

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on November 3, 2011 beginning at 1:00 p.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 Andrew Ebel
Councilmember Danny Goss
Councilmember Keith Herring
Councilmember Weldon Williams, Jr.

Others present:

City Manager Terry Roberts, Assistant City Manager Kyle Dannhaus, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Chief Financial Officer Carolyn Miller, Stacy Hardy, Debbie Gaffey, Christi Korth, Adam Griffin, Florence Bentke, Darlene Konieczny, B.J. Plumb, Fire Chief Ricky Boeker, Police Chief Rex Phelps, Public Works Director Doug Baker, Leslie Kelm, Allen Jacobs, Public Utilities Director Lowell Ogle, Dane Bybee, Jamey Maurer, Lin Hartstack, Casey Redman, Janie Mehrens, and Susan Nienstedt

Citizens present:

Wesley Brinkmeyer, Bill Betts, Charles Moser, James Rothermel, Mike McArthur, Delbert Boeker, Jennifer Hermann, Jason Kiemsteadt, Mary Barnes-Tilley, C.H. Harvey, and Marshall Harrell III

Media Present:

Allison Smith, Brenham Banner Press; Frank Wagner, KWHI

- 1. Mayor Tate Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – City Attorney Cary Bovey**

3. Service Recognitions

Service recognitions were presented to the following employees:

Jeana Bellinger	Administration	5 Years
Stacy Hardy	Finance	5 Years
Kevin Post	Water Treatment	5 Years
Florence Bentke	Finance	15 Years

4. Proclamations

- Mayor Tate read a proclamation declaring November 2011 as American Indian Heritage Month.
- Mayor Tate read a proclamation declaring November 2011 as Pancreatic Cancer Awareness Month.
- Mayor Tate read a proclamation declaring November 15, 2011 as Hermann Family Day. The proclamation was received by Jennifer Hermann

5. Citizens Comments

Citizen James Rothermel addressed Council about the problems with Suddenlink. Mr. Rothermel asked Council to please contact Suddenlink to see if there was anything that can be done about the poor service they are providing the citizens of Brenham.

Citizen Mike McArthur addressed Council about a neighbor that has broken out the curb of a city street to allow cars to park on both sides of the house. Mr. McArthur stated that he had visited with several city staff members in the past about this being a violation of the city's code but nothing has been done to correct the problem. Mr. McArthur provided photos of the area to the City Secretary.

Citizen C. H. Harvey addressed Council about his concerns related to the operation and maintenance of new city facilities. Mr. Harvey stated that the City cannot continue to buy things and then expect the taxpayers to pay the O&M costs with a tax increase.

CONSENT AGENDA

6. Statutory Consent Agenda

6-a. Minutes from the October 20, 2011 Council Meeting

6-b. Second Reading of Ordinance No. O-11-018 Providing for Taxation of Goods-in-Transit that are Otherwise Exempted from Taxation by Texas Tax Code Section 11.253

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve statutory consent agenda Item 4-a minutes from the October 20, 2011 council meeting and statutory consent agenda item 4-b second reading of Ordinance No. O-11-018 providing for taxation of goods-in-transit that are otherwise exempted from taxation by Texas Tax Code Section 11.253

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

REGULAR AGENDA

- 7. Discuss and Possibly Act Upon Ordinance No. O-11-019 on its Second Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; Amending the Official Zoning Map to Change Property Currently Zoned as R-1, Single-Family Residential District to B-1, Local Business/Residential Mixed Use District Located At or Near the 1600 Block of Longhofer Street (Vacant Lot) with a Legal Description Being Altman’s Subdivision, Lot 4, 0.254 Acres to Construct a Professional Office on this Property**

Allen Jacobs presented this item to Council. As directed by City Council at the October 20, 2011 meeting additional language indicating that only the construction of a professional office building would be allowed at this location was added to Ordinance No. O-11-019.

