



# City of Pflugerville

## Minutes - Final City Council

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Tuesday, March 8, 2011

7:00 PM

100 East Main Street, Suite 500

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### Regular Meeting

#### 1. Call to order

Mayor Jeff Coleman called the meeting to order at 7:12 p.m. Councilmembers Wayne Cooper, Mike Marsh, Starlet Sattler and Victor Gonzales were in attendance. Councilmember Darelle White was absent. City employees attending: Brandon Wade, City Manager; Floyd Akers, City Attorney; Lauri Gillam, Assistant City Manager; Beth Davis, Finance Director; Amy Good, Assistant Finance Director; Terri Waggoner, Public Information Officer; Trey Fletcher, Managing Director of Operations; Felix Benavides, City Engineer; Karen Thompson, City Secretary; Chuck Hooker, Police Chief; Shawn Brown, Police Lieutenant; Tracy Hibbs, Utility Billing Operations Manager.

#### 2. Opening

**A. Pledge of Allegiance to the Flag of the United States of America: I pledge allegiance to the flag of the United States of America, and to the republic for which it stands: one nation under God, indivisible, with liberty and justice for all.**

Mayor Coleman led those in attendance in reciting the Pledge of Allegiance to the flag of the United States.

**B. Pledge of Allegiance to the Texas State Flag: Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.**

Mayor Coleman led those in attendance in reciting the Pledge of Allegiance to the Texas State flag.

Items were addressed in the order as recorded in the minutes.

#### 3. Presentation

- A. 2010-0481 Presentation of semi-annual report on solid waste and recycling services by IESI representatives.
- Gerry Rieger, IESI, reported on 63% recycling participation and IESI education efforts. Mr. Marsh asked how recycling commodities are doing. Mr. Rieger reported that glass is still difficult to deal with as well as all of the commodities which went down about 15% from January to February and have continued to go down in March. He reported that glass is in the negative. Mr. Marsh asked if they have seen any decrease in the pressure on landfills in the Central Texas area. Mr. Rieger stated no, due to a major landfill closing in 2015. He stated that landfill costs are still increasing. He stated that it would have increased more if recycling had not increased. He stated that IESI is proud to be a diversion company and to keep it out of the landfill. Mayor Coleman asked that the City of Pflugerville benefit in price breaks with IESI in the future since the City has been involved in pioneering this effort early on.

### Reading of the Consent Agenda

Luciena Case, 800 Busleigh Castle Way; and Sarah Kostusiak, 19608 Sea Island Drive; did not wish to speak but asked that the Mayor announce for the record their support for the approval of item 8B. Melody Ryan, 1012 Ripley Castle, spoke in support for the approval of item 8B. Ms. Ryan provided information on the MOMS Club of Pflugerville-NW. She stated that with the summer heat, their group found themselves only visiting parks with shade. She reviewed their fundraising efforts and stated that they are excited to be able to contribute to shade, benches, and small play equipment at three parks.

No items were removed from the consent agenda. Ms. Thompson read the items and the caption of the ordinance under consideration.

### 5. Approval of Minutes

- A. 2010-0472 Approval of the minutes of the February 17, 2011, Special Meeting and Quorum; February 22, 2011, Worksession and Regular Meeting; February 24, 2011, Quorum; and February 27, 2011, Quorum.
- The minutes were approved on the consent agenda.

### 6. Resolution

- A. RES-0027 Approving a resolution to support the legislative activities of the Alliance of Oncor Cities (AOC) during the 82nd Session of the Texas legislature as they affect electric utility ratemaking.
- The resolution was approved on the consent agenda.

### 7. Ordinance Second Reading

- A.     **ORD-0048**     Approving an ordinance on second reading with the caption reading:  
AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS,  
ADOPTING THE FIRST AMENDMENT TO THE FISCAL YEAR  
2010-2011 BUDGET FOR THE CITY OF PFLUGERVILLE; AND  
PROVIDING AN EFFECTIVE DATE.

The ordinance was approved on second and final reading on the consent agenda.

## 8.     **Other Actions**

- A.     **2010-0477**     Receive report on City Council, Commission, Board and Committee expenditures for February 2011.

The item was approved on the consent agenda.

- B.     **2010-0484**     Approving the use of 4B funds in the amount of \$17,500.00 for the Moms Offering Moms Support (MOMS) Club of Pflugerville-NW to provide shade structures and park amenities in Heritage Park, Bohls Park and another park location to be determined.

The item was approved on the consent agenda.

