



City of Pflugerville

Minutes - Final City Council

Tuesday, February 8, 2011

7:00 PM

100 East Main Street, Suite 500

Regular Meeting

1. Call to order

Mayor Jeff Coleman called the meeting to order at 7:04 p.m.

Councilmembers Wayne Cooper, Mike Marsh, Darelle White, Starlet Sattler and Victor Gonzales were in attendance. City employees in attendance: Brandon Wade, City Manager; Floyd Akers, City Attorney; Lauri Gillam, Assistant City Manager; Karen Thompson, City Secretary; Trey Fletcher, Managing Director of Operations; Felix Benavides, City Engineer; Amy Atkins, Parks and Recreation Director; Chuck Hooker, Police Chief; Laura Wilkes, Police Sergeant.

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.

3. Public Comment

There were no requests to speak under the Public Comment item.

Reading of the Consent Agenda

Items 5A (ORD-0040), 8A (2010-0439), 8B (2010-0437), and 8C (2010-0447) were removed from the consent agenda. Ms. Thompson read the items and captions of the ordinances under consideration.

4. Approval of Minutes

- A. **2010-0435** Approval of the minutes of the January 18, 2011, Worksession and January 25, 2011, Worksession and Regular Meeting.

The minutes were approved on the consent agenda.

5. Ordinances Second Reading

- B. **ORD-0042** Approving an ordinance on second reading with the caption reading: AN ORDINANCE AMENDING THE CITY OF PFLUGERVILLE CODE OF ORDINANCES TITLE XV LAND USAGE, CHAPTER 157 UNIFIED DEVELOPMENT CODE AMENDING SUBCHAPTER 2, SUBSECTION (A)(B) AND (D) BY REASSIGNING THE AUTHORITY OF THE ARCHITECTURAL REVIEW BOARD TO THE PLANNING AND ZONING COMMISSION AND REMOVING ANY REFERENCES OF THE ARCHITECTURAL REVIEW BOARD; AMENDING SUBCHAPTER 9, SUBSECTION (F)(5) AND (G)(5) BY REASSIGNING THE RESPONSIBILITIES OF THE ARCHITECTURAL REVIEW BOARD TO THE PLANNING AND ZONING COMMISSION; AND AMENDING SUBCHAPTER 20, SUBSECTION (C) TO REMOVE THE DEFINITION OF PRELIMINARY ARCHITECTURAL PLAN; REPLACING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE AND DECLARING AN EFFECTIVE DATE.

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

- C. **ORD-0043** Approving an ordinance on second reading with the caption reading: AN ORDINANCE AMENDING THE CITY OF PFLUGERVILLE CODE OF ORDINANCES TITLE XV LAND USAGE, CHAPTER 155 SITE DEVELOPMENT CODE, SUBCHAPTER B CENTRAL BUSINESS DISTRICT, AMENDING SUBSECTIONS 155.1202 SITE ACCESS AND CIRCULATION (E)(3), 155.1206 LANDSCAPING AND SCREENING (C)(1)(F), 155.1207 (D)(3)(D), 155.1305 SIGNS (O)(2) (J) BY REASSIGNING THE RESPONSIBILITIES OF THE ARCHITECTURAL REVIEW BOARD TO THE ADMINISTRATOR; AMENDING SUBSECTION 155.1306 PUBLIC ART BY REASSIGNING THE RESPONSIBILITIES OF THE ARCHITECTURAL REVIEW BOARD TO THE PLANNING AND ZONING COMMISSION; AMENDING SUBSECTIONS 155.1501 REVIEW BODIES, 155.1502 GENERAL REVIEW PROVISIONS, 155.1504 MAJOR PERMIT REVIEW, 155.1505 CRITERIA FOR APPROVAL, AND 155.1507 MODIFICATIONS TO APPROVED PERMITS BY REESTABLISHING GENERAL PROCESSES AND PROCEDURES FOR PLAN APPROVAL; AND AMENDING SUBSECTION 155.1601 DEFINED TERMS, PRELIMINARY ARCHITECTURAL PLAN; REPLACING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE AND DECLARING AN EFFECTIVE DATE.

