

The City of West University Place

A Neighborhood City

CITY COUNCIL

Susan Sample, Mayor
Bob Kelly, Mayor Pro Tem
Burt Ballanfant, Councilmember
Brennan Reilly, Councilmember
Mardi Turner, Councilmember

STAFF

M. Chris Peifer, City Manager
Alan Petrov, City Attorney
Thelma Lenz, City Secretary

CITY COUNCIL MEETING MINUTES

The City Council of the City of West University Place, Texas, met in regular session on **Monday, January 11, 2016**, in the Municipal Building, 3800 University, West University Place, Texas beginning at **6:30 p.m.**

Agenda Items were as follows:

Call to Order. Mayor Sample called the meeting to order at 6:30 p.m. in the City Council Chambers. Council and Staff in attendance were: Mayor Pro Tem Kelly, Councilmembers Reilly and Turner, City Manager Peifer, City Attorney Petrov, City Secretary Lenz, Police Chief Walker, and Public Works Director Beach. Councilmember Ballanfant was absent.

Cadesman Brickley, Boy Scout Troop 266, led the Pledge of Allegiance.

City Secretary Lenz confirmed that the notice of this meeting was duly posted in accordance with the Texas Government Code, Chapter 551.

Before taking Public Comments, Councilmember Reilly moved to consider moving Agenda Item #2 so that it follows Agenda Item #5. Mayor Pro Tem Kelly seconded the motion. **MOTION PASSED.**

Ayes: Sample, Kelly, Reilly, Turner
Noes: None
Absent: Ballanfant

1. Public Comments

This was an opportunity for citizens to speak to Council relating to agenda and non-agenda items.

Stan McCandless, 3712 Rice Boulevard, spoke to first apologize for some recent emails he sent to Council. He then spoke to request equity with regard to the Baptist Church and senior services. He said the Baptist Church gets a free ride every Sunday to use the Senior Services from 2:00 pm to 7:00 pm and it costs seniors over 65 \$90 to use the Recreation Center. He said he would like to propose that all resident seniors get discounts at age 65 rather than age 75. He said seniors should have free use of the Rec Center and Colonial Park during normal times and also receive a discount on the programs offered by the City, particularly the exercise programs.

Ramsay Elder, 2817 Tanglely, spoke to comment about the inconsistency regarding municipal facilities. He said it is simply a sin that the west side will get all fixed up even though they are the facilities on the west side are either brand new or recently renovated. He said Council should make sure that the rules and the procedures are the same for both the east side and the west side.

2. Houston-Galveston Area Council 2016 General Assembly

Matters related to designating a representative and an alternate to the Houston-Galveston Area Council 2016 General Assembly. *Recommended Action: Discuss and designate a representative and an alternate to the 2016 Houston-Galveston Area Council 2016 General Assembly.*

Action on this item was taken after Action on Item 5.

After City Manager Peifer gave some historical background on the Houston-Galveston Area Council, Councilmember Turner moved to designate Mayor Sample as the representative and Mayor Pro Tem Kelly as the alternate. Mayor Pro Tem Kelly seconded. **MOTION PASSED:**

Ayes: Sample, Kelly, Turner
Noes: None
Absent: Ballanfant, Reilly

3. Independent Counsel Concerning Zoning Board of Adjustment Application

Matters related to a discussion of whether the City should retain independent legal counsel or direct current counsel to represent the interest of the City and/or the neighboring residents in connection with the Zoning Board of Adjustment application received in regards to the AT&T (formerly Southwestern Bell) property located at 4068 Bellaire, 6707 Academy and "0" Ruskin.

Robert Grossman, 4103 Ruskin, spoke to clarify his request of City Council at the previous meeting. He said he is simply requesting that the City pay for an attorney to advocate in support of the decision of the Administrative Official. He said this attorney should not make arguments or provide facts that exclusively counter AT&T's request for special exception or variance, but rather only defend the decision of the Administrative Official. Mr. Grossman said the reason for this is that if this is appealed, the decision of the Zoning Board of Adjustment (ZBA) will be overturned if it is not properly supported by law and fact.

David Cole, 4104 Cason, spoke to say he would also urge City Council to approve hiring outside Council to support Planner Scarcella and the Administrative Order so that the City stands a good chance of having the Order upheld.

