

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 Gilliam, City Secretary

CITY COUNCIL MEETING MINUTES

The City Council of the City of West University Place, Texas, met in regular session on **Monday, April 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 Council Chambers. Council and Staff in attendance were: Mayor Pro Tem Kelly, Councilmembers Ballanfant, Reilly and Turner, City Manager Peifer, Executive Assistant/Asst. City Secretary Evelyn, City Attorney Petrov, Public Works Director Beach and Police Chief Walker.

Boy Scout David Wesson led the Pledge.

Executive Assistant/Asst. City Secretary Evelyn confirmed that the notice of the meeting was duly posted in accordance with the Texas Government Code, Chapter 551.

Agenda items were as follows:

1. Public Comments

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

Speakers that signed up to speak deferred their comments until discussion of Item 3.

2. Water Rate Increase

Matters related to approval of an ordinance to increase water rates by 0.50%, effective May 1, 2016. *Recommended action: Approve ordinance increasing water rates to West University Place residents by 0.50%, effective May 1, 2016, on the second and final reading.*

Finance Director Daugherty presented and said the City received notice from the City of Houston in a letter dated March 10, 2016 that Houston would increase its treated water rates to the City of West University Place in the amount of 1.4 percent. She said in order for the City to continue recovering the cost of purchasing the treated water and keeping the pay-as-you-go Capital Improvement Program, staff is proposing a .5 percent increase in the water rates sold to residents, which equates to approximately .38 cents per month for a customer that uses 12,000 gallons. She noted that it is not .95 per month as she had indicated during first reading of the ordinance.

Councilmember Reilly confirmed with Ms. Daugherty that West U fully budgets for the cost increases.

Councilmember Reilly stated that Ms. Daugherty created a great supplemental chart which shows City of Houston increases since 2007 and said what the City pays to Houston has almost doubled in the last 8 years, but the cumulative cost increase has been twenty eight and a half percent. He said West U is avoiding all of the costs by being more efficient, using its own resources, and by not using much City of Houston water. He also said that even though Houston keeps increasing its rates, West U is increasing its rates at a much slower pace.

As requested by Mayor Sample, City Manager Peifer elaborated on state laws that require West U to use a percentage of surface water from Houston.

Councilmember Ballanfant moved to approve the ordinance on second and final reading. Councilmember Kelly seconded the motion. **MOTION PASSED.**

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

3. **Office of Public Integrity Section of Harris County District Attorney's Office - Investigation**
Matters related to the Harris County District Attorney investigation of City Council members, including payment or reimbursement of attorneys' fees. *Recommended Action: Discuss and take any desired action.*

Before Council discussion began, comments were heard from members of the public who signed up to speak on the topic.

Eddie Matthews, 5906 Fordham Street, spoke to say that this topic was brought up during the Council meeting of February 8, 2016, when Councilmember Reilly sought to add it to the future agenda items. He said at that time, it was pointed out by a fellow councilmember that "councilmembers were told specifically that nothing they paid for out of their own pockets regarding that issue were going to be reimbursed." Mr. Matthews said the Minutes from that meeting when all of Council was present, reads "item not added to the future agenda items list due to lack of second from another councilmember" and in his view that was a firm and final decision on this issue. He said, however, during the Council meeting on March 28, 2016, Councilmember Reilly requested the same item be designated "to be determined" on the future agenda items list and received a second from Councilmember Ballanfant. Mr. Matthews said Council determined this issue on February 8, 2016 and he doesn't think Council can forever revisit decisions just because one member of Council doesn't agree with the outcome. He said if there was no provision in the City rules in place for indemnification for Council when the alleged actions in the DA investigation occurred, then he doesn't believe that any member of Council is entitled to reimbursement of legal costs. He said if Council decides to implement a new policy to allow for reimbursement, it should be on a future basis only and should not be made retroactive to cover past defenses.

Alida Drewes, 6112 Fordham Street, stated that she agrees with every single point her neighbor (the previous speaker) made and that every single point he made is valid because councilmembers "don't get paid when they already decided that they are not going to get paid". She said if there is cause why people are going down to the District Attorney's office, then maybe Council needs to be a little more careful how fiscally responsible it is and about the decisions that are being made, such as the chemicals that are being sprayed across West University that are killing the bees which are necessary for pollination. Ms. Drewes said Council is not being transparent about this and said one has to beg for a form that states that the City is killing bees. She said one can't survive if the City is

poisoning the air and said one doesn't know what it is doing to the children and pets that have to stay outside.

