

CITY OF DENTON CITY COUNCIL MINUTES

April 21, 2015

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, April 21, 2015 at 1:00 p.m. in the Council Work Session Room at City Hall.

PRESENT: Mayor Pro Tem Engelbrecht, Council Member Gregory, Council Member Hawkins, Council Member Johnson, Council Member Roden, Council Member Ryan, and Mayor Watts.

ABSENT: None.

1. Citizen Comments on Consent Agenda Items

There were no citizen comment cards submitted.

2. Requests for clarification of agenda items listed on the agenda for April 21, 2015.

Council Member Ryan questioned why Closed Session Item E was being discussed in Closed Meeting.

City Attorney Burgess stated that the item was posted in Closed Meeting in order to discuss the law as it concerned video conferencing. She had included information in her Attorney Status Report regarding the legal aspects of Open Meetings Act.

Council Member Johnson asked about Consent Agenda Item B in terms of creating the committee. It did not name the Planning and Zoning Commission as that committee and questioned about choosing members.

City Attorney Burgess stated that information had been provided in her legal status report regarding the law. The law provided that there would be a committee with certain qualifications for the members and specifically stated that the Planning and Zoning Commission could fulfill the role as long as one member met a qualification.

City Manager Campbell stated that it was not uncustomary for the Planning and Zoning Commission to have that duty due to land use issues that were associated with projects.

Mayor Watts stated that there had been a request by the developer on Agenda Item 4D to postpone consideration and questioned how to proceed.

Council Member Hawkins stated that the applicant wanted to continue it to another meeting. The neighborhood wanted to know if they should attend or not.

City Attorney Burgess recommended to open the public hearing and take testimony from those present and then continue the item to another time.

Council Member Johnson questioned that rather than two public hearings, could the Council make a decision to continue and not have to take it up again.

City Attorney Burgess stated that there was a requirement that the notice of public hearing be published in the paper that the public hearing was going to be held.

Mayor Watts questioned Consent Item D regarding a security item.

Chuck Springer, Director of Finance, stated that the item went through a formal selection process and a five year contract for the formal bid process.

City Attorney Burgess stated that there was an alternate ordinance for Consent Agenda A and requested that Council use that ordinance when making a motion.

3. Work Session Reports

- A. ID 15-203 Hold a discussion and provide staff direction with regard to possible amendments to the City Council Rules of Procedure.

City Attorney Burgess stated that the goals for this discussion would be to explain the changes in the draft ordinance, explain the additions to the draft ordinance, discuss individual council member's desired changes and receive direction for additional changes.

Rules of Procedure – The Rules were edited for clarity; reorganized two sections concerning types of meetings and reports from members of the public; deleted the time limits section as duplicative; and included limits in a substantive section. Additional changes included updating citations, correcting erroneous references, adding a prohibition on the distribution of political materials, adding a video conferencing provision, and adding luncheon meetings to comport with council practice.

Council Member Roden stated that there tended to be some public confusion when Council gave direction on issues with no formal vote such as moving ahead with projects ideas. He asked if there was a legal distinction that could tighten that up in terms of direction.

City Attorney Burgess stated that the action Council could take was controlled by the posting on the agenda. The Work Session was usually posted for discussion and to provide direction with regard to a project and was not posted for action. The intent was look at the agenda and determine what Council was going to do at that meeting. If action was to be taken, the agenda had to say such.

Council Member Roden stated that in some cases there might be a consensus but not an unanimous point of view and questioned if the minutes of the meeting reflected that or gave direction.

City Attorney Burgess stated that the minutes were consistent with how the item was posted.

Mayor Watts stated that in some ways direction may not satisfy the requirements of a vote but that direction was seen sometimes the same as a vote. The recording of that was different.

Council Member Roden suggested that “direction” might need to be defined in the rules.

Council Member Gregory asked if it would be appropriate under types of meeting to insert wording that Council may give direction with consensus for direction on how to proceed.

City Attorney Burgess continued with the Rules changes that included correcting the recessed meeting provision, added specific procedures for public hearings, and clarified the 3/4 voting requirement.

City Manager Campbell suggested a change to the public hearing procedures. He suggested opening the public hearing before any staff presentation started. After the Mayor read the agenda caption, immediately open the public hearing and remain open until closed and then follow with council discussion.

Council discussed the 3/4 voting requirements, terms of legal disqualification, and whether to list the types of disqualifications.

City Attorney Burgess stated that Staff needed direction on time limits for members of the public wishing to address the Council and reviewed the current provisions. She had heard a desire to change some of those time limits.

Council Member Roden questioned the provision concerning groups or organizations and how that provision was triggered.

City Attorney Burgess stated that Council had tolerance with people present. Latitude was given for additional time. The rule stated that 10 members had to be in the Chambers and the Mayor would make the call.

Council Member Roden suggested focusing on the area for groups beyond three minutes to respect everyone's time as moving from three to five minutes would be significant. The vast majority of people did not need extra time.

Mayor Watts stated he was in favor of moving to five minutes for public hearings. If the group/organization provision was going to be expanded, he would like that to be tight. Items to consider would be when the registration would take place or whether the ten people needed to be present. He wanted to make sure that they had enough time to say substantively what they wanted to say.

Council Member Johnson stated that the group/organization provision could save some time if used properly. If there was a group of ten or more present and they elected someone to speak for them, then those ten people did not get to speak as that person was presenting that group. They would have to register before the meeting and list the ten names so people did not try to speak individually. He felt three minutes for citizen comments was fine as many people said the same thing as others. A suggestion would be to make the group/organization provision more known to the public and perhaps use a different colored card to complete.

Council Member Ryan stated that he was in favor of adding minutes to each of the time limits. He suggested that there may be a way to reduce the time back to three minutes if there were lots of people present.

City Manager Campbell suggested that the number in the group could be reduced to four or more and it still would reduce the amount of time.

Council Member Johnson stated that he was in favor of citizen comments at three minutes; an applicant might need more than five minutes which he felt currently was not an adequate amount of time. Give an applicant ten minutes on regular cases and fifteen minutes on zoning cases.

Mayor Pro Tem Engelbrecht suggested ensuring the citizens had time to rebut the applicant similar to the amount of time the applicant received.

Council Member Johnson stated that if an applicant knew that he had five minutes, he prepared a presentation to complete in five minutes. However, sometimes the Council asked a lot of questions, and if the applicant had enough time to present his case, there might not be so many questions.

Mayor Watts did not have a problem with providing ten minutes for applicants. He felt Council needed to give time for applicants and citizens to get all of their information out.

Council Member Johnson stated that he would be in favor of reducing the group/organization provision to groups of four people or more and to give them ten minutes; providing four minutes for citizens; and ten minutes for applicants.

Council Member Ryan did not have a problem with Council Member Johnson's suggestions.

Council Member Gregory stated that if the times were going to be extended, the Agenda Committee should restrain the number of public hearings at a meeting. The meetings should not be going until 3:15 a.m. and suggested writing in the rules that at midnight, the meetings would cease. It was fine to give enough time for citizens and presentations but it was not good to have such long meetings.

Mayor Pro Tem Engelbrecht stated that it was not fair to citizens or applicants to have such long meetings.

Council Member Gregory suggested starting the meetings before 6:30 p.m.

Council Member Roden stated that he was in favor of the four minutes but to also let people know that this was not the only way to go to discuss items with Council.

Mayor Watts stated that late meetings were a challenge because sometimes it was not known what might cause a late meeting. It would be hard to stop in the middle of a meeting due to the time.

Council Member Gregory stated that if the time went to four minutes, have a provision to notify people in advance of a long meeting and that the Council reserved the right to roll back the time to three minutes.

