

MINUTES OF REGULAR MEETING

April 9, 2019

MONTGOMERY CITY COUNCIL

CALL TO ORDER

Mayor Sara Countryman declared a quorum was present, and called the meeting to order at 6:01 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: Jack Yates City Administrator
Larry Foerster City Attorney
Susan Hensley City Secretary
Chris Roznovsky City Engineer

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.

CONSENT AGENDA:

1. Matters related to the approval of minutes of the Regular Meeting held on March 26, 2019.

2. Consideration and possible action regarding acceptance of the Certificate of Substantial Completion and Maintenance Bond for The Shoppes at Montgomery, Phase I, Public Water and Sanitary Sewer Extension.

John Champagne moved to accept the Consent Agenda as presented. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

CONSIDERATION AND POSSIBLE ACTION:

3. Consideration and possible action regarding the Annual Audit for the year ending September 30, 2018.

Ms. Darla Dear, Auditor with the accounting firm of Belt Harris Pechacek presented the Audit to City Council. Ms. Dear thanked Mr. Yates and Ms. Hensley and the City staff for all the help they provided during the audit. Ms. Dear said the staff did a great job.

Ms. Dear reviewed the three most important pages of the audit. Ms. Dear advised on page one of the Audit, it shows the City received an unmodified opinion, which is the highest level of assurance you can receive that all disclosures have been made in the Audit.

Ms. Dear then reviewed pages 24 and 25 that covers the General Fund revenues and expenditures for the year. Ms. Dear said the total revenues for General Fund were \$3,149,025 and the total expenditures were \$3,100,379. Ms. Dear said there were some other sources and users with transfers in and out, bringing a net change in the fund balance to \$10,641. Ms. Dear said the beginning fund balance was \$1,266,011, with an ending fund balance of \$1,276,652, which was a great job.

Ms. Dear reviewed page 63 of the Audit which covers the actual expenditures compared to what was budgeted. Ms. Dear said on the total expenditure they had two areas that were over budget, but that net variance was about \$62,867 for that expenditure line.

Ms. Dear said the second book is the Single Audit for federal expenditures, and noted that on page 10 of this report, it shows the federal grant expenditures and the City had \$1,216,092, which is mainly the CDBG grant that is the Texas Community Development Block Grant and the FEMA Disaster Assistance.

Rebecca Huss said she had a couple of comments, starting with page 8 under governmental activities, where it states the City provides fire protection, which is incorrect, other than providing water protection. Rebecca Huss said the fire department is under a separate tax entity.

Rebecca Huss then said on page 54 the Audit talks about the City's net pension assets, and she understands that the City has been in a good position in the coverage amount, with a net pension asset rather than a net pension liability, but it seems like the numbers have changed between last year and this year, and she was wondering what that means in terms of whether they should start thinking about putting extra money away. Ms. Dear said it is extremely hard for any entity to decide how much they are going to put in there because of the actuarial change on the interest rates. Ms. Dear said if you look on page 56, it shows the net Pension Assets, with the City having \$151,032 which is divided between the governmental side and the enterprise side of the water and sewer. Ms. Dear said on December 2016, the measurement is a whole year ahead of time before these are done, which is the reason they have 2016-2017 year end. Ms. Dear said the beginning balance was \$62,000, which increased to \$151,000 this year. Ms. Dear advised the figures for the Net Pension Assets are directly from TMRS, who provides the disclosure for the Audit. Jon Bickford asked if the figures in parenthesis are net assets. Ms. Dear said that was correct.

John Champagne asked why in the accounting world you would put the figure in parenthesis. Ms. Dear said this disclosure is for the liabilities, so most entities are recording in liability, but in your case, it is the opposite of the liability and it is showing up in parenthesis. Jon Bickford said it is a negative liability.

Rebecca Huss said page 57 talks about Tax Abatements, and she was not entirely sure those were completely accurate, and the fact that this public information is not showing the names of the developments, makes it confusing to figure out which one is which. Rebecca Huss said she thought it would be helpful to have more accurate information in there, and at least one of them is in production now, and it acts like it is a future project, and they are already rolling off the years that are left in the agreement. Rebecca Huss said she felt they needed better information in this section, and said there might be at least one tax abatement missing from the list, and the Kroger agreement has already started, so she felt there needed to be more details on the amount of time that is left in the agreement, and she would like it to be more specific on the amount of money and years. Mr. Yates said there is also the Cheatham agreement. Rebecca Huss said she was thinking of the one that has to do with The Shoppes, and since this is all public information, there is no point in leaving

that information out because it is confusing. Ms. Dear said she would go back and check on the information. Ms. Dear said there are some disclosures, and noted that the Cheatham Development was the second to the last agreement, with \$13,951 under the agreement. Rebecca Huss said there are more agreements than what is listed. Mr. Yates said there were two 380 Agreements and the Cheatham Agreement. Rebecca Huss said The Shoppes Agreement is missing in this, which is fairly large. Rebecca Huss said they need to be specific about the maximum dollar values and names of the developments so they know who they are reading about, that way the public will also know what the information is covering. Ms. Dear said she would pass that information along.

John Champagne moved to approve and accept the Audit as presented, possibly with the changes that have been discussed. Jon Bickford seconded the motion.

Discussion: Jon Bickford asked if they needed to list the specific changes. John Champagne stated the Auditor had all the changes discussed.

