

MINUTES OF PUBLIC HEARING and REGULAR MEETING

September 11, 2018

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
	Dave McCorquodale	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 called for a moment of silence remembering the tragedies that took place on September 11th, 17 years ago to our Country.

INVOCATION

T.J. Wilkerson gave the invocation.

PLEDGE OF ALLEGIANCE TO FLAGS

PUBLIC HEARING

Convene into Public Hearing:

Mayor Countryman convened into Public Hearing at 6:03 p.m.

For the purpose of giving all interested persons the right to appear and be heard regarding the following:

1. Budget Public Hearing: for the proposed of hearing public comments regarding the proposed 2018-2019 City of Montgomery FY Operating Budget.

“This budget will raise more total property taxes than last year's budget by \$202,893 a 19.7% percentage increase, and of that amount \$74,617 is tax revenue to be raised from new property added to the tax roll this year.”

There were no public comments made during the Public Hearing.

Adjourn Public Hearing

Mayor Countryman adjourned the Public Hearing at 6:04 p.m.

Reconvene into Regular Meeting

Mayor Countryman reconvened into Regular Meeting at 6:04 p.m.

Mayor Countryman stated, with City Council's permission, she moved to Agenda Item 22.

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.

Clayton Weikel advised that he did not live or work in the City. Mr. Weikel said he had heard that there was going to be a vote of no confidence possibly against Chief Napolitano, and said if that was to occur City Council would be doing a great injustice to the City and its citizens. Mr. Weikel said he has been in law enforcement for 10 years, and out of those 10 years Chief Napolitano has been one of the best people he has ever worked under. Mr. Weikel said he was not only a boss but a leader.

Scott Smith advised he lived in Montgomery and said he came to support Chief Napolitano. Mr. Smith said that in a previous life he had the satisfaction of working with the U.S. Secret Service with people like Chief Napolitano, and said he was worthy of trust and confidence. Mr. Smith asked City Council to vote no and gave his support to the Chief.

Marisa Zamarripa said that she wanted to state that she thinks that Chief Napolitano is an amazing official in the City. Mrs. Zamarripa said as a business owner, Chief Napolitano has come to their need every time they have called him, during holidays or any time. Mrs. Zamarripa said that if City Council does let the Chief of Police go, has anybody thought of the repercussions, what if he decides to sue the City and what is that going to do as far as the taxpayer dollars and how much is it going to cost and what if he wants compensation, what will that do. Mrs. Zamarripa said she thinks the Chief is a great leader and nobody here has any issues with him that she knows of personally. Mrs. Zamarripa said if someone on City Council or works for the City has issues with the Chief, she felt that needs to be addressed personally and does not need to be brought up at a City Council Meeting. Mrs. Zamarripa said she feels that all of us have come together, they are joining, they want to be here and they want the Chief to be here. Mrs. Zamarripa said some of the things that have come into light by the Golden Hammer of Facebook, such as a letter that was put out there needs to be addressed, and said she was told that it did not need to be addressed, she personally feels that it does and they need answers. Mrs. Zamarripa said she felt that some type of investigation needs to be done, and if someone just has a personal issue with the Chief it should be addressed personally.

Mr. Mike White addressed City Council on behalf of Chief Napolitano. Mr. White said he always believed that elected and appointed officials were put into place to move the City in a positive direction and to face the challenge of the day and to make the community a better, safer place to live and raise their children. Mr. White said this was not true when it comes of the governing body of this City. Mr. White said they choose to take an elementary playground stance for whatever reason to tap one of the finest persons and best Police Chief the City has ever had. Mr. White said some say that Chief Napolitano is over qualified for this job, and that is an understatement. Mr. White said while the Chief was with the United States Secret Service he was awarded the task of guarding Presidents of the United States of America and their families. Mr. White said that after he retired from the Secret Service, the Presidents and their families stayed in contact with Chief Napolitano over the years. Mr. White said due to the friendship that had developed and is still there today, Chief Napolitano has honored this City time and time again with past Presidents of this Country and their families, not only in conversation, but taking officers from this Department to one of their homes to meet with them. Mr. White said he has been in law enforcement for 42 years, 34 of those years have been in this County, and said that when he states that Montgomery Police Department is one of the most respected law enforcement agencies in Montgomery County he knows what he is talking about. Mr. White said Chief Napolitano takes a proactive stance when dealing with protecting this City and its citizens. Mr. White said the

officers in the Police Department are professional and highly trained and equipped to handle any situation that may arise and is all due to Chief Napolitano's push for excellence. Mr. White said Chief Napolitano gets invited to put on classes for the churches and other institutions in Montgomery County to teach them about what to do in the event of an active shooter and how to keep innocent people safe. Mr. White said the City has the best man for the job, a good and decent man who believes in God and is a great family man and has a group of officers that believe in and respect him so why mess with a good thing. Mr. White said that he was asking City Council if they can put their personal feelings aside and do the right thing for the citizens of Montgomery and vote to keep Chief Napolitano.

