

Minutes
Regular Council Meeting
May 21, 2013

On this 21st day of May 2013, 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
Alderwoman Kathy Wilkins
Alderwoman Gina Champion
Alderman Steve A. Lopez
David Valdez

Thus, constituting a quorum.

Personnel present: Gary Pelech, City Administrator; Dora V. Rodriguez, Asst. City Administrator and City Secretary; Denise Duffy, City Accountant; and Tom Cate, City Attorney.

Others present: Sandy Herrera, Devine News; James Armstrong, Medina Valley Times; Patrick M. Reilly, Cedar Park, Texas; William White, San Antonio, Texas; Ira C. & Donna Known, Bobby Dominguez, Roland & Isabel Esquibel, Hank & Audrey Grage, Sonia J. Lance and Mary Jane Balderrama, 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 spoke under this item.

The second order of business was Recognition.

Mayor Herring thanked City Secretary Dora V. Rodriguez and her election staff for a great job in running the Early Voting Elections, and especially Gilbert Fraga for doing such a great job on Election Day as the Election Judge. He also recognized the Arabians on doing such a fine job. He then thanked Bobby Jack Rushing for filling in for Tom Cate while he was out, and also welcomed back City Attorney Tom Cate.

The third order of business was to discuss and consider adopting a Resolution Honoring the Veterans of the TET Offensive.

Mayor Herring first recognized several members of the VFW. Among those he recognized were: Patrick M. Reilly of Cedar Park, Texas, representing the Vietnam veterans. Then from our local VFW and Ladies Auxiliary were: Steve A. Lopez, District Commander, and his wife Sofia; Roland

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Esquibel, Post Commander, and his wife Isabel; Bobby Dominguez; Henry Grage and his wife Audrey; Richard Saldana; and Ira and Donna Keown. Mayor Herring thanked them all for their services to our country and for everything that they do. He then read the resolution out loud.

Motion by Alderman Lopez, seconded by Alderwoman Wilkins to adopt Resolution 5-13 Honoring the Veterans of the TET Offensive.

Resolution 5-13 attached as Exhibit A.

Ayes	--	Five
Nays	--	None

Motion carried.

The fourth order of business was to Administer the Oath of Office to newly Elected/Appointed Officers. *(La cuarta orden de negocio fue administrar juramento a los oficiales recién elegidos/nombrados.)*

City Attorney Tom Cate administered all three Oaths of Office: to Mayor William L. Herring, Alderman Steve A. Lopez and Alderman Harold J. Lance. *(Tom Cate, el abogado municipal, administro los tres juramentos de oficina: a Alcalde William L. Herring, Concejal Steve A. Lopez y Concejal Harold J. Lance.)*

The fifth order of business was to Canvass Election Returns for the May 11, 2013 General Election for District #5. *(La quinta orden de negocio fue escrutinar los resultados de la elección general del 11 de Mayo del 2013 para Distrito #5.)*

Mayor Herring congratulated Hal Lance and Dave Morgan for running a clean campaign, and he also congratulated our newly elected school board members, Carl Brown and Wes Herring. *(Alcalde Herring felicitó a Hal Lance y Dave Morgan por correr una campaña limpia, y tambien felicitó a los oficiales de escuela recién elegidos, Carl Brown y Wes Herring.*

City Council reviewed the election results. *(El concejo municipal verificó los resultados de la elección.)*

Motion by Alderman Lance, seconded by Alderman Lopez to approve the Election Returns for the May 11, 2013 General Election for District #5. *(Moción hecha por Concejal Lance y apoyada por Concejal Lopez de aprobar, escrutinar los resultados de la elección general del 11 de Mayo del 2013 para Distrito #5.)*

Ayes (<i>Voto a Favor</i>)	--	Five (<i>cinco</i>)
Nays (<i>Voto en contra</i>)	--	None (<i>ninguno</i>)

Motion carried. *(Moción aprobado).*

The sixth order of business was to discuss and consider Appointing a new Mayor Pro-Tem.

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Mayor Herring thanked Alderman Hal Lance for doing such a great job as Mayor Pro-Tem during the times that he was absent. He also thanked Mrs. Sonia J. Lance for attending meetings with Alderman Lance.

