

**Minutes**  
**Regular Council Meeting**  
**August 19, 2014**

On this 19<sup>th</sup> day of August 2014, at 6:00 p.m. the City Council of the City of Devine convened in a Regular Meeting; the same being opened to the public at their regular meeting place; thereof, at City Hall, 303 S. Teel Drive, Devine, Texas. Notice of said Meeting having been prescribed in Chapter 551, Government Code, and Vernon's Texas Codes, Annotated, and the following members being present:

Mayor William L. Herring  
Alderman Hal Lance  
Alderdwoman Kathy Wilkins  
Alderman Steve A. Lopez  
Alderman David Valdez  
Alderman David Espinosa

Thus, constituting a quorum.

Personnel present: Gary Pelech, City Administrator; Dora V. Rodriguez, Assistant City Administrator/City Secretary; Denise Duffy, City Accountant; Ofilia Pedroza, Clerk; and Attorney Bobby Jack Rushing, filling in for Tom Cate, City Attorney.

Others present: Doug Trott and Sonia J. Lance 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 Recognition.

Mayor Herring recognized the VFW. Alderman Lopez announced that VFW Post 3966 had done very well this year, and he and his Quartermaster received All-State recognition; they came in at #2 in the State of Texas for Community Service and were invited to go to Nationals at St. Louis, Missouri where they were awarded with a plaque and other smaller awards. Devine's VFW Post 3966 had the best book in the State of Texas. Alderman Lopez will try to bring in their awards at the September regular meeting to show them off. Mayor Herring and City Council congratulated him and the VFW Post.

The second order of business was to discuss and consider Approval of Minutes: Regular Meeting, July 15, 2014 and Special Meeting, July 23, 2014.

City Council reviewed minutes. It was noted that the following change needed to be made to the Regular Meeting Minutes of July 15, 2014: Remove the name of Alderdwoman Gina Champion and replace it with the name of Alderman David Espinosa.

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Motion by Alderman Espinosa, seconded by Alderman Lopez to Approve the Minutes for Regular Meeting, July 15, 2014 and Special Meeting, July 23, 2014, with the correction to the minutes of July 15, 2014.

|      |    |      |
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| Ayes | -- | All  |
| Nays | -- | None |

Motion carried.

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

Sonia Lance addressed City Council on behalf of the Devine Garden Club. She said the Garden Club is planning the date of Saturday, October 4<sup>th</sup> to have these city-wide garage sales, and she said they are very concerned with these sales. Mrs. Lance stated that she personally would like for the City to have these city-wide garage sales and charge \$5.00 for the first garage sale; \$10.00 for the second, and \$15.00 thereafter if they want to have more. She explained that the Garden Club makes its money by doing this but because of the way things have been; they have had to go outside of the city limits for the last couple of years in order to have the garage sales. Mrs. Lance added that the Garden Club does a lot for the City of Devine, and she asked that City Council take this into consideration.

The fourth order of business was to discuss and consider request by Douglas Trott for the City to remove the water line off of private property.

Mr. Doug Trott addressed the Council as council members reviewed a handout of a diagram. Mayor Herring informed Council that Mr. Trott lives on the corner of Libold and Mockingbird, and the water line is located where it says "alley" on the diagram. Mr. Trott added that only part of it is in the alley and no one knows how it got there. He said he's sure it was done years ago. He said it blew out one time; the City came out and fixed it. He said at one time there was an agreement in exchange for an easement so they could put in a larger water service but that never happened.

