

MINUTES OF REGULAR MEETING

June 28, 2016

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
 John Champagne, Jr. City Council Position # 2
 T.J. Wilkerson City Council Position # 3
 Rebecca Huss City Council Position # 4
 Dave McCorquodale City Council Position # 5

Absent: Jon Bickford City Council Position # 1

Also Present: Jack Yates City Administrator
 Larry Foerster City Attorney

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.

Mayor Jones recognized James Goodman with Boy Scout Troop 491, who was present as part of earning his Community Service Badge. Mayor Jones welcomed Mr. Goodman to the meeting.

CONSENT AGENDA:

1. Matters related to the approval of minutes for the Public Hearings and Regular Meeting held on June 14, 2016.

Rebecca Huss moved to approve the minutes as presented. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

CONSIDERATION AND POSSIBLE ACTION:

2. Consideration and possible action on Department Reports.

A. Administrator's Report – Mr. Yates presented his report to City Council detailing his activities for the previous month. Mr. Yates noted that he and Mr. Fleming had attended the kickoff meeting with FEMA regarding the flooding damages, but said that they have not had the individual inspection by FEMA as of this date. Mr. Yates said he expected that FEMA would conduct the inspection in the next couple of weeks. Mr. Yates stated that he had also worked with the City Engineer on financing information for the Texas Water Development Board.

Mr. Yates said that since the last Council meeting, where a question had come up regarding measuring the distance from the business to a school for an alcohol beverage permit. Mr. Yates said that the State primarily handles that information when the applicant fills out a sworn statement, so if the applicant states that they are outside of the 300 foot required distance, they accept that as the truth.

Mr. Yates also discussed an automated answering phone system and whether City Council would permit it to be used. Mr. Yates said that when people would call the City they would get a welcoming message and asked to press a number for the department that they need. Mr. Yates said that he felt that this would help the front desk personnel quite a bit and would be more convenient for the customer. Mr. Yates said that the cost would be a one-time setup cost of \$135, with no additional charge. Mr. Yates said that this is one way that they are going to save having to hire someone else part-time for the front office. Mr. Yates said that the recording and transfer would

take approximately 5-6 seconds to complete. Dave McCorquodale asked if no one would be available to answer the call would there be two separate voice mail boxes for the court and administrative messages. Mr. Yates advised that there would be separate mail boxes and the call would roll over to the staff member that was available when someone is at lunch or away from the desk. John Champagne said that he thought it was a good idea, but the only thing that he wanted to make sure that the caller did not get caught in “no-mans” land after they pick a number. Mayor Jones said that he thought it was a good idea. Mayor Jones said he has watched the phone system at the office and they need some help. Mayor Jones said that he felt Mr. Yates efforts in customer satisfaction is well noted. Mr. Yates said that he thought it had worked out well with the Customer Service Committee meetings.

- B. Public Works Report – Mr. Yates presented the report to City Council in the absence of Mr. Mike Muckleroy, Public Works Foreman. Mr. Yates stated that Mr. Muckleroy has been inspecting the mowing and had a \$1,400 deduction this last month. Mr. Muckleroy said that he offered to take the contractor around to show him where he did and did not mow, but the contractor realized where he had not mowed so he was fine with the deduction. Mr. Yates said that they had 2-water taps, 2-sewer taps and zero water stoppages for the month. Mr. Yates said that they also had to drain the clarifier at the sewer plant this month, which involved a bit of public works time to coordinate the work.

- C. Police Department Report – Chief Napolitano presented his report to City Council. Chief Napolitano stated that two weeks ago the Department had a rough week with deaths of both a Pearland Police Officer and Patton Village Sergeant Baumgartner. Chief Napolitano advised that our Officer Chris Carswell, who used to work in Roman Forest, which is next to Patton Village, went on loan to Patton Village to help them get through this time of mourning and to make it easier for them to keep their schedule going. Officer Carswell went over to Patton Village and took over Sergeant Baumgartner’s shift until next week and then he will return to the City. Chief Napolitano said that he would like to congratulate Officer Carswell for doing that service.

Mayor Jones said that he noticed the traffic citations were down approximately 30% percent for the month, and asked what that was from. Chief Napolitano stated that the Department is down two officers, including Officer Weikel that has resigned as of today. Chief Napolitano said that Officer Weikel has chosen to go into another line of business. Chief Napolitano said that they are in the midst of looking for two officers to hire, along with Officer Carswell being out, so they are really down three officers at this time. Chief Napolitano said that since it is summertime they have less traffic with less people speeding, so the citations will go down, but will pick up again in August. Chief Napolitano said that the Department still did over 400 traffic stops for the month of May.

D. Court Department Report – Ms. Rebecca Lehn, Court Administrator, presented her report to City Council. Ms. Lehn said that their numbers are down as stated by the Chief, and said that next month the figures will probably be worse because it is happening now and will show up on the next report. Ms. Lehn said that while the Court is slow they are able to catch up on a lot of things. Ms. Lehn said that there was an error in the report on the figures for the warrants collected, which should have been \$8,279.10 instead of \$3,279.10 as shown in the report. Ms. Lehn advised that Officer Flores was now working on warrants and of the \$8,279.10 collected, \$5,707.50 is from Officer Flores. Ms. Lehn said that they are trying to track which warrant payments come from Officer Flores contacting them. Mayor Jones said that was good news from the Court. Rebecca Huss said that on page 3, where it shows the current year-to-date, and asked if it would be a problem to add another column to show the average year-to-date compared to the previous year. Ms. Lehn said that she would include that information. Ms. Lehn said that she would also be providing updates on how the Warrant Officer is doing so they can see how well it is working with Officer Flores in that position.

