

KENNEDALE CITY COUNCIL
MINUTES
REGULAR MEETING
August 15, 2016
CITY HALL COUNCIL CHAMBERS, 405 MUNICIPAL DRIVE

WORK SESSION - 5:30 PM
REGULAR SESSION - 7:00 PM

I. CALL TO ORDER

Mayor Johnson called the meeting to order at 5:33 p.m.

II. WORK SESSION

***NOTE: Pursuant to Section 551.071, Texas Government Code, the City Council reserves the right to adjourn into Executive Session at any time during the work session or the regular session to discuss posted executive session items or to seek legal advice from the City Attorney on any item posted on the agenda.**

A. Presentation by Halff and Associates of Streambank Erosion Study

Streets and Parks Supervisor Larry Hoover introduced Ben Pylant and Levi Hein from Halff Associates, Inc. who performed the Streambank Erosion Study for the city.

Project Manager Ben Pylant provided background on the project, noting that CMJ Engineering assisted in the geotechnical area of the project. He informed Council that the Winding Creek area extends downstream to Kennedale Sublett Road, about one mile of stream length. He stated that they took this as a pilot study to evaluate and inventory the erosion issues. Adding that the goals of the study are to prioritize erosion issues in the study area; develop erosion program options; inform future budget planning; and inform future planning efforts.

Project Engineer Levi Hein continued with the analysis and results of the study. He stated that getting to the goals is a three pronged approach; analysis, assessment, and alternatives. For the watershed analysis they looked at the peak discharges for events of low flow, bank full, and high volume flooding. He noted that a lot of the discharges that cause the erosion are more of a daily event (i.e. 1-year or 10-year). He provided a review of the analysis.

Ben Pylant spoke regarding the assessment phase of the project. He stated that streams have a habit of evolving in a predictable manner. Stage 1 is a fairly stable channel with trees growing out from banks stabilizing soil. A Stage 2 channel has exposed tree cuts and slumping between trees. At stage 3 the creek widens and can lose significant portions of the bank; when trees fall in stage 4 the channel banks are almost bare. He added that Winding Creek is between a stage 2 and a late stage 3 channel.

Half Associates developed an erosion site ranking which is prioritized by public issues and private issues; additionally, they have met with the city regarding the options and alternatives.

B. Discussion of items on regular agenda

City Manager Bob Hart informed the Council that Hong Muyheng, one of the International Fellows that the City sponsored last year received a promotion since he was here. He, along with his superiors, would like to come to Kennedale to visit with Council. It will be somewhat of a repeat of what we did last year. They would like to come the week of October 3rd through October 11th, which is the week we'll be doing interviews for the Advisory Boards.

III. EXECUTIVE SESSION

Mayor Johnson recessed into executive session.

A. The City Council may meet in closed session at any time during the work session or the regular session, pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda and the following matters:

1. Citizen's Petition

IV. REGULAR SESSION

Mayor Brian Johnson opened the regular session at 7:04 p.m.

V. ROLL CALL

Present: Frank Fernandez, Brian Johnson , Kelly Turner, Liz Carrington, Charles Overstreet, Michael Walker

Absent: None

VI. INVOCATION

Pastor Greg Adams from Covenant Life Baptist Church provided the invocation.

VII. UNITED STATES PLEDGE AND TEXAS PLEDGE

"Honor the Texas Flag; I Pledge Allegiance to Thee, Texas, One State under God; One and Indivisible."

VIII. VISITOR/CITIZENS FORUM

At this time, any person with business before the City Council not scheduled on the Agenda may speak to the Council, provided that an official 'Speaker's Request Form' has been completed and submitted to the City Secretary prior to the start of the meeting. All comments must be directed towards the Mayor and Council, rather than individual council members or staff. All speakers must limit their comments to the subject matter as listed on the 'Speaker's Request Form.' No formal action or discussion can be taken on these items.

Mayor Brian Johnson explained that the people who have signed up to speak regarding the water rate increase and/or the petition would not be allowed to speak because it is on the agenda. He

noted that the standing rule for the Citizen's Forum states: *that at this time, any person with business before the City Council not scheduled on the Agenda may speak to the Council.*

Sherry Beard White, 717 Magnolia Drive, stated that she recently came back to Kennedale to care for her mother; adding that things have changed a lot. She thinks it is very beautiful down the Parkway with all the scrubs, but she is scared to pull out onto the Parkway from the Dollar General Store because it is very difficult to see. She is requesting that the foliage along Kennedale Parkway be trimmed back for better visibility.

