

SPECIAL MEETING

CITY COMMISSION

HARLINGEN, TEXAS

DECEMBER 27, 2011

A Special Meeting of the Harlingen Elective Commission was held on Tuesday, December 27, 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

Staff Present:

Carlos Yerena, City Manager

Amanda C. Elizondo, City Secretary

Roxann P. Cotroneo, City Attorney

Gabriel Gonzalez, Assistant City Manager

Roel Gutierrez, Finance Director

Mayor Boswell 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. Mayor Boswell noted this was a rescheduled meeting from the prior week due to the Christmas Holidays.

Pledge of Allegiance/Welcome

Mayor Boswell welcomed back the City Commissioners, city employees and everyone in attendance from the Holidays and wished everyone a "Happy New Year."

- 1) Appointment of Canvass Committee to canvass the election results from the December 16, 2011 City Special Election to fill the position of City Commissioner District 1.

Mayor Boswell asked for a canvass reading of the elections results of the December 16th 2011, Special Election for City Commissioner District 1.

Amanda Elizondo, City Secretary stated a special election was held on December 16, 2011 to fill the unexpired term for City Commissioner District 1. Ms. Elizondo furnished the envelopes to the City Commission containing the election returns indicating the amount of votes that each of the candidates received, the combination forms listing the names and signatures of all the people that participated in the election from District 1, the tape from the Precinct Counters from Early Voting and Long Elementary School and a report of the number ballots used and the unused ballots.

The Mayor and Commissioners then proceed to review the election information and there being no comments or questions, the envelopes were initiated by the Mayor and Commissioners indicating acceptance of their review of the election documents.

- 2) Consider and take action to approve a resolution announcing results of the Canvass of the December 16, 2011 City of Harlingen Special Election for City Commissioner District 1.

Ms. Elizondo read the following resolution announcing the election results. She stated there were four provisional votes and one curbside voting. She stated that out of the four provisional ballots three were accepted and one was rejected and the curbside vote was accepted a total of four votes were accepted by the Early Ballot Board. Therefore, two additional votes were counted for each of the candidates.

For the record, the Resolution read as follows:

RESOLUTION NO. 11R-51

STATE OF TEXAS
COUNTY OF CAMERON

WHEREAS, a Special Municipal Election was held on the 16th day of December 2011 in the City of Harlingen for the election of one Commissioner, District 1; and

WHEREAS, a canvass of the returns of said Special Municipal Election was duly made by the canvassing committee and the results of the canvass were received by the Elective Commission of the City of Harlingen on this the 27th day of December 2011 in accordance with Chapter 67, Section 67.001 of the Texas Election Code.

NOW THEREFORE BE IT RESOLVED BY THE CITY OF HARLINGEN:

That the following candidates received the indicated number of votes in the Special Municipal Election of the City of Harlingen on December 16, 2011:

FOR COMMISSIONER DISTRICT 1

Gail Moore	<u>208</u>
Danny Castillo	<u>348</u>
J.J. Gonzalez	<u>29</u>

AND BE IT FURTHER RESOLVED pursuant to the Charter of the City of Harlingen that: Danny Castillo is herewith declared as duly elected City Commissioner for District 1.

READ, CONSIDERED AND ADOPTED THIS 27th day of December 2011 at a Special Meeting of the Elective Commission of the City of Harlingen at which a quorum was present and which was held in accordance with Chapter 551 of the Local Government Code as amended.