E. Utility/Development Report – Mr. Yates presented the report to City Council in the absence of Mrs. Ashley Slaughter, Utility Billing Clerk. Mr. Yates reported that the total revenue for utilities was \$62,553, permits \$2,417, Community Building \$1,400, and there are a total of 545 water/sewer accounts. Mr. Yates said that each one of the City accounts is paying for their water into the water/utility fund. Mr. Yates advised

that Memory Park consumption was down to 56,000 gallons, versus the anomaly of the previous month usage of 200,000 gallons. Mr. Yates said that City Hall usage was also down from last month's 42,000 and is expected to go down to 16,000 because they added a timer and rain gauge for the sprinkler system. Mr. Yates said that there had been one residential permit and the total number of permits was 13 for a total of \$2,417 in permit fees. Mr. Yates said that they had 5 bookings for the Community Building during the month, with one partial loss of deposit for \$150.

- F. Water Report – Mr. Mike Williams, with Gulf Utilities, presented his report to City Council. Mr. Williams advised that for the month of May they ran at 99% percent water accountability for the month through Well 4. Mr. Williams said that they had a couple of call outs during the month for Lift Station 3 for high wet wells and air compressor failures. Mr. Williams said that they have identified that the air compressor failures were caused by power glitches, so they have worked into the schedule to put in a backup battery on the controls to reduce the call outs. This month they cleaned 6 lift stations, with 2 being cleaned top to bottom, because they noticed higher call outs for Lift Stations 3 and 5 had visible debris. Mayor Jones asked if the problem with them was due to towels. Mr. Williams said that it was due to disposable wipes that are labeled that they break down, but they don't break down.

Mr. Williams said that this month they ran 58% of permitted flow. John Champagne asked if that meant that of the 58% of the capacity. Mr. Williams said that the peak flow was 58% capacity, and the average flow was 28%. Mayor Jones asked what the difference between permitted and capacity was. Mr. Williams said that they kind of work together, the capacity of the plant runs off of the permit, which they are permitted for 450,000 gallons. John Champagne asked what the average daily flow compared to the average water usage. Mr. Williams said that the average daily flow compared to average water usage was found on page 11 of the report, which shows that this month they have 51% of water from the water plant make it into the sewer plant. John Champagne asked how they account for the differential. Mr. Williams said that would have to be through irrigation and other water loss through the system. John Champagne said that there was no way, it is not irrigation, and asked what it could be. Mr. Williams

said that the irrigation water goes into the ground, not into the sewer line. Rebecca Huss said that John Champagne's point was that it rained a lot last month. John Champagne said that there was no way that was correct. John Champagne said that if you said that half of the residents in the City have irrigation, plus it poured rain during last month, so there has to be something more going on. John Champagne asked if it could be things like filling up the pond, because they did not do that since the pond was overflowing from the rain. Rebecca Huss said that 200,000 gallons per month go to the chlorine stream, fresh water, so that would go directly into Stewart Creek. Mayor Jones said that another 200,000 to 300,000 gallons is for flushing lines. John Champagne asked what the average disparity was for other municipalities for these items. Mr. Williams said that he would have to look that information up. Mr. Yates said that he would guess the average would be 55% to 60% for water consumed making to the sewer plant based on his experience. Rebecca Huss said that she thought we were a little lower than average, but not significantly lower on their returns. John Champagne said that it was interesting to him as to why they are not capturing more of the water flow. John Champagne asked what the total flow was for the month. Mr. Williams advised that the total flow to the sewer plant for last month was 3.409 million gallons, and they pumped just over 6 million gallons. John Champagne said that was a lot of irrigation. Mr. Williams advised that Mr. Muckleroy is also smoke testing the lines, and when he smoke tests he usually finds more than one area that need attention. Mr. Yates advised that they get a lot of infiltration into the sewer system. John Champagne said that infiltration would reduce the disparity, which is not happening. Mr. Yates said that the only thing that had not done is to do what he calls sounding, where they run a wire from one hydrant to the next and they can tell where there are leaks between the hydrants.

John Champagne said that a citizen knowing this information about the water being used and only half goes into the sewer, the natural question that the citizen would have would be why they are paying one to one for water and sewer. John Champagne said that he was questioning the ratio for every gallon of water used the assumption is that there is a gallon going to the sewer, which is not true. Mr. Yates said that currently the sewer rate being charged is less than water rates. Mayor Jones said that the sewer rate was based on water usage. Mr. Yates said that was correct.

Mr. Williams said that they had no excursions for the month of May.

Mayor Jones asked what was going on at the corner of Caroline and Houston Street. Mr. Williams advised that there was a water leak at that location that had been caused by tree trunks running parallel with the water main. Mr. Williams said that when the ground shifted it caused the line to leak. Mayor Jones said that he still sees a pile of dirt at that location, and asked if the water was still leaking. Mr. Williams advised that the tree trunks have been removed and they fixed the leak, so they are giving it a couple of weeks to settle prior to going back and sodding the location.

Dave McCorquodale asked whether there would be a change in the temperature of the water since they pumped 99% of the water out of Well #4. Mr. Williams advised that they would notice a slight increase in the water temperature. Mayor Jones asked whether the heat exchangers perform as well in hot temperatures. Mr. Williams said that was correct. Mr. Williams said that they also had identified a water main break that they had on SH 105 by Kickin' Ash.

John Champagne asked about when a water main break occurs and what would be Gulf Utilities involvement. Mr. Williams advised that Gulf Utilities would repair the leak with their employees. Mayor Jones said that the Public Works crew would perform minor repairs.

John Champagne said that it has been 4 months since they had the bid and reinstatement of Gulf Utilities. Mr. Yates said that it has been 6 months. John Champagne said that he would like to know where the City is in relation to the bid received by Gulf Utilities, in terms of cost, and requested that information for the next meeting. Mr. Yates advised that he would provide that information. John Champagne said that he would like to see the cost, and an overview on how the repairs and proactive work are done. He would also like to know if work is being outsourced to a third party, and if so who is calling the third party. John Champagne said that he would also like to know how much overtime they have paid in comparison to the bid that was turned in by Gulf Utilities relative to the other bids. Mr. Yates said that he would provide that information at the next meeting.