Council Member Hawkins stated he was in favor with extending speaker time to four minutes.

Mayor Watts stated that consensus seemed to be four minutes for citizen comments, ten minutes for applicants with a total of 20 minutes for all applicants on the same project; groups of four or

more with written designation turned in before the meeting and present at the meeting would receive ten minutes.

City Attorney Burgess stated that language would be included to provide latitude to reduce the four minutes to three in event of a need for efficiency or for a large number of people. The Mayor would make that determination. She continued that staff was requesting Council direction on the location of public reports on the agenda. She reviewed the current practice and questioned if Council wanted to change either the procedure or the process.

Council Member Gregory stated that he preferred to keep the current practice. He felt the current system was working and that it gave new people a chance to speak at the beginning of the meeting.

Council Member Ryan felt that the six month wait time to speak at the beginning of the meeting was not excessive. He liked the citizen reports both at the end and at the beginning as there may be someone who wanted to speak at the end.

Council Member Roden stated that he liked keeping it at the front end of the meeting. He questioned why Council was not able to discuss a citizen report as the topic was listed on the agenda.

City Attorney Burgess stated that the postings for these public reports were not very specific and that the information provided did not have the specifics as to what was going to be discussed. There was no in-depth type of posting.

Council Member Roden questioned what the value was of declaring that they were going to speak and what they were speaking on and if an open microphone type of situation would be better.

City Attorney Burgess stated that the Attorney General had rules that an open microphone session was acceptable. However, unless specifically posted, the Council could not interact in any way. Citizens would just speak on whatever they wanted. A procedure such as was done now could be formed with some type of posting with open microphone and no information on a topic would be no discussion on the presentation.

Council Member Gregory stated that there were times when several individuals spoke at every meeting and there might be a person advertising a local business. Another consideration was whether that was the most effective way to do business. He did not want to do away with the time but cautioned to be careful what the door might be opening.

Council Member Johnson asked if anyone was complaining about the current system. He felt the time at the end of the meeting for citizen reports had value for those not being able to come early.

Council discussed the system for signing up for citizen reports, the placement on an agenda for citizen reports, length of reports and the beginning versus the end of the meeting placement. Consensus was to consider a hybrid procedure with four minutes for presentations; five slots at

the beginning of the meeting; those slots could be reserved by the Wednesday before the meeting; and non-reserved slots could be for open microphone speakers.

City Attorney Burgess stated that another area for Council direction was in regards to public comments regarding the Consent Agenda. Currently this was done at the first part of a Work Session. A consideration might be to move to that just before action on the Consent Agenda.

Council Member Johnson was in favor of leaving it where it was and not do it in a regular meeting.

Council Member Ryan stated that the lack of speakers on the Consent Agenda might be due to the time of day. He also felt Council discussion should be moved either to the regular meeting or not be the first item on the agenda.

Mayor Watts questioned about moving it to after the Council's request for clarification of agenda items in the Work Session.

Council Member Ryan felt that would be better but still was not where it needed to be. That was too early in the meeting and the comments were not at the same time for consideration of the items.

Mayor Watts questioned if an item was pulled from the Consent Agenda would the public be allowed to comment on it.

City Attorney Burgess stated that if an item were pulled off the Consent Agenda, the Council rules were that it went to Individual Items for Consideration and the public could comment.

Council Member Roden stated that another consideration was the unpredictable meeting times. He suggested a formal process for citizens to request to pull an item from the Consent Agenda.

City Attorney Burgess stated that an option might be to have a citizen contact the City Secretary's Office if they desired to speak on a Consent Agenda item. She stated that she would revise the draft ordinance for Council consideration and that Council needed to vet any rules prior to changing them.

Council Member Roden stated that another item to consider would be to have Council time at the beginning the meeting for presentations.

City Attorney Burgess stated that the Council's rules had that provision at the end of the agenda to allow for celebrations, comments, etc. but it could be put at the first of the agenda if so desired.

Council Member Roden suggested considering having music played before 6:00 p.m. when there was going to be a big meeting.

Council Member Ryan stated that he had requests to have a mechanism for a written request as to why something was in a closed session. He suggested a formal procedure for citizens to get an opinion as to why an item was in closed meeting.

City Attorney Burgess stated that she was already required by State law to state the Open Meetings sections for provision of citing why an item was on a closed meeting. There were many times when she could not say more than that. Council received an opinion regarding why a closed meeting was qualified which was covered under the law

Mayor Watts stated that he would be hesitant to formalize such a procedure as the City Attorney already explained why an item was being discussed in closed meeting.

City Attorney Burgess stated that it would not be necessary as the items were posted to some detail and the issue to discuss was noted on the posting.

Council Member Roden felt there was a distinction between what was legal and perception and people were already opposed to close meetings. Some type of procedure might provide a release valve for those who had questions on the public declaration of why Council was going into closed meeting on an item. It would help with the perception.

City Attorney Burgess stated that unfortunately the perception was that there were more closed discussions than citizens would like. Citizens may not understand unless they were involved in the government.

Council Member Gregory stated that he was not sure that a written or oral explanation would still satisfy some people.

- B. ID 15-229 Receive a report and hold a discussion regarding bicycle and pedestrian issues in Denton, focusing on rules and regulations; and an update on bike and pedestrian educational efforts.

Mark Nelson, Director of Transportation, introduced Julie Anderson, the City's new bike/pedestrian coordinator, who would be making the presentation.

Anderson stated that her presentation would include an overview of bike and pedestrian facilities, rules and regulations, educational efforts and Bike month.

Bike facilities included (1) bike lanes which were a striped lane for the exclusive use of people on bicycles, (2) shared lane markings which guided people on bikes where to ride in the lane and later people in cars, (3) shared roadway which was a low volume, low speed street designated as a route with "Shared the Road" signs, and (4) shared-use path which was a wide path intended for use by people on bikes and pedestrians.

Pedestrian facilities included crosswalks and sidewalks. She reviewed the rules for people on bikes and rules for pedestrians. Denton had a vulnerable road user which defined a vulnerable road user as a pedestrian, a person on horse-back or a person operating equipment other than a motor vehicle.

Education and Safety – strategies would be formalized to collaborate with UNT, TWU and DCTA; have an event booth to reach out to a broader audience; safety classes; pedestrian safety

week information; printed and online maps; coordinated safety campaign with NCTCOG; and informal rides.

Bike month was scheduled for the month of May with a “Cycle with the City” event on May 11th. The ride was to see what the city had done to improve the bike infrastructure.

Council discussed the rules of the road with bike riders and where bike lanes were acceptable.

- C. ID 15-324 Receive a report, hold a discussion, and give staff direction on the 2015-2019 Consolidated Plan for Housing and Community Development, the 2015-16 Action Plan and the funding recommendations developed by the Community Development Advisory Committee and the Human Services Advisory Committee.

Barbara Ross, Community Development Manager, stated that over the past year, staff developed Denton’s *2015-2019 Consolidated Plan for Housing and Community Development* using a process with input from citizens and local non-profit organizations. The Consolidated Plan was a five-year strategy targeting proposed housing, social services and public works projects benefiting low and moderate-income households and neighborhoods. Annual action plans were developed based on the strategies outlined in the Consolidated Plan.

On an annual basis, the City of Denton prepared an Action Plan for submission to the US Department of Housing and Urban Development (HUD). The Action Plan served as the City’s application for Community Development Block Grant (CDBG) and Home Investment Partnerships (HOME) program funding.

Public hearings requesting citizen input and meetings with neighborhood groups regarding the use of CDBG and HOME funds were held October through December 2014. Spanish translation was available at the public hearings. Public hearing outreach included many specific events.

