REGULAR MEETING

CITY COMMISSION HARLINGEN, TEXAS

January 17, 2018

A Regular Meeting of the Harlingen Elective Commission was held on January 17, 2018 at 5:30 p.m., City Hall, Town Hall Meeting Room, 2nd Floor, 118 E. Tyler Street, Harlingen, Texas. Those in attendance were:

Mayor and Commissioners
Chris Boswell, Mayor
Michael Mezmar, Mayor Pro-Tem, District 3
Richard Uribe, City Commissioner, District 1
Tudor Uhlhorn, City Commissioner, District 2
Ruben de la Rosa, City Commissioner, District 4
Victor Leal, City Commissioner, District 5

Staff Present
Dan Serna, City Manager
Amanda Elizondo, City Secretary
Rick Navarro, City Attorney

Mayor Boswell called the meeting to order and announced the meeting was duly posted according to State Law. The following proceedings were held:

Invocation/Commission Richard Uribe

Pledge of Allegiance/Welcome

Mayor Boswell led the Pledge of Allegiance and welcomed those in attendance and proceeded with the following items:

1) Approval of Minutes

a) Regular Meeting of December 6, 2017

Motion was made by Commissioner Uhlhorn and seconded by Commissioner Uribe to approve the minutes of December 6, 2017. Motion carried unanimously.

Consent Agenda

2a) Second and final reading to approve and adopt an ordinance amending Exhibit A of Ordinance No. 14-10 and amend Chapter 18, Master Fee Schedule of the Harlingen Code of Ordinances establishing new rental rates for vendor booths for various City events held at City parks, establishing rental rates for Harlingen Field, establishing rental rates for the mobile stage and establishing rental rates for bathroom units, providing for publication and ordaining other matters related to the foregoing.

b) Second and final reading to approve and adopt an ordinance to rezone from Residential, Single Family ("R-1") District to Residential, Triplex and Quadruplex ("M-1") District for Lots 1 and 2, Block 1, Adams Treasure Subdivision, located at the northeast corner of 7th Street and Vinson Avenue. Applicant: Town and Country Homes, C/O Armando Elizarde.

c) Second and final reading to approve and adopt an ordinance for a Specific Use Permit ("SUP") to allow a Bar/Lounge in a General Retail ("GR") District located at 1105 South Tamm Lane, bearing a legal description of 3.347 acres out of Block 33, Stuart Place Subdivision Survey 139/297/298. Applicant: Ruben Martinez.

d) Second and final reading to approve and adopt an ordinance for a Specific Use Permit ("SUP") to allow an adult business (tattoo shop) in a General Retail ("GR") District located at 1617 East Harrison Avenue, Suite A, bearing a legal description of Lots 13-16, Block G, East Park Terrace Subdivision. Applicant: Roger Castillo.

e) Consideration and possible action to approve the preliminary plat of the proposed Oak Estates Subdivision, being a 15.18 acre tract of land, more or less out of Block 95, Lon C. Hill Subdivision, located on the West side of Ed Carey Dr. South of Morris Rd. Applicant: Jack Brown of Brown, Leal & Associates c/o Dr. Usman Sheriff.

Mayor Boswell stated Item 2 (b) was removed from the consent agenda.

For the record, Mayor Boswell relinquished his chair and exits the meeting room in order to avoid "an appearance of impropriety." He signed an affidavit on Abstention from Voting Form and the form is filed in the City Secretary's Office.

Motion was made by Commissioner Leal and seconded by Commissioner Uribe to remove approve Item 2 (b) under the consent agenda. Motion carried unanimously.

Mayor Boswell returned to the meeting and continued with the remaining items on the consent agenda.

Motion was made by Commissioner Leal and seconded by Commissioner Uhlhorn to approve the items 2 (a), (c), (d), (e) under the consent agenda. Motion carried unanimously.

3) Consideration and possible action to a resolution by the City of Harlingen to authorize the City Manager to enter into a contract between the City of Harlingen and the East Rio Hondo Water Supply Corporation for the City's use of the Corporation's fire hydrants for the purpose of fire suppression.

Rogelio Rubio, Fire Chief stated the agreement between the City of Harlingen and the East Rio Hondo Water Supply Corporation would allow the City to use ERHWSC's fire hydrants for fire suppression. Under the Texas Water Code, Section 67, the ERHWSC may only provide water for fire suppression by an agreement as outlined in the statue. This agreement conforms to the statute and allows the City access to the fire hydrants as outlined, so that it may continue to provide health and safety services to its citizens.

Dan Serna, City Manager stated the Legal Department had reviewed the contract and staff recommends approval.

Commissioner Uhlhorn inquired if the pressure was dropped below 30 psi would there be notification?

Chief Rubio stated the hydrants that would be used are referred as fill hydrants that would fill the fire trucks which the pressure would come from the truck and the pipe will not pressurized. The need is volume therefore that should not be a problem for us.

