



**MINUTES OF THE
Special Called Meeting of the
City Council**

16100 Wharf Cove, Volente Texas 78641
Wednesday, October 1, 2014 at 6:00 p.m.

1. Call to Order of the City Council.

Mayor Graber calls the meeting to order at 6:09 pm

2. Roll Call.

Council Members Jan Yenawine and Judy Graci present. Mayor Pro Tem Mark Scott and Mayor Frederick Graber present. Council Member Beck and Council Member Yarbrough absent at call to order but arrive during Agenda item 3.

WORK SESSION AGENDA ITEMS

3. Work Session of the City Council to discuss a Short Term Rental Ordinance.

a) Staff presentation

Barbara Wilson, City Administrator:

Details Briarcliff's experience with their STR Ordinance, where HOA sued STR operator, but lost on deed restrictions. Court awarded \$40k to attorney fees, court costs fees, etc. Only \$2400 to HOA.

Asks Council to look at the Federal standards on housing and definitions of family, emailed to council members prior to meeting.

Cities in which the proposed STR Ordinance is based on may have police force or be zoned differently. Rollingwood prohibits STRs all together.

Tom Buckle, City Attorney, says prohibiting STRs altogether could be discriminatory.

There is a Health and Safety concern regarding septic systems and STRs, the Fire Code is also considered a Health and Safety concern.

Council Member Graci:

Asks Tom Buckle about zoning and if R-1 can do anything prohibiting STRs.

Tom Buckle, City Attorney, responds, R-1 cannot prohibit STRs because zoning is land use, not who pays whom money. STRs are using the property as residential, despite the amount of time for which they're being used.

Council Member Yenawine:

If the LCRA bases septic permit analysis on expected home-use, a shocked septic could contaminate the wells.

Tom Buckle, City Attorney, says you can regulate the number of people in STRs based on Health and Safety. Septic could determine occupancy. LCRA expert testimony may be required to prosecute. Sewer and water facility restrictions can be put in place, which may limit guests at STRs.

Tom Buckle, City Attorney, says a police department for enforcement is not necessary, violations can be collected through neighbor testimony and employee observation.

Council member Yenawine:

Can we require licensing for STRs to follow the same rules as commercial licensing?

Tom Buckle, City Attorney, says STRs are neither residential nor commercial. Size of septic is the issue, not zoning.

Yenawine, if a STR operator said I want design (a septic system) for 60 people and the LCRA approves the plan, if they go over 60 then can a code enforcer say there is a violation?

Tom Buckle responds yes and if prosecuted than can be counted as violation of ordinance.

Mayor Pro Tem Scott:

LCRA regulations could help define occupancy, but guests are not considered occupants of the STR. How do you enforce a cap on the number of guests?

Council Member Yarbrough:

Every property has to have a septic inspection, they count bedrooms but do not limit number of people in the bedrooms. A Continued Use Certification from LCRA shows if a septic system is adequate for the number of bedrooms and square footage. Owners need to have personal responsibility. The LCRA should not be involved in the Ordinance.

Mayor Graber: Then how would people in an STR be limited if not by septic?
Council Member Yarbrough says she and Council Member Beck and I conversed, and met with the STR operators last night. We reviewed leases, and drafted a Code of Ethics (Behavior) for STRs. The STR operators are fine with limiting the occupancy to 2 people per bed, no sleeping on floor or couch. Fold out couches and futons would be considered beds.

Council Member Graci asks Council Member Yarbrough if she means limiting occupancy to the number of bedrooms, or number of beds?

Council Member Yarbrough answers number of beds.

Council Member Beck asks if we are aware of any STR septic's blown out. Adding, we seem to be grasping for straws for control instead of addressing the issues up front with Operators.

Barbara Wilson, City Administrator, responds that this is not a nuisance consideration but instead a Health and Sanitation consideration. In determining a septic permit, the LCRA wants to know square footage, and whether it's for residential or commercial use. This may result in reclassification of homes to Hotel/Motel classifications and subsequent septic expansion. Septic systems all around the lake have been blown out; 4 bedrooms in Lago Vista (21 days per month rented during season, 15 people at a time). This septic would have passed for residential use, but is being used commercially. LCRA counts toilets, sink, W&D hook-ups for consideration as well.

