

State of Texas

County of Brazoria

City of Angleton

The City of Angleton, Texas City Council conducted its Regular Monthly Meeting at 6 p.m., Tuesday, June 23, 2009, with the following in attendance:

Rudy Santos	Mayor Pro Tem
Jason Perez	Councilman
Gregg Dykes	Councilman
John Wright	Councilman
Randy Rhyne	Councilman

OTHERS PRESENT:

Greg Smith	City Manager
Herbert L. Prouty	Interim City Attorney
Shelly Deisher	City Secretary
Herb Smith	City Engineer
David Ashburn	Chief of Police
Chris Saddler	Parks Department
Patti Worfe	Economic Development Director
Robert Heinemeyer	Public Works Director
Tina Taylor	
Robert Owens	Director

And those listed on the guest registry.

1. CALL TO ORDER BY MAYOR PRO TEM SANTOS AT 6:00 p.m.
2. Pledge of Allegiance.
3. Moment of Silent Reflection/Prayer.
4. **Ceremonial presentations-**
  - A. Yard of the Month-Brenda and Gene Smith on North Plantation
  - B. Business of the Month- Chef Marc Anthony's on Hwy 35

5. **Citizens wishing to address council:** Judy Shaefer is in support of this ordinance. We were a victim of peddler in town. Came to American Legion...Cummings Tool set. Called them back after much research. Stated they would replace it. They did not find one at the time. Finally had to drive to Houston to the warranty place. These guys need to be controlled and monitored. I appreciate this ordinance.
6. **Requests to address Council other than citizenry.** None.
7. **Consent items:**
  - A. Minutes from June 9, 2009 meeting.
  - B. Ratify accounts payable.
  - C. Declare Police Unit 39, 2003 Chevrolet Impala as surplus and storage building from city inventory as surplus.

Motion by Councilman Perez to approve all consent items.  
Second by Councilman Rhyne.

Motion passes with 5 for; 0 against.

**ACTION ITEMS:**

8. Discussion and possible action on Resolution of 2009 Angleton Ladycat Softball Team.  
  
Motion by Councilman Dykes to approve Resolution of 2009 Angleton Ladycat Softball Team;  
Second by Councilman Rhyne.  
  
Motion passes with 5 for; 0 against.
9. Presentation of Resolution to 2009 Angleton Ladycat Softball Team.  
  
A break of five minutes was taken to take pictures of the Ladycat Softball Team with City Council.
10. Discussion of ORDINANCE NO. 2009-O-6A, AN ORDINANCE OF THE CITY OF ANGLETON, TEXAS AMENDING ORDINANCE NO. 2008-0-9B AND SECTION 5-19 OF THE CODE OF ORDINANCES OF THE CITY OF ANGLETON ESTABLISHING REGISTRATION REQUIREMENTS FOR CONTRACTORS,

SUBCONTRACTORS AND ANYONE DOING CONSTRUCTION, REPAIR WORK, LABOR OR CONSTRUCTION SERVICES WITHIN THE CITY TO REGISTER WITH THE CITY AND TO PROVIDE PROOF OF LIABILITY INSURANCE OR TO BE LICENSED BY THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION; ESTABLISHING AN EXPIRATION DATE OF ONE YEAR FROM THE DATE OF ISSUANCE OF THE CERTIFICATE OF REGISTRATION; ESTABLISHING A REGISTRATION FEE; PROVIDING EXEMPTIONS; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 FOR EACH VIOLATION AND MAKING EACH DAY OR PORTION OF A DAY THE VIOLATION CONTINUES A SEPARATE VIOLATION; PROVIDING FOR AN OPEN MEETINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER AND A SAVINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE CLAUSE AND FOR OTHER PURPOSES.

Greg Smith: This was originally passed in September of last year to protect our residents from contractors who do not have insurance after Hurricane Ike. This was the initial intent. After Herb came, there needs to be modifications. We have registration for TRCC if the contractors are registered with them. Any regulations that TRCC has, we are making it to where they will follow their TRCC rules.

Herb Prouty: Basically, the ordinance increases the amount of the insurance to be consistent with city's liability under the Texas Tort Claims Act. Makes provision that financial sound insurance company be the one who issues the insurance for the contractor; provides for due process if the contractor wants to appeal process of the contractor; provides standards for revocation; expands the exemptions of homeowner or homeowners' employees or relatives who work. This expands it.

Greg Smith: Maintenance employees or residents who work for other entities to get a product ready, would be exempt because they are considered maintenance workers, not contractor.

Herb Prouty: Will include that as an additional exemption after we bring it back.

Mayor Pro Tem Santos: Have we had any complaints since September? What kind of example do you have coming to council?

Greg Smith: One contractor did not want to have to buy liability insurance policy, but it was an ordinance and to get an exemption, he would have to appeal to council which was going to delay construction, so he got his liability insurance policy back into effect. This gives our residents protection. This makes it where the contractors must be registered or have liability insurance. It is an either/or situation. I have only been made aware of one situation and none have come to city council.

Mayor Pro Tem Santos: I want to clarify this...you say either/or. If he has a TRCC certificate, he does not have to have liability insurance?

Greg Smith: One or the other.

Herb Prouty: I will defer to Robert, but how the Ordinance is written now, it requires both if you are not exempt. In other words, the contractor (Robert, you correct me if I am wrong)...if he is registered with TRCC...no, he doesn't. If he is registered with the Texas Commission, then he doesn't have to have insurance or doesn't have to register with us. He does have to register with us and have insurance if he is not registered with TRCC or if he is not a homeowner that is doing his own affairs.

Councilman Rhyne: If he is not registered or even if he is registered but still does not have to have any insurance, how does that still protect our citizens?