Bob Gruenhagen, 913 Shady Vale Drive, stated that he wanted to talk about the petition, and the Mayor explained why he couldn't, so he'd like to talk about communications. He said that the Citizen's forum is here, and some people complain, some people have good ideas, but as far as he could see there's no forum for feedback. When we leave here, we don't know what happens to our recommendations. Furthermore, last Friday the city had an open meeting about the budget; but there was no public forum, so if people came, they wouldn't be able to discuss anything. He stated that as far as tonight, he studied why people were not allowed to speak on the water rates and/or petition. He noted that the Council has the authority to allow anyone to speak about anything that's on their mind. He cited a seven page ruling from the Attorney General's office which states that Council has the governing authority to get interaction from the people and let them have a voice, and that it is encouraged. He recommends that Council consider this for the future because it would have been a very important thing to allow tonight.

Cathy Brown, 808 Shady Bend Drive; Robert and Wilma Jackson, no address listed; and John Hivale, 418 Coker Valley Drive; were all signed up to speak regarding the water rate, and/or the petition.

IX. REPORTS/ANNOUNCEMENTS

In addition to any specific matters listed below, the city council may receive a report about items of community interest, including but not limited to recognition of individual officials, citizens or departments, information regarding holiday schedules, upcoming or attended events, etc.

A. Updates from City Council

Charles Overstreet stated that he sat in for Mayor Johnson at the Mayor's Council where they talked about the ZIKA Virus and the mosquito problem with the West Nile Virus. They recommended that homeowners do some water mitigation and spraying in their own backyards. He added that he also attended the Lake Arlington Watershed Committee meeting that looks at controlling the E.coli in Village Creek as it runs into Lake Arlington, to make our water supply safer.

B. Updates from the Mayor

Mayor Johnson stated that he was sorry that he missed the last meeting and thanked everyone for the well-wishes. He added that his dad and sister are both recovering. Additionally, he spent a week at Camp Hope, which is part of One Safe Place; it is an organization for kids who have experienced domestic violence. He stated that after a week with these kids, He

realized that the country is in pretty good hands.

C. Updates from the City Manager

City Manager Bob Hart stated that everyone is aware that we've had some blue algae issues in the pond at Sonora Park. The Texas Parks and Wildlife people have checked the pond; they believe that we have had enough rain, so it has been cleared. All the signs are down and the pond is safe for fishing. He announced that the dates for the Budget Public Hearings will be September 8th at 7:00 p.m. and September 19th at 6:30 p.m.

X. MONITORING INFORMATION

Monitoring information updates are in the agenda packet for review.

A. Executive Limitations

B. Ends Review - Balanced Scorecard

XI. INCIDENTAL ITEMS

There were no incidental items.

XII. REQUIRED APPROVAL ITEMS (CONSENT)

All matters listed under incidental items (consent) have been previously discussed, require little or no deliberation, or are considered to be routine by the council. If discussion is desired, then an item will be removed from the consent agenda and considered separately.

A. Consider approval of minutes from July 18, 2016 regular meeting

B. Approve Schedule of Investment Activity for quarter ending June 30, 2016

C. Consider approval of Resolution 491 a financing agreement for the purpose of procuring "rolling stock and related equipment"

D. Consider approval to extend the Interlocal Agreement for participation in Fort Worth's Environmental Collection Center/Household Hazardous Waste program through September 30, 2017

E. Consider approval of bid awards for health, dental, vision and life and AD&D and voluntary life insurance and authorize the City Manager to sign the agreements

F. Consider approval of contract for Municipal Judge

G. Consider approval of contract for Municipal Court Prosecutor

H. Consider amendment to the developer agreement with Kennedale Seniors, LLC

Motion To approve all required approval items on (Consent) agenda. **Action** Approve, **Moved By** Charles Overstreet, **Seconded By** Frank Fernandez.

Motion passed Unanimously

XIII. DECISION ITEMS

A. Consider approval of Ordinance 607 authorizing the issuance, sale and delivery of the aggregate principal amount of \$3,720,725 for the City of Kennedale, Texas general obligation refunding bond, Series 2016; securing the payment thereof by authorizing the levy of an annual ad valorem tax; and approving and authorizing the execution of all instruments and procedures related thereto including an escrow agreement, a paying agent/registrar agreement and a purchase contract and investment letter. The final ordinance will be provided at the meeting on Monday night.