Alida Drewes, 6112 Fordham, was allowed to speak at this time as she did not have an opportunity to speak during public comments. Ms. Drewes spoke to say that she agrees with the comments made during public comments about the seniors being totally ignored. She said quite some time ago, resident Joe Mitchell asked Council to raise the 65 exemption and not one word has been said about it since that time. She said 65 is an age when residents need the support from the City. She said she doesn't expect to have her services reinstated, so don't think she is asking for herself. She inquired as to why when the bus caught on fire, staff did not call the County to ask why the bus was catching on fire and putting the lives of the citizens at risk. Ms. Drewes said citizens are being faced with life-safety issues and it is being said that citizens don't care, but citizens do care about their children's health and disabled people. Ms. Drewes also said the City shouldn't be spending taxpayer money on private parties.

Getting back to relevant topic of this item, Councilmember Reilly requested clarity from City Attorney Petrov about the City's role with the ZBA. He asked City Attorney Petrov if it is permissible for the City to have Council that would represent the City's interest in front of the ZBA.

City Attorney Petrov said it is permissible. He said there was a prior unique situation with the West University Baptist Church where the City was a co-applicant and so special counsel was hired for

that circumstance. He said as a general matter, the city attorney represents the City's interest in putting forth staff's position.

Councilmember Reilly said asked Mr. Petrov if his firm could represent Debbie Scarcella and defend her decision from the ZBA without it being anything extraordinary.

Mr. Petrov said it wouldn't be extraordinary, but he wouldn't use the word represent. He said as a matter of course, his firm assisted staff in putting forward the City's position and supporting it to be sure the record is correct.

Councilmember Reilly asked Mr. Petrov, in the instance of the case with the West U Baptist Church, if it is required or just advisable to have a separate Counsel when the City is going to be putting on a case, in addition to advising it about its responsibilities.

Mr. Petrov said he doesn't know if he would characterize it as either required or advisable. He said it's not common. He said it was a very politically charged situation with that case so there was an effort to go above and beyond what would be normal.

Councilmember Reilly said he believes the Administrative Official made the right decision in this case and he would like to see the City represented to develop the facts and he prefers that Mr. Petrov's firm does that. He also said if Council doesn't have an issue with Mr. Petrov's firm also providing advice to the ZBA, Council should encourage the City Attorney to in fact defend and build that record so that the Administrative Officer's decision is upheld on appeal.

Councilmember Reilly said he presumes also that it wouldn't be impermissible for the City to not only be in favor of upholding the Administrative Officer's decision, but also argue against the granting of an exception or a variance if, in fact, those aren't warranted by the facts.

Mr. Petrov said if they aren't warranted by the facts the staff can only give a position statement on a variance or exception as to whether or not those items should be granted under the Code, and if not his firm would be ready to assist in developing the record.

Mr. Petrov said his firm assisted Debbie with the Administrative Order, which was a process that involved going back through the history of actions prior City Councils had taken and trying to march through the development of the Code as it related to that property.

Councilmember Reilly said he would like to see the City's counsel vigorously defend the Administrative Officer's decision and the City's decision on the exception and variance, which he doesn't believe is warranted in this particular case. He said this is a City of residences, not a City of manufacturers, and it should be kept like that.

Mayor Pro Tem Kelly asked what the difference is with this request from the one with the Baptist Church. Councilmember Turner said the difference is the City had a dog in the hunt and had an interest in the outcome.

Councilmember Reilly asked Mr. Petrov if Reid Wilson has a conflict because he represented the City on another issue. Mr. Petrov said the law doesn't see it as a conflict. Councilmember Reilly said he doesn't know many clients who would be happy about their lawyer representing them one week and suing them the next week and said that should be taken into account in the future.

Mr. Grossman spoke again and said the reason he gave Council the appeal document that Reid Wilson had submitted is because of the issues he raises as regards to fact and law and some of the points he makes are very complex, especially the legal issues, and they depend on facts that he personally wouldn't be in a position to know so he is relying on someone to provide those facts. He said he sees this hearing at the ZBA as being fluid and adversarial with conflicts on the law and the facts and because of that he feels that an independent attorney, separate from an attorney that advises the ZBA on their deliberations, would be more properly geared to arguing the pros and cons of the facts and the law and opposing the fluid argument that he anticipates any good advocate will put forward.

