

MAY 28, 2019

**A REGULAR MEETING OF THE CITY OF KINGSVILLE CITY COMMISSION WAS HELD ON TUESDAY, MAY 28, 2019 IN THE HELEN KLEBERG GROVES COMMUNITY ROOM, 400 WEST KING AVENUE, KINGSVILLE, TEXAS AT 6:00 P.M.**

**CITY COMMISSION PRESENT:**

Sam R. Fugate, Mayor  
Edna Lopez, Commissioner  
Hector Hinojosa, Commissioner  
Dianne Leubert, Commissioner  
Arturo Pecos, Commissioner

**CITY STAFF PRESENT:**

Mary Valenzuela, City Secretary  
Courtney Alvarez, City Attorney  
Kyle Benson, IT Manager  
Derek Williams, IT  
Susan Ivy, Parks Manager  
Deborah Balli, Finance Director  
Tom Ginter, Director of Planning & Development Services  
Charlie Sosa, Purchasing Manager  
Diana Gonzales, Human Resources Director  
Emilio Garcia, Health Director  
Rudy Mora, City Engineer  
Adrian Garcia, Fire Chief  
Ricardo Torres, Police Chief  
Ron Lee, Fire Marshall

**I. Preliminary Proceedings.****OPEN MEETING**

Mayor Fugate opened the meeting at 6:00 P.M. with all five Commission members present.

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

The invocation was delivered by Mrs. Courtney Alvarez, City Attorney, followed by the Pledge of Allegiance and the Texas Pledge.

**MINUTES OF PREVIOUS MEETING(S)****Regular Meeting – April 8, 2019**

**Motion made by Commissioner Pecos to approve the minutes of April 8, 2019 as presented, seconded by Commissioner Lopez. The motion was passed and approved by the following vote: Lopez, Hinojosa, Leubert, Pecos, Fugate voting "FOR".**

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

**1. Public Hearing on an ordinance amending the zoning ordinance by granting a special use permit for 526 E. Kleberg Ave., also known as Orig. Town, Block 40, Lots 17-22, for auto paint and body shop use, Domingo Reyna, applicant. (Director of Planning & Development Services).**

Mayor Fugate read and opened this public hearing at 6:02 p.m.

Mr. Tom Ginter, Director of Planning & Development Services reported that this building has been vacant for some time. The requestor would like to open a paint & body shop. The requestor is a new owner therefore requiring new permits, as existing permits do not transfer. Staff did not receive any phone call for or against the special use permit. The Planning & Zoning Commission has approved this item with a 4-0 vote.

Mr. Goff, 513 E. Yoakum, commented that he has a problem with the painting issue regarding the fumes. He stated that back in the day when the old body shop was there, OSHA received many calls from him and nothing was ever done because of the fumes. He stated that the fumes were very strong that he was not able to open the windows to his house.

Mr. Domingo Reyna, 106 Avalong Dr., Robstown, TX commented that he is certified in autobody work and stated that spray filters will be changed our frequently. There will be no overspray.

Commissioner Leubert asked if Mr. Reyna was under TCEQ Rules and Regulations. Mr. Reyna responded yes. Leubert further commented that this business will be monitored and if there are any problems there is a phone number to file a complaint.

Mayor Fugate announced that this is a public hearing and if anyone would like to speak on behalf of this item may do so now with a five-minute time limit. Additional time cannot be extended by City Commission.

There being no further comments, Mayor Fugate closed this public hearing at 6:08 P.M.

### III. Reports from Commission & Staff.<sup>2</sup>

*"At this time, the City Commission and Staff will report/update on all committee assignments which may include, but is not limited to, the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Tourism, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development, Code Enforcement, Condemnation Update, Proposed Development Report; Accounting & Finance – Financial & Investment Information, Investment Report, Quarterly Budget Report, Monthly Financial Reports, Utilities Billing Update; Police & Fire Department – Grant Update, Police & Fire Reports; **Streets Update**; Public Works; Landfill Update, Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Emergency Management, Administration –Workshop Schedule, Interlocal Agreements, Public Information, Health Department, Hotel Occupancy Report, Quiet Zone, SEP, Legislative Update, Proclamations, Employee Recognition, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor, Wastewater Treatment Plant, Water And Wastewater Rate Study Presentation, Golf Course Update. No formal action can be taken on these items at this time."*

Mrs. Deborah Balli, Interim City Manager/Finance Director reported that a Street Department report for Commission to review.

