



Lisa B. Pierce, Mayor

Sylvia Apodaca
Mike Grant
Jerry Lehman

Kimberly McGehee-Aldrich
John W. Pierce
Joe Salazar

**CITY COUNCIL MINUTES
PUBLIC HEARING/REGULAR MEETING
THURSDAY, JANUARY 23, 2020 – 7:00 P.M.
CITY HALL COUNCIL CHAMBER
112 BAUMAN, KIRBY, TX 78219**

1. Call Meeting to Order

Mayor Pierce called the meeting to order at 7:00 P.M.

2. Invocation and Pledge of Allegiance to the Flag

Mayor Pierce led the invocation and pledge of allegiance to the flag.

3. Mission Statement

“The City of Kirby is dedicated to delivering excellent municipal services to our community in a fiscally responsible manner.”

4. Roll Call

PRESENT

Mayor Pierce
Council Member Lehman
Council Member Pierce
Council Member Apodaca
Council Member Grant
Council Member Salazar

ABSENT

Mayor Pro-Tem Aldrich

5. Citizen Participation

1. B.J. Voigt – She commended Michael Cenicerros and staff who took care of the potholes.
2. Chris Garza – He asked that the minutes be posted to the website in a timely manner.
3. Steve Linscomb – He provided an update on the construction at Kirby middle School.

6. Consideration Of And Action On Minutes

- a. Public Hearing/Regular Meeting January 9, 2020

Council Member Grant moved to approve the January 9, 2020 Public Hearing/Regular Minutes; seconded by Council Member Salazar. The motion carried with a 6-0 vote.

AYES: 6 NAYES: 0

7. Public Hearing

- a. On A Request To Allow The Property Located At CB 5092R, BLOCK 1 LOT 2, Otherwise Known As 5863 Binz Engleman Road, Kirby, TX 78219, Which Is Zoned Light Industrial (LI) To Be Used For The Following Purpose: For The Development Of An Apartment Complex With Approximately Seventy Apartment Units.

Mayor Pierce closed the regular meeting and opened the public hearing.

1. Mr. Steven Pittman – He inquired what type of apartment complex and what is the price range.
2. Sharon Shuler – She said she is concerned about appearance we give when entering the City. She has seen the photos. And it looks great project, but it's not for Kirby.
3. Sid Sanders Sr. – He said it's a quiet area and didn't think it will be a problem. He said maybe it will be an asset.
4. George Colvin – He said he owns the property that is adjacent to the Fire Department. He doesn't want the colors for the exterior of the building that were presented at the Planning and Zoning Commission meeting. He addressed the time frame to start and

complete the project. As a builder he would have to have performance bonds and would the City be responsible to remove the project if something happened. He supports the idea if it is done right. He thinks this will increase more business in the City.

5. Mrs. Claire Colvin – How many more police will the City need to hire, she's concerned about any negative impact, because it will adjoin her property. She's concerned about safety and security important.

6. Mr. Monnich – He said this project will take years to complete. He explained they want to meet codes and receiving approval on the project first. The units will be multi-color and not look like Whataburger. First, we need to find out if we can build apartments on the property. Regarding security, a project like this doesn't need to have impact on security. They will be providing reasonable housing. The average electric bill for a 2 bedroom is \$60 elec. Energy efficient and green facility. They create small park and recreational area for tenants. They create a facility where tenants can have their on-line groceries delivered if they have to work late. They have a facility for children. The apartment units will have internet service, full set of appliances. Not sure how many apartments will be constructed, because they haven't created the site plan. A two bedroom apartment is 960 square feet, one bedroom is 480 square feet. They are 100% ADA on the first floor. The facility is child friendly. There are a couple acres in the flood zone and it will be used as a recreational area. In regards to security, they build a secure facility. The tenants go through a credit review. This is a facility that provides amenities and good living space at a reasonable price. All of the professional for the design have won several awards for design. There is a serious demand in Kirby for housing. They want to introduce innovation. They will be a good partner for this community.

7. Sid Sanders Sr. – He asked if the unity will be for sale. Mr. Monnich said the are for renters. Mr. Monnich said he is the developer, manager, owner, general contractor.

