

**City of Alpine  
Special City Council Meeting  
February 12th, 2014  
6:00 P.M.  
Minutes**

- 1. Call to Order, Invocation and Pledge of allegiance to the flag – Mayor Rangra called the City Council meeting to order.**
  
- 2. Determination of a quorum and proof of notice of the meeting – There was a quorum present. Mayor Rangra, Councilors Bermudez, Davidson, Fitzgerald, Gonzales and Castelli were present. The City Secretary said the notice had been posted at 5:00 P.M. on February 7<sup>th</sup>, 2014. City Manager Zimmer, City Attorney William “Mick” McKamie (by teleprompter) and City Secretary Taylor were also present.**
  
- 3. Presentations, recognitions and proclamations – None**
  
- 4. Reports –**
  - City Mayor’s Report -**
  
  - City Attorney Report –**
  
  - City Manager Report –**
  
  - City Staff Updates –**
  
- 5. Citizens Comments (on agenda items) –**

**Judge Schlosser – said she wanted to speak on the item placed on the agenda by your city manager, #10. She said she did inform the City Manager that her second term would be ending in March of 2014 and that it was time to renew. She said typically when we renew it goes on the agenda and the council votes. She said her comment about this item is that you really don’t have an opening until you vote and if you don’t vote she is automatically renewed. She said her suggestion to the council is to put off posting any job until you know if you are going to have an opening or not. She said she is in the process of preparing a report to come to council. She said it is not ready today and she would like the council to have that when the council reviews her because they have been doing a lot of really great things over in the court and they went online with credit card payments today. She said they had their first payment online today. She said in the next few days there will be a link on the Alpine Web Page showing that**

online payments and credit card payments are available both by phone at a 1-800 number and also online. Mayor Rangra asked if Mayor Schlosser was talking about item 10. Judge Schlosser said yes, she was talking about item 10. Mayor Rangra said this does not have anything about what you are talking about. Judge Schlosser said she was suggesting that the Council might want to put this item off because there are a lot of things that she would like to report to the Council on and she gave one example and it is really premature to vote on advertising a position that there is no opening for. She said she does realize that you will want to and she did suggest to Mr. Zimmer that the council might not want to wait until March, if the council is not going to renew her, to advertise because you do not want to have a vacancy there. She said it will automatically renew her if you have not voted by then. She said what really needs to go on the agenda is a renewal. Mayor Rangra said he hates to interfere but this is not about Judge Schlosser or anybody but we just authorize the city manager to advertise for the position. Mayor Rangra said it is not about Judge Schlosser. Judge Schlosser said she was sorry but it was about her. Mayor Rangra said we need to stick to the item. Judge Schlosser said she was sticking to the item and it was relevant. Mayor Rangra said he had to stick to the wording. Judge Schlosser said she assured him that it was within the purview of this item because it is frankly illegal for you to advertise a position that is not open or that is not going to be open and you do not know if it is going to be open until you vote. She said she is suggesting to the Council that you might want to put that on before you vote on this.

**6. Public Hearings – None**

**7. Consent Agenda – (Minutes, Financial reports, Department Written Reports, board appointments, etc.) – None**

**8. Information or Discussion items – None**

**Action Items to be accompanied by a brief statement of facts, including where funds are coming from, if applicable. (Action items limited to 15 per meeting.) –**

**9. Discuss and Consider approving the first reading of Ordinance 2014-02-01, an Ordinance of the City Council, of the City of Alpine, Texas amending the FY 2013-2014 Budget for the City of Alpine, Texas. (E. Zimmer, CM) – City Manager Zimmer said with regards to our last Council meeting on February 4<sup>th</sup>, we reviewed the budget at that time with our revisions and from the public we received a valuable comment that discussed going through the ordinance process as indicated by our charter so we set up this meeting to basically to have the first reading of the ordinance. He said those have been provided to the council, the ordinance along with all of the revisions that were in the council's packet. He said we have also provided copies to**

website as well. He said if the council would like he could read the ordinance so it would be read into record from this meeting. Councilor Fitzgerald asked if we actually had to read the ordinance. He asked Mick, the City Attorney if reading it was necessary. Mick McKamie, the City Attorney (who was present by teleprompter) said reading the caption of the ordinance was sufficient. City Manager Zimmer said Ordinance 2014-02-01, amending Fiscal Year 2013/2014 Budget for the City of Alpine, Texas. He said it was an Ordinance of the City Council of the City Council of the City of Alpine, Texas amending the Fiscal year 2013/2014 Budget for the City of Alpine, Texas. Motion was made by Councilor Davidson, by Resolution 2014-02-07, to approve the first reading of the Ordinance. Motion was seconded by Councilor Bermudez. There was no discussion from the audience on the amendment. Motion carried unanimously.

