

REGULAR MEETING

CITY COMMISSION

HARLINGEN, TEXAS

SEPTEMBER 19, 2012

A Regular Meeting of the Harlingen Elective Commission was held on Wednesday, September 19, 2012 at 4:00 p.m. in Town Hall, City Hall, 118 E. Tyler, Harlingen, Texas. Those in attendance were:

Mayor and City Commission

Mayor Chris Boswell

Mayor Pro-Tem Robert Leftwich, Commissioner District 2

Danny Castillo, Commissioner District 1

Mike Mezmar, Commissioner District 3

Jerry Prepejchal, Commissioner District 4

Staff Present:

Carlos Yerena, City Manager

Amanda C. Elizondo, City Secretary

Richard Bilbie, Assistant City Attorney

Gabe Gonzalez, Assistant City Manager

Dan Serna, Assistant City Manager

Elvia Trevino, Interim Finance Director

Absent

Joey Trevino, Commissioner District 5

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.

Invocation/ Commissioner Jerry Prepejchal

Commissioner Jerry Prepejchal gave the invocation.

Pledge of Allegiance/ Welcome

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

1) Public Announcement of Events

There were no public announcements.

2) Recognition of City Staff

Mayor Boswell stated Item No. 2 would be postponed for a future date.

3) Recognition of Omar Lucio, Cameron County Sheriff

Commissioner Prepejchal read and presented a plaque of recognition to Sheriff Omar Lucio, Cameron County Sheriff for his 50 years of outstanding service and achievement in law enforcement.

4) Presentation of a proclamation, proclaiming September 19, 2012 as "Omar Lucio's Day"

Mayor Boswell also read and presented a proclamation to Mr. Lucio proclaiming September 19, 2012 as "Omar Lucio's Day" for his many years of service and dedication to his profession in Harlingen and Cameron County.

Sheriff Lucio thanked God for giving him all the benefits and rewards for serving in law enforcement and his wife and family for their support. He served the Harlingen Police Department in the past and held a special place in his heart for Harlingen. He cherished the privilege to humbly serve the citizens of Harlingen and promised to diligently protect all the citizens and their families. He thanked Mayor Boswell, Commissioners and citizens of Harlingen for making September 19, 2012 a very special day for him and his family.

5) Approval of Minutes

- a) Regular Meeting of August 15, 2012.

Motion was made by Commissioner Mezmar and seconded by Mayor Pro-Tem Leftwich to approve the minutes of August 15, 2012 as presented. Motion carried unanimously.

CONSENT AGENDA

- 6a) Second and final reading to approve an ordinance adopting the Revenue and Expenditures Budget for the City of Harlingen, Texas, for Fiscal Year October 1, 2012 through September 30, 2013 in the amount of \$64,913,955 and \$64,697,122 respectively; providing for publication of the caption of this ordinance and ordaining other matters related to the foregoing.
- b) Second and final reading to approve and adopt an ordinance fixing the ad valorem tax rate for maintenance and operations for the City of Harlingen, Texas for the Calendar Year 2012 at \$0.451862 per \$100.00 dollars valuation; providing for publication and ordaining other matters related to the foregoing.
- c) Second and final reading to approve and adopt an ordinance fixing the ad valorem tax rate for interest and sinking payments for the City of Harlingen, Texas for the Calendar Year 2012 at \$0.136965 per \$100.00 dollars valuation; providing for publication and ordaining other matters related to the foregoing.
- d) Consider and take action to approve a request from St. Anthony's Catholic Church to close East Van Buren Avenue between 10th and 11th Streets for their Annual 2012 Fall Festival starting from Friday, November 2, 2012 at 12 noon to Sunday, November 4, 2012 at 11 p.m. to ensure the safety of the participants.
- e) Consider and take action to approve a request from the Rotting Flesh Factory Haunted House to close West Van Buren Avenue between "E" and "F" Streets and the alley adjacent to the street closure on September 28, 29, 30 and October 5, 6, 7, 12, 13, 14, 20, 21, 25, 26, 27, 28, 29, 30 and 31, 2012 to operate a walk-through haunted house attraction from 5:00 p.m. to 1:00 a.m. to ensure the safety of the participants.
- f) Consider and take action to approve a request from the Parks and Recreation Director to close the streets between N. "J" and N. "L" Streets and N. "L" Street between Fair Park Blvd. and West Adams on Saturday, November 3, 2012 from 8 a.m. to 12 midnight for a Blues on the Hill/Dallas Cowboys Festival to ensure the safety of the attendees.
- g) Consider and take action to approve a request from the Immaculate Heart of Mary Catholic Church to close "C" Street between Polk and Tyler Street on Thursday, October 4th -12 Noon to set up the equipment; Friday, October 5th - 6:00 p.m. to 11:00 p.m.; Saturday, October 6th - 6:00 p.m. to 11:00 p.m.; and Sunday, October 7th, 2012 - 6:00 p.m. to 10:00 p.m. to hold their Annual Fiesta de Amistad and secure the safety of families attending the event.

