

Minutes
Regular Council Meeting
June 25, 2013

On this 25th day of June 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
Aldерwoman Kathy Wilkins
Aldерwoman Gina Champion
Alderman Steve A. Lopez
Alderman 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; Rob Flores, Chief-of-Police; Tom Cate, City Attorney; Mary Badillo, City Financial Consultant; and Raul Garcia, City Engineer.

Others present: Robyn Teague, Chamber of Commerce; C.E. (Curly) and Eldora Brehm; Deborah Dauphinee; James R. Spurgers; Charles West; Joe and Adelina Robles; Sam B. Monreal and Sonia J. Lance, all of Devine.

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.

Mr. Charles West addressed City Council and inquired on the paving status on Rossville Road, where he lives.

Mayor Herring responded that Council can't comment under the Visitor's Forum unless it is in reference to a policy, and the policy is that Rossville Road will be re-paved after a water line gets installed. He was told that as soon as we find out a definite date, he would be informed.

The second order of business was Recognition.

- Mayor Herring read a letter from Sheriff Randy Brown in which he thanked Chief Rob Flores and the Devine Police Department for the assistance provided with "Operation Jackpot" which turned out to be a huge success.
- Mayor Herring also thanked the men and women who worked Mission Devine for the ninth straight year.

Regular Meeting Minutes
June 25, 2013
Page 2

- Mayor Herring also recognized our City Financial Consultant's (Mary Badillo) daughter, Senior Army Jessica Sigler who was proudly wearing her Air Force uniform. She is back from deployment; was in Kuwait and is now stationed in Little Rock, Arkansas. He expressed his gratitude and glad that she is now back in the United States.

The third order of business was to discuss and consider Approval of Minutes: Regular Council Meeting, May 21, 2013; Special Council Meeting, June 4, 2013 and Special Council Meeting, June 11, 2013.

Council reviewed minutes.

Motion by Alderwoman Champion, seconded by Alderwoman Wilkins to Approve Minutes for Regular Council Meeting, May 21, 2013; Special Council Meeting, June 4, 2013 and Special Council Meeting, June 11, 2013.

Ayes	--	All
Nays	--	None

Motion carried.

The fourth order of business was to discuss and consider awarding contract for Repairs to Edwards Water Well #1.

City Engineer Raul Garcia addressed City Council and explained to Council that the Edwards Well #1 started leaking oil at 1400 feet deep. When they went in to televise the well, they found a hole in the casing. He explained that this well had been repaired before, about 18-20 years ago but apparently it was not a good repair at the time.

Mr. Garcia informed City Council that a bid opening was held on June 13th and two bids were received of which Alsay, Inc. submitted the lowest bid in the base amount of \$257,010.50, based on using 12 and 8 inch casings. In case the 12 and 8 inch casings do not work, there is an alternate bid for \$128,371.85, based on using 10 and 6 inch casings. Council reviewed a letter submitted by Mr. Garcia recommending the contract be awarded to Alsay, Inc. The letter summarized what the contractors will do. Mr. Garcia also discussed the summarization and explained the tabulation sheet to City Council. He also told Council that this number could go up or down depending on what they find once they go inside the well. If the contract is awarded today, Mr. Garcia stated that contractors would begin work in three to four weeks and it could take up to 90 days if they do the whole thing. Mr. Garcia did emphasize that if this does not work, we may need to abandon the well. The risk for the City is \$63,100.00.

Alderman Lance inquired how long this well has been off-line. According to Mayor Herring it's been off-line over one year. He stated we can get by with the wells that we have, but he would like to have both Edward's wells running because they are our best wells.

Regular Meeting Minutes
June 25, 2013
Page 3

City Engineer Raul Garcia informed Council that the odds are 75/25 in favor of the City. He also told Council that the cost for a new well would be \$1 to 2 Million.

Motion by Alderman Lopez, seconded by Alderman Valdez to award bid contract to Alsay to repair Edward's Well #1 in the amount of \$257,010.50, and to begin work in three to four weeks.