Mr. Tom Cronin addressed City Council stating that five years ago Police Chief Royce Goodson was fired by City Council, initially he was brought in to clean up the department that he alleged was marred by years of corruption, dirty politics and in fighting. Mr. Cronin said John Fox and City Administrator Bill Kotlan decided that they did not like Chief Goodson so it was a personality conflict. Mr. Cronin said to him it looks like history is repeating itself. Mr. Cronin said now the City of Montgomery's dirty laundry is being displayed in the likes of the Golden Hammer. Mr. Cronin said he does not pretend to know all details based on what is online on the Golden Hammer, which coincidentally is published by the same attorney that represented Royce Goodson when he sued the City. Mr. Cronin said he did not know the exact details but based on what is in the Golden Hammer it should not have been allowed to manifest itself into something that the Mayor and Councilmember Huss have no business getting involved in, at this juncture. Mr. Cronin said according to the information published and confirmed, again this is the Golden Hammer, Officer Bauer, a subordinate to Police Chief Napolitano, used his personal relationship with the Mayor, City Councilmember, City Administrator Yates and asked them to intervene in a personnel matter. Mr. Cronin said he really hoped the City Council and the Mayor think about this long and hard before they do something serious, because again this is a personnel matter that should not be before City Council. Mr. Cronin said City Administrator Yates and Chief Napolitano should be able to sit down and come to an understanding regarding a subordinate Officer Bauer's schedule and allow him to resign if he does not get his way. Mr. Cronin said he hoped the rest of the City Council has the brains and professionalism tenacity to nip this in the bud and not allow these ridiculous power plays to continue. Mr. Cronin said they support Chief Napolitano, we appreciate his commitment to law enforcement and the City of Montgomery.

CONSENT AGENDA:

2. Matters related to the approval of minutes for the Public Hearing and Regular Meeting held on August 28, 2018.
3. Consideration and possible action regarding completion of a one-year warranty period and release of maintenance bond for the McCoy's Building Supply on-site public water, on-site public sanitary sewer, and off-site public sanitary sewer project.
4. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and Al Cade, Inc. regarding the Cade Tract Development (Dev. No. 1811).
5. Consideration and possible action regarding authorizing Jones|Carter to prepare a Utility and Economic Feasibility for the Cade Tract Development (Dev. No. 1811) subject to receipt of a deposit by the Developer.
6. Consideration and possible action regarding approval of an Amendment to the Montgomery Economic Development Corporation Bylaws replacing "September" as the time of the Annual Meeting to "January."

Rebecca Huss had a question regarding Item 5, and said there was no backup on the item, talking about the usual documents, and wanted to make sure it was the standard usual contract. Mr. Yates advised that was correct.

Dave McCorquodale said he had a question for the City Engineer regarding the McCoy's Punch List Inspection that advised the manholes would be done during regular cleaning. Mr. Roznovsky said that they ended up not requiring that item and the reason that it was on there was there was some debris in the bottom of the manhole and they were going to clean them out, so it was noted at N/A.

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

CONSIDERATION AND POSSIBLE ACTION:

7. Consideration and possible action regarding adoption of the following Ordinance:
AN ORDINANCE OF THE CITY OF MONTGOMERY, TEXAS ADOPTING AN OPERATING BUDGET FOR FISCAL YEAR 2018-2019.

“This budget will raise more total property taxes than last year's budget by \$202,893 a 19.7% percentage increase, and of that amount \$74,617 is tax revenue to be raised from new property added to the tax roll this year.”

Mr. Yates advised the tax rate was being reduced from \$.4155 to \$.4000, which is a reduction of one and a half cents. Mr. Yates said there was also a water and sewer increase of \$4.50 per thousand gallons for water, so for the average customer it would be an increase of \$4.50 per month. Mr. Yates said the General Fund had a surplus of \$233,000. Mr. Yates said by putting in as much as they are going to be putting into the Debt Service Fund it will increase its balance up to about \$350,000, which is excellent for the City because that is what is used for future debt. Mr. Yates said the Capital Projects Fund will be the Texas Water Development Board projects and hopefully the General Land Office (GLO) will come through in October. Mr. Yates said the Water and Sewer Fund has a carryover of about \$846,000, with revenues of \$1,902,000 and expenses of \$1,600,000, so they are expecting that fund to increase around \$250,000. Mr. Yates said the reason for that fund to increase is so that they can pay for maintenance and operations of the system. Mr. Yates said whatever funds are carried over for that normally goes over for the Capital Projects Fund, which is the larger water and sewer projects.

Jon Bickford said they have stated that the budget will raise the property taxes, which they don't really raise them, they just raise more money because of more homes and the assessed value has gone up. Jon Bickford said they actually lowered the tax rate. Mr. Yates said that was correct. Mr. Yates said the City has been at the \$.4155 tax rate for the last seven years. Mr. Yates said, as he explained during the Budget Workshop, if the sales tax continues to increase and as they add homes in the City, along with commercial improvements, he thought that next year they will be looking at another decrease in property taxes. Rebecca Huss said that would not be dependent upon the Appraisal District raising peoples assessed rates it is based on conversion of raw land into commercial or residential land. Mr. Yates said that was correct. Mr. Yates said that the City voted in 2007 to assess themselves a one half cent tax to lower property taxes and this year that will bring in about \$765,000 and said if not for that the tax rate would be at \$.7 cents. Rebecca Huss said that City Council continues to place high value on fiscal responsibility, which they started 7-8 years ago and they continue to save money for the future.

Jon Bickford moved to adopt an Ordinance of the City of Montgomery, Texas adopting an Operating Budget for Fiscal year 2018-2019. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

8. Consideration and possible action to set by Order the 2018 Ad Valorem Tax Rate for Maintenance and Operations, \$0.2058 /\$100.