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

6. **Ordinance First Reading**

- A. **ORD-0046** Approving an ordinance on first reading to add duties to the Parks and Recreation Commission associated with being the Keep Texas Beautiful affiliate with the caption reading: AN ORDINANCE AMENDING THE CITY OF PFLUGERVILLE CODE OF ORDINANCES TITLE IX: GENERAL REGULATIONS SECTION 95.27 DUTIES OF THE COMMISSION, REPLACING ALL ORDINANCES IN CONFLICT; CONTAINING A SEVERABILITY CLAUSE AND DECLARING AN EFFECTIVE DATE.

The ordinance was approved on first reading on the consent agenda.

7. **Resolutions**

- A. **RES-0023** Approving a resolution dissolving the Keep Pflugerville Beautiful Committee and establishing the Parks and Recreation Commission as the Keep Texas Beautiful Affiliate.

The resolution was approved on the consent agenda.

- B. RES-0022 Approving a resolution dissolving the Downtown Planning Committee.

The resolution was approved on the consent agenda.

Action on the Consent Agenda

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

Ordinances Second Reading

- A. ORD-0040 Approving an ordinance on second 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, BY APPROVING A SPECIFIC USE PERMIT FOR A BODY ART STUDIO AT THE EXISTING MULTI-TENANT BUILDING LOCATED ON LOTS 10-12 BLOCK A OF THE PFLUGERVILLE SUBDIVISION, LOCALLY KNOWN AS 101 E. PECAN STREET; TO BE KNOWN AS THE FREEDOM MACHINE TATTOO SPECIFIC USE PERMIT, (SUP1011-01), AND PROVIDING AN EFFECTIVE DATE.

The ordinance was approved on second and final reading.

Mayor Coleman read the item to include the caption of the ordinance under consideration. Mr. White indicated that he had pulled the item from the consent agenda so he would have an opportunity to state his opposition.

Carl Wasmuth, 1510 Santolina Court, provided a document to Council showing the regulations imposed on tattoo and body piercing parlors in Riverside, California. Mr. Wasmuth stated that his understanding is that State law provides that persons under 18 cannot receive tattoos. He stated that it is not unusual for cities to set a minimum distance between a tattoo parlor and a bar and some cities ban the placement of tattoo parlors in the central business district. He stated that it is also not unusual for some cities to take an adversarial position against tattoo parlors with some that would like to ban them altogether, which he stated seems impossible now with court cases involving the first amendment, but he stated a city still has some leeway in locations. He reported on a Bohs neighborhood survey, posing the question if the special use permit should be approved with the following results:12-yes, 31-no, and 2-uncertain.

Rod Reyna, 1009 Rocky Creek Drive, indicated that he had sent an email to the City Council. He read the email until his 3 minutes was exhausted. He was allotted an additional minute. Mr. Reyna spoke in opposition to the special use permit for a body art studio downtown, voicing concerns that Pflugerville residents do not want one and the Pflugerville Downtown Association does not want one. He stated concerns for children seeing the tattoo parlor on their way to Timmerman Elementary School, to daycare, to church, or to HEB.

He stated concern for residents not knowing that a tattoo parlor may be coming because the application was slipped in over the holidays and only a single sign is placed in front of the business and only those within 200 feet are informed. He voiced concerns for the culture of the City Council, except one, that supports a tattoo parlor in downtown Pflugerville with the Mayor not having to vote or to state his opinion. He read quotes from the Councilmember bios on the City website which showed Councilmembers intent to develop and progress in a way that is beneficial to the entire city.

