

Minutes
Regular Council Meeting
June 28, 2016

On this 28th day of June 2016, 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
Alderman Steve A. Lopez
Alderman David Valdez
Alderman David Espinosa

Thus, constituting a quorum.

Personnel present: Joe Ramos, City Administrator; Dora V. Rodriguez, Asst. City Administrator/ City Secretary; Denise Duffy, City Accountant; Tom Cate, City Attorney; Kandy Benavides, Chief of Police; Chris Andrews, Lieutenant; Robert Amaro, Corporal; Feliza Miller, Police Officer; Ismael Carrillo, Director of Public Works; and Rob Flores, Superintendent of Public Works; and Juanita Carrillo.

Others present: Marly Davis, Devine News; Steven Santana, Medina Valley Times; Margaret Hardin, Langford Management Community Services; Justin Upshaw, Texas Fleet Fuel; Alfred & Elisa Gallegos; Woodrow Wilburn, Bronson Wilburn, Juan Davalos, Paul Reed, Zach & Debbie Beadle, Jim & Kathy Lawler, David Ehlinger, Charles West and Sonia J. Lance, Devine, Texas.

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

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

No one spoke under this item.

The second order of business was Recognition.

Mayor Herring recognized Mission Devine for a great job done in the community.

The third order of business was to administer the Oath of Office and Statement of Officer.

Mayor Herring administered the Oath of Office and Statement of Officer to Alderman David Valdez and Alderwoman Kathy Wilkins.

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The fourth order of business was a Public Hearing: Bill Dorfmeister wanting to place cattle on his property located at Colonial Parkway, Windy Knoll Drive, Warhorse Drive and Faye Avenue.

At 6:10 p.m., Mayor Herring announced that the Public Hearing was open. Mayor Herring informed Council that Mr. Bill Dorfmeister is wanting to put cattle on his property. He explained Mr. Dorfmeister was given a copy of the animal ordinance 1-13B and they've also met with him. Mayor Herring then read aloud Section 14-4 of the ordinance concerning livestock. He stated that Mr. Dorfmeister has built fences around his property in order to comply with the ordinance, and he has been complying with all the rules and regulations so far. He also agreed not to bring in any cattle until we've had this public hearing.

- Mr. Juan Davalos addressed Council and expressed the following concerns: Health issues – As a neighbor, he has to put up with the flies, fleas, mosquitos, and smell created by all the animals. He's alright with allowing him to bring in cattle once Mr. Dorfmeister submits his plan on how he is going to address the sanitation issue and what he plans to do to prevent the spread of diseases; and he wants documentation of this. Value of property – He is concerned over the issue of how this (bringing in cattle) will impact their property values. Elevation Study – Mr. Dorfmeister raised his property by 4-5 inches using dirt from his pond and Mr. Davalos expressed concern how this will affect his and his neighbors' properties. He asked if there was an impact study done at that time. He said he's already had to raise his carport because he couldn't get to it when it rains. Environmental Study – He asked for Council to do an elevation study before any more animals are brought in to see how it is going to affect them (the neighbors).
- Mr. Paul Reed addressed Council and expressed the same health and sanitation concerns. He wanted to know why Mr. Dorfmeister hasn't done something in the last five years; it's been in the same shape and condition. He expressed concern over dead animals being pulled in to the city side and left to rot. He asked for Council to consider setting this back until Agenda Item #19 is looked at further to give it more thought before allowing him to bring in more animals.
- Mr. Bronson Wilburn addressed Council with his concerns over sanitation. He told Council his property doesn't border Mr. Dorfmeister's property but he lives across from it. He complained of the smell especially after it rains. He stated, "What's to say he is going to maintain it; I don't think so!"

City Administrator Joe Ramos commented "Other than when he called to make the request, our hands are tied; there's an ordinance in place that as long as he adheres to the things in the ordinance, legally I can't keep them out of there." City Attorney Tom Cate agreed with this. The ordinance will be looked at later on and a lot of legal issues will be addressed.

At 6:22 p.m., Mayor Herring closed the Public Hearing.