G. Engineer's Report – Mr. Glynn Fleming, Associate Engineer, presented his report to City Council. Mr. Fleming advised that the Capital Fund Grant Project for Kroger continues to progress. Mr. Fleming noted that the SH 105 Retail Center had submitted a plat that had generated a variance request, however, the developer wants to rescind the request and it will be addressed under another agenda item.

Mr. Fleming advised that regarding the Buffalo Springs Bridge, he and Mr. Yates had met with some people from FEMA, earlier in the month, when they attended the initial applicant kick off briefing. Mr. Fleming said that the first disaster declaration, which is DR4269 that pertains to the tax day event. The official declaration came down on June 3, 2016. Mr. Fleming said that the paperwork was submitted on June 14, so they are now in the que and waiting for a representative from FEMA to contact them. Mr. Fleming said that he hoped that someone would be down to meet with them and inspect the locations within the month. Mr. Fleming said that he did bring out an environmental specialist out on June 17 to have him inspect the area and to make sure that they had a thorough understanding, so when they are ready to go in and begin to remediate and clean the area up and reconstruct the bridge to get it functioning, to make sure that they have an understanding of the permitting requirements.

Mr. Fleming said that his last item, which was not included on the report was information on pursuing funding from the Texas Water Development Board for some of the outstanding projects that they had identified on the City's Water and Sewer Master Plans. Mr. Fleming said that four of those projects were submitted for consideration last week, so they are now in the que with the Texas Water Development Board. Mr. Fleming said that he has been advised that there is a 2 to 3 week review process, and he expects them to come back with comments, and possibly request some more information. Mr. Fleming said that the Texas Water Development Board will give them some type of idea of the likelihood of the funding through low interest loans. Mayor Jones asked whether that would be monies that were destined for this fiscal year. Mr. Fleming said that was correct. Mayor Jones said that depending on what the Board says, they could reapply next year. Mr. Fleming said that the Board has a set amount of money that they fund annually, typically they start out the year with \$80 to \$100 million dollars. Mr. Fleming said that the systems that can prove ongoing and

serious health and compliance issues are the ones that score the highest and are funded first. The City does not fall into that category, while we do have some short comings and deficiencies, we are not claiming ongoing or safety health issues, so it does not get the City to the top of the funding heap. Mr. Fleming said that they typically have funds left over once they fund those entities in need, and that is where the City would come into play. Rebecca Huss said that she thought that was why the City was applying now, because most of the urgent needs probably had been met. Mr. Fleming said that they are either funded or they are in the pipeline now to start receiving funds and they are starting to realize what funds they have left over to distribute. Mr. Fleming said that right now they have submitted the request and they are waiting for a response.

Rebecca Huss thanked Mr. Fleming for meeting with the developer and representative from L Squared Engineering regarding them being required to submit a traffic control plan for Stewart Street and getting all the outstanding punch list items addressed, prior to issuance of any further building permits or certificates of occupancy. Mr. Fleming said that they are getting there and said that they had received a submission for the traffic control plan late last week, which will be reviewed and comments prepared. Mr. Fleming said that there were clearly some significant punch list items that needed to be addressed, and we can encourage them to be addressed sooner than later. Rebecca Huss said that she thought that was a good way to handle the matter to get it done.

Dave McCorquodale asked about the Buffalo Springs Bridge and whether it was a construction deficiency, not an original design deficiency, with the amount of water that they were catching at that point. Dave McCorquodale asked whether the size of area and the amount of runoff that they are catching larger than what that specifically was designed for runoff and what the bridge could handle. Mr. Fleming said that yes they were aware of the slope paving, particularly on the north side, had construction deficiencies. Mr. Fleming said that some of the slope paving was not constructed according to what the drawings recommended. Mr. Fleming said that regarding some of the other areas on the south side of the bridge, there is a scale of how you are required to design, and while the City of Houston requires you to build with a two year storm frequency and Montgomery County requires the design with a 5 to 25 year storm frequency. Mr. Fleming said that the events that they saw during the back-to-back

floods expand far outside that 25 year flood. Mr. Fleming said that they did learn some valuable lessons so that what they hope to put back at that location will be better able to withstand similar flows. Mr. Fleming said that there are some improvements that need to be made, because they can't reasonably take that volume of overland flow and cascade it 40 feet over a hill, they will have to find some mechanism to transport that water in a controlled fashion. Dave McCorquodale asked whether the City currently had any ability to look at the watershed area, to be able to contain and slow down the amount of water there as the developer builds out all of that area, because they can only assume that the water is going to get faster and increase in volume.

Dave McCorquodale asked if there were things that the City could do to look at the watershed area on a long term to try and implement solutions upstream. Mr. Fleming said that the spillway that did exist, that is now gone, and the equilibrium that is reaching out now sort of solves the velocity issue because it is no longer taking a wide body of water through the small spillway. Mr. Fleming said that the City has a vested interest in seeing when the developer goes back to repair that spillway that he does not create a similar issue, instead having the water go through there in a more controlled natural fashion. Mr. Fleming said that as far as new development upstream, they will review everything for compliance with Montgomery County Drainage Criteria, which requires them to analyze the large residential development in its entirety, not just what is happening inside, but the impact on the community at large. Mr. Fleming said that if the County sees that the development is going to increase the static level, then the developer will have to make accommodations in their development to detain water on site and discharge it in a controlled fashion.

- H. Financial Report – Mr. Yates presented the report to City Council in the absence of Mrs. Cathy Branco, Bookkeeper. Mr. Yates advised that General Fund has a balance of \$1,057,000, MEDC has a balance of \$748,000, and the Utility Fund has a \$90,000 balance. Mr. Yates advised that the General Fund is \$83,310 revenue over expenditure, and the Utility Fund is \$82,000 expenses more than revenue.

Rebecca Huss asked about the mobile data terminal that cost \$3,000 that was paid for this month instead of the budgeted amount of \$700, which puts that over the annual

budget almost \$5,000. Mr. Yates asked Chief Napolitano if it was police related. Chief Napolitano said that he would have to go back and look because he was not sure Mr. Yates said that he would have to check on that information and report back tomorrow. Rebecca Huss said that she would email Mrs. Branco to get the information.