Motion was made by Commissioner Leal and seconded by Commissioner Uribe to approve the resolution by the City of Harlingen to authorize the City Manager to enter into a contract between the City of Harlingen and the East Rio Hondo Water Supply Corporation for the City's use of the Corporation's fire hydrants for the purpose of fire suppression. Motion carried unanimously.

4) Public hearing to consider an ordinance on first reading for a Specific Use Permit "SUP" to allow a storage container in a Light Industry ("LI") District located at 902 W. Harrison Avenue, bearing a legal description of Lots 4-9, Block 1, Svadlenak and Corris Subdivision. Applicant: Jesus Sanchez.

Rodrigo Davila, Planning and Development Director stated the applicant is requesting the Specific Use Permit to allow a storage container (8ft x 20ft) at the "La Michoacana Meat Market" located at 902 W. Harrison Avenue. The storage container has been located at this location for approximately five (5) months and is use to store merchandise by the owner of the establishment. No chemicals are stored in the storage container. The container is located on the northeast side of the property and behind the existing grocery store. Surrounding properties are zoned Light Industry ("LI") to the north, east, west, and General Retail ("GR") to the south. The surrounding land uses consists of commercial use in all directions. The Building Inspections and Fire Prevention Departments reported no objection to the request. The Planning and Zoning Staff did not receive any objections from the surrounding property owners. Staff recommends approval subject to complying with the following conditions: 1) the Specific Use Permit would be limited to ninety days; 2) the container must be located in the rear of the property and screened with an 8ft. solid fence; and 3) comply with the requirements administered by the Planning and Zoning, Building Inspections, and Fire Prevention Departments.

Discussion was held regarding the length of time that the storage container was in place and Mr. Davila stated the storage was at the site approximately five months. The business was not aware of the violation until the Code Enforcement Department informed them of the violation. The items in the storage unit are not clear and staff is aware that there are no perishable items in the storage unit.

a) Public Hearing

Mayor Boswell announced this was a public hearing and anyone wishing to speak for against this item may do so.

There being no comments, Mayor Boswell closed the public hearing.

b) Consideration and possible action to approve an ordinance on first reading for a Specific Use Permit "SUP" to allow a storage container in the above described property.

Rick Navarro, City Attorney read the caption of the ordinance.

Motion was made by Commissioner Uhlhorn and seconded by Commissioner Uribe to approve an ordinance on first reading for a Specific Use Permit "SUP" to allow a storage container in a Light Industry ("LI") District located at 902 W. Harrison Avenue, bearing a legal description of Lots 4-9, Block 1, Svadlenak and Corris Subdivision. Motion carried unanimously.

5) Consideration and possible action to repeal the existing Flood Damage Prevention Ordinance (Chapter 105) and adopt in its place an updated Flood Damage Prevention Ordinance as provided by the Federal Emergency Management Agency (FEMA) to stay in compliance with the requirements of the National Flood Insurance Program (NFIP).

Carlos Sanchez, Asst. City Manager stated the Federal Emergency Management Agency (FEMA) has recently completed re-evaluating the flood hazards in our community. As a result, a new Flood Insurance Study (FIS) and Flood Insurance Rate Maps FIRM identifying existing flood hazards in the community have been issued. As a condition of our continued participation in the National Flood Insurance Program (NFIP) the City is required to adopt flood management regulations which meet the standards of Paragraph 603.3(d) of the NFIP regulations (44 CFR 59) by the effective date of the FIRMs, February 16, 2018. These standards are the minimum requirements and do not supersede any state or local requirements of a more stringent nature. Per ordinance an Appeal Board will need to be established to address an applicant's grievance.

Commissioner Uhlhorn inquired if the City has changed any lines or downgraded any areas that would be a greater flood risk as they were identified before?

Mr. Sanchez stated no modifications were done to increase or decrease the severity and there were no other changes. One of the restrictions in the regulations is that every building permit must meet the base flood elevation in regards to the 1% probability water levels elevation in any particular rain event. Participation in the National Flood Insurance Program is a requirement so citizens in our community can obtain flood insurance protection.

Mr. Sanchez stated the appeal board would address grievances made by a developer in the event of a disagreement to the restrictions imposed for future developments.

Commissioner Uhlhorn inquired when the new maps would be published.

Mr. Sanchez responded the maps were made available a couple of years ago. The only change was in the designation.

Rick Navarro, City Attorney read the caption of the Ordinance.

Motion was made by Mayor Pro-Tem Mezmar and seconded by Commissioner De La Rosa to repeal the existing Flood Damage Prevention Ordinance (Chapter 105) and adopt the updated Flood Damage Prevention Ordinance as provided by the Federal Emergency Management Agency (FEMA) to remain in compliance with the requirements of the National Flood Insurance Program (NFIP). Motion carried unanimously.

6) Consideration and possible action to support a resolution in support of South Dakota's Petition to the United States Supreme Court to modify previous holdings restricting states and municipalities from collecting sales tax on internet sales at point of purchase rather than point of sale.