8. Roger Romens – He asked if they would consider special needs for the elderly.

9. Noemi Arisa – She inquired about the material he will use to build the apartments. She asked if all the tenants will go through a credit check. What is the cost of rent? How will this be good for Kirby. Will there be a limit to the number of people living in a 480 square foot one bedroom unit. Mr. Monnich said at the most there will be two people. She asked if they use recycle ship containers do you know what was in the container? Mr. M said all of the shopping containers are tested and graded. They are typically used for transporting coffee. The units are taken to a facility where they are modified. The rent is around \$800 for one bedroom and around \$1,100 for two bedrooms for a family. Every potential tenant goes through a credit review with him. This is not government housing. This is good for Kirby because it will bring needed innovation. This complex will provide affordable, reasonable housing, and energy efficient housing in Kirby.

There were no other proponents or opponents.

- b. On A Request To Consider A Variance To The Sign Ordinance, Section 154.06 (D)(1) Height Of Signs - To Allow A Pole Sign With The Height Of Eighteen (18') Feet And Section 154.06 (B) To Allow A Four (4') Foot Front Setback Located At CB 5941 BLK 2 LOT E 50 FT OF S 147.2 FT OF 11 ARB 11B, Block 2, Otherwise Known As 523 Edalyn/5416 FM 78, Kirby, TX 78219.

Mr. Bob Long, applicant, informed Council he has been in Kirby over ten years and has never had an official sign. He wants a lighted sign, but the design he has is three feet over the required height.

There were no other proponents or opponents.

- c. On A Request To Consider A Variance To The Zoning Ordinance – Single Family Dwelling District (R-1), Section 153.016 (B)(6)(a) To Consider Permitting Encroachment Into The Five (5') Foot Side Yard Setback Due To The Construction Of A Carport And Widening Of The Driveway Located At CB 4018A, BLK 15 LOT 17, Otherwise Known As 5122 Cinderella St., Kirby, TX 78219.

There were no proponents or opponents.

Mayor Pierce closed the public hearing and reconvened the regular meeting at 7:45 P.M.

8. Discussion And Possible Actions

- a. Discussion And Possible Action On A Request To Allow The Property Located At CB 5092R, BLOCK 1 LOT 2, Otherwise Known As 5863 Binz Engleman Road, Kirby, TX 78219, Which Is Zoned Light Industrial (LI) To Be Used For The Following Purpose: For The Development Of An Apartment Complex With Approximately Seventy Apartment Units.

Mr. Thomas Hernandez said he concurred there hasn't been any new businesses in the area. He's concerned about the image of the complex and the use of the storage containers being used as the apartments.

Mayor Pierce stated that the Planning and Zoning Commission met on January 14, 2020 and voted 2-1 in favor of the apartment complex.

Council Member Salazar said the complex will have 40 – 70 units. Also, Mr. Monnich will be the manager, maintenance person, and other responsibilities. Mr. Monnich stated there will be a maintenance man. Tenants will have to use their internet service and cable service. There will be traffic concerns. Will Ackerman Road and Binz Engleman Road be able to handle this impact.

Council Member Grant inquired about the containers that will be used. Mr. Monnich stated the containers will be 40' long, 9.5' height, and 8' wide and then they are modified to create the apartment.

Mayor Pierce confirmed that the pods will be three units high. Could possible be seven of these pods if there is space available.

Mr. Monnich said there will be a site plan analysis to determine the number of pods and parking spaces.

Council Member Salazar said he said it's affordable housing. You can go down to Woodlake and get the same thing that he's offering but a little larger. You can go across HEB and get bigger. I thought he said this is affordable housing.

Council Member Pierce asked if there was any other location in Bexar County where he has built a project like this. Mr. Monnich said he doesn't have any in Bexar County. He has a prototype in Inconel, Texas. Kirby project is not a prototype. Council Member Pierce asked if he would you use Kirby as a selling point. Mr. Monnich said he would.

Council Member Salazar – 2nd one. Mr. Monnich – yes, of this type.

Mayor Pierce inquired about sprinkler systems. Mr. Monnich said the units are 100% sprinkled and with alarm systems. She asked Chief Bois what would be the increase in population. Chief Bois said approximately 280 residents. He didn't think it would much of an impact on crime rate. He would be more concerned with ingress/egress. She asked Mike about the water supply. He said the pumps can handle the volume.