Mayor Jones asked when Budget work would start. Mr. Yates said that he would be sending out the information. Mr. Yates said that he would be getting the information out to the department heads tomorrow so that they can prepare their budgets, and then they will start on the Budget process.

Rebecca Huss moved to accept the departmental reports. John Champagne seconded the motion, the motion carried unanimously. (4-0)

3. Report regarding the proposed Tree Ordinance.

Mr. Yates advised that the Planning and Zoning Commission had voted to recommend the Tree Ordinance to City Council, with the exception that the fees were not attached to the Ordinance. Mr. Yates said that what he had advised the Planning and Zoning Commission as he was advising City Council tonight, the fees are intended to be similar to the engineering fees in the sense that it is part of the funds that people put up for their escrow agreement. The fees would be based on the actual cost to the City for the tree forester. Mr. Yates said that he will need to find out what the fees will be and work them into the Ordinance before it is brought to City Council.

Mr. Yates said that basically the Tree Ordinance provides for a tree protection plan, which is a plan submitted by a property owner showing the protected trees that exist with a method of protecting the trees and tree removal. Mr. Yates said that there is also a tree replacement plan, which is submitted by the property owner showing a method of replacement of the trees removed during construction. Mr. Yates said that this Ordinance does not mean that you can't cut down any trees on your property, but it means that you have to replace with the same coverage of the tree limbs as before if you cut down more than 20 percent of the trees. Mr. Yates said that the Ordinance does not pertain to previously platted lots or any parcel platted or not with less than 5 acres.

Mr. Yates said that the terms of the Ordinance are that it is unlawful to damage or remove a tree having at least 10 inches caliper, except with a permit. Mr. Yates said that they would have to hire an arborist or tree specialist to be able to conduct inspections and reviews and the cost would be covered in the Escrow Account.

John Champagne said that he sees the protected trees that are part of the Ordinance and said that there are exceptions for different trees, and said that if they had a large oak tree that is diseased and if it was removed would have to be replaced with a caliper of 10 inches. Mr. Yates said that was correct, but noted that a dead or diseased tree would not be considered part of the tree preservation plan and would not require City approval to cut down. Mr. Yates said that they would not have to replace that tree, but they might have to convince the urban forester that the tree is diseased. Dave McCorquodale said that anything on a residential lot is excluded.

Dave McCorquodale asked about the section of the Ordinance that references the extra-territorial jurisdiction ("ETJ") and said that a while back when the City of Shenandoah tried to enforce building codes in the ETJ, in the Tamina area and believed that the State came back and said that they could not enforce things that were outside the City limits. Dave McCorquodale asked the City Attorney if this was something that is enforceable in the ETJ. Mr. Foerster said that he did not believe that it was enforceable in the ETJ. Mr. Foerster said that a recent decision from either the Appellate or Supreme Court that general law cities, such as our City, do not have authority to enforce building codes in their ETJ. Mr. Foerster said that in the ruling the Court went on to say that unless the Texas Legislature gives you authority to enforce certain things in the ETJ, absent that authority you can't do it. Mr. Foerster said that there are exceptions to that, and one of them happens to be regulating signs in the ETJ, but other than that, he did not know of any legislation that he has seen that speaks to tree preservation in the ETJ.

Dave McCorquodale asked about the provision for temporary protection for trees, and said that he assumed that there would be a sheet or appendix that would show the different types of protection that the City would accept. Mr. Yates said that they do have an Urban Forestry Manual from the City of Shenandoah that City Council might want to adopt as an appendix, because it is very detailed and gives specific instructions, where the Ordinance does not go

into all the details. Dave McCorquodale stated that he has worked a lot with different tree ordinances in Houston and some of them are ridiculous with the amount of effort that they make you go through, but he felt that it would be good to have just a well thought out idea on protecting the tree. Dave McCorquodale said that he wanted something that would be easily attainable, but actually does something to protect the trees. Mr. Yates said that he could put the wording into the Ordinance to follow the Urban Forestry Standards or the actual Urban Forestry Manual could be referenced.

Dave McCorquodale said that when the developer submits his tree plans does the City go out to ensure that the plans are being followed, and would it be part of the initial site inspection. Mr. Yates said that it would be reviewed just like the plats and construction plans are reviewed and someone would go out and conduct the inspection.

John Champagne moved, based on Mr. Yate's recommendation, to accept the Tree Ordinance Report presented, and to bring back the Tree Ordinance, with any modifications, to be voted on at the July 12, 2016 City Council Meeting. Dave McCorquodale seconded the motion.

Discussion: Dave McCorquodale asked Mr. Yates if there was enough time for staff to do what they need to do before the July 12, 2016 meeting. Mr. Yates advised that he thought that would be enough time.

Mayor Jones said that when he first looks at the Ordinance it looks like this will be very burdensome to the developer and to the City to enforce the Ordinance, but he is not sure that he really feels that way now. Mayor Jones asked Mr. Yates to help him understand some things. Mayor Jones asked whether the only trees that are mandated for preservation are 10 inches or larger. Mr. Yates said that was correct. Mayor Jones said that there are some trash trees that thrown out and then you have to replace 80 percent of that caliper. Mr. Yates said that was correct. Mayor Jones said that if it was not practical, for whatever reason, to replant that many little trees everywhere what other options would they he have to meet the Ordinance requirements. Mr. Yates said that he thought he would add a tree fund section in the Ordinance. Mr. Yates said that the other alternative is they could place the trees on the adjacent lot or other property designated by the City. Mr. Yates said that the example that he gave the Planning Commission last night was if they wanted to build a parking lot but did

not have enough space in the parking lot for trees, then they could put it on the street right of way next to the parking lot, or across the street, or the City could replace some of the trees in Cedar Brake Park. John Champagne said that there would be a lot of latitude. Mr. Yates said that was correct. Mayor Jones asked if they could you give your trees to your buddy. Mr. Yates said that would not work. Mayor Jones asked if there was some private property that wanted the trees could they put them on that property. Mr. Yates said that it could not be done unless the City agreed to it. Dave McCorquodale said that in his mind they would have to look at the canopy relative to the size of the City, so, in his mind he would think, all options could be considered. Mayor Jones said that he wanted there to be options, and he felt that using them on public right of ways or in parks is great.