10. Discuss and Consider authorizing the City Manager to advertise for the position of Municipal Judge for the City of Alpine. (E. Zimmer, CM) – City Manager Zimmer said the reason for the item on the agenda is because as we were putting together the agenda, for this special meeting, there was some discussion between the city secretary and himself on the term as it related to our existing Municipal Judge and whether it expired in March of 2014 or as the charter indicates, the Judge’s term would run consecutive with the term of the Mayor. He said with that being said, last fall the Council had requested the Interim City Manager who was Molly Taylor at the time, to advertise for the City Attorney position when there was an opening. He said his thought on putting this on the agenda was to ask the Council whether they wanted the City manager to post this position in the newspaper and post it publically, reading specifically in the charter, 4.05 – c, it indicates that the Mayor would nominate and the Council would approve the Municipal Judge for a two year term to run consecutively with the Mayor. He said the charter does not specifically outline how the advertising is to take place or how those nominations would come forward so merely here, he is just suggesting that if the Council would like the City Manager to advertise for this position, we certainly would do so on behalf of the Mayor and the Council. He said that is the reason for this item. Mayor Rangra asked the Council if they had any questions. Councilor Fitzgerald said he could appreciate the City Manager trying to pro act on this so that we don’t have a gap in who is Municipal Judge but he can see Judge Schlosser’s point too. He said it could be a little bit “the cart before the horse”. He said maybe we ought to just keep her on the agenda and evaluate her and then if there is one we still have time between now and then if we don’t vote to keep her, we still have time until the end of her term to advertise. He said she makes a good point that there is no opening. Mayor Rangra asked what the charter said. The City Manager said the Charter states that the Mayor nominates and the Council approves for a two year term to run consecutive with the Mayor’s term. Mayor Rangra said

that would mean that May, 2014 of this year, after the election, the Mayor will nominate. City Manager Zimmer said it does not state whether it is done prior to or post election but in talking with Barbara with Mick McKamie's office, she had indicated that it is important that the Council just be consistent on this. He said he also spoke about this with Mick McKamie as well. He said if you are nominating and then approving prior to a new Mayor going in then you would keep consistent on that or if you were waiting until a new Mayor came in and did it afterwards, that you kept consistent every two years. He said he did not know if Mick would like to make any further statement on that. Mick McKamie, City Attorney said he thought you could nominate and approve the term of appointment on either side of the term of office date and that does not change the date of the term of office. He said for instance, if it is concurrent with the Mayor's term, that date would be the start of the term of office regardless of when the position was filled, because at the end of the term there is a vacancy. He said it could be filled on an interim basis, of course, but he thinks the council should just adopt a policy. He said the council may have some other appointments as well that are Mayoral appointments approved by the Council that have similar issues. He said it is just a matter of being consistent. Mayor Rangra asked when this appointment started. The City Manager said Judge Schlosser's current appointment started in March of 2012. Mayor Rangra said the Mayor comes in, in May. The City Manager said the Mayor comes in, in May. Mayor Rangra said the new Mayor. The City Manager said correct. Mayor Rangra said the question is that this would only be for March and April and May until the Mayor appoints one or nominates one? The City Manager said if you don't and you take no action on it, then you would basically reappoint Judge Schlosser. He said he is not the lawyer in this and Mick would answer the question more than him but in May of 2012, with no action, because there was no further action basically saying that Judge Schlosser was appointed through May of 2014. He said you were two months off cycle in March of 2012. Councilor Bermudez said at their meeting that they just came back from this weekend, they were talking about the Municipal Judge who is over the court. She said they asked the question because they were kind of confused. She said they told them if there is a vacancy which is what there was when Judge Schlosser came in, before the election in May, from that March to May, she is allowed to stay and then if there is no vote to keep her or not, she is automatically in, but if there is a nomination and vote, he or she may or may not be appointed. She said the Mayor has the power to nominate and then the council approves and appoints. She said in other words, they told the instructors at the meeting that there was going to be a council meeting where we might advertise for the position. She said you can do that. She said the Judge could send in her resume for this position. Councilor Gonzales said that is what he heard too. Councilor Bermudez said that is exactly what the City Manager was saying right now. City Manager Zimmer said he was also thinking that the period of time in hiring

