

Minutes
Regular Council Meeting
September 21, 2010

On this 21st day of September 2010, 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 William L. Herring
Alderman John Ramirez
Alderwoman Marina Antu
Alderwoman Kathy Wilkins
Alderwoman Gina Champion

Absent: Alderman Lance; thus, constituting a quorum.

Personnel present: Dora V. Rodriguez, Interim City Administrator/City Secretary; Rob Flores, Chief of Police; Nancy Pepper, City Accountant; Billy Grote, Director of Public Works; Ismael Carrillo, Superintendent of Public Works; Barbara Moore, Library Director; and Cassandra Maldonado, Municipal Court Clerk.

Others present: Donny R. Whitaker and Kevin Langley, Medina County Sheriff's Office; John H. Harrell and Joe Jarosek, City of Uvalde; Sandy Herrera, Devine News; Aileen Montgomery & Juan Billalobos Jr., Devine Housing Authority; Larry Stacy, Phillip Montgomery, Jose & Rosa Pedroza, Adolf Chapa, Frank Cortez, Steve Lopez, Robert Fernandez, Jesse Ramirez, Henry Ramirez, Sylvia Guardiola, T. Hope, Jimmy & Elaine Shoemake, Lupie Zavala, Raymond Esquibel, Linda Krienhop, Mary Jane Balderrama, Carol Campsey, and Jerry Beck all of Devine, Texas.

Mayor Herring, presiding, declared the meeting opened and welcomed all visitors. Mayor Herring also delivered the Invocation and led the Pledge of Allegiance.

The first order of business was Recognition.

Mayor Herring thanked the Council for working the concession stand at the football game. He also thanked Wesley Beck, Rob Flores, Dora V. Rodriguez, Devine Police Department, Devine Volunteer Fire Department, City of Devine Staff, City of Devine Public Works, Medina County Sheriff's Office, Medina County Commissioners for Precincts 3 & 4, FEMA, Department of Public Safety Small Business Administration, Gina Champion and Kathy Wilkins for helping during the flood.

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

No one signed up to speak under this item.

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The third order of business was to discuss and consider approval of Minutes: Regular Meeting August 17, 2010; Special Meeting August 23, 2010; Special Meeting August 30, 2010; Special/Budget Workshop September 7, 2010.

Council reviewed minutes.

Motion made by Alderwoman Champion, seconded by Alderman Ramirez to accept the minutes for Regular Meeting August 17, 2010; Special Meeting August 23, 2010; Special Meeting August 30, 2010; Special/Budget Workshop September 7, 2010.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The fourth order of business was to discuss and consider adopting a resolution authorizing the submission of a Texas Community Development Block Grant program application for the Texas Department of Rural Affairs for the Community Development Fund; and authorizing the City Administrator to act as the City's Executive Officer and authorizing representative in all matters pertaining to the City's participation in the Texas Community Development Block Grant Program.

Motion made by Alderman Ramirez, seconded by Alderwoman Antu to adopt a resolution authorizing the submission of a Texas Community Development Block Grant program application for the Texas Department of Rural Affairs for the Community Development Fund; and authorizing the City Administrator to act as the City's Executive Officer and authorizing representative in all matters pertaining to the City's participation in the Texas Community Development Block Grant Program.

Resolution 09-10 is attached as Exhibit A.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The fifth order of business was to discuss and consider adopting a resolution strongly opposing the use of a pipeline or any other means to convey or transport water out of Uvalde County.

John Harrell, with the City of Uvalde, informed Council that investors from California want to build a \$250,000 pipeline to pump water from Uvalde to San Antonio. He stated that SB1477 created the Edwards Aquifer Authority and included a provision prohibiting the construction of such a pipeline. He mentioned that every time the legislature meets, they try and get the pipeline idea passed. He added that surrounding communities have passed similar resolutions as well.

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Motion made by Alderman Ramirez, seconded by Alderwoman Wilkins to adopt a resolution strongly opposing the use of a pipeline or any other means to convey or transport water out of Uvalde County.

Resolution 09-10A is attached as Exhibit B.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The sixth order of business was to discuss and consider request made by Jimmy and Elaine Shoemake regarding the new Church at 407 N Teel.

Elaine Shoemake requested Council assure her that if she were to sell her business located on Teel Dr., the new owner(s) would be able to obtain their beer license from the City and TABC. She had been informed by TABC that the new owner would need Council's approval before they could acquire their licenses.

