

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on April 21, 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 Keith Herring
Council member Andrew Ebel
Councilmember Charlie Pyle
Councilmember Danny Goss

Members absent:

Councilmember Weldon Williams, Jr.

Others present:

City Manager Terry Roberts, Assistant City Manager Kyle Dannhaus, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Administrative Assistant Tammy Cook, Chief Financial Officer Carolyn Miller, Christi Korth, Adam Griffin, Fire Chief Ricky Boeker, Assistant Police Chief Jay Petrash, Public Works Director Doug Baker, Leslie Kelm, Public Utilities Director Lowell Ogle, Community Services Director Wesley Brinkmeyer, Angela Hahn

Citizens present:

Page Michel, Clint Kolby, Luther Hueske, Gene Krupa, Willy Dilworth, Carol Doersom, Perry Thomas, Gary Kimball, Syd Falk

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 – Councilman Andrew Ebel**

3. Citizen Comments

Mayor Tate introduced Zachary Muehsler who is working on his Citizenship for the Community Merit Badge for Scouts.

4. Consent Agenda

Statutory Consent Agenda

4-a. Minutes from the March 24, 2011 Council Meeting

4-b. Second Reading of Ordinance No. O-11-003 Authorizing the Placement of a Stop Sign on Hasskarl Drive at its Intersection with Eleanor Drive

A motion was made by Councilmember Herring and seconded by Councilmember Pyle to approve Statutory Consent Agenda Items 4-a. Minutes from the March 24, 2011 Council Meeting and 4b. Ordinance No. O-11-003 Authorizing the Placement of a Stop Sign on Hasskarl Drive at its Intersection with Eleanor Drive.

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 Charlie Pyle	Yes
Councilmember Weldon Williams	Absent
Councilmember Danny Goss	Yes

REGULAR AGENDA

5. Discuss and Possibly Act Upon the Authorization to Proceed with the Purchase and Installation of the Products and Items Necessary to Meet the Federal Railway Administration Requirements for the Implementation of a Quiet Zone from Kuhn Lane to Burleson Street

This item was presented by Public Works Director Doug Baker who advised that they are ready to begin the establishment of the Railroad Quiet Zone. Everything up to this point has been to fulfill the requirements; now they are ready to submit the Notice of Establishment, which is the final step. This is the point where you tell the various agencies that the train horns are to be silenced on a particular day.

Mr. Baker gave some information on what had been happening in the last few months. They have been doing as much as they can at all of the crossings but he reiterated that the only crossings that count in the Railroad Quiet Zone are at Salem Road, Industrial Boulevard, College Street and Second Street in addition to Vulcan Street, which will be closed. At some point in the future, some of the other crossings may count, as this is very fluid, but not at this point.

Mr. Baker advised that the County is piggy-backing with the City in the submission for the establishment of the zone. If they did not do this, Burluson Street would never qualify standing on its own because of the geometry. At Kuhn Lane and Salem Road, technically the track is in the county. He said some of the things that Gene Krupa, with BEFCO Engineering, is asking the City to do is to let the Railroad Administration, BNSF, etc., know that this is a joint submission. There is a resolution that will be submitted designating this as a joint submission.

Mr. Baker further advised that, in accordance with the requirements of the Train Horn Rule, a Notice of Establishment of a railroad quiet zone must be sent to the Federal Railroad Administration, TxDot, and BNSF at least 21 days prior to the date the train horns are to stop blowing. The notice can be sent prior to, during, or after the installation of the medians and signs. This involves determining a date when the horns are to stop blowing and having the improvements installed by that date. According to Jerry Martin, our contact person with the FRA, the cities and counties he has dealt with in establishing quiet zones make the improvements and submit the Notice in Establishment afterwards. Mr. Baker said that, without having installed any of the median products before, he do not know how long it will take to do the work. He and Leslie Kelm believe it can be done in about two months. However, if Council wanted to submit the notice before they began doing the work and therefore had to commit to a no-horn date today, he would feel comfortable with August 31st. He felt it would be better to follow Jerry's recommendation to do the installation and then submit the notice. By doing so, they believe the train horns can be silenced sooner.

