

Minutes
Regular Meeting
June 16, 2009

On this 16th day of June, 2009, at 7:00 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 Jerry Beck
Alderman John Ramirez
Alderman Frank Cortez, III
Alderman David Espinosa
Alderman Hal Lance
Alderwoman Marina M. Antu

Thus, constituting a quorum.

Personnel present: Dora V. Rodriguez, Interim City Administrator/City Secretary; Ofilia Pedroza, Assistant City Secretary; Nancy Pepper, City Treasurer; Tom Cate, City Attorney; Rob Flores, Chief of Police; Billy Grote, Director of Public Works; Ismael Carrillo, Superintendent of Public Works; and Barbara Moore, Library Director; and Darrell Rawlings, Code Compliance Officer.

Others present: Sandy Herrera – Devine News; Cameron Lopez and Laressa Wong – TCEQ; Carly Brehm, Russ Pumphrey and Marcus Wigley – Airport; Clay, Cynthia and Cara Patterson; Sandra Stacy, Mary Jane Balderrama – Devine Garden Club; Ernest Ruston, Douglas J. Haass, Aleesa J. White, Pat Allen, and Sonia J. Lance of Devine, Texas.

Mayor Beck, presiding, declared the meeting opened and welcomed all visitors. Mayor Beck also delivered the Invocation; Alderman Cortez led the Pledge of Allegiance.

Before conducting any business, Mayor Beck recognized Cara Patterson for her outstanding athletic achievements as she passed her medals around for the public to view. Everyone applauded as Mayor Beck announced she had gone to State eight times, and said we were all very proud of her.

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

Ms. Sandra Stacy addressed City Council. She presented a plaque to the City of Devine, Mayor, Council, Administrator and Employees on behalf of the Devine Garden Club – Sandra Stacy, President; and Mary Jane Balderrama, Project Chairman. She stated this was in appreciation of all the help they received with the Four Corners Restoration Project. She said the goal of the Devine Garden Club is to preserve natural beauty and stimulate civic pride.

The second order of business was to discuss and consider approval of Minutes: Regular Meeting May 19, 2009; Special Meeting June 1, 2009; and Special Meeting June 8, 2009.

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City Council reviewed Minutes.

Motioned by Alderman Cortez, seconded by Alderman Ramirez to approve Minutes for Regular Meeting May 19, 2009; Special Meeting June 1, 2009; and Special Meeting June 8, 2009.

Ayes	--	All
Nays	--	None

Motion carried.

The third order of business was the Presentation of Check received from the Edwards Aquifer to the City of Devine for Conserving Water for the Year 2008.

Interim City Administrator Dora V. Rodriguez announced that the City of Devine received a rebate check from the Edwards Aquifer Authority in the amount of \$14,168.00 for conserving water; she said last year we received \$19,000.00. The money will be given back to the customers as an EAA credit on their monthly bill beginning this month. The credit will be for \$2.08 and will be spread out over several months.

The fourth order of business was to discuss and consider the street overlaying to be done on Bright Street.

Interim City Administrator, Dora V. Rodriguez, explained that due to an inquiry from a realtor on a piece of property located off of Bright Street who wanted to know if the lot is split in half by Bright Street, it has come to the attention of Public Works since this is one of the streets that will be overlaid. She informed Council that since Public Works is going to be overlaying the street, they need to know where to stop paving. Council reviewed maps. In researching records in Hondo, the road ends at a cul-de-sac; however, the cul-de-sac has never been developed and the road actually continues. She stated that we are not sure whose responsibility it is to do the cul-de-sac. Darrell Rawlings, Code Compliance Officer, stated that there is currently a fence line along the street right-of-way, as indicated on the plat.

Code Compliance Officer Darrell Rawlings informed Council that Mr. Ferguson represents the current owner who acquired the property through a tax auction and they were trying to get clarification on whether it was two separate lots or one lot altogether because the plat indicated that it was one lot. Code Compliance Officer Darrell Rawlings explained that a mobile home had been moved and it is now one vacant piece of property (Lot 13A). He mentioned that we've had problems with the maintenance of this piece of land (which is behind Country Hugs) because the owner of this property didn't realize how far the property actually extended because the road was going across right through the private property.

