF CITY REGULATIONS AND COMPLAINTS RECEIVED BY THE PLANNING DEPARTMENT AND POLICE DEPARTMENT: PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

ORDINANCE NO. 11-55

AN ORDINANCE OF THE CITY OF HARLINGEN, TEXAS ADDING SECTION 90.03 OF THE HARLINGEN CITY CODE, AS AMENDED; PROHIBITING THE CAPTURE, KILL OR INJURY OF A GREEN PARAKEET (ARATINGA HOLOCHLORA) OR RED-CROWNED PARROT (AMAZONA VIRIDIGENALIS) LOCATED WITHIN THE CORPORATE CITY LIMITS OF THE CITY OF HARLINGEN; PROHIBITING THE CAPTURE, INJURY, REMOVAL OR TAKING OF THEIR NESTLINGS OR UNHATCHED EGGS FROM THEIR NESTING SITE WITHIN THE CORPORATE CITY LIMITS OF THE CITY OF HARLINGEN; PROHIBITING A PERSON FROM DELIBERATELY DESTROYING ANY ROOSTING TREE OR NESTING SITE LOCATED ON ANY PUBLIC PROPERTY OR PUBLIC RIGHT OF WAY WITHIN THE CORPORATE CITY LIMITS OF THE CITY OF HARLINGEN WITH APPROVED EXCEPTIONS PROVIDING A PENALTY NOT TO EXCEED FIVE HUNDRED AND NO/100 (\$500.00) FOR A VIOLATION OF THIS ORDINANCE; PROVIDING FOR PUBLICATION; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING THE EFFECTIVE DATE OF THIS ORDINANCE AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

PASSED AND APPROVED on first reading November 2, 2011.

PASSED AND APPROVED on second and final reading on November 21, 2011.

SIGNED: /s/ Chris Boswell, Mayor

ATTESTED BY: /s/ Amanda C. Elizondo, City Secretary

- 23) Consider and take action to authorize the City Manager to execute an advance funding agreement with the Texas Department of Transportation (TxDOT) to install new signs designating a portion of State Highway 499 (Loop 499) as the Colonel Bill Card, Jr. Boulevard in accordance with Senate Bill 1248-ENR.

Senator Eddie Lucio gave a brief overview of Senate Bill 1248 passed by the 82nd Texas Legislature and signed by Governor Rick Perry. This bill designated a portion of State Highway 499 from County Road 106 to US. Highway 77 as "Colonel Bill Card, Jr." Boulevard. He gave a brief biography of Colonel Card, Jr. He was an American hero, Pearl Harbor survivor and an outstanding community leader. Senator Lucio stated he had been instrumental in bringing Southwest Airlines to the Harlingen Airport and Regional Academic Health Center. The dedication of Loop 499 memorialized Colonel Card for the honors and events that he brought to this city. This designation insured that the legacy of this great man was never forgotten.

Motion was made by Commissioner Leftwich and seconded by Commissioner Ruiz to authorize the City Manager to execute an advance funding agreement with the Texas Department of Transportation to change the name of Loop 499 to Colonel Bill Card, Jr. Motion carried unanimously.

- 8) Consider and take action to approve an amendment to the Ordinance (Chapter 51) to establish a rate for the use of Reclaimed Water (effluent) and a rate for Return Water (Reclaimed Water) returned to the Waterworks, meeting or exceeding the definition of Reclaimed Water.

Motion was made by Commissioner Trevino and seconded by Commissioner Leftwich to table Item No. 8. Motion carried unanimously.

- 18) Consider, discuss and take action to:

- (1) Authorize the City Manager to withdraw all city employees that were hired on or after October 1, 2007 from the City of Harlingen 401(a) Plan with TCG Advisors and enroll them in the Texas Municipal Retirement System Effective January 1, 2012; and
- (2) Approve an ordinance on first reading to participate in the Texas Municipal Retirement system and the Supplemental Death Benefits Funds by the City of Harlingen, Texas and to make current service and prior service contributions to the City's account in the municipal accumulation fund of the Texas Municipal Retirement System at the actuarially determined rate of total employee compensation.

Commissioner Leftwich relinquished his chair and excused himself from the meeting room in order to avoid "an appearance of impropriety" and signed an affidavit, which was presented to the City Secretary.

No action was taken and it was the consensus that this item be brought back at the next City Commission meeting.

Motion was made by Commissioner Leftwich and seconded by Commissioner Trevino to convene in executive session to discuss Items 22 and 25(a). Motion carried unanimously.

On November 21, 2011 at 5:55 p.m., Mayor Pro Tem Prepejchal announced the Harlingen City Commission would convene in executive session.

Roxann Pais Cotroneo, City Attorney publicly announced that she wanted the minutes to reflect that she would remain in executive session during the discussion of Item 22, but would remove herself from executive session when Item 25(a) was discussed.

At 7:54 p.m., Mayor Pro Tem Prepejchal announced the Harlingen City Commission had concluded its executive session and declared the meeting open to the public.

25) Closed/Executive Session to discuss the following items:

- a) pursuant to Chapter 551, Subchapter D, V. T.C.A. Government Code, Section 551.071 consultation with the City's appointed outside legal counsel, Charles Willette, regarding an attorney grievance complaint filed with the Texas State Bar by Kori J. Marra on November 3, 2011 against the Harlingen City Attorney, including but not limited to whether the City should pay the City Attorney's legal fees and any other costs connection with her testimony in Marra's criminal trial and in defending the grievance complaint.

No action was taken on the above item.

- 22) Announcement and consideration of the Court's ruling on whether or not Kori J. Marra retains or forfeits her Harlingen City Commissioner District 3 position upon conviction of an offense under Texas Local Government Code Subsection 171.001-171.008, which pertains to conflict of interest statutes.

Charles Willette, Jr. assigned counsel stated he had been asked by the City Manager to look into a possible forfeiture issue of a conviction. He stated Commissioner Kori J. Marra was officially convicted of an offense for a violation regarding a conflict of interest statute. She was given thirty days in jail and a \$500.00 fine. Her attorney did not give an immediate notice of an appeal. The city needed to move forward and determine how that would affect the City Charter since the Charter stated that a Commissioner immediately forfeited their office when convicted of that offense.

No action was taken.

- 26) Consider and take action to authorize a defense and payment of any legal and all costs associated with: (1) defending the City Attorney in a Texas State Bar Grievance complaint filed by Kori J. Marra against the City Attorney on November 3, 2011, two days before the City Attorney's witness trail testimony; and (2) protecting and advising the City Attorney on her witness testimony in the criminal trial of Kori J. Marra for conflict of interest criminal offenses.

Charles Willette, Jr. stated he was asked by the City Manager to look into the issue of the city paying the City Attorney's legal fees since it related to a State Bar Grievance that had been filed by Ms. Marra. He reported the two issues were: (1) the city had a contract with the City Attorney and in the contract there was specific language under the paragraph entitled Indemnification. It stated the city was required to indemnify, defend and represent the City Attorney in particular matters involving torts and professional liability. The grievance could certainly be considered a legal matter that could end up in a courtroom in a court of law; (2) the Attorney General had determined that it was legal if it was in the best interest of the city to pay the attorney fees. This was if the employee was acting in the course and scope of her employment as City Attorney.

As per his investigation it was clear that the City Attorney was acting in her role and not of a private attorney. It would be in the best interest of the City to pay all legal fees to defend her grievance.

Motion was made by Commissioner Leftwich and seconded by Commissioner Trevino to authorize a defense and payment and all costs associated with the City Attorney in the State Bar Grievance. Motion carried unanimously.

- 14) Status report on Convention Visitors Bureau Marketing and Advertising Campaign.