Steven Coffey, Chair-Human Services Advisory Committee, presented the funding recommendations from the Human Services Advisory Committee. There were twenty applicants with two of the applicants being new agencies. Eighteen applicants had received prior funding. The Committee recommended funding of 71% of the requests that were made.

- D. SI15-0012 Receive a report, hold a discussion, and give staff direction regarding notification fees for Historic Landmark Designation Applications.

Aimee Bissett, Interim Director of Planning and Development, stated that this item was a result of citizen requests as well as Council requests concerning the fees. She reviewed the Historic Landmark Designation categories. The application was considered/recommended by HLC and the Planning and Zoning Commission. There was a \$65 application fee and a \$220 notification fee. Public hearings were required at HLC and P&Z, notices mailed and newspaper publications.

The standard notification fee was \$220 and the various categories involved with the notification fee were reviewed. These involved costs to place a legal notice in newspaper, the cost to send certified letters to property owners within 200 feet and regular mail within 500 feet plus the cost to purchase the notification sign. Staff time and associated soft costs such as researching the

notification area and compiling the address list, creation of the notification map, etc. were also included in the notification fee. As the Historic Landmark designations were grassroots effort to voluntarily seek the designation, some felt the fee was a disincentive to apply and subjected the requestor to additional requirements. Council had been requested to consider waiving the fee for Historic Landmark designations of which there were six pending applications.

Council Member Roden felt there were pros and cons of putting these requests under the zoning classification which required the same notification as other types of zoning cases. It was, however, of great value to have them tied to a zoning category.

Bissett stated that when the ordinance was originally created, the majority of the historic landmarks were city initiated. The City had to make sure the notifications were zoned properly.

Mayor Watts asked about the type of tax abatement for historic designations on homes.

Bissett stated that once a home became eligible for the abatement and if a certain amount of money were spent on renovation of the home, the tax became capped at a certain amount of renovations.

Council Member Gregory asked for a review of the costs associated with the designation.

Bissett reviewed the costs associated with the legal notice and the mailing costs.

Council Member Gregory stated that the costs added up to \$850 as opposed to the fee of \$285. The fee did not cover the cost of the expenses.

Council Member Roden felt that the incentive structure needed to be looked at and that was why the Council Historic Landmark Committee was formed. He did not think there was an urgency to review the incentive structure and suggested that the Council Committee work on these type of issues.

Council Member Johnson felt that the financial incentive was of least concern at this time. It was the process and involvement. He did not think the fee needed to be changed at this time.

Council Member Hawkins felt that notification process was unnecessary.

Council Member Gregory felt that a more in-depth conversation was needed on the subject at another meeting.

Mayor Watts agreed that it was part of a more comprehensive discussion for the Council Historic Landmark Committee to work on.

Council consensus was to keep the fee as it was while the Council moved through the process. The Council Historic Landmark Committee would continue with the process.

E. ID 15-339 Receive a report, hold a discussion, and give staff direction regarding Smoking Ordinance No. 2012-367.

Lindsay Baker, IGR/PIO, presented the update on the proposed ordinance. Her presentation would include a review of the current ordinance, a review of the draft ordinance provisions, and a discussion of definitions. She reviewed the provisions of the current smoking ordinance in terms of where smoking was prohibited and where smoking was permitted. The draft provisions were based on public hearing comments and a motion by Council Member Roden.

Draft revisions included the addition of (1) bars with a grandfather clause, (2) E-cigs prohibited in all non smoking locations, (3) sale of e-cigs to minors, (4) prohibition within 30 feet of Parks and Recreation facilities, (5) definitions for e-cigs and vape shop, and (6) extended the exemption to vape shops. Amendments to the draft ordinance included definition amendments for cigar bar and patio and an amendment for a bingo parlor barrier.

The current definition of patio was reviewed with the recommended definition revised to “an outdoor space generally used for dining or recreation that adjoined a building and typically had an improved floor surface.”

The current definition of cigar bar was reviewed with the recommended language extended to include specific language for equipment used for storing and maintaining the cigars. This language removed a loop hole for not a full cigar bar facility.

Council Member Roden stated that there currently were three cigar bars in Denton and questioned if they had that equipment.

Baker stated they all already had that equipment.

Grandfather provision for bars were presented which would be for bars operating as “smoking bars” as of the effective date of the ordinance. The provisions included (1) would have to register with the City within 30 days to be a smoking bar; (2) would only be open to individuals over 18; (3) would post a sign indicating that it was a smoking establishment; (4) not allow live music in the establishment; and (5) if the bar changed use or ownership it would become a nonsmoking establishment.

Council Member Gregory thought that the section on bingo parlors had been amended to December 31, 2015 but the proposed ordinance had an April 19, 2016 date.

Baker stated that the effective date was counted 3 years from the effective date of the ordinance.

City Attorney Burgess stated that the effective date of the prior smoking ordinance was longer than usual.

Council Member Hawkins felt that the prior direction amended the provision regarding the live music. He could not agree with live music provisions as stated by Council Member Roden.

Council Member Gregory stated that at the prior meeting a motion and second was made to continue the item and if the proposed ordinance accurately reflected the motion and second, then the proposed ordinance as written would be what was on the floor for consideration.

City Attorney Burgess stated that there was a live motion and second on the floor. Council could make amendments to the live motion. Staff tried to craft the ordinance was indicated by the motion.

Council Member Roden stated that the narrative he had received was that as a City, the private industry was heading in the right direction. Any new bars would be non-smoking and there were only eleven still smoking with those being reduced to seven. He felt the City needed to keep moving in that direction. An assessment had been done by citizens that indicated that there were twenty smoking bars and thirteen nonsmoking which would indicate that the city was not going in the right direction. He questioned the difference in the number of bars.

Baker stated staff's list had 33 bars listed on the system and that they had made calls and contacted the bars for their smoking status.

Council Member Johnson asked for a clarification of why the ordinance was being revised at this time and whether it was because of complaints from citizens.

Baker stated that when the initial ordinance was approved, Council requested staff to come back in about two years to determine how the ban was working, if it was successful and if a more comprehensive ban was needed.

Council Member Johnson questioned if the stated goal before was to eliminate smoking in all places.

Baker stated that the ordinance was very sketchy when it was presented to the Committee. The intent was to look at what the community wanted with an eye towards a comprehensive ban. At the time of the first ordinance, the community was quite not ready for that.

Council Member Johnson stated that the issue wasn't so much whether to ban smoking or not. The issue was that it wasn't completely banned. People had made major financial commitments due to the current ordinance. If the financial front had been 5-10 years ago it would be different. The second question was the research. Make sure the reason was the reason. If this was about public health such as bartenders, then that should be said. As consumers, people could choose to go to a smoking bar or not. He questioned if staff had contacted those individuals who they said they were trying to protect. He had only heard from one bartender regarding the issue. If it was about protecting health in the work place, then cigar bars and bingo halls mattered as well. Only one bar owner wanted it because he did not want to do it and wanted Council to do it so patrons would not be mad at him.

Council Member Gregory stated that the prior Council had asked that this item come back before them. He did not think it went far enough before but was equally curious to see if it went too far. He wanted to hear the entire scope on the issue.

Council Member Hawkins asked about the ad hoc committee and whether it was needed now. Baker stated that an extensive amount of work was done for the initial committee. Representatives from various industries were represented in the discussion as were members of the community.

City Manager Campbell stated that the perception was that baby steps were needed and an evaluation at a later date to see if more needed to be done later.

Mayor Watts reminded Council that as they moved forward with the issue, there was a motion and a second on the table. He did not want a lot of discussion in the Work Session and then have to repeat it in the regular meeting. He suggested Council move on and consider the item at the regular meeting.