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The fifth order of business was a request from Alderman Lance that Council move to Agenda Item #23. City Attorney Tom Cate commented that Council can do this if they want. Motion by Alderman Lance, seconded by Alderman Espinosa that Council move to Agenda Item #23, Executive Session.

Ayes	--	All
Nays	--	None

Motion carried.

The sixth order of business was Executive Session: Pursuant to provision of the Open Meetings Act, Chapter 551, Texas Government Code, Section 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, and Section 418.183(f) of the Texas Government Code (Texas Disaster Act).

- Executive Session – Personnel Matter – Pursuant to Section 551.074 Texas Government Code – Appeal of Disciplinary Action; Police Officer Complaint against the City Administrator.

At 6:24 p.m., Mayor Herring announced to the public that the Council would go into a Closed Session.

At 6:47 p.m., Closed Session was opened to the public.

No action was taken in Closed Session.

The seventh order of business was to Reconvene into Regular Session and consider action, if any, on item(s) discussed in Executive Session.

Motion by Alderman Espinosa, seconded by Alderman Lopez to remove all disciplinary paperwork from Officer Miller's personnel file.

Ayes	--	All
Nays	--	None

Motion carried.

The eighth order of business was Executive Session: Pursuant to provision of the Open Meetings Act, Chapter 551, Texas Government Code, Section 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, and Section 418.183(f) of the Texas Government Code (Texas Disaster Act).

- Executive Session – Personnel Matter – Pursuant to Section 551.074 Texas Government Code – Complaint against the City Administrator for Misuse of City Vehicle.

At 6:48 p.m., Mayor Herring announced to the public that the Council would go into a Closed Session.

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At 7:22 p.m., Closed Session was opened to the public.

No action was taken in Closed Session.

The ninth order of business was to Reconvene into Regular Session and consider action, if any, on item(s) discussed in Executive Session.

No action was taken.

The tenth order of business was to discuss and consider Approval of Minutes: Regular Meeting, May 17, 2016; Special Meeting, June 15, 2016.

Council reviewed minutes.

Motion by Alderwoman Wilkins, seconded by Alderman Lance to Approve Minutes: Regular Meeting, May 17, 2016; Special Meeting, June 15, 2016.

Ayes	--	All
Nays	--	None

Motion carried.

The eleventh order of business was to discuss entering into a Contract with Texas Fleet Fuel.

Council held discussion with City Attorney Tom Cate and Mr. Justin Upshaw with Texas Fleet Fuel regarding an implied contract.

Motion by Alderman Espinosa, seconded by Alderman Lopez not to enter into an implied contract with Texas Fleet Fuel.

Ayes	--	All
Nays	--	None

Motion carried.

Motion by Alderman Valdez, seconded by Alderman Lopez to return to Executive Session: Pursuant to provision of the Open Meetings Act, Chapter 551, Texas Government Code, Section 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, and Section 418.183(f) of the Texas Government Code (Texas Disaster Act).

- Executive Session – Personnel Matter – Pursuant to Section 551.074 Texas Government Code – Complaint against the City Administrator for Misuse of City Vehicle.

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The twelfth order of business was Executive Session: Pursuant to provision of the Open Meetings Act, Chapter 551, Texas Government Code, Section 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, and Section 418.183(f) of the Texas Government Code (Texas Disaster Act).

- Executive Session – Personnel Matter – Pursuant to Section 551.074 Texas Government Code – Complaint against the City Administrator for Misuse of City Vehicle.

At 7:40 p.m., Mayor Herring announced to the public that the Council would go into a Closed Session.

At 8:12 p.m., Closed Session was opened to the public.

No action was taken in Closed Session.

The thirteenth order of business was to Reconvene into Regular Session and consider action, if any, on item(s) discussed in Executive Session.

Motion by Alderman Lance, seconded by Alderman Valdez to terminate the employment of Mr. Joe Ramos immediately based on the fact that he used the city vehicle to take his family and daughter's friend with him to a seminar in South Padre. The fact that he did this shortly after Council discussed the use of the city vehicle constitutes misuse of city equipment and lack of confidence; and for him to turn in all city property, and for an officer to stand by while he cleans out his desk.