Mr. Yates advised the Ad Valorem tax is divided into Maintenance and Operations and Debt Service. Mr. Yates said the Maintenance and Operations goes into the General Fund that pays for the Police Department, City Hall, Parks, Public Works, streets, street lights, Community Center, barricades, everything except water and sewer operations. Mr. Yates said the \$.2058 will bring in approximately \$576,000, which is about \$80,000 more than last year and that is how the City can afford to add a police officer or keep up with the City's growth. Mr. Yates said the tax rate for Operations and Maintenance is recommended at \$.2058.

John Champagne moved to approve the Ad Valorem Tax Rate for Maintenance and Operations at \$.2058. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

9. Consideration and possible action to set by Order the 2018/ Ad Valorem Tax Rate for Debt Service, \$0.1942/\$100.

Mr. Yates advised the other part of the Ad Valorem tax rate is for Debt Service that this year the City will begin the year with the Interest and Sinking Fund, which they are planning to end the year at \$205,224 and this Debt Service Rate of \$.1942 will bring in \$490,000. Mr. Yates said there is a transfer in from Water and Sewer and MEDC also transfers in \$60,000. Mr. Yates said combined, that will be about \$700,000 and they have Debt Service of \$669,369 and they expect to end the year with a remaining balance of \$341,166. Mr. Yates said possibly in a year or two the City will be able to make roughly \$1 million or \$1,200,000 expense to the capital improvements of the City each year so they can be self-sustaining or self-supporting without having to borrow funds.

Jon Bickford moved to approve the Ad Valorem Tax Rate for Debt Service at \$.1942. T.J. Wilkerson seconded the motion, the motion carried unanimously. (5-0)

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, SETTING THE AD VALOREM TAX RATE OF THE CITY OF MONTGOMERY, FOR THE YEAR 2018 AT A RATE OF \$0.4000 PER ONE HUNDRED DOLLARS (\$100.00) VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE CITY OF MONTGOMERY AS OF JANUARY 1, 2018 SPECIFYING SEPARATE COMPONENTS OF SUCH RATE FOR OPERATIONS AND MAINTENANCE AND FOR DEBT SERVICE; LEVYING AN AD VALOREM TAX FOR THE YEAR 2018 PROVIDING FOR DUE AND DELINQUENT DATES TOGETHER WITH PENALTIES AND INTEREST; PROVIDING FOR COLLECTION AND ORDAINING OTHER RELATED MATTERS.

John Champagne moved to adopt the Ordinance setting the Ad Valorem Tax Rate for the City of Montgomery for the year 2018 at a rate of \$.4000, as presented. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

11. Consideration and possible action to adopt the following Resolution:

A RESOLUTION GRANTING A PETITION FOR ANNEXATION OF A TOTAL OF 1.758 ACRES OF LAND, MORE OR LESS, IN THE BENJAMIN RIGSBY SURVEY, ABSTRACT 31 AND THE ZACK LANDRUM SURVEY, ABSTRACT 22; SETTING A DATE, TIME, AND PLACE FOR TWO PUBLIC HEARINGS ON THE PROPOSED ANNEXATION OF SAID PROPERTY BY THE CITY OF MONTGOMERY, TEXAS; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO PUBLISH NOTICE OF SUCH PUBLIC HEARINGS AND MAKE AVAILABLE TO THE PUBLIC THE CITY ANNEXATION SERVICE PLAN.

Mr. Yates advised this was the piece of property that is directly south of the Napa Auto Parts Store. Mr. Yates advised the owner bought the property without checking into the water and sewer situation.

Rebecca Huss said that the documentation shows starting at the corner of SH 105, with the east Right-of-Way line as Old Dobbin Road, and said she thought it should be Old Plantersville

Road and asked if Mr. Yates could check that location. Mr. Yates said he would confirm that information.

Jon Bickford asked if services already run in front of the property in an easement. Mr. Roznovsky said that was correct, there is currently water and sewer in the Right-of-Way on SH 105 and it is just a matter of locating them.

Jon Bickford moved to adopt the Resolution calling for the Public Hearings for October 9, 2018 and October 23, 2018 to be held at 6:00 p.m. at City Hall as previously read. John Champagne seconded the motion.

Discussion: Rebecca Huss asked whether the Engineer's Feasibility Study will be done by that time, because she hates having Public Hearings and making decisions before they actually know exactly how much it is going to cost the City. Mr. Roznovsky asked when the first Public Hearing would be held. Rebecca Huss advised it would be on October 9, 2018. Mr. Roznovsky said the study would be done.

John Champagne asked what possible costs could be included for this piece of property. Mr. Roznovsky said there is not much. Mr. Roznovsky said the biggest difference is going to be that it is questionable as to what side of the road the waterline is located, because maps are different, so Public Works will dig it up. Rebecca Huss said that the use of the land would also determine the costs. Mr. Roznovsky said the only thing the developer is proposing is one bathroom connecting to existing facilities and it is not impacted by the Thoroughfare Plan, Wet Lands, or public utilities; it is more a formality and paperwork.

The motion carried unanimously. (5-0)

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

AN ORDINANCE AMENDING CITY OF MONTGOMERY ORDINANCE NO. 2015-16 TO INCLUDE ADDITIONAL AND FUTURE AREAS WITHIN THE CITY IN THE GRANT OF AUTHORITY; MAKING CONFORMING AMENDMENTS; PROVIDING FOR ACCEPTANCE; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE. (CenterPoint Franchise)

Mr. Yates advised this is a request from CenterPoint to expand the franchise area. Mr. Yates said the expanded area includes an area south of Waterstone subdivision including Lone Star

Parkway all the way over to SH 105, and will take in the Grandview subdivision. Mr. Yates said the expansion also includes getting closer to Buffalo Springs and Lone Star Parkway. Mr. Yates said since this is a nonexclusive franchise, City Council is required to approve the action.