Gene Krupa, with BEFCO Engineering, went over what will be included in the Notice of Establishment. He advised that they are meeting with the County on the following Tuesday to for them to adopt a letter saying the City will be the agent and authorizing BEFCO to submit on their behalf.

A motion was made by Councilmember Goss and seconded by Councilmember Pyle to approve the Authorization to Proceed with the Purchase and Installation of the Products and Items Necessary to Meet the Federal Railway Administration Requirements for the Implementation of a Quiet Zone from Kuhn Lane to Burluson Street.

Councilmember Goss said he had been involved with everyone concerned in this project and he felt he had picked it apart fairly well. He said his number one priority is the safety of our citizens. Second is the cost that the city would incur in this project and then all of the players involved; that everyone is on board and willing to participate. He is satisfied with where they are today with it and that ultimately this is going to be a large benefit to the citizens as far as quality of life goes in our city.

Mayor Tate asked Commissioner Hueske if the County was on board with this project. He stated that they were. He did know for sure if the item is on the agenda for their next meeting but that, if it is not, it will be for the one on the third.

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 Charlie Pyle	Yes
Councilmember Weldon Williams	Absent
Councilmember Danny Goss	Yes

6. Discuss and Possibly Act Upon the Sale of a Tract of Land, Approximately 1,318 Square Feet in Size and Part of the A. Harrington Survey, A-55, being Part of Key's 1st Addition, to Stanpac USA, LLC and Authorize the Mayor to Execute any Necessary Documentation

City Manager Terry Roberts presented this item. He stated that the City owns a small tract of land, approximately 1,318 square feet, along Commerce Street adjacent to Stanpac USA. The tract once held a large bank of transformers used to supply power to the former Mt. Vernon Mills. As a result of renovations and remodeling, the transformer bank at that particular location was no longer needed and removed in favor of supplying power from other locations. This property is no longer needed by the City and can be disposed of. Stanpac is interested in acquiring it to facilitate a planned new loading dock area off of Commerce St.

The property has been appraised. City staff recommends the sale of this surplus tract to Stanpac USA, LLC at its appraised value of \$1 per square foot.

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Ebel to approve the Sale of a Tract of Land, Approximately 1,318 Square Feet in Size and Part of the A. Harrington Survey, A-55, being Part of Key's 1st Addition, to Stanpac USA, LLC at the appraised value of \$1 per square foot 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 Charlie Pyle	Yes
Councilmember Weldon Williams	Absent
Councilmember Danny Goss	Yes

7. Discuss and Possibly Act Upon Authorization to Sell the 2001 Ford Booster Truck and Designate the Proceeds as Matching Funds for the Purchase of a New Booster Truck through a Texas Forest Service Grant as Applied for by the Brenham Fire Department and Accepted by the City of Brenham

Fire Chief Ricky Boeker presented this item. He said the Brenham Fire Department membership applied, and been approved for, a grant thru the Texas Forest Service to replace our current Booster truck (B1). This truck was purchased by the members of the Fire Department in 2001 for about \$64,000 and given to the City. About 5 years ago the truck had some rust issues that we addressed and they have come back again. Instead of spending additional funds on the same problem we want to replace this truck because we feel it is a design issue that will not go

away. The grant will pay 90% of the actual cost not to exceed \$78,000 and we are estimating that the new truck will cost around \$100,000. We are asking that when we sell the current booster truck that we be able to use the selling price to make up the difference in the cost of a new vehicle with equipment. The current truck is in good shape except for the rust issue and we feel now is the time to trade/upgrade while the current truck still has some value for another department. There has been some interest from several local Departments on purchasing the current truck from us.

A motion was made by Councilmember Goss and seconded by Councilmember Pyle to Sell the 2001 Ford Booster Truck and Designate the Proceeds as Matching Funds for the Purchase of a New Booster Truck through a Texas Forest Service Grant as Applied for by the Brenham Fire Department and Accepted by the City of Brenham and approved by the City Manager and Fire Chief.

