

COUNCIL MEETING, THURSDAY, JANUARY 27, 2011, 6:00 P.M.

The Mayor and City Council met in regular session on Thursday, January 27, 2011 at 6:00 p.m. with the following members present: Mayor Diaz, Council Members Claudio Ochoa, Rachel Nunez, J. Ramon, Christopher Ochoa and Mario Gonzales; City Manager Maner, City Attorney DeFoyd and City Secretary Raines.

The meeting was opened with Prayer and the Pledge of Allegiance.

A motion was made by Council Member Nunez and seconded by Council Member Christopher Ochoa to approve the minutes as presented. Vote: 5 For 0 Against

Mayor Diaz advised that Comments from Members of the Public would be moved to the end of the agenda.

Mayor Diaz announced that long time resident Emily Beavers (Mother of former Mayor Mike Jackson) had passed away and that another resident, Sammy Reyna, was in critical condition and ask that everyone keep the families in their prayers.

#### DEPARTMENT HEAD REPORTS:

Chief Ayala stated that they had been very busy, he reported that there had been two shootings and they were in the process of taking the suspects into custody, that they have had a number of burglaries, they have suspects and they appreciate the help they have received from the citizens, the Rangers and HPD.

Mayor Diaz stated that he had been getting a lot of calls about loud music and maybe we could get some help from the citizens on this. There was discussion on putting up signs about the loud music. City Manager Maner mentioned putting up signs on Mercury, Holland and Market Street advising that the loud music ordinance would be enforced.

Councilman Ramon ask if we had a meter to measure volume and was advised the city did have one.

Public Works Director, Kyle Reed, reported that we have had a lot of rain, we are trying to catch up with the mowing and he had mentioned to Councilman Christopher Ochoa about putting some work on the agenda to have council consider some pipe bursting while the prices are extremely low. He stated that Councilman Ochoa was going to meet with him on Tuesday and he would see Councilwoman Nunez tomorrow and he would like to meet with each and every one of them and go over the project and he would like to have it on the next agenda so they could get started on some of this work.

Councilman Claudio Ochoa ask Mr. Reed if he could send him an e-mail on whatever he had, specs, quotes, etc.. Mr. Reed stated he would need to be sure he had all the information on it.

Kim Bellotte, Parks & Recreation, reported that the baseball and softball leagues were still registering and they still need help and support so if wants to be a sponsor or help work the fields, they will be glad to have your help. She advised that opening day was scheduled For March 26<sup>th</sup>. She stated that public works had been working hard on the fields.

Cindy Miller, Heritage Hall Director, announced that their game night would be Monday, January 31<sup>st</sup>, from 4:00 p.m until 7:00 p.m., and invited everyone to bring a covered dish and join them.

Stephanie Orr, Jacinto City Library, reported they were busy planning for Black History Month and they had two programs scheduled for February 17<sup>th</sup>, one for the children and one for adults.

Mayor Diaz stated that he had no report at this time.

City Manager Maner stated that he had no report.

Mayor Diaz introduced Marquez McMillan and Daniel Avalos, stating that Mr. Avalos was a candidate for Constable for Precinct 2. Mr. Avalos gave a short bio on himself and discussed some of the things he would like to accomplish.

#### UNFINISHED BUSINESS:

1. City Manager Maner advised that this had been brought up once before and tabled, that it was the application of Juan & Hilda Cantu for a variance, that they, without a permit, built a porch on their house and it was within one foot of the side property line and the eave actually extends to the property line and there were pictures here. He stated that since the last meeting, he would like to point out that our building inspector went back and researched the records and in November of 2009, Mr. Cantu pulled a permit to do some work on his house and did it and it was done right and passed and the reason he pointed this out was because that removed any doubt that Mr. Cantu knew he should have gotten a permit before he did this other work and also, he wanted to point out to the council, because it was his job to see that the ordinances are enforced, that the building inspector as requested that this not be granted and the fire marshal has also requested that it not be granted. He ask the city attorney to correct him if he was wrong, the matter

before the council is whether or not to approve the advice of the variance board that it not be granted and that doesn't mean that Mr. Cantu can't do anything, if he wants to do something that will pass code, he just gets a new permit and does it.