Rebecca Huss said CenterPoint is asking the City for a favor, so could the City ask them for a favor in return. Mr. Roznovsky said CenterPoint has a gas line that crosses the canal outside the City limits that was damaged during Harvey and they have repaired it a couple times, and so this is their way around, to go down Buffalo Springs, Lone Star Parkway and back into Grand Harbor to service that area. Mr. Roznovsky said CenterPoint is trying to eliminate a line that has been causing problems. Rebecca Huss said she is wondering if they have an opportunity to ask them to extend further than what they are asking for in order to break the monopoly that has been driving our citizens crazy. Rebecca Huss said if CenterPoint is wanting something from the City, can't the City ask for something back? Mr. Yates said they could ask for that, but said his question was whether they should ask for something else. Jon Bickford asked if they had already asked CenterPoint. Mr. Yates said yes, he had asked and CenterPoint said they were considering the action. Jon Bickford said at least they asked CenterPoint. Mayor Countryman said yes, they did ask CenterPoint.

Jon Bickford moved to approve the Ordinance to increase the franchise area for CenterPoint Natural Gas. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

13. Consideration and possible action regarding scheduling a Public Hearing for rezoning of the 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 October 23 at 6 p.m., as requested by Larry Jacobs. (Both properties are located on one tract of land.)

John Champagne asked if this was not the same property that was requested before. Mr. Yates said the R-2 was, yes. Jon Bickford said City Council already said no once. Mr. Yates said that was correct. Rebecca Huss asked if the City was not in the same boat where they have a single parcel of property that is zoned with two different classifications on Old Plantersville Road that is driving them crazy, so why would the City invite the same type of headache on a different parcel. Mr. Yates said what the property owner is stating is that the property has been

industrial all along and there is residential property located right next to it. Rebecca Huss said they could end up with the same thing 20 years from now with this property.

John Champagne moved to not approve the Public Hearing for rezoning the property located at 2580 Lone Star Parkway and 2560 Lone Star Parkway. Jon Bickford seconded the motion.

Discussion: Rebecca Huss said she did not disagree with the outcome because she voted one way on the previous action, and she obviously disagrees with the split parcel, but she did not know about City Council's ability to reject peoples' right to address or seek governance. John Champagne said he recalled arguing with Rebecca Huss over that same issue. Rebecca Huss said she knew and she might have been wrong. John Champagne said that he could have been right. John Champagne asked if they could reject this action. Mr. Foerster said that he has never seen that done before. Mr. Foerster said he did not think that it is ever wrong to give an opportunity to the property owner or anyone else to engage in discussion and comment about the proposed change. John Champagne said point made.

John Champagne rescinded his motion.

John Champagne moved to approve setting the Public Hearing to be held on October 23, 2018 at 6 p.m. at City Hall regarding rezoning of property located at 2580 Lone Star Parkway and 2560 Lone Star Parkway as presented. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

14. Consideration and possible action on partially vacating the plat of Section 1 of the Lone Star Parkway Development.

Mr. Yates advised that items 14 and 15 will need to be acted on by the Planning and Zoning Commission before City Council can take action on them. There will be no action taken on these items tonight.

15. Consideration and possible action on completely vacating the plat of Section 2 of the Lone Star Parkway Development.

No action was taken on this item as stated under the previous item.

16. Consideration and possible action regarding variance requests regarding Louisa Lane Development as requested by the Developer, as follows:

- a) to allow the use of Hot Mix Asphalt Concrete instead of concrete;
- b) to allow the use of open ditch drainage throughout versus the use of curb and gutter;
- c) to allow a variance from the required 300 feet minimum radius to be 205 feet radius; and
- d) to allow setting the maximum length for a dead-end cul-de-sac street to be 1,000 feet with another 600 feet in front of the gate instead of the required maximum 800 feet.

Rebecca Huss said she understood that there was a Planning and Zoning Commission last night. Mr. Yates said that was correct and advised that after 15-20 minutes of discussion the Commission recommended approval by City Council of all four of the variance requests.

Rebecca Huss asked what questions were brought up at the meeting. Mr. Roznovsky said a lot of the questions revolved around what was being proposed for the development, the private streets, asphalt and open ditch versus concrete curb and gutter. Mr. Roznovsky said there were questions regarding maintenance responsibilities and how to make it clear to potential home buyers in that section that the streets will be private and maintained privately, therefore their HOA or POA dues should be reflected. Mr. Roznovsky said the other questions that came up were in regard to existing Louisa Lane and what would be in front of the gate, which is only 15 feet wide of old asphalt with a 30 foot wide right-of-way. Mr. Roznovsky said the current standards now for a minor residential street would be 50 foot wide right-of-way with a 28 foot wide pavement. Rebecca Huss said that would be double what they currently have on Louisa Street. Mr. Roznovsky said that was correct. Mr. Roznovsky said that what is being proposed behind the gate is to the City's standards with the 50 foot right-of-way and a 28 foot wide pavement, but the question was the impact to the road in front of the gate. Mr. Roznovsky said they went back and today they used the trip generation manual that is a published guide for the number of houses and the number of cars per day that they would generate. Mr. Roznovsky said they get a total of 100 trips a day on that road, so over the entire day, with the peak hour having 14 cars, which is one car every six minutes that would be coming out of that development. Rebecca Huss said that is significantly less than if the road was a thoroughfare.