Councilmember Herring questioned whether they might get more money by going through GovDeals. Chief Boeker responded that he had been talking with Carolyn Miller about this. The pro side of selling it to one of the local departments is that they would know exactly how much money they would get without going through the bidding process on GovDeals. The city would accept sealed proposals.

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 Charlie Pyle	Yes
Councilmember Weldon Williams	Absent
Councilmember Danny Goss	Yes

8. Discuss and Possibly Act Upon Ordinance No. O-11-004 Authorizing the Issuance and Sale of City of Brenham, Texas, General Obligation Refunding Bonds, Series 2011, In the Aggregate Principle Amount of \$7,730,000 and Awarding the Sale Thereof; Levying a Tax in Payment Thereof; Authorizing the Execution and Delivery of a Paying Agent/Registrar Agreement and an Escrow Agreement; Calling Certain Bonds for Redemption; Approving the Official Statement; Finding and Determining That the Meeting at Which This Ordinance is Passed is Open to the Public as Required by Law; and Enacting Other Provisions Relating Thereto.

Gary Kimball, of Specialized Public Finance, presented this item. He stated that he met with the Audit Committee in March and presented information related to the opportunity to advance refund a portion of the City's outstanding 2002 Certificates of Obligation and the 2001 General Obligation Refunding Bonds. The City would issue approximately \$7,730,000 in General Obligation Refunding Bonds and would recognize about \$525,000 in savings. This action would yield a net present value benefit of around 6.2 per cent. This would be taking the interest rate of 4.45 on the old bonds down to 2.59 on new bonds.

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve on its first reading Ordinance No. O-11-004 Authorizing the Issuance and Sale of City of Brenham, Texas, General Obligation Refunding Bonds, Series 2011, In the Aggregate Principle Amount of \$7,730,000 and Awarding the Sale Thereof; Levying a Tax in Payment Thereof; Authorizing the Execution and Delivery of a Paying Agent/Registrar Agreement and an Escrow Agreement; Calling Certain Bonds for Redemption; Approving the Official Statement; Finding and Determining That the Meeting at Which This Ordinance is Passed is Open to the Public as Required by Law; and Enacting Other Provisions Relating Thereto.

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 Charlie Pyle	Yes
Councilmember Weldon Williams	Absent
Councilmember Danny Goss	Yes

Due to the delay in arrival of one of the presenters in Item 9, Mayor Tate advised that they would move into the Work Session.

WORK SESSION

10. Presentation by Bickerstaff Heath Delgado Acosta, LLP and Discussion of the Initial Assessment Regarding the Need to Redistrict the City Councilmember Wards Based on Recently Issued 2010 Census Data

City Manager Terry Roberts presented this item. He introduced Syd Falk, with the Bickerstaff Law Firm, who would go over the Initial Assessment considering 2010 Census data. Mr. Falk introduced his associate, Josh Katz. Mr. Falk stated that he wanted to talk about the law that applies to redistricting, some practical things along the way, including the adoption of two suggested resolutions, and finally the actual population and demographic numbers of the City according to the census.

Mr. Falk talked about why the City needs to re-district. The U.S. Constitution requires that members of an elected legislative body be chosen from districts of substantially equal population and applies to city councils. Exact equality of population is not required, but a “total maximum deviation” of no more than ten percent in total population between the most populated and the least populated city councilmember district based on the most recent census should be achieved. This maximum deviation of ten percent constitutes a rebuttable presumption of compliance with the one person-one vote requirement. If a city’s councilmember districts do not fall within the ten percent maximum deviation, the city is at substantial risk of being sued for violation of one person-one vote standards, and it would have little if any defense to the suit. The deviation shown in the data for the City of Brenham is 14.23 per cent, which is above the amount allowed by law. Mr. Falk went over the type of information that is gathered by the census and how it can be used in the redistricting process.

