

**MINUTES OF REGULAR MEETING**

**July 13, 2021**

**MONTGOMERY CITY COUNCIL**

**CALL TO ORDER**

Mayor Sara Countryman declared a quorum was present and called the meeting to order at 6:00 p.m.

Present:	Sara Countryman	Mayor
	Carol Langley	City Council Place # 1
	Kevin Lacy	City Council Place # 2
	T.J. Wilkerson	City Council Place # 3
	Julie Davis	City Council Place # 4
	Byron Sanford	City Council Place # 5

Absent:

Also Present:	Richard Tramm	City Administrator
	Dave McCorquodale	Assistant City Administrator
	Susan Hensley	City Secretary
	Alan Petrov	City Attorney

**CALL TO ORDER**

**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 Countryman said there were several citizens who filled out a speaker request form. Mayor Countryman asked if anyone with issues other than item #6 from the Agenda would come forward to speak.

Mrs. Jenny Stewart of 205 Kings Lane, Montgomery, Texas stated she has been a resident since 1991 and wanted to list some issues so they are on record.

Mrs. Stewart said she does not believe the City focuses on big issues and serious problems and as a result, many residents have had to hire attorneys to fix problems that should never have occurred. Mrs. Stewart said a sandpit operated without a permit for over five years and no one from the City bothered to inspect or check it out until it started to cave in on their property. Mrs. Stewart said the Texas Commission on Environmental Quality (TCEQ) Report indicates such issues. Mrs. Stewart said a canal was dug in a subdivision without proper permits where the canal failed and now residents have suffered financial and emotional damage and many had to hire attorneys. Mrs. Stewart said house trailers are brought onto properties without permits. Mrs. Stewart said they have a City manhole on their property that has been spilling raw sewage out of it for over four years. Mrs. Stewart said it has been brought to the attention of City Council numerous times, even on the record at previous Council meetings, but with no response except after she called the City and told them she filed an official complaint with TCEQ. Mrs. Stewart said two people came out and cleaned up what they could and applied disinfectant. Mrs. Stewart said however, it continues to overflow, it is going into Town Creek, and into Lake Conroe and that is illegal. Mrs. Stewart said the sewer line is grossly neglected with no maintenance or infiltration and it is obvious. Mrs. Stewart said she was falsely accused once of photoshopping pictures she gave to City Council. Mrs. Stewart said she has been documenting this dilemma for years and has lots of pictures on her phone. Mrs. Stewart said if anyone wants to go see what is going on they can go over and look at the sewer. Mrs. Stewart said the infiltration is obvious and if you want to know where the infiltration issues stem from look at the plants that are growing out of the top of one of the sewer lines.

Mrs. Stewart said Bellevue is a city that has less than 400 people, it does have a water tower, however. Mrs. Stewart said the City of Montgomery should have one by now. Mrs. Stewart said the City needs to loop the town with water. Mrs. Stewart said in a drought scenario and fire off of Lone Star Parkway it could not be stopped. Mrs. Stewart said she knows this because they have had three fires go through their property. Mrs. Stewart said one of the fires that went through their property was about to go through the property south of them, but the fire department came and stopped it. Mrs. Stewart asked why the City spent \$750,000 on four acres and stated most people do not even know the money was spent and it is not even finished being paid off yet. Mrs. Stewart said there are other places if the City needed a future building in the town that they can find with a lot less money.

Mrs. Stewart asked why do some residents get their water bills credited while others do not. Mrs. Stewart asked why do some residents get their water turned back on when there is a mistake on their bill and their water is turned off but other people do not. Mrs. Stewart said there is just a list of things that are going on in this town that are not acceptable to her or anyone else.

Mayor Countryman said there were several speaker requests so to save time she is going to randomly pick three and ask them to come forward to the podium to speak since it is all on the same subject matter. Kevin Lacy said he wanted to be able to hear from everyone who filled out a speaker request form and asked if that is possible. Mayor Countryman asked Mr. Petrov, City Attorney if that can be done. Mr. Petrov said it is the decision of City Council. City Council concurred to hear everyone with a two-minute time limit.

Ms. Courtney Weidner of 506 Oak Chase Drive, Conroe, Texas said she is here today to speak about Mr. Bill Clevenger with Texas Twist & Shakes. Ms. Weidner said she is the owner of Weidner Insurance and has been an established business in Conroe for many years and is also the Vice President of the Women's Food Truck Organization. Ms. Weidner said she got to know Mr. Clevenger last year when she found out he was starting this business and thought it was the best idea. Ms. Weidner said she knew it was something that was going to bring tourism to historic Montgomery and that it was a unique product. Ms. Weidner said all food trucks are unique and she is a big advocate for them. Ms. Weidner said it is the newest craze as far as entrepreneurship goes and being a small business owner. Ms. Weidner said in the short time she got to know Mr. Clevenger she does not doubt that he will be a very successful business owner. Ms. Weidner said he will be able to run the food truck with professionalism and his mind and heart are completely in the right place. Ms. Weidner said as she

understands, Mr. Clevenger needs to get a special use permit to operate where he wants to be and she would like to ask City Council to please grant him that. Ms. Weidner said she knows they have to vote on it, but she understands there may be some conflicts with some businesses, but does know Mr. Clevenger's business is so unique that it would not be a conflict with any business downtown because it is bringing something new and different to Montgomery.

Ms. Karla Nash of 26981 Mock Lane, Montgomery, Texas said she is a business owner in the Historic District of Montgomery and is here to speak in favor of Mr. Clevenger and his ice cream truck in downtown Montgomery. Ms. Nash said she is an educated individual but for the life of her, she cannot grasp what is going on here. Ms. Nash said she does disagree with the approach of having a big group of people storming City Hall to scream for ice cream, but she also disagrees with putting roadblocks in the way of small businesses in our community. Ms. Nash said she knows that originally before Mr. Clevenger purchased the lot he researched it for multiple uses. Ms. Nash said she knows there are a series of steps to open a business in Montgomery and knows the concept was approved by Planning and Zoning and from there, things get very confusing. Ms. Nash said she read the letter written by Caleb Villarreal to Mr. Clevenger and it was not clear to her what the problem was. Ms. Nash said she knows there is an extra layer of rules regarding the Historic District and tried to read the City Code where an ice cream truck was specifically prohibited, but came up empty-handed. Ms. Nash said she wants to understand if this ice cream truck violates the current City Code that Planning and Zoning were unaware of, or if tonight is about rewriting the City Code to allow this type of business. Ms. Nash said what she hopes is that this is not a personal vendetta against someone who ran for Mayor in the last election. Ms. Nash said she wants to thank City Council members for their volunteer time and effort to serve our City, but she also hopes City Council constantly remembers they are here for the best interest of all residents of the City. Ms. Nash said as a business owner she would love to have an ice cream truck in downtown Montgomery. Ms. Nash said she thinks it would encourage people to walk around and enjoy our beautiful little town. Ms. Nash said she thinks Mr. Clevenger and his wife are good people. Ms. Nash said she often visits small towns and sees a lovely mix of food trucks and brick and mortar shops done tastefully, so why would this be any different. Ms. Nash said she hopes that each of the City Council members either changes whatever is in the City Code that forbids allowing this small business or vote to stand by Planning and Zoning's decision.

Mr. Bob Stewart of 205 Kings Lane, Montgomery, Texas said some of this he has heard from concerned members of City Council about food trucks such as Mr. Clevenger's being a detriment to

the historic nature of Montgomery and in particular possibly the business district of Montgomery. Mr. Stewart said the reality is the business district is not historic. Mr. Stewart said it is sad to say, but true. Mr. Stewart said it burned to the ground decades ago leaving one brick building. Mr. Stewart said 25 years ago a group of citizens got zoning passed. Mr. Stewart said it was a great first step in protecting our City. Mr. Stewart said another group of citizens followed and attempted to get architectural controls passed to force developers to build structures that fit the historic nature of our City and it went nowhere. Mr. Stewart said the result is we have developers that come in and the vast majority of them do not look at Montgomery as a historically significant city like we do, they just look at it as a place to build a business and so we ended up with the Brookshire market with a tobacco barn sitting in front of it. Mr. Stewart said then we ended up with metal buildings right on Eva Street with facades put on the front of them to make it look like there is some kind of a historic saloon. Mr. Stewart said they ended up with shacks that sell donuts and then ended up with a donut shop that is the size of an aircraft carrier that blocks the view of one of the most historic buildings down there. Mr. Stewart said the reality is we do not have a Historic District. Mr. Stewart said he hopes Mr. Clevenger gets his ice cream truck.

Ms. Brandi Chrisenberry of 18913 Bethel Road, Richards, Texas said if you spend time speaking with your constituents or keeping up with societal trends, you are aware of the growing interest in small-town traditional values in communities supporting communities instead of big businesses and corporations supporting communities. Ms. Chrisenberry said although they are technically outside the city limits, they very proudly call Montgomery their home. Ms. Chrisenberry said they take every opportunity they can to tell visitors about all the wonderful things our small town has to offer. Ms. Chrisenberry said they are fully invested in this beautiful town. Ms. Chrisenberry said the grand community of small business owners, farmers, ranchers, growers of things, harvesters of things, craftsmen, and the like they personally met and developed relationships with within the last two years which has been overwhelming. Ms. Chrisenberry said just the support and encouragement for these small business owners have been overwhelming. Ms. Chrisenberry said the people themselves are excited about these communities even if they are not necessarily part of these communities right now. Ms. Chrisenberry said this awesome movement for this old-time community comes together to support each other like the good old days is like what we have here and would like it to stay that way. Ms. Chrisenberry said she thinks these food trucks, ice cream, and coffee trailer businesses no matter what the packaging are part of our community.

Ms. Juanita Simmons of 21910 Twin Creeks Road, Montgomery, Texas said she has been in Montgomery for three years, is retired and this is the city she wants to live in. Ms. Simmons said she has traveled all over the world and they all have food trucks. Ms. Simmons said some of the most interesting towns have food trucks. Ms. Simmons said some of the best food you can get does not always come from a fancy restaurant. Ms. Simmons said she does support the food truck issue and she does not believe in any way that it will hurt the City of Montgomery. Ms. Simmons said she has attempted numerous times in the last year to get the attention of some of the City Council members. Ms. Simmons said she has sent emails, made phone calls, and requested someone call her back. Ms. Simmons has received no response. Ms. Simmons said she hopes the City sees what is happening here and the people here today are supporting food trucks, at least most of them as she has not heard from anyone that is not. Ms. Simmons said to just listen to the people because she thinks there is nothing wrong with food trucks.

Mr. Garrett Murphy of 15767 Beechnut, Montgomery, Texas, a manager with Tony's Deli said he is here today to support Mr. Clevenger. Mr. Murphy said the first time he met Mr. Clevenger he introduced me to sweet tea and root beer, awesome products, but the best thing was the customer service. Mr. Murphy said Mr. Clevenger is a great guy and a great businessman. Mr. Murphy said he has no doubt his food truck will be successful. Mr. Murphy said Montgomery needs milkshakes as there are no milkshake places besides Whataburger and McDonald's. Mr. Murphy said he would love to see Mr. Clevenger's business open and if there is a special permit he would want them to vote and hopes it passes.

Mr. Kade Jenkins of 14809 Lake Mt. Pleasant Road, Montgomery, Texas said he has lived in Montgomery for 27 years. Mr. Jenkins said he grew up here and went to all the school districts in Montgomery and this is his hometown and has seen it through all the changes. Mr. Jenkins said over the past 10 years he and his wife have both worked as youth pastors, worship pastors, and outreach pastors in the area and moved into Lake Conroe Village to do ministry in the area because they believe in community and they believe in the potential that is in this City. Mr. Jenkins said they have also adopted their daughter through foster care and they met at a youth home in Conroe. Mr. Jenkins said they spent the last years of their lives just giving because that is who they are. Mr. Jenkins said they opened this coffee trailer because they want to give to the City and because they believe they can bring something unique, different, and most of all excellent. Mr. Jenkins said they think they can do that in a trailer with wheels. Mr. Jenkins said in their time operating for two weeks he has had to borrow his

dad's truck to bring their trailer to the lot and back home every single day. Mr. Jenkins said they were under the impression, not by anyone's fault but their own, that they would be able to leave it. Mr. Jenkins said they now know that is not true. Mr. Jenkins said they do not have a ton of money as their past jobs did not allow them to have an influx of money and they cannot afford brick and mortar. Mr. Jenkins said they can afford the trailer and they have to try and do this. Mr. Jenkins said they love this work in Montgomery and love what it stands for and that people can walk around and enjoy all this. Mr. Jenkins said in their time here they have brought people from Huntsville and Spring and they have an NFL quarterback who came because he heard about their coffee trailer. Mr. Jenkins said if he had a dollar for every customer that came and looked around and said hey I had no idea this downtown was so great, then maybe they could afford a brick and mortar, but they do bring in business and they do bring something to this community.

Mrs. Kathryn Jenkins of 14809 Lake Mt. Pleasant Road, Montgomery, Texas said she grew up in Conroe but she also went to Montgomery as a high school volunteer but she considers Montgomery her home. Mrs. Jenkins said her mom had an antique spot in one of the antique shops while she was growing up so it has always been a part of her life. Mrs. Jenkins said she previously owned a business only for a year because she did not get enough business. Mrs. Jenkins said unfortunately they have seen downtown Montgomery as a dying area which she hates to say that because there are so many great people and shops there. Mrs. Jenkins said she wants to see it flourish and see people coming from other places. Mrs. Jenkins said they have had people from Margaritaville who drove past five coffee shops to come to their coffee shop because they saw them on the internet and it looked like a good place to visit. Mrs. Jenkins said they are bringing people into the downtown area and people are visiting us and then shopping around. Mrs. Jenkins said they are bringing the City money. Mrs. Jenkins said they want to follow the rules. Mrs. Jenkins said she does not know what it is about but it seems it is about drama and she hates that because she wants everyone to get along. Mrs. Jenkins said when City Council is voting on item #6 from the Agenda, it feels like it is red tape to add that they have to have a special use permit after they have already gone through all these things to get a license to be open and now they have to have a special use permit. Mrs. Jenkins asked what is a special use permit. Mrs. Jenkins asked is it they can only be there twice a month or only on Saturdays. Mrs. Jenkins said they want to be there all the time.

Mr. Bill Clevenger of 388 Berkley Drive, Montgomery, Texas said thank you to everyone coming out to support in attendance for the meeting this evening. Mr. Clevenger said they have so many issues

going on in the world today. Mr. Clevenger said you turn on the news and this is happening and that is happening. Mr. Clevenger said they are a community that is giving and he has never seen a community that is so giving that we have today and yet here we are trying to cultivate a sense of the world community. Mr. Clevenger said he did run for Mayor and although he lost he is proud of it. Mr. Clevenger said just the fact that he went out and his whole stance was community and coming together. Mr. Clevenger said it does not matter who we are, where we came from, who we represent, what religion we are, it does not matter. Mr. Clevenger said right now they are all in this little community and we all have our issues behind closed doors. Mr. Clevenger said his wife, son, himself, and five other young individuals have been anticipating opening up this ice cream stand. Mr. Clevenger said as Mrs. Stewart said there are issues here and they know there are infrastructure issues, but there are more important issues going on and an ice cream truck can bring smiles to this community.

