

# CITY OF DENTON CITY COUNCIL MINUTES

February 12, 2013

After determining in Open Session that a quorum was present, the City Council convened in a Closed Session on Tuesday, February 12, 2013 at 1:30 p.m. in the Council Work Session Room at City Hall.

PRESENT: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden

ABSENT: None

1. Closed Meeting:

A. Deliberation regarding Personnel Matters - Under Texas Government Code Section 551.074.

1. Deliberate and discuss the evaluation, duties, discipline, procedures, and contracts of the Municipal Court Judge, City Attorney, City Manager, and Internal Auditor.

Following the completion of the Closed Meeting, the City Council convened in a Work Session to consider the following:

1. Citizen Comments on Consent Agenda Items

Rick Woolfolk submitted a Comment Card to speak on Consent Agenda Item 4B regarding the name change of the Airport.

2. Requests for clarification of agenda items listed on the agenda for February 12, 2013.

Mayor Burroughs asked about Consent Agenda Item 4H in reference to the smart meters. He asked where the city was in relation to the number of smart meters that were acquired for the first amendment and how many were left to be acquired of the 45,000 meters being replaced.

Phil Williams, General Manager-DME, stated that 20,000 meters were done out of a total 48,000 meters for DME. This was being done in five phases.

Mayor Burroughs stated that one of the stated purposes of the smart meters was to have auto connect and disconnect of electric services. He thought that the purpose was to provide more accurate information for billing services both for the homeowner and the city

Williams stated that was the ultimate goal. The initial implementation was for customers who had a lot of turnover and those were implemented first.

Mayor Burroughs asked if staff was doing any kind of test groups on how to find the best uses for the information from the meters or were they waiting to get all the information in for creative uses.

Williams stated that staff was already meeting on ways to begin pilot testing for other uses.

Council Member Watts stated that there had been a news article about the PUC to opt in or opt out and a discussion on that. He asked for an informal staff report on the impact that would have on the City if that legislation was passed.

Council Member Roden asked about Consent Agenda Item I calling the election in relation to early voting. He noted that the option for early voting at the Hickory Street location was no longer an option.

City Secretary Walters stated that there would only be one early voting location at the new County Election facility on Kimberly. Two years ago voting was held both at the Hickory Street location and at the County Administration Building off Loop 288. However, that location was not used last year as the number of voters using the location did not warrant its use.

Council Member Roden stated that the location this year then would not be that same building on the Loop.

City Secretary Walters stated that the new Elections office was further down off Morris on Kimberly.

Council Member Roden expressed a concern using a new location that voters might not be familiar with and felt that there would need to be a lot of education available for the voters to be award of that location.

City Secretary Walters stated that she had already discussed that with the County which had indicated that they would be putting an ad in the newspaper for the new location, posting it on their Facebook page, as well as the City posting it on its Facebook and Twitter accounts. It would also be posted on the City's website. A map could be posted on the website for the location of the new polling location.

Council Member Engelbrecht asked about notifying voters of their new voting districts.

City Secretary Walters stated that the County was completing their precinct line changes on March 5<sup>th</sup>. Once that was completed, information would be provided to voters regarding where voters would be voting.

Council Member Gregory asked if there was a way for a voter to go to the City's website, type in their address and find out what voter district they were in.

City Secretary Walters stated not on the City website but that Denton County had that database on their website. There was a link on the city site to the County site. There was a potential of having errors if the City maintained a separate database as the list of registered voters was very fluid and needed to be updated very regularly.

Council Member Gregory asked what happened if a voter moved. Would a change of address be required?

City Secretary Walters stated correct and that there was a 30 day waiting period until the change was effective. If the change was less than 30 days before an election, the voter would vote in his/her old district, not the new district.

Council Member Engelbrecht stated that part of the change at the Airport would be changing the logo and asked why the logo would not be the same as the city logo.

Quentin Hix, Director of Aviation, stated that the Airport logo had been different for a number of years. The City's logo would still be used at the top of the Airport's letterhead in addition to the one specific to the Airport.

Council Member Engelbrecht asked about the policy regarding separate logos.

Hix stated that it was reviewed in the sense of color scheme and the guidelines. The new logo was within the guidelines for City logos.

Council Member Watts asked for a characterization of the Economic Development Partnership Board meeting and any additional input into that meeting.

