

MINUTES OF REGULAR MEETING

September 27, 2016

MONTGOMERY CITY COUNCIL

CALL TO ORDER

Mayor Kirk Jones declared a quorum was present, and called the meeting to order at 6:00 p.m.

Present: Kirk Jones Mayor
 Jon Bickford City Council Place # 1
 T.J. Wilkerson City Council Place # 3
 Rebecca Huss City Council Place # 4
 Dave McCorquodale City Council Place # 5

Absent: John Champagne, Jr. City Council Place # 2

Also Present: Jack Yates City Administrator
 Larry Foerster City Attorney

INVOCATION

T.J. Wilkerson gave the invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

VISITOR/CITIZENS FORUM:

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must be recognized by the Mayor. Council may not discuss or take any action on an item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

There were no comments.

CONSENT AGENDA:

1. Matters related to the approval of minutes for the Budget Workshop Meeting held on August 4, 2016, Budget Workshop Meeting held on August 13, 2016, Special Meeting held on September 6, 2016, and Public Hearing and Regular Meeting held on September 13, 2016.
2. Consideration and possible action regarding adoption of a Proclamation proclaiming Tuesday, October 4, 2016 as “National Night Out” in the City of Montgomery.

Dave McCorquodale moved to approve the Consent Agenda items as presented. Jon Bickford seconded the motion, the motion carried unanimously. (4-0)

Mayor Jones advised that National Night would will be held on October 4, 2016 at 6 p.m. at Cedar Brake Park and invited the citizens to attend. Lt. Belmares advised that the event is scheduled from 6:00p.m. to 8:00 p.m. and they would be serving refreshments. Lt. Belmares said that they will also have the Montgomery Fire Department, Montgomery County Sheriff's Department, McGruff the dog, Montgomery ISD Police Department, members from the Armed Forces and some of their equipment. Lt. Belmares said that they would be serving hamburgers and hot dogs.

CONSIDERATION AND POSSIBLE ACTION:

3. Consideration and possible action on Department Reports.

- A. Administrator's Report – Mr. Yates presented his report to City Council. Mr. Yates said that he, Councilmember Wilkerson, the City Engineer and City Secretary had interviewed grant writer candidates. Mr. Yates said that he had also worked on implementing the oversized load ordinance.

Jon Bickford asked for an update on Kroger and when they are going to start selling groceries. Mr. Yates said that he is expecting them to open in March 2017. Mr. Yates said that he and Mr. Fleming had met with the contractor at the job site, who advised that the building would be finished by mid-December. Once that is completed, they will need to bring in the coolers, and they also have a store initiation staff that will take a month or two for start-up staff.

- A. Public Works Report – Mr. Mike Muckleroy, Public Works Manager, presented his report to City Council. Mr. Muckleroy reviewed the different jobs that he had completed during the month, including cutting the ditches to grade on Harley Street. Mr. Muckleroy advised that his crew completed four water taps, one sewer tap and six water leaks, four of which were in Memory Park, during the month. Mr. Muckleroy stated that there were zero sewer stop ups and two sewer inspections.

Mayor Jones asked if they knew what was causing the leaks at Memory Park. Mr. Muckleroy said that it was caused by cracks in the line and bad fittings. Mr. Muckleroy said that they replaced three fittings last month that had pin holes in them. Mr. Muckleroy said that sometimes you get a bad batch of fittings. Jon Bickford asked if they were sprinkler fittings. Mr. Muckleroy said that was correct, with three of them on the two inch main line, so when they break it is a lot of water a one time. Mr. Muckleroy reported on the work that they had done at the parks. Mr. Muckleroy said that the docents at Memory Park reported 258 visitors and they provided 21 tours for the month.

Rebecca Huss asked if there was some sort of plumbing product, where if you have flow over a certain amount it would turn the water off. Rebecca Huss said if they have all these leaks that cost the City money, it would be nice to control that problem without waiting until someone notices the leak. Mr. Muckleroy said that at Memory Park, Mr. Burleigh notices it every morning, because he checks his flow meter every morning. Mr. Muckleroy said that the Eye on Water program is helping him, because he has it set up on his homepage so that when he opens the internet, the first thing that he looks at is the Beacon website.

Jon Bickford said that the City could get a radio transmitting flow meter placed on those two inch lines, so you would know when the sprinklers are going off, because if they are not going off there should not be water in those lines. Jon Bickford said that they could check the lines every four hours. Rebecca Huss asked if the Beacon website was up to the minute, because she knew with the consumer line, they have to wait until the next day. Mr. Muckleroy said that every in-point in the City reads at a different minute of the day. Mr. Muckleroy stated that Mr. Burleigh checks the flowmeter every

time that he goes down to the park. Jon Bickford asked how long the two lines ran during the break. Mr. Muckleroy said that the large one was fixed quickly, but two of them that were fairly small, were fixed the next day. Mr. Muckleroy said that when Mr. Burleigh notices any type of leak, he immediately shuts everything down and advises him.

- B. Police Department Report – Chief James Napolitano presented his report to City Council. Chief Napolitano advised that school was now back in session on August 20, and they were able to move most of the traffic through pretty well. However, they did get bottled up because they were not able to get the students into the school quick enough.

Chief Napolitano said that this was the first time since he has been at the City, that they did not have a major event that occurred on the first day of school.

Mayor Jones said that it looked like the number of citations has increased a little bit. Chief Napolitano said that the amount of cars coming through the City has increased. Chief Napolitano said at 2:15 p.m. they try and put everyone on duty out at a particular location for the school children, because they seem to be driving fast again.

Jon Bickford thanked the department for their service and asked that they take care of themselves.

- C. Court Department Report – Ms. Rebecca Lehn, Court Administrator, presented her report to City Council. Ms. Lehn advised that they had disposed of 96 warrants last month, which averages about three per day. There were 64 that paid their warrant fees and 16 were arrested.

Ms. Lehn said that she has put together a report for next month that will provide a comparison over the last five years. Ms. Lehn said that she was not at one of the Budget Workshops where Council discussed Court costs, State fines, how they budget expenses, etc. Ms. Lehn advised that she has put together a five-year look at what the Court has done on everything. The report will show total revenue, City revenue versus

State revenue, citations, warrants, it will show everything and the amount that the Court has grown.