Herb Prouty: If he is registered with Texas Commission, there are certain rules and guidelines that they have to follow. I think there are continuing education requirements they have to meet. We are really depending on state commission to regulate those contractors. There are ongoing requirements they have to meet.

Councilman Wright: Where do I go to see the requirements of TRCC?

Robert Owens: Search for TRCC and it will come up. Another difference on the insurance part of TRCC registration, is those are homebuilders and they carry risk insurance. There is a

difference between the two insurances.

Herbert Prouty: I thought the citation is in ordinance to find it.

Mayor Pro Tem Santos: It there an exam that you take to get a TRCC certificate?

Owens: No. Have to register and sign an agreement to mediation if there are problems.

Councilman Wright: Herb, you said something in your statement that further provided for definition of financially sound insurance....define financially sound for me.

Herb Prouty: Financially sound is if you look under Section 2 on the second page under A...seventh line from top...liability policy shall be issued by an insurance company in the State of Texas having at least an A- rating with Best Rate Carriers. An A- rating is considered a very good rating for an insurance company and indicates financial stability.

Greg Smith: This is strictly a discussion item. We are going to try to get everything clarified and questions asked by citizens. Will make needed changes and bring it to you next time for your approval.

Councilman Dykes: So you are going to clarify whether they have any insurance through the Commission, and if you don't...This is saying they don't have to have liability insurance if they are registered with TRCC.

Greg Smith: I think that is the intent of this Ordinance. If they are registered with TRCC they don't have to have additional insurance.

Councilman Dykes: But they don't necessarily have liability insurance by being a member of that?

Greg Smith: Most do have risk insurance because most of the TRCC registrants are...

Councilman Dykes: have risk policy to protect what they are building, but we are talking about liability, if they cause damage, then we are leaving the homeowner out like Councilman Rhyne said.

Herb Prouty: True. It is not a requirement under TRCC.

Robert Owens: Most all subs that work under the contractors, such as electricians, plumbers, and air conditioning people all have to carry liability insurance under their licenses.

Councilman Wright: If they are registered with TRCC and certification runs out, how do we know before the next year...if they are registered with TRCC, they don't have to register with us, correct, so if their registration I runs out...

Robert Owens: We always ask for their registration and they show us their card.

Councilman Wright: So you are keeping up with them, even though they are...

Robert Owens: There is an expiration date on the card and always ask for proof. We write that card number down on the application.

Greg Smith: So if they present that card and they are invalid, they would be falsifying government documents.

Councilman Wright: I am saying if it was only valid for another two months they straddle the year.

Mayor Pro Tem Santos: It is presented at every permit that they pull.

Herb Prouty: We have standards to revoke it and that would be one of the things if they present false information that they are registered and they are not, then we would require them to register with us..

Robert Owens: Check valid registration online while they are registering.

11. Discussion of ORDINANCE NO. 2009-O-6B, AN ORDINANCE OF THE CITY OF ANGLETON, TEXAS AMENDING CHAPTER 18 OF CODE OF ORDINANCES OF THE CITY OF ANGLETON BY REPEALING THE CURRENT CHAPTER 18 IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 18 REGULATING THE CONDUCT

OF PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS WITHIN THE CITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR LICENSING AND REGISTRATION; PROVIDING FOR BONDING OF TRANSIENT MERCHANTS; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 PER VIOLATION AND MAKING EACH DAY OR PORTION OF A DAY THAT A VIOLATION CONTINUES A SEPARATE VIOLATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING AN OPEN MEETINGS CLAUSE; PROVIDING FOR OTHER PURPOSES AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Pro Tem Santos: Remember, this is for discussion only.

Greg Smith: This ordinance is something we have been talking about for a while. Had complaints from business owners and citizens dealing with peddlers. Hours of operations, mode of operations, setting up roadside in people's parking lots. We have looked at it. There was a committee...Jamae Bowman with Keep Angleton Beautiful, myself and Mannie Sanchez and we came up with guidelines we would like to come up with. This is the first draft. If the solicitor is properly licensed to sell in the State of Texas and are selling something door to door, we need to collect that sales tax if it is taxable. They must show they have a valid sales tax certificate and we are listed as who they are paying as a recipient. It is point of sale right now with Texas on sales tax. City is where you have to collect sales tax. This is first major difference. Requirements are a lot more stringent. Getting actual description, permanent address, any other names they operate in, giving city more time to grant license to do proper background checks. Will issue ID with picture. Be very clear they are not City of Angleton employee, but will be able to tell they are licensed. Sets hours of operation. Gives us a lot more ability to control. On the side of setting up in someone's parking lot, a lot more information is going to be needed...including survey, letter of permission from property owner, hard off-street surface to park on that is either asphalt or concrete...not just gravel. Must provide restroom facilities. All business owners in the city must provide these. It is injustice to our business to let someone come up and start selling these things without having the proper facilities. If we deny the permit, will have 30 days to make appeal. Have denied because of background checks. Each individual have to go through back ground checks and

pay fee. Designed to letting these people come into town and just knocking on the door. Make sure they are legitimate companies. There are exemptions...boy scouts, girl scouts, school and youth organizations. If you are not selling door to door, just issuing information door to door, you do not permit them.

PROUTY: If they are advocating religion associated with freedom of speech, and not selling anything or selling incidental to what they are advocating, are not required to register with the City. This is to protect people from fraud and misrepresentation. Transient merchants are required to put up a bond from \$10,000 to \$25,000 dollars to protect against misrepresentation and fraud. If they make a fraudulent misrepresentation on the product they are selling, then the citizen through the City has the right to access that bond to recover any damages.

Greg Smith: 9 a.m. to 7 p.m. are the hours of operation.