Ayes	--	All
Nays	--	None

Motion carried.

The fourteenth order of business was to discuss and consider recommendation of the Planning & Zoning Commission for Meeting held on May 31, 2016:

- a. Request made by Zach Beadle for a Variance.

Council reviewed a letter submitted by Mr. Zach Beadle as Mayor Herring held brief discussion regarding Mr. Zach Beadle parking his 18-wheeler on the right-of-ways of Benton Street and Windy Knoll. He explained that our ordinance does not allow for 18-wheelers to be parked on city right-of-ways. He informed Council that the Planning & Zoning Commissioners had recommended for City Council to grant a one-year variance to Mr. Zach Beadle.

Brief discussion was also held by Alderman Espinosa and Alderman Valdez regarding other situations in their districts.

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Motion by Alderman Espinosa, seconded by Alderman Lopez to approve Planning & Zoning's recommendation to grant a one-year variance to Mr. Zach Beadle.

Ayes	--	All
Nays	--	None

Motion carried.

Discussion was held by Mr. Zach Beadle after the motion. He thanked Council and basically wanted them to know that he will be looking for another location to move.

The fifteenth order of business was to discuss and consider request from Alfredo & Lisa Gallegos for an extension for cleaning up and getting permits for burned house at 308 E. Park Avenue due to a hardship.

Mr. Alfredo Gallegos addressed Council and asked for a six-month extension to clean up, based on hardship.

Motion by Alderman Valdez, seconded by Alderman Espinosa to grant Alfredo & Lisa Gallegos a six-month hardship extension to clean up.

Ayes	--	All
Nays	--	None

Motion carried.

The sixteenth order of business was to discuss and consider renewing Delinquent Tax Collection Contract.

Mayor Herring told Council that this contract is with our City Attorney, Tom Cate.

Motion by Alderman Lopez, seconded by Alderwoman Wilkins to renew the Delinquent Tax Collection Contract with City Attorney Tom Cate.

Contract attached as Exhibit A.

Ayes	--	All
Nays	--	None

Motion carried.

The seventeenth order of business was to discuss and consider accepting the \$36,000 check for leasing our Water to the Edwards Aquifer and amending Current Budget to reflect the use of it.

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Mayor Herring explained this is the refund check we received for leasing water to the Edwards Aquifer Authority. City Attorney Tom Cate advised Council that this money needs to go to the

Water Fund. Assistant City Administrator/City Secretary Dora V. Rodriguez informed Council that the Auditors also advised for this money to be applied to the Water Fund.

Motion by Alderman Espinosa, seconded by Alderman Lopez to accept the \$36,000 check for leasing our Water to the Edwards Aquifer and amend Current Budget to apply this money to the Water Fund.

Ayes	--	All
Nays	--	None

Motion carried.

The eighteenth order of business was to discuss and consider approving savings of \$3,600 from the Edwards Aquifer Permit Fee and to pass it back to our Water Customers on their monthly bill until December 2016.

City Attorney Tom Cate explained that the Edwards Aquifer Authority (EAA) charges the City a surcharge and now we are being refunded this money so it needs to be passed on to our customers. Assistant City Administrator/City Secretary Dora V. Rodriguez informed Council that we have 1,750 customers and beginning in July 2016, they will start getting a credit on their utility bills of \$2.05 through December 2016.

Motion by Alderwoman Wilkins, seconded by Alderman Lopez to approve savings of \$3,600 from the Edwards Aquifer Permit Fee and to pass it back to our Water Customers on their monthly bill until December 2016.

Ayes	--	All
Nays	--	None

Motion carried.

The nineteenth order of business was to discuss and consider adopting a Resolution authorizing the submission of a Texas Home Investment Partnerships Program Application in the Home Program Competitive Award Contract; and authorizing the City Secretary to act as the City's Executive Officer and authorized Representative in all matters pertaining to the City's Participation in the Home Program Competitive Award Contract.

