

**AUGUST 22, 2005**

**A REGULAR MEETING OF THE CITY OF KINGSVILLE, TEXAS, CITY COMMISSION WAS HELD ON MONDAY, AUGUST 22, 2005 IN THE HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS, CITY HALL / 200 EAST KLEBERG AVENUE AT 5:00 P.M.**

**CITY COMMISSION PRESENT:**

Sam R Fugate, Mayor  
 Charles E Wilson, Commissioner (arrived at 5:40 PM)  
 Al Garcia, Commissioner  
 Stanley Laskowski, Commissioner  
 Arturo Pecos, Commissioner (arrived at 6:22 PM)

**CITY STAFF PRESENT:**

Carlos Yerena, City Manager  
 Courtney Alvarez, City Attorney  
 Edna S Lopez, City Secretary  
 Dora Byington, Purchasing Director  
 Jennifer Cantu, Director of Development Services  
 Dianne Leubert, Solid Waste Superintendent  
 Al Lopez, Fire Chief  
 Y I Hinojosa, Street Field Supervisor  
 Caron Vela, Accounting Manager  
 Stanley Fees, City Engineer  
 Vilma Castillo, Collections Director  
 Julian Cavazos, Lieutenant  
 Joe Casillas, Water Production Supervisor  
 A L Noyola, Health Director  
 John Garcia, Garage Superintendent  
 Macario Mayorga, Water Supervisor  
 Art Alvarez, Risk Management  
 Robert Rodriguez, Library Director

**I. Preliminary Proceedings.**

**OPEN MEETING**

Mayor Fugate called the workshop to order in the City Commission Chambers at 5:15 P.M.

**CONVENE INTO PETITIONS, GRIEVANCES, AND PRESENTATIONS – ITEM III - #1 / WORKSHOP SESSION TO REVIEW AND DISCUSS PROPOSED FISCAL YEAR 2005-2006 BUDGET FOR DEPARTMENTS OF THE CITY OF KINGSVILLE.**

1. Review and discuss proposed fiscal year 2005-2006 budget for departments of the City of Kingsville.

City Manager Yerena briefly went over the latest changes of the proposed budget. The budget is based on the adoption of a tax rate of .70196, which is higher than the effective tax rate of .66988. He discussed the major budget changes: the increase for street and bridge repairs, provided information on the purchase of a street repaving machine and for the increase in the Police uniforms cleaning amount.

Commissioner Laskowski asked about the two accounting service contracts totaling \$31,300. He stated that \$65,050 is budgeted in the 180 account, \$15,000 in GASB 34 for a total of \$65,000. City Manager Yerena replied that this is basically for the contractual service for the audit and the audit only. Traditionally, additional funding has been paid to the auditors for them to assist the city in getting the required paperwork in order to do the audit. City Manager Yerena stated that the line item is consistently budgeted according to past years.

Commissioner Laskowski asked about taking the \$5,000 budgeted for the military task force. Mayor Fugate stated that could be taken out.

Commissioner Laskowski commented that he felt very uncomfortable adopting a budget with a \$41,000 fund balance. He further added that it was very irresponsible.

Mayor Fugate called for the review of department budgets.

Garage Department:

Mr. John Garcia, Garage Superintendent stated the cuts were what he approved.

Mayor Fugate called for questions or comments. There were no questions or comments made.

Service Center:

Mr. Garcia stated he did not see anything wrong with the proposed budget.

Mayor Fugate called for questions or comments. There were no questions or comments made.

Commissioner Laskowski requested to look at Computer Operations and asked about the \$23,000 increase for Incode. Ms Caron Vela replied that this includes all maintenance for all modules and provided information on new modules that have been added.

City Manager Yerena provided information on the effective tax rate and what some of the increases will project in terms of revenue. The budget is based on current tax rate .70196 which would allow the ability to collect more monies than what the effective tax rate would have allowed. He explained what was needed to be done at tonight's meeting.

Ms Melissa DeLaGarza, Kleberg County Tax Assessor provided information on the tax rate process, stressing it was extremely necessary to decide on proposed tax rate at tonight's meeting for publication purposes. She stated that approval has to be record vote. She explained the new public hearing notice procedure and provided information on Option "A" & "B" giving dates for publishing and public hearings.

Ms Alvarez stated that the reason for Option "B" was to provide an alternate calendar that would not necessitate a public hearing on a Friday afternoon or evening.

Ms DeLaGarza provided information on a "Notice of Public Hearing on Tax Increase" handout. She stated that the City's effective rate is .67988, last year's rate was .70196, and since there was an increase in value, unfortunately the tax rate has to go down. She provided information on various scenarios regarding different percentages.