### Action on the Consent Agenda

Mr. Gonzales made a motion to approve the consent agenda. Ms. Sattler seconded the motion. All voted in favor. The motion carried.

## 4.     **Public Comment**

Brent Hurta, 3104 Murrelet Way, did not wish to speak but asked that the Mayor state for the record his support for the development of a skate spot.

## 9.     **Ordinance First Reading**

- ORD-0041**     Discuss and consider approving an ordinance on first reading with the caption reading: AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS AMENDING ORDINANCE NO. 874-07-04-10 OF THE CITY OF PFLUGERVILLE, TEXAS, AS AMENDED, CHANGING THE ZONING DESIGNATION FOR A 5-ACRE TRACT OF LAND OUT OF THE J. DAVIS SURVEY NO. 13, ABSTRACT NO. 231, WITHIN THE CITY OF PFLUGERVILLE, TEXAS, LOCALLY KNOWN AS 2711 KELLY LANE, FROM AGRICULTURE / CONSERVATION (A) TO GENERAL BUSINESS 1 (GB1) DISTRICT AND GENERAL BUSINESS 2 (GB2); TO BE KNOWN AS THE BLACKHAWK COMMERCIAL REZONING, (REZ1011-03), AND PROVIDING AN EFFECTIVE DATE.

Mr. Fletcher provided information. He recommended against approving the ordinance providing modified and overlapping zoning categories. He stated that he believes that zoning one area as GB1 and one area as GB2 would be acceptable or they could do an ALUR. Council discussion with Mr. Fletcher followed.

Paul Linehan, representing the applicant, presented. He explained that they do not want to do an ALUR and would like to reuse the golf maintenance building. He stated that they have everyone in agreement, but the City's process does not allow it. He stated that they feel like the only solution they have is to split the tract. He stated that they can do GB2 on the east part and GB1 on the area to the west. He stated that this is the closest to what they want, but is not what the neighborhood wants. Council discussion followed with Mr. Linehan. Mr. Linehan agreed that they would do a restrictive covenant and that they would have it ready for Council review before the second reading of the ordinance.

Mike Ussery, owner of the property, stated that effort has been made to try to figure out something that could reuse the building. He stated that they have worked with the neighborhood to find acceptable uses. He indicated their willingness to split the property and the zoning of the tract as described by Mr. Linehan. He spoke regarding restrictive covenants, that if they were to restrict the land, that to them would be regulated by the issuance of building permits on the site. Mr. Akers stated that the adjoining homeowners associations party to the agreement would have to enforce the restrictive covenants. Mr. Ussery stated that they thought it would be better to have the prohibited uses within the categories by ordinance and thought that was doable. Mayor Coleman explained that the City does not have that leeway. Council discussion continued with Mr. Ussery.

Mr. Linehan indicated that the neighbors have been wonderful to work with. He stated that the only problem is they could not work with the City's ordinance. He stated that GB2 on the east 2.7 acres and GB1 on the western 2.3 acres would work and they would like to do a restrictive covenant. Mayor Coleman asked if they are willing to put in a clause that if the developer loses a court case for violation of restrictive covenants, that they would be willing to pay for the court costs. Mr. Linehan indicated that he does not want to make it conducive to court cases. Council discussion with Mr. Fletcher and Mr. Linehan continued.

Mr. Marsh made a motion to approve the ordinance as described with modifications, that GB1 would be applied to the western 2.3 acres and GB2 would be applied to the eastern 2.7 acres with restrictive covenants with Falcon Pointe and Blackhawk to be presented on second reading. Mr. Gonzales seconded the motion. Mr. Linehan indicated that they would like to only do restrictive covenants with Blackhawk. Mr. Marsh stated that the benefits should include the Falcon Pointe Homeowners Association. Council discussion followed with Mr. Linehan. Mayor Coleman asked if they want to put any kind of recourse for the homeowner association in the restrictive covenants in the event of violation, for the homeowners association to sue and if they win, to recoup the costs. Mr. Akers explained that it is unlikely that a judge would award the costs regardless of what the restrictive covenant says. He stated that a judge might award them if it is egregious. Mayor Coleman stated then there is no reason to add the language.

All voted in favor. The motion carried.

## Break

Mayor Coleman called for a break at 8:40 p.m. He resumed the meeting at 8:54 p.m.

## 10. Discuss and consider action

2010-0445 Discuss and consider action on noise concerns regarding McMurtrie Farms Event Center, 16611 Edgemere Drive and 800 Ramble Creek Drive.