Mayor Countryman said she needs to be clear that it is not whether the ice cream business has started, but whether or not they have followed the rules.

#### **CONSENT AGENDA:**

1. Matters related to the approval of the June 22, 2021 Regular Meeting Minutes.

Julie Davis moved to approve the June 22, 2021, regular meeting minutes. Kevin Lacy seconded the motion, the motion carried unanimously. (5-0)

2. Consideration and possible action on an encroachment agreement with Haza Foods (Wendy's).

Mr. Tramm said the developer of the new Wendy's restaurant was requesting an encroachment agreement to locate the proposed monument sign and light poles within the existing City utility easement at the site. Mr. Tramm said the construction plans show the proposed items will be near but not in conflict with the water and wastewater lines that run through that area. Mr. Tramm said the agreement will release the City from responsibility for damages of those items that might result from the City having to do necessary work for damages incurred to the improvements as a result of required maintenance and repairs to the public utilities. Mr. Tramm said the approval of this agreement does not remove Haza Foods from being required to get all necessary permits for operation in this location, including a permit for the proposed monument signage. Mr. Tramm said they have received a signed copy of the encroachment agreement from Haza Foods.



Julie Davis asked if the encroachments on this are similar to the ones they discussed for the rest of that shopping center. Mr. Tramm said they are not in line with them because they are on the opposite side of the road and down the street. Julie Davis said she meant feet from the road if they are similar or very close to a similar distance from the road. Mr. Tramm said while they are generally similar in the sense that they overlap the utility easement, roads are not always entirely symmetrical on easements on both sides so he does not know the specifics of how many feet exactly this one is versus the other, but the Engineer may have that information.

Mr. Chris Roznovsky, City Engineer said to answer the question they store this so Wendy's is on the same side of the street as Christian Brothers. Mr. Roznovsky said Christian Brothers has a variance for this encroachment agreement as well as the building next door, so this does fall in line. Julie Davis said just for continuity she did not want to have one sign way up front and one in the back having a checkered board pattern all along SH 105. Mr. Roznovsky said from what he remembers all of the signs are placed closer to the building versus closer to the street based on utilities there.

Kevin Lacy moved to approve the encroachment agreement for Haza Foods. Byron Sanford seconded the motion, the motion carried unanimously. (5-0)

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

3. Discuss and consider candidates to be considered for Place 2, City of Montgomery Planning and Zoning Commission for the unexpired term expiring October 1, 2022.

Mr. Tramm said on June 8, 2021, City Council accepted the resignation of Keri May from the Planning and Zoning Commission, Place 2. Mr. Tramm said this position was open for applications through July 7, 2021. Mr. Tramm said there have been three applicants for the position. Mr. Tramm said the person who would be appointed would replace Ms. May and serve the remainder of the uncompleted term which runs through October 1, 2022.

Mr. Tramm said City Council may choose to accept one of these applicants or may choose to continue advertising. Kevin Lacy asked when do they have to have the position filled. Mr. Tramm said that is up to City Council, but technically you do not have to fill it at all, however then Planning and Zoning Commission would be one member short. Mayor Countryman said being one man down on a small board hurts and last week there was a cancellation due to it.

Mr. Tramm said yes it did because they are operating with just four out of five positions. Mr. Tramm said two people had a family conflict and one at the last moment and therefore that meeting needed to be rescheduled.

Julie Davis moved to appoint Mr. Bill Simpson to that position. Byron Sanford seconded the motion.

Discussion: Kevin Lacy said they have a packed house of people and maybe others would be interested in applying for the position. Kevin Lacy said he does not see why they cannot table this decision until the next meeting. Mayor Countryman said the position has already been open for a month and asked how long was the application process. Mr. Tramm said the position was open for a month and has been a little longer than that since advertising. Kevin Lacy said he did not see much advertising and asked if they advertised the position in the water bills. Mr. Tramm said they did and also advertised on the website and on the electronic sign which is the normal process. Kevin Lacy said he would prefer to wait to decide until the next meeting.

The motion carried with 4-Ayes and 1-Nay vote by Kevin Lacy. (4-1)

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, ALTERING THE PRIMA FACIE SPEED LIMITS ESTABLISHED FOR VEHICLES UNDER THE PROVISIONS OF SECTIONS 545.356 AND 545.353 OF THE TEXAS TRANSPORTATION CODE, ON CERTAIN STREETS AND HIGHWAYS OR PARTS THEREOF WITHIN THE CORPORATE LIMITS OF THE CITY OF MONTGOMERY, AS SET OUT IN THIS ORDINANCE, TO WIT: ESTABLISHING A CONSTRUCTION SPEED ZONE ON SH 105 FROM 0.108 MILES WEST OF FM 2854 TO STEWART CREEK ROAD, A DISTANCE OF APPROXIMATELY 0.262 MILES TO REDUCE THE SPEED LIMIT TO 45 MILES PER HOUR; AUTHORIZING THE INSTALLATION OF SIGNAGE IN ACCORDANCE WITH THIS ORDINANCE; PROVIDING FOR THE ALTERATION OF THE PRIMA FACIE SPEED LIMIT OF SH 105 TO INCREASE TO 55 MILES PER HOUR UPON COMPLETION OF CONSTRUCTION; PROVIDING A PENALTY NOT TO EXCEED \$400.00 FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

Mr. Tramm said the Texas Department of Transportation has requested the City of Montgomery take action to reduce the speed limit on a portion of SH 105 in the City during upcoming construction. Mr. Tramm said following construction, the speed limit would return to the previous speed limit. Mr. Tramm said the area of construction will run from FM 2854 to Conroe at I-45. Mr. Tramm said all of that is not in the City of Montgomery as there is a portion from FM 2854 to the City boundary toward Conroe in the east area.

Kevin Lacy said it is a construction zone and the speed limit should be reduced.

Kevin Lacy moved to adopt the Ordinance as requested by TxDOT. Julie Davis seconded the motion.

Discussion: T.J. Wilkerson asked if it is the same one they are doing the work on from Montgomery to Conroe at I-45. Mr. Tramm said yes essentially it is one very large project and much of it falls in the City of Conroe and they have taken action on a similar ordinance in the areas in the City of Conroe and we have been asked to take the same action for the area in the City of Montgomery.

Julie Davis said just for clarification if they choose not to do this which does not sound like they are doing, they are talking about a quarter of a mile stretch from east of FM 2854 to Stewart Creek which would be 55 mph then to switch it back to 45 mph as soon as it hits Conroe because they are taking action on the same thing. Mr. Tramm said yes that is correct and it is very logical to follow the process.

T.J. Wilkerson asked if the prima facie speed is just a proposed speed limit. Mr. Tramm said that is correct.

The motion carried unanimously. (5-0)

T. J. Wilkerson asked about Section 545-356 and Section 545-353, can the City also go to them and propose a speed limit, and then it is up to them to reject it afterward if they do not think it is necessary. Mr. Petrov said you can request it, yes, but they do not have to take any action on the request. T.J. Wilkerson said in the section it states the City can imply that so if they want to take the same thing and apply it to FM 1097 from Mia Lago down to FM 149 and reduce the speed limit with the City and if the State does not think it is necessary, they can come back and change it. Mr. Petrov said where the State controls the roadway, they control the signage.