Mayor Beck inquired if the neighboring property owners are aware that the cul-de-sac exists. Code Compliance Officer Darrell Rawlings stated he was not sure. Interim City Administrator Dora V. Rodriguez informed him that letters were mailed out back in June of 1998 by Linda Gunn when she

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was City Administrator, so they were notified. Mayor Beck stated that in layman's terms we are going to tear down someone's fence and pave his front yard, and he just wants to make sure that he is aware of it.

Council held discussion on having Public Works just pave up to a certain point for now, or whether to leave Bright Street for "last to do" on the list. Director of Public Works Billy Grote inquired if the road and property should be surveyed first. It was last surveyed by John Howard. Mayor Beck suggested that before we proceed in taking the fence down and paving the front yard, that he would like to see the property owners here for the next council meeting so that everyone knows what is going on.

Motioned by Alderman Espinosa, seconded by Alderman Ramirez to table item until property owners are able to attend the next meeting or set up a special meeting, if needed.

Ayes	--	All
Nays	--	None

Motion carried.

The fifth order of business was to discuss and consider amending the Adopted International Residential Code, 2003, ed, regarding Swimming Pool Permit requirements.

Code Compliance Officer Darrell Rawlings addressed City Council. He told council this applies to all one and two-family dwellings on private property, and then directed Council to Page 3 of the International Residential Code R105.2 Work Exempt from Permit. He said that under Building: #7, it gives an exemption to prefabricated swimming pools that are less than 24 inches deep. He stated that this pretty much implies that all pools over 24 inches deep are not exempt from the building code permits. According to Code Compliance Officer Darrell Rawlings, he has been abiding by this code and even took several people to court last year. He explained that he's had a lot of feedback/concerns from the citizens especially those taking down their temporary pools after summer is gone and then putting them up again the following summer only to have to pay another yearly permit. He explained we've been charging \$40.00 for the pool permit each time it is set up. Code Compliance Officer Darrell Rawlings told Council he doesn't see a need for a permit and he questioned Council whether there is a need for permits on temporary pools. He called other cities and their ordinances pretty much specify that permits are required on permanent pools but not on temporary ones, and they also exempt the temporary pools from having fences to enclose them. He said this is not something he agrees with personally because of the possibility of children drowning and we have other ordinances that require fences and ladders, but he said the main concern here is making them come in and pay a \$40 permit fee for our inspector to go out and check the set up of one of these prefabricated pools. Due to all the concerns received, he told Council he wanted to know if there was any amendment we could do regarding above ground and temporary pools.

City Council held discussion over the possibility of waiving the permit fee. Code Compliance Officer Darrell Rawlings suggested that we waive the \$40 permit fee for temporary pools but to take

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fencing and safety issues as regular ordinance violations. He stated that the in-ground pools, the permanent pools, hot tubs and spas that are connected and hard-wired in will still require the permits and will need to be inspected.

Motioned by Alderman Cortez, seconded by Alderman Ramirez to waive the \$40.00 permit fee for temporary pools but to keep in compliance with all other safety requirements that we have.

Ayes	--	All
Nays	--	None

Motion carried.

The sixth order of business was to discuss and consider work to be done on Anderson Road.

Alderwoman Antu addressed Council on the condition of Anderson Road which is a dirt road behind Corley. She said several people own the lots behind their houses and this road is the only way to get back there behind their lots. She explained she's been getting calls from some of the neighbors that the road is blocked due to other neighbors parking their vehicles or boats. People try to get around it by going around the other side but there are so many dips and holes. She asked if in the meantime there was any way we could do something to level Anderson.

Discussion was held on possibly grading the road. Interim City Administrator Dora V. Rodriguez got some figures from Public Works on overlaying that road. The total cost of materials to overlay Anderson Street is \$23,252.00. She said the problem that Public Works has is that they don't really know where the width of the road begins. Superintendent of Public Works Ismael Carrillo told Council that it has a 60 ft. right-of-way. He said normally you have a 10 ft. easement on either side, but this road has a 15 ft. easement on both sides, leaving 30 ft. for the roadway.