After public comments were made on the issue, Mayor Pro Tem Kelly requested to speak first. He said he wanted to make something clear to Mr. Matthews and everyone, which is that the City already has insurance that covers the mayor and city council for criminal actions if a charge or an indictment is made against them and that costs are reimbursable up to \$10,000 (if there is no conviction or they are not found guilty).

Mayor Pro Tem Kelly said it is his understanding that the complaint filed with the District Attorney (DA) was unsworn. He said DA did their duty and began a criminal investigation and what came out of it was that there is a gap in the insurance covering city council and the mayor. He said mayor and council is covered during a certain stage, but not during the earlier stage and he's not sure why. He said through his own research and via the city attorney's opinion, it appears that there is nothing that prohibits a city from reimbursing a mayor or city councilmember when an investigation begins and is carried forward in a criminal manner and there is never any finding of wrongdoing.

Mayor Pro Tem Kelly said he wants it made very clearly that he has no intent of asking the City of West University Place to reimburse him for consulting an attorney during this investigation. He said when the DA's office contacted the City and each member of council requesting emails and wanting to interview them about matters surrounding Mike Ross' termination, he decided it was in his best interest to hire an attorney to advise him about criminal matters and criminal investigations and how things would proceed. He said he feels it was very helpful to have that attorney's advice and guidance, since the City Attorney could not represent him or the other members of Council due to it being a conflict of interest.

Mayor Pro Tem Kelly said as a volunteer representing the City of West University Place he had to spend money to hire an attorney in this matter with the matter ending with no charges brought against him and no trip to the grand jury. He wanted to know if this Council could legally vote on a prospective basis for other councils and mayors to have that insurance that covers that gap in order to protect those citizens that will serve on Council in the future from those that file unsworn complaints.

Mr. Matthews came forward to speak again to address a point made by Mayor Pro Tem Kelly. He said he thinks the problem, as Mayor Pro Tem Kelly stated, is that there is a gap in the City's insurance policy. He said it is unfortunate that there is a gap, which existed when Council came on board and so he personally thinks Council has to live with that. He said he has no problem with Council correcting and eliminating the gap on a go-forward basis.

Mayor Pro Tem Kelly said he agrees with Mr. Matthews and thinks having gap coverage is good so that the mayor and city council are not personally penalized financially for something that doesn't get past the DA's office.

Mayor Kelly said there is not going to be a charge or grand jury indictment in this case because the investigation has ended.

Mayor Sample said City doesn't really have anything that says that the investigation is closed. She said what might have been heard is that the District Attorney's office is not currently prosecuting it further, but it can open back up at any time, unless there is something in writing that says they

would never prosecute this again. She also said that by declining to prosecute doesn't mean there was no finding of wrongdoing.

Mayor Pro Tem Kelly said if anyone has any doubt, including the mayor, as to whether the investigation has ended, they should either call the Village News (who, to his knowledge, is the only source who tried to call the DA attorneys involved) or they can call the DA attorneys themselves. He said the quote given to the Village News by the lawyer involved in the matter was very clear. Mayor Pro Tem Kelly said it is a little problematic as to how to determine whether or not there was an end to the investigation, but a very simple way to determine that is by the statute of limitations. He said if the DA doesn't bring a charge or go to a grand jury, then the statute of limitations runs and the matter concludes with no finding by a jury of any legal or criminal act.

Mayor Pro Tem Kelly said he doesn't understand the mayor's reluctance to protect future councils and mayors against this type of action.

Mayor Sample said she doesn't condone this type of action but feels that it is a valid check in society for someone to go, if they feel there's been some type of problem, to whatever law enforcement agency they feel is appropriate.

Mayor Kelly said he agrees with the mayor, but said if that person decides to do that then the repercussion should not fall on the innocent mayor and councilmembers. He said they should not have to pay out of their own pockets for no wrongdoing when trying to serve the interest of the City. He said he finds it interesting for the mayor not to be in favor of protecting future councils and mayors from that type of activity.

Councilmember Reilly spoke to say that at the commencement of the investigation, his first question to the DA was whether they would bring charges against the person who filed the complaint if at the conclusion of the investigation it is found that there was no merit to the investigation and he was told no and that they would only do that in exceptional cases. He said it also would not have mattered if the complaint sworn or unsworn, because they don't want to be stifling complaints and they would have a very difficult time proving that a complaint was done for malicious, harassing purposes even though he thinks that it is obvious that there were no merits to allegations of this case and that it was done for harassment.