Ayes	--	All
Nays	--	None

Motion carried.

The fifth order of business was to discuss and consider adopting Ordinance regulating Coin-Operated Machines in the City of Devine; providing for an occupation tax on coin-operated machines; providing for the sealing and release of coin-operated machines in the event the occupation tax is not paid; restricting the location of coin-operated machines; providing for the repeal of conflicting ordinance; and, providing for a severability clause.

City Attorney Tom Cate pointed out some changes to Council. He explained that after talking to Alderwoman Champion, under Section 10 – Location, they felt it would be better to add a description on how the distance of 300 feet will be measured. Another suggestion Alderwoman Champion had about a peace officer being able to look into certain areas, but after researching that, he felt it would be better to leave that to a search warrant.

Motion by Alderwoman Champion, seconded by Alderwoman Wilkins to Adopt Ordinance 6-13 regulating Coin-Operated Machines in the City of Devine; providing for an occupation tax on coin-operated machines; providing for the sealing and release of coin-operated machines in the event the occupation tax is not paid; restricting the location of coin-operated machines; providing for the repeal of conflicting ordinance; and, providing for a severability clause.

Ordinance 6-13 attached as Exhibit A.

Ayes	--	Four
Nays	--	None
Abstain	--	One – Alderman Lopez

Motion carried.

Mayor Herring added that on a related matter, the VFW is exempt from the franchise tax and sales tax but they do need to apply for the amusement tax as soon as possible, by contacting the State Comptroller's office.

The sixth order of business was to discuss and consider Adopting Ordinance amending Article II of the City's Code of Ordinances, entitled: "Unsanitary or Unsightly Conditions on Private Property",

Regular Meeting Minutes
June 25, 2013
Page 4

providing for penalties; providing for a cumulative & conflicts clause, providing for a severability clause; and providing for an effective date.

Council discussed that there are no changes to this ordinance since the public hearing. However, City Administrator Gary Pelech pointed out that other ordinances did not specify anything regarding fines, and this ordinance does. He told Council that we are working on having our Codes Compliance Officer being able to give citations.

Motion by Alderman Lance, seconded by Alderman Lopez to Adopt Ordinance 6-13A amending Article II of the City's Code of Ordinances, entitled: "Unsanitary or Unsightly Conditions on Private Property", providing for penalties; providing for a cumulative & conflicts clause, providing for a severability clause; and providing for an effective date.

Ordinance 6-13A attached as Exhibit B.

Ayes	--	All
Nays	--	None

Motion carried.

The seventh order of business was to discuss and consider Adopting Ordinance amending Article III of the city's Code of Ordinance, entitled: "Junked Vehicles; providing for penalties; providing for a cumulative & conflicts clause, providing for a severability clause; and providing for an effective date.

City Attorney Tom Cate pointed out that there was only a formatting change done to this ordinance but nothing of substance. He told Council that he did hold a discussion with the lawyer who drew up this ordinance. He explained to Mayor Herring that this may lead into Item #6 on the agenda which is to discuss the creation of a Municipal Court of Record. He went on to explain that (in the Junked Vehicle Ordinance) we have the municipal court as being the entity that would hold a hearing on the junked vehicles. After discussing that, they agreed that our municipal court does not have jurisdiction. And, in discussing that, they determined that if Devine had a Municipal Court of Record, then that court would have jurisdiction to hear complaints against junked vehicles, unsightly lots, code enforcements, lapidated buildings, unsafe buildings, etc. He explained that we put Item #6 on the agenda just to discuss the Municipal Court of Record because the qualifications of the judge require that the judge be a licensed attorney, and Judge Taylor is not a licensed attorney. According to Tom, if Council doesn't agree on Item #6, we're going to have to amend the Junked Vehicle ordinance to name the City Secretary as the one to conduct

Motion by Alderwoman Wilkins, seconded by Alderman Lopez to adopt Ordinance 16-B amending Article III of the city's Code of Ordinance, entitled: "Junked Vehicles; providing for penalties; providing for a cumulative & conflicts clause, providing for a severability clause; and providing for an effective date.

