

City of Alpine  
Regular City Council Meeting  
Tuesday, October 6, 2020  
5:30 P.M.  
Minutes

1. Call to Order, and Pledge of allegiance to the flags – Mayor Ramos called the meeting to order. The meeting was held via Zoom Conference in the City of Alpine, Texas. Mayor Ramos led the pledge of allegiance to the flags.
2. Determination of a quorum and proof of notice of the meeting – Councilor Curry, Councilor Olivas, Councilor Betty Fitzgerald, Councilor Escovedo, Councilor Stephens and Mayor Ramos were present. City Secretary, Cynthia Salas reported that the agenda was posted at 2:00 P.M. on October 2, 2020. City Manager Erik Zimmer, City Secretary, Cynthia Salas, and City Attorney Rod Ponton also attended via zoom.
3. Public Comments (limited to 3 minutes per person) – Jim Street, John Kennedy, Jan Moeller, and Keri Blackman.
4. Presentations, Recognitions and Proclamations – (A. Ramos, Mayor) –
  - Proclamation for Domestic Violence Awareness Month
5. Reports – Copies of the charts presented during the meeting are posted on the City website at <https://www.cityofalpine.com/Alpine%20City%20Council%20-%20CM%20Report%203-17-2020.pdf>

City Mayor's Report – (A. Ramos, Mayor) – None

City Attorney's Report –

- Update on admission of Alpine Police Dept. arrestees into the Brewster County Jail.
- COVID-19 Governor's Orders – Duration, milestones for modification whether any changes likely.

City Manager Report –

- Coronavirus Update
- GA-30 and GA-31 – Governor Executive Order Updates
- City properties – Update on Valuations and Maintenance Needs

City Staff Updates –

- Building Services Update – David Hale
- City Utilities Update – Scott Perry
- Finance Update – Megan Antrim

6. Public Hearings –
  - Public Hearing on citizen's views and comments concerning the Texas Parks & Wildlife grant application to develop Pueblo Nuevo Park. The City is requesting \$200,000 in funds and is required to provide a \$200,000 match from City funds if awarded.
7. Consent Agenda – (Minutes, Financial reports, Department written reports, board appointments, etc.) –

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being discussed separately unless requested by a Council Member, in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon.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

1. Approval of minutes from City Council meeting on September 15, 2020. (E. Zimmer, City Manager)
2. Approval of Resolution 2020-10-08 for closing of 5<sup>th</sup> Street (Hwy 118) between Holland and Avenue E for Artwalk on November 20<sup>th</sup> and 21<sup>st</sup>, 2020. (E. Zimmer, City Manager)
3. Approval of City Attorney’s August 2020 invoice. (E. Zimmer, City Manager)
4. Approval of Alexandra Tackett for At Large member for Parks Board from Friends of Big Bend Parks. (R. Stephens, City Council)

**Motion was made by Councilor Stephens, by Resolution 2020-10-01 to approve the consent agenda as presented. Motion was seconded by Councilor Escovedo. Motion passed 5 to 0.**

8. Information or Discussion items –

1. Discuss information provided by TML requesting support and a local Resolution to allow for the expenditure of Municipal HOT revenue by the City for construction or improvements of/in municipal parks. (E. Zimmer, City Manager)
2. Discuss future City Council meeting locations and use of Zoom. (E. Zimmer, City Manager)

9. Action items to be accompanied by a brief statement of facts, including where funds are coming from, if applicable. (Action items limited to (up to 10 per meeting.) after being called upon by Mayor or Mayor Pro Term. Citizens are required to state their name and the Ward in which they reside. Priority will be given to citizens of Alpine and those who own businesses or property in the City. Individuals who do not live in, or own businesses or property in the City limits of Alpine, will be allowed to speak if there is time available.) –