Mr. Roznovsky said that was correct. Mr. Roznovsky said the Planning and Zoning Commission did recommend approval of the variances. Jon Bickford said that Louisa Street is asphalt today. Mr. Roznovsky said that was correct, the existing street is asphalt with road side ditches, and the new development is proposing the same but to be built according to the City's current wider standards. Rebecca Huss said the street would actually choke down to a smaller street as they exit the development. Mr. Roznovsky said that was correct, there would be a transition.

Dave McCorquodale said the cul-de-sac issue was in the pack and it stated it had been reviewed by the Fire Marshal. Mr. Roznovsky said that was correct; the turning radius issue and the length of the dead end turn was submitted to the Fire Marshal and they offered no objection to it. Mr. Roznovsky said since the development has private streets, the Fire Marshal will have another opportunity and is required to approve the plans. Mr. Roznovsky said there were no issues with the information.

Mr. Jonathan White advised that what they are trying to do with this development is estate homes that range from \$500,000 to \$600,000 and advised that having a gate for this type of development was typical. Mr. White said the turning radius was the main reason for making that transition on Louisa as it comes in and there is also a large oak tree that they are trying to preserve, as well. Mr. White said they are going to be talking to someone to make sure when they work around the tree they make sure they do not affect the tree.

Dave McCorquodale moved to approve the variances requested as presented. Rebecca Huss seconded the motion.

Discussion: Jon Bickford asked about the size of the lots. Mr. White advised the smallest lot will be .4 acres and they go up to a little over an acre.

The motion carried unanimously. (5-0)

17. Consideration and possible action regarding Change Order No. 1 for the 18-Inch Gravity Sanitary Sewer Line Extension contract.

Mr. Roznovsky advised this line goes from Lift Station No. 1 located in the Montgomery Shoppes development to the Wastewater Treatment Plant site. Mr. Roznovsky said this Change Order is for the temporary relocation of an existing utility that is likely in the way due to the proposed line being 30 feet deep, the width of the excavation is likely to be in conflict with the existing force main so this is to temporarily pipe it for the duration of the project. Mr. Roznovsky said the increase is \$4,300 and is a 1.2 percent increase to the contract amount, which is funded by the developer who put up a 10 percent contingency and they are still well within the funds that were provided to the City to cover the costs.

Rebecca Huss moved to approve Change Order No. 1 for the 18-inch Gravity Sanitary Sewer Line Extension project as presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

18. Buffalo Springs Bridge Report by the City Engineer.

Mr. Roznovsky stated the latest update on the Buffalo Springs Bridge since the last City Council meeting, when they reported on the work force and project manager issues the contractor was having and advised that the contractor has since gotten additional crews on site to help pick up the pace. Mr. Roznovsky presented photos showing the progress of the road. Mr. Roznovsky said they have had meetings with the contractor regarding requested Change Order. Mr. Roznovsky said they have an item on the Agenda that is a request for additional days for the contract, additional days of pumping, additional debris removal that they negotiated back with the contractor and he has agreed to not ask for those items. Mr. Roznovsky said they advised the contractor why this was his fault, due to management of the project, so he agreed.

Mr. Roznovsky said the current schedule that the contractor has is to not be complete until October 31, 2018 for the bridge. Mr. Roznovsky said what they have done to work with the contractor is he is impacting the State Farm building on the northeast corner as he is mobilizing more of that side to get that complete. Mr. Roznovsky said they met with State Farm last week and they plan to open on November 1, so hopefully the time issue should work out. Mr. Roznovsky said they will see what the rains do over the week. Mr. Roznovsky said they do

not have the schedule because the order of things were not the way that they wanted to see it on the schedule, so they are revising the information.

Mayor Countryman asked about the delay due to the rain and the work force walking off the job. Mr. Roznovsky said the City has approved the days that are attributable to weather delays and issues, but work force issues and management issues are not part of the contract, so as stated in the memo provided, the contractor does have liquidated damages in the contract for \$250 a day. Mr. Roznovsky said if the contractor meets the schedule of October 31, 2018 it will be about \$25,000 in liquidated damages.

John Champagne asked if the contractor was paid up to date in terms of where he is in construction. Mr. Roznovsky said the City currently has Pay Estimates for the month of June, July and they are wrapping up the August Pay Estimate. John Champagne asked if the contractor has been paid. Mr. Roznovsky said the contractor has been paid through work completed through the end of May. John Champagne asked if the City was holding funds in arrear for the work he has already completed. Mr. Roznovsky said with each Pay Estimate they hold 10 percent for retainage, and the timing of why it is still June is because they were going back and forth with the contractor on issues, so that Pay Estimate was not finalized until the first of August. Mayor Countryman asked what the City has withheld so far of that \$25,000. Mr. Roznovsky said the total to date is approximately in the \$400,000 total of the work completed and the City has held back 10 percent of that amount, so we are at \$40,000 for retainage.

Rebecca Huss asked why the contractor gets any credit for a rain day if they are already in the liquidated damages phase, because the project should already be done. Mayor Countryman said she thought the rain day estimates were for the initial completion date. Rebecca Huss said the fact that it has rained this week, if he was supposed to be done last month. Jon Bickford said if they had a month of rain in July they would be in the same boat, so they can't really say that. Rebecca Huss said that it did rain in June and July, but the contractor was given those days, and he was supposed to be done even with those days. Jon Bickford said if they had more rain during the normal performance period and it got delayed out, we would be in the same boat. John Champagne asked Mr. Foerster if a vendor is late on delivery and it costs him money, there are opportunity costs that he can recoup that typically takes legal action, and

asked if there was any possibility that the City could take legal action to recoup opportunity costs, costs that are tangible but not identified. Mr. Foerster responded no, which is why they have liquidated damages in the contract that captures most kinds of issues.