Mrs. Susan Ivy, Parks Director, reported that the pool will be opening on Friday, May 31<sup>st</sup> at 5:30 p.m. Ivy also distributed a copy of Summer Activities Program list which has also been distributed to all elementary schools.

Commissioner Hinojosa thanked Commissioner Pecos for a successful Kleberg County Veteran's Ceremony.

Commissioner Leubert commented that she attended the ceremony and would encourage everyone to attend one, as it is a great ceremony.

Mrs. Courtney Alvarez, City Attorney commented that the next scheduled Commission meeting will be on June 10<sup>th</sup>. Staff is to submit agendas item by May 31<sup>st</sup>.

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

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

Mr. Johnathan Plant, 730 Santa Elena Drive, commented that it is his understanding that the Commission will be voting tonight to adjust the allocation that is given to the Conner Museum from the Hotel Occupancy Tax. He asked if this was correct.

Both Mayor Fugate and Commissioner Lopez response was yes.

Mr. Plant continued to comment that the City has a contract with the University that says that it is understood and agreed that either party can terminate this contract giving the other party at least 90 days' notice of termination, at which they did not receive notice. He further commented that he was not told of any of this up until 4:30 p.m. today and is blind sighted by this. He stated that they do depend heavily on the funds they receive from the Hotel/Motel Tax. At this time, it pays a portion of his salary, temporary exhibits, promotions, and advertising. Without these monies, the Museum would be hampered at what they could do as they do not receive any financial support or operating funds from the University. They only get the building and electricity, but there is a lot more that is involved in this. He stated that they preserve the artifacts, not just of Kingsville but of the entire county, which cost a lot of money. He commented that Historical Preservation cost a lot of money in terms of supplies and manpower. At this time he is down to a staff of 2 plus himself and with one being out on sick leave, he is doing the job of two. Plant stated that they need these funds and the University agrees that the percentage the University and Museum receives, should be reallocated. The current agreement the Museum has with the University has is dated 1979, which is still enforced. He stated that the entered negotiations with the City and the previous City Manager to negotiate that amount. These talks were discontinued by City Manager. There was no further discussion or anything. Everything was just dropped. He stated that the University agrees that it should be negotiated, but they were not given any

warning, let alone 90 days written notice. Plant commented that without those monies, the Museum would be extremely limited as to what they can do. He further commented that they bring in visitors to Kingsville and they spend money at the local restaurants and stores. A new exhibit will be done in the Fall which will bring in traffic from the Valley. He further stated that they are working very hard to bring in visitors to Kingsville.

Mrs. Courtney Alvarez, City Attorney stated that just a point of clarification, the only action before the Commission tonight would be to consider to approve or not the recommendations from the HOT Board Advisory and if approved, then there would be an amendment made to the agreement then they would be given the notice and then at that point and time, the agreement would come back to the Commission.

Mr. Dave Christopher, 1506 Lewis Street, commented that he is here on behalf of the Conner Museum. He stated that he was apprised about an hour ago of the possible potential action regarding the Conner Museum. He stated that they are an auxiliary of the Friend of the Conner Museum and would like to speak on behalf of the Conner Museum and let the Commission know that this is a valuable resource and a bargain for the City and supports the exhibits that the Conner Museum brings to the City.

V.