of the City Manager and the period of time of hiring of the City Attorney was approximately three months for the City Manager and the City Attorney was approximately three and one half months and so if the Council was going to take any action proactively they would want to start considering at this point. He said as far as Judge Schlosser, he was not making any sort of any negative connotation towards her but what he would tell the council was that our court session in January, the docket, went very well. He said it has nothing to do with how the court is running. He said he was just trying to give the council the opportunity to say as we are working to get everything back in alignment, here is an item to consider. He said he was also not going to take this to the council or to the Mayor individually. He said he felt like it would be healthy to discuss this in a session like this and that was why he put it on the agenda. Councilor Gonzales said he was reading 4.05 – c and it talks about compensation. He said his understanding is that now we have a different system that is going to require a lawyer to be the Municipal Judge and asked if that was correct. The City Manager said because we are a court of record, yes, it does have to be an attorney, as the Municipal Judge. Councilor Gonzales asked if the City Manager was also going to advertise how much compensation would be offered. The City Manager said he would not make that determination. He said that would be determined by the Council as to the level of compensation. He said you can always put commensurate with expectations and experience and that leaves it very open. Councilor Bermudez said one of the things that she was wanting to put on the next agenda. She said it was one of the things they learned. She said they were told that small cities do not really need a court of record. She said it costs money to have a court of record. She said they were told that big cities do need one. She said she was thinking that maybe we could bring this back to the council to reverse this court of record ordinance. She said then we would not need a lawyer to be Municipal Judge. The City Manager said that would impact the advertising. Councilor Davidson was laughing and said he thought it was funny to have a Municipal Judge who is not an attorney. Councilor Gonzales said we have had one before. Councilor Fitzgerald said the last one was Judge Blackley. It was mentioned that the Judge before that one was not an attorney. Mayor Rangra said Judge Schlosser stated that “there is no vacancy”. He said he wanted to pursue that. He said if there is not a vacancy there is no need to advertise. He said the question is when you read the charter it says that it starts with the Mayor’s term. He asked when the vacancy took place. The City Manager said the charter states that the Mayor would nominate and the Council would approve to run a term consecutively with the Mayor. He said so reading that, knowing that the Mayors term starts in the even numbered years, in May of the even numbered years (he asked Mick to correct him if he was wrong), but it would be safe to say that the term for the Municipal Judge would run in May of 2014 to May of 2016. Mayor Rangra said when Councilor Bermudez and Gonzales were at the meeting, and they told the instructors that our

Municipal Judge was appointed in March and no action is taken, it will automatically renew the Judge for two years, which would be March of 2016. The City Manager said what he would explain as far as is there a vacancy or not, he has not been a City Manager up until this point. He said he has never been a Municipal Judge but he has worked in organizations where he has had to reapply for a job every year to three years and so depending on the requirements of the organization it is not uncommon for people to reapply for positions. He said he is not stating that is what our charter in Alpine says. He said our charter says that the Municipal Judge is nominated by the Mayor and appointed by the Council to run at a term consecutive with the Mayor's term. Councilor Davidson said to clarify this in his mind, what he is hearing is that although the City Charter of the City of Alpine is not the highest law of the land and does not supersede other laws but what he has seen is that in March of 2010 the City Council interviewed any number of people and whether any of those people there knew it or not, what they were doing was indeed hiring a municipal judge to serve the unfilled term of the previous one that had resigned. He said whether that was on the agenda and they knew it or not. He asked the City Attorney if that was right since we had a charter that dictated how this works. He said what the city did, was to hire a municipal judge to serve out the remainder of that term and then therefore by not taking any further steps defacto appointed the standing judge for the two year term that began in May of 2010. Mick said he would be happy to research that issue. He said he had not researched the appointment dates or anything like that but he can tell the council that both the Charter and the City Ordinance that created a court of record specified two year terms and that means two years. He said there is of course a hold over provision in the State Constitution that an officer serves as a holdover until their successor is appointed and qualified to fill the position but nonetheless the term expires after two years. He said you are correct that there are some higher laws than the City Charter but not many. He said state statutes are not unless they clearly indicate so. He said the home rule city charter is on the same level of dignity as a state law. He said in this case there is a general statute for cities to use to create a Municipal Court of Record. He said it prescribes that you have to create a two or four year term. He said in our ordinance created a two year term for a court of record. He said the rest of the provisions in the city ordinance are similar to the state law. He said there is no conflict with the state law so he believes that the charter provisions apply and you can read in harmony, the state law and the city charter so that the two year term is concurrent with that of the Mayor. He said when that is used in the City Charter that means the regular office of Mayor. He said so that if the Mayor is elected according to the Charter in even numbered years, that would also serve as the period of the term for the Judge. He said it would be most appropriate for there to be a