- D. Utility/Development Report – Mrs. Ashley Slaughter, Utility Billing Clerk, presented her report to City Council. Mrs. Slaughter advised that there were 12 new water accounts and 16 disconnects, making the current number of water accounts at 556.

Mrs. Slaughter advised that she had met with Caleb to go over the issues that they were having with Incode, because the problem had been with incorrect coding by Incode. Mrs. Slaughter advised that the system was now working.

Rebecca Huss asked if the system was working correctly, and when they pressed the button to do the reads the numbers all come back correctly. Mrs. Slaughter advised yes and no, because there were a couple of accounts that were coming back with too many numbers, so instead of reading 40 it is reading 400, so they are still working on those accounts. Mrs. Slaughter said that she can work on that issue internally to get it resolved. Mrs. Slaughter said that she felt that next month they should be good.

Jon Bickford asked how the accounts with the errors are being fixed. Mrs. Slaughter said that it was a matter of each meter having what is called a “resolution” and the “resolution” transmits back to Incode showing the amount of digits they pull over for the meter read. Mrs. Slaughter advised that the compound meters were their biggest issues last month, because they were not splitting the meter readings as they should be done. Jon Bickford asked if when they fix the problem, it resolves the problem. Mrs. Slaughter said that once they correct the problem it is fixed. Mrs. Slaughter said that Accurate was not able to tell them the correct number for the “resolution” so that they got the correct reading. Mr. Muckleroy stated that every meter size had a different resolution. Mr. Muckleroy advised that the “resolution” means decimal points. Mrs. Slaughter said that the meter reading that was done today had only two errors, which was with Neptune meters. Mrs. Slaughter stated that the meter is reading correctly, it is just not sending it correctly. Mrs. Slaughter advised that Caleb is going to come out next week to replace one of the Neptune registers to see if that corrects the problem for the next meter reading. Mr. Muckleroy stated that somewhere the Neptune meter is

not talking correctly with the Badger in point. Jon Bickford asked if the City was still withholding payment from the contractor until the matter is resolved. Mr. Yates confirmed that they were withholding payment to the contractor. Rebecca Huss asked if the adjustments were permanent fixes or will they have to do this every month. Mrs. Slaughter said that she had no reason to believe that they were not permanent, but they would be checking them tomorrow. Rebecca Huss said that it would be nice if the system was automatic. Mr. Muckleroy said that they were almost there.

- E. Water Report – Mr. Mike Williams, Gulf Utility, presented his report to City Council. Mr. Williams reported that they had four district alerts, with the first alert was when Well No. 4 failed to prime Water Plant 3, which typically is caused by electrical surges.

There was also a blower amp surge at the Stewart Creek Waste Water Treatment Plant where the controller needed to be repaired. Mr. Williams advised that they have the bid approved and they are waiting for the contractor to make the repair to the controller.

Mr. Williams stated that at Water Plant 3 they had a leak on the sensor line and all the air leaked out, causing the booster pump to short cycle. Mr. Williams advised that they made immediate repairs. Mr. Williams said that they also had a high wet well alarm at Lift Station 2 that was most likely due to rain in the area.

Mr. Williams said that they had a TCEQ inspection at the Stewart Creek Waste Water Treatment Plant. There were two items noted, one being a recalibration of the totalizer and sludge DMR corrected. Mr. Williams said that today they had received a letter from TCEQ rescinding the alleged violations. Mr. Williams said that they had the totalizer recalibrated. Mr. Williams advised that the sludge DMR was correct and was a TCEQ oversight. Mayor Jones asked why they were alleged violations. Mr. Williams said that TCEQ calls them alleged violations if they see any issues during the inspection, and if the alleged violations are fixed they do not turn into violations. Mayor Jones asked if the alleged violations were ignored, would the City be fined. Mr. Williams said that was correct, they would become violations and could be a monetary fine and/or they could put the City into a different class with more frequent inspections and stipulations.

Mr. Williams reported that the average daily flow for the month was at 96,000 gallons. Mr. Williams stated the testing of the sewer plant showed the average count for the NH₃ (ammonia) came out to 1.92 and the maximum level is 2.0, so they are remaining on the cusp. Mr. Williams said that they had great test results all month long, and then on the last day of the month when they pulled a sample their return had clogged up, so the lack of circulation at the plant caused the ammonia level to raise. Mr. Williams also advised that they are looking into getting laboratory services. Mr. Williams stated that the rainfall for this month was 5.16 inches. Mr. Williams advised that they pumped 28% out of Well 3, which was due to water quality, because they started seeing higher temperatures due to the higher run time and the fan being out in the cooling tower. Jon Bickford asked if the cooling tower fan was repaired. Mr. Williams said that the fan was pulled yesterday and they are doing the warranty repair. Mr. Williams said for the time being, they still have one fan that is operational. Mayor Jones asked if they were still mixing the pumping out of Well No. 3, more than usual. Mr. Williams said that was correct. Mr. Williams said that the permit for Well No. 4, they are running on short supply on the permit and they have used Well No. 4 to its maximum. Mr. Williams said that they are only allocated 10 million gallons from Well No. 4 for the rest of the calendar year. Mayor Jones said that they are over utilizing Well No. 4. Mr. Williams said that was correct. Mr. Williams said that they should not have any issues with going over the permitted amount because they have already adjusted the alternator at the Water Plant to run Well No. 3 more for the next two months, and see where they are at in December. Mr. Williams said that they will use the maximum from Well No. 4 without getting too close to the maximum. Mayor Jones asked what the magic combined number was out of Well No. 2 and 3 that they need to stay under. Mr. Williams said that with Well No. 2 they are allowed to pump 41,930,000 gallons per year, and Well No. 3 they are allowed 51,000,000 gallons per year, so they are nowhere near the maximum number. Mayor Jones asked if there was a special balance that they want to achieve after the first of the year. Mr. Williams said that after the first of the year, they are going to try to use the wells to get esthetically pleasing water without going over their permits. Mr. Williams said that he would plan on using Well No. 3 more in the summer, and then Well No. 4 in the winter to balance the temperature of

the water, which will provide a lot longer retention time in the groundwater storage tanks by letting the water cool off.

