

FEBRUARY 16, 2004

A SPECIAL MEETING OF THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS WAS HELD ON MONDAY, FEBRUARY 16, 2004 AT 6:00 P.M. IN THE HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS AT CITY HALL, 200 EAST KLEBERG AVENUE.

CITY COMMISSION MEMBERS PRESENT:

Horacio "Hoss" Castillo, Mayor Pro-Tem
Al Garcia, City Commissioner
Arturo Pecos, City Commissioner
Charles E. Wilson, City Commissioner

CITY STAFF PRESENT:

Carlos Yerena, City Manager
Courtney Alvarez, City Attorney
Irene Ramirez, City Secretary
Diana Gonzales, Human Resource Director
Jennifer Detloff, Director of Development Services
Caron Vela, Accountant
Wilma Castillo, Collections Supervisor
Yolanda Vasquez, Municipal Court Clerk Supervisor
Stanley Fees, City Engineer
Dora Byington, Purchasing Director
Corando Garza, Fire Chief / Assistant City Manager
George Bejarano, Finance Director
Dianne Leubert, Solid Waste Mgmt. Superintendent
John Garcia, Garage Superintendent
Rick Torres, Chief of Police
Joe Casillas, Water Production Supervisor

I. PRELIMINARY PROCEEDINGS.

OPEN MEETING

The meeting was opened at 6:01 p.m. by Commissioner Castillo, Mayor Pro-Tem.

INVOCATION / PLEDGE OF ALLEGIANCE - (Mayor Esquivel)

Ms Dora Byington led everyone in prayer, followed by the Pledge of Allegiance led by Commissioner Charles Wilson, and the pledge to the Texas flag led by Commissioner Arturo Pecos.

MINUTES OF PREVIOUS MEETING(S) - Required by Law None Available.

II. PUBLIC HEARING - (REQUIRED BY LAW).

None.

III. PUBLIC COMMENT ON AGENDA ITEMS. 3

Mayor Esquivel, 226 Carol, addressed the audience and the commission from the podium, stating he is officially in office until such time results of the February 07, 2004 recall election are canvassed. He stated he accepts his loss, however, is concerned with the different opinions regarding the "hold-over" provision, the calling of a replacement election, and the February 16, 2004 memo written by the city attorney. He quoted from the Texas Home-Rule Handbook stating "when a city charter conflicts with state law the state law controls". Mayor Esquivel also cited the final ruling by Judge Banales on the

25% rule, focusing on his comments on "a plain reading of the terms" and that "the City cannot add words to a provision in the charter in order to obtain the relief it wants".

He stated when the recall issue began everyone knew we had to have a replacement election. He asked that the city order an election in 10-20 days as ordered in the city charter or to allow the right to hold-over provision in the Texas Constitution to prevail. He stated all he was asking for is fairness, equity, and consistency.

Mr. Joseph De La Cerda, 711 East Lee, voiced his concerns about a delay in obtaining an open records request he made in January, stating he was not treated fairly. He stated he would be filing a formal grievance with the office of the attorney general and the secretary of state's office and would be making another open records request the next day.

IV. PETITIONS, GRIEVANCES, AND PRESENTATIONS.2

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

City Manager Yerena introduced the new Finance Director, Mr. George Bejarano, who started working with the City today. Mr. Bejarano previously worked for the City of Weslaco.

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

Ms Alvarez stated the finance department produced the documents specific as to what Mr. De La Cerda requested, and if there were records that were produced in duplicate she would be happy to compensate him for any overcharges. She stated the City complied with the open records act and that Mr. De La Cerda was informed as to the date the information would be available and she requested an opinion from the office of the attorney general.

