

MINUTES OF REGULAR MEETING

August 13, 2019

MONTGOMERY CITY COUNCIL

CALL TO ORDER

Mayor Sara Countryman declared a quorum was present and called the meeting to order at 6:03 p.m.

Present: Sara Countryman Mayor
Jon Bickford City Council Place # 1
John Champagne, Jr. City Council Place # 2
T.J. Wilkerson City Council Place # 3
Rebecca Huss City Council Place # 4
Tom Cronin City Council Place # 5

Absent:

Also Present: Richard Tramm City Administrator
Larry Foerster City Attorney
Susan Hensley City Secretary
Jack Yates Consulting Administrator

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 citizen comments.

CONSENT AGENDA:

1. Matters related to the approval of minutes of the Regular Meeting held on July 23, 2019.
2. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and Promocon USA, LLC regarding the West Lakes Development (Dev. No. 1904).
3. Consideration and possible action regarding authorizing Jones|Carter to prepare a Utility and Economic Feasibility Study for Promocon USA, LLC regarding the West Lakes Development (Dev. No. 1904).

Rebecca Huss moved to approve the Consent Agenda as presented. Tom Cronin seconded the motion, the motion carried unanimously. (5-0)

CONSIDERATION AND POSSIBLE ACTION:

4. Receive presentation on the Annual Service and Assessment Plan for the City of Montgomery Public Improvement District No. 1.

Mrs. Mallory Craig, Attorney with Coats|Rose, advised the City of Montgomery Public Improvement District No. 1 (PID No. 1) is a commercial development area and the first year they levied an assessment on the parcels within PID No. 1 was 2017. Mrs. Craig advised the Government Code requires them to update this information annually. Mrs. Craig advised there have been no new parcels since 2017, but they expect to have some new parcels next year. Mrs. Craig said the current amount of acreage is 6 acres, with a total of 40 acres in the PID. Mrs. Craig advised the assessment for this year, which is the same as two years ago, is \$35,000. Mrs. Craig said the assessment ends up being a pass-through, with the City collecting the funds and then reimburses the developer per the reimbursement agreement and the service and assessment plan. Mrs. Craig advised around March or April she would present the City Administrator a reimbursement form so the City can reimburse the developer.

Rebecca Huss stated the 2018 assessment is the same as the 2017 assessment. Mrs. Craig advised the 2019 assessment would be the same as the 2018 and 2017 assessments.

5. Consideration and possible action regarding adoption of the following Ordinance:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY ACCEPTING AND APPROVING AN ANNUAL UPDATE TO THE SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR CITY OF MONTGOMERY PUBLIC IMPROVEMENT DISTRICT NO. 1; PROVIDING FOR PAYMENT OF THE ANNUAL INSTALLMENT OF THE ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; AND PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

Mrs. Craig advised the full ordinance with the service and assessment plan which has been updated for the current year. Mrs. Craig said she did find a couple of references to 2018 that should be 2019, which has been updated in the information that was presented to the City Secretary. Mrs. Craig said this is the same service and assessment plan that was adopted in 2015 when they created the PID, they just update it.

John Champagne asked if this ordinance was approved by the City Attorney. Mrs. Craig said she had submitted the information to the City Administrator and City Attorney and said Mr. Jack Yates also reviewed the information. Mr. Foerster said he was fine with the information.

Jon Bickford moved to adopt the Ordinance for PID No. 1 as presented with the corrections to change "2018" references to "2019" in the body of the Ordinance. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

Mr. Tramm asked to move forward to item 11 until Ms. Kimberly Roe from the Montgomery Tax Office arrives. City Council concurred.

6. Consideration and possible action to call a Public Hearing regarding the City of Montgomery 2019-2020 Proposed Operating Budget to be held on September 10, 2019, at 6 p.m. at City Hall.

Rebecca Huss moved to set September 10, 2019, as the Public Hearing date for the 2019-2020 Proposed Operating Budget at 6:00 p.m. at City Hall at 101 Old Plantersville Road, Montgomery. Tom Cronin seconded the motion, the motion carried unanimously. (5-0)

7. Consider and Accept the 2019 Effective and Rollback Rates.

Ms. Kimberly Roe, Chief Deputy for the Tax Assessor/Collector Tammy McRae, could not be here tonight. Ms. Roe advised the City's 2019 total taxable value is \$256,598,213, and new value of \$15,546,211, which brings the total value to \$272,144,424. Ms. Roe stated the City's effective rate is \$.3944 and the rollback rate is \$.4406, and the debt amount they have is \$674,073, with unsecured funds of \$160,000 to reduce that down to \$514,073, which is the amount needed in property taxes to cover the City's debt. Ms. Roe said the City's debt rate is \$.1888. Ms. Roe said she did a comparison for the City's proposed rate of \$.4000, which would bring in a levy of \$1,026,393, which is a 1.12% increase from last year.

Rebecca Huss said these numbers are different from the spreadsheet they have in their books. Mr. Tramm said yes, they had to go back and forth this afternoon to update the numbers to make them fully in line with the law. Mr. Tramm said City Council has received a replacement sheet for that information and advised that Ms. Roe is giving City Council the correct information. Mr. Tramm said they also have received a copy of the Notice of Public Hearings on the Tax Increase that will be published.