Mayor Fugate called for a recess at 5:55 P.M.

The Commission reconvened into regular session at 6:05 P.M.

**6:00 P.M. – Regular Session of the Agenda continues.**

Mayor Fugate called the meeting to order in the City Commission Chambers at 6:05 P.M.

**INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)**

The invocation was delivered by Ms Dora Byington, followed by the Pledge of Allegiance and the Texas Pledge.

**MINUTES OF PREVIOUS MEETING(S) – Required by Law**

Mayor Fugate called for consideration of the minutes of the regular meeting of August 8, 2005 and the special meeting of August 10, 2005. **Commissioner Laskowski made a motion to accept the minutes as presented, seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Fugate, Wilson, Garcia, Laskowski voting "FOR". Pecos "Absent".**

## II. Public Hearing - (Required by Law).<sup>1</sup>

1. NONE

## III. Petitions, Grievances, and Presentations.<sup>2</sup>

1. Review and discuss proposed fiscal year 2005-2006 budget for departments of the City of Kingsville.

2. City Manager's Report. (City Manager).

Mayor Fugate called for the City Manager's report. City Manager Yerena reported on the mold remediation work at the Fire Department; the fence at public works; on a vacancy in the Civil Service Commission; and on the TML Regional Quarterly meeting.

3. City Attorney's Report. (City Attorney).

Mayor Fugate called for the City Attorney's report. Ms Alvarez reported on the first Thursday Municipal Court; a Charter Review Committee meeting; and advised the Commission that the agenda item regarding the proposed tax rate must be acted on.

4. City Commission's Reports. (City Commission).

Mayor Fugate called for the City Commission's reports. Commissioner Wilson congratulated City Staff and the Water Negotiating Committee as well as the Mayor and fellow City Commissioners on the historic meeting held to authorize document to be signed on how water will be purchased in the future.

Commissioner Garcia thanked Commissioner Laskowski for all his hard work on the water authority contract.

Mayor Fugate encouraged everyone to attend the TML meeting; reported that a feasibility study of the old high school had occurred; and commented on BRAC.

## IV. Public Comment on Agenda Items<sup>3</sup>

1. Comments on all agenda and non-agenda items.

NONE

## V. Consent Agenda

1. A motion approving execution of annual contracts with three companies (Morrison Supply Co., Hughes Supply Co., and National Water Works) for supplying utility supplies for the Water and Wastewater Departments. Funds for these items are included in the annual budget. Based on estimated usage, as of this date,

approximately \$175,000.00 will be expended under this contract. (Director of Purchasing).

2. A motion approving the out-of-state travel for Sgt. Tamera Meyers Blackstock to attend the Office of National Drug Control Policy, Counterdrug Technology Assessment Center training in St. Louis, Missouri on September 20 – 23, 2005. (Chief of Police).

3. A motion authorizing the City Manager to enter into a memorandum of understanding with John Womack & Co., P.C. to perform all pre and post audit procedures for the year ended September 30, 2005. (City Manager).

4. A motion authorizing the City Manager to enter into a memorandum of understanding with Patrick L. Moore, CPA to audit the financial statements for the year ended September 30, 2005. (City Manager).

5. A motion approving a resolution accepting funding from the Coastal Bend Council of Governments for a Digital Deterrent Camera System; authorizing the Mayor to act on the City's behalf with such grant; and providing for an effective date. (Solid Waste Management Superintendent).

Mayor Fugate called for consideration of the consent agenda. Commissioner Laskowski made a motion to accept all five items of the consent agenda, seconded by Commissioner Wilson. The motion was passed and approved by the following vote: Fugate, Garcia, Wilson, Laskowski voting "FOR". Pecos "ABSENT".

### REGULAR AGENDA

#### CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

#### VI. Items for consideration by Commissioners.<sup>4</sup>

6. Consider accepting certified total appraised, assessed, and taxable values of all property and total taxable values of new property in the City of Kingsville as certified by the Kleberg County Appraisal District. (City Manager).

City Manager Yerena stated this basically certifies the appraised value information used to come up with effective tax rate.

Mayor Fugate called for questions or comments. Commissioner Wilson made a motion to adopt the total appraised, assessed, and taxable values of all property and total taxable values of new property in the City of Kingsville as certified by the Kleberg County Appraisal District, seconded by Commissioner Laskowski. The motion was passed and approved by the following vote: Fugate, Garcia, Laskowski, Wilson voting "FOR". Pecos "ABSENT".

7. Consider a proposed tax rate; if proposed tax rate will exceed the rollback rate or the effective tax rate (whichever is lower), take record vote and schedule public hearing. (City Manager).