Regarding a policy, Councilmember Reilly said he agrees that if a policy is to be adopted, with Alan's guidance, it should be prospective. He said his focus is that he wants to be able to encourage residents of the City to run for City Council. He said the City needs more diversity and more representation on City Council and on the boards and commissions, some of which are subject to the same Open Meetings Act. He said if a member of the Zoning Board of Adjustment denies a resident's application for an exception and that resident files an anonymous complaint against the board member just to harass him, the City ought to be responsible for taking care of that member who has agreed to serve the City when there are no merits to the allegations.

To reiterate what Mayor Pro Tem Kelly said, Councilmember Reilly said if anybody has any doubt that this investigation has been closed, they can talk to his or Mayor Pro Tem Kelly's attorneys who were told by the DA that there were no merits to the allegations and that the investigation has been closed. He said technically it is correct to say that the case can be reopened in the future, though he thinks it is incredibly unlikely.

Councilmember Reilly asked City Attorney Petrov if the Attorney General (AG) Opinion that reads that the Mayor and Council are prohibited from voting for a policy to reimburse themselves is correct. Mr. Petrov said he doesn't believe that's correct. He said he thinks Council is prohibited from voting to reimburse themselves in a specific instance and said the interesting aspect about this investigation is that it involved a majority of the councilmembers and so in this case the majority of the council is disqualified from voting on reimbursing themselves or anybody else.

Councilmember Reilly asked if that extends to future actions that haven't occurred – for example could Council recommend to the City that it buy the gap insurance in the future even though that might potentially benefit this Council, or could this Council only do it with respect to prospective councils. Mr. Petrov stated that with respect to prospective events, including this Council, he thinks that this Council could adopt a policy, but then it will still get into the situation that whenever there is a particular situation that involves a majority of Council, the vote of the actual reimbursement could be in question.

Councilmember Reilly asked if that could be solved by purchasing insurance so that there is no action of the Council in the future. Mr. Petrov said it could be solved by insurance, if insurance was available, which he doesn't believe is available for this type of claim.

Councilmember Reilly then asked if the City has a policy that protects councilmembers, employees, board and commission members, etc., in the event they are sued personally. Mr. Petrov said yes, the TML coverage applies to all City officers and employees.

Councilmember Reilly said to satisfy the gap, would it be okay for the policy to state that in any case for someone for which there is no insurance and in circumstances in which all the other requirements of the AG Opinions are satisfied, the City can have a policy whereby the City Manager would bring that request for reimbursement to the next Council for consideration. Mr. Petrov said assuming that the next Council was different councilmembers and the City had insurance and there was a claim that fell within the coverage, he doesn't think there would be a problem.

Councilmember Ballanfant spoke to say that in certain cases where there are ultimate convictions, the costs could fall on the taxpayers. He said people should always be careful when going to the DA to make charges about people.

Councilmember Reilly asked City Attorney Petrov if the existing TML coverage for all employees provides coverage for criminal activity. He said he presumes the City would have an obligation to defend an employee for acting within the scope of his/her employment in the nature of reimbursement. City Attorney Petrov said his understanding is yes, up to \$10,000 in reimbursements. Councilmember Reilly then asked if the City would be able to provide legal representation to that employee. He said with public funds, there is a three-prong test: (1) the person is acting within the scope of his/her responsibility; (2) the expenditure serves the public interest; and (3) the person is not found guilty. Councilmember Reilly asked if Council approves the reimbursement of that employee's attorney's fees. Mr. Petrov said yes, after a finding of the employee being not guilty and the charges are clearly dropped.

Councilmember Reilly asked Mayor Sample if she has been informed whether this investigation has been closed. Mayor Sample said she was told by the Assistant District Attorney that it is not being pursued at this time.

Councilmember Turner said other than meeting with the DA's office when they called, she has not had any other conversations with the DA regarding the investigation.

Councilmember Reilly said he would encourage the person who filed the complaint anonymously to come forward and acknowledge their responsibility. He said he thinks they should apologize to the City Council and to his kids who had to go to school and be asked if their father was going to jail. He said it is terrible that he had to have that conversation with his kids. He said he has a pretty thick skin but for those folks who have blogs and who constantly post a bunch of trash about this investigation being ongoing and continue to publicize it even though it's clear that it never had any merit and doesn't have any merit is atrocious and shameful. Councilmember Reilly said he hopes as a City that the rest of the citizens of West U understands that the City is not going to be able to convince people to serve on the boards, commissions, and task forces if every time somebody disagrees with them, somebody files a harassing complaint against them and their name gets thrown in the paper with a lot of mud.