1. Discuss, consider, and take appropriate action approving Resolution 2020-10-03, regarding the Texas Parks and Wildlife – Local Parks Grant program to develop Pueblo Nuevo Park. The City is requesting \$200,000 from Texas Parks and Wildlife (TPWD) and is requesting to provide \$200,000 match if awarded. (L. Escovedo, City Council) – **Motion was made by Councilor Escovedo, by Resolution 2020-10-03, approving Resolution 2020-10-03, regarding the Texas Parks and Wildlife – Local Parks Grant program to develop Pueblo Nuevo Park. The City is requesting \$200,000 from Texas Parks and Wildlife (TPWD) and is requesting to provide \$200,000 match if awarded. Motion was seconded by Councilor Olivas. Motion passed 5 to 0.**
2. Discuss, consider, and take appropriate action on Resolution 2020-10-04, a Resolution by the City of Alpine supporting Fall events. (E. Zimmer, City Manager)- **Motion was made by Councilor Stephens, by Resolution 2020-10-04, a Resolution by the City of Alpine supporting Fall events. Motion was seconded by Councilor Curry. Motion passed 5 to 0.**
3. Discuss, consider, and take appropriate action to approve Resolution 2020-10-06, a Resolution of support for Halloween treat give-away. (E. Zimmer, City Manager) – **Motion was made by Councilor Stephens, by Resolution 2020-10-06, a Resolution of support for Halloween treat give-away. Motion was seconded by Councilor Escovedo. Motion passed 5 to 0.**
4. Discuss, consider, and take appropriate action on Resolution 2020-10-07, a Resolution for the 2021 Regional Solid Waste Grant application for the City of Alpine. (E. Zimmer, City Manager) – **Motion was made by Councilor Stephens, by Resolution 2020-10-07, a Resolution for the 2021 Regional Solid**

Waste Grant application for the City of Alpine. Motion was seconded by Councilor Curry. Motion passed 5 to 0.

5. Discuss, consider, and take appropriate action to approve Letter of Engagement with Gibson, Ruddock, and Patterson LLC to perform a single audit for the City of Alpine FY 2020/2021. (E. Zimmer, City Manager) – Motion was made by Councilor Stephens, by Resolution 2020-10-09 to approve Letter of Engagement with Gibson, Ruddock, and Patterson LLC to perform a single audit for the City of Alpine FY 2020/2021. Motion was seconded by Councilor Curry. Motion passed 5 to 0.
6. Review, discuss, consider, and take appropriate action on approving Resolution 2020-10-05 that will force resolution of the issues created by the Brewster County Sheriff unilaterally not allowing Alpine Police Department arrestees to be admitted to the County/City Jail without magistration. (R. Stephens, City Council) – Motion was made by Councilor Stephens, by Resolution 2020-10-05 that will force resolution of the issues created by the Brewster County Sheriff unilaterally not allowing Alpine Police Department arrestees to be admitted to the County / City Jail without magistration. Motion was seconded by Councilor Curry. Motion was amended by Councilor Stephens to approve Resolution 2020-10-05. Motion was seconded by Councilor Curry. Motion to approve amended motion was approved 5 to 0. Motion by Councilor Stephens to approve Resolution 2020-10-05. Motion was seconded by Councilor Curry. Motion passed 5 to 0.

Motion was made by Councilor Stephens, by Resolution 2020-10-10 to adjourn and reconvene Wednesday, October 7, 2020 at 5:30pm in accordance to established procedures. Motion was seconded by Councilor Curry. Motion passed 5 to 0.

Motion was made by Councilor Stephens, by Resolution 2020-10-11 to reconvene back into regular session. Motion was seconded by Councilor Curry. Motion passed 5 to 0.

Determination of quorum - Councilor Curry, Councilor Olivas, Councilor Betty Fitzgerald, Councilor Escovedo, Councilor Stephens and Mayor Ramos were present.

7. Discuss, consider, and take appropriate action, if any, on the Municipal Prosecutor / City Attorney. (R. Stephens, City Council. Motion was made by Councilor Stephens, by Resolution 2020-10-12 to discuss and consider appropriate action, if any, with regard to the City Attorney who is also the Municipal Prosecutor. Motion was seconded by Councilor Curry. Councilor Stephens shared background information and discussed three (3) potential areas that require in-depth discussion. Councilor Stephens advised that it is important for the City Council, the City Manager, key City staff members and the City Attorney to be in alignment because there have been a number of circumstances when actions have been taken that do not appear to be consistent with the City Charter. Section 4.04 of the charter states:

A) that the City Council shall appoint an attorney licensed to practice law in the State of Texas as an Attorney and shall serve at will. The City Attorney will be entitled to compensation as established by the City Council.