Council Member Johnson stated that having the Work Session would allow Council to craft language there through a conversation. Currently he saw an ordinance that he did not think there was consensus on. He questioned if there was going to be another public conversation about the proposed ordinance and have it modified again from the dais or vote on what was currently presented.

City Attorney Burgess stated that Council could handle minor modifications at the dais but if there were major changes it might be better to give staff time to craft language or make changes not at the dais.

Council Member Ryan felt that there was a need for more data to know how many smoking bars were in the City.

Mayor Watts indicated that he was in favor of a sunset provision for consideration of prior business decisions made. He was not in favor of a grandfather clause. He did not care about the number of smoking/nonsmoking bars at this time; he was worried about the ones with patios and the ones that were not able to change direction.

Council Member Gregory stated that because of the prior motion and the printed ordinance, his vision at this point was to motion for amendments and then vote on those amendments. One of his motions would be crafting a working end date, a sunset date, for bars currently smoking to no longer be smoking.

City Attorney Burgess stated that a motion to amend would take precedence over a main motion.

Council Member Johnson stated that if Council was going to pass an ordinance there should be an understanding of why. He questioned if this was about work place safety for employees in the bars. It seemed as though in other businesses such as cigar bars the employees did not matter. If the reason was for work place safety, then there should be no carve outs.

Following the completion of the Work Session, the City Council convened in a Closed Meeting to consider the specific items listed below under the Closed Meeting section of this agenda.

1. Closed Meeting:

- A. ID 15-263 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; 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 acquisition of real property interests located in the Samuel McCracken Survey, Abstract Number 817 and the J. Carter Survey, Abstract No. 274, City of Denton, Denton County, Texas (located generally within the 1300 through 4400 block range of Sherman Drive). Consultation with the City's attorneys regarding legal issues associated with the acquisition or condemnation of the real property interests referenced 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. (Fire Station 4)

- B. ID 15-304 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 real estate matters related to the site selection for the DME Hickory substation, presently located at the intersection of West Hickory and South Bonnie Brae in the City of Denton, Texas, and concerning certain real property within the immediate vicinity, specifically Lots 1, 2, and 3 of the Oak Street Terrace Addition, and the potential acquisition of real property interests. Consultation with the City's attorneys regarding legal issues associated with the condemnation or acquisition of the real property interests 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. (Consent Agenda items: ID 15-305; ID 15-307; and ID 15-308)

- C. ID 15-331 Consultation with Attorneys - Under Texas Government Code, Section 551.071.

Consult with and provide direction to City's attorneys regarding legal issues and strategies associated with the current Gas Well Ordinance, and proposed Gas Well Ordinance amendment, regulation of gas well drilling and production within the City Limits and the extraterritorial jurisdiction, including: Constitutional limitations, statutory limitations upon municipal regulatory authority; statutory preemption and vested rights; impacts of federal and state law and regulations; impacts of gas well drilling upon protected uses and vice-versa; current and proposed extension to moratorium on drilling and production; other concerns about municipal regulatory authority or matters relating to enforcement of the Gas Well Ordinance, both current and proposed; settlement matters concerning gas well drilling in the City; surface development issues involving surface and mineral estates; and legal matters associated with a citizen's initiative ordinance and pending litigation styled Jerry Patterson, Commissioner, Texas General Land Office v. City of Denton Texas, Cause No. D-1-GN-14-004628 currently pending in the 53rd District Court of Travis County and Texas Oil and Gas Association v. City of Denton, Cause No. 14-09833-431 currently pending in the 431st District Court of Denton County regarding hydraulic fracturing where a public discussion of these legal matters would conflict with the duty of the City's attorneys under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

- D. ID 15-335 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Discuss, deliberate, receive information from staff and provide staff with direction pertaining to the acquisition or the condemnation of fee simple tracts, utility easement tracts, slope easement tracts, drainage easement tracts and temporary construction easement tracts for the Bonnie Brae Street Widening and Improvements project, the limits of which are generally between the intersection of Bonnie Brae Street and Interstate Highway 35 East and the intersection of Bonnie Brae Street and U.S. Highway 380, affecting real property tracts in the Robert Beaumont Survey, Abstract No. 31, the Buffalo Bayou, Brazos and Colorado Railroad Survey, Abstract No. 192, and the Eugene Puchalski Survey, Abstract No. 996, in the City and County of Denton, Texas. Consultation with the City's attorneys regarding legal issues associated with the acquisition or condemnation of the tracts referenced above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the Denton City Council under the Texas Rules of Disciplinary Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceedings or potential litigation. (Bonnie Brae Street segment between I-35 E. & U.S. 380 - no action item)

- E. ID 15-336 Consultation with Attorneys - Under Texas Government Code, Section 551.071

Consult with the City's attorneys regarding legal issues associated with the Texas Open Meetings Act as it applies to meetings using telephone, videoconference and internet where a public discussion of these legal matters would conflict with the duty of the City's attorneys under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

Regular Meeting of the City of Denton City Council at 6:30 p.m. in the Council Chambers at City Hall.

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

- A. ID 15-227 Motorcycle Safety and Awareness Month

Mayor Watts presented the proclamation for Motorcycle Safety and Awareness Month.

- B. ID 15-309 Mayor's Day of Concern for the Hungry

Mayor Watts presented the proclamation for Mayor's Day of Concern for the Hungry.

- C. ID 15-334 Parks Foundation and Denton Elks Gift to the City of Denton

Tim Crouch, Chair of the Parks Foundation, presented two checks to the city of Denton from the Denton Elks Club and an anonymous gift for basketball courts at two city parks in honor of Don Johnson.

3. CONSENT AGENDA

Mayor Pro Tem Engelbrecht motioned, Council Member Ryan seconded to adopt the Consent Agenda and accompanying ordinance and resolutions including an Alternate Ordinance for Item A. On roll call vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously.

Ordinance No. 2015-108

A.ID 15-139 Consider adoption of an ordinance closing, abandoning and vacating a portion of the right-of-way of Avenue D between Eagle Drive and Maple Street, being a 0.0836 acre tract, to accommodate the construction of Rawlins Hall and surrounding improvements at the University of North Texas; reserving a permanent utility easement in a portion of said tract; and providing an effective date. (Avenue D Abandonment for UNT Rawlins Hall/Gateway Park projects)

Ordinance No. 2015-109

B.ID 15-036 Consider adoption of an ordinance creating a Capital Improvements Advisory Committee pursuant to Texas Local Government Code §395.058 as a requirement before authorizing road impact fees; appointing the Planning and Zoning Commission's members as members of the Capital Improvements Advisory Committee; providing for the adoption of procedural rules for the Capital Improvements Advisory Committee to follow in performing out its duties; and providing for an effective date.

Resolution No. 2015-012

C.ID 15-231 Consider approval of a resolution authorizing the City Manager, or his designee, as Denton's authorized representative, to accept on behalf of the City of Denton an offer from the Texas Department of Transportation (TxDOT) relating to a grant for engineering and construction of a shared use path on Western Boulevard; confirming agreement to pay a portion of the total project cost; and providing an effective date. The Mobility Committee recommends approval (3-0).

Ordinance No. 2015-110

D.ID 15-274 Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of a Security Access Control System for the City of Denton; and providing an effective date (RFP 5313-awarded to American Business Electronics, Incorporated (The ABE Corp.) in the five (5) year not-to-exceed amount of \$2,500,000).