Motion by Alderwoman Wilkins, seconded by Alderman Lance to appoint Alderwoman Champion as the new Mayor Pro-Tem.

Ayes	--	Five
Nays	--	None

Motion carried.

The seventh order of business was to discuss and consider Approval of Minutes: Regular Council Meeting, April 16, 2013; Special Council Meeting, April 19, 2013; and Special Council Meeting, April 22, 2013.

City Council reviewed the minutes.

Motion by Alderman Lopez, seconded by Alderman Valdez to approve the Minutes for Regular Council Meeting, April 16, 2013; Special Council Meeting, April 19, 2013; and Special Council Meeting, April 22, 2013.

Ayes	--	Five
Nays	--	None

Motion carried.

The eighth order of business was to discuss and consider adopting an Excessive Force Policy Resolution.

Mayor Herring read resolution out loud.

City Administrator Gary Pelech informed City Council that this resolution has to do with the Home Program and is required by the State. City Attorney Tom Cate added that several other agencies also require this if we're going to be eligible for their funding.

Council held discussion on definition of violence.

Motion by Alderwoman Champion, seconded by Alderman Lopez to adopt an Excessive Force Policy Resolution as 5-13A

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Ayes	--	Five
Nays	--	None

Motion carried.

The ninth order of business was to discuss and consider adopting an Ordinance to regulate Game Rooms.

Mayor Herring read the ordinance caption out loud.

City Attorney Tom Cate told Council that he based this ordinance on the Kirby ordinance. He explained that although some council members had liked the Pleasanton ordinance because it was a very strong ordinance, it also provided for some things in there that we cannot legally do such as permit fees. He explained that if we're going to have a permit fee, there has to be a reasonable relationship to the enforcement of the permit. The first thing, he said, that we need to understand is that this ordinance just applies to machines that are legal. If they aren't legal, then there are penal laws that will take care of those illegal machines. The ordinance allows us to charge an occupation tax on those machines and by state law the most we can charge is one fourth of the state occupation tax (\$60 a machine), so we're only looking at \$15 per machine per year.

Mayor Herring inquired why Pleasanton charges so much and asked if they have an illegal ordinance. City Attorney Tom Cate stated that he feels that they do have an illegal ordinance. He told Council that there are some other things in the Pleasanton ordinance that he feels will be difficult to enforce if someone were to challenge it. For example, the ordinance talks about the way that a building should look – not have any curtains on the windows and having it all open. If it is a legal business, we have to treat it the same way that we would treat any other legal business. In the same way that they have limitations on the number of coin-operated machines that they can have in Pleasanton and the number of businesses in the ordinance, Attorney Tom Cate stated that he didn't think they can do that. He said that would be the same as us trying to regulate the number of hamburger joints that we can have in Devine; we just can't do that because the hamburger business is a legal business. Attorney Tom Cate told Council that it all starts with the premise that these are legal machines. If these coin-operated machines are not legal, then our law enforcement needs to enforce the penal law and close them down. It is very difficult to enforce the ordinance and it's very difficult to enforce the penal provisions regarding coin-operated machines.

City Administrator Gary Pelech asked City Attorney Tom Cate if it's the way these machines pay out that makes them legal or illegal. According to Tom Cate, that is basically correct.

Mayor Herring inquired if we have any provisions in here exempting machines operated by community service organizations or churches or other organizations.

City Attorney Tom Cate informed Mayor Herring that the state statute provides for a lot of exemptions. When you think about it, a soda machine can be a coin operated machine. You put in money and it gives you a soda; a candy machine works the same way so there are a lot of things that are exempt, and if it qualifies it's going to be exempt.

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Mayor Herring announced that the reason he was asking was because we had two representatives from our local VFW, Mr. Bobby Dominguez and Mr. Ira Keown, and he asked one of them to explain what they are running out of at the VFW.

Mr. Bobby Dominguez, who runs the local VFW canteen, addressed the Council. He told Council that they have four machines and explained that theirs is called a Donations; it's a V-Sweep in which they donate money towards the sweepstakes. He said that it has been very profitable throughout the State of Texas with the VFW's. It's all governed under the Texas State Lottery Commission. He said they have to pay quite a bit of taxes on this. He told Council that they made 60% through the State; this takes care of the licensing and any legal matters that might come up. He explained that they usually never have any problems with legal matters because they are fair with what goes in and comes out. They keep a close eye on it and govern it very well. He said all the money they make profits back into the community.