Rebecca Huss said that since Well No. 4 is so deep and has a larger motor that uses more electricity. Mr. Williams said that he has not seen the electric bills from the motors, but Wells 2 and 3 draw less electricity, but they also do not produce as much water. Mr. Williams said that Well No. 4, while he was there, kicked on and filled the GST in about an hour and a half, and Well No. 3 would probably take about five hours to fill the GST.

Mr. Yates said that he thought that they should have the City Engineer review the electric bills, because there probably is a management way of providing the best water quality for the City, by checking the pump loads and the size of the pumps against the electric bills. Mr. Yates said that an analysis on that could probably save the City quite a bit of money.

- F. Engineer's Report – Mr. Glynn Fleming, P.E., City Engineer, presented his report to City Council. Mr. Fleming said that they continue to move forward with the Impact Fee Advisory Committee. Mr. Fleming said that the Committee had held one meeting and the next meeting was scheduled to be held on October 7, 2016 to get ready for the Public Hearing City Council scheduled to be held on October 25, 2016.

Mr. Fleming advised that the Joint Mobility Study is underway and most of the preliminary work has been done. In the next couple of weeks, crews will be installing apparatus around town at some of the major intersections and busy thoroughfares.

Mr. Fleming said that the Texas Capital Fund Grant – Kroger Project has been moved back to the original opening date of the first quarter of 2017, on March 1.

Mr. Fleming advised that the public utility construction project is moving forward. The contracts with Key Construction were recently received and they are being prepared for circulation and execution by the City. The preconstruction meeting has been scheduled for Wednesday, October 5, 2016. Mr. Fleming said that there will be

noticeable progress at that location in the near future. Mayor Jones asked about the scope of the project. Mr. Fleming said that they would be tying into the existing water and sanitary sewer on the corner of SH 105 and Lone Star Parkway, then running both of those lines west along SH 105 to the future roadway, Garner Drive, where both lines will turn north onto Garner Drive and run about 1,000 feet. Mr. Fleming said that Garner Drive is approximately 1,000 feet of 40 foot paving that will run through the center of that development. Mr. Fleming said that Phase I is what you see on the ground at this time, Phase II will be located on the west side.

Mr. Fleming advised that they continue to make progress on the Bridge at Town Creek, and they are slowly moving forward under the FEMA guidelines. Mr. Fleming said that the gabion and sheet piling contractors are both working on cost estimates on their portion of the work. In the next couple of weeks, there will be some geotechnical investigations, where they will do some borings to get the existing soil conditions, along with some survey crews on the ground. Mr. Fleming said that through the City Attorney, they have reached out to neighboring land owners both upstream and downstream requesting a joint progress meeting to take place in 45-60 days. To make sure that all parties are moving forward on roughly the same timeline.

Rebecca Huss asked Mr. Yates if there was any insurance that might cover these damages. Mr. Yates advised that was not the case.

Mr. Fleming advised that the Hills of Town Creek has mobilized and underway. Lake Creek Village, Section Two, the utility and paving are complete and they had the initial inspection last week, so the contractor is addressing some minor punch list items.

Mr. Fleming said that Lone Star Parkway (East) improvements should have survey crews in the area in the next couple of weeks.

Mr. Fleming advised on September 16, the City received two Funding Determination Letters from the Texas Water Development Board, indicating that both of the proposed Drinking Water project applications were deemed eligible to receive loan funding and

are proceeding with the technical review phase of the application process. Mr. Fleming said that he felt the wastewater projects would receive the same results.

Mr. Fleming restated the information about the cooling tower fan that Mr. Williams had reported on. Rebecca Huss asked about the value of the fan for the cooling tower. Mr. Fleming advised that it was probably between \$20,000- \$25,000. Rebecca Huss said that it was nice that it was under warranty and that it was found in the nick of time. Mr. Fleming said that the unit has probably been in service 2½ - 3 years and it carries a five year warranty.

Dave McCorquodale asked about the paving out at Waterstone. Mr. Fleming said that back in April and May, when the big rain events occurred, they lost a significant portion of their new paving. They had to remove the damaged paving and replace a lot of the base material. Dave McCorquodale asked about the workmanship and progress of the project. Mr. Fleming said that they found it to be in keeping with the City guidelines.

Mr. Fleming advised that the last item on his list, West Side at the Park, was pulled after he submitted his report. Mr. Fleming said he had been contacted by the developer's engineer and he will be meeting with them tomorrow morning to discuss their issues, so the item was removed from this agenda. Mr. Fleming said that it will probably be back on the next agenda.

Mayor Jones asked about the status of the water reuse project at the sewer plant. Mr. Fleming said that Gulf was authorized to move forward with the project this morning and they had placed their orders with NTS. Mr. Fleming said that the order had about a six to eight week lead time.

Mayor Jones asked Mr. Yates and Mr. Foerster about the Letters of Termination that we sent to MUD's 3 and 4, and asked if they had received an acknowledgement. Mr. Yates said that they had received the acknowledgement that they had received the letter. Mr. Fleming said that with each of the MUD's the letters will go before their Boards at their next regularly scheduled meeting to receive action and acceptance of

the letter. Rebecca Huss stated that they can't refuse to accept the letter, which is the City's contractual right. Mr. Fleming said that was his understanding.

G. Financial Report – Mrs. Cathy Branco, Financial Consultant, presented her report to City Council. Mrs. Branco advised that there were funds available in the amount of \$1,841,396, and of those funds approximately \$800,000 is unavailable because it is prescriptive or belongs to the Montgomery EDC. Mrs. Branco stated that the September 1 Debt service payment had been paid, and the next Debt Service payment will be on March 1, 2017 for \$411,358. Mrs. Branco advised that the tax revenue would start coming in during September and October. Mrs. Branco said that she is getting all the reports processed and will be preparing for closing out the year and starting the Annual Audit.