Ordinance No. 2015-111

E.ID 15-305 Consider adoption of an ordinance finding that a public use and necessity exists to acquire fee title to a 0.138-acre tract situated in the E. Pulchalski Survey, Abstract No. 996, legally described as Lot 2, of Oak Street Terrace Addition, an addition to the City of Denton, Denton County, Texas ("Property Interest"), and more particularly described on Exhibit "A", for the public use of expansion, construction, maintenance, operation, and improvement of electrical transmission and distribution lines, facilities, and structures, including substations and switch stations; authorizing the city manager, or his designee, to make and initial offer to Serendipity Business Interests, LLC Property ("Owner") to purchase fee title in and to the Property Interest for the price of Seventy Five Thousand Dollars and no cents (\$75,000.00), and other valuable consideration, as set forth in the contract of sale attached as Exhibit "B"; authorizing the expenditure of funds; and providing an effective date. (Hickory Street DME Substation assemblage tract: Serendipity Business Interests)

Ordinance No. 2015-112

F.ID 15-307 Consider adoption of an ordinance finding that a public use and necessity exists to acquire fee title to a 0.138-acre tract situated in the E. Pulchalski Survey, Abstract No. 996, legally described as Lot 3, of Oak Street Terrace Addition, an addition to the City of Denton, Denton County, Texas ("Property Interest"), and more particularly described on Exhibit "A", for the public use of expansion, construction, maintenance, operation, and improvement of electrical transmission and distribution lines, facilities, and structures, including substations and switch stations; authorizing the city manager, or his designee, to make and initial offer to Mankins Property ("Owner") to purchase fee title in and to the Property Interest for the price of Ninety Five Thousand Dollars and no cents (\$95,000.00), and other valuable consideration, as set forth in the contract of sale attached as Exhibit "B"; authorizing the expenditure of funds; and providing an effective date. (Hickory Street DME Substation assemblage tract: Mankins Property)

Ordinance No. 2015-113

G.ID 15-308 Consider adoption of an ordinance finding that a public use and necessity exists to acquire fee title to a 0.164-acre tract situated in the E. Pulchalski Survey, Abstract No. 996, legally described as Lot 1, of Oak Street Terrace Addition, an addition to the City of Denton, Denton County, Texas ("Property Interest"), and more particularly described on Exhibit "A", for the public use of expansion, construction, maintenance, operation, and improvement of electrical transmission and distribution lines, facilities, and structures, including substations and switch stations; authorizing the city manager, or his designee, to make an initial offer to Neblett Property ("Owner") to purchase fee title in and to the Property Interest for the price of One Hundred Twenty Two Thousand Dollars and no cents (\$122,000.00), and other valuable consideration, as set forth in the contract of sale attached as Exhibit "B"; authorizing the expenditure of funds; and providing an effective date. (Hickory Street DME Substation assemblage tract: Neblett Property)

Ordinance No. 2015-114

H.ID 15-310 Consider adoption of an ordinance accepting competitive bids by way of an Interlocal Agreement with Tarrant County and awarding a contract for the purchase of

office supplies; providing for the expenditure of funds therefor; and providing an effective date (File 5682-awarded to Staples, Inc. in the five (5) year not-to-exceed amount of \$1,500,000).

Ordinance No. 2015-115

I. ID 15-311 Consider adoption of an ordinance accepting competitive bids and awarding a public works contract for the construction of the City of Denton Wastewater Collection System Replacements Section 1 project; providing for the expenditure of funds therefore; and providing an effective date (Bid 5749-awarded to the lowest responsible bidder meeting specification, UtiliTex Construction, LLP in the amount of \$588,302). The Public Utilities Board recommends approval (7-0).

Ordinance No. 2015-116

J. ID 15-313 Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of water treatment chemicals for the of City of Denton Water Production and Water Reclamation divisions; and providing an effective date (RFP 5725-awarded to highest ranked proposer for each item as shown on Exhibit A of ordinance in the three (3) year not-to-exceed amount of \$4,200,000). The Public Utilities Board recommends approval (7-0).

Ordinance No. 2015-117

K. ID 15-315 Consider adoption of an ordinance accepting competitive proposals and awarding a contract for micro-surfacing services for the City of Denton Street department; and providing an effective date (RFP 5712-awarded to Viking Construction Inc. in the three (3) year not-to-exceed amount of \$1,050,000).

Ordinance No. 2015-118

L. ID 15-316 Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of electric utility overhead transmission conductors (Suwanee) for Denton Municipal Electric; and providing an effective date (RFP 5690-awarded to Irby Utilities in the three (3) year not-to-exceed amount of \$1,100,000).

Ordinance No. 2015-119

M. ID 15-320 Consider adoption of an ordinance of the City of Denton, Texas approving and authorizing the City Manager to execute an Interlocal Cooperation Agreement between the City of Denton and the Denton County Emergency Services District 1 for fire fighting and emergency medical services declaring an effective date.

Resolution No. 2015-013

N. ID 15-322 Consider approval of a resolution allowing El Guapo's Mexican Restaurant to be the sole participant allowed to sell alcoholic beverages at the Cinco de Mayo Celebration on May 2, 2015, upon certain conditions; authorizing the City Manager or his designee to execute an agreement in conformity with this resolution; and providing for an effective date. Staff recommends approval of the request.

Ordinance No. 2015-120

O.ID 15-338 Consider adoption of an ordinance accepting competitive proposals and awarding a public works contract for the construction of hangars at Denton Enterprise Airport; providing for the expenditure of funds therefor; and providing an effective date (RFP 5753-awarded to Mag Construction Services, LLC in the not-to-exceed amount of \$617,801.65).

4. ITEMS FOR INDIVIDUAL CONSIDERATION

A. ID 15-337 Consider adoption of an ordinance of the City of Denton, Texas, designating portions of certain retail establishments, public buildings, and food establishments as nonsmoking areas; providing notification requirements; prohibiting smoking in designated nonsmoking areas; providing exceptions; providing penalties; providing a severability clause, repealing ordinance 2012-367, and any other ordinance in conflict herewith; and providing for an effective date.

Lindsay Baker, IGR/PIO, stated that based on Council comments during the Work Session, a few minor changes had been made to the proposed ordinance. She reviewed the current ordinance provisions in terms of where smoking was prohibited and where smoking was permitted. Add-ins and amendments to the proposed ordinance were presented along with the definitions of patio in terms of current wording and the streamlined version of patio. The definition of cigar bar with increased wording for particular equipment was reviewed. That wording indicated that the specific equipment would be needed to qualify for a cigar bar. The grandfather provision for bars was reviewed including the provisions that would grandfather bars for smoking.

Mayor Watts indicated that as this was not a public hearing those individuals wishing to address the Council would need to complete speaker cards.

Council Member Ryan questioned the provision regarding bingo parlors as to whether it meant a business model or a current business.

City Attorney Burges reviewed the definition as written.

Council Member Ryan stated that if an existing location moved and had already installed the barrier, it would still be able to allow smoking.

City Attorney Burgess stated correct as provided in the Occupations Code.

The following individuals spoke regarding the proposal:

Billy Poer, 1716 Eagle Drive, Denton, 76203 – opposed as presented

Council Member Hawkins stated that he was struggling to protect bartenders and workers in these establishments and asked Poer if he felt forced to go into these environments to work or work at these establishments.

Poer stated that he did not feel forced to go into these establishments but that the public health was still there.

Jennifer Jaynee, 6303 W. Shady Shores Rd., #628, Denton 76208 – did not speak but was opposed as drafted

Charlie Nolet, 719 W. Hickory St., Denton, 76201- opposed - in terms of a public health issue, no one ever had to step into a bar. Smoking was legal; he had not seen what was being proposed.

Council Member Johnson stated that Council did not vote on the motion and second at the last meeting in order to have additional discussion. The drafted ordinance was reflective of the motion and second and this discussion was a continuation of that prior discussion.

Nolet stated that the proposal would only affect a small portion of people and businesses. People did not have to go into his business.

