



**A REGULAR MEETING  
OF THE WESLACO CITY COMMISSION  
TUESDAY, JANUARY 7, 2014**

On this 7<sup>th</sup> day of January 2014 at 5:30 p.m., the City Commission of the City of Weslaco, Texas convened in a Regular Meeting at City Hall in the Legislative Chamber, located at 255 South Kansas Avenue with the following members present:

Mayor	David Suarez
Mayor Pro-Tem	J.F. “Johnny” Cuellar
Commissioner	David R. Fox
Commissioner	Olga M. Noriega
Commissioner	Gerardo “Jerry” Tafolla
Commissioner	Lupe Rivera
Commissioner	Fidel L. Pena, III
City Manager	Leonardo Olivares
City Secretary	Elizabeth M. Walker
City Attorney	Ramon Vela

Also present: Juan Salas, IT Department; Bret Mann, Finance Director; Jeff Underwood, Planning & Code Enforcement Director; David Salinas, Public Utilities Director; Police Chief Michael Kelley; Fire Chief Santiago Cuellar; Arnold Becho, Library Director; Martin Mata, Assistant Library Director; Veronica Ramirez, Human Resources; and other staff members and citizens.

**I. CALL TO ORDER**

- A. Certification of Public Notice.  
Mayor Suarez called the meeting to order and certified the public notice of the meeting as properly posted Friday, January 3, 2014.
- B. Invocation.  
Ms. Elizabeth Walker, City Secretary, delivered the invocation.
- C. Pledge of Allegiance.  
Mayor Suarez recited the Pledge of Allegiance and the Texas flag.
- D. Recognition of the Retirement of Tom Dimas, Fire Marshal’s Office.  
Mayor Suarez expressed his gratitude to Mr. Tom Dimas for his dedicated service to the City.
- E. Roll Call.  
Elizabeth Walker, City Secretary, called the roll, noting perfect attendance.

**II. PUBLIC COMMENTS**

Mr. Roger Gutierrez commented on the poor street conditions on Mile 1 and Mile 5½.

**III. PUBLIC HEARINGS**

- A. To solicit input on behalf Justo Bariert to approve a Conditional Use Permit to obtain an On-Premise Wine and Beer Retailer’s Permit at 1501 W. Business Hwy., being Lot 1, Westgate Center Subdivision, Weslaco, Hidalgo County, Texas.

Mayor Pro-Tem Cuellar, seconded by Commissioner Tafolla, moved to open the public hearing at 5:42 p.m. The motion carried unanimously; Mayor Suarez was present, but not voting. There were no comments received.

Mayor Pro-Tem Cuellar, seconded by Commissioner Rivera, moved to close public hearing at 5:43 p.m. The motion carried unanimously; Mayor Suarez was present, but not voting.

**IV. CONSENT AGENDA**

The following items are of a routine or administrative nature. The City Commission has been furnished with background and support material on each item, and/or it had been discussed at a previous meeting. All items will be acted upon by one vote without being discussed separately unless requested by one commission member, in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon. The remaining items will be adopted by one vote. Possible action.

- A. Approval of the Minutes of the Regular Meeting on December 17, 2013; (Requested by City Secretary’s Office.) Attachment.
- B. Approval of the renewal of municipal membership in the Texas Border Coalition in an amount of \$3,567.00 and authorize the Mayor to execute any related documents. (Requested by Finance.) Attachment.
- C. Approval of the contract modification with WSI Weather Systems at no cost to the City to change from a modem-supported system to an internet-based system and authorize the Mayor to execute any related documents. (Requested by Airport.) Attachment.
- D. Approval of the one year interlocal agreement extension with the Hidalgo County Head Start Program for the property located at 310 N. Kansas Avenue, effective January 1 – December 31, 2014 and authorize the Mayor to execute any related documents. (Requested by Parks and Recreation Department.) Attachment.
- E. Approval of the request from the Weslaco Area Chamber of Commerce to hold the 25<sup>th</sup> Annual Texas Onion Fest on Saturday, March 22 at the Weslaco City Park on Airport Drive, to sell beer during the event, to place a banner promoting the event at the intersection of Texas and Pike Boulevard for two weeks prior to the event, and to waive appropriate ordinances associated with the event. (Requested by Parks and Recreation Department.) Attachment.

Mayor Pro-Tem Cuellar, seconded by Commissioner Pena, moved to approve the consent agenda as presented. The motion carried unanimously; Mayor Suarez was present, but not voting.

**V. APPOINTMENTS**

- A. Discussion and consideration to approve Resolution 2014-01 appointing a member and an alternate to the Lower Rio Grande Valley Development Council (LRGVDC). Possible action. (Requested by Planning and Code Enforcement Department.) Attachment.

The City Manager stated that this item was to replace those positions held by former Mayor Wise and Commissioner Martinez.

Mayor Pro-Tem Cuellar, seconded by Commissioner Fox, moved to approve Resolution 2014-01 identifying Mayor Suarez and Commissioner Pena to replace Mayor Wise and Commissioner Martinez to the Lower Rio Grande Valley Development Council (LRGVDC). The motion carried unanimously; Mayor Suarez was present, but not voting.

For the record, Resolution 2014-01 reads as follows:

**RESOLUTION NO. 2014-01**

**THE STATE OF TEXAS           §    APPOINTING A MEMBER AND AN ALTERNATE  
COUNTY OF HIDALGO       §    MEMBER TO THE LOWER RIO GRANDE VALLEY  
CITY OF WESLACO           §    DEVELOPMENT COUNCIL (LRGVDC)**

**WHEREAS**, the Lower Rio Grande Valley Development Council (LRGVDC) has requested that a City of Weslaco elected official serve as the official member to its Board of Directors; and

**WHEREAS**, the LRGVDC further has requested that a City of Weslaco elected official serve as the alternate member of the LRGVDC Board of Directors;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WESLACO** that Mayor Pro-Tem Cuellar be appointed as the official member to serve in the LRGVDC Board of Directors.

**BE FURTHER RESOLVED** that the remainder of the City Commission including Mayor David Suarez and Commissioner Fidel Pena, III be appointed as the alternate members to serve in the LRGVDC Board of Directors and a copy of this Resolution shall be delivered to the Lower Rio Grande Valley Development Council office to evidence these appointments.

**PASSED AND APPROVED** this 7<sup>th</sup> day of January, 2014.

/s/ David Suarez, MAYOR

ATTEST:

/s/ Elizabeth M. Walker, CITY SECRETARY

APPROVED AS TO FORM:

/s/ Ramon Vela, CITY ATTORNEY

- B. Discussion and consideration to nominate a member of the Weslaco community who has made significant civic contributions and achievements to the Rio Grande Valley Walk of Fame as part of BorderFest 2014 and authorize the Weslaco City Commission to sign the nomination form. Possible action. (Requested by City Manager's Office.) Attachment.

The City Manager referenced the list of former nominees since 2005.

Commissioner Noriega, seconded by Commissioner Pena, moved to nominate Ms. Soyla Gonzalez to the Rio Grande Valley Walk of Fame as part of BorderFest 2014 and authorized the Weslaco City Commission to sign the nomination form. Mayor Suarez and Commissioners Noriega, Fox, and Pena voted in favor; the motion carried.

## VI. NEW BUSINESS

- A. Discussion and consideration after public hearing on behalf of Justo Bariant to approve a Conditional Use Permit to obtain an On-Premise Wine and Beer Retailer's Permit at 1501 W. Business Hwy., being Lot 1, Westgate Center Subdivision, Weslaco, Hidalgo County, Texas and authorize the Mayor to execute any related documents. Possible action. (Requested by Planning and Code Enforcement Department.) Attachment.

The City Manager stated notice was published and hearing held; Planning and Zoning Commission and staff recommend approval.

Mayor Pro-Tem Cuellar, seconded by Commissioner Rivera, moved to approve the item as presented. The motion carried unanimously; Mayor Suarez was present, but not voting.

- B. Discussion and consideration on behalf of Medelfish, Ltd. to approve the Final Plat of RSBR Westgate Subdivision, being a re-subdivision of 1.44 acres out of lots 3 and 4, Quail Hollow North Subdivision, Weslaco, Hidalgo County, Texas and authorize the Mayor to execute any related documents. Possible action. (Requested by Planning and Code Enforcement Department.) Attachment.

The City Manager stated the proposed subdivision was for a new Dollar General, noting that the Planning and Zoning Commission reviewed the subdivision and with staff recommends approval with the stipulation that funds be escrowed for sidewalks on Westgate Drive.

Commissioner Tafolla, seconded by Mayor Pro-Tem Cuellar, moved to approve the item as presented. The motion carried unanimously; Mayor Suarez was present, but not voting.

- C. Discussion and consideration to issue a request for proposals or extend the term of the existing 125 Cafeteria Plan (optional/voluntary supplemental insurance; e.g., vision, dental, life, cancer, long-term care, etc.) for the City of Weslaco employees for an additional year, effective April 1, 2014 - March 31, 2015, at no cost to the City. Possible action. (Commission directed anonymous survey on December 3, 2013; Requested by Human Resources Department.) Attachment.

The City Manager stated that at a previous meeting the Commission had instructed staff to poll the employees on their assessment of the current cafeteria plan. Ms. Ramirez reported there were 162 respondents to the ten question survey. When asked if they felt there would be a positive or negative impact in soliciting new vendors 53 employees stated a positive impact and 60 employees stated a negative

impact. However, the overall findings indicated 72 employees recommend keeping the same vendors. The City Manager summarized that the majority of the respondents were satisfied with the current vendors.

Commissioner Noriega stated that the finding were miscalculated and misrepresented since the calculations were based on the total survey rather than on the individual questions. Commissioner Pena expressed the importance of looking at the responses to the open ended comments and properly evaluating what the respondents want.

Commissioner Pena, seconded by Commissioner Noriega, moved to request bids in order to see what other vendors are out there and what they offered, since the option to retain the current vendors is available.

Mayor Pro-Tem Cuellar stated that a healthy discussion was held at the last meeting when the recommendation was made to go out for bids every 3-4 years. Commissioner Fox stated that on question nine (9) and ten (10) the majority of the participants wished to stay with the current vendors at least one more year.

Mayor Pro-Tem Cuellar, Commissioners Tafolla, Rivera and Fox opposed. The motion failed (3-4).

Mayor Pro-Tem Cuellar, seconded by Commissioner Rivera, moved to approve extending the term of the existing 125 Cafeteria Plan. Mayor Suarez, Commissioners Noriega and Pena opposed. The motion carried (4-3).

- D. Discussion and consideration to ratify Memorandums of Understanding (MOUs) as executed by the City Manager with the Boys and Girls Club of the Mid Valley, the Boys and Girls Club of McAllen, and the Boys and Girls Club of Weslaco, Inc. Possible action. (Requested by the City Manager's Office.) Attachment.

Commissioner Pena, seconded by Commissioner Noriega, moved to approve the item as presented.

The City Manager stated that during Fiscal Year 2012 as the Boys & Girls Club of the Mid Valley was winding down, he executed several Memorandums of Understanding with various organizations so to continue providing services to the community.

Commissioner Fox noted for the record that he would abstain from the discussion and the vote. The City Attorney supported Commissioner Fox's stance to abstain based on the fact that he had executed one of the Memorandums of Understanding while he was director and the Boys & Girls Club of the Mid Valley has not yet dissolved. The City Attorney advised the Mayor Pro-Tem, as a former Club board member, to also abstain as there remains exposure to the Club. Mayor Pro-Tem Cuellar stated that he would abstain from discussion and vote based on counsel.

Mayor Suarez stated that according to the Charter all contracts require City Commission approval before execution. The City Attorney affirmed the Mayor's

comment but stated that the previous administration allowed the City Manager to execute certain agreements as long as they followed the guidelines of the purchasing policy. Mayor Suarez expressed his concern that the City Manager acted beyond the scope of his duty and asked how the Commission could ratify past actions and undo violations of the City Charter.

In response to Commissioner Pena, the City Attorney stated the purchasing policy permits not all warrants must be individually authorized by Commission because they may be approved through the budget and a check register signed by the Mayor. If it is the will of the Commission the purchasing policy can be changed.

Commissioner Noriega stated in June 2011 the Boys & Girls Club had received an IRS Levy and the City still released \$19,200.00 in funding. Commissioner Noriega referenced a memo from the City Attorney recommending that a check be issued to the IRS for less than \$15,000.00 when the club no longer existed and there was no contract in place.

The City Manager responded that the City over thirty years of contracts that exhibit Commission and Community support for this organization. The City Manager accepts full responsibility of this judgment call and stated that it was rare for a Memorandum of Understanding to be issued, but stood by his actions since Commission already had approved the budget to fund the club. The City Manager stated he was unaware of any levy and a public purpose agreement has been executed with the current entity.

The City Manager stated the request being brought before the Commission now is to ratify the first and second Memorandums of Understanding since the third contract was in compliance with the purchasing policy.

Commissioner Pena withdrew his motion stating he was not comfortable ratifying the contracts after the discussion. Commissioner Noriega also withdrew her motion. The City Manager recommended the Commission wait for a legal analysis before making a decision.

Commissioner Tafolla, seconded by Commissioner Rivera, moved to table the item. Mayor Suarez, Commissioners Noriega, Tafolla and Pena opposed; Mayor Pro-Tem Cuellar and Commissioner Fox did not participate. Motion failed (4-1).

- E. Discussion and consideration to approve a professional services contract for legislative advocacy with Caballero Governmental Affairs in an amount not to exceed \$60,000.00 per year for a two-year term, February 1, 2014 – January 31, 2016, authorize a budget amendment as appropriate, and authorize the Mayor to execute any related documents. Possible action. (Requested by the City Manager's Office.) Attachment.

Mayor Pro-Tem Cuellar, seconded by Commissioner Tafolla, moved to approve the item as presented.

The City Manager recommended that the agreement establish a venue provision and

a conflict of interest provision.

Commissioner Pena stated he was unclear as to what work has been done by Ms. Caballero for the City. Commissioner Noriega stated that according to the previous agreement reporting from Ms. Caballero was a requirement. The City Manager stated that the City could not use federal funds to lobby federal agencies, but will work with Ms. Caballero on her compliance with the monthly reports. In response to Commissioner Noriega, the City Manager responded that the City could look into other agencies for these services.

Mayor Pro-Tem Cuellar called to question the motion. Mayor Suarez stated that he had more questions on this item. In response to Mayor Suarez, the City Manager stated he had not approved any additional expenses and if any had been incurred Ms. Caballero had not invoiced them.

Mayor Suarez, Commissioner Noriega and Commissioner Pena opposed. The motion carried (4-3).

- F. Discussion and consideration to enter into a professional services agreement with Prodigy Construction Management, LLC for construction management services for the Valley Nature Center construction project and authorize the Mayor to execute any related documents. Possible action. (Requested by the City Manager's Office.) Attachment.

The City Attorney requested item IV. B.be taken from its posted sequence to be discussed after Executive Session.

## **VII. REPORT**

- A. Report by Finance Department on Hotel Occupancy Tax expenditures for Fiscal Year 2012-2013. Attachment.

Mr. Mann provided the Commission with a copy of the tax code and expenditures.

In response to Mayor Suarez, Mr. Mann stated the hotel/motel fund was utilized to pay for the light and water at the Tower Theatre since 2005. Commissioner Noriega stated she emailed Mr. Mann regarding the Hotel Occupancy Tax on December 1, 2013 and never received a response. Mr. Mann responded that he only had a list of the activities as budgeted for fiscal year 2013-2014.

In response to Commissioner Noriega's inquiry about what was being done to promote the City, Mr. Mann responded that staff was continuing with the Winter Texan advertisement, Valley Metro advertisement, the Chamber, Visitor Center, Valley Nature Center, Weslaco Museum and Frontera Audubon. Currently the City receives \$350,000.00 per year from the Hotel Occupancy Tax.

The City Manager stated that the City is in substantial compliance with the statutes and there may be an issue with a list staff may not have received.

Commissioner Noriega inquired about the consequence if the City was not appropriating funds properly. The City Manager stated that there is no issue with carrying the balance from the Hotel Occupancy Tax into the next fiscal year.

Mayor Pro-Tem Cuellar asked the City Attorney to provide a written opinion on whether the Commission has been appropriating the Hotel Occupancy Tax properly. Mayor Suarez suggested that a workshop be held to discuss the Hotel Occupancy Tax.

#### **VIII. EXECUTIVE SESSION**

At 7:22 p.m., the Mayor announced the regular meeting to convene in Executive Session. At 9:08 p.m., the Mayor announced the City Commission had completed its Executive Session and reconvened the regular meeting as open to the public.

#### **IX. POSSIBLE ACTION ON WHAT IS DISCUSSED IN EXECUTIVE SESSION**

- A. Pending Litigation – Discussion with City Attorney regarding Cause No. CCD-0033-F In The Matter of Proceedings By The City of Weslaco, Texas for The Condemnation of Certain Property of Ricardo Oliva pursuant to §551.071 of the Texas Government Code. (Requested by Mayor.)

There was no action on this item.

- B. Potential Litigation – Discussion with the City Attorney regarding potential claims on the Emergency Medical Services (EMS) accident of December 26, 2013 in Santa Maria as authorized by §551.071 of the Texas Government Code.

There was no action on this item.

- C. Potential Litigation – Discussion with the City Attorney regarding potential claims by subcontractors on the Valley Nature Center building project as authorized by §551.071 of the Texas Government Code.

There was no action on this item.

#### **VI. NEW BUSINESS**

- F. Discussion and consideration to enter into a professional services agreement with Prodigy Construction Management, LLC for construction management services for the Valley Nature Center construction project and authorize the Mayor to execute any related documents. Possible action. (Requested by the City Manager's Office.) Attachment.

Mayor Pro-Tem Cuellar, seconded by Commissioner Tafolla, moved to approve the item as presented.

The City Manager stated that Mr. Alex Palacios, principal for Prodigy Construction Management, LLC, would be providing site evaluations, quality assurances and

evaluations of the payment applications. Mr. Palacios stated it would take one to two weeks to prepare a detailed status report and would be able to present to the Commission at the next regular meeting.

The motion carried unanimously; Mayor Suarez was present, but not voting.

**X. ADJOURNMENT**

With no other business before the Commission, at 9:12 p.m. Commissioner Tafolla, seconded by Commissioner Rivera, moved to adjourn the January 7, 2014 regular meeting. The motion carried unanimously; Mayor Suarez was present, but not voting.

**CITY OF WESLACO**

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**MAYOR**, David Suarez

**ATTEST:**

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**CITY SECRETARY**, Elizabeth M. Walker

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**MAYOR PRO-TEM**, J.F. "Johnny" Cuellar

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**COMMISSIONER**, David R. Fox

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**COMMISSIONER**, Olga M. Noriega

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**COMMISSIONER**, Gerardo "Jerry" Tafolla

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**COMMISSIONER**, Lupe Rivera

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**COMMISSIONER**, Fidel L. Pena, III