



CITY COUNCIL REGULAR MEETING

Monday, May 08, 2023 at 6:30 PM

City Council Chambers | 202 N. Virginia Street, Port Lavaca TX 77979

MINUTES

STATE OF TEXAS §
COUNTY OF CALHOUN §
CITY OF PORT LAVACA §

On this the 8th day of May, 2023, the City Council of the City of Port Lavaca, Texas, convened in a regular session at 6:30 p.m. at the regular meeting place in Council Chambers at City Hall, 202 North Virginia Street, Port Lavaca, Texas, with the following members in attendance:

I. ROLL CALL

Jack Whitlow	Mayor
Jerry Smith	Councilman, District 1
Tim Dent	Councilman, District 2
Allen Tippit	Councilman, District 3
Rosie G. Padron	Councilwoman, District 4, Mayor Pro Tem
Jim Ward	Councilman, District 5
Ken Barr	Councilman, District 6

And with the following absent: None

Constituting a quorum for the transaction of business, at which time the following business was transacted:

II. CALL TO ORDER

- Mayor Whitlow called the meeting to order at 6:32 p.m. and presided.

III. INVOCATION

- Councilman Ward gave the invocation.

IV. PLEDGE OF ALLEGIANCE

- Mayor Whitlow – Pledge of Allegiance.

V. PRESENTATION(S)

- Proclamation - May is Motorcycle Awareness Month
- Proclamation - National Police Week is May 14 – May 20, 2023
- Proclamation - National Public Works Week is May 21 – May 27, 2023 “Connecting the World through Public Works”

VI. COMMENTS FROM THE PUBLIC

(Limited to 3 minutes per individual unless permission to speak longer is received in advance. You may make public comments as you would at a meeting by logging on with your computer and using "Join Zoom Meeting" information on first page of this agenda).

- Mayor asked for comments from the public and Councilman Ward expressed his appreciation for all city employees.

VII. CONSENT AGENDA - (Council will consider/discuss the following items and take any action deemed necessary)

- A. Minutes of April 10, 2023 Regular Meeting
- B. Review of Credit Card Statement
- C. Receive Monthly Financial Highlight Report
- D. Receive Victoria Economic Development Corporation (VEDC) Monthly Report

Motion made by Councilman District 6 Barr

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

THAT, in accordance with recommendation of staff, Council hereby approves all consent agenda items as listed.

Seconded by Councilman District 1 Smith

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

VIII. ACTION ITEMS - (Council will consider/discuss the following items and take any action deemed necessary)

1. **Consider approval of the Annual Comprehensive Financial Report (ACFR) for the Fiscal Year ending September 30, 2022, prepared by the Audit Firm of Pattillo, Brown & Hill, L.L.P. Presenter is Susan Lang**

Finance Director Lang advised Council that the City is required to engage in an independent audit of its financial statement on an annual basis. The City's financial statements were audited by the public accounting firm of Pattillo, Brown & Hill, L.L.P. (PBH).

The results of the audit and highlights of the City's financial position were shared with the Finance Committee on April 24, 2023. Present at the meeting were City Council members Tim Dent, Jerry Smith and Allen Tippit. City staff included Interim City Manager Jody Weaver and Finance Director Susan Lang. Representatives from PBH reporting the results included Audit Partner, Paula Lowe and Audit Supervisor, Travis Rogers.

The City received an Unqualified Opinion, which is the highest level of assurance that the financial statements are presented fairly, in all material respects, and are presented in accordance with generally accepted accounting principles.

The audited financial statements for the fiscal year ended Sept. 30, 2022 showed an increase in total Net Position, which may serve over time as a useful indicator of a government's financial position, of \$1,919,576. Additionally, the combined governmental ending fund balances for the year ended 9/30/22 were \$10,243,050. The City's general fund, which is the major operating fund for the city, had an unassigned fund balance of \$7,701,244, or 66% of the total general fund expenditures. This represents a healthy reserve.

Motion made by Councilman District 1 Smith

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

THAT, in accordance with recommendation of staff, Council hereby approves the Annual Comprehensive Financial Report (ACFR) for the Fiscal Year ending September 30, 2022, prepared by the Audit Firm of Pattillo, Brown & Hill, L.L.P.

Seconded by Councilwoman District 4 (Mayor Pro Tem) Padron

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

2. **Consider ratification of Amended Bank Depository Agreement, Depository Pledge Agreement, and Securities Account Control Agreement between the City of Port Lavaca, First National Bank in Port Lavaca and Pershing, a BNY Mellon Company for a five (5) year period effective February 01, 2023. Presenter is Jody Weaver**

Interim City Manager Weaver advised Council that the City approved and executed a depository agreement and depository pledge agreement with First National Bank (FNB) on January 9, 2023 to be effective February 1, 2023 for a term of five (5) years. The agreement was forwarded to the bank for execution by the remaining parties, which included First National Bank in Port Lavaca, and Pershing, a BNY Mellon Company (Pershing).

On March 14, 2023, staff was informed by First National Bank that the Pledged Collateral agreement the city had previously provided to the bank for review in December, 2022 would not be acceptable to Pershing. Instead, Pershing offered a Securities Account Control Agreement for consideration.

The City was provided an alternative agreement furnished by Pershing, and as a result, there was a need to amend the Depository Agreement and Depository Pledge Agreement in order to insert language which referred to the Securities Account Control Agreement.

Members of the Finance Committee were involved in the review of the documents as well as the City's Attorney. These documents were ultimately approved and executed by all parties.

Proper agreements are not only required by Federal and State law, they also provide the mechanism to ensure the City's funds are fully collateralized in the event of a bank failure. Without the proper agreements in place, the City would only receive the \$250,000.00 FDIC insurance as a recovery of all funds deposited in the bank.

Additionally, the implications on the city's annual audit would include a finding in the government auditing standards report due to the City not being in compliance with a state law to have all deposits properly collateralized, with not disclosures mentioning that all cash deposits were not properly collateralized.

Motion made by Councilman District 5 Ward

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

THAT, in accordance with recommendation of staff, Council hereby approves ratification of Amended Bank Depository Agreement, Depository Pledge Agreement, and Securities Account Control Agreement between the City of Port Lavaca, First National Bank in Port Lavaca and Pershing, a BNY Mellon Company for a five (5) year period affective February 01, 2023.

Seconded by Councilman District 2 Dent

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

3. **Consider appointment/reappointment of member(s) to Port Commission to fill term-expired vacancy('s) and/or start a new term. Presenter is Jody Weaver**

Interim City Manager Weaver advised Council that the term of current board members of the Port Commission will be expiring in May 2023. They have all expressed a desire to be reappointed for a new two-year term. The members in question are Alex Davila, Mike McGuire, Jim O'Neil, Larry Nichols and Mike Kovarek.

Motion made by Councilman District 2 Dent

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

THAT, Council hereby approves reappointment of Alex Davila, Mike McGuire, Jim O'Neil, Larry Nichols and Mike Kovarek to the Port Commission for each to serve two-year terms.

Seconded by Councilman District 1 Smith

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

4. **Consider Resolution No. R-050823-1 of the City of Port Lavaca, Texas finding that AEP Texas Inc.'s application to amend its Distribution Cost Recovery Factors (DCRF) to increase distribution rates within the city should be denied; authorizing participation with the cities served by AEP Texas; authorizing hiring of legal counsel; finding that the city's reasonable rate case expenses shall be reimbursed by the company; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to the company and legal counsel. Presenter is Anne Marie Odefey**

Motion made by Councilman District 3 Tippit

WHEREAS, the City of Port Lavaca, Texas ("City") is an electric utility customer of AEP Texas Inc. ("AEP" or "Company"), and a regulatory authority with an interest in the rates and charges of AEP; and

WHEREAS, the City is a member of the Cities Served by AEP ("Cities"), a membership of similarly situated cities served by AEP that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in AEP's service area; and