Lin Taylor, 119 W. Hickory St., Denton, 76201 – opposed - All of her employees smoked - this would not be helping their health. Ban could put businesses out of business with this prohibition. People should be able to smoke if they wanted, it was legal. Do research and talk to employees about their preferences.

Kay Kamm, 8900 Carpenter Fwy., Dallas, 75247 - opposed as it was not a comprehensive ordinance for all establishments; either amend it with a comprehensive ordinance or reject the proposed ordinance.

Michael Hennen, 724 Thomas Street, Denton, 76201 - opposed as drafted - Smoke Free Denton found 19 bars that allowed smoking, which meant more employees were affected by second hand smoke than originally discussed.

Council Member Hawkins asked about smoking in a cigar bar.

Hennen stated that he did not have a problem with that as a humidor would protect others from the smoke.

Council Member Hawkins stated the purpose of the humidor was to not limit the smoke. Smoking would be all around the people there.

Hennen still felt it was a good compromise.

Kelsey Bernstein, 7272 Greenville Ave., Dallas, 75231- opposed as presented due to the grandfather provision.

Mike Cheves, 900 Jeffrey, Denton, 76208 – opposed - if protecting people from smoking, then ban cigarettes, ban everywhere and not exempt cigar bars. He was opposed due to free enterprise. He felt this was trying to legislate health.

Carey Bilyeu, 2019 N. Locust St., Denton, 76209 – opposed; questioned the patio provision and why have an ordinance if change ownership of bar, then loose the grandfather clause. It devalued the establishment with that provision; delay approval of the ordinance.

Adam Arnold, 119 S. Elm St., Denton, 76201 – opposed - not present but was opposed.

Daniel Davis, 1717 Oak Tree Dr., Denton, 76209 - opposed - studies were net effect and not per business. Studies showed that correlation was not causal. The actual effect would target a small number of businesses in which a small number of the relative Denton population went to and would drive smokers into the streets.

Jennifer Gibbs, 119 S. Elm St., Denton, 76201 – opposed; not protecting the health of people because if health was a concern cigar bars, bingo and fraternal organizations would be included.

Erin Rener, 1508 Morse St., Denton, 76208 - opposed

Jeremy Birchfield, 1607 W. Oak St., #117, Denton, 76201 - opposed

Lloyd Banks, 1009 Ave C., Denton, 76201 – not present but was opposed

Comment cards were submitted by:

Pam Gibbs, 2020 Kendolph Dr., Denton, 76205 - opposed

Pat Cheek, 1220 Tulane Dr., Denton, 76201 - opposed

Tatum Shea, 990 West Highland, Denton, 76201 – opposed as presented

Schuyler Dix, 905 Cleveland Dr., Denton, 76201 – opposed as presented

Casey McGowen, 990 West Highland, Denton, 76201 – opposed

Alicia Yancey, 2606 Shelby Ave., #306, Dallas, - opposed

Mallory Aleem, 302 Wrangler Ln., Denton, 76205 – opposed as presented

Marie Milleage, 9504 Grandview Dr., Denton, 76207 - opposed as presented

Kamyon Conner, 908 N. Austin St., Denton, 76201 – opposed as drafted

Turner Wortham, 2217 Northway, Denton, 76207 – opposed as drafted

Abby McAlpin, 990 W. Highland St., Denton, 76201 – opposed as presented

Kayleigh Kincer, 990 West Highland St., Denton, 75057 – opposed as presented

Nicholas Miller, 1016 Beechwood, Denton, 76210 - opposed as presented

Mayor Watts stated that there was a motion and second on the table

Council Member Hawkins stated that when the ad hoc committee was formed, the ordinance was very outdated. It had since been updated and he questioned why it was being discussed again two years later.

Baker stated that the Council had requested that staff bring it back in two years to see if it was having the desired effect and if any changes were needed in the provisions.

Council Member Hawkins asked if the Committee felt it would get back together for the review.

Baker stated that staff did not get from Council that it would be reconvened but some of the committee members felt it would be reconvened. Council did not feel it was appropriate at this time.

Council Member Gregory stated that there was a motion on the floor but he wanted to amend that motion to amend the last sentence of Section 4 by striking the language “upon change or use of change of ownership said establishment shall lose its designation of a smoking bar”. He motioned to amend the language to “a bar operating as a smoking bar as of the effective date of this ordinance shall cease operation as a smoking bar on or before December 31, 2016 and shall thereafter comply with all provisions of this ordinance”. Council Member Engelbrecht seconded the motion.

Council Member Johnson asked for a point of clarification. Council would vote on this amendment and there may be other amendments. At some point Council would vote on the entire ordinance with the amendments in it. He questioned if a provision was amended that might affect another provision, was Council able to later amend that same point. In other words, could an amendment be amended.

City Attorney Burgess stated that the Council’s rules allowed an amendment to be amended one time but no more. However, a friendly amendment could be offered as well.

Council Member Roden stated that this motion was offered as a distinct and standalone amendment and questioned if that was the intent. As the maker of the original he questioned if he could simply adopt it as a friendly amendment to his original motion.

City Attorney Burgess stated that it was offered as an amendment and not as a friendly amendment so as it currently stood, it was an amendment to the motion.

Council Member Hawkins asked about procedure if he was to motion to continue in order to form an ad hoc committee.

City Attorney Burgess stated that a motion to continue took priority and she would have to review Council’s procedures to see if it took priority over the current motion to amend or the entire motion.

Council Member Gregory felt that Council had tried to do a lot over time to craft the best ordinance possible. The goal of his motion was to do as much as possible to protect as many workers as could be done in the City. If the December 31, 2016 was a problem and if it meant another vote to adjust that date, he would be open to a friendly amendment in that regard.

City Attorney Burgess stated that according to the Council’s rules, a motion to postpone took precedence over a motion to amend.

Council Member Hawkins motioned to postpone to date certain to allow the ad hoc committee to reconvene to study the issue. He did not see a hurry to revise the ordinance and felt that the Committee needed to look at the issue again. Council Member Ryan seconded. He was on the initial ad hoc committee and they were told it would come back to the Committee.

Council questioned if a motion to postpone was debatable.

Mayor Watts stated that Council could also suspend the rules if needed in order to have discussion.

Mayor Pro Tem Engelbrecht questioned whether the motion was to reconvene the former committee or form a new committee. If a new group, he questioned the rules for formulation and if the former group, what would be the procedure if someone was no longer available to serve.

Mayor Watts stated that the motion on the table was a motion to continue but that the purpose or intent of the motion was to reestablish the ad hoc committee. He questioned if the establishment of the ad hoc committee was a substitute aspect and an aspect of the motion to continue.

Council Member Hawkins responded yes as he felt the previous ad hoc committee that was formed was an effective group and an effective way to get to a compromise on the ordinance. He would like to see that repeated. He did not have all the details at this time but wanted that previous procedure followed.

Mayor Watts indicated that a motion to postpone was not debatable unless there was a request for a suspension of the rules. If Council agreed to that, it could be debated or discussed.

Council Member Johnson requested to suspend the rules as he felt there were other reasons for a continuance that made sense in the addition to the ad hoc committee. He questioned if the request to continue was only for one reason or could there be other reasons as well.

City Attorney Burgess stated that the motion was to postpone until such time as the ad hoc smoking committee had an opportunity to vet the issue and upon completion of the work of the ad hoc committee, it would be placed back on the City Council agenda.

Council Member Hawkins stated that was his motion and that he touched on a few items to consider such as the ordinance and the mix of the ad hoc committee.

Mayor Watts felt that the motion as it stood did not sound like a motion to postpone as a motion to postpone would postpone the current ordinance on the table. The motion by Council Member Hawkins was a motion to postpone with some other type of action attached to it which he felt defeated the purpose of the motion to postpone and therefore became its own motion. A motion to postpone would be to postpone the current ordinance that had been motioned and seconded with an amendment that had been motioned and seconded.

