

# CITY OF DENTON CITY COUNCIL MINUTES

January 12, 2016

After determining that a quorum was present, the City Council convened in a Closed Meeting on Tuesday, January 12, 2016 at 2:00 p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items were considered.

**PRESENT:** Council Member Roden, Council Member Hawkins, Council Member Briggs, Mayor Pro Tem Gregory, Council Member Wazny and Mayor Watts

**ABSENT:** Council Member Johnson.

Mayor Watts opened the meeting at 2:00 with Council moving to Closed Session at 2:03 p.m.

## 1. Closed Meeting

- A. ID 16-013 Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086. Receive a presentation from Denton Municipal Electric staff ("DME") regarding public power competitive and financial matters pertaining to plans, strategies, opportunities, and developments for generation improvements to the DME system; discuss and deliberate strategies regarding same; discuss and deliberate opportunities and strategies for the City to acquire purchased power and enter into agreements regarding the same, in order to meet its future energy needs. Discuss, deliberate and provide Staff with direction.[TMPA]
- B. ID 16-056 Deliberations Regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071. Receive information from staff, discuss, deliberate and provide staff with direction regarding the potential acquisition, exchange, lease or value of real property located generally in the 800 block of East Sycamore in the City of Denton, Denton County, Texas. Consultation with the City's attorneys regarding legal issues associated with the potential real property matter where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.
- C. ID 16-071 Deliberations regarding Real Property - Under Texas Government Code, Section 551.072; and Consultation with Attorneys - Under Texas Government Code, Section 551.071. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the potential purchase of certain real property interests located in the 300 block of East McKinney Street, City of Denton, Denton County, Texas. Consultation with the City's attorneys regarding legal issues associated with the potential acquisition of the real property interests described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.

- D. ID 16-078 Deliberations Regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071. Receive information from staff and discuss, deliberate and provide staff with direction regarding the condemnation of (i) real property located generally west of the 2600 block of South Mayhill Rd. in the City of Denton, Denton County, Texas; and (ii) real property located generally in the 3900 block of Quailcreek Rd. in the City of Denton, Denton County, Texas; where discussions had, deliberation, and direction given, by the Denton City Council in an open meeting would have a detrimental effect on the position of the governmental body in litigation with the property owner. Consultation with the City's attorneys regarding legal issues associated with the condemnation of the real property interests described above; discussion of these legal matters in an open meeting would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in litigation. [Mayhill Road Widening Project]
  
- E. ID 16-067 Consultation with Attorneys - Under Texas Government Code, Section 551.071. Hold a discussion with the City's attorneys and provide direction with regard to City of Denton Ethics provisions and state and federal law and regulations as it concerns ethics matters and regulation of the conduct of public officials. A public discussion of this legal matter would conflict with the duty of the City's Attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

Following the completion of the Closed Meeting, the City Council convened in a 2nd Tuesday Session.

1. Work Session Reports

- A. ID 16-066 Receive a report, hold a discussion, and provide staff direction concerning City of Denton Ethics provisions, and state and federal law, regulations, and policy related to ethics issues and regulation of the conduct of public officials.

Anita Burgess, City Attorney, presented a continuation of her previous ethics discussion at a prior meeting. She reviewed what had been done to date with the Ethics Committee and prior discussions regarding what was covered by current law. The Denton ethics provision including what was the issue needing attention was also reviewed.

Council Member Wazny, Chair of Ethics Commission, made a presentation on conflict of interest for matters before a governing body. She felt state law was not adequate enough for conflict of interest. Her next item concerned contracts with the City of Denton as there was a fiduciary relationship with Council and the Planning and Zoning Commission. The City's ethics policy should also include fiduciary relationships. The recusal regulations from the State lacked strength in terms of the Planning and Zoning Commission and Council. Property ownership contiguous or close to property being considered by a governing body should be included in the conflict of interest including family members and business relationships. In terms of post-employment, Council, the Planning and Zoning Commission and managerial employees should have a two year

waiting period before working for a project if that individual voted on or worked on that project while in office. State law did not address this.

Council discussed capping the amount of personal investment instead of 10%.

Mayor Watts suggested holding another discussion on the specifics presented by Council Member Wazny as it was difficult to do so at this time without adequate preparation.

Council Member Roden asked about the White Paper from Attorney General Abbott that Council Member Wazny referenced. He questioned if it was making recommendations on what was lacking in state law.

Council Member Wazny stated that it was just an explanation of the state laws and she added her own comments.

Council Member Roden questioned if the property issue included any land, past or presently owned.

Council Member Wazny stated that the 10% could be replaced with any financial interest with no dollar amount. Her focus was with business ownership, not with an individual but as a broker.