Hope Davo, CVB Director presented a Power Point presentation on new developments and ideas to promote the City of Harlingen to attract tourism. She briefly highlighted some of changes made to improve their web page. She provided copies of their publications to the City Commission and briefly highlighted some statistical information regarding the Convention Visitors Bureau marketing and advertising.

At this time Mayor Boswell arrived and presided over the meeting.

- 6) Consider and take action to approve an ordinance authorizing the issuance of City of Harlingen, Texas General Obligation Refunding Bonds, Series 2011, approving and authorizing the execution of an escrow agreement, a paying agent/registrar agreement, a purchase contract and other instruments and procedures related thereto, delegating authority to Mayor or the City Manager to select outstanding bonds to be refunded and approve all final terms of the bonds, approving an official statement, and calling certain bonds for redemption.

Roel Gutierrez, Finance Director stated the city's financial advisor, First Southwest, had identified a refunding opportunity for the City of Harlingen that could potentially save over \$200,000 by refinancing the General Obligation Bonds, Series 2004. The city was scheduled to payout \$4,189,121.99 for the current 2004 General Obligations bonds by 2024. By refinancing the bonds the city's payout would be \$3,925,862.50 with the same 2024 maturity date.

Anne Burger Entrekin, Financial Advisor with First Southwest highlighted the Debt Service Savings. She pointed out the Bond Buyer's Index of 20 Municipal Bonds that came out once a week showed a 5-year history. They would be moving bonds from the Municipal Yield Curve and moving forward to bring down the interest rates. She stated this particular refinancing opportunity could potentially save over \$200,000 to the city. The bonds were originally issued in January 21, 2004 in a principal amount of \$4,360,000 with a rating from A+ A2. The maturity went from Year 2005 to Year 2024 with coupons in the range of 2.00% to 4.40%. The call date for the General Obligation Bonds was February 15, 2012. The amount current outstanding was \$3,410.00 and the city was currently at an A- from Standards and Poor having received a couple of upgrades. The city bonds were now rated by Fitch at AA-. It was standard in Texas to have a 10-year call date that provided issuers the option to pay off the bonds without any penalty and the call date of 2/15/2012 was approaching. On the Preliminary Savings Analysis the city would consider refunding \$3,300,000 with maturities that went from the Year 2013 thru 2024. The gross savings based on market rates as of today were at \$220,929. On an annual basis it was approximately \$18,364 and the city present values as of today equaled to \$182,605 which presented a 5.70% percentage savings. Ms. Entrekin stated the presentation was for the adoption of a Parameter Bond Sale for the Refunding Bonds. This was a process whereby certain parameters were defined and should those parameters be met than an authorized delegate of the city could execute the pricing certificate. This also allowed the refunding to be executed once the bond issuance process had been completed and the parameters had been met. The proposed parameters include the following:

- Delegated Pricing Officers: Mayor or City Manager
- Minimum Savings Threshold: 2.500% Present Value Savings
- Maximum Principal Amount: \$3,500,000
- Minimum Price for the Bonds: 97%
- Expiration of parameter Authority: May 31, 2012 (180 days)

She briefed the Commission on the Proposed Timeline of Events should they decided to move forward.

At this time the City Attorney read the caption of the ordinance.

ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF HARLINGEN, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2011, APPROVING AND AUTHORIZING THE EXECUTION OF AN EXCROW AGREEMENT, A PAYING AGENT/REGISTRAR AGREEMENT, A PURCHASE CONTRACT AND OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO, DELEGATING AUTHORITY TO THE MAYOR OR THE CITY MANAGER TO SELECT OUTSTANDING BONDS TO BE REFUNDED AND APPROVE ALL FINAL TERMS OF THE BONDS, APPROVING AN OFFICIAL STATEMENT, AND CALLING CERTAIN BONDS FOR REDEMPTION.

Motion was made by Commissioner Leftwich and seconded by Mayor Pro Tem Prepejchal to approve the ordinance authorizing the issuance of the City of Harlingen, Texas General Obligation refunding Bonds, Series 2011. Motion carried unanimously.

- 7) Consider and take action to approve a resolution authorizing the City Manager to refinance an existing Lease/Purchase Agreement for the Energy Conservation Project with Government Capital Corporation.

Roel Gutierrez, Finance Director stated that the city had been presented with the opportunity of refinancing an existing lease/purchase agreement at a lower interest rate which resulted in a saving of approximately \$25,124.82. In 2004, the city started an Energy conservation Project which included energy efficient upgrades to the lighting on A/C systems within several city buildings, upgrades to the traffic signals and street lights. The city financed this project over 15 years with an annual payment of \$116,861.48 per year. After the January 2012 payment, Government Capital Corporation offered two options to refinance the last 7 years, as follows:

- Option 1: The payment dates remained the same and the city would save \$2,639.94/yr or \$18,458.58 in total.
- Option 2: The payment dates moved up by 3 months and the city would save \$3,589.26/yr or \$25,124.82 in total.

In both options, the payments stay within the original fiscal years and the city would be able to pay the new annual amount three months earlier in each year.

Motion was made by Commissioner Leftwich and seconded by Mayor Pro-Tem Prepejchal to approve the resolution authorizing the City Manager to refinance an existing lease/purchase agreement with Option 2. Motion carried unanimously.

- 9) Discussion and possible direction to amend Section 12.03 pertaining to the height of an on-premise sign that is not located within 600 ft. of the Expressway.

Ken Clark, Director of Planning and Development stated at the November 9, 2011, Planning and Zoning Commission meeting discussion was held in regards to amending the city's Landscaping and Sign Regulations Ordinance. An amendment was requested by Panda Express to allow a new 80 foot pole sign in a GR District that was not located within 600 feet of the Expressway. Pursuant to Section 12.03 of the Zoning Ordinance, fifty feet was maximum height of a pole sign in a GR District, except when located within 600 feet of Expressways 77 and 83 or future Interstate I-69. Panda Express currently has an existing 80 ft. pole on the property which was constructed prior to the adoption of the ordinance in 2002; however, according to their engineer, the existing pole did not have the capacity to handle a proposed 14 ft. cabinet sign. The proposed amendment was not recommended for approval by the Planning and Zoning Commission. Staff and a member of the Planning and Zoning Commission were in agreement of an amendment to the Sign Regulations Ordinance to allow an existing non-conforming pole sign to be removed and replaced for maintenance work, so long as the height of the sign was not increased. If the consensus of the City Commission was to do the amendment, staff could be directed to prepare an item for consideration and approval at the December 7, 2011 City Commission meeting.

Jamie Green, Regional Real Estate Manager with Panda Express stated their issue was an existing sign that was already on the property. Their engineers had determined that putting a new 80' pylon sign on the existing pole would create a safety hazard and a stronger pole would be required to accommodate a sign that was consistent with other signs that Panda Express had in the Rio Grande Valley.

Mayor Boswell instructed staff to present a proposed amendment to the ordinance that would accommodate the proposed sign by the next meeting.

- 10) Consider and take action to amend the Development Corporation of Harlingen, Inc. 2010-11 Fiscal Year Budget.

Roel Gutierrez, Finance Director highlighted the budget amendment that was approved by the EDC Board at their November 8, 2011. The purpose of the amendment was to amend the budget from line item to line item to cover the expenditures balance at the end of the year and recommended approval.

Motion was made by Mayor Pro-Tem Prepejchal and seconded by Commissioner Trevino to approve the amendment for Fiscal Year 2010-11 Budget. Motion carried unanimously.

- 11) Consider and take action to approve a renewal of the contract between the Development Corporation of Harlingen, Inc. and Valley Initiative for Development and Advancement (VIDA) for October 1, 2011 to September 30, 2012.

