

CITY OF OVILLE MINUTES
Monday, 28 November 2011
Regular City Council Meeting
105 S. Cockrell Hill Road, Ovilla, TX 75154

Mayor Vansyckle called the Regular Council Meeting of the Ovilla City Council to order at 7:00 P.M. The following City Council Members were present:

Tom Leverenz	Mayor Pro-Tem, Place 1
James Wade	Council Member, Place 3
Doug Hunt	Council Member, Place 4
Richard Dormier	Council Member, Place 5
Michael Dickey	Council Member, Place 2

Noted members were present, thus constituting a quorum. City Administrator Randy Whiteman, various department-head staff members and Ovilla's legal counsel, Tim Sralla were also present.

PL4 Hunt gave the Invocation.
Mayor Pro-Tem Leverenz led the Pledge of Allegiance.

Comments, Presentations and Reports and Appointments

CITIZENS COMMENTS / CITIZENS FORUM:

1. Mr. Morris Gresham – Comments regarding Item 5: Urged Council to remember that despite claims heard or read this past week, a person that commits unethical and criminal acts *is not* a victim. The citizens that have to endure these acts are the victims. This is not about embarrassment but law and order. City and state codes are the laws we citizens depend on to protect each of us. Please remember after carefully examining all the evidence, facts exhibits and testimony, that friendships and political alliances must take a backseat for the task that is set.
2. Mr. Phil Lynch – Comments regarding Item 5: This was a contest of values and hoped that Council had done their homework and will not allow political favors. Tonight is not about misunderstandings or mischaracterizations. It is about values, actions and character. Upon reviewing the complaint, this is not about politics it is about right and wrong. When the City Council removes this official's keys and does not allow him to operate inside city hall after hours, he just might get the message, "*This is not his house, it is our house.*" (Complete written comments were given to the City Secretary)

◆ Department Activity Reports / Discussion

- ◆ Finance Department
 - Monthly Financials
- Accountant S. Jungman

Accountant Sharon Jungman advised those present that the auditors were expected next week to begin the annual audit.

CONSENT ITEMS:

- ◆ Minutes of the November 14, 2011 Regular Council Meeting.
- ◆ Annual UB Software Support and Agreement with AVR.

Mayor Pro-Tem Leverentz made a motion that Council approves the consent items as presented.

PL5 Dormier seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, no abstentions.

PL2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

Mayor Vansyckle announced that he would pull Item 5 from the regular order of the agenda to address first.

ITEM 5. Discussion/Action – City Council will hear a complaint filed by City Administrator Randy Whiteman in open session pursuant to the Council Procedures on Hearing Complaints.

Mayor Vansyckle offered the Chair to Mayor Pro-Tem Leverentz to address Item 5.

Mayor Pro-Tem Leverentz read Item 5 and stated each step of the Council Rules of Procedures beginning with the filing of a complaint to the rebuttal and the subsequent hearing of the complaint against a member of Council.

Mayor Pro-Tem Leverentz noted that the complaint information and the rebuttal were submitted in timely manner. Mr. Whiteman submitted eleven complaints/charges against Mayor Vansyckle. Council proceeded with the hearing. (City Secretary was instructed to make copies for citizens in attendance.)

Council allowed Mr. Whiteman to give opening remarks or clarify any materials as the complainant. Mayor Vansyckle was offered the same as the respondent. Both were satisfied with their submittals. The complainant and respondent were not allowed to speak to one another during the questioning and hearing.

Mayor Pro-Tem Leverentz opened the inquisition process with the City Administrator Randy Whiteman and allowed each individual Council Member to ask questions pertaining to each of the eleven charges-all with testimony and documented information to support his complaints. The inquiry was a very lengthy process. The allegations submitted by complainant, Randy Whiteman and individually reviewed were:

1. The Mayor overstepped his authority when he told me to suspend my removal of Mr. Ramsey.
2. The Mayor demonstrated Abuse of Power when he failed to follow Ovilla's Employee Personnel Handbook in his handling of the complaint against me and instead tried to remove me in a hasty special meeting.
3. The Mayor demonstrated Official Oppression when he purposely withheld Mr. Ramsey's original complaint from the whole council in an effort to eliminate support for me on the council.
4. The Mayor demonstrated Official Oppression when he purposely withheld Mr. Ramsey's original complaint from me to thwart my defense against the accusation.
5. The Mayor's actions to fax Mr. Ramsey my letter and then personally deliver the doctored complaint showed bias against me.
6. The Mayor failed to declare a conflict of interest or excuse himself from the complaint process even though he had participated with Mr. Ramsey in the filing of the complaint.

