

MINUTES OF REGULAR  
CITY COUNCIL MEETING HELD  
DECEMBER 19, 2019

The City Council of Olmos Park, Texas held a regular meeting on December 19, 2019 commencing at 6:00 p.m. in the Council Chambers at City Hall. Mayor Ronald Hornberger presided and Council members present were Juliana Dusek, Erin Harrison, Kenyon McDonald Sharon Plant and Deanna Rickabaugh. Staff present was City Manager, Celia DeLeon; City Secretary, Diane Gonzales; Fire Chief, Michael Goodreau; Police Chief, Rene Valenciano, Building Official, Ricardo Cavazos and Public Works Director, Gilbert DeLeon. Also present was City Attorney, Richard Lindner; Brian Magness from Armstrong & Vaughn; Madison Wilson, 1045 Shook Avenue; William Brooks, 439 Paseo Encinal and Adam Harden, 415 Devine Road.

Mayor Ronald Hornberger called the meeting to order at 6:00 p.m. and determined a quorum was present.

Citizens to be heard: This time is provided for citizens to address the Council on issues and concerns. No action can or will be taken on issues raised under this portion of the meeting. Please state your name and address for the record and limit your remarks to a period not to exceed three minutes.

There were no citizens to be heard.

Receive and discuss FY2019 Audit Report; take possible action

Brian Magness with Armstrong and Vaughn presented the FY2019 Audit Report and stated Olmos Park had a total expenditure in the General Fund of \$3,330,547 and it was \$151,000 below budget. The General Fund has a total expenditure of about \$3.3 million which equates to about \$270,00 per month. There is a total fund balance of \$2.1 million in the General Fund so there is approximately eight months of expenditures in the General Fund available to fund any type of emergency. He stated this is a very conservative very managed City when we tend to see three to six months of expenditures which is our recommendation.

Councilwoman Rickabaugh moved to accept the FY2019 Audit Report.

Councilman McDonald seconded the motion.

The vote in favor of the motion was unanimous.

Councilwoman Dusek arrived at 6:05 p.m.

Discussion on Resolution 2019-06 of the City of Council of the City of Olmos Park, Texas establishing an Energy Conversation Goal in order to comply with Senate Bill 241; authorizing the City Manager to take all necessary steps to implement the provisions of this Resolution; incorporating recitals; providing a severability and adopting an effective date; take possible action  
Mayor Hornberger stated this is required by the recent session of the legislature and at this point in time there is no funding requirement and there is also a certification required that is fairly modest. With this plan in place for future legislative we will have to reduce by X percent and that will require expenditures to make changes to reduce our consumption of electricity.

Councilwoman Plant stated this is burdensome even if there is no cost on small cities. She asked is there a penalty if we do not approve this?

City Attorney Richard Lindner stated the state law says that the City shall establish a goal to reduce at least five percent and there does not appear to be any penalties but the legislative does say the City "shall" establish a goal.

Councilwoman Harrison asked what if our community is already proactively doing something and because we are so small and we have already done what we can do what happens then? She stated with establishing five percent each year we will get to a point where we can't do anything else.

City Manager DeLeon stated the City Attorney reported in his email that there are a few cities who submitted their input and some of the questions they asked on their report was our electricity consumption and water consumption and she pulled all of the invoices to gather the data. They also want to know how many street lights we have and she had Gilbert DeLeon, Public Works Director drive the City and count the lights. She was able to submit this year's report since it was so basic.

Councilwoman Plant asked how long did it take to gather the information for the report?

City Manager DeLeon stated it took a couple of hours and it took the Public Works Director a couple of hours.

Mayor Hornberger stated we are a small City and we have limited resources and have limited control over our use of resources and we actively look for ways to save money and we put in LED lighting as much as we can. If we were the City of San Antonio and had ownership of SAWS and had ownership of CPS we would have some control over what we can do.

Councilwoman Harrison asked is it based on actually cost of the energy used or is it based on wattage used, what is the measure that they are looking for is it the overall cost savings or is it actual reduced consumption based on wattage?

Councilman McDonald stated it is only reduced consumption, they don't look at the cost.

Councilwoman Plant stated the City Manager can file the same exact report she did last year and save some City time.