Jon Bickford moved to accept the departmental reports as presented. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

4. Consideration and possible action regarding scheduling a Public Hearing for an Alcohol Beverage License Application for Cowpokes located at 22016 Eva Street "A", Montgomery, Texas (previously the Heritage House) as submitted by Brave Spear LLC owner David Gerrard.

Mr. David Gerrard was present and gave an overview of what he had planned for his property. Mr. Gerrard said that he wanted to bring back good fine country cooking back to the west side of town. Mr. Gerrard said that he and his wife came from Magnolia about four years ago, looking to start a family business. Mr. Gerrard said that he found the Heritage House and said that it was a beautiful site for them to start their business.

Mr. Gerrard said that part of their plan was to bring the restaurant Cowpokes in the old Heritage House building. Mr. Gerrard said that he agreed with the previous owner not to use the name Heritage House when they purchased the property. Mr. Gerrard advised that they also have plans for a frozen custard stand on the property, which they are hoping that the community will enjoy. Mr. Gerrard said that phase one of the project is the frozen custard stand. Phase two, open the Cowpokes restaurant, with a full sit down dining, before the holidays. Phase three, will be the clearing in the back of the lot, where they would like to

have a small live music venue for bluegrass and country music. Mr. Gerrard said that they have big plans and hope to have the support of the City.

Jon Bickford asked if Mr. Gerrard had purchase the entire property. Mr. Gerrard said that they had purchased the whole property. Mr. Gerrard said that there was also another location on the site where they were going to put another building, which they are going to use as an office space and possibly a knick-knack Texas furnishings store in the building. Mr. Gerrard said that might even sell Christmas trees during the holidays.

Rebecca Huss said that she is happy to see people putting money into the property and leveling the building. Mr. Gerrard said that he thought that the previous owner was so busy making good food and pleasing the customers that they did not keep up some of the things. Mayor Jones said that they wished them luck. Jon Bickford asked if the distance from the schools was okay. Mayor Jones said that the Heritage House had a beverage permit. Rebecca Huss said that apparently if you have a food and beverage permit, the 300-foot measurement is not an issue. Rebecca Huss said that the City Secretary has given her the Top Ten Questions about the TABC licensing. Mayor Jones said that as long as they are over 50% food it is a different set of rules.

Rebecca Huss moved to schedule a public hearing for an Alcohol Beverage License Application for Cowpokes located at 22016 Eva Street "A", Montgomery, Texas (previously the Heritage House) as submitted by Brave Spear LLC owner David Gerrard to be held on October 25, 2016 at 6:00 p.m. at City Hall. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

5. Consideration and possible action regarding approval of the Montgomery Economic Development District 2016-2017 FY Operating Budget.

Mr. Yates advised that the agenda should state the Montgomery EDC. Mr. Yates said that the MEDC Board has approved the Budget, which is now being presented to City Council for their approval. Mr. Yates reviewed the budget with City Council.

Mr. Yates said that the staffing line item is meant to be \$35,000, but it will be determined by a separate committee, formed by the MEDC, over the next two months and then they will bring their findings back to City Council for approval.

Mr. Yates said that \$10,000 has been set aside for an internship program with either high school or early college students, to be hired by local businesses. Mr. Yates said that the details for this program will be worked out later.

Mayor Jones said that that big line item in the budget is for infrastructure improvements. Mayor Jones said that they have a lot of plans for MEDC to participate, such as, the grant project for Pizza Shack and McCoy's line upsizing project. Rebecca Huss said that she thought it was good that MEDC is spending their money on those projects, because it really will bring in jobs and revenue to the City.

Mayor Jones said that this budget is not much different than City Council has seen in the past. The MEDC is still participating in the festivals and blight removal, which they have accomplished a lot over the last year, removing dilapidated houses and cleaning property.

Jon Bickford asked when they set the City budget, when did they assume the tax revenue from Kroger would start. Mr. Yates said that they set it for March. Jon Bickford said that he wanted to be mindful of the date and when the taxes would be collected. Jon Bickford said that he did not want to overcommit and under deliver. Mayor Jones said that the plan, per the budget, is to spend down the balance, but historically they do not end up spending all of the projects that they plan, and they end up carrying over funds. Mayor Jones said that if everything happens, they will draw down some funds.

Jon Bickford confirmed that they are going to maintain their position held by Shannan Reid. Mr. Yates said that was correct, and it was listed under the Montgomery Area Chamber of Commerce office at \$37,000. Mayor Jones said that as Mr. Yates had mentioned, that is being discussed as to whether that relationship will or can continue, so those funds are in there as a place holder for now.

Mr. Yates said that he will check on his notes regarding the timing of the tax revenue for Kroger, because it will matter for the City's General Fund, and he will advise City Council. Mr. Yates said that he had \$20,000 per month net for General Fund, so three months would equal \$60,000. Jon Bickford said that he thought that they started in November, but he might be wrong. Mr. Yates said that he thought that he had set it at either February or March, but he would check. Rebecca Huss said that either way they had been very conservative on the figure, and they had not included McCoy's in the figure, so she did not feel that it would impact on where the City is on their projected revenue.

Jon Bickford said that the City and MEDC really needed to take a look at getting the buildings, at least the Simonton House, painted this year. Jon Bickford said that they might get them done by using volunteers or paid help, but the building has been sitting there primed and not painted for four years. Mr. Yates said that he has \$5,000 in the MEDC Budget for Fernland. Jon Bickford said that \$5,000 would cover the paint, but if they have to pay someone it will not cover the labor, unless you get volunteers. Jon Bickford said that they need action to get that done. Mayor Jones said if someone would come to MEDC with a project, he was sure that they would approve it. Rebecca Huss said that she thought the log homes were still waiting for the resin testing on the interior. Mr. Yates said that they are working with the Fellowship Church that is going to put a preservative on the log cabins. Jon Bickford asked Mr. Yates how they get the Simonton House painted, because he does not want to bring it up again in six months. Mr. Yates said that he would work on it. Mayor Jones said that the City could pay for that project. Jon Bickford said that was a City building.