The motion carried unanimously. (5-0)

Mr. Yates said he would like to point out that the City did have a good Audit. Mr. Yates said about 25,000 to 30,000 separate transactions have to happen, that goes all the way through the process of solicitation of the proper quote, the proper assigning of an account number, and then the entry into the books, balancing of the books, which is about 18,000 just to get to writing the checks. Mr. Yates said virtually every dollar goes through the front counter, so that speaks well for Autumn Redman, who has to balance every day and every month. Mr. Yates said that also speaks well for Cathy Branco, financial consultant, and for Ms. Hensley because the Auditors also look at the contracts, and verify all the details on that. Mr. Yates said a lot of work goes into the Audit.

Jon Bickford said he thought the whole team needed to be commended. Ms. Dear said everything looked really well. Jon Bickford said how do you beat that, so he said "great work by the whole team and thanked them very much." Jon Bickford asked Mr. Yates to make sure the team gets that news because he appreciates what they did and continue to do for the City.

4. Consideration and possible action regarding a Variance request of six feet of canopy overhang into the building line setback and utility easement in The Shoppes at Montgomery subdivision by Stantec Consulting/Chick-Fil-A.

Mr. Yates advised this is regarding a one foot overhang outside the front building line of the required 35 foot for the Chick-Fil-A Restaurant. Mr. Yates said they are cantilevering a canopy for cars to drive under and according to their site plan, it needs to be one foot overhanging past the 35 foot setback. Rebecca Huss asked to clarify that it was one foot, because the notes say six feet. Mr. Yates said he wanted to make sure that there was enough room, so he checked with Mr. Roznovsky. John Champagne asked to clarify whether it was a one or six foot variance. Mr. Yates said it was one foot. Jon Bickford asked if that was overhanging concrete. Mr. Yates said it would be asphalt. Jon Bickford said it would be paving of some sort and would cover the cars. Jonathan White, Engineer with L Squared, advised it would be over the drive through window specifically. Mr. Yates said there is an Encroachment Agreement on the Agenda for tonight that involves the paving and the canopy, so if there is any damage or repairs that are needed in the easement, it will be of no cost to the City. Jon Bickford said if the liability is not on the City, then he would say okay.

John Champagne asked for clarity, because the information speaks of a six foot canopy overhang, which is also equal to asphalt or concrete. Mr. Yates asked Mr. White for the actual width of the canopy. Mr. White said he was not sure, but he thought it was nine feet. John Champagne asked if the concrete or the pavement over the line was six feet or one foot. Mr. White said the pavement would definitely be over the line. John Champagne asked why it was worded just for the canopy if everything is over the line. Mr. White said the canopy and pavement would be over the line, but stated pavement can be placed over the building line, but you can't put a structure over the building line. John Champagne asked if they were counting the canopy as a structure and that was the issue. Mr. White said correct. Mr. Yates said the encroachment will be 16 feet of paving that is over the utility easement, and if City Council allows it, they will also be allowing the encroachment of one foot into the easement.

John Champagne moved to approve the one foot variance as presented. T.J. Wilkerson seconded the motion, the motion carried unanimously. (5-0)

5. Consideration and possible action regarding Longview Greens Miniature Golf variance request to allow gravel to be used as a parking surface.

Mr. Yates advised this is a request from the original variance that was granted March 14, 2017 to Mr. Long regarding his parking area, and said Mr. Long was present tonight. Mr. Yates said City Council has granted an extension to the variance three times for six month extensions, and this is a

request to extend the variance and he was not sure how long he was going to ask for it to be extended.

John Champagne asked if Mr. Long was going to address City Council. Mr. Long advised he appreciated the variances that have been granted to-date, and said they have put their best foot forward to work with the City, who has been very helpful. Mr. Long said they also received a grant from the City that they are very grateful for. Mr. Long said if they had the funds available to support paving the parking lot, they would. Mr. Long said it does not bring him any joy to keep coming back every six months and having the same conversation. Mr. Long said they find it more important to stabilize the business and put money back into the business, and they feel it is justified. Mr. Long said last year they did shaved ice and this year they did soft serve ice cream. Mr. Long said they feel it is more important to use those funds, instead of paving the parking lot, at this time to solidify the business because it is the long term financial interest of the business that is most important.

John Champagne said Mr. Long was very polite in not stating right across the street from his business there is a parking area full of crushed rock, and asked why he did not bring that up and asked why there should be two sets of requirements or guidelines. Mr. Long said he could not speak to that one. John Champagne said he could speak to it, and asked why the City is putting crushed gravel at Fernland, but they are holding Mr. Long to a higher standard. John Champagne said he appreciated Mr. Long coming every six months, and as far as he is concerned, he has another six months.

Rebecca Huss moved to give Mr. Long a two year extension with the provision that upon conveyance or sale of the business, the variance is immediately null and void. Rebecca Huss said the variance is going to someone who has been engaged with the community, who is putting money into his business and a local entrepreneur who is trying to make it work, who has been coming back to the City. Rebecca Huss said this would give him some breathing room to not have to come back in six months, but if he chooses to sell the property, whoever buys it will have to pave or come back to City Council with another plan.

T.J. Wilkerson seconded the motion.

Discussion: Jon Bickford asked what they tell the next person, stating he has asked this question before, because they are saying that Mr. Long does not have to do it because they are giving him a

two year variance. Rebecca Huss said Mr. Foerster has stated before that this does not set a precedence; every incident is unique enough. Jon Bickford said they have a moral obligation to everybody and all businesses in the community. Rebecca Huss said they talked about this before and there is certainly a lot of backup in the packet that states unless they are willing to give a variance, then they end up pulling Mr. Long's certificate of occupancy, and she does not think any of us on City Council is willing to do that, and until anyone is willing to do that, then they might as well acknowledge it by giving a long term variance.