City Attorney, Tom Cate, advised Council not to take any action on the issue. He told Mrs. Shoemake that whenever the business was sold, the new owner could then request approval from Council.

Motion made by Alderman Ramirez, seconded by Alderwoman Antu to table this item until the next meeting.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The seventh order of business was to discuss and consider request made by Frank Cortez, III for a street light to be installed on E. Davis Street.

Mr. Cortez stated that there had been a drive-by shooting on this street recently, and although he knew that the street light wouldn't prevent future acts from happening, the street was dimly lit and in need of a street light. He mentioned that there was a light on either end of the street and that it would be a good idea to put one halfway between the two. He added that his neighbor, Mr. Adolf Chapa, was willing to allow a street light be installed on the pole located on his property.

Interim City Administrator, Dora V. Rodriguez, informed Council that because there was an existing pole, AEP could install the light and the City would pay the monthly fee.

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Motion made by Alderwoman Wilkins, seconded by Alderman Ramirez that a street light be installed on E. Davis Street.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The eighth order of business was to discuss and consider annual report and Pilot check from the Devine Housing Authority.

Aileen Montgomery, Director of the Housing Authority, addressed Council as she discussed the Annual Report and presented them with a check in the amount of \$2,953.50 which represents the Payment in Lieu of Taxes (PILOT) for Fiscal Year Ending September 30, 2009. She also mentioned that the Housing Authority contracted Bluebay Construction to make improvements to the apartments on Rosewood, Zig Zag and Black Jack.

Motion made by Alderman Ramirez, seconded by Alderwoman Champion to accept the Annual Report and Pilot Check in the amount of \$2,953.50 from the Devine Housing Authority.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The ninth order of business was to discuss and consider Re-appointments for the Housing Authority Board.

Aileen Montgomery, Director of the Housing Authority, informed Council that Mr. Billalobos, Ms. Dishman, and Ms. Guerra have agreed to serve another term.

Motion made by Alderman Ramirez, seconded by Alderwoman Antu to approve re-appointing Juan Billalobos, Jr., Betty Dishman and Sabrina Guerra to serve another term on the Devine Housing Authority Board.

List of Local Housing Authority Board of Commissioners attached as Exhibit C.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

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The tenth order of business was to discuss and consider Amending Current Budget for Fiscal Year 2009-2010.

Interim City Administrator, Dora V. Rodriguez, reported to Council that the cost for the restrooms exceeded what had been initially budgeted.

City Accountant, Nancy Pepper, informed Council that before we pass and adopt a new budget, we must first amend any items in the current budget that are over or out of budget. She also mentioned that any department that goes over budget generates a flag when the auditors look at the budget. She held discussion with Council in detail on some of the changes made, namely:

- Under Capital Outlay, Attorney and Appraisal Fees for the Hester Park totaled to \$10,000.
- Sewer and Water Fund had very few changes.
- Several changes in the Gas Fund due to the Sale of the Gas System.
- One of the larger amendments was due to the decrease in Garbage Rates.
- Also under Capital Outlay, the beacon at the airport resulted in an amendment. The City did receive \$2,291 in grant money for the beacon.

Motion made by Alderwoman Wilkins, seconded by Alderwoman Champion to approve the final budget amendments for Fiscal Year 2009-2010.

Amended Budget for Fiscal Year 2009-2010 is attached as Exhibit D.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The eleventh order of business was to discuss and consider Adopting Budget for Fiscal Year 2010-2011 and Ordinance.

City Accountant, Nancy Pepper, held discussion with Council on the budget, namely:

- \$10,000 was added in Capital Outlay for Software to allow online payments
- The General Fund had a deficit Budget of \$19,830 but with approximately \$100,000 in transfer funds from the Operating Funds of the Gas System, we will have sufficient funds to cover the deficit.
- Debt Service Fund had a deficit budget because of the \$30,000 in cash reserves.
- Sewer and Water Fund had a surplus of \$75,900.

Council reviewed Budget.

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Motion made by Alderwoman Champion, seconded by Alderwoman Antu to adopt Budget for Fiscal Year 2010-2011 and to adopt Ordinance 09-10B.

Budget for FY 2010-2011 attached as Exhibit E; Ordinance 09-10B attached as Exhibit F.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The twelfth order of business was to discuss and consider Adopting 2010 Tax Rate and Ordinance.

Mayor Herring informed the public that the Tax Rate was being lowered to \$.5690.