Mr. Yates advised that Section 3.1805(9) states "At the request of the applicant, replacement trees may be planted on city property in lieu of the property under construction/development, with prior city approval." Mr. Yates said that with prior City approval the trees could be placed anywhere. Mayor Jones said if he had 70 acres of heavily forested land that he wanted to build a residential subdivision, would he have to build all the houses around the saved trees, or cut the trees down and then replace them. Mr. Yates said that he would have to plant enough trees for the 24 inch to get the replacement, because once you get past the allowed 20 percent of trees to be removed, replacement is 100 percent.

Mayor Jones asked if he had a 2 acre tract for commercial use and he did not have to cut down any trees, would the City make him plant trees or bushes on that property. Mr. Yates said that would be handled by a Landscape Ordinance, which he would probably be bringing to Council at the first meeting in August. Mr. Yates said that regarding the 2 acre commercial development they would not have to abide by the Ordinance.

Mayor Jones asked whether this Ordinance was less demanding than the cities of Conroe or Shenandoah. Mr. Yates said that it was definitely less than Shenandoah, and substantially less than Conroe. Mr. Yates said that Conroe gets into how many trees are required to be planted on each subdivision lot and parking areas. Mayor Jones said that Dave McCorquodale had stated that Houston area was crazy and asked if this would be better than Houston's ordinance. Dave McCorquodale said that did not include the City proper. Mayor Jones asked Dave McCorquodale if he felt that this Ordinance was overbearing for the

developer. Dave McCorquodale said not at all, he felt that there was enough room to move to where it is not the big item on your radar.

Rebecca Huss said that she had a couple of comments. Rebecca Huss said that there were some editing items that she would email to Mr. Yates. Rebecca Huss said that on the removal maintenance and replacement of trees, somebody had told her at one time that these things were useless because anyone could kill a tree. She was wondering if there was any language that makes that section not apply if the trees die within a certain period of time after the tree survey. It would really be convenient if say a Target was going up and there was a giant beautiful tree right in the middle of where they want to build and they had their site plan, and the tree conveniently dies in six months, so they could just put in a parking lot at that location. Mr. Yates said that they do have a section in the Ordinance that addresses damaging trees. Rebecca Huss said that she was talking about where you can't prove that someone actually damaged the tree by dumping a load of cement around the roots, she was talking about a more insidious convenient death of the tree with no consequences. John Champagne said that if the City could not prove it, what would be their recourse. Mayor Jones said that Rebecca Huss was saying that they could put a time factor in the Ordinance. Rebecca Huss said that the recourse is essentially if you remove trees that are permitted, then you have to replace them according to a certain schedule if the tree conveniently dies so that you can have your building. Mr. Yates said that Section 3.1807 Enforcement and Penalties (2) states that cutting down, destroying, removing, moving or pruning that significantly disfigures or in a manner that significantly disfigures the tree in a manner that would reasonably lead to the death of any tree shall be subject to fines as established in the fine section. Rebecca Huss said that was if you could prove it, she felt that it should be something more such as if a tree dies within a certain period then they would still have to replant. John Champagne asked if Rebecca Huss wanted to make it time specific as well. Rebecca Huss said that was correct, after the initial tree survey had been done. Mayor Jones said that if the tree dies shortly after the survey, then they would still have to count the tree. John Champagne said that he did not read through the Ordinance with a fine tooth comb, but that was one of the reasons that he made the motion to come back after looking it over for a couple weeks and they could email a lot of the recommendations for the expediency of this meeting. Rebecca Huss said, just to be clear, for nonresidential would include nonprofits and institutional uses. Mr. Yates said that Section 3.1085(10) states that a tree identified on the tree preservation plan that is

replaced but dies within one year of the date it was planted must be replaced in accordance with the provisions of the Ordinance. Rebecca Huss said that was related to a new tree that had been planted, as opposed to a giant old tree that conveniently dies. Mr. Yates said that he thought that they would have to catch the person in the act. Rebecca Huss said that is why she would like to have a period of time that the tree has to survive after the original assessment, and if it does not survive then they would have to replace the tree according to the original schedule. Rebecca Huss said that she felt that would discourage ad hoc poisonings. Mr. Yates said that he would work on a section to address that information.

Rebecca Huss commented on Sec. 3.1806 Fees and Implementation, and asked if the nonresidential permits would include schools, churches, industrial and all of that and asked if that was the intention. Mr. Yates said that was correct. Mayor Jones said that they would review the information at the next City Council Meeting.

The motion carried unanimously. (4-0)

4. Consideration and possible action regarding adoption of the following Ordinance:
AN ORDINANCE INVOLVING LIGHTING POLICIES FOR COMMERCIAL PROPERTIES BY ADDING TITLE VI TO CHAPTER 18 OF THE CITY OF MONTGOMERY CODE OF ORDINANCES; INCLUDING DEFINITIONS, COMMERCIAL OUTDOOR LIGHTING REQUIREMENTS, AND PROHIBITIONS; PROVIDING EXEMPTIONS, ADMINISTRATION AND ENFORCEMENT WITH PENALTIES FOR VIOLATIONS; PROVIDING FOR VARIANCES BY CITY COUNCIL; PROVIDING SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION.

Mr. Yates advised that a copy of the Lighting Ordinance information had been sent out with the City water bill. Mr. Yates said that he had received only one phone call from a citizen who lives in Waterstone that was concerned about the light on the back of their property coming from the Summit Business Park.