Alderwoman Antu said it would be okay to have it graded just to have access. Director of Public Works Billy Grote suggested that they put base because it's a sand road and they've had to pull out vehicles before. If they just put base, they would be looking at \$4,652.00. Superintendent of Public Works Ismael Carrillo suggested we also get this road surveyed so we know exactly where this road should be.

Council decided to table item and call John Howard to first get a cost on the surveyor.

Motioned by Alderman Espinosa, seconded by Alderman Cortez to table this item until we get more information.

Ayes	--	All
Nays	--	None

Motion carried.

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The seventh order of business was to discuss amending Chapter 2 Administration (Airport) – Section 2-261 of the Code of Ordinances for the City of Devine.

Interim City Administrator Dora V. Rodriguez informed Council that Chapter 2 Administration (Airport) – Section 2-261 of the Code of Ordinances currently states that our airport advisory board currently consists of five members and we actually have eight members, so we need to change it to reflect the eight members.

Airport Manager C.E. (Curly) Brehm commented that we have a good board right now and he'd like to keep all of them.

Motioned by Alderman Espinosa, seconded by Alderman Cortez to amend Chapter 2 Administration (Airport) – Section 2-261 of the Code of Ordinances for the City of Devine as Ordinance 06-09 to reflect the eight member airport advisory board.

Ordinance 06-09 attached as Exhibit A.

Ayes	--	All
Nays	--	None

Motion carried.

The eighth order of business was to discuss and consider going out for proposals for the Purchase of 87 Octane Unleaded Gasoline and #2 Diesel Fuel.

Motioned by Alderman Cortez, seconded by Alderman Lance to approve going out for proposals for the Purchase of 87 Octane Unleaded Gasoline and #2 Diesel Fuel.

Ayes	--	All
Nays	--	None

Motion carried.

The ninth order of business was to discuss and consider going out for proposals for Major Medical and Life Insurance.

Motioned by Alderman Cortez, seconded by Alderman Lance to approve going out for proposals for Major Medical and Life Insurance.

Ayes	--	All
Nays	--	None

Motion carried.

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The tenth order of business was to discuss and consider the proposal from Mr. Arturo Barrientes to sell the Ehlinger property he purchased from a Delinquent Tax Sale to the City for an amount of \$7,500.

Mr. Barrientes was not present at the meeting. Council held discussion on needing this property for the drainage and the possibility of waiting two-three years before they do anything with the drainage. Council brought up the following questions: “What happens if the price goes up?” or “What if it’s not available anymore?” And, “Should we make him a good faith offer?” It was noted that Mr. Barrientes has already come down in the price. Interim City Administrator Dora V. Rodriguez reminded Council that City Attorney Tom Cate had mentioned before that if the property became available at a good price, it would be something that the City should consider purchasing. City Attorney Tom Cate confirmed this and told Council that \$7,500 is an ideal price since the cost at the tax sale was \$6,000 and you would add 25% to that, bringing it to \$7,500. (He actually paid \$5,309.00).

Council held lengthy discussion.

Aldermen Ramirez and Espinosa commented that even though we’re not in a hurry, we need to purchase this property because it’s needed.

Motioned by Alderman Espinosa, seconded by Alderman Ramirez to accept proposal from Mr. Arturo Barrientes and buy the Ehlinger property he purchased from a Delinquent Tax Sale to the City for an amount of \$7,500.00, and to amend the budget.

Ayes	--	Three
Nays	--	One (Alderman Cortez)

Motion carried.

Alderman Espinosa commented that he’s already gotten complaints of high weeds and we need to take care of it.

The eleventh order of business was to discuss and consider options for the Remediation of the Storage Fuel Tank at the Devine Municipal Airport and to authorize the Interim City Administrator to negotiate with Contractors on the Remediation.