City Manager Yerena provided information on the current tax rate (.67988), stating that the budget was put together keeping the current tax rate (.70196). The law dictates that if the City increases the tax rate from the effective tax rate the City will have to schedule public hearings.

Commissioner Laskowski voiced his concern regarding the \$41,000 fund balance.

Mayor Fugate called for a motion. Commissioner Wilson made a motion to adopt a tax rate of .71, and chose Option "B", and to hold a special meeting on the 22<sup>nd</sup>, he then changed the date 9/22, to the regular scheduled meeting of 9/26, seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Fugate, Laskowski, Pecos, Garcia, Wilson voting "FOR".

**8. Discuss and consider tax abatement agreement with Alpha Lake, Ltd. as a qualified business in the Kingsville Enterprise Zone (#EZ291-122299-K). (City Manager).**

City Manager Yerena stated that this item was discussed at the previous meeting. A memorandum from the Planning Director has been provided. Staff is not recommending approval of the tax abatement. City Manager Yerena stated some of the work is maintenance.

Mayor Fugate called for a motion. Commissioner Wilson made a motion to accept Staff's recommendation, seconded by Commissioner Laskowski.

Mayor Fugate called for discussion. He stated that he felt that they should receive some type of abatement in order to encourage more retail.

The motion was passed and approved by the following vote: Wilson, Garcia, Laskowski voting "FOR". Fugate, Pecos voting "AGAINST".

**9. Discuss and consider approval for the West Storage Tank logo. (City Engineer).**

Commissioner Wilson announced he would abstain from voting.

Mr. Stanley Fees, City Engineer provided information on the logo options. The cost for the logo is included in the contract.

Commissioner Pecos made a motion to put "JAVELINAS", seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Fugate, Garcia, Laskowski, Pecos voting "FOR". Wilson "ABSTAINED".

**10. Consider reallocating funds from the Certificates of Obligation 2005 for second water well. (City Manager).**

City Manager Yerena stated this basically allows an additional \$500,000 for expenditures for the construction of water well. This would decrease the 2002-2002A funding for that particular water well. This would leave a budget balance \$328,615 in the 2005 water storage tank line item. This would increase the water well account by \$500,000 and allow for construction of second water well.

Mayor Fugate called for a motion. Commissioner Laskowski made a motion to reallocate the funds from the Certificates of Obligation 2005 for second water well, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Wilson, Garcia, Pecos, Laskowski voting "FOR".

**11. Consider introduction of an ordinance amending the Certificates of Obligation 2002-2002A Budget for the City of Kingsville for**

**\$450,000 originally for water well with funding to come from an allocation of funds in the Certificates of Obligation 2005. (City Manager).**

City Manager Yerena stated this would allow for the expenditures instead of constructing the water well which were approved. He explained the other expenditures.

#### **INTRODUCTION ONLY**

**12. Consider introduction of an ordinance amending the City of Kingsville Code of Ordinances Chapter V, Article 1, Garbage, providing for the deletion of special pick-ups. (Solid Waste Management Superintendent).**

Ms Dianne Leubert, Solid Waste Superintendent provided information on what is to be deleted from the ordinance. She stated this would allow them more time to pick up the brush and less time to compete with private industry.

Commissioner Pecos asked about the demand for special pickups. Ms Leubert replied only \$8,000 in revenue has been made since May 2004. He then asked about other options for commercial customers. Ms Leubert stated those customers have access to other businesses.

Commissioner Garcia asked about residential property owners options. Ms Leubert explained her goal is to go through the City at least twice and the adopt-a-truck service is still available.

Ms Leubert stated that the disabled and elderly don't use this due to money constraints.

#### **INTRODUCTION ONLY**

**13. Consider introduction of an ordinance amending the City of Kingsville Code of Ordinances Chapter XI, Article 2, Ambulance Service, providing for the deletion of the current article and the adoption of a new article; repealing all ordinances in conflict herewith and providing for an effective date and publication. (Fire Chief).**

Fire Chief Al Lopez stated his concern with the current ordinance. The current ordinance does not have the language needed to insure 911 service backup. Instead of changing the old language which is outdated and confusing, the department felt the need to completely redo the ordinance in order to address fees differently.

Commissioner Laskowski asked if licensing number would be provided on the outside of the vehicle. Chief Lopez replied that was a good idea.

Commissioner Garcia asked about inspections. Chief Lopez replied that inspections would be done as permit is issued and there would be spot inspections whenever needed. He explained that spot inspections would include inspections of equipment, paperwork, and employees' permits.