Bill Martin, EDC Director, Development Corporation of Harlingen, Inc. recommended approval of the grant to Valley Initiative for Development and Advancement (VIDA) to provide career center services to many at risk students in the Harlingen area. VIDA's headquarter was located at Texas State Technical (TSTC). TSTC provided an office as in-kind support. They provided regular reports on enrollments, education, training and placement. The Harlingen EDC Board budgeted \$300,000 for the VIDA's contract for Fiscal Year 2011-2012. He recommended approval of the contract.

Motion was made by Mayor Pro-Tem Prepejchal and seconded by Commissioner Ruiz to approve and renew the contract with VIDA. Motion carried unanimously.

- 12) Consider and take action to approve the Land Lease Agreement the Development Corporation of Harlingen, Inc. and Texas State Technical College (TSTC) for the University Articulation Career Center.

Bill Martin, EDC Executive Director stated the original agreement with TSTC for the Articulation Center provided for ownership to the EDC of the building on land leased from TSTC. The term lease was for 40 years beginning July 1, 2011 and ending June 30, 2051, plus a maximum of two (2) optional 10 year renewal terms. The rent total amount of the annual lease payment was one dollar annually, payable on or before the first day of July of each year. The Harlingen EDC Board approved the lease agreement on November 8, 2011.

Motion was made by Mayor Pro-Tem Prepejchal and seconded by Commissioner Leftwich to approve the Land Lease Agreement. Motion carried unanimously.

- 13) Consider and take action to approve the contract agreement between the Development Corporation of Harlingen, Inc. and KMBH for videotaping and broadcasting the monthly HEDC Board meeting.

Bill Martin, EDC Executive Director stated the term of the contract was for a one year beginning October 1, 2011 and ending September 30, 2012, unless the contract was terminated pursuant to the provisions herein, whichever occurs first. The Economic Development Corporation of Harlingen, Inc. shall have the option to renew the contract for two (2) one (1) year periods from October 1, 2012 to September 30, 2013 and for October 1, 2013 to September 30, 2014 upon thirty days written notice at the end of each contract year on the same terms and conditions.

Motion was made by Commissioner Trevino and seconded by Mayor Pro-Tem Prepejchal to approve the contract with KMBH. Motion carried unanimously.

- 15) Consider and take action to submit a letter to the State of Tamaulipas requesting the State to prioritize and construct the necessary commercial facilities on the Mexican side of Los Indios Free Trade Bridge.

Carlos Yerena, City Manager stated the city was part owner of the Los Indios Free Trade Bridge along with the City of San Benito and Cameron County. The item would authorize staff to submit letter to the State of Tamaulipas requesting the State to prioritize and construct the necessary commercial facilities to allow trucks to be unloaded and inspected at the Los Indios Bridge. In order to move forward, the State of Tamaulipas was asking the city to submit a letter

identifying the infrastructure as a priority. Upon submission of the letter the State would consider moving up the infrastructure improvements from the year 2014 to sometime next year.

Motion was made by Commissioner Trevino and seconded by Mayor Pro-Tem Prepejchal to approve the submittal of the letter to the State of Tamaulipas. Motion carried unanimously.

16) Consider and take action to approve an ordinance on first reading to amend the City of Harlingen's Budget for Fiscal Year 2011-12.

Roel Gutierrez, Finance Director stated this was the first amendment to the 2011-2012 Budget. This budget amendment would allow the carryover of the approved and budgeted encumbrances and project balances from Fiscal Year 2010-2011 which were unspent at end of the year.

Staff recommends approval of the budget amendment.

City Attorney read the caption of the ordinance.

AN ORDINANCE AMENDING THE REVENUE AND EXPENDITURE BUDGET FOR THE CITY OF HARLINGEN, TEXAS, FOR THE FISCAL YEAR OCT. 1, 2011 THROUGH SEPT. 30, 2012. TOTAL BUDGET REVENUES WILL REMAIN AT \$62,100,376 AND TOTAL BUDGET EXPENDITURES WILL INCREASE TO \$65,245,666 RESPECTIVELY; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

Motion was made by Commissioner Leftwich and seconded by Commissioner Ruiz to approve the ordinance on first reading amending the City of Harlingen's Budget for Fiscal Year 2011-12. Motion carried unanimously.

