

MINUTES OF REGULAR MEETING

January 8, 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

Mayor Countryman advised the City Attorney, Larry Foerster, would be running late this evening.

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.

Cheryl Fox addressed City Council, advising that she was really unhappy about how visitors see the City when they first come into the City when they go by the site on SH 105, where the donut shop is going in. Mrs. Fox asked the City Council to look at the photos that she presented them and asked them to look at the photos of the property as if they were a visitor to the City. Mayor Countryman said she knows why the property is looking that way. Mrs. Fox said she knows there is always a promise that the property is going to get better; she has heard it for almost 18 months, because at that time she spoke to Mr. Muckleroy and he assured her that it was going to be taken care of. Mrs. Fox said you can see by the photos, there is a sign that says "Montgomery Barber Shop" that has been there for about a year, and there is a huge pile of brush that could be a fire hazard. Mrs. Fox asked if, on the second photo, the sign met the City's sign requirements. Mrs. Fox said she wished that City Council would take a look at this as visitors, because she has had several people who come from out of town say how absolutely terrible it looks. Mrs. Fox said she thinks that it puts a bad light on the City of Montgomery. Mrs. Fox said she knows that there are plans in the works that this will be resolved, but in other cities the City gives notice, and if it is not done in a timely manner, then the City does the work and charges the property owner.

Mr. Scott Howard advised that he wanted to wait until the Agenda item comes up to make his comments. Mayor Countryman said that would be fine.

CONSENT AGENDA:

4. Matters related to the approval of minutes for the Public Hearing and Regular Meeting held on December 11, 2018.
5. Consideration and possible action regarding completion of a one-year warranty period and release of maintenance bond for the Public Water and Sanitary Sewer Facilities for Buffalo Springs Shopping Center Phase II.
6. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and 1983 Land Investments, LLC regarding The Woods at Town Creek tract (Dev. No. 1815).
7. Consideration and possible action regarding authorizing Jones|Carter to prepare a Utility and Economic Feasibility Study for 1983 Land Investments, LLC regarding The Woods at Town Creek Development (Dev No. 1815).

Jon Bickford moved to accept the Consent Agenda items as presented. T.J. Wilkerson seconded the motion, the motion carried unanimously. (5-0)

CONSIDERATION AND POSSIBLE ACTION:

8. Consideration and possible action regarding scheduling a Public Hearing for rezoning of property located at 2580 Lone Star Parkway, Montgomery from "ID-Industrial" to "R-2 Multifamily" and the property located at 2560 Lone Star Parkway from "ID-Industrial" to "B-Commercial" be held on February 12 at 6:00 p.m., as requested by Larry Jacobs (both properties are located on one tract of land).

John Champagne moved to call the Public Hearing regarding the rezoning of property located 2580 Lone Star Parkway, Montgomery from "ID – Industrial" to "R – 2 Multifamily" and the property located at 2560 Lone Star Parkway from "ID- Industrial" to "B – Commercial" be held at 6:00 p.m. on February 12 at City Hall, 101 Old Plantersville Road, Montgomery. Tom Cronin seconded the motion, the motion carried unanimously. (5-0)

9. Consideration and possible action regarding appointment or reappointment of MEDC Board Members to fill the positions currently held by Rebecca Huss, Bob Kerr, Amy Brown, Randy Moravec and John Champagne.

John Champagne stated that he did not send his application in to be reconsidered for the MEDC Board, so he would like to give that opportunity to someone else.

Rebecca Huss said she would like to be reconsidered to serve on the MEDC Board if it pleases City Council.

Jon Bickford asked if they have to have two people from City Council serve on the MEDC Board. John Champagne said that is correct.

Tom Cronin said he too would like to be considered to serve on the MEDC Board, stating that he was out of the country so he was not aware of the opening.

Mayor Countryman said she also would like to be considered to serve on the MEDC Board.

John Champagne moved to consider Tom Cronin for a position on the MEDC Board.

Rebecca Huss said it is certainly possible that all three of the City Council members could serve on the Board; it does not say that they are required to only have two members of City Council, and it is always posted as a public meeting. John Champagne said unless there is no one from the public that has submitted. Rebecca Huss said no one from inside the City limits has submitted an application. Rebecca Huss said there were three other applications that were submitted who are located outside the City limits. John Champagne said he would say it would be, in his mind, advantageous for outside people to look at these things, as opposed to the majority of the City Council.

