

**REGULAR MEETING**  
**SEPTEMBER 22, 2009**

Mayor Jeff Bearden called the Regular Meeting of the City Commission to order at 6:30 p.m. in the Commission Chambers, and a quorum was declared present.

Present: Mayor Jeff Bearden

Commissioners: Jimmy Dennis, Russell Brownlow, Travis Taylor and Phil McCuiston

Staff Present: City Manager Mitch Grant, City Attorney Trish Byars, Police Chief Tom Wilson, Fire Chief Kent Smead, Public Works Director Bob Cochran, Finance Director Anne Garmon, Community Development Director Monica Wilkinson, Municipal Judge Delores Flores and City Secretary Linda Byers.

Commissioner Dennis led the group in the Pledge of Allegiance to the U.S. and Texas flags, followed by the invocation.

**PUBLIC COMMENT**

Mayor Bearden opened the meeting to Public Comment from those who had submitted Requests to Speak during Public Comment Forms.

Larry Lyles stated that he enjoyed his golf cart, it saves on fuel, he has a substantial investment in his cart, and he causes no problems when operating his golf cart.

Don Goodrum spoke representing Larry McIlhenny, noting his golf cart has given him freedom to travel without assistance. Mr. Goodrum agrees with the suggested restrictions and supports approval of the golf cart ordinance.

Jackie Barnes supports approval of a golf cart ordinance with whatever restrictions the city commission feels is necessary.

Mark James owns property next to 4800 College Dr. and is against rezoning that property.

David Potter lives at 1724 Una and he along with all of his neighbors are against rezoning 4800 College Dr.

Matt Maurer is the applicant for rezoning 4800 College Dr.. He states that alcohol cannot be sold near hospital. Trash will be picked up. They are trying to provide a service with the convenience store, and help Vernon to grow.

Lacy Maurer stated that they wanted to give state employees a place to take their breaks, and supports rezoning.

Claudia Bennett supports rezoning 4800 College Dr.

James Foster spoke against rezoning 4800 College Dr. because alcohol sales could be allowed if not in City Ordinances. He spoke against the use of salt in the nitrate removal process, and wants the city to find other options for safe water. The Maiden St. project is vague on the agenda, and what about paving the rest of the city? He proposed putting stop signs on a future agenda. He wants to pave more of Vernon's streets.

Nathan King is against the open container law, and supports petitioning the TABC to prohibit open containers in the Central Business District, stating that it does not look good to see people on the streets of Vernon with open containers of alcohol. He endorses prohibiting rezoning of 4800 College Dr., questioning the effect on the kids on the NTSH grounds and the effect on the neighborhood.

Mayor Bearden closed Public Comment.

### **CONSENT AGENDA**

Commissioner Dennis requested the removal of Item B from the consent agenda.

Commissioner McCuiston moved the following items under the Consent Agenda be approved:

- A. Minutes of the Regular City Commission meeting held on Tuesday, August 25, 2009 and a Special Meeting held on Monday, August 31, 2009.
- B. Removed from consent agenda for special consideration.
- C. Second Reading of Ordinance No. 1521 – Regarding outdoor storage and landscaping.
- D. Second Reading of Ordinance No. 1523 – Zoning change for 4630 Wilbarger.
- E. Second Reading of Ordinance No. 1527 – Setting Water and Sewer Rates.
- F. Second Reading of Ordinance No. 1528 – Sale of Fire Substation #2 on Sand Road and designating usage of proceeds.
- G. Approve change in Personnel Policy Manual designating September 11 Firefighter Holiday to be observed as one of existing floating holidays.
- H. Approve Vouchers – August 1, 2009 through August 31, 2009.

Commissioner Brownlow seconded the motion, which passed by unanimous vote.

### **CONSENT AGENDA – ITEM B** **PLACEMENT OF SIGNS PROHIBITING CELL PHONE USE IN SCHOOL ZONES**

Commissioner Dennis stated that he pulled this item from the consent agenda to clarify the City's position. The Vernon Daily Record article implied that the City inaction regarding placement of signs in school zones as not caring for safety of its citizens and children. There are a lot of signs, many of which the citizens ignore, so it's a lot more than a matter of placing signs. The City Commission was concerned with how the police force was going to enforce these signs once these signs were placed, and takes the safety of its citizens as a high priority. Safety also must be a priority of the citizens of Vernon, and they should abide by signs once they are placed. Commissioner Dennis made the motion to approve the placement of signs prohibiting cell phone use in school zones.