Mayor Coleman indicated that he would like to speak to a couple of items by Mr. Reyna that were factually incorrect. Mayor Coleman stated in response to the statement that they slipped an application in over the holidays, that this is the seventh or eighth public meeting discussing this topic. He stated that it has been going on for over three months and there have been articles in the Pflugerville Plag and articles in the Community Impact, at least on line. He stated that no one has slipped anything through. Mayor Coleman stated he spoke in favor of this item at the Planning and Zoning Commission meeting and has indicated his support for it.

Mr. White stated that he is in opposition and he has been clear in his opposition since the beginning with this being located downtown. He stated that he has at no time felt that this was being run through. He explained that the Councilmembers do have differences of opinion. He stated that it does not change his opinion regarding this type of use in the downtown area. He stated that he thought there was great wisdom in the original way the ordinance was drafted in not providing a special use permit for this use in the downtown area. He stated that he will continue to stand in opposition to this use in this area and he hopes Council makes their decision based on what they feel is in the best long-term interest of the community.

Lisa Young, 504 Green Valley Cove, stated that she is concerned and agrees with Mr. White and the previous two gentlemen that spoke. She stated that her concern is for the proximity to the high school. She stated that she thinks that having the business close to the high school could possibly pose a temptation for additional truancy issues. She stated that she feels this is not a family-friendly business suitable for downtown Pflugerville. She stated that she is concerned about underage tattooing. She stated that teens will find a way to do this. She stated that there are a large number of teens that are tattooed because it is very popular. She stated concerns for adding another adult-oriented business in addition to the bars downtown.

Mr. Cooper stated that he believes that Mr. Dodson will run a reputable business. He explained that tattoos have become more accepted in society and that there are a lot of people that have tattoos that are not the dregs of society. He stated that Pflugerville is a diverse community and there are a lot of different tastes and it does not make them bad. He stated that as long as the businesses is run in a way that is not negative, it is something that makes our city diverse and interesting. He stated he voted for it and he would vote for it again. He stated in the interest of being a diverse community, he thinks it is good for us.

Mr. Gonzales made a motion to approve item 5A, the specific use permit. Mr. Cooper seconded the motion. Council discussion followed. Mayor Coleman stepped down from the dais during the discussion. Mayor Pro Tem Gonzales

was presiding. Mr. Gonzales called for a vote on the item. The vote was: Mr. Cooper-yes, Mr. Marsh-yes, Mr. White-no, Ms. Sattler-yes. The motion carried.

Mayor Coleman returned to the dais.

8. Other Actions

- A. 2010-0439 Authorize the City Manager to negotiate and execute an amendment to the existing agreement with Halff Associates, Inc. for additional engineering design services for Heatherwilde Boulevard Roadway Phase II, which will allow for the integration of the Phase I and Phase II projects into one project. The amendment will be in the amount of \$83,640.00.

Mr. Cooper recused himself and stepped down from the dais to abstain because he is employed with Halff Associates. Mr. Marsh moved approval of item 2010-0439. Mr. White seconded the motion. The vote was: Mr. Cooper-abstain, Mr. Marsh-aye, Mr. White-aye, Ms. Sattler-aye, Mr. Gonzales-aye. The motion carried.

- B. 2010-0437 Receive report on City Council, Commission, Board and Committee expenditures for January 2011.

The item was approved.

Mr. Cooper commented that it seems that Mr. Gonzales is the only one taking advantage of these opportunities. Mr. Cooper made a motion to approve item 8B. Mr. Gonzales seconded the motion. All voted in favor. The motion carried.

First Supplemental Agenda Item

- 1A. RES-0021 Resolution ordering a General Election for May 14, 2011 for the election of Councilmembers for Place 2 and Place 4.

The resolution was approved.

Mr. Cooper made a motion to accept the resolution. Mr. White seconded the motion. All voted in favor. The motion carried.

9. Discuss and consider action

- A. 2010-0410 Discuss and consider proposal to mitigate noise associated with Red's Gun Range, 1908 West Pecan Street.

There was discussion on the item. No action was taken.