17) Consider/discuss and possible action to approve a request from Jose Rubio, Jr. regarding the construction of a proposed stage 16'x48' at a height level of 4' at the Lon C. Hill Fair Park paid by private donations.

Jose Rubio, Jr. highlighted the request and stated the construction of the proposed stage would be done through private donations and sponsors. The proposed stage would be located at Lon C. Hill Park to use for future events. He asked for the City Commission's approval to proceed with this project. The stage would be located across from the Harlingen Boys and Girls Club and hopefully be completed by Spring Break and before the opening of the Water Splash Park.

Commissioner Trevino stated he would like to see the design of the stage before the Commission approved the request.

Commissioner Ruiz asked whether the stage would be leased.

Mr. Yerena replied it would be up to the City Commission to determine the terms.

Mayor Boswell instructed Mr. Rubio to present a plan/design of the proposed stage that is to be donated to the City.

Motion was made by Commissioner Leftwich and seconded by Commissioner Ruiz to approve the request subject to presenting a plan or design of the proposed stage. Motion carried unanimously.

19) Consider and take action to adopt a resolution of the City of Harlingen, Texas making the following changes to the City's General Election pursuant to the 82nd Texas Legislative Senate Bill 100 passed into law and signed by the Texas Governor.

1. changing the city's general election date from May to November;
2. providing for the holdover of places affected by the changes in the general election date;

3. directing the City Attorney to prepare a proposed charter amendment to reflect the changes enumerated in this resolution and present it to the Harlingen City commission to comply with Chapter 9 of the Texas Local Government Code and other applicable laws, which provides for a city charter amendment election;
4. providing for severability; and
5. ordaining other matters related to the foregoing.

Motion was made by Commissioner Leftwich and seconded by Commissioner Ruiz to adopt and approve the resolution.

Ms. Cotroneo stated the resolution would extend all terms from May 2012 to November 2012. A Charter election would have to be held to change the terms and election dates from May to November. The current City Commission would have their terms extended for six months.

For the record, Commissioner Leftwich stated the intent was to have a Charter Amendment Election to coincide with the November 2012 Election and present it to the voters in a referendum form. This would only extend the coming year's seats in 2012 without voters' approval, anything after November 2011 shall be determined by the voters.

Mayor Boswell stated voting themselves to extend their terms seemed like a conflict of interest.

Commissioner Leftwich amended his motion to read "city's general election from May 2012 to November 2012, only." This will not affect his term which ended in May 2013, with the expectation there would be a City Charter Amendment that would coincide with the election in November to be determined by the voters.

Mayor Boswell asked how the language would read on the Charter amendment.

Ms. Cotroneo replied the item directed her to prepare the proposed charter amendment. The City Commission would review the amendment and make recommendations, and then she would bring it back to them for their approval whether to have an election for the charter amendment.

Mayor Boswell suggested tabling the item until the public was notified. This was a lack of transparency among the City Commission to place this item on a Friday afternoon for a meeting on Monday afternoon. This item plays a significant impact on the way the City of Harlingen is governed.

Commissioner Leftwich stated this item was placed on the agenda long before Friday and it was in full discussion at the last City Commission meeting. Let the record show, that he has proposed modifications that would only affect the May 2012 Election to the November 2012 Election and there would be no change to his term.

Mayor Boswell stated the City Commission at their last meeting discussed to present this item as a charter amendment in May and let the public decide if they wanted to change the election date to November. There were no objections at that time.

Commissioner Leftwich reiterated his motion to modify Line 1 on the resolution to specify May 2012 to November 2012. Motion was seconded by Mayor Pro Tem Prepejchal and it carried unanimously.

- 20) Consider and take action to approve or deny a one-year contract between the City of Harlingen Aquatics Team (HAT) for the use of Pendleton Pool.