Motion made by Alderman Ramirez, seconded by Alderwoman Antu to adopt 2010 Tax Rate of \$.5690 for the maintenance and support of the general government (General Fund) in the amount of \$.4969 on each \$100 of property; and for the Interest and Sinking Fund (Debt Service) of \$.0721 on each \$100 valuation of property; and to adopt Ordinance 09-10C.

Ordinance 09-10C is attached as Exhibit G.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The thirteenth order of business was to discuss and consider approving the following Contracts/Agreements:

- a. Contract with the Greater Devine Chamber of Commerce.

Council reviewed the Contract.

Interim City Administrator, Dora V. Rodriguez stated that it was the same contract as last year. She report that the Chamber was notified that the Contract was up for renewal and they didn't request that any changes be made.

Motion made by Alderman Ramirez, seconded by Alderwoman Wilkins to approve the Contract with the Devine Greater Chamber of Commerce.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

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The fourteenth order of business was to discuss and consider approving the following Inter-local Agreement with the following entities for services:

- a. Medina County.

Council held discussion over the Interlocal Agreement.

Motion made by Alderman Ramirez, seconded by Alderwoman Champion to approve the Interlocal Agreement with Medina County.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The fifteenth order of business was to discuss and consider appeal of termination by Joe Pedroza with possible Executive Session Pursuant to Provisions of the Open Meeting Act, §551.074 of the Texas Government Code.

Joe Pedroza was asked by Mayor Herring if he wanted the discussion to be held in Open or Closed session. He chose to have it under Open Session. He then presented his appeal in detail. Some of his main issues were:

- He received negative warnings prior to his employment with the City that he wasn't going to make it as a police officer.
- He exceeded the expectations at Devine ISD as the School Resource Officer.
- He played a big part with SAAD, and Stranger Danger at the schools, and the Brown Santa Program for the Devine Police Department.
- He had strong determination to succeed.
- Received negative response from Chief Flores on the need for a second class for students who had signed up for a Criminal Justice Class for next year. He wanted to know who had approved it. Even though Chief Flores ended up approving the class, this is not the response he was expecting, yet he received many compliments from parents expressing their approval on his accomplishments with the students.
- He spoke of his SRO Evaluation at the school between Glenda Allen and himself. He explained earlier that he had advised Chief Flores of this meeting but was told to just inform him later on how the meeting went. He also tried to get a hold of Chief Flores on the day of the meeting but could not reach him. Yet when the meeting started, Chief Flores and Lt. Benavides showed up. Chief Flores made sarcastic remarks and implied that he needed to know exactly what was going on. He received a good evaluation and positive compliments from Ms. Allen, but no comments at all from Chief Flores other than to keep him informed. He never received any acknowledgement from him.
- He expressed his disappointment with Chief Flores when he later learned that there was not going to be a second class because the Chief had informed the Devine ISD Superintendent of his concern over this second class tying up Mr. Pedroza from other police duties.
- Expressed disappointment over how he was approached/confronted on his failing to document traffic stops which he had conducted. He was told he was in violation of Department Policy Procedure #40 and Texas Code of Criminal Procedures, Article 2.133 which refers to racial profiling documentation. He stated he was not denying he

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- made the traffic stops, but explained that he didn't issue any warnings or citations, so there would be no documentation because he was using officer's discretion on this. He told Chief Flores that if he needed to enforce it, he would need to do it across the board. He was told he was being terminated due to the traffic stops which he failed to document. He informed Chief Flores that he would appeal this.
- He brought up that before joining the department, he was told that he would not last and he would not succeed, and that he would not make any changes because of past attempts from other officers who had left the department.
- He was informed from past officers who have left the department due to lack of leadership and management that they left because of reasons he is facing today.
- He claims he knew how to do his job. It was the micro-management that existed which caused turmoil with those who attempted to make progress while conducting their duties.
- He stated that the City of Devine needs to stop losing good officers.
- Feels he has done no wrong to deserve the action taken against him by Chief Flores.
- In his research and attempt to find a solution, he found that we need a new leader that the community can confide in; he said this is long overdue.
- He asked to be reinstated but would not work under this leadership. He would rather resign than be terminated.