Council Member Grant said traffic congestion at Binz Engleman & Ackerman is a concern.

Mayor Pierce said the address is Binz Engleman, but the ingress/egress would be on Ackerman Road only.

Council Member Lehman said we need to look at the future of Kirby. We have to move forward. This will create more businesses.

Council Member Apodaca said we will attract more businesses to the City. There will be credit checks for prospective tenants. They will spend their money here.

Mayor Pierce asked Mr. Monnich to provide information on the tax base. Mr. Monnich said seven apartments will cost \$7,000,000. Kirby will see an incredible boost in property taxes. The amount of sales tax will increase. The tenants will spend money in Kirby.

Mayor Pierce inquired about his investor. Mr. Monnich said the investor wants to be in Kirby.

Mayor Pierce asked if there is anything that could keep funding from happening. Mr. Monnich said the land owner wants to be a part of the project. That is a big help. The land is part of the equity.

Mayor Pierce asked if there was any pushback from Inconel. Mr. Monnich said they welcomed him and they needed housing. They wanted more built.

Council Member Pierce said QT is a new business in Kirby and when people found out, the land value increased. Mr. Monnich said it's already impossible to buy property in Kirby.

Council Member Grant suggested tabling this item and have staff research more.

Mayor Pierce said there will be traffic concerns regardless who builds. When will another opportunity to come in?

Council Member Salazar said the apartments will not generate normal business traffic. We haven't even covered the drainage issue.

Mr. Schnall someone can make a motion to table and it must be seconded. It is not debatable or amendable. And the vote must be a majority. If it's a motion to postpone then it still must be seconded, it is debatable, it is amendable and it requires a majority vote, and the motion must state when it is postponed to.

Council Member Grant moved to postpone until we received information from Inconel and the State whether they will or will not approve the project. Council Member Lehman is concerned if postponed Mr. Monnich will walk away and the property will remain undeveloped for another 20 years. He should be allowed to move forward with the next step.

Council Member Grant withdrew his motion.

Council Member Apodaca moved to accept the request to allow the property located at CB 5092R, BLOCK 1 LOT 2, otherwise known as 5863 Binz Engleman Road, Kirby, TX 78219, which is zoned Light Industrial (LI) to be used for the following purpose: for the development of an apartment complex with approximately seventy apartment units; seconded by Council Member Lehman.

Council Member Pierce reflected on conversations during the discussions on this request.

The vote was 3-3. The motion did not pass.

AYES: 3

NAYES: 3 (Council Member's Pierce, Grant,
and Salazar)

- b. Discussion And Possible Action On A Request To Consider A Variance To The Sign Ordinance, Section 154.06 (D)(1) Height Of Signs - To Allow A Pole Sign With The Height Of Eighteen (18') Feet And Section 154.06 (B) To Allow A Four (4') Foot Front Setback Located At CB 5941 BLK 2 LOT E 50 FT OF S 147.2 FT OF 11 ARB 11B, Block 2, Otherwise Known As 523 Edalyn/5416 FM 78, Kirby, TX 78219.

Council Member Grant moved to approve the request to the Sign Ordinance, Section 154.06 (D)(1) Height of Signs - to allow a pole sign with the height of eighteen (18') Feet and Section 154.06 (B) to allow a four (4') foot front setback located at CB 5941 BLK 2 LOT E 50 FT OF S 147.2 FT OF 11 ARB 11B, Block 2, otherwise known as 523 Edalyn/5416 FM 78, Kirby, TX 78219; seconded by Council Member Apodaca. The motion carried with a 6-0 vote.

AYES: 6

NAYES: 0

- c. Discussion And Possible Action On A Request To Consider A Variance To The Zoning Ordinance – Single Family Dwelling District (R-1), Section 153.016 (B)(6)(a) To Consider Permitting Encroachment Into The Five (5') Foot Side Yard Setback Due To The Construction Of A Carport And Widening Of The Driveway Located At CB 4018A, BLK 15 LOT 17, Otherwise Known As 5122 Cinderella St., Kirby, TX 78219.