City Attorney Burgess stated that the motion on the table was to postpone this ordinance to an event certain. If postponed and if the Committee vetted it and decided to recommend a different ordinance, Council could chose to let this ordinance die and act on whatever ordinance the Committee brought forward.

Council Member Johnson asked if he could offer a friendly amendment to a motion to postpone as he felt the motion to postpone was specifically to reconvene the ad hoc committee.

Mayor Watts questioned whether the motion to postpone to reconvene the ad hoc committee was a valid motion.

City Attorney Burgess stated that the motion to continue as she understood it was to continue to an event certain reconvening the ad hoc committee.

Mayor Watts stated if that was the motion and second, then it was possible to make a friendly amendment to a motion to postpone to a date certain.

Council Member Johnson offered a friendly amendment that in addition to the reconvening of the ad hoc committee, factual data be established through a survey of all bartenders in the city of Denton whether they smoked or not and whether they support a smoking ban or not. The reason he wanted to offer that friendly amendment was the stated purpose of this from the beginning was to protect them. He felt the role of government was to protect those unable to do so but he did not see that they wanted to be protected.

City Attorney Burgess restated that the friendly amendment to the motion was to postpone to reconvene the ad hoc smoking committee and gather the data to an event certain upon the completion of those two tasks.

Council Members Hawkins and Ryan were in agreement with the friendly amendment to their motion and second.

Mayor Watts questioned if the amendment to postpone was debatable.

City Attorney Burgess stated that it would not be debatable without a suspension of the rules.

Mayor Pro Tem Engelbrecht requested a clarification of the motion and amendment regarding the event certain.

Council Member Gregory asked for a point of clarification. It seemed that the only data collected would be from bartenders.

Council Member Johnson stated that Council would determine who would collect the data in terms of a survey of bar employees whether they smoked and if they supported a ban on smoking in bars.

Council Member Gregory asked about other businesses.

Council Member Johnson stated that the ordinance would only ban smoking in bars.

Mayor Watts stated that if Council was going to continue with a discussion, there needed to be a motion to suspend the rules. He was not allowed to comment until there was a suspension of the rules.

Council Member Hawkins motioned, Council Member Ryan seconded to suspend the rules. On hand vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously

Mayor Watts stated that he was not in favor of the motion to postpone. He had enough discussion on the proposal and reconvening the committee would not give any more information than was needed now to make a decision. If the issue was for work place safety, smoking should be banned in cigar bars and smoke shops. He wanted to talk about an exception to bingo halls. This was a policy decision.

Mayor Pro Tem Engelbrecht stated that he was not in support of the motion to postpone.

On roll call vote for the motion to postpone to an event certain which was the convening of the ad hoc smoking committee to vet the issue and include a survey to gather data regarding smoking preferences of bar employees and whether they supported the ban, Council Member Hawkins "aye", Council Member Johnson "aye", and Council Member Ryan "aye". Mayor Pro Tem Engelbrecht "nay", Council Member Gregory "nay", Council Member Roden "nay", and Mayor Watts "nay". Motion failed with a 3-4 vote.

Council considered the amendment offered by Council Member Gregory. That motion was to amend the last sentence of Section 4 of the ordinance so that it would state that a bar operating as a smoking bar as of the effective date of the ordinance shall cease operating as a smoking bar on or before December 31, 2016 and shall thereafter comply with all provisions of this ordinance.

Council Member Johnson offered a friendly amendment to change the date to December 31, 2017 to give time for businesses to work on a business plan to reinvent themselves. The ordinance gave advantages to bars with patios over those without patios.

Council Member Gregory and Mayor Pro Tem Engelbrecht accepted the friendly amendment to change the date to December 31, 2017.

Council Member Gregory restated that the motion would be to strike the last sentence in Section 4 and substitute "a bar operating as a smoking bar as of the effective date of the ordinance shall cease operating as a smoking bar on or before December 31, 2017 and shall thereafter comply with all provisions of this ordinance".

City Attorney Burgess stated that the motion would strike the language in Section 4 a. 7 the last sentence.

Council Member Roden stated that the motion would effectively make mute Section 4.a.7.1 and questioned if Council Member Gregory was going to address any of the other sections.

Council Member Gregory stated that he would expect that a bar would register as a smoking bar and would follow any of the other rules in the provision unless Council amended any other rules. He had an idea for an amendment for Section 4.7.

Council Member Roden asked if he could make a friendly amendment that was not amending the amendment. His friendly amendment would be to strike Section 4.a.7.4 which was the clause not allowing live music performances. That clause would be struck from the ordinance.

Council Member Gregory and Mayor Pro Tem Engelbrecht were in favor of that friendly amendment.

On roll call vote for the amendment to change the wording in Section 4 to “a bar operating as smoking bar as of the effective date of the ordinance shall cease operating as a smoking bar on or before December 31, 2017 and shall thereafter comply with all provisions of this ordinance” and to strike Section 4.a.7.4 regarding the prohibition of live music performances, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Johnson “aye”, Council Member Roden "aye", and Mayor Watts "aye"; Council Member Hawkins "nay" and Council Member Ryan "nay". Motion carried with a 5-2 vote.

Council Member Gregory motioned to amend Section 4.7 to “which do not have an open aired outdoor patio”. The effect of this was bars operating as smoking bars with an open aired outdoor patio could use it now as a designated smoking area and would not have to be exempted until December 31, 2017. Mayor Pro Tem Engelbrecht seconded the motion.

Council Member Roden questioned if that would be part of the administrative process whereby they would have to register as a smoking bar and one of the criteria to allow them to register as a smoking bar would be the absence of a patio.

Council Member Ryan questioned the effective date.

Mayor Watts stated that currently the effective date was 120 days.

On roll call vote for the amendment regarding open aired outdoor patios, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Roden "aye", and Mayor Watts "aye"; Council Member Hawkins "nay", Council Member Johnson "nay", and Council Member Ryan "nay". Motion carried with a 4-3 vote.

Council Member Johnson motioned to amend Item 4.a.7 to strike #1 requiring bars to register. He reasoning was that if smoking was going to be allowed until December 31, 2017 was it necessary to have a registration process. Council Member Hawkins seconded the amendment.

Council Member Roden stated as even though there was the requirement to have a posting of a conspicuous sign declaring a smoking establishment, it would still give clarity to have a registration process.

Council Member Johnson rephrased Council Member Roden’s comment that it would be logical that all of the bars would move away from smoking because that was the direction the City was going. He felt it was the direct opposite and that they would want to keep their options open. He felt all of the bars would register if the City had the option to do so.

Mayor Watts stated that the amendment that previously passed indicated that if a business did not have open air patio then they would get the sunset date. If an establishment did have an open air bar the effective date was 120 days and after 120 days it would have to be nonsmoking. The sunset date only applied to bars without an open aired patio. On a registration, after 120 days, it would be down to those with or without a patio. He questioned why Council Member Roden would be in favor of maintaining the registration process.

Council Member Roden stated he was just responding to Council Member Johnson’s concern.

On roll call vote regarding the amendment to amend Item 4.a.7.1 to strike requiring bars to register, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", and Mayor Watts "aye"; Council Member Roden "nay", and Council Member Ryan "nay". Motion carried with a 5-2 vote.

Council Member Gregory motioned to add wording to the definitions section regarding tobacco bar. He did not have a problem with Item 1 and 2 as listed. For Item 3 he would add "has signage stating that it was a tobacco bar, add Item 4 "does not employ or allow entrance to anyone under 18 years of age", and add Item 5 "generates at least 15% of its quarterly gross revenues from the sale of tobacco products".