Regular Meeting Minutes
June 25, 2013
Page 5

Ordinance 6-13B attached as Exhibit C.

Ayes	--	All
Nays	--	None

Motion carried.

The eighth order of business was to discuss the creation of a Municipal Court of Record to aid in Code Enforcement.

Mayor Herring explained that if we are going to establish a Municipal Court of Record No. 1 for the City of Devine, we would need to abolish the court not of record which is what we have now. Currently our municipal court does not have jurisdiction but if the Municipal Court of Record No. 1 is established, it would assume jurisdiction.

Alderwoman Champion commented that she feels it would better benefit the City in order to be able to regulate this the way it needs to be regulated because right now we're getting nowhere with it.

Mayor Herring and Council held discussion with City Attorney Tom Cate to make sure they understood how this works. Some of the things pointed out were:

- In the municipal court not of record that we have now, if Judge Taylor has a verdict and renders someone guilty and they decide to appeal it, there would need to be a brand new trial in the County court, and the same witnesses that we would've had in our municipal court would need to go over there. If they are found not guilty in the County court, it would just be too bad; if they are found guilty and are fined, the County gets the money.

If we were to go to a municipal court of record, there would be some differences, namely:

- There's going to be a record and there would have to be error during the trial that appears on the record before the case is overturned unappealed.
- A transcript would be sent to the County court and the County Judge would determine if we did anything wrong. If she does find a procedural error, she could remand it back to us or she could hear it in her court, but the burden is upon the defendant to show the error.
- Why haven't we done this before? It is long overdue and it's time Devine steps into the 21st century.
- One of the judge qualifications that will affect Judge Taylor is that the Judge would need to be a licensed attorney, which he is not.
- The City would need to hire an official court reporter.

Council discussed that if we pass this ordinance, we are going to have to enforce it. The consensus of the Council was to put this item back on the agenda for July's regular meeting.

The ninth order of business was to discuss and consider Council Appointments.

Regular Meeting Minutes
June 25, 2013
Page 6

As City Council reviewed list of council appointments, Mr. C.E. (Curly) Brehm addressed City Council. He talked about how long he has been on the airport board and how long he has been airport manager. He informed Council that very recently he was able to get an aircraft dealer out of Mexico to use our airport as the headquarters for Texas. They have a very good relationship and he now lives in San Antonio, so it shows that he is committed. He also informed Council that he does not receive a salary as airport manager.

Mayor Herring said he would be talking to Mr. Glen Dale Estep, Chairman of the Airport Advisory Board, about having an Airport Advisory Board meeting at city hall. Mr. Brehm agreed that would be a good idea.

Mayor Herring thanked him for his comments and then continued with the Council Appointments.

List of Council Appointments attached as Exhibit D.

City Attorney – Law Office of Tom Cate:

Motion by Alderwoman Wilkins, seconded by Alderman Lopez to re-appoint Tom Cate as our City Attorney.

Ayes	--	All
Nays	--	None

Motion carried.

Library Board - Sara Hicks, Cindy Wadsworth, Dennie Schmidt, Blain Martin, Maria Silva, Paul Noak, and two vacancies.

Motion by Alderman Lance, seconded by Alderwoman Champion to approve the library board members intact.

Ayes	--	All
Nays	--	None

Motion carried.

Planning & Zoning Commission – Onis Wiemers, Doug Wilkins, Ed Dougherty, Darrell Murdock, Jim Lawler, Mike Herring and Rick Maxwell.

Motion by Alderwoman Champion, seconded by Alderman Lopez to appoint all the Planning & Zoning members as read.

Ayes	--	All
Nays	--	None

Motion carried.

Regular Meeting Minutes
June 25, 2013
Page 7

Consultants and Advisors – Langford Community Management Services; Southwest Securities, Financial Advisory; Mary Badillo, Financial Advisory; and Garcia & Wright, Engineers.

