

**Minutes**  
**Regular Council Meeting**  
**March 18, 2014**

On this 18<sup>th</sup> day of March 2014, at 6:00 p.m. the City Council of the City of Devine convened in a Regular Meeting; the same being opened to the public at their regular meeting place; thereof, at City Hall, 303 S. Teel Drive, Devine, Texas. Notice of said Meeting having been prescribed in Chapter 551, Government Code, and Vernon's Texas Codes, Annotated, and the following members being present:

Mayor William L. Herring  
Alderman Hal Lance  
Aldерwoman Gina Champion  
Aldерwoman Kathy Wilkins  
Alderman Steve A. Lopez  
Alderman David Valdez

Thus, constituting a quorum.

Personnel present: Dora V. Rodriguez, Interim City Administrator/City Secretary; Denise Duffy, City Accountant; and Tom Cate, City Attorney.

Others present: Heather Brummage, John Brummage, Matt Hales, Robyn Wheeler, Krystal Stehle and Sonia J. Lance, all of Devine, Texas.

Mayor Herring, presiding, called the meeting to order. Mayor Herring also delivered the Invocation and led the Pledge of Allegiance.

The first order of business was the Visitors/Citizens Forum.

No one signed up to speak under this item.

The second order of business was Recognition.

Mayor Herring recognized the following:

- He announced that Chris Champion is now on the Housing Authority Board.
- Thanked everyone, on his and his wife's behalf, for their expressions of sympathy and visitations to the funeral on the loss of his father-in-law.

The third order of business was to discuss and consider adopting a Proclamation for March for Meals Month.

Mayor Herring announced that he had the pleasure of going with County Commissioner Pct. #4 Jerry Beck yesterday to deliver the meals to seniors; they delivered a total of 23 meals. He then read the proclamation out loud to the public.

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 2**

Motion by Alderman Lopez, seconded by Alderman Lance to adopt the Proclamation for March for Meals Month.

Proclamation attached as Exhibit A.

Ayes	--	All
Nays	--	None

Motion carried.

The fourth order of business was to discuss and consider Approval of Minutes: Regular Council Meeting, February 18, 2014; Special Council Meeting, February 27, 2014; and Special Council Meeting, March 11, 2014.

Council reviewed minutes.

Motion by Alderwoman Champion, seconded by Alderwoman Wilkins to approve the minutes for Regular Council Meeting, February 18, 2014; Special Council Meeting, February 27, 2014; and Special Council Meeting, March 11, 2014.

Ayes	--	All
Nays	--	None

Motion carried.

The fifth order of business was to review the TIFF Meeting.

Mayor Herring informed Council that a TIFF meeting was held on February 27, 2014. Council reviewed minutes where it states that this should be over in 2015.

Alderman Lance inquired as to when these meetings take place and said he would like to sit it on the meetings. He will be given Lance Elliot's contact information.

Mayor Herring announced that the next two items would be combined together for discussion since the situations with both items have taken up a lot of time between the City office staff and the Police Department:

The sixth order of business was to discuss and consider concerns regarding 506 Mockingbird Lane; concerns regarding police responses to noise disturbance; harassment accusations; Code Compliance issues and deed restrictions addressed by Heather Brummage.

And

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 3**

The seventh order of business was to discuss and consider concerns regarding 506 Mockingbird Lane for Code Compliance violations and parking by William Matthew Hales, Jr. (Matt).

Mayor Herring informed Council that the City Attorney and the City Prosecutor have been consulted. He explained that Joy Moore, the owner of 506 Mockingbird Lane, has hired an attorney; so, he, as Mayor, has asked Tom Cate, City Attorney, to bring Council up to speed on the basic facts and circumstances surrounding the agenda items. He explained that after City Attorney Tom Cate has addressed these issues, he would allow both Heather Brummage and Matt Hales to make their informal presentations to the Council.

City Attorney Tom Cate explained that he was contacted back in February by the City Secretary and was told that there had been several complaints about Code violations occurring at 506 Mockingbird Lane here in Devine, and he was asked to write a letter to Ms. Joy Moore about the situation existing out there. He said that he did this on February 25, 2014. He explained that we had received a complaint regarding various permit violations on building requirements, and in the letter he outlined the violations that he had been told about. He asked her to get in touch with Code Compliance Officer Darrell Rawlings to talk about the building code violations and to take whatever steps necessary to get into compliance with our building code.