Mr. Tramm advised the information has changed from the information that went out in the Agenda Books on Friday. Jon Bickford asked if this information is correct. Mr. Tramm said the information that has been provided tonight is correct. Jon Bickford asked if City Council will have an opportunity to adjust this rate. Ms. Roe advised they could not change the calculated debt rate, but you can change your total tax rate. Jon Bickford said he was just wondering if they have an opportunity to lower the average taxable value taxes by \$9.20 and keep it the same as it was last year. Mr. Tramm said that was certainly a prerogative of City Council.

Mr. Foerster asked Ms. Roe, as a point of information for City Council, the new cap of 3.5% that goes into effect January 1, 2020, he asked how that is going to affect the City's tax revenue after the first of the year. Ms. Roe said she could not give a specific answer, but the rollback is currently at 8%, so you can go up to 8%, which is what the \$.4066 is and next year it will be 3.5%, so that number would be less. Mr. Foerster advised he has been told by some is that

with the new 3.5% cap, it could mean some cities will be losing revenue next year. Ms. Roe said she has heard that. Mr. Foerster said he just wanted to mention that information to City Council, so they are aware that with the new rate you do the effective rate and roll everything out, they may be looking at less tax revenue than you had this year. Jon Bickford asked how much of this does the City get to keep. Rebecca Huss said the City gets to keep all our tax. Rebecca Huss said the City is obviously more dependent on the sales tax. John Champagne said the City would have that much impact from the change. Rebecca Huss said the ad valorem tax has never been the primary driver to how well the City is doing, but ever since she has been on City Council they have been on a strong economic environment, so if that changes the stability of the property tax will be more important to us. Jon Bickford said that would have to be a pretty significant change. Rebecca Huss said that was correct and said property tax is a small portion of the City's budget now, but if they are in a sales tax dilemma it is nice to have that.

Rebecca Huss stated they can change their tax rate in the process, so once they start looking at the numbers, in terms of what the expectations are in the departments and the needs of the City, they don't need to decide that today. Ms. Roe said what your proposed tax rate is, is what they are going to publish. Mayor Countryman asked when they need to decide this by. Jon Bickford noted that Ms. Roe is stating that once they publish the tax rate, they can't change it. Ms. Roe said they need a proposed tax rate today. Ms. Roe said City Council could lower the Maintenance and Operations (M&O) rate. Mr. Tramm said they could still decide that number later on whether or not to lower the rate for Maintenance and Operations. Rebecca Huss said she thought it was better to see what the City's needs are. Ms. Roe advised they need to decide the split of the M&O and said the debt rate is \$.1888, which would mean the M&O rate would be \$.2112 to have the \$.4000 tax rate.

Ms. Roe advised for the record the effective rate is \$.3944 and the rollback rate is \$.4406. Rebecca Huss advised that was a lot lower than the original assumption was \$.4800 in the Friday paperwork, so they lost a lot.

Jon Bickford moved to accept the 2019 effective tax as \$.3944 and rollback rate as \$.4406. John Champagne seconded the motion, the motion carried unanimously. (5-0)

8. Consider and discuss the Tax Rates needed to Fund the 2019-2020 Budget for Maintenance and Operations and Debt Service.

Ms. Roe advised if the City did the proposed rate of \$.4000 the M&O rate would be .2112, and the INS (debt service) rate would be \$.1888.

Rebecca Huss asked how the INS rate was calculated and how is it different than the figures from Friday. Ms. Roe advised the INS rate is calculated off the property tax that is needed to pay the debt. Ms. Roe said the debt amount they had was \$674,000.73 and there is \$160,000 of unencumbered funds that roll into that debt that will bring it down to \$514,000.73. Rebecca Huss said if they wanted to be more conservative, they could up the amount to \$.1900. Ms. Roe said the City can't change their calculated debt rate, based on the statutes. Jon Bickford said the M&O rate could change and said he wants the \$9.20 going back to the citizens, which is a total of \$5,000 - \$6,000. Rebecca Huss said they are stuck with the \$.1888 and if they want to stick with the \$.4000 tonight, they could do that, but later in the budget discussion, if they are able to, they can lower the M&O part later without running afoul of any legislation or any law. Ms. Roe said that was correct. Rebecca Huss said they need to go through the budget workshop before they fix the number lower.

9. Consider and Vote on a Proposed Tax Rate for 2019.

Jon Bickford moved to accept the proposed tax rate of \$.4000 for 2019. John Champagne seconded the motion.

Discussion: Jon Bickford said he wanted to make sure they have on record in the minutes that City Council will go back and address the increase when they get into budgeting and do what they have to do to get those dollars back to the citizens of the City.

The motion carried unanimously. (5-0)

Ms. Roe advised she would send the legal notice tomorrow to Mr. Tramm for his approval.

John Champagne asked how long Ms. Roe has been doing this job. Ms. Roe advised she has been with the Tax Office since 2008 and Chief Deputy since 2015 with the Appraisal Office. John Champagne thanked Ms. Roe. Rebecca Huss also thanked Ms. Roe for coming out and said she felt like the City was in good hands.

10. If the Tax Rate needed to fund the budget exceeds the lower of the 2019 Effective Rate or Rollback Tax Rate Presented, Consider and Approve two (2) Public Hearing dates.