Commissioner McCuiston seconded the motion. Commissioner Taylor stated that he was in favor of enforcement without any warning citations. The motion passed by unanimous vote.

**APPEAL OF PLANNING & ZONING COMMISSION DECISION**  
**ZONE CHANGE REQUEST FOR 4800 COLLEGE DR.**

Appeal from Matt Maurer on behalf of Leon Laney to the September 15, 2009 Planning & Zoning Commission's decision to deny a Zone Change Request from Single Family Residential to Convenience Commercial for the property at 4800 College Drive.

The City Commission can either schedule a public hearing to hear the appeal or refer the matter back to the Planning & Zoning Commission for reconsideration if information is available that was not considered at the Planning & Zoning Meeting or if an error was made.

Mayor Bearden recused himself from discussion and voting on this matter citing his employer, North Texas State Hospital, having taken a position at the Planning & Zoning Commission meeting and owns the property adjacent to 4800 College Dr.. He placed Mayor Pro-tem Brownlow in charge of this discussion.

Mayor Pro-tem Brownlow asked rezoning applicant Matt Maurer:

1. In the Planning & Zoning Commission was there any evidence that was not considered that is substantial enough that the Planning and Zoning Commission should rehear the case? Mr. Maurer responded "No, sir".
2. Do you feel that there was prejudice on the part of the Planning & Zoning Commission in their decision? Mr. Maurer responded "No, sir".

Commissioner Brownlow noted that because of Mr. Maurer's responses to the questions, the City Commission has no grounds for appeal.

Commissioner Taylor made the motion to accept the Planning & Zoning Commission recommendation.

Commissioner Dennis seconded the motion. Commissioner McCuiston noted that because of the rules in the Zoning Ordinances, the City has no grounds to accept the appeal. City Manager Grant explained the rules in the Zoning Ordinance. After discussion of the rules, if there are no grounds for appeal, the Commission must accept the Planning & Zoning decision, the motion passed by unanimous vote.

**ORDINANCE NO. 1529**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF VERNON, TEXAS, TO ADOPT REGULATIONS BASED ON THE 2009 STATE AMENDMENT TO THE TEXAS TRANSPORTATION CODE KNOWN AS H.B. NO. 2553, SUBCHAPTER F, SEC. 551.401. THE AFOREMENTIONED AUTHORIZES TEXAS MUNICIPALITIES TO GOVERN THE OPERATION OF MOTORIZED CARTS IN THEIR JURISDICTION TO ENSURE THE PUBLIC SAFETY AS DEEMED APPROPRIATE ACCORDING TO THE GUIDELINES SET FORTH BY TEXAS H. B. NO. 2553; TO ADD SECTION 25 – TRAFFIC, ARTICLE IX – GOLF CARTS TO THE CITY OF VERNON CODE OF ORDINANCES; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; AND PROVIDING FOR RECORDING AN EFFECTIVE DATE.**

Mayor Bearden explained that the City has consulted with Texas Municipal League, and looked at model ordinances from other cities. The Texas Department of Transportation had stopped licensing golf carts for use on public streets. A municipality may prohibit golf carts from use on city streets in the interest of safety, or a municipality may allow use of a golf cart on all public streets with a posted speed limit of not more than 35 miles per hour, and the golf cart must have all necessary equipment. The City does not have to pass an ordinance or issue permits, but can just vote to allow the use pursuant to Texas law.

City Attorney Trish Byars agreed with this information that the City could allow golf carts with limited operation, they could prohibit their use, or the City could give additional operation. If the City votes to allow golf cart use, they could come back at a later time and allow further use or prohibit their use.

Mayor Bearden voiced concerns about liability to the City, and problems with enforcement of any ordinance. Commissioner McCuiston asked about driver's license and age requirements. There are no restrictions within the state law. Commissioner Taylor felt that there should be age and drivers license restrictions. Commissioner Dennis agreed that there should be age restrictions. City Attorney Byars said that the City has very limited liability, and other Texas Cities have set different restrictions. Commissioner Dennis and Taylor both agreed that owners should have liability insurance. There was further discussion concerning the required equipment and operation as outlined in the ordinance.

Commissioner Dennis made the motion to approve Ordinance No. 1529 to allow operation of golf carts on city streets. Commissioner Taylor seconded the motion,

Further discussion included discussion of drivers license restrictions, and age restrictions.

Commissioner Taylor made the motion to amend Ordinance No. 1529 to add an age limit of 18 years of age with a valid driver's license. Commissioner McCuiston seconded this motion.

The motion to approve the amendment passed by a vote of 4 – 1 with Commissioner Taylor casting the dissenting vote.

The Ordinance as amended passed by unanimous vote.

### **PLANS FOR NITRATE REMOVAL**

City Manager Grant discussed the city's need to address the public concerns that were voiced at the August 31, 2009 Texas Commission on Environmental Quality Public Hearing. There is a need to revisit our plan for getting the Ion Exchange plant back on line. Where we are at this time:

- Our drinking water supply is high in Nitrates (above 10 parts per million), this does not comply with federal drinking water standards.
- We currently are permitted to discharge the brine water (from the ion exchange plant) through the wastewater treatment plant but this has proven to have adverse effects on the plant operation.
- Brandt Engineering has developed a permit application to discharge directly into the Pease River and this permit has received preliminary approval from the TCEQ.
- The Texas Water Development Board (TWDB) has approved a Development Fund (D-Funds/State Funds) loan for us at a fair rate.
- We have been ranked 4<sup>th</sup> out of over 600 applicants for Drinking Water (Federal funds) in the Draft IUP document and we will most likely be invited to apply for this loan at an even lower interest rate.

Mr. Grant emphasized that it is not the responsibility of the City to clean up the Pease River, but it is our responsibility to make sure that we do not discharge anything into the river that is any higher concentration of contaminants that what is already there. The way to do that is to dilute the discharge with clean water. The plan to comply, and also be conscious of the environment are to:

- Continue efforts to gain approval from the TCEQ for a direct discharge of brine water to the Pease River, and;
- Conduct a feasibility study on other reasonably economic alternatives to brine discharge to the Pease River including but not limited to injection wells, drying beds and individual home filter systems.

Mr. Grant is seeking authority from the City Commission to get a price for a feasibility study.

Mayor Bearden reiterated the information from Mr. Grant, stating that the City should focus their priorities on the ground water storage tanks, which will have to be replaced regardless of the form of nitrate removal that we pursue.

Commissioner McCuiston made the motion to accept the City Managers plan.

Commissioner Dennis seconded the motion, which passed by unanimous vote.

### **PLANS FOR SIDEWALK PLANTERS**

Mr. Grant explained that Don Wilson, who is a member of the Downtown Revitalization Task Force, has developed a design for "Typical" planters on Main Street. There is not any money available to construct these planters, but they are seeking approval from the commission for their construction and design when funds are available from private and other sources.

Mayor Bearden noted that this was included in the Downtown Revitalization Plan.

Commissioner Brownlow made the motion to approve the plan for planters on city sidewalks.

Commissioner McCuiston seconded the motion, but voiced concern that any trees planted should not be a type that would not push up the concrete sidewalks and cause problems in the future. The motion passed by unanimous vote.

### **PUBLIC HEARING** **ORDINANCE NO. 1530 – AMBULANCE RATE CHANGE**

Fire Chief Kent Smead explained that our ambulance billing company, Southwest General Services (SGS), conducted a rate study, and Lieutenant Adam Scott did a survey of our local EMS Services to determine if the rates that the City charges for ambulance services were in line with local and area rates. The City currently has one rate, plus mileage. Medicare and other insurance allow payment for Advanced Life Support, and insurance companies allow payment for supplies. Medicare does not allow for supply charges, but the City accepts what Medicare pays. Chief Smead noted that the rates recommended in the new ordinance are below average for our area, and recommends adoption of the new rates plus supply charges.

Mayor Bearden opened the Public Hearing.

Nathan King asked who would pay if an individual was unable to pay. Chief Smead responded that if there is no insurance and the individual is unable to pay, the charges are written off, and those write offs are shared by the City, Wilbarger County and Wilbarger General Hospital.

Commissioner McCuiston asked if an individual is treated but not transported, would Medicare pay. Chief Smead responded that Medicare would not pay.

Commissioner Dennis asked who would pay for this increase. Chief Smead responded that it would be paid mostly by the insurance companies, but will also increase the coinsurance costs to citizens.

Mayor Bearden closed the public hearing.

**ORDINANCE NO. 1530 – AMBULANCE RATE CHANGE**

**AN ORDINANCE AMENDING CHAPTER 3 ½, AMBULANCES, OF THE CODE OF ORDINANCES OF THE CITY OF VERNON; BY REPEALING EXISTING RATES AND ADOPTING A NEW SCHEDULE OF RATES; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; REPEALING ALL ORDINANCES IN CONFLICT; AND PROVIDING FOR RECORDING AN EFFECTIVE DATE.**

Commissioner McCuiston made the motion to approve Ordinance No. 1530 on First Reading.