A motion was made by Councilmember Herring and seconded by Councilmember Goss to approve Ordinance No. O-11-019 on its second reading amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; amending the official zoning map to change property currently zoned as R-1, Single-Family Residential District to B-1, Local Business/Residential Mixed Use District located at or near the 1600 Block of Longhofer Street (Vacant Lot) with a legal description being Altman’s Subdivision, Lot 4, 0.254 Acres to construct a professional office building on this property

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

8. Discuss and Possibly Act Upon Ordinance No. O-11-020 on its Second Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; Amending the Official Zoning Map to Allow a Specific Use Permit at 1404 North Park Street (Legal Description Being O’Malley Subdivision, Section 1, Lot 1-B), for the Operation of a Full Service Car Wash, Car Detail, and Lube Center

Allen Jacobs presented this item to Council. As directed by City Council at the October 20, 2011 meeting additional language clarifying the hours of operation was added to Ordinance No. O-11-020.

A motion was made by Councilmember Goss and seconded by Councilmember Williams to approve Ordinance No. O-11-020 on its second reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; amending the official zoning map to allow a specific use permit at 1404 North Park Street (Legal Description Being O’Malley Subdivision, Section 1, Lot 1-B), for the operation of a Full Service Car Wash, Car Detail, and Lube Center

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

9. Discuss and Possibly Act Upon Ordinance No. O-11-021 on its Second Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas to Provide for Sexually Oriented Businesses as Specific Uses in I – Industrial Districts, in Accordance with the Specific Use Permit Approval Process and Chapter 16, Brenham Code of Ordinances Regulating Occupational Licenses and Business Regulations

Allen Jacobs presented this item to Council. He advised that there were no changes between first reading and second reading of the Ordinance.

The City Attorney, Cay Bovey, advised Council of four (4) questions raised by the members of the Sexually Oriented Businesses Task Force at their last meeting on October 19, 2011. Mr. Bovey provided the following answers:

1. **Can the Fireman’s Training Center be considered a protected class? While it is a privately owned facility, they rent it out for BISD functions, non-profit fund raisers, weddings, etc.?** The Fireman’s Training Center is a protected location due to there being a Texas Alcoholic Beverage Commission license issued for the premises.
2. **Can the City purchase land and require all SOBs to locate in that specific area of the city?** The Texas Constitution places limitations on a city’s expenditure of public funds by stating that City funds can be spent only to carry out municipal purposes. Therefore, the City cannot expend its public funds to acquire property to require SOB businesses to locate there.
3. **What if a property owner in the industrial zoned area is talking with a potential buyer about selling a portion of his property to build a hotel? At what point can that property be included in the protected class?** Having discussions with a potential buyer to develop a hotel on the site would not cause the property to be included in the protected class related to hotels. The City would take the position that if a building permit has been obtained for the construction of a hotel on the site, and construction of the hotel has started, the site would fall within the list of protected locations.
4. **What if a property owner is considering opening a child care facility at his current business location?** At what point can that property be included in the protected class? Evidence that the site has been licensed/registered as a child care facility by the appropriate agency of the State of Texas would be sufficient evidence for the site to be determined to be a child care facility.

A motion was made by Councilmember Goss and seconded by Councilmember Herring to approve Ordinance No. O-11-021 on its second reading amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas to provide for Sexually Oriented Businesses as Specific Uses in I – Industrial Districts, in accordance with the specific use permit approval process and Chapter 16, Brenham Code of Ordinances Regulating Occupational Licenses and Business Regulations

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

10. Discuss and Possibly Act Upon Ordinance No. O-11-022 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

City Secretary Jeana Bellinger presented this item to Council. She advised that the only change from first reading were the section numbers. She stated that she did not realize the numbering was out of order at first reading.

A motion was made by Councilmember Williams and seconded by Councilmember Goss to approve Ordinance No. O-11-022 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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

11. Discuss and Possibly Act Upon Resolution No. R-11-020 Reauthorizing an Investment Policy for the City of Brenham

Chief Financial Officer Carolyn Miller presented this item to Council. She advised that the Public Funds Investment Act requires that a local government adopt a written investment policy and reauthorize the policy annually. She stated that the only change to the policy this year is reflected in the Internal Controls Section requiring the Chief Financial Officer to monitor the city’s credit rating on all authorized investments.

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve Resolution No. R-11-020 reauthorizing an Investment Policy for the City of Brenham.