WHEREAS, on or about April 5, 2023 AEP filed with the City an Application to Amend its Distribution Cost Recovery Factor ("DCRF"), PUC Docket No. 54824, seeking to increase electric distribution rates by approximately \$39.7 million (an approximately \$1.63 increase to the average residential customer's bill from the rates just approved in the Company's most recent DCRF case) and impose a Rider Mobile TEE Facilities to recover \$30.67 million (an approximately \$1.30 increase to the average residential customer's bill) related to mobile generation facilities; and

WHEREAS, all electric utility customers residing in the City will be impacted by this ratemaking proceeding if it is granted; and

WHEREAS, Cities are coordinating its review of AEP's DCRF filing with designated attorneys and consultants to resolve issues in the Company's application; and

WHEREAS, Cities members and attorneys recommend that members deny the DCRF.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

Section 1. That the City is authorized to participate with Cities in PUC Docket No. 54824.

Section 2. That subject to the right to terminate employment at any time, the City of hereby authorizes the hiring of the law firm of Lloyd Gosselink and consultants to negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.

Section 3. That the rates proposed by AEP to be recovered through its DCRF and Rider Mobile TEEE Facilities charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

Section 4. That the Company shall continue to charge its existing rates to customers within the City.

Section 5. That the City's reasonable rate case expenses shall be reimbursed in full by AEP within 30 days of presentation of an invoice to AEP.

Section 6. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 7. That a copy of this Resolution shall be sent to Leila Melhem, American Electric Power Service Corporation, 400 West 15th Street, Suite 1520, Austin, Texas 78701 and to Thomas Brocato, General Counsel to the Cities, at Lloyd Gosselink Rochelle & Townsend, 816 Congress Ave., Suite 1900, Austin, Texas 78701.

Seconded by Councilman District 5 Ward

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

5. **Consider Resolution No. R-050823-2 of the City of Port Lavaca, Texas to approve Annual Review of the City of Port Lavaca's Investment Policy and Strategy. Presenter is Susan Lang**

Finance Director Lang advised Council that as a requirement of the Texas Public Funds Investment Act and as per the City's Investment Policy and Strategy, the City shall perform an annual review of the investment policy. On Monday, April 24, 2023, the City's Finance & Investment Committee convened to review the current investment policy and found the proposed policy with changes to be adequate for the City's needs. Staff and the Finance Committee recommends approval of the annual review of the City's Investment Policy and Strategy by Resolution No. R-050823-2, a copy which is on file in the Office of the City Secretary, in its entirety.

Motion made by Councilman District 2 Dent

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

THAT, in accordance with recommendation of staff and the Finance Committee, Council hereby approves Resolution No. R-050823-2 of the City of Port Lavaca, Texas to approve Annual Review of the City of Port Lavaca's Investment Policy and Strategy.

Seconded by Councilman District 3 Tippit

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

6. **Consider Resolution No. R-050823-3 of the City of Port Lavaca, Texas to adopt the City of Port Lavaca's Budgetary and Financial Management Policies for the 2023-2024 Fiscal Year. Presenter is Susan Lang**

Finance Director Lang advised Council that as a pre-cursor to the annual budget process, the Budgetary & Financial Management Policies of the City were reviewed by the Finance committee meeting on April 24, 2023. Staff and the Finance Committee recommends approval of the City of Port Lavaca's Budgetary and Financial Management Policies for the 2023-2024 Fiscal Year by Resolution No. R-050823-3, a copy which is on file in the Office of the City Secretary, in its entirety.

Motion made by Councilman District 3 Tippit

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

THAT, in accordance with recommendation of staff, Council hereby approves Resolution No. R-050823-3 of the City of Port Lavaca, Texas to adopt the City of Port Lavaca's Budgetary and Financial Management Policies for the 2023-2024 Fiscal Year.