Jon Bickford said an application was received today from someone that is local. Rebecca Huss said she believed the deadline was Wednesday. John Champagne asked the City Secretary if there are allowances for this deadline after the date. The City Secretary advised they had published the deadline on the website, and said it would be up to City Council to determine allowances. Mr. Yates also stated that would be up to City Council. Rebecca Huss said she would say no because she told other people that they had missed the deadline.

Rebecca Huss said she did see what John Champagne was saying, although since Tom Cronin is new on City Council, she would submit that this is really more of a five-month term, because that position is up for re-election so it may or may not be a temporary thing, and then one of the positions should have been up last year, so they will be up for reappointment again.

Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

John Champagne moved to consider Julie Hutchinson who submitted her application late for one of the positions on the MEDC Board.

Jon Bickford asked if the City told anyone else that they could not apply late. Rebecca Huss said Julie Hutchinson was the only person she told could not apply late. Rebecca Huss said her qualifications are similar to Randy Moravec's and she lives in the City limits, so she would nominate her for Randy Moravec's position. John Champagne said the motion was to allow Julie Hutchinson to apply, since her application was late.

Tom Cronin seconded the motion, the motion carried unanimously. (5-0)

Rebecca Huss moved to appoint Julie Hutchinson to fill Randy Moravec's position. Tom Cronin seconded the motion.

Discussion: John Champagne said he would like to say that Mr. Moravec brings a lot of value to the Board. John Champagne said Mr. Moravec has opinions, but he has a vast amount of experience and his fiscal prowess and PhD is pretty substantial.

The motion carried with 3-Aye votes by Rebecca Huss, T.J. Wilkerson, and Tom Cronin; and 2-Nay Votes by Jon Bickford and John Champagne. (3-2)

Jon Bickford moved to appoint Amy Brown to the MEDC Board. John Champagne seconded the motion, the motion carried unanimously. (5-0)

Jon Bickford moved to appoint Bob Kerr to the MEDC Board. John Champagne seconded the motion, the motion carried unanimously. (5-0)

John Bickford asked if there were any other applications for Rebecca Huss' position. Ms. Hensley advised the applications were not submitted by spot.

Jon Bickford moved to appoint Rebecca Huss for the last City Council position on the MEDC Board. John Champagne seconded the motion, the motion carried unanimously. (5-0)

Mr. Foerster, City Attorney arrived at the meeting.

10. Consideration and possible action regarding an Alcohol Beverage Permit Application for CVS Pharmacy #11097 located at 20125 Eva Street, Montgomery, Texas.

Mr. Yates said this is an application by CVS for a Wine and Beer Retailer Off-Premises permit. Rebecca Huss said this is the exact same type of permit that Kroger, located across the street, also possesses.

Jon Bickford moved to grant the Alcoholic Beverage Permit Application for CVS Pharmacy #11097. T. J. Wilkerson seconded the motion.

Discussion: John Champagne asked about Off-Premise Permit and what it is. Mayor Countryman said it was consumption off the premises, you can't drink on the premises.

The motion carried unanimously. (5-0)

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

AN ORDINANCE OF THE CITY COUNCIL OF MONTGOMERY, TEXAS, AUTHORIZING PARTICIPATION WITH OTHER ENTERGY SERVICE AREA CITIES IN MATTERS CONCERNING ENTERGY TEXAS, INC. AT THE PUBLIC UTILITY COMMISSION OF TEXAS IN 2019; AUTHORIZING THE HIRING OF LAWYERS AND RATE EXPERTS; AUTHORIZING THE CITY'S PARTICIPATION TO THE FULL EXTENT PERMITTED BY LAW AT THE PUBLIC UTILITY COMMISSION OF TEXAS; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT; AND DECLARING AN EFFECTIVE DATE.