Mayor Coleman opened the item for consideration. Mayor Coleman stepped down from the dais. Mayor Pro Tem Gonzales was presiding. Mr. Fletcher provided information on the proposal in the amount of \$155,246.94 in materials and drawings and \$129,207.00 in labor. Mayor Coleman retook the dais. Mr. Cooper asked if this would provide assurance that it would mitigate noise and vibration. Mr. Fletcher stated that the proposal was assembled remotely with questions answered by Red's and photographs and that this evaluation provides no guarantee. Council discussion followed with Mr. Fletcher. Mr. Wade indicated that staff could provide more information on what noise mitigation could be expected with this. Mr. Wade indicated that he would like to have an idea if Council would like to move forward, knowing that the \$300,000 would come from the general fund and the use of a 380 grant. He stated that it would amount to one penny on the tax rate for a year. Mr. Marsh asked if 4B sales tax funds could be used for this. Mr. Akers stated that it is not a primary employer, so he does not believe that 4B funds could be used for a shooting range. Mr. White asked if there was a provision for upgrades for buildings. Mr. Akers stated not that he knows of, that 4B funds are not usually allowed for retail establishments. Mayor Coleman explained that while he feels for the neighbors, to put it into perspective for the entire city, the Council met with the Library Board in worksession tonight and he feels money allocated to the Library would assist more citizens. He stated if it was \$10,000, they could consider it, but \$300,000 is a lot in a time when they have a large need for the Library and they did not give raises to the employees. He stated that he thinks that continuing to talk about it is probably keeping hope with the neighbors that is unrealistic.

Mr. Marsh requested that Karen Ziegler, owner of Red's, 1908 West Pecan, take the podium. Mr. Marsh asked Ms. Ziegler if there are any grants that would be available from the NRA (National Rifle Association). Ms. Ziegler stated that she would be willing to look into that as well as the NSSA (National Skeet Shooting Association). She stated that they have been caulking the cracks with self expanding foam, and trying to seal everything possible where noise is escaping, and are also asking the electricians if they can build a three-sided barrier around the fans to direct the noise toward the street. She stated that they are working on it on their own and that they want to be a good neighbor and to work as hard as they can to get as much of this resolved as possible. Mr. Marsh asked if the building had any noise abatement systems. Ms. Ziegler stated she believes the concrete blocks are filled in their cavities. She stated that she just attended a show and received some information from vendors that do abatement, so she will learn more in the future. Mr. Marsh stated that he does not think that they should give up on it because the homes were there and then the gun range was built, and now that they are in the City, the City can at least serve as a mediator and catalyst to come to a solution. Mayor Coleman agreed that the City can be a mediator but not spend the money; that he thinks there are other areas where the City's money is better spent. Mayor Coleman stated that he does not want to continue to tell staff to spend time on this. He stated that he would like to get away from having staff try to figure out if they are going to have to find money for this. Mr. White stated appreciation to Ms. Ziegler for being a responsible business owner, knowing that they are

fully within their rights to continue to operate as is. Mr. White stated that the neighborhood has asked us to address this and that is where we are at. Ms. Ziegler stated that they will continue to seek additional alternatives. Mr. White stated that he thinks that we still need to do our due diligence and continue as a liaison role with the business to see if there is a way to significantly reduce the noise.

Mr. Gonzales stated that they have to be receptive to the concerns of the citizens and to be sensitive to the business owners. He stated that it is a unique situation and he does not think that the City can make that investment because we have projects that are more pressing. He stated that they can move forward with the relationship with the neighbors and the business in a liaison role, but they serve as a stewards of taxpayer dollars and have to be careful with that.

Mr. Wade stated that at this point he has been asked to continue as a mediator and liaison and to look for grants. Mayor Coleman asked if there is a motion to be made for Mr. Wade to find out what it would cost to get a consulting contract to fix this problem. Mr. White indicated to make that motion. The motion died due to lack of a second. The City was to continue to serve as a mediator and liaison and to search for grants.