Margaret Hardin of Langford Community Management Services was present and expressed her appreciation to the City of Devine for allowing them to work on our grants.

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Motion by Alderman Lopez, seconded by Alderman Lance to adopt Resolution 6-16 authorizing the submission of a Texas Home Investment Partnerships Program Application in the Home Program Competitive Award Contract; and authorizing the City Secretary to act as the City's Executive Officer and authorized Representative in all matters pertaining to the City's Participation in the Home Program Competitive Award Contract.

Resolution attached as Exhibit B.

Ayes	--	All
Nays	--	None

Motion carried.

The twentieth order of business was to discuss and consider awarding Contract for Administration/Management Services for the Grant Writing Services to prepare FEMA Hazard Mitigation Grant Program (HMGP) and General Land Office CDBG-DR Grant Application(s) for project and the subsequent project management/administration of the grant if the City is awarded a State HMGP and/or CDBG Contract.

Motion by Alderwoman Wilkins, seconded by Alderman Espinosa to award Contract to Langford Community Management Services for Administration/Management Services for the Grant Writing Services to prepare FEMA Hazard Mitigation Grant Program (HMGP) and General Land Office CDBG-DR Grant Application(s) for project and the subsequent project management/administration of the grant if the City is awarded a State HMGP and/or CDBG Contract.

Ayes	--	All
Nays	--	None

Motion carried.

The twenty-first order of business was to discuss and consider awarding Contract for Engineering Services for Budget/BCA/scope of work/draft specifications for the preparation of FEMA Hazard Mitigation Grant Program (HMGP) and/or CDBG-DR General Land Office application(s) for a Drainage Project and subsequent preliminary and final design plans, bid documents and necessary interim and final inspections required by the City for the implementation of the HMGP if the City is awarded a State HMGP and/or CDBG Contract.

The City received two proposals; one from Garcia & Wright Consulting Engineers, Inc. and one from Cobb Fendley Engineering/Architectural Services. After Council reviewed the scoring sheets on both companies, Mayor Herring recommended that we award the contract to Garcia & Wright Consulting Engineers, Inc. based on what the scoring sheets indicated.

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Motion by Alderman Lopez, seconded by Alderman Espinosa to award Contract to Garcia & Wright Consulting Engineers, Inc. for Engineering Services for Budget/BCA/scope of work/draft specifications for the preparation of FEMA Hazard Mitigation Grant Program (HMGP) and/or CDBG-DR General Land Office application(s) for a Drainage Project and subsequent preliminary and final design plans, bid documents and necessary interim and final inspections required by the City for the implementation of the HMGP if the City is awarded a State HMGP and/or CDBG Contract.

Ayes	--	All
Nays	--	None

Motion carried.

The twenty-second order of business was to discuss and consider for the City Administrator to enter into a contract with the Law Firm, Denton & Navarro Rocha Bernal Hyde & Zech to use them on a regular basis for legal work.

Council held discussion with City Attorney Tom Cate who recommended to disregard this agenda item since Mr. Ramos is no longer with the City of Devine.

Motion by Alderman Lance, seconded by Alderman Valdez to not approve entering into a contract with the Law Firm, Denton & Navarro Rocha Bernal Hyde & Zech to use them on a regular basis for legal work.

Ayes	--	All
Nays	--	None

Motion carried.

Discussion was held after the motion by Assistant City Administrator/City Secretary Dora V. Rodriguez. She inquired what we should do about any work that has already been submitted by Mr. Ramos to the Law Firm, Denton & Navarro Rocha Bernal Hyde & Zech. City Attorney Tom Cate commented that Mr. Ramos sent work without Council approval and legally it's like entering into a contract without Council approval and we don't have to honor it. He told Council "But, I don't think that's the right thing to do; they've done the work for you so I think you should pay it."

Motion by Alderman Espinosa, seconded by Alderwoman Wilkins to pay the Law Firm, Denton & Navarro Rocha Bernal Hyde & Zech for any work they have done up until this moment.