Jon Bickford said another option is to delay it another six months and ask where the plan is, because the ordinances were in place before the business went in, and asked Mr. Long if he was aware of the ordinance. Mr. Long said yes, he knew that before the business went in. Jon Bickford said somewhere there had to be a plan that said at some point he has to pave the parking lot. Jon Bickford said Mr. Long is going to keep investing in the business, but at some point he has to pave the parking lot, so he feels like there are two pieces of the investment, the investment in the business, and the investment in meeting the obligation that the City put in place. Jon Bickford said the City did not give a permanent variance back then for a non-paved surface. Jon Bickford said if non-paved surfaces are okay for all businesses, if we change our ordinances to support that, he is okay with that. Jon Bickford said each case being a special case, there are going to be special cases everywhere. Rebecca Huss said this is not a permanent variance. Jon Bickford said he would really like to just say at some point they have to see a conversion, and he is willing to do this another six months, but he wants to know what the business plan is next time for the conversion, because if it is not done, what is the plan; are they going to be ready to make an investment in a year, six months, two years; the City needs some kind of commitment.

Tom Cronin said he really hates to see someone's dreams crushed, and said Mr. Long has come back and done everything the City requires, except paving the driveway. Tom Cronin said financially starting a business is extremely tough and sometimes it takes a couple of years, and sometimes you just throw up your arms. Tom Cronin said he was more in agreement with Jon Bickford's six months and keep re-evaluating every six months, because he thinks that is fair and Mr. Long has been more than honorable coming to City Council and requesting the extension every time. Tom Cronin said he knew Mr. Long was not trying to stretch it out with the City. Tom Cronin said he knows Mr. Long has a good business and it might take more time, and said Mr. Long is the only miniature golf course in the area, next to Houston, and asked Mr. Long where there is another miniature golf course. Mr. Long said it was far away. Tom Cronin said he felt the business was a plum for the City to continue and try to work with Mr. Long; he could not say

support him because financially he knows that Mr. Long can get some sewer and water hookups. Tom Cronin said he applauded Mr. Long for continuing to try, and said that he agreed with the six months.

Mayor Countryman said she would like to point out that Mr. Long's business is different than most businesses here, because his is dependent on the weather, not a restaurant or a boutique, or winery is dependent on the weather. Mayor Countryman pointed out that last year they had a hurricane, and this year they have had a great amount of rain, so when there is not weather to be outside, and for Mr. Long to get his feet underneath him, he needs the time.

John Champagne said Mr. Long's business model is his business model, he knows the weather, and knew all that going in. John Champagne said he applauds Mr. Long for coming back to the City every six months. John Champagne said laws are made for a reason, to adhere to, and, to Jon Bickford's point, if they are going to make variances on every law, why have laws. John Champagne said the other point is he will make a commitment to Mr. Long that the City is going to comply with the existing law as well, and that the location across the street is going to change. John Champagne thanked Mr. Long for all he has done.

The motion failed with the following vote: (2-3)

Rebecca Huss – Aye	Jon Bickford – Nay
T.J. Wilkerson – Aye	John Champagne – Nay
	Tom Cronin - Nay

Jon Bickford moved to provide an additional six months beyond what has been provided already, and approve the variance for another six months. Tom Cronin seconded the motion.

Discussion: Jon Bickford said he also wanted to express that he appreciates the fact that he gets it, and said he feels that he is trying to be consistent with everyone. Jon Bickford said developers are coming in and asking for variances all the time as well, and City Council has to be consistent and said he feels that is very important for the community. Jon Bickford said he apologizes and said he is not trying to be mean, he is just trying to be consistent.

John Champagne said at the end of the day Mr. Long has a variance. Jon Bickford said they have to vote on the variance.

The motion carried unanimously. (5-0)

6. Consideration and possible action regarding request for a Special Use Permit for microblading business at 14375 Liberty Street by Candace Welsh.

Mr. Yates advised that Ms. Welsh is present for the meeting. Mayor Countryman advised that Mr. Yates notes were missing from the pack.

Ms. Welsh advised that she was trying to get a Special Use Permit so she can open a business at the West Mont Building to do microblading, which is a cosmetic enhancement of the eyebrows. Rebecca Huss said she thought that Ms. Welsh came before City Council in the past, and said this is a form of tattoos.

Ms. Welsh said this is her first time before City Council. Mayor Countryman said that was a different business that came before City Council in the past. Mr. Yates said this is the same type of business that was granted in May 2016 to someone else. Mr. Yates said all City Council needs to do is to refer this to the Planning and Zoning Commission to start the process for a Special Use Permit. Mr. Yates said the Commission will conduct a Public Hearing, and then City Council will conduct a Public Hearing. Mr. Yates said there is a \$500 fee for a variance application.

Rebecca Huss asked if there were any complaints regarding the previous Special Use Permit when it was used by the previous person. Mr. Yates said no, and said that the person just started her business back up. Mr. Yates said he has to contact that person because she is supposed to have insurance for the City.

Rebecca Huss said the only thing that she remembered about the Special Use Permit was the discussion about the verbiage of the Special Use Permit about the location of the tattoo versus the location of the business itself, because it was very specific about the type, because it is more of a cosmetic use for eyebrows and eyelashes rather than body art.

Mayor Countryman stated, just so she is aware, and understands, City Council is just approving the beginning of the Special Use Permit process. Mr. Yates said that was correct.