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

AN ORDINANCE ALTERING THE PRIMA FACIE SPEED LIMITS ESTABLISHED FOR VEHICLES UNDER THE PROVISIONS OF § 545.356, TEXAS TRANSPORTATION CODE, UPON THE BASIS OF AN ENGINEERING AND TRAFFIC INVESTIGATION, UPON CERTAIN STREETS AND HIGHWAYS, OF PARTS THEREOF, WITHIN THE CORPORATE LIMITS OF THE CITY OF MONTGOMERY, AS SET OUT IN THIS ORDINANCE; AND PROVIDING A PENALTY OF A FINE NOT TO EXCEED \$200 FOR THE VIOLATION OF THIS ORDINANCE.

Mr. Tramm said the Texas Department of Transportation has requested the City of Montgomery take action to reduce the speed limit on a portion of FM 149 in the City. Mr. Tramm said in this case this would be a permanent change. Mr. Tramm said the attachments include correspondence from TxDOT on this item, a recommended ordinance supplied by TxDOT with a comparison to the current ordinance, a memo from the City Engineer, and an excerpt of a City road map showing the affected area in red.

Mr. Tramm said he contacted MISD for their comments on this matter, specifically the school zone, and they were supportive of it. Mr. Tramm said City staff recommends the changes as presented.

Julie Davis asked if this was just a school zone change and not an actual all the time speed limit change. Mr. Tramm said that was correct.

Kevin Lacy moved to adopt the Ordinance at the request of TxDOT. Julie Davis seconded the motion, the motion carried unanimously. (5-0)

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

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CITY ORDINANCE NO. 1996-3, DATED JUNE 4, 1996, BY AMENDING CHAPTER 64, "PEDDLERS, SOLICITORS AND VENDORS" OF THE CITY CODE OF ORDINANCES; PROVIDING FOR A PENALTY FOR A VIOLATION OF THIS ORDINANCE; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SAVING AND SEVERABILITY CLAUSES;

PROVIDING A TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION.

Mr. Clevenger, who owns Texas Twist & Shakes said he purchased the lot at 404 Caroline Street on August 11, 2020. Mr. Clevenger said he was very vocal and outspoken about his intentions with that piece of property located in the Historic District of Montgomery, Texas.

Mr. Clevenger said he met with different people, asked about the process, worked with City officials, and was directed to the Planning and Zoning Commission. Mr. Clevenger said he went to the Planning and Zoning meeting in November 2020. Mr. Clevenger said the members saw the design of the trailer. Mr. Clevenger said Mr. Dave McCorquodale was very instrumental in helping him navigate his way and was very helpful. Mr. Clevenger said he met with Mr. Tramm and received nothing but encouragement from him. Mr. Clevenger said the Board Members of Planning and Zoning loved the design of the trailer as it represented Texas and he received the approval.

Mr. Clevenger said the second approval was in November 2020 with City Council. Mr. Clevenger said they discussed the platting and developing the property and that he was not changing the aspect of the property itself. Mr. Clevenger explained his intentions very thoroughly and it was approved. Mr. Clevenger said up until that point, the town did not receive anything of this magnitude of anything against it.

Mr. Clevenger said in January 2021 he moved the trailer to the property. Mr. Clevenger said it was not in its current state, but he moved it in and everyone wanted to know when Texas Twist & Shakes was going to open. Mr. Clevenger said between January 2021 and April 28, 2021, there were numerous meetings with City officials. Mr. Clevenger said on April 28, 2021, the trailer moved into its position and he did not hear anyone complaining about it. Mr. Clevenger said granted everyone said he was in the forefront of everything but they do not truly have the Ordinance, you are out front, and we like it. Mr. Clevenger said he and Mr. Tramm discussed lots of different things and he explained how positive it was for the economy and this is what brings revenue to the City and they liked it and kept moving forward. Mr. Clevenger said they talked about water and sewer utilities but everything hinged on what the County wanted to be done, because ultimately in the end you have to go to the County to get their approval and then bring it back to the City to apply for the mobile vendor permit.

Mr. Clevenger said on May 18, 2021, he had a meeting with the City Administrator, the Assistant City Administrator, and the City Secretary. Mr. Clevenger said they talked about Planning and Zoning, City Council, water, sewer, what the County wants to do, and what his plans were. Mr. Clevenger said he supplied answers to all their questions on everything. Mr. Clevenger asked if they recalled having the meeting on May 18, 2021. Mr. Tramm said he does not recall the exact day, but remembered they talked.

Mr. Clevenger said after he explained everything in detail and given the information on how he was going to do it, he followed what the County wanted to be done and proved to them how he was going to do it and what he needed to do. Mr. Clevenger said he obtained the electric permit and granted he admitted he did not pull the exact full permit for the electric from the pole over to the other thing. Mr. Clevenger said Mr. McCorquodale reminded him of that and they discussed that on July 2, 2021. Mr. Clevenger said in the process he turned in his water samples which are required by the County and it passed.

Mr. Clevenger said on May 18, 2021, as with any person in business, they need to go through the proper channels and work with the employees of the City which is standard. Mr. Clevenger said if you comply with the County then you will meet City standards. Mr. Clevenger said from November 2020 to June 3, 2021, not one thing was revealed that he was doing anything wrong when he provided the information and had met the County codes.

Mr. Clevenger said if you recall when they were going over the water and sewer items he was asked if he was serving water to which he stated no he was not serving any water as they were procuring water from Cozy Grape through a food-grade hose. Mr. Tramm stated at the time what Mr. Clevenger had secured was just for washing hands and equipment. Mr. Tramm said he also presupposed there was not a permit on file. Mr. Clevenger said correct. Mr. Clevenger said it all came back to what does the County say because if the County says it then the City is for it because they admitted that the City was not there yet and it did not happen. Mr. Clevenger said this meeting was documented because he recorded it and he can do that under the law of the State of Texas.

Mr. Clevenger said at the end of the meeting, Mr. McCorquodale said he wanted to bring in the City Secretary Susan Hensley as she is the one who handles all the mobile food vendor permits. Mr. Clevenger said Ms. Hensley stated all you need to do is bring in your application for the mobile food vendor permit for your City approval, they will sign it and it usually takes

up to 10 days, but she could probably get it done within 24 hours and they would even laminate it.

Mr. Clevenger said he then worked on the electricity as he went back and forth with Entergy and it was quite a mess. Mr. Clevenger said systems were not matching up but they got through it and they got the line. Mr. Clevenger said everything had been done by approval from City contractors. Mr. Clevenger said when they got to the water and sewer issue they crossed that bridge. Mr. Clevenger said ultimately it still came back to the County and it was voiced to him what does the County say about it. Mr. Clevenger said he went and did what the County wanted.