Mayor Boswell stated the US Supreme Court had decided to revisit the case of whether the state and municipalities could charge a sales tax on internet sales. Currently, the internet sales taxes are usually collected at the point of sale which would be at a large distribution facility. I suggested getting this resolution on the Development Corporations and LRGV Development Council agendas in support of changing this ruling so that municipalities and states could charge a sales tax to collect for the city. As internet sales become more prevalent local municipalities will not able to collect. Certain large cities that have a distribution center are actually getting rich and smaller communities that do not have those types of opportunities to collect sales tax are not

benefiting. Local citizens are paying sales taxes to other state and municipalities while the sales tax has been very favorable in Harlingen, this is an issue for all local municipalities. It will be sent to the Development Council possibly joining them in support to overturn the decision.

Discussion was held in regards to the local collection of the sales tax and how it was being disbursed when goods were purchased through the internet in the state and out of the states and Mr. Serna stated "E-commerce is growing by 15% a year."

Commissioner Leal stated he had contacted the State Comptroller Office and they had not been very helpful in providing information.

Motion was made by Commissioner Uribe and seconded by Commissioner Leal to approve the resolution in support of South Dakota's Petition to the United States Supreme Court to modify previous holdings restricting states and municipalities from collecting sales tax on internet sales at point of purchase rather than point of sale. Motion carried unanimously.

7) Board Appointments

Commissioner Uribe

Re-appointed Laura Garcia to the Animal Shelter Advisory Committee
Re-appointed James C. Milligan to the Golf Advisory Board.
Re-appointed Jacob Montalvo to the Harlingen Proud Advisory Board.
Re-appointed Lenore Combs to the Veterans Advisory Board.
Re-appointed Cesar Perez to the Zoning Board of Adjustments.
Re-appointed Robert Garza to the Zoning Board of Adjustments.

Motion was made by Mayor Pro-Tem Mezmar and seconded by Commissioner Uhlhorn to approve the reappointments of Laura Garcia to the Animal Shelter Advisory Committee, James C. Milligan to the Golf Advisory Board, Jacob Montalvo to the Harlingen Proud Advisory Board, Lenore Combs to the Veterans Advisory Board, Cesar Perez to the Zoning Board of Adjustments, Robert Garza to the Zoning Board of Adjustments. Motion carried unanimously.

8) Executive Session/Closed Session on the following items:

a) pursuant to Chapter 551, Subchapter D., V.T.C.A. Government Code (Section 551.072), regarding the purchase, lease or value of real estate, if the deliberation in an open meeting would have a detrimental effect on the position of the Development Corporation of Harlingen Inc. in negotiations with a third person regarding some of the following projects; and/or Contemplated or pending litigation, or matters where legal advice is requested of the Attorney on a matter in which the duty of the attorney to the Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Act. Section 551.071 of the Texas Open Meetings Act. and/or Executive Session pursuant to Chapter 551, Subchapter D., V.T.C.A. Government Code (Section 551.087) regarding commercial and financial information from business prospects with which the Board is conducting economic development negotiations and/or to discuss or deliberate financial or other incentives relating to Cardone Industries, Inc., SDC TX, LLC., and/or GLH, LP.

Item No. 8 (a) was not discussed.

9) Consideration and possible action to approve an Amendment to the Performance Agreement dated November 29, 2017 with Cardone Industries, Inc. and SDC TX, LLC. and GLH, LP. providing for the conveyance of approximately 2.79 acres to SDC TX, LLC and authorizing the Mayor to execute the Amendment.

Mr. Raudel Garza, CEO of the Economic Development Director stated Cardone Industries, Inc. was requesting to straighten a road that was on the original layout. The piece of property consisted of 2.79 acres and it would make more sense for Cardone Industries, Inc. to own and straighten the road. The 2.79 acres is an addition to the 60.9 acres that was initially in the project.

Motion was made by Commissioner Uhlhorn and seconded by Commissioner Uribe to approve an Amendment to the Performance Agreement dated November 29, 2017 with Cardone Industries, Inc. and SDC TX, LLC. and GLH, LP. providing for the conveyance of approximately 2.79 acres to SDC TX, LLC and authorizing the Mayor to execute the amendment. Motion carried unanimously.

10) Consideration and possible action to approve an Amendment to the Industrial District Agreement dated November 28, 2017 between the City of Harlingen, and Cardone Industries, Inc., GLH, LP. and SDC TX, LLC.

Mr. Serna stated the Industrial Development Agreement with Cardone Industries, Inc. was also being amended to reflect the additional 2.79 acres.

Motion was made by Commissioner Uhlhorn and seconded by Commissioner Leal to approve the Amendment to the Industrial District Agreement dated November 28, 2017 between the City of Harlingen and Cardone Industries, Inc., GLH, LLP.and SDC TX, LLC. Motion carried unanimously.

11) Citizen Communication

No Citizen Communication

There being no further business to discuss, Mayor Boswell adjourned the meeting.

CITY OF HARLINGEN

Chris Boswell, Mayor

ATTEST:

Amanda C. Elizondo, City Secretary