Motion was made by Commissioner Prepejchal and second by Commissioner Castillo to adopt and approve the items under the consent agenda. Motion carried unanimously.

For the record, the captions of Ordinance No. 12-61, 12-62 and 12-63 read as follows.

ORDINANCE 12-61

AN ORDINANCE ADOPTING THE REVENUE AND EXPENDITURE BUDGET FOR THE CITY OF HARLINGEN, TEXAS, FOR THE FISCAL YEAR OCT. 1, 2012 THROUGH SEPT. 30, 2013 IN THE AMOUNT OF \$64,913,955 AND \$64,697,122 RESPECTIVELY; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

ORDINANCE 12-62

AN ORDINANCE FIXING THE AD VALOREM TAX RATE FOR MAINTENANCE AND OPERATIONS FOR THE CITY OF HARLINGEN, TEXAS FOR THE CALENDAR YEAR 2012 AT \$0.451862 PER \$100.00 DOLLARS VALUATION; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

ORDINANCE 12-63

AN ORDINANCE FIXING THE AD VALOREM TAX RATE FOR INTEREST AND SINKING PAYMENTS FOR THE CITY OF HARLINGEN, TEXAS FOR THE CALENDAR YEAR 2012 AT \$0.136965 PER \$100.00 DOLLARS VALUATION; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

PASSED AND APPROVED on first reading September 5, 2012.

PASSED AND APPROVED on second reading September 19, 2012.

SIGNED: /s/ Chris Boswell, Mayor
ATTESTED BY: /s/ Amanda C. Elizondo, City Secretary

- 7) Consider an Ordinance on First Reading to rezone from Not Designated (N) District to Residential, Multi-Family (M-2) District for 9.47 ± acres out of Lot 1, all of Lots 2 and 7, and 9.44 ± acres out of Lot 8, Block 145, San Benito Land and Water Company Subdivision, located on the north side of East Treasure Hills Boulevard west of FM 509.

Joel Olivo, Planning and Zoning Manager stated the applicant was requesting to rezone the above mentioned property from Not Designated District to a Residential, Multi Family District to build high-end apartments and property was currently vacant. Phase one would consist of 140 units. The Future Land Use Plan Component of the City of Harlingen Vision 2020 Comprehensive Plan showed the area to be a low and medium density residential. All the required notices were done and the Planning and Zoning Department did not receive any objections from property owners residing within the 200 feet radius. He recommended approval of the ordinance on first reading.

- a) Public Hearing

Mayor Boswell announced this was a public hearing and anyone wishing to speak for against this item could do so.

Yolanda Shoffeit, P.O. Box 697 was asked to state her residence and voter registration number and failed to do so, Mayor Boswell continued with Item (b).

- b) Consider and take action to approve and adopt an ordinance on first reading for the above mentioned rezone request.

Richard Bilbie, Assistant City Attorney read the caption of the ordinance.

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

- 8) Consider an ordinance on first reading for a Specific Use Permit (SUP) to allow a bar/lounge in a general retail (GR) District located at 1105 S. Tamm Lane, bearing a legal description of 3.4740 acres out of Block 33, Stuart Place Survey, 139/297/298.

Mr. Olivo stated the applicants were requesting a SUP to operate a bar/lounge located at 1105 South Tamm Road of Business 83. The proposed building was approximately 2958 sq. ft and had been utilized as a bar and grill in the past. The parking area consisted of 58 parking spaces and only 30 spaces were required. Days and hours of operation would be from Wednesday through Sunday between the hours of 8:00 p.m. to 3:00 a.m. The request was review by the required city departments and no objections were received. The Planning and Zoning Commission conducted a public hearing and recommended approval of the request subject to compliance with the all current conditions.

Commissioner Mezmar stated that after reviewing the police reports of the previous owner, it had an array of issues including assaults and arrests. He questioned if the new applicant was related to the previous owner.