Mr. Falk then spoke about the main sets of legal issues. There is the role of the Department of Justice in the redistricting process as well as two other legal principles that apply.

Mr. Falk went on to describe the role of the Department of Justice. Section 5 of the Voting Rights Act is the part of the act that says political subdivisions shall pre-clear any changes in voting practice, procedure, or standard. For example, if you change polling locations, it must be pre-cleared. If you change from a paper ballot to a machine ballot, it must be pre-cleared. The important thing about pre-clearance is that you cannot implement the change until and unless it has been pre-cleared.

Mr. Falk went on to say that there are two ways to get pre-clearance. By far the simplest, and usually least expensive way, is to apply to the DOJ for that pre-clearance. You do what is called a pre-clearance submission, they do a detailed administrative review, and will approve or disapprove your proposed new plan. The DOJ maintains a full-time staff that, during redistricting time, does nothing but that.

The other alternative is to go a special Federal court in the District of Columbia. The Act specifically says that is the only other alternative. It is a special three judge Federal District Court. It is a court case and, as such, it is slow and expensive since it is in Washington.

The main thing the DOJ is going to look at in the submission is “retrogression”. This means they are going to look at the new plan proposed and compare it to the existing plan and ask whether or not the new plan has reduced the relative strength of minority voting in any of the districts to a degree that could have been avoided.

Mr. Falk said the legal standard has two prongs to it. You are obligated to show that your proposed plan neither has a purpose of discrimination nor the effect of retrogression. In order to make that comparison, they have to have a benchmark plan, which is your current plan with the new census data. He went over the contents of the pre-clearance submission. He reminded Council that DOJ will object to the plan that is proposed if they believe there is an alternative plan that is less retrogressive. The burden will be on the City to convince DOJ that the plan they have adopted, and proposing for pre-clearance, is minimally retrogressive or, if it retrogresses more than an alternative plan, that the City has a legitimate and good reason for doing so.

Section 2 of the Voting Rights Act is the general anti-discrimination provision. There are a number of procedures that can violate Section 2 but the two the courts have focused on in redistricting are “cracking”, sometimes called “fracturing”, and “packing”. “Cracking” is the practice of taking a numerically significant group of minority voters and splitting them into sub-groups and putting them into different districts in order to minimize their voting clout. “Packing” is the opposite; it is taking a fair number and putting them in one district in order to minimize their ability to elect or influence elections significantly in other districts.

Mr. Falk went on to discuss how far you have to go to avoid retrogression and avoid Section 2 liability. He stated that there is a limit and he explained a court case that supported that.

Mr. Falk said there are certain guidelines they are recommending the city adopt to ensure fair and adequate public participation in the redistricting process. They are also recommending

certain criteria that the City may require all redistricting plans to follow. These criteria generally tract the legal principles that the courts and DOJ have found to be appropriate elements in sound redistricting plans.

Mr. Falk went back over the process that will take place in working on redistricting. He advised that the DOJ has sixty days after it receives the submission to either approve it or reject it so that needs to be kept in mind if redistricting is to be completed in time for the election process for 2012. Because DOJ can ask for more information and then have an additional sixty days to act, Mr. Falk says they are suggesting more of a buffer than just counting back sixty days from February.

Mr. Falk said the City is getting its Initial Assessment today; the next is to develop their illustrative plans; next is Public Hearing(s); adopt a plan and submit the preclearance; goes through the preclearance process. The target date for adopting that final plan and being sure that there is plenty of time to deal with DOJ is sometime around the beginning or middle of August.

Mr. Falk then went over all of the census numbers to be considered in this redistricting process. Councilmember Goss asked if, when you have a university in an area that is overpopulated, that is taken into consideration compared to other areas. Mr. Falk responded that is part of the population that is counted. Census data does not distinguish where people are registered to vote.