Motion by Alderman Valdez, seconded by Alderman Lance to appoint all the Consultants and Advisors as read.

Ayes	--	All
Nays	--	None

Motion carried.

Airport Advisory – Curly Brehm, Vicki Pumphrey, Bill Bain, Tony Crosby, Glen Dale Estep, Hap Squires, and Greg Coyne.

Brief discussion was held by City Council to vote for each Airport Advisory Board member separately.

Motion by Alderman Lance, seconded by Alderman Lopez to consider each member of the Airport Advisory Board separately.

Ayes	--	Three
Nays	--	Two (Alderman Champion and Alderman Wilkins)

Motion carried.

Airport Advisory Board – Curly Brehm:

Motion by Alderman Wilkins, seconded by Alderman Champion to approve Curly Brehm to serve on the Airport Advisory Board.

Ayes	--	Three
Nays	--	None
Abstain	--	Two (Alderman Lopez and Alderman Lance)

Motion carried.

Airport Advisory Board – Vicki Pumphrey:

Motion by Alderman Lance, seconded by Alderman Lopez to approve Vicki Pumphrey to serve on the Airport Advisory Board.

Regular Meeting Minutes
June 25, 2013
Page 8

Ayes	--	All
Nays	--	None

Motion carried.

Airport Advisory Board – Bill Bain:

Motion by Alderman Lopez, seconded by Alderman Valdez to approve Bill Bain to serve on the Airport Advisory Board.

Ayes	--	All
Nays	--	None

Motion carried.

Airport Advisory Board – Tony Crosby:

Motion by Alderwoman Champion, seconded by Alderman Lopez to approve Tony Crosby to serve on the Airport Advisory Board.

Ayes	--	All
Nays	--	None

Motion carried.

Airport Advisory Board – Glen Dale Estep:

Motion by Alderman Lance, seconded by Alderwoman Wilkins to approve Glen Dale Estep to serve on the Airport Advisory Board.

Ayes	--	All
Nays	--	None

Motion carried.

Airport Advisory Board – Hap Squires

Motion by Alderman Lopez, seconded by Alderwoman Champion to approve Hap Squires to serve on the Airport Advisory Board.

Ayes	--	All
Nays	--	None

Motion carried.

Airport Advisory Board – Greg Coyne:

Motion by Alderwoman Wilkins, seconded by Alderwoman Champion to approve Greg Coyne to serve on the Airport Advisory Board.

Ayes	--	All
Nays	--	None

Motion carried.

Airport Advisory Board – Manager:

Motion by Alderman Lance, seconded by Alderman Lopez to appoint Vicki Pumphrey to serve as Manager of the Airport Advisory Board, if she accepts.

Ayes	--	Three
Nays	--	Two (Alderwoman Wilkins and Alderwoman Champion)

Motion carried.

Mayor Herring thanked Mr. C.E. (Curly) Brehm for his years of service as manager and mentioned that we would have a plaque for him. Mr. Brehm is still on the Airport Advisory Board.

Fire Marshall – Darrell D. Rawlings:

Motion by Alderman Lance, seconded by Alderman Lopez to re-appoint Darrell D. Rawlings to serve as Fire Marshall.

Ayes	--	All
Nays	--	None

Motion carried.

Emergency Management Coordinator – Robert Flores:

Motion by Alderman Lopez, seconded by Alderwoman Champion to re-appoint Robert Flores as Emergency Management Coordinator.

Ayes	--	All
Nays	--	None

Motion carried.

Regular Meeting Minutes
June 25, 2013
Page 10

The tenth order of business was to discuss and consider request made by the Devine Chamber of Commerce for a Noise Variance for the Fall Festival on November 2, 2013.

Robyn Teague, President of the Chamber of Commerce, was present for the meeting.

Motion by Alderman Lopez, seconded by Alderwoman Wilkins to grant request made by the Devine Chamber of Commerce for a Noise Variance for the Fall Festival on November 2, 2013.