Mr. Wade provided information on the noise ordinance and its enforcement. He stated that McMurtrie has agreed to shut down earlier, with parties ending at 10 p.m. He addressed parking issues, stating that parking mostly takes place on the site with some on the adjacent church property and some on the street, although that is discouraged. He stated that anyone can park anywhere on a public street unless it is posted otherwise. He stated regarding the concern for drinking and driving that the potential is always there and they need to follow the rules for addressing these issues to include the ratio for sheriff's officers on site, TABC certified servers, etc. He stated that the area was annexed in 2008 and zoned in 2009 and staff has reevaluated and reconfirmed that they do have vested rights on the property. He stated if they were going to challenge that, they needed to do that at annexation. He stated for the zoning to take full effect, the current use must cease for 6 months and the City must make determination that they have ceased to function and make sure they do not function within that 6 months. He stated that he is happy to continue to work with landowner and see if there are any additional things that the City could do such as grants to do noise abatement.

Mr. Fletcher provided location slides and explanation and discussed with Council. He provided information on the property owners being vested for these uses at the time of annexation. Mr. Akers stated it was described as a bed and breakfast and events center at the time of annexation. Mr. Marsh asked regarding the construction of a wall as a noise barrier. Mayor Coleman verified that the City is unable to require a sound barrier to be constructed. Mr. Akers stated that the use is vested and it is prohibited by law to inhibit it. He provided additional information on the City's noise ordinance.

Jerry Eschberger, 910 Ramble Creek Drive, asked how they got in this predicament. He stated that they are in a residential area and hope to have it nice and quiet and for things to happen as usual. He stated that he sat on the committee when they were coming into the City and he is proud to be a part of Pflugerville. He stated that what changed, except the tax bill, was not much. He stated that he is hearing that there is nothing that the City can do about it, but he hopes the City will pay some attention to this neighborhood as they would like to stay as they are; peaceful without additional traffic and noise. He stated that he was not at the last meeting and he appreciates the Council listening to them and if anything can be done, he hopes that they will look into it.

Mayor Coleman explained that how they got into this was that they bought and built homes in an unincorporated area and that restricts what can be done by the City. He stated that another bed and breakfast center cannot go next to them; that it is now a residential area in the City. He stated that the City is unable to shut something down that was there before the City annexed the area.

Elizabeth Gomez, 900 Ramble Creek, was signed up to speak, but passed when called upon.

Sandy Flora, 807 Ramble Creek Drive, asked if they were holding weddings before annexation how they did not hear this until the spring of 2010. She asked why they are allowed to do this. She stated that there have been events there since the Council last discussed this and the neighbors have not heard a peep, so they can operate without being a nuisance.

Chelsea McMurtrie, co-owner of McMurtrie Farms, stated that as Ms. Flora pointed out they have been quieter and have reworked their contract to state no amplified sound after 10 p.m. and no sound at any time over 85 decibels. She stated that they have had a couple of contracts not book because they wanted a later time. She stated that they would also like to construct a wall, which looks like stone and to cover it with vines. She stated that they have a decibel meter on premises and have never been cited. She stated that they want to work with neighbors. Mr. Marsh asked where they intend to construct the sound barrier. She stated along the property line between the Hindu temple and their property. She provided information on their locations for live music and DJ music. She stated that most events end at 10 p.m., and that there are some daytime ceremonies, with or without music. She stated that they have open houses one to five times a month with two to 24 people coming out. She stated that the larger events average around 100 people. She stated that she recommends that everyone park on site. She stated that people sometimes do park on Edgemere. She stated that she strongly discourages people from parking on Ramble Creek. Mr. Marsh asked if there is a capacity designated by the fire department. Ms. McMurtrie indicated that the lodge holds 10 people, but otherwise it is completely outdoors. Ms. McMurtrie stated regarding the wall, that the pricing is around \$20,000, and they cannot say at this time when they could afford to construct it.

Mayor Coleman stated that from what he can tell there is nothing that can be done. He stated that the landowners have voluntarily placed new guidelines on their contracts. He stated that he is not sure what else the Council can do other than to tell the City Manager and Police Chief to enforce the law. Mr. Gonzales stated that he would imagine that from a business perspective that in relationship to the neighbors and law enforcement and complaints, that it can negatively affect their business. He encouraged the McMurtries to be as good or better of neighbors as possible. He stated that he can appreciate both sides.