19. Consideration and possible action regarding Change Order No. 2 for the Buffalo Springs Drive Bridge Embankment Repair contract.

Mr. Roznovsky advised that the contractor has requested a Change Order on the one item that they did agree to the Change Order, which was the addition of stabilized sand that was needed. Mr. Roznovsky said that what the contractor found was the soil conditions behind where the wall is now were not suitable to be used, and the amount of groundwater coming in they needed additional stabilized material to help keep the area stable. Mr. Roznovsky said the Change Order is for a total amount of \$84,500 of the shares, which FEMA has 75 percent, the CDBG Grant pays a portion up to a cap and then the City picks up the remainder, so including this Change Order the total shares are listed in the report. Mr. Roznovsky stated that out of the \$1.12 million dollar contract, \$842,008.43 is FEMA, \$274,430 is CDBG and the City's portion is \$6,239.47.

Jon Bickford moved to approve Change Order No. 2. John Champagne seconded the motion, the motion carried unanimously. (5-0)

20. Consideration and possible action regarding authorization to spend additional funds from the General Operating Fund to go toward the Buffalo Springs Drive Bridge Embankment Rehabilitation project until funds are received from FEMA.

Mr. Yates advised that the General Fund has loaned the Capital Improvement Projects Fund \$334,757 and City Council authorized up to \$400,000 several months ago. Mr. Yates advised Pay Estimate #6 is \$51,000 that will get them up to \$386,525. Mr. Yates said in talking with the State, because they have been holding up Pay Estimates #2, #4 and #5 for \$334,757 that he expects to receive in late September 2018 or mid October 2018, but he does not know that he will get those payments. Mr. Yates said that they have received Pay Estimate #7 that will take us over the \$400,000. Mr. Yates said that when the interim loan was approved they thought that they could pay it back in the same fiscal year. Mr. Yates said the General Fund has

\$610,000 available cash without cashing in \$300,000 in CD's. Mr. Yates said the cash flow of the General Fund has approximately \$108,000 per month in expenses and about \$200,000 of revenue. Mr. Yates said he was asking for an allowance of \$150,000 to front the loan to the Capital Improvement Project Fund. Rebecca Huss said Mr. Yates' memo stated \$200,000, and asked which amount was his preference. Mr. Yates said he would prefer \$200,000. Jon Bickford asked if the City borrows the funds from themselves do they have to pay themselves back this year. Mr. Yates said no, it is only if the City borrowed from an outside entity.

Dave McCorquodale asked Mr. Yates to remind City Council the amount that they are saving by essentially loaning ourselves the funds versus going to a commercial bank. Mr. Yates said that it was about \$15,000 to \$20,000 for the interest on \$334,000. Rebecca Huss said that it was not the interest, it was the origination fee that was so bad. Mr. Yates said that was \$6,000 origination fee.

Jon Bickford moved to give permission to the City Administrator to use up to \$200,000 more of General Fund funds for transfer to Capital Improvement Projects Fund for payment to the bridge contractor and to initiate the interim loan if funds are not received from the State by the end of October 2018. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

21. Discussion regarding Animal Ordinance.

Mr. Yates advised this was a discussion of the ordinances of the City that covers all of the complaints of the neighbors except for the number of dogs allowed on a piece of property, because there is no ordinance that limits the number of dogs that can be owned. Mr. Yates said if there was an odor on the property, the City could issue a citation resulting from that. John Champagne asked how the odor would be measured. Mr. Yates said it would be in the eye of the beholder. Rebecca Huss asked, in terms of public health, did the officers actually take samples and check them for health hazards and being a danger to children, etc. Rebecca Huss said those items were not completely exhausted. Mr. Yates said that was probably right. Jon Bickford said before they go any further they need to find out how much it is going to cost the City to set up a lab here to do that type of analysis or send it out to be analyzed and make a decision as City Council as to whether or not they are going to spend that kind of money to determine where that came from. John Champagne said at the first blush they have all these

subjective metrics to determine whether they are in or out of compliance, and said the easy thing would be to make it specific to the number of animals. Mr. Yates said he agreed with that conclusion.

Jon Bickford asked what the question was; was it whether they limit the number of animals. Mr. Yates said his basic point is that he thought they have the ordinances for complaints for everything except the number of dogs. Jon Bickford said he thought that was reasonable. Rebecca Huss said she would offer a note of caution, 1) the City is not cookie cutter in that if you have a limitation of six dogs, that is not going to necessarily work for landowners with 100 acres in the City and it might be unreasonable for them, so it can't be just a broad number. Mr. Yates said what a lot of cities do is use a subdivision lot. John Champagne said then they could just state the square feet. Rebecca Huss said in this particular issue all of the dogs look the same, and they will have to grandfather in the current situation, which means in order to tell if you have new dogs or old dogs you are going to have to license everybody else's dogs, including this person's dogs. Rebecca Huss said if they have dogs that all look the same, no one is going to be able to tell if that is a particular dog and it is more complicated if you are trying to deal with this particular type of problem.