Mayor Burroughs stated that the primary discussion was not what was characterized. The primary discussion was that the purpose of the change was to deliberately look at the marketing aspect that had not been looked at before. The Board did not see any purpose to review the issue again as the same commentary had been presented in the past. No one on the Board wished to change the recommendation.

Council Member Gregory stated that the Board questioned why they were asked to review the issue again as they had already considered the item. The question was considered again out of courtesy to the Airport Board which was not their charge anymore but they were in favor of the change. This was part of the comprehensive master plan for the airport.

Council Member Gregory stated that Mr. Woolfolk had talked about other organizations that changed their logo such as Keep Denton Beautiful. This had been done before so it was not anything different.

City Manager Campbell stated that all departments used the city logo but some departments had logo markers that were specific to their departments and followed those guidelines.

Council Member Engelbrecht stated that he wanted the City logo on everything that went out and if that was not to be included with this proposal, then he might be in favor of pulling the item for further discussion.

Betty Williams, Director of Administrative Services, stated that according to the standards policy this was not a logo but a marker. The city of Denton logo was on all correspondence and some departments had markers on the right hand side of their letterhead. It sounded that was what the Airport was going to do.

Hix stated that staff was going to follow that policy at the Airport.

Williams stated that was the standard throughout the organization and was reinforced throughout.

3. Receive a report, hold a discussion, and give staff direction regarding the appointments from City Council, Denton County and Rayzor Investments, LLP to the Tax Increment Reinvestment Zone Two Board of Directors.

Aimee Bissett, Director of Economic Development, stated that on December 18, 2012 Council adopted the ordinance designating and describing the boundaries of the TIRZ. The ordinance also established a Board of Directors for the TIRZ. The guidelines for membership on the Board was that there would be nine members appointed by Council, one by Denton County and one by Rayzor Investments. Staff recommended in December that the members of the Economic Development Partnership Board be appointed to act as the nine members on the TIRZ Board as both boards would be considering the same issues. Everette Newland was recommended for appointment by the County and Selwyn Rayzor was recommended for appointment by Rayzor Investments.

Council Member Engelbrecht stated that the TIRZ was addressed as Westpark Reinvestment Zone but the ordinance called it the TIRZ II with no referral to Westpark. He recommended amending the ordinance to include the name of Westpark TIRZ to keep it consistent.

Mayor Pro Tem Kamp asked if there was an attendance requirement for the Board.

Bissett stated that she did not see any kind of attendance requirement.

City Attorney Burgess stated that staff would review the ordinance to be sure.

Consensus of the Council was to proceed with the nominations.

4. Receive a report and hold a discussion on the assessment of the Denton Development Code by Clarion and Associates including the development of Infill and Redevelopment regulations.

Brian Lockley, Director of Planning and Development, introduced Matt Gobel from Clarion and Associates who updated Council on the start of the creation of infill and redevelopment regulations.

Matt Gobel, Clarion and Associates, presented an overview of the scope and schedule of the program. He reviewed the makeup of the firm and the research and publications they had developed.

The project goals included (1) ensure the process was open and inclusive, (2) respect Denton's past efforts and decisions, (3) focus on solutions that work, and (4) create a code that was clearer and easier to administer and use. The projected scope, code assessment and amendments would focus on three specific issues of efficiency of the development review process, barriers to infill and redevelopment and overall code organizations.

The project approach included project initiation, code assessment, code amendments with public review and training and education.

Project initiation involved initial documents review, initial project meetings, interviews with staff and stakeholders, code assessment, preparing an assessment report for a staff draft and preparing an assessment report for a public version. Code amendments included cleanup reorganization and reformatting, preparing new infill code amendments, development application and review procedure amendments.

Training and Education would involve prepare training materials, a half-day training session regarding off-premise sign assessment.

Mayor Pro Tem Kamp requested an electronic copy of this presentation for all on Council.

Council Member Gregory asked if form base code was included in this process.

Gobel stated that form base code would be looked at with a broader review than just the current discussion with the Downtown area.

Council Member Watts stated that the definition of infill was a lot never developed. That definition should not be interchanged with the term redevelopment.

Gobel stated correct and as part of the process there might be a need to redefine infill as it currently was restrictive.