CITY OF HARLINGEN
/s/Chris Boswell, Mayor

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

For the record a total of 585 votes were cast for the December 16th Special Municipal Election, District 1:

City of Harlingen
Official Special Election District 1 Tabulation
12/16/11

Candidates	City Hall Early Vote	Polling Place Long Elem.	Provisional	Curb Side	Total	Percentages
Gail Moore	81	125	2		208	35.56%
Danny Castillo	182	164	1	1	348	59.49%
J.J. Gonzalez	15	14			29	4.96%

Total Votes by Location	278	303	3	1	585	100%
----------------------------	-----	-----	---	---	-----	------

Break down by Precinct

Precinct Percentages

Pct 56	107	84		32.65%
Pct 78	76	105		30.94%
Pct 84	88	107		33.33%
Pct 87	7	7		2.39%

Provisional/curbside			3	1		
----------------------	--	--	---	---	--	--

Total	278	303	3	1		
-------	-----	-----	---	---	--	--

Total votes cast 585

Motion was made by Commissioner Leftwich and seconded by Mayor Pro-Tem Prepejchal to adopt and approve the resolution declaring the results for the December 16, 2011 City of Harlingen Special Election District 1. Motion carried unanimously.

3) Swearing In and Oath of Office to the newly elected official

Mayor Boswell congratulated newly Commissioner Danny Castillo.

Honorable Judge Sally Gonzalez administered the Oath of Office to Commissioner Castillo.

Mayor Boswell thanked Commissioner Ruiz and extended his appreciation for his services on the commission and dedication to the community.

Commissioner Ruiz thanked the Mayor and City Commissioners and especially the citizens of Harlingen for giving him the opportunity to serve as District 1 City Commissioner. He wished everyone in attendance happy holidays. Commissioner Ruiz mentioned he was not leaving the City of Harlingen, but only seeking to represent the city at a larger capacity in Austin. Commissioner Ruiz congratulated Commissioner Castillo for volunteering himself and being elected to the position. Being City Commissioner took great effort and courage.

Commissioner Castillo thanked first and foremost his wife and family and above all God. He acknowledged that in life ultimately things work out. He stated there was great future for the City of Harlingen, but was not only through the works of the elected officials, but also through the work and diligence of the citizens of Harlingen. It was an honor and privilege to serve as city commissioner and stated he had served as the City of Harlingen Chief of Police for 25 years. He thanked his supporters for their help and support to get him elected. Commissioner Castillo hoped to serve honorably and was committed to do his best.

CONSENT AGENDA

- 4a) Second and final reading to approve and adopt an ordinance to amend the Specific Use Permit issued under Ordinance No. 90-74 for a wrecking and salvage yard from 8.67 acres to 6.41+/- acres out of Block 7, F.Z. Bishop Campbell Lands Subdivision and allow a specific use permit for a recycling center (ferrous metal) and wrecking and salvage yard in a "LI" District located on Roosevelt Road west of Expressway 77, bearing a legal description of 1.0 acres out of Block 8, and 2.263+/- acres out of an 8.94 acre tract out of Block 7, F.Z. Bishop Campbell Lands Subdivision. (Planning and Development)
- b) Second and final reading to approve and adopt an ordinance to amend the City of Harlingen's Budget for Fiscal Year 2011-12 to authorize the funding for the Harlingen Community Improvement Board's recently approved project for the Veteran's Memorial Project at the Pendleton Park. (Finance Department)
- c) Second and final reading to approve and adopt an ordinance of the City of Harlingen, Texas by adding Chapter 123 of the Harlingen City Code, Sections 123.01 thru 123.13 as amended; prohibiting the accumulation of tires on residential property; requiring tire businesses to have an annual permit; requiring a tire hauler to have an annual permit for each vehicle used to transport tires; providing for renewal, suspension or revocation of permits for a violation of the ordinance; providing for destruction, storage and disposal of tires; providing disposal records and a transmittal manifest; providing for enforcement and criminal penalties; providing for publication; providing a savings clause; providing a severability clause; and ordaining other matters pertaining to the foregoing. (Environmental Coordinator)
- d) Second and final reading to approve and adopt an ordinance for the renaming of Alice Street to Darrell Wayne Shipp Street. (Requested by Mayor Pro-Tem Prepejchal and Commissioner Gus Ruiz)

, Motion was made by Commissioner Leftwich and seconded by Mayor Pro-Tem Prepejchal to approve the consent agenda. Motion carried unanimously.

Mayor Boswell changed the order of the agenda and proceeded with Item No. 9.