Mr. Yates reviewed the full cut off and cut off light fixtures and said that the beauty of these fixtures is that it puts the light on the ground and does not shine into the sky. Mr. Yates advised that Brian Solomon with Solomon Electric had made a very good presentation to the Planning and Zoning Commission. Mr. Solomon stated that the full cut off lights were probably going to be preferred for the edges of property because they will allow less stray light to go onto the adjoining property. Mr. Yates said that this Ordinance applies only to new commercial developments and does not apply to residential. Mr. Yates said that since Kroger already had a plan, they would not fall under this Ordinance. Mr. Solomon had advised that almost everyone now was using cut off or full cut off fixtures. Mr. Yates said that this was similar to the Tree Ordinance in the sense that when a person comes in to get their commercial building permit they will have an extra page that will be their lighting page showing the area to be lighted and they type of fixture to be used. Mr. Yates said that the Ordinance provides that they are required to use full cut off for the perimeter lighting and can use cut off fixtures for the interior of the property.

John Champagne asked whether street lighting would be required to comply with the Ordinance. Mr. Yates explained that street lights were covered under 18-304 Exemptions, which that made them exempt from the provisions of the Ordinance.

Rebecca Huss said that since this Ordinance this only applies to commercial, would the Lone Star Cowboy Church have to comply with this Ordinance. Mr. Yates said that if the Church were to develop a new area, then they would have to comply with the Ordinance. Dave McCorquodale said that they would say that they are institutional and exempt from this Ordinance. Mayor Jones said that he would say that institutional would fall under this Ordinance. Mr. Foerster said that he thought that "commercial" was defined in the Ordinance, but they did not believe that they included "institutional" by the definition of the Ordinance. Mr. Foerster said that commercial is typically for profit. Mr. Yates said that he could add a section that deals with institutions, schools and churches. Mayor Jones asked why they could not include a new residential development, which will include new street lights, to make sure that they use the right fixtures. Dave McCorquodale said that a new residential development is really commercial, at that point, because it is the developer making a living. Mr. Fleming stated that it would possibly be easier and more encompassing to designate everything in the Ordinance, except what is designated as R-1 Single Family. Mr.

Yates asked if they would want to state private streets versus public streets, because public streets right now are excluded. Mr. Yates said that it would be easy to add a section about new subdivisions being full cut off or cut off lights. Dave McCorquodale said that he felt that would be worthwhile to add that section because one street light has a lot more impact than a lot of the other types of lighting.

Dave McCorquodale asked about other cities, in terms of lighting, what was the ratio of LED lights to incandescent. Mr. Fleming said that they rarely, if ever, were called upon to review lighting plan, but said that people are going to LED lights. Dave McCorquodale said that he had read an interesting article yesterday that the American Medical Association had recommendations on LED lighting, in particular relating to the color of the lights regarding the heat produced. Dave McCorquodale said that they recommended warm light versus bright light. Dave McCorquodale said that there is a whole lot that goes into lighting and people are starting to look at it. Mr. Yates had discussed the strength of the lighting, but to include that in the Ordinance, it would have to be a lot more technical. Dave McCorquodale said that he appreciated the work that went into this Ordinance, and feels that it does 99.5 percent of everything that the City can do and, to him, he felt that it was going to have a really big impact on how the City looks and feels as they see the development occurring over the next 5 to 10 years.

Rebecca Huss commented on page 3, subsection 4 that addresses municipal and state activities being exempt, and asked if they needed to include county activities as being exempt, because the City has at least one county road in the City. Mr. Yates said that was easy to change. Rebecca Huss said that Section 18-305 regarding grandfathering, and asked about, for example, the Brookshire Bros. parking lot if it should get damaged during a storm that knocked down all their lights, can the language of the Ordinance have the wording that the replacement would conform with the new Ordinance. Mr. Yates advised that it would be an improvement, and under the Zoning Ordinance if it is 50 percent or more, damaged it has to be repaired according to the new Code.

Mr. Foerster said that the question is whether they need to make some changes to the Ordinance before it is approved or approve this Ordinance subject to the recommended changes that have been made. Dave McCorquodale said that if everyone was comfortable

and understood the changes, basically everything outside an individual owner on an individual lot, this Ordinance would apply to them, then he did not feel that he needed to see the Ordinance again prior to approval. Mr. Yates said that he felt they could work that information into the definitions. John Champagne said that the motion would have to be made recognizing the modifications. Mr. Yates said that was correct. Mr. Yates said that he would also include the street lighting in new subdivisions and the private developer would have to provide cut off or full cut off, and they would add the word "County" to the exemptions along with Municipal and State.

Dave McCorquodale moved to adopt the Ordinance as submitted, with the conditions were outlined by the City Administrator. Rebecca Huss seconded the motion, the motion carried unanimously. (5-0)

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

AN ORDINANCE BY THE CITY OF MONTGOMERY, TEXAS REGULATING HOURS OF MOVEMENT OF OVERSIZED VEHICLES; AMENDING CITY CODE OF ORDINANCES AT CHAPTER 86, "TRAFFIC AND VEHICLES," BY ADDING A DEFINITION OF "OVERSIZED VEHICLE;" SETTING PERMISSIBLE HOURS TO MOVE OVERSIZED VEHICLES WITHIN THE CITY AS A CONDITION OF A PERMIT ISSUED BY THE CITY; PROVIDING A PROCEDURE FOR A REQUEST FOR A POLICE ESCORT AND ESTABLISHING A PERMIT FEE OF \$110 FOR THAT ESCORT; PROVIDING SEVERABILITY AND REPEALING CLAUSES; PROVIDING AN OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION AS PROVIDED BY LAW.

Mr. Yates presented the information to Council. Mr. Yates stated that the Ordinance really has two parts to it. The first is the regulation of times that an oversized vehicle can come through the City, which is anytime other than 6 a.m. to 9 a.m. and 3 p.m. to 6 p.m. Mr. Yates advised that the oversized vehicle is required to get a TxDOT permit, and if this Ordinance is passed, then they would notify TxDOT of the Ordinance and they would inform the permittee of the City's requirements.