Paul Menzies, Director of Parks and Recreation stated HAT was a private swim team that used Pendleton Pool throughout their 50-plus year existence. For the last twenty years, they have used the city owned and operated Pendleton Pool located at Pendleton Park pursuant to a contract between the City of Harlingen and HCISD to co-fund the maintenance and operations of the pool. The contract expired August 31, 2011. Staff recently met with HCISD and discussed the framework of a possible new contract to continue funding operations at the pool. Staff

proposed to continue accommodating HAT at Pendleton Pool via a separate contract. Such contract for the facility usage was similar to those agreements the City Commission routinely renewed with the various non-profit organizations that operated sports leagues at the City's park facilities. Mr. Menzies stated other requirements of the contract included, but not limited were: HAT providing to the city documentation of its IRS 501(C) non-profit status and an annual audited financial report. Those documents had not been received and staff had made several attempts to retrieve these documents for the past two months.

Mayor Boswell suggested that HAT be allowed a timeframe or approve the contract with a condition that the documents be provided within a certain period of time.

Commissioner Leftwich stated the city has entered into contract with HAT, yet they had not met the terms of the contract.

Mr. Menzies responded this was the first time this facility agreement had been brought before the City Commission.

Motion was made by Commissioner Leftwich to allow HAT 28 days from the date of the meeting to provide the proof of insurance and designation of non-profit status. Motion died for a lack of a second.

Commissioner Ruiz stated it would be difficult to obtain a non-profit status in three weeks because it normally took longer.

Mayor Boswell stated that non-profit status would take a minimum of six months, although he could provide the insurance.

Motion was made by Commissioner Leftwich and seconded by Commissioner Trevino to allow up to November 28, 2011 to provide insurance coverage and staying with the twenty one days on either proof of non-profit status or proof of submittal of the non-profit status. If HAT submitted these documents then the City Commission would consider allowing him more time to submit his documents.

Under discussion, Rose Flores stated she was contracted by the City to teach water aerobics at Pendleton Park Pool. She wanted to comment on Mr. Tucker's behavior when being at the Pendleton Pool. He pushes the lifeguards around and when he is around he is in control and no one could tell him what to do. There was an incident during water aerobic classes when he was walking by he leaned over into the pool and spitted into the water. Ms. Flores stated this was very disrespectful.

Motion carried as followed: FOR: Leftwich, Trevino, Ruiz AGAINST: Prepejchal
(Vote 3-1)

21) Presentation and discussion on the May 2012 and November 2012 election calendars and a possible City Charter amendment election calendar.

Ms. Cotroneo highlighted a calendar of the election dates and recommended if the city was going to have Charter amendments they would have to be proposed to the voters. A majority of the voters would have to approve the amendments for the amendments to become effective. The Charter amendment election would have to happen on a uniform election date. The two optional dates were May 2012 or November 2012. The Commission had asked how much time was necessary to established a Charter Commission Advisory Group to discuss amendments and present to City Commission and for the May 2012 Charter election, (1) the Charter amendments had to be completed by May 14, 2012, which would only allow the Commission seven regular meetings; (2) for the November 6, 2012 Charter election the amendments would have to be completed by approximately September 7, 2012 and that would only allow nineteen regular meetings for the City Commission to discuss them and present them to the voters. She pointed out that pursuant to the Texas Constitution Article 11, Section 11; it required a municipality when there was a vacant office to conduct a Special Election within 120 days from the vacancy date. So pursuant to forfeiture of office there was a vacancy and March 20, 2011 was the 120 days.