- 9) Closed/Executive Session pursuant to Chapter 551, Subchapter D, V.T.C.A. Government Code, Section 551.071 consultation with the City Attorney to seek legal advice regarding

Charles E. Lee vs. City of Harlingen, Civil Action No. B-10-CV-233 in the United States District Court for the Southern District of Texas.
(City Attorney)

At 12:23 p.m., Mayor Boswell announced the City Commission would convene in executive session to discuss Item No. 9.

Motion was made by Commissioner Leftwich and seconded by Commissioner Trevino to convene in executive session. Motion carried unanimously

At 12:44 p.m., Mayor Boswell announced the City Commission had completed its executive session on Item No. 9 and declared the meeting opened to the public.

Commissioner Leftwich stated he was concerned that some of the considerations had gotten the city into legal issues with the lawsuit over the annexation with the respect to not complying with state law. The Texas Local Government Code required the county to appoint a bargaining committee to negotiate the services with the city for the tracts of land that were being discussed. This issue was very disputable that the city did not comply with state law and once again the city was in the same situation. The city would place itself in legal situations by executing an ordinance to rescind the action taken to disannex the above mentioned tracts. State law deemed that when an annexation was done by rescinding the disannexation ordinance the city was not complying with numerous state law requirements for annexing land. Once the city disannexed, state law stipulated that the city could not annex the property until after five years. It had not been five years from December 1, 2011 effective date of the disannexation. Commissioner Leftwich stated there were many steps under state law that were require to be done before disannexing this territory. There was not a committee appointed by the county to negotiate a service plan for this area. Commissioner Leftwich stated that under protest, he would not be voting on this agenda item because of the unlawfulness that it contained.

Mayor Pro-Tem Prepejchal stated he requested to place this agenda item on the agenda. He then read the following public statement:

PUBLIC STATEMENT

I have requested that this agenda for deannexation be placed back on the agenda. On October 5, 2011 I voted in favor of deannexation. My vote was based on several considerations. First, I believed that should we lose the pending lawsuit under Texas Law the City would be set back 10 years before it could attempt to re-annex the land in question. I believe that the City could within a shorter period of time consider the annexation & given enough time to provide infrastructure and other services.

Second, I was concerned of the cost to the City in fighting a costly legal battle, and my understanding then and now is that should the City lose we could be liable for costs and attorney's fees. I was assured by the deannexation leadership that they would dismiss the lawsuit and not seek attorney's fees if the vote for deannexation was favorable.

After the vote I called on the deannexation leadership to live up to their word and they failed to do so. A few days ago the City was informed that the Federal Judge ruled in the City's favor and that the case is now in State Court. As of today, that lawsuit has not been dismissed as promised. In fact the deannexation leadership has informed us they will continue to go forward with the lawsuit.

Based on these considerations, I have asked for the Commission to reconsider its vote to deannex and I will not vote to uphold the deannexation. This issue has divided our community, but as of today I will vote to rescind the deannexation ordinance because it is in the City of Harlingen's best interest to do so.

As your City Commissioner, I expect people to be honest when they make promises to me or anyone on this Commission. When they fail to do so I will not let that go unchallenged. When I was elected Commissioner, I took an oath to uphold the Constitution and the Laws of this State and by my vote today I will fulfill that promise.

Commissioner Leftwich then excuses himself from the meeting.

- 10) Consider and take action to adopt (1) an ordinance on first reading to rescind and declare void and (2) a resolution to rescind and declare void: the adoption of Ordinance No. 11-44, passed and approved on October 5, 2011 disannexing all of the territory previously annexed under Ordinance No. 08-65 approved on November 19, 2008, consisting of a parcel of land described as 1,039+ acres comprised of these two tracts of land:

Tract 1: A tract containing 392+ acres of land generally bounded on the North by Drury Lane and Brennaman Road, on the East of Stuart Place Road, on the South by Garrett Road and on the West by Baker Potts Road; and

Tract 2: A tract of land containing 647+ acres of land generally bounded on the North by Wilson Road, on the West by Altas Palmas Road, on the South by Orange Drive and Queen Sago Drive and on the East by Stuart Place Road. (Requested by Mayor Chris Boswell and Mayor Pro-Tem Jerry Prepejchal)

Mayor Boswell stated that on December 9, 2011 the federal courts dismissed all federal claims in this case. This placed the case back in state court and stated the City Commission had consulted with the city attorney in executive session.