Rebecca Huss moved to direct the City Administrator to begin the process for a Special Use Permit for a microblading business at 14375 Liberty Street by Candace Welsh. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

7. Consideration and possible action regarding approval of an alcohol beverage permit application for a Wine and Beer Retailer's Permit for Wine & Design Montgomery to be located at 202 McCown Street, Montgomery, as submitted by Janderson Holdings, LLC.

Mr. Yates advised the application has been reviewed and is now being presented to City Council for approval during a public meeting as required by the City's Code.

Tom Cronin asked if they are required to have a 60-day notice. Mr. Yates said no they are not. Tom Cronin said it was his understanding this business would be like Painting with a Twist. Mr. Yates said yes.

Tom Cronin asked Ms. Hensley if she had received everything that she needed for the permit. Ms. Hensley advised yes, she had received everything.

Tom Cronin moved to accept the Alcohol Beverage Permit Application for a Wine and Beer Retailer's Permit for Wine & Design to be located at 202 McCown Street, as submitted by Janderson Holdings, LLC. T.J. Wilkerson seconded the motion, the motion carried unanimously. (5-0)

8. Consideration and possible action regarding approval of an alcohol beverage permit application for a Wine and Beer Retailer's Permit for Chronic Tacos to be located at 20212 Eva Street, Montgomery, as submitted by Arquitt Tacos, Inc.

Mr. Yates advised this business would be located in the Kroger Shopping Center. Mr. Yates said as in the previous item, this is for approval by City Council during a public meeting.

The Mayor asked if this would be located in a store. Ms. Hensley advised this is located in the Kroger Center in one of the suites.

Jon Bickford moved to approve the alcohol beverage permit application for a Wine and Beer Retailer's Permit for Chronic Tacos to be located at 20212 Eva Street, Montgomery, as submitted by Arquitt Tacos, Inc. Tom Cronin seconded the motion, the motion carried unanimously. (5-0)

9. Consideration and possible action regarding an Encroachment and Maintenance Agreement regarding pavement and canopy encroachment into the City utility easement at the planned Chick-Fil-A site in The Shoppes of Montgomery subdivision, by Stantec Consulting/Chick-Fil-A.

Mr. Yates said this is a request for an encroachment and maintenance agreement with Chick-Fil-A, Inc. for them to pave over 16 feet of City utility easement area and to place a canopy over a one foot area over the easement. Mr. Yates said the difference between this and the variance is this is for the long term agreement for the improvements built on the easement, whereas the variance was for permission to build outside the building lines to satisfy the zoning ordinance. Mr. Yates said if the pavement or canopy have to be moved or damaged due to the need to make repairs, there will be no cost to the City as provided in Section 3(c) of the Agreement.

John Champagne moved to approve the encroachment and maintenance agreement with Chick-Fil-A, as presented. Jon Bickford seconded the motion.

Discussion: Rebecca Huss said to Mr. Yates that usually there is a letter from the engineers stating that the pavement does not cover anything important. Rebecca Huss asked if there was a reason that there is not such a letter from the engineer, and asked if they can be assured that this pavement does not cover anything important. Jon Bickford stated that if it does cover something and it has to get torn up, then they will pay for the repairs. Rebecca Huss said normally the engineers have an opinion one way or the other, and there is usually a note saying that there is nothing important or it does not impede anything, etc. Rebecca Huss said there is usually an engineer's opinion.

Mr. Foerster said in his recollection there maybe utilities under that easement. Rebecca Huss said that was the point of a utility easement, yes. Mr. Foerster said there would be pavement, and under this agreement, if they have to go in there and repair any utilities and tear up the concrete, it will be at their cost. Rebecca Huss said she did read the information, but the question she has is whether or not we need access to it and whether it has an importance on day-to-day operations, so if they need to tear up every week to get at it, then that would clearly be an impairment to the City's operations. Rebecca Huss said it would be nice, before they approved this, to know for sure that the engineers have looked at it and said they don't see any problem with it. Jon Bickford said he

did not see the purpose of carrying this on. Jon Bickford said if they need to dig a hole and sink something and bury it, and dig a hole again the next day, what is the difference. Rebecca Huss said she thought that would make everyone upset. Jon Bickford said if they have a failure, they have a failure, whether it is at Chick-Fil-A or right outside the door, you fix it and cover it back up, what difference does it make where it is.

Mayor Countryman said if they normally have that letter in the report, and now we don't have it, we just talked about standardization and laws in the variance, so if that was what normally happened, then they should have that. John Champagne said they have a maintenance agreement and he has a motion pending. Jon Bickford said there is also a second to the motion. Rebecca Huss said then there is no reason why we ignored the process of getting the engineer's comment on this. John Champagne stated again that he has a motion pending. Mayor Countryman said this is open for discussion. Rebecca Huss said she was asking a question that she felt she deserved to get an answer and should be on the record. John Champagne asked who Rebecca Huss was asking the question. Rebecca Huss said she was asking Mr. Yates.

Mr. Yates advised the utility easement is 20-25 feet wide and asked Mr. White if he knew whether there were any water or sewer lines directly under that location. Mr. White said there were water and sewer lines. Rebecca Huss asked whether there were any important junctions or actual mechanical things or just the actual pipes themselves. Mr. White said that was correct, and there is a fire hydrant that is in the way that will have to be moved, but no important items underneath. Mr. Muckleroy, Director of Public Works, advised moving the lift station is the key factor, and once that is gone it will be gravity sewer and pressurized water line, but nothing major, no major T's. Mr. White said they just have the sewer line that they just installed. Rebecca Huss said they usually do have a letter that states something similar.