Jon Bickford moved to approve the Montgomery Economic Development Corporation 2016-2017 FY Operating Budget as presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

6. Consideration and possible action to adopt the following Ordinance:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS AMENDING THE RATES TO BE CHARGED FOR GARBAGE AND TRASH PICKUP SERVICE INSIDE THE CITY OF MONTGOMERY, TEXAS; PROVIDING FOR A PENALTY FOR FAILURE TO PAY ACCOUNTS; PROVIDING CONDITIONS UPON WHICH SERVICE WILL BE RESUMED; REPEALING ALL CONFLICTING

ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING AN EFFECTIVE DATE OF OCTOBER 20, 2016.

Mayor Jones advised that City Council has already approve the increase, this is just the ordinance adopting the increase.

Dave McCorquodale moved to adopt the ordinance as presented. Jon Bickford seconded the motion, the motion carried unanimously. (4-0)

7. Consideration and possible action to adopt the following Ordinance:

AN ORDINANCE BY THE CITY COUNCIL OF MONTGOMERY, TEXAS, REGARDING AMENDING CHAPTER 78, "SUBDIVISIONS," OF THE CITY CODE OF ORDINANCES BY ADDING ARTICLE VII, ENTITLED "VEGETATION," CHAPTER 170, "TREE PRESERVATION AND REPLACEMENT," REGARDING THE REGULATION OF TREE REPLACEMENT AND REMOVING; PROVIDING DEFINITIONS; PROVIDING REGULATIONS FOR TREE PRESERVATION AND PROTECTION; CREATION OF A CITY TREE FUND; CREATING AN ACCEPTABLE CITY TREE LIST; PROVIDING FEE SCHEDULE FOR TREES AND IMPLEMENTATION; PROVIDING FOR CRIMINAL PENALTIES AND CIVIL ENFORCEMENT; PROVIDING REPEALING AND SEVERABILITY CLAUSES; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION.

Mr. Yates advised that this is the tree preservation ordinance that was discussed 2-3 months ago. Mr. Yates said that there were slight changes to the ordinance based on review with the City Attorney. Mr. Yates presented an overview of the tree ordinance and general description.

Dave McCorquodale stated that in order to remove a tree larger than 10 inches, a permit would be required, but asked to confirm that a tree smaller than 10 inches would not require a permit. Mr. Yates said that was correct. Dave McCorquodale said that as that relates to canopy, does the developer have to save 20 percent of the canopy, as it relates to trees larger than 10 inches or is there a cumulative over the site, which could have a bunch of six inch trees that make up the canopy. Mr. Yates said that the canopy is the cumulative total. Dave

McCorquodale confirmed that the protective trees, and the ones that are smaller, the smaller ones would still count toward the 20 percent of the canopy area that they would be able to remove without having to replace them. Mr. Yates said that was correct. Mayor Jones said if a resident wants to cut a tree in their back yard, it would not affect them. Mr. Yates said that it does not affect an existing subdivided lot.

Dave McCorquodale asked since the list is pretty short regarding unincorporated undeveloped land owners, and asked if it would be prudent for the City to notify them about this ordinance. Mr. Yates said that he sent Chris Cheatham, Phillip LeFevre and Steve Bowen a copy of the draft ordinance. Mr. Yates said that he had included that email in the last agenda pack. Mr. Yates said that Phillip LeFevre was okay with the ordinance, there was no comment from Steve Bowen, but Chris Cheatham was concerned with the ordinance but did not offer comments.

Rebecca Huss said that Phillip LeFevre will not really be affected by the ordinance because of his development, but what is important is to remember what happened when they negotiated with Milestone and then all the trees got cut down. Rebecca Huss said that during the negotiation process, while the City has something that they want, that is the time for the City to have the ability to impact land that is not protected by this particular ordinance and use our leverage early on. Rebecca Huss said that there is a vast amount of property that is not impacted through development agreements, such as on the south side of the City, where there is all that pasture land with a few trees around the edges. Mr. Yates said that what he needs to work on is a landscaping ordinance, where there is not a coverage issue but you still want some trees on the property. Rebecca Huss said that it might be a checklist where the developer sees what the City's priorities are and they can make suggestions.

Mayor Jones said that the City has been talking about a tree ordinance for about 12 years, so if this one is satisfactory, and also noted that ordinances are made to be amended if they have a need to do so.

Jon Bickford noted that Section 78-175, #9, "this man not think so" needs to have the wording corrected. Mr. Yates advised that he would make that correction.

Dave McCorquodale moved to approve the ordinance, with the correction. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

8. Consideration and possible action regarding a Drainage Encroachment Agreement by and between Bentley Builder, LLC and the City of Montgomery regarding Lot 1 Block 2 of Waterstone on Lake Conroe, Section 2, Montgomery, Montgomery County, Texas.

Mr. Yates presented the information, advising that the request is from the builder who is in the process of selling the home. Mr. Yates advised that the home was built approximately six feet inside the drainage easement that lies on the lot. Mr. Yates said that the drainage easement is not in use now, due to the after-design changes in the drainage of the area where drainage now flows into an underground storm sewer. Mr. Yates said that Mr. Fleming has reviewed the issue and agrees that the area is no longer designed or designated to accept any drainage runoff. Rebecca Huss confirmed that they were not giving up the easement, they were just allowing them to encroach on the easement. Mr. Yates said that was correct.

Rebecca Huss asked if the question was answered as to how this occurred in the first place. Mr. Yates said that he believed that it happened because he and the Building Inspector did not check the plot plan well enough. Mr. Yates said that every building permit has a site plan on it, and he overlooked the encroachment. Dave McCorquodale said that if he had to guess, the easement probably was not shown on the plot plan, which is not to say that it was overlooked by the three checks, in the system, by the City Administrator, City Engineer or Building Inspector.

Dave McCorquodale asked Mr. Fleming if he looked at the site plan. Mr. Fleming said that he did, and said that it is clearly not functioning as a drainage easement as this time. Mr. Fleming said that in his opinion the easement was probably carried over on the Section Two plat because it was already there when they designed Section One. Dave McCorquodale asked Mr. Fleming if he was confident that the water that would have gone over the easement is now satisfactorily going somewhere else. Mr. Fleming said that it is going in the newly paved road and into some inlets. Jon Bickford asked if there were any underground utilities in this easement, which by the City allowing them to encroach would prevent the City from being able to get to them. Mr. Fleming said that by plat, this was dedicated solely as a

drainage easement. Mr. Yates said that there were no water or sewer or other utilities under that property.