Councilman Wright: Seven days a week?

Greg Smith: Right now, seven days a week. Questions have been asked to disallow on Sundays. Transient merchant would probably be more apt to do on Saturday and Sunday. We need guidance from council.

Councilman Rhyne: I personally don't want anyone knocking on my door at 10 a.m on Sunday. Sunday is my family day.

Herb Prouty: We can do the Sunday provision. If you post a notice on your door "no peddlers or solicitors", that is an offense if they try to knock at your door and that is any time.

Councilman Rhyne: Is that provision in this ordinance?

Herb Prouty: Yes it is.

Councilman Perez: Isn't that wording more specific than going to WalMart and buying a "no soliciting sign"? I noticed it was more specific to size and wording.

Herb Prouty: Correct. It does have specific specific language that it has to be a certain size and wording. The lettering has

to be a certain size. To make sure the sign is big enough to where the solicitor can see it.

Greg Smith: Time period for procedural issues is 5 days after they submit their application. The City Manager or designee must make a determination if application is complete. If the application is incomplete, they have five days to get complete. We have 10 business days after completion to grant a license. Fee is \$50. Each ID is \$15.00. Incurred cost will be granted back to PD to provide for supplies incurred for IDs. All of the process will be done here. Will email picture to PD.

Mayor Pro Tem Santos: Duration of permit is 21 days?

Smith: Yes, sir.

Santos: When they re-apply, will they go through the same criteria, background checks and everything? Pay another \$50.00. When it expires they will have to go through the whole process again?

Smith: Yes, sir. If police officer sees one without ID, they can call us and we can pull their permit right then and revoke it. The ordinance states if they violate any part of the ordinance, their permit will be pulled.

Mayor Pro Tem Santos: Is ID going to have expiration date?

Greg Smith: Yes, sir.

Mayor Pro Tem Santos: If we have a police officer to confront one on the 31 days, you get a ticket today?

Greg Smith: Yes, sir. We do not want anyone to believe that City of Angleton is endorsing or promoting their solicitation with our name on it. Probably will not have our logo on it.

Councilman Rhyne: I am not sure that I have a problem with the City's logo being on it because when the citizens look at it, when they get one with say...register's peddler on it, then are they going to make one on their own?

Smith: You are right. We could do the City ID as a watermark where they would have to have access to that logo for their ID.

Would be hard to be reproduced.

Mayor Pro Tem Santos: It is pretty fancy little outfit that comes in and puts in a full two page ad. How is the local landowner involved? I am sure they are paying him a fairly good sum of money for renting the grounds. Does he come pull the permit or does the transient merchant pull the permit?

Greg Smith: Transient merchant will pull the permit because we have to make sure he is collecting the sales tax. The property owner will never pull the permit.

Mayor Pro Tem Santos: There is no way we can go to the property owner and tag him for any violation?

Councilman Perez: Letter of permission will be the OK from the landowner which will be our check and balance.

Smith: It may actually become a little harder to keep up with. Trash service may not be able to set up for two days. If there is litter and trash, then property owner is responsible for it. The property owner definitely has an interest in what is going on. We will create our own forms. We must have survey.

Councilman Rhyne: Most of the time I have seen it, VFW or America Legion Hall have had them. I am sure they are paid for the parking lot and the building too. With a paved parking on that, are we now throwing those people out? That is probably the only income they have.

Greg Smith: The purpose of the hard surface is to follow and coincide with current ordinances. If they were exempt from the hard surface before the ordinance, they may be able to be exempt. May need to address that specifically regarding the hard surface.

Robert Owens: There is a difference between setting up in a parking lot and leasing a building in town. There is certain accountability.

Greg Smith: We will try to better identify the terminology.

Mayor Pro Tem Santos: Seen it at fairgrounds parking lot. Seen it at the old Weingarten's parking lot.

Greg Smith: Fairgrounds is exempt because they are outside the city limits.

Perez: If we have festivals downtown, how are those affected?

Herb Prouty: City-wide, civic events are exempt. If they are recognized city events, they are exempt.

Greg Smith: I do have a concern about the sales tax with those also. Businesses are collecting sales tax. Those dollars should come to the city. We should be following up on those specifically for sales tax.

Councilman Wright: It is not in this ordinance, correct?

Greg Smith: They are exempt because it is a city-wide festival.

Councilman Perez: So if it is a church doing the festival...Serendipity...and they have crafters set up out there, they are also excused if it is a non-profit church and they are in their church or parking lot?

Herb Smith: I am going to have to find that provision. There are a number of exemptions, including religious and non-profit organizations.

Greg Smith: Section 18.3 talks about exemptions.

Herb Prouty: If it is council's wish that those type things be exempt, we can re-write this.

Councilman Wright: Section 18.3 item c, number 15: a list of most recent locations where applicant has conducted business. If this person is filing an application for the first time and not ever had any previous locations..

Greg Smith: If this is the first time then he puts non-applicable. But if he puts non-applicable and we find out he has been somewhere else, his permit will be revoke because he falsified a government document.

Herb Prouty: Or he wouldn't be granted a license in the first place. Going back to Councilman Perez's questions, in 18.2(J), it exempts any special event which makes a significant

contribution to the culture, economic or social welfare of the City if sponsored or organized by the City, Chamber of Commerce, city civic organization which could include nonprofit, school, other governmental entity and religious and charitable organizations it would be a non-profit, then it would be exempt.

Councilman Perez: What does this do to the Schwann man?

Herb Prouty: There is an exemption in the ordinance for delivering goods, everything from...especially agricultural products, people who are delivering goods such as newspapers, meat...

Councilman Perez: But the question is...he takes those orders, he has his client list online, and he stops and asks if you want to buy something, he is peddling...he is soliciting.

Herb Prouty: If he is doing that, then he may have to apply for a license. If he is just delivering based on a delivery route, there is an exemption for that.

Councilman Wright: Item C, Section 18.2...states he is exempt. If he is trying to establish a route, then he is exempt.

Councilman Dykes: Covers portable food stands...portable BBQ hut for the weekend?

Herb Prouty: It does. The thing that it doesn't cover that is exempt is a farmer or someone who has produced their own food, that is exempt under state law.

Mayor Pro Tem Santos: What about the guy fishing and selling fish and shrimp?

Herb Prouty: Would probably have to have license.

Greg Smith: I think there are things we have left out that need to be addressed.

Councilman Rhyne: I think it is a real good start.

Mayor Pro Tem Santos: Compared to other cities, is \$50.00 a reasonable amount to charge for administration fees?

Greg Smith: Yes. In other cities, you can't get anything less than \$100.00.

Herb Prouty: You can see from the length of these questions, the staff is going to have to do some checking.

Greg Smith: We have had several that we denied due to their background. We have had a lot of drug possession and crimes against people that have wanted to be door-to-door solicitors and we have absolutely denied them. We will continue to deny them. We do a good job to try to protect. This will help eliminate those that shouldn't be selling. We'll make modifications and bring this ordinance back to you at the end of July or first of August.

12. Discussion and possible action on approval of bid from Matula & Matula Construction, Inc. for the proposed 8" water main along Tinsley Street.

Greg Smith: This came in way under budget. The budget was \$100,000. Bid price was \$41,000. My recommendation with the remainder of that money is to bring it back to council to go back and complete Western Avenue. Had to stop project short and this will help us achieve that.

Mayor Pro Tem Santos: Actually it was the same contractor, wasn't it?

Greg Smith: Yes.

Mayor Pro Tem Santos: do you think we can use the same unit prices?

Greg Smith: We will have to start over and ask.

Councilman Wright: I have to ask a fair question. I beat up on you when you are over budget, I want to ask a legitimate question when you are under budget too. Why is there such a difference between Matula & Matula and the other guys? I see the main line item, the 8" water main, but I want to know why it is significantly less?

Greg Smith: Are you asking why we budgeted \$100,000 and it

came in at \$41,000?

Herb Smith: He wants to know the difference between the two bidders.

Councilman Wright: Both would be good answers.

Herb Smith: Matula is a very aggressive bidder and (inaudible) time period. He bid between 40 and 60% below the second bidder and below our budget in the last three bids he has done. (Inaudible). He just seems to be prepared.

Councilman Wright: I also know that in the past he has come back for a lot of change orders too.

Mayor Pro Tem Santos: I believe the scope of work is well defined in his numbers. If it goes beyond the scope of work, then it should be a legitimate change orders. Is there any contingency in this Herb?

Herb Smith: Not the way it is structured now. We don't anticipate...very small job. (Inaudible) It should be pretty straight forward.

Councilman Wright: Greg, you were going to talk about the \$100,000 verses...

Greg Smith; Yes, the \$100,000 was a number that was \$50,000 from last year's budget rolled into this year's \$50,000 budget. It was not an engineered budget. It was just a number from the \$50,000 we used last year to try to make a better impact on this year's budget. No budgetary consideration of unit price when we set that \$100,000. We wanted to get \$100,000 worth of work done.

Mayor Pro Tem Santos: I need a motion, counsel.

Motion by Councilman Perez to approve bid from Matula & Matula for proposed amount on 8" water line and ask that City staff go and look to see what we can do with the remaining balance of that budget to do more work at Western Avenue sewer area.

Second by Councilman Wright.

Motion passes with 5 for; 0 against.

13. Discussion and possible action on variance to the noise ordinance to conduct a benefit for Charles (Shorty) Sigovia on July 18, 2009, beginning at 5:00 p.m. at The Ice House.

Councilman Wright: When does it end?

Jessie Graham (son of Jackie Graham, owner of The Ice House is representing his mother) As you know, the icehouse has put on many benefits for citizens in the past. We would like to continue to do that to help them out. This was brought to us by the participants to have bands outside the building during the day. This would be pertaining to four bands outside during the day. Would be finished outside before nightfall. We can designate a time if council sees fit. Other bands would be inside building as they normally would be on Friday or Saturday evening. Basically, we are asking that if a permit is required for having that activity during the day.

Mayor Pro Tem Santos: I don't think a permit is required, only a variance to the noise ordinance.

Herb: Yes, that is how it has been presented as a request for a variance to the noise ordinance. I think Councilmember Wright had a good point. You do need to establish an ending time.

Mayor Pro Tem Santos: Last time, it was a really nice benefit you had and council was literally thrown under the bus by the representatives that came up here and asked for that. I don't know if she was a dispatcher or police officer, but had several complaints. Angleton Dispatch would say that council let them do it. We don't want to go through that again. We can work through this, I believe. Chief, you are going to have to help us out here. If this gets approved and we have an ending time of say...what's fair...11:00? If your dispatcher gets a call you work for us and you tell that dispatcher to call you and you go handle it. Can you do that?

Chief Ashburn: Shut it down? We had a lot of complaints last time.

Mayor Pro Tem Santos: Yeah, they threw us under the bus.

Chief Ashburn: That is my concern this time. You can say that you are going to control it, but that noise echos all through the neighborhoods.

Mayor Pro Tem Santos: If that happens over there, what about you controlling the crowd? We don't want to start getting people thrown in jail because the cops come and say hey, you have to shut it down. We don't want to go through that venture either, Jessie.