Mr. Cameron Lopez from TCEQ addressed City Council and informed them that there is an underground 3,000 gallon storage tank that has been at the airport for several years (prior to 1987). He told Council that by today’s standards, the tank is severely out of compliance with the current rules on storage tanks. He said the State perspective is that it does have violations of those rules and the tank is set for removal which is probably the best option. Mr. Lopez informed Council that this tank was actually found to be under another registration in Devine. He said it wasn’t installed by the City but it is on City property now. Mr. Lopez explained to Council that the removal of the tank is required to be done by a B Licensed contractor, licensed by their agency. He stated that Mr. John

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Barron who works for ACI has this type of license, and as long as the work is overseen by that licensed person, he can use whatever personnel he wants to do the work, which would include City of Devine Public Works. He stated that if the City of Devine should come up with an agreement with Mr. Barron, it would be fine with TCEQ. He discussed other issues with Council on using qualified personnel which could be a significant savings, but it would all be contingent upon Mr. Barron's agreement because it's his license.

Interim City Administrator Dora V. Rodriguez told Council that Mr. Barron was running late for the meeting but in talking to him earlier, he stated he would need to get some figures together but he didn't see a reason why we can't use Public Works.

When asked how this situation had come to his attention, Mr. Lopez told Council it had come to his attention because of another site inspection he was doing, and this tank was listed on that registration.

Mayor Beck stated that we would still need to speak with Mr. John Barron and get his input. Airport Manager Curly Brehm told Council that John Barron would definitely be his choice.

Mr. Lopez told Council they were also looking into other options and introduced Ms. Laressa Wong to the Council. She is with the TCEQ Small Business and Local Governments Assistance Office. She told Council she could help us through the process of understanding the rules and requirements, in addition to any other environmental rules. She stated they also have Environ-mentors which are volunteers that assist the Small Business and Local Governments Assistance Office. They are looking into the possibility of doing lab analysis for soil samples (to make sure tanks are not leaking). Ms. Wong stated that they also still have the Reimbursement Program which is used when petroleum is leaking from the tanks; she briefly discussed the program and application process. Discussion was held on our tank being old and empty, and hopefully with the passage of time, nothing exists but you never know. Timewise, Mr. Lopez told Council that we are still looking at another three-to-four months to comply; the sooner we do it, the better.

Interim City Administrator Dora V. Rodriguez inquired as to what happens once we remove the tank. According to Mr. Lopez, it will go for scrap metal (which John Barron will take care of), and once it's removed from the ground, it also loses its regulation. In order to meet the Violation Process at the airport, they made sure the tank was empty and secured to ensure that no one uses it. Mr. Curly Brehm mentioned to Council that this agency is aware that he is trying to get gas for the City out at the airport. He said that they are also willing to offer training workshops throughout the state by next April.

Mr. John Barron arrived at 8:30 p.m.

Mayor Beck told Mr. Barron that the main question Council had regarding the Remediation of the tank at the airport was, "How much money are you going to charge us?" Mr. Barron said he'll get together and talk about it with Dora V. Rodriguez, Interim City Administrator. He said they're still

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determining how much the City is going to do themselves and what they are allowed to do themselves. He said once they get all that determined; then they can come up with a number.

Motioned by Alderman Cortez, seconded by Alderman Ramirez to give Interim City Administrator Dora V. Rodriguez authorization to negotiate with John Barron, with Alamo 1, to determine the cost of the remediation of the storage tank in order to comply with TCEQ.

The twelfth order of business was to discuss status on the Animal Control Agreement with the City of Natalia.

Mayor Beck informed everyone that this did not work out with the Animal Control officers. It was not feasible on their part to do this on their off-time; they declined the offer.

The thirteenth order of business was to discuss and consider options for getting rid of the Grackles (Birds).

Chief Rob Flores addressed City Council. He said he'd like to know how much he can spend and proceeded to give Council some options. Chief Flores explained the bird cage was effective for the first year only and the Grackles move from place to place. One of the options he looked into was a Fogger which is like pepper spray for birds; it won't affect dogs or humans but it's very expensive.

Mayor Beck felt that it's not feasible for the City to go out and eradicate all the Grackles. Alderman Lance inquired what it would cost if we were to do this and if it would be successful. According to Chief Flores, the Fogger will cost anywhere from \$4,000 to \$8,000, and the Solution it uses goes for \$80.00/gallon but you can only do a certain size area.