24) Board Appointments

Discussion and possible action regarding membership on any of the following listed board/entity:

- a. Airport Board
- b. Animal Shelter Advisory Committee (3)
- c. Audit Committee
- d. Civil Service Commission (Mayor) (2)
- e. Community Development Advisory Board (2)
- f. Construction Board of Adjustments (8)
- g. Convention & Visitors Bureau (1)
- h. Development Corporation of Harlingen, Inc.
- i. Downtown Improvement District Board (2)
- j. Golf Course Advisory Board
- k. Harlingen Community Improvement Board (2)
- l. Harlingen Housing Authority Board
- m. Harlingen Finance Corporation
- n. Harlingen Proud Advisory Board
- o. Library Advisory Board (1)
- p. Municipal Auditorium Advisory Board (2)
- q. Museum Advisory Board (3)
- r. Parks Advisory Board
- s. Planning & Zoning Advisory Board
- t. Senior Citizens Advisory Board (1)
- u. Tax Increment Finance Board (1)
- v. Tennis Advisory Board
- w. Utility Board of Trustees
- x. Veterans Advisory Board (2)
- y. Zoning Board of Adjustments (5)

Specifically, appointment or discussion and possible action to include appointment and/or removal of any position subject to appointment or removal by statute, ordinance or bylaws.

No board appointments were made.

25) Closed/Executive Session to discuss the following items:

- b) pursuant to Chapter 551, Subchapter D, V.T.C.A. Government Code, Sections 551.087 and 551.071 regarding commercial and financial information from a business prospect with which the City Commission is conducting economic development negotiations and/or to discuss or deliberate financial or other incentives with the business prospect known as *Project Green* also known as *Synergy Renewables Harlingen, LLC* and to seek legal advice from the City Attorney regarding this subject.
- c) pursuant to Chapter 551, Subchapter D, V.T.C.A. Government Code Section 551.074 personnel matters to deliberate the annual evaluation, duties and performance of the City Manager from September 15, 2010 to September 15, 2011.
- d) pursuant to Chapter 551, Subchapter D, V.T.C.A. Government Code, Section 551.071 consultation with attorneys to seek legal advice regarding the City's legal rights, privileges and obligations in collective bargaining with the Harlingen Profession Fire Fighters Association, International Association of Fire Fighters Local 3404.
- e) pursuant to Chapter 551, Subchapter D, V.T.C.A., Government Code, Section 551.071 consultation with City Attorney to seek legal advice regarding contemplated or pending litigation, or matters where legal regarding the lease agreement between

the City of Harlingen and Whitewings Baseball Club, LLC ("Whitewings") for the use of the baseball stadium also known as the Harlingen Field.

On November 21, 2011 at 8:32 p.m., Mayor Boswell announced the Harlingen City Commission would convene in closed session to discuss the following items.

Motion was made by Commissioner Trevino and seconded by Commissioner Leftwich to convene in executive session to discuss the above mentioned items. Motion carried unanimously.

At 9:10 p.m., Mayor Boswell announced the Harlingen City Commission had concluded its executive session and declared the meeting open to the public.

- 27) Consider and take action to approve an amendment to the Chapter 380 Economic Development Agreement between the City of Harlingen and Synergy Renewables Harlingen, LLC, for the development, construction and operation of a waste-to-energy facility.

No action taken.

- 28) Consider and take action to authorize the City Manager to enter into a Waste Supply Agreement between the City of Harlingen and Synergy Renewables Harlingen, LLC.

No action taken.

- 29) Consider and take action to amend and approve the City of Harlingen employment contract for the City Manager position.

Motion was made by Mayor Pro-Tem Prepejchal and seconded by Commissioner Ruiz to amend and approve the City Manager's employment contract. Motion carried unanimously.

- 30) Consider and take action to approve a duly negotiated collective bargaining labor agreement between the City and the bargaining agent for all eligible employees of the Harlingen Fire Department.

Motion was made by Commissioner Trevino and seconded by Mayor Pro-Tem Prepejchal to approve the Collective Bargaining Labor Agreement with the Harlingen Professional Fire Fighters Association, International Association of Fire Fighters Local 3404. Motion carried unanimously.

There being no further business the meeting, Mayor Boswell declared the meeting adjourned.

City of Harlingen



Chris Boswell, Mayor

Attest:



Amanda C. Elizondo, City Secretary