Mr. Marsh asked what the level of offense is for violation. Mr. Akers explained that it is a Class C with up to a \$500 fine. Mr. Akers stated that they could potentially do a 380 to rebate their property taxes to build the sound barrier to enhance economic development in the community. Mr. Marsh stated that he would like to ask staff to see if this would qualify for economic incentives in order to expedite the constructing of the sound barrier. Mr. Wade stated they

would be happy to investigate the economics of it and bring that information back. Ms. McMurtrie indicated that there are no sales tax on events and no hotel tax in Pflugerville, that all tax generated is property tax.

Mayor Coleman asked Council what they would like to do. Mr. Cooper stated that it seems like they have made a good effort. Mr. Wade stated that he is happy to further investigate. Mr. Marsh stated that he thinks that if there is another option they should explore it. Mr. Wade was to have staff investigate economic incentives and to report back.

- B. 2010-0458 Discuss and consider action to approve the selection of Lockwood, Andrews & Newnam, Inc. (LAN) for engineering services for the preparation of the water distribution system master plan and water model and authorizing the City Manager to enter into negotiations.
- Mr. Cooper thanked staff for providing the matrices and information. Mr. Cooper made a motion to approve this item and authorize the City Manager to go into negotiations and move forward. Ms. Sattler seconded the motion. All voted in favor. The motion carried.

- C. 2010-0475 Discuss and consider action regarding future agenda items.

Mr. Gonzales requested an item regarding the skate spot. Mr. Cooper inquired about the international festival item he previously requested. Mayor Coleman stated that an item was being brought forward to the next Council meeting to adopt the list of City events. Mr. Marsh stated that he requested an item to consider a 9-11 ceremony at the Fallen Warrior Memorial. Mayor Coleman indicated that the item would be placed on the next agenda.

## Executive Session

Mayor Coleman announced that the City Council was retiring to executive session on items 10D, 10E, 10F, 10H for economic development deliberations and 10G for legal counsel. He read the items to be discussed. The time was 9:46 p.m.

- D. 2010-0414 1.) Executive Session Item: Deliberation regarding economic development negotiations pursuant to Chapter 551.087 of the Texas Government Code concerning development agreements between Terrell Timmermann and the City of Pflugerville for the Greenview and Pfluger Crossing developments. 2.) Open Session Item: Discuss and consider action concerning development agreements between Terrell Timmermann and the City of Pflugerville for the Greenview and Pfluger Crossing developments.

Discussion on the item was to take place in executive session.

- E. 2010-0448 1.) Executive Session Item: Deliberation regarding economic development negotiations pursuant to Chapter 551.087 of the Texas Government Code regarding economic development agreements for the Stone Hill Town Center in Pflugerville, Texas. 2.) Open Session Item: Discuss and consider action regarding economic development agreements for the Stone Hill Town Center in Pflugerville, Texas.  
**Discussion on the item was to take place in executive session.**
- F. 2010-0473 1.) Executive Session Item: Deliberation regarding economic development negotiations pursuant to Chapter 551.087 of the Texas Government Code regarding Project Icarus. 2.) Open Session Item: Discuss and consider action regarding Project Icarus.  
**Discussion on the item was to take place in executive session.**
- G. 2010-0478 1.) Executive Session Item: Consultation with legal counsel pursuant to Chapter 551.071 of the Texas Government Code for discussion concerning pending litigation. 2.) Open Session Item: Discuss and consider action concerning pending litigation.  
**Discussion on the item was to take place in executive session.**
- H. 2010-0480 1.) Executive Session Item: Deliberation regarding economic development negotiations pursuant to Chapter 551.087 of the Texas Government Code regarding Project Morpheus. 2.) Open Session Item: Discuss and consider action regarding Project Morpheus.  
**Discussion on the item was to take place in executive session.**

### **Executive Session Closed**

**Mayor Coleman reconvened in open session at 10:55 p.m.**

- 2010-0478 1.) Executive Session Item: Consultation with legal counsel pursuant to Chapter 551.071 of the Texas Government Code for discussion concerning pending litigation. 2.) Open Session Item: Discuss and consider action concerning pending litigation.

**Mr. Cooper made a motion to authorize the City Attorney to contract with an attorney to convene in the Capital Metro lawsuit. Mr. Marsh seconded the motion. All voted in favor. The motion carried.**

### **11. Adjourn**

*The meeting was adjourned at 10:55 p.m.*

**Mr. Marsh made a motion to adjourn. Mr. Cooper seconded the motion. All voted in favor. The motion carried.**



Respectfully submitted,

Karen Thompson  
City Secretary

Approved as \_\_\_\_\_ on March 22, 2011.