Rebecca Huss asked what would happen if someone were to build a house on a drainage easement, and would that be the responsibility of the builder. Mr. Yates said that legally the ultimate responsibility is the builder.

Mr. Yates advised that the legal and engineering fees related to this agreement total approximately \$250, which if Council chooses to, he would like to have that included in the motion.

Dave McCorquodale moved to grant the encroachment agreement, with the administrative fees of approximately \$250 being paid by the home builder requesting the encroachment agreement. Jon Bickford seconded the motion, the motion carried unanimously. (4-0)

9. Consideration and possible action regarding Request for Proposals (RFP) for Grant Writer and Request for Qualifications (RFQ) for Engineer for Community Development Block Grant Program application.

Mr. Yates said that there is a specific process that CDBG requires to hire a grant writer and/or administrator and engineer. Mr. Yates said that City Council already advised that they wanted to apply for the CDBG several months ago.

Mr. Yates said that they also need to appoint a Review Committee, which he is recommending be T.J. Wilkerson, either the Mayor or Mayor Pro-tem, City Secretary and himself. Mr. Yates advised that there is a specific scoring procedure that must be followed. Once that is complete then City Council will make the final decision.

Jon Bickford moved to proceed with the Request for Proposals (RFP) for Grant Writer and Request for Qualifications (RFQ) for Engineer for Community Development Block Grant Program application, and that they ask that the selectees for the Interview Committee if they will accept those positions. T.J. Wilkerson seconded the motion.

Discussion: Rebecca Huss asked if the motion needed to specifically state all four names of the Interview Committee. Mr. Yates said that it probably should, and said that it probably should not be three members of City Council, because that would be a quorum.

Jon Bickford amended his motion to include naming the following people as the Interview Committee: T.J. Wilkerson, Susan Hensley, Jack Yates and Rebecca Huss. T. J. Wilkerson seconded the amended motion, the motion carried unanimously. (4-0)

10. Consideration and possible action regarding approval of Montgomery EDC funding of a paving project north of the Montgomery Community Center along Clepper Street.

Mr. Fleming presented the information to City Council, stating that the area that they are looking at for parking was along the stone wall along Clepper Street. Mr. Fleming said that he was recommending a crushed limestone in that area because of an aging waterline that is located there and at some point they might need to perform maintenance on, and there is also several nice trees just inside that stone wall. Mr. Fleming said he would hate to jeopardize the trees by paving to far under their dripline with asphalt. Mr. Fleming said that the quote for the limestone, graded out so that the transition from the paving to the grass was easier to maintain, along with placement of some wheel stops to prevent vehicles from bumping into the stone wall was estimated at \$24,632.

Jon Bickford asked if they have checked on parking a 4-door extended cab pickup, and how far it would stick out into the street. Mr. Fleming said that he was surprised at who was able to park in that area. Mr. Fleming said that they tend to park head into the parking spot, which he would like to discourage, and have them park more at an angle. Jon Bickford agreed and asked if they could do that. Mr. Fleming said that he would recommend having the contractor align the wheel stops to encourage angled parking.

Dave McCorquodale asked Mr. Fleming if he felt that using any type of crushed aggregate, at least in the near term, and whether he worried about the sediments and silts in terms of the flow of the ditch, and whether there should be temporary bamboo matting while the materials compact, so the materials do not end up in the ditch. Mr. Fleming said that the flow actually runs the other way back toward FM 149. Mr. Fleming said that during construction there

will probably be a straw bale or two there to make sure that does not happen. Once the material settles, Mr. Fleming said he did not think there would be an issue. However, they did feel that they would need some maintenance, so the contractor has included one year of maintenance and upkeep on the area, and to rake it occasionally.

Mr. Fleming said that the MEDC voted unanimously in favor of this and to authorize the City to work with this contractor or another for an amount not to exceed \$25,000.

Jon Bickford said that once they establish this area for parking, people are going to park there, so does the City run any risk of that pipe getting crushed because we are parking regularly. Mr. Fleming said that he did not think so, because they are not encouraging large trucks. He was concerned with the large dumpster that they had for the Wine Festival. Mayor Jones said that they have been doing that for years.

Mayor Jones said that the parking has been in the MEDC budget for years. Mayor Jones said that there is also another source of funding that is available for this, which is the agreement that Mr. Barnes agreed to provide parking on the north side of the Community Center in lieu of parking places at the amount of \$10,000. Mr. Yates said that Mr. Barnes has until December 31 to pay the balance. Mayor Jones said that it won't cost MEDC as much with those funds.

Rebecca Huss asked about Clepper Street because there is obviously some need for adjustments in the area, and asked if future adjustments would require this material to be ripped up or encroached upon. Mr. Fleming said that also played into his recommendation to steer away from asphalt or concrete paving. Mr. Fleming said that the current elevation of the paving on Clepper is a good deal higher than the base of the stone wall, so any future improvements to Clepper directly impacts the area. Jon Bickford said if they have to dig up the pipe, they will have to take up all the materials too.

Rebecca Huss advised that the owner of Jim's Hardware bought the small residential property next to the store, and to her, what would make the most sense would be for him to replat that as one property so he would not have to do the offset for a piece of the property. Rebecca Huss said that she thought they were thinking of having a different route for their trucks, so

the owner might need to be encouraged to do something to Clepper if he will have a lot of heavy truck traffic. Rebecca Huss said it would be nice to do the projects together. Mr. Fleming said that he would be happy to look into that, along with Mr. Yates. Mr. Fleming said that they can certainly find out what the timeline is for doing something in that area. Mr. Fleming said that they also needed to keep in mind that Clepper is a City road, and while the owner might be inclined to participate with further improvements, ultimately, it is still a City road. Rebecca Huss said that there is a lot of potential value that the City can add in exchange for doing this as a big combo project. Mayor Jones said it was something worth looking into, plus the property would have to be rezoned. Mr. Fleming said that he was not aware that the owner had acquired that piece of property. Mr. Fleming said that they would certainly look into the matter.