Mr. Yates advised this is to participate, at no cost to the City, with the Lawton Law Firm involvement in electric utility rate issues with the Public Utilities Commission ("PUC") on behalf of the City. Mr. Yates said the ordinance is required for the Lawton Law firm to represent the City of Montgomery before the PUC. Mr. Yates said the reason there is no cost to the City is because the PUC rules require utilities to pay the expenses of contesting/questioning/reviewing any electric rate issues brought before the PUC. Mr. Yates said in his last 4 ½ years the law firm has been representing the City, and said they also represent approximately 40 other cities in southeast Texas in the same manner. Mr. Yates said the City Attorney recommends passage of this ordinance.

Rebecca Huss moved to approve the Ordinance as presented. T.J. Wilkerson seconded the motion, the motion carried unanimously. (5-0)

12. Consideration and possible action regarding rescinding the Animal Control Ordinance.

Mr. Scott Howard said most people know why he is here tonight. Mr. Howard said Tom Cronin was new on City Council and welcomed him. Mr. Howard said about a year ago a guy moved in their neighborhood with 22 bird dogs and he kept them in an 800 square foot backyard. Mr. Howard said he would rather have a hog farm, because at least hogs don't bark. Mr. Howard said the stench over there during this past summer was, at times, unbearable. Mr. Howard said they battled the situation for six months; the police were called numerous times, but they were told it was not a legal matter, the State was called, but they were told it was not a State matter, it is a neighborhood,

inside the City limits City of Montgomery problem. Mr. Howard said he pursued every avenue he could to get an animal ordinance. Mr. Howard said he was not an animal hater, he just hates what is going on two doors down from his house.

Mr. Howard said Jon Bickford and Rebecca Huss have taken time out of their schedule to come and see what the problem is in person. Mr. Howard said the noise level is a factor, which has gotten better since the Animal Ordinance was adopted last month. Mr. Howard said it has gone from 27 dogs to 11 dogs, six outside dogs and five of their personal dogs inside their home.

Mr. Howard said to John Champagne that he has been the roller coaster in this endeavor. Mr. Howard said he pulled the minutes up from the meeting in November and said John Champagne was almost begging the City Attorney and City Administrator to do something to help them, whatever it was in some legal way. Mr. Howard said he understands the rights of citizens. Mr. Howard said last month John Champagne would not have anything to do with the Animal Control Ordinance. Mr. Howard said in October they were all knee deep in the Police Chief matter, so this all went to the back burner and nobody cared how bad our neighborhood was. Mr. Howard said he did not know where John Champagne stands on this matter, stating that he gets the civil liberties of these people and they have a right to have a bunch of dogs. Mr. Howard said John Champagne, in the November Meeting, said he was all about doing what is good for most of the people, and now after four or five months of waiting his turn to come up here every month to speak, they finally get an Animal Control Ordinance, which most big cities have. Mr. Howard said a lot of people put in a lot of man hours putting this Ordinance together and now we are just going to throw it out. Mr. Howard said he was all about amendment, and maybe there are some things that need to be tweaked and changed, but just to throw it out puts us back to square one. Mr. Howard said he promised he would be at City Council every meeting trying to get it back on the Agenda.

Tom Cronin asked what the new Ordinance has done to Mr. Howard's situation. Mr. Howard said it has gone from 22 dogs outside to six dogs outside and five inside. Mr. Howard said they were grandfathered because at the time the Ordinance was passed they had 11 dogs. Mr. Howard said there is no way to keep track of the dogs if they sell them; this was a dog training business.

John Champagne said this is an open forum, an opportunity for a private citizen to come and say their piece; it is not, however, an opportunity for this City Council to engage. John Champagne said there is typically a time limit on these things. John Champagne said he appreciated everything that Mr. Howard said, and said he probably could have saved Mr. Howard some time if he had

waited until after he had addressed the matter, but said he had every right to do this, which he wanted to say for the record. Mr. Howard said he appreciated John Champagne's input and said he would like to have an open forum about the matter. Mr. Howard said he would like to invite everyone to come to the property and see for themselves this is not a 10-acre pasture with six horses in it, it is an 800 square foot back yard with a pile of dogs in it, and said the stench is awful. Mr. Howard said he was prepared to go a little deeper into this, but he will see what happens. Mr. Howard said he did not know if City Council was really going to rescind this Ordinance in its entirety. Mr. Howard said that he hoped Tom Cronin in his new position, before he makes a vote he hoped he could look into the matter and see what is right for most of the people. Mr. Howard said he never hears T.J. Wilkerson say much about this matter and he did not know how he feels about it; he knew he voted no last time, but before he votes again he wished he would come and see what it is like because this is not about somebody's horses out in a pasture that may or may not be in the City limits, most of us do not care or complain about that. Mr. Howard said what is to stop the next guy and what are they going to move in with. Mr. Howard thanked City Council for their time and said he will see them next month.