City Attorney Richard Lindner stated it states you shall establish a goal to reduce the electric consumption by at least five percent each fiscal year.

Mayor Hornberger stated if this City Council does not mind the legislature and do what they say that we shall establish a goal, what is the penalty?

City Attorney Richard Lindner stated he will always recommend that the City follow the law and several other Cities in the county have complied.

Mayor Hornberger asked would we have a five percent goal every year?

City Attorney Richard Lindner stated that law says establish a goal of five percent for seven years.

Councilwoman Plant stated they are not thinking about small Cities and reducing street lights is also a safety issue. She asked can we send a letter stating this is not applicable to our City?

Councilwoman Rickabaugh moved to table the item.

Councilman McDonald seconded the motion.

The vote in favor of the motion was unanimous.

Discuss and take possible action on an Ordinance Of The City Of Olmos Park amending Chapter 20 of the City's Code Of Ordinances by adopting the 2018 Edition of the International Fire Code and the 2018 Edition of the NFPA 101, Life Safety Code; making local amendments to such codes; providing for the issuance of permits and collection of fees therefor; providing for penalties for violations; providing for repeal of all ordinances in conflict; stating a public purpose and providing cumulative, continuation, and severability clauses.

City Manager DeLeon stated we received a revised ordinance at 4:00 p.m. today.

City Attorney Richard Lindner stated the revisions were under the Life Safety Code section.

Councilwoman Plant asked does this pertain to just the Commercial District?

Fire Chief Goodreau stated yes just to the Commercial District and there are specific occupancies identified by the Fire Code which this is a mandate to the Fire Code with the opportunity to have open flame devices but we are eliminating that option to have an open flame device because we just think there is a life safety issue involved such as a candle that would have to have some type of protected measure.

Councilwoman Plant asked what if someone brought in a birthday cake to a restaurant with candles on it?

Fire Chief Goodreau stated the goal to adopting the code is to prevent a fire, if the candles are not sitting there unattended and if the City adopts this than it is law.

Mayor Hornberger stated statues are to be read with plain meaning so a birthday cake with candles is prohibited.

Fire Chief Goodreau stated if you consider a birthday cake a device.

Mayor Hornberger stated look at it as a candle that is unprotected. Part of the problem with legislatures writing laws is that so often they don't seem to stop and consider what is the natural ultimate consequence because some day some court or some lawsuit will do exactly that so you have to look at "unintended" consequences as you are drafting the law.

Councilman McDonald recommended to add the word "unattended" to the ordinance.

Councilwoman Plant stated she had some questions on the sprinkler system section.

Fire Chief Goodreau that the code wants us to insert a specific date but we need to take that by case by case basis and really will depend on what type of work is going to be done at the business and how soon are they ready to open the doors. On an existing structure is only applies to and assembly with three hundred persons or more that includes consumption of alcohol and an institutionalized building, example of foster care, or hospital. When we are dealing with new buildings you are going to see more sprinkler system requirements but when they wrote the code they understand that anybody adopting the codes are trying to protect the business and not run them out of town. If a business is just changing certificate of occupancies and the building is

already standing then there is one chapter in the code that applies and it is the existing structure. If it is a new build they will have to follow the entire code.

Councilwoman Plant stated we should have some sort of interpretation on application and have some sort of internal policy in the Fire Department that is approved by the City Manager.

Fire Chief Goodreau stated the existing structure chapter is so important because an Inspector will not go out unless there is a current Certificate of Occupancy, they will use the book that referenced that year so if someone got a Certificate of Occupancy under the 2012 adoption that is what they will apply. The book may be intimidating but it has the largest impact on new commercial builds and one chapter applies to the existing structures and the whole idea is keeping the community safe and making things consistent.

Fire Chief Goodreau stated adopting this Fire Code book takes out a lot of the interpretation and can be amended relatively easy.

After a lengthy discussion Council amended the draft ordinance sections 22 C and 23 C and add the word “unintended” to the open flame devices.

Councilman McDonald moved to adopt the 2018 Edition of the International Fire Code and 2018 Edition of the NFPA 101 Life Safety Code making local amendments to such codes; providing for the issuance of permits and collection of fees therefor; providing for penalties for violations; providing for repeal of all ordinances in conflict; stating a public purpose and providing cumulative, continuation, and severability clauses with the addition to the word “unattended” to section 22 C and 23 C.

Councilwoman Plant seconded the motion.

The vote in favor of the motion was unanimous.

Discuss and take possible action on an Ordinance 2019-12 amending Article II to the Code of Ordinances City of Olmos Park, Texas Chapter 40 Zoning; Single-Family Residence Districts, subsection 40-45 Impervious Cover; for the purpose of regulating certain improvements affecting flow patterns of surface runoff on residential lots; declaring a public purpose; incorporating recitals; providing a repealer and savings clause; providing for a penalty; providing for severability and setting an effective date .

City Attorney Richard Lindner stated at last month’s meeting Council discussed this and no revisions were made and before this can go into effect we still need to have a public hearing.

Councilwoman Plant stated she did not see anything in the ordinance about retaining walls and that is her main concern.

City Attorney Richard Lindner stated his concern with regulating retaining walls is he does not want to hamstring a Civil Engineer based on the Engineering readings a retaining wall needs to be put in place. A retaining wall acting as a dam of not deferring water he thinks is more of a global approach of just regulating any dam might be more effective than only regulating things that are defined as a retaining wall.

Mayor Hornberger stated the discussion about retaining walls came about because the whole idea about sometimes getting rid of a retaining wall is a bad idea because it will increase the flow of water as you go down a hill and the lots are basically leveled and if a retaining wall is taken out

it creates in certain circumstances where it is no longer level from one lot to another and that would increase the flow of run off. The theory is to protect the integrity of the existing retaining wall and the problem with taking out existing retaining walls is that this will affect drainage and erosion and those are the reasons you have retaining walls to preserve the characteristics of the property.

City Attorney Richard Lindner stated he will look into whether or not to add regulation that before an existing retaining wall can be removed or modified an Engineer review of it will be needed to look at effects of drainage and erosion.

Councilwoman Plant stated we have been talking about this for several years and she does not want neighbors suing neighbors or having a neighbor to pay to make a retaining wall higher because of the grade of the property.

Mayor Hornberger stated any additional consideration in the modification would be that the person doing any construction or remodeling would have to have an Engineer take a look at an existing retaining wall and certify what they are doing is not going to affect the structural integrity of the existing retaining wall.

City Attorney Richard Lindner stated there is the water code law that the neighbors can sort out themselves same with retaining walls there are laws about supporting your neighbors claim so there is same type of way for an aggrieved neighbor to go against the neighbor without the City's help. He stated the City would like to be more proactive and pass ordinances and he will present a revised draft ordinance at the next meeting.

Mayor Hornberger stated the whole concern about retaining walls is that in most instances are eighty to ninety years old so after that much time water is going to have had deteriorating effect on the retaining wall

Councilman McDonald moved to table this item until the next meeting.

Councilwoman Dusek seconded the motion.

The vote in favor of the motion was unanimous.

Appoint members to the Economic Development Corporation to serve a two-year term through December 31, 2021; take possible action

City Manager DeLeon stated we have three members to appoint and we have two members that are currently serving on the board that would like to be re-appointed so that will leave one vacancy.

Madison Wilson stated she has lived in Olmos Park for two years and is a CPA and she currently works in finance and takes great pride in being a resident of Olmos Park and would love the opportunity to join the Economic Development Corporation to learn more about the commercial district and to bring some new ideas to the table.

City Manager DeLeon stated she provided the attendance sheet for Council's review of the current board members.

Adam Harden stated he is an Attorney for the firm of Norton, Rose and Fulbright and graduated from Trinity University in 2006 and has a Master's Degree from the University of Texas and received a Master's in Law for taxation and would like to serve on the Economic Development Corporation.

Councilwoman Plant stated the EDC meetings are not lasting very long because the President, Barry Sturrock has taken the reins on the section of McCullough that we are going to revitalize so we are negating plans and working with business owners. She stated President, Barry Sturrock term expires at the end of December and he will no longer be able to serve on the board.

Mayor Hornberger stated he is an Attorney and Donna McElroy is an Attorney so there is enough Attorney's on the EDC board right now and it is important that we have other professions on the EDC.

Councilwoman Plant stated she will be coming off the board next year and she was part of the project and whoever does not have an opportunity to serve on the EDC board now will be able to next year.

Councilwoman Rickabaugh stated there are two members on the attendance sheet that have missed 3 meetings. She stated serving on one of the other boards does not mean that you can't have an interest in what is going on and have some input.

Mayor Hornberger stated Donna McElroy absences were work related as she is an Attorney.

Council asked Adam Harden if he would be willing to serve on the Planning & Zoning Commission and Mr. Harden stated he would be ok with it.

Councilwoman Plant moved to appoint Madison Wilson to the Economic Development Corporation Board to replace Barry Sturrock and re-appoint Fedra Chapa and Donna McElroy for a two-year term.

Councilman McDonald seconded the motion.

The vote in favor of the motion was unanimous.

Appoint members to the Planning and Zoning Commission to serve a two-year term through December 31, 2021; take possible action

Councilwoman Rickabaugh moved to re-appoint William Brooks and Dr. Weisenthal and to appoint Adam Harden to the Planning & Zoning Commission for a two-year term.

Councilman McDonald seconded the motion.

The vote in favor of the motion was unanimous.

Discussion on changing the regular City Council meeting dates; take possible action (Councilwoman Harrison, Mayor Hornberger)

Mayor Hornberger stated currently City Council meets on the third Thursday of every month.

City Manager DeLeon stated Councilwoman Harrison was proposing the third Wednesday of each month and staff nor does the or our City Attorney have a problem with moving the date.

Councilwoman Rickabaugh stated this item has come up before and Council had issues.

Councilwoman Plant stated she had issues with her home in Rock Port because of hurricane Harvey.

Councilman McDonald stated he also had issues with his home in Rock Port because of the hurricane.

Mayor Hornberger stated if the day was changed to Wednesday that would give the staff an additional day to begin working on items from the Council meetings.

City Attorney Richard Lindner stated he will have a conflict in January but he will have another Attorney will come in his place.

Councilwoman Harrison stated she wants to move the City Council day so she can attend the Alamo Heights ISD School Board meetings.

Councilwoman Rickabaugh stated that was the same reason that she wanted to change the date a year ago.

Councilwoman Harrison moved to change the date of the City Council meetings from the third Thursdays to the third Wednesdays of each month.

Councilwoman Dusek seconded the motion.

The vote in favor of the motion was unanimous.

Discuss and take possible action on revising Chapter 32-69 (C) Lot Frontage Requirements and/or instructing Planning and Zoning Commission to review regulating the street frontage of lots bordering three city streets (Councilwoman Rickabaugh, Councilwoman Plant)

Councilwoman Rickabaugh stated she was concerned about the lots around Alameda Circle which are sub dividable right now and she would like to have setbacks looked at or deed restrictions that might be associated.

City Attorney Lindner stated the City does not enforce deed restrictions the City just enforce ordinances.

Councilman McDonald asked why are the lots sub dividable?

City Manager DeLeon stated they can meet the minimum lot size requirement and she had the Building Official look into the ordinances and under Chapter 32-69 section C if we change that language it could possibly work for what we are looking for. She stated the council packets included back-up from Chapter 40 which is Zoning and the Council may to have the P&Z review the rear side yard and front yard restrictions.

City Attorney Richard Lindner stated Alameda Circle has unique characteristic of the City and there are some regulations that can protect that. Anytime the land gets sub divided it will trigger and there is an argument to be had that any lot that is trying to be sub divided will have to face inward because of the ordinance. He will work on a revision to the subdivision code and suggested to Council to consider giving Planning & Zoning direction to consider ways to keep the significance of Alameda Circle preserved.

Councilwoman Plant moved to direct staff and City Attorney to look into the concerns of revising the code and to direct Planning & Zoning to consider zoning options in keeping the significance of Alameda Circle.

Councilman McDonald seconded the motion.

The vote in favor of the motion was unanimous.

Discussion on Tree Ordinance restrictions in particular tree/hedge trimming: take possible action (Councilwoman Dusek, Councilwoman Plant)

Councilwoman Dusek stated we have in our ordinance that if your hedges are over ten feet in height you will need a permit to be cut and how it is regulated and she believes the intent is more of removal and would affect the landscaping. She stated when it comes to maintaining and trimming she does not agree with how the ordinance is written.

Public Works Director, Gilbert DeLeon stated people that have their hedges twenty feet high that cut down to ten feet are leaving them there for Public Works to pick up.

Mayor Hornberger stated the motion would be to remove the reference with respect to hedges to trimming and maintenance.

Councilwoman Dusek stated she would like to just remove the maintain portion and asked why are we requiring someone to come get a permit.?

Councilwoman Rickabaugh stated Councilwoman Dusek wants to take out in section 32-274 under exceptions "this exception shall not apply to any trimmings above ten feet in the height of the tree."

Councilwoman Harrison stated she was not aware that if she was trimming her own tree over ten feet that she needed to pull a permit to be in compliance and seems to be an unnecessary burden.

City Attorney Richard Lindner stated section 32-274 requires a contractor to provide the service to come in a get a permit and section 32-275 is the permit to actually cut it regardless of who does the work. The homeowner does not have to get a permit if it is under ten feet.

Building Official Ric Cavazos stated the ordinance does not refer to hedges it states trees. The interpretation that Tree Wisemen gave was a shrub tree when the ordinance was amended it went from eight feet to ten feet and everybody assumed that the shrub was also included.

Mayor Hornberger states the chart shows designation of trees and nowhere in the ordinance does it mention hedges.

After a lengthy discussion Council discussed changing section 32-274 and section 32-275 changing ten feet to thirteen feet and to reconsider this next month.

Councilwoman Dusek moved to amend section 32-274 section A from ten feet to thirteen feet and section 32-275 A from ten feet to thirteen feet.

Councilman McDonald seconded the motion.

The vote in favor of the motion was unanimous.

Mayor Hornberger stated to have another agenda item next month to discuss the fees in section 32-277 A 4.

Consent Items:

- a. Approve Cash Disbursements November 2019;
- b. Approve City Council minutes for November 21, 2019;
- c. Excuse Councilwoman Plant from attending the regular December 19, 2019 meeting;
- d. Approve Holiday Schedule;
- e. Appoint Givler Engineering as City Engineer for January 1, 2020 to December 31, 2020, pursuant to City Code Chapter 2-14(a); take possible action;
- f. Appoint Davidson, Trolio, Ream and Garza Law Firm as the City's Attorney for January 1, 2020 to December 31, 2020, pursuant to City Code Chapter 2-13(a); take possible action;



- g. Appoint Frank Dickson as Municipal Court Prosecutor and Patrick Mayo as alternate Municipal Court Prosecutor for calendar year 2020; take possible action;
- h. Approve EDC FY2020 Budget;
- i. Approve the EDC FY2020 Work Plan;
- j. Approve 2019 P&Z Annual Report

City Manager DeLeon stated she removed the two proposed additional days on the holiday schedule and the schedule will remain the same. She also stated there are no changes in fees with the City Engineer's contract or the City Attorney's contract.

Councilwoman Plant moved to approve consent items A through J.

Councilwoman Dusek seconded the motion.

The vote in favor of the motion was unanimous.

Departmental Reports: (Written reports submitted to City Council, no further discussion required, unless requested by City Council.)

- a) Police:
  - (1.) Incidents, arrests and activity during the prior and current months.
- b) Fire:
  - (1.) Fire and other service calls, activity and training activities during the prior and current months.
- c) Streets and Sanitation:
  - (1.) Monthly Report
- d) Administration:
  - (1.) Financial reports for October and November 2019;
  - (2.) Monthly overtime, CT, vacation, sick leave report;
  - (3.) Building Department Report;
  - (4.) Municipal Court Report
- e) Manager's report:
  - (1.) Discussion of written reports (if needed).

Councilwoman Plant moved to approve the departmental reports as submitted.

Councilman McDonald seconded the motion.

The vote in favor of the motion was unanimous.

There was no further business and the meeting was adjourned at 8:10 p.m.

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Ronald Hornberger  
Mayor

ATTEST:

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Diane Gonzales  
City Secretary