Ayes	--	All
Nays	--	None

Motion carried.

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The twenty-third order of business was discuss and consider amending our Code of Ordinance Chapter 14 of the Animal and Fowl, Article I. In General – Section 14-4. Keeping Livestock and Domestic Fowl within the City Limits.

Mr. Jim Lawler addressed Council about domestic fowl; he was a little confused because he has three chickens. Mayor Herring informed him that it's okay to have them as long as it is meeting the requirements of having them penned and having them within 50 feet of someone else's dwelling.

Mayor Herring also stated that Mr. Ramos had planned to bring up before Council about changing the ordinance. He stated, "Right now Mr. Dorfmeister is able to do this and we have a lot of legal questions on this." He went on to say that whatever we pass now (or change now) is still not going to affect Mr. Dorfmeister which seems to be the problem with the public hearing.

Council briefly discussed possibly tabling this until the next meeting.

Alderwoman Wilkins held discussion with Council regarding Mr. Dorfmeister placing cattle on his property. She inquired that if and when he removes them, she wants to make sure he isn't able to put them back in there. If it causes a health or sanitation issue, she would like to be contacted (since it is in her district) or for Council to be contacted to be able to do something about it. Mayor Herring stated that we already have that right. If there is a health issue, the people in District 4 would need to report it so that Animal Control can investigate it.

Mr. Juan Davalos addressed Council again, and inquired if we are going to wait until we have a disease spread before we do something about it because the Zika Virus is going on right now. He stated, "I don't care if he puts cattle there, but what are we going to do to prevent the smell, to prevent the insects, to prevent any diseases to be transported beyond those boundaries?" He wanted to know if there's going to be a plan in place and who will be monitoring that plan to avoid any health issues.

Mayor Herring responded that we have an Animal Control officer that could monitor the plan but as far as what we specify would be a legal question that needs to be deferred to our city attorney. City Attorney Tom Cate stated that we are going to have to look at the ordinance; he didn't have an answer tonight. Mayor Herring informed Mr. Davalos that as soon as we have an answer, we could address it in a Special Meeting.

Alderman Lopez inquired if this would affect any building growth in that area. According to Mayor Herring, Mr. Dorfmeister has been wanting to building townhouses there but the City has not allowed him to do this until he hires an independent engineer to determine if putting that dirt in there impacts the flood zone, and he has yet to do that.

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Motion by Alderman Espinosa, seconded by Alderman Lopez to table this item for further review.

Ayes	--	All
Nays	--	None

Motion carried.

The twenty-fourth order of business was to discuss and consider amending our Code of Ordinance Chapter 94 of the Traffic Ordinance, Article VII. Trucks – Section 94-241. To prohibit variances due to hardship.

Mayor Herring stated that Mr. Ramos was asking that we take out the hardship variance (from the ordinance) that we just granted to Mr. Beadle.

Alderman Espinosa stated he would like to leave the variance wording in the ordinance for the time being; he said they can come back and request a variance.

Motion by Alderman Espinosa, seconded by Alderman Valdez to leave the ordinance as is; not to amend our Code of Ordinance Chapter 94 of the Traffic Ordinance, Article VII. Trucks – Section 94-241.

Ayes	--	All
Nays	--	None

Motion carried.

The twenty-fifth order of business was to discuss and consider amending our Code of Ordinance Appendix A – Zoning Ordinance to prohibit Manufactured Homes in Article 6. Class D-Two Family Residence District through Article 12A. District K Garden Homes Residential District.

City Attorney Tom Cate explained that Mr. Ramos had wanted to limit manufactured houses just to Zones B and C. He said that right now, they're allowed in Zones B thru J, and basically he didn't want manufactured homes in the City. He briefly held discussion on zone restrictions, and further discussion was held by Council on mobile homes. City Attorney Tom Cate added that this would require quite a bit of work if we are going to do this; it would require a Comprehensive Plan, and for notices to be sent out. He advised Council that we need to slow down and look at it more closely. He told Council that the Comprehensive Plan that we did back in 2010 does not mention anything about prohibiting manufactured homes. He further stated that this would be a policy issue and it doesn't comply with the Comprehensive Plan. City Attorney Tom Cate suggested that no action be taken by Council on this.