Mr. Clevenger said on July 8, 2021, he was approved by the County. Mr. Clevenger said on Saturday his wife went to the mailbox and he received a certified letter from Montgomery's City Attorney dated July 8, 2021. Mr. Clevenger said it was addressed to his attention regarding the Texas Twist & Shakes ice cream mobile food trailer, a trailer located in the Historic Downtown District of Montgomery, Texas. Mr. Clevenger stated it read: "Please be advised this firm represents the City of Montgomery, Texas. As such, I request all future correspondence be directed to the undersigned. The purpose of this correspondence is to inform you the trailer located in the Historic District is in current violation of the Code of Ordinances of the City ("City Code")." Mr. Clevenger asked what City Code and how could it be in violation when the whole time from November 2020 every month forward, conversation after conversation, meeting after meeting not one person said he was in violation yet in this letter there is no City Code to say he is in violation. Mr. Clevenger said the letter continues, "As you know on or about November 3, 2020, and November 10, 2020, the Planning and Zoning Commission and City Council respectfully approved a variance request for platting requirements and exterior modifications to allow you to operate the trailer in the Historic District. Unfortunately, through no fault of your own, the approval of the variance request does not permit you to operate the trailer in the Historic District". Mr. Clevenger said he purchased this piece of property in the Historic District and was very open about what he wanted to do from day one. Mr. Clevenger said the letter goes on to state "Although you relied on the approval of the variance of this request to operate the trailer in the Historic District, the continued operation is no longer permissible under City Code." Mr. Clevenger asked what City Code, there is no City Code. Mr. Clevenger continues reading the letter "The City relies primarily upon the general rule that a municipality cannot be estopped in the exercise of its governmental functions. See City of White Settlement v. Super Wash, Inc." Mr. Clevenger

asked what City Code has he violated in almost nine months. Mr. Clevenger said zero. Mr. Clevenger continued by reading “Moreover, the interest of an individual must at times yield to the public interest and in which the responsibility for public policy must rest on decisions officially authorized by the government’s representatives, rather than on mistakes committed by its agents.” Mr. Clevenger asked what mistakes were committed.

Mr. Clevenger said you are probably going to hear different things and maybe a City official made a mistake. Mr. Clevenger said they reference a table that most do not even know about and most elected officials do not even know about. Mr. Clevenger said they are going to try and figure out a way to make one poor guy fall on the sword and that is wrong. Mr. Clevenger said he did not make a mistake as he went through the proper process and his superiors even agreed with him as it is recorded. Mr. Clevenger said to remember what he said in that meeting as he was told he was all clear and was good to go. Mr. Clevenger said he was told all he needs to do is bring his approval from the County, fill out the mobile food vendor application, and submit \$50.

Mr. Clevenger continued by reading “In this case because the operation of the trailer is not specifically permitted in the table of permitted uses or special uses.” Mr. Clevenger said he is selling ice cream. Mr. Clevenger said he is not building anything or doing anything different and in the table, it says ice cream. Mr. Clevenger said it does not say anything about referencing whether it is brick and mortar or a trailer. Mr. Clevenger said they even talked in one of the Zoom meetings saying he wanted to do it right because we all know we are going to be doing this. Mr. Clevenger stated Mr. Tramm said in the meeting on May 18, 2021, we want to make sure we get this right because if we get it right the first time more will come and it will bring revenue to the City and that is what the City needs.

Mr. Clevenger read “In this case, because the operation of the trailer is not specifically permitted in the table of permitted uses or special uses, you must obtain a special use permit to continue to operate the trailer in the Historic District.” Mr. Clevenger said as Mr. McCorquodale shared with him on July 2, 2021, when he asked him what is the next thing to overcome, Mr. McCorquodale said they are going to try and exercise something and they just do not want you to open up this ice cream trailer. Mr. Clevenger said Mr. McCorquodale referenced the Romans going down through Africa and when the Romans would get handed their rear ends they decided they would scorch it all and that is the term he used that they are going to scorch Montgomery and ruin it for everybody.



Mr. Clevenger said he followed everything and they might have changed a little bit along the way, but that was always communicated through the City Administrator and the Assistant City Administrator. Mr. Clevenger said not once did they say he cannot do that. Mr. Clevenger said he was asked what does the County say. Mr. Clevenger said he goes back to the May 18, 2021 meeting and everything was all good, clear, and done.

Mr. Clevenger continued by reading "Further, City Code requires City Council to grant a special use permit for special uses not expressly permitted under Chapter 98 of City Code." Mr. Clevenger said this is the first time anyone has heard about special use. Mr. Clevenger said special use is not even in effect right now because that is what they are going to vote on right now. Mr. Clevenger said all this time he was never told he needed a special use permit. Mr. Clevenger said as this ice cream stand became a reality within weeks of opening up, all of a sudden there was an issue. Mr. Clevenger said he wants to be a compliment to the City. Mr. Clevenger said people have come out in droves as you can see and said we want this and this is what is going to create a buzz in this community.

Mr. Clevenger said there are so many pressing issues this City faces that we are going to hold on and try to stop an ice cream stand. Mr. Clevenger said something as American and Texan as it is anything to have an ice cream cone stand in the Historic District coming out of an establishment that has five kids. Mr. Clevenger said now he has to tell these kids and one is having open heart surgery tomorrow at the ripe old age of 17. Mr. Clevenger said this kid has stayed on him for months. Mr. Clevenger said he was in Pennsylvania when Ashton called him again and said he wants to come to work. Mr. Clevenger and his wife decided they are going to hire him on persistence alone because in today's world finding a young kid that wants to work is amazing. Mr. Clevenger said Ashton came today and tomorrow he is having open-heart surgery. Mr. Clevenger said Ashton asked him when he thinks they are going to open up and he told him hopefully soon.

Mr. Clevenger continued reading "Please be aware, upon receipt of this correspondence, continued operation of the trailer in the Historic District may subject you to violations and penalties described in Chapter 98 of the City Code." Mr. Clevenger said again, there is no City Code.

Mr. Clevenger read “The City sincerely apologizes for any inconvenience this may cause. Nonetheless, the City must continue to exercise its governmental functions through the continued enforcement of the City Code.”

Mr. Clevenger read “Thank you in advance for your cooperation and I look forward to hearing from you soon.” Mr. Clevenger said on Saturday he and his wife were floored as they have invested over \$200,000. Mr. Clevenger said now he is meeting with people and trying to figure out how he is going to save his livelihood.

Mr. Clevenger said he hired an attorney who emailed the City pointing out the fact the City does not have full immunity to do what they did and his attorney referenced an actual case for it.

Mr. Clevenger said ABC-13 news has been out and conducted a great interview. Mr. Clevenger said he thinks everyone is truly baffled. Mr. Clevenger said it points out the heart of the situation which is what in the world is wrong with ice cream in the Historic District. Mr. Clevenger said just because maybe six people come out and say this is atrocious and we cannot have this, but just on the mere fact that these folks took time out of their day right now to support them says something because everyone wants ice cream.

Mr. Clevenger said he has followed the laws set in place and of no fault of his own, the City officials want to take away his \$200,000 investment from him. Mr. Clevenger said his question to every single person here is if this can happen to him, then who is next. Mr. Clevenger said this sets a precedent of where it could be.

Mr. Clevenger said he wants to share another letter of support from Whitley Vineyards. Mr. Clevenger said this family has been in the Montgomery area since 1991 and they are some of the most giving and fair people that Montgomery could speak of. Mr. Clevenger passed the letter around for all to view.

Mr. Clevenger said in closing he heard through the grapevine today that he did not apply for his mobile food vendor permit. Mr. Clevenger said he did not get approval from the County until July 8, 2021, and a curveball was sent to him on July 10, 2021. Mr. Clevenger said he is here now with his completed application and attached check and is asking for City Council to approve this right now. Mr. Clevenger said no one likes lawsuits and he is not threatening in

any way. Mr. Clevenger said a letter like this leaves no one with a choice but to defend what they can have.

Mayor Countryman asked Mr. Clevenger to please provide the recordings he has and asked who told him they do not want him to have the trailer. Mr. Clevenger said Mr. Dave McCorquodale, Assistant City Administrator.

Mr. Clevenger said his attorney has already sent a letter of correspondence back that has been unanswered as of yet today because the City Council has yet to respond. Mr. Clevenger said he understands where it is at and he has all the documented information. Mr. Clevenger said it does not need to go this far. Mr. Clevenger said City Council members have already said to him what are you talking about, you have already been approved.