Councilwoman Nunez stated the first thing he did wrong was to build without a permit.

Councilman Ramon advised that he checked the property and talked with the neighbors and was told that it was already there and built out of metal and he just replaced it with wood.

A motion was made by Councilwoman Nunez and seconded by Councilman Gonzales To accept the Variance Board's recommendation at 10310 Burman, denying this application.  
Vote: 5 For 0 Against

2. City Manager stated he would just like to point out that this was an application from Mr. Jose Lopez to put a wooden carport three feet from the property line, the structure was not built, this was an application where he filed for a permit and because it was closer than the ordinances and code allow to the property line, the building inspector had to turn him down, then he went to the variance board and the variance board turned him down and that was why we were here tonight.

Councilman Ramon stated that he didn't know how many members of the council went, but he did go to this property and it was three feet from the next property and the house Next door was more than eight feet away from the structure of this house. He stated this guy did everything that he could to do it right, he got the permit, went before the board and it was one foot away from meeting the requirements and it was not going to hurt anything. He ask City Manager Maner if he wanted to talk and he replied that he was sorry, that it was actually two feet. Mr. Ramon stated it was not going to hurt anything to approve this. Mr. Ramon stated he believed that Councilman Ochoa went to the house, he didn't know about anyone else. Councilwoman Nunez stated that she went to the house. Mr. Ramon stated the existing structure of the house was already there, he just extended the porch and he was asking the council to reconsider and really think about it because he didn't think it was going to hurt and like the city attorney pointed out last meeting, we are not labial in case of a fire like some citizens were trying to say. He stated that City of Houston distances were 2 feet. City Manager Maner ask if that was residential construction.

Councilwoman Nunez stated that from what she understood from Mr. Lopez, he was going to obey the city code and he is going to build it like our city code ask the people in Jacinto

City to do to avoid any kind of damage to another persons property. Mr. Ramon stated that he had not talked with him this last week.

A motion was made by Council Member Nunez and seconded by Councilman Claudio Ochoa to accept the variance board's recommendation to deny the request for a variance at 10526 Norvic for a carport. Vote: 4 For 1 Against (Councilman Ramon against)

#### NEW BUSINESS:

1. Councilman Claudio Ochoa stated that he would like to make a motion to table this agenda item until this election process has been completed and once it has been completed, he would put it back on the agenda for a vote to approve this committee. The motion was seconded by Councilman Jose Ramon. Vote: 5 For 0 Against

Mayor Diaz stated that we would go down to Agenda Item No. 5.

5. Chief Squyres explained that it was basically stimulus money from a couple of years ago and the States Energy Efficiency Group had been trying to come up with a method of allocating this fund so finally they did, we have a contract in place, they looked at city facilities and found that Town Center could be upgraded as far as HVAC system to run more economically. He stated it was a win win situation for the city, there was no match for the grant, it would not cost the city anything whatsoever, there was paper work involved in handling the grant, but we were use to that with CDBG grants and we looked forward to it.

Councilman Christopher Ochoa made a motion that council authorize the advertising for bids for the remodeling of the Town Center HVAC control system, which will be paid for by the Energy Efficiency and Conservation Block Grant with the bids due back of February 10' 2011. The motion was seconded by Councilwoman Nunez.

Councilman Claudio Ochoa stated that he would like to change the due date on the bid to February 24<sup>th</sup> if we could, to give us more time to look at them.

Mayor Diaz stated we would amend the motion to change the due date of bids to February 24<sup>th</sup>.

Vote: 5 For 0 Against

Page 5 – January 27, 2011

2. Nancy Gosney, 1726 Belin, ask Mayor Diaz who was in charge of the council and

Mayor Diaz stated he would believe it was the citizens, the people who vote them in. Ms. Gosney ask when the charter was violated, who is in charge of reprimanding them. The Mayor ask the city attorney if he would like to answer that question. City Attorney DeFoyd stated the citizens or the District Attorney's office, depending on what it is, if it was criminal, the DA would be interested in it. He stated the council was in charge of the duty to abide by the charter and the citizens elect these councilmen and he assumed they would express their disappointment at the ballot box, but if she was talking about something that each one of these councilmen have a duty to do and that is to uphold this charter and abide by it and if they don't do their duty, they shouldn't be elected or they should be removed. Ms. Gosney stated they were trying to clarify this question, they keep getting different answers. Mr. DeFoyd stated that if what she was asking, was there a policeman that policed all this, the answer was no, that these people were elected to police their self, elected to abide by the charter and part of their oath was they would abide by the charter and discharge their duties under the charter and he was assuming that everybody here would do that, if they don't, then the citizens need to do something about it. Ms. Gosney addressed Ms. Nunez and Mayor Diaz, stating that she had spoke to Mayor Jackson in reference to this review/revise and she was informed that five years ago they didn't have any issues so there was no need to form a committee to review the charter. She ask what year was it done and was advised 1998. She ask if this was a true statement that five years ago there was no issues. Councilwoman Nunez stated that she didn't remember it coming up at all. Councilman Claudio Ochoa stated he thought he understood the city secretary, there was some changes that needed to be made and either they did not approve those to go for a vote and ask if that was correct. The city secretary stated no sir, that in 1998 there were changes that were on the ballot and the citizens voted those changes down.

3. Larry Schion, 506 Hare-Cooke Rd, Crosby, Texas, stated that Ms. Gosney had a lot of good questions, and when she ask about our charter, you know, our charter is what it is and we should follow it. If things are not built according to the code, they should have to take them down, that is the rules, there shouldn't be any bickering back and forth. He discussed how the council voted on the recommendations of the variance committee, stating that the charter didn't mean anything to Position 3, that he wanted to change it for everybody so they didn't want to tear anything down. He stated why did we have a charter, that they were fixing to update the charter and he hoped the charter was updated in a way that says this is what it says and then they can't sit up there and argue about it. He stated that when they build something that doesn't meet code, make them tear it down and when they are in the hole a lot of money, this will stop. Mr. Schion discussed other

Page 6 – January 27, 2011

they find with the charter and that is where the citizens have the power, they put you in and they can take you out, and that is what Ms. Nancy was talking about, when they get

from 400 to 600 votes on it, that should matter and all of this wasn't on any of them except him, they didn't break it but they voted on it, so when it hits the streets this time, the people are going to think a little bit about it, so the ones that voted on that need to think about it because this next election that will be on the street and it will affect the way people vote. He stated that the people should be able to say what they want to as long as it isn't vulgar, there was a time to do it and Ms. Gosney was fighting real hard on this and she was keeping everybody here in line and he would liked her being his friend and on his side. Mr. Schion stated our charter was plain and just keep it that way and when the charter comes around , all of them need to vote on one thing, if you get 400 or 500 votes, that recall should be right there although we are having a misunderstanding on how it should work but just remember on election, the people who voted against it, the people would know.

Councilman Ramon stated he was confused, that he didn't break the charter tonight, this deal was about the building code, it was a different book so if he had broke the charter, the attorney would have told him, he needed to get his facts right before you put them on flyers, the charter wasn't broken tonight, he was trying to pass an item that was violating the building code of the city.

4. Councilman Claudio Ochoa said he would start off by saying a flyer was passed out Last week , updating on recall on Jose Ramon, Position No. 3, Police and Fire. He stated that the stuff that was said and specified on this flyer, he was a little concerned about for all the city council. He read Item No. 1 which said certain council voted against the recall, denying the citizens the right to vote. He stated he voted against the recall because there were no specific grounds noted on the recall petition, he didn't deny the citizens the right to vote as the flyer stated. If a County Judge finds the petition warrants a recall and orders an election, the citizens will be able to vote in the recall election. He read Item No. 2, which stated certain council people ignored the charter, he stated that he did not ignore the charter, that Article 9, Section 13 allows him to do what he did, vote for or vote against, he took action on this agenda item and he voted what he believed to be right, not taking action was a violation of our charter. He stated that everyone on the city council table voted for or against the recall election, that makes everyone up here in compliance with our charter, none of us broke our charter. He stated that in reference to Article 9, Section 13, he was very glad the petition was being taken to the County Judge, he was the one that could clarify whether the petition warrants a recall and if the judge finds that the petition is valid, he will order a recall and the city council will set the recall election date.

Page 7 – January 27, 2011

He call attention to Item No. 4 on the flyer, the city council is forming a committee to review the charter so that council members are protected from recall. He stated that he didn't think anyone up there was selecting a person to review the charter so that he or anyone in the future can be protected from recall. He stated he was not forming this review

committee to protect any council member from recall, and ask Councilman Gonzales if he was and he stated absolutely not. Mr. Ochoa stated that was what the flyer stated and he ask Mr. Gonzales if he had seen the flyer. (System did not pick up his answer). Mr. Ochoa stated he didn't know who wrote the flyer, that they didn't put their name on it, maybe they didn't want to be associated with it or tell the people they are the one that is misinforming the public. He stated no one was forming this committee to change the charter so no one could be recall, they were not doing that, they were doing this because it has not been revised in 23 years, it has to be updated, as Councilman Gonzales stated when he voted to appoint this committee, he stated this has to be updated, that was why they were doing it. Mr. Ochoa said a statement made in a letter made in reference to two family members in city council, certainly you are not saying you don't want this, right. This would be a violation of someone's constitutional rights, he didn't think revision could be put into the charter. He stated the request for background checks and drug testing, that he was not against that but the application was a government documents and he thinks they mandate what needs to be on the application. He stated that we could discuss what can be done regarding this request. He stated there were some things they were talking about they would like to see done that are open, he thinks if he is correct, and ask the city manager if these meetings were going to be public meetings and the city manager stated yes, that the commission would hold public hearings or they certainly should and get public input on it. City Attorney DeFoyd stated that every single meeting, that every time three of those members get together, it is a public meeting and it has to have an agenda and any citizen has a right to be there and we are talking about a review committee, they may review and decide there is nothing they want to change. City Manager Maner stated he thought they were all public meetings but the thought the charter said they could hold public hearings also. Councilman Ochoa stated he was just saying that in the event that someone wanted to make a recommendation, such as in here and he was sure there were more recommendations, he was sure the committee was going to be open for that, maybe they contact us and we talk to the board member they appoint, that he didn't know how that was going to work. City Attorney DeFoyd stated that normally the way it had worked in the past where we had a review commission was they met and they posted their meetings and they usually wanted him there as the city attorney to talk with them about the charter, they wanted the city secretary there most of the time, and the city manager, they are supposed to do that and we are there only as staff and to give them assistance in language, it was not for us to have any influence on them at all and remember that whatever they suggest, has to come back to the council, the council

Page 8 – January 27, 2011

has to decide to put it on the ballot, then it goes to the citizens and vote on each revision, if there is a revision, so there were safeguards. Councilman Claudio Ochoa stated he guessed the question was, so that we get clarification, in the event a citizens wants to attend one of these meetings, or they allowed to, and City Attorney DeFoyd stated absolutely, it was a public hearing and a public meeting, and the commission could control it's agenda, that it

would not be a free for all. Councilman Claudio Ochoa stated that last on his comments about the flyer, they said being on city council was a privilege, not a right and he couldn't agree more and he was glad that a majority of the citizens that voted in this last election gave him the privilege. He happened to think they were right in voting for him and giving him and he thanked them for voting for him, that this privilege allows him to listen to everyone and vote his consensus in the best interest of the citizens.

#### COMMENTS FROM MEMBERS OF THE PUBLIC:

Larry Schion, 506 Hare-Cook Rd., stated that the last meeting that we were here, Mr. Ochoa, and he knew in the minutes it shows it, said that if we don't do a charter change that everyone up there could be under the same fire as Mr. Ramon. He stated that tells him that he is a little concerned because of what was going on with Mr. Ramon and a recall, so with that statement made, and after going into a ten or twelve page speech that was read, he stated off some things so it sounded like to him, just like with Position No. 4 wanting to bring in Robert's Law on the people because we were speaking and he wanted to quieten the public. Mr. Schion discussed why they didn't like for the public to talk. He stated his brain tell him Mr. Ochoa was talking double talk because last week it was because him or anyone else up here could get what Mr. Ramon was getting and then wanting the charter and he thinks that if himself and other people stand out there when this is voted on and tell the people what is going on, they will probably shoot it down, that he was part of that committee when the last proposed changes were put on the ballot and they work to get them defeated and the people voted it out, and he promised them that they would do it again.

Carmela Garcia, 11010 Verano, said that Position One stated the last time that it was a waste of time to come up here and speak and she didn't think anything was a waste of time, that on the recall election, she had looked back on the video and it was 46 minutes long, now if we get on the agenda, we have about ten minutes, that agenda item should not have taken 46 minutes, to her that was a waste of time, but that was just her opinion, that she just thought we should all be given the same amount of time. She stated also, Council Position No. One, you were elected to represent the residents and in his speech it was quite clear that he did not represent her, she was one of 608 residents that did sign that petition of which 471 were certified and she really felt like he did not represent her.

Page 9 – January 27, 2011

She stated that she agreed that the city charter did need to be revised and she agreed with him on that part and that was why she came up here to share some ideas, but she did want to make a correction before she did that, that it hasn't been corrected in 23 years and she had heard this over and over and she knew that Ms. Nunez has said that it was last looked at back in 1998 and she had heard that several times so for him to say 23 years was not correct, but anyway, she did agree that the city charter did need to be revised and as she was

petitioning, some very well respected member of this community, and she didn't want to name any names, actually were the ones that suggest having background check and drug testing on each of the possible future councilmen so she agreed with them, we didn't want any councilmen to be spending money and later make all these expenditures on signs and banners and come to find out you can't run because of this in your background and this was suggested by one of the persons who did sign the petition. She stated that she had just heard Position No. 1 say that it was a privilege to be a councilman and she just wanted to suggest that he go back to his recording, that he was the person that said that he had a right to be in this position and it wasn't a right, it was a privilege. She stated that about the variance, that was why we had Chief Squyres, he was the one with the license, he was the one that could say what needs to be done and we have to go by his suggestions just because he is the expert, if he says lets not go for it because of this, he has already stated the reasons, she doesn't see how you can go against. Mayor Diaz advised her that time was up.

Mr. H. G. Wooten, 11006 Munn St, stated that in regard to the charter being changed, he didn't care what anybody says or who they appoint, it didn't get passed that way, it has to go to the people and the people have a say in it and they could vote it down. He stated that you have checks and balances on most everything and you certainly would have on that. He stated he didn't care who you appointed on that, the citizens would have the chance to vote on it, he stated the council might vote it down, he didn't know that much about it, that was why we have Jim DeFoyd up there, he was a smart man and he would certainly tell you if it was the wrong way to do it but we have to have confidence in the citizens out here and the Council, Mayor, City Manager, City Secretary and City Attorney to work this thing out, it will be finalized by the citizens saying they are for or against it, that you could change a lot of things but it might not pass. He stated he thinks the charter need to be reviewed but whether or not it needs to be changed is debatable.

Mayor Diaz adjourned the meeting at 7:00 p.m..

Respectfully submitted,

Joyce Raines, City Secretary