The motion carried with a unanimously vote. (5-0)

10. Consideration and possible action regarding Tree Ordinance Variance request for The Shoppes at Montgomery.

Mr. McCorquodale advised this is coming from the engineer of record for The Shoppes at Montgomery. Mr. McCorquodale stated they are asking to remove two sets of trees where TxDOT needs to place the driveways so they line up with the other driveways. Mr. McCorquodale said they are asking to not have to replace trees on the site at this point in the development. Mr.

McCorquodale said there are no pad sites going in at this time, no development is on the site, but what they need to do is get the driveways in while the TxDOT permit is valid and before it expires. Mr. McCorquodale said the request is to allow the preservation of 45% of tree canopy coverage on the site. Mr. McCorquodale said in the pre-development phase it does not seem like it would serve anyone well, because the trees might have to come out again.

Jon Bickford asked if there was some hook that says when the development does occur the equivalent of these trees would get replaced in accordance with the ordinance. Mr. McCorquodale said before development happens, it is his intent in the next 45 days to have a revised tree ordinance to City Council. Mr. McCorquodale said he has been working on the tree ordinance and trying to make some revisions and working with the developers in town trying to find numbers that work with both the City and the field. Jon Bickford said his question is, the engineer of record has requested a variance, since he is not the owner of the property, he is the engineer, so he would be inclined if they were going to give him a variance, that we also have a hook that is a commitment from the owner, a contractual commitment from the owner back to the City that says whenever this property does get developed, that the equivalent of these trees, or this canopy, gets replaced in accordance with our effective tree ordinance. Jon Bickford said they need something that binds the owner to have to do this if they develop the property, because otherwise they could sell the property or anything else, they need that to stay with the property. Mr. McCorquodale said the ordinance that is in place, when the site is developed, is replacing these trees, and that is part of the new ordinance, then that is what they need to do, and if it not part of that, what they need to do is follow the existing ordinance. Jon Bickford said in this case, when you put the new ordinance into effect, and by then those trees will be gone, they could say those trees were not here so why do I need to replace them.

Mr. Yates said this development will fall under the existing ordinance. Mr. Foerster said once they plat the property, whatever the ordinance is in place is what they are going to be obligated to follow. Jon Bickford said if the rule is they have to follow the ordinance that is in place, he is okay with that, but said he is saying there has to be some binding document that says if they pull the trees out now, and they don't develop for another year, when they start developing in a year, they need to replace the trees.

John Champagne said he was pretty certain that City Council had not adopted the new ordinance, so when he was going through it today "indiscriminate" caught his eye, and asked what "indiscriminate" means and said it was a very subjective term. John Champagne said

“indiscriminate” maybe indiscriminate to us, but not indiscriminate to another. John Champagne said they don’t have an ordinance in place to support what they are trying to do with this developer. John Champagne asked what they were going to do to try to pass the ordinance before he pulls trees and asked how this would work since they don’t have an ordinance that requires him to replace the trees in place. Mr. McCorquodale said they do have a tree ordinance in place right now. John Champagne said he knew they did, but asked if it is stated the way that this is worded. Mr. McCorquodale said right now it is 100 percent caliper inch replacement after they cut more than 20 percent.

Rebecca Huss said she sees Jon Bickford’s idea is a good one, but perhaps a time limitation as well because you could argue that you keep putting it off, then the site is fully developed and then you end up with a small corner that never gets developed, and you still haven’t figured out where to put the replacement trees. Rebecca Huss said she likes a Sunset Clause, so she would like to see a limitation on a plan regarding when to replace the trees and where to put them. Rebecca Huss said she thought Jon Bickford’s idea was a good idea to have a contractual relationship with the owner of the property.

Mr. White said he did not know if City Council had the letter that fully explains the extent of how many trees they would have to replace for two driveways. Mr. White said it would be 108 caliper inches that would have to be replaced for the two driveways, which is a pretty significant amount for two driveways. Mr. White said, to give City Council an idea, when the tree preservation ordinance was being looked at as a whole, they started seeing development coming into town and seeing how a piece of land that was completely cleared and you have development where nothing has to be planted, but then you have another tract across the street that is heavily wooded and has to plant way more trees. Mr. White said, as an example, this tract if they put some buildings on the remaining piece of this, approximately 900 trees would have to be replaced, with new trees being planted. Mr. White said that is a very difficult task to do with a development like this and it is almost impossible, because if you put in 900 trees you would take up many acres and would reduce the allowable area that they can use. Mr. White said as part of the 380 Agreements, reimbursement is important, and it is important for them to develop this property. Mr. White said he was not aware of the requirement that when the next pad site actually comes in, it would fall under the existing ordinance, stating he thought that any development that occurs after a new ordinance they could be under that new ordinance. Mr. White said that was something they had assumed and they were told. Mr. White said they could just delay the driveway placement for the new ordinance. Jon Bickford said they don’t know what the new ordinance looks like, so was Mr. White saying he

wants to be under the new ordinance when they don't even know what it looks like. Mr. White said he has seen a draft of the new ordinance. Jon Bickford said City Council has not voted the draft ordinance in yet. Mr. White said he understood, but they have to be able to preserve about 20 percent, and they are saying they will keep 45 percent at least preserved for now, and then as each pad site comes in and gets developed, they will have to adhere to whatever ordinance is in place.