Mayor Sample said it is best that Council doesn't get any deeper into this because she doesn't want to step on a quasi-judicial body's toes and tell the members what they as legislators want them to do, because there is a separation for a reason.

Councilmember Reilly left the meeting at this time – 7:25 p.m.

4. Municipal Facilities

Matters related to a presentation describing the status of each Municipal Facility and related discussion in order to determine which facilities should or should not be included in a detailed Facilities Condition Survey performed by a licensed professional.

Public Works Director Beach presented this item and noted that at its previous meeting, Council requested that staff provide at this meeting information on the condition of the City's facilities and staff's recommendation on which facilities, if any, should be considered for an assessment. He then reviewed the buildings and work that had been done on each since being built.

After review of the buildings, Mr. Beach said staff recommends for an assessment the Public Works Building, the Public Works Operation Breakroom lockers, Public Works Outbuilding, Information Technologies, Public Works Fleet Maintenance, the Library, the Community Building, Scout House and the Wastewater Treatment Plant office. He said staff recommends partial assessment for the Municipal Building, Fire Department, Recreation Center and the Police Department. He said the pump stations and other operational parts of the sewer/treatment plant are constantly being monitored by the City's engineer.

Mr. Beach said the assessment can range from \$30,000 to \$100,000 for a city-wide assessment. He said costs won't come into play until the end, so staff will solicit the RFPs and bring the item back to Council for consideration.

Councilmember Turner moved that Council ask staff to solicit an RFP for the evaluation of the facilities listed on Mr. Beach's Municipal Building Assessment Recommendations document. Councilmember Reilly seconded the motion. **MOTION PASSED.**

Ayes: Sample, Kelly, Turner
Noes: None
Absent: Ballanfant, Reilly

5. City Currents

Matters related to article content included in *City Currents*. *Recommended Action: Discuss and take any desired action.*

Mayor Sample presented and stated that *City Currents* is a community newsletter and said in addition to informative articles and information, the newsletter also includes a Mayor's column and a City Council column, which rotates quarterly among the councilmembers.

Mayor Sample said the first newsletter started in April 1974 and the first newsletter declared that the aim of the newsletter was to emphasize activities and factual information considered important to the residents and that issues of *City Currents* are not intended to reflect the personal opinions or attitudes of the City Commission (Council).

Mayor Sample said she received a number of phone calls from people who are not happy with the content of the past two Council columns. She said she understood that the complaint about the first column had more to do with the feeling that the column itself clashed with the intent of the *City Currents* newsletters in that it self-promoted a particular councilmember versus providing updates and information. She said after the last newsletter came out, there were further complaints about Texas ethics rules violations and after requesting a clip on the state law from the City Attorney and rereading both columns, it does in fact look like the newsletter is crossing over into uncertain territory. She then read an excerpt of the law – Title 15 of the Election Code.

Mayor Sample said she has talked with the City Attorney about this and before someone sends a complaint to the Texas Ethics Commission, she suggests that the City request an Advisory Opinion on the two council columns in question.

Mayor Pro Tem Kelly said he wanted to know who made the complaints and that person's background and qualifications, because they have attacked the City in this. He said he did some research and the two articles in question followed the format of prior publications and the views expressed are exactly as they've been expressed in the past. He said the only thing that is different is that the second publication has the mayor's column and the councilmember's column each taking up a full page, which he believes should only be a half page each.

Mayor Pro Tem Kelly said he looked at all the articles and the complaint received in an email forwarded by the City Manager, which doesn't identify who made the complaint, is that one article needed a disclaimer and didn't have one and he is not sure of the problem with the second article.

Mayor Pro Tem Kelly said the articles in the last two editions of the newsletter don't need "a disclaimer statement" under the Texas Ethics Commission rules as they do not contain express advocacy. He said expressed advocacy is defined in the law as "they are not calling for a vote for or against a candidate in an election or for or against a matter in an election" such as saying "vote for me" or "vote for these bonds" and there is no article in the last two editions of the *City Currents* that contains expressed advocacy as called for in the Texas Ethics Commission. He said the articles can be printed at the City's expense and published per the Election Code, also.

Mayor Pro Tem Kelly read an article from a past issue of the *City Currents* that was written by then councilmember George Boehme that related to debt and said that somebody could argue that what he wrote was a political statement and advocated that the City has too much debt.

