

CITY OF SANGER, TEXAS

MINUTES: REGULAR CITY COUNCIL MEETING

November 20, 2017, 7:00 p.m.

502 Elm Street, Sanger, Texas

COUNCIL MEMBERS PRESENT: Mayor Thomas Muir, Councilman Bill Boutwell, Councilman David Clark, Councilman Allen Chick, Councilman Gary Bilyeu, Councilman Lee Allison

COUNCIL MEMBERS ABSENT: None

The Mayor and all Council Members were present constituting a quorum.

STAFF MEMBERS PRESENT: Acting City Manager Alina Ciocan, City Secretary Cheryl Price, Finance Director Clayton Gray, Director of Parks and Recreation Jim Berman

1. Call Meeting to Order, Invocation, Pledge of Allegiance.

The Regular City Council Meeting was called to order by Mayor Muir on Monday, November 20, 2017 at 7:00 p.m. The Invocation was given by Councilman Allison and The Pledge of Allegiance was led by Councilman Clark.

2. Citizens Input: (Citizens are allowed 3 minutes to speak. The City Council is unable to respond or to discuss any issues brought up during this section).

There were no citizens present who wished to be recognized to speak.

3. CONSENT AGENDA:

a) Approval of Minutes:

1. City Council Work Session, November 6, 2017
2. City Council Regular Meeting, November 6, 2017

b) Disbursements

c) Approve Appointing Matt Fuller to Open Board Position, Place 5, on the Planning and Zoning Commission.

d) Approve and Authorize the Mayor to Sign an Interlocal Cooperation Agreement with Denton County for Library Services.

A motion was made by Councilman Bilyeu to approve the Consent Agenda as presented. The motion was seconded by Councilman Boutwell. Motion carried unanimously (5-0 vote).

4. Consider any Items Removed from Consent Agenda.

None.

REGULAR AGENDA

5. **Consider, Discuss and Possibly Act on Approving and Authorizing the Mayor to Sign Contracts with USA SHADE and Fabric Structures for the Fabrication and Installation of Shade Structures at John Porter Sports Complex and Railroad Park Not to Exceed \$242,248.44.**

Parks and Recreation Director Jim Berman was recognized to present the request. He advised that back in July the 4B Development Corporation put together their budget for this fiscal year and in that budget, they allocated for shade structures over the bleachers at Porter Park and Railroad Park. The budget was approved for \$250,000. The additional funds would allow additional unforeseen items such as moving utilities, etc. The bid was from the State Contract. Councilman Boutwell was concerned regarding the contract and that there were a lot of things that weren't included. He expressed concerns regarding some of the wording on utilities and other items. Mr. Berman advised that the contractor is basically providing the structure and assembling it and putting the piers in and putting it together. If there are any utilities that need to be moved, we will have to move them. On Railroad Park, Mayor Muir noted concern about the piers and whether the structure would be sturdy enough since the site is on a former landfill site. Councilman Boutwell noted they have a lot of limitations noted on their contract on items that they will not be responsible for and asked if he foresees a lot of change orders. Mr. Berman noted that the way the proposal is written is when they are not dealing with a municipality the permitting agency drags their feet and stretches it out for a long period of time and there could be changes of prices in steel at the factory and the prices would go up. Since we are the permitting agency he does not see us holding up the project. There was concern regarding the structures holding up in high winds and Mr. Berman noted the structures will be insured. Mayor Muir noted that his concern is, if it will matter whether we are poking holes in the ground where the former landfill was. Mr. Berman noted that he was not aware of any regulations. There were additional questions and it was noted there were three (3) shades going to be installed at Porter and eight (8) shades at Railroad. Mr. Berman stated he received comments favoring the project. Mayor Muir noted one of the comments was from the pee-wee league attendees and their complaint was that there was no shade at the park and this would help bring in more out of town tournaments and, there were some comments regarding the backstop. Mayor Muir noted that he thought it was going to look very nice. Councilman Bilyeu asked what the time frame was on the project. Mr. Berman advised that he is trying to get it done before spring. They are already doing the drawings but were not going to start ordering the parts until we issued the P.O. We would like to get them in by March. By the time the holes are being drilled, the product will be onsite. Councilmembers noted they would like to know when construction starts because they will start getting questions. Acting City Manager Alina Ciocan advised that Council would be notified and we can also take a proactive approach and post it on the website, Facebook and Twitter.

A motion was made by Councilman Boutwell to approve and authorize the Mayor to sign contracts with USA SHADE and Fabric Structures for the Fabrication and Installation of Shade Structures at John Porter Sports complex and Railroad Park not to exceed \$242,248.44. Motion was seconded by Councilman Bilyeu.