Mr. Tramm advised the City has placed on the budget preparation calendar August 27, 2019, and September 3, 2019, as the two public hearing dates on the effective tax rates. Mr. Tramm advised they will have had two Budget Workshops before those public hearing dates.

Jon Bickford moved to approve two Public Hearing dates, August 27, 2019, and September 3, 2019, at 6:00 p.m. at City Hall at 101 Old Plantersville Road, Montgomery. Tom Cronin seconded the motion, the motion carried unanimously. (5-0)

11. Consideration and possible action regarding adoption of the following Ordinance:

AN ORDINANCE BY OF THE CITY OF MONTGOMERY, TEXAS PROHIBITING FISHING IN THE MEMORY PARK MUNICIPAL POND; PROVIDING A CRIMINAL PENALTY OF TO \$200.00 PER OFFENSE; DIRECTING THE POSTING OF “NO FISHING” SIGNS; PROVIDING A REPEALING CLAUSE AND SEVERANCE CLAUSE; REQUIRING COMPLIANCE WITH TEXAS OPEN MEETINGS ACT; AND PROVIDING THE EFFECTIVE DATE UPON ITS PUBLICATION.

Mr. Tramm advised at the last meeting City Council gave he and the City Attorney the task of developing an ordinance, which has been prepared by the City Attorney and noted that it does offer a penalty of up to \$200 per occurrence. Mr. Tramm said the primary goal is to keep people from fishing for the ornamental Koi in the Memory Park pond. Mr. Tramm said they had previously tried enforcing that matter under a “no trespassing” violation, but the Court dismissed those charges and said they needed something more specifically enforceable to prohibit the fishing activity.

Rebecca Huss said her comments would be there are other fish in the pond beside the Koi, stating the Grass Carp are also reasonably valued. Rebecca Huss said the fish are very expensive items when they get as large as they are. Rebecca Huss said she did not know that placing an approximate value in the ordinance attracts attention or makes it more likely that the ordinance is enforced criminally. Rebecca Huss said if someone kills a fish that is worth \$20,000, she would think that it is potentially worth mentioning in the ordinance that this is not a \$.99 cent goldfish. Mr. Tramm said, as to the fish in the pond, he has seen the Koi but has not seen the Carp but knowing the kind of fish in other ponds in the area, he would suspect they are there and they serve a valuable purpose. Jon Bickford said he believed the Grass Carp that are in Lake Conroe are sterile.

Mr. Tramm said the penalty amount could be a specific amount or removed, or if there is an alternate amount it could be added. Rebecca Huss said she was not saying the cash penalty should be removed, but she was wondering if they should value the items being fished and/or stolen and/or killed in order to reinforce the seriousness of the matter. John Champagne asked if it was known what a Carp costs. Rebecca Huss said the high-class show Carp is \$30,000. John Champagne said they do not have fish in the pond worth that amount but said Mr. Randy Burleigh put some fish in the pond. Mr. Burleigh said the size of the Koi in the pond could be purchased for about \$200 and the Grass Carp have a permit from the State of Texas, so they are more valuable, plus the permit cost. Jon Bickford said the State charges you if you hunt too many birds, so the City could do that with the fish, a fine plus so much for fish based on the value of the fish.

Mr. Foerster said he put \$200 as the fine only because that was the term that he heard at the last City Council Meeting and stated they could bump it up to \$500.

John Champagne moved to adopt the ordinance for Memory Park Pond and increased the penalty for breaking the ordinance to \$500.

Mr. Foerster asked if that was not to exceed \$500. John Champagne said he also wanted to know where the fines will be deposited. Mr. Foerster said typically the fine would go into the General Fund, not to the Park. Mr. Tramm said it could be something they track when anyone is cited for that offense. John Champagne said he would like the money to go to the Memory

Park fund. Mr. Tramm said he would discuss the matter with the City Attorney. John Champagne said that was fine, he would not hold up the motion for that item.

Rebecca Huss seconded the motion.

Discussion: John Champagne said his motion was for \$500, not to exceed \$500. Mr. Foerster said that would be a flat \$500 fine. John Champagne said that was correct \$500, but not to exceed \$500. Jon Bickford, if it is a flat \$500 fine it would not exceed \$500. Mr. Foerster said if they say "not to exceed" that could be up to \$500. Mayor Countryman said it could be \$150. Mr. Foerster said the Court could assess something less than \$500 because you are giving the Court discretion. John Champagne said he wants the fine to be \$500. Mr. Foerster said he understands that he wants the fine to be \$500 period. Tom Cronin asked if they want to post the fine on the signs. John Champagne and Jon Bickford said yes.

John Champagne restated his motion for clarification.

John Champagne moved that any breaking of the ordinance for fishing in Memory Park Pond be assessed \$500. Rebecca Huss seconded the restated motion.

Mr. Foerster said the ordinance states there will be signs posted to notify people of the ordinance.

12. Consideration and possible action regarding adoption of the following Ordinance:

AN ORDINANCE GRANTING TO CENTERPOINT ENERGY RESOURCES CORP., DBA CENTERPOINT ENERGY TEXAS GAS OPERATIONS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF MONTGOMERY, TEXAS FOR THE TRANSPORTATION, DELIVERY, SALE AND DISTRIBUTION OF NATURAL GAS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

Rebecca Huss said she thought CenterPoint already operated in the City of Montgomery. Jon Bickford said it is not the entire City and asked if this was for the entire City limits. Mr. Foerster said that was correct.