He stated that he was also informed that she was conducting a business at 506 Mockingbird. City staff had gone on Facebook and found basically what amounts to advertising for the use of the pool in the backyard and other amenities in the backyard for parties. He said that in his letter to Ms. Moore he had informed her that that area in the City of Devine is zoned for single family residences and commercial activity is not allowed. He also informed her that if she continued to conduct activity in a residential zone that the City would take whatever legal action they needed to take to make sure that commercial activity is not conducted in a residential area, including filing a law suit to get an injunction to prevent that type of commercial activity in a residential area.

City Attorney Tom Cate mentioned that after Ms. Moore received this letter, she did come down to the City Office to talk to Code Compliance Officer Darrell Rawlings about the matter. Based upon her conversation with Mr. Rawlings, she did get permits and paid the penalty for not having pulled the permits in the first place. She also informed Mr. Rawlings that she was not conducting any commercial activity and if she had been that she would not be doing it anymore, with the understanding that if she does and the City is presented with evidence that this commercial activity is occurring, that we will file a lawsuit to prohibit that.

City Attorney Tom Cate added that we also had a complaint about the noise that was coming from the residence. He said it was his understanding from our police department that once officers were dispatched to 506 Mockingbird to investigate the noise complaint, that by the time they reached the residence the noise had subsided. He spoke to Mr. Bobby Jack Rushing, City Prosecutor, about this and he said that he had also talked with our police department. Mr. Rushing explained to him that since our officers did not hear any noise when they got there, he wanted the neighbors to file written noise complaints. Mr. Rushing told Mr. Cate that if the neighbors filed sworn, written, noise complaints under the penalty of perjury, that he would look into it and he would prosecute it in the

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 4**

Municipal Court. We have an ordinance that prohibits unreasonable noise. This is based upon a reasonable man standard that says if a reasonable man would consider that to be an unreasonable noise and if a jury agrees, there could be a conviction for that for violation of a city noise ordinance.

City Attorney Tom Cate went on to explain that on the issues under Agenda Items #8 and #9 (the sixth and seventh order of business), there have been some concerns about the police response through a noise disturbance. He said he's explained that the best that he can, but if there's a particular complaint against an officer we are required by state law to have the complaining party file a written complaint with the City against the officer. Then, by state law, the Police Chief needs to conduct an investigation. He explained that there are certain rules that we have to follow as a City, and his first primary concern is to keep the City out of trouble and secondly to keep the City Council out of trouble. So, he said, if there is a complaint on a police officer you are required to follow the state statute by law. He stated that sometimes city residents will go and talk to their city council representative, which is fine because that's what the political process is all about but, he stated, we have a code of ordinance where we have an appointed City Administrator and he is supposed to be conducting investigations for the City since he's supposed to have charge of the departments.

City Attorney Tom Cate went over our code of ordinances on the powers and duties of the City Administrator. He said City Council has to go to the City Administrator if they get any complaints and basically they need to let the City Administrator do his job.

City Accountant Denise Duffy passed out a handbook on the Duties of City Council & Mayor (book & disk) put out by Texas Municipal League. City Attorney Tom Cate stated that it is a very good publication and answers a lot of questions. He then discussed the following:

Codes Compliance Issues – He said those are before Code Compliance Officer Darrell Rawlings right now, and he needs to do his job and report to the City Administrator.

Deed Restrictions – The City is not allowed to enforce deed restrictions only unless we don't have a zoning ordinance, but we do have a zoning ordinance. So the enforcement of deed restrictions, by law, under these facts and circumstances is left up to the people who own land over there where these deed restrictions apply; in this case it's up to the neighbors. The City's remedy, if this violation of zoning ordinance continues, is for the City to file a lawsuit in county court law to remedy that violation.

Harassment Accusations – City Attorney Tom Cate stated that he wasn't sure of the harassment accusations but stated that he was aware that Ms. Moore had contacted a lawyer, Grady Roberts, from Pearsall and he wrote letters to Ms. Brummage and Mr. Hales, and he also sent copies to him and to the City.