Mayor Herring held discussion with Mr. Pedroza to confirm a few things; namely:

- Officer Pedroza reaffirmed Mayor Herring that if Council reinstates him, he will resign, but he is seeking his benefits; his vacation pay and back pay from the time he was wrongfully terminated.
- He told Mayor Herring that by being reinstated, his termination would be lifted. He said his F-5 Form (personnel form) would state basically that he resigned.
- Mayor Herring asked him for clarification on what he is asking of the F-5 form. Officer Pedroza stated he is asking for Honorable Discharge.

Mayor Herring then allowed Chief Flores to also address Council in response to the accusations made by Officer Pedroza.

Chief Flores stated he was prepared to answer any questions from Council.

Mayor Herring and City Council reviewed various documented conversations between Officer Pedroza and Interim City Administrator Dora V. Rodriguez, noting some of the following statements:

- Chief Flores found Officer Joe Pedroza in violation of nine counts of Department Policy and Procedure #40 Racial Profiling and in violation of nine counts of State Law Article 2.133 of the Texas Code of Criminal Procedures. His termination was effective immediately and he was to surrender his credentials and duty weapons. He was given the opportunity to ask any questions or make comments.
- Investigations were done on other officers that had the highest amount of traffic stops and all of their documentations were there. The rest of the officers were investigated and all were in compliance except Officer Pedroza.
- Proper notice and training was provided to Officer Pedroza. There should be no excuse, and the racial profiling is state law.

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- Council reviewed Racial Profiling Reports.
- There was no complaint on the racial profiling; there was a complaint that he wasn't following the law; he wasn't doing what he was supposed to be doing.
- City Attorney Tom Cate clarified that the allegation or complaint against Officer Pedroza is that he was not following state law by not making out the reports on traffic stops that are required by the racial profiling statute.
- When inquired about a verbal warning, Chief Flores stated that a verbal warning would eliminate the documentation not being there.
- City Attorney Tom Cate clarified that Chief Flores is not required, under state law, to divulge any information on who made the allegations.
- Why go to this extreme? According to Chief Flores, because the stats would come back to him and by state law he would have to answer to this. He is ultimately responsible for compliance with the racial profiling statute.
- There was confusion. City Attorney Tom Cate explained that all we are looking at is the documentation that is required under the racial profiling statute. He clarified that the complaint under Officer Pedroza is that he was not obtaining the information that is required under the racial profiling statute. The information is required so that the determination can be made whether or not racial profiling is taking place.
- Per Chief Flores, he has not had this problem from other officers; this is the first time.
- Why termination and no warning? Per Chief Flores, because of the severity of it in violating police policy and violating state law. We know what we need to do.
- Mayor Herring inquired about the severity of the racial profiling documentation. City Attorney Tom Cate stated that under Article 2.1385 of the Code of Criminal Procedure, the penalty applies to the chief administrator of the law enforcement agency, Chief Flores, as a civil penalty in the amount of \$1,000 for each violation.
- When asked if Officer Pedroza resigns, if this would still come back to the department, City Attorney Tom Cate stated that the key word is "intentional". He told Council that Chief Flores does not want this to continue and he felt this was a serious enough violation that he used his discretion to terminate Officer Pedroza's employment with the City. Chief Flores confirmed this to be correct.
- Mayor Herring pointed out that all city employees are at-will employees and can be terminated at any time for any reason; there is no contract.
- There was confusion from the Council on whether this is state law and not policy, or both. Chief Flores stated that state law says that we will make policies for that and the policy at that point is backed up by the state law.
- Discussion was held on the manner this was handled and on verbal warnings. According to Chief Flores there is no documentation on anything. Officer Pedroza did not follow procedure by not documenting the stops. He stated that if an officer gives a verbal warning, they still need to make a written documentation of that verbal warning, at the minimum.
- Chief Flores informed Council that to his knowledge, he's had no other problems or complaints on Officer Pedroza. But when he confronted him about his failing to document, his response was that "everybody does it." However, according to Chief Flores, everyone else in his department obviously does document.
- Council reviewed documented conversation between Officer Pedroza and Interim City Administrator, Dora V. Rodriguez.