John Champagne said his first reaction to this voluminous Ordinance, which is much longer than the Declaration of Independence, he has reviewed this thing three or four times and he sees great benefit to a lot of it. John Champagne said here are his concerns, and his desire was not to rescind the entire thing, and said he has been out to Mr. Howard's home, but no one was home. John Champagne said one of his biggest issues is how they are going to enforce this Ordinance. John Champagne said he walks this town a lot and he can find a dozen homes right now that are out of compliance. John Champagne asked how they implement this Ordinance, saying that is the key; do they use it as a tool or do they use it conservatively, because now they open the floodgates. John Champagne said these Ordinances come in to play because people don't know how to handle their freedom with self-restraint and respect for each other's neighbors; that is the problem so government has to step in, which is never a good thing. John Champagne said now they have government officials that are going to determine what is right and wrong and he did not like it, but this is what we got.

John Champagne asked if they had sent officers out to the location a number of times. Mr. Yates said yes over the last several months. John Champagne said he has seen the reports, and there was nothing, which is diametrically opposed to what we are hearing tonight, but they have every right because it is a subjective thing. John Champagne said his problem is his dogs bark and when they do he tries to shut them up and put them inside because he does not want to disturb his neighbors,

which is how most people are. John Champagne asked who is going to have the final word as to who is out of compliance, will it be the Director, whoever that is, and have we addressed who that is going to be. Mr. Yates said it is the Director of Public Works. John Champagne said he has got all kind of time to be enforcing this Ordinance, and the Police will be involved, he would image. Mr. Yates said it would be the Director or his designee that can enforce the Ordinance. John Champagne said the only reason he brings this up is we have limited resources. John Champagne said he feels the problem is real and he is not discounting that, it has taken an inordinate amount of time and resources to address.

John Champagne said the other thing is there is some wording that states it is a violation to keep any dog, bird or other animal that causes frequent or long, continued noise, and asked for someone to tell him what that means. John Champagne said they have to be careful when they send people out there because this thing can be a real big bat. John Champagne said the other thing is no person shall keep, use or maintain a dog outdoors on any premises unless the dog is either provided with full access to an enclosed building or access to a dog house or similar shelter at all times. John Champagne said if you go through the City, he can find six locations where that is done. John Champagne said it states that it shall be unlawful for any person to fasten, chain or restrain the dog to a house, tree and asked if they were going to get into all this now.

John Champagne said he is going to take back his desire to rescind part of this Ordinance, but when this thing rears its ugly head, and it will, just remember what was discussed here because he is all for addressing issues that need addressing, but he had a problem with being so comprehensive, so inclusive, so intrusive, and said some of this is common sense, such as rabies, animal fights, and roadside sale of animals, which he is in with all of that.

John Champagne said he officially rescinds his motion to rescind. Jon Bickford said John Champagne had asked for the item to be put on the Agenda, and now he wants to take it off. Mr. Foerster said the item on the Agenda is to consider rescinding the Animal Control Ordinance; if there is not a motion to rescind, then there is no action. Mr. Foerster said he wanted to point out, as time goes on, whether it is tonight or a later time, if there are things about this Ordinance that need to be cleaned up, which is not uncommon with any kind of Ordinance, this City Council can go back and fix the problem. John Champagne said he was fully aware of that. Mayor Countryman said if she recalled correctly, in December when this was adopted, we said if we need to change it later we can, but at least now we have a foundation, and those were the words that were used. Mayor Countryman said she thought they should all be fully aware that the Ordinance can change,

and probably will change, but they need at least something as a guideline. Mr. Foerster said they should all be alert that there might be something that they forgot about or did not address.

Mr. Foerster advised that no action was needed because there is no motion.