Parking Issues – He stated that as long as people parking on the street are not obstructing the flow of traffic, it is not a violation. The purpose of the street is to allow people to drive on the street, to get from point to point, and also to have a place to park their automobile. City Attorney Tom Cate

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 5**

added that Council can change that but he didn't think that was the proper remedy in this case. He said that his understanding is that if there is a problem with traffic over there, it's because of commercial activities going on which goes back to Zoning; not to Parking. He said Zoning is the reason that Council, prior to this, passed a zoning ordinance to control things like this – noise, traffic congestion, etc., to not allow commercial activities in a residential zone.

No Trespassing Signs – According to City Attorney Tom Cate, if the citizens want to put up a No Trespassing sign, there is nothing wrong with that; they are certainly in their own right, and it is not a problem. He added that there may be a problem in enforcing that with criminal trespassing but as far as putting signs up, they can do that.

Alderwoman Champion inquired about the definition for commercial business, and how do we know what is or isn't. City Attorney Tom Cate responded that if you are receiving consideration for your activity, it's going to be commercial. He explained that if you're just having a party, it is not commercial. Alderwoman Champion went on to inquire as to how the City would go about finding out something like that. According to City Attorney Tom Cate, we need evidence. The best thing would be to have someone who attended say that he/she paid this person money for the use of their property. He went on to say that advertising could be some proof but he wasn't sure if it would be enough proof. However, advertising with prices would be a good indicator of commercial activity. He explained that we did get pictures and pricing off of Facebook before he sent his letter. Interim City Administrator/City Secretary Dora V. Rodriguez added that she has checked Facebook since then and all evidence has been removed. Brief discussion was held regarding parties continuing but not sure of anything being charged and not having any proof.

Alderwoman Champion also inquired if inspections were done afterwards on the permits that Ms. Moore did come in to get and paid fees. City Attorney Tom Cate explained that we couldn't inspect some of the work that we were told about because it was already covered; it's something that we're just now finding out happened years ago. Fines and permit fees have been doubled on the new ones and they have been paid.

Mayor Herring then informed council of the following work done which was addressed in the letter:

- Construction of three new outbuildings
- Construction of an in-ground swimming pool
- Construction of an at-large ground fish pond with a waterfall feature
- Construction of a large concrete slab with exposed plumbing
- Construction of a new exterior kitchen
- Remodeling of existing kitchen
- New bathrooms inside and out
- Construction of a new privacy fence

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 6**

Mayor Herring informed Council that Code Compliance Officer Darrell Rawlings did address the first seven issues, and the construction of the new privacy fence is another issue involving deed restrictions, not a city ordinance.

Alderman Lance wanted to know the definition of a fence and he was told it needs to be over six feet tall to require a building permit.

Alderwoman Champion inquired as to what the homeowner needs to do regarding deed restrictions. According to City Attorney Tom Cate, the homeowner, not the City, would need to file for an injunction to enforce the deed restriction. It was noted that in this case, Mrs. Heather Brummage provided the deed restrictions

Mayor Herring then allowed Mrs. Heather Brummage to speak.

Mrs. Brummage addressed City Council as they reviewed a copy of her documentation. She introduced herself as a neighbor to Ms. Joy Moore. Some of the things addressed were as follows:

- On or about March 5<sup>th</sup>, she called the non-emergency number to the police department to report loud music at 506 Mockingbird Lane. An officer arrived 20 minutes later; they did turn down the music only to turn it back on again – even louder – after the officer left.
- The loud music has been an ongoing issue for approximately one year.
- Her children complain about not being able to sleep at night.
- She calls the police department repeatedly about the loud music only to be told by dispatch that there is no time limit on loud noises and that when the officers sit in the street, they don't hear the music.
- One officer actually admitted that he had not been dispatched as many times as he was told she had called in. She expressed concerns to Lt. Kandy Benavides as to how dispatchers can pick and choose which calls they dispatch, and she's still waiting for clarification.
- On another night of more loud music, she called again and spoke to the officer dispatched regarding a Demand Letter that was delivered under her door by Ms. Joy Moore, even though she has four eye-level "No Trespassing" signs in her yard. She was told by the officer that the letter seemed nice and all Ms. Moore wants is to finish her wall and he felt she should comply. To this, she replied that the contents of the letter were not relevant, but rather the fact that she came onto her property to deliver it. She was told by the officer that he wasn't sure if her "No Trespassing" signs were even legal and stated, "I think they have to be in purple paint or so many feet apart but I don't really know. She, in turn, asked him "How can you enforce the law if you don't even know what it is?" She was later given a complaint form to complete.
- Later she was shocked as the same officer later commented, "It's funny I got this call because we were just talking about how you always call but when we get here, we don't hear the music." "It's almost as if you are harassing HER." The next day she receives a letter from Joy Moore's attorney suing her for harassment and to stop calling the police department.