Mayor Herring inquired if they are allowed to pay out money instead of prizes.

Mr. Bobby Dominguez explained that they are allowed to pay out. But, he said, they don't call it paying out prizes; it's called winning a sweepstakes. He said you donate towards the sweepstakes and play the machines, and according to whatever you hit, you are allowed to pay out on the sweepstakes.

Mr. Ira Keown, also associated with the VFW, spoke to City Council. He stated that these Sweeps are regulated through the Texas Lottery Commission and Department of Texas VFW. He said they have already researched this; it's been to the State Supreme Court three or four times and has been upheld each and every time because we are running a donation instead of a gambling operation. It's the same as when you buy a lottery ticket at the corner store. Mr. Bobby Dominguez added that it's all governed the same way as bingo's are. He said there may be some variations but it's all under the Lottery Commission.

Mayor Herring asked City Attorney Tom Cate if theirs would be exempt from this tax.

City Attorney Tom Cate's response was that you have to look at it on a case-by-case basis. Whatever is going to be exempt under state law is going to be exempt under our law (the ordinance). So if they're able to function that way now and no one is bothering them, no one is bringing charges against them, then they're probably going to be okay under our ordinance. He reiterated, again, that his initial comments were prefaced by the statement that this just applies to machines that are legal. We are not defining what an illegal machine is by this ordinance; the state law already does that. And, again, if someone is violating the gambling statutes, it's up to our law enforcement to enforce this. That is not what this ordinance does; this ordinance restricts the placement of these coin-operated machines. You cannot have them within 300 feet of a school, church or hospital. But it's

all based upon the premise that this applies to machines that are legal. So if you have a legal machine, this will apply to you but only in the form of the occupational tax, which is \$15.00 a year.

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City Secretary Dora V. Rodriguez held discussion with City Attorney Tom Cate on the permit for the occupational tax being similar to how we handle beer permits for businesses. According to City Attorney Tom Cate, everyone who has coin operated machines, unless they are exempt under state law, is going to have to pay the occupational tax to the City of Devine. He explained that the City Secretary, under the terms of this ordinance, will need to come up with an application for a permit (like the beer permits) and she would be able to charge anyone who applies for that, an application fee based on the amount of time that it actually takes to process the permit.

Mayor Herring stated that he would like to table this item to allow time to publish it in the newspaper and give the people who operate these machines an opportunity to come before council at the next meeting. Council agreed.

Alderman Lance inquired what would be required of the City Office if this were to pass.

City Attorney Tom Cate stated the City Office would need to process the application, collect the fee and collect the occupation tax, which the City does already with other permits.

Motion by Alderman Lance, seconded by Alderman Lopez to table this item so it can be published in the newspaper.

Ayes	--	Five
Nays	--	None

Motion carried.

The tenth order of business was to discuss the first reading on the revised Unsightly Property Ordinance.

Mayor Herring read the ordinance out loud and announced that this is the first reading of the ordinance.

City Administrator Gary Pelech asked City Attorney Tom Cate if he wanted to go over any changes that he noticed.

City Attorney Tom Cate said he did have a couple of changes; however, to follow proper procedure which is to have the first reading, second reading and then the final passage, he preferred to have City Council first look over this draft for the first reading. Then, for the second reading, he could go over his suggested changes with Council.

City Council reviewed draft.

Mayor Herring asked City Secretary Dora V. Rodriguez to correct his name to William instead of Bill.

The eleventh order of business was to discuss the first reading on the revised Junked Vehicles.

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Mayor Herring read the ordinance out loud and told Council that, again, this is just the first reading and requires no action.

City Council reviewed the draft.

Alderman Lance stated that the definition of junked vehicles means that a vehicle is self-propelled, so he inquired about trailers. He said it's not specified in the ordinance

City Attorney Tom Cate said Alderman Lance was right because the state statute specifically defines what a junked vehicle is, and trailers (any kind of trailer) are not included in that definition. He said you would have to look that up under the definition of a nuisance. According to Tom, trailers probably fall under the other ordinance for unsanitary or unsightly conditions on private property. He went on to explain that the reason we have an ordinance with a specific provision for junked vehicles is because they are titled vehicles and we have to account for those titled vehicles to the state; only some trailers are titled but not all of them, and they would be reported to a different agency.