Interim City Administrator Dora V. Rodriguez told Council she's received phone calls from several businesses and we need to tell the people something. She requested for Council to include in their motion that property owners be responsible if the birds are on their property. As far as the four corners, she said there is not much that we can do.

Alderman Lance suggested that we look into this deeper and to at least say that we're trying to do something but we haven't decided yet. He suggested we find out what San Antonio is doing. He said it may be cost-prohibited but feels it is wrong to say "We can't do anything." Chief Flores told Council there are also nets, owls, spikes. He said San Antonio uses everything there is available, but they are a tourist city. The most effective option, according to Chief Flores, would be the Fogger.

Motioned by Alderman Ramirez, seconded by Alderman Lance to authorize Chief Flores to inquire on prices and to get as much information as possible, and to table this item pending further investigation.

Ayes	--	All
Nays	--	None

Motion carried.

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The fourteenth order of business was the Executive Session: Pursuant to Provision of the Open Meeting Law §551.071 through §551.076, §551.086, §551.087 Texas Government Code, (Consultation with Attorney, Deliberation Regarding Real Property, Deliberation Regarding Prospective Gift or Donation, Deliberation regarding Economic Negotiations and Personnel Matters).

- a. §551.074 Personnel Matters – Police Department – School Resource Officer and Sergeant Position.

At 8:24 p.m., Mayor Beck announced to the public that the Council would go into a Closed Session. At 8:45 p.m., Closed Session was opened to the public.

No action was taken.

The fifteenth order of business was to Reconvene into Regular Session and Consider Action, if any, on items discussed in Executive Session.

Motioned by Alderman Espinosa, seconded by Alderman Cortez to increase Officer Chris Teague's pay rate for the new Sergeant's position from \$15.47 to \$16.47 (and making him salary) effective immediately, and to amend the budget.

Ayes	--	Four
Nays	--	One – (Alderman Ramirez)

Motion carried.

The sixteenth order of business was to discuss Reports, namely:

- City Secretary's Report – Council discussed Municipal Court fines. It was pointed out that part of the money collected goes to the State. Codes Department is doing something new with the usage of door handle notices as a courtesy; then they'll issue a citation agreement where they allow the residents to indicate how many days they need to be in compliance, rather than us telling them they have 30 days to comply. If they don't comply under their own terms, they will be issued a 10-day letter before going to court. Alderman Espinosa inquired if anyone has been cited for no permits for yard sales. Interim City Administrator informed him that none have been issued yet. She said that the Code Compliance Officer and Clerk, Darrell and Maria, are staying on top of it; they make daily rounds, they check the newspaper listings, and they coordinate with Chief Flores and Lieutenant Benavides if they are not able to make contact with someone.

Mayor Beck inquired about the status of the properties on Transportation and Teel Drive. City Attorney Tom Cate informed him that there are two lawsuits on that. He said Darrell is working on getting copies of the deeds on the people who own those properties. We want to make sure that we include everyone. City Attorney Tom Cate believes that the one on

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Transportation may still be under his mother's name, Frances Rodriguez; he's not sure if a probate has been done on that estate. He stated that if Darrell can get him the deeds tomorrow, he can file the lawsuits on Thursday. He said he's not aware of any other city filing lawsuits against citizens, and this will be a first for Medina County. Mayor Beck also inquired about a house on Judson Street where Patsy Walters lives. Interim City Administrator informed Council that Mr. George Lieck owns that and he came in to talk to Darrell already, and he will be taking care of it. She also informed them that there is also a house by the bus barn where Ashley's is. Darrell made contact with them. The owner apologized and will start cleaning it. The owner of the house next to it will also be cleaning it up and asked for Darrell to work with him.

- Public Works – Alderman Cortez questioned a check made out for \$2,500 to Reyna's Welding and inquired if we only use a certain welder. His concern was that we have a new welder at the Well Yard and he suggested that we look at this closer the next time it comes up. Director of Public Works Billy Grote stated that the problem is that we don't have anyone with much experience in building buildings. Superintendent of Public Works Ismael Carrillo explained to Council that Reyna's did the first building at the Animal Control shelter and he just added on to the existing building. He was paid \$2,500 for the welding labor plus the material (14 sheets of tin @ 30 ft.). The tin alone was \$1,300. Interim City Administrator Dora V. Rodriguez added that Public Works is also short four employees.

