



**MINUTES
CITY COUNCIL
OF THE VILLAGE OF VOLENTE, TEXAS
NOVEMBER 18, 2014 at 7:00 P.M.
City Hall, 16100 Wharf Cove, Volente, Texas.**

1. Call to order of the City Council. (Mayor Frederick Graber)
Mayor Graber calls the meeting to order at 7:05 p.m.
2. Call Roll. (Acting City Secretary, Julia Vicars)
Julia Vicars, Acting City Secretary calls roll. Mayor Frederick Graber, Mayor Pro Tem Mark Scott, Council Members Babs Yarbrough, Jan Yenawine, and Judy Graci all in attendance. Council Member Ken Beck is absent. Also in attendance is Tom Buckle, City Attorney.
3. Pledge of Allegiance and Reading of the Village Vision Statement.
All stood for the Pledge of Allegiance and once seated, Mayor Graber read aloud the Village Vision Statement.
4. Citizen Comments.

Bob Steichen, 15807 FM 2769:

Asks for an update from TCAD regarding the way Booth Circle cuts into his property for 17ft along a 500 ft stretch. Wants a copy of the land survey. Asks of Council to consider cleaning up the ditches along Booth Circle that have accumulated trash.

5. Mayor's Report. (Mayor Frederick Graber)

Mayor Graber thanks the citizens and friends that have made his time as Mayor a rewarding experience. The Mayor details the accomplishments of his term, including tackling the BCRUA pipeline through the Village, obtaining a new park, moving the Village offices, improving resident involvement, overhauling the financials, the Community Survey, Party Boat Resolution, Short Term Rental Ordinance, and a new website. Mayor Graber encourages the new Council and Mayor to listen to the voices of the community and to stay involved with the public and treat different opinions with respect. The majority of the residents of Volente, including Council

and Mayor, want the same thing – a peaceful community that wants peace and quiet. Mayor Graber says he was proud to serve as Mayor and wishes the new members of Council and the new Mayor the best of luck.

6. Financial Reports. (Mayor Pro Tem Mark Scott)

Mayor Pro Tem Mark Scott details the new reports for the Financials that will be presented monthly to Council, overviews the Expenses and Revenues for the month of October and Cash Flows (see attached), and details conversations with the Auditors about upcoming Audit presentation.

7. Staff Reports from City Administrator & City Secretary.

a. Construction Report

Barbara Wilson, City Administrator, details the Construction Report. Single family homes, major remodels, and pool construction are all taking place.

b. Projects

Barbara Wilson, City Administrator, details the visit to the Lago Vista regarding work on the Master Water Plan. City Engineer, Marc Dickey, is working with staff to prepare for the meetings of Planning and Zoning and is making recommendations to Planning and Zoning on some of their tasks. Barbara is making note of the road and drainage problems reported to possibly begin mowing and ditch work. Capital Metro will be presenting changes in the funding of the Build Central Texas program, which only has six cities remaining in the program. These changes, re-vamping the entire system, should get back some of the money Volente has put in. If these changes are not acceptable, then during the May election we could possibly opt out of the BCT program. A recommendation to reorganize the re-subdivision process for residents is taking place.

Council Member Babs Yarbrough asks of Barbara if the complaints about Short Term Rentals on the City Administrator report (see attached) were complaints from before the ordinance was passed? Barbara answers yes.

Council Member Babs Yarbrough asks to be included on discussions about the changing of the re-subdivision process after having to go through the process with a client.

8. 2013 Audit Presentation. (Neffendorf, Knopp, Doss & Company, PC)

Mayor Pro Tem Mark Scott mentions that because of some last minute line item changes, the Audit is not ready for presentation tonight as planned.

Mayor Pro Tem Mark Scott makes a motion to postpone the Audit Presentation to December's Regular Council Meeting. Council Member Jan Yenawine seconds. Carries unanimously.