### **Consent Agenda**

#### **Notice to the Public**

*The following items are of a routine or administrative nature. The Commission has been furnished with background and support material on each item, and/or it has been discussed at a previous meeting. All items will be acted upon by one vote without being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon. The remaining items will be adopted by one vote.*

#### **CONSENT MOTIONS, RESOLUTIONS, ORDINANCES AND ORDINANCES FROM PREVIOUS MEETINGS:**

*(At this point the Commission will vote on all motions, resolutions and ordinances not removed for individual consideration)*

**Motion made by Commissioner Pecos to approve the consent agenda as presented, seconded by Commissioner Hinojosa. The motion was passed and approved by the following vote: Hinojosa, Leubert, Pecos, Lopez, Fugate voting "FOR".**

1. **Motion to approve final passage of an ordinance amending the Fiscal Year 2018-2019 budget to receive and expend donations from La Posada and Christus Spohn Hospital for recreational programs (Park Department Healthy Families Initiative). (Parks Director).**
2. **Motion to approve reappointment of Joni B. Harrel to the City-County Health Board for a three-year term. (Health Director).**
3. **Motion to approve a resolution of the City Commission of Kingsville, Texas designating authorized signatories for contractual documents and documents for requesting funds pertaining to the Texas Community Development Block Grant Program (TxCDBG) Contract number #7219012, Texas Capital Fund 2018 Program for improvements in the downtown area. (Downtown Manager).**

### **REGULAR AGENDA**

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

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

4. **Presentation and discussion regarding Hotel Occupancy Tax. (Tourism Director).**

Ms. Janine Reyes, stated that they have taken a close review on their budget and how it is being spent.

Mr. Scott Joslove, President/CEO for the Texas Hotel Lodging Association commented that he has written an article called "What cities need to know about local hotel tax". He stated that every two years, after legislative session, he updates the article on what the rules are. He stated that a local hotel tax is called a dedicated tax. He further commented that the tax could be used for any public purpose, but for the hotel tax, it is a bit different. Hotel tax is a dedicated tax which has a two part test for any expenditure. He stated that the first part of the test is that every expenditure must directly promote tourism and the hotel and convention industry. When this is broken down, it is every expenditure, all must directly promote. He further stated that the second part of the test is that every expenditure has to fit in 1 of 9 statutory categories: 1) Convention Center; 2) Registration and Convention Delegate; 3) Spend 1/7 or about 15% for advertising or promotion; 4) Promotion of the Arts, not to spend more than 15% of what you bring in;

5) Historical Restoration or Preservation; 6) Sporting relating events; 7) Sporting relating facilities; 8) Tourism related signage, 9) Shuttles between area of hotels and tourist attractions. Mr. Joslove stated that if it doesn't fit in one of those categories, it can't be done. He further stated that one of the questions that staff asked is what is the general practice where you see all the money going to one facility. He stated that the other question he was asked to address was how often is it that an entity gets a percentage of funding in terms of the arts or historical. He stated that as far as percentages, typically city counsels awards an amount certain to a facility. Reason that they don't do a percentage is that each budget cycle, you don't want them to feel an entitlement that you have this percentage that allows grow as their needs don't grow or may grow more than their percentages and maybe less. But with an amount certain, they provide you exactly what they need and the justification for it which would avoid an entitlement. This way you don't have an automatic growth indicator that is not related to actual budget request. He further stated that if you do an amount certain and suddenly the actual proceeds don't come in as planned, what happens with that amount certain. He gave an example of that an amount of \$30,000 was budgeted for an entity but your funds are down by 10%. He further stated that the city could place a stipulation that if the city has the right to use its discretion to reduce any allocation based on reduced revenues that may come in to the city from the hotel tax fund. By having this, they are put on notice that you can only fund with what you receive and all entities would be subject to that potential reality.

Commissioner Hinojosa asked Mr. Joslove what kind of audit does his organization have in auditing all these hotels to make sure they are following the letter of the law?