Mayor Countryman said we are here to talk about the Ordinance, not your specific business. Mayor Countryman said she just wants to make sure Mr. Clevenger understands it is the Ordinance that is the business and they are not voting on his business. Mr. Clevenger asked then why did he receive the letter. Mayor Countryman said that is a separate business and tonight for City business they are talking about the Ordinance and amending the Ordinance. Mayor Countryman said that is what is on the Agenda. Mr. Clevenger asked then why did they send the letter. Mr. Clevenger said three of the City Council members did not even know this letter existed and that is on record. Mr. Clevenger asked who instructed the City Attorney to send a letter to him stating his business is done. Mayor Countryman said she would have to ask Mr. Tramm that question. Mr. Tramm replied that came from staff. Mayor Countryman said they are here to talk about the Ordinance not to talk about Mr. Clevenger's specific business.

Mayor Countryman said Mr. Clevenger stated he had a recording and they would like to have a copy of that recording, please. Mr. Clevenger said it will go through his Counsel. Mayor Countryman asked if it was one recording or many recordings. Mr. Clevenger said there are numerous recordings. Mayor Countryman asked if they could have a copy of all of them. Mr. Clevenger said through his Counsel he will do that. Mr. Clevenger said if they pass the Ordinance tonight, you destroy his business. Mayor Countryman said no you are incorrect on that. Mr. Clevenger asked then why the letter. Mayor Countryman said Mr. Clevenger you are not understanding. Mayor Countryman said if they approve it or they do not approve it, you still need to get a special use permit. Mr. Clevenger said no. Mayor Countryman said yes you

do. Mr. Clevenger said a special use permit is not there, it is not in the Code and you are trying to enact it today.

Mr. Petrov, City Attorney said Mr. Clevenger is correct in admitting that Chapter 64 was including the reference to the specific use permit, but not because it does not exist because it already exists in Chapter 98. Mr. Petrov said it is in the Zoning Code under 98-88 and if you go through the table you do not have a listing for ice cream sales, but you do not have a listing for a mobile food vendor. Mr. Clevenger said but they do not have a policy either. Mr. Petrov said that is exactly right. Mr. Petrov said if you go to item (b) under the table it says that if there is no listing then a specific use permit is required.

Mayor Countryman said if you go back and look at what you were approved for, Planning and Zoning approved the artwork on the trailer. Mr. Tramm said what Planning and Zoning approved included the signage and the layout of the property. Mr. Tramm said what was provided by Mr. Clevenger was a singular trailer, several tables and it was on the drawing he provided that it would be an ice cream truck. Mr. Tramm said when Mr. Clevenger brought in or let someone else bring in a coffee trailer that was operating that was another item that was not what Planning and Zoning approved. Mr. Tramm said that meant that staff reviewed that item that was not what Planning and Zoning approved and discussed with the City Attorney what the proper steps would be because now instead of having a single trailer on the property you have two trailers. Mr. Tramm said you have one that is an ice cream trailer that back in November 2020 they were working with you to get permitted and as of now still is not permitted. Mr. Tramm said if Mr. Clevenger had provided that item on that day they would have processed it and gotten it to him quickly. Mr. Tramm said staff discussed that a new trailer had been brought to the property, one that was not approved or reviewed by Planning and Zoning, and the owner of the trailer is expecting to stay there permanently, not operating as a mobile vendor. Mr. Tramm said that is what caused the staff discussion with the City Attorney's office and that is what led to the City Attorney identifying the correct operation for staff at that point where previously that is when a special use permit would have been needed. Mr. Tramm said that is something that staff did not catch which is why it was not mentioned previously. Mr. Tramm said that was a mistake on staff and he apologizes for that, but it is something the City Attorney identified after the secondary truck came out and that is what generated the letter. Mr. Tramm said the item that was in violation was not the non-operational ice cream trailer, it was the coffee trailer.

Mr. Clevenger asked if Mr. Tramm and City Council had this discussion and you had your ducks in a row to prove he was wrong, why would you list an ice cream trailer in that certified letter sent to him. Mr. Clevenger said it stated he could not operate his ice cream trailer on his property and never once mentioned a coffee trailer. Mr. Clevenger stated Mr. McCorquodale worked with Mr. Jenkins and his wife to open this and present it to Planning and Zoning and when they started going through the proper motions somehow this was removed from the Planning and Zoning agenda because did they know this letter was going to come out. Mr. Clevenger said yet three of the five City Council members did not even know this letter was going to be generated. Mr. Clevenger said if they are saying it is all over the coffee trailer then why was he not told because you just said it had nothing to do with this ice cream trailer. Mr. Clevenger said it had nothing to do with the fact of him opening an ice cream trailer that he has already been approved for and right here in front of everyone you say it had to do with the coffee trailer. Mr. Clevenger asked why is it not in the certified letter.

Mr. Tramm said you say you have been approved for the ice cream trailer but you were only approved for a variance to not have a platted property. Mr. Tramm said a variance to not have a platted property does not mean you can just conduct business.

Mrs. Clevenger asked why they did not respond to their attorney today. Mr. Petrov said he did not have time today.

Mr. Clevenger said it is going to be public record unless City Council steps up and does the right thing. Mr. Clevenger said mistakes happen, but you set the precedent and we all agreed through Zoom meetings and documented conversations that he did it the way the County wanted it. Mr. Clevenger said we can say over and over that we are not talking about City business, but we are talking about City business because if you enact on an ordinance today after the fact, you are putting him out of business. Mr. Clevenger said we are talking about this right now.

Mr. Clevenger said you sent the letter and now the City Administrator says it had nothing to do with his ice cream truck, it had everything to do with the coffee trailer. Mr. Clevenger said he went through the proper motions he was instructed to do back in November 2020 and even Planning and Zoning members were saying they want the coffee. Mr. Clevenger said a Planning and Zoning Board member was telling him they cannot wait to see him come. Mayor

Countryman said we are here to talk about the ordinance, we are not here to talk about your individual business.

Kevin Lacy said he is aware there are a couple of City Councilmen who he has spoken with that have said no matter who it is, they do not want a food truck in downtown Montgomery. Kevin Lacy said he told them it is not about what you want, it is about what the voters want. Kevin Lacy said the voters want food trucks and they want revenue. Kevin Lacy said food trucks have been proven by Conroe to bring revenue. Kevin Lacy said they come downtown to get a coffee, to get ice cream, shop, and walk around. Kevin Lacy said they have a lot of really cool things for families like the movie nights and things like that and there is nothing wrong with expanding our horizons. Kevin Lacy said it is small-minded to think we are going to be against something just because we do not like it. Kevin Lacy said it is not our job to like it or not. Kevin Lacy said we are City Council and we do what you want because that is what this is about.

Kevin Lacy said Item #6 has everything to do with putting another roadblock in front of you. Kevin Lacy said he has had conversations with Mr. Tramm, Mr. McCorquodale, and everyone else and the story has changed 10,000 times. Kevin Lacy said we have gone from blaming Mr. McCorquodale for the mistake to talking with the media reporter and blaming Mr. Petrov for the mistakes because he sent the letter to the wrong person. Kevin Lacy said to take responsibility and stand up. Kevin Lacy said they have been putting roadblocks in front of this man for almost a year and he has spent over \$200,000 doing what he needed to do to make it right. Kevin Lacy said this item needs to be taken off and postponed to another meeting until we make something right with him first. Kevin Lacy said that is his opinion and he does not even think it is worth arguing about because he is not going to argue about it. Kevin Lacy said they know there are people downtown that are against Mr. Clevenger for many political reasons. Kevin Lacy asked Mr. Clevenger who his primary competition is in Montgomery. Mr. Clevenger said he does not see that as an issue at all. Kevin Lacy said there is none so what is the problem then. Mr. Clevenger said he would be complimenting the town and businesses.