#### **INTRODUCTION ONLY**

**14. Discuss and consider potential options on contract for consulting services and acquisition of grant funding with Raul Rubio. (Commissioner Garcia).**

Commissioner Garcia stated his intent is to see if anything can be done, if not just lay it to rest. He also stated that he is personally not pleased with their non-results.

Ms Alvarez stated that on August 26, 2002 the City Commission considered the agenda item with regard to Mr. Rubio. On August 29, 2002, a fax from Mr. Rubio was received with the proposed one page contracts. She prepared a memorandum with regard to those contracts and recommendation to the Commission that they weren't suitable as submitted and would need redrafting before recommendation for approval. On September 18, 2002, while she was on maternity leave, the Commission approved the revised Rubio contracts and on same day contracts were signed and a check issued in the amount of \$35,000. There were two contracts, one for an infrastructure grant, with initial payment of \$15,000; and the second was a planning grant with initial payment of \$20,000.

Roughly two months after the contract was signed, on November 5, 2002, a pre-application grant for the planning grant was submitted by Mr. Rubio to the City to EDA. In February 2003, the City was informed of the denial, four days later a memo from Mr. Rubio was received about the progress. Two weeks later, Ms Alvarez sent a certified letter with regard to the status of both contracts, receipt was received. On March 10<sup>th</sup> a memorandum from Mr. Rubio on the progress was received. On April 28-29<sup>th</sup>, emails were received from Mr. Mata, who works for Mr. Rubio, regarding new submittal to the EDA on the planning grant. On May 16, 2003, Ms Alvarez spoke to Mr. Mata, and on August 20, 2003 the City received a memo. The current City Manager has made attempts to contact Mr. Rubio, and on October 7, 2004 a certified letter was sent.

With regard to the planning grant, the work was done on that and an argument could be made by Mr. Rubio or attorneys that he has fulfilled his agreement with regard to that contract. With regard to the infrastructure grant the agreement terminates upon notification by the EDA that the City has been awarded the grant and/or eight months after receipt of payment from the City whichever comes first. Verbally, Mr. Rubio agreed that he would be a man of his word and would follow through on the grants, but the City has not received any information or indication that anything was ever done on the infrastructure grant. Mr. Rubio has received the initial payment of \$20,000.

With regard to the options, Ms Alvarez stated that the City can set a firm date for some type of result or to pursue some type of legal recourse against Mr. Rubio. In regard to the planning grant, Mr. Rubio or his attorneys could probably allege that he has fulfilled his contractual obligation. With regard to the infrastructure grant, the City could have a potential claim or an argument for a claim.

Ms Alvarez provided information on the statute of limitations.

Mayor Fugate asked who Raul Rubio was. Ms Alvarez replied he was some kind of consultant or grant writer.

In conclusion, Ms Alvarez stated the best case scenario would be only a claim for a straight breach on the infrastructure grant contract. She stated there were two problems – (1) This is not covered by TML, so it would have to be done internally or it would have to be contracted out and there

are not sufficient funds in the budget; and (2) how do you get him served and if served, how do you collect on a judgment if it can be obtained and would the judgment covered the cost of the litigation.

Mayor Fugate suggested the case be filed in federal court due to citizen residing in another state.

Commissioner Laskowski stated that the City owes it to the taxpayers to make some attempt to make this man to do what he was paid to do. He recommended sending a strong letter notifying him of the City filing in federal court.

Mayor Fugate suggested including Mr. Mata in the lawsuit, and to send a demand letter. He stated there was a way to research to see if he is a viable defendant, and attorney fees can be collected. He also suggested looking to see if this is a deceptive trade practice act.

There was discussion on contacting the Economic Development Administration Division of Department of Commerce and notifying them of Mr. Rubio's performance.

Mayor Fugate called for a motion. **Commissioner Garcia made a motion to proceed with potential litigation for breach of contract and notify the Economic Development Administration Division of Department of Commerce of the consequences or circumstances of these events, seconded by Commissioner Pecos. Mayor Fugate stated that he wanted to make clear to Staff that it is the Commissions' desire and directive to start litigation, starting with the demand letter.**

**The motion was passed and approved by the following vote: Fugate, Wilson, Laskowski, Pecos, Garcia voting "FOR".**

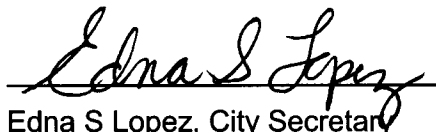
## VII. Adjournment.

There being no further business to come before the City Commission the meeting was adjourned at 7:07 P.M. on August 22, 2005.



Sam R. Fugate, Mayor

ATTEST:



Edna S Lopez, City Secretary