Ayes	--	All
Nays	--	None

Motion carried.

The eleventh order of business was to discuss and consider Condemnation for Habitation and Demolition Agreement for the houses located at the following addresses that were damaged by fire. This action is required for these properties to be eligible to participate in the Texas Department of Housing and community Affairs HOME PROGRAM. The addresses are:

- a. 405 Hayden
- b. 302 N. Transportation
- c. 306 N. Transportation

Council discussed that there are four or five houses being built but these are the three that need to be condemned.

Motion by Alderman Valdez, seconded by Alderman Lopez to approve the Condemnation for Habitation and Demolition Agreement for the houses located at the following addresses that were damaged by fire. This action is required for these properties to be eligible to participate in the Texas Department of Housing and community Affairs HOME PROGRAM. The addresses are:

- a. 405 Hayden
- b. 302 N. Transportation
- c. 306 N. Transportation

Ayes	--	All
Nays	--	None

Motion carried.

The twelfth order of business was to discuss and consider adopting a Resolution approving Cooperation with the Steering Committee of Cities served by AEP TCC to review AEP Texas Central Company's requested approval of an adjustment to its energy efficiency cost recovery factor; hiring legal and consulting services to negotiate with the company and direct any necessary litigation and appeals; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of the resolution to legal counsel.

Regular Meeting Minutes
June 25, 2013
Page 11

City Administrator Gary Pelech explained that basically we are doing the same thing as we did with West Texas Gas. We are hiring Lloyd Gosselink to represent the City. All the cities that are served by AEP are joining in with this process. We are going to make them provide us proof that you deserve the rates you're saying you need. It shouldn't cost the City anything. The company will have to reimburse the cities for any costs that they have. Mr. Pelech added that to his knowledge everyone that is served by AEP has joined in this agreement.

City Attorney Tom Cate added that he agreed with City Administrator Gary Pelech, and that we just need to have representation up there to try to protect our customers.

Motion by Alderwoman Wilkins, seconded by Alderman Lance to adopt Resolution 6-13C approving Cooperation with the Steering Committee of Cities served by AEP TCC to review AEP Texas Central Company's requested approval of an adjustment to its energy efficiency cost recovery factor; hiring legal and consulting services to negotiate with the company and direct any necessary litigation and appeals; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of the resolution to legal counsel.

Ayes	--	All
Nays	--	None

Motion carried.

The thirteenth order of business was to discuss and consider awarding Delinquent Tax Collection Contract.

City Attorney Tom Cate explained that what brought this up is that he sent out letters a couple of months ago saying that they are going to increase their attorney fees. He explained that after talking to City Attorney Gary Pelech, they discussed that if the Law Office of Thomas P. Cate could get the delinquent tax collection contract for the City of Devine, he would agree to keep his rates at \$200 per hour.

Alderman Lance inquired as to how much money we are talking about. According to City Attorney Tom Cate, the delinquent tax roll is at about \$188,000.00.

Mayor Herring informed Council that there would be no conflict of interest with Tom being our City Attorney. Council discussed that basically it would be no different than what we have if the County was still doing this through Steen. The possibility of collecting the full \$188,000.00 is about 92-93% which is still good.

Alderwoman Wilkins inquired if we might be double dipping due to the fact that the County also collects delinquent taxes. City Attorney Tom Cate explained that their part comes out of the delinquent tax payer's money.

Regular Meeting Minutes
June 25, 2013
Page 12

Motion by Alderman Lance, seconded by Alderman Valdez to award the Delinquent Tax Collection Contract to the Law Office of Thomas P. Cate, P.C.

Ayes	--	All
Nays	--	None

Motion carried.

The fourteenth order of business was to discuss and consider appointing Tax Assessor Collector Melissa Lutz to calculate and publish the 2013 Effective Tax Rate and all necessary required notices for the City of Devine.

Mary Herring informed Council that Melissa Lutz is the new tax assessor-collector.