Mr. Joslove responded that they have only had five CEO's in the 119 years for the Texas Hotel Associations, with him being the fifth. When he started, they told him they had a \$1 million dollar fund, legal defense fund; that if they needed to challenge or go hand in hand with a community on how they are spending their hotel tax, they could use those funds. He further stated that in 19 years, they have never used a single dollar from that fund. He further stated that when something happens, they call and let the community know that they are not spending the minimum on marketing, or spending more on promotion than allowed. He stated that in his experience in the past 19 years, is that the City Manager and City Attorney just work with them and correct the problem.

Commissioner Leubert stated that she feels that at this point she needs to pull items 4 & 5 so that staff can have some time to negotiate and figure this out.

Mayor Fugate commented that they are doing item 4 now.

Commissioner Leubert commented that she understood, but she is talking about 4 & 5. This would allow staff to negotiate and see if they could find a common ground for both the Museum and Tourism and see if there is something that can be done with the information that was presented by Mr. Joslove.

Mayor Fugate commented that there are four months left in this budget so staff has time.

Commissioner Lopez asked if there was a need for a second on Commissioner Leubert comment and asked if her comment was a motion.

Mrs. Alvarez commented that this item isn't an action item. It is only a presentation and discussion item. When the Commission gets to item 5, this would be when the Commission can consider whether or not to move forward with the Hotel Occupancy Tax Board recommendation or not, or to provide additional direction to staff. She further stated that as mentioned previously, item 5 would not change any contract terms, it would just give staff direction on how the Commission would want us to move forward with those contract negotiations.

Commissioner Leubert commented that this is what she is asking and maybe this is the time to table item 5, so that we have more time.

Mayor Fugate commented that instead of tabling the item, they will just pass by it.

Commissioner Lopez commented to just pass by this item.

Commissioner Hinojosa asked Mr. Jonathan Plant if the University charges rent for the use of their building. Mr. Plant responded no. Hinojosa further asked about the utilities. Mr. Plant stated that the University pays for the electricity. Plant also stated that everything in terms of their operating expenses comes out of his funds.

**5. Consider recommendations from Hotel Occupancy Tax Advisory Board for arts and historical funding. (Tourism Director).**

Mayor Fugate asked if the Commission would like to by pass this item.

Commissioner Lopez commented that they would just by pass on the item.

6. **Consider appointment of Erin McClure to the Hotel Occupancy Tax Advisory Board for a two-year term to fill the Texas A&M University-Kingsville representative vacancy. (Tourism Director).**

Motion made by Commissioner Lopez and Commissioner Pecos to approve the appointment of Erin McClure to the Hotel Occupancy Tax Advisory Board for a two-year term to fill the Texas A&M University-Kingsville representative vacancy, seconded by Commissioner Leubert. The motion was passed and approved by the following vote: Pecos, Lopez, Hinojosa, Leubert, Fugate voting "FOR".

7. **Consider introduction of an ordinance amending the Fiscal Year 2018-2019 budget to receive and expend additional anticipated hotel/motel tax revenues. (Tourism Director).**

Introduction item.

8. **Consider introduction of an ordinance amending the zoning ordinance by granting a special use permit for 526 E. Kleberg Ave., also known as Orig. Town, Block 40, Lots 17-22, for auto paint and body shop use. (Director of Planning & Development Services).**

Introduction item.

9. **Consider a resolution authorizing the City to submit an application to the Texas Department of Agriculture for a Community Development Block Grant for the Fire, Ambulance, & Services Truck (FAST) Fund to replace a brush truck in the Fire Department; with an anticipated cash match; authorizing the Interim City Manager to submit the grant and act as the grant official on the City's behalf with such grant program. (Fire Chief).**

Mr. Ron Lee, Fire Marshall stated that the Fire Department is requesting approval to apply for a Texas Community Development Block Grant Program, Fire, Ambulance, & Services Truck Fund, which if awarded will replace the department's brush truck of 15 years requiring replacement. The grant request is for \$175,000 with the City responsible for a cost share of \$5,000 when the grant is awarded and fulfilled.

