

COUNCIL MEETING, THURSDAY, JANUARY 13, 2011, 6:00 P.M.

The Mayor and City Council met in regular session on Thursday, January 13, 2011 at 6:00 p.m. with the following members present; Mayor Diaz, Council Members Claudio Ochoa, Rachel Nunez, Jose 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.

Mayor Diaz ask for a moment of silent Prayer for the victims and their families of the Arizona tragedy.

A motion was made by Council Member Nunez and seconded by Council Member Claudio Ochoa to approve the minutes of the council meeting on December 9, 2010 and December 20, 2010 as presented. Vote: 5 For 0 Against

Mayor Diaz stated that comments from members of the public would be moved to the end of the meeting.

Mayor Diaz called upon the department heads for their reports:

Kim Bellotte, Parks and Recreation, reported that they were starting to get ready for the summer, that she had attended their water safety training last week and comparing our guards to other cities, we have a great set of guards. She stated that baseball and softball leagues were signing up now at the gym and they both ask that if you have coached before, please come out and coach again and they need volunteer help and sponsorships.

Mayor Diaz ask if there were any board members here tonight and he understood that they had a board meeting last night and ask if she got any input on that. Ms. Bellotte stated that Mario was coming back as president.

There was general discussion on sponsorship and what it cost to sponsor a child.

Chief Ayala stated that it had been very quiet and he been visiting with residents and we appreciate all the help we get from everyone.

Chief Squyres stated that the fire side had been slow, but the EMS had been very busy during the holidays. He provided a power point presentation on the proposed website the city is working on, outlining some of the things that will be available on the website.

Jim Moore, Public Works, reported that the city had been very fortunate during this cold spell and had no problems with pipes.

Cindy Miller, Heritage Hall, advised that the seniors would be having the monthly breakfast next week, game night would be on January 31<sup>st</sup> from 4:00 p.m. to 7:00 p.m. and that Friday was

Kelly's last day and they would be having cake at 10:00 a.m. if anyone would like to come by and join them.

Stephanie Orr, Jacinto City Library, reported that they were pretty quiet, just trying to get programs together for next month's Black History Month.

#### MAYOR'S REPORT:

Mayor Diaz welcomed Dawn Harris from Commissioner Mormans' office.

Mayor Diaz welcomed everyone back, stating that last year was a good year, all of our city employees were a great value to our city, as well as our administration and council, we work hard to improve this city and we want to keep focusing this and helping our citizens.

#### CITY MANAGER'S REPORT:

City Manager Maner commented on it being warm in the council chamber because the new unit was in place and it was working well and thanked the council for approving this. He stated the Gateway Projects on Mercury and Holland at the feeder road was awarded to the low bidder after being reviewed and we should have a signed contract by the next council meeting and he expects construction to start shortly thereafter and we were still looking at a completion date of late spring and it is going to be a real asset to the city. He stated that the bid was low enough that we were going to be able to add a few things to it, maybe some lighting or landscaping.

#### UNFINISHED BUSINESS:

1. A motion was made by Council Member Gonzales and seconded by Council Member Nunez that the city not allow coin operated machines at 1509 Mercury. 4 For – 1 Against (Council Member Ramon voting against)

There was general discussion concerning coin operating machine being allowed in the city and the legality of the machines.

#### NEW BUSINESS:

1. Nancy Gosney, 1726 Belin, stated that the people would request that we do a roll call vote on action items, stating their position, name and vote. She stated that as of December 9, 2010 the city secretary certified the recall election to be sufficient, the petitioners sent out a letter on December 28<sup>th</sup> to all the councilmen homes, the city attorney, the city manager and we send another letter in a package to city hall again to make sure that they received it because there were quite a few councilmen that did not sign at their homes for the certified letter. Ms. Gosney read the letter (a copy of the letter is attached as a permanent part of the minutes). Ms. Gosney stated

a copy was sent to Ms. Raines and she e-mailed a copy to the Mayor and Council. Ms. Gosney called attention to the agenda from the previous meeting, stating that Councilman Ramon interrupted and spoke of Article 5, Section 18 and she didn't see this on the agenda from last council meeting and she referred to Article 6, Section 15, Meeting of the City Council, Page 22, you have 72 hours to get on the agenda and she felt like he should operate just like the rest of them did. She discussed the controversy about her carport that was brought up by Mr. Ramon at the last council meeting, and the carport that was approved a number of years ago was used by all the school children from the bus stop across the street when it was raining. Ms. Gosney stated she had one question for the city attorney if the Mayor would allow it. She ask that if the council passed a variance to allow the use of combustible material, could the city be liable for the property if it caught on fire and the city attorney stated no.

2. Larry Schion, 506 Hare-Cooke Rd., Crosby, Texas, stated that he lived here for 40 years so that was what gave him the right to speak and he still owns property here. He stated that he speaks about the same thing over and over and if he could just get an answer. Mr. Schion stated that of all the people at the table, the only one that he still had a problem with was Mr. Ramon and he had ask many questions since he had been speaking up here, that when you ask a gentlemen a direct question, you should get a direct answer. He discussed the changes in how the council worked together and ask Mr. Ramon what made him change his attitude and instead of helping because what he does right now is when the mayor or city attorney speaks he talked out on him and it just seem like he was more against them than he was for them and if he would like to answer that he would like to hear it.

Councilman Ramon stated that he had a lot of friends at this table, he didn't have to agree with the way they do business or some of the items they believe in, that is a democracy, you don't have to be in agreement 100%, they had different views, if everyone was in agreement, it would be perfect but even though they are his friends and he respects them, he doesn't have to agree with some of the issues.

Mr. Schion stated that one of the reasons he got involved with this was that he had known the mayor since he was a youngster and he had never said one distasteful thing to him and ask him if he had been friends with Mr. Ramon and he stated that they been very close friends and still are and he ask him why you talked about him so much and he stated that he had no idea, why didn't he ask him his self, so he was asking.

Councilman Ramon stated that he didn't have nothing against the mayor, he disagreed with how he conducts the business in the city because this should be city business that is conducted here, not personal business.

Mr. Schion ask did he think that because of the record he had and there was a recall and people get out and get the signatures, it has gone through the political steps and did he think it was not right to talk about it, the first time the people did not know his history and now they do and everything he does here is city business because he is paid a check along with everyone else up here.