reappointment every two years because the term expires. He said if there were an appointment in March, which he believed they just referred to, then it would be an interim appointment until the May term began, the May two year term under the city charter and then it would continue for two years. He said if no new appointment is made at the end of the two years than that judge or officer would continue to perform the duties of the job but would be beyond their term of office. He said there will be a vacancy, under the terms of the charter at the end of the two year term, whenever that is. He said in this case he believes the charter makes it very clear that the end of the two year term will be when the new Mayor's term begins. He said he thinks it would be most appropriate to reappoint or appoint a new officer, whatever the council's wish is, at that time. He said and again, an appointment in this case, out of the charter, is by the Mayor with the approval by the Council. He said he did not know if he had answered that question adequately but that is what he thinks. He said he has not seen the original appointment dates, but in general that is the way it works. Councilor Fitzgerald said when he came on the Council the first time, after Gerald Raun died, he fulfilled the rest of his first term, but that did not alter the election cycle of Ward 3 council race. He said the election was always in May. Councilor Bermudez said right now the Council does not have anything to do with it. She asked the Mayor if he was going to appoint or bring someone before us. Mayor Rangra said the election is coming and we do not know what will happen in the Mayor election. He asked if we could just go ahead and not take any action on this item. Mick said it was up to the Council. He said it was like any other agenda item. He said the City Manager put this on the agenda for the Council's information. Mayor said if we do not take any action on this item then the new Mayor in May still has the flexibility to nominate a new person or re-nominate the current judge. Mick said that was the way the charter reads. The Mayor said the reason the City Manager has this item on the agenda is so that there is a list of candidates for the new Mayor in May. He asked if that is why the City Manager put this item on the agenda. The City Manager said he put this item on the agenda for two reasons. He said number one was so that we would have this discussion. He said so we walk out of this room with clarity. He said he feels good that we have had a healthy discussion. He said number two was based on the outcome of the discussion if there was a need to advertise, which he is not feeling like, based on this discussion there is, that would have been part two. He said most importantly it was to have this discussion in an open council meeting and not people thinking or having some idea of what needs to happen. He said we have the attorney, all the council, the mayor and the city manager and the standing municipal judge is here. He said he thinks it has been a healthy and transparent discussion. He said he thinks it is important for the Judge too to have this dialogue and understand this. Councilor Gonzales asked if there was a time period after the Mayor has been elected that we need to do this. Mick said not really. He said you know this is a pretty common issue in all home