Deputy Chief Kester stated that based on his knowledge, the applicant was not related to the previous owner. The previous owner did not have the proper licenses required by TABC and this was the reason that the business was closed.

Commissioner Castillo asked if the ordinance would require that there be a minimum retention period for securing the surveillance recordings.

Deputy Chief Kester responded the ordinance did not include such a requirement, but language could be incorporated in the ordinance to provide for a minimum retention period.

Commissioner Castillo recommended thirty days retention for the security recording in case the Harlingen Police Department needed to refer to the recording to investigate any situations at the establishment.

a) Public Hearing

Mayor Boswell announced this was a public hearing and anyone wishing to speak for or against this item could do so.

There being none, Mayor Boswell declared the public hearing closed.

b) Consider and take action to approve and adopt an ordinance on first reading for the above-mentioned Specific Use Permit.

Mayor Pro-Tem Leftwich stated after reviewing the attached incident reports of the past business history it was fairly simple to understand how dangerous a particular location and operation could be. It was requested in the past that a grading system be utilized by the police department and asked if such system was produced by the Police Department. By utilizing such system this give the City Commission a prospective of the incidents that were happening at these establishments.

Deputy Chief Kester stated at the time there was no set standard for reviewing and processing specific use permits.

Mayor Pro- Tem Leftwich recommended that the Police Department continued the effort on establishing a grading system. This would give the Commission a better prospective of the incident reports to improve the bars when Specific Use Permits were due for renewal.

Commissioner Castillo asked if the Police Department continued to provide a breakdown of the calls versus legitimate incidents on these establishments. TABC's concern was mostly if an incident occurred at a public venue, especially in the parking lot if the bar owner took the initiative to report the incident regardless if the incident happened near the establishment.

Mr. Bilbie read the caption of the ordinance.

Motion was made by Mayor Pro-Tem Leftwich and seconded by Commissioner Prepejchal to approve and adopt the ordinance on first reading with amendments of the retention of security surveillance videos for a minimum of 30 days and for staff to provide a report in six (6) months regarding the establishment's operation for review and compliance. Motion carried unanimously.

- 9) Consider an ordinance on first reading for a Specific Use Permit ("SUP") to allow a farmers market in a Residential, Single family (R1) District located at 19833 Morris Road, being a legal description of 20 acres out of Block 31, Lon C. Hill Subdivision.

Mr. Olivo stated the applicant was requesting a specific use permit to allow a farmers market at 19833 Morris Road. The market would be located on a one acre lot operating from what used to be a home. The home was equipped with restroom facilities. The days and hours of operation would be Monday, Wednesday and Friday from 5 p.m. to 7 p.m. The applicant was proposing five vendors to be at the site as part of the farmers' market business. The Engineering and Fire Departments had no objection to the request subject to the applicant complying with the required regulations. The Building and Health Inspections Departments had not cleared the request due to the applicant not complying with the some of the regulations. The Planning and Zoning Department was prepared to approve SUP subject to the applicant complying with the parking, fire, building and health regulations.

Commissioner Castillo stated the opening of the farmers market was a great idea. He asked what would be the future plans of the building after all the issues with the American Disability Act requirements were addressed.

Mr. Olivo responded that they would return after the renovations and amend the "SUP." Classes would also be conducted at the facility.

Commissioner Castillo asked if the idea about port-a-potties was discussed with the applicant as a possibility until the renovations were done.

Mr. Olivo stated the idea was presented to the applicant.

Ken Clark, Planning and Development Director stated no activities would be conducted while the renovations were being done. Phase I was to obtain the users permit for the farmers market. This would allow the people to be out in the fields attending to the crops and when they harvest crops sometime in December, the farmers bring them to the market to sell. There was no problem growing the crops or starting the market, as long as, the applicant provided proper parking for the customers. The applicant would be working with Texas A&M Engineering and Environmental Department to develop the parking lot.

Mayor Pro- Tem Leftwich asked if the applicant had solicited permission from the adjacent property owners for customers to park in their property to accommodate additional customer parking. He asked if the restroom facility could be ADA compliant.

Mr. Clark responded the restroom facility could be made ADA compliant; however, the applicant was seeking the flexibility for the use of the port-a-potties and not having to do the parking lot until they knew that the public would shop at the farmers market.

Commissioner Castillo stated no variance was being requested, but it was more of a phase in approach to gain full compliance.