Commissioner Brownlow seconded the motion, which passed by unanimous vote.

**PURCHASE UTILITY / BUCKET TRUCK**

Public Works Director Bob Cochran explained that the bucket truck currently in use is a 1979 model, and the bucket is cracked and dangerous. His proposal is to purchase a pre-owned truck and the 2005 Ford F450 truck from Utility Fleet Sales of Bryan, TX is the best option, priced at \$48,900.00. It will be financed for five years.

Commissioner Dennis made the motion to approve the purchase of the bucket truck.

Commissioner McCuiston seconded the motion, which passed by unanimous vote.

**PURCHASE PICKUPS – WATER DEPARTMENT**

Public Works Director Bob Cochran solicited bids from local and area dealers for a ½ ton pickup and a ¾ ton pickup with a Utility bed. The best bid for the ½ ton pickup was for a 2010 Ford from Vernon Auto Group at a price of \$19,342.00. The best bid for the ¾ ton utility truck was a 2009 Chevrolet from Classic Chevrolet of Dallas, TX at a price of \$27,152.85. Both of these vehicles will be financed for five (5) years.

Commissioner McCuiston made the motion to approve the purchase of both pickups.

Commissioner Taylor seconded the motion, which passed by unanimous vote.

**PURCHASE POLICE VEHICLES**

Police Chief Tom Wilson requested approval to purchase four (4) police patrol cars through state cooperative purchasing (Txsmartbuy) at a total cost of \$101,108.00 and includes additional emergency “ready for the road” equipment. Delivery will take approximately four months. Funds were budgeted for the down payment and the vehicles will be financed for five years.

Commissioner Taylor made the motion to approve the purchase of the police vehicles.

Commissioner Brownlow seconded the motion, which passed by unanimous vote.

**ORDINANCE NO. 888**

This Ordinance is to accept a Block Grant of \$250,000.00 from the Texas Community Development Program (TCDP) for paving on Maiden Street between Strayhorn St. and Bentley St. a location selected several years ago. City match in the amount of \$52,755 is included in the 2009-2010 Budget. Nortex Regional Planning Commission will provide general administration for this grant.

Commissioner McCuiston made the motion to approve Resolution No. 888.

Commissioner Dennis seconded the motion, which passed by unanimous vote.

**MAIDEN STREET GRANT ENGINEER**

Request for Proposals were received from five engineering firms. A committee composed of City Manager Mitch Grant, Public Works Director Bob Cochran and Street Supervisor Johnny Turkett reviewed the proposals and recommended the firm of Kimley-Horn and Associates, Inc. The contract price is set at \$30,000 plus \$7,000 for surveying. Jeff James and Lesley Bruce were present to represent Kimley-Horn & Associates, Inc.

City Manager Grant explained that the City will request strip paving instead of curb & gutter paving in an attempt to expand the number of streets receiving paving. The seven members of the Paving Task Force (Dan Richardson, Carolyn Randel, Dennis Fenter, John Martinez, Rev. Robert Thomas, Charles McArthur and Jimmy Lyday) will be used to determine which other streets are paved.

Commissioner McCuiston made the motion to approve hiring the firm of Kimley-Horn & Associates for the Maiden Street Paving project.

Commissioner Taylor seconded the motion, which passed by unanimous vote.

**ENGINEERING SERVICES ON TANK CONSTRUCTION PROJECT**

Request for Proposals were received from four engineering firms. A committee composed of City Manager Mitch Grant, Public Works Director Bob Cochran and Water Department Supervisor Alan Powell reviewed the proposals and recommended the firm of Kimley-Horn and Associates, Inc. for this project.

The proposal is to build a 2 million gallon concrete tank on Strayhorn Street near the existing tank, and another 750,000 gallon steel tank with a polybrid lining near the Odell Well Field. City Manager Grant recommended that the commission approve the engineering contract with the stipulation to wait on the timing until the City gets approval on the TWDB loan. The engineering for the Nitrate Discharge line will be done after the City makes the decision to proceed with the current discharge plans.



Commissioner Taylor made the motion to approve hiring the firm of Kimley-Horn and Associates, Inc. for the tank construction project, with the stipulation to wait until after the next meeting to start the contract.