8C. 2010-0447

Authorizing the City Manager to execute a letter of commitment to Travis County pledging Pflugerville's portion of approved projects that fall within Pflugerville's City Limits if there is a successful referendum including those projects.

There was discussion on the item. No action was taken.

Mr. White and Mr. Marsh exited the dais. Mr. Fletcher provided an updated spreadsheet from what was provided in the packet and provided information on the item. He stated that he was making a change to the staff recommendation and advised now to take no action until the Capital Improvement Program is reviewed. Mr. White and Mr. Marsh returned to the dais. Mr. Cooper asked if there is a deadline on the item. Mr. Fletcher indicated that July is their deadline. Mayor Coleman asked if this is binding on the City. Mr. Fletcher indicated that the City would be expected to follow through with its commitment and would bear the responsibility to improve the roadway in its jurisdiction. Mayor Coleman stated that it is potentially a good idea especially on Weiss Lane. Mayor Coleman asked that Mr. Marsh and Mr. White get with Mr. Fletcher to get more information. Mr. White stated that he reviewed all of the material and only had a question if it were an all or none offer. Mr. Fletcher stated not at all. No action was taken on the item.

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

There was discussion on the item. No action was taken.

Mr. Wade stated that we are still at a quandary with what we can do of assistance here as well. He stated that this business was in business prior to annexation, and there is very little that the City can do to mitigate this issue any further than we already have. He stated that he thinks we would continue in a liaison/mediator role and possibly look for grants, although he is not sure what would be available. Mr. Fletcher provided a description of the location on a map. Mayor Coleman asked Mr. White if he had any additional questions. Mr. White asked if any improvement had been made since the neighbors gave public comment or if they are still at odds. Mr. Wade stated that he believes they are still at odds. Mr. White indicated that he would like to hear comments from the citizens.

Sandy Flora, 807 Ramble Creek Drive, stated that they are not against business, but they are adamantly opposed to business in single family residential with loud music. She stated that she is certain that city administrators did not know that this venue would turn into such a noise nuisance. Ms. Flora spoke to her concerns regarding noise and traffic. She stated that they have an outdoor stage with amps and the music went on one time to 1:30 a.m. Mr. Cooper asked if they have ever called the police when it was too noisy. She stated that in some cases they got the off duty police and they did not do anything about it; that they showed up and there was no resolution.

Elizabeth Gomez, 900 Ramble Creek, stated that she was here because they still have a lot of unanswered questions and unresolved problems. She stated that they had a meeting with the Police Chief and they have concerns with the interpretation of noise ordinance. She stated with the loud DJs and announcers, they can hear every word at her house. She stated that when they call the police it is all about the 85 decibels. She stated that if they would come into her home they would know that they are disturbing the peace. She stated that this venue was brought in as a bed and breakfast and now has turned it into a full-fledged wedding event center. She stated that the Police Chief had asked them to build a retaining wall around the premises as a sound barrier. She stated that they have had a lot of citizens sign a petition and that she thinks it is something important that should be addressed.

Peri Laughlin, 906 Ramble Creek, stated that the events at McMurtrie are raucous events lasting well into the night. She stated that her children are unable to sleep and she feels that their rights as homeowners have been taken away. She stated that it was not an events center upon annexation and presented a Google earth photograph. Mayor Coleman stated that would be one of his questions, if McMurtrie was a bed and breakfast or an events center upon annexation.

Agnes Thompson, 519 Dusty Leather Court, stated that the noise from McMurtire causes her to hear "boom, boom, boom" and it is shakes the wall. She stated concerns with the increase in traffic with a venue that serves liquor. She stated concerns for the increased traffic and activity on Edgemere and Ramble Creek, roads filled with children going to the park. She stated that a

child is going to get hurt, mammed, or killed. She stated that she has been told they have off-duty police officers and the problem is that there is a conflict of interest when that happens. She stated that she does not want to worry about the kids. She stated that somebody is going to get hurt and it is going to be a child. She stated that they really need to look at this. She stated that they came in as a bed and breakfast and they have never been a bed and breakfast.