9. 2014 Community Survey. (Mayor Frederick Graber)

a. Survey Results

Mayor Graber details the Survey results and the process behind obtaining the analytics of the data as presented to Council. Mostly, residents of the Village still want a quiet, residential area without major commercial development. Mayor Graber briefly goes over the results on each page then hones in on a few key results, specifically the overall quality of life in Volente, the descriptions of what the community of Volente should be and the community's view on tourism. The goals for Volente reflect that the community wishes for the roads to be improved and for the development of the Village to be in line with the size of the Community (no big development boom).

Allison Thrash, Chair of Planning and Zoning:

States that the Planning and Zoning Commission need these results for understanding the view of residents, specifically for the tasks before the Commission currently. Asks for direction from Council to use the Community Survey results and how they apply to the tasks on Planning and Zoning's plate. The brochure of original Community Survey and Comprehensive Plan has almost run out, which is an opportune time to replace it with the new results and Comprehensive Plan revisions.

Mayor Graber suggests any citizens with input for the Community Survey Results come to the podium to speak at this time.

Bob Steichen, 15807 FM 2769:

Requests that because of the importance of the survey and its results, a Town Hall meeting be held in which the Community has more time to go over the analysis of the results without the chance of bias.

Mayor Graber responds that this is not the end of looking at results of the Community Survey, but instead the initial view of the standard analysis for Council. He adds that the Survey Results will be available on the website for the community to view.

Bill Connors, 8016 Lakeview:

Feels the Survey results are not all encompassing and would like for the people who did not have the opportunity to complete a survey get a chance to be heard. He cites that it is not legal to require that someone own land to vote, and as such, the survey should have been sent to everyone and not just property owners.

Council Member Judy Graci reminds the public that the Community Survey is not voting, nor does it determine eligibility to vote in Volente. This survey was meant to be used as a tool to shape the decisions made by Boards, Commissions, Committees and Council with the understanding that those who are property owners and have invested in the community be able to voice their opinion.

Mattie Adams, 15941 Booth Circle:

States that there was no tangible list of recipients of the original survey, and it was hard to determine who should receive a Survey this time around. After careful consideration and deliberation by Council, the survey was sent to the owner of each parcel of land in the Village of Volente, as listed on the TCAD list (effective October 1st). She adds that there was a lag time from TCAD, which created a small subset of people that were not included on the list, but efforts were made for those people, if eligible, to be included. The office took on the task of any surveys sent back from USPS making their way into the hands of those they were addressed to.

Nancy Curafel, 8138 Joy Rd:

States that originally the survey was supposed to be sent out and done in the same exact manner as the original survey, and it was not. Asks if Survey Monkey will be providing more analysis of the results.

Mayor Graber responds that Survey Monkey does not do the analytics of results, but Tammadge Marketing would be able to provide additional analysis, as requested.

Kristi Belote, 15805 Buddy:

Concerned that the results are not accurate because of mailing discrepancies, changes in the questions on the survey, and changes in recipients.

Mayor Graber responds that the same questions were sent out so Council could gauge any changes in opinion over the last ten years.

Mayor Pro Tem Mark Scott adds that this was a discussion over many meetings at length, with Council taking extreme care in making sure the survey would be as inclusive as possible.

Allison Thrash, 15100 FM 2769:

States that she was a resident prior to incorporation and was present for the original processes of incorporation and developing Ordinances. There has been so much change and flux in the Village that the original survey and original questions were needed to be sent out again to see if there had been a change in values as well. Significant data came of this, such as the changes to impervious cover and taxpayer monies. As well as seeing where the values of residents have remained the same as they were ten years ago. Most of the money spent was to keep the information at an arm's length, with a third party which is the price we must pay for the distrust of Council by citizens.

Council Member Judy Graci adds that this is the first look at the results for Council. The majority of those who submitted their responses want a family oriented, rural, bedroom community -- just like ten years ago. She agrees with Allison that there were not big changes in the view of the residents on the topics addressed. This survey was to ask residents, again, what they would like. This was not specifics but instead goals and core values, which give Council a direction to move forward.