Mr. Graham: As always, on an event like this, we will have off-duty Angleton police officers on site. I think the issue is where the bands are outside. The building does muffle some of the sound, but it does get loud at times. Having these bands outside during the day, is that going to be an issue? Otherwise, there really isn't an issue having the band inside the building which we do on a weekly basis.

Greg Smith: One of the complaints we had was when you give a variance to the noise ordinance, at what level is the variance no longer good? Complaints were that it wasn't just loud, it was shaking their houses. Variance does not put a top level what is allowed by the variance. Need to address this. What level of noise is the issue.

Councilman Perez: When we got the packet online, there was a Good Neighbor letter attached that had decibel levels on it.

Robert Owens: State law says that anything above 86 decibels is considered to be a nuisance. Jackie has bought a sound meter.

Councilman Perez: Maybe that is what we need to look at. If it gets at this level, all bets are off.

Councilman Dykes: Was this good neighbor letter policy enforced at the last one we gave the variance on?

Mayor Pro Tem Santos: I don't think so.

Councilman Dykes: It wasn't presented to us. I just wondered if ya'll had it.

Graham: I am not aware of that.

Greg Smith: With all due respect to the owners of the Ice House, the last variance request was by the people who were putting on the benefit, not the Ice House itself. This is a totally difference situation.

Mayor Pro Tem Santos: Who would be the arbitrator for the decibel meter?

Graham: Security which would be the off-duty police officers that are onsite.

Mayor Pro Tem Santos: They are working for the Ice House?

Councilman Wright: We got burned on the last variance we gave. If we grant one this time, it has to have some parameters this time.

Mayor Pro Tem Santos: It has got to work this time, because if it doesn't, it probably won't ever work.

Councilman Rhyne: Good Neighbor policy says it will not peak greater than 85 decibels outside of the Ice House.

Graham: That is not quite possible, actually.

Councilman Rhyne: That is what I thought. I thought that is why you are here asking for something so they can go to 100 decibels or whatever on the outside.

Graham: On a regular Friday or Sat night, we don't come to council for permit.

Councilman Rhyne: But those are inside your building.

Graham: Those are inside the building. We are asking for four additional bands to play one hour each and we can't get them in there. There is no room. Wanted to do that in the daylight hours, say from.... (female in audience: 5-9 I believe. Auction should be over by 5).

Graham: Bands do not normally start until 9 inside the building on the weekends. Basically asking to have those bands outside until 9:00. Other bands are really irrelevant

because it would be a normal business operation at that point. If council sees fit and 9:00 is not good, we can talk...definitely up to your discretion.

Councilman Dykes: Any complaints from Best Western on a regular Friday or Saturday night?

Chief Ashburn: A few times we have had to go over there when there has been a band playing extra loud and tell them and usually they can turn it down and we don't get any more phone calls. Sometimes even inside the building it gets loud.

Councilman Dykes: You made a point to put the stage pointing away from the residents.

Graham: That is what we have discussed..actually facing the highway and not directing toward the other residents around. The residents are within a quarter mile. Depends on weather and which way the wind is blowing. We are trying to direct it to the highway during the day. We don't want to disturb the public. This is what the benefit group brought to us. We are coming to ya'll to see if it is possible to do.

Councilman Wright: Do our officers on duty have a decibel reader with them?

Chief: No, but we may need to check into getting one.

Graham: The meter we have is certified.

Councilman Wright: Councilman Dykes and I were looking at something that caught our attention. It says that the band shall measure the sound created by the band. We want to make sure that is not what happens here. We want someone separate to have control.

Graham: As owners of the Ice House, we would have control of that situation and to bring that level down as required.

Chief Ashburn: Will want something written up so we don't throw anyone under the bus because we will get calls.

Mayor Pro Tem Santos: We have a decibel reader and decibel of 85-100. We have a certified piece of machinery. We have

off-duty police officers enforcing state law. Where does it tell me where this meter has to be? How far from the stage? On the road...on the door.

Graham: We normally measure it outside of the last possible seat.

Mayor Pro Tem Santos: Is that a fair place to measure from?

Greg Smith: Last sentence of Good Neighbor Policy states decibel shall not exceed 100 dba inside and shall at no time steadily or peak greater than 85 dba outside.

Graham: What is outside defined?

Greg Smith: And what is steady defined as? You can get into a lot of technical terms. If it ever exceeds 85, does that mean it gets shut down?

Councilman Rhyne: That is what they are requesting the variance to exceed the 85 outside so these other bands can play.

Councilman Dykes: This is a different weekend than the softball tournament, right?

Graham: Normally, with the band inside the Ice House, if you run your decibel meter at the last seating position on the outside perimeter, it maintains about 85 to 90 decibels.

Councilman Rhyne: I understand that, but you are not talking about bands inside the building. You are talking about bands out in the parking lot or however you are going to put them. There is no barrier between the band and the outside. The noise variance you are asking for is to be able to crank it up to 100 or better or that you are going to be able to (1) exceed state law and (2) exceed what your Good Neighbor Policy is for the bands to play outside your building. Is that correct?

Graham: No sir, that is not what we are asking for. We are asking for them to play out there and keep the decibel level within the same boundary as inside the building.

Greg Smith: Even on a normal Friday or Saturday night, if the

band is inside the Ice House, we have complaints from miles away. You can hear their music as far away as Heritage Oaks. Have complaints on a regular basis.

Graham: As well as you can hear the high school band playing at a football game.

Mayor Pro Tem Santos: This is the first I have seen the Good Neighbor policy. We have an Ice House representative asking for a variance.

Councilman Wright: Would you be willing to quit at 8:00 p.m.?

Graham: On the outside?

Councilman Wright: Uh hum.

Graham: I believe we can accommodate that.

Councilman Wright: So, 8 p.m. and the person responsible for the decibel reader would be the off-duty security person responsible for the reading?

Graham: I would prefer it to be Ice House proper, Jackie Graham. (Lady from audience: She is the person who owns the device)

Councilman Wright: She would be the person there with it? She would be the point of contact if there was any issue?

Graham: Yes.

Councilman Wright: Chief, you are saying you would control it if we got a complaint? You would go over there and handle it?

Greg Smith: I think you would need to authorize the police department, if they feel they are disturbing the peace, that the police chief or his designee be able to revoke the variance immediately, on the spot. That was the other issue, you granted the variance without authorizing any city staff to do it, we have no authority to shut it down. If you do grant it, I think there should be some language in the variance authorizing the Police Chief or his designee to immediately revoke the variance if it becomes a public disturbance or

nuisance.

Councilman Wright: I know in the past we were burned the last time. I don't want to say cut it off and say no more, but we need to find a happy medium. I think you have made some strides with the Good Neighbor policy and I think all the groups are pretty aware of what is going on. I think last time everyone thought the variance is there and it is good. I would like to find a way to put language in here that worked for you, worked for us, worked for the police.

Graham: I completely agree. We need to work together on this. We are not trying to take anything out of bounds here. We want to continue to do the benefits for the people that need them.

Motion by Councilman Wright to approve noise variance subject to it is only until 8:00 p.m.; grant police chief or designee at the police department to revoke the variance if it is out of hand and it is measured and the point of contact is Jackie of the Ice House and she is measuring it while each band is performing.

Second by Councilman Perez.

Graham: I just want to make sure I understand it completely. We are going to allow the bands until 8 p.m. outside under the ordinance.

Councilman Wright: That is right.

Graham: and after that point and time, the bands inside still fall under normal regulations.

Councilman Wright: That is right.

Mayor Pro Tem Santos: This variance will be null and void after 8 p.m. if you don't have any incidents between 5 and 8.

Graham: What if it started at 4:00 instead of 5:00? Is that a problem?

Councilman Rhyne: We are changing the rules already?

Graham: No not trying to change the rules, just wanted it to

go longer. There are four bands at an hour apiece.

Lady from audience: Go from 4 to 8 instead of 5 to 9.

Mayor Pro Tem Santos: I have got a motion and a second.

Councilman Wright: The wording on the agenda says 5.

Herb Prouty: That is correct, but you can change it if you want to an earlier time. That gives the public notice that you are discussing that but the public would be notified that you might vary it.

Amend motion by Councilman Wright to change the hours between the hours of 4 to 8:00.

Graham: Thank you sir.

Amended second by Councilman Perez to his original motion.

Councilman Dykes: Are we still discussing?

Mayor Pro Tem Santos: We are still in discussion.

Councilman Dykes: We are probably still going to end up with some tread marks. I am a little more comfortable with it being earlier in the day and having a definite cut-off time. We do need to help certain people that are having big problems. We would probably have a lot less discussion if we started at 11 in the morning until 3 in the afternoon. People have a lot less issues with having it in the middle of the day.

Graham: In the future, I think we can look at that. I think that is an excellent idea.

Councilman Rhyne: Is there a decibel level for outside? When you grant that variance for inside the city, the 86 decibel on the state law is now out the window.

Graham: We are willing to accept any decibel level outside.

Mayor Pro Tem Santos: According to y our agreement, it is not to exceed 100 decibels.

Graham: I am not sure what the state regulation is.

Councilman Rhyne: It is 86 decibels outside. Anything that exceeds that is considered a violation of state law. Once we do this, we are by-passing that.

Councilman Wright: Not yet, because we can still amend the motion. I think we have given the chief's group the authority to revoke and authorization if it exceeds and becomes a complaint. I think we have the wording to protect that if it is really a nuisance.

Graham: So even if we are maintaining an 86 decibel level outside, and we get complaints, we can still get the provision revoked?

Councilman Wright: I don't think you can do that. Chief, can that happen if they are falling underneath the state guidelines, would you still be able to shut them down?

Chief Ashburn: Usually when you go out the first time, they usually turn it down and we don't shut them down.

Graham: If we are running at the 85 decibel range, and we are continuing to get calls, is that going to affect us?

Councilman Rhyne: I personally don't think that will affect you because the state law allows you to do 85 up to 86. I just don't want to see 110 decibels measured at my house which is about four blocks away.

Mayor Pro Tem Santos: I have a motion and an amended motion with seconds. Do we want to put a number out there for the decibel not to exceed state law?

Herb Prouty: I think that would be the best because obviously if the decibals are exceeding state law, that would give the Chief the authority to shut it down.

Second amended motion from Councilman Wright that decibel level shall not exceed state law of 86 decibels outside;  
Second amended Second motion by Councilman Perez.

Mayor Pro Tem Santos: I am still in discussion mode.

Councilman Wright: This is why I am glad we are working through this. You can see we are trying to help ya'll and you need to do everything on your end to help us. It is for a good cause and that is what it boils down to.

Graham: I appreciate everything ya'll are doing. We are not trying to be loud but I understand the situation as well.

Motions pass with 5 for; 0 against.

14. Discussion and possible action on approval of ORDINANCE NO. 2009-O-6F, AN ORDINANCE OF THE CITY OF ANGLETON, TEXAS AMENDING CHAPTER 2 OF THE CITY OF ANGLETON CODE OF ORDINANCES "ADMINISTRATION" TO PROVIDE FOR THE KEEPING OF RECORDS OF OPEN MEETINGS AND EXECUTIVE SESSIONS OF THE CITY COUNCIL IN ACCORDANCE WITH THE TEXAS OPEN MEETINGS ACT AND OTHER APPLICABLE LAWS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN OPEN MEETINGS CLAUSE; PROVIDING AN EFFECTIVE DATE CLAUSE AND PROVIDING FOR OTHER PURPOSES.

