

CITY OF KEMPNER

**SPECIAL CALLED MEETING
FRIDAY, MAY 7, 2021 AT 6:00 PM**

**Notice is hereby given:
THE CITY COUNCIL WILL CONVENE IN A SPECIAL CALLED MEETING IN COUNCIL
CHAMBERS, LOCATED AT 12288 E. Hwy 190 Kempner, Texas 76539.**

1. CALL TO ORDER, INVOCATION AND PLEDGES TO FLAGS

2. NON- ACTION ITEMS

- A. Necessary announcements by the Mayor/ Chair of the Meeting.
- B. Citizen Comments. Any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action can be taken on these items at this meeting.

This is an opportunity for members of the public to suggest the addition of topics for the discussion or to address topics of interest, with presentation limited to three (3) minutes. All speakers will conduct themselves in an orderly and lawful manner. No profane or threatening language will be tolerated. All speakers will be recognized prior to speaking and will announce their name and address for the minutes purpose.

3. ACTION ITEMS

- A. Discussion and possible action to approve Resolution No. E 21-05 #1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KEMPNER, TEXAS, CANVASSING THE ELECTION HELD ON MAY 1, 2021 BY CERTIFYING THE GENERAL ELECTION; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

4. ADJOURNMENT

All items on the agenda are for discussion and/or action. The City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices,) and 551.086 (Economic Development).

The City of Kempner is committed to compliance with the Americans with Disabilities Act (ADA). Reasonable accommodations and equal access to communications will be provided to those who provide notice to the City Secretary at (512) 932-2180 at least 48 hours in advance.

Agenda Posted on Tuesday, May 4, 2021 on or before 10:00 am.

Posted by: David Williams, City Manager

STATE OF TEXAS *

COUNTY OF LAMPASAS *

CITY OF KEMPNER *

BE IT REMEMBERED that on May 7, 2021 the City Council met in City Hall with the following members present: Council Members Jared Jones, John Wilkerson, & Melba Vandever.

The Meeting was called to order at 6:00 pm and the following business was conducted:

1. Call to Order, Invocation and Pledges to the Flags

Roll Call conducted by Place 2, Jared Jones – Place 1, Norm Parker was vacant as the council member has resigned. Place 2, Jared Jones was present, Place 3, John Wilkerson was present, Place 4, Mack Ruskiewicz was not present, Place 5, Melba Vandever was present. The Mayor was not present. With three council members present a quorum for the purposes of canvassing the election was present.

Motion was made by Jared Jones to suspend normal rules of the meeting and to ask that Council Member John Wilkerson chair the meeting as the Mayor and Mayor pro-tem were absent. This motion was 2nd by John Wilkerson, and it was passed unanimously.

Tammy Carroll Martin led the invocation

Pledge of Allegiance/Pledge to the Texas Flag

2. Non- Action Items

A. Comments from the Chair of the Meeting John Wilkerson

Tonight the City of Kempner is holding a special called meeting. For general purposes of transparency, and the protection of the City of Kempner, I wanted to establish the legality of this meeting.

Mr. Williams, did you receive an email from me on Monday, May the 3rd requesting your assistance in my request to hold a special called meeting?

Yes

Did you send out an email to the remainder of the City Council members and the Mayor, advising that a request for a Special Called meeting had been made and asking if they are in support of the Special Called meeting?

Yes

What were the action items requested to be on the special called meeting?

1. *Canvassing the May 2021 elections.*
2. *Installation of newly elected officials.*
3. *Discuss and take action on removing Keith Harvey from all financial accounts for the City of Kempner.*
4. *Discuss and take action on adding David Williams to all financial accounts of the City of Kempner.*
5. *Discuss and take action on adding Mayor Elect John Wilkerson as signatory on financial accounts.*
6. *Discuss and take action on removing Mayor Pro Tem Ruskowitz from all financial accounts.*

Did Mayor Harvey respond to you on this matter?

No

Has Mayor Harvey taken any action from the time you sent the email asking if any other council members supported the meeting to the time you posted the agenda for tonight's meeting?

I am unaware of any actions he has taken beyond posting an agenda for May 11, 2021 that did not include canvassing the election.

To be clear, Mayor Harvey posted an agenda at City Hall the same day this message was sent out, however the posted agenda did not have any of the action items that would permit the Council to canvass the elections and install newly elected people to their respective positions?

Mayor Harvey posted the May 11, 2021 agenda at City Hall that evening after my email was sent. It was not posted to the website until the next morning, that agenda did not mention canvassing the election or installing newly elected people.

Do you know if Mayor Harvey was advised to put these actions on the agenda by the City Attorney?