Bob Hart introduced Mark McLiney, Senior Managing Director for SAMCO Capital Markets, Inc.

Mark McLiney stated that they have been working with staff on reviewing standing obligations and watching as interest rates lowered. He noted that they have been waiting on two bond issues in particular; the 2005 and 2008 Certificate of Obligation bonds. He added that they are close to being where we can take advantage of these lower rates. The total savings on the 2005 bonds is estimated to be \$296,954; and the 2008 bonds is \$405,809. The winning bid comes from First National Bank as presented in Ordinance 607.

Motion To approve Ordinance 607 authoring the issuance, sale and delivery of the aggregate principal amount of \$3,720,725 for general obligation refunding bond, Series 2016.

Action Approve, **Moved By** Liz Carrington, **Seconded By** Kelly Turner.

Motion passed Unanimously

B. Public Hearing on Amendment of Water, Wastewater, and Roadway Impact Fees

1. Presentation by Freese and Nichols
2. Public Hearing
3. Response by Freese and Nichols
4. Action by Council

City Planner Rachel Roberts explained that Impact Fees are fees collected from developers when new development comes into the city, which will impact the infrastructure. She added that they have to be roughly proportional to their actual impact on the infrastructure and State Law requires that the fees are regularly evaluated.

Eddie Haas from Freese and Nichols was the lead consultant on the Roadway portion of the Impact Fee Study, and Jessica Brown was the lead on the water and wastewater. Mr. Haas stated that Chapter 395 of the Texas Local Government Code requires that impact fee evaluations include a public hearing with the consideration of land use assumptions, a Capital Improvement Plan for the three infrastructure components, and the collection rate of the actual impact fee cost per service unit. He added that Freese and Nichols worked with an Advisory Committee, and looked at surrounding cities to see what they are charging. He continued with the process. He noted that if Council does not decide on the rates tonight, you have thirty days to make a determination. If not, you will have to call another public hearing. He processed with a presentation of twelve project segments, and the cost estimates for each of those segments.

Jessica Brown spoke in regard to the water and wastewater portion of the study, stating that they started with the most recent Water and Wastewater Master Plan that was adopted in 2014.

She reviewed the current collection rate, the process used, and the projected cost of projects. There was a short discussion regarding the legal requirements for spending impact fees; the areas they can be used for and the time frame in which they must be used.

Public Hearing:

Mayor Johnson opened the public hearing; there was no one signed up to speak regarding the amendments to the water, wastewater, and roadway impact fees. Mayor Johnson closed the public hearing.

C. Consider approval of Ordinance 604 adopting the water and wastewater impact fees

Motion To approve Ordinance 604 adopting the water and wastewater impact fees.

Action Approve, **Moved By** Frank Fernandez, **Seconded By** Liz Carrington.

Motion passed Unanimously

D. Consider approval of Ordinance 606 adopting the roadway impact fees

Motion To approve Ordinance 606 adopting the roadway impact fees. **Action** Approve, **Moved By** Liz Carrington, **Seconded By** Frank Fernandez.

Motion passed Unanimously

E. Certification of Citizens Petition by City Secretary under Article XI of the City Charter; and Consideration and/or action regarding Citizens Petition under Article XI of the City Charter

City Secretary Leslie Galloway addressed the Mayor and City Council, stating that the city's charter does allow qualified voters of the city the power to propose an ordinance through an initiative petition or require reconsideration by the City Council of any adopted ordinance through a referendum petition. She noted that the Charter does not allow for a petition to propose or repeal an ordinance related to zoning, the appropriation of money, or the levy of taxes. She reviewed the events stating that on Wednesday, July 6, 2016 a petition was filed in the City Secretary's office regarding Ordinance 589, which set forth a new water and wastewater rate structure. A petition requires that 250 verifiable signatures are needed, and there were 708 signatures, of which, at least 446 were verified. She added that while the number of signatures is sufficient, two things are problematic.

As she mentioned previously, it is not clear what type of petition was filed. The affidavit states that it is a referendum petition. If viewed as such, it is not valid, as the Charter requires that such a petition be filed within 60 days of the effective date of the referenced Ordinance. The effective date of Ordinance 589 was January 29, 2016, which means the petition, would have needed to be filed by Tuesday, March 29, 2016; and it was not. Even though it was stated to be a referendum petition, there was also an attached proposed ordinance, which calls for the recall of Ordinance 589. Proposed ordinances fall under the category of initiative petitions. Again, neither of these types of petitions is permitted to be used to propose or force the reconsideration of ordinances related to the appropriation of money. As utility rates are an appropriation of money, the petition cannot be valid, no matter what form it is determined to be. She added that her review of the signatures is included in the packet.

City Attorney Wayne Olson stated that the Charter is the right of the citizens to petition the Council to do certain things. In regard to this petition, the citizens filed it as either an initiative or a referendum. In one case, the residents are asking the City Council to adopt an ordinance; in the other, they're asking that City Council to repeal an existing ordinance. He added that the City Secretary has raised issues concerning the petition, noting that it wasn't filed within 60 days, and the initiative process is not allowed for the appropriation of funds. He added that it is not allowed by the Charter or by State Law; therefore his determination is that the petition does not meet the requirement of the Charter and Council cannot act on it. He added that Council will need to address the issues raised by the citizens in another manner.

Mayor Brian Johnson replied that the petition falls under areas not covered by the Charter. However, if you look at our Governance Policy, at the top of the chart you have the owners, who are the citizens. We work for the citizens and staff works for Council. Brian added that you can't just say, yes, there are 700 signatures, but it's not valid under the Charter. If you follow the governance model, it does require some response. I think most people realize at this point that there is a water and sewer infrastructure problem, and you don't like our way of solving the problem. You want us to look for another way of us solving this problem. Mayor Johnson went around the room to allow each Council member to address the public.

Council member Charles Overstreet stated that he agrees that our obligation is to respond to the 700 signatures and the spirit of the petition, not necessarily the letter of its validity. We have to deal with our water infrastructure problem without overburdening the residents. He stated that after they instituted the water rates, there was a lot of pushback from the community, so the Mayor put together a Committee, with some of the people who have stood in front of Council and voiced their disapproval. In his opinion, it is not responsible to go back to the old water rates and ignore the problem. We cannot subsidize water out of the development cost in the City; it will shut down all the goals set in the Master Plan. We need to find a solution that allows us to continue to develop the Master Use Plan and create a sustainable water system.

Council member Mike Walker stated that he agreed with the City Attorney, noting that there are a number of issues with this petition. He thinks it's clear that the City Charter doesn't allow the kind of relief sought in the petition. The Charter is a legal document, as is the petition, and these need to be handled in a way that doesn't set a troublesome precedent for future Councils. With that being said, there is a lot of dissatisfaction among residents, and he feels they overreached with Ordinance 589, and did not do a good job of seeking public comment before the adoption of the Ordinance. We have not done a good job communicating what the purpose and reasoning behind these rates were. He has learned that citizens want a Council that communicates with the residents and listens to their input. Noting that once we saw the petition was not legal, we began asking citizens what they would like. The recommendation came back that we needed to put together another group of residents to evaluate the rates; and we have done that. In closing, he stated that at one point we could have amended Ordinance 589; but, it has become toxic to the community. He requested that the repeal of Ordinance 589 be added to the September Council agenda. He is hopeful that the Committee will come back with something that is better, something we can all accept, something that will allow us to accomplish the goals that have been set, and something that lessen the burden on the community.

Council member Frank Fernandez stated that he knows how hard everyone has worked on the petition and all the legwork that goes into it. He added that Council has listened and we need a new solution. He's glad to see citizens get involved; he asked that you stay involved. He noted that there are other issues facing the City that involves a lot more money and that are more deserving of your input.

Council member Kelly Turner stated that he would like to echo what's been said. Certainly we've heard the folks tonight, those on social media, and the 700 plus that signed that petition. He noted that there has not been an open dialogue because Council has not been able to respond in open session. He added now that we are able; I hope everyone can see that we hear you. He noted that Council didn't come to these rates in a 30-day period; we had consultants and a committee to research and present these rates. He agrees with Councilman Walker that we overreached, and we are aggressively looking at solving this. He added that we are glad to have you here; noting that often we only have three people in attendance. He wants everyone in the same boat rowing together; and if we can do that more consistently, we can work towards better ways to communicate. We want your input so we know what direction to move the community. He stated that Council will put Ordinance 589 on the agenda next month and we will look at the rates recommended by the Committee. In closing, he stated that he appreciates those who have taken time to have heart-felt conversations with Council.