City Attorney read the caption of the ordinance.

Motion was made by Mayor Pro-Tem Prepejchal and seconded by Commissioner Castillo to adopt and approve the ordinance on first reading. Motion carried unanimously.

At 12:53 p.m., Commissioner Leftwich returned to the meeting.

- 5) Consider and take action to approve and adopt an ordinance on second and final reading providing that goods-in-transit personal property, as defined and exempted by Texas Tax Code Section 11.253 shall be subject to taxation by the City of Harlingen for tax year 2012 and all subsequent years thereafter and providing for new state law amended definitions of goods-in-transit, bailee, warehouse, and public warehouse operator. Attachment (City Attorney)

Roxann Pais Cotroneo gave an explanation on the goods-in-transit personal property ordinance. She stated many of the Cameron County Water Districts and Municipal Utility Districts had approved this ordinance.

Mayor Boswell stated this ordinance has been in place since 2007. The passage of the ordinance preserved the city's ability to tax goods-in-transit, but the City Commission could rescind the ordinance at any time. There were some concerns from businessmen on how it would affect them, even though the city had it in effect for the past four years. The City of McAllen and City of Pharr had passed and approved the goods-in-transit ordinance.

David Alex gave a brief overview of the Senate Bill that governed this issue and how it was affecting the cities in the valley.

Mayor Boswell stated the City of Brownsville had passed the ordinance and the cities had the right to tax the goods-in-transit. The Cities of Brownsville and McAllen passed the ordinance this did not mean that they were not interested in international trade. The City of Harlingen by statute could rescind the ordinance at anytime. The goods-in-transit was an issue that had been created by the legislature. The Freeport Exemption was re-defined to what goods-in-transit included as far as tangible personal property. Some municipalities were concerned that there were some loopholes in the statute that would have allowed big retailers to move items into a warehouse that local municipalities could not tax. Legislature had removed that loophole from the ordinance and now in order for the cities to tax the goods-in-transit they would have to pass and approve an ordinance. But, again the City Commission could rescind the ordinance at any time.

Mr. Alex stated he considered third party distribution when there were millions of dollars going over the free trade bridge with the selling of automobiles. This was what he was trying to

keep local. If the City of Harlingen rescinded this ordinance then it would seem that the city did not want international trade.

Matt Gorges spoke in reference to his business that leased from a company in Chicago that processes fresh vegetables. He pointed out that the local economy in the valley has changed over the last 20 years. As a result, NASA and the Maquiladoras in the valley had continued to grow and that was a tremendous opportunity for the community. Cameron County and City of Brownsville had an advantage to these opportunities since they are very close to the border. Free Trade was continuing to grow and as these corridors become open the opportunity the traffic in Harlingen would increase. This would not only affect his business, Valley International Cold Storage, since they were an enterprise of their own. Mr. Gorges stated he was for the growth of Harlingen, but was against the passing of the ordinance.

Motion was made by Commissioner Trevino and seconded by Commissioner Leftwich to table the item until more information was provided to the Commission.

A short discussion was held and Mayor Boswell stated the ordinance needed to be approved before the end of the year.

Ms. Cotroneo stated that if the City Commission decided not to pass the ordinance by January 2012, the city would not be able to tax again until it came back to the legislature.

Mr. Gorges suggested that the City Commission study the item within the next two months and asked for the City Commission to rescind the action.

Ms. Cotroneo read the caption of the ordinance.

For the record, Mayor Boswell stated if the agenda item was approved, he would place it in the February agenda.

Commissioner Leftwich rescinded his first motion and a made second a motion to adopt and approve the ordinance on second and final reading. Motion was seconded by Mayor Pro Tem Prepejchal and it carried unanimously.