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Councilman Ramon stated that he came here talking about his house having a no trespassing sign, was that correct and Mr. Schion stated yes and he didn't think that was right. Mr. Ramon ask Mr.

Schion if he had a sign at his house that says no trespassing. Mr. Schion stated that he did but he lived in the country.

Mayor Diaz ask that we move on.

Councilman Claudio Ochoa ask the mayor if he could make a comment. He stated that in Mr. Ramons defense a little bit, he was not his friend, he was an acquaintance but Mr. Ramon has voted with this city council 99% of the time so he is really not against us up here, he has had some differences of opinion and also the only time he didn't vote was against him and he didn't take any offense against that because is why each one of us has a vote and can vote the way they want to vote and they should do that.

Councilman Claudio Ochoa stated that he did want to make a comment about the recall, and he wanted to address that right now, he wanted to make a statement. Mayor Diaz ask him to wait until we got to that item and Councilman Ochoa stated that he wanted to make it right now and ask why he could not do so. Mayor Diaz replied that he was ordering him not to and ask him to make his comment when they started. Councilman Ochoa ask if he was going to allow him to make the comments when they got to this item on the agenda and Mayor Diaz replied sure. Councilman Ochoa stated so Mayor you stated that I can make a comment just as we get to this Item before we take a vote or make a motion and Mayor Diaz advised him yes.

3. Councilman Claudio Ochoa stated that he would like to make a statement and addressed the Mayor, City Council and the citizens of Jacinto City stating that he was going to make this comment regarding the recall election. He stated that a recall petition had been brought to us to consider removing Mr. Ramon from office, that the front page, with no specific acts, was attached to the front of this petition and as Mr. Ramon's attorney pointed out to the council and everyone in attendance at a public hearing on December 20, 2010, there are no specific charges stated on this petition. Councilman Ochoa continued to read the statement outlining why he felt the petition didn't meet the requirement for a recall and statues that he felt covered this and quoted case law from other cities that had recall elections. He stated that after review several home rule charters in Texas, all of them conflict with the Jacinto city Charter because the Jacinto City charter failed to have a section that contains the form for the petition. Councilman Ochoa continued to read the statement as to why he did not feel the Jacinto city charter contained the requirements for a recall and what the liability could be for the city and city officials. After his statement, Councilman Ochoa ask if anyone could show or state that specific facts they gave the signers of the petition before they signed, that this petition didn't show any specifics, could anyone show the city council any specific charges on the petition that Councilman Ramon committed after the election, he ask each council member if they had witnessed any violations of the city charter by Councilman Ramon and they stated they had not and he stated that he had not seen him violate the charter. He stated that if this petition had specific information detailing when, where and how Mr. Ramon violated the charter, then this city council could vote for a recall based on those specific violations, this petition didn't state these specifics and allowing this unfair recall would then set, as a first time

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Precedent so that each one of our present and future elected officials can also unfairly and easily be removed for no real factual reason. He stated that he would prefer that we not vote for the recall and let a judge decide whether a recall election is warranted and under Section 13, failure of city

council to call an election it states “ in case all the requirements of this charter have been met the city council shall fail to or refuse to receive the recall petition or order such election, or discharge other duties imposed upon said city council by the provision of the charter with reference to such recall, then the County Judge of Harris County, Texas shall discharge any such duties herein provided to be discharged by the city secretary or by the city council. In addition, any qualified voter in the city may seek judicial relief in the District Court of Harris County, Texas to have any of the provisions of this charter, pertaining to recall, carried out by the proper official. “

He stated a judge making the ruling would keep Jacinto City and it's citizens from facing more litigation, costing all of us money we can't waste and that he would be voting against the recall and he request this city to consider consequences for voting for it, that he didn't believe any of us want to see the city facing more litigation.

City Attorney DeFoyd stated that what was before the council today is to order an election, it is not to vote to reject Mr. Ramon, it did not have anything to do with him, that was not what we were here today to do under this agenda item. He stated this agenda item simply says you call an election and he wanted to make it very clear that when you are talking about removal of an officer it was different than a recall election and he referred to the local government code saying that you were removing the councilman and that was not the case. He stated there was a petition filed, it was certified by the city secretary and understand that he represents the city, he doesn't represent anyone at this table, he represents this city and that was his job as the city attorney, whether they followed his recommendation didn't matter to him but he did want to make clear the law. He stated now with regard to the sufficiency of the petition, he takes no position, the city council has taken no position at all, we had absolutely nothing to do with the petition at all, in fact, he was asked if he would and he said no. He didn't want this city to be vulnerable to anything that was brought forth by the citizens of this city because it was not his job and its not the councils job to do that. He stated that he didn't know if the petition was going to be sufficient or not, that was not the issue, the issue is that the petition was done, was certified and now we are at the point where the charter says you shall order an election and the charter also tells you that if you don't order the election, it may be ordered by the county judge; now we are talking about an election, not the sufficiency of a petition, that is another issue, or any citizen can file in the district court to require the city to hold that election, of course it is up to the council to decide if they are going to order the election and he has no comment on that one way or the other, however, he must caution them that in the event this council didn't do so, there is a distinct possibility that you would be, the city, would be subject to attorney's fees if the council unlawfully failed to order an election, and we are not talking about the right or wrong of it, we are only talking about the order to call the election but that is up to the council and up to a judge eventually to decide if the petition is sufficient, it was not his job and it was not this council's job, it was the peoples job, this was the job of the people of this city and there was two ways to look at it, there were cities that different charters than we do, that Baytown's charter allows them to remove a councilman for any reason, such as not liking the way he votes, in fact, that was happening right now, that every city has a different charter but he would assure them that they would find many the same as ours. He stated the only issue here is whether or not the council orders an election that the charter requires it to do.

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Councilman Claudio Ochoa stated the reason he brought this up in a statement was because if this city council orders an election that could cause litigation it was going to cost the city money. We

could lose that and it would cost more money because there was state case law that says we can't remove someone.

City Attorney DeFoyd stated they were not removing, this was a recall election, the only people that could recall was the citizens of the city.