- b. Direction and costs for Additional Data Analysis.
Items b and c were discussed at one time.
- c. Direction that funding for the 2014 Survey be moved from General Reserves into the Fiscal Year 2014-2015 Budget.

Mayor Graber says that Tammadge put the original analysis together, and more analysis can be done at an additional cost. Currently the cost of the survey is around \$5,000, which is an improvement from the \$12,000 the original survey cost.

Council Member Babs Yarbrough suggests hearing from citizens before deciding what additional analysis is needed.

Mayor Pro Tem Mark Scott agrees that specific costs for additional analysis are needed. Before Council gets a chance to review the results there is no way to tell what more specific analysis is necessary.

Council Member Jan Yenawine says that right now we have as close to apples as apples that will be possible. He adds that before Council has specifics as to the cost of analysis, discussion is unnecessary.

Council Member Judy Graci feels that a couple of analyses would be helpful to see, but until there is a cost for that then there is nothing to be decided. If it is reasonable then we should get the results now.

Mayor Graber says that funding will be put to the side. But the Planning and Zoning Commission needs direction as to how to implement these results in their recommendations.

Council Member Babs Yarbrough says that it might be beneficial to allow the new Council to direct Planning and Zoning based on these survey results.

Mayor Pro Tem Mark Scott makes a motion that Council direct the Planning and Zoning Commission to look at the Survey results and allow them to come up with an analysis of how these results fit into their task list. Council Member Babs Yarbrough seconds. Carries unanimously.

Mayor Pro Tem Mark Scott says that the money budgeted for this expense, which was budgeted last year, went into reserves when it was not spent. It must be moved from general reserves into the budget.

Mayor Pro Tem Mark Scott makes a motion to move \$4,250.00 from reserves into the fiscal year 2014-2015 budget. Seconded by Council Member Jan Yenawine. Carries unanimously.

10. Public Hearing on 2014-O-17 Ordinance of the Village of Volente, an Ordinance adopting the common law nuisance standard within the Village of Volente; providing for definitions;

prohibitions; enforcement, fines and criminal penalties; severability; public notice; open meetings; and, effective date.

a. Open Hearing

Mayor Graber opens the Public Hearing at 9:04 p.m.

City Attorney, Tom Buckle, says that common law nuisance can be prosecuted criminally or civilly. Municipal Court would be a criminal procedure, as a fine-only offense.

Council Member Babs Yarbrough, asks for clarification on including junked cars etc. that other cities have.

City Attorney, Tom Buckle, responds that a nuisance ordinance can include specifics, but that the version in front of Council today is a broad nuisance ordinance.

Jan Yenawine, when this was brought up it was going to be part of our Short Term Rental ordinance and Tom Buckle advised that it was proper for Village to have general ordinances that cover everybody, instead of writing specifics into each ordinance.

City Attorney, Tom Buckle, adds that doing this avoids the perception of discrimination.

Mayor Graber adds that this is intended to be a blanket ordinance that effects commercial ventures and private citizens.

Bill Connors, 8016 Lakeview:

Says he is concerned with how vague the ordinance is. Asks how this ordinance is not discriminatory and if there is a need for the ordinance if neighbors can already sue neighbors. If neighbors come together with a personal vendetta, then this ordinance could be used maliciously. Adding, this is vague and open to interpretation. Concerns that he Council coming in for the next two years will have something difficult to enforce or interpret.

City Attorney, Tom Buckle responds that the possibility of being sued by a neighbor could happen without the adoption of this ordinance. But by this ordinance, a Judge or jury make the decision, not the neighbor. The neighbor has the burden of demonstrating proof to judge or jury this is a reasonable nuisance. This is just simply trying to give society a chance to correct a societal wrong, allowing the municipality to take on outrageous behavior and remove neighbor to neighbor interaction when needed.

Mayor Pro Tem Mark Scott adds that it is unfair for neighbors who have a constant issue that is unreasonable for the responsibility of resolving the issues to be taken into their own hands. The complaint has to go through stop-gaps that eliminate frivolous complaints.