Mr. White said there is actually a provision in the ordinance that allows exceptions to the ordinance if you remove trees within a public easement. Mr. White said they are not putting anything in the property they are actually only bringing the driveway up to the right-of-way line and shared property line, but because those trees are on that line, they have to be removed or they are going to be damaged. Mr. White said that is located inside the 60 foot utility easement, and they have tried to make a statement before that they believed that exception should apply, but that was overwritten, so that is why they are here. Mr. White said they have been trying to fight this battle since November. Rebecca Huss asked if they were talking about removing trees that technically belong to you, but are not legally under their control because they are part of the easement. Mr. White said they are located in the easement.

Mr. White said the original idea was to go underground and across the front of the property with the utilities and remove every single tree across the front. Mr. White said they have been working with the rear property owner to actually bring utilities through the interior of the tract, which they have to dedicate additional easements inside the tract just to be able to provide utilities to those other pad sites, so they are further restricting that property just be the additional easements. Mr. White said technically anyone can come in there, that is a public entity, and clear the trees in the easement and they would not have to be subject to replace them. Jon Bickford asked if the trees are in the City's easement. Mr. Yates said yes. Jon Bickford asked if that would be a decision that the City could make versus a variance request. Mr. White stated the trees are located in the easement, but he had been told that he could not cut them down, or he would have to replace them. Jon Bickford asked to confirm with Mr. White they would not be going into the property, they would just be taking the trees off of the easement. Mr. White said the property line is where the easement starts. John Champagne asked if they were just going to put a driveway from the street into the easement. Mr. White said that was correct, which is what they have been trying to do since November. Mr. White said they have had to redo this permit one time, and TxDOT is very difficult to get permits, and they are about to get to the point where the permit will not be valid again. Jon Bickford asked if the driveway was going to go from the street, across the easement to the property line and then stop. Mr. White said it was not across the easement it was across the

right-of-way and stopping right there. Mr. White said if they go and continue the driveway, they would have to abide by the tree ordinance in place. Jon Bickford said he did not know why this was on the agenda.

Rebecca Huss asked how many trees they are talking about. Mr. White said it would be 11 trees, with one being a 24 inch caliper, and to him it is on its last leg. John Champagne said the City of Montgomery mows these areas in the line of SH 105, and asked if the City wanted to remove a tree to make it easier to mow, could we do it. Mr. Yates said the City can remove a tree. Mr. White said the City removed trees for the 18 inch gravity sewer line, which was on private property with City utilities, but there is an exception in the ordinance for public utilities. John Champagne said he did not get it. Jon Bickford said he was just wondering why the City administration can't make a decision that says these trees are in the right-of-way they can take them out. Jon Bickford said he was wondering if this is really a variance that they need to vote on. Rebecca Huss said she did not want them to take out all the trees in the right-of-way, since they have moved their utilities to the back, so she did not want to say all the trees in the easement can be removed. Jon Bickford said he was not sure that City Council needed to say anything, he thinks the City Administrator could say they could take these trees out. John Champagne said this is for two driveways and asked why they are talking about this.

Mr. White said he felt that they had done everything that they could in correspondence to get this done. Rebecca Huss said TxDOT is requiring the driveway be located in a specific place. Jon Bickford asked Mr. Foerster if this needs to be a City Council action. Mr. Foerster said he thought it would be appropriate for City Council to act on this matter for clarification, because as he understood it, they are only talking about two driveways and the trees that are on the City easement that cross where the driveway would cross to their property. Mr. Foerster said they are only talking about removing the trees that are on the City easement at this time, not within the balance of the property. Jon Bickford asked if Mr. McCorquodale knew exactly which trees they were so he could confirm the eleven trees. Mr. McCorquodale said yes, he could locate them on the tree survey.

Rebecca Huss asked if this was a variance or a direction for something else, because if this is a variance, then they are required to do something about them later in the project. Rebecca Huss said if they are acting now, as a directive to clear the right-of-way then that would change things. Mr. Yates said he thought it was not a variance, he thought it would be a City action to remove the trees in the right-of-way. Rebecca Huss asked who is paying for it. Mr. White said it is privately funded.

Jon Bickford moved to approve the privately funded removal of the eleven trees that interfere with the placement of the access driveways across the property they are working on to connect to SH 105, and will allow the property owner to clear just that number of trees, under City supervision, and allow them to take them from the road to their property line. Rebecca Huss seconded the motion.

Discussion: Jon Bickford asked if they would remove the trees from property. Mr. White said yes, they will be removed and mulched. John Champagne said he still has a great affection for private business, he would like to say we are restricting you to a specific number of trees or to an area to facilitate two driveways and asked if that was one of the same. Mr. White said it is.

T.J. Wilkerson asked if they would not have to replace any of those trees being removed. Mr. White said they would be removing eleven trees.

The motion carried unanimously. (5-0)

11. Reports regarding several management issues recently discussed by City Council:

a. Status of Backflow Prevention Devices Installation;

Mr. McCorquodale advised the backflow prevention ordinance was passed last summer that requires any business with a high health hazard to have a back flow prevention device installed. Mr. McCorquodale said since then, any new business that has come in that would fall under that category has already had one installed, so late last year the City began notifying the residents in town, and they identified the businesses that would need to have a backflow prevention device. Mr. McCorquodale said they were at the tail end of the process in getting the devices installed. Mr. McCorquodale said there was a handful of people that they sent a couple letters to and Mr. Muckleroy has hand delivered second notices to the businesses that have not responded. Mr. McCorquodale said the process is going good and said for a 5/8 inch backflow device, the cost, if a City contractor does the work, was about \$850, and for a 2 inch backflow device it was \$1,250.

John Champagne asked about Kroger and whether they were in compliance. Mr. McCorquodale advised Kroger was in compliance.