Councilman Ochoa stated it was a recall election, we were voting for an election, based on no specifics. City Attorney DeFoyd stated no you were setting an election. Councilman Ochoa said we are setting an election based on no specifics, we saying lets have an election based on a petition that the voters came in without giving us any specific reasons for having an election. City Attorney DeFoyd replied which the charter says you have the duty to do.

Councilman Ramon stated we were talking about a charter that hadn't been revised in more than twenty years and the charter says it should be revised every five years, that in itself is a violation of the charter so the attorney is right. Councilman Ramon stated that what they needed to know tonight Jim was he saying the council didn't have a choice. City Attorney DeFoyd replied that no he wasn't saying that, the charter said you either vote for it or you don't, the charter says you have a duty to set the election if you receive a petition and they have received a petition that is certified and that was all he was saying and the charter says you have to order the election and the charter also tells you what will happen if you don't order the election, he assumed that if they didn't make the motion, someone would file a law suit in district court.

Councilman Claudio Ochoa stated that was pretty much what the city had become, law suites after law suit and he didn't want to create another law suit here.

City Attorney DeFoyd stated that he was not creating a law suit by ordering an election.

Councilman Ramon stated yes, there would be a law suit, he could assure him of that.

City Attorney DeFoyd stated he was going to file a law suit no matter what happened or these people were going to file a law suit no matter what happens.

Councilman Claudio Ochoa stated they should take the recourse as our charter says.

City Attorney DeFoyd said and so what if the district judge says I don't think this is specific enough, you know what will happen, all they will do is just go back and get the same thing amended again and you are right back where you started.

Councilman Claudio Ochoa stated let them put some specifics in the petition and he would vote for it.

Councilman Ramon ask the city attorney to repeat what he had said, that he didn't get it.

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City Attorney DeFoyd stated that if the district judge ruled on this particular petition, it was not going to stop the citizens, if they want to do another petition, they can do it.

Councilman Ramon stated that according to the city charter, they could not recall the same elected official. City Attorney DeFoyd stated they were not recalling him because he had not been recalled. Councilman Ramon stated they could not do it twice and the city attorney replied yes they could, read the charter, it tells you that if there is any problem with the petition, then it can be redone again. He stated that he wanted everybody to understand that he represented the city, the city's position was they didn't want to have anything to do with it, this was between Councilman Ramon and the citizens and the city needs to be out of it.

Councilman Claudio Ochoa stated they had ask us to vote and he had ask city council to please vote against this.

Councilman Ramon ask the city secretary, for the record, who put this item on the agenda.

City Secretary Raines stated that the Mayor and City Attorney ask her to put it on the agenda.

Councilwoman Nunez ask if she could correct something that Mr. Ramon had said, that the charter was revised and we had an election in 1998 in regard to several items that were put on the election, like the person who hold court not having to be an attorney, the city manager having to live in the city etc. and this was done in 1998 and we did have an election and there was no amendments and she went over other dates when it had been reviewed.

Councilman Ramon stated that he was just working with what they gave him at city hall and it says Home Rule charter generated in 1981 and amended in August 1987.

City Secretary Raines stated that there was an election in 1998 and none of the proposed amendments passed and between 1987 and 1998, that she was not sure of the exact date, there was a charter review committee appointed and they came back to the council and stated that didn't not feel that any amendments need to be made.

Councilman Ramon stated so it was revised and the city secretary stated no, it was reviewed . Councilman Ramon said his statement was that this charter hadn't been revised. City Attorney DeFoyd advised that the charter didn't say revised, the charter said reviewed and the commission should meet the first meeting in July of every fifth year, it doesn't mean that the commission is going to revised the charter, the charter was just like the constitution, it had been here a long time, the review commission was basically to bring it up to date if they see some problems with it and if they don't see problems, nothing would be changed.

Councilwoman Nunez called attention to a memo from the city attorney which states that by ordering the election, the city council is not taking any position whatsoever on the petition for recall, the city council was simply performing it's duty under the city charter. City Attorney

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DeFoyd stated that was correct, and we shouldn't be getting into the legal end of whether or not a petition is good or not, that he didn't think that was the council's duty, he thought that was the duty of the people who filed the petition.

Councilman Ramon stated that he thought it was, they represent the people and if they can do this to him, they could do it to any of them in the future.

City Attorney DeFoyd stated let him say again that the petition may be totally bad, he didn't know, he wasn't the judge, he didn't want to be the judge, he didn't want the city to have to have anything to do with it, he thinks that is up to the citizens and the district judge.

Councilman Claudio Ochoa stated he thought they had an opinion and an obligation to all the citizens, not only the ones that put this petition together, they had an obligation to the other citizens that didn't want a recall and the question that he ask each one of these city councilmen, Incompetence, front page here, that was one of the things it says is why they are recalling Mr. Ramon because he is incompetent, he had voted with them 99% of the time, did that mean that they were incompetent too, he was performing his duties, if they had brought something to him that stated that on certain dates that Mr. Ramon did this or that, he would be in favor of throwing him off the highest building because he didn't want to sit next to someone who had violated our charter, but he was not incompetent and he went over the other items listed and stated his position on them, stating these were general accusations, there was no specific here, we were going to be in a lot of trouble voting for this recall and they were the ones going to be paying for it and he (Mayor Diaz ask for no comments from the public) didn't want to see this city in litigation anymore and that was the only reason, that Mr. Ramon was not his friend, he was his fellow council member and he respected him for that and that alone.

Councilman Ramon read the definition of incompetency.

Councilwoman ask the city attorney that if the council voted not to do the recall, then a judge would be the person to handle it so the city would not be liable. City Attorney DeFoyd stated that was probably not the case, that if the city council doesn't order the election and that is all you are doing, you are not recalling Mr. Ramon, you are not doing anything that has to do with the petition, that is was a simple ministerial act really, ordering an election based upon a petition that is handed to you, it is not the cities job and it is not the council's job to determine whether or not it is a sufficient petition .