City Attorney, Tom Buckle, says that over and over again that when this is considered too objective, courts proved otherwise. The standard is for a person of reasonable sensibilities. There is always prosecutorial discretion.

Council Member Jan Yenawine, states that City Council does not get involved in the prosecution of this in any way shape or form. Complaint goes to prosecuting attorney, and he has to be convinced the complaint is valid.

City Attorney, Tom Buckle responds that the Council does have a role of authorizing the Municipal Court to proceed.

Council Member Jan Yenawine says the Municipal Judge is appointed by City Council but works for judicial system of the State of Texas, whom they have to answer to. It is a different chain of command outside of Council. This is not as alarming as it looks when you first read it. This ordinance gets the job done without tying things down.

Council Member Babs Yarbrough asks about Statewide nuisance ordinance.

City Attorney Tom Buckle responds that this is common law, used to solve problems. Residents have the availability to sue under the common law nuisance.

Council Member Babs Yarbrough requests that times be put in that allow more specifics for time noises can take place, etc. She feels the public does not want more ordinance and states she will be voting against the implementation of such a broad ordinance.

Mayor Graber says that Council Member Babs Yarbrough stated that she was very vocal about the possibility of the Short Term Rental ordinance being discriminatory. This nuisance ordinance takes away the possibility of discrimination, and yet she seems against it.

Council Member Babs Yarbrough responds that there need to be more stipulations and it needs to be more clear about the process of a complaint. She feels that with the annexation of water this ordinance will be used against Party Boats and Shore Club in their business.

Mayor Graber asks if this ordinance is used by other Municipalities.

City Attorney, Tom Buckle, responds that generally most governmental units have both levels -- a specific noise ordinance with decibel and hours of noise permitted and a "blanket" ordinance that is broad like this one. It can be done both ways. You can do a more specific ordinance on noises, but this ordinance can serve as a general nuisance ordinance.

Mayor Pro Tem Mark Scott reads aloud the paragraph about nuisance in the proposed Ordinance ("Shall be a violation of this ordinance to cause..."). He states that this creates a separation of legislative and judicial. To protect the Village, something like this that requires judicial decision of unreasonableness is necessary.

City Attorney Tom Buckle agrees, adding as example speed limits, which are not law. It is the unreasonableness of speed traveling, given the conditions that create a violation.

Council Member Babs Yarbrough says that the STR Ordinance was just passed with limits for sound. Asks if the noise ordinance coincide with what the STR ordinance states. This creates two different rules for STR Operators to abide by. Tom Buckle, City Attorney, responds that both apply to Short Term Rentals and compliance with both is required, much like living in a subdivision that has ordinances within a city with its own ordinances.

Council Member Judy Graci adds that there were complaints in the past year of four properties that seem to be nuisance properties that interfere with quality of life and usage of property for neighboring residents. She reads aloud the lines pertaining to noise in the STR Ordinance passed. This proposed Ordinance is just a parallel of what already passed in the STR Ordinance. The addition of a noise ordinance, in which hours of loud noise can be limited, is available outside of this nuisance ordinance. There's no issue with the new Council going in and working with a residential Noise Ordinance. As Council Member Ken Beck has said, enforcement will be a top priority for the new Council, of which we have had none. There has been no way for Linda Attwood to have resolution with the STR Operator next door. This has a parameters for someone to seek resolution by way of filing a complaint with neighbors or alone, and if they can prove that it infringes upon their right if unreasonable, then they can get a resolution to their issues. She adds that while this ordinance is broad, it is a great tool for someone who is having a problem.

City Attorney Tom Buckle adds that this is a "default" ordinance, specifics can be there, and if you abide by the specific ordinance then no judge or jury will find you out of compliance with this default ordinance.

Council Member Judy Graci adds that if everyone began thinking about neighborly and what's a good neighbor, then any level of discomfort should not have to be taken into civil lawsuit. The Village should protect its residents.

City Attorney Tom Buckle adds that this applies to citizens of Village being affected by unreasonable nuisances.

Andy Fogarasi, 8306 Lime Creed Rd:

States that if he understands correctly, this ordinance would provide an intermediate step of assisting in stopping a nuisance without a resident having to go through private court. This nuisance ordinance and going through municipal court would act as a stronger argument to the person creating a nuisance.

City Attorney, Tom Buckle responds that yes, that is accurate. The only private court a resident could go through would be District Court, which would require a high dollar retainer for an attorney and you could get an injunction to stop the nuisance. The City, through their Municipal Court, can tackle the problem and has the ability to fine \$100-1000/day until the nuisance abates.

Andy Fogarasi asks if there is a step in place that would allow the city to communicate to that neighbor before taking more drastic actions. City Attorney, Tom Buckle, responds yes. Staff is in contact with the defendant before it ever would enter the court.

Mike Nitz, 16209 Dodd Street:

States that the survey results gave two great points – that the community as a whole loves their peace and quiet and does not like over regulations. This ordinance goes against over regulation, even though its protecting the peace and quiet. This ordinance should be before the new Council, not slid in before the exiting Council.

David Springer, 8504 Lime Creek:

States that Council has to approve the spending for this before it goes through the Municipal Court. The Council will be the first step of determining reasonableness. There is a buffer.

Allison Thrash, 15100 FM 2769:

States there has been discussion of neighbor to neighbor, and without a police force, which is not supported by the community, this Ordinance provides a relatively inexpensive way for residents and taxpayers to seek resolution to problems. This ordinance is a deterrent and tool for someone to seek relief from encroachment on the enjoyment of their property. States she supports the passing of this ordinance.

Nancy Curufel, 8138 Joy Rd:

States that Volente is two square miles and does not have a lot of trouble, so this ordinance is unnecessary. Says she is against the passing of this Ordinance.

Kit Hopkins, 15943 Booth Circle:

States that the creation of this ordinance came from the STR ordinance. If everyone needs to be treated the same, as Council Member Babs Yarbrough stated, then this ordinance should be passed. Adds that citizens should not have to carry noise meters around with them, and if there is a nuisance a citizen should have relief. Says she supports the passing of this ordinance.

Bob Steichen, 15807 FM 2769:

Feels that Council is putting the cart before the horse – that this process is being rushed and there has not been enough review of this ordinance. Requests that this go before the new Council before being passed.

Kristi Belote, 15805 Buddy:

Thinks the STR ordinance was a good compromise on such a controversial topic. Adds that this nuisance ordinance needs to have the same attention and compromise. Feels this nuisance ordinance is too broad and is unenforceable as it is written and does not support the passing of this ordinance.

Bill Connors, 8016 Lakeview:

States that he is not in support of this nuisance ordinance but instead adopting Travis County's nuisance regulations into Volente so that TCSO can enforce the same rules in our Village.

Mattie Adams, 15941 Booth Circle:

There was a nuisance ordinance discussed a year ago that was very specific, and the public was in an outrage. Now, this ordinance, could not be more mundane or generalized and the public is still not seemingly in support. Noise can be separated from nuisance, and this vague language could not be more common law terminology. A citizen can't just make a complaint-- you have to prove that there could even be a case made with the prosecutor. This could resolve real issues. In favor of passing this ordinance. If the new council wants to build on this further, then that would be great.

b. Presentation

c. Citizen / Public Comments

Items a, b, and c discussed at one time, above.

d. Close Hearing

Mayor Graber closes the public hearing closes at 9:50 p.m.

11. Discussion and Possible Action on 2014-O-17 Ordinance of the Village of Volente, an Ordinance adopting the common law nuisance standard within the Village of Volente; providing for definitions; prohibitions; enforcement, fines and criminal penalties; severability; public notice; open meetings; and, effective date.

City Attorney, Tom Buckle adds that putting hours on noise is totally appropriate but isn't applicable to noise, odors, dust, lighting, etc.