Noemi Ariaza Avalos read a letter from property owner. The owner apologized for not being able to attend the meeting.

City Manager Vernon informed Council that their neighbor to the right of the property, John Bishop, called City and said he is opposed.

City Council discussed the request.

Council Member Grant moved to deny the variance request.

Mayor Pierce stated the Planning and Zoning Commission approved the request with a caveat. The caveat I, "that if future demolition would be required due to City improvements of utility or easements related to those utilities that the City would not be required to replace the demolished concrete areas."

Marc Schnall said if this item is not removed in reasonable time then code compliance can issue a citation. Under our ordinance, each day is a separate violation. It's in the property owner's best economic interest to remove something or continually face municipal court citations. But so, as the practical matter Mr. Grant said is correct, there is an exception for

someone who has a very deep pocket and wants to pay whatever fine the municipal court assessed for these violations.

Council Member Grant moved to deny the variance request and remove, place back the way it used to be; seconded by Council Member Salazar

Sandra Gray asked if she could speak.

Mr. Schnall said in a situation like this, you are not reopening the public hearing but allow this neighbor to speak, it would take a majority vote for the Council to change the rules of the Council. A motion is required to make a motion to allow person to speak. This is an exception to the rules.

Mayor Pierce stated if you want to allow the resident to speak the floor is open for a motion.

Council Member Apodaca moved to allow Sandra Gray opportunity to speak; seconded by Council Member Lehman.

AYES: 6 NAYES: 0

Sandra Gray said she lives on Cinderella and is friend of the applicant. Why did it take six months for this to be cited? Maria & husband are top neighbors, clean and nice. The owner did not understand she needed permits. She's here to support the applicants.

Council Member Grant moved to deny the variance request and take it back to the Zoning Ordinance requirements; seconded by Council Member Salazar. Motion failed with 3-3 vote.

AYES: 3 NAYES: 3 (Council Members Jerry Lehman, Joe Salazar, John Pierce)

Mr. Schnall said the motion that Mr. Grant made failed because were not four votes.

Mayor Pierce said the motion to deny the variance request did not pass so the motion to take it back to the ordinance requirements did not pass.

Council Member Grant stated this does not prevent Code Compliance from issuing a citation.

Mr. Schnall said that is correct, nor does it stop someone else on the governing body to make another motion right now.

Roger Romens called for a point of order from the audience and addressed Council about the vote. He cited the City Charter on overriding the Planning and Zoning Commission recommendation.

Mr. Schnall respectfully asked Council to recess the meeting while he checked the Zoning Codes, Charter and Local Government Code to respond to this point of order.

Mayor Pierce called for a ten minute recess at 9:04 P.M. and reconvened the meeting to order at 9:16 P.M.

Mr. Schnall said the ruling on the point of order is that it is denied because the City Zoning Ordinance Section 153.116 (B) (5) A vote of three-fourths of all the members of the City Council is also required to overrule a recommendation of the Zoning Commission that the proposed amendment, supplement or change be denied. Therefore, it did not require a vote of six because the Planning and Zoning Commission did not deny this application for this variance. Therefore, did not require a super majority of the governing body under the wording of 153.116. He further stated that he believed the last item that came before that comment was your statement to the governing body asking if anyone on the governing body wished to make a motion under item 8.c.

Mayor Pierce said the last motion was to deny variance and for the homeowner to make the driveway and carport back to code. This is the motion that failed to pass.

Council Member Grant moved to deny the variance to the Zoning Ordinance and for the homeowner to make the driveway and carport back to code; seconded by Council Member Salazar. The motion passed with a 4-2 vote.

AYES: 4

NAYES: 2 (Council Members Lehman and Pierce)

d. Update, Discussion And Possible Action On Binz Engleman Road Reconstruction Project

Mr. Mark Hill, engineer for the project, provided an update on Binz Engleman Road Reconstruction Project.

e. Discussion And Possible Action On Appointing A Member To The Beautification And Recycle Committee

Mayor Pierce was not provided any applications.

f. Discussion And Possible Action On Appointing Alternate Members To The Building And Standards Commission

Mayor Pierce was not provided any applications.

g. Discussion And Possible Action On Appointing Members To The Kirby Senior Center Corporation Board

Mayor Pierce said there was an application from David Barbosa requesting to serve on the Kirby Senior Center Corporation Board.