Council member Liz Carrington stated that it's challenging when we don't get the input that we need. We've listened to groups and experts tell us that we need to fund the infrastructure, and even with these rates, that fund is still \$375,000 in the red. She added that the new water rate committee will have an open hearing, and residents will be able to give input. She stated that it's frustrating for Council because there are rules concerning the procedures of meetings; but they have to be followed. She knows that residents are frustrated that there is no feedback. She is proud of the Mayor for following those laws, because it hasn't always been that way in this city. Continuing, she added we are not always right, nor always experts; but when we need information we ask for it. We have a responsibility to keep the infrastructure healthy and alive; to look at this from an economic viewpoint. She noted that water is more valuable than any other commodity; you can't live for more than two days without it. Concluding, she stated that everyone on council loves this city, and cares about it and its residents. We've heard you, and we're working very hard to resolve this issue. We don't want you having to choose between medicine and water. She's sorry we've gotten to this state, but asked for time to fix it.

Mayor Brian Johnson stated that he agrees with a lot of what he's heard, and that in crisis there is often opportunity. One opportunity for the citizens is to sign up for a Board. If you don't like something, if you're going to complain, if you don't agree, or if you want to be part of the solution...sign up to serve on a Board, come and provide a different point of view. Mayor Johnson continued, noting several citizens he has spoken with and encouraged to serve on some type of board or committee; and examples of citizens that do not necessarily agree with how things are being handled. He stated that If you really want to know what's going on, please come out and join us. He added that he agreed with Liz that it was disappointing to see so many leave at the June meeting before the Parks Master Plan was presented. Citizens need to hear about this; it's important because it sets how we will be spending money for parks. He added that the City needs a broader base of ideas; we have a lot of issues coming up, and if you have

ideas, we need to hear them. Concluding, he stated that he will be happy to talk with anyone at any time. He appreciates all the input, and all the work that's been done. He requested that everyone stay involved even after the water rates are resolved; adding that the City's Strategic Plan is coming up. He provided his cell number for anyone who wanted to talk with him further, and encouraged everyone to sign up for agendas and newsletters on the city's website.

Mayor Johnson stated that Council will add the repeal of Ordinance 589 to the September agenda; and requested a motion on the petition.

Motion To deny the citizen's petition based on its incompatibility with the City Charter and upon advice of legal counsel. **Action** Deny, **Moved By** Charles Overstreet, **Seconded By** Michael Walker.

Motion passed Unanimously

F. Review and Consider Action to approve Ordinance No. 603, adopting the 2015 International Building Code, 2015 International Residential Code, 2015 International Plumbing Code, 2015 International Mechanical Code, 2015 International Fuel Gas Code with local amendments, 2015 International Energy Conservation Code, the 2015 International Fire Code with local amendments, and the 2014 National Electrical Code.

City Planner Rachel Roberts stated that we are currently operating under the 2006 version of most codes, which makes us a bit behind. She informed the Council that the codes are put out by a national organization, but cities have the option to adopt local amendments, which are more suitable for their community character. Staff is requesting to update the listed codes.

City Manager Bob Hart stated that the adoption of these codes has been pushed by the Council of Governments in this region. The local amendments are being done collectively by cities around the metroplex and you'll see this being done across the region within the coming months.

Rachel added that there are state mandates that require the City to adopt the International Energy Code by September 1st.

Motion To adopt Ordinance 603. **Action** Approve, **Moved By** Kelly Turner, **Seconded By** Charles Overstreet.

Motion passed Unanimously

XIV. EXECUTIVE SESSION

Mayor Johnson recessed into executive session at 9:07 p.m.

A. The City Council may meet in closed session at any time during the work session or the regular session, pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda.

The City Council will meet in closed session pursuant to Section 551.072 of the Texas

Government Code to deliberate the purchase, exchange, lease, or value of real property for the following:

1. 108 New Hope Road
2. 6727 Hudson Village Creek

B. The City Council will meet in closed session pursuant to Section 551.074 of the Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.

1. City Manager's Annual Evaluation

XV. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

Mayor Johnson reconvened into open session at 10:49 p.m.
No action required.

XVI. ADJOURNMENT

Motion To adjourn. **Action** Adjourn, **Moved By** Liz Carrington, **Seconded By** Frank Fernandez.
Motion passed Unanimously

APPROVED:

ATTEST:

Brian Johnson, Mayor

Leslie Galloway, City Secretary