Jon Bickford moved to adopt the ordinance granting to CenterPoint Energy the right, privilege and Franchise to construct, install, extend, remove, replace, abandon, operate and maintain its facilities within the public rights of ways in the City of Montgomery. John Champagne seconded the motion.

Discussion: Rebecca Huss asked if the previous ordinances only included the north side of the City. Mayor Countryman said that was correct. Jon Bickford said it did not include Buffalo Springs for instance. Mayor Countryman said it was all of Waterstone.

Mr. Foerster said Mr. Burleigh advised him before the City Council Meeting that he was told there might be an agreement between the current gas provider and Mr. LeFevre concerning Buffalo Springs, but he did not know of any agreement that would impact on the City's right to provide service. Jon Bickford said Mr. LeFevre has stood up in more than one City Council Meeting and stated there is no such agreement. Mayor Countryman said LDC has mentioned that information and said it might have been a handshake. Mayor Countryman said they have asked LDC for that paperwork during a meeting with LDC, to support what Mr. Black has claimed, and that paperwork has yet to be seen.

Rebecca Huss said Buffalo Springs, the roads and the rights-of-ways, are owned by the City, so when Mr. LeFevre transmitted those to the City, those do not come encumbered. Mr. Foerster said that was correct. Rebecca Huss said regardless of whatever he has decided, handshake or no, the City did not inherit that.

Mr. Foerster said one other observation, stating that he supports the ordinance and had no problem with it, but he went back and forth with the attorney for CenterPoint because there is no definition of "gross receipts". Mr. Foerster said all the other ordinances he has seen regarding other gas providers for other cities there has been some definition of what is "gross receipts" because that is how you get paid. Mr. Foerster said the City gets paid on a percentage of the "gross receipts" that are flowing through the City. Mr. Foerster said in talking to the

attorney for CenterPoint, she keeps insisting this is standard language and the term “gross receipts” is a customary term used in the industry and they use it for hundreds of other cities and they are not going to insert a definition for “gross receipts” here. Mr. Foerster said they went back and forth on this matter, which was one of the delays in getting this ordinance before City Council. Mr. Foerster said CenterPoint is saying the definition is customary in the industry and it does provide the City is going to have access to records to confirm what those “gross receipts” are. Mr. Foerster said he also requested CenterPoint include some language regarding if there is any damage to any other line running through there, they will be responsible for that because they might be running a line next to the other provider’s line. Mr. Foerster said CenterPoint was quick to say they would add that language, but they were firm on the definition for “gross receipts.” Mr. Foerster said they did not want to add the definition, because then they would have to go back and change all 300 of the other ordinances.

Rebecca Huss said she thought it was fairly straight forward, except for the fact there is a monthly fee and a cubic usage fee, and the question is whether the “gross receipts” include the monthly fee, but realistically what is the City’s franchise fee from CenterPoint and LDC combined yearly. Rebecca Huss said that is never talked about in the budget because it is such an insignificant amount that she could not imagine, even if the entire City is covered by CenterPoint, that it is going to move the needle in terms of budget discussions. Mr. Foerster said he was sure Rebecca Huss was right. Mr. Foerster said he just wanted to make sure that City Council was aware of the information regarding “gross receipts.” Rebecca Huss said the important thing was to get it done and give people a choice between monopolistic behaviors. Mr. Foerster said that was why they presented it tonight.

The motion carried unanimously. (5-0)

13. Report on Boards and Planning and Zoning Commission Appointments by City Administrator.

Mr. Tramm said he wanted to update City Council that later this year the Planning and Zoning Commission would have three of the terms up for appointment, which is being advertised on the City’s web site.

Mr. Tramm said the Board of Adjustment recently had a resignation, so they are advertising for that position on the City's web site. Mr. Tramm said there will also be other terms up for appointment later this year. Mr. Tramm said one of the reasons he wanted to bring this information up was because there have been some comments at a previous City Council meeting about the power of the Board of Adjustment being able to make a decision that is final, which City Council would not be able to overrule that decision.

Mr. Tramm said he has had discussions with the City Attorney and there is a possibility that if City Council has a significant enough concern, City Council could take on the powers of the Board of Adjustment and not have a second Board. Mr. Tramm said he is not looking for answers tonight, but it is something that he would like to get a sense of direction from City Council or at least put it out there for them to consider for the future.

Mr. Foerster said the Local Government Code allows City Council to appoint themselves as the Board of Adjustment. Mr. Foerster said the City of Willis had done that and a number of other cities around the State have appointed the City Council as the Board of Adjustment. Mr. Foerster said some cities do it because they find it difficult to get people that will show up to the meetings, and others feel that if there are so few of those requests made, it would be just as easy to address it in a regular City Council Meeting versus a called Board of Adjustment Meeting for one or two variance requests. John Champagne asked if members of the Board of Adjustment must be citizens in the City. Mr. Foerster said yes, they must be residents of the City.