Greg Smith: This ordinance brings our code of ordinances to meet state law and what is currently allowed under the Open Meetings Act. This is to keep us in compliance with state law.

Herb Prouty: Gives you flexibility in case state law changes. Still are required to record and keep records in accordance to state law and you won't have to change the ordinance.

Motion by Councilman Wright to approve Ordinance No. 2009-O-6F;  
Second by Councilman Rhyne.

Motion passes with 5 for; 0 against.

15. Discussion and possible action on approval of ORDINANCE NO. 2009-O-6H, AN ORDINANCE OF THE CITY OF ANGLETON, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH PERDUE, BRANDON, FIELDER, COLLINS & MOTT, LLP FOR THE COLLECTION OF DELINQUENT COURT FEES AND FINES; PROVIDING FOR A FEE TO DEFRAY COSTS OF COLLECTING

DELINQUENT FINES, FEES, AND OTHER DEBTS PURSUANT TO ARTICLE 103.0031 OF THE TEXAS CODE OF CRIMINAL PROCEDURE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN OPEN MEETINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

Greg Smith: This is something we have talked about before. Law Firm already does tax collection and lien collection. This will allow them to collect court fees, etc. Did fabulous job with liens on property. Staff recommends approval. Mike Darlow of the firm is here if you have any questions. This does not cost the City anything. Fees will be passed on to individual who owes fees. This is allowable by state law to collect these fees and pass it on to the individual. This is another method to get these fees collected. Been waiting for several months to bring this to you.

Motion by Councilman Perez to approve Ordinance No. 2009-O-6H;  
Second by Councilman Dykes.

Councilman Perez: What do we think is sitting out there to be collected?

Tina Taylor: \$4,582.00 in actual (inaudible), \$1,362,000 outstanding.

Darlow: A lot have not been adjudicated as guilty. Part of our job is to get them in to the court. Hopefully, they will pay. They have the right to have a trial or for the court to find them indigent and waive it. We don't get paid unless there is money collected. I would like to tell you that you will see numbers like in tax collection, in the 70-80% range, but it's not true. We will be down in the teens and 20's. This is very hard collection. Most of these people that have tickets don't live here. We do a tremendous amount of address research to find these people and getting them to come in and take care of their debt to the city.

Councilman Rhyne: Is this anything like you do for the county?

Darlow: Yes. We do this for the JP court, the County and District Courts.

Tina: We do Omni right now.

Darlow: This is just another tool. With Omni, it is a great tool, except you only get your license renewed every six years. Omni is not going to do anything to get that collected right away. That is where we step in and make phone calls and write letters. Will provide you with a report around December.

Motion passes with 5 for; 0 against.

Short break taken at this time.

16. Discussion and possible action on approval of Interlocal Agreement between Brazoria County and the City of Angleton to overlay the parking lot located on South Chenango, on property owned by the City.

Greg Smith: Overlay for parking across the street for municipal court over-flow. Had to have separate interlocal agreement for that. May get that done in next couple of days, next couple of weeks for sure.

Councilman Wright: This is just for the parking lot, not the road?

Smith: Correct. The price is going down. Will be able to do more roads. One more road is alleyway next to City Hall.

Heinemeyer: The alleyway and this half block in front of Municipal Court also. Normally, the mayor has to sign the interlocal, does it need to be designated for City Manager to sign because mayor is not in town.

Greg Smith: Mayor Pro Tem can sign.

Motion by Councilman Dykes to approve the Interlocal Agreement between Brazoria County and City of Angleton and authorize Mayor Pro Tem Santos to sign.  
Second by Councilman Rhyne.

Motion passes with 5 for; 0 against.

17. Discussion and possible action on appointing a liaison from City

Council to serve on the Senior Citizen Commission Board.

Greg Smith: This position was held by Bonnie Church and so we need to reappoint someone from Council for this position.

Councilman Perez: Since I tried to start that several years ago, I will be obliged to help in that arena.

Motion by Councilman Rhyne to appoint Councilman Perez for the Senior Citizen Commission Board.

Second by Councilman Dykes.

Motion passes with 4 for; 0 against; Perez abstained.

18. Discussion and possible action on appointing three Board Members to the Planning and Zoning Commission.

Greg Smith: Do have some positions coming up in June. They are Henry Munson, Bill Walker and Bette Perry. We are recommended re-appointment of these three members to the Planning and Zoning Commission.

Motion by Councilman Perez to re-appoint the three board members to Planning and Zoning Commission;

Second by Councilman Rhyne.

Motion passes with 5 for; 0 against.

19. Discussion and possible action on appointment of Electrical/Mechanical Appeals and Advisory Board for term 2009-2010.

Greg Smith: All current board members have agreed to serve on the board; they are Robert Owens, Chris Walthall, Drennan Roberts, Mike Ahart, Paul Blaha, Bill Waite, Jr.

Motion by Councilman Dykes to re-appoint all board members to serve on the Electrical/Mechanical Appeals and Advisory Board for term 2009-2010;

Second by Councilman Wright.

Motion passes with 5 for; 0 against.

20. Discussion and possible action on appointment of Keep

Angleton Beautiful (KAB) Board of Directors for terms ending in June, 2009 and for filling the vacancy for Place 4.

Greg Smith: Dorothy Wilbeck, Joe Carrales, Mark Echols and Kathy Dykes are respectively positions 1, 3, 5 and 7 and then an unexpired term for position for, Ellen Eby has applied for that position.