Motion made by Commissioner Hinojosa to approve this resolution authorizing the City to submit an application to the Texas Department of Agriculture for a Community Development Block Grant for the Fire, Ambulance, & Services Truck (FAST) Fund to replace a brush truck in the Fire Department; with an anticipated cash match; authorizing the Interim City Manager to submit the grant and act as the grant official on the City's behalf with such grant program, seconded by Commissioner Leubert. The motion was passed and approved by the following vote: Lopez, Hinojosa, Leubert, Pecos, Fugate voting "FOR".

10. **Consider a resolution authorizing the City to submit an application to the Fire House Subs Grant requesting grant funding for extrication tools on behalf of the Kingsville Fire Department with no anticipated cash match. (Fire Chief).**

Mr. Lee stated that the Fire Department is requesting approval to apply for a Fire House Subs Grant, which if awarded will assist in replacing the department's outdated rescue extrication tools. The total grant request is for \$31,373.37 with no cost share.

Commissioner Lopez asked who would be working on this grant. Mr. Lee responded that there is a grant team that was created which consist of Fire Chief, himself, and a few others from the department.

Motion made by Commissioner Hinojosa to approve the resolution authorizing the City to submit an application to the Fire House Subs Grant requesting grant funding for extrication tools on behalf of the Kingsville Fire Department with no anticipated cash match, seconded by Commissioner Leubert. The motion was passed and approved by the following vote: Hinojosa, Leubert, Pecos, Lopez, Fugate voting "FOR".

11. **Consider reallocation of funds within CO2016 for a landscaping project for Santa Gertrudis medians. (Parks Director).**

Mrs. Jennifer Bernal, Parks Manager made a PowerPoint presentation to the Commission. She stated that this presentation had been made a few meetings ago. Staff is now looking to see how they can do the project at a lower cost. She spoke about the medians near the University and what would be planted and seeded. Mrs. Bernal's PowerPoint presentation involved pictures that were numbered.

Commissioner Hinojosa asked Mrs. Alvarez if the City has received approval from the General Counsel to spend monies from CO's. Mrs. Alvarez responded that previously

there had already been monies approved for landscaping in CO 2016, but this would be coming from a different fund from the CO 2016.

Mayor Fugate commented that this area is a major thoroughfare to our City and need to look nice.

Mrs. Bernal stated that the cost would be approximately \$14,750. Keep Kingsville Beautiful will be contributing \$4,500 which will be going towards the purchase of trees.

**Motion made by Commissioner Hinojosa to approve the reallocation of funds within CO2016 for a landscaping project for Santa Gertrudis medians, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Leubert, Pecos, Lopez, Hinojosa, Fugate voting "FOR".**

**12. Discuss and consider the formation and size of the Charter Review Committee. (City Attorney).**

Mrs. Alvarez stated that a few meetings back, Commissioner Hinojosa had made a comment of having a Charter Review and potentially getting something on the ballot during the City General Election in May 2020. In looking back, the last Charter Review Committee was created in 2005 and presented their finding in early 2006 to the Commission. At that time, the Commission was allowed to vote to place certain items on the ballot on the General Election of May 2006. Alvarez stated that at that time, the Commission met and considered the size and formation, with the formation being whether the commission would appoint members to the Charter Review as a group or would each Commission member appoint one member each.

Mayor Fugate asked what size was the Committee in 2005. Mrs. Alvarez responded that it was a group of 7 committee members. Each Commission member appointed one person and two that were voted on as a whole by the Commission. She further stated that what the Commission would need to consider is to establish a Review Committee of 5 to 7 persons that can bring back to the Commission some proposals for the Commissions consideration around mid-January 2020 so that the Commission can make a decision on or about February 2020 as to what should be on the May 2020 City General Election.