Commissioner McCuiston seconded the motion.

Commissioner Dennis questioned what the fee would be from Brandt Engineers for work already done. Mr. Grant responded that that amount had not yet been determined, but would be included in the total project costs.

Commissioner McCuiston asked why the Odell Well Field tank would be steel. If a concrete tank was cheaper, why not build both tanks from concrete? Mr. Grant responded that adding a larger tank in town increases our in town storage, and if the costs estimates are good, both tanks will possibly be built from concrete. It was also questioned if the demolition cost includes sale of the used steel. Jeff James from Kimley-Horn noted that demolition costs were only estimates.

With no further discussion, the motion was approved by unanimous vote.

**TABC PETITION TO PROHIBIT OPEN CONTAINERS  
IN CENTRAL BUSINESS DISTRICT**

Mr. Grant explained that the City has option to prohibit open containers in the Central Business District, and that is the only restriction available to the City. If the City is wet, open containers are allowed by state law. The Commission can vote to prohibit all open containers in the Central Business District. If and when we have interest in a restaurant or group wanting to have use of public areas we can develop an ordinance to allow some more limited use or we can be proactive with an ordinance defining exact uses.

Commissioner McCuiston made a motion to prohibit open containers in the Central Business District.

Commissioner Dennis seconded the motion, which passed by unanimous vote.

**RESOLUTION NO. 889 – BOOTSTRAP BUCK GRANTS**

This resolution names the officials responsible for the applicant and certifies that the City is eligible to receive program assistance. This \$2,500 grant will be used to purchase street pole banners for the Santa Rosa Roundup.

Commissioner Taylor made the motion to approve Resolution No. 889.

Commissioner McCuiston seconded the motion, followed by discussion about banners that would reach across the street, after which the motion passed by unanimous vote.

**EXECUTIVE SESSION**

Commissioner McCuiston made the motion to enter into Executive Session at 8:40 pm – Government Code, Title 5, Chapter 551, Section 551-074; Personnel – One (1) year evaluation of the City Manager.

Commissioner Dennis seconded the motion, which passed by unanimous vote.

**RESUME REGULAR SESSION**

Commissioner McCuiston made the motion to resume regular session at 9:15 pm.

Commissioner Taylor seconded the motion, which passed by unanimous vote.

Commissioner Dennis made the motion to approve a three percent (3%) salary increase following a favorable evaluation for City Manager Mitch Grant.

Commissioner McCuiston seconded the motion, which passed by unanimous vote.

Mayor Bearden voiced the fact the Commission was pleased and proud of their association with Mr. Grant, and the job he has done in the past year. He has accomplished a lot in the past year, and the Commission appreciates the job he is doing.

**EXECUTIVE SESSION**

Commissioner Taylor made the motion to enter into Executive Session at 9:20 pm – Government Code, Title 5, Chapter 551, Section 551-072; Deliberation on Sale and Valuation of former Police Station at 1800 Cumberland.

Commissioner McCuiston seconded the motion, which passed by unanimous vote.

**RESUME REGULAR SESSION**

Commissioner Taylor made the motion to resume regular session at 9:40 pm.

Commissioner McCuiston seconded the motion, which passed by unanimous vote.

Commissioner Dennis made the motion to allow the City Manager to secure an appraiser to get a fair market value on the building at 1800 Cumberland St. and to offer the building on the market to sell to Wilbarger County.

Commissioner McCuiston seconded that motion, which passed by unanimous vote.

**EXECUTIVE SESSION**

Commissioner McCuiston made the motion to enter into Executive Session at 9:43 pm – Government Code, Title 5, Chapter 551, Section 551-072; Deliberation regarding acquiring real property and value of that real property.

Commissioner Taylor seconded the motion, which passed by unanimous vote.

**RESUME REGULAR SESSION**

Commissioner McCuiston made the motion to resume regular session at 9:50 pm.


Commissioner Taylor seconded the motion, which passed by unanimous vote.

Commissioner Brownlow made the motion to decline to accept the property of the old Sands Motel.

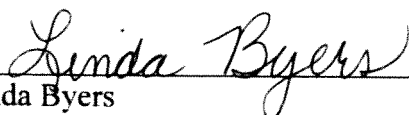
Commissioner McCuiston seconded the motion, which passed by unanimous vote.

**ADJOURN**

The meeting was declared adjourned at 9:52 p.m.

  
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Jeff Bearden  
Mayor

ATTEST:

  
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Linda Byers  
City Secretary