Councilmember Reilly said he would like staff to report back to Council regarding a couple questions: (1) Is there insurance available to cover the gap between the time an investigation is commenced and if the investigation is dropped before any charges are brought; and (2) If City Council can't get that coverage, can there be an official policy adopted by City Council whereby if the City Manager gets a request for reimbursement he/she would hold it and bring it to the next Council that is qualified to hear the request.

Before the vote, another citizen, David Dutch, 3901 Rice Boulevard, said he doesn't understand the insurance, but if it did lapse, that's an egregious error. Mayor Sample said it has not lapsed.

Mr. Dutch said if the councilmembers are exonerated, he feels unequivocally that they should be reimbursed. He said if he was sitting on Council and somebody brought forth a suit and it never came to fruition and he came out of pocket \$5,000 to \$20,000, it would blow his mind that his City wasn't behind him.

Councilmember Turner spoke to say that she agrees that Council should look into the possibility of future reimbursements, but doesn't think it should apply to this Council.

Before closing discussion, City Manager Peifer confirmed that staff will look into Councilmember Reilly's requests regarding gap insurance.

4. Future Agenda Items

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

Councilmember Reilly requested that an item be added to the next agenda for him to report on Zoning and Planning Commission activities as its Council liaison.

Councilmember Turner asked what additional information/benefit is Council getting from this approach as opposed to distributing the Minutes that are already on the website. Councilmember Reilly said the biggest benefit is that it gives Council an opportunity to talk about it together in a way that it can't do outside of a Council meeting.

Councilmember Turner said there are three boards that are quasi-judicial that are required to operate under certain rules and regulations and have to file their Minutes in a certain meaningful fashion. She said the other boards are more community service organizations and pretty much run themselves so she is still struggling with the benefit.

Councilmember Reilly said, other than the Zoning Board of Adjustment, Council liaison reports will be helpful.

5. 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. Joint Resolution with Harris County

Matters related to adopting a resolution with Harris County. *Recommended Action: Approve Resolution.*

B. Harris ERP Annual Software Maintenance and Support

Matters related to approve contract payment with Harris ERP for software maintenance and support. *Recommended Action: Approve contract payment.*

C. Wastewater Treatment Plant Belt Filter Press #2

Matters related to awarding a contract for the replacement of Belt Filter Press #2 at the Wastewater Treatment Plant. *Recommended Action: Replace Belt Filter Press #2 at the Wastewater Treatment Plant.*

D. City Council Meeting

Approve City Council Minutes of the March 14, 2016 and March 28, 2016. *Recommended Action: Approve Minutes.*

Councilmember Reilly requested that Item 5C be removed for discussion. He then moved to approve the Consent Agenda with respect to Items 5A, 5B, and 5D. Councilmember Turner seconded the motion. **MOTION PASSED.**

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

In regards to Item 5C, Councilmember Reilly said he agrees with staff's recommendation to accept the second lowest bid, because the difference is almost nothing, but he said if the lowest bid was 30% less rather than 2% less, what is the process for addressing that, even when the lowest bidder doesn't meet other requirements. Public Works Director Beach said there will always be criteria to ensure that the City gets a quality contractor that can finish the job in a timely manner and do what they say they can do.

Councilmember Reilly said are there circumstances in which staff would waive certain criteria because of the difference in price. Mr. Beach and Mr. Peifer said no, especially when it comes to public health and safety. Mr. Beach said criteria isn't put in place to exclude contractors, they are put in place to protect the community's interest.

After discussion, Councilmember Turner moved to approve staff's recommendation to approve a contract with R & B Group, Inc. for performance of the WWTP Belt Filter Press Replacement Phase II Project in the amount of \$377,000. Councilmember Reilly seconded the motion. **MOTION PASSED.**

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

6. City Manager/Council/Attorney Reports

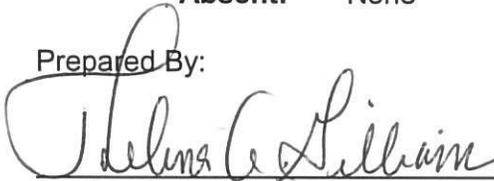
City Manager Peifer reported that CenterPoint Energy has informed the City that it will proceed with seeking a cost recovery of \$49.5 million system-wide and will be adding recovery costs to the rates.

7. Adjourn

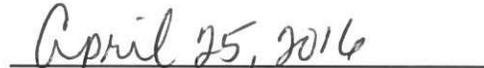
At 7:43 p.m., Councilmember Turner moved to adjourn the regular meeting. Councilmember Reilly seconded the motion. **MOTION PASSED.**

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

Prepared By:


Thelma A. Gilliam, City Secretary




Date Approved