rule cities where you have these kinds of terms that come up when the new mayor comes on board. He said it is just a matter of custom. He said your officers are appointed in the way that the municipal court judge would be here, would hold over until their successor is appointed and qualified. He said it is just a matter of as soon as you feel comfortable doing that. He said some cities do it for the first meeting after the new Mayor is sworn in. He said some do it in different ways. He said it is up to the council to set that policy. Councilor Gonzales said he is referring to the time when it becomes automatic and she or he becomes the Municipal Judge if they chose not to do anything. Mick said there is no automatic reappointment when there is a definite term of office. He said the term is two years, clearly, under the charter and under the ordinance. He said it expires at the end of two years. He said there must be a reappointment for another two year term. He said it is not a continuing appointment. Mayor Rangra asked if we needed to reappoint, again going back and rehashing it. He said this term is over, as he is saying, and the two year appointment started in March of 2012. Mayor Rangra said it is over in March of 2014. He asked if we needed to reappoint in March of 2014 to fill the incomplete term or just leave it at that and let the new Mayor worry about it. Mick said he thought it was pointed out earlier that from March until May of 2012, it was an interim appointment, because it was not concurrent with the Mayor's term. He said there would be a need for a reappointment when the new Mayor's term starts in May of 2014. Mayor Rangra asked if everyone understood. Motion was made by Councilor Fitzgerald to table this item. Motion was seconded by Councilor Bermudez. Dale Christopherson said he was very interested in the discussion that we had. Judge Schlosser said she researched this issue when the Mayor brought it up the last time he and she spoke about it. She said with all due respect a term is a term and the state statutes can conflict with the charter. She said in this case the term begins the day she takes office. She said she was voted in to a term in March of 2010 and it expired two years later, it was renewed and that one will expire in March of 2014. She said every bit of research that she has, and she has a whole folder on it, indicates that she needs to be reappointed in March of 2014 or she will have a two year term. She said the council is getting two different legal opinions. She said she did research this thoroughly when the Mayor asked her about it six months or a year ago. She said the council might want to take a look at the case law and might want to take a look at what has been written out there. She said she thinks there is a way to reconcile your conflict with your charter and the statute which says the term begins when you are appointed and it runs for two years. She said that would mean that you would probably need to rewrite the charter to say that when the term begins the Mayor will nominate and the Council will vote on it. She said the issue is when does the term begin and that is a legal definition. She said in all of the Municipal Court Records and cases that she has pulled off Municipal Education for education site and all the cases she has pulled indicate that you cannot contravene with that two year statute. She

said since the statute says it has to be two or four years then you get appointed and it goes to the end of that two years. She said that is the interpretation that the Municipal Court Education Center has taken and they have spoken out on it verbally and in writing. She said she does not want there to be any confusion when it comes up in May. She said her position will be that she was renewed in March. She said the opportunity occurs in March and not in May. She said maybe you should get something in writing from the Attorney and she will be glad to forward to Mr. Zimmer all of the cases and opinions on this issue but it looks as if your charter is in direct conflict with the statute which says that terms last two years. She said there is no interim term in the statute. She said there is nothing to allow an interim term. She said her interpretation of the statute is that every two years from the time that she is appointed to the end of that two year period you need to appoint her and here is the danger. She said if you do not reappoint her in March and you let it sit until May what could happen is with all the cases that are decided between March and May, someone could come in and say you have no authorized sitting judge at that time and they could have all of that set aside. She said she has to tell the Council that the March docket looks like they are going to have several thousand cases on it and she would hate to redo them because they are going back on the docket and picking up 5,000 pending cases that have been left and mismanaged by the prior judge and the prior clerks. She said they are going to get all of those cases taken care of and closed in the next couple of months. She said she did about 300 of them today and put them in the system and they are going to be heard at the March docket. She said by the time the March docket occurs they will probably have a couple of thousand cases on that docket. She said her concern is that if she is correct and your attorney is wrong and you don't appoint her in March what could happen is that she could be sitting there until May and things could be happening and you would have no legal judge presiding and that is her concern. She said she is not worried about the council doing the right thing but she is really worried about that interpretation. She said of course someone would have to raise it and she will not do it. She said she will wait until May and do whatever they wish. She said her concern is that someone will say that you do not have a legal sitting judge. She said she thinks a written opinion on this would be advisable. Mayor Rangra said the Council is constantly told that they need to listen to their lawyer and he is sure that the new Mayor will keep that in mind. He said you have heard the comments from Judge Schlosser and he is sure that he will do some research on that and help the new Mayor whoever he or she will be. Motion carried unanimously.

11. Citizens Comments (limit 3 minutes) – none
12. Council Member's Comments and Answers – none
13. Executive Session – none

**14. Action – Executive Session – none**

**15. Adjournment – Meeting was adjourned upon the motion of Councilor Davidson and seconded by Councilor Fitzgerald. Motion carried unanimously and meeting was adjourned.**

I certify that this notice was posted at 5:00 P.M. on February 7th, 2014, 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.

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Dr. Avinash Rangra, Mayor

Attest:

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Margaret "Molly" Taylor, City Secretary

I, Margaret "Molly" Taylor, City Secretary, do certify that this notice was posted at 5:00 P.M on February 7th, 2014, and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Margaret "Molly" Taylor, City Secretary