7. The Mayor's participation with Mr. Ramsey in his second draft of the complaint shows an unhealthy relationship exists and that his participation in the complaint denied me due process, as he was the one administering the investigation.
8. The Mayor violated the Open Meetings Act in meeting with or having correspondence with several councilmen prior to the Council meeting where they discussed offering me to resign prior to the meeting or firing me if I didn't.
9. The Mayor failed to identify a conflict of interest with Mr. Ramsey and that the conflict of interest was material in his unfair handling of the complaint against me.
10. The Mayor's efforts to get me fired were in retaliation of my removal of Mr. Ramsey and provide grounds for a Whistle Blowers Suit against the City.
11. The Mayor demonstrated abuse of power when he went to the City Secretary and ordered her to allow him to view my personnel file, the Mayor copied my social security number down violating my right to personal privacy.

During the questioning, Council directed testimony to staff members, Mike Dooly, Chief Moon and Pam Woodall in order to substantiate the complaint(s) against the Mayor. Council also directed questions to City Attorney Tim Sralla.

Having concluded the questioning with the complainant, Mr. Whiteman, Mayor Pro-Tem Leverentz then turned Council's attention to the respondent, Mayor Vansyckle. Again, each individual Council Member asked questions and allowed Mayor Vansyckle his rebuttal to each of the eleven allegations. While the Mayor admitted he directed the City Secretary to pull the City Administrator's personnel file, and to faxing the termination document to Mr. Ramsey's office, he adamantly and strongly voiced everything else contained in the charges to be falsehoods and slanderous lies. Mayor Vansyckle stated he felt it necessary to conduct a personal investigation into Mr. Ramsey's complaint against the City Administrator, and into the opinion of a Municipal Court water case. Mayor Vansyckle furthered his comments with an excerpt from his written rebuttal that stated the City Administrator was working with certain citizens against him and that Mr. Whiteman was no longer capable of representing Ovilla. Council inquired as to why the Mayor had not supplied any supporting documentation to corroborate his responses.

Council also discussed the events, timelines and distribution of the original complaint filed by Mr. Rodney Ramsey and the written rebuttal with exhibits and testimonies submitted by Mr. Whiteman. Why some Council Members had knowledge of and received the information earlier than fellow members remained unanswered. A direct instruction from the Mayor to the City Secretary not to release some documents to PL 5 Dormier and PL 3 Wade during the same timeframe was also a matter unsettled. These questions alluded to the likelihood of a walking-quorum and were all discussed with City Attorney Tim Sralla.

Having concluded the inquiries from the complainant and respondent, Mayor Pro-Tem Leverentz allowed each to three-minute closing remarks. Following their statements, Mayor Pro-Tem and the Council (excluding the Mayor and City Administrator) adjourned into Executive Session at 10:10 P.M. to deliberate the following:

ITEM 1. The City Council will meet in closed session pursuant to Section 551.071 of the Texas Government Code for consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion on any item posted on the agenda.

- Complaint filed by City Administrator

ITEM 2. The City Council will meet in closed session pursuant to Section 551.074 of the Texas Government Code to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee.

- Mayor Vansyckle

The Council reconvened into regular session at 11:27 P.M.

Mayor Pro-Tem Leverentz asked for a motion from Council under Item 1 of the Executive Session. PL5 Dormier made a motion that Council finds violations under the Council Code of Ethics by the Mayor for Complaint(s) 1, 5, 6 and 11 as listed:

1. **Complaint number 1:** The Mayor overstepped his authority when he told me to suspend my removal of Mr. Ramsey.

Substantiated under Council Rules, page 6: Recognize that public and political policy decisions, based on established values, are ultimately the responsibility of the Mayor and City Council: Respect and adhere to the Council-Administrator structure of Ovilla City government outlined by the Ovilla City Code of Ordinances. Members therefore shall not interfere with the administrative functions of the City or the professional duties of city staff; nor shall they direct/interfere with the ability of the staff to implement Council policy decisions.

2. **Complaint number 5:** The Mayor's actions to fax my letter to Mr. Ramsey and then personally deliver the doctored complaint showed bias against me.

Substantiated under Council Rules, page 6: Recognize that public and political policy decisions, based on established values, are ultimately the responsibility of the Mayor and City Council: Because of the value of the independent advice of boards and commissions to the public decision-making process, refrain from using their position to unduly influence the deliberations or outcomes of board or commission proceedings.

3. **Complaint number 6:** The Mayor failed to declare a conflict of interest or excuse himself from the complaint process even though he had participated with Mr. Ramsey in the filing of Mr. Ramsey's complaint.

Substantiated under Council Rules, page 6: In accordance with the law, Members shall disclose investments, interest in real property, sources of income, and gifts, and they shall abstain from participating in deliberations and decision-making where an appreciable conflict of interest may exist.

4. **Complaint number 11:** The Mayor demonstrated abuse of power when he went to the City Secretary and ordered her to allow him to view my personnel file. The Mayor copied my social security number down violating my right to personal privacy.

Substantiated under Council Rules, page 6: Recognize that public and political policy decisions, based on established values, are ultimately the responsibility of the Mayor and City Council: Members shall recognize their special role in dealings with city employees and in no way create the perception of inappropriate direction to staff.

PL3 Wade seconded the motion.

Mayor Pro-Tem Leverentz asked for a record vote by the raising of hands.

All present Council raised hands in favor. No oppositions, no abstentions.

Place 2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

Mayor Pro-Tem Leverenz asked if there was a motion from Council under Item 2 of the Executive Session. PL 5 Dormier stated that Council would schedule another date to take appropriate action under this item. The remaining seven complaints received no action at all from Council, neither in violation nor exoneration.

Mayor Vansyckle assumed the Chair again and returned to the regular order of the agenda.

PUBLIC HEARING & DISCUSSION

ITEM 1. Public Hearing and Discussion – Receive Comments and discussion to consider the approval of taxation of Goods-In-Transit that are otherwise exempt from taxation under Section 11.253, Texas Tax Code.

Mayor Vansyckle opened the Public Hearing at 11:30 P.M.

Mayor Vansyckle asked if there was anyone to speak in favor of this item.

Mayor Vansyckle asked if there anyone wishing to speak in opposition of this item.

Mayor Vansyckle asked if anyone wanted to make any comments.

There were no comments.

Mayor Vansyckle closed the Public Hearing at 11:31 P.M.

REGULAR AGENDA

INDIVIDUAL CONSIDERATION:

ITEM 2. Discussion/Action – Consider Ordinance 2011-028 relating to the approval of taxation of Goods-In-Transit that are otherwise exempt from taxation under Section 11.253, Texas Tax Code.

- Presented by Administrative Staff

PL4 Hunt made a motion that Council approves Ordinance 2011-028 relating to the taxation of Goods-in-Transit, pursuant to TX Tax Code 11.253 as presented.

PL3 Wade seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, no abstentions.

PL2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

ITEM 3. Discussion/Action – Update Council with audio/visual technical equipment and Council may take any action deemed necessary.

- Presented by Administrative Staff and Mayor Vansyckle

Mayor Vansyckle gave Council a demonstration with one of the seven Eee-Tablets he recently purchased on the city's behalf. Mayor advised he was working under advisement with the City of Ferris to gain tablet user knowledge and software capabilities. He advised Council that software needed to be purchased. Additionally, he stated he had made a call for service regarding the not yet working audio equipment. Mayor stated he was not certain of the costs still pending to achieve working order of all the equipment. The City Secretary informed Council that the additional software required to enable the viewing of the tablets in the manner that the Mayor described and requested would run approximately \$200.

City Accountant Sharon Jungman advised that the original budget for this purchase was \$5,000. Over \$6,000 was expended to date. Ms Jungman asked that Council consider how they wanted to pay for the increased expenditures.

Mayor Pro-Tem Leverentz made a motion that Council approves the purchase of any necessary software to get the Eee-Tablets working.

PL4 Hunt seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, no abstentions.

PL2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.

ITEM 4. Discussion/Action – Determine Council's response to Oncor regarding the many outages in Ovilla during the past two years.

- Requested by Council

Mayor Pro-Tem Leverentz announced that he had filed a Conflict of Interest with the City Secretary prior to the meeting regarding this item.

PL4 Hunt advised that in recent conversation with Oncor, they shared with him that they (Oncor) had completed some extensive tree trimming and replaced various switches within the city with the intention to improve Ovilla's service. PL4 Hunt suggested that an Ovilla representative (Council or staff) schedule a visit with Oncor directly instead of filing a complaint with the PUC (Public Utility Commission).

PL5 Dormier made a motion that Council approves the scheduling of a meeting with Oncor and to suspend previous plans to file a formal complaint with the PUC.

PL4 Hunt seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, 1 abstention by Mayor Pro-Tem Leverentz.

PL2 Dickey was noted absent.

VOTE: The motion carried unanimously: 3 in favor, 1 abstention, 1 absent.

Council's Request for Consideration of Future Agenda Items

Place 5, Dormier: Agenda Item to follow up on Council's action(s) regarding the findings of Mayor's violations.

Place 4, Hunt: None

Place 3, Wade: None

Mayor: None

Place 2, Dickey: Absent

Mayor Pro-Tem Leverentz: Discuss Accident Review Board

Agenda Item for Council's further action(s) regarding the findings of Mayor Vansyckle's violations.

Adjournment

PL3 Wade made a motion to adjourn the meeting of November 28, 2011 at 11:45 P.M.

PL4 Hunt seconded the motion.

Mayor Vansyckle asked for a record vote by announcement of AYE or NAY.

Present Council announced AYE in favor. No oppositions, no abstentions.

PL2 Dickey was noted absent.

VOTE: The motion carried unanimously: 4-0.



Bill Vansyckle, Mayor

ATTEST:



Pam Woodall

Approved December 12, 2011

Attachments: Conflict of Interest Affidavit from Mayor Pro-Tem Leverentz

Certified Executive Agenda for Executive Session Item 1 (7 filed separately)

Certified Executive Agenda for Executive Session Item 2 (7 filed separately)

Citizen's Comments by Mr. Phil Lynch



AFFIDAVIT

STATE OF Texas)

)

COUNTY OF Ellis)

That on this 28 day of November, 2011, Tom LEVERENTZ personally came and appeared before me at 6:45 o'clock AM/PM, Ovilla City Hall, of Ovilla, Texas, known, and known to me, who says:

Per the Local Government Code, Section 171.004, I am filing this affidavit stating that I shall abstain from voting and participating in the City Council matter of

Item 4

The nature and extent of my interest in this matter is _____

*The company that I work for (ASPLUNDH)
is employed with Oscar.*

FURTHER AFFIANT SAYETH NOT.

Thomas Leverentz

(Signature)

PRINTED NAME: Thomas LEVERENTZ

PRESENTED AND FILED with me on this 28 day of November, 2011.

Penelope Marshall

CITY CLERK/SECRETARY

11 28 2011 Citizen's Comments

My name is Phil Lynch,

Before us tonight is a contest of values. Either we will witness a full item by item investigation as the city council meeting on October 3rd led us to believe, or will we witness a council who has not done their homework.

It is my hope, we will witness a full investigation without any political favors involved, no doubt, we the people can tell the difference.

Tonight is not about misunderstandings or mischaracterizations. It's about values, actions and character. It is a sad day in Ovilla when a citizen can report that he has too easily found serious ethics violations in each and every of the eleven paragraphs in our Code of Ethics.

Tonight many in this room will hear of a disrespect for civility and decorum which has been displayed out of sight from most of us. People of Ovilla, picture in your mind a guest in your home, much like an elected official in a city hall setting. Picture the guest, when receiving information he doesn't like habitually yelling and being extremely rude to your family, using language unbecoming to your family members. Then picture the guest in your home constantly slamming your doors in a furious outburst.

Gentlemen, that is what the guest in our home, our city hall, has been doing for two years. The family members are our employees. No one should have our consent by omission, default or any other method to act uncivilly in our house. Its unacceptable behavior and we should all be ashamed as we have condoned this behavior by our silence for two years. No more.

From this night forward, our employees are to be treated with respect and decency at all times, bad news or not. Elected officials are free to slam their own doors, yell at their own family members, and insult those in their household, but gentlemen, not our doors and not in our home, not any longer.

In my humble opinion, this kind of behavior is merely a window into what you will uncover this evening. What's the saying, I paraphrase, nothing shall remain uncovered, all things hidden will be revealed.

Another example of how the subject of this ethics investigation has miss-characterized an excuse for his behavior the past two years is to always blame others. What others? Contrary to what the Mayor is suggesting, my recollection is that nearly every council vote for two years has been 5-0, and only a hand

full have been 4-1 and I don't remember any 3-2, but there may have been a couple. So, with mostly unanimous votes, exactly what political opposition could he be referring to?

Gentlemen, as you can plainly see from the complaints, this isn't about politics. It's about right and wrong!

Let's quickly check a few facts. Was it political opponents who snuck in Ramsey as city prosecutor without disclosing a previous business and personal relationship?

Was it political opponents who began fixing tickets the month after Ramsey was on board and the ink not dry on the Oath of Office?

Was it political opponents who went against the Ovilla Code of Ordinances?

Was it political opponents who went against the city's lawyer's advice and legal opinion on a water case?

Was it political opponents who went against the Texas Constitution in a water case?

Was it political opponents who continually told the city prosecutor to not prosecute certain people and to actively prosecute people the official didn't like?

Was it the political opponents who made him use foul language, yell and slam doors in city hall as though it was his private property?

Was it the political opposition which led the official to appoint a citizen to the highly important Board of Adjustments overseeing property owners request for changes with permits that reportedly enclosed his garage recently and according to city records did it without a permit?

Is it political opposition that makes him operate his private investigator business out of city hall both during and after office hours?

Well gentlemen, when the city council stops the official from operating his business out of city hall, and removes his keys so he won't be here when the staff is not here, he just might get the message this is not his house, it's our house.

Thank you for your attention.