Mary Jane Balderrama inquired from Council about what they are doing with these ordinances, and said she knows that we also have a lot of old ordinances out there.

Mayor Herring explained that we will revise what we have now and it will give us more authority to comply with state law; it will bring us up-to-date.

City Administrator Gary Pelech stated that we have a lot of them that are very hard to enforce because they are so old and they don't comply with some of the state laws. That's why we're trying to change all of this.

Council held discussion on having a public hearing to give people an opportunity to present any input on these ordinances. They want to proceed carefully to be able to stay out of trouble.

The twelfth order of business was to discuss and consider adopting an Ordinance for the Zone Changed of Property described as approximately 19 acres of land located along the north side of Hondo Avenue E. in the area of IH-35 in the City of Devine.

Council held discussion that they've already acted on this back in March and April, and this is just the actual ordinance. Mayor Herring added that we are basically just making legal what has actually already taken place.

Motion by Alderwoman Champion, seconded by Alderwoman Wilkins to Adopt Ordinance 5-13B for the Zone Changed of Property described as approximately 19 acres of land located along the north side of Hondo Avenue E. in the area of IH-35 in the City of Devine.

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Ayes	--	Five
Nays	--	None

Motion carried.

The thirteenth order of business was to discuss and consider recommendation of the Planning & Zoning Commission Meeting held on May 20, 2013.

- a. Acknowledgement of the Preliminary Plan for the zoning classification of Property consisting of approximately 20 acres of land located along the north side of Hondo Avenue E. in the area of IH-35 in the City of Devine, from Class A. Single Family Residence District to Class H. Commercial Business District, which is proposed to include any or all properties with the following addresses: Hondo Avenue E. (R58416).

Mayor Herring informed Council that the Planning & Zoning Commissioners met last night to discuss this and no action was taken. As Council reviewed minutes of the Planning & Zoning meeting, he advised that we have to have a Public Hearing and need to mail out letters to all the people who are going to be affected by this. Mayor Herring added that the Planning & Zoning Commission will be meeting again on June 3 with a Public Hearing, and then we can have a meeting after that to act on their recommendation.

Motion by Alderwoman Champion, seconded by Alderman Lopez to acknowledge that the Planning & Zoning Commission met last night for acknowledgement of the Preliminary Plan for the zoning classification of Property consisting of approximately 20 acres of land located along the north side of Hondo Avenue E. in the area of IH-35 in the City of Devine, from Class A. Single Family Residence District to Class H. Commercial Business District, which is proposed to include any or all properties with the following addresses: Hondo Avenue E. (R58416).

Ayes	--	Five
Nays	--	None

Motion carried.

The fourteenth order of business was Information Items.

Mayor Herring made a few announcements; namely:

- He thanked the public, businesses and newspapers for attending our comprehensive plan meetings; we've had three so far and they have all been great turnouts.
- Our Police Department should be commended for solving home burglaries; they did catch one suspect and recovered a lot of items. Great job done by Chief Rob Flores and our Police Department.
- Thank you also to our Police Department for helping us out last Friday in cleaning up a piece of property.

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- We have received the final rebate check from the Edwards Aquifer Authority for \$23,000.00. We'd been getting a hefty rebate because of the fact that we've been conserving water by pumping from our Edwards/Carrizo Wells, but this is it; this is the last one – no more rebates.
- Mayor informed Council that we will be having some big issues facing us involving water. A patch (that was put in in the early 80's) is leaking on our Edwards Well #1 so that well is not being used. We still have the other Edwards Well which is 28 feet deep and going strong, and we have the other three wells in the city plus our newest one, the L.C. Martin Well.
- We have a big decision to make – Our City Engineer, Raul Garcia, is drawing up plans to go out for bids to see if we can afford to fix that well.
- We also need some sewer lines to be enlarged so we can improve our sewer service and more development around the Lowes and Family Dollar area.
- He thanked the veterans present for honoring us with their service.
- Mayor Herring informed everyone that he's looking forward to another two-year term and said he's enjoyed the last three years.

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

Ayes	--	Five
Nays	--	None

Motion carried.

Mayor

City Secretary