Mayor Graber adds that noise does not have to be loud to interfere with enjoyment of your property. Making it tied to decibel does not fully appreciate the challenges with noise and how it operates in our environment. With this general nuisance ordinance, it has to be proven to be unreasonable. This is an inexpensive option, without the cost of a Police Force. This has to be proven unreasonable, which is a big hill to climb. This won't get malicious neighbors anywhere.

Council Member Judy Graci says we have hours on the current noise Ordinance with lots of decibels, which can be reworked. Working on the noise ordinance should be easier to enforce and have boundaries. The major thing is peace and quiet, and how we protect it. There's neighbor to neighbor interaction, but failing that then there needs to be another avenue for residents to seek relief. For this ordinance, it has to be proven, and when someone needs recourse this is applicable.

Mayor Pro Tem Mark Scott says that this has been in the works for years, so it is not a rushed process. The one brought up a year ago was very specific, and was frowned upon. Adds that he is torn because while he feels things are under control right now, things may change in the future. The new Council can amend this ordinance as they see necessary. The Community Survey results show that 70% agree with the regulation of loud outdoor noise, so this is important to put into place as it can be applied to disturbances. This ordinance is simple and clean, and puts the responsibility on others to prove it is a reasonable disturbance.

Council Member Babs Yarbrough asks if this ordinance applies to commercial entities. City Attorney Tom Buckle responds that it is the same process but ultimately the Council decides on which things it spends its money and they won't pursue something that is a frivolous.

Council Member Judy Graci makes a motion to adopt Ordinance 2014-O-17 an ordinance adopting the common law nuisance standard within the Village of Volente; providing for definitions; prohibitions; enforcement, fines and criminal penalties; severability; public notice; open meetings; and, effective date. Seconded by Council Member Jan Yenawine. Motion passes with Council Members Yenawine, Scott, and Graci voting for. Council Member Babs Yarbrough voted against.

12. Approval of the Meeting Minutes from August 14, August 19, October 1, October 4th, October 16th, October 21st, and November 4th, 2014.

Discussion amongst Council of changes to be made to the meeting minutes mentioned above.

Council Member Jan Yenawine makes a motion to approve the meeting minutes from August 14, August 19, October 1, October 4, October 16, October 21, and November 4, with the corrections mentioned. Mayor Pro Tem Mark Scott seconds. Carries unanimously.

13. Completion of Ballot for Travis Central Appraisal District's Board of Directors.

Council Member Jan Yenawine makes a motion to support Tom Buckle as candidate. Seconded by Mayor Pro Tem Mark Scott. Carries unanimously.

14. Recognition of Service for exiting Council Members and Mayor.
 - a. Judy Graci
 - b. Jan Yenawine
 - c. Mayor Frederick Graber

Barbara Wilson, City Administrator, presents plaques to Council Member Judy Graci, Council Member Jan Yenawine, and Mayor Frederick Graber.

15. Consider and Act upon Resolution 2014-R-2 to receive and accept as true and correct the canvassed voting results for the Election held on November 4, 2014 for Election of Council Members Place 1 and Place 3 and for the Election of Mayor of the Village of Volente.

Barbara Wilson, City Administrator, details the Resolution and total votes for each candidate.

Council Member Jan Yenawine makes a motion to accept Resolution 2014-R-2. Seconded by Council Member Babs Yarbrough. Carries unanimously.

16. Administer Oaths of Office for newly Elected City Council Member Place 1 and Council Member Place 3. (Judge Denise Thrash)

The Honorable Judge Denise Thrash administered the Oath of Office for Bill Connors and Kristi Belote.

17. Adjourn.

Council Member Bill Connors makes a motion to adjourn. Council Member Kristi Belote seconds. Carries unanimously.

Meeting adjourned at 10:21 pm.

Passed and approved this ____20th____ day of _____January_____, 20_15__.

Signed:

_____ *KB* _____

Mayor, Ken Beck

Attest:

_____ *JV* _____

Julia Vicars, Acting City Secretary