Rebecca Huss said the thing that brought this to our attention was the Blue Wave issue and the decision of the Board of Adjustment could have resulted in a situation where the City paid for litigation if it ended up that way, which it did not. Rebecca Huss said with the Planning and Zoning Commission they generally provide input that City Council acts on, and the City controls the MEDC Budget. Rebecca Huss said there is less of a surprise if there is something that City Council disagrees, whereas with the Board of Adjustment there is no action. John Champagne said they are more autonomous. Rebecca Huss said the Board of Adjustment is completely autonomous other than changing the members out, which you can't do until after there is already an issue and if the Board decides something they disagree with, the citizens still must pay for it.

John Champagne said anytime they can reduce bureaucracy, it is worth looking at. Rebecca Huss said during the first three years she was on the Board of Adjustment, they never met. Mr. Tramm said the City Council does already have meetings they are already coming here for. Jon Bickford asked whether minutes must be kept and recorded. Mr. Tramm said yes, they have an agenda posted and minutes are taken and recorded. Jon Bickford said that is money they do not need to spend. Mr. Tramm said that is already being done for City Council Meetings. John Champagne said he would argue the Board's perspective is much more limited than City Council, in terms of what is going on in the City, all the moving parts. Mayor Countryman said she agreed. Rebecca Huss said it is different, which is not necessarily a bad thing, but the problem is there is no way for City Council to say they disagree, and they don't like the outcome. John Champagne said that is bad. Jon Bickford said it is true and if the other thing would have gone another way, it could have cost the City a lot of money even though they did not want it to go that way. Rebecca Huss said that was the biggest eye-opener, because every other Board, City Council ultimately could pull back. Jon Bickford asked what they need to do. Mr. Tramm said he will discuss it with the City Attorney and get the proper way to bring it back. Mr. Foerster said they can present the item at the next meeting in the form of an ordinance.

City Council returned to item 6 at this time.

14. Discussion regarding a future election proposition for the May 2020 Election to abolish the Montgomery Economic Development Corporation and transfer its sales tax to the City general fund.

Mr. Tramm advised as the new City Administrator the Montgomery Economic Development Corporation (MEDC) is probably the one element of the City he is least familiar with, with only one meeting since he has been here. Mr. Tramm said the economic development of the City is an important function and said he thought the City Council probably could handle that function, but one question would be, do they want to add those items to the City Council Agenda. Mr. Tramm said there are certain agreements in place with the MEDC and said the City Attorney would probably be in a better position to answer some of those questions.

Tom Cronin said he had discussed the information with Mr. Foerster and asked him to talk about it. Mr. Foerster said this item came up through an inquiry that Tom Cronin had with a local citizen, so he was asked to get some feedback. Mr. Foerster prepared a memo that was included in the packet regarding the MEDC. Mr. Foerster said the creation of the Type A and Type B Corporations goes back many years and was a vehicle for cities to collect additional sales tax because they were capped at one cent, but if they had other corporations or vehicles by which they could legally collect additional sales tax, they would do that. Mr. Foerster said some cities, for example, Willis, would have a general fund sales tax and then in addition to that a sales tax up to a half-cent for an EDC or what they call a Type A City and another half-cent for a Type B City. Mr. Foerster said some cities have structured it a little differently where they also have the right to assess a sales tax for specifically street maintenance and repair. Mr. Foerster said the City of Panorama Village is a good example of that.

Mr. Foerster said prior to 2015, the legislature flatly said those were the only ways of generating additional sales tax. Mr. Foerster said up to the two-cent sales tax cap, \$6.25 cents will always go to the State of Texas and up to another two percent could go to other governing entities, and within a City, it could be up to two cents. Mr. Foerster said an Emergency Service District, like ESD #1, can capture two cent sales tax. Mr. Foerster said in the case of the City of Montgomery, many years ago they created the Montgomery EDC, which is a Type B entity, that by law has certain authority to use the sales tax that it collects for purposes relating to jobs, parks and other community amenities, etc., which he would have to read the charter to know exactly what that is. Mr. Foerster said the City has been operating for many years with MEDC and a City sales tax, which they could continue to do, which is a decision that City Council makes based on how they see the use of sales tax is used. Mr. Foerster said there are some cities right now, to his knowledge, not a lot, that has seen the value in moving that sales tax revenue into the general fund. Mr. Foerster said the only way a city can do that is through a vote of the people. Mr. Foerster said they could terminate the MEDC, but that won't get the sales tax over to the City. John Champagne asked where the money would go. Mr. Foerster said if they just terminated MEDC they would lose the sales tax revenue, so what some cities such as Willis have done is, they had a proposition on the ballot. Mr. Foerster said Willis had a street maintenance tax with a Type A Economic Development Corporation tax, which was less than a half-cent (\$0.375) and a similar (\$0.375) for their Type B Community Development Corporation. Mr. Foerster said they chose to keep the Type B Community Development

Corporation, which is the equivalent of what the City's EDC is, but they chose by proposition on the May 2019 Election to the voters in Willis to terminate the street sales tax and the Type A Economic Development Corporation tax and transfer that by proposition, by the adoption of a new local sales and use tax in the City that bumped the City sales tax from one cent to \$1.625 cents. Mr. Foerster said they kept the full two cents and the voters approved that. Mr. Foerster said once the voters have approved the action, they notify the State Comptrollers Office of the change and also by resolution of the EDC terminated the EDC, and their City Council also had a similar resolution they passed. Mr. Foerster said that was all done in a matter of 30 days.