Council Member Apodaca said the application was not fully completed. There was information not filled in.

Council Member Grant moved to accept his application; seconded by Council Member Apodaca. The motion carried with a 6-0 vote.

AYES: 6

NAYES: 0

h. Discussion And Possible Action On Potential Amendments To Ordinance No. O-2018-847 Revising Sections 50.10 Through 50.20 Of The Code Ordinances Including A Revision To Sewer Service Charges And Providing For A Penalty Not Less Than One (\$1.00) Dollar Nor More Than Two Hundred (\$200.00) Dollars And Each Violation Shall Constitute A Separate Offense.

City Manager Vernon said there are two changes to the ordinance. SAWS is going up on rate and asked to postpone to the second meeting in February.

Council Member Apodaca moved to postpone the action on potential amendments to Ordinance No. O-2018-847 revising Sections 50.10 through 50.20 of the Code Ordinances including a revision to sewer service charges and providing for a penalty not less than one (\$1.00) dollar nor more than two hundred (\$200.00) dollars and each violation shall constitute a separate offense to the second meeting in February; seconded by Council Member Pierce. The motion carried with 6-0 vote.

AYES: 6

NAYES: 0

i. Discussion And Possible Action On Ordinance No. O-2019-865 Repealing Existing Chapter 91 Of The Code Of Ordinances And Adopting A New Chapter 91 Entitled "Animals" To Set Out Provisions As To Animals, Including An Animal Shelter, Animal Control Officers, Microchipping, Animal Bites And Animal Care, Spaying And Neutering, Rabies Control, Adoption Of Animals, Fees, Enforcement, And Related Matters, And Setting A Fine Not To Exceed The Amounts Set Out In Section 10.99 Of The Code Of Ordinances For Each Violation. This Is The First Reading.

City Manager Vernon said the terminology has been updated. Replaced former term with 'Animal Control Officer' and the term 'shelter' have been placed back in the ordinance.

Mayor Pierce asked that this item be brought back to the next meeting to bring a clean copy.

Council Member Grant moved to table Ordinance No. O-2019-865 repealing existing Chapter 91 of the Code of Ordinances and adopting a new Chapter 91 Entitled "Animals" to set out provisions as to animals, including an animal shelter, animal control officers, microchipping, animal bites and animal care, spaying and neutering, rabies control, adoption of animals, fees, enforcement, and related matters, and setting a fine not to exceed the amounts set out in Section 10.99 of the Code of Ordinances for each violation; seconded by Council Member Pierce. The motion carried with a 6-0 vote

AYES: 6

NAYES: 0

- j. Discussion And Possible Action On Ordinance No. O-2019-866 Amending Sections 150.15, 150.16, 150.27, 150.28, 150.32, 150.33, And 150.35 Of The City's Code Of Ordinances Relating To Building, Mechanical, Plumbing, Existing Building, Performance, And Fuel Gas Codes And Adding Sections 150.37, 150.38, And 150.39 Relating To 2018 International Fire Code, 2018 International Swimming Pool And Spa Code, And 2018 International Green Construction Code To The City's Code Of Ordinances To Adopt Certain 2018 International Codes And Standards, Establishing Certain Building Code And Building Related Regulations And Requirements, And Establishing A Penalty Of A Fine Of Not Less Than \$500 Nor More Than \$2,000 For Violations With Each Day A Violation Occurs Constituting A Separate Offense. This Is The First Reading.

Mr. Schnall said the Fire Marshal has requested that the local amendments adopted in 2015 concerning sprinklers be a local amendment to the 2018 Building Codes. The updated ordinance includes the local amendments from the 2015 Building Codes.

He provided information addressing other updates to the codes. He addressed the square footage of buildings requiring automatic fire sprinklers.

Mr. Schnall – adopt O-2019-866 with change 500 to 2,500. Sec. 150.16 (c)(1).