Mayor Pro Tem Gregory stated that he was not opposed to revising the ordinance or the policies or making an ordinance in place of a resolution. However, he wanted to know where the problems were. He was interested in specific definitions as they were better than broad terms and probably would have hesitation on some of the specifics. He expressed concern about disenfranchising the voters especially in single member districts.

Council Member Wazny stated that she was not as concerned about specific past employment but rather post-employment people who left the City after working on a project for a developer and then went to work for the developer.

Mayor Pro Tem Gregory questioned how that would be enforced if the individual was no longer on Council or employed by the City.

Mayor Watts stated that as Council discussed these more specifically, he felt some of the provisions presented he would not have a problem with but did have concerns about some of them. The fiduciary interest with realtors was a good question but he was not sure about a broker and it would be a hard issue with past transactions.

Council Member Briggs stated that there was a perception that Council did not operate in a manner that put personal interests aside. She was in support of an ethics ordinance but felt it was important to discuss it. The purpose was not to make allegations of past members, current members or employees.

Mayor Pro Tem Gregory stated that he would like to look at working to help citizens understand that Council was voting on what was best for the whole City and not for individuals. He did not want to create an ordinance that would disqualify a segment of the population from running for

Council or make a hardship on Council or their families. He was in favor of crafting an ordinance that was in the best interest of the City but not harm council members or put people out of work.

Mayor Watts stated that an ethics ordinance did not make people ethical but rules helped set up parameters on what to follow. He was in favor of a discussion once Council had time to study the issues presented by Council Member Wazny. The details would be very important when crafting an ordinance and depending on how it was crafted, could disqualify some people who would be helpful to the community.

Mayor Pro Tem Gregory stated that Council could not control how the media or individuals decided to interpret the actions of Council. All they could do was behave in an ethical fashion in the best interest of the City.

Council Member Wazny stated that her goal was prevention and education and not punishment. If the ordinance were created carefully, it could circumvent mistrust from the public and establish a ground rule for public officials.

Council Member Roden asked the City Attorney to clarify statements made as they related to attending Closed Session after recusal.

City Attorney Burgess stated that issue was an issue she did not agree with the Attorney General. She would never give such advice to her clients. That was not the best opinion in her opinion and she would not advise it.

Council Member Roden asked what would be the maximum penalty that could be levied against an official who violated a financial interest.

City Attorney Burgess stated that a municipal ordinance could carry a Class C misdemeanor which would be less than a Court could impose. She would agree with the proposition that Council could be more stringent regarding conflict provisions. There already was a provision in the Charter which the voters had enacted that already went beyond State law that included both officers of the City and employees. She felt Denton was unique with that regard as she did not know if other cities had this type of provision in their local Charter.

Council Member Roden stated that the writers of the Charter which was ratified by the voters felt that Chapter 171 should rule on that particular issue.

City Attorney Burgess stated that they indicated that they wanted Chapter 171 as ruling for conflict of interest.

Council Member Roden questioned the City Attorney that in terms of post-employment and whether she aware of any ability of a city to regulate council or staff employment choices once an individual left an official position with a city.

City Attorney Burgess stated that there might be some cities that might try to do that but she would need to research that.

Council Member Roden questioned whether the discussion involved real problems or perception. He questioned whether Council Member Wazny's angst for the community was based on real problems that she agreed with; that they were in the midst of corruption in City Hall and needed to save the public trust. Or it was based on not real problems but perception. He was trying to understand what the basis of people's concerns were.

Council Member Wazny stated that there were some issues that the City had that threw questions to the public so it was not just perception. There were issues that they had witnessed and had problems with.

Council Member Roden stated that at some point those issues would have to be named and discussed if the perception for those issues were a real problem. At some point the discussion would have to get very specific and discuss if that was a real problem or a misunderstanding on what counts for a conflict of interest. He cautioned to be careful when carrying forward citizen angst to be specific on whether that was believed to be based on something real or carrying forward false perceptions.

Council Member Wazny stated that in terms of the Charter when the City grew, the Charter had to grow with it. It was not a roadblock that the Charter could not be changed.

Mayor Pro Tem Gregory stated that the City Attorney did not say it was a roadblock but rather would require a Charter amendment and had to be considered in the sequencing of an ordinance for a vote from the citizens.

Council Member Briggs stated that whether perception or reality, the result was the same. There was a serious issue in the City now and an ethics ordinance could safeguard staff and Council from perceptions.