Mr. Foerster said there are other cities that have done it, and in fact, he got the wording for the Willis action from another city in Dallas, and TML gave him some direction, which is what Willis did. Mr. Foerster said the City has time to consider whether this is something that they want to do, and they might also want to talk to MEDC about this to discuss if further. Mr. Foerster said he would suggest this is something they would want to do to transfer sales tax, they would need to pass an election order no later than February to make it happen. Mr. Foerster said City Council does not need to take any action tonight, he and Mr. Tramm are simply bringing this to City Council's attention, so they are aware of this. Mr. Foerster said there are other cities, such as Conroe, who has an EDC, which they chose to keep in place because as far as they can see it serves a useful function. Mr. Foerster said the City's EDC might also do the same thing, that is not his or the City staff's decision, it is the decision of the City Council and the feedback of the citizens. John Champagne said the citizens have to vote on the matter.

Rebecca Huss said she thought they need to have all the facts as well and need to quantify how much it would cost to unwind all of the 380 Agreements, and bond issuance, because the EDC is involved in paying for all of that as a separate legal entity and you can't evaporate entities that are involved in legal agreements without the counterparties specific agreement and redrawing all of those legal agreements. Jon Bickford said they don't need to overcomplicate what they don't know, because he has done corporations on and off and it is not that difficult if they are not that complex, and certainly the MEDC is not that complex of a corporation. Rebecca Huss said she has done private placement debt with cities and it is complicated, especially if you have more than one issuer involved in the placement.

Tom Cronin said his contention was the money is the taxpayer's money, there are two bodies that control separate finances in a sense. Tom Cronin said recently he was in a meeting and somebody on the Board who is appointed said it was EDC money so they should be able to do that, and said it is not MEDC's money. Tom Cronin said another contention he has is that there are only two people on the MEDC Board that were elected by the citizens, the other five were appointed and he really thinks that all the fiscal decisions for the City of Montgomery ultimately should go through the City Council and the six elected officials here should determine how those funds are spent. Tom Cronin said there is a lost opportunity cost and said we are a small town, we don't go out and try and bring in big businesses or small businesses, especially small businesses downtown. Tom Cronin said there is no recruitment, so he thinks there is a lost opportunity cost because if dollars were spent trying to create economic development, those dollars could be used more efficiently through across the board tax cuts or infrastructure improvements. Tom Cronin said he thinks they are losing the control that this Council deserves with those funds. Tom Cronin said there are a lot of other reasons they need to share common goals, but he did not think MEDC and the City Council has ever discussed common goals, so he thinks there are a lot of holes in that argument.

Rebecca Huss said she did not think necessarily the discussion of common goals is a bad one, but fundamentally you are not ill-served by having different people with different viewpoints on different boards. Rebecca Huss said the MEDC Board does have a separate function and that requires a fair amount of energy and occasionally when a position comes open there are not a lot of takers for the extra days of service. Rebecca Huss said they do have a different group of volunteers the MEDC delegates that function to, but his Board has a fair amount of oversight through the annual budget, composition of the Board and specific approval of all items spent over \$10,000, which she feels gives the elected officials enough oversight of the Board to steer the direction of the MEDC. Rebecca Huss said she thought the MEDC has changed a lot over the last couple of years as well, they have been more active in the development of the community. Rebecca Huss said the MEDC Board is going to come before City Council, when they do the budget, to fund the entire improvement of the downtown streetscape, which is a big deal because that is something the MEDC has never talked about before. Rebecca Huss said she thinks there are a lot of changes and a lot of impacts the MEDC is involved in doing and she is pretty sure that City Council does not want to be involved in

the minutia of an extra two hours of meetings every month that the Board has been involved in.

Tom Cronin asked how the MEDC has been involved with the Comprehensive Plan for the revitalization of downtown, advising that no MEDC member except for him has been there. Tom Cronin said Dave McCorquodale has been doing the work on the project. Rebecca Huss said she has been to every meeting as well. Tom Cronin said he did not see Rebecca Huss at the last meeting. Rebecca Huss stated that was a meeting of the downtown business owners, of which she is not one, but there is another meeting on Thursday, and she was at the other two.

John Champagne said he thought there was merit on both sides. John Champagne said to the point of the two-hour extra meeting, he would say City Council could probably cut the time down to 15 minutes in a lot of cases. John Champagne said he was looking at the web site MEDC Budget details that include downtown improvements, the thought is that \$60,000 would be for physical improvements in the downtown historic district, with no specific items contemplated; utility extensions that states this figure is the balancing of the revenues versus expenses for the MEDC Budget, with no specific utility extensions planned. John Champagne said his point is that he feels it is worthwhile exploring. John Champagne said his first MEDC meeting a very nice lady requested funds to paint her home, arguably there was a commercial aspect to her home, and because she was a long-time resident and fine person, she got the \$9,000. John Champagne said his question, prior to awarding that, was what was the criteria in which they decided that was a good investment for MEDC to make, in which case there was silence. John Champagne said that the situation still goes on, not to the degree it did. John Champagne said he was casting aspersions on anyone, stating he thought that anyone that goes into that body wants to do a good job, but said they can reduce the number of people and fingers in the pot, in terms of not limiting representation, he was not against that because he wants to know what people want, but said City Council can take care of that. John Champagne said the streets in this City are deplorable which is one of the reasons he wants to absorb MEDC to get that money to fix the streets.

Jon Bickford said they do not have to decide tonight but said this was a good discussion. Mr. Foerster said that was correct.

15. Consideration and possible action regarding a variance to the Code of Ordinances of the City of Montgomery, Section 64-31(6), requiring a surety bond with permit application for food truck vendors during the Texas Flag Festival on August 24, 2019.

Mr. Tramm said one of the things that have recently come to his attention is some food truck vendors are avoiding registering for a 30-day permit with the City because of the bonding requirement. Mr. Tramm said they have checked into the cost of obtaining a bond that is \$150 for a two-year bond, which can be used for multiple permits. Mr. Tramm said if it is someone who is considering a short-term item, you have to think how much revenue they might have to generate to make up that \$150. Mr. Tramm said he has read through the ordinance several times and said he does not see any way that he has any latitude to waive such a requirement. Mr. Tramm said City Council has the authority to consider that information. Mr. Tramm said there is an event coming up where they expect several people in town and asked if the City Council would consider a variance for that and if that is successful, maybe a point going forward.

Tom Cronin asked where the event was going to be held and where would they put the food trucks. Mr. Tramm said they would be in the vicinity of the Flag Festival, for instance, they will be having events at Fernland Park, where they could put a truck in that parking area because that will be closed to in and out parking. Mr. Tramm said another area could be by the Community Center because they will also be using that area. Mr. Tramm said most of it would be in the Fernland Park area. Tom Cronin asked who would vet the food trucks to make sure they are adhering to all the requirements, State, local and County laws. Mr. Tramm said they would have to submit all the paperwork and items as backup, including insurance and other requirements that come to the City Secretary's Office. John Champagne asked if the fee was for two years. Mr. Tramm said one of the requirements in the City's ordinance is that there is a bond that they are required to have in the amount of \$1,000, which is meant to cover anything the insurance might not cover. Rebecca Huss said the surety bond only covers illegal, wrongful and fraudulent conduct. John Champagne said that was pretty broad. Rebecca Huss said that depends on if you are an insurance company, in which case they could interpret that rather narrowly. Rebecca Huss said in some ways looking at Item D under the Ordinance Code that specifically deals with mobile food trucks, it states that each driver should have insurance, which they are required to have if you are driving a car, and said she feels what really protects

the City and residents the most is they have to have a regular business policy. Rebecca Huss said the City does not check the business owners for their business insurance, we assume they have it, so in some ways, we are discriminating against mobile food vendors in a way that we don't against regular businesses. Rebecca Huss said having the regular business policy is probably the best way to protect the citizens. Rebecca Huss said the City of Conroe web site states they require a surety bond, but she knows that Montgomery SnowBalls was involved with something in their parks department and Conroe only required the Certificate of Insurance that named Conroe as the Certificate holder. Rebecca Huss said all the City of Conroe wanted to know was that Montgomery SnowBalls had insurance, what the limits were so if something happened Conroe would exhaust those insurance limits prior to absorbing whatever came next.

Tom Cronin asked who enforces the sales tax. Rebecca Huss said that is obviously something that has never been done or maintained, it is up to the truck to report it properly. Mayor Countryman said there is typically a fee to be a part of and that is what is supposed to be in place of the sales tax, which is what happens at all the festivals. Rebecca Huss said it depends on whether they hand out forks and have chairs. Tom Cronin said prepared food is taxed. Rebecca Huss said the sales tax consultant came here and said if they do not hand out forks or silverware, they don't have to pay tax and said the sales tax consultant knows what he is talking about. Tom Cronin said according to Texas TAC Code Section 151-314, it states it is taxed and has nothing to do with utensils. Jon Bickford stated they needed to get an expert to clear the information up.

Rebecca Huss said the insurance issue is not consistent with A) the goal of protecting the citizens, and B) consistency with types of businesses. Jon Bickford asked Rebecca Huss if she was in favor of the variance. Rebecca Huss said she was asking for a variance to see if they can get more food trucks for the Flag Festival and then asked to consider this as an ongoing item.

Rebecca Huss moved to provide a variance for the surety bond part of the application during the Texas Flag Festival on August 24, 2019. T.J. Wilkerson seconded the motion.