Council Member Grant moved to adopt Ordinance No. O-2019-866 amending Sections 150.15, 150.16, 150.27, 150.28, 150.32, 150.33, and 150.35 of the City's Code of Ordinances relating to Building, Mechanical, Plumbing, Existing Building, Performance, and Fuel Gas Codes and adding Sections 150.37, 150.38, And 150.39 relating to 2018 International Fire Code, 2018 International Swimming Pool and Spa Code, and 2018 International Green Construction Code to the City's Code of Ordinances to adopt certain 2018 International Codes and standards,

establishing certain building code and building related regulations and requirements, and establishing a penalty of a fine of not less than \$500 nor more than \$2,000 for violations with each day a violation occurs constituting a separate offense, with the change of 500 square feet to 2,500 square feet in Sec. 150.16(C)(1) seconded by Council Member Salazar. The motion carried with a 6-0 vote.

AYES: 6

NAYES: 0

- k. Discussion And Possible Action On Amendment To Section 150.86 – Barbed Wire Prohibited Of Chapter 150 – Building Regulations Of The Code Of Ordinances Of The City Of Kirby To Amend Provision Regarding Barbed Wire Fences Of Ordinance No. O-2005-611. This Is The First Reading.

City Manager Vernon read the current ordinance and said that research prompted this consideration. TCEQ rules dictate that at well sites the barbed wire has to face out away from property.

Council Member Grant moved to accept the amendment to Section 150.86 – Barbed Wire Prohibited of Chapter 150 – Building Regulations of the Code of Ordinances of the City of Kirby to amend provision regarding barbed wire fences of Ordinance No. O-2005-611; amended that if the real property changes ownership within sixty days the owner will come into compliance with the current code and a list of addresses of those businesses will be maintained with the City Secretary; seconded by Council Member Salazar. The motion carried with a 6-0 vote.

AYES: 6

NAYES: 0

- l. Discussion On Potential Scooter And Bicycle Safety Regulations

Chief Bois provided information on the scooter and bicycle safety regulations.

After discussing this item, Mayor Pierce asked that this item be placed on the March 12, 2020 Council agenda.

- m. Discussion And Possible Action On Kirby Fire Department Shift

City Manager Vernon provided history on fire department. The work schedule is identified in the Personnel Policy Manual.

Assistant Chief Hilburn said currently, the Fire Department works a 24 on 48 off shift. Members of the department have requested changing to a 48 on 96 off shift. This will provide them with more time with their family. Council approval is being requested to change from 24/48 to 48/96 fire shift effective February 10, 2020.

Council Member Apodaca moved to accept new Kirby Fire Department shift change to 48/96 effective February 10, 2020. The motion carried with a 6-0 vote.

AYES: 6

NAYES: 0

- n. Discussion And Possible Action On Resolution No. R-2020-715 Calling A General/Special Election On May 2, 2020; For The Purpose Of Electing Three Council Members For Two Year Terms And One Council Member For A One Year Term To Complete An Unexpired Term On The City Council, Designating The Polling Places, Designating Voting System And Directing The Giving Of Notice Of Such Election; And Providing Details Relating To The Holding Of Such Election.

Council Member Apodaca moved to accept Resolution No. R-2020-715 calling a General/Special Election on May 2, 2020; for the purpose of electing three council members for two year terms and one council member for a one year term to complete an unexpired term on the city council, designating the polling places, designating voting system and directing the giving of notice of such election; and providing details relating to the holding of such election; seconded by Council Member Grant. The motion carried with a 6-0 vote.

AYES: 6

NAYES: 0

9. Request And Announcements

- a. Requests By Mayor And Council Members For Items To Be Placed On Future City Council Agendas And Announcements On City Events/Community Interests

Council Member Apodaca said there was a good turnout at the Kirby Senior Center breakfast.

Mayor Pierce thanked everyone for attending the meeting. Boy Scout Troop 1412 had their Eagle Scout Court of Honor on January 18, 2020. On February 8 will be the Kirby Senior Center Pancake Breakfast. On Friday & Saturday there will be a Rodeo event, not in Kirby. There will be loud music. Filing for office is 8:00 AM – 5:00 PM until February 14, 2020. On January 27th at 6:30 P.M. there is a special meeting about expansion & employees.

10. Adjournment

The meeting adjourned at 10:51 P.M.

Lisa B. Pierce
Mayor

Patty Cox, TRMC
City Secretary