

**MINUTES OF PUBLIC HEARING and REGULAR MEETING**

**June 12, 2018**

**MONTGOMERY CITY COUNCIL**

**CALL TO ORDER**

Mayor Sara Countryman declared a quorum was present, and called the meeting to order at 6:02 p.m.

Present: Sara Countryman Mayor  
Jon Bickford City Council Place # 1  
John Champagne, Jr. City Council Place # 2  
Rebecca Huss City Council Place # 4

Absent: T.J. Wilkerson City Council Place # 3  
Dave McCorquodale City Council Place # 5

Also Present: Jack Yates City Administrator  
Chris Roznovsky City Engineer

**INVOCATION**

John Champagne gave the invocation.

**PLEDGE OF ALLEGIANCE TO FLAGS**

**PUBLIC HEARING:**

Convene into a Public Hearing:

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

1. Public Hearing - regarding for the purpose of hearing public comments regarding a Proposed Budget Amendment to the 2017-2018 City General Fund Operating Budget.

Mr. Yates advised that the primary reason for amending the 2017-2018 Operating Budget is because of the rebate for the Kroger Shopping Center Milestone 380 Agreement, which he thinks is going to be approximately \$150,000 from the City of Montgomery and

approximately \$42,000 from the Montgomery EDC. Mr. Yates said that would reduce the total income of the General Fund from \$3,068,429 to \$2,955,878. Mr. Yates said that with the amendments the adjusted net would be \$25,111. Mr. Yates stated that the actual budget amendment would be presented for adoption at the next meeting, tonight is just the Public Hearing.

Rebecca Huss said if they are \$30,000 to the positive that would be roughly within one percent of being a zero budget. Mr. Yates said that in the line item "contract labor streets" there is \$129,219 and they are probably only going to spend \$30,000. Mr. Yates advised that each year they put the extra general fund reserve funds in that line item, not expecting to spend all the funds, just keeping them there. Mr. Yates said that with the amendment there would be about \$15,000 in carry over at the end of the year.

There were no other comments made during the Public Hearing.

#### Adjourn Public Hearing

Mayor Countryman adjourned the Public Hearing at 6:07 p.m.

#### **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.

Matt Fugua, with Blazer, had a question regarding the May 22, 2018 meeting minutes that he brought up as a point of reference, stating that there was a discussion about deliberation on the public hearing for the special use permit regarding a potential rezone. Mr. Fuqua said that one of the items that was discussed was when Council Member McCorquodale asked if the development behind the Lone Star Community Center required rezoning, because presumably that would be in the same zone. Mr. Fugua said that Mr. Yates advised that property was zoned Multi-Family and he wanted to state for the record that to his understanding, the property behind the Lone Star Community Center, the Independence Place Apartments, according to the zoning map shows to be

R1 Residential and does not show to be zoned Multi-Family. Mr. Fugua said that particular property is permanent supportive housing according to their web page with programs for persons with mental illness.

John Champagne asked to confirm that it was on page 28 of the minutes. Rebecca Huss stated that it would be page 32 of the Agenda Pack. John Champagne said that the City had presented the designation of the property incorrectly. Mr. Fuqua said that it was information that was provided to City Council and he just wanted to clarify that information. Mr. Yates said that he would have to check that information to be sure.

Mr. Fuqua said that he wanted to address a brief public comment on behalf of himself, advising that he had been before City Council on May 22, 2018. Mr. Fuqua advised that he was part owner of Heritage Apartments located on Flagship Boulevard. Mr. Fuqua stated that they had received a support Resolution from the City on January 23, 2018 for their application for Heritage Seniors. Mr. Fuqua said that they are currently in a competition for tax credits this year for their senior property. Mr. Fuqua said that the way things are at this point with the State's allocation, only one development will be picked in our region. Mr. Fuqua said that Heritage Seniors has 80 units and the Star of Texas Seniors has 32 units. Mr. Fuqua said that looking at both applications, the Heritage Seniors development is projected to pay almost \$5,000 more in real estate taxes than the Star of Texas Seniors development and \$23,500 to other taxing jurisdictions. Mr. Fuqua said that they are assuming that Heritage Seniors will house 68 more people than the Star of Texas Seniors, using the IRS sales tax estimator and a medium household income of \$30,000, those additional 68 people will pay roughly \$10,000 of incremental level sales tax annually. Mr. Fuqua said that the application also shows Heritage paying a difference of \$44,000 in gross utility payments to the City of Montgomery annually. Mr. Fuqua said that the applications show that Heritage Seniors will serve a broader section of incomes with market grade units included alongside affordable units.

John Champagne stated that Mr. Fuqua had laid out a value proposition and asked the City Secretary if he could go back to the minutes and read the information verbatim on what was discussed. The City Secretary advised that the discussion was in the minutes.