T.J. Wilkerson asked if this was a legitimate business that this man is running. Mr. Howard said since the passing of the Ordinance they claim that they are not doing business there anymore and they have dwindled the number of dogs from 22 to six dogs, and they say the six dogs remaining are their personal bird dogs. Mr. Howard said he has not seen any customers, and he is watching for them. Mr. Howard said he doesn't believe they are conducting business anymore; he thinks the gentleman went back to work, because he had quit his job and was working with the dogs full time. Mr. Yates said he sent a letter regarding the home occupation, and he sent the people a letter stating that they needed to stop the business. Mr. Yates said he spoke to them two weeks later and they said they had quit the business. T.J. Wilkerson said he rode through there a couple of times checking.

13. Report regarding Atkins Creek Water and Sewer Line Repair.

Mr. Roznovsky presented the report to City Council detailing how the erosion of Atkins Creek has progressed. Mr. Roznovsky said over the past three years the Creek has gone 1,700 feet back from where it was, with the first year going 600 feet and then 1,100 feet in the last two years to get to this point. Mr. Roznovsky said the big erosion happened after Hurricane Harvey that was in August 2017, which took it back approximately 600 feet just during Harvey, which is what damaged the water and sewer lines and storm lines included in the FEMA project.

Mr. Roznovsky said from December 9, 2018 to today the Creek has eroded the last 100 feet and is right at FM 1097. Mr. Roznovsky said the December 9, 2018 rain event did a good amount of damage and they lost about 200 feet during that night. Mr. Roznovsky said after the December 9, 2018 event they were watching it get closer to FM 1097 so they contacted TxDOT. Mr. Roznovsky said on December 14, 2018 TxDOT saw the issue and concerns, so they mobilized crews and on December 21, 2018 they started installing rip rap to help protect against future erosion. Mr. Roznovsky said unfortunately the rip rap was not large enough, so when the rain occurred on December 26th and 27th all of it was gone. Mr. Roznovsky said by 10 a.m. the following day it was all gone and up to FM 1097, with the waterline and gas line exposed, along with some communication lines. John Champagne asked who engineered that area. Mr. Roznovsky said no

one, it was a natural stream when the Waterstone and Terra Vista developments went in and they modified it to drop it down to the canal level. Mr. Roznovsky said after Christmas TxDOT came back when this was happening and they were able to move on site since they were there a couple days before and they already had equipment there to start repairs. Mr. Roznovsky said there was a waterline that was broken during that process, which serves all of the Terra Vista Subdivision. Mr. Roznovsky said luckily Public Works had the fore thought that they had ordered material beforehand and had it on hand, so when this happened within an hour and a half they had a waterline up and running to provide service to Terra Vista so they were only out for an hour and a half. Mr. Roznovsky said TxDOT put in a new pipe to replace the broken pipe, while TxDOT continued to stabilize the area around it so they could put it back in service. Mr. Roznovsky said since yesterday TxDOT has done a lot of stabilization around the end and the channel is much bigger. Mr. Roznovsky said TxDOT is still out on location and they have been assisting and paying for all the work that is being done.

Jon Bickford asked if TxDOT was doing this to save FM 1097. Mr. Roznovsky said that was correct. Jon Bickford asked why the developer around this was not responsible. Mr. Roznovsky said from the water line back to the street is a public easement and right-of-way; downstream of that, minus the couple of times that they cross, is all private property, so there are three parts going on TxDOT (at the street and the waterline), FEMA (City's water and sewer lines taken out during Harvey and getting back in) and long effects of erosion, which is what is still to be determined how that moves forward because it is mostly owned by three property owners.

Jon Bickford asked if one could argue that their activity has caused this. Mr. Roznovsky said that is an argument, and part of it is how the channel was dropped and there is a chance that caused it and it wasn't controlled when the erosion started and nothing was done to prevent it at that time. Jon Bickford said his question is why we are not going after the responsible party to pay for this.

Mr. Roznovsky said that FEMA has revised the schedule for the project, advising that the funds for the repair of the water and sewer lines and at the last meeting FEMA had advised they would only grant \$68,000, but they have since reversed that and are moving forward with the full scope of the project at \$405,800. Mr. Roznovsky said according to FEMA, as of today, within the next 32 days we should have the obligation of funding to be received. Jon Bickford said FEMA is going to provide \$405,800 the City. Mr. Roznovsky said it will be \$365,000 from FEMA, \$40,000 from the City and that will take care of the water and sewer lines that were exposed, will stay where they are and piers and piles go in to extend across, so they will be supported.