- 6) Consider and take action to approve and adopt on second and final reading an ordinance amending the City of Harlingen Zoning Ordinance, Section 11, Landscape Regulations, and Section 12, Sign Regulations.

Joel Olivo, Planning Manager stated at the last City Commission meeting the Planning and Zoning Commission recommended approval of two amendments to the landscaping regulations and five amendments to the sign regulations. The amendments to the landscaping regulations consisted of changing the threshold when a non-conforming property needed to be brought up to compliance. The current replacement cost of property structures be change from 50% to greater than 60%. The second amendment consisted of establishing a minimum of two inches (2") caliper for trees.

Under the Sign Regulations, the five amendments consisted of:

- 1) to allow an access easement as an option to account as a street frontage when determining allowable signage;
- 2) consist the allowable signage for commercial use to be the same amount as determine in a general retail district, currently it is 1.2 sq. ft. and staff is recommending to change to 3.0 sq. ft. linear ft. with commercial use;
- 3) allowable maintenance work for non-conforming on premise poll sign with an approved engineering report;
- 4) increase the number of days for inflatable signs from 14 days, 4 times per year to 30 days, 4 times per year;
- 5) allow directional signs no larger than 20 square feet.

Mr. Olivo stated staff would be presenting three additional amendments at the January 4th City Commission meeting.

Ms. Cotroneo read the caption of the ordinance.

Motion was made by Mayor Pro Tem Prepejchal and seconded by Commissioner Trevino to adopt and approve the ordinance on second and final reading.

Under discussion, Commissioner Trevino stated there was an issue in regards to the banner signs. He referred to Pages 12-14, Item 9, "Banner Signs commonly referred to as "feather flags", "wind flags", or similar" be stricken from the ordinance and allowed at the next ordinance reading.

Motion carried unanimously.

- 7) Second and final reading to approve and adopt an ordinance to abandon a 60 ft. road right-of-way described as a 0.127 acre tract of land more or less, being 60 ft. wide road-of-way dedicated on the Caldwell Subdivision located on the west side of Idaho Street south of Expressway 77.

Joel Olivo stated at the last meeting the applicant was requesting to amend the right-of-way on Idaho Street, there was a 60 foot right-of-way that was dedicated as part of the Caldwell Subdivision many years ago. The owner was requesting abandonment and was now proposing to re-plat for six multi-family lots. Staff was recommending approval of the request subject to the applicant purchasing the right-of-way at fair market value as determined by the appraisal report.

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

Motion was made by Commissioner Trevino and seconded by Commissioner Leftwich to adopt and approve the ordinance on final reading to abandon the 60 ft. road right-of-way. Motion carried unanimously.

Under discussion, Victor Banuelos, the applicant stated the subdivision was approved in 1974, but it never got developed. The streets were never constructed and no improvements had been made on the property. He requested the abandonment of the right-of-way and for the city to donate the property to Mr. Armando Regaldo. Mr. Banuelos stated the right-of-way would be incorporated into the subdivision. The city would benefit from the taxes.

Ms. Cotroneo stated the market value on the property was \$13,000. The city was not allowed to donate land. It could be brought back with a Chapter 380 Agreement.

Mr. Gonzalez suggested the city solicit bids.

Commissioner Trevino suggested staff bring a proposal to the next City Commission meeting.

Mayor Boswell agreed the action is only to abandon the right-of-way.

At this time, Commissioner Trevino relinquished his chair and excused himself from the meeting in order to avoid an appearance of impropriety and signed an affidavit, which was presented to the City Secretary.

At 1:28 p.m. Mayor Boswell announced the City Commission would convene in executive session to discuss the following items.

Motion was made by Commissioner Leftwich and seconded by Mayor Pro-Tem Prepejchal to convene in executive session. Motion carried unanimously.