Mayor Jones said that they could still move forward with this project, and have conversations with owner. Rebecca Huss said that she would be comfortable if they knew what the changes were going to be to that property, and that the current plan would accommodate those plans. Mayor Jones said that was a good point to make.

Rebecca Huss moved to approve the project funding, as planned by the MEDC and the City Engineer, for parking on the north side of the Community Center along Clepper Street. Dave McCorquodale seconded the motion.

Jon Bickford stepped out of the meeting at 7:41 p.m. prior to the vote.

The motion carried unanimously. (3-0)

11. Consideration and possible action regarding requested variances for the proposed Villas of Mia Lago, Section Two development as follows:
- a) Variance from required minimum lot width of 75 feet; and
 - b) Variance from required minimum lot area of 9,000 square feet; and
 - c) Variance from required minimum side yard setback of 10 feet to 5 feet.

Jon Bickford came back to the meeting at 7:44 p.m.

Mr. Fleming advised that he offered no objections to the requested variances, as they are a continuation of those previously approved for the adjoining Villas of Mia Lago, Section One development. Mr. Fleming advised that this development is planned to have 42-lots, single family residential.

Mr. Fleming advised that last night the Planning and Zoning Commission approved all three of the variance requests unanimously, and passed them on to City Council.

Mayor Jones asked what Section One of the development looked like in comparison to these plans. Mr. Fleming said that each of these variances is in keeping with what was previously approved by the City for Section One, which would allow the developer to maintain the same look and aesthetics. Mr. Fleming said that from an engineering stand point, he offers no objections to the requests. Mr. Fleming said that regarding the lot area request, it is worth noting that they do have adequate compensating green space allotted within the development and is intended to be part of Restricted Reserve A. Mr. Fleming said that it is also worth noting that they had discussed the future extension of Lone Star Bend, which both the City and the County have plans to extend that road through to Bois d' Arc. Mr. Fleming said that as part of this plat, the developer plans to dedicate that necessary right-of-way to facilitate that extension of the road.

Dave McCorquodale asked about the turnaround that is shown on the plat that encroaches into the lots located by it, and asked how that worked as they are building out that road. Mr. Fleming advised is you drive through the area, that asphalt turnaround is there right now as per the Code, because it is required for a dead end road. Mr. Fleming said that as Section Two is built out the turnaround will be removed, the asphalt taken away, and the road extended.

Mayor Jones asked if the Planning and Zoning Commission was unanimous in their decision to approve the variances. Mr. Fleming said that the decision was unanimous.

Rebecca Huss said that in her thinking, Reserve A, is not a lot to provide compensating greenspace, basically it is across a large roadway that is projected to have a fair amount of traffic. Rebecca Huss said that the whole point of Lone Star Bend is to get traffic from

Walden Road to this location. Rebecca Huss said if she is going to send her children to go and play in Reserve A, they are going to get squashed. Rebecca Huss said that she did not think that it did much aesthetically or functionally to provide compensating green space. Rebecca Huss asked how many more sections will be in the development. Mr. Fleming said that to his knowledge this would be the extent of the Villas of Mia Lago. Mr. Fleming advised that Mr. Liberatore, the developer, was present. Mr. Liberatore advised that Section Two would be the final section of the Villas of Mia Lago, because they are currently out of land. Jon Bickford asked if they got more land would they continue the development. Mr. Liberatore stated that they have 80-acres that they are trying to get the City of Conroe to release out of their ETJ, in the back of the Estates of Mia Lago. Jon Bickford asked if the idea was to have more villages. Mr. Liberatore said no this would be the end of the villages.

Mr. Liberatore said that aesthetically, in Section Two versus Section One, they increased their lot size. They originally had 45 lots platted and they reduced that amount to 42 lots, increasing the lot size, which would allow 3-car garages. Jon Bickford asked if the garages would be facing the street. Mr. Liberatore said that unfortunately they would face the street.

Dave McCorquodale asked if Mr. Liberatore knew if the price points for the homes in Section Two were comparable to the homes in Section One. Mr. Liberatore said that they were hoping that Section Two homes would be a little bit higher in price. Mr. Liberatore said that he has all the lots in Section Two sold to a builder group, who is talking about an upgraded style of home. Jon Bickford asked if it made any sense of seeing examples of the homes before they approve them. Mr. Liberatore advised that their homes are all masonry, no siding allowed with architectural shingles. Mr. Fleming said that everything on the plat is Code compliant.

Mr. Liberatore advised that his attorney, Steve Weisinger, will be asking the City of Conroe to release the property in the ETJ. Rebecca Huss said that she is more comfortable with the plan because it is the same as Section One. Jon Bickford asked about the size of the homes. Mr. Liberatore advised that the single and two story homes would range from 1,600 – 2,400 square feet. Jon Bickford said that his concern was cramming this many homes in a small area.

Dave McCorquodale asked if they needed to address each variance with a separate motion. Mayor Jones also asked if they needed to set a minimum lot width. Dave McCorquodale asked if they just approved the plat, would that be set in stone. Mr. Yates said that you are instructing the City Engineer to review the final plat based on these variances, and the variances will be on the final plat. Mr. Yates said that the final plat is approved and amended by City Council.

Jon Bickford stated that lots 4 and 5 on Minera Lane are only 42 feet wide. Mr. Fleming said that those lots are existing lots located in Section One.

Dave McCorquodale moved to approve to approve the Preliminary Plat as recommended by the Planning and Zoning Commission to include the following variances: a) the variance from required minimum lot width of 75 feet; and b) the variance from required minimum lot area of 9,000 square feet; and c) the variance from required minimum side yard setback of 10 feet to 5 feet, because he trusts that he will see the final plat that will look like this, with the variances. Dave McCorquodale said that if they came back with 30 more lots on the plat, he would probably raise some questions. Rebecca Huss seconded the motion.