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Motion by Alderman Lopez, seconded by Alderman Espinosa to postpone amending our Code of Ordinance Appendix A – Zoning Ordinance to prohibit Manufactured Homes in Article 6. Class D-Two Family Residence District through Article 12A. District K Garden Homes Residential District.

Ayes	--	All
Nays	--	None

Motion carried.

The twenty-sixth order of business was to review our Code of Ordinance Chapter 66 Offenses and Miscellaneous Provisions, Article I. In General – Section 66-12. Curfew Hours for Minors and discuss and consider amendments to the Ordinance.

Council reviewed ordinance. Mayor Herring informed Council that we are wanting to change the times to Monday through Sunday from 11:00 p.m. to 6:00 a.m. and doing away with Midnight on Friday and Saturday, and adding “Minors cannot be out between 9:00 a.m. to 2:30 p.m., Monday through Friday during the school year.”

Chief of Police Benavides held discussion with Council on a few exceptions, like for being in a private school or if they are home-schooled. City Attorney Tom Cate added being in the custody of a parent would be another exception. He said this is designed to combat absenteeism at school.

Motion by Alderman Espinosa, seconded by Alderman Lance to amend the Curfew ordinance by doing away with the Midnight on Friday and Saturday, changing the times to Monday through Sunday from 11:00 p.m. to 6:00 a.m., and adding “Minors cannot be out between 9:00 a.m. to 2:30 p.m., Monday through Friday during the school year,” as Ordinance 6-16A.

Ordinance attached as Exhibit C.

Ayes	--	All
Nays	--	None

Motion carried.

The twenty-seventh order of business was Executive Session: Pursuant to provision of the Open Meetings Act, Chapter 551, Texas Government Code, Section 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, and Section 418.183(f) of the Texas Government Code (Texas Disaster Act).

- Executive Session – Personnel Matter – Pursuant to Section 551.074 Texas Government Code for the Police Chief – Completion of the 6 Month Training Period.

At 8:53 p.m., Mayor Herring announced to the public that the Council would go into a Closed Session.

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At 8:59 p.m., Closed Session was opened to the public.

No action was taken in Closed Session.

The twenty-eighth order of business was to Reconvene into Regular Session and consider action, if any, on item(s) discussed in Executive Session.

Alderwoman Wilkins commented that she thinks Chief of Police Benavides is doing a great job.

Motion by Alderwoman Wilkins, seconded by Alderman Espinosa that Kandy Benavides has completed her 6 Month Training Period and she is our Police Chief, and to grant her a pay raise of \$1.25/hour.

Ayes	--	All
Nays	--	None

Motion carried.

The twenty-ninth order of business was Executive Session: Pursuant to provision of the Open Meetings Act, Chapter 551, Texas Government Code, Section 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, and Section 418.183(f) of the Texas Government Code (Texas Disaster Act).

For the record, Director of Public Works Director Ismael Carrillo declined his right to have an Executive Session – Personnel Matter – Pursuant to Section 551.074 Texas Government Code for the Director of Public Works – Completion of the 6 Month Training Period.

Council held brief discussion on Public Works Director Ismael Carrillo having 32 years of service with the City. Alderman Espinosa and Council congratulated him for a job well done.

Motion by Alderman Lance, seconded by Alderman Espinosa to remove Mr. Carrillo from his 6 Month Training Period and appoint him as the Director of Public Works with a \$1.25 pay raise.

Ayes	--	All
Nays	--	None

Motion carried.

The thirtieth order of business was Informational Items.

- VFW – Alderman Lopez announced that Jesse Rodriguez will be the new Commander at the VFW, so he will now be taking it easy. Also, the VFW Post #3966 was #1 in the State of Texas for Community Service again.

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

Ayes	--	All
Nays	--	None

Motion carried.

Mayor

City Secretary