Rebecca Huss asked Mr. Foerster if City Council would be able to pick which application they think would be best for the City. Mr. Foerster stated that they could not, that would be done by the State. Rebecca Huss said that would be based on their score card for them, but it would not necessarily be best for the City. Jon Bickford said that the City Council was not picking anything, to be clear, there is nothing that would be picked as a part of anything that City Council does. Jon Bickford said that there is something potentially on the table that could require approval, but has nothing to do with picking a winner to be absolutely accurate. John Champagne said that was correct.

Mr. Samuel Thompson, stated that they are committee members of the HOA in Lake Creek Village and they have some questions that they would like to get answered regarding their streets if they take over their HOA. Mr. Thompson advised that he was present with Mr. Bill Cassidy who is also a committee member. Mr. Cassidy advised that in 2015 they both purchased homes in Lake Creek Village and said that there were several things that had attracted them to the neighborhood that did not turn out. Mr. Cassidy said that one of the things that was not disclosed to them or any of the people moving there was the drainage and the streets were all private property. Mr. Cassidy said that the drainage area between Racetrack Lane and Abner is a big issue with them because they take on water from Buffalo Springs, Memory Park and Bessie Price Owen, along with all the dirt from the construction on the other streets that has filled up the detention pond with dirt. Mr. Cassidy said that they brought this information up with the developer and Mr. LeFevre has told us that they do not want to give the streets to the City of Montgomery because they won't fix them. Mr. Cassidy said that the people that they have spoken to in their neighborhood have no desire to worry about fixing streets, drainage or anything else. Mr. Cassidy said that apparently Mr. LeFevre has made a deal with the Rotary Club to drain water off of Racetrack into Memory Park and by doing so during heavy rains the pond gets extremely full and comes over the bulkhead and pours large amounts of water down Bessie Price Owen and breaks off large pieces of dirt from that area. Mr. Cassidy said that back in February they met with Mr. LeFevre and they walked the drainage area, which he promised to get the erosion problem fixed. Mr. Cassidy said they met again in May when Mr. LeFevre said that same thing that he was working on it and to this day there has been no progress and nothing has been done with the drainage. Mr. Cassidy said that they are here today wanting to know how they can turn their streets over to the City. Mr. Cassidy said that the people of Lake Creek Village have no desire to keep or maintain the streets. Mr. Cassidy said that

regarding the drainage issue, they did not know if the City would help them take it over and fix the problem or force Mr. LeFevre to fix it. Mr. Cassidy said that they feel that they should not have to pay for it because none of them were told that they would be responsible for fixing the streets and drainage. Mr. Cassidy said that Mr. LeFevre wants them to form an HOA Board and completely take it over, which is why they are here today hoping that the City can help them fix it or force him to fix the problem before he builds something else in the City and does the same thing to future residents.

Jon Bickford asked if the notion that the streets are owned by the HOA or the community is in the deed restrictions and asked if they had seen a copy of the deed restrictions. Mr. Cassidy said that they received a copy when they moved in and the only person on the Board is Mr. LeFevre and the deed restrictions have changed and they did not get the changes. Mr. Cassidy said that they do not have a vote regarding the deed restrictions and said that the only reason that they have three people on their committee is the residents come to them with their problems and they go to Mr. LeFevre because he does not want them to bombard him with phone calls. Jon Bickford said the residents of Buffalo Springs went through the similar situation. Rebecca Huss said that right from the start the streets were platted private streets. Jon Bickford said that was why he asked if they had a copy of the deed restrictions. Mr. Foerster said that if they amended their deed restrictions they should be of record and you can get copies of the amended deed restrictions. Rebecca Huss asked where they could go to get that copy of the filed deed restrictions. Mr. Foerster said that they would need to go to the County Clerk's Office where all the deeds, deed restrictions and other public documents are filed. Mr. Foerster said that the County Clerk can help them find the document. Mr. Foerster said that it sounded like there have been several variations of amended deed restrictions over the past few years.

**CONSENT AGENDA:**

2. Matters related to the approval of minutes for the Regular Meeting held on May 22, 2018.
3. Consideration and possible action regarding adoption of a Banking Resolution for the City Bank Accounts changing the authorized signors for all accounts with First Financial Bank, N.A., Montgomery, Texas.

4. Consideration and possible action regarding completion of a one-year warranty period and release of maintenance bond for the Water and Sanitary Sewer to Serve Pizza Shack project.
5. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and Star of Texas Seniors, Ltd.
6. Consideration and possible action regarding authorizing Jones|Carter to perform Utility and Economic Feasibility Study for the Star of Texas Seniors, Ltd. development.
7. Consideration and possible action regarding adoption of an Escrow Agreement by and between the City of Montgomery and Ranier & Son Development Company, LLC.

Jon Bickford said that he had a question regarding Items 5 and 6. Mr. Yates stated that on Item 5, he has in the notes that the Star of Texas paid \$3,000 but they actually paid \$7,000, which is the cost of the Feasibility Study.

Rebecca Huss said that based on their discussion at the Workshop regarding where they were on collections versus expenditures on work done on behalf of developers paid for by City, when exactly do they collect on the Escrow Agreement for work done, because the Escrow Agreement states 10 days after the signing of the Agreement for the total amount. Mr. Yates said they have the funds from the Star of Texas Seniors for the Feasibility Study. Rebecca Huss said that the Escrow Agreement states that whole amount, which is \$16,500 within 10 days. Mr. Yates said that the thought is that they will bill them another \$2,700 based upon the action tonight. Rebecca Huss said that it would be \$18,500, so they are not going to pay the full amount within 10 days. Mr. Yates said that they won't have to pay until they get into the actual engineering. John Champagne asked why do they put "10 days" in the contract and what does it refer to the initial or total payment, because if it doesn't why don't we just take out the 10 day requirement. Mr. Yates said that they should probably take out the 10 day requirement. Rebecca Huss said that they could have the days more specific about the work. Mr. Yates said that he would have a new Escrow Agreement to City Council at the next meeting that will gauge the payments and have a not to exceed amount included.

John Champagne asked if instead of it being subjective in terms of payment, Mr. Yates could outline how incremental payments should be made in the Escrow Agreement. Mr. Yates said that would be done in the new Agreement.

Jon Bickford asked about Item 6, regarding authorizing Jones|Carter to perform the study for the development since the development does not exist and they do not know if it is going to exist and it was not his place to determine how developers chose to spend their money, but there is a chance that the approval of the zoning is either approved or not approved. Jon Bickford said that if the zoning is not approved, he did not want the City to have any obligations associated with the Agreement. Mr. Yates said that he was going to contact the developer of Lone Star development to see if he wanted to wait on the Feasibility Study a few more weeks, it might save them some money should the zoning not be approved. Mr. Yates said that he will have a conversation with the Star of Texas Seniors to confirm that he wants to get started. Jon Bickford asked if they would prefer to defer action on Item 6. Mr. Yates said they had a brief discussion about this before he paid the \$7,000, but that was during the Special Use Permit period and not during the zoning period. Jon Bickford said that he just wanted to make sure that the developer was going into this with their eyes wide open. Mr. Yates said that he understood.

Rebecca Huss said that she wanted to make a comment and say thank you very much for following up with the questions that came up at the last meeting on the outstanding funds and how to resolve all of that and this goes a long way on how to do that and definitely the amounts of money and work that are being done on behalf of the developers by third parties is a surprisingly large amount. Rebecca Huss said that \$18,500 is not small change, but on a development by development basis it is a large amount of money and it is really important for the City to stay on top of it. Rebecca Huss said that she appreciated Mr. Yates making extreme efforts to do so. Mr. Yates said that they have about 15-16 active Escrow Accounts at this time.

John Champagne commented on Item 3 regarding the banking resolution changing the authorized signors for all accounts and asked what is changing. Mr. Yates advised that the Mayor's signature needed to be changed from Mayor Jones to Mayor Countryman.

John Champagne advised a correction to the minutes, stating that where the word “ethical” is used when quoting him, and it should be “unethical.” The City Secretary advised that she would make the correction.

Jon Bickford moved to approve Consent Items 2-7. Rebecca Huss seconded the motion.

Discussion: Rebecca Huss stated that she assumed that the motion included the change to the minutes as stated by John Champagne. Jon Bickford said that was correct.

Rebecca Huss amended the motion to include the change to the minutes as stated by John Champagne as well as Mr. Yates checking on information. Rebecca Huss said that Mr. Yates comment about the R1 versus R2 for Multi-Family zoning is not actually a mistake in the minutes, as opposed to a factual error, so that does not require an amendment. Jon Bickford said that he wanted Mr. Yates to speak with the developer to make sure of the information before they spend \$18,500 they knew that they were going to be spending it on nothing.

Mayor Countryman called for a vote on the motion that they approve the Consent Agenda. The motion carried unanimously. (3-0)

#### **CONSIDERATION AND POSSIBLE ACTION:**

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

Mr. Yates presented the information to City Council advising that this is a continuation of the original variance granted on March 14, 2017 and then extended for six months on January 9, 2018. Mr. Yates advised that Mr. Long was present tonight.

Rebecca Huss said that she appreciated Mr. Long coming back with all the information that they requested at the last meeting because it is very helpful for her in determining what they are looking at. Rebecca Huss said that she had spoken to Mr. Long the other



day by phone and asked if he was able to determine how much an application of dust suppressant actually costs. Mr. Long said that he started looking through line items, but they rolled the cost into overall parking lot costs. Mr. Long said that he has sent a request to the contractor for the cost but has not received a response. Rebecca Huss said that it has been a gravel parking lot for quite some time and she did not know if the City has received any complaints, but said while she was out campaigning they did not have any complaints about the neighborhood golf course. Rebecca Huss said that she thought that they are good neighbors and it is a good amenity for the City and does not really seem like financially things have changed that much. Rebecca Huss said that she did not really see the point in making Mr. Long come back every six months, however she would note that she would not want it to be a permanent variance, she would prefer to have it expire if there was a change in ownership.

John Champagne said that this variance has been for a year and a half and he would not want to make it evergreen, he appreciates Mr. Long coming in every six months because things do change. John Champagne said that his hope is that Mr. Long will become so successful that paving the parking lot will just be an afterthought. John Champagne said that he would like Mr. Long to come back every six months.

John Champagne said he was not sure that he would want to reject the variance at this point. Rebecca Huss said that if they reject the variance, they are pulling the Certificate of Occupancy, which she felt was totally unacceptable. John Champagne said that Rebecca Huss eluded to a conversation and asked if there was any conversation regarding his ability to pay. Rebecca Huss said that they discussed information and referred to the sales tax numbers that show it has been a difficult spring and switching straight to summer. Jon Bickford asked if tax was charged on every person that plays a round of golf. Mr. Long said yes they were charged. John Champagne asked Rebecca Huss what in the conversation that she had with Mr. Long made her amenable to the variance. Rebecca Huss said that it did in terms of what she has been thinking about with Economic Development Corporation and talking to downtown merchants is that Montgomery needs to capitalize on the tourism aspect of growth and she felt that Mr. Long's business is an important part of getting people here and then making them stay. Rebecca Huss said that

she felt that Mr. Long is part of what we have to offer and he donates tickets or rounds of golf and refers people onto the next business to shop or eat and considers himself a local business that she sees as an asset to the community. Rebecca Huss said that she does not think that they should let a parking lot come between them.

Jon Bickford stated that the parking lot rules were in place before he decided to put a business there. Jon Bickford said that he too hopes that this business is successful and he can do something with the business. Jon Bickford said that the issue is when you start allowing variances to keep continuing then the next business that wants to come in and have a similar variance, you have to grant it again and again. Jon Bickford said then why don't we take all the ordinances out the front door and burn them, because we have variances all over the place. Jon Bickford said that at some point he feels like he does not want anything to happen to the business, but it is also not his job as a City Council Member to help keep someone in business, you have to do what is right for the City. Jon Bickford said that maybe they need to keep this going on a six month basis until they see where they are. Rebecca Huss said that she did not disagree with Jon Bickford's continuing variance problem, but on the other hand this is not a business like McCoy's or Kroger with a multi-million dollar parent company. Jon Bickford said that he totally understands business. Rebecca Huss said that this type of business actually does better with a more natural type of parking lot and in reading the past minutes that talked about a non-traditional parking surface that might actually be a better option for the natural type of business that it is. Rebecca Huss said that a traditional parking lot ordinance does not necessarily match for this use anyway. Jon Bickford said that he wants to know where this stops. Rebecca Huss said this goes back to what Dave McCorquodale had talked about several years ago, that the ordinances are the bare minimum standards. Rebecca Huss said that if you bring something to the table that is better than what the ordinance states, just because it does not fit within the rigid boundaries, does not mean they should say no if they need a variance. John Champagne said that was assuming there are not any differences in opinion as to what is a benefit to the City. John Champagne said that he would just say that Rebecca Huss has done a job keeping this parking lot gravel, which he is not against at this point, but when someone wants to open a burger place on the side of the school or next to a residential location and the traffic is going to be horrendous, what

is going to be your metric for allowing that at that point. Jon Bickford said that when the burger place gets built next to his shop and a Chick-fil-A on the other side and they say gravel is okay, so they are going to say they want gravel too. Rebecca Huss said that Mr. LeFevre wants to put a park on the other side. Jon Bickford said that he did not care about the vision he cares about what could come. John Champagne said that this is all subjective and this is why we have ordinances.

John Champagne moved that they approve this variance for another six months pending Mr. Long's return in stating his ability or inability to pave the parking lot.

Rebecca Huss asked if John Champagne would be willing to extend it for a longer period of time. John Champagne said that he would not.

Mayor Countryman asked that the motion be stated one more time. John Champagne asked the City Secretary to state the motion. Ms. Hensley advised that John Champagne moved to approve the variance for another six months pending Jason Long returning to stating the ability or inability to pave the parking lot.

Rebecca Huss asked if John Champagne was on MEDC when they voted to do the Community Center parking in precisely the same material.

Mayor Countryman asked for a second to the motion. Jon Bickford seconded the motion.

Discussion; Rebecca Huss said that she still felt that they could do better with a longer period of time for the variance given the lack of complaints from neighbors. Rebecca Huss said that she got the point, but a) they have this situation and so what they may or may not be encouraging other people to do is sort of not an argument because we already have the situation and b) they have good relationships with their neighbors and don't have any complaints about dust. John Champagne said that he was not going to debate the difference between the Community Center's parking lot and this, that aside, he asked Rebecca Huss if she believed this extends an unusual hardship for Mr. Long to do this every six months and said that the answer would be no. John Champagne said that he did

not think that it was too much to ask. Rebecca Huss said that she thought that it was unnecessary.

Mr. Foerster advised that one of the things that City Council might want to consider and he is not speaking for or against the variance, is reviewing the ordinance to see if they want to make some changes to the ordinance that would still provide the kind of amenity and surface that is needed for businesses, but might allow for some flexibility from time to time rather than addressing it time after time with variances. Jon Bickford said that he would offer to Mr. Foerster that on a larger scale there are residents north and northwest of that facility and the wind especially in the summer when everything is dry comes out of the south and southeast and blows things to the north and northwest, where there are a lot of homes with more coming. Jon Bickford said that four to six years ago the City went through a situation with the Lone Star Church. Mr. Foerster said that was before his time. Jon Bickford said that every time they had church and they let everybody out it created a dust storm and they finally had to reroute traffic because the facility was not paved. Jon Bickford said that he is not worried about one shop, one shop is okay, but they have to be fair to others because they are going to come, so if they offer it to one shop they have to offer it to more than just one shop and then all of a sudden the entire street becomes gravel. Jon Bickford said that the more shops that come in and the more gravel that they add the more dust is going to be created. Jon Bickford asked that before people buy property, please read the ordinances because if it says that your lot has to be 70 feet wide, guess what that does not mean 50 feet wide it means 70 feet, if it says you have to pave your parking lot, guess what you have to pave your parking lot. Jon Bickford said that this drives him crazy. Jon Bickford said that he appreciates what Mr. Foerster is saying, but his theory is, especially with a commercial space, they have to defend every action that they take when it comes to variances and they have to defend it not only to ourselves but to the next person that comes in, to be fair. Mr. Foerster said that all he was pointing out was that he totally agrees with Jon Bickford's concern that if we give a variance we have to justify it and make it distinct to those circumstances so that when the next person comes along they can't say "you gave a variance here, why don't you give me the same variance?" Jon Bickford said that he has not heard anything yet that would allow him to do that. Rebecca Huss said that they could easily make up something that could. Jon

Bickford said that he was not going to make up a lie or story just to pass something through. Rebecca Huss said that they could craft well intentioned variance based on revenue or patrons or something. Jon Bickford said that he was not going to craft something to be a permanent part of the City's plan going forward. Jon Bickford said that he would say that they either vote on it as is, or he honestly has thoughts of making an amendment to say we approve the variance for 30 days at a time in case somebody else comes and wants to put a business in next to that location. John Champagne requested that they get a vote on the motion.

The motion carried with a vote of 2-Ayes and 1-Nay by Rebecca Huss. (2-1)

John Champagne asked for point of order, asking if they needed three votes to pass the motion. Mr. Foerster advised that they have a quorum present of three members, so all they need is a majority vote. John Champagne said that he thought that the Mayor could go one way or the other. Mayor Countryman said that she can only break a tie vote. Mr. Foerster stated that was correct.

9. Consideration and possible action regarding authorizing Jones|Carter to perform annual water plant inspection.

Mr. Roznovsky presented the information advising that there were different options available for the inspection, one being the minimum inspection that is \$2,000 and a full mechanical and electrical inspection for \$7,500. Mr. Roznovsky advised that the last time the City had a full mechanical inspection was 2016 and there is no record of an electrical inspection for the City. Mr. Roznovsky stated that the City is at the time limit for the internal inspections of the tanks at Water Plant 2, so his recommendation is the full mechanical and electrical inspection for both facilities.

Jon Bickford asked Mr. Muckleroy, Director of Public Works, if he had a chance to review the information. Mr. Muckleroy stated that the inspection needs to be done and feels that it is a good idea and money well spent. Mr. Yates said that he did not realize that they were at the time limit. Mayor Countryman asked how often the inspections are supposed

to be done. Mr. Roznovsky advised that the inspections are annual, with the interior portion of the inspection being required every five years. Mr. Yates asked Mr. Muckleroy if he knew anyone else that travels the State that does this service for a lesser fee. Mr. Muckleroy said that he did not know off the top of his head whether somebody could do it at a lower cost, but said that Jones|Carter is familiar with the system and \$7,500 is not a steep price to pay for a full water plant inspection. John Champagne said that every time something like this comes up he does not see any competitive bids, while he has no doubt that Jones|Carter will do a good job, is this a competitive number. Mr. Yates said that he did not think that they had that information. John Champagne said that he had a problem with that personally. Mr. Yates said he thought that by working with the Rural Water Association and others to get some other quotes, which is what he would suggest that they do.

Jon Bickford asked if they had a time crunch to get this approved tonight. Mr. Yates said they did not have to approve this item tonight. Jon Bickford asked if they could at least look and see what other costs could be. Mr. Roznovsky said that they will be doing the minimum inspection, which is look inside the tank to see if it is good or not, which is \$2,000. John Champagne said the scope of work was another thing and asked whether it has been identified as to what exactly needs to be done. Mr. Yates said that they did not have the scope of work. Mr. Roznovsky said that it is the same format that they have provided in the past. John Champagne said that was fine if they wanted to use that scope to get competitive bids, then he would be good with that. Rebecca Huss said that she thought it was important if they have never done an electrical inspection that they have a record of our water operations working. Jon Bickford asked to clarify that this was an electrical inspection of all the wells. Mr. Roznovsky said that the four largest motors in each facility will be scanned, an electrical engineer will go through the panels and test the relays and an electrical contractor will come out and run scans on the equipment. Jon Bickford asked what they would be scanning on the motor. Mr. Roznovsky stated that he would have to get the details. Jon Bickford asked if they would be Jones|Carter employees or subcontractors. Mr. Roznovsky said the ones that run the scanners would be subcontractors. Jon Bickford asked if the City had a negotiated markup for subcontractors with Jones|Carter in the contract. Mr. Roznovsky said that he would check on that

information. Jon Bickford said that Jones|Carter should get paid for bringing the subs in, but he was just wondering if it was pre-negotiated. Mr. Yates said that this is such a common practice that he is sure there is probably at least four of five individuals that perform this.

Jon Bickford said that he was trying to understand the complexity of this project. Mr. Roznovsky said that the base for looking at tanks is \$2,000, the mechanical inspection, which is looking at the tanks and the pumps for wear and tear is \$4,300 and then \$3,200 more to look at the electrical.

Jon Bickford moved to table taking action regarding authorizing Jones|Carter to perform the annual water plant inspection until they receive more information from the City Administrator. John Champagne seconded the motion.

Discussion: Rebecca Huss asked if they wanted to put a timeline on when it comes back to City Council. Mr. Yates said that he would like a month. Mayor Countryman said that would be mid-July. Mr. Yates said that he should be able to get the information for the first meeting in July 2018. Jon Bickford asked to make sure that they were okay with the State regarding turnaround time. Mr. Roznovsky said that the last inspection was completed in June of last year, so it is an annual action that needs to be done in 2018.

The motion carried unanimously. (3-0)

10. Consideration and possible action regarding completion of a land swap by and between the City of Montgomery and Montgomery SH 105 Associates, LLC, per the 380 Agreement.

Mr. Foerster advised that as part of the Development Agreement the City entered into with First Hartford Realty Corporation, which is doing business as Montgomery SH 105 Associates. Mr. Foerster said that there was an agreed land swap that would allow the City to acquire more property for our sewer plant in exchange for some release of easement land, which this formalizes the approval of the deeds for the land swap.

Rebecca Huss asked Mr. Foerster if he feels this accomplishes everything and this is the final land swap, with no other pieces that will be moved around. Rebecca Huss said that it was her understanding that some of the things that they have done previously was a small piece of this and this would be the final action. Mr. Roznovsky said that this is the physical swap of land but there are still easements to be dedicated and released, but as far as what can be done at this point, this is it. Mr. Foerster said that he had prepared the deeds so he was comfortable with the deeds.

John Champagne moved that they approve the special warranty deed per the 380 Agreement as presented. Jon Bickford seconded the motion.

Discussion: Rebecca Huss asked to hear what Mr. Jonathan White had to say. Mr. Roznovsky said that Mr. White pointed out that there is one piece of land that will have to be done, which the existing lift station is on a site that is actually owned and being used, but once the lift station is relocated that will go back. Rebecca Huss said that as long as it is better for the City then she was okay.

The motion carried unanimously. (3-0)

11. Report regarding the proposed Backflow Prevention Assembly Ordinance by the City Engineer.

Mrs. Katherine Vu presented the information to City Council advising that this is a draft ordinance, which was passed out at the last City Council Meeting for review. Mrs. Vu stated that this ordinance will require the installation and annual testing of a backflow preventer at what is identified as a high health hazard nonresidential user. Mrs. Vu stated that a high health hazard includes restaurants, auto repair shops and commercial kitchens and said that a full list provided by TCEQ has been included in the agenda pack. Rebecca Huss asked if a commercial kitchen located in a residence would have to have this device. Mrs. Vu said that if it was licensed as a commercial kitchen it would be considered. Jon Bickford said that if they have a sprinkler system they already have a device. Rebecca Huss said that it would be on their sprinkler meter not on the house meter.



Mrs. Vu said that this is a very common practice among cities and is actually a State law and so with the ordinance they would be addressing retroactive users. Mrs. Vu said that all the new developments in past four years have been installing backflow preventers just as a general practice, which is common with developers and will not come as a surprise when it is requested. Mrs. Vu said that they have obtained proposals from Gulf Utilities for the various sizes of devices that will be required. Mrs. Vu said that the average cost to most users will be \$600 for the installation of the device and \$80 for the annual testing of the device.

Mrs. Vu said that she has included an example of a drafted handout that could be included in the mail explaining why the device is needed and why they are being requested to have one installed. Mrs. Vu said that they would include a letter with options on how to meet this requirement. Mrs. Vu said that one option would be that they could install it themselves at their own cost, have it tested and certified and submitted to the City. John Champagne asked who would test and certify the devices. Mrs. Vu advised that there are testers that the property owner would have to hire to perform the test. Mr. Yates said that the City would have someone available if the person wanted the City to perform the test.

Jon Bickford asked if the backflow preventers were already required for residential sprinkler systems in the City. Mrs. Vu said that was correct. Jon Bickford said that this is just moving the requirement into commercial as well. Mrs. Vu said that was correct.

Mrs. Vu reviewed the following options:

- Option 1 – the user would install the device, have it tested and submit the certification to the City;
- Option 2 – the user can request the City to install, test and certify the device; and
- Option 3 – would give users until the end of this calendar year to have it installed, tested, certified and turn the information into the City.

Mrs. Vu said that this could be a significant cost to some users so they want to give them ample time to take care of it. Mrs. Vu said that they would also include a letter

to users that currently have a backflow preventer that are not experiencing annual testing that the \$80 charge will be added their water bill for nonresidential users that are specifically high health hazard users. John Champagne said that the miniature golf would not have to do this action. Rebecca Huss said that the antique shops would not be required to do this either. Mrs. Vu said that this will not affect most of the downtown businesses.

Mr. Yates said that they would not want to be responsible for backflow into the system and causing the neighborhood or the entire City to have to be on a boil order for two or three weeks because of backflow. Mr. Yates said that some of the proposal is the law and some is good public water management.

Mrs. Vu said that this was just a presentation tonight. Mrs. Vu said that they have no record of backflow violations, this action is purely preventative. Rebecca Huss said that Corpus Christi had three or four boil notices last year.

Mr. Yates said they would present the ordinance for adoption at the next meeting and then they will give public notification about the terms. Rebecca Huss said that she definitely preferred the delay requirement for adoption to give people a chance to learn about it and save for it. Jon Bickford said that the only ones that are high risk are going to be the ones that will be charged for the annual inspections. Jon Bickford said that there are going to be commercial users that have backflow preventers, and just because they have one does not mean that they have to have the annual inspection, that is just for the high risk users, and asked to make sure that the ordinance reads that way he would be good with it.

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

AN ORDINANCE BY THE CITY COUNCIL OF MONTGOMERY, TEXAS, AMENDING CHAPTER 78, "SUBDIVISIONS," OF THE MONTGOMERY CITY CODE OF ORDINANCES, BY AMENDING SECTION 78-61 OF ARTICLE III, "PLATS" AND SECTION 78-124 OF ARTICLE V, "ENGINEERING AND CONSTRUCTION STANDARDS; BY PROVIDING BENCHMARKS FOR THE FINAL PLATS AND ENGINEERING CONSTRUCTION PLANS OF PUBLIC

FACILITIES; PROVIDING REPEALING AND SEVERABILITY CLAUSES; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION.

Mrs. Vu presented the information advising the proposed ordinance is to require benchmarks for a survey to be tied to the City's benchmarks. Mrs. Vu said that currently what is listed in the Code of Ordinances is that the final plat has to be tied to the City's benchmark system. Mrs. Vu said that what is not listed in the ordinance that is covered in this proposed ordinance is that the final plans also have to be tied to the benchmark system, which would be the same as the final plat. Mrs. Vu said that the reason for this is that when they are tied to the same benchmarks there is less opportunity for error in elevations. Mrs. Vu said this is no extra work for the surveyor it just gives them a different starting point. Mrs. Vu said the proposed ordinance also includes the language that if during the survey there is an error found in the City's benchmark system or a discrepancy it is reported to the City Engineer so that it can be corrected for accuracy.

Jon Bickford moved to approve the Benchmark Ordinance as presented. John Champagne seconded the motion, the motion carried unanimously. (3-0)

13. Buffalo Springs Bridge Report by the City Engineer.

Mr. Roznovsky advised that the bridge is moving along, while they have been delayed due to the weather. Mr. Roznovsky said that as of now they are working on the wall on the south side of the bridge, they have two of the footings poured and have a wall section scheduled for later this week. Mr. Roznovsky said that they are also excavating out the channel between the two wall segments and getting the riprap placed and then they will be done.

Jon Bickford asked how much risk they run with the storm brewing. Mr. Roznovsky said that is why they are working fast to try and get the riprap down before the storm. Rebecca Huss said that she would like to have photos of the bridge.

14. Consideration and possible action regarding Change Order No. 1 on the Buffalo Springs Drive Bridge Embankment Repair Contract.

Mr. Roznovsky presented the information advising that there have been impact dates to the contract and as of the end of May the contractor was up to 35 days lost due to weather. Mr. Roznovsky said that of those 35 days, their recommendation is to provide an additional 22 days to the contract amount to cover the difference in what should have been planned for in the difference of what actually occurred. Mr. Roznovsky said that additionally because there has been additional bypass pumping, dewatering and excavation required so the change order is for the addition of 22 days that would bring the new end date to July 24, 2018 and increase the cost \$14,000.

John Champagne asked if the contract outlined for these contingencies and the addition and is the City on the hook for any additional time and/or problems or was the contractor to assume these irregularities. Mr. Roznovsky said that the costs are based on unit price items, so they were based on days and it was an estimate on the number of days that they would use. Mr. Roznovsky said that the amount of groundwater that they encountered was more than expected, which increased the number of days. Mr. Roznovsky said the bypass pumping and dewatering were bid on a per day cost for pumping, so that number of days was assumed and it turned out to be different and the change order is to cover the additional days. John Champagne said the contractor bid the job, the contingencies he should know he looked at the property. John Champagne said that his question is whether the variable is open ended and could it go on to infinity. John Champagne said that when he bids a job and it is turnkey any additional costs that he incurs are his. John Champagne said that they are saying that because of the additional problems with silt, water and etc., because they had more pumping days the City should have a change order and increased the amount for that falls on the City. Mr. Roznovsky said that was correct. John Champagne said that he was assuming the contract left it open for that contingency and the City to absorb that cost. Mr. Roznovsky said that was correct for certain items, but others such as the system that the contractor used to dam off the water was a lump sum item, so the contractor has had to redo that a couple times at his cost. Mr. Roznovsky said that if the contractor would have come in with less days of pumping he would not have

been paid for those days of pumping. Mr. Roznovsky said that the funds will come from the grant and FEMA amount.

Rebecca Huss said that by changing the end date does the City then push away the City's ability to get the liquidated damages part. Mr. Roznovsky said that it does. Rebecca Huss said that they are giving on both sides, quantity dollars and liquidated damages dollars. Mr. Roznovsky said that was correct the contractor gets paid for the additional quantities of work that he did and then he will not be impacted because it actually changes the date of the period of performance in the contract. Mr. Roznovsky said that now the days that the contractor is late past July 24, 2018 is what he would have in liquidated damages. Mr. Roznovsky said that there are no incentives he is just not having to pay a penalty. Jon Bickford said that they can't control the weather.

Rebecca Huss moved to approve Change Order No. 1 on the Buffalo Springs Drive Bridge Embankment Repair Contract. John Champagne seconded the motion, the motion carried unanimously. (3-0)

#### **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.)

#### **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.

Mr. Yates asked about having a Workshop Meeting regarding the FM 149 Project and he was thinking of either June 19, 2018 or June 21, 2018 at 6 p.m. After discussion, the consensus of City Council was to call the Workshop Meeting to be held on Tuesday, June 19, 2018 at 6 p.m.

John Champagne would like to discuss the ability to respond to permits, electrical or otherwise, in the scope of these permits, in other words if he wanted to change an electrical outlet in the house would he have to get a permit, what are the requirements if he wants to put in a generator. John Champagne said that he would like to know how long it takes to get a response from the City for the permits. John Champagne said that secondly would be the software that is incapable of differentiating the irrigation meters for residential usage. Mr. Yates asked if John Champagne would like that in a report. John Champagne said that would be good. Rebecca Huss asked if the question regarding permitting and whether that would be for homeowners. John Champagne said that he wanted the information for permitting for homeowners. Rebecca Huss said that when they come up with a solution the information should be on the web site and available for everyone. John Champagne said that he wanted to hear about the response time. Rebecca Huss said that she felt that information should be on the website.

### ADJOURNMENT


Jon Bickford moved to adjourn the meeting at 7:26 p.m. Rebecca Huss seconded the motion, the motion carried unanimously. (3-0)

Submitted by:

  
Susan Hensley, City Secretary

Date Approved:

06/26/18

  
Mayor Sara Countryman