B) The duties of the City Attorney shall be to:

1. Serve as legal advisor to the Council, to all offices, departments, and agencies of the City, and to all officers and employees of the City in matters relating to their official duties.
2. Represent the City in all legal proceedings.
3. Perform all services to his or her position as may be required by statute, laws at the State or Local level, the City Charter, City Ordinance, or as directed by the City Council.

C) The Council may retain special counsel at any time that it deems such action appropriate or necessary; this is about giving Council the latitude to pick a special counselor should the City Council choose to require the service of an attorney, different than the selected City Attorney.

Councilor Stephens advised that there an item on the on the Executive Session from the September 15 City Council meeting which was postponed until today's meeting. The day after the September 15<sup>th</sup> meeting, Councilor Stephens met with Rod Ponton in his office and they had a good discussion. Rod Ponton stated that he wanted to remain the City Attorney and that he wants to resolve all issues that may exist. At that meeting Councilor Stephens moved any discussion with Rod Ponton out of Executive Session and into the public meeting.

There are 3 keys areas which require discussion:

- 1) The role of the City Attorney and the prosecution of cases at the Municipal Court that come from City Staff who write citations relative to court cases.
- 2) Actions that the City Attorney has taken without discussion with the Council that potentially places the City at risk, or matters of policy that may require the City Attorney input and ultimately action not within the purview of the City Attorney, to make unilateral or take decisions or action on.
- 3) Expectations that the City has regarding the changes that the City Attorney should make relative to action with the City of Alpine.

Councilor Stephens understands that there are members of the Council that also utilize Rod Ponton for legal matters outside of their role on the City Council. Those relationships have the potential for being a conflict of interest. He advised that he will comment on that when it comes to discuss items that deal with any actions that the Council may take pertaining to Rod Ponton. Those who currently utilize Rod Ponton for legal matters, whether he is paid or unpaid for those services, need to ensure that the discussions that Council is having today are about the best interest of the City of Alpine. He stressed that, should any action be taken, those who utilize Rod Ponton for legal matters outside of the City should disclose this prior to such action. Councilor Stephens also noted that during this agenda item there will, no doubt, be a number of different perspectives. He stated that hopefully we can focus on the issues rather than focusing on personalities so that the Council will be able to determine its appropriate course of action relative to any relationship with Rod Ponton to represent the City consistent with the City Charter.

1) The first item is the role of the City Attorney when it comes prosecuting cases at the Municipal Court that come from members of the City Staff that write citations resulting in court cases referring back to Section 4.04 of the Charter; serve as legal advisor to the Council, to all offices, departments, and agencies of the City, and to all officers and employees of the City in matters relating to their official duties.

(2) represent the City in all legal proceedings. There have been a number of circumstances, some of which have been raised to the City Council it was reported that the City Attorney has not represented the City cases well when it came to prosecution in the municipal court.

Rod Ponton shared at least one example with the Council on September 1, 2020 when there were multiple citations written for a code violation and Rod felt it was in the best interest of City to only pursue one of the citations. There are other issues that have arisen and Councilor Stephens thought that it was worthwhile for the City Council and Rod Ponton to listen to some of the employee perspectives. Councilor Stephens requested that three employees of the City provide their perspectives to City Council. The employees who spoke to the City Council were the Building Official, the Animal Control Supervisor, and the Chief of Police. The Building Official, David Hale, stressed the importance that the Council have alignment amongst the Council and the City Prosecutor in terms of how cases are prosecuted in the Municipal Court. David Hale also discussed issues with cases that are based on citations from Code Enforcement, and the department's loss of confidence in the City Attorney/City Prosecutor. Chief of Police, Robert Martin, spoke to a number of issues involving the City Attorney and the Alpine Police Department's loss of confidence with the City Attorney. Jennifer Stewart, Animal Control Supervisor, provided her perspective regarding the City Attorney and Animal Control.

Councilor Stephens summarized the issue with the City Attorney/City Prosecutor, as discussed by the three employees, would be a lack of confidence of how strongly Municipal Court cases are prosecuted and how a consistent lack of preparedness by the City Prosecutor negatively affects the cases.