Mr. Trott explained he had sent an e-mail to City Administrator Gary Pelech the first part of this year about moving the water line. He said he got an e-mail back from City Administrator Gary Pelech the next day saying that he would have an easement and he was willing to have him look at it. Mr. Trott stated he emailed him back on February 19<sup>th</sup> telling him he wanted to have the water line removed because the house behind him is blocking the alley. He said that now it's gotten to the point where the City, CPL, and whoever else, drives across his yard to get into that alley because of a car being parked in the alley 99% of the time. He said he would like for the water line to be moved off of his property and the alley so that he can put up a fence. He said he also wants to know the location of the sewer line. Mr. Trott explained that since Mockingbird and Monticello are built on an arch, he thinks they found it easier to come off of it at an acute angle and go across into the alley. He said he wasn't sure if Council could see that on the diagram they were reviewing, but he said there is about a 20 foot gap between the two alleys. He explained that on the east side it's farther

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south than it is on the north side by about 20 or 30 feet. He said that if the sewer line is in there, he'd also like it removed.

Mayor Herring asked if we had any idea where the sewer line is. City Administrator Gary Pelech said he didn't on the sewer; he's only been involved with the water line. Mr. Trott said he hadn't thought about the sewer line until the night before and said he wouldn't doubt it if there's a gas line in there somewhere. Mayor Herring stated that this was the original part of Colonial Oaks. He said Monticello Circle was built around 1958 and mentioned some residences in the area; he said there's no telling how long that line has been there.

Brief discussion was held with Councilman Espinosa. Councilman Espinosa inquired about two elbow drawings on the diagram hand-out. City Administrator Gary Pelech explained that would be what you would have to do; you would have to cut across 90 and 45 that around which would cost us about \$1,600.00 if these valves on Mockingbird, Monticello and all these alleys all shut off. If they don't, he said we'll have to get a company come in called Insta-Valve, and it's going to cost us approximately \$5,300.00 to put in a valve. Mr. Pelech explained that Insta-Valve would cut into the top of the 6" line and then they would drop in another valve in there. He said that if it doesn't hold or if it breaks, they would have to step back and would need to do it again, and that would be another \$5,300.00. He added that this is a cement asbestos line that's been there for about 50 years, and he's not sure that's it's going to cut like it should; so this is his main concern. Mr. Trott explained that the one he saw when it blew out in his yard was PVC; it was not AC. City Administrator Gary Pelech said that part would be PVC but explained that off of this one here, it's AC. Mr. Pelech explained that in order to clear that area, we would have to 90 around it and then go around and come back.

Alderman Lance inquired for a ballpark estimate as to how long it would take if we install this. City Administrator Gary Pelech said it would depend on whether or not they can cut that valve and if it will hold, and then it would take maybe half a day or so; he's not sure. Mayor Herring explained that it took a whole day to put the one in the park across from his house when they put in new Water, Sewer and Gas lines. He said it took almost all day and it took two guys from the company and two of our Public Works guys to work on it. Mayor Herring explained this would be if these 50 year old valves didn't work. He said that if they do work, we would be turning off water to 15 homes. According to City Administrator Gary Pelech, we would have to notify the residents but his main concern still is that we're not sure how much we'll need to spend if it doesn't hold. He said the initial cost is \$1,300.00 and just one valve would be an additional \$5,350.00. He said we don't know what we're going to get into. Alderman Lopez asked if there was a doubt and Mr. Pelech responded that there definitely is. He explained that on those 50 year old asbestos concrete lines, if you start cutting, they just start walking. He said that it greatly concerns him to try to move that line.

Attorney Bobby Jack Rushing then addressed City Administrator Gary Pelech on some potential legal issues. He said he was looking at the shapes of some of these alleys and roads, and asked if we knew if there are any other areas out there where there are lines that run across. He said it looks like we have a line that goes across some of these. City Administrator Gary Pelech said it is highly possible that those lines cut across just like this one does. Attorney Rushing said he was just curious

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if we have other lines that kick off or do the same. Mr. Pelech said it certainly wouldn't surprise him and explained that we just haven't had a chance to look into this. He explained that the reason we found out about it is because there had been a leak

Alderman Espinosa inquired that if there was another source, if we could back feed and block it off. City Administrator Gary Pelech talked about all the lines that come across and tie in, having to be shut off. They discussed that this is our main water supply.