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 7**

- Later, same evening there was an incident with a grown man, boyfriend of Joy Moore's, barking at her dog and yelling at her (as she is calling the police officer) to shut her dog up. Officer Perez responded to the scene and commented that "Oh, he's just a drunk." He basically told her there was nothing he could do, but did advise her that there is an ordinance for barking dogs. At this point, she is in total disbelief. The next day, she expressed her concerns with Lt. Benavides.
- Another concern is the disconnect between city codes and deed restrictions in reference to the 8 ft. stucco wall being built between her home and 506 Mockingbird Lane. She asked, "How can the City permit construction of anything that violates the deed restriction?"
- She wants to live in peace and raise her children in a community that is going to lend to their development. She said she wants to be part of the solution, not just a resident who complains about the needs of our community. She added that if our infrastructure is not sound, how we are going to be able to support the growth that Wal-Mart and other future businesses will surely bring.

Mr. Matt Hales addressed City Council next. He expressed his thanks also, especially to Alderman Lance and Alderwoman Wilkins.

He informed City Council that he has been living next to this for 5 ½ years with this mother. He stated that he is appalled by the lack of communication between the City Administrator and each council member. He told City Council that these two council members had no clue that these letters had been circulating and that there was something going on in their own council district. He asked, "How are they supposed to defend us when they don't even know that Ms. Moore has been sending letters and I've been sending letters?" He said that in defense of them, he's going to give them a chance to be informed. He told Council that he would be back before the City Council and said it's going to be a long road.

Mr. Hales told City Council that he was going to take Ms. Moore to court for deed restrictions. He also said he was going to get the City to up-code their Code Compliance. He went on to say that he is bothered that when he comes in for Code Compliance, he is required to fill out a form giving us his name, address, phone number and his e-mail address yet there is no intention of getting back to him with any answers. He said that the "Almighty" letter that Mr. Cate sent, addressed the parties of which he had not complained about and there's no response on the deed restrictions or code violations. He told Council that Ms. Moore is so in violation of Codes violations that it's not even funny. Even though Ms. Moore was issued a permit for her 8 ft. wall, he added that it's interesting that it is 6 ½ ft. in the back yard but in the front yard it increases to an 8 ft. tall stucco wall.

Mr. Hales informed Council that he is not going to let Ms. Moore torch his parents' investment at 504 Mockingbird Lane.

Mr. Hales spoke of how brilliant Ms. Moore is and how she could include you in a lawsuit.

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 8**

Mr. Hales touched on the following:

- Parking – He doesn't think anyone who has rented her house for parties will ever come forward and admit to that for fear of Ms. Moore turning around and including them in a lawsuit. He had a two hour conversation with her attorney, Grady Roberts, and presented him with his side and gave him pictures. He then gets a letter from Ms. Moore suing him for being a nuisance neighbor and blowing dirt on her car that had been parked there for 58 days and never been moved. Her attorney was quite taken back at the fact he had no clue of the letters she had sent him and the Brummages or the letter from City Attorney Tom Cate. However, he is optimistic that maybe Ms. Moore will begin working with them on the parking situation.
- He talked about the parties being held there and mentioned that unbeknownst to Ms. Moore, he himself has booked a party with her through his attorney. He plans to tell her "Gotcha!" He said it's sad to be playing this way under the fence with her, and called her a "sneaky snake" who works for a lawyer at USAA; he said she pools from USAA's legal resources and she slides right under the fence.
- He's upset that the City Administrator has not contacted him although he appreciated that Interim City Administrator/City Secretary Dora V. Rodriguez has shown the most interest and she did meet with him yesterday; he'll wait to see what happens.
- He put up "No Parking" signs in regards to the party-parking situation and it got called in to the police. Then dispatch got called that he was stealing trash cans and abusing trash cans in the middle of the street while creating a dust storm.
- He's not going to let her destroy his property value.
- He's got 17 deed restrictions that he's going to go after, and that is just starting. What she doesn't know is that he has a blueprint of her house which he got six months before she purchased it because he was looking at it to purchase. Her code violations are overwhelming.
- Regarding the fence, he wanted to know how Darrell could've given her a permit on an eight foot wall in the front of her house which cuts his view off totally down the street. He has to back into his driveway because he can't see to get out of his driveway. He feels this is something that needs to be fixed, and it is not just him.
- He feels that Officer Perez's interest is not with the City's.
- When asked by Grady Roberts, her attorney, what it would take to resolve this, his response was "for her to treat us with exactly the same respect that she wants us to treat her with".
- This has escalated so far out of control and because of her drunken boyfriend and his mouth and her niece who lives there (and her mouth); he put up the "No Trespassing" signs because he doesn't want them on his property.
- It's going to get more serious.

Mr. Hales thanked Alderwoman Wilkins and Alderman Lance for their help, and thanked City Council for listening.

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 9**

Mayor Herring then asked if anyone in the audience was there representing Ms. Joy Moore to give them the opportunity to respond, but no one spoke out.

City Attorney Tom Cate commented that everyone understands what the situation is out there and we just need to keep working towards a solution; if it means going to court, we have to go to court.

Mayor Herring advised that since we do have the idea of lawsuits involved, he would not be asking for any motions on this because it is ongoing.

Some comments made were as follows:

Alderman Lance – He found out about this through friends who have known about it for some time yet he only found out yesterday. He wanted to know why it was so slow getting to Council. He said apparently a lot of people at the City know about it.

Alderwoman Wilkins – She inquired if anyone is going to keep Heather Brummage or Matt Hales informed on this. According to City Attorney Tom Cate, someone has to come in and file a written complaint first. They would need to go to the police department and ask for Lt. Benavides, since she is aware of this situation, and ask to file a sworn complaint on noise at 506 Mockingbird; and same for parking issues or traffic flow. Brief discussion continued on the width of the street and what creates an obstruction on the street.

Krystal Stehle of 603 Mockingbird Lane inquired if there is a noise ordinance. She spoke of having parties but shutting down early at a decent hour due to having elderly neighbors. She wanted to know at what time one gets complained on, in case there is a party and it does go on late.

City Attorney Tom Cate responded that it doesn't matter what time; it's just the level of the noise.

Mr. Matt Hales stated that the problem is the bass in the music is the big issue; it makes the windows vibrate.

Alderman Lopez commented and just wanted to be clear that the City Administrator would be taking care of this and that as city council they would not be micromanaging anything. City Attorney Tom Cate emphasized that was correct. He added that if a council member had a problem they are made aware of, they would need to go talk to the City Administrator and not go to the police department, for example.

Alderwoman Wilkins inquired if the person having the problem talks to the City Administrator wouldn't the City Administrator need to let them (as council) know about it? According to City Attorney Tom Cate, that would be a policy thing. He told Council that he feels the lines of communication between the City Administrator and the Council have been fairly good, but thinks that the problems we are encountering now are because the City Administrator had surgery and he's been out-of-pocket during the time that all of this has been going on. He felt that once he starts

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 10**

feeling better and gets back to work, that it will resolve a lot of the communication problems that are being talked about tonight.

Mayor Herring thanked everyone for their comments.

The eighth order of business was to discuss and consider Adopting an Ordinance for No Parking during School Zone Hours on Mesquite Avenue, and the effective date.