Discussion: Jon Bickford said the only other thing that he would add is he wants to make sure that anybody that comes to the City and serves food has had some kind of health inspection. Rebecca Huss said they have to have the County Permits, which is a requirement. Jon Bickford

said if they have health inspections to serve food, he is good with it. John Champagne said there is a food truck that shows up every so often at Jim's Hardware and asked if they have a bond. Jon Bickford asked if they have a surety bond. Mayor Countryman said yes, they have a bond. John Champagne asked why we would want a variance. Rebecca Huss said because not all of them do and a lot of the food truck vendors won't operate in the City. Jon Bickford asked how many a lot is. Rebecca Huss said there are four or five food truck vendors that will operate in the City and if they are busy doing something else then they can't get them. John Champagne asked why they are considering a variance. Rebecca Huss said under ideal circumstances when you have a festival the more booths, food trucks, parking and alcohol are all sources of revenue for the event and it can be self-sustaining and give benefits to the community or the organization that puts it on. Rebecca Huss said each item is a revenue generator, so if food trucks, if they are willing to come, will generate revenue and depending on their own social media aspect, they themselves will generate visitors. John Champagne asked if the food trucks are going to be held in conjunction with the Flag Celebration with the Bank. Mayor Countryman said the bank is doing something, but this is for the Flag Festival. John Champagne said this benefits the City, which is a good thing so they can give a variance. Rebecca Huss said yes. John Champagne said if it did not benefit the City, a variance would not be considered. Mayor Countryman said that was correct, but it does because it is for the Flag Festival. John Champagne said he sees a bit of hypocrisy here, but that is just him. Rebecca Huss said it is also inconsistent with what they require of other businesses and it is bad for small businesses and she thinks the ordinance itself should be changed, but the timing on that is not consistent with the timing of the event.

Tom Cronin said they are setting themselves up, the food trucks compete with local restaurants and things like that, so they are bringing in competition and not supporting the local businesses. Rebecca Huss said the fees the food trucks are paying are generating more revenue than the sales tax that would be generated by a stand-alone similarly priced type of business. Mayor Countryman said the restaurants they have here are sit-in restaurants. Mayor Countryman said if you go by Jim's on a Friday you will see a long line with the food trucks because people like to go and be mobile with it and not go in and sit down. Rebecca Huss said it is a different clientele. Mayor Countryman said the food trucks have a huge following mentioning the food truck park off FM 1488 that is all food trucks.

Jon Bickford stepped out at 7:20 p.m.

John Champagne said he was just trying to figure out why we want to give a variance. Rebecca Huss said the surety bond does not achieve anything that you would think in terms of protecting the citizens. John Champagne asked why they have it. Rebecca Huss said exactly. John Champagne said they have it and it goes back to the parking lots, we have it and if you don't want it, let's get rid of it. John Champagne said Rebecca Huss argued about not holding people to the ordinance for parking lots, and by the way, she was the one that moved for the ordinance. John Champagne said this is an ordinance in place, and you either support it or you don't. Rebecca Huss asked if John Champagne was talking about gravel parking lots. John Champagne said yes. Rebecca Huss said all the people they were talking about were grandfathered. Mayor Countryman called for the discussion to stick to the variance of the surety bond for the Flag Festival. John Champagne said there is an ordinance in place, so if they don't like the ordinance then they need to get rid of it. Rebecca Huss said that is exactly what she wants to do, but since the event is next weekend it is not possible to get rid of the ordinance. John Champagne said until they do that, he would vote nay. Mayor Countryman advised this is the discussion and the vote will be taken when Jon Bickford gets back. Rebecca Huss stated they could vote while Jon Bickford is gone.

Mayor Countryman called for the vote.

The following vote was recorded:

T.J. Wilkerson – Aye

Tom Cronin - Nay

Rebecca Huss – Aye

John Champagne – Nay

Mayor Countryman broke the tie with an Aye vote. The variance was passed with a vote of 3-Ayes and 2-Nays. (3-2)

John Champagne moved that the individual that is missing come back for the vote. Rebecca Huss stated Jon Bickford was not present. Tom Cronin seconded the motion. Rebecca Huss said it was not motionable. Mayor Countryman asked the City Attorney for his opinion. Mr. Foerster said it was at the discretion of the presiding officer if they want to wait until the full Council is present, because a Council member had to step out for a personal break and will be back momentarily and then he thought it would be fine for him to wait, because he did not

know how he was going to vote, but when he comes back they could vote on it, otherwise the Mayor in the absence of the Council member can break the tie.

EXECUTIVE SESSION:

The City Council reserves the right to discuss any of the items listed specifically under this heading or for 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.

16. Adjourn into Closed Executive Session as authorized by the Texas Open Meetings Act, Chapter 551 of the Government Code, in accordance with the authority contained in the following:

a) Section 551.071 (consultation with attorney) Pending and Possible Litigation.

Mayor Countryman moved to adjourn into Executive Session at 7:22 p.m.

17. Reconvene into Open Session.

Mayor Countryman reconvened the meeting at 8:24 p.m.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

18. Consideration and possible action(s) if necessary, on matter(s) deliberated in Closed Executive Session.

No action was taken.

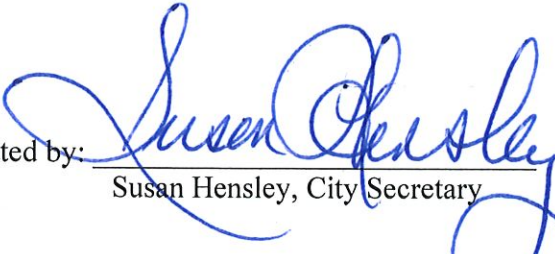
COUNCIL INQUIRY:

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.

No comments were made.

ADJOURNMENT

T.J. Wilkerson moved to adjourn the meeting at 8:24 p.m. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

Submitted by:  Date Approved: 08/27/19
Susan Hensley, City Secretary


Mayor Sara Countryman