Mr. Yates said that the second part of the Ordinance deals with the requirements for police escorts. Mr. Yates said that not very many cities have a requirement, but in speaking with Police Lieutenant Belmares, he thought it was worthwhile because of the past damage that has been done to the traffic light wires due to stretching or damaging them. Mr. Yates said that the \$110 fee for escorting is based on 2 people for one hour, which is basically how long it takes. Mr. Yates said that ultimately if they could get the intersection at SH105 and Lone Star Parkway that would allow the usage of the Parkway rather than SH105. Mayor Jones asked if the City could force all oversized loads to take that route. Mr. Yates advised that was correct. Mr. Yates said that he has not been able to get to TxDOT to try and talk them into widening the intersection. John Champagne said that he thought the Ordinance was good.

Rebecca Huss said that the time 3 p.m. to 7 p.m. during the week would not start early enough because the high school lets out at 2:30 p.m., so by 2:45 p.m. would be the time that the traffic gets backed up so it would need to be 2 p.m. Mr. Yates said that the reason that he changed the time to 3 p.m. from 2 p.m., because the buses get out around 2:30 p.m. Lt. Belmares said that the school lets out at 2:25 p.m. and he would need to get with Mr. Mike Foster with Montgomery ISD to confirm the times.

John Champagne asked Lt. Belmares for his suggestions. Lt. Belmares said that he would give 30-40 minutes for the majority of the school traffic to move out. John Champagne asked to confirm that Lt. Belmares wanted to modify the time to 2:30 p.m. to 7 p.m. Lt. Belmares said that they had said 3 p.m., which is the same as the City of Conroe. Lt. Belmares said that they could do 2 p.m., but said that the wide loads are going to pull over on the side of the road until one of the officers is available for the escort.

Dave McCorquodale moved to adopt the Ordinance with the amendment of the afternoon time to begin at 2:30 p.m. for oversized loads to come through the City instead of beginning at 2 p.m. Rebecca Huss seconded the motion.

Discussion: John Champagne asked if the afternoon time would still end at 7 p.m. Dave McCorquodale said that was correct the 7 p.m. end time would remain the same. Mayor Jones asked for clarification, because some of the oversized loads come in with their own

police escort, whether from the Sheriff's Department or somewhere, usually on motorcycles, and asked if the City would still need to get involved. Mr. Yates said that yes they would still need to have the City Police escort. Lt. Belmares said that when the oversized loads come through with their own police escorts, they are being paid to get the load through the City, but our main goal is to make sure that everything is kept safe and no damage is done as they come through the City.

Mayor Jones asked how often the City knows that an oversized load is coming through the City. Lt. Belmares said that a lot of them come through the City unescorted with a bucket truck that stops traffic, which is illegal, but with the City an officer will be able to direct the traffic legally. Mr. Yates said that the Ordinance requires 24-hour notice before they can come through the City.

Rebecca Huss said that when they go through the s-curve by the KOA Campgrounds, and even though our jurisdiction does not go out that far, does the City start the escort out there. Lt. Belmares said that the City limits would start at Stewart Creek and they would help the loads get through the City. Lt. Belmares said that they would have an officer on the east bound traffic and another officer blocking traffic further back so that they can make that s-curve. Mr. Yates said that they purposely did not list the number of officers that would be provided because there might be only one officer available. Lt. Belmares said that Officer Flores is in the office and she would be able to assist with the escort, or the Chief or he would also be available to help if needed. Lt. Belmares said that he felt they could provide the service without any problems.

The motion carried unanimously. (4-0)

6. Consideration and possible action regarding variances requested from McCoy's Building Supply as follows:
 - a. from required side yard setbacks for the proposed McCoy's Building Supply; and
 - b. from required driveway spacing for the proposed McCoy's Building Supply.

Mr. Fleming advised that McCoy's had rescinded item (b).

Mr. Fleming presented the information to City Council. Mr. Fleming reviewed the Code stating that the side setback are between 10 to 25 feet depending of the zoning classification of the property. Mr. Fleming said that neither he nor the Planning and Zoning Commission have any objections to this variance request, so it has been sent to City Council. Mr. Fleming said that the way the adjacent property is currently zoned, McCoy's property would have a staggered side yard setback along that property line anywhere from 25 feet in one area and 10 feet in the other area. Mr. Fleming said that McCoy's has requested a reduction to a uniform 15 feet setback along the entire western property line.

Mayor Jones asked what the adjacent property is zoned. Mr. Fleming said that it is partially single family and commercial. Dave McCorquodale asked to clarify that the 15 foot setback was the commercial to commercial setback. Mr. Fleming said that actually the commercial to commercial setback is 10 feet. Mr. Fleming said that it is the assumption that we will come back and rezone the entire adjacent property as commercial and they will be exceeding the commercial setback. John Champagne asked Mr. Fleming if he was good with the request. Mr. Fleming said that he offered no objections.

John Champagne moved to approve the variance request for the required side yard setbacks for McCoy's Building Supply. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

7. Consideration and possible action regarding a variance request from required rear yard vegetative setback and visual barrier for the proposed SH-105 Retail Center.

Mr. Fleming advised that this item has been rescinded by the developer because they will be revising the plat and it will be resubmitted to the City. No action was taken by City Council on this item.

8. Consideration and possible action regarding authorizing Jones & Carter, Inc. to proceed with preparation of the TPDES Permit renewals for the Town Creek and Stewart Creek wastewater treatment plants.

Mr. Fleming presented the information to City Council. Mr. Fleming advised that both of these wastewater treatment plant permits are on a five year renewal cycle and will expire June 1, 2017. Mr. Fleming said that the process to renew these permits takes approximately 11 months to complete. The applications are required to be filed with TCEQ a minimum of 180 days prior to the expiration date. Mr. Fleming reviewed the process procedure with City Council.