Director of Public Works Billy Grote announced that by the end of this week or first part of next week, we should be in Stage II water restrictions. Discussion was held. Interim City Administrator Dora V. Rodriguez also informed Council that Fred Morales was given a courtesy call informing him that if he wants to fill the existing pool, he can do so under Stage I, but our ordinance states he won't be able to do this under Stage II. She stated we may need to do a Special Meeting next week for this. We contacted the Edwards Aquifer Authority and they pretty much said that is going to be Council's call to allow him to fill up the pool. Mr. Morales had inquired if he could get Carrizo water but was told no because we can't pump Carrizo to that part of town. Interim City Administrator Dora V. Rodriguez informed Council that Mr. Morales had paid for 300,000 gallons of water today. Mr. Morales was hoping that by paying for it now, he could be grandfathered in but the Edwards Aquifer said it doesn't work that way; it will be up to Council. Council decided that they definitely want a special meeting next week for Fred Morales.

Billy informed Council that one of the Carrizo Wells went down about two weeks ago and he had to put a new pump and pipe in it. This month we got a bad water sample; the repeat sample also came back bad. Council was informed that we're thinking it could be because of the fact that it just got repaired and everything got moved around and things haven't settled. Billy will be getting with the engineer on this. But, with one Carrizo Well down, it means more pumping of the Edwards Well.

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Discussion was held on using the excess money left on the Street line item for sidewalks (extending the sidewalks from SH-173 to Reyna's Welding). Interim City Administrator Dora V. Rodriguez informed Council that according to our Financial Advisor Phil Sagebiel, the money for the sidewalks cannot come out of the Street line item; it has to come out of Capital Outlay. Discussion was held on the sidewalks. Superintendent of Public Works Ismael Carrillo obtained two quotes; one was for \$9,600.00 if Public Works helps with part of the labor, and the other was for \$13,000.00 with the contractor doing all of the work. Interim City Administrator Dora V. Rodriguez reminded Council that if we're going to do work on Anderson Street, that will also take quite a bit of money. Council talked about putting some numbers together to try to put Anderson Street on the agenda for the next Special Meeting.

- City Treasurer's Report – Accountant Nancy Pepper reported that we are at 67% of our budget; we're holding up on our own and doing very well on expenses. She said revenue is down in the General Fund. Property taxes are in but sales tax and franchise taxes are below budget. She told Council that if we hold what we are doing, we're still going to be okay. The Edwards Aquifer reimbursement check is not reflected in the budget but that will be credited back to the customers. The Gas Fund is holding; they're below revenue at 50% when they should be at 67%. Accountant Nancy Pepper reported that the Gas cash flow is there; it dropped some, but they took care of making a \$68,000.00 bond payment and paying for the gas meters in the amount of \$66,305. They were able to make these payments without having to borrow from Lone Star. She said they usually stay below budget.
- Library – Barbara Moore, Library Director, reported that we had around 600 people, children and adults, just in the four programs they had last week.
- Chamber of Commerce – Interim City Administrator Dora V. Rodriguez reported that the Chamber's next regular meeting will be on June 24th. She announced that James Caldwell stepped down from his position as vice president but may be reconsidering his decision.

Alderman Lance requested that the Reports be the first item on the agenda. Interim City Administrator explained that is how it used to be, but they took too much time and they were moved to the bottom of the agenda for that reason. She also explained that with the old way when reports were listed first, we started getting complaints from out-of-towners who had to actually sit through all the reports before we could get to their item, and this is another reason why we moved the reports to the end. Alderman Cortez commented that the entire Council Packet is given to them on Friday, so that gives them 2-3 days to look over everything. Council held discussion on their preferences and it was decided to leave as is.

There being no further business to come before the government body, motion was made by Alderman Cortez to adjourn the meeting.

Mayor

City Secretary