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- Regarding Officer Pedroza's comment, in this same conversation, about Chief Flores working nightclubs but not allowing his other officers to work in nightclubs, Chief Flores told Council that it depends on where they are and what it is. He doesn't have a problem with officers working at certain locations where they can make extra money, but he does have a problem if the place has a history of shootings or stabbings. He commented that he's allowed his officers, including Officer Pedroza, to work at the same nightclub in which he works in only because he knows it's a safe place; however, he has denied his officers permission to work at other places which are not safe. Chief Flores stated that he does not choose which of his officers can work at nightclubs, they are the ones who come and ask him for permission if they can work, but he told Council that he has also denied Sergeant Andrews to work at one of these places.
- In another phone conversation Officer Pedroza requested his F-5 and was told it was pending his appeal before Council. He advised that if could get his F-5 in good standing, he would not appeal before Council. After discussing this with TML and our city attorney, Interim City Administrator Dora V. Rodriguez advised him that this decision would be up to Chief Flores since he initiated the termination. After discussing this with Chief Flores, he advised that he stood firm on his decision to terminate.
- In a meeting with Chief Flores and City Attorney Tom Cate, Chief Flores inquired what he would tell a prospective employer if they were to call about his employment. City attorney Tom Cate advised him that the policy would be that he would not say anything on separation and that we would have to get a release signed by Officer Pedroza. Everyone was in agreement and City Attorney Tom Cate would draw up a compromise settlement release stating that this is where Officer Pedroza would stop, and he would mention the separation policy.
- Mayor Herring stated that Chief Flores would mark a General Discharge. He would not fill in any statement about what was violated or anything, and there would be no explanation. City Attorney Tom Cate added that it is city policy that the city does not reveal any information in the personnel file unless we get a release from the employee. So, without a release, if a prospective employer calls, they would not know about this.
- It was agreed he would get a General Discharge because according to Chief Flores the only criteria that Officer Pedroza meets is the description for General Discharge. Officer Pedroza agreed to this.

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

At 9:30 p.m., Mayor Herring announced to the public that the Council would go into a Closed Session. At 10:30 p.m., Closed Session was opened to the public.

No action was taken in Closed Session.

The seventeenth order of business was to reconvene into Regular Session and Consider Action, if any, on Items discussed in Executive Session.

Mayor Herring asked Joe Pedroza if he would be willing to accept the following terms:

- The City would reinstate him if he would be willing to resign immediately.
- His F5 would be marked with General Discharge and no comments.

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- He would receive his back pay as of August 26 as well as vacation pay.
- Agree to sign a Compromise Settlement Agreement with the City.

Mr. Pedroza agreed to the terms as stated above.

Motion made by Alderwoman Champion, seconded by Alderwoman Wilkins to approve the terms as previously mentioned.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

The eighteenth order of business was to discuss and consider signing Annual Acknowledgement of Conflict of Interest and Code of Conduct.

Interim City Administrator, Dora V. Rodriguez, informed City Council that it was that time of the year again to read, understand and acknowledge the annual Code of Conduct, Whistle Blower's Policy and Conflict of Interest. She explained that this auditing standard (SAS 99) was developed due to an increase in fraud discovered in the workplace, whether it be corporation, non-profit, or governmental. This was put in place by our auditors, and they will now be investigating if annual confirmation of all above policies were obtained. She discussed in detail and read some of the responsibilities to the City Council. City Council then signed their Code of Conduct and Conflict of Interest Policies.

The nineteenth order of business was to discuss the Reports, namely:

- City Secretary's Report – Interim City Administrator, Dora V. Rodriguez, went over Disconnection Report. Council reviewed report.
- City Treasurer's Report – City Accountant went over report with Council. She mentioned that the Investment Report needed to be revised.
- Public Works – Director of Public Works, Billy Grote, informed Council that Hoover Construction had to pull off from the project on Hickory due to the recent rains creating seepage problems. Superintendent of Public Works, Ismael Carrillo stated that the Park Restrooms are nearing completion. Interim City Administrator, Dora V. Rodriguez updated Council on the Hester Park Project.
- Police Chief's Report – Council reviewed report.
- Driscoll Public Library – Council reviewed report.
- Chamber of Commerce – Chamber member Sandy Herrera mentioned that their next meeting would be September 22, 2010 at Triple C at 12:00p.m.

The twentieth order of business was Information Items.

- a. Letter from EJ's about the Police Department.

Mayor read the letter from EJ's.

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Mayor Herring read over a Proclamation for Dig Pink Cancer Awareness Day in Devine.

Motion made by Alderwoman Champion, seconded by Alderwoman Wilkins to adopt the Proclamation for Dig Pink Cancer Awareness Day in Devine.

Proclamation is attached as Exhibit H.

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

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

Ayes	--	Four
Nays	--	None
Absent	--	One (Alderman Lance)

Motion carried.

Mayor

City Secretary