- 11) Executive/Closed Session on the following items:
- a) 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 *Project Uncle* and to seek legal advice from the City Attorney regarding this subject. (*City Manager*)

- b) 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 Attorney from December 1, 2010 to December 1, 2011. Attachment (*City Attorney*)

At 1:55 p.m., Mayor Boswell announced the City Commission had completed its executive session on Item 11 (a) and (b) and declared the meeting opened to the public.

- 12) Consider and take action to approve an amended employment contract for the City Attorney.

Mayor Boswell questioned if the proposed amount was to increase the city attorney's salary to \$165,000.00 and if it included a 12 month buy-out. He stated the city attorney should not make the same amount of money as the city manager. Mayor Boswell pointed out the city manager should be the highest paid official. The proposed increase was more than what the federal judge made. He stated he was not in favor of the increase.

Commissioner Leftwich stated the prior city attorney was making almost \$225,000.00. For the amount of success that the City of Harlingen has had through the city attorney's office, the city was getting a bargain for the amount of pay. It has been noted that there has been changes in the way the city did business, plus changes out in the community such as neighborhood cleaned ups. Dangerous structures have been demolished within the last 18 to 24 months, plus several economic development, paper work, and legal work that has been done. A number of litigated issues resolved and with the amount of work accomplished in the past year. The city was not out of line in what was been offered to pay the current city attorney.

Mayor Boswell stated a lot of people have contributed to those successes. The fact there were no raises to the policeman, fireman and city employees because the City Commissioners were trying to balance and approve a budget in a very tight year, placed a very bad example at this time.

- 8) Consider/discuss and take action to approve a government relations service agreement for a lobbyist consultant for the City of Harlingen. Attachment (*Requested by Commissioner Robert Leftwich and Mayor Pro-Tem Jerry Prepejchal*)

Roy Maggard, Veterans Advocate asked the City Commissioner to consider voting in favor of Item 8 in order to work with government officials in Washington D.C and Valley Veterans in bringing a full service V.A. Hospital to Harlingen, Texas and deny I-69 Highway to the Rio Grande Valley. He felt that they needed a lobbyist because a lot of the opportunities were not coming out of committees in Washington D.C. Mr. Maggard quoted 6,440 veterans were used in-patients beds under the contracts with local hospitals; 117,000 veterans lived in the Valley and could not understand why the V.A. did not want to build the V.A. Hospital and save taxpayer money. He mentioned that under the contracts with the local hospitals it took awhile for the V.A. to pay the hospital the bills of the veterans which in turn damaged the credit of the veterans. He stated that veterans had gone to Washington D.C. on three separate occasions, but the congressmen were not very helpful organizing meetings with top officials. He hoped the city could help with the Valley Veterans in bringing a Veterans Hospital to Harlingen.

Motion was made by Commissioner Leftwich and seconded by Mayor Pro Tem Prepejchal to approve a government relations service agreement for a lobbyist consultant for the City of Harlingen.

Commissioner Trevino stated there were issues that required a federal lobbyist and suggested to solicit statement of qualifications to search for a lobbyist with this type of expertise.

Mayor Pro Tem Prepejchal stated the EDC, Airport, Harlingen Waterworks and City Commission needed to work together and search for a federal lobbyist to provide consulting services to all of these departments.

Mayor Boswell stated no agreement was presented for approval.

Motion was made by Commissioner Leftwich to approve a generic agreement so the City Manager could pursue an agreement with the lobbyists and present one lobbyist for their consideration and approval.

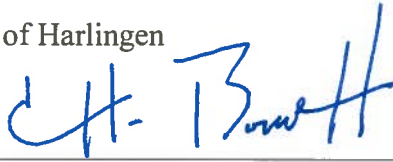
Mayor Pro-Tem Prepejchal seconded the motion.

Commissioner Leftwich asked if the City Manager would be bringing different proposals of lobbyists for their approval.

Mayor Boswell stated his understanding of the motion was to bring proposals to the City Commission for approval.

Motion carried unanimously.

City of Harlingen



Chris Boswell, Mayor

ATTEST:


Amanda C. Elizondo, City Secretary