**Motion made by Commissioner Hinojosa to approve a 7 member on the Charter Review Committee with each Commissioner appointing one member and two members approved by the Commission as a whole, seconded by Commissioner Lopez. The motion was passed and approved by the following vote: Pecos, Lopez, Hinojosa, Leubert, Fugate voting "FOR".**

**13. Consider authorizing change order #1 for Caesar Street Improvement Project (RFP#19-05) as per staff recommendation. (City Engineer).**

Mr. Rudy Mora, City Engineer stated that the purpose of the Change Order is to modify the improvements along Caesar St. between 14<sup>th</sup> and 15<sup>th</sup> Street. The project was awarded to Garrett Construction in the approximate amount of \$650,000. It includes an Alternate No. 2 Bid a single course seal along E. Casear Ave. between 14<sup>th</sup> Street and Bypass 77. Street striping is included in the Base Bid and Alternate No. 2. It will be beneficial to include full depth construction on the west bound lane. We would also suggest full depth on the east bound lane, however, the 48" diameter drainage system under the east bound lane is in poor condition. The City will need to consider replacing this drainage soon.

Commissioner Leubert asked if the drainage line would it need to be replaced soon. Mr. Mora responded that previously it had some areas that had collapsed, so yes. Leubert further asked if it needed to be replaced, it would require for heavy equipment to brought in on the brand new road that was just done. She further stated that at one time, staff was going to look into drainage lines prior to fixing streets, just so that we didn't have to break a new street.

Mr. Mora stated that the previous City Manager asked for the project to be extended from 14<sup>th</sup> Street to Bypass 77, which was the purpose of it being rehabilitated with a sealcoat so that water wouldn't penetrate underneath the base. When the project was awarded, there was a question from the Commission asking if there was anything else that could be done for this street, which this is a section that would be beneficial.

Mayor Fugate commented that everyone's concern is that we build a road then down the line we go back and break that street to do any type of utility repairs.

Commissioner Hinojosa commented that he agrees with the Mayor's comment.

Mayor Fugate commented that what staff needs to look into, prior to the Commission approving this change order, is look to see what the cost would be to fix that pipe.

No action was taken on this item.

**14. Consider termination of AR Energy Services contract for Bid#18-01-Curb, Gutter, and Driveway Repair. (City Engineer).**

Mr. Mora stated that the city has a contract with AR Energy Services which was executed on December 4, 2017 for curb gutters and driveway repairs. The last project with the contractor was E. Miller St. between 11<sup>th</sup> and 13<sup>th</sup> Street. The project began on May 2018 and was substantially completed on February 2019. On February 11, 2019, the City and Contractor performed a final inspection of the project and several deficiencies were noted on the punch list. As of today, the contractor has not reached out to the city to correct the deficiencies. Staff contacted the bonding company on May 1, 2019 and explained the City's dissatisfaction with the workmanship and lack of effort. The City holds a 10% retainage on the contract in the amount of \$5,415.47. On May 15, 2019 the contractor forfeited the retainage. It is staffs recommendation to terminate the contract with AR Energy Services, LLC effective immediately and rebid the contract for curb, gutter and driveway repairs.

**Motion made by Commissioner Pecos to approve the termination of AR Energy Services contract, seconded by Commissioner Lopez and Commissioner Hinojosa. The motion was passed and approved by the following vote: Hinojosa, Leubert, Pecos, Lopez, Fugate voting "FOR".**

**15. Consider rescinding condemnation order for 213 W. Santa Gertrudis. (City Attorney).**

Mrs. Alvarez stated that after speaking a legal representative for this property, there has been a tentative agreement to rescind the order from April 8, 2019. This would not prohibit the city at some point in the future, to go back out to begin the process over again if nothing is done according to the agreement.

**Motion made by Commissioner Pecos and Commissioner Lopez to approve the rescinding condemnation order for 213 W. Santa Gertrudis, seconded by Commissioner Hinojosa. The motion was passed and approved by the following vote: Pecos, Lopez, Hinojosa, Leubert, Fugate voting "FOR".**

**VI. Adjournment.**

There being no further business to come before the City Commission, the meeting was adjourned at 7:06 P.M.

  
Sam R. Fugate, Mayor

**ATTEST:**

  
Mary Valenzuela, TRMC, CMC, City Secretary