Rebecca Huss asked if the landowners are going to do anything to stabilize their side of the creek, because the piers might not be enough to hold. Mr. Roznovsky said the pier support is steel casing, which extends 20-30 feet into the existing banks, so it can keep on working its way back and we are protected for a while. Mr. Roznovsky said ultimately the decision has to be made on how this gets fixed, because either you bring in a lot of dirt and fill it to what it was, or if you want to lay the slopes back to where they are stable.

Mr. Roznovsky said they will have a follow up call with TxDOT on Thursday, because their original plan all along was to bring the rip rap in to stabilize the creek and then come in with a more permanent solution at the easement line. Mr. Roznovsky said one thing that they are considering, but still working out the details, is that they might be able to participate with helping stabilize the area further downstream up to a couple hundred feet from FM 1097 if they are able to get the access to it. Jon Bickford asked if in these discussions whether the property owners are plugged in. Mr. Roznovsky said they are not, the initial reach out to the property owners regarding our permit to do the work, but they never received any response and ultimately the Corp. of Engineers approved their permit, which they received last week. Jon Bickford asked to confirm that they have never received a response from the property owners. Mr. Roznovsky said they have not.

Rebecca Huss asked how far from the center of this would they need to get the appropriate slope. Mr. Roznovsky said just 200 feet; you go from existing Terra Vista Circle, from the edge of the pavement to where the fence is all the way over to the trees on the opposite side of the creek, that whole distance is about 200 feet. Mr. Roznovsky said what they will need is 75 feet outside that, which would include some of Peninsula Point Drive, which is in Waterstone Section 2, and the four lots that back up to it in Terra Vista, and a lot of other area. Rebecca Huss said back to Jon Bickford's point, this is private property and while it is theoretically the City's problem, on the other hand we are serving their property and making their property developable, so really this is a problem that they need to figure out how to solve. Mr. Roznovsky said they can at least get the TxDOT portion in the front protected so the waterline and highway are stabilized, then get the aerial crossing in so they are protected on the water and sewer utilities, then it will buy us time and something needs to be done.

Jon Bickford asked if they have a way to contact the property owners if they should reach out to them. Mr. Foerster said he thought that we need to sit down with them and get their input and engaged in this thing. Jon Bickford said they need to participate in the resolution of this. Mr.

Foerster said this is going to have an impact to their subdivision. Jon Bickford said it already has from what it sounds like. Jon Bickford said the property owners need to take ownership of this. Jon Bickford said this is the last 10 percent the City is going to pay and they need to get on this thing. Mr. Roznovsky said he was not saying that was 100 percent of what caused the erosion, but from the timeline of events after the canal was done is when the erosion started. Jon Bickford said his point is they need to put the flag up right now that says they need to get them engaged in this conversation because he does not like where this is headed.

Rebecca Huss said at the very least they should not be adding houses that could make it worse and give them less flexibility. Jon Bickford said he did not know if they should be adding houses or not; he would have to get a professional engineer to tell him that. Mr. Roznovsky said the area that Rebecca Huss is talking about is the area that is backing up to this to make sure that building permits are not issued and homes are not being built on these lots that are on the edge. Jon Bickford said he did not know if they had the authority to declare whether or not they can or cannot issue permits for that; there would have to be some kind of determination by an engineer. Jon Bickford said they would need to have an engineering firm tell them that something is at risk.

Mr. Roznovsky said there is no action, this is just a report. Jon Bickford said they do have a request, and said he thought the City Attorney needed to get into this information. Mr. Foerster asked if any of this area is deemed to be in the wetlands. Mr. Roznovsky said there is. Mr. Foerster said they need to look at that issue as well with the Corp. of Engineers. Mr. Roznovsky said the project that they have is not impacted by the wetlands, but there are areas that are defined as wetlands. Jon Bickford said he would seek to get Austin involved and get everyone down here and get this worked out. Rebecca Huss said given our previous experience with TxDOT's engineering, is their solution to this similar to Jones and Carter in terms of laying back the slope to hold it or do they have some other solution. Mr. Roznovsky said when they met, Jones and Carter provided all the drainage analysis and studies, geotechnical information that they could, so they could look at it to come up with a solution, and they said they should build a sheet piled wall right on the edge of the easement. A copy of the report is attached to the minutes.