Mayor Countryman said Mr. Clevenger can open he just has to get a special use permit and that is all that needs to happen. Mr. Clevenger said it did not require that, he did not need it, it was not voiced and never had been. Mayor Countryman said they will listen to the recordings and see if a special use permit was discussed. Mayor Countryman said if what you are trying to use the property for is not designated already you have to have a special use permit. Mayor

Countryman said they have done this for all other properties and they do this for everyone. Mayor Countryman said Mr. Clevenger is not singled out.

Mr. Clevenger said he is absolutely being singled out. Mr. Clevenger said the City Attorney was instructed by staff. Mr. Clevenger said Mr. Tramm is not going to go out on his own and instruct the City Attorney to send a letter of this magnitude and to tell him his \$200,000 has gone straight out the window. Mr. Clevenger said Mr. Tramm was instructed by someone. Mr. Clevenger said three of the City Council members, a majority of City Council, did not even know this letter existed so someone instructed the City Attorney to send this letter. Mr. Clevenger said regardless of how it was sent out, it stated he is in violation of a code that does not even exist. Mr. Clevenger said his counsel who is representing him sent a letter responding to the City Attorney and if Mr. Tramm did not do it the only reason why he did not do it is that he is under the contract and the duty of the City Council. Mr. Clevenger said someone instructed him not to get back with his attorney. Mr. Clevenger said when you vote on it this evening you are going to dash his money, investment, his time, the people's ice cream cones and it will be gone. Mr. Clevenger said then they are going to enter into a lawsuit. Mr. Clevenger said the majority of the community wants this ice cream stand to open up. Mr. Clevenger said Mr. Tramm just said this has nothing to do with the ice cream stand. Mr. Clevenger said the majority of the community wants this ice cream stand and City Council is going to go out on their own or certain members of it and put the City into a lawsuit and guess who pays for that lawsuit. Mr. Clevenger said we all do, our taxpayer's money. Mr. Clevenger said this should not even be done because it has already been accomplished and approved. Mr. Clevenger said the City is going to fight him and enter into a lawsuit that he has to protect his investment and turn around and fight the same thing that they want and that is lunacy. Mr. Clevenger said he implores City Council respectfully this was approved and done as he is within weeks of opening an ice cream stand with employees.

T.J. Wilkerson asked Mr. Clevenger if he purchased the lot in August. Mr. Clevenger said yes. T.J. Wilkerson asked if he went through Planning and Zoning. Mr. Clevenger said yes. T.J. Wilkerson asked if he told Planning and Zoning the whole deal and they did not have any issues. Mr. Clevenger said correct. T.J. Wilkerson asked if it came before City Council. Mr. Clevenger said yes. Mayor Countryman said they approved a variance. Mayor Countryman said Planning and Zoning approved the signage and the drawing that was submitted. Mayor Countryman said everyone has to have signs approved in town. T.J. Wilkerson said City

Council approved a variance and asked if in the permit it stated electrical and water. Mr. Clevenger said he did get an electrical permit. Mr. Clevenger said between Mr. McCorquodale and himself he said the electrician did not pull the actual full permit. Mr. Clevenger said Mr. McCorquodale said to go in and pull the electrical permit which the electrician did today and leave two openings in the line so they can inspect it and inspect the breaker box. T.J. Wilkerson asked if he had to get a water permit. Mr. Clevenger said he did not get a water permit. Mayor Countryman said they gave him a variance for it.

Mr. Clevenger said they kept going back and forth and Mr. Tramm said you keep going up against a wall as one person wants this, and one wants that, but what does the County say. Mr. Clevenger said he provided what the County said. Mr. Clevenger said he met with the County and held up the paper for the approval from the County. Mr. Clevenger said the County supersedes the City in this instance and he did what the County wanted. Mr. Clevenger said the City Administrator and the Assistant City Administrator who he had been working with the entire time told him he was good to go, just bring them the approval and they will sign it. Mr. Clevenger said granted the coffee trailer came and he gets that, but they were going through the proper motions. Mr. Clevenger said he is impressed with Mr. McCorquodale and his great attention to detail in his work. Mr. Clevenger said he is a great asset to this City. Mr. Clevenger said Mr. McCorquodale created the plan which was presented to Planning and Zoning and City Council in November and it was all approved showing where his trailer was. T.J. Wilkerson asked if his trailer was going to be stationary. Mr. Clevenger said it is going to be fixed and everyone agreed with that.

Julie Davis said November 10, 2020, the meeting took place under section 78-3. Julie Davis said the only thing City Council approved was the request to waive the platting requirement for a property to receive water and sanitary sewer service for Texas Twist & Shakes, LLC located at the northeast corner of Caroline and Liberty Streets. Julie Davis said the only thing they waived was platting requirements for water and sewer and that is the only thing that has ever come before City Council of what she can find documented.

Mr. Clevenger said when you first start to obtain a permit you do not go to City Council, City Council directs you to go to Planning and Zoning to approve it. Mr. Clevenger said then Planning and Zoning considers if it is to be approved, however, it is always subject to City Council. Mr. Clevenger said no issues were raised.



Julie Davis said Mr. Tramm mentioned that no one on staff looked at the current law, not what they are talking about amending tonight. Julie Davis said nobody looked at it and apologized and took ownership as it is their fault because they did not look at it, but if you pull up the City law which is available on the City website under section 98-88 as per Mr. Petrov's quoting, if you scroll through all the permitting uses you are right, there is not an ice cream trailer there, but when you scroll down to (b), it very specifically states any use not specifically permitted in this table or in the use regulations of each district set up below shall require a special use permit after the approval by City Council. Julie Davis said one, they have to approve it, and then it is still going to require a special use permit no matter what changes here because that is what is in the law and because they went back and looked at it, now they all know it and cannot ignore it.

Mrs. Clevenger asked if everyone has seen the letter from their attorney. Julie Davis said no she has not seen anything from their attorney.

Mayor Countryman said they are here to do City business not to satisfy this tonight. Mayor Countryman said they are here to do the ordinance. Mayor Countryman said they cannot even vote on it because they have to vote on the ordinance and nothing else this evening. Mayor Countryman said this ordinance is not about one particular business and the ordinance is very general for the City.

Mrs. Clevenger said City Council approved the variance for the electricity and water. Mr. Tramm said that does not go to City Council for approval. Mayor Countryman said they do not approve electricity. Mr. Tramm said what Julie Davis read was the only item approved by City Council. Mrs. Clevenger said they have money in that which is what their attorney sent to them. Mrs. Clevenger said since that was approved they will just have to see them in court then. Mrs. Clevenger said they are going to get their money back which is around \$60,000. Mr. Clevenger said this is a \$60,000 mistake made by the City. Mr. Clevenger said they will have to enter into a lawsuit.

Kevin Lacy said to Julie Davis' point, that is what was approved and that is right and is exactly what the meeting minutes are. Kevin Lacy said he thinks when a customer or a business owner of the City comes to them for guidance he thinks the responsibility is on them to make sure they know everything. Mayor Countryman asked if that is the City or City Council. Kevin Lacy said the City because that is what they are hired and paid for to do and if they miss something

and it was a huge thing which was admitted per their letter to Mr. Clevenger, they need to step up and do the right thing. Kevin Lacy said staff needs to admit they made a mistake, and they want to make it right. Kevin Lacy said they need to take care of this and revise some of the City ordinances to make sure this does not ever happen again. Kevin Lacy said item #6 on the Agenda does impact the future approvals of what Mr. Clevenger is intending to do.