Mayor Pro Tem Kelly said why all of a sudden 6 months into this administration, is this administration and the City being attacked for violating the Texas Election Law and the Texas Ethics Commission law? He said Council needs to find out who made the allegations and on what basis, what legal opinions did they have, who did they consult legally to make such allegations, and what facts do they have because they definitely don't have the facts in the two *City Currents* and they don't certainly don't have the law, which he defers to the City Attorney.

Mayor Pro Tem Kelly said there is something rotten. He said there are some people not happy with the outcome of the election and 6 months later they are making legal allegations against the City of West University Place and its council members for doing exactly what has always been done in *City Currents*.

Mayor Sample said she is not on a witch hunt for the people who are dissatisfied with it. She said the point is (a) the City has a newsletter that is not for self-promotion and (b) whatever the motives, the articles were a little much to be sent out with taxpayer's money. She said if there is nothing wrong with them, there shouldn't be problem with getting an advisory opinion. She said she doesn't want lingering liability over a staff member for allowing it to go through or somebody in the City who wrote the article. She said it's just better to have clarification and transparency right now.

Former councilmember George Boehme, 3005 Robinhood, spoke to say that he is very familiar with the article Mayor Pro Tem Kelly referenced that was written by him and he said he also wrote another one that talked about the City needing stronger zoning and he will tell Mr. Kelly that he was not familiar with the ethics rule and he believes that they were both were in violation. Mr. Boehme said that the West U Essentials magazine has been contacted by many people about this issue and the law is clear – when there is a City newsletter dependent on taxpayer money, it should be informational in nature not self-advocating

Mayor Pro Tem Kelly told Mr. Boehme that he is not reading the law properly. He said the law does have those comments that Mr. Boehme made, but the statute must be read in its entirety, because at the bottom it states that “irrespective of the above, it has to contain express advocacy,” which it then defines express advocacy.

Mr. Boehme told Mayor Pro Tem Kelly that he needs to focus on whether he violated the law or not.

Mr. Boehme said he thinks that what the mayor requested, which is to ask the Ethics Commission for an Advisory Opinion is a very reasonable request.

Councilmember Turner said the two articles are questionable and she agrees they are not perhaps what *City Currents* should be, but is not sure how it can be prevented other than to have an editor review articles beforehand. She said she thinks Council should take a look at the next two articles from council members and see if they do any less reprehensible of a job.

Mr. Petrov spoke to say that the Ethics Commission does have rules that it puts out about newsletters to prevent using public funds for political advertising. He said whether the two articles in question or other past articles have crossed that line is a fact question. He said the Ethics Commission allows people to get Advisory Opinions.

Mayor Sample said she would rather get an Advisory Opinion than a complaint. Mayor Pro Tem Kelly said he doesn't have a problem with that, either.

Mayor Pro Tem Kelly said this could be a slippery slope by reining in the mayor and council member from giving comments about what is going on in the City. He said if you do that, the slippery slope is that there will be groups for or against any particular thing that one would say. He said he is for getting an Advisory Opinion.

Mayor Sample moved that Council ask City Attorney Petrov to submit an Advisory Opinion request on the two articles in question to the Ethics Commission. Councilmember Turner seconded the motion. **MOTION PASSED.**

Ayes: Sample, Kelly, Turner
Noes: None
Absent: Ballanfant, Reilly

City Council took action on Item 2 at this time.

6. Future Agenda Items

Matters related to future agenda items. *Discuss and take any desired action.* **City Council**

The parks acquisition item will be moved to the second meeting in February as requested by Councilmember Turner.

7. Consent Agenda

All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member requests in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

A. City Council Minutes

Approve City Council Minutes of the December 14, 2015. *Recommended Action: Approve Minutes.*

Councilmember Turner moved to approve the Consent Agenda as presented. Mayor Pro Tem Kelly seconded the motion. **MOTION PASSED.**

Ayes: Sample, Kelly, Turner
Noes: None
Absent: Ballanfant, Reilly

8. Adjourn

With no further discussion, Councilmember Turner moved to adjourn the meeting at 7:55 p.m. Mayor Pro Tem Kelly seconded the motion. **MOTION PASSED.**

Ayes: Sample, Kelly, Turner
Noes: None
Absent: Ballanfant, Reilly



Thelma A. Lenz, City Secretary

January 25, 2016
Date Approved