Mr. Clark responded no variance had been requested, after meeting with the applicant, it became clear that the farmers market could be done in phases. It was suggested that she approach the commission with the information to possibility gain the flexibility. Passage of the ordinance would allow future market vendors to have the same flexibility as the applicant.

a) Public Hearing

Mayor Boswell announced this was a public hearing and anyone wishing to speak for or against this item could do so.

Kate McSwain, 1610 East Crockett stated as more farmer markets open people would have the opportunity to purchase chemical free products grown by farmers. One concern was the use of paved and concrete parking lots which was counter active to the chemical free initiative of the farmers. She asked if there were some other methods to have an environmental free parking area.

Ramiro Gonzalez, Health Department Director stated the Health Department did not regulate produce. If the food was cut and served then the farmer market would become a retail establishment and compliance of the Heath Code was required.

b) Consider and take action to approve and adopt an ordinance on first reading for the above-mentioned Specific Use Permit.

Mr. Bilbie, read the caption of the ordinance.

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

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

18) Closed/Executive Session regarding the following items:

- a) Attorney consultation pursuant to Section 551.071, Texas Government Code in connection with the City's legal rights, duties, privileges, and obligations related to the collective bargaining process and the labor agreement proposed for approval and related matters.
- b) pursuant to Section 551.072, Texas Government Code regarding the sale and value of real property legally described as: a 20.498 acre tract, out of Block 8, Stuart Place Subdivision of Survey 41, City of Harlingen, Cameron County, Texas as recorded in Volume 5, Page 6 of Map Records of Cameron County, Texas; SAVE & EXCEPT a 0.38 acre tract conveyed to the City of Harlingen by deed recorded in Volume 8164, Page 193 Official Records of Cameron County, less an additional 0.38 acre tract in the Palm Court Drive right-of-way.
- c) 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 know as **Project Blue** with which the City Commission is conducting economic development negotiations regarding the possible creation of a Chapter 380 Economic Development Program and/or to discuss or deliberate financial incentives with the business prospect and to seek legal advice from the City Attorney regarding the development of a Chapter 380 Economic Development Agreement and matters related to the subject.

At 4:42 p.m., Mayor Boswell announced the City Commission would convene into executive session to discuss the above mentioned items.

Motion was made by Mayor Pro-Tem Leftwich and seconded by Commissioner Prepejchal to convene into executive session to discuss Item Nos. a, b, and c. Motion carried unanimously.

At 5:16 p.m., Mayor Boswell announced the City Commission had completed its executive session and declared the meeting open to the public.

Carlos Yerena, City Manager requested that Item No. 10 be discussed in executive session.

At 5:17 p.m., Mayor Boswell announced the City Commission would convene into executive session to discuss Item No. 10.

Motion was made by Commissioner Castillo and seconded by Mayor Pro-Tem Leftwich to convene into executive session to discuss Item No. 10. Motion carried unanimously.

- 10) Consider and take action to approve and adopt an ordinance on first reading to allow a Specific Use Permit for an adult business in a General Retail ("GR") District located at 6779 W. Expressway 83, bearing a legal description of 3.597 acres out of South 10 acres of the South ½ of Block 15, Stuart Place Subdivision Survey 138.

At 5:40 p.m., Mayor Boswell announced the City Commission had completed its executive session and declared the meeting open to the public.

Mr. Bilbie read the caption of the ordinance.

Motion was made by Commissioner Castillo and seconded by Commissioner Mezmar to deny the request for the specific use permit. Motion carried unanimously.

- 11) Consider and take action to approve a request from the Planning Department to waive the demolition permit fee of \$500 for the demolition of the abandoned warehouse located at 827 S. West Street, corner of W. Buchanan and S. West Street.

Ken Clark, Director of Planning and Development stated the Planning Department was requesting that the demolition permit fee be waived to demolish the abandoned railroad warehouse located at 827 S. West Street. Union Pacific Railroad agreed to demolish the dilapidated structure for the property owner, who was physically and financially unable to do so. The warehouse would be demolished on September 25, 2012 and staff was recommending approval of waiving the demolition permit fee.

Motion was made by Mayor Pro-Tem Leftwich and seconded by Commissioner Mezmar to approve the staff's request to waive the demolition permit fee for the demolition of warehouse located at 827 S. West Street. Motion carried unanimously.

- 12) Consider and take action to approve the Keep Harlingen Beautiful (Harlingen Proud) Budget for Fiscal Year 2012-2013.