Attorney Bobby Jack Rushing also inquired if we know if these lines were city lines originally or if it was a development. He was told it was developed by Joe E. Briscoe; he was the one who developed the Colonial Oaks Subdivision. He put in all the lines and then turned around and dedicated it back to the City.

Alderman Lance inquired why Attorney Bobby Jack Rushing was asking that question. He asked if it could be because we have water lines crossing other corners of property. Attorney Rushing said that it could be that. Then he explained that if a developer put this in and then dedicated it, in that dedication there may have been utility easements to the City for these lines as well. He said that if they didn't, there's still implied dedication on something like this where they had existing lines for the development. He said that even if it wasn't a written dedication of easements, there may be (what we call in legal terms) implied dedication. So it is possible to imply dedication.

Alderwoman Wilkins said she wanted to be clear on if the reason Mr. Trott is wanting to have this done is because he wants people to stay off his private property. She asked if he is wanting to put up a fence? Mr. Trott explained that the people who live at 1505 Libold can't get into their carport because of the lift in it, so they park in the alley. He said anytime the city workers, West Texas Gas, or CPL need access to the alley, they just drive across through his yard. Discussion was held that no one should be parking in the alley; the police should be contacted. Mr. Trott said the only way he can stop them from doing that is to put up a fence. Mr. Trott's concern is that if he puts up a fence and the line should blow up again, he said the City will probably tear down the fence but would they rebuild it? Alderman Lance responded yes, that we have to.

Mayor Herring reminded Council that Mr. Hicks had previously come to them concerning his duplex that was almost in the alley. He explained that next to the duplex is a carport, and this is what Mr. Trott is talking about; there is a duplex blocking part of the alley in there that we have discussed before when Mr. Hicks was on the agenda wanting to sell it or do something with it. He explained we didn't show it on the diagram handout but there is a structure there. Alderwoman Wilkins stated that she's still not happy with people parking in the alley when they're not supposed to be either.

Alderman Espinosa suggested the possibility of the City sharing the expense of the fence with Mr. Trott to where Public Works could have access to get in there if needed. City Administrator Gary Pelech added that he personally wouldn't mind if Mr. Trott were to put up a fence, and if the City needed to go in, in the event of a leak, we would tear it down and rebuild it like the way it was as Alderman Lance stated earlier. He said he wasn't sure about sharing the cost on it, but if there ever

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was a leak, we would take it down and rebuild the fence. He added that we would need to do some line locates first. Alderwoman Wilkins inquired as to what type of fence he would be putting up, whether it would be wood or chain link. According to Mr. Trott, it will probably be a wooden fence. Council held discussion that a wooden fence would be easier and it would be better.

Mayor Herring wanted to know if we are legally bound to move the line.

Attorney Rushing responded that he wasn't sure but felt that the City has a legal basis to say no. He explained that we can go back to what the developer did as far as any kind of paperwork or deed records, if he gave us a dedication. But he said that even absent that, because those lines have been there that long, we have two things to stand on:

- There's the concept of an implied dedication – when they gave that to us even if they didn't formally say this is where all the lines are and you have access by easement; and also
- The concept of a public easement – a different theory – a prescriptive easement, because you have something that serves a public purpose; it's been there for so long and it is used by the public. It is not a written easement; it's not something that you will find in property records. He explained this concept comes from a law of roads that might go across somebody's property that are used by the public for a long period of time.

Mr. Trott told Attorney Rushing that you can't have a prescriptive easement or an adverse possession if it's a silent easement. He said that's one of the criteria and there are five criteria that have to be met, and if any one of those are violated which this one would because no one knew it was there. He said he was just throwing that out there. Attorney Rushing said he is just letting us know that this is one other potential. He said there's probably dedication or implied dedication here. Mr. Trott said he didn't believe so. Attorney Rushing added that there are five tests used to get to the easement theory. He said they primarily go along the lines of whether it was open and known. He explained that even though it's a buried line, if it was there for a long time and they knew it was there, that actually might get you there still.