ADJOURNED WORK SESSION

RE-OPEN REGULAR SESSION

11. Discuss and Possibly Act Upon Resolution No. R-11-004 Adopting Criteria for Use in the 2011 Redistricting Process

A motion was made by Councilmember Herring and seconded by Councilmember Goss to approve Resolution No. R-11-004 Adopting Criteria for Use in the 2011 Redistricting Process.

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 Charlie Pyle	Yes
Councilmember Weldon Williams	Absent
Councilmember Danny Goss	Yes

12. Discuss and Possibly Act Upon Resolution No. R-11-005 Establishing Guidelines for Persons Submitting Comments and Specific Redistricting Proposals

A motion was made by Councilmember Goss and seconded by Councilmember Ebel to approve Resolution No. R-11-005 Establishing Guidelines for Persons Submitting Comments and Specific Redistricting Proposals.

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 Charlie Pyle	Yes
Councilmember Weldon Williams	Absent
Councilmember Danny Goss	Yes

9. Discuss and Possibly Act Upon the Acceptance of the 2010 Audit of Washington County Appraisal District by Seidel, Schroeder & Company, Approval of a Request to Spend up to \$20,000 for new Computers from Retained Funds Leaving a Reserved Funds Balance of \$140,000, Approval of a Request to Retain Accumulated Excess Funds in the Amount of \$59,929 with the City of Brenham's Portion being \$6,598 and Approval of the Accounting Methodology for these Funds

Washington County Appraisal District Chief Appraiser Willy Dilworth presented this item. He stated that Seidel, Schroeder & Company has completed the audit of the Washington County Appraisal District's (WCAD) for the fiscal year ending August 31, 2010 and they found no discrepancies.

A motion was made by Councilmember Pyle and seconded by Councilmember Herring to approve the Acceptance of the 2010 Audit of Washington County Appraisal District by Seidel, Schroeder & Company.

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 Charlie Pyle	Yes
Councilmember Weldon Williams	Absent
Councilmember Danny Goss	Abstain

Mr. Dilworth is asking the taxing units to approve WCAD spending up to \$20,000 for new computers from retained funds leaving a reserved funds balance of \$140,000 and approval of a request to refund accumulated excess funds in the amount of \$59,929 with the City of Brenham's portion being \$6,598 to be applied to its share of the 2011-2012 budget.

A motion was made by Councilmember Pyle and seconded by Mayor Pro Tem Nix to approve the request to spend up to \$20,000 for new computers from retained funds leaving a reserved funds balance of \$140,000 and the request to refund accumulated excess funds in the

amount of \$59,929 with the City of Brenham's portion being \$6,598 and approving the Accounting Methodology for these funds.

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 Charlie Pyle	Yes
Councilmember Weldon Williams	Absent
Councilmember Danny Goss	Yes

13. Administrative/Elected Officials Report

- City Manager Terry Roberts reminded everyone about the 290 groundbreaking the next morning
- Mr. Roberts also reminded everyone about the Junior Mentoring at 4:00 p.m.

Council adjourned into Executive Session at 2:34 p.m.

EXECUTIVE SESSION

- 14. Texas Government Code Section 551.071 – Consultation with Attorney – Executive Session for the Purpose of Consultation with Legal Counsel Regarding the City's Redistricting Obligations**
- 15. Texas Government Code Section 551.071 – Consultation with Attorney – Executive Session for the Purpose of Consultation with City Attorney Concerning Legal Matters Related to the Henderson Park Lift Station Rehabilitation Project**
- 16. Texas Government Code, Section 551.071 – Consultation with Attorney Regarding Pending Litigation: Cause No. 34262, Randall L. Patterson v. City of Brenham, in the 21st Judicial District Court of Washington County, Texas**

Executive session adjourned at 3:45 p.m.

RE-OPEN REGULAR SESSION

- 17. Discuss and Possibly Take Action as a Result of Executive Session Regarding Pending Litigation: Cause No. 34262, Randall L. Patterson v. City of Brenham, in the 21st Judicial District Court of Washington County, Texas**

No action was taken.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jean Bellinger, TRMC
City Secretary

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