Adam Weaver, Executive Director for Keep Harlingen Beautiful highlighted the budget for Fiscal Year 2012-2013 and stated the funding for Keep Harlingen Beautiful was derived from the recycling center revenues. He pointed out that approximately \$95,000 was used to educate the students of the Harlingen Schools. Approximately \$27,000 was left over and these funds were allocated to beautify the entrances of the City from Expressway 83 at Dixieland Road. This project would be done in partnership with Texas State Texas College and Harlingen Parks and Recreation Department.

Mayor Boswell thanked the Keep Harlingen Beautiful Board Members for their generous contribution to beautify the city.

Motion was made by Commissioner Prepejchal and seconded by Mayor Pro-Tem Leftwich to approve the Keep Harlingen Beautiful Budget for Fiscal Year 2012-2013. Motion carried unanimously.

- 13) Consider and take action to approve a resolution accepting Harlingen's Waterworks System's adopted budget for Fiscal Year 2012-2013.'

For the record, at the request of Mayor Pro-Tem Leftwich and Commissioner Prepejchal, attached to the minutes is the Verbatim to Item No. 13.

- 14) Consider and take action to approve the Economic Development Corporation of Harlingen, Inc. Budget Fiscal Year 2012-213.

Raudel Garza, EDC Executive Director highlighted the EDC proposed budget for fiscal year 2012-2013. Total revenues returned to the EDC by the TIRZ would be \$7,655,483. The sales tax figure would be slightly higher than what the City had proposed. He also highlighted the Job Training & Educational Incentives, Small Business Loan Assistance, Studies and Job Creation Grants, and Infrastructure Grant Expenses.

Motion was made by Mayor Pro-Tem Leftwich and seconded by Commissioner Castillo to approve the Economic Development Corporation, Inc. Budget Fiscal Year 2012- 2013 minus the Tech Prep funding. Motion carried unanimously.

Mayor Pro Tem Leftwich excused himself from the public meeting and abstained in the next vote.

Motion was made by Commissioner Castillo and seconded by Commissioner Prepejchal to approve the addition of the Tech Prep funding in the Economic Development Corporation, Inc. Budget Fiscal Year 2012-2013. Motion carried unanimously

- 15) Consider and take action to approve the second amendment to the License Agreement with American Tower and the City of Harlingen for the installation of additional transmit antenna and 1 ¼ Heliac cable transmission line at a mount height of 480' for the new Digital Radio System.

Motion was made by Mayor Pro-Tem Leftwich and seconded by Commissioner Prepejchal to approve the second amendment to the License Agreement with American Tower and the City of Harlingen. Motion carried unanimously.

- 16) Board Appointments

Mayor Boswell

Donald M. Clifford - Library Board, Lay Representative

Frank Cortazo - Library Board, Alternative Lay Representative

Dean LaFever - re-appointed to the Harlingen Community Improvement Board

Vanessa Serna - appointed to the Harlingen Housing Authority Board

Julio Cavazos - re-appointed to the Harlingen Housing Authority Board

Nicolas Consiglio - re-appointed to the Harlingen Proud Advisory Board

Motion was made by Commissioner Prepejchal and seconded by Commissioner Castillo to approve the board appointments. Motion carried unanimously.

- 19) Consider and appropriate action to approve a Collective Bargaining Labor Agreement for Fiscal Year 2012-2013 between the City of Harlingen, Texas and the duly recognized bargaining agent for the Harlingen Police Officers, the HPLEA.

Motion was made by Commissioner Prepejchal and seconded by Commissioner Castillo to approve the agreement. Motion carried unanimously.

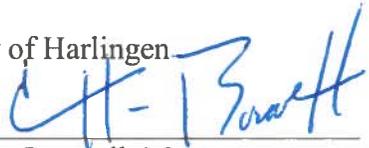
17) Citizen Communication

Yolanda Shoffiet, P.O Box 697 – 284 Atlas Palmas spoke in regards to the scandal regarding the lobbyist that was hired to speak in Washington D.C. and was paid \$250,000. As it turned out the person being paid was dead. She asked how the books were balanced.

Commissioner Prepejchal informed stated this was an issue with the Chamber of Commerce and not the City of Harlingen.

There being no further business to discuss, the meeting adjourned.

City of Harlingen


Chris Boswell, Mayor

ATTEST:


Amanda C. Elizondo, City Secretary