Councilman Christopher Ochoa ask Mr. DeFoyd if it was his opinion that this recall is not something that we need to get into as he mentioned, it is setting an election and that is all you are doing and that is what you are saying is your opinion and he also stated that we can accept or reject his opinion, that was what he also stated. Councilman Ochoa stated that in his opinion you don't just have to rob a bank, you have to be accused of robbing a bank by holding a gun out and saying give me the money, if you are actually driving an escape vehicle, you are also charged with

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robbing that bank to whatever degree and he knew that he was trying to say that we were just going to remove ourselves, that we are just calling this election but you know what this election says, it says a recall, pursuant to city charter city council shall set recall election for council position No. 3, cut and dry, and he just didn't understand how that had nothing to do with us, that in his opinion if



he voted for something like this, he would be held liable, the city would be held liable and he believed so and that was his opinion.

City Attorney DeFoyd stated that was not the case, this was a simple administrative act of setting an election, that was all it was, the council had nothing to do with the petition.

Councilman Claudio Ochoa advised the city attorney that they understood his opinion, that he didn't have to repeat it over and over again. Mr. Ochoa stated he was concerned with case law, that ordered an election, it was none specific, they violated this councilman's right and they got sued and they had to pay this man because they ordered a recall without specific reason, that was case law that TML has advised all cities to do something about their charter so they won't be liable, In 1991, there was a case and TML advised us to do that, so we can be liable for ordering this recall, voting for it and he was not going to put his name to it.

Councilman Gonzales stated that we were forgetting this petition and the voters and we were elected to speak on their behalf and saying that, this is the process and he believes that it has been deemed certified and everything met specs for this recall and he thinks that we should go ahead and go forward with this, what was the next step, he believes it would be to vote after a motion was made, was that correct. The city attorney stated that was correct.

Councilman Gonzales stated so saying that, he would like to make the motion for the recall.

Mayor Diaz advised that we had a motion made by Councilman Gonzales to set recall election for Council Position No 3 for May 14, 2011.

Councilwoman Nunez stated that before she seconded that, we had a city attorney, that has the opinion and he specifically states here that we could be liable if we don't go through with this here and that is why we have a city attorney to advise us of the legal aspect of anything that is presented to us and being that it is not that we are setting out to recall Mr. Ramon, but the election itself by the people that signed that petition, she would second that motion.

Councilman Claudio Ochoa stated that he wanted to say one more thing, that the attorney has stated that we have to vote for this recall, that is not so, our city charter says in Section 13 and he didn't know what he didn't get about this and he read this section from the charter and he said again he was just stating that they had recourse and if they vote on this they were going to be liable no matter what the attorney says here, there is case law on it and we should not vote for it, we should let a judge decide whether there is warrant for a recall.

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Councilman Ramon stated that he would like to make a comment, that all of the council said that they hadn't seen him violate the charter, you agreed and you are going to make a motion to recall me anyway, that is a contradiction in its self but he just wanted to make it clear that he had not violated the city charter while in any session in this city council, now if they wanted to vote for his recall, so be it.

Mayor Diaz call for a vote on the motion.

Vote: 2 For setting recall election ( voting for: Council Members Nunez and Gonzales – 3 Against setting recall election (voting against: Council Members Claudio Ochoa, Jose Ramon and Christopher Ochoa)

Councilman Ramon ask the city manager what he had said, that he did not hear him and City Manager Maner stated that he didn't think the city charter allowed him to vote on something that affected him personally. Councilman Ramon ask if he was the legal adviser for the council and City Manager Maner replied he had advised the mayor to ask for legal council.

City Attorney stated that he would read it from the charter so that everyone could hear it and ask them to look at Section 25, Page 26 in the charter.

There was general discussion.

Councilman Ramon stated they were not voting on the recall itself, so he should be able to vote.

City Attorney DeFoyd advised Mr. Ramon that he was going to give him his opinion, for whatever it was worth, Mr. DeFoyd stated he believed that this refers to matters involving finances rather than this particular instance and he thinks he can vote, and that was his opinion.

Councilman Christopher Ochoa ask the Mayor if he could stated for the record what happened with this agenda item.

Mayor Diaz stated that Agenda Item No. 3 pursuant to City Charter City Council shall set recall election for Council Position No. 3 for May 14, 2011, was denied by city council and was put to rest. He Ask City Attorney DeFoyd where this item went from here and was advised by Councilman Christopher Ochoa that it was properly disposed of. Mayor Diaz stated the vote was 3 Against and 2 For

4. A motion was made by Council Member Gonzales and seconded by Council Member Nunez to approve Resolution 2011-1R for a Municipal Setting Designation for property located at 5802 Navigation Blvd and 235 North Norwood St. and immediately adjacent public right of way in Houston, Texas.

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There was discussion as to what if any affect this would have on our ground water and they were advised that the engineers had assured us that our water well would not be affected at all and TCEQ will supervise this operation. Vote: 5 For 0 Against

5. There was discussion on what all Ordinance 2011-1 Regulating Handbills and Advertising Distribution In Jacinto City would cover and City Attorney DeFoyd advised that we can't prohibit

Legal newspapers or political materials.

A motion was made by Council Member Christopher Ochoa to table Ordinance 2011-1 for clarification. The motion was seconded by Councilman Claudio Ochoa. Vote: 5 For 0 Against

6. Mr. Oscar Figueroa and Mr. Jose L. Lopez addressed the Mayor and Council concerning the variance request at 10526 Norvic which the variance board had recommended be turned down. Their concerns were translated by Mr. Antonio Reynoso. Mr. Figueroa stated that he had documents here on different products that have been documented as fire safe and that he had talked with other inspectors and they don't understand why it is not accepted here and he thinks having to go to the board was unjust.

Councilman Claudio Ochoa ask if he had information on the material that he was submitting today, Mr. Figueroa stated that he had treated wood and hardy board.

Chief Squyres explained what he had brought and the actual requirements that he had to live up too, stating that they had explained this to him before and tried to help him come up with solutions to the problem.

There was general discussion concerning the issue with the carport.

Council Member Nunez stated that the materials that Chief Squyres told Mrs. Lopez, and there was an interpreter because she didn't speak English, and he told her exactly what material they could use and she was thinking by now, he should know so they could comply with the city code and be able to build Mr. Lopez's carport because this came up in November and we had given him about six week or more to resolve this and normally we go ahead and act on the variance boards decision and we always go with what the variance board recommends but this time we table it to try to give Mr. Figueroa and Mr. Lopez a chance to see what kind of material they could use before we voted on it and it was not on this agenda but she would assure him that it would be on the next agenda and the one on Burman as well. She stated that she had ask the city secretary to put those two items on the agenda.

Councilman Claudio Ochoa stated that his question to him again was, did he submit some new material that he could use or not.

Chief Squyres stated that both he and the building inspector reviewed what he had submitted and it was the same thing he brought here, it was treated wood, and it was a fire retardant treated wood,

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and he gave an example, that it made the wood fire resistant but there was no such thing as fire proof, that the code requires non combustible products and what he was asking him to do, is say that by treating it, it turns it non combustible and wood is combustible no matter what you treat it with and as long as he wants to use wood, with any kind of treatment, it would require a variance.

Councilman Claudio Ochoa stated that he just heard hardy plank in the conversation, so was hardy

plank something that he could use. Chief Squyres replied that hardy plank is what he is suggesting that he wrap it with so you want see the wood or somehow he thinks that will keep the fire from getting to it. Mr. Squyres stated that hardy plank will not burn itself, it isn't a combustible material, so hardy plank meets it, they could use hardy plank, but underneath this hardy plank, he can't use wood, so he guessed what his question was, if you are going to wrap it with hardy plank anyway, why doesn't he build it with metal and put the hardy plank on it.

Councilman Ochoa asked Mr. Reynoso to explain this to Mr. Figueroa in Spanish.

There was general discussion. Mr. Reynoso stated Mr. Figueroa question was would he just have to use the metal on the edge of the line next to the neighbors. He was advised that within five foot of the property line it would have to be metal and we would have to check with the building official regarding the rest. City Manager Maner stated that he would point out, just for Oscar's knowledge, the one foot or the five foot line refers to any overhand also, it doesn't refer to just where the post are set, if you have the post set at the one foot line, you can't have an eave hanging over that.

Council Member Nunez stated that she thought Mr. Figueroa was wrong on that because we had red tagged (Councilman Christopher Ochoa advised that it should get translated) Mayor Diaz ask that everyone hold on for just a second and ask Mr. Reynoso to translate that and he stated that what he was saying was there was a lot of other houses here in Jacinto City that do not meet with this ruling, they don't comply but nobody has ask them to knock them down and he guessed what he was saying was that he was asking for equality.

Council Members Nunez stated that she wanted to ask him if he had discussed this with Mr. Lopez, the options that he has with the metal and hardy plank, talk to his customer, that he wants the carport built and will abide by the city code, that is why his wife came and talked with Lon Squyres. Mr. Lopez was in the audience and stated that he would like it to be made with wood and covered with hardy plank. Council Woman Nunez advised Mr. Lopez that they had already explained to Mr. Figueroa that he is violating the city code if he does that and she sent his wife to talk to the fire chief so he could tell her what other alternate materials you could have so that your carport would look like it was made out of wood. Mr. Reynoso translated, stating that Mr. Lopez stated that he wouldn't be happy with that so he would have to make some modifications.

Councilman Ramon stated that he would like to make a comment, that when this item was on the agenda the last time, he did go to the property to inspect what they were talking about and in fact,

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he was at the variance board and basically, what it is, his home structure is already violating the city ordinance the way it is built, of course, he probably bought it like that and what he wants to do is extend the gable which is a carport and won't have a wall, only a roof, so the structure is already there and the next house is more than eight foot away so he really didn't see a problem and if they would go and see the structure they would be able to see it was not really a danger, it had really been blown out of proportion. He stated that he was at the meeting and the variance board ask( the inspector if this was city ordinance and he said no and they turned it down, which in his opinion (was not able to understand the word used) this guy is trying to apply for a variance to be different from

the norm and the variance board says no and they were upset about that and he recommended the city council go by there and look and a couple of them had.

Councilman Claudio Ochoa stated what Councilman Ramon was saying was that it was not going to be any more dangerous than it already is and he replied yeah. Council Member Nunez stated but it would be violating the city codes and Councilman Ramon replied that it already was as it stood right now and Council Member Nunez stated but he was going to tear it down. Councilman Ramon stated no, he was going to bring it up, the structure was there, he was going to bring the carport out. Council Member Nunez stated he was still going to build on to it. Mr. Ramon replied that there was not going to be a wall, just a roof.

Mayor Diaz ask if Mr. Lopez had anything else he would like to say.

Mr. Reynoso stated that Mr. Lopez had one more comment, if the Variance Board was going to say no because it was against the ordinance, why did they take his \$250.00 anyway.

Councilwoman Nunez stated that he ask for the hearing to come before the board and that was the way it was done and it was also published in the newspaper and that cost money.

Councilman Ramon ask Councilwoman Nunez if she told him his item would be on the agenda next time and she replied that she had.

Councilman Christopher Ochoa stated that he would like to make a comment and this was why he felt that rules of procedures were very important, as many of the members in the audience had stated, non verbally, that it exceeded over ten minutes, but he thought that in this case it was important that there was time for translation, so if we did get rules of procedures, he thought it would be important to highlight that, but he would like to continue the precedence that was set already for what the time limit was for the agenda items.

Mayor Diaz stated that it went over sixteen minutes and he thought that was enough time for the translation and he thinks that was fair but he did agree with him.

7. Carmela Garcia, 11010 Verano, stated that she had four topics that she wanted to talk about and they all had to do with the last council meeting and stated that Position No. 1 wanted dates and that was December 22, 2010. She stated that at the last council meeting Position No. 3 interrupted the public comments for the closing statements. Councilman Claudio Ochoa ask Ms.  
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Garcia to repeat the date and she stated December 22, 2010. She stated Position No. 3 interrupted the public comments for a closing statement, public comments were not completed and that is considered disruption of the public's first amendment rights and she was asking him today to be a bit more considerate and follow procedures properly. She stated Point No. 2, that in his closing speech he mentioned that since May 13<sup>th</sup>, the day he was sworn into office, "I have been unjustly and unfairly attacked by some of those who supported my opponent and lost the election". Ms. Garcia stated that the reason she made mention of these two statements in English and Spanish Position No 3, is to correct a couple of things that he had stated. No. 1, that when she speaks, she speaks with facts, not attacks, and as she recalled in a previous meeting, she clearly stated to him

that she was here to help him, not work against him and ask what part of this statement was not understood. No. 2, she stated that after a meeting back in May, she advised Position One that she was sorry that she didn't have the date with her, that she also told Position 3 directly that she voted for him, she have him an opportunity and that she wanted her vote back, she did not go behind closed doors and neither was she snickering on him, she spoke to him directly that evening and if she ever had anything to say to him, she will say it to him directly, not anyone else. She stated that so far he had not earned her trust, therefore, if there is anything that she has to say, it was going to be in this place. Point No. 3, she said that he also stated, "I have done nothing wrong, as a city councilman, to be recalled for ". (she translated in Spanish) She stated to just let her remind him, Position No. 3, nothing wrong was incorrect, he had violated the city charter numerous times, to please go back and watch the videos, it was all there. Second, he had harassed and bullied her and others and third, he had proven himself to be incompetent, again all this is on video sir, please refer back to them and she would not state this if she didn't have it in front of her and she stated lastly, the translation of this English statement into Spanish, that nothing wrong and the Spanish translation was incorrect and she ask that he not translate his own statements in these meetings due to the extreme discrepancy that she would be more than glad to translate for him, that she was certified by the State of Texas. She state No. 4, to Position 3 stating that when he had a question concerning government business, who did he call and ask him to please answer this. Councilman Ramon stated that he didn't want to be accused of interrupting her this time. Councilman Ramon stated it depended on what question he had, was she talking about federal government, state government, local, Ms. Garcia stated when he had a city business question, who did he call. Councilman Ramon stated that if it was legal, the city attorney, if it was regarding the police department, the chief of police, if it was regarding the person cleaning the ditches, it would depend on what department they were talking about who he called. Ms. Garcia stated that was exactly what she would do, that according to Article 5, Section 2B, " each city council member shall, depending upon the position number to which he or she is elected, serve as a liason officer on behalf of the city council to each of the administrative departments created hereinabove; provided, however, that such councilman shall not interfere with city manager's supervision, authority, and control of the above administrative departments and the councilman shall always deal with his or her administrative department solely through the city manager. Ms. Garcia ask if he had ever spent time with the city manager before he talked to his department head, which in this case, Chief Ayala and Chief Squyres. Councilman Ramon stated that he had never talked to the city manager, that he had never had any problems within his departments. Ms.

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Garcia stated that it didn't necessarily have to be a problem. Councilman Ramon ask Ms. Garcia if she was going to say that every single council member in here call the city manager before they talked to a department head. She stated that she was just saying, that as a councilman, that was his duty. Councilman Ramon stated he was asking her a question. Ms. Garcia stated that when she had a question about the city government, she call the city government depending on the situation, but that was her, the resident, that was a big difference. Councilman Ramon stated she hadn't answered his question. Mr. Garcia stated that she wasn't asking about anybody, she was just directing it to him. Ms. Garcia stated that according to the statement he made in the closing speech at the last council meeting, you made false accusations against city government, you stated "there are some in our city government who know that I'm not guilty of anything to be removed for but to protect their

own interest, they have assisted those in this unjust recall process and I am asking now, for those that oppose me, to please stop these warranted attacks on me, you have brought up unnecessary (she stated that she couldn't understand the word) to the city, you have tarnished my name without justification" she stated those were his exact words. Mr. Ramon corrected her, stating it was unwarranted attacks and she stated she just typed what she understood. She stated he thought she and anyone else that speaks at this podium about him are getting help behind the scenes or that they were getting nonpublic information through them, he was so wrong, that was what they called false accusations, they go through proper channels and they expect him to do the same.

Councilman Claudio Ochoa stated that he believed that if any citizen had a complaint against a city council member we have a place to do that, we have closed session, we ought to take those complaints to closed session because we are wasting a lot of time here just complaining, we have heard these complaints over and over and he would suggest that the citizens take the proper channels and if he has done something wrong, believe him, why waste these peoples time out there, take him to the back (Ms. Garcia stated she had an answer for that) and he promised that if he had done something wrong they could sanction him or kick him off city council if we have too but please don't waste these people time anymore bringing up the same situation over and over, it is not good, we are dividing this city instead of uniting the city. If you have a complaint against the city council, do what the charter says, bring it back to them and they would take it into special session and work it out.

Ms. Garcia stated he wanted specifics, that was specifics, look at the video and he would get the details. Councilman Claudio Ochoa stated that he was just asking her, could she do that. Ms. Garcia stated this was city business and when she stated 2010, she was giving him a date. Councilman Claudio Ochoa stated, let him ask her a question, would she bring it to a closed session meeting so they could do something about it. Ms. Garcia stated that he had not earned her trust, could he respect that. Councilman Ochoa stated that we have to comply with the city charter, we can't just be wasting peoples time all night going back over and over the same thing. Ms. Garcia stated that was why they were getting paid. Councilman Ochoa stated that he would stay here all night but it was senseless to keep doing this. Mayor Diaz ask that we move on.

8. Councilman Claudio Ochoa stated that he would like this city council to move forward in

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getting our city charter reviewed and updated, that our charter should be reviewed every five years, that he had researched charters in several cities in the State of Texas and by doing so, he had found that these charters have been updated to include changes that Texas Municipal League has recommended, we have not done this and we need to do so, we are currently in violation of the city charter because it has not been reviewed as it should be every five years and tonight he was asking city council to do what is our duty, which is to appoint a charter review commission as required by Section 19 in the current city charter and to have each one of them to appoint one member of the committee by the next city council meeting January 27, 2011.

Mayor Diaz stated that tonight he had stated discuss the appointment and ask the council for their comments.

Councilman Claudio Ochoa ask if they would like to discuss this and get ready to appoint a charter committee and they knew it was needed and some of the citizens had requested it, it was long over due and we needed to move forward.

Councilwoman Nunez stated that she agreed that we should go ahead and appoint a committee so that we could review our charter and be up to code with it.

Councilman Ramon agreed.

Councilman Christopher Ochoa stated that he thought a lot of what had been going on here in the city is the result of a charter that has been outdated and today we have a lot of disputes on the city charter, if we can get something that is up to code, up to date, that abides by all State and Federal Law, he didn't think we would waste as much time in debating whether or not our charter is acceptable or unacceptable so he was for appointing someone and he was looking at the community, he was going to appoint someone from the community that would like to be appointed, maybe there was an interview process he could go with, that he already had somebody in mind and he thinks that at the next meeting we could make that move.

Councilman Gonzales ask if in the past, was it normal practice to gather people from the audience or residents to have a committee and he was advised that it was, and he stated that he was for it then.

Councilman Claudio Ochoa requested that the city secretary put this on the agenda for January 27, 2011, for each city council to present their appointee so that we can go and do the process of getting these committee members appointed.

Mayor Diaz announced that there would be no action taken on this item tonight, it was for discussion and all the council members were in agreement to make appointees to review the charter and revise it.

#### COMMENTS FROM MEMBERS OF THE PUBLIC:

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Paul Dailey, 1701 Chazen, stated that the people they pick should be neutral and open minded. He stated that we have all heard about what we consider merit raises and if someone was doing an extremely good job and needed, in their opinion, a merit raise, could it not be a raise of filling their Vehicle up once a month at the city barn. He ask Cindy how many gallons did her vehicle hold and that was all he wanted to say.

George Sosa stated he was a coach and on the board of the little league and baseball was just around the corner and they wanted to know what they have to do to get help from the city to get the fields in order. He stated that they did not have All Stars last year because our fields did not qualify. He stated there were plenty of parents and coaches who were willing to help.

Mayor Diaz advised him that he could contact him or the city manager and they could set up a meeting and he could contact Kim Bellotte, our Parks and Recreation Director.



Mr. Sosa stated that they really didn't want to put a lot on Kim because she had four fields going on. Mayor Diaz stated that was her job.

Kim stated that was her job and that we help all the time with the fields, she deals with the president of the board and if they need anything they have never been denied, but make sure they go through the right things because if she doesn't know they need it, they won't get it. She stated that she had never denied any dirt or anything for the baseball league, that they work very well together, so if it wasn't getting down to their level, they needed to have a board meeting but she talked to Mario constantly. Mr. Sosa thanked her for letting him know that and he would get with her that he was in charge of getting the fields in order.

Councilman Claudio Ochoa stated that he would like to meet with him and ask Kim to let him know when the meeting was so that he could attend.

There was general discussion concerning the fields.

Larry Schion, stated that what he would like to ask was if all the 600 people who got together, did what they just voted on just capped it out of the water or was the next step Robert Echols, he was just curious.

City Attorney DeFoyd stated that Section 13 says that when the council fails or refuses to act, the committee or any citizen can take it to the County Judge and ask the County Judge to order the election. Mr. Schion ask if that was Robert Echols and was advised that it was Judge Ed Emmett. Mr. DeFoyd stated it also said that any citizen could, if they wanted to, go to the District Judge. So there is two paths that are set out by the charter when the council fails or refuses to act and that is what they did tonight, they refused to order the election. Mr. Schion stated that he didn't want them to shoot it out of the water because that was a lot of work, a lot of people went to. Mr. DeFoyd stated to let him say again, this council was not voting on the merits of this petition,

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It has nothing to do with the merits of this petition, the petition stands on it's own, the council should not have anything to do with it. Mr. Schion read the section from the charter that covered council member voting on issues before them, stating that the only reason they were up here was conduct, they didn't care about his financial statements. He stated they gave him the go ahead on the second part of the comment, but the first part was what this recall was about. Mayor Diaz stated that we needed to move on.

Dale Pollock ask if he could pick up aluminum cans at the park and was advised that he could pick up all the cans he wanted to.

Mr. H. G Wooten stated he agreed that the charter needed to be reviewed and changed but those changes should be voted on by the people.

Carmela Garcia stated this was something positive she was doing in the community, there was a leadership course that was going to be offered at the school where she worked, it was offered for all

the GPISD, it was a Spanish leadership course/motivation, that we need leadership, especially Hispanic leadership and if they knew someone that would like to take this leadership course they had one coming up on January 31<sup>st</sup>, February 23<sup>rd</sup>, March 28<sup>th</sup> and April 13<sup>th</sup>. The explained what the different sessions covered.

Councilman Christopher Ochoa stated he thought this was an excellent program, because his brother was in high school, they come to him for letters of recommendation, volunteer opportunities and was definitely going to make sure that Cameron takes one of these and if she had any extra, he was sure he would like to pass them out to his friends because this was great for scholarship applications, etc. . Ms. Garcia stated that she had already spoken to the community liason for Cameron's school, and she was going to hit on the LEP population first, which she had 64 on the list, She discussed a number of the reason they were offering this opportunity.

Councilman Ochoa stated so this was for parents as well as high school students and Ms. Garcia Stated that it was mostly parents but if there were high school kids that would like to take this with their parents, she wasn't going to force them away from this, that it was offered from 8:00 to 10:00 a.m. in the morning. She stated that if there were high school kids that would like to take this and they had permission from their parents and teachers that would have to be decided up there but it was mostly for parents.

Councilman Claudio Ochoa ask Ms. Garcia if she could have these classes in the evening because most of the Hispanics are working during the day, there was a few that could probably go but you would get a whole lot more in the evening. Ms. Garcia stated that she had English classes offered at the school for parents and the presence there is very little. There was discussion on how to get people out for these programs.

Councilman Ramon thanked Cindy and the Senior Citizens for donating the gift card to him and just wanted to let them know that he would be donating it to Mr. Pablo Gardune who was recently diagnosed with cancer.

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Nancy Gosney, 1726 Belin, ask Councilman Claudio Ochoa is he was certified by the State of Texas with the lawyer's bar, yes or no, he state no he wasn't. She ask him if he was certified in Fire and Safety with the State of Texas, he replied that he had taken some classes and he was certified for Emergency Evacuation in the City of Houston.

Ms. Gosney ask Councilwoman Nunez the same questions and she replied that she was not.

Ms. Gosney ask Councilman Ramon the same questions and he replied no.

Mr. Gosney ask Councilman Christopher Ochoa and Councilman Gonzales the same questions and they replied no.

Mr. Gosney stated that tonight she was really paying attention to the combustibile stuff and she played a statement made by Mr. Squyres during a council meeting regarding issues that were discussed tonight and she just wanted to make that comment.

Tammy Carter, 10722 Chadwick, she stated that she found it interesting that today the charter was not valid when it applied to one of them but in every other meeting, some part of the charter is held accountable for the city employees, it is used against the citizens and some of them were even part of using the exact same charter, that tonight you call invalid, valid to press charges against people for using city tables and for their information, there were specifics presented when signatures were obtained on the petition and they had heard about them over and over, Councilman Ochoa, in Position 1, even said tonight that we keep hearing about these over and over so you have heard specifics. It had happened in meetings, public hearing, she discussed how many signatures they had because they had specifics. Councilman Ochoa stated that he only wished that she had put them on the petition form. Ms. Carter stated that she was still speaking.

she stated that unfortunately, she missed the last council meeting but she was so relieved to see Councilwoman Nunez back in her seat, that she spoke with her usual knowledge and grace about event that she had obviously done for a number of year and she thank each individual that was a part of that event, it was obvious that she knew what she was talking about, who she was talking too and she was actually, to her, a council person up here doing her job. Ms. Carter stated that she quotes the charter, she knows what is happening and she knows that she has been in that seat year after year but she has taken the time to do that, she knows the public, whether it is the senior citizens or those kids out there walking behind the fire truck and she even took the time to read a letter and as she was watching the video; she was so thankful for people who video, she noticed a lot of things, she noticed Position 1, rolling back and forth in his chair, making faces at different people in the audience, Councilman Position 3 was making faces when Ms. Nunez was thanking certain individuals and while she was reading a card that one of the children had made, there was even some sarcastic faces made, then there was this whole interaction between what part of no don't you understand, and then at one point he even turned and said that he would like to talk to his people and she didn't have that video recording but she could bring it next time if we need proof of that and he then spoke in Spanish and she was offended because she considered all of us to be citizens and there shouldn't be any difference between my people, he didn't know whether she spoke Spanish or not. She stated, then Position 4 liked that microphone, he was banging his  
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forehead on the microphone, he was sliding it back and forth and resting his chin on it and texting

Councilman stated excuse him, that he appreciated her comments but he put things on his phone when people bring auctions to the table and he apologized to Mr. Wooten for not attending the auction at the opry last Saturday but that was exactly what he was doing, there is nothing against me leaning back or me touching this right here, he could do that and as far as the city charter, she was making some general statements saying that oh, the council for things that go against them it's wrong but there is so many sections in this charter, not everything is going to be reviewed and revised. There are things in the charter that are correct so he just thought her statement was very general and her intentions are malice and that was all he had to say about it.

Ms. Carter her intentions were malice, that he made a decision, based on the charter that he said was invalid and bringing up his behavior at the council and all those other issues, she advised Ms. Nunez that she missed some of her comments and she would share with her later. Councilman Christopher Ochoa advised the Mayor that he didn't think she had time. Ms. Carter stated that to her, if you were bored up here, ask to be excused, you don't have to be here but this is your job.

She stated that he was up here stating that he wanted to be professional, that he wanted to be respected and were making faces, playing with the microphone, etc.. Councilman Christopher Ochoa stated he was sorry, how would she like for him to act and Ms. Carter replied professional and he stated that he was acting professional (Mayor Diaz gavelled everyone down asking them to hold on one second) Mayor Diaz advised Councilman Christopher Ochoa that he was out of order and he stated that she was out of order, that she had disposed her three minutes of time and he was allowing her to talk. Mayor Diaz advised him that he was out of order (there was discussion between the Mayor and Councilman Ochoa). Mayor Diaz stated that he was going to let everybody talk, that was what was good about this city, everybody could express their feelings and we were going to have to compromise and he was sorry it had to come to this but just hold on for one second.

Councilman Claudio Ochoa stated that as far as jesters and looking at people and making faces, everybody was making faces, as far as looking at your phone and texting maybe, you are putting information in concerning an event or whatever, everyone does that, he has seen Maner and DeFoyd do it so he thinks we are nit picking and wasting time, he was going to reiterate again, that if we have a complaint about anyone, an official, and it is a legitimate complaint that we ought to take it behind closed doors, if it is against the law or against city council policy not to use a phone and the mayor states turn your phones down and I hear phones still working well that is the little things that happen in city council, we are wasting city council time discussing those little things like I don't like you texting, it's a mute point, we are going to continue to do it, we are going to continue to look at people and say hello, it doesn't mean that we aren't paying attention because we are going to vote and when we vote, that is what matters here. If she has a complaint about how he voted on something we can discuss it. He ask her why it was so important to her if he looked at his constituent here and says hello or bobs his head up and down. Ms. Carter stated it was important to her because he was elected to represent us up there and, as we know, there has been numerous media cameras and when they were up in front of the public, they expected them to represent us professionally and everyone doesn't make faces at the public and everyone doesn't

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Play when they are sitting at the council. Ms. Carter ask Rachel how long she had been a councilwoman and she replied going on 11 years. Ms. Carter ask had anyone ever ask her to be Professional in a meeting and she replied never. Ms. Carter ask Mr. Raines how long had she been City secretary and she replied to long, Ms. Carter ask had anyone ever ask her to be professional in a meeting and she replied no. Ms. Carter stated she didn't think we had ever ask the Mayor or Councilman Gonzales and that was exactly her point.

Councilman Claudio Ochoa stated that he just thought that we were nit picking and wasting time. Ms. Carter ask if it was because he didn't like what she was saying. Councilman Ochoa stated that he loved what she was saying, he really did, because it opened up the door for us to discuss whether or not, if you have a legitimate complaint about a person whether we can take the proper steps and take it and do something about it, that was all. If there was a legitimate complaint, he would love to help her, if it was a complaint against him bring it against him and they would talk about it, just do it right.

Councilwoman Nunez stated she could say something on the positive note, that she went to the doctor today and he gave her very good new, she was doing very good, she thanked them for all their prayers, concern and love and her love was returned to all of them.

Mayor Diaz adjourned the meeting at 9:00 p.m..

Respectfully submitted,

Joyce Raines  
City Secretary