Motion by Alderman Lance, seconded by Alderman Lopez to appoint Tax Assessor Collector Melissa Lutz to calculate and publish the 2013 Effective Tax Rate and all necessary required notices for the City of Devine.

Ayes	--	All
Nays	--	None

Motion carried.

The fifteenth order of business was to discuss and consider authorizing for the City to create new Financial Accounts.

City Financial Advisor Mary Badillo informed Council that when we did the audit this past year, it came to their attention that there were a couple of items that needed their own special revenue account. She explained that in order to do this, they can't just create an account; City Council has to approve.

- Lodging Tax – We have to pull it out of the General Fund and in doing so, the next time we touch the budget or amend the budget, we are going to be pulling out all the line items that go with that and put it into this special revenue fund account.
- TCLOSE – She explained that the money that comes in for this is supposed to be earmarked specifically for training (for the Police Department), and it never was in the past. So this new special revenue fund is going to be set aside. In doing so, she advised, we are going to have to open up new bank accounts for the two special revenue accounts, the Lodging and the TCLOSE accounts.

Motion by Alderman Lopez, seconded by Alderman Valdez to authorize the City to create new Financial Accounts.

Regular Meeting Minutes
June 25, 2013
Page 13

Ayes	--	All
Nays	--	None

Motion carried.

City Financial Advisor Mary Badillo added that City Council also needs to approve in the minutes to open up new bank accounts because the auditors will specifically look for that.

Motion by Alderwoman Wilkins, seconded by Alderwoman Champion to approve that the City open up new bank accounts for TCLOSE and Lodging.

Ayes	--	All
Nays	--	None

Motion carried.

The sixteenth order of business was to discuss and consider amending the Budget for Fiscal Year 2012-2013.

City Financial Advisor Mary Badillo addressed City Council and went over some of the highlights for the adjustments, as follows:

General Fund Operating Revenue

- Grants and Contributions – The Library received a \$1000.00 grant. In addition to that, there was another \$1,968.00 for the School Resource Officer.
- Other – The City sold some fixed assets and the proceeds for that was \$14,470; therefore, we increased the revenue by that amount.

General Fund Operating Expenses

- These are all just overhead for operating accounts. There is nothing unusual for these particular areas.

Mary Badillo explained to Council that, as discussed earlier, we will be taking some expenses out of here to put in to the Lodging. We just need to verify that we can do certain things with the new special revenue accounts that you approved tonight.

Sewer & Water Operating Revenue

- Nothing here is unusual but recommending that the total Operating Revenue be at \$1,772,639.

Sewer & Water Operating Expenses

- Recommending that the total Operating Expenses be at \$1,489,698.

Regular Meeting Minutes
June 25, 2013
Page 14

Debt Service – There are no changes. Operating Revenue remains at \$131,560 and Operating Expenses at \$117,940.

Mayor Herring thanked City Financial Advisor Mary Badillo, City Accountant Denise Duffy and City Secretary Dora V. Rodriguez for all the hard work and many hours they put into this and for correcting past mistakes made by past employees.

Motion by Alderman Valdez, seconded by Alderman Lopez to approve amending the General Fund Revenue at \$2,307,887 and General Fund Expenses at \$2,381,327 for the Budget for Fiscal Year 2012-2013.

Ayes	--	All
Nays	--	None

Motion carried.

Motion by Alderman Lance, seconded by Alderwoman Champion to approve amending the Sewer and Water Operating Revenue at \$1,772,659 and the Sewer and Water Operating Expenses at \$1,489.698 for the Budget for Fiscal Year 2012-2013.

Ayes	--	All
Nays	--	None

Motion carried.

The seventeenth order of business was Informational Items.

- Vacation Bible School is going on at the First Baptist Church during the day and at Bethania Baptist Church in the evening for the kids.
- Several golf tournaments are going on (Lions Club, Knights of Columbus, Dean Bates); the Crime Stoppers will have one in September.
- There are several benefits going on to help needy people.

There being no further business to come before the governing body, motion was made to adjourn the meeting.

Mayor

City Secretary