Following the conclusion of the Work Session, the Council convened in a Closed Session to consider the following:

1. Closed Meeting:

A. Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.

1. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the potential purchase of certain real property interests located in (1) the M. Yoachum Survey, Abstract No. 1442, City of Denton, Denton County, Texas (located generally along the 200 block of Mockingbird Lane); and (2) the E. Puchalski Survey, Abstract 996, City of Denton, Denton County, Texas (located generally in the 1300 block of Underwood Street). Consultation with the City's attorneys regarding legal issues associated with the potential acquisition and condemnation of the real property 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.

- B. Consultation with Attorneys - Under Texas Government Code Section 551.071.
1. Consult with City's attorneys regarding the status, strategy, mediation and possible resolution of litigation styled Sutton, et al. v. Walters, Cause Number 2011-60760-393.
  2. Consult with City's attorneys regarding encroachments by other cities into Denton's extraterritorial jurisdiction, and provide feedback and direction regarding the strategic abatement of these encroachments.
  3. Receive a briefing from, consult with and provide direction to the City's attorneys regarding the processes associated with real property acquisitions and delegations of authority related thereto, utilizing the power of eminent domain, where a public discussion of such legal matters would conflict with the duty of the City's attorneys to the City of Denton, Texas and the City Council of the City of Denton under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.
  4. Consult with City's attorneys regarding the city's becoming a gas utility in a limited area of the city and the calling of an election regarding same.
- C. Consultation with Attorney - Under Texas Government Code Section 551.071; Deliberations regarding Economic Development Negotiations - Under Texas Government Code Section 551.087.
1. Receive a report and hold a discussion regarding legal issues on matters regarding the leasing of land and financing of a City facility on University of North Texas property located at I-35 and North Texas Boulevard where such discussion presents a conflict between the duty of the City's attorneys to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and the provisions of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code. Also hold a discussion regarding the leasing of land and financing of a City facility on University of North Texas property located at I-35 and North Texas Boulevard, including financial information related to such activities from a business prospect.

**1. PLEDGE OF ALLEGIANCE**

The Council and members of the audience recited the Pledge of Allegiance to the U. S. and Texas flags.

**2. PROCLAMATIONS/PRESENTATIONS**

There were no proclamations/presentations for this meeting.

**3. CITIZEN REPORTS**

There were no citizen reports for this meeting.

**4. CONSENT AGENDA**

Mayor Burroughs noted that Item J would be pulled for separate consideration.

Council Member Gregory motioned, Council Member King seconded to approve the Consent Agenda and accompanying ordinances and resolutions with the exception of Item J. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden “aye”. Motion carried unanimously.

Ordinance No 2013-048

- A. Consider adoption of an ordinance of the City of Denton, Texas to declare the intent to reimburse expenditures from the Unreserved Fund Balance of the Electric Fund with Certificates of Obligation with an aggregate maximum principal amount equal to \$32,000,000 to allow Denton Municipal Electric to continue funding ongoing capital expenditures for expansion of the distribution and transmission electric facilities; and providing an effective date. The Public Utilities Board recommends approval (5-0).

Ordinance No. 2013-049

- B. Consider approval of a resolution regarding a Denton Airport Branding/Marketing Proposal presented by the Economic Development Partnership Board for a new Denton Airport Logo, Tag Line, Anthem and Name. The Economic Development Partnership Board recommends approval (9-0).

Ordinance No. 2013-050

- C. Consider adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to make an application with the Texas Department of Housing and Community Affairs Emergency Solutions Grant Program and take all other actions necessary to obtain and implement the program; and providing for an effective date.

Resolution No. R2013-005

- D. Consider approval of a resolution creating a special seven (7) member Oversight Committee to monitor, evaluate and report on progress of the Five Year Capital Improvement Program, which was approved by the voters at the Bond Election on November 6, 2012; and providing for an effective date.