Mayor Herring explained the location of Mesquite Street being between Windy Knoll and Warhorse Drive; he said the obstruction is around a business that has a lot of cars being worked on. The problem is that Mesquite is the main feeder road to the Intermediate and to the Elementary Schools. Mayor Herring explained that when Mesquite was paved, the schools were not that big and discussed the changes that the schools have gone through regarding increase in size; they have at least quadrupled in size since they were originally constructed. He explained that this street is beautifully paved with curbs but it is a narrow street, and when you have those vehicles parked on the side, it makes it into a one-lane street, and it backs up the traffic on Windy Knoll and also on Warhorse Drive during school hours. Mayor Herring added that the people who run the business on that street have been very cooperative in the past in removing the parked cars on days of heavy school traffic such as the first day of school but it's gotten so bad now during school hours especially at peak times and traffic gets very congested, so this has become a safety issue.

Mayor Herring then read the ordinance out loud.

City Council held discussion on the clarification of school zone hours. According to City Attorney Tom Cate, the City has an ordinance somewhere that establishes those hours. Mayor Herring mentioned that there are already two signs up with the school zone hours on each side of Windy Knoll near the Mesquite intersection. City Attorney Tom Cate also told Council that we have to put up signs before we can enforce the penalty. Also, it was mentioned that the Martin Family runs an auto repair business on that street, and no one was at the meeting for representation.

Motion by Alderman Lopez, seconded by Alderman Valdez to Adopt an Ordinance for No Parking during School Zone Hours on Mesquite Avenue, and effective as soon as the ordinance is published one time in the newspaper and the signs are installed.

Ordinance 03-14A attached as Exhibit B.

Ayes	--	Five
Nays	--	None

Motion carried.

The ninth order of business was to discuss and consider accepting Certification of Unopposed Candidates. *(El noveno orden de negocio fue discutir y considerar aceptar el Certificado de los Candidatos Sin Oposición.)*

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 11**

Mayor Herring read aloud the Certification of Unopposed Candidates prepared by City Secretary Dora V. Rodriguez, declaring Kathy Wilkins-District #4 and David Valdez-District #1 as unopposed candidates; therefore, declared elected. *(Alcalde Herring leyó en voz alta el Certificado de los Candidatos Sin Oposición que fue preparado por la Secretaria de la Ciudad, declarando Kathy Wilkins-Distrito #4 y David Valdez-District #1 como candidatos sin oposición; en consecuencia, declarados elegidos.)*

Motion by Alderman Lance, seconded by Alderman Valdez to accept the Certification of Unopposed Candidates. *(Mociónado por Concejal Lance, segundado por Concejal Valdez para aceptar el Certificado de los Candidatos Sin Oposición.)*

Ayes	--	Five
Nays	--	None

Motion carried.

The tenth order of business was to Discuss and consider ordering Cancellation of Election for Alderman District #1 and Alderman District 4. *(El décimo orden de negocio fue discutir y considerar ordenar la Cancelación de Elección para las carreras electorales del Concejal Distrito #1 y Concejal Distrito #4.)*

Motion by Alderman Valdez, seconded by Alderwoman Wilkins to order Cancellation of Election for Alderman District #1 and Alderman District 4. *(Mociónado por Concejal Valdez, segundado por Concejal Wilkins para ordenar la Cancelación de Elección para las carreras electorales del Concejal Distrito #1 y Concejal Distrito #4.)*

Ayes	--	Five
Nays	--	None

Motion carried.

The eleventh order of business was Informational Items.

Mayor Herring announced the following:

- The Driscoll Public Library received the Tocker Grant in the amount of \$49,998.00. We will be re-arranging the library so the library will be closed from April 21<sup>st</sup> through May 9<sup>th</sup>.
- VFW – Alderman Lopez announced that they have some books on the Korean War and they will be donating a box of books to the Driscoll Public Library and another box to the school library.
- A Track Meet is scheduled for this Saturday
- Softball boys and girls will be playing in Crystal City tonight
- A mobile unit from UTSA is coming tomorrow afternoon to the high school to help seniors in filling out the FAFSA form for financial help. The public is welcome.

**Regular Council Meeting Minutes**  
**March 18, 2014**  
**Page 12**

There being no further business to come before the governing body, motion was made by Alderman Lance, seconded by Alderman Lopez to adjourn the meeting.

Ayes	--	Five
Nays	--	None

Motion carried.

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Mayor

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City Secretary