Discussion: Mr. Yates advised that the Planning and Zoning Commission only approved the variances, because they had already approved the Preliminary Plat. Dave McCorquodale said to strike "Preliminary Plat" from his motion and replace with "variances." The City Secretary asked to confirm that they are approving the variances as they are listed on the agenda. Dave McCorquodale said that was correct.

Mr. Yates said that the variances are shown on the draft of the Final Plat. Jon Bickford asked if they could state that they are approving the variances as shown on the draft of the Final Plat, because he did not want the lots to get smaller. Mr. Yates said that would not happen, because Council's instructions are on how to prepare the Final Plat, which City Council will review. Mayor Jones said that they do not have to approve the Final Plat if they do not like what they see.

The City Secretary confirmed that the motion was to approve the variances as stated on the Agenda. City Council concurred that was correct.

The motion carried unanimously. (4-0)

12. Consideration and possible action regarding approval of the Final Plat submission and accompanying construction plans for SH-105 Retail Center.

Mr. Fleming advised that this was a small, 2-acre commercial development on the northeast corner of SH 105 and Lone Star Parkway. Mr. Fleming said that the building will face SH 105, and it is a single commercial pad 18,000 square feet, with multiple tenants. Mr. Fleming advised that the construction plans are on file in the City Secretary's office for review.

Mr. Fleming said that he offered no objections to the plat submission, although prior to sending them to mylars, there are a few minor typos that need to be corrected.

Jon Bickford asked if Mr. Fleming had any idea what the plan was for the property. Mr. Fleming said that the anchor tenant is intended to be an emergency clinic.

Dave McCorquodale asked if Mr. Fleming was comfortable with the ingress and egress. Mr. Fleming said that have their permit from TxDOT and they are compliant with the City's Code. Mayor Jones asked how far back their driveway was from SH 105. Mr. Fleming said that it was far enough back that TxDOT has approved it, right at their property line.

Mayor Jones asked about their water and sewer connections. Mr. Fleming said that both water and sewer were located on the corner of Lone Star Parkway and SH 105, and they are planning to tie into the City's extension along SH 105. Mr. Fleming said that they will mobilize quickly and have a contractor on site mid-November.

Rebecca Huss asked whether this was also subject to Corridor-Enhancement. Mayor Jones said that they were subject to Corridor-Enhancement regulations.

Jon Bickford asked if they had in place, what they need for Impact Fees. Mr. Fleming said that they did not have that yet. Rebecca Huss said that they did have the Pro-Rata Share Ordinance in place. Mr. Fleming said that was a grant funded extension along there, and to

this point there has been no discussion regarding the developer paying a Pro-Rata Share. Rebecca Huss said that they had discussed this matter, because the City is bearing the burden of the risk because Pizza Shack refused to indemnify the City on job creation. Mr. Fleming said, with all due respect, he believed that was incorrect. Mr. Fleming said that Pizza Shack is obligated to meet their job criteria. Rebecca Huss said that she thought Mr. Fleming was wrong because Pizza Shack refused to indemnify and the City had to accept that. Mayor Jones said that it was not a refusal to indemnify, they plan on meeting the criteria. Rebecca Huss said that she understood what they were saying, but the City was taking the risk. Mr. Yates said that the MEDC is providing the difference between the grant and the total cost, because Pizza Shack was not able to qualify. Rebecca Huss said that was because they were not creating enough of the right kind of jobs.

Mr. Fleming said that there has not been any discussion regarding Pro-Rata buy-in, but there have been extensive discussions with the developer about the proposed timing of the extension. Mr. Fleming said that they are very cognizant of the fact that the City's work is directly tied to Pizza Shack showing measurable progress, and we feel that they are about there. Mr. Fleming said that they are prepared to advertise for bids on that project mid-October. If for any reason they are not comfortable doing so, they will have to have a discussion with the developer, which they have been apprised of the possible need for them to go ahead and extend the utilities across their tract for the following reasons: 1) so they can receive utility services, and 2) because they have to pave over the City's utilities once they are in the ground.

Mayor Jones said if Pizza Shack had to get water and sewer on their own, they would just have to bore in two different directions. Mr. Fleming said that per the City's Code they would have to extend the full length of their property if they did it on their own. Mr. Fleming said that then the City would need to upsize both water and sewer lines at that location. Mayor Jones said that he liked that deal better. Jon Bickford said that he felt they needed to alert the developer now and would they change their plan. Mr. Fleming said that they have had the discussion with Pizza Shack about the timing of the grant funded extension, and if they have to go back to them and state that they are going to have to extend the utilities across their property, they are prepared to have that discussion. Rebecca Huss said financially the City would be better off delaying Pizza Shack, extending their own utilities and paying for it

themselves. Mr. Fleming said that regardless of when the grant funding moves forward, MEDC has to make their contribution in advance, per the terms of the Department of Agriculture. Mr. Fleming said if they significantly alter the scope of work, such as taking off 400 feet, the City will have to go back to the Department of Agriculture to advise them that they have changes to the plans.

After discussion, Jon Bickford moved to accept the Final Plat and construction plans for the SH 105 Retail Center, as presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

EXECUTIVE SESSION:

The City Council reserves the right to discuss any of the items listed specifically under this heading or f or any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real property),551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas. (No current items at this time.)

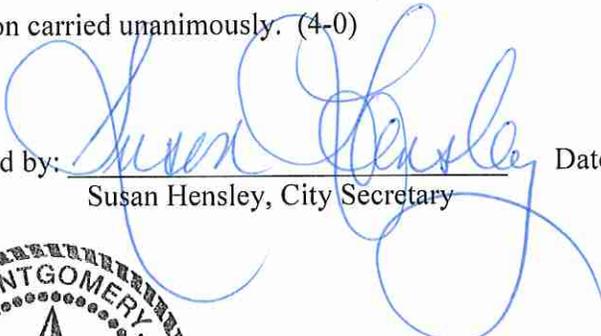
COUNCIL INQUIRY:

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

ADJOURN

Jon Bickford moved to adjourn the meeting at 8:12 p.m. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

Submitted by:


Susan Hensley, City Secretary

Date Approved:

10/11/16




Mayor Kirk Jones