14. Consideration and possible action regarding approval of the Certificate of Acceptance for the Buffalo Springs Drive Bridge Project.

Mr. Roznovsky reviewed the final pay estimate for the Buffalo Springs Drive Bridge Project. Mr. Roznovsky advised the total project cost was \$1,114,936; of that the City's share was \$4,304 and

the rest was paid through the CDBG Grant from the State and also through FEMA. Mr. Roznovsky said as they discussed previously, there were \$21,500 in damages that were taken off the contract because of the contractor's delay, which is factored into the total share. Mr. Roznovsky said the other item is the Certificate of Completion, so the one year warranty period begins when the project is substantially complete, which was October 31, 2018 when the road was ready to be opened.

John Champagne asked Mr. Roznovsky to confirm that all of the expenses incurred by Jones and Carter was taken out of the grants and funding from FEMA. Mr. Roznovsky said that was correct, and stated that amount is not included in this number; the engineering was paid for out of FEMA and the CDBG Grant.

Rebecca Huss asked for the outstanding balance that the General Fund account owes the Construction Fund. Mr. Yates advised it was \$280,000. Rebecca Huss said they are still waiting. Mr. Roznovsky said they received a request today from FEMA asking for us to show them on the pay estimate what items were mitigated items and what items were not, even though they paid 1-6 without that question, they are now asking about pay estimate 7. Mr. Roznovsky said they will get that information to them tomorrow. Mr. Roznovsky said essentially what is new, is the storm sewer pipe and the concrete wall versus slope paving. Rebecca Huss said since they had the worksheet, FEMA has already agreed to pay everything. Mr. Roznovsky said that is correct, the scope of what was approved is exactly the same, stating the way that FEMA breaks things down is not how the contractor looks at the project. Mr. Roznovsky said they asked FEMA if they need to write the bid items just like they have the project listed, which is specific items and actions, and they advised no, to just do it as they normally do.

Jon Bickford moved to accept and move forward with the Certificate of Acceptance for the Buffalo Springs Drive Bridge Project. Rebecca Huss seconded the motion, the motion carried unanimously.
(5-0)

15. Report regarding City Staff Issues:

- a) Current procedure for hiring for all positions;
- b) Number of employees per department;
- c) Status of applications for Police Chief; and
- d) Process of hiring assistant to the current City Administrator and Succession Plan for that position.

Jon Bickford asked to propose that since these are HR issues, that they discuss this in Executive Session rather than in Open Session. Mr. Foerster said he did not believe they qualify because these are procedural issues not dealing with individual people. Mr. Foerster said if City Council was addressing issues regarding the City Administrator you could go into Executive Session for that, but the Texas Attorney General has concluded that if it is simply procedures that you are discussing, they need to be in Open Session. Mr. Foerster said if City Council is talking about individuals, such as the City Administrator, that would allow you to go into Executive Session. John Champagne said they would be talking about the City Administrator. Mr. Foerster said that would allow you to go into Executive Session for that item.

Rebecca Huss asked if they need to postpone until the next meeting to have the item posted under Executive Session. Mr. Foerster said you have an option, and the right to discuss any item listed above in Executive Session, but again the question is if you are talking about a personnel matter that would be involving an officer or employee, they can go into Executive Session to discuss that item. Mr. Foerster said they have certain items like the procedure for hiring a position and the number of employees in each department, status of applications; those things, he believes would be simply matters for open discussion. Jon Bickford said maybe "a, b and c" conduct in open discussion and "d" go into Executive Session.

John Champagne stated that Mr. Yates, in regards to the hiring procedure, you attach the job description. John Champagne said all of the hiring is done within budgetary limits, correct. Mr. Yates said that is correct.