Rebecca Huss asked about Town Creek, and given what has been recorded and the likelihood, as in never, of being able to restart Town Creek without significant investments that just do not make any sense, so why would they get the Town Creek permit renewed. Mr. Fleming said that they have a gentleman on staff that is a long time TCEQ employee that is now employed with Jones & Carter for several years, who has he has discussed this information with. Mr. Fleming said that they know that they will go in and demo what is at Town Creek right now, because they will never use it, but they do plan to reconstruct the site and reactivate it. Mr. Fleming said that the collective opinion is once you have an active permit you do not give it up, because this is a rapidly developing area and they will be reserving that capacity. Mr. Fleming said that stream discharges into Lake Conroe and as the State continues to look at the rapid development around the lake, again the City wants to reserve the capacity that we have. Mr. Fleming said that when they do get ready to reactivate Town Creek, probably in 4-5 years, there will be a major permit amendment required for that site, because they know that they are going to ultimately look at 600,000 gallons, maybe more, of capacity there. Mr. Fleming said that they will have a permit that phases in with two or three phases.

Dave McCorquodale said that modifying a permit is much easier than starting from scratch. Mr. Fleming said that actually it is probably equally as onerous and more costly and takes the same amount of time, and there is more to go through because we will be asking for increased capacity and possibly increased effluent limitations with the different concentrations that they can discharge.

Rebecca Huss asked to confirm that Stewart Creek is asking for an additional 400,000 gallons per day. Mr. Fleming said that is not correct, they are just renewing the current capacity. Mayor Jones asked about the cost and whether it would be set aside as a budget project or fall into normal costs. Mr. Yates said that it would fall under normal costs and the invoices

will flow in with the regular items. Mr. Fleming said that the total approximate cost for processing both permits is \$32,000, with 15-20 percent of the work will be done in this fiscal year and the rest in the next fiscal year. John Champagne said that they have no choice but to do this.

Rebecca Huss moved to approve authorize Jones & Carter, Inc. to proceed forward with the preparation of the TPDES Permit renewals for the Town Creek and Stewart Creek wastewater treatment plants, for the amount of \$32,000, as outlined in their memo. T.J. Wilkerson seconded the motion, the motion carried unanimously. (4-0)

9. Consideration and possible action regarding an Agreement by and between the Kroger Company and the City of Montgomery for additional funding of the proposed public improvements intended to serve the 52-acre Kroger/Milestone Development.

Mr. Yates advised that this item was not ready for consideration at this time. Mr. Yates stated that the City Attorney needs to work with Kroger and Milestone Development, and said that this would not have an effect on the next agenda item related to bid tabulation and award. Mr. Yates said that the Agreement is that Kroger will pay for everything over the amount of the grant funds.

Rebecca Huss moved to table this item. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

10. Consideration and possible action regarding bid tabulation and recommendation of award for construction of the public paving and utility improvements to serve the Kroger development.

Mr. Fleming advised that in the agenda pack there is an email from him dated June 23, 2016 regarding the opening of the bids for this project, which were received that morning. Mr. Fleming said that the apparent low bidder was Key Construction for \$910,688.

Dave McCorquodale asked to confirm that award of this bid now would not affect, if for some weird reason the agreement did not work out, it would not obligate the City. Mr.

Fleming said that it really did not because their original intent, in addition to the two sheets presented, was to make a recommendation for award to sign the contract this evening. Mr. Fleming said that one thing that he did not anticipate was an out of State contract winning the bid, because Key Construction is based out of Wichita, Kansas. Mr. Fleming said that their normal time period for checking references is running a little bit longer on this, so he does not have a recommendation of award on this but actually, considering that they have some comments to address with Kroger, until the agreement is finalized it will work out nicely. Mr. Fleming said that if anything he would ask for authorization, once they have checked the references and found them to be agreeable, to prepare a recommendation for the Mayor and him to sign. Mr. Fleming said that it would allow them to stay roughly on the schedule that they committed to that is having the contract ready for execution at the first meeting in July.

John Champagne asked to confirm that there would be no problem with the project going into the ditch if they have a problem with Kroger. Mr. Foerster said that the motion could be made subject to the final agreement that is going to be worked out. John Champagne said that he was talking about the bid approval with the contractor. Mr. Foerster said that was what he was saying. John Champagne said that the bid would be awarded in those same terms, as well. Mr. Foerster said that he did not think that they were going to have any problem. John Champagne said that if the City Attorney is fine with it, then he was fine with it. Mr. Foerster said that they were still working with the language for the agreement with Kroger, which they had just received a few days ago so they need more time to develop a response. John Champagne said that he was good, he just wanted to run it by the City Attorney.

John Champagne moved to accept the recommendation to receive the bid, and accept the apparent low bid as submitted, and authorize preparation of the award, and the Mayor to sign. Dave McCorquodale seconded the motion, the motion carried unanimously. (4-0)

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.

11. Convene into Closed Executive Session pursuant to the Texas Open Meetings Act at Sections 551.071 and 551.072 of the Texas Government Code to meet with the City Attorney to receive confidential legal advice about real property transactions.

Mayor Jones convened into Closed Executive Session at 7:59 p.m.

12. Reconvene into Open Session and take possible action resulting from deliberations made during Closed Executive Session.

Mayor Jones reconvened into Open Session at 8:55 p.m. There was no action taken by City Council.

COUNCIL INQUIRY:

Pursuant to Texas Government Code Sect. 551.042 the Mayor and Council Members may inquire about a subject not specifically listed on this Agenda. Responses are limited to recitation of existing policy or a statement of specific factual information given in response to the inquiry. Any deliberation or decision shall be limited to a proposal to place on the agenda of a future meeting.

There were no comments made.

ADJOURNMENT

Dave McCorquodale moved to adjourn the meeting at 8:55 p.m. Rebecca Huss seconded the motion, the motion carried unanimously. (4-0)

Submitted by: 
Susan Hensley, City Secretary

Date Approved: 07/12/2016


Mayor Kirk Jones