In a phone conversation I had with our City Attorney Jeff, he told me that he had let the Mayor know we needed to canvas the election by May 12, 2021, and that this conversation was before the Mayor posted the agenda on the building on May 3, 2021 or on the website on May 4, 2021.

To be clear, it is your understanding through your conversation with the City Attorney, that the City Attorney properly advised Mayor Harvey what legally needed to be done, however Mayor Harvey posted an agenda without the necessary items to keep Kempner in compliance with the law?

Yes the City Attorney Jeff told me that when he advised Mayor Harvey of this and that Mayor Harvey indicated that he would revise the agenda by Saturday as he has 'until Saturday to make the changes.'

Lastly, I wanted to ask you about the City Secretary. She is not here tonight, is there a reason for that?

She is on a previously long planned and approved vacation as she is getting married.

Thank you for your information.

Statement by Alderman Wilkerson:

The elections were held on May 1st 2021. The citizens took time out of their schedules to go to the polls and cast their votes for who they wanted to serve the City as leaders within the Community.

The County elections office sent notification to the City Manager of the official results of the elections on Monday, May 3rd 2021 and the City Manager emailed those results out to all the Council members the same date.

Kempner is a Type A General Law municipality, lawfully created through under the provisions of the Texas Constitution. General Law cities are called such because they must follow the general laws enacted by the Texas Legislature. While those laws can at times be cumbersome to understand, it is also the intent of the legislature that must be taken into account when implementing such.

Local Government Code section 22.036 tells us that the newly elected officials shall be installed on the 5th day after the elections (excluding Sundays), however there is also a provision that permits this to occur as soon as thereafter.

Section 22.037 of the Local Government code tells us that the Mayor is the presiding officer over all meetings of the Council. This statute further clarifies in subsections (c) If the mayor fails, is unable, or refuses to act, the president pro tempore shall perform the mayor's duties and is entitled to receive the fees and compensation prescribed for the mayor. (d) If the mayor and the president pro tempore are absent, any alderman may be appointed to preside at the meeting.

Both the Mayor, and the Mayor Pro Tem were made aware of this meeting, and neither are here to preside over this meeting.

Under section 22.038 of the Local government code, the Mayor has the ability to call a special called meeting on his or her own accord. This statute further specifies the Mayor shall call a special called meeting upon request of three Aldermen.

The Texas election code tells us that only two Council Members need be present to establish quorum for the purpose of canvassing the elections, which is the first step in the process to install the newly elected officials.

Texas Law does not permit us to install the newly elected officers in a special called meeting with less than 4 Aldermen present.

In closing with this statement, I wanted it to be clear, and on the record, that each and every Council member sitting here today has complied with the laws of the State of Texas in the organization and attendance of this meeting.

The issue before us tonight is the fact that the voters have spoken at the polls, yet no recognizable action was taken by the current Mayor to ensure the smooth installation of newly elected officials was to be taken in a timely manner, much less in accordance with law. In contrast, we observed the continued pattern of purposeful disregard of law, despite proper legal advice from the city attorney. Due to this, for the protection of the city, the transaction between the City Manager and I, along with this statement will be reduced to writing and reflected accurately in the meeting minutes.

The minutes for tonight's meeting will be sent to Mayor Harvey tonight, so they can be added to the agenda for the approval of the council on the meeting occurring on the 11th.

At the conclusion of tonight's meeting, pursuant to 67.016 of the Texas Election Code, as the presiding officer over this meeting, I will be signing the Certificate of Election for each of the newly elected officials.

I would encourage the newly elected officials to ensure they are qualified for office by next Tuesday, which can be accomplished by signing the documents the City Manager has for you.

B. Citizens Comments

- a. Former Judge Kenneth J. Mahoney spoke to the council saying that interim Judge Marcus cannot sign everything that is required in the city and he offered his services to the city until he moved towards the end of May. He offered his services at no cost to the city.

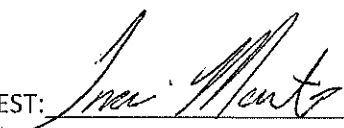
3. Action Items

- a. Discussion and Possible Action to approve resolution No E 21-05 #1
- City Manager presented exhibit A of the resolution reading the vote totals for all positions
 - Motion by Place 2, Jared Jones to accept the results
 - 2nd by Place 5, Melba Vandaveer
 - All in favor, motion carries
 - Motion to approve Resolution No E 21-05#1 by Place 5, Melba Vandaveer
 - 2nd by Place 2, Jared Jones
 - All in favor, motion carries

4. Adjournment

- Motion by Council Member Place 3, John Wilkerson
- 2nd by Place 2 Jared Jones
- All in favor, motion carries

ATTEST:


Assistant City Secretary: Tracie Martin

APPROVE:


Mayor: John (JW) Wilkerson