Jon Bickford said that it makes sense to direct the City Administrator to prepare an ordinance regarding the maximum number of dogs that are allowed on property inside the City, with some further investigation that may need to be done in terms of whether it is a residential lot or a lot of a particular size, but get the process started with the implementation and execution can be worked in parallel. Rebecca Huss said maybe they can go forth and say there will be no commercial dog activities on residential lots in residentially zoned areas. John Champagne said now we are getting into liberty; now he has a problem. Rebecca Huss said that property is zoned residential. John Champagne said the point is that is the owner's residence, and if it is offending people around him, the City finds a way to deal with it. Rebecca Huss said that is what she thought they were doing. John Champagne said they were taking it to a commercial activity; this person is in a residential area and without a sign up. Rebecca Huss said this is a commercial activity in a residentially zoned area so that would be another way that they could deal with the problem. John Champagne brought up dog sitting. Rebecca Huss said in most municipalities the animal enforcement laws are related to complaints, so if you dog sit one dog or more and your neighbors do not complain then they are doing a great job. John Champagne

said that was his point. John Champagne said the fact is if you are going to make it commercial dependent, then dog sitting is out and a lot of other things are out; he said leave the liberty of people to do what they want with their homes, not at the expense of people around them. John Champagne said if someone has 25 dogs and it is affecting his neighbors, then he thinks a reasonable thing would be to reduce the number of dogs. Rebecca Huss said she was just confused at the role of the State and limiting dogs on one hand but not limiting the use of property. John Champagne said, in his opinion, it is too encompassing, it is about liberty, which government is always ready to take away. Rebecca Huss said so is taking away the number of dogs you can have. John Champagne said that the number of dogs is all he is focusing on.

Mr. Yates said he was asking for City Council's direction on this matter. Rebecca Huss said this person's dogs all come from the same breeder and they have the same parents. Jon Bickford asked what the issue is if there are only four dogs there at a time. Rebecca Huss said if they have to grandfather the existing 20 dogs. John Champagne asked who said they have to grandfather the existing 20 dogs. Rebecca Huss said she did not understand how you could get rid of animals that people currently own. John Champagne said if they can't come to a conclusion then they need to table the matter. John Champagne said if they have to have someone go out and smell the property to determine whether it is bad or not, it is kind of ridiculous. Mr. Scot Howard said that it is not if you live next door to it.

Mr. Foerster said this item is not for action, so he suggested that they submit an ordinance for City Council to review. Mr. Foerster said the City of Willis has a similar issue and they have a limitation on animals, dogs, etc., and said that it has not been a problem that he is aware of during the last many years that they have had the ordinance. Mr. Foerster said he would share that ordinance with Mr. Yates and City Council for review as a place to start. Mayor Countryman asked Mr. Foerster how many cities he represents. Mr. Foerster advised that he represents seven cities including the City of Montgomery. Mayor Countryman asked if Mr. Foerster could get examples from his cities so they can compare them and have different options and select what would serve the City best so they can come to some type of resolution on the matter. Mr. Foerster said he could do that and share with City Council. Mr. Yates said that is how they work up ordinances by using examples of other ordinances. Jon Bickford said

he would also suggest that they get input on how many dogs a home should or should not have or other ideas about how to implement a new ordinance and provide that to Mr. Yates.

Rebecca Huss said the trouble with some ordinances is Montgomery has gone along pretty well without the situation and they have come to a circumstance where somebody does not care what impact they are having on their neighbors and they feel it is okay to have 25 dogs on a 8,000 square foot lot. Rebecca Huss said she was not sure that an ordinance exists to deal with such a situation that is normal, because this is clearly an abnormal situation. John Champagne said he agreed. Rebecca Huss said they might look around and say this won't stop someone who is determined to do what they are doing, since it does not close every loophole. Jon Bickford said they can do everything that they can do, but there are also limits as to what we can do. Rebecca Huss said she agreed except for if you are saying what is happening is unacceptable to what we want for the quality of life for our City, then it is almost like we have to go above the normal to stop it just because of this one situation. Jon Bickford said they need to let staff capture the information so that we can review it. John Champagne said he was sensitive to the plight and agree 25 dogs does seem to be extreme; it is how they deal with it.

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.

22. 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) 551.074 (personnel matters) concerning the City Police Chief.

Mayor Countryman announced that upon the recommendation of the City Administrator, they are going to be tabling this Executive Session as they will be having a third party independent study to review operations of the Police Department.

Dave McCorquodale moved to table Agenda Item No. 22. T.J. Wilkerson seconded the motion, the motion carried with 4-Ayes and 1-Nay by John Champagne. (4-1)

23. Reconvene into Open Session.

POSSIBLE ACTION FROM EXECUTIVE SESSION:

24. Consideration and possible action if necessary on matters deliberated in Closed Executive Session related to the City Police Chief.