Discussion was called. Councilman Clark asked if we have had our legal team look at the contract. Mr. Berman stated that we can have the attorney look at it, that he has not had any of the contracts that he has done in the past reviewed by the attorney. Councilman Clark asked if this was normal. Mayor Muir noted that if we have a major deal we have the contracts reviewed. On something that is standard/routine or "boilerplate", we do not typically have the attorney review, which helps to balance legal costs. Acting City Manager Alina Ciocan advised that this seems to be a pretty standard agreement and that staff has no issues with sending it out for review before we execute it if that is what Council wants. Councilman Clark noted that he is not asking to do it, but it is a \$250,000 contract; and, there could be some future liability with it, so he was just wondering if it was necessary. Mayor Muir noted that with this type of contract we normally don't, but on a one party to one party contract that is not replicated anywhere else, we would have it reviewed. This type of contract where they are putting up shade structures in every ballfield in the county and it is a "rubberstamped" contract, often we don't. Mayor Muir noted that if the Council has real heartburn on that it he is for it; but, at the same time, he is also ok if we do not send it out for review. He stated he wanted to get a sense from the Council and if the Council wants to have it reviewed, we can definitely do it. Councilman Allison asked what the Warranty was on this. It was noted there was a limited warranty that was specific to different parts such as the steel is warranted for 10 years and there was a clause that if someone other than install, it would have to be exactly to their specifications or it would void the warranty; fabrics are warranted for 10 years, etc. Councilman Clark noted he was concerned mostly with liability. It was noted that there is a Certificate of Insurance included in the packets. Councilman Bilyeu noted that if we have them install it, their liability covers it, and we have some recourse. Councilman Allison noted concern that in the contract under the Statement of Limited Warranty that there is one statement he would like for the attorney to look at, which says that at the company's "sole discretion" the company will repair or replace defective product or workmanship or refund the portion of the defective product or service rendered. There was discussion as to taking out the statement "sole discretion". Councilman Boutwell asked if they could make an amendment to the contract and remove the statement of "sole discretion" so they could move forward with the installation to make the Spring installation deadline. Mayor Muir noted they could do that or they could opt for the contract to be contingent on review by legal counsel.

Councilman Allison offered an amendment to the original motion made by Councilman Boutwell subject to the limited liability clause statement "at sole discretion" being removed from the contract. Councilman Boutwell agreed to amend his motion to approve contingent on staff's consideration of the legal language, most specifically to delete the "at sole discretion" language from the contract; and, any other review staff feels is necessary Councilman Bilyeu agreed to the amendment and revised his second to the motion. The motion carried unanimously (5-0 vote).

Parks and Recreation Director noted that the Park Tour for tomorrow is going to be cancelled because it is already dark at 5:45. It will be rescheduled in the Spring.

6. **Consider, Discuss and Possibly Approve Ordinance #11-37-17 – Amending Chapter 13, Utilities of the Code of Ordinances, Article 13.300 Tampering with Utility Service Equipment, Article 13.1300 Installation of Underground**

Electrical Service; Article 13.1400 Installation of Street Lights; Article 13.1600 Utility Billing Procedures; Article 13.1700 Average Monthly Payment Plan; Providing for Repeal, Penalty, Severability and an Effective Date.

Finance Director Clayton Gray was recognized to present his portion of the Ordinance. He noted that he worked with Mike Brice on this ordinance and they came up with the proposed changes. The first portion "Meter tampering", basically states that any damages are taken care of by the person that causes the damage. The next two portions 13.1300 and 13.1400 regarding Electric, Mike Brice had worked with Mike Prater on this and these two items are the updates to reflect our current standards. Article 13.1600 basically are housekeeping items, keeping in tune with the way that our policies and procedures have changed through the years. The next two sections are complete additions. Article 13.1608 allows for adjustment of a water bill for a leak that has been repaired. Currently we do not have this stipulation for these types of adjustments. The way this is written allows us to adjust for a period of up to two consecutive months. Within any 12-month period for a resident who has had a leak that has been repaired may come and make application and provide proof of repair. To make the adjustment we would go through and look at their history to calculate an expected or average usage for that month. This would allow for some financial relief for citizens and also make sure that the City is covering our bases and covering all of our costs. Section 13.1608 is similar, but this is an adjustment for a high-volume water bill, which is not as a result for some repair for whatever reason is abnormally high usage which can come from things like running toilets, some people have come in and they are in new construction areas where a contractor is using their water during the day, etc. Those things that can't be proved, but the usage has gone up considerably. This adjustment is a little different, in that it will be only for a one-month period. A lot of times when someone has a leak they don't realize it until they get their water bill and often times by the time they open the envelope we are already two to three weeks into the billing cycle. This adjustment can be granted once every 36 months. As part of the process the calculation will be the same; however, the expected consumption when calculated, has to be three (3) times the normal consumption before we consider making an adjustment. There is an allowance for the City to investigate the circumstances, for instance checking the meter, sprinkler system (if they have one) and checking the irrigation settings, etc. Both of these items would be initiated by the customer. Councilman Allison asked how he came up with the three times the amount. Finance Director Clayton Gray advised that the way they arrived at that amount is that they looked at about 15 cities around the state that have ordinances like this and the three times normal consumption was used most frequently. Austin had the most lenient policy and they will let you do something once ever 12 months no matter what it is. Mike Brice particularly liked the City of Farmers Branch standards which we basically mirrored. There was discussion as to how the calculations were done and different scenarios. Finance Director Clayton Gray noted that there is also an added item (g) in 13.1609, an exception, which allows for extraordinary circumstances which may be considered with approval of the city manager. There was discussion regarding this and the reason that Mike Brice added this in 13.1609 and not in 13.1608 is because in 1608 there is not a requirement that it be a certain volume, it is just that there is proven repair. Under both of these sections if their water consumption affected the sewer consumption it can also be recalculated. Article 17.700 is basically just cleaning up general housekeeping issues and adding

Item (f) Termination where a customer's participation in the average monthly payment plan shall terminate either when service is terminated or when a penalty for late payment is applied to the account. So, in order to stay on the AMP Plan, you must pay you bill on time.

Mayor Muir noted that one of the changes he noted is that it took the calculating, etc., from the City Manager and gave it to the Finance Director. Finance Director Clayton Gray stated that he has been doing it since he started working at the City and this is just moving the ordinance into the way it has been done for the last couple of years.

Councilman Boutwell noted a typographical area on 13.300 (a) (7) the word "collect" in the last sentence should be "collected".

Councilman Boutwell noted Article 13.1300 (9) The compaction amount needs a percentage of compaction that is required. Councilman Allison noted that details like that are in the construction standards. Acting City Manager Alina Ciocan advised that we can put it in the Ordinance that it "shall be compacted to meet the City's construction standards". With this addition we would not have to update this ordinance every time we change the construction standards.

Councilman Clark asked about if in instances of a highwater bill do we test the meter for accuracy in-house, or send it out to a third party. Finance Director Clayton Gray stated that we send it out to a third party. Councilman Clark also asked if we offered a water audit and if we did it or paid for it by third party. It was noted that someone on staff does it. Councilman Clark noted he liked the idea of the third party testing the meters and an offer of the water audit.

A motion was made by Councilman Bilyeu, to approve Ordinance #11-37-17 – Amending Chapter 13, Utilities of the Code of Ordinances, Article 13.300 Tampering with Utility Service Equipment, Article 13.1300 Installation of Underground Electrical Service; Article 13.1400 Installation of Street Lights; Article 13.1600 Utility Billing Procedures; Article 13.1700 Average Monthly Payment Plan with the modification concerning compaction in 13.300 (9) with a phrase being added that it must meet the City's construction standards. Motion was seconded by Councilman Clark. Motion carried unanimously (5-0) vote.

7. Consider, Discuss and Possibly Act on Approving and Authorizing the Mayor to Sign Change Order #1 with Pavecon Construction.

Acting City Manager Alina Ciocan provided a summary. She noted that Mike Brice had put this memo together before he passed and it was his intent to bring it before City Council, but because of everything that happened, it did not make it on the agenda. She noted that her understanding of it is that on the McReynolds Project the contractor sloped part of the road in the wrong direction. Our engineers met with Mike Brice and Neal Welch and determined that the issue would not materially affect the project. There were some negotiations back and forth and ultimately what was agreed upon was that Pavecon was going to give us a credit for \$70,000, and they were going to work on a section of Bolivar from Railroad to 2nd Street and our contribution would be approximately \$88,000. Mayor Muir noted that Mike Brice had

visited with him on this and they were in the process of working through it. When they looked at the slope, because of the way the drainage works, it was not adversely affected. There was a lot of back and forth and he did not know what the details of the negotiations were but they did agree to do some additional work for us to compensate. Mike Brice thought this would be a good in-between and save ripping everything out when it really would not change the soundness of the road and the flow. The reason for focusing on the Railroad Avenue piece is smooth it out and raise it to avoid future high centering by trucks on the track. There was considerable miscellaneous discussion regarding the project details and it was discussed that we may want to get input from the Engineer Pacheco Koch on the offer. Council discussed postponing a decision tonight and wanted to have Neal Welch Director of Public Works present to answer questions. Mayor Muir suggested taking no action on this item and bringing it back when we have the appropriate information available. No action was taken on this item.

8. INFORMATION ITEMS:

a) All American Dogs Animal Report Summary

Mayor Muir noted that we used to receive a detailed report and it was done by one of the owners that recently passed away. They are also in a transition period and are working on getting us a report in the future. They did give us a summary of the animal intake in the form of an e-mail.

9. ADJOURN.

There being no further discussion the meeting was adjourned by Mayor Muir at 8:08 P.M.