Kevin Lacy said he is going to ask that City Council tables this for the next meeting. Kevin Lacy said he thinks they need to discuss this with their attorney and make sure that it is being fair to Mr. Clevenger, all future food trucks, and small businesses coming into Montgomery. Kevin Lacy said he thinks right now it is too emotional and they need to discuss it and make things right. Kevin Lacy said they made the mistake as a City and says City Council too because they hired them and City Council is just as responsible as City staff. Kevin Lacy said he is upset as a City Councilman as he did not know Mr. Clevenger was getting a letter and he thinks he should know these things. Kevin Lacy said he is very upset that they know the current political climate in the town and they know who they are dealing with and know what has been going on for the past nine months. Kevin Lacy said to sit there and say we just approved a sign, well guess what, Mr. Clevenger we would like to approve the sign holder as well. Kevin Lacy said he thinks they need to discuss this and table it for the next meeting. Kevin Lacy said he does not want to vote on this today.

Byron Sanford said he would like to second the motion.

Discussion: Byron Sanford said he talked with Mr. Clevenger and shared with him the old saying that everyone's perception is 100 percent their reality and there is just so much that Mr. Clevenger obviously thought and then there is so much that City management thought. Byron Sanford said he would like to say to the coffee owner, God has you, you will be fine, and you have plenty of people who will help you. Byron Sanford said everyone has opinions about aesthetics, district issues, and strong feelings about what happened 50, 25, and 10 years ago when he was not even on City Council. Byron Sanford said he spent 22 years at Sour Lake and they had a nice town square. Byron Sandford said it took forever to get a handful of people that did not want to see them grow until they finally got a Sonic. Byron Sanford said he appreciates everyone's prayers who were with him on this because this has been nerve-racking for all of us. Byron Sanford said he concurs with Kevin Lacy that emotions are high and he will say that he has been consistent with the idea that they want everyone to succeed. Byron Sanford said when he sees business owners who own brick and mortar and are fighting the Amazon age and

the Walmart and delivery age, he has a passion for them as well. Byron Sanford said whatever they do going forward when you talk about a lawsuit he googled it and all over the country you get the same thing, food truck versus whomever. Byron Sanford said they are a four-block by two-block Historic District and are very small and he does not want to take a bulldozer to these people that sacrificed and knock the buildings down and kill their dreams either. Byron Sanford said if he is not mistaken, they have a food truck permitted. Byron Sanford said at the Hills of Town Creek if he had the capital he would be up there because he has 70 to 80 people all up and down Brock's Lane and Scenic Hill for the past three months building, inspecting, and going by there. Byron Sanford said he is in the HOA and he would pull for them. Byron Sanford said let them up there for an hour or two. Byron Sanford said there is a mobile element when you put wheels on it and they play by a set of rules. Byron Sanford said Tomball has restrictions that if you are mobile you can stay four hours in the spot but you have to move 100 yards after the four hours to meet the qualifications of mobile. Mr. Clevenger said Tomball also has an establishment called 403's that is owned by the Mayor and it is a food truck park. Mr. Clevenger said he is not trying to create a food truck park. Byron Sanford said he thinks that Mr. McCorquodale was envisioning one and then in the last ten days the coffee truck came in and they said wait and that may have given rise to the letter which he did not see either. Byron Sanford said there have been many mistakes made.

Mr. Clevenger said he is not trying to create it and he did not do anything. Mr. Clevenger said they came to him by way of two City business owners in the community and he thinks they all agree what the story is and what they have done. Mr. Clevenger said he agrees with Byron Sanford's brick-and-mortar statement. Mr. Clevenger said the City of Conroe's Mayor is championing and jumping from the rooftops saying they have a food truck park in their Historic District and it is going to help their brick and mortar stores. Mr. Clevenger said his trailer is bringing something that compliments the entire town. Mr. Clevenger said he guarantees that it is hard and frustrating to sit in those antique shops and hope and pray that someone walks through that door. Mr. Clevenger said he owns another business in Pennsylvania and it is a godsend every time that door opens up and he respects that. Mr. Clevenger said he was approved for this permit and he is going to be here and compliment the entire City. Mr. Clevenger said they need to create an energy for the City and have people come to the City, but they have to come first and in one of the sections of the amendment you want to say 7:00 p.m. and he provided this analogy with Mr. Wilkerson and many others. Mr. Clevenger said a perfect example is they are going to lower the speed limit on SH 105. Mr. Clevenger said say

some individual works in The Woodlands on Research Forest and they live in Town Hills development. Mr. Clevenger said they are a good hour away right now and with the speed limit change, it is going to bog them down even more with a 45 MPH speed zone through this construction. Mr. Clevenger said by the time this person gets home it is 6:00 p.m. or 6:30 p.m. Mr. Clevenger said this person then decides to go and check out what is going on in the City. Mr. Clevenger said in the ordinances right now that they want to pass, an establishment has to close at 7:00 p.m. Mr. Clevenger said closing at 7:00 p.m. in Texas in the evening is not even realistic.

Byron Sanford said they have a motion and he seconded it. Byron Sanford said there are procedural and legal things and then you throw in a heavy dose of emotions, he thinks they can do better and they need to do better going forward. Byron Sanford said this is a complex deal. Byron Sanford said when he looks at the revitalization that is about to happen here in town and the lighting, the shrubs, and everything else, the people are going to come for that. Byron Sanford said good things are about to happen and that traffic is going to come. Byron Sanford said we need to support our residents and our small businesses. Mr. Clevenger said the City Administrator even said that revitalization is going to help his establishment.

Mr. Clevenger said he would like to ask one more time if they can approve his mobile vendor permit. Mayor Countryman said it is not on the Agenda and they cannot do it tonight. Mr. Clevenger asked if he could come in tomorrow. Kevin Lacy asked if they could do it right after the City Council meeting. Mayor Countryman said they can conduct business after the City meeting. Mr. Tramm said when permits come in it gets stamped and signed. Mr. Tramm said the City Secretary will check and make sure all the details are there which includes verifying insurance. Kevin Lacy said they will get it done first thing in the morning.

Mayor Countryman said there is a motion on the floor to table item #6 on the Agenda.

The motion carried unanimously. (5-0)

#### **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.

No action was taken.

**POSSIBLE ACTION FROM EXECUTIVE SESSION:**

No action was taken.

**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 the 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.

Julie Davis said there are five lights out at Cedar Brake Park near the bathroom and were still out as of Sunday night. Julie Davis said she did make sure to stop and tell Officer Tim Bauer and he made sure to put in a work order.

Julie Davis said the sink at the Community Center in the women's restroom was on the floor on Sunday night and it was nonfunctional when they had Movie in the Park.

Julie Davis said she wanted to make sure there is a follow-up to both of those because she feels that aesthetically if they are going to do an event there they should make sure to have maintenance do a walk-thru and check those things. Mr. Tramm said he will notify Public Works in the morning and also ask them when they do have something there like movie night that it be checked before the event.

**ADJOURNMENT**

Kevin Lacy moved to adjourn at 7:50 p.m. Julie Davis seconded the motion, the motion carried unanimously. (5-0)

Submitted by:

Susan Hensley  
Susan Hensley, City Secretary

Date Approved:

07/27/21

Sara Countryman  
Mayor Sara Countryman