Mayor Pro Tem Engelbrecht seconded the motion.

Council Member Hawkins questioned how the 15% would be regulated.

Council Member Gregory stated that it would be done only with a complaint.

Council Member Johnson questioned if the business held a permit and held an alcoholic beverage permit and at least 15% of sales must be from tobacco products, how would that relate to a tobacco shop.

Council Member Gregory stated that a tobacco bar was different from a tobacco shop and he was only interested in the definition for tobacco bar.

On roll call vote for the change in definition for tobacco bar, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", and Mayor Watts "aye"; Council Member Ryan "nay". Motion carried with a 6-1 vote.

Council Member Johnson motioned to reinstate Section 2.a.21 regarding "any location which was within 30 feet of an entrance to a location which smoking was prohibited". He would be open to a modification of that distance. He wanted this section back in the ordinance because if this was about public health, he was sure people will begin smoking on sidewalks as they could not smoke in the establishments. That would force people to walk through second hand smoke on the sidewalks. Mayor Pro Tem Engelbrecht seconded the motion. He felt the sidewalk issue was a big economic issue as people did not want to walk through smoke on the Square.

Council Member Gregory expressed a concern with adding the section back in as the way it was written would prohibit most smoking on patios as there had to be some kind of entrance to get to the patio and back out.

Council Member Johnson questioned if a passage way from within an establishment onto a patio that was part of the establishment was an entrance unless it had a patio at its entrance.

Council Member Gregory stated that the intent was not to exempt smoking from the patio. He questioned if there needed to be a definition of entrance in the ordinance.

City Attorney Burgess stated it might be best to include such a definition.

Council Member Johnson suggested the wording “within 30 feet of the street front entrance and/or main entrance to a non smoking establishment”.

Mayor Pro Tem Engelbrecht needed clarification on the definition before he would agree to it with his second. He questioned if it meant 30 feet on the exterior from the entrance. He felt it needed to say 30 feet from the entrance outward into the public space. He did not see it dealing with a patio.

Council Member Johnson replied correct; that it would be any location 30 feet of an exterior entrance.

Mayor Pro Tem Engelbrecht stated that it would be 30 feet outward into the public space. In that case, he would agree to that with his second.

Council Member Ryan questioned the situation where the patios were the front entrances.

Council Member Johnson stated that his wording would be “a non-smoking establishment 30 feet from the street front exterior entrance into a non-smoking establishment”.

Mayor Watts stated that the amendment was talking about public space. If the patio was part of the business, it was not public space and was part of the establishment.

Council Member Johnson stated that the use of “public space” was the term to use.

Mayor Pro Tem Engelbrecht was in agreement with the change in wording for his second to the amendment.

Council Member Roden stated that businesses that take up public space would not be considered on their private property.

Council Member Johnson replied correct that two tables on a public sidewalk was not a patio.

Council Member Ryan questioned the situation where there would be a private patio within 30 feet of another establishment.

Council Member Johnson stated that situation would not be public space, it would be private space.

Council Member Ryan asked about areas away from downtown such as Kroger. He questioned if individuals could not smoke in the parking lot which was private property.

Council Member Johnson stated that he was talking about public sidewalks and about the Square including Hickory and Industrial. He was talking about public sidewalks however it was defined.

On roll call vote regarding reinstating Section 2.a.21 regarding “any location which was within 30 feet of public space to an entrance to a location which smoking was prohibited”, Mayor Pro

Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", and Mayor Watts "aye"; Council Member Ryan "nay". Motion carried with a 6-1 vote.

Mayor Pro Tem Engelbrecht questioned Section 4.a. 5 "bingo parlors". His assumption was that with the original ordinance there was only one bingo parlor that was being discussed and now the wording was "bingo parlors which may not exist on the effective date". He questioned why the wording was not just for the original bingo parlor or a continuation of ones that were. He did not want new ones to come up before the effective date of the ordinance. He felt some kind of language stating that needed to be added.

Council Member Gregory suggesting changing the wording to say existing on the date of passage of the ordinance.

Mayor Pro Tem Engelbrecht motioned to amend Section 4.a.5 to state "any bingo parlor existing on the date of passage of the date of this ordinance". Council Member Gregory seconded the motion.

On roll call vote for the amendment to the wording for bingo parlors, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", and Mayor Watts "aye"; Council Member Ryan "nay". Motion carried with a 6-1 vote.

Council Member Roden called the question.

Mayor Watts stated that the question was to vote on the original motion as amended at this meeting. Council Member Gregory seconded.

City Attorney Burgess indicated that Council could only discuss the calling of the question. There could be no other comments regarding the ordinance as calling the question cut off any debate.

Council Member Roden withdrew his calling of the question. Council Member Gregory agreed to withdraw his second.

Council Member Johnson stated that he appreciated the discussion of Council and the manner in which it was conducted. The stated purpose of revising this ordinance was for work place health and safety. He felt smoking and secondhand smoke was bad. People made decisions to work in a bar and the role of government was to protect those who could not protect themselves. One life was not worth more than another and that was done at this meeting. He would be voting for the amended ordinance but he wanted to make sure it had at least the changes made at this meeting.

Council Member Hawkins stated that he was not in favor of amended ordinance. Although he agreed with many of the amendments, smoking was legal and he was struggling with the issue. If an individual wanted to go to a place that had smoking, he should be able to do that. A small business owner should be able to open a smoking establishment as long as it was legal to do that. This was not the role of government. People were adults and did not have to go into these places if they did not want to.

Council Member Ryan agreed with Council Member Hawkins comments. The national trend was moving towards the legalizing of marijuana but the national trend was also to prohibit smoking which was legal. This took away the rights of people to go into establishments where they wanted to go.

Council Member Gregory stated that the ordinance did not take away a person's right to smoke, only to smoke in certain places. The role of government was to preserve and protect health, safety and general welfare.

Mayor Watts appreciated the honesty and candor of the members and the process as it evolved.

Council Member Roden motioned, Council Member Gregory seconded to adopt the ordinance as amended. On roll call vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Johnson "aye", Council Member Roden "aye", and Mayor Watts "aye"; Council Member Hawkins "nay", and Council Member Ryan "nay". Motion carried with a 5-2 vote.

5. PUBLIC HEARINGS

Ordinance No. 2015-122

- A. Z14-0025 Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, regarding a rezoning of approximately 2.402 acres from Neighborhood Residential 2 (NR-2) to Community Mixed Use - General (CM-G). The subject property is generally located at the northeast corner of Teasley Lane and Robinson Road in the City of Denton, Denton County, Texas; and providing for a penalty in the maximum amount of \$2,000.00 for violations thereof, severability, and an effective date (Z14-0025). The Planning and Zoning Commission recommends approval of this request (6-0).

Aimee Bissett, Interim Director of Planning and Development, stated that this public hearing would address the rezoning for Lakewood Square. The request was to rezone from NR-2 to Community Mixed Use. She presented the location map, existing zoning, proposed zoning, future land use map, background of the property, staff analysis uses were consistent with what was on the ground and consistent with Denton Plan. There was one response received in opposition to the proposal. She presented the criteria for approval of the zoning amendment which the proposal met. The Planning and Zoning Commission as well as the Development Review Committee recommended approval.

The Mayor opened the public hearing.

No one spoke during public hearing.

The Mayor closed the public hearing.

Council Member Johnson motioned, Mayor Pro Tem Engelbrecht seconded to adopt the ordinance. On roll call vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member

Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously.

Ordinance No. 2015-123

- B. Z15-0001 Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, regarding initial zoning of approximately 2.397 acres from Rural Residential-5X (RD-5X) to Neighborhood Residential 1 (NR-1). The subject property is generally located on the east side of