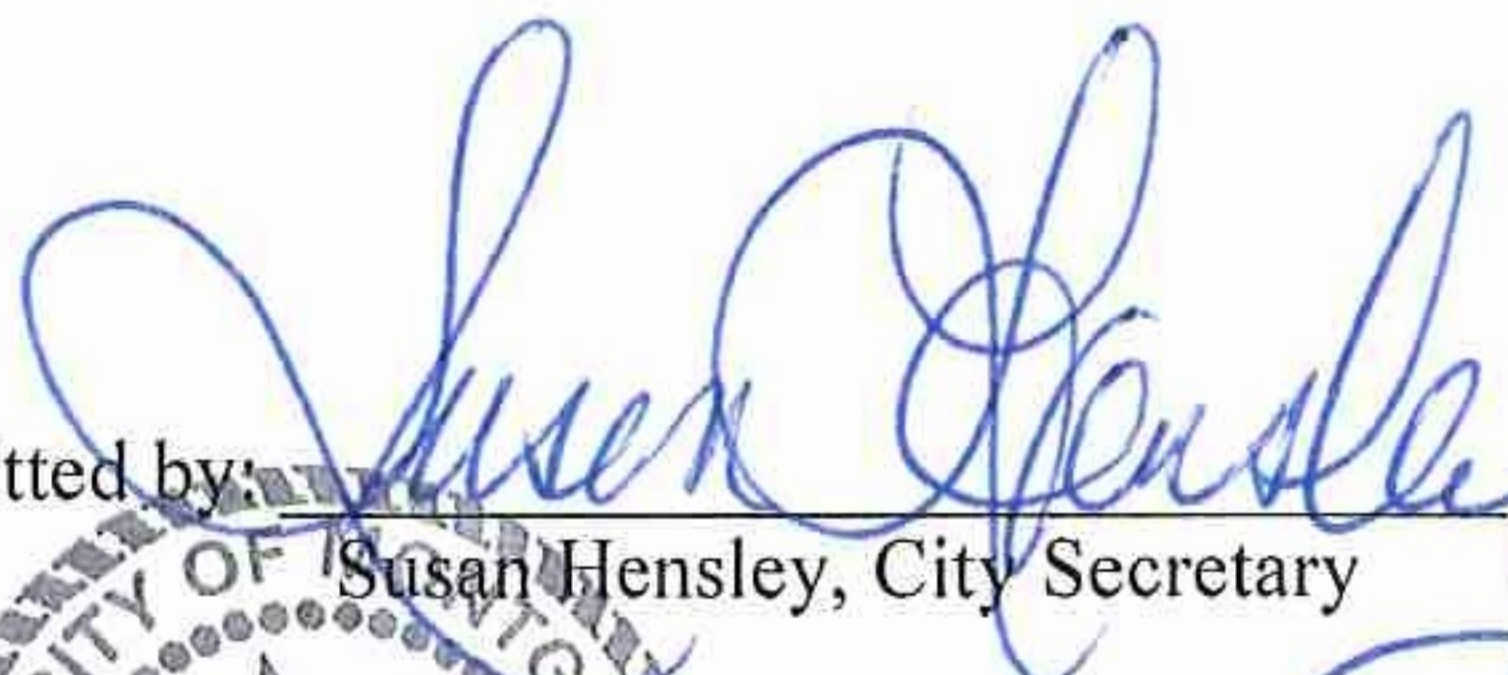
COUNCIL INQUIRY:

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.

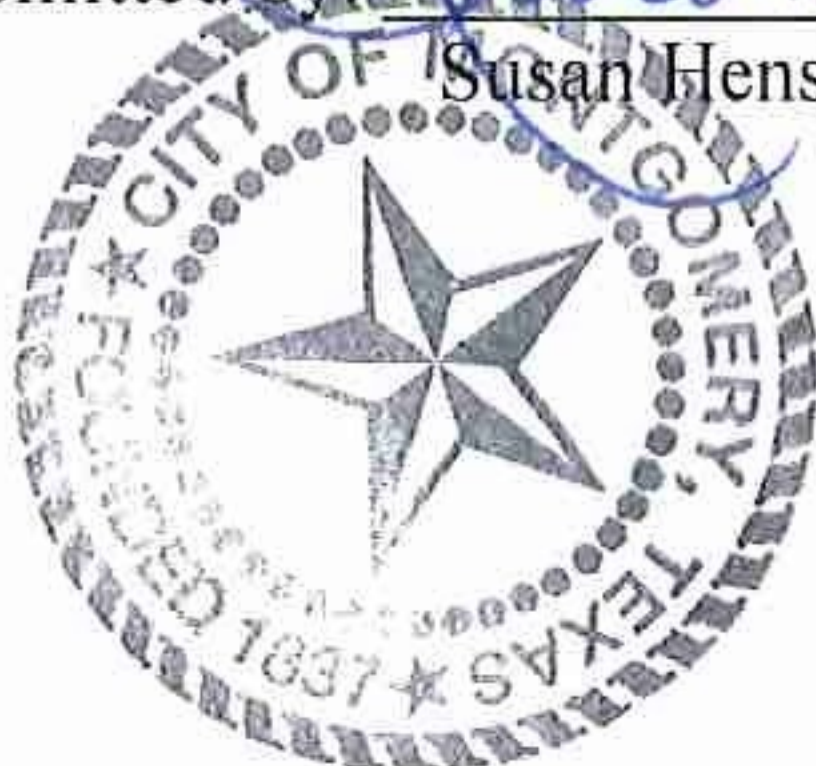
John Champagne stated that City Council just tabled Executive Session and he is still trying to figure out why, who did it and how it was done. Mr. Foerster said he would be happy to visit with John Champagne after the meeting to discuss the matter. John Champagne said that he would like to put the item back on the Agenda for the next meeting. Mr. Foerster said the matter has only been tabled so it would be brought back at another meeting. John Champagne said he was asking that it be brought back at the next meeting.

ADJOURNMENT

Dave McCorquodale moved to adjourn the meeting at 7:23 p.m. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

Submitted by: 
Susan Hensley, City Secretary

Date Approved: 09/25/18




Mayor Sara Countryman