Council Member Graci says she has been reviewing other cities STR agreements and have not seen one as of yet that deals with LCRA. They DO limit number of occupants during the day and limit number of people staying overnight; usually 2 per bedroom, not bed.

Tom Buckle, City Attorney says the Texas Property Code prohibits leasing out structures to more than 3 adults per bedroom, statewide.

Council Member Yarbrough says the Texas Property Code is included in David Dire's lease for his STR, and talks about eviction from his STR.

Tom Buckle, City Attorney, responds yes, the Texas Property Code requires an owner to give a notice to vacate. If the rental is month to month, 30 days' notice is required prior to terminating. On one day rental, one day notice. Weekly, 7 day notice, etc.

Council Member Graci asks how noise will be handled. The current Noise ordinance deals with heavy construction; could amplified sound be added to the noise paragraph in the proposed ordinance. In Lakeway, if there are 2 noise related complaints from 2 different people within a 2-year period then an outdoor amplified sound permit would be required. Graci fills in Yarbrough and Beck (who were not present at call to order) on Tom Buckle's comments that a Police Department would not be necessary. Violations could be regulated without a lot of cost. Number of occupants and noise problems are two main issues to control.

Mayor Pro Tem Scott says that noise and nuisance, trash, are main issues. Trying to tackle these through septic and other things is skirting. How do we control the main issues? Are the violations made against the Property Owner or the person making noise?

Tom Buckle, City Attorney answers you can bring prosecution against occupant and owner. You need witnesses to be the complaining neighbors.

Mayor Pro Tem Scott asks if Council can nominate citizens to be volunteer code enforcers?

Tom Buckle, City Attorney, yes you can have someone that's a citizen but you would have to designate them as an Agent of the Village.

Council Member Beck says the issue that has brought citizens forward is consistently noise, light possibly. Much secondary to that is the issue of trash. Not so much Health and Safety as instead disruption of peace. Details past experience with Party Boats, could STRs have the same resolution between VOV and Operators of STRs.

Mayor Graber says he was not invited to the meeting with STR operators. Did all of the owners show up?

Council Member Beck responds Anne Steichen invited and scheduled the meeting with STR operators. David Dire, Cecil Martin, and Rick Redmond were in attendance. Ed Reugg and Mario and his Administrative Assistant have had prior conversations with about this Code of Conduct. We challenged all Operators to come up with Code of Conduct to self-regulate so that we don't have the issue of enforcement. Discussed Beds vs Bedrooms, parking restrictions, noise (amplified music couldn't begin before 11am, end at 10 weekdays, end at 11 pm weekends, etc.), STR operators need 2 people's names, available by public record, so that citizens can immediate contact someone. Operators are willingly providing all lease information and contact information so that VOV has the opportunity to enforce with the owner any violation of Code of Conduct.

Council Member Graci says the problem is there are some responsible owners, and then there are some who are not. Some owners are motivated by money; more people means more money. Cities have STR ordinances for a reason. Having an ordinance gives ability to enforce, more so than pleading over phone for change. Jonestown's ordinance, as example, has maximum number of people during day and maximum number for overnight. If it becomes needed we could also hire off duty commissioned Police Officers (Jonestown). But you have to have an ordinance for them to enforce.

Council Member Beck is concerned that the Council's reaction to situations is to immediately put an ordinance into effect for enforcement. Instead suggests working with Operators to see if they will make correction to behavior first. Barbara Wilson, City Administrator, says that the resolution for the Party Boats is not 100% effective. She coordinated Party Boat rental meetings, at this point 80% are in compliance but 20% are still causing problems.

Mayor Graber asks if there any talk of regulating occupants in the STR owner's meeting? Were there any citizens present?

Council Member Beck responds no citizens were present; that this was just an initial meeting of STR operators.

Council Member Yarbrough says the Operators intent from STR Operator meeting was to pull together something for the community to consider at the Town Hall meeting. Operators need to be contacted in order to help enforce complaints. There is a broader problem than STRs to consider, with regard to noise.

Mayor Graber asks are you looking for a nuisance ordinance?

Council Member Yarbrough responds that she doesn't know that an Ordinance is necessary, but there is no enforcement for anyone with a complaint to call.

Council Member Yenawine says the meeting Anne Steichen put together was for STR Operators to come together, not for an open meeting for everyone to attend. That's the Town Hall Meeting. We can have a Code Enforcement person that strictly enforces whatever is passed and handles communication between complainers and violators, issuing tickets if necessary.

Tom Buckle, City Attorney says you can rely on citizens and neighbors coming in and filing complaint.

Mayor Graber asks if 3 complaints or 3 convictions is required.

Tom Buckle, City Attorney responds it would have to be 3 events, each warranting a prosecution, to get license revoked. Or 3 types of violations, (example nuisance, and traffic, noise) to revoke license. 3 or 4 neighbors would need to come together and file complaints to ensure prosecution has enough evidence to pursue a case. Complaints go to Barbara, Barbara sends them to Tom Buckle, City Attorney who evaluates the complaint. If approved, then yes, there is trial and prosecution. Financial penalties are per incident, resulting in a loss of license after 3 convictions.

Council Member Beck asks if a chance be given to people in the party rental or operators to get things under control before penalizing.

Mayor Pro Tem Scott asks if Travis County is called on noise complaint, will they be forced to witness complaint?

Barbara responds Title 9, section 40.1 Texas Penal Code, says they must file an affidavit with the complaint, and it has to be witnessed and signed. They keep the tapes for 2 weeks, but paperwork is not completed usually because of time constraints. After two weeks, there is often no record of the complaint.

Council Member Yenawine says he is against neighbors enforcing, there should be a designated Code Enforcement person. It may require someone local or a designated Council Member that can be called so that it is documented. If the Code Enforcement Officer or Sheriff tells a party operator to shut down, then the party starts back up, are those 2 different complaints?

Tom Buckle, City Attorney responds only if the day changes. (11 pm, then 1 am).

Council Member Yenawine adds that neighbors should not be enforcers and owners should not be penalized for 1 incident alone.

Mayor Graber states the complaint process is coming together but what about immediate relief for citizens suffering from the nuisance?

Tom Buckle, City Attorney says that cannot be done, there has to be the judicial process. In response to working with STR operators, the responsible owners are usually compliant and the judicial process weeds out non-compliant operators.

Council Member Yarbrough says she collected leases from STR Operators. The leases are more explicit than Council has been yet. STR Operators are willing to work with Council. Operators are best and first line of defense regarding nuisances. STR operators are willing to network to shut down parties out of control, whether or not it is their personal STR property.

Council Member Ken Beck contacted Commissioner Daugherty about the Sheriff's department on how deputies will perform out here. I am awaiting a call back for specifics.

Tom Buckle, City Attorney, mentions that Sheriff is an elected official, and enforcement may change with the change of person in power.

Barbara Wilson adds that compliance with other organizations regarding Health and Sanitation (LCRA, the Fire Department) is required in order to be complaint with the STR Ordinance.

Tom Buckle, City Attorney responds Volente should have a nuisance and noise ordinance in place to enforce with STR operators. The language here should act as a template for the City.

Council Member Yenawine proposes waiting until after Town Hall meeting before going through the ordinance line by line.

Tom Buckle, City Attorney, agrees. The Town Hall meeting could change the point of view of Council. It may be premature to get to a final consensus on the ordinance. Divergent opinions between Council may change with Saturday's meeting.

Mayor Graber details the plans and format for Saturday's Town Hall meeting.

REGULAR AGENDA ITEMS

4. Discuss and Consider Possible Action on an update regarding the cost and distribution of the 2014 Community Survey (Mayor Graber).

Mayor Graber details the history arriving to present. At the last meeting I volunteered to take on getting the 2014 Community Survey up and going via Survey Monkey. I

created a digital version of the 2004 Survey, converted it to a word doc, and began discussions with Survey Monkey for its upload and launch. But in speaking with representatives at Survey Monkey, they stated that the premium service we subscribed to did not include programming the survey, but rather only increased the response time that customer service would respond to programming questions. They stated they could program it for us, but it would cost thousands. They also said they had no ability to upload the survey hard copies that are mailed in and would have to be entered manually. Survey Monkey will provide the raw data, but won't generate the analytics. With this news, I contacted Council Member Graci to help find firms and gather bids for the cost of completing the Survey knowing it needed to come back to Council for direction.

The bids were reviewed by Council.

Mayor Graber suggested verbiage be included in the cover letter encouraging residents to complete the survey online to save the Village money. Stresses that the survey needs to be kept to 3rd party management to eliminate any chances the data could be compromised.

Mayor Pro Tem Scott asks what is the total damage above and beyond cost of Survey Monkey and what happens when we want to do another simple survey?

Mayor Graber responds quick surveys could be easily done through Survey Monkey. The premium was to have support on phone within 5 minutes.

Council Member Yarbrough says all of our extensive research into this with Survey Monkey seemed to tell us differently.

Council Member Beck adds that while he believed that we would still have to input the questions for Survey Monkey, he did think they would have performed the analytics.

Mayor Pro Tem Scott asks if the \$4,000 estimate is beyond the \$2,000 we expected?

Mayor Graber responds theoretically, but the number depends upon how many surveys are mailed in versus being completed online.

Council Member Yarbrough asks which one of the proposed companies has been worked with before?

Mayor Graber responds Tammadge (proposed cost of \$4,250). This Company works with Survey Monkey all the time and is used to these issues.

Council Member Graci asks if Council wants to consider having Village staff or the \$5/hour person input the hard copy survey responses, but have the programming done by one of the firms?

Consensus among Council is that it is better to keep the Survey with a single 3rd party company, and out of the office.

Council Member Graci asks if the additional money be coming out of general savings?

Mayor Graber responds yes, the additional money would come from savings.

Barbara reminds Council that this is coming from FY 2014-2015, in which the cost of the survey is not anticipated.

Mayor Pro Tem Mark Scott makes a motion to authorize the Mayor to enter into an agreement with Tammadge Market Research to complete the community survey, not to exceed \$4,200, including uploading written responses at \$15 per survey. Seconded by Council Member Jan Yenawine. Council Members Jan Yenawine, Judy Graci, and Mayor Pro Tem Scott vote in favor. Council Members Babs Yarbrough and Ken Beck vote no.

Council Member Beck states that while he is in favor of completing a Community Survey, he is against this particular survey. The Village could possibly solicit volunteers to enter people's surveys online for other citizens to save the Village some costs.

Council Member Yarbrough says she is also opposed because of the costs and the particular survey at hand.

5. Discuss and Consider Possible Action to allow site work at Friendship Park by volunteers at no cost to the Village. (Mayor Graber)

Mayor Graber says The Environmental Committee met on Saturday (September 27, 2014) and decided a consensus on the park needs to be developed. TX DOT would not allow entrance to park in one location because of fear of cars mistaking it as an entrance to Reed Dr. With this information, we're looking for parking, entrance and handicapped access off of the Reed Dr. side of the park. There are also slope and drainage issues and a site plan needs to be engineered before the Committee can move forward with further park recommendations.

Barbara Wilson, City Administrator, adds there is a bid for \$1,500 from Carey Witt and his Engineering firm (Geo Solutions) to create a site development plan and placement for parking and handicapped access.

Mayor Graber says Robert Nelson calculated it could be 100 ft. or more of ramp (12 ft. sideways for every foot upwards). Once Carey Witt has determined the best solution, a recommendation will be brought back to Council for consideration then bids would need to be collected from construction firms.

Tom Buckle, City Attorney, says Parks fund can be allocated to pay for this and the costs of construction.

Mayor Graber details the security fence around plot for play scape, cedar/limb type fence around entire park. \$1,500 covers planning so that project can be bid for construction.

Council Member Yarbrough suggests getting a detailed bid of what all the \$1,500 includes, and to get a full site plan of park so that it can be built at once.

Barbara Wilson says the bid includes site plan with conceptual of drainage, LCRA, etc.

Council Member Yenawine suggests a meeting in which the community can decide placement of play scape, etc.

Council Member Yenawine makes motion to accept Carey Witt's proposal to create a site development plan for Friendship Park not to exceed \$1,500. Seconded by Council Member Yarbrough. Carries Unanimously.

6. Adjourn

Meeting adjourned at 7:47 pm.

Approved this 18th day of November, 2014.

Signed:

Mayor, Frederick Graber

Attest:

Julia Vicars, Acting City Secretary