Councilor Stephens discussed the next issue which involves the City Attorney taking action on items that are not within his purview, and without City Council Consent. He stated that this type of behavior puts the City at risk. Councilor Stephens advised that this discussion would involve City Council's expectations of the City Attorney. The magistration issue between the City and the County Jail, which Rod Ponton took upon himself to try and remedy without Council consent, is a central example of the actions that the City Attorney has taken which are not appropriate. The City Attorney also fulfilled a Texas Public Information Act request without approval from City Administration or the City Council, which is outside of the City Attorney's purview.

Councilor Stephens discussed that the County Attorney and County Sheriff made informal allegations of possible misconduct by Alpine Police Department officers. No formal complaint was received. The City Attorney has finally requested formal information regarding the circumstances about this issue, but it has been over a month since these informal allegations were made.

Councilor Stephens discussed a video of Alpine Police Department bodycam footage that was released on YouTube and circulated on social media. The Chief of Police then issued a press release regarding the video and viewpoint of the Alpine Police Department. He then referred to a memo sent by the City Attorney to the Council stating that there was widespread recognition and patterns or practices of bad arrests by the Alpine Police Department. Rod Ponton sent an email to the City Council in which he advised that he sent two letters to the Texas Attorney General. In the email he stated that he was concerned with civil liabilities and persons arrested without probable cause of arrests made by the Alpine Police Department.

Regarding the issue with the Alpine Police Department not accepting arrestees prior to magistration, Rod Ponton took it upon himself to sort the issue by himself, and without direction of the Council or City Administration. He has also written correspondence without the inclusion or approval of the Council. Rod Ponton arranged a meeting with the Brewster County Sheriff where he arranged an agreement for the City concerning booking arrestees prior to magistration. The Core issues regarding the City Attorney is that he has conducted meetings, written letters, put a deal together with the Brewster County Sheriff – all without coordination or approval from the Council. Councilor Stephens also advised that the Brewster County Attorney allegedly has documented issues with Alpine Police Department Arrests, an issue that the Council was not aware of until the night of this meeting. Rod Ponton has not taken action to document these concerns or issues and bring them back to the Council.

Councilor Stephens stated that he wondered if the City Council was supposed to be the ones making policy decisions, and reiterated Section 4.04 of the Charter which confirms that the City Attorney serves as legal advisor so that the Council can make policy decisions.

The City attorney has documented that the City is at significant liability, and has failed to take action within an acceptable time. It is not until now, or last night's meeting, that the City Attorney is finally offering to take action on these critical items. Councilor Stephen's view is that the City Attorney is the one putting the City at risk due to the lack of action on his part to critical items. Councilor Stephens solicited comments from the rest of the Council at this time.

Councilor Olivas stated that he agreed with much of what Councilor Stephens said, but he believes that there seems to be a total lack of communication between the City and the County with respect to the arrestees of the Alpine Police Department. He understands that the City Manager has tried to get a hold of the Sheriff by multiple means, and it never happens. He also understands that the communication is lacking between the Chief of Police and the Sheriff. He sees that Mr. Ponton took it upon himself to discuss the issue with the Sheriff without City Council or City Manager approval, and came out of the meeting with a set of guidelines that will continue the discussion on the issue.

He is happy that Rod Ponton did this, and in his view Rod Ponton represented the City of Alpine in his actions.

Councilor Stephens advised that this was not the issue that he is raising. He clarified that the City Attorney has put the City at significant risk. He wrote two letters to the Texas Attorney General's office and chose not to discuss these letters with the City Council. In his opinion, these are policy discussions that the City Council should have been intimately aware of, most likely in executive session, since these are sensitive issues. The City Attorney's duty is to advise the Council and for the Council to give direction to him on actions he takes for the City.

Rod Ponton's response was that he was trying to advise the Council on the issues when he learns about the information. He states to have shared everything he has learned with the Council. Councilor Stephens stated that Rod Ponton was asked to provide a City Attorney report at each Council meeting, and he didn't have a report on the September 15 meeting. Rod Ponton advised that this was true, but that he did have a report at the beginning of this meeting. Councilor Stephens advised a big issue is that information is not available to the Council in a timely manner.