Mayor Watts did not want an ethics ordinance to preclude political courage. There were all different kinds of opinions on conflict of interest or public mistrust of the Council. This issue was dealing with interpretation and subjective interpretation but the rules were not objective. He wanted to know the extent it reached out. If someone violated the ethics ordinance, he would like to know the process of enforcement if it could even be enforced.

Council Member Wazny stated that if someone signed an ethics ordinance stating that and then went off and worked for a company, that person would no longer have a political career as the public would know that it had happened.

Mayor Pro Tem Gregory stated that when something was put in an ordinance it had to be defined and when defined someone would not be happy. Where it made a difference was when people went to the polls as they did not have to have a definition. The best cure for political ethics was elections. He seriously doubted that more rules or another layer of bureaucracy would cause people to have better character than they had now. He did not feel that new rules would make people more ethical than they were before.

Mayor Watts questioned if Council Member Wazny would present the names of the citizens she had working on the proposed ordinance.

Council Member Hawkins expressed concern that anyone who could represent the City well was not precluded on Council because of a technicality. The ordinance had to have specific provisions.

Council Member Roden stated that the question was whether to start with this ordinance or not and whether there were problems significant enough with issues that rose to the level to consider the issue. He was not convinced that the problems were that great and questioned the real problems that were being addressed.

Council Member Wazny felt it did deserve the time.

Council Member Hawkins felt that it was worthy of a little more time to consider if Council wanted to continue.

Council Member Briggs stated she was in favor of investing more time into the issue.

Mayor Watts stated that he was open to having a little more time but not approaching it in the vein that there was a problem. Do not associate moving forward that there was a problem.

Mayor Pro Tem Gregory stated that he was in favor of more discussion.

- B. ID 16-012 Receive a report, hold a discussion, and give staff direction on Downtown events.

Aimee Bissett, Director of Development Services, discussed recent events in the Downtown with an increased interest in events to be held in the downtown area. She reviewed special events application for events that were to be held both in the parks and in the downtown area and presented the number of events in various categories that occurred downtown from 10/21/04 to present. She noted that there was an event season in Denton and the trend of locations for these events. Information on how many events closed downtown streets, challenges for special events, and possible solutions were noted.

Council discussed policy considerations for the downtown area, new ideas and how were they considered. Multiple events on a single weekend were discussed along with how best to facilitate those situations. A question was raised regarding any consideration to limit how many weekends in a row or parking lots would be closed in a row due to mixed businesses in the downtown area and staff resources. A consideration was the heavy impact for closings in the downtown area that were not beneficial to businesses and the impact on public resources such as the Police Department with numerous events.

- C. ID 16-014 Receive a report, hold a discussion and provide staff direction on the proposed development of a surface parking lot on the site of the Old Central Fire Station.

Mark Nelson, Director of Transportation, presented information on a proposal to install a surface parking on the site of the Old Central Fire Station. He reviewed the current conditions/use and finance options from low to high to create the parking lot. Staff was recommending the high option, Option 3. The schedule could start at end of this month given direction to move forward

with temporary surface parking in the March time frame and then move forward with a comprehensive design with a 6 month time frame.

Council Member Hawkins stated that he had been approached by members of St. Andrew's Church who had offered their parking lot west of the Church in exchange for Our Dailey Bread to move into the old fire station. He requested Council delay making a decision for a week or so to consider their proposal.

Mayor Pro Tem Gregory stated that he was willing to wait a week or two but had heard that Our Daily Bread was moving to Serve Denton that had a larger location available. In terms of options, he suggested a hybrid with the middle option money and use that difference in amount from the high option to apply to the purchase of property on Bolivar Street to square off the lot.

Council Member Briggs stated that she liked the second option and Mayor Pro Tem Gregory's recommendation.

Council Member Roden stated that he would like more specific recommendations regarding Our Dailey Bread and what was being discussed before giving direction. He was also open to thinking about City Hall West and the parking lot as part of the consideration. He would be in favor of the lower cost option if in conjunction with City Hall West.

Council Member Wazny was in favor of a time line of a couple of weeks with specifics to consider the request. She agreed that City Hall West and the parking area were all one discussion. There was a need to look at the big picture but parking was needed in the area.

## 2. Concluding Items

- A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the City Council or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting and Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Mayor Watts requested a Work Session to consider citizens comments moved from the end of the meetings.

Council Member Wazny requested the rules in writing regarding Council Members being allowed to attend the Closed Session of board/commission meetings.

Council Member Roden requested a report if there were rules in place to restrict private parking lots in downtown area.

Council Member Roden requested a report regarding private parking lot being used as used car lot sales and whether that was violating any codes in the downtown area.

With no further business, the meeting was adjourned at 7:20 p.m.

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CHRIS WATTS  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS