

MINUTES
CITY COUNCIL CHARTER MEETING
November 7, 2005
5:30 P.M.
Council Chambers

MEMBERS PRESENT: Mayor Rietz. Council Members Baker, McAlister, Dick Pacholl, Nordin, Scott Pacholl and Hecimovich. Council Member-at-Large Christopherson.

MEMBERS ABSENT: None.

OTHERS PRESENT: Post Bulletin and Austin Daily. Misty Christ. Bruce Loesch. Michael Bednar.

Added to the agenda: A motion approving proposal for engineering services for the Industrial Wastewater Treatment Plant; and a resolution approving flood grant agreement with the Department of Employment and Economic Development.

Moved by Council Member Hecimovich, seconded by Council Member Nordin, approving the agenda as amended. Carried.

Moved by Council Member-at-Large Christopherson, seconded by Council Member Nordin, approving the public hearing minutes of October 4, 2005 and city council minutes of October 17, 2005.

Mayor Rietz and Fire Chief Dan Wilson recognized Jason Jacobs and Jim Grunewald for rescuing Barb Scheid during a recent house fire. Both men received plaques and a letter from Mayor Rietz.

Licenses:

Food Transfer: Mickey's Place, 111 2nd Avenue NE
Novelty Machine Transfer: Mickey's Place, 111 2nd Avenue NE

Claims:

- a. Pre-list of bills.
- b. Erma Legler, 611 1st Street SW. This claim has been referred to the city attorney to protect the city's interest.

Carried.

Moved by Council Member Nordin, seconded by Council Member-at-Large Christopherson, approving the consent agenda. Carried.

Moved by Council Member McAlister, seconded by Council Member Dick Pacholl, resolving the City Council into the Board of Adjustments and Appeals. Carried.

A public hearing was held on a conditional use permit requested by Steve Wheeler, 504 4th Street SW, and Misty Christ, 505 10th Street NW, for a customary home occupation (photography studio) in an R-1 Single Family Residential District. The residence is surrounded by an R-1 District. This request was reviewed by the Austin Planning Commission on October 11. Questions were raised at that public hearing regarding proposed signage and where the business would be conducted (outside or inside). The Planning Commission approved the conditional use permit by a 4-3 vote with eight conditions. Affected property owners have a 15-day appeals period, and if objections are raised, the request is heard by the Board of Adjustments and Appeals. An appeal was received by Michael Bednar, 505 4th Street SW. Community Development Director Craig Hoium said our ordinance requires that no more than 30% of the primary structure is to be used for the business. The proposed area for the business is 398 square feet. Mr. Hoium said future plans include adding a garage, and part of the garage would be used for the business. The petitioner is still limited to 30% usage. For signage, the petitioner is limited to a two-square-foot sign, which would be flat to the structure.

Council Member Scott Pacholl questioned the relationship between the owner of the property and the petitioner and her address. Mr. Hoium said the request is as a result of a potential purchase of property. The petitioner is going through the motions required before purchase.

Council Member Baker questioned why staff recommended no signage. Mr. Hoium replied that those are the standard recommendations for a conditional use permit.

Mayor Rietz read a letter from the Gundersons. The letter stated that the Gundersons objected to the conditional use permit calling the area a "classic residential area." They requested that the petitioner be given assistance for other options as this is not a good place for the business. They requested the City Council deny the petition.

Council Member McAlister asked City Attorney David Hoversten to remind Council on what basis their decision should be made and what the Council can legitimately address.

City Attorney David Hoversten said Council's decision must be supported by specific findings. Before granting a conditional use permit, they should consider the effect of the proposed use upon the health, safety and general welfare of the occupants of the surrounding land. The Council should apply principals A-H from City Code 11.56 where applicable. Mr. Hoversten said mere opinion of neighbors is not a reason to deny. Council should look at the relevant facts. This is not a popularity factor. He said the courts have found that showing demonstrable evidence is greater than mere opinion of how a conditional use would adversely affect a neighborhood. Mr. Hoversten also reminded Council that conditional use permits are proper uses in that neighborhood. The Austin ordinance provides for proper uses of conditional use permits in an R-1 District.

The question is, does that use adversely affect the health, safety and welfare of the surrounding land occupants. Mr. Hoversten then gave an example of a commercial cement contracting business next to an R-1 District. In that situation, there could be evidence found that the business creates undue noise, dust and chemical hazards.

Bruce Loeschen, 501 4th Street SW, said many people have the misconception that his business is a hobby. He said it is studio art, but it is not retail. He is very concerned that parking would be an issue.

Michael Bednar, 505 4th Street SW, objected to the conditional use permit and questioned that it would be harmonious with the Comprehensive Plan. She questioned the 30% main floor usage with the potential garage increasing the square footage.

Community Development Director Craig Hoium said there is language in our codes addressing home occupations, and the Planning Commission and some other groups have reviewed the ordinance and requested greater leniency for home occupations, especially with the introduction of the Internet. Mr. Hoium said whether the total square footage is 2000 or 2500, the petitioner cannot exceed 30% square-footage of the first floor. He or she could not even request a variance to exceed the limit. If the petitioner builds a garage, she would still not be permitted to exceed the allowable square footage. The garage is classified as part of the prime residence if it is attached to the dwelling. He said the Council can choose to approve the petition 'as is' and if a garage is added, the petitioner would come have to come back.

Mayor Rietz questioned how the historical significance could be addressed. Mr. Hoium said the Council could either deny the request or approve with the condition that the site remain historical.

Another neighbor objected to the petition saying that the parking in front is an "accident waiting to happen."

Council Member Dick Pacholl said he has received some phone calls on this request, and the people are afraid of their property values declining.

Bruce Loeschen stated his home occupation is not retail. He said if this petition is approved, he has every right to move the retail portion of his business on to his property. This will be a domino effect in the neighborhood.

City Attorney David Hoversten reiterated the 'customary home occupations' that are allowable under City Code 11.30 Subd. 3(d). Many are involving sales of products or services which do invite people coming into the home.

Misty Christ spoke to Council saying it was best for her to move from downtown to an R-1 District. She is a single woman so trying to run a home and business is difficult. Plus, she is looking at getting a master's degree online, and the home occupancy would be easier. Ms. Christ said she does everything by appointment and has for a year. She has a

definite schedule for her portraits and does most orders over the phone. She sees the business as bringing up the value in the home and stated that she intends to build a new garage; the current garage needs to be taken down.

Council Member Dick Pacholl asked what she would do if a sitting involved more than one or two customers, which would mean more than two vehicles. She said if the group is larger, she would use another location.

Council Member Nordin questioned if she employs other people. Ms. Christ says that at times, her friends help, but it is mostly just herself. They (the friends) are not needed (in the business). She would use the inside of her home and the Skinner's Hill area.

Council Member Scott Pacholl questioned Ms. Christ how many appointments she has per day. She said about eight during December. Currently there are three to four per day.

Council Member Scott Pacholl questioned the traffic impact. Mr. Hoium said the dwelling is set way back on the lot. Approximately three vehicles could fit in the driveway with room left over. He said Council could approve but with the condition that customers be restricted to parking in the driveway. He stressed that they can place conditions on a conditional land use.

Council Member Pete Christopherson asked what would happen if the petitioner moved away from the property. City Attorney David Hoversten said the conditional land use permit is attached to the property, but would only allow for photography use. In addition, the conditional land use would be subject to conditions placed upon the current conditional use permit (e.g. driveway parking only).

Dr. Isele, 511 6th Avenue SW, questioned what is meant by residential. He assumes that means residential. He said the attitude of the neighborhood is that this area not be commercial at all.

City Attorney David Hoversten said that the Supreme Court has shown through case law that home occupancies are acceptable as conditional use in an R-1 District. Whether you agree or disagree is irrelevant; that's the law.

Council Member McAlister questioned if daycares have special rules. Mr. Hoium said day cares are permitted land uses. There are limits as to how many children may be cared for, and there are restrictions which must be approved by the fire marshall. But a day care does not take a special hearing. In addition, a day care may have many hours open. He said he believes they are limited to having 14 children at one time.

Council Member McAlister said with this conditional use permit, the Council *can* set hours, limit parking and make other rules so it can be an agreeable situation.

Moved by Council Member Dick Pacholl, seconded by Council Member-at-Large Christopherson, approving the conditional use permit with the same conditions approved

by the Planning Commission. 5-2. Council Member Nordin and Scott Pacholl voted nay.

Michael Bednar asked who would police this conditional use permit. Mayor Rietz said that would be done by the Planning and Zoning office.

Moved by Council Member Hecimovich, seconded by Council Member Nordin adjourning the Board of Adjustments and Appeals and resolving back into the City Council. Carried.

A public hearing was held to review the Austin Floodplain Repetitive Loss Plan and Floodplain Progress Report. Community Development Director Craig Hoium said this is reviewed annually. He said the main changes to the document are the waterway improvements that are currently underway. Since year 2000, 78 additional properties have been acquired. The City of Austin participates in the Community Rating System, and part of the program is the creation of flood development restrictions. The more tasks that are performed, the better our rating can be. One activity of these flood development restrictions is the public hearing and annual review of the Floodplain Repetitive Loss Plan and Floodplain Progress Report. This program provides savings for flood insurance premiums.

Moved by Council Member Nordin, seconded by Council Member Hecimovich, adopting a resolution approving the Repetitive Loss Plan. 7-0. Carried.

Tom Dankert, Director of Administrative Services, requested Council call the 1996A Improvement Bonds on February 1, 2006, which is the first bond option date. These bonds can be paid off through a fund set aside from special assessment prepayments. This item was discussed and recommended for approval at a previous work session.

Moved by Council Member Hecimovich, seconded by Council Member Nordin, adopting a resolution authorizing the call of the bonds. 7-0. Carried.

The following positions are vacant and require approval to be filled: three Street Department positions, one fire position, and two WWTP positions. These positions are in the budget. The two WWTP positions will be filled after January 1. This was discussed and recommended for approval at a previous work session.

Moved by Council Member Nordin, seconded by Council Member Dick Pacholl, authorizing these city positions be filled. Carried.

The following appointments have been recommended by the Committee-of-the-Whole:

CITY/COUNTY HEALTH BOARD (County Appointment)

Meets the 4th Thursday of January, and the 3rd Thursday of March, May, August and November – 7:00 pm, Health and Human Services-Oak Park Mall

1. Geoff Baker

HOUSING AND REDEVELOPMENT AUTHORITY BOARD

Meets the 3rd Wednesday of the month – 4:30 pm, HRA

1. Gloria Nordin
2. Dick Pacholl
3. Pete Christopherson
4. Norm Hecimovich

JOINT AIRPORT ZONING BOARD – AUSTIN/MOWER COUNTY

No set meeting times

1. Dick Pacholl
2. Pete Christopherson

LIBRARY BOARD

Meets the 2nd Monday of the month – 3:00 pm, library

1. Gloria Nordin

PARK AND RECREATION BOARD

Meets the 1st Wednesday of the month – 5:15 pm, Park & Rec office

1. Pete Christopherson

FAMILY CONNECTIONS

Meets 3rd Tuesday of the month -- 9:00 a.m, Mower County Board Room

1. Norm Hecimovich

AUSTIN/MOWER COUNTY TRANSIT (AMCAT) BOARD

No set meeting times

1. Geoff Baker
2. Scott Pacholl

CABLE TV COMMITTEE

No set meeting times

1. Dick Pacholl

CONVENTION & VISITORS BUREAU

Meets the 4th Tuesday of the month – 1:00 pm, various business locations

1. Geoff Baker

DEVELOPMENT CORPORATION OF AUSTIN

Meets the 3rd Tuesday of the month – noon, Town Center Conference Room

1. Brian McAlister

CHAMBER OF COMMERCE GOVERNMENT COMMITTEE

Meets 3rd Wednesday of the month – 7:30 am, Chamber of Commerce

1. Norm Hecimovich

PORT AUTHORITY OF AUSTIN

Meets 4th Wednesday of the month in March, June, September, December (plus several special meetings) – 4:30 pm, Council Chambers

1. Brian McAlister
2. Norm Hecimovich

AUSTIN/MOWER COUNTY HOMEOWNERSHIP BOARD

Meets January, April, September – 6:30, City Hall Conference Room

1. Gloria Nordin
2. Scott Pacholl

MOWER COUNTY WATER MANAGEMENT COMMITTEE

No set meeting times

1. Gloria Nordin

COMMUNITY EDUCATION ADVISORY COUNCIL

Meets Tuesday, February 8, 2005; April 12, 2005; June 14, 2005 – noon, Woodson School Community Education Office

1. Norm Hecimovich

LEAGUE OF MOWER COUNTY CITIES

Meets quarterly – 6:30 pm, various cities throughout Mower County

1. Dick Pacholl
2. Everyone

SENIOR CENTER BOARD OF DIRECTORS

Meets 2ND Thursday of the month – 9:00 am, Mower County Senior Center

1. Brian McAlister

KSMQ BOARD OF DIRECTORS

No set meeting times

1. Brian McAlister

BLAZING STAR JOINT POWERS TRAIL

No set meeting times

1. Gloria Nordin
2. Scott Pacholl
3. Geoff Baker

LEC COMMITTEE

No set meeting times

1. Bonnie Rietz
2. Brian McAlister
3. Pete Christopherson

CITY-COUNTY COMMITTEE

Meets the third Wednesday of the month – 3:15 pm, HRA

1. Bonnie Rietz
2. Everyone

This was discussed and recommended for approval at a previous work session.
Moved by Council Member Dick Pacholl, seconded by Council Member Scott Pacholl, approving the appointments. Carried.

City Administrator Jim Hurm presented the Austin Main Street Project Guiding Principles.

Council Member Dick Pacholl questioned the money being used for this project and wanted verification that eminent domain would not be used. Mr. Hurm said that was correct; eminent domain would not be used. The City may acquire some property and then want to eventually tear buildings down, but the City is not taking anyone's property. The same procedures will be used here as was used with the flood properties.

Moved by Council Member McAlister, seconded by Council Member Nordin, approving the Austin Main Street Project Guidelines. 5-2. Carried. Voting nay: Council Member Scott Pacholl and Council Member-at-Large Christopherson.

The American Legion Post #91 has applied for a renewal or their premises permit for their Post #91 and Smitty's Tavern. This is a two-year renewal.

Moved by Council Member Dick Pacholl, seconded by Council Member-at-Large Pete Christopherson, adopting a resolution approving gambling premises permit renewal at Smitty's Tavern. 7-0. Carried.

Moved by Council Member Dick Pacholl, seconded by Council Member Hecimovich, adopting a resolution approving gambling premises permit renewal at the American Legion Post #91. 7-0. Carried.

The City of Austin has an agreement with Interstate Power and Light Company (IPL) for an access to monitor wells in an area located south of East Oakland Avenue between the Cedar River and 4th Street SE. This property was originally a coal gasification plant. IPL is now requesting additional monitoring wells under this same agreement. The company is now purchasing the property.

Moved by Council Member Hecimovich, seconded by Council Member Nordin, approving the access. Carried.

Sterling Center has requested a street closing for their annual Christmas in the City celebration.

Moved by Council Member Nordin, seconded by Council Member Hecimovich, approving the street closing. Carried.

City Attorney David Hoversten relayed to Council that the prosecuting attorney's office has notified the City that Steve Kish has violated the Austin City Code. According to City Code, violation requires either suspension or revocation if it is found that he has violated the code. Findings must be established which would recommend suspension or revocation. This violation was discussed by staff, which recommended that a 5-day suspension be imposed. Kish must then be given a written notice of the recommended penalty. He may appeal at a public hearing.

Chief Paul Philipp reported that in April, Kish had three violations of piercing minors. He entered a plea of guilty.

Council Member Scott Pacholl asked if there was permanent injury. Chief Philipp said the violation is due to piercing minors without parental consent.

Council Member McAlister asked if he had been fined (he had), and questioned the criminal and civil prosecution process. City Attorney said, yes, there is a double penalty; our ordinance requires it.

Moved by Council Member Nordin, seconded by Council Member Hecimovich, stating Findings that Steve Kish did violate city ordinance requirements on April 2, 2005, and recommending five days suspension at a hearing. Carried.

City Administrator Jim Hurm requested Council approve extension of rip-rap along the Mill Pond to the pedestrian bridge. Additional cost is estimated at \$42,000 and would be paid from the property liability insurance fund. The project is concurrent with a 90/10 FEMA grant project for flood mitigation.

Council Member Dick Pacholl said he is concerned that this would cause more flooding. City Engineer Jon Erichson said this is for stabilizing the stream banks. It was identified as part of the FEMA grant. This will not cause more flooding. The project should be completed early next week.

Moved by Council Member Nordin, seconded by Council Member Hecimovich, adopting a resolution authorizing expenditure of funds for additional rip-rap. 7-0. Carried.

Moved by Council Member Nordin, seconded by Council Member Scott Pacholl granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 802 7th Place, NE, Schumacher property. Carried.

Moved by Council Member Nordin, seconded by Council Member Dick Pacholl, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1008 13th Avenue NE, Dieser property. Carried.

Moved by Council Member Dick Pacholl, seconded by Council Member Scott Pacholl, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 207 6th Street NW, Mallen property. Carried.

Moved by Council Member Nordin, seconded by Council Member Dick Pacholl, granting the Planning and Zoning Department the power to contract for the removal of junk and/or illegally stored vehicles at 1303 East Oakland Avenue, Paul Ellis property. Carried.

Michael O'Conner has petitioned for minor subdivision to support ongoing expansion of his business, MJ O'Conner, Inc. This is a proposed subdivision, or minor subdivision, and the petitioner does not need to go through the normal plat process. Mr. O'Conner has plans to construct an industrial structure. Assistant City Engineer Steven Lang has requested an easement to this property.

Moved by Council Member Hecimovich, seconded by Council Member Dick Pacholl, adopting a resolution approving the subdivision. 7-0. Carried.

The Transit Board has submitted a Letter of Understanding regarding terms of the lease for garage space at 7th Street NE and 5th Avenue. The lease would be effective January 1, 2006.

Council Member Baker questioned the monthly fee, which is set at \$600 per month. City Administrator Jim Hurm said we could evaluate this, but this has been the lease amount all along and it is likely that it will not be needed for many more months due to a new transit building in the near future.

Moved by Council Member Hecimovich, seconded by Council Member Scott Pacholl, approving the Letter of Understanding. Carried.

Moved by Council Member Dick Pacholl, seconded by Council Member-at-Large Christopherson, adopting a resolution granting transfer of on-sale hard liquor license from Bullet of Austin, Inc. dba The Alaskan to Mickey's Place of Austin LLC dba Mickey's Place. 7-0. Carried.

City Engineer Jon Erichson presented a proposal for engineering services for the Wastewater Treatment Plant. The industrial plant has experienced operational problems relating to solids separation. The agreement has been reviewed and approved by Hormel Foods. He recommends approval.

Moved by Council Member Hecimovich, seconded by Council Member-at-Large Christopherson, approving the agreement. Carried.

City Engineer Jon Erichson requested Council approve a flood grant from DEED, which was authorized by the State as part of the 2005 bonding bill. The \$800,000 will be used for the following projects:

- 1) Railroad yard revitalization project
- 2) Scattered site acquisition
- 3) Wildwood Park acquisition, and
- 4) Infrastructure rehabilitation

Moved by Council Member Nordin, seconded by Council Member Hecimovich, adopting a resolution approving the grant. 7-0. Carried.

REPORTS:

The Hormel Foundation has distributed a check for \$25,000 for payment towards the AMCAT dialysis route.

The Hormel Foundation has recently announced the 2006 funding. Awards are as follows:

SpamTown USA Freedom Festival	\$25,000
Paramount Theatre	10,000
Destination Downtown Program	104,500
AMCAT	0
Fire Dept	3,000
Park & Rec	0
Police Dept	0
Austin Public Library	8,000
Pedestrian/Bike Trail on 14 th St NW	25,000
Public pool	0
J.C. Hormel Nature Center	12,000
Mill Pond Fountains	0
Community Entrance Sign	0
Park & Rec – two dance pads	2,500
Total	\$190,000

Smitty's Tavern has requested a change of city code to allow for the sale of 3.2 beer beginning at 10:00 am on Sundays. Jim Hurm read a letter from City Clerk Lucy Johnson stating that this is not allowed according to state statute.

Mr. Erichson said the airport is tentatively scheduled to be open Thursday.

The newly installed stop light on 1st Avenue SW is not operational yet. The Street Department is waiting for a component; it should be working by early December.

The Senate Capital Investment Committee visited Austin to view sites affected by the 2004 flood. It is important that the City seek additional funds in the 2006 bonding bill.

Council Member Nordin, reporting for the Library Board, said the online homework line is being used very well. Also, the book sale did very well again.

Council Member Hecimovich thanked people involved with welcoming the soldiers home from Iraq, including Mayor Rietz, the Sheriff, Chief Philipp, and Chief Wilson.

Council Member Dick Pacholl questioned if there is any further developments on the Gary Anderson property. Mr. Erichson said there is nothing to report on yet.

Mayor Rietz announced that there would be another group of soldiers coming home next week. She also thanked the media for their work.

Mayor Rietz reminded everyone to have a moment of reflection for the troops at 11:00 am on November 11.

Council Member Hecimovich said one more group would be coming by the end of December, and then a small contingency after that.

November 15 is Premature Awareness Day for the March of Dimes.

This Thursday through Sunday is the Yuletide auction for KSMQ.

Moved by Council Member Hecimovich, seconded by Council Member Nordin, adjourning the meeting to November 21, 2005.

Adjourned: 7:09 p.m.

Approved: November 21, 2005

Mayor: _____

City Recorder: _____