Ordinance No. 2013-050

- E. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Professional and Personal Services Agreement with Power Engineers, Inc., a Corporation, for engineering and other related services for studies, consultation, and support during the site and route selection processes for transmission line and electric substation projects for Denton Municipal Electric;

authorizing the expenditure of funds therefor; and providing an effective date (File 5174-in an amount not to exceed \$1,576,050.). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2013-051

F. Consider adoption of an ordinance accepting competitive proposals and awarding a Public Works Contract for the construction of electric substations for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5142-awarded to Can-Fer Utility Services, LLC in an amount not to exceed \$16,560,000). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2013-052

G. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of sanitary sewer root control services from Duke's Root Control Inc., which is available from only one source and in accordance with Chapter 252.022 of the Texas Local Government Code such purchases are exempt from the requirements of competitive bidding; and providing an effective date (File 4553-Purchase of Sanitary Sewer Root Control Services for the Wastewater Collections Department in the annual estimated amount of \$90,000 for a three year total not to exceed \$270,000). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2013-053

H. Consider adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute a Second Amendment to an agreement with Trilliant Networks, Inc. for Phases IV and V of the Advanced Metering Infrastructure System (AMI); providing for the expenditure of funds therefor; and providing an effective date (RFSP 4485-Second Amendment to Agreement for Advanced Metering System Infrastructure awarded to Trilliant Networks, Inc. in the estimated amount of \$2,867,738.87). The Public Utilities Board recommends approval (7-0).

Ordinance No. 2013-054

I. Consider adoption of an ordinance ordering an election to be held in the City of Denton, Texas, on May 11, 2013, and if a runoff election is required, on June 15, 2013, for the purpose of electing Council Members to District 1, 2, 3, and 4 of the City Council of the City of Denton, Texas; prescribing the time and manner of the conduct of the election to be in accordance with an agreement with the Election Administrator of Denton County; providing a severability clause; providing an open meetings clause; and providing an effective date.

Ordinance No. 2013-056

K. Consider adoption of an ordinance of the City Council of Denton, Texas authorizing the City Manager to execute an engagement arrangement ("Engagement") with Kelsey, Kelsey & Hickey for legal services regarding property acquisitions and claims matters related to electric transmission line and electric substation purposes of Denton Municipal Electric; authorizing the expenditure of funds therefor; and providing an effective date.



Ordinance No. 2013-057

- L. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Contract of Sale (herein so called), as attached to the ordinance and made a part thereof as Exhibit "A", by and between the City of Denton (the "City"), and CODELLA LLC (the "Seller") contemplating the sale by Seller and purchase by City of a 2.486 acre tract of land, more or less, situated in the T.M. Downing Survey, Abstract Number 346, in the City of Denton, Denton County, Texas, as more particularly described in Exhibit "A" to the Contract of Sale (the "Property Interests"); for the purchase price of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00); authorizing the City Manager, or his designee, to execute and deliver any and all other documents necessary to accomplish closing of the transaction contemplated by the contract of sale; authorizing the expenditure of funds therefore; and providing an effective date.

Item J was considered.

Ordinance No. 2013-055

- J. Consider adoption of an ordinance ordering an election to be held on May 11, 2013 for the purpose of submitting to the registered voters of Denton, Texas a proposition allowing the City of Denton to own, acquire, construct, maintain, and operate a gas utility in that area of the City near the Airport Industrial Park and more specifically described in Exhibits "A" and "B" attached thereto and incorporated therein, for the purpose of providing gas utility services to non-residential customers; prescribing the time and manner of the conduct of the election to be in accordance with an agreement with Denton County; prescribing the form of the ballot; providing for notice; providing for publication of notice of this election; providing a severability clause; providing an open meetings clause; and providing an effective date.

Anita Burgess, City Attorney, presented the details regarding the City becoming a gas utility in a limited area of the city. Charter Section 12.01 provided that city may own, acquire or operate a public utility on the effective date of the Charter. At that time, the City did not have a gas utility. The provision in the Charter had a limiting effect on the provision of gas services at the Airport Industrial Park and in recruiting business in the area. It limited that area in an ability to develop and grow. In the last session, the Legislature enacted legislation to support city's efforts to construct a CHP plant and in tandem provide gas service in a limited area of the City. The legislation created a CHP economic development district and boundaries were set for that district.

At the Council Planning Session the issue was raised as whether Council wanted to move forward with a vote to allow Denton to become a gas utility in a limited area of city. Council determined it would be best to move forward with a vote of electors. Staff was proposing Council enact an ordinance which would allow the City to sell gas in an area similar but not identical to the area depicted in the CHP economic development map. A different area was being proposed because the area would be clearer to voters as they looked at the ballot proposition. Gas could be sold not in tandem with the CHP construction of the plant. Staff was requesting Council pass the ordinance to allow the sale of gas for non-residential purposes and to include commercial and industrial purposes.

Mayor Burroughs stated that the ordinance would only call the election and did not give the ability to build a gas utility.

Burgess stated correct. She reviewed the wording of the proposition.

Council Member Gregory stated that if the voters approved the proposition, that did not require the Council to go forward with the construction of the gas line and providing the utilities.

City Attorney Burgess stated that approval would authorize the construction and providing of the gas services but did not require it to be done.

Council Member Gregory stated that the ordinance memorialized the Council's intention to not do this if a private utility wanted to provide such a service in the kind of gas capacity that was proposed.

City Attorney Burgess stated correct and had the emphasis that if someone else wanted to provide the service, the City would not do so.

Council Member Gregory stated that was included in the language of the ordinance.

City Attorney Burgess stated correct.

Mayor Burroughs stated that this was a first step in a long process. The City had long focused on areas for economic development purposes. One was the industrial park which had serious limitations concerning the lack of significant gas pressure. The City had already lost numerous opportunities for development due to a lack of the gas provisions. The City had questioned private industry in the past if they wanted to provide the gas service but had been told that they were not interested without the customer base already there. He felt going to the voters would be a preferred step in this process if there was no CHP customer needing the gas. Hopefully the City would not need to do this if providers in the area decide to offer the service. This would be for a very limited purpose.

Council Member Gregory asked for an explanation as to why an authorization for a CHP plant itself which would sell steam and chilled water was not included in this election.

City Attorney Burgess stated that the City already had the authority for the CHP plant as a result of the state legislation so it was not necessary to include it in the election. If this proposition was approved the City could sell natural gas without the CHP plant and would provide gas in the area for economic development prospects that was not already there.

Council Member Gregory stated that the Charter indicated that the City could not sell utilities that the City did not have in 1959. The ordinance was not asking authorization for steam heat and chilled water as that was not considered a utility.

City Attorney Burgess stated that the City did not need authority for chilled water and steam as an opinion had been rendered that these were not a public utility and did not fit into the definition of the City Charter.

Council Member King motioned, Council Member Roden seconded to adopt the ordinance. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden “aye”. Motion carried unanimously.

**5. ITEMS FOR INDIVIDUAL CONSIDERATION**

A. Consider nominations/appointments to the City's Boards and Commissions:

1. Capital Improvement Program Oversight Committee.

Tony Puente, Assistant Director of Finance, stated the names of six individuals were presented in the backup materials for consideration on the Committee. David Sanchez would be added as a seventh name.

Mayor Pro Tem Kamp motioned, Council Member King seconded to approve the nominations. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden “aye”. Motion carried unanimously.

2. Tax Increment Reinvestment Zone Two Board of Directors

Aimee Bissett, Director of Economic Development, stated that these appointments would be for the Westpark Tax Increment Reinvestment Zone Two Board of Directors. Nine members would be appointed by Council, one member by the County and one member by Rayzor Investments. It was recommended that the nine members of the Economic Development Partnership Board be the nine city representatives, Everette Newland for the County representative and Selwyn Rayzor for the Rayzor Investments representative.

Council Member Watts motioned, Mayor Pro Tem Kamp seconded to approve the nominations. On roll call vote: Council Member King, Council Member Watts, Council Member Gregory, Council Member Engelbrecht, Mayor Pro Tem Kamp, Mayor Burroughs, Council Member Roden “aye”. Motion carried unanimously.

**6. CITIZEN REPORTS**

There were no citizens reports scheduled for this meeting.

**7. 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 Pro Tem Kamp announced the Council's clean up of their Adopt-a-Spot would be March 2nd at 10:30.

Council Member Roden announced that Quakertown Park would receive a state historical designation on Saturday.

Council Member Engelbrecht announced that the Thin Line Film Festival was currently happening in Denton.

Mayor Burroughs announced that next week was Denton County Days which the Council and other community leaders would be attending in Austin to meet with legislators to inform them about issues important to Denton and Denton County.

- B. Possible Continuation of Closed Meeting under Sections 551.071-551.086 of the Texas Open Meetings Act.

Council did not return to Closed Session.

With no further business, the meeting was adjourned at 6:59 p.m.

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MARK A. BURROUGHS  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS