

**MINUTES OF REGULAR MEETING**

**February 13, 2018**

**MONTGOMERY CITY COUNCIL**

**CALL TO ORDER**

Mayor Kirk Jones declared a quorum was present, and called the meeting to order at 6:00 p.m.

Present:	Kirk Jones	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 Jones announced that one of the City's Police Officers, George Hernandez, suffered a heart attack today, and they think that he is doing okay. Mayor Jones asked that everyone keep him and his family in their thoughts and prayers.

**INVOCATION**

T. J. Wilkerson gave the invocation.

**PLEDGE OF ALLEGIANCE TO FLAGS**

**VISITOR/CITIZENS FORUM:**

Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must be recognized by the Mayor. Council may not discuss or take any action

on an item, but may place the issue on a future agenda. The number of speakers along with the time allowed per speaker may be limited.

Mr. Jeff Thompson, who resides on Old Plantersville Road, advised that he has been a resident since 2011. Mr. Thompson advised that he was rear-ended Friday morning by a teenager and said that he is fed up. Mr. Thompson said that he has a bunch of police reports where they have hit his mailbox, and they can't even let their children ride their bikes on Saturdays or Sundays, or whenever. Mr. Thompson said that it is getting bad and he fears for other people. Mr. Thompson said that he went out and got a petition on Saturday and Sunday, and he had 32 people sign the petition to see if they can get some type of traffic flow management or restriction for certain times of the day. Mr. Thompson said that it has gotten to where they can't get out of their driveways and it is an ongoing issue. Mr. Thompson said that he can't even let his daughter out to ride her bike on the road, because they are too scared that someone will run her over. Mr. Thompson said that they have issues with other people the same way; there are no sidewalks to ride on. Mr. Thompson said that he has tried to come up with ways to resolve this problem. Mr. Thompson said that one way is to put traffic flow restrictions on the road, and setting a time for them to come in, such as 6 a.m. to 8 a.m. and 2 p.m. to 4 p.m. Mr. Thompson said that the church flow traffic is also very bad. Mr. Thompson said that this is something that they really need to look into. Mr. Thompson said that he has been doing research, and they have some places in Texas doing the same type of thing to keep the traffic flow down, because someone is going to get hurt really bad one day, and he hopes that it is not somebody's child. Mr. Thompson said that he wanted to bring the matter up to see what they can do about the problem.

Rebecca Huss asked if when Mr. Thompson mentioned "traffic flow restrictions" was he talking about residents only. Mr. Thompson said that was correct. John Champagne asked what the speed limit was on that street. Mr. Thompson advised the speed limit was 20 mph. Mr. Thompson said that it was not fun getting rear-ended pulling into your driveway, because the kids are getting so anxious to pass you because you are doing the speed limit. Mr. Thompson said that he had a lot of people that he spoke to yesterday in the trailer park that have the same problem and there are a lot of kids that get off the school bus. Mr. Thompson said that in 2012 one of the kids actually passed the elementary school bus that had its lights on. Mr. Thompson said that he wants to live and likes living in Montgomery and he moved out here for a better place to live. Mr. Thompson said that it really concerns him that they have tried things such as stop signs and speed bumps, but it has not worked, they go right over the speed bumps and they don't even stop for the stop signs. Mr. Thompson said when you say something to the

kids, they curse at you. Mr. Thompson said that if this continues, he will have to move even though he likes living in the City and built a place to retire. Mr. Thompson said that he does not know if they are living blind on the problem, but it is a bad situation.

Rebecca Huss said that the police officers themselves are doing what they can, but unfortunately catching speeders has a lower priority than responding to accidents with injuries or things like that, so even if they set up to catch speeders on Womack Cemetery before they get to Mr. Thompson's house, they might get called away, so they really have to have someone set up right there at the house every day. Mr. Thompson said that he understands that happens. Rebecca Huss said that they have to get creative and aggressive in other ways. Mr. Thompson said that is what he was wanting to see what they can come up with to detour the speeders, because they have SH 105 and Lone Star Parkway, but they also have issues on Lone Star Parkway with speeders.

Mayor Jones thanked Mr. Thompson for coming to City Council and showing them the magnitude of the problem and said that they will look into the matter and see what more they can do. Mr. Thompson said that he has been in transportation for 27 years, and he drove a truck for 26 of those years, so he sees things that other people do not see, but one thing that he does not see is these kids respecting people that live in the City. Mr. Thompson said that they have people revving their motors causing noise pollution.

Rebecca Huss asked Mr. Thompson to send the City some information about the other cities in Texas and what they are doing. Mr. Thompson said that he would get that information to the City.

**CONSENT AGENDA:**

4. Matters related to the approval of minutes for the Public Hearing and Regular Meeting held on January 9, 2018 and Public Hearing and Regular Meeting held on January 23, 2018.

Dave McCorquodale moved to approve the revised minutes as presented. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

**CONSIDERATION AND POSSIBLE ACTION:**

5. Consideration and possible action regarding an Interlocal Agreement with Montgomery County Emergency Services District No. 2 to share sales tax proceeds for future commercial retail properties that may be annexed by the City.

Mr. Yates advised that this is a proposal/offer from ESD #2 to equally share two percent, one percent for each entity, of the sales tax in the future annexed areas in the City. Mr. Yates advised that this matter has been discussed in the past. Mr. Yates said that ESD Board has approved the Agreement. Mr. Yates said that ESD did not have to make the offer to share the sales tax, but advised that their stated reason for the offer was for the overall strength of the City and ESD. Mr. Yates said that without the Agreement, the City would not be able to collect any future sales tax in any future annexations and the development of the City, in his opinion, would become very sporadic and haphazard as the only reason for City annexation would be water and sewer service. Mr. Yates said that he felt the Agreement makes for a stronger and more fiscally sound City.

Rebecca Huss asked exactly how they would allocate the one percent within the City, because right now it is pretty specific, with  $\frac{1}{2}$  percent going to MEDC, 1 percent goes to the general account and  $\frac{1}{2}$  percent goes toward debt reduction and general fund. Mr. Yates said that they would have to advise the State Comptroller on how it was to be split, but he would think that  $\frac{1}{4}$  of it would be for MEDC and  $\frac{3}{4}$  of it would go to the City. Rebecca Huss said that she did not really like that because if they say running the City costs one percent of the sales tax, then it is one percent, and if they are giving away  $\frac{1}{4}$  of it then you actually are not ending up in a more fiscally sound financial position because you are providing services and getting back 75 percent of the revenues that you need to provide those services.

Mayor Jones stated that approving this Agreement really has nothing to do, at this moment, as far as how to distribute the funds. Rebecca Huss stated that the next agenda item would specifically impact this issue, so she would think that every annexation would be determined by what they decide here. Mr. Yates said that if City Council does not approve this Agreement the City will get nothing with future annexations. Rebecca Huss said that she did understand that fact, but that did not answer her question. Mayor Jones asked why they would not distribute the funds the same exact way as they do now. Jon Bickford asked if the split has been formalized. Rebecca Huss said that was what she is asking right now, because there is

no discussion of the split between this agenda item and the next agenda item, so she felt that this was the time to do that. Mayor Jones said that could be a future agenda item. Mr. Yates said the sales tax would not begin until there was actual payment. Jon Bickford said that there would have to be an agreement between the parties on what the split would be. Rebecca Huss asked which parties would be involved. Mr. Foerster, City Attorney, advised that the contract is between the City and ESD #2, so under this contract, ESD #2 is saying that they are giving the City ½ of any sales tax revenue in those areas that the City may annex in the future. John Champagne asked what the issue was. Rebecca Huss said the issue is that they are talking about annexing something in the very next agenda item, so they either need to talk about it now or under the next agenda item. Mayor Jones said that item has nothing to do with this item. Jon Bickford asked if there was a date driving this agreement. Mr. Foerster said that the agreement would be effective the 1<sup>st</sup> of February 2018.

Mr. Foerster said that the Agreement is with the City, and the Montgomery EDC is not a party to this Agreement. Mr. Foerster said that the Fire District has said that they are willing to give half of their sales tax to the City of Montgomery, which is all that this Agreement provides. Mr. Foerster said that what happens is the law allows the Texas Comptroller to honor this Interlocal Agreement and for all sales tax collected in the areas to be annexed, half of the sales tax would go to ESD #2 and half would go to the City of Montgomery. John Champagne said that this would not be the existing sales tax, but it would be for all the future annexations+ . Mr. Foerster said that anything that they currently have in the City limits, at the time of the election back in May 2016, when the sales tax was approved by the people, anything that the City had prior to that date does not have to be shared with anybody. Mr. Foerster said after May 2016 the sales tax went into effect and ESD #2 was entitled to everything outside of the incorporated area of the City of Montgomery. Mr. Foerster said that what ESD #2 is offering the City of Montgomery, effective February 1, 2018, is that the City would split, with ESD #2, any sales tax collected in any areas that are developed commercially, where sales tax is generated, and annexed by the City.

Jon Bickford stated that what the angle of ESD #2 is if they can't get the City on board with this, the City probably won't provide water and sewer or probably won't be interested in annexing the property into the City. Jon Bickford asked why ESD #2 would stop by and ask if we want to split the sales tax. Mr. Yates said that he thought it was just the strength of the

overall City, and said that the more water and sewer expansion that the City does, the more fire protection ESD #2 will be able to provide. John Champagne said that as he understands it, if the City does not annex anything and generate sales tax, ESD #2 gets nothing. Mr. Foerster said that this is a win-win. John Champagne said that this Agreement does not require the City to annex anything, this is just an Agreement in the event that they do annex. Mayor Jones said that was correct. Mr. Yates said that ESD #2 collects 2 cents in sales tax currently, with the Agreement they would split that with the City. Jon Bickford said that the City does not necessarily have to give any portion of those funds to MEDC. Mr. Yates said that, as Mr. Foerster stated, the Agreement is between the City and ESD #2, not MEDC, so the City would get the full amount. Mr. Foerster said that he would expect that if the City Council felt that it was important that a portion be shared with MEDC that could be arranged by another Interlocal Agreement, by which they are directing that a portion of what the City gets from sales tax collection would be shared with MEDC. Jon Bickford asked what the City is getting currently. Mr. Yates advised that the City is getting 1 ½ percent and MEDC gets ½ percent. Rebecca Huss said that the way that this Agreement is set up the City of Montgomery gets 1 percent and ESD #2 gets 1 percent, and the MEDC does not get anything unless the City enters into a separate Agreement that governs the one cent. Rebecca Huss said that there would be no split with the MEDC unless the City decides that works for them at some point in the future.

Rebecca Huss said that they had discussed this matter in Executive Session, and she felt that it was worth putting it on the record that this does significantly change the economics of annexation for the City. Rebecca Huss said that in the past they have had a simplistic view of things, as the revenue is great; it is money that they did not have before. Rebecca Huss said that when you annex, those services that you provide cost money if you are doing a good job and by properly accounting for your services. Rebecca Huss said that if you are providing water and sewer for big customers, then you are going to have to make big investments in your infrastructure where everyone is potentially going to bear the cost. Rebecca Huss said that they have talked about larger projects, where they have been able to use the 380 Code, which is basically using sales tax rebates to reimburse developers for infrastructure investments, so they are using their sales tax that they are generating and the City is giving it back to them for them to recoup their cost, and the City no longer has half of the money that they used towards that. Mayor Jones said that would have to be taken into consideration if a 380 Agreement possibility came up. Jon Bickford said that the clarity that he would put around that is that all

that is true for sales tax generating property and is not true for residential property. Mr. Yates said that it is any sales tax that is generated by any source, because some people have businesses in their homes. Rebecca Huss said that if they are sticking to some of the Codes, especially if you have the homeowners separate, that activity is quite low. Rebecca Huss said that the Jones|Carter economic feasibility studies that have been done show that if they did not have development they would not need to have expansion, and the City would look exactly as it does now because you do not want to add on a bunch of residential stuff, 200 houses gives you \$40,000 in additional ad valorem, which is not worth the cost of services rolling that out. John Champagne asked wouldn't that evaluation have to be done on a case-by-case basis. Rebecca Huss said absolutely. John Champagne said that basically what Rebecca Huss is saying is our business model has changed, so every time that they look at an annexation, it will be looked at from a different perspective. Rebecca Huss said that was correct, and said that she thought that people get complacent and there is a tendency toward a simplistic view of bigger is better, it is extra revenue that they have not had before, which is something that she had heard a dozen times when they have given money away and she did not think that is the case, things cost money and they have to be able to pay for it, so she thinks that they need to be very cognizant that this will alter the way that they have looked at things in the past. John Champagne said that he agreed with Rebecca Huss. Jon Bickford said that he thought that was why they put the impact fees in place, as well. Rebecca Huss said that for the smaller properties, such as the Peter Hill property, this works out really well because the 1 percent is fair.

Rebecca Huss moved to accept the Interlocal Agreement with Montgomery County ESD #2 to share sales tax proceeds for future commercial retail properties that may be annexed by the City. John Champagne seconded the motion, the motion carried unanimously. (5-0)

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

AN ORDINANCE ANNEXING THE HEREINAFTER DESCRIBED TERRITORY OF 3.22 ACRES OF LAND, MORE OR LESS, IN THE JOHN H. CORNER SURVEY, ABSTRACT 8, TO THE CITY OF MONTGOMERY, MONTGOMERY COUNTY, TEXAS, AND EXTENDING THE BOUNDARY LIMITS OF SAID CITY SO AS TO INCLUDE SAID HEREINAFTER DESCRIBED PROPERTY WITHIN SAID CITY LIMITS, AND GRANTING TO ALL THE INHABITANTS OF SAID PROPERTY ALL THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BINDING SAID INHABITANTS BY

ALL OF THE ACTS, ORDINANCES, RESOLUTIONS, AND REGULATIONS OF SAID CITY; ADOPTING AN ANNEXATION SERVICE PLAN FOR SAID ANNEXATION; PROVIDING A SEVERABILITY CLAUSE AND A TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING THE EFFECTIVE DATE UPON PASSAGE OF THE ORDINANCE. (Peter Hill Property)

Mr. Yates advised that the property is located on the extreme east extraterritorial jurisdiction (ETJ) of the City on the south side of SH 105. Mr. Yates advised that the ETJ of the property proposed to be annexed is approximately one half in the City of Montgomery ETJ and one half in the City of Conroe ETJ. Mr. Yates stated that the property owner is Peter Hill.

Mr. Yates advised that there have been two public hearings with no public comment, nor has staff received any calls at City Hall on the matter. Mr. Yates stated that the intention is to have Mr. Hill run a water and sewer line underneath SH 105, and probably have the upsizing of the water line from an 8-inch to a 12-inch be funded by the MEDC. Mr. Yates said the 12-inch water line would serve as a looping of a planned line that will be placed from FM 2854 to Mr. Hill's connection when the HEB tract is developed.

Jon Bickford asked what the difference in price was when going from an 8-inch line to a 12-inch line. John Champagne asked, based on this anticipated annexation, have we compiled a cost to the City and/or MEDC if we do decide to annex this property, and the anticipated payback. Mr. Yates said that except for the upsizing of the line there is no cost to the City. Rebecca Huss said there was an Economic and Utility Feasibility Study that Jones|Carter did six weeks ago. Mr. Roznovsky said that the request for MEDC to fund the upsizing has not been done as of this time, and the extra cost is somewhere in the \$10,000 range. Mayor Jones said that he could not speak for the entire MEDC Board of Directors, but if the City is not going to share the sales tax with MEDC, then why should they upsize the line, and stated that was a rhetorical question that could be answered later.

Mr. Jonathan White, engineer for the project, said that the cost for the upsizing might not be financially feasible to get through the process, so he did not think that Mr. Hill would seek reimbursement. Mayor Jones asked if Mr. Hill would go through the process of upsizing. Rebecca Huss asked Mr. White if there was any movement on getting all the tax generating stuff on the City's side of the ETJ line. Mr. White said that he did not think that they have

done anything to move them, he thought that the contract with the sales tax generator is not willing to move.

Jon Bickford asked to confirm the part of the property that is being annexed. Rebecca Huss said they were annexing the half of the property that is located inside the City's ETJ. John Champagne said that there will be ongoing costs to provide services to this piece of property. Mr. Yates said that the only charge will be water and sewer and police protection. Jon Bickford said that it will require Public Works maintenance, and protection from the Police Department.

John Champagne asked about how much the anticipated revenue from this enterprise would be. Mayor Jones said he thought that was answered in the Feasibility Study. Rebecca Huss said that she had the information, and said it would be \$3,500 in maintenance and operations revenues, but there was nothing stated for sales tax. Mr. Roznovsky said that they do not normally include sales tax in the study. Rebecca Huss said that it was also \$3,700 in debt service revenue. Mayor Jones asked to confirm that those were annual numbers. Rebecca Huss said that was correct.

Mr. Foerster said that in addition to whatever revenue the City might get from water and sewer or the ad valorem tax, one of the things that annexation also does is put the property in the City for purposes of Building Codes and Corridor Enhancement Requirements that they would otherwise not have if it was outside the City, so as people are coming into the City it is going to be regulated along SH 105. John Champagne said that was a very good point. Mayor Jones said that they are on the edge of it all and the City can't go any further east, so if they want to exert any influence that is all they have. Mayor Jones said that even though it may not be a lot of revenue, it is not a loss. Jon Bickford said that at the end of the day if the City does not annex the property, it will still be built. John Champagne said that someone will have to provide water and sewer. Rebecca Huss said that they would have to get the service from Stanley Lake MUD. Mayor Jones said that it would be a lot tougher on them. Jon Bickford said that he was trying to think of the downside to annexation and it was not obvious to him. John Champagne said that there was the cost. Jon Bickford said that it was also a revenue, and it is hard to determine the cost until you know what is going into the property. Mayor Jones said the property was adjacent to the HEB property.

Dave McCorquodale said that he spoke as someone who does not do land development, but what he is in favor of is orderly growth in the City. Dave McCorquodale said that he thought the best thing that they can do is to be smart about how Montgomery grows, and again to Mr. Foerster's point, putting some control over tactile things that they see and touch would be an advantage to the City. Rebecca Huss said that her only counter to that is that a lot of people moved here because they liked the City the way it is, and so by annexing we make this project happen, which it might not happen otherwise, so by sticking to our borders and not annexing we potentially prevent development from happening at all. Dave McCorquodale said that to him, in short, the horse is out of the barn, and if you are moving here looking for a small town, you are in the wrong zip code, we are in Montgomery County, north of the fourth largest city in the nation, we are 60 miles from downtown, and if anybody thinks that they are not going to experience growth in the City or around the City, that we don't control, I think is fooling themselves.

Dave McCorquodale moved to approve the annexation of the said Peter Hill tract. John Champagne seconded the motion, the motion carried unanimously. (5-0)

7. Consideration and possible action regarding amendment of an October 9, 2012 Variance Agreement regarding the paving of property, north, and adjacent to Rancher's Daughter business on College Street.

Mayor Jones said that the property in question is located on College Street on the corner. Mr. Yates stated that this is a report from the City Attorney regarding the 5 ½ year old unsigned variance agreement with Ms. Rendy Kerr, to consider options available and if willing, to make a decision.

Mr. Yates stated that this concerns a variance agreement given on October 9, 2012 by City Council to Ms. Rendy Kerr, that allowed her and her husband, at the time, permission to build on the north edge of the property at the southeast corner of FM 149 and College Street in return for paving the street next to their location on College Street. Mr. Yates stated that they built the addition to the building but never paved the parking area on the south side of the building as required by the agreement. Mr. Yates advised that in the City file there is a variance agreement, signed by Mayor John Fox, but not by Mr. or Mrs. Kerr. Mr. Yates said that he has

shown this information to Mr. Foerster, who, so far, has said that the variance agreement is not valid because of the passage of time since approval by City Council.

Mr. Foerster said that as he looked at both the proposed variance and the City Council's action on granting the variance, it was conditioned upon the owners of the property providing paving within three years, which was not done and the owners never signed the agreement. Mr. Foerster said that he could not speak as to why that was done or was not done, but that is the fact. Mr. Foerster said that, his opinion, the variance would be voidable and in effect the construction has been done, encroaching into the setback, so it is difficult to say at this point to tear down your structure, but the fact remains that there was no agreement, and the variance was conditioned upon an agreement that was never signed by the property owners. Mr. Foerster said that he has been told that either Planning and Zoning or one of our City agencies has suggested that they not pave it, and there is also other considerations that Mr. Roznovsky might speak to concerning the fact that they do not know what the plans are going to be for the widening of FM 149 in front of the property. Mr. Foerster said that those are the facts as he sees them.

Mr. Yates said that in January Ms. Kerr appeared before the MEDC and asked them to pay for the parking cost of the property, \$3,700, and MEDC voted to not approve the funds because they felt that the parking was not necessary at this time and voted to recommend to City Council not to require the area to be paved. Mr. Yates said that, to him, it seems like there is an option to take no action if they do not want to pave the area. Jon Bickford said that the fact that the agreement has never been signed, and so they have kind of a breach of contract that was never signed, and the owners were given permission to move forward with this building if they agreed to pave the property within 3½ years, so he did not think that they should say they are not required to pave the property, the answer is our position that they are still required to pave it, whether or not we require them to do it right now, maybe is a different story. Jon Bickford said that he did not think that the City should back off the requirement, because, to him, that is a different conversation. Mr. Foerster said that Jon Bickford was correct, and said that City Council has the option on how they want to proceed. Mr. Foerster said that Mr. Roznovsky might be able to speak to this information.

Mr. Roznovsky advised that one of the projects that everyone is aware of is the TxDOT planned improvements of FM 149. Mr. Roznovsky said that one of the items that is in there was limiting the amount of access to FM 149; the preliminary plans have changed what the front parking access to the Rancher's Daughter looks like. Mr. Roznovsky said that one consideration that he would recommend would be the "what if" scenario; if TxDOT comes in and the parking of the front of the building goes away, what is the next option? Mr. Roznovsky said that if the front parking went away right now, there would be no parking adjacent to the building as it stands. John Champagne said that was all up in the air. Mr. Roznovsky said that was correct. Jon Bickford said that he thought this was going to be more of if they force them to pave the parking now, TxDOT could come and rip it right up. Mr. Roznovsky said no, that is not the problem. Jon Bickford said that because they built beyond where they were supposed to build, the City has now lost parking as a result, or they could lose parking. Mr. Roznovsky said that he was not aware of what it was before. Mr. Yates said that the area was grass before and it is still grass. Mr. Roznovsky said that if the parking in the front goes away, and the City says that you do not need to pave for parking, there will be no adjacent parking for that location. Mr. Roznovsky said that maybe they need to table this item and come back to it once they know what TxDOT is going to do and they have an approved set of plans. Mayor Jones asked what that parking would look like if the City were to require the parking to be put in; how many spaces would be required, would it be parallel parking, etc. Mr. Roznovsky said he did not know that information because there was not a lot of space there, it might be more of a loading zone, where it has just one parallel parking space and a loading area with people coming in and out. Dave McCorquodale asked about the sidewalk on College Street. Mayor Jones said that they would have to drive over the sidewalk to get to the parking, which is why they felt that they did not need the sidewalk.

Ms. Rendy Kerr said that she thought she was hearing that her building was encroaching on the City's property. Mr. Foerster said that he was not saying that, but said that it was his understanding that what Ms. Kerr was asking for was a variance to the ordinance that had a setback, where they had to set the building back from the right-of-way so many feet, and the variance was granted to Ms. Kerr to allow her to construct the building on her property, but within the building set back. Jon Bickford said that the variance was granted allowing them to do that if they did something in return. Mr. Foerster said that they had to sign an agreement to pave the property within three years, which was never done. Mayor Jones said that he could

not think of City Council's reasoning for wanting that parking at the time. Mayor Jones said that the City has done a lot to increase the parking in the downtown area, while it might not be exactly where everybody wants it, and said that he just did not think that they need that parking anymore. Rebecca Huss said that might be, but on the other hand if they provided a variance in return for consideration, it does not really seem fair for all of the other people.

Rebecca Huss said that in some ways she feels like they should enter into a new agreement that if the variance is granted because of the previous variance being null and void, then the encroachment is illegal. Rebecca Huss said that they can give a proper variance in exchange for whatever it is the City decides, whether it is the money for offsetting parking somewhere else that makes more sense, or if the engineer is able to construct a parking set up that does make sense after the TxDOT plans are finalized. Rebecca Huss said that she felt that they need to stick to the rules. Mayor Jones said that he thought it was worthwhile to consider our thoughts and opinions on whether they want that parking at that location. Rebecca Huss said that it is why she also said offset parking was an option as well, so if they put a time period that was more in people's memory they might be able to come up with something that would be a reasonable compromise. Mayor Jones said that they might be paving across the street and he asked Ms. Kerr whether a lot of her patrons already park across the street. Ms. Kerr said that everybody else's customers park out in front of her shop. Jon Bickford asked if there was an urgency on this matter, and if there was some kind of impending event that is causing us to do this action. Mayor Jones said that this is an unresolved issue that was brought up.

Jon Bickford said that his proposal/motion is that City Council's position is that the agreement for the change in the ordinance was incumbent upon the paving occurring, so the action or requirement to get the paving done is still there, and with that said, it does not mean that City Council or the City has to say you need it paved tomorrow. Jon Bickford said that he is proposing and suggesting that perhaps they table this item.

Jon Bickford moved to table this and allow the Kerrs' and the City to speak and figure out a plan to get through this matter, and he thought that the plan might be to not do anything specific until they find out something from TxDOT. Jon Bickford said that was why he was suggesting that they do nothing until they find out what it going to happen with TxDOT, unless there is some impending event or urgent matter that they have a problem with, because you could agree

on putting paving in and then TxDOT runs a bulldozer over it, so what is the point. Jon Bickford said that he feels they should just wait. John Champagne said that from his understanding, would it be safe to say his motion would include tabling this issue until TxDOT becomes more definitive as to what they are going to do with that particular area. Mayor Jones said that it could be that they come up with another solution. Jon Bickford said that if another solution is derived that won't be impacted by anything that TxDOT is doing. John Champagne said that he could second that motion.

Mayor Jones said that he thought that the motion was to table the item by Jon Bickford and seconded by John Champagne.

Discussion: Mr. Foerster stated for the record in the minutes, to make sure that it is understood that unless somebody on the City Council challenges his opinion, that the variance is at the very least voidable by the City Council, but we are tabling that action until they have more information. Mr. Foerster said that he was not asking that his statement be in the motion, he just wanted the minutes to reflect his opinion. Jon Bickford said that he understood that the variance is voidable. John Champagne said that he also understood that the variance was voidable.

Rebecca Huss said that she would like to point out that they do have an illegal encroachment that could extend for a decade before TxDOT gets their act together on FM 149. Rebecca Huss said that since she has been on City Council, they have had many plans that TxDOT was planning on doing immediately, and those plans have been extended and delayed, and re-proposed, etc., so she is not sure that waiting for TxDOT in order to resolve this issue is exactly the most timely way in which to deal with it. Mr. Foerster said that he did not disagree with that point, and it might be time for the City to get back with the property owners and look at this with the City Engineer and see what the options are if TxDOT takes away the parking in front, or if they don't. Rebecca Huss asked if there was a point at which the encroachment becomes grandfathered, as in they know it and did not do anything about it, and it would become legal. Mr. Foerster said that he has never had this come up where you have somebody renege on an agreement, which might be too strong, but they failed to do so at the time. Mayor Jones said that the City failed to enforce the issue in a timely manner. Mr. Foerster said that was correct, the City failed to enforce the agreement. Mr. Foerster said that he did not think, in

his understanding of municipal law, that anyone can take advantage of a City's delay in not enforcing its ordinance, because it is still on the books. Jon Bickford asked to confirm that Mr. Foerster was not aware of any statute of limitations. Mr. Foerster said that he was not aware of any statute of limitations for that issue. Rebecca Huss said that she knew that in personal real estate law, if she paved over her neighbor's driveway, and they knew about it, and she used it for over 10-15 years, she could actually move her lot line at that point. Mr. Foerster said that was true and is called a prescriptive right of way easement, because you have been using it for 10 or more years, and said that he did not think that law applies, in his experience to cities or other governmental entities.

Mayor Jones asked the City Secretary to restate the motion that has been recorded for this item.

Ms. Hensley stated the following motion:

Jon Bickford moved to table the item, and to allow the Kerrs' and the City to speak, and not make plans until they find out information and plans from TxDOT, unless there is another impending event. John Champagne seconded the motion.

Ms. Hensley also advised that Mr. Foerster asked that it was understood by City Council that the variance is voidable, but tabling the action does not void the variance.

The motion carried unanimously. (5-0)

8. Consideration possible action regarding LDC gas rates and recovery charges billed to their customers.

Mr. Foerster advised that LDC, natural gas provider in the City, had requested on two separate occasions that City Council grant the right for LDC to do a surcharge on all gas customers in the City of Montgomery. Mr. Foerster stated that on both occasions, early last year and then later in June of last year, this City Council declined the request. Mr. Foerster advised that Mr. Yates went and requested more information from the Railroad Commission, which is the appellate authority in connection with any surcharges within an incorporated area. Mr. Foerster

said that the City has original jurisdiction, and the decision can be appealed with the Railroad Commission.

Mr. Foerster said that Mr. Yates collected the information and this weekend he spent some time reviewing two separate docket numbers that were submitted by LDC to the Railroad Commission. Mr. Foerster said the first docket number was for areas which appeared to both the Railroad Commission and to him, to be for recovery of relocation charges in the unincorporated area, what they call the Montgomery County Service Area, which was approved by the Railroad Commission in June 2017. However, in the first docket number, Mr. Foerster said that it stated that additional costs included in this application will not be recovered more than once through any prior, pending or future applications to the commission or another regulatory agency, City, municipality or other incorporated territory. Mr. Foerster said he took that to mean that the request for the \$20,000 in recovery costs, which relate to the requirement that they had to relocate their gas lines in the Villas of Mia Lago and Lone Star Bend area. The Railroad Commission that has original jurisdiction outside of the City and approved it. Mr. Foerster said that the order provided that they would not be entitled to collect any money from the incorporated area, in other words, LDC could not double bill.

Mr. Foerster said that at about the same time, LDC submitted a request for relocation charges in the City, which the City Council denied; so they appealed that denial under a new docket number with the Railroad Commission by way of a Petition for Review. Mr. Foerster advised that in August 2017 the Railroad Commissioner Examiner required a pre-hearing conference, dated August 15, 2017 to address several issues. Mr. Foerster said that among the things that they were going to be considering at the pre-hearing was whether the City of Montgomery had properly denied the request and whether the LDC's filing should be omitted or supplemented, and whether LDC had properly served the City of Montgomery with their appeal. To his knowledge, the City of Montgomery has never received the appeal from LDC, and on any other matters. Mr. Foerster said that about the time of the hearing on August 18, 2017, LDC then withdrew its Petition for Review by filing a Notice of Dismissal of the Petition, which was granted on September 25, 2017.

Mr. Foerster said that it has come to his attention, through the consultant for LDC, that they believe that because the City did not follow the technical requirements of the statute, that is,

there are only four reasons for denial of relocation costs, LDC believes that they are entitled to this surcharge. Mr. Foerster said that he believes that LDC is not entitled to the surcharge because of the previous ruling made by the Railroad Commission. Mr. Foerster advised that he sent an email out yesterday to the attorneys for the Railroad Commission asking for clarification on this issue and said that he has not heard back from them yet. Mr. Foerster said that once he receives more information, he may be coming back to the City Council and requesting a hearing on this issue, where at the very least if he is correct, asking or demanding that LDC refund any surcharges that they have been collecting for the last few months.

Jon Bickford asked Mr. Foerster, to make sure that he is understanding correctly, that the research that he has done indicates that they already collected funds. Mr. Foerster said that LDC already has the authority to collect the \$20,527.60 from the unincorporated areas, but not from the City. Mr. Foerster said that they got that authority back in June 2017. Mr. Foerster said that LDC did not appeal the order from the Railroad Commission Examiner. Mr. Foerster said that when Mr. Yates received responses from the Railroad Commission, the Railroad Commission attorney said that she had attached information relating to GUD# 10648, which was the second appeal, and the ultimate withdrawal of the City of Montgomery's denial of its relocation costs recovery, and she also attached a copy of the relevant statute. Mr. Foerster said that the attorney also attached GUD# 10637, which was the first appeal in the unincorporated area, with administrative approval of LDC relocation costs recovery in the unincorporated area. Mr. Foerster said that he believed by that information that LDC got what they asked for in the unincorporated area; and by his reading of the examiner's opinion, LDC was not entitled to collect it from the incorporated areas, such as the City of Montgomery. Mr. Foerster said that LDC filed a Motion to Withdraw their appeal, and now they are saying, as he reads it, they did not need to file the appeal anyway because technically, the City Council did not properly deny the LDC request on the basis of one of these four statutory items. John Champagne said that LDC basically arbitrated their own case. Mr. Foerster said that you could argue that, yes.

Mr. Foerster said that he did not know that any action needs to be taken tonight; this is just for purposes of educating City Council on what is going on. Jon Bickford thanked Mr. Foerster.

Mayor Jones advised that Mr. Randy Burleigh would like to speak regarding this item.

Mr. Randy Burleigh, City resident, stated that he wanted to thank Mr. Yates for pursuing this issue, because it is a paper trail. Mr. Burleigh said that LDC wanted the Railroad Commission to move the City's docket, and the Railroad Commission advised that docket was closed and they had to go on their own. Mr. Burleigh said that LDC said that the City technically messed up on denial of the surcharge, and they thought that he did not need approval from the Railroad Commission to charge the City since the City did not have the right code, so they thought they could charge the City. Mr. Burleigh said that he appreciated Mr. Yates' work and it is the first step.

John Champagne asked if there were any legal ramifications, if in fact LDC did this action outside the normal guidelines set by the Railroad Commission. Mr. Foerster said that he would suspect that they would argue that they believed what they were doing was right. John Champagne said that does not matter. Mr. Foerster said that Mr. Yates was told in an email or phone call that the City had some authority to penalize LDC, but stated that he could not find that statute, and said that he thought that the Railroad Commission has that authority and the City can appeal to the Railroad Commission. Mr. Foerster said that he did not want to say that because there might be good faith belief that we did not technically follow the statute, but if they read their own examiner's report, it clearly states that they are not entitled, in his judgement, to collect the fee from an incorporated area once they have collected it from an unincorporated area.

Mr. Foerster said that City Council can table this item until they get more information.

Mr. Mike Swain, with LDC, was present and said that he wanted to offer to meet with the City Attorney. Mayor Jones asked Mr. Swain to please meet with the City Attorney.

Rebecca Huss said that, over all, the City's experience with LDC has been that they have repeatedly asked the City to impede competition, which raises rates for customers and they have asked the City to provide for reimbursement for business failures that is just unacceptable. Rebecca Huss said that LDC is hiding behind their own imagined loop holes and procedures that they control and they think access to the Railroad Commission and interpretation of what the Railroad Commission says and determines what their customers get charged.

John Champagne moved to table this item. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

9. Consideration and possible action regarding QBS Homes request for a front building line variance from 25 feet to 20 feet on Lots 1,2,3 and 4 on Sheppard Street, and from 15 feet to 10 feet on the north side of Lot 4 all within Section 1, Block 1 in the West Side at the Park Subdivision.

Mr. Yates advised that this was a request from Damon Scott of QBS homes on the west side of Sheppard Street by Cedar Brake Park. Mr. Yates said that the reason given for the request was to create more space in the rear of the lots because of how narrow the driveways are in the back.

Rebecca Huss asked if this would have already been discussed when they platted the property. Mr. Yates said he did not know about the original platting because that was before his time.

Mr. Damon Scott advised that they are trying to create five additional feet for the driveway because of the slope of the land and the high elevation. Mr. Scott said the more driveway that they have, the less of the slope they will have into the garage, and will allow four vehicles to be parked, two in the garage and two in the driveway. Mr. Scott said that as it sits now, they would have the vehicles hanging out into the alleyway of those homes.

Dave McCorquodale asked if the vehicles would hang out into the alley because of the floor plan of the house and less the size of the lot. Mr. Scott said that could be a fact, but they built five of these homes and they are trying to stay with the same theme directly across the street.

Dave McCorquodale said that one of the points that they had talked about when they were looking at this plat initially, was the fact that the ones that are currently built were within the Historic District, and the ones that we are discussing now are not in the Historic District because of where the boundary stops. Mr. Yates said that was correct. Dave McCorquodale said that these homes would not have to meet the criteria of the Historic District. Mr. Yates said that was correct. Mr. Scott said that their understanding from the beginning was to make

all the homes flow. Rebecca Huss said that they are not going to look like the other homes, because the pictures that they saw looks like the blue two story house on Houston Street. Mr. Scott said that they were doing a two story house on the corner, because of the width of that lot and the 15 foot building line versus a 10 foot building line, and they would like to have the 10 foot line on the north side so that it would accommodate the chimney on the right, north side of the house, and the other homes will be the same style as the other historic style homes.

Mayor Jones said that only the chimney will be encroaching on the two story home. Mr. Scott said that was correct.

Rebecca Huss asked if they did not do this, would all the houses be two story, and if they do only the one two story will the other homes look like the homes on Caroline Street. Mr. Scott said that was correct. Dave McCorquodale said that if they have to get the same style of homes, he would think that this is a good way to do that, and he would personally like to make that absolute in terms of that style, and said that he had no reason to doubt them in any way. Dave McCorquodale said that personally he did not have an issue with five feet, other than the slippery slope that Jon Bickford has talked about on every variance request. Jon Bickford said that he was absolutely disgusted with this, he wants everyone to know that he is so sick and tired of builders buying property and trying to cram five houses into a four house piece of property to make some extra money and then they have to do a variance. Jon Bickford said that the variances frustrate him and makes him so mad, because when he tried to do historic repairs on his home on Worsham Street, he could get no variance, and said that he was done with this because it is ridiculous. Jon Bickford said that they needed to stop buying property and expecting to come in and have the City grant variances for everything because you are trying to cram more houses in a small area. Jon Bickford said that he knows people will keep doing it, because that is what everyone does when they come in here. Mayor Jones said that the City has rules and at least we are here talking about it.

Rebecca Huss said that something that is very interesting on this item and is very applicable, is that the rear loading lots are wide enough for the people that are living in Houston, but are not wide enough for the people that live in Montgomery. Rebecca Huss said that she would not want to live in them and have to get her car down the alley. Rebecca Huss said that while improvement in the quality is fine for a variance, but the rear loading narrow alley is not an

improvement in the quality overall, so if they do this again, regardless of how big the lots are and how many homes, they need a wider alley.

Jon Bickford moved to deny the variance. John Champagne seconded the motion. The motion failed with the following vote:

Jon Bickford - Aye

Dave McCorquodale - Nay

John Champagne – Aye

Rebecca Huss – Nay

T.J. Wilkerson – Nay

Dave McCorquodale asked if the side lot line on lot 4 can be in the same motion or is this the front building line, and then a separate motion for the side variance for lot 4. Mr. Yates said that it could be handled as one motion since it is all on one block.

Dave McCorquodale moved to approve the side building line variance for lot 4, and the front building line moved from 25 feet to 20 feet with the stipulation that the rear building line is also moved forward five feet. Rebecca Huss seconded the motion.

Discussion: Dave McCorquodale explained, for clarity, what he is doing with the rear line being moved forward five feet, is to avoid just the house getting bigger and they still end up with a driveway that is too short, but they just basically got five more feet to build in if the purpose of the variance as it is being presented is to give them a longer driveway, he wanted to make certain that is what they get. Dave McCorquodale said, if he was thinking right, moving the rear building line forward five feet. Mr. Yates said that they would be increasing the building area 10 feet. Dave McCorquodale said that it would just be moving the house forward five feet toward Sheppard Street, so the same footprint that the builder has now is just moved forward. Mayor Jones asked Mr. Scott if that was his intention. Mr. Scott said that was correct, he just needed five more feet for the driveway, he is not making the homes bigger.

The motion carried with the following vote:

Dave McCorquodale – Aye

John Champagne – Nay

Rebecca Huss – Aye

Jon Bickford – Nay

T.J. Wilkerson – Aye

10. Consideration and possible action regarding approval of an application for an Alcohol Beverage Permit for Uncle Bob's BBQ Montgomery, to be located at 20873 Eva Street, Suite G, Montgomery, as submitted by Robert L. Blalock. (Previously Pizza Shack)

Mr. Yates advised that this is the second beverage permit that will be processed under the new City ordinance. Mr. Yates said that this process does still require the vendor to come before City Council to request the beverage permit.

Mr. Bob Blalock, owner, was present and stated that Uncle Bob's BBQ Montgomery would be a full service restaurant and bar, with barbeque and burgers, and typical family fare. Mr. Blalock said that they would have televisions at the restaurant.

John Champagne asked if Mr. Blalock was going to take all of the square footage that Pizza Shack had. Mr. Blalock said they would have the same square footage and they were not increasing. John Champagne said that was a pretty large operation. Mr. Blalock said that it was just a little larger than what they have at their other operation.

Dave McCorquodale asked Mr. Foerster about when you look at the application regarding the 300 feet from the school, and asked if where you are leasing space in a center, where does the 300 feet from the school start, is it from the walls of the business, and is it illegal for someone to walk out of the restaurant with an open container into the parking lot. Mr. Foerster said that those are two different questions. Mr. Foerster said that the distance was one thing, but is it illegal for someone to walk out of the business with an open container, and said that it was his understanding that it is illegal. Dave McCorquodale said that he wanted to make certain that they are talking about this building even though the center is a larger tract, which is obviously within 300 feet of the school, but it is more of a technicality question. Mr. Yates said that it would be measured from the restaurant, because they went through that same question with El Bosque Restaurant. Rebecca Huss said that was not true, because it came up with Hodge Podge Lodge; it is from the nearest property line. Dave McCorquodale said that with a lease, you would be leasing one particular spot, which is defined in the lease. Mayor Jones stated that the business prior to this one had a beer license. Rebecca Huss said that fortunately it turns out that it is not their responsibility to make sure that anyone's liquor licenses are correct.

Jon Bickford moved to approve the Alcohol Beverage Permit for the sale of mixed beverages for Uncle Bob's BBQ in Montgomery, to be located at 20873 Eva Street, Suite G, Montgomery, as submitted by Robert L. Blalock. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

11. Buffalo Springs Bridge Report by the City Engineer.

Mr. Roznovsky advised that the wet weather has definitely had an effect on the construction of the bridge. Mr. Roznovsky said that they will be getting a revised schedule of work this week, which will show the actual progress and where they stand on the bridge as well as having an onsite meeting with the contractor this week or early next week, to discuss the progress.

John Champagne asked about Houston Street, which was not on the agenda. Mr. Roznovsky advised that he had a conversation with the Commissioner this morning regarding Houston Street and his superintendent has gone out to the location and looked at the site, and was fine with it and was waiting for some dry weather to be able to complete this one-day job. Mayor Jones asked if there was some touch up that needs to be done on Caroline Street. Mr. Roznovsky said that they have someone going out to check on that connection, because one thing that had happened a week ago was they had a redo where the inlet was located, so some of that area was disturbed, which was on their punch list to redress and stabilize that area, but he has not received the report yet. Mayor Jones said that someone had run over one of the barrels and decided to use that as a through road, and the barrels had also been moved on the other end.

Mr. Yates said that prior to going into Executive Session he had an update on Officer George Hernandez, stating that he had a stint placed into his heart. Mr. Yates said that Officer Hernandez was playing basketball when the heart attack occurred; thankfully a Houston Fire Medic was on the sidelines; Officer Hernandez should be out of the hospital in 3-4 days. Rebecca Huss asked which hospital Officer Hernandez was in. Mr. Yates said he was in Memorial Hermann Hospital.

**EXECUTIVE SESSION:**

The City Council reserves the right to discuss any of the items listed specifically under this heading or for any items listed above in executive closed session as permitted by law including if they meet the qualifications in Sections 551.071(consultation with attorney), 551.072 (deliberation regarding real

property), 551.073 (deliberation regarding gifts), 551.074 (personnel matters), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Government Code of the State of Texas.

12. Convene 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) 551.071 (confidential consultation with the City Attorney); and
- b) 551.072 (deliberation regarding real property).
- c) 551.074 (personnel matters – City Administrator’s Contract)

Mayor Jones convened into Closed Executive Session at 7:29 p.m.

13. Convene into Open Session.

Mayor Jones reconvened into Open Session at 8:04 p.m.

**POSSIBLE ACTION FROM EXECUTIVE SESSION:**

14. Consideration and possible action, if necessary, on matters deliberated on during Closed Executive Session with the City Attorney.

John Champagne moved to authorize the City Administrator, Jack Yates, and the City Attorney to pursue acquisition of the property located at 21049 Eva Street, Montgomery, Texas. Jon Bickford seconded the motion, the motion carried unanimously. (5-0)

Jon Bickford moved to extend Mr. Yates contract for another year and increase his annual compensation by 10 percent. Dave McCorquodale seconded the motion, the motion carried unanimously. (5-0)

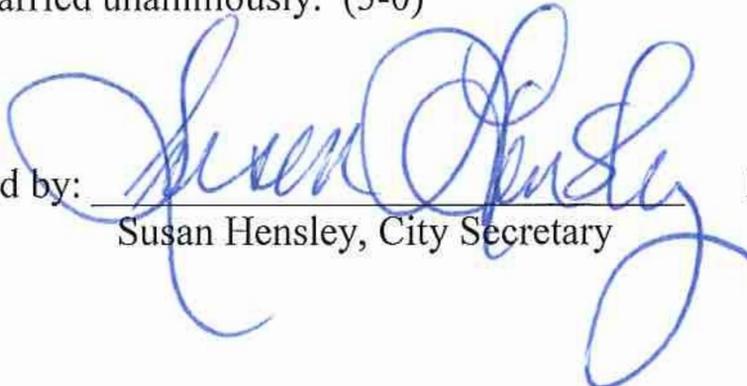
**COUNCIL INQUIRY:**

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.

**ADJOURNMENT**

Jon Bickford moved to adjourn the meeting at 8:08 p.m. John Champagne seconded the motion, the motion carried unanimously. (5-0)

Submitted by:   
Susan Hensley, City Secretary

Date Approved: 02/27/18

  
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Mayor Kirk Jones

