

## **Brenham City Council Special Meeting Minutes**

A special meeting of the Brenham City Council was held on July 25, 2011, beginning at 9:30 a.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

### Members present:

Mayor Milton Y. Tate, Jr.  
Mayor Pro Tem Gloria Nix  
Councilmember Danny Goss  
Councilmember Charlie Pyle

### Members absent:

Councilmember Keith Herring  
Council member Andrew Ebel  
Councilmember Weldon Williams, Jr.

### Others present:

City Manager Terry Roberts, Assistant City Manager Kyle Dannhaus, City Secretary Jeana Bellinger, Tammy Cook, Police Chief Rex Phelps, Allen Jacobs, Leslie Kelm, Kim Hodde, Community Services Director Wesley Brinkmeyer, Angela Hahn

### Citizens present:

Clint Kolby, Heather Kirby, Stephan Schulze, Carrie Baker, Tennille Smith, C.H. Harvey, Diane Pieper, Marty Douglas, Brianna Douglas, Brian Bender, Debbie Bender, Jeremy Rosenbaum, Nathan Winklemann

### Via Telephone Conference:

City Attorney Cary Bovey

### Media Present:

Arthur Hahn, Brenham Banner Press; Frank Wagner, KWHI

- 1. Mayor Tate called the meeting to order**
- 2. Invocation and Pledges to the US and Texas Flags – City Manager Terry Roberts**

City Manager Terry Roberts gave a few opening remarks and noted a few changes between the old ordinance adopted in 1993 and the proposed new ordinance. Overall the

proposed ordinance is more restrictive and comprehensive than that of the current Ordinance. Due to a recent inquiry for a Sexually Oriented Business within the city limits, a special meeting has been called to discuss this issue further.

Mr. Roberts explained the two action items that will be presented. One is the adoption of an ordinance pertaining to Sexually Oriented Business and the other is a moratorium on the processing, approval, and issuance of a Sexually Oriented Business License/Permit Application.

Mr. Roberts turned the meeting over to City Attorney Cary Bovey who attended via telephone conference.

## **EXECUTIVE SESSION**

### **3. Texas Government Code 551.071 – Consultation with City Attorney Regarding Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham’s Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits**

Mr. Bovey gave a brief history and outline of the current ordinance. A comprehensive code review has been in process during the last several months. The current ordinance has not been reviewed since its inception in 1993, thus it is very outdated and non-comprehensive. It does not have standard requirements such as appropriate definitions, content, and it does not address the secondary effects of Sexually Oriented Businesses except to protect a limited number of uses -- day cares, churches, and schools.

Mr. Bovey reminded everyone that a City cannot prohibit a Sexually Oriented Business from operating within city limits, but the City can regulate or mitigate the negative secondary effects of Sexually Oriented Businesses. The old ordinance lacks regulation, but the new ordinance would aggressively and legally regulate these businesses. In addition to more restrictive regulations there a few other notable changes to the new ordinance:

- The protected uses list was expanded to include parks, recreational areas, hotel/motels, and most areas where children may gather
- The distance from these protected uses was increased from 1,000 feet to 1,320 feet

Mr. Bovey opened the floor to questions or comments.

Brenham citizen and business owner, C.H. Harvey questioned the Industrial Foundation Charter that allows any type of business to operate within the Industrial Park. He feels this ordinance is discriminatory in that sexually oriented businesses are limited to only industrial areas. Mr. Harvey asked council to refrain from taking any action and encouraged the formation of a task force or committee to discuss this issue further.

Mr. Bovey explained to Mr. Harvey that the city does not enforce the deed restrictions within the Industrial Park, but the city is legally required to designate areas within the city limits where Sexually Oriented Businesses may operate. After an extensive review it was determined

this area was the most restrictive while allowing the city to remain constitutionally sound in its decision. Mr. Bovey noted this ordinance is very thorough and defensible.

Mr. Harvey re-stated his concern of locating Sexually Oriented Businesses within the Industrial Park and felt more time was needed to discuss this issue before any action be taken by the council.

Councilmember Pyle made a comment that an extensive review has been done on this issue, numerous maps were generated and studied to determine the most restrictive, yet constitutionally legal areas these business may operate. He noted this ordinance can come back at a later date and be amended. However, the current ordinance is not restrictive or enforceable. By passing an ordinance today, the City will at least have an ordinance that regulates these businesses.

## REGULAR SESSION

### 4. **Discuss and Possibly Act Upon Ordinance No. O-11-009 on its Second Reading Amending Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham's Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits**

A motion was made by Councilmember Pyle and seconded by Councilmember Goss to approve Ordinance No. O-11-009 on its second reading amending Chapter 16, Occupational Licenses and Business Regulation, of the City of Brenham's Code of Ordinances to provide for the regulation of Sexually Oriented Businesses within the city limits.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
<b>Councilmember Andrew Ebel</b>	<b>Absent</b>
Councilmember Danny Goss	Yes
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
<b>Councilmember Weldon Williams</b>	<b>Absent</b>

### 5. **Discuss and Possibly Act Upon Resolution No. R-11-008 Providing for a Moratorium on the Processing, Approval, and Issuance of Sexually Oriented Business License/Permit Applications**

A motion was made by Councilmember Goss and seconded by Mayor Pro Tem Nix to approve Resolution No. R-11-008 providing for a moratorium on the processing, approval, and issuance of Sexually Oriented Business License/Permit Applications

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
<b>Councilmember Andrew Ebel</b>	<b>Absent</b>
Councilmember Danny Goss	Yes
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
<b>Councilmember Weldon Williams</b>	<b>Absent</b>

The meeting was adjourned.

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Milton Y. Tate, Jr.  
Mayor

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Jeana Bellinger, TRMC  
City Secretary