3. Mayor and City Commissioner's Reports. (City Commission).

Commissioner Castillo stated he received a written opinion from Mrs. Alvarez at 5 p.m. stating once the results of the election are canvassed they (the recalled officials) cease to hold office. He stated Ms. Jennifer Wainsath, a representative with the Secretary of State's Office, was quoted in the February 11, 2004 issue of the Kingsville Record with the headlines of "Secretary of State says recalled mayor and commissioner can stay until replaced" pursuant to Article 16, Section 17 of the Texas Constitution. Commissioner Castillo stated he had serious concerns with the city attorney's opinion, but was not going to contest the issue. He stated he was leaving under protest and has not conceded that he has been removed until May 15 when he will seek re-election and wanted his constituents to know that.

Commissioner Castillo asked Mrs. Alvarez if a case she cited in her opinion has anything to do with city commissioners being recalled or to municipal court judges, to which she responded that the case refers to municipal judges, stating "there is nothing in Texas nor in the U.S. that is directly on point to our situation".

V. ITEMS FOR CONSIDERATION BY COMMISSIONERS.4

1. Consider resolution and order canvassing the election returns and declaring the results of the City of Kingsville Special Recall Election conducted on February 7, 2004. (City Secretary).

Commissioner Castillo stated since there is no quorum required for canvassing the results, he would be stepping down. He exited the meeting, followed by Commissioner Arturo Pecos. Commissioner s

Wilson took over the meeting.

Ms. Ramirez read the results of the February 07, 2004 election as follows:

	<u>Mayor Esquivel</u>	<u>Comm. Castillo</u>	<u>Comm. Pecos</u>
	For/ Against	For/ Against	For/ Against
PP#1	315/ 241	328/ 226	315/ 239
PP#2	341/ 225	364/ 197	358/ 206
PP#3	131/ 320	151/ 297	148/ 296
PP#4	198/ 271	221/ 245	217/ 245
PP#5	354/ 311	383/ 279	371/ 294
PP#6	684/ 250	715/ 218	706/ 225
Totals	2023/ 1618	2162/ 1462	2115/ 1505

A motion was made by Commissioner Garcia and seconded by Commissioner Wilson to approve the resolution declaring the results of the February 07, 2004 Special Recall Election as noted herein. Motion carried, 2/0.

2. Consider resolution ordering the City of Kingsville General Election, Designating Voting Precincts, and Polling Places, Establishing Election Procedures, and Appointing Early Voting Clerk. (City Secretary).

Ms. Ramirez stated this resolution is necessary to order the May 15, 2004 General Election, designating voting precincts and polling places, appointing the early voting clerk, and establishing election procedures. She was unclear on some of points dealing with the replacement election and asked the city attorney to address those items.

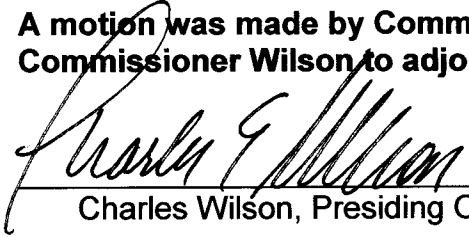
Ms Alvarez stated historically the city secretary prepares the resolutions, and basically the resolution specifies that the city commission ordered a recall election, it resulted in certain individuals being subject to recall; pursuant to the city charter, the city commission shall order a replacement election; the State Election Code supersedes our charter on the dates to hold a special election to fill a vacancy; the terms of all members expire in May of 2004; the current facts do not allow for an election prior to May 15th as there are no exemptions to the uniform election dates which presently apply; and further stated the city commission could always come back and set a different date pursuant to an exemption prior to such date;

A motion was made by Commissioner Garcia and seconded by Commissioner Wilson to approve the resolution ordering the May 15, 2004 General Election. Motion carried, 2 /0.

Commissioner Garcia stated he wanted to clarify that the roles of the remaining commission. It was decided by mutual consent that Commissioner Wilson will serve as presiding officer as he received the most votes at the last-election. .

VI. ADJOURNMENT

A motion was made by Commissioner Garcia and seconded by Commissioner Wilson to adjourn the meeting at 6:32 p.m.



Charles Wilson, Presiding Officer

ATTEST:

Irene Ramirez, City Secretary