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

12. Discuss and Possibly Act Upon an Ordinance on its First Reading Amending the FY2010-11 Adopted Budget

Carolyn Miller presented this item to Council and outlined, in detail, all of the amendments to the FY2010-11 adopted budget. She advised that the proposed Ordinance would be the second and final amendment to the FY2010-11 budget. She said the General Fund revenues were being increased for GovDeals online auction funds, increase in Court Traffic fines and insurance proceeds. She also stated that expenditures were being reduced by \$50,000 due to the Downtown Master Plan, which was deferred until FY2011-12.

Ms. Miller also stated that there were other amendment items are for BCDC activity, the AMR smart meter project and year-end budget realignment (clean-up), as well as the Worker's Comp Fund transfer to the Medical Self-Insurance Fund to ensure a balanced fund.

A motion was made by Councilmember Herring and seconded by Councilmember Herring to approve an ordinance on its first reading amending the FY2010-11 adopted budget.

13. Discuss and Possibly Act Upon Resolution No. R-11-021 Authorizing Execution of an Agreement with TxDOT for the Temporary Closure of State Right of Way in Connection with the 2011 Christmas Stroll to be Held on Friday, December 2, 2011

Public Works Director Doug Baker presented this item. He advised Council that this is the same street closure agreement that is done every year for the Christmas Stroll.

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Ebel to approve Resolution No. R-11-021 authorizing execution of an agreement with TxDOT for the temporary closure of State Right of Way in connection with the 2011 Christmas Stroll to be held on Friday, December 2, 2011.

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

14. Discuss and Possibly Act Upon Final Payment to Glasco & Co. Landscaping, Inc. for Work at Toubin Park and Authorize the Mayor to Execute any Necessary Documentation

Assistant City Manager Kyle Dannhaus presented this item. He advised Council that all of the work at Toubin Park has been completed and he is recommending final payment to Glasco & Co. in the amount of \$32,461.95

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Herring to approve final payment to Glasco & Co. Landscaping, Inc. in the amount of \$32,461.95 for work at Toubin Park and authorize the mayor to execute any necessary documentation.

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

15. Discuss and Possibly Act Upon Bid No. 11-017 for Hohlt Park Restrooms Located Near the Dr. Bobbie M. Dietrich Memorial Amphitheater and Authorize the Mayor to Execute any Necessary Documentation

Kyle Dannhaus presented this item to Council. He advised that on September 8, 2011 the Purchasing Department opened bids for the restrooms located in Hohlt Park near the Dr. Bobbie M. Dietrich Memorial Amphitheater. He stated that twelve (12) bidders requested packets and eleven (11) returned bids.

A motion was made by Councilmember Williams and seconded by Councilmember Ebel to approve Bid No. 11-017 for the Hohlt Park restrooms located near the Dr. Bobbie M. Dietrich Memorial Amphitheater and award bids to the following contractors:

- LaBu, Inc. for Foundation work in the amount of \$14,000
- Mark Buck for the Roofing System in the amount of \$15,076.64
- R.W. Pfeffer Masonry for the Block/Rock work in the amount of \$49,945
- American Drain & Plumbing for Plumbing work in the amount of \$17,800
- David Herman Electric for Electrical work in the amount of \$5,205
- Mike Pohl for Mechanical work in the amount of \$5,750

Mr. C.H. Harvey addressed Council. He expressed his concern that the city does not include operation and maintenance costs in any of their budgets. Mr. Harvey stated he was glad that the city obtained donations to fund construction of the restrooms but that there were no funds donated to help with the annual O&M of the facility.

Councilman Goss asked whether or not the restrooms could be relocated a little further away from the amphitheater so that the overall look of the facility would not be diminished by having restroom facilities so close. Mr. Dannhaus stated that he would look into that but that it may be a problem due to the flood plain running through that area.