City Administrator Gary Pelech told Council that he would certainly entertain the idea of a wooden fence. He said he liked that idea rather than going to the potential extreme cost of moving that line. If there's any way possible, he told Mr. Trott that the City would work with him to make sure that we line locate everything for when he does put his fence up. Mr. Trott said he's heard that before. Mayor Herring told him that we can put it in writing for him in the form of a resolution or a contract, or whatever we need to do. Council agreed. Mr. Trott said he is willing to work with us. He said he was not going to agree to it right now, but he would like to sit down with us and discuss it but he doesn't want it to go over two to three months; he wants something done. City Administrator Gary Pelech said we can authorize Attorney Rushing to draw up something and then we can all take a look at it and see what he thinks. Mr. Trott was alright with this.

City Administrator Gary Pelech brought up that back in 2009 when they were working on that deal, it had all been worked out but Mr. Trott never came in to sign so he just figured he had decided not to do that. Mr. Trott said that the deal was that they had to put a tap in first and they never did it.

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Mr. Pelech explained that it requires us to get it signed first and then we put the tap in. But he said that anyway, we will work with him. Speaking of the tap, Mayor Herring asked Mr. Trott if he would consider the tap we talked about before. Mr. Trott said he will not consider the tap but that he would work with the City on the fence. Mayor Herring said we only want to do the right thing in this case. Mr. Trott added that he will work with anybody on anything but he doesn't want to do the tap; however, he still wants to know where the sewer line is because there are no manholes on Libold that he is aware of unless they are covered over really good. City Administrator Gary Pelech said he would get with Billy Grote on this, the Director of Public Works, and he would get with Attorney Rushing to get some paperwork together. He told Mr. Trott that as soon as we get this, he would get with him to try to work it out.

Attorney Rushing added that as far as a final decision goes, because of the way the agenda item reads, he wanted to caution us not to make a resolution now. He said we can talk about it and he can do some drafting and come back in a month; then if there needs to be a resolution, we can do it then. He said there's not enough in that agenda item authorizing you to do that now.

Motion by Alderwoman Wilkins, seconded by Alderman Valdez to table this item until further discussion.

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| Ayes | -- | All  |
| Nays | -- | None |

Motion carried.

The fifth order of business was to discuss and consider for the City to enter into an Interlocal Agreement with the Devine ISD for the School Resource Officer.

As City Council reviewed the interlocal agreement, City Administrator Gary Pelech informed them that the only change is the last sentence under Section V on Page 2: The school's share of the salary shall not exceed \$25,000.00. City Secretary Dora V. Rodriguez said that the school had added that change. Everything else is the same as last year. This is a one (1) year agreement, and Marcus Alexander is the new Resource Officer; the school has been very pleased with him.

Motion by Alderman Lance, seconded by Alderman Valdez to approve for the City to enter into an Interlocal Agreement with the Devine ISD for the School Resource Officer.

Interlocal Agreement for School Resource Officer attached as Exhibit A.

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| Ayes | -- | All  |
| Nays | -- | None |

Motion carried.

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The sixth order of business was to discuss and consider for the City to enter into an Interlocal Agreement with the Devine ISD for the School Resource Officer's vehicle.

City Council reviewed the interlocal agreement. City Administrator Gary Pelech informed them that this is new. He said we are getting money that we've never had before. He explained that the only thing that changed is that we were going to ask for \$5,000.00 up front and then \$5,000.00 annually for five years, but we kicked out the \$5,000.00 up front and the school is still going to pay \$5,000.00 for five years so they will be paying a total of \$25,000.00. And after the contract is over, the vehicle will belong to the City. He said we will probably end up selling it or trading it in for another one. Council felt it was a pretty good deal.

Discussion was held with Attorney Rushing on the fact that the vehicle has already been purchased; we got it this week. He explained he had drafted this agreement before we had the vehicle which explains why in Section III; it mentions the first installment of \$5,000.00 due on or before October 1<sup>st</sup>. City Administrator Gary Pelech added that he didn't think it will be an issue because they already approved the modified version; they just took out the \$5,000.00 up front.

Alderman Lance inquired what our school resource officer does when there is no school. He was told that he becomes a City Police Officer but basically the school has him for nine months at 40 hours a week, eight hours a day, and the City has him for three months. The school also picks up the tab for any special events (like football games) if they request him and the school will pay his overtime. Superintendent Linda McAnnely is the one who will be making the decisions on this. He explained that the City can use him but we would have to pay him overtime if he's already put in the 40 hours at the school. City Secretary Dora V. Rodriguez mentioned that he was supposed to teach a class; that was one of the school requests, but then the school found out about some law that prohibits him to do so because he is not certified to teach, and they notified her that this was not going to happen. Brief discussion was held on that.

Motion by Alderman Lopez, seconded by Alderman Lance to approve for the City to enter into an Interlocal Agreement with the Devine ISD for the School Resource Officer's vehicle.

Interlocal Agreement for School Resource Officer's Vehicle attached as Exhibit B.

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| Ayes | -- | All  |
| Nays | -- | None |

Motion carried.

The eighth order of business was to discuss and consider for the Council to select a Weekend for the City-Wide Garage Sale and waive permits for that weekend.

Alderman Lance said October 4<sup>th</sup> would be a good weekend and council held discussion on having it Saturday only. They discussed current permits. City Secretary Dora V. Rodriguez informed Council that currently a permit costs \$20.00 and is good for up to three days (usually Friday, Saturday and

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Sunday) if the customer wants. Alderman Lance requested permits for this day to have a fee of \$10.00. Mayor Herring added that the agenda item reads waiving permits for that weekend which means not charging at all. Alderman Lance disagreed and felt there should be a fee. City Secretary Dora V. Rodriguez explained that the problem we are having right now is that we have people who are having garage sales anyway and not paying for the \$20.00 permits; they are having them regardless. She explained that we don't have the manpower to police it, so if we are going to hold this city-wide and charge \$10.00 for a permit, they are not going to pay it. City Administrator Gary Pelech added that he also feels that we really need to waive the permit fee since it's only one time a year. Discussion was held on other cities like Hondo, Castroville and D'Hanis already doing this. They waive the permit fees but some of them do charge a fee for a map showing locations of all the yard sales.

Attorney Rushing spoke of Castroville's situation only and mentioned that they had let the Chamber be in charge of developing a map of where all the garage sales would be and if you wanted to be on the map, there would be a fee for that, but it didn't work out so well after the first time because very few people cared to be on the map. Then he agreed with City Secretary Dora V. Rodriguez on waiving the permit fees. He said the first time may not be that huge but if you don't waive the permit fees, it becomes a policing nightmare because a lot of people are going to take advantage of it. He also suggested to limiting that waiver to just Saturday; he said you don't want to encourage them all weekend. City Administrator Gary Pelech said he would like it to be on Saturday, October 4<sup>th</sup> only, and to waive all permits. Discussion was held on St. Joseph's church festival. This year the church will be having a one day festival only and it will be held on Sunday only, the following day, October 5<sup>th</sup>.

Discussion was held that there would be a publication in the newspaper and flyers would be going out with the utility billing statements, and we can even advertise with the Chamber on their sign.

Motion by Alderwoman Wilkins, seconded by Alderman Lance to select Saturday, October 4<sup>th</sup> for the City-Wide Garage Sale and waive the permit for that Saturday only.

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| Ayes | -- | All  |
| Nays | -- | None |

Motion carried.

The ninth order of business was to discuss and consider a Noise Variance request made by the Devine Chamber of Commerce for the Fall Festival for November 1, 2014.

Motion by Alderman Lopez, seconded by Alderman Valdez to approve the Noise Variance request made by the Devine Chamber of Commerce for the Fall Festival for November 1, 2014.

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| Ayes | -- | All  |
| Nays | -- | None |

Motion carried.

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The tenth order of business was to discuss and consider review of:

Rate A. Review of Effective and Rollback Tax Rates.