John Champagne said he was going to ask about a specific position, asking if that was okay. Mr. Foerster said that was okay. John Champagne said the first question was the Assistant to the City Administrator, and said when this was discussed it was his intent, he thought, and the intent of this City Council for Mr. Yates to hire a Deputy City Administrator, meaning someone to fill in once Mr. Yates transitioned out. John Champagne asked if Mr. Yates did not get that. Mr. Yates said no, he did not. Mayor Countryman said she did not recall that. John Champagne said the Mayor was not here for that. Mayor Countryman said she was here. Rebecca Huss said Mr. Yates had a 1-10 list of things that he did and he was to delegate the things that were the least priority. John Champagne said this has been a good while back and has been done a number of times. Jon Bickford said he remembered the topic of discussion that they needed to start planning that way and see if they could find someone to learn from Mr. Yates. John Champagne said they discussed it a number of times. Rebecca Huss said now they are straying into the specifics of an Executive

Session discussion. Mr. Foerster said if they are just talking general terms, he thought they were okay staying in Open Session.

John Champagne said now they are going to get into when, how and the time, so now we are getting really specific in regards to Mr. Yates and asked if he was okay with that. Mayor Countryman said she thought that was an Executive Session topic, because that is a person. John Champagne asked if he could ask the City Attorney the question. Mr. Foerster said now John Champagne is veering into what could be discussed in Closed Executive Session. John Champagne said that was why he was asking. Mr. Foerster said John Champagne was targeting a City employee, the City Administrator.

John Champagne said there has been some hiring in the departments, and said Mr. Yates has listed the number of individuals that are employed in each department. John Champagne asked if Autumn was no longer here. Mr. Yates advised her first name is Leslie, and she is listed. John Champagne said they have eight individuals in Public Works, one part-time, and the Utility Development Clerk is Autumn. Mr. Yates said that was correct. Mr. Yates said there were six employees in that department when he got here four years ago, and the two additions have been talked about during budget time. Mr. Yates said while we were adding the positions, we saved money by doing our own manhole checking and work, so the Council felt they could add those positions.

John Champagne said in the Police Department, he believed the optimum number is 11. Mr. Yates said yes that is what staff has advised. John Champagne said the Police Department is at eight officers. Mr. Yates said they were at eight, but they just hired Officer Justin Ravari. John Champagne said they are in arrears three officers. Mr. Yates said that is correct. John Champagne said that leads him to the application and the invitation on the web site for Montgomery; he went to the Texas Municipal League web site and asked if the minimum requirements listed are the actual minimum requirements, not on the City's web site, because if you go to the City's web site there is a very detailed document that goes much further. Mr. Yates said the City's web site includes the job description itself and the TML site is a restatement of that information. John Champagne said it really isn't because there is no mention of having a Master Peace Officer Proficiency Certification for one of the requirements. John Champagne said the requirement is on the City's web site. Mr. Yates said the ad that is on the TML web site states to go to the City web site for the full job description. John Champagne said that he saw that, he just wanted clarification that the document on the City's web site is the controlling document. Mr. Yates said that was correct.

John Champagne said the only other thing that he has is the City Administrator and a question regarding Dave McCorquodale. Mr. Foerster said if it has to do with personnel issues it will be appropriate to go into Closed Executive Session under Section 551.074 of the Texas Local Government Code. Mayor Countryman asked if they have to place that item on the Agenda. Mr. Foerster said City Council can go into Closed Executive Session for that specific reason, but City Council will need to adjourn into Closed Executive Session at this time. Mayor Countryman asked if this action needed to be done with a motion. Mr. Foerster said under the circumstances, yes, there should be a Motion to go into Closed Executive Session to discuss the City Administrator Position with a second and a vote.

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. (There are no items at this time.)

John Champagne moved to adjourn into Closed Executive Session at 7:13 p.m., to discuss two personnel issues regarding the City Administrator and the Assistant to the City Administrator. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

Mayor Countryman reconvened the meeting at 7:50 p.m.

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.

There were no comments made.

ADJOURNMENT

Jon Bickford moved to adjourn the meeting at 7:50 p.m. Tom Cronin seconded the motion, the motion carried unanimously. (5-0)

Submitted by: *Susan Hensley* Date Approved: *01/22/2019*
Susan Hensley, City Secretary

Sara Countryman
Mayor Sara Countryman