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

16. Discuss and Possibly Act Upon Recommendation for Self-Insured Medical Funding Rates for Calendar Year 2012 for the Group Health Plan Effective January 1, 2012 and Authorize the Mayor to Execute any Necessary Documentation

Janie Mehrens presented this item to Council. She advised that during the FY2011 budget process a 10% funding increase for group health plan contributions was included in the budget based on medical trending and claims information available at the time. Because of the continuing rising cost of general medical services and for our group, of large claims, the Self-Insured Medical Fund will show a negative fund balance for the fiscal year. It is anticipated that a transfer of over \$115,000 from the Workers' Compensation Fund will need to be made in order to balance the medical fund.

Although the actual costs for stop loss coverage and anticipated claims costs will not be final until December, it is necessary to approve the funding rates at this council meeting so the rates will be available to employees to make their decisions for dependent coverage during open enrollment which begins November 15, 2011 and the rates would go into effect January 1, 2012.

A motion was made by Councilmember Herring and seconded by Councilmember Goss to approve a recommendation, as presented, for self-insured medical funding rates for calendar year 2012 for the Group Health Plan effective January 1, 2012 and authorize the mayor to execute any necessary documentation.

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

17. Discuss and Possibly Act Upon the 2012 Holiday Schedule

Janie Mehrens presented this item to Council. She advised that it contained the same number of total holidays as in past years and one (1) floating holiday for employees.

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Williams to approve the 2012 Holiday schedule.

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

18. Discuss and Possibly Act Upon Ratification of a BVWACS/BVCOG Contract Amendment with Motorola Solutions, Inc. for Additional Infrastructure Equipment and Services and Authorize the Mayor to Execute any Necessary Documentation

Fire Chief Ricky Boeker presented this item. He advised Council that the governing board of the Brazos Valley Wide Area Communication System (BVWACS) has approved an amendment to their contract with Motorola Solutions, Inc. for additional equipment and services to upgrade and enhance their system.

Mr. Boeker advised that no additional funding from the participating entities is required because unspent budgeted funds each year have been kept in the BVWAC capital fund in the event system upgrades are needed.

A motion was made by Councilmember Goss and seconded by Mayor Pro Tem Nix to approve the ratification of a BVWACS/BVCOG contract amendment with Motorola Solutions, Inc. for additional infrastructure equipment and services and authorize the mayor to execute any necessary documentation.

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
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

Council adjourned into Executive Session at 2:11 p.m.

EXECUTIVE SESSION

- 19. Texas Government Code Section 551.072 – Deliberation Regarding Real Property – Discussion Regarding Potential New Park Land**
- 20. Texas Government Code Section 551.072 – Deliberation Regarding Real Property – Discuss and Consider the Acquisition of Property for the Handley Street Extension Segment of the U.S. Hwy 290 Project**

Executive Session adjourned at 3:55 p.m.

RE-OPEN REGULAR AGENDA

- 21. Discuss and Possibly Act Upon Resolution No. R-11-022 Determining the Public Need and Necessity for the Acquisition of Certain Real Property for the Public Uses of Construction, Widening, Improvements, Use, Repair, and Maintenance of Street Improvements as Part of the Handley Street Extension Segment of the U.S. Hwy 290 Project, Authorizing the City Manager to Agree on Amounts to be Paid to the Property Owner(s) as Compensation for Said Property, and Authorizing the City Attorney to Institute Condemnation Proceedings, (Use of Eminent Domain), If Necessary, to Acquire Said Property situated in the City of Brenham, Washington County, Texas out of the Isaac Lee Survey A-77 Owned by J.R. Enterprises**

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Herring that the City of Brenham authorize the use of the power of eminent domain to acquire a 0.0575 acre parcel of land situated in the City of Brenham, Washington County, Texas out of the Isaac Lee Survey A-77, and owned by J.R. Enterprises, for the public uses of construction, widening, improvement, use, repair, and maintenance of street improvements as part of the Handley Street Extension segment of the U.S. Hwy 290 Project, by the adoption of Resolution No. R-11-022.

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	Abstain
Councilmember Andrew Ebel	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes
Councilmember Danny Goss	Yes

22. **Administrative/Elected Officials Report**

City Manager Terry Roberts Reported on the following:

- Toubin Park grand opening on Tuesday, November 8th
- Herman Furniture Anniversary Celebration on November 15th
- Advised Council that Highway 290 will be converted to the frontage roads within the next couple of weeks

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC
City Secretary