Jon Bickford said he visited someone that leases a building in town today and got his report that he got a request that he put in a backflow device. Jon Bickford said his question is why it would be incumbent upon the lessee to do that, shouldn't the landowner be required to do that. Jon Bickford said if a landowner has a strip of buildings and they all have water coming to them, if he is leasing that property, as a renter, why he is paying for that, shouldn't the City say the property owner should put that in. Mr. McCorquodale said they do not get into the lease agreements for commercial leases, but the water account holder is the one responsible and who the City is dealing with. Mr. Yates said overall, considering that they hit the 80 business out of the blue for the \$800 statement on something new to them, getting all but five back was a very good response and they have done very well.

Mr. McCorquodale said there are only four businesses that have not responded yet. Mr. Yates said he was not sure that two or three of those businesses even need to be on the list, so he will check with Mr. Rick Hanna to make sure they need to be on the lists.

Jon Bickford asked if there was a strip of five stores, do they typically have water coming into each of the five stores. Mr. McCorquodale said in the case of Joe Shockley's property, he has a meter on each one, and Kroger has one tap that they are all served from that one meter.

b. Status of Grease Traps within the City; and

Mr. McCorquodale said Tom Cronin had asked the City to look into the status of the grease trap program. Mr. McCorquodale said the summary of the findings is:

26 – Active grease trap accounts

2- Inactive grease traps, which are vacant businesses

3-accounts that had grease traps installed, which were not billed the \$50 per month fee or inspecting them.

Rebecca Huss asked for the status of the three that they were not billing or inspecting; were they filthy, grease contributors to our system. Mr. McCorquodale said he did not believe so, they were servicing them on their own. Mr. McCorquodale said according to the Code, if an establishment has a food preparation area, they need to have a grease trap. Mr. McCorquodale said there are some other things such as a three basin sink that are also required to have a grease trap. Mr. McCorquodale said neither of the Community Centers had grease traps, either ours or the Lone Star Community Center, and most churches don't

have them. Mr. McCorquodale said Mr. Foerster has shared an ordinance from Willis that exempts churches. Mr. McCorquodale said there is a debate as to whether the City might want to exempt the Community Centers or the churches.

Jon Bickford asked about a church that also offers day care services, because many do. Rebecca Huss said the Methodist Church has a daycare, but the children bring their own lunches to school. Jon Bickford asked if they need to put a caveat in there, if a daycare center provides meals every day, then does that fall into the category that would require a device. Mr. McCorquodale said an example would be the Cowboy Church with their expansion of putting in a kitchen for their school and they are installing a grease trap, even though they are under the umbrella of the church. John Champagne said, to him, focusing on days as opposed to volume is a disconnect, so if they are operating four days out of seven, it is not every day, and asked if that would be termed every day. John Champagne said they are focusing on days and not on the stuff that they have to deal with at the sewer plant. John Champagne said he was talking about Willis; gave an exemption that unless they are doing it every day, they are not required. Rebecca Huss said people having pot luck dinners and bringing their dishes in and washing the dishes is different than actually cooking the items and washing the pots and pans.

Mr. Yates said there are also under the sink grease traps for very small usage, so if someone was marginal they could use one of those.

Tom Cronin asked if the City has a capacity requirement. Mr. McCorquodale said there is a flow test, but right now the City does a very basic inspection with our in-house employees, where they look to see if there is grease in the trap and if there is grease that is getting by the trap. Mr. McCorquodale said there are some other things that they can do to gather some more useful data, and said the key to it all is you are getting the data that you need and not just collecting data for the sake of data. Mr. McCorquodale said the time retention test is what tells you if your grease trap is the right size and if it is holding what it needs to hold for the right amount of time for the grease to separate from the water.

John Champagne said the City is doing things and checking. Tom Cronin said an issue that he has, he has been told by somebody that cleans grease traps there are a couple of restaurants that go weekly. Tom Cronin said that was why he asked if the City had a

capacity issue, and asked Mr. Muckleroy if he knew what the smallest one out there is. Mr. Muckleroy said he thought the smallest one out there right now is Hodge Podge Lodge, and that one is really undersized. Mr. Muckleroy said he spoke to Mr. Hanna about their grease trap, stating that it kind of slipped under his radar. Mr. Muckleroy said he spoke to Hodge Podge and they are in the process of upsizing their grease trap, and he explained that very thing to them that the larger size would be more cost effective for them to go ahead and upsize and pump every three months rather than every week, which is a lot. Mr. McCorquodale said when a business opens and they say they are just doing one day a week sandwiches, and then six months down the line they have a full on restaurant with meals served every day, like the situation of Hodge Podge having a 50 gallon grease trap with a full service restaurant.

Mr. McCorquodale said other pretreatment measurers to be monitored will be the new carwash facilities going in that have sand and oil separators. Mr. McCorquodale also said the older carwashes are grandfathered, but stated no issues have been noted to date.

Rebecca Huss said one of the policy recommendations is that we need to update our ordinances to cover enforcement for failed inspections, because we did have for the first time a double failed inspection in February. Mr. McCorquodale said they could do that outside an ordinance; they could come up with a policy with a directive because our ordinance does not actually speak to the fees, it just says the fees are available in the City Secretary's Office. Rebecca Huss said given the situation, it would be best if it was written down so that there is full transparency as to what actions people should take and what is required. Mr. McCorquodale said one of the tough things is it's not very black and white, and there can be some subjective reasons why someone would not pass a grease inspection, if it is close to being full, it might be more of a notice to the owner that if they are scheduled to be pumped three weeks from now they might not make it. Rebecca Huss said that was another reason to outsource for a more technically driven inspection procedure. Mr. McCorquodale said you can train staff or take them off of whatever else they were doing, to do a more enhanced inspection, or farm it out to a contractor.

Mayor Countryman asked if they continue to have the same offenders. Mr. McCorquodale said in general, yes. Rebecca Huss said interestingly enough it is not necessarily the same offenders. Rebecca Huss said she has the inspection logs for the last three years, and it is not who you think, McDonald's actually seems to have the cleanest

grease traps in town, with no violations for three years. Rebecca Huss said they either did a great job of upsizing or they do a great job of managing their kitchen, or something. Rebecca Huss said people that you would not necessarily consider are the scofflaws.

Mayor Countryman said if they get a third party, she knows that there have been some owners that have not been as kind to our City employees when they are having to deal with the news, so perhaps that third party would be something that would take the City out of it. Rebecca Huss asked about making a decision on a third party or upsizing the City inspections. Mr. McCorquodale said he would think that would be a told direction, or if City Council would like them to come back with a proposal. Mr. Yates said he thought staff could figure that out. Rebecca Huss said she would like to see that, because she felt it would be better to outsource that service and have it be more technical and not subject to political pressure. Mr. McCorquodale said in general the cost for staff doing a more enhanced inspection versus a third party is the same, with the exception of failed inspection, because right now we do not charge for failed inspections, and a third party contractor would come out and he did not think they would be doing that at our cost. John Champagne said if the person failed an inspection, he thought an argument could be made that the culprit could pay for it, or should pay for it. Mayor Countryman said certainly. Rebecca Huss said that seems obvious.

Rebecca Huss asked Mr. Yates if he could make that happen. Mr. Yates said he could.

c. Status of Live Streaming of City Council Meetings.

Mr. McCorquodale stated the points to consider are low cost, ease of operation, and ease of user input. Mr. McCorquodale said in his opinion, they could use one fixed camera that is permanently mounted on the wall because then you would not have to set it up and take it down. Mr. McCorquodale advised the City of Conroe uses a higher end service with someone watching the meetings and operating the cameras, and is as expensive as it sounds. Mr. McCorquodale said they have talked about improving the microphones and the lighting. Mr. McCorquodale advised the lighting in the Council Chambers is a bit different because they have been working with Public Works and Solomon Electric to replace some more of the older style lights with the LED lights, with the idea of being able to light the dais more effectively. Mr. McCorquodale advised, regarding the bandwidth, the City is in the process of getting fiber optics and said Consolidated was out

yesterday and determined the service was on our side of SH 105, so the process might move a little faster than a couple months.

John Champagne said, as he remembered, state regulations have certain things that have to be in place with audio and all that, so he would say just get us some information for the basic service. Mr. McCorquodale said that is exactly what he is doing, stating a company called Boxcast that he is looking at that seems the middle of the road option, would be about \$120 per month for their services. Mr. McCorquodale said it would allow the City to go back the next day and index those videos so it is not one giant block; they can designate sections of the tape to go to specific items on the Agenda. Jon Bickford said they are going to go beyond live streaming and start recording the meetings as well. Mr. McCorquodale said that is correct. Jon Bickford asked if they just want to do live streaming, and you have the choice of watching it. Mr. McCorquodale said you can certainly do that, you do not have to upload those videos, you can just live stream. Jon Bickford asked about the storage with Boxcast because they are not going to give you unlimited storage. Mr. McCorquodale said the tape would be downloaded by the City. Mr. Yates said it would be like a set of minutes and the City Secretary would save and archive. Rebecca Huss said Mr. McCorquodale's comment on the social media and not having to work on policing the comments and then dealing with censorship and free speech, etc., if they just have it available for viewing, but not receiving, makes it easier. Mr. McCorquodale said it was not comments about City Council meetings they would have to worry about, it is comments that have nothing to do with anything City related, but you would not be able to take those down as a City government.

Mr. Yates said they are talking about a cost for livestreaming to be \$2,500 to \$3,000. Jon Bickford said he would not make this so hard, stating that technology has come so far, and there is a Cisco service with cameras and microphones on the computer, and as many people can join as you want, you can cut the microphones when you want. Jon Bickford said that video is more than adequate at the house, and very simple to set up once IT gets it in place. Mr. McCorquodale said the idea would be they could set up the recording to start on Tuesday at 6:00 p.m. and then Ms. Hensley can stop the recording at the end of the meeting. Jon Bickford said Go To Meetings is another service, but they actually moved off of that service to Cisco Webex, but he did not know if something like that would be viable or useful, and he did not know what they charged for their service.

Mayor Countryman said Mr. McCorquodale could bring back three different ideas for the next City Council Meeting and they can look at all three of them and make a selection and move forward with that. Mayor Countryman thanked Mr. McCorquodale for all his hard work.

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.

12. 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 551.072 (deliberation regarding real property) to consider real property matters involving certain properties in the City and consultation with attorney on confidential legal matters under Section 551.071 of the Texas Government Code.
 - b) Section 551.074 (personnel matters) regarding the City Administrator position.

Mayor Countryman adjourned the Regular Meeting at 7:32 p.m.

13. Reconvene into Open Session.

Mayor Countryman reconvened into Open Session at 8:39 p.m.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

14. 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

Jon Bickford moved to adjourn the meeting at 8:40 p.m. John Champagne seconded the motion, the motion carried unanimously. (5-0)

Submitted by: 
Susan Hensley, City Secretary

Date Approved: 4/23/19




Mayor Sara Countryman