Rate B. Review of Schedules A, B, and C.

Rate C. Review Tax Rate.

Rate A. Review of Effective and Rollback Taxes – Mayor Herring informed Council that last year's tax rate and the one that we've had for quite a while is \$0.5690 per \$100; that's the property tax rate we have right now. The Effective Tax Rate, the total tax rate needed to raise the same amount of property taxes revenue for the City of Devine from the same properties in both the 2013 tax year and the 2014 tax year, will be \$0.5467 per \$100; so it's less. He said the Rollback Tax Rate, which is the highest tax rate that the City of Devine may adopt before voters are entitled to petition for an election to limit the rate that may be approved to the rollback rate, and which we would have to have numerous meetings on, would be \$0.5790 per \$100. Mayor Herring stated that his opinion on this is that for the first time in three years, we are able to have a good tax rate if we leave it like it is. He reminded Council that three years ago we were given the wrong information and we set a tax rate three cents below the break-even point. So for the last three years, we have had to transfer money from our accounts to make up for the loss of revenue. In other words, in 2010, we set the tax rate based on wrong information. He said we set it at \$0.5690 and it should've been at \$0.5990 per \$100. He explained that we came in short even though we had the collection break that we were going to get anyway. And we've had for the last three years, situations where we've had to move money from accounts to balance out without raising taxes. City Administrator Gary Pelech added that if we leave it alone, it will increase by \$29,000.00, and it will cost everyone about \$3.00 more per year because of the values having gone up. Mayor Herring added that \$0.5690 per \$100 is good in his opinion. For Council's information, he added that the City of San Antonio is at \$0.5590 per \$100. He said he didn't know what any other cities were but we are one cent higher.

Alderman Espinosa asked how we had been misled. Mayor Herring explained that the late Tax Assessor-Collector, Loraine Neuman, had sent us tax figures that were wrong and by the time City Secretary Dora V. Rodrigue, City Accountant Denise Duffy and City Financial Advisor Mary Badillo caught it, it was too late, and there was nothing we could legally do about it; but it was not the City's fault. So, we transferred money for three years but now we won't have to do that unless we want to.

Mayor Herring stated that was for review only; no action is required but we do need to hold two public hearings on the proposed tax rate; the first one to be on September 9, 2014 at 12:00 noon and the second hearing to be on September 16, 2014 at 12:00 noon. City Secretary Dora V. Rodrigue also reminded Council that we will need to have a special meeting for City Council to call for these public hearings.

Rate B. Review of Schedules A, B, and C. – Council reviewed worksheet. Alderman Espinosa asked City Accountant Denise Duffy if she was good with all the information provided, and she said that she was. There were no other questions or comments from Council.

Rate C. Review Tax Rate – There were no questions or comments from Council.

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The eleventh order of business was Review the 2014 Appraisal Roll Certified by James Garcia with Medina County Appraisal.

City Council reviewed the Certified Appraisal Roll for the City of Devine for 2014, having a Net Taxable Value of \$141,414,604.00, less exemptions. City Secretary Dora V. Rodriguez added that last year it was at \$135,873,655.00.

The twelfth order of business was Informational Items.

- Wal-Mart is putting their shelves in. They are still scheduled to open on October 8, 2014 at 7:30 with the grand opening, but rumors are going around that they may have a soft opening before that.
- Alderman Lopez announced he had received a phone call that they are going to have a Community Garden over at the Medina County Annex building. He said they have a well there and they want to start a garden for the community. Sonia Lance added that it's just supposed to be a meeting to see if the Garden Club will do it.
- TML – Alderman Lance announced that the Texas Municipal League is having a Small Cities Problem-Solving Clinic in Pleasanton on September 12, 2014. Council was told that if anyone wanted to attend; they needed to contact City Secretary Dora V. Rodriguez.

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

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| Ayes | -- | All  |
| Nays | -- | None |

Motion carried.

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Mayor

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City Secretary