Seconded by Councilman District 5 Ward

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

7. **Consider Resolution No. R-050823-4 of the City of Port Lavaca, Texas to adopt the Sidewalk Plan as part of the City of Port Lavaca's Comprehensive Plan adopted by Ordinance No. G-9-16 on September 12, 2016. Presenter is Jody Weaver**

Motion made by Councilman District 5 Ward

WHEREAS, a well-planned sidewalk/shared use path system helps to provide an affordable mode of transportation available to all citizens and is an effective tool to encourage non-vehicular mobility and promote a healthy lifestyle; and

WHEREAS, the City of Port Lavaca Comprehensive Plan recommends the City adopt a Sidewalk Master Plan to ensure pedestrian safety and connectivity in the City; and

WHEREAS, a Sidewalk Master Plan will guide City staff, property owners and developers in determining where sidewalks are needed to create an effective network of sidewalks and shared use paths within the City; and

WHEREAS, the City Council of the City of Port Lavaca, Texas finds it to be in the public interest to adopt the Sidewalk Master Plan as presented; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS;

THAT, the City Council adopts the Sidewalk Master Plan to guide the City in future planning and decision-making regarding the placement and construction of sidewalks and shared use paths, the provisions of which shall be as set forth on the City's website on the Comprehensive Plan page labeled "Port Lavaca Sidewalk Plan – May 2023".

Seconded by Councilman District 6 Barr

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

8. **Consider Resolution No. R-050823-5 of the City of Port Lavaca, Texas to prepare and submit Grant applications to the Texas General Land Office (GLO) Coastal Erosion Planning & Response Act (CEPRA) Cycle 13 and Commitment of Public Funds as required for match for the following projects: Harbor of Refuge Protection and Restoration and Lighthouse Beach Restoration. Presenter is Jody Weaver**

Motion made by Councilman District 3 Tippit

WHEREAS, the City of Port Lavaca is a coastal community sitting on the shores of Lavaca Bay, a northwestern extension of the Matagorda Bay ecosystem and is committed to the long-term protection and enhancement of our coastal and natural resources; and

WHEREAS, the Texas General Land Office (GLO) administers the Coastal Erosion Planning Response Act (CEPRA) Program in Texas to provide state legislature appropriated grant funds to worthy coastal jurisdictions through the review of submitted project goal summary applications and subsequent award of project grant funds; and

WHEREAS, the Harbor of Refuge Protection and Restoration Project is included in the GLO 2023 Coastal Resiliency Masterplan as one of 121 projects prioritized as Tier 1 by the Texas General Land Office through close input from a Technical Advisory Committee (TAC) to mitigate issues that negatively impact the Texas coast; and

WHEREAS, in recognition of the critical importance of Port Lavaca's coastal natural resources to all residents and visitors to the Texas coast, the potential availability to leverage local dollars with State and Federal funds, the societal benefits to current and future generations of Texans, the City of Port Lavaca City Council considers it fitting and proper to commit local dollars as required match funds toward for the implementation of these critical shoreline protection projects and provide public access to the same; and

WHEREAS, The Matagorda Bay Mitigation Trust, whose mission is to support and fund environmental mitigation projects, studies, and initiatives in the Matagorda and San Antonio Bay ecosystems, has generously awarded the City of Port Lavaca a \$200,000.00 grant to go towards the required match dollars of a potential CEPRA grant award.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS;

THAT, the City Council hereby approves and supports the submission of two (2) CEPRA Cycle 13 grant applications to solicit funding for the following essential projects and hereby also commits to establish and maintain public access to said shorelines:

- 1) Harbor of Refuge Protection and Restoration, Phase 1 including preliminary engineering, permitting, and final design with a commitment of \$275,200.00 of local match dollars, \$200,000.00 of which is the generous grant from the Matagorda Bay Mitigation Trust Fund.
- 2) Lighthouse Beach Restoration Project feasibility study, with a commitment of \$50,000.00 of local match dollars.

The City Manager is hereby authorized to execute any and all applications and contract forms as necessary, dedicate/secure the required cash match, and coordinate staff's efforts to submit the approved Project Goal Summary grant applications to the General Land Office.