Moving on to the 3<sup>rd</sup> item for discussion, expectations that the City has regarding changes that the City Attorney needs to make relative to his duties to the City of Alpine. The items that the City Attorney must adhere to are as follows:

1. The City Attorney needs to make a report at every Council meeting regarding matters in public, and in executive session as appropriate. Not a meeting shall go by without a City Attorney presentation.
2. The City Attorney will not write letters or take action outside of the City, unless there is an emergency nature without approval from the City Manager or the City Council. The exception is unless it is part of an agreed upon strategy that Council or the City Manager is supporting relative to legal action that the City Attorney is representing the City in.
3. The City Attorney will provide a report to the City Council after every municipal court to discuss key actions and results from a prosecution perspective. This does not include expectations that the City Manager, Chief of Police, Building Official, and Animal Control Supervisor have for the City Attorney. As discussed earlier there are separate expectations from them.
4. Expectation is that at the next City Council meeting the City Manager and City Attorney come back with recommendations on how they wish to proceed and what specific actions the City Attorney will take concerning the lack of confidence, lack of trust, and concerns over items prosecuted in the municipal Court.

Motion unanimously carried.

8. Discuss, consider, and take appropriate action approving the proposed changes of Chapter 10 – Animals, Section 10-186 Dangerous Dogs. (M. Curry, City Council) – Motion was made by Councilor Curry, by Resolution 2020-10-13 to approve the first reading of proposed changes of Chapter 10 – Animals, Section 10-186 Dangerous Dogs. Motion was seconded by Councilor Olivas. Motion unanimously carried.

10. City Councilmember Comments and Answers – No discussion or action may take place.

11. Executive Session - Pursuant to Texas Government Code 551.071 Consultation with Attorney on a matter for which it is the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct conflict with this Chapter and requires discussion of the item in closed session), and 551.071(consultation with attorney regarding potential or contemplated claims against the City) Pursuant to Texas Government Code 551.074 – to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee. –

Motion was made by Councilor Stephens, by Resolution 2020-10-14, to move into Executive Session. Motion was seconded by Councilor Curry. Motion unanimously carried (7:24 P.M.)

1. Discuss the update of Parkhill, Smith, and Cooper. (E. Zimmer, City Manager)
2. Discuss Union Pacific Declaratory and Injunctive Relief filing. (E. Zimmer, City Manager)

NOTICE: The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed on the posted agenda, above, as authorized by the Texas Government Pursuant to Texas Government Code 551.071 (consultation with an attorney), 551.072 (deliberations about real property), 551.073 (deliberations about gifts and donations), 551.074 (personnel matters), 551.076 (deliberations about security devices), and 551.086 (economic development)

**Motion was made by Councilor Stephens, by Resolution 2020-10-15 to come out of executive session. Motion was made by Councilor Curry. (7:53 P.M.)**

12. Action – Executive Session –

1. Discuss, consider, and take appropriate action, if any, on Parkhill, Smith, and Cooper. (E. Zimmer, City Manager) – **Motion was made by Councilor Stephens, by Resolution 2020-10-16 to take no action.** Motion was seconded by Councilor Curry. **Motion unanimously carried.**
2. Discuss, consider, and take appropriate action, if any, on Union Pacific Declaratory and Injunctive Relief filing.) – **Motion was made by Councilor Stephens, by Resolution 2020-10-18 to take no action.** Motion was seconded by Councilor Betty Fitzgerald. **Motion unanimously carried.**

I certify that this notice was posted at 2:00 P.M. on October 2, 2020, pursuant to Texas Open Meetings Act. (Texas Vernon's Annotated Civil statutes, section 551.043 Texas Government Code.) This facility is wheelchair accessible and accessible parking space is available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the city secretary's office at (432) 837-3301 or fax (432) 837-2044 for further information.

\_\_\_\_\_  
Andres "Andy" Ramos, Mayor

Attest:

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Cynthia Salas, City Secretary

I, Cynthia Salas, City Secretary, do certify that this notice was posted at 2:00 P.M. on October 2, 2020, and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

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Cynthia Salas, City Secretary