Motion by Councilman Perez to approve the following presented to us, Board of Directors of KAB;  
Second by Councilman Dykes.

Councilman Wright: Do we need to say "and for filling the vacancy"?

Amend motion by Councilman Perez to include vacancy for Position 4;  
Amended motion seconded by Councilman Dykes.

Motion passes with 5 for; 0 against.

21. Discussion and possible action on appointing six (6) Tax Increment Reinvestment Zone (TIRZ) Board of Directors from the City Council members. Board of Director's positions are Chairman, Vice Chairman, Secretary, Assistant Secretary and two remaining positions on the Board.

Greg Smith: This board is the city council as they are elected. In addition, there are two other vacant positions. Other taxing entities have not made appointments within the time period, so we can appoint the other two positions in addition to the City Council.

Mayor Pro Tem Santos: We can appoint the other two positions?

Greg Smith: In addition to the City Council positions. There are two non-city council members. Typically, they come from the other taxing entities in the TIRZ, but they did not make recommendations for appointments.

Councilman Wright: That would be county and drainage district?

Greg Smith: I believe that is correct.

Mayor Pro Tem Santos: So basically we are in, as council.

Greg Smith: You need to make a motion and a second, but yes.

Councilman Rhyne: Are we going to go back and figure out who the other two are? Do we need to come back later and do the other two?

Greg Smith: We can.

Councilman Rhyne: I think it would only be right to have a representative from the County and the Drainage District on the Board also.

Greg Smith: Herb, is there any problem with us going to...

Herb Prouty: No, you can contact them again and ask if they want to be represented. The original ordinance gave a cut-off date for them to nominate someone and at the end of that cut-off date, it is your option to go ahead and make those appointments to any citizen you want to. You are not bound to make performance to the two taxing entities, but we can go back and contact them and see if they are interest. If they are, we can have them give their recommendations and you can go ahead and appoint. If they are not interested, then, as Greg said, you still have those two positions to fill.

Mayor Pro Tem Santos: When was that cut-off date?

Herb Prouty: It was...I think it was the reinvestment zone...what was it Shelly, I think 2004 that it was created and it was sometime in 2005...they had about a year to designate and they chose not to. I don't have the exact date.

Greg Smith: Need to appoint to position of Chairman, Vice Chairman, Secretary and Assistant Secretary. Chairman and Vice Chairman would probably be the mayor and mayor pro tem. Then you would need to appoint Secretary and Asst. Secretary. Then the motion should also request that the City send a letter to the other taxing entities giving them an extension of about 30 days to give a nomination. County will

have to take it before the Commissioner's Board.

Mayor Pro Tem Santos: I will say we will have Secretary as Councilman Dykes and Assistant Secretary as Councilman Wright just because of tenure.

Motion by Councilman Rhyne to appoint Mayor Henry as Chairman, Mayor Pro Tem as Vice Chairman, Secretary to be Councilman Dykes and Assistant Secretary will be Councilman Wright.

Second by Councilman Perez.

Motion passes with 5 for; 0 against.

22. Discussion and possible action on re-appointing three Board Members to expired term positions on the Board of Adjustments.

Greg Smith: Board of Adjustment members are Fred Oberhelman, Sam Carlton and Freddie Archie. Staff Recommends re-appointment of these three members.

Motion by Councilman Wright to re-appoint the three positions to Board of Adjustments;

Second by Councilman Rhyne.

Councilman Rhyne: We have asked them if they want to continue this, right?

Greg Smith: Nods head yes.

Motion passes with 5 for; 0 against.

23. **REPORTS OF BOARD & COMMISSIONS:**

Angleton Parks Board – Did not meet this month; did not have quorum.

Keep Angleton Beautiful – got an award for sustained excellence from Keep Texas Beautiful at recent conference. Scored 90 or higher for three consecutive years on the application for grant but ineligible because we won last year.

24. **Staff Reports & Questions for Staff** – Greg Smith: been notified from BWA that they have switched reservoir. Bad odor and taste to our water for up to next seven days. Taste and

odor will probably not hit until Monday. Received phone call about three today notifying us about this.

Councilman Rhyne: Is there any way we can supplement with our water?

Robert Heinemeyer: Never have been able to completely stifle it.

J. W. Rhyne: I am a citizen of Angleton. Is there any way you can make those people at BWA pay the citizens of Angleton for having to taking that water? They do this to us quite frequently.

25. **Council Information**

Mayor Pro Tem Rudy Santos – none.

Councilman Jason Perez – none.

Councilman Gregg Dykes – none.

Councilman John Wright – Softball is having tournament on July 10.

Councilman Randy Rhyne – any closer to making some use of the back of the water bill for some of the notifications of these things?

Greg Smith: We can absolutely do it, it is just setting up the format and seeing if we want to put in a separate sheet of paper or just turn the bills over and run it back through. The bills only go out once a month and it may be that once the bills go out next time, the 7-10 days about the water notification will be over. We are sending out about 800 emails.

(Councilman Perez left the room at 8:09; returned at 8:11.)

Councilman Rhyne: Since Councilman Perez left the room, should we read the flyer for the benefit for Frenchell Jones?

Councilman Perez entered the room and was asked to read the flyer which stated that the benefit was July 28 at 12:00 at the KC Hall. Live and silent auction, music, raffle, and BBQ plates. She is a life-time resident of Angleton. Worked for the ambulance corp for a few years, the hospital a few years, Brazoria Co. Sheriff's office for a few years. She has a rare lung disorder and has been out of work since August.

26. Council adjourned into executive session at 8:14 p.m.

No action out of executive session.

Adjourn 9:04 p.m.

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J. Patrick Henry, Mayor

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Shelly Deisher, City Secretary