Seconded by Councilman District 1 Smith

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

9. **Consider Resolution No. R-050823-6 of the City of Port Lavaca, Texas supporting City of Port Lavaca's Application to the Texas Department of Transportation's (TxDOT) 2023 Transportation Alternatives Set-Aside (TA) Program. Presenter is Jody Weaver**

Motion made by Councilman District 5 Ward

WHEREAS, the Texas Department of Transportation issued a call for projects in December 2022 for communities to apply for funding assistance through the Transportation Alternatives Set-Aside (TA) Program; and

WHEREAS, the TA funds may be used for development of preliminary engineering (plans, specifications, and estimates and environmental documentation) and construction of pedestrian and/or bicycle infrastructure. The TA funds require a local match, comprised of cash or Transportation Development Credits (TDCs), if eligible. The City of Port Lavaca would be responsible for all non-reimbursable costs and 100% of overruns, if any, for TA funds; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

THAT, the City of Port Lavaca supports funding this project as described in the 2023 TA Detailed Application (including the preliminary engineering budget, if any, construction budget, the department's direct state cost for oversight, and the required local match, if any) and is willing to commit to the project's development, implementation, construction, maintenance, management, and financing. The City of Port Lavaca is willing and able to enter into an agreement with the department by resolution or ordinance, should the project be selected for funding.

Seconded by Councilwoman District 4 (Mayor Pro Tem) Padron

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

10. **Consider recommendation of Planning Board for approval of a single-lot Final minor plat, Sylvia Pina Mendoza Life Estate Subdivision, located at 914 Schooley Street, CAD Pin #54708. Presenter is Derrick Smith**

Development Services Director Smith advised Council that the applicant for the proposed subdivision was deeded the land. With the probate, Sylvia Pina Mendoza was provided the land under CAD PIN 54708 with the remainder to a family member. Ms. Mendoza is now legally platting the property to obtain proper building permits for a remodel and addition to her home. He said the applicant has also obtained proper permits for the re-route of utilities. An easement has been created and new meters have been set to separate the residential dwelling from the multi-family dwelling located off-premises. The Planning Board has approved this request.

Motion made by Councilwoman District 4 (Mayor Pro Tem) Padron

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

THAT, in accordance with recommendation of the Planning Board and staff, Council hereby approves a single-lot Final minor plat, Sylvia Pina Mendoza Life Estate Subdivision, located at 914 Schooley Street, CAD Pin #54708.

Seconded by Councilman District 6 Barr

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

11. **Consider recommendation of Planning Board for approval of a conceptual retail store; to be located on 1207 W. Austin Street, legal description for the lot is Burkeshire Subdivision (PL), Lot PT 6, Acres 1.327, Property identification #10081. Presenter is Derrick Smith**

Development Services Director Smith advised Council that the applicant is proposing to construct a Dollar General on the site. The proposed structure will be 12,644 square feet with 50 parking spaces. Smith said the developer contacted him to confirm that the property had been platted and water/wastewater availability for the site. The Planning Board has approved the conceptual retail store to be located at 1207 W. Austin.

Justin Weaver was in attendance and commented to Council that he had reservations about a General Dollar Store opening up for business so near his own business on W. Austin Street.

Motion made by Councilman District 5 Ward

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS:

THAT, in accordance with recommendation of the Planning Board and staff, Council hereby approves a conceptual retail store; to be located on 1207 W. Austin Street, legal description for the lot is Burkeshire Subdivision (PL), Lot PT 6, Acres 1.327, Property identification #10081.

Seconded by Councilman District 2 Dent

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

IX. ADJOURNMENT

Mayor asked for motion to adjourn.

Motion made by Councilman District 5 Ward

Seconded by Councilman District 6 Barr

Voting Yea:

Councilman District 1 Smith, Councilman District 2 Dent, Councilman District 3 Tippit, Councilwoman District 4 (Mayor Pro Tem) Padron, Councilman District 5 Ward, Councilman District 6 Barr

Meeting adjourned at 7:40 p.m.

ATTEST:

Jack Whitlow, Mayor

Mandy Grant, City Secretary