Mayor Coleman asked Mr. Fletcher regarding the status of the business upon annexation. Mr. Fletcher explained that in a letter from the Planning Director at the time that the uses were identified and those uses included a wedding and events center.

Mr. Wade stated that as a city there are limitations on what we can do. He stated that one of the things that he will ask staff to do is to go back in and rejustify, and to ask the City Attorney to also look at it from a legal standpoint. He stated that he will also ask the City Attorney his opinion on what we can do more than what we are doing. He stated that if there is anything that he can do from a legal standpoint, he would be happy to do it.

Mr. Cooper stated that it really bothers him, that it seems really out of character, especially alcohol consumption and kids around there, that he thinks that is concerning. Mr. Wade stated that he will ask Police Chief to look at his tools to approach this issue. Mr. Gonzales stated regarding the police officers, that someone stated that our off duty police officers are no longer being used there. Mr. Gonzales stated concerns for people driving out of the events under the influence of alcohol.

John Gomez, 900 Ramble Creek Drive, indicated that when McMurtrie Farms has events, they stop people from using the hike and bike trail. He asked who would police the city property they are using. He spoke to concerns for road access that used to be available, which has now been closed by McMurtrie Farms. Mr. Wade stated that they will review the ownership and control as well.

Mr. White thanked the citizens for coming out. He stated that we have a business in town and the way the operation is currently handled is not currently in sync with the neighborhood. He stated that he would like to find out exactly what the legal status is and what the City can do, and to work with the neighbors and the business. He stated that it could be a situation that the business states times of operation. He stated that he knows from input that there are sound, congestion, and access issues. He stated that he does not want to drive off a business and that he hopes that the business finds that what it is doing now is causing undue stress on the neighbors. Mr. Marsh asked how they could be under 85 decibels.

Chief Hooker stated that the decibel meter is used until 10:00 p.m. He stated that if the neighbors feel harrassed after 10:00 p.m., they should call the police and they will dispatch an officer to the location and ask the people to turn the music down. He stated that they do not return unless they receive a second complaint. He stated that a ciitation is issued on the second visit and they shut the venue down. He stated that he thinks Mr. Akers is better versed in the legality of the ordinance. Chief Hooker spoke regarding the noise ordinance. He stated that he did meet with McMurtrie and representatives from the community and suggested that they place a barrier down the east side of the

property, to provide a visual and noise barrier. He stated that they have built a metal fence with vines. Chief Hooker stated that he has tried to mediate but after the picketing of the business last weekend, he does not believe that there is going to be mediation between those two groups any longer. He stated that they will continue to have issues there and that these issues are subjective. He stated that the officer has to have the ability to make the decision if the noise is reasonable after 10:00 p.m. He stated that they use the decibel meter prior to 10:00 p.m. Mr. Marsh asked if our noise ordinance is proficient. Chief Hooker indicated that he believes it is. Mr. Wade stated that he would like an opportunity to look at this further and to bring back to Council on March 8. No action was taken.

- C. 2010-0436 Discuss and consider action regarding future agenda items.

Mr. Gonzales requested a proclamation for National Work Zone Awareness week from April 4 to April 8.

Executive Session Held

Mayor Coleman announced that the City Council was retiring to executive session on items 9B (2010-0445) and 9C (2010-0436) for the deliberations regarding economic development negotiations. The time was 9:07 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. No action was taken.

- 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. No action was taken.

Executive Session Closed

Mayor Coleman reconvened in open session at 10:00 p.m. No action was taken.

Adjourn

The meeting was adjourned at 10:00 p.m.

Mr. Marsh made a motion to adjourn. Mr. White seconded the motion. All voted in favor. The motion carried. The meeting was adjourned.

Respectfully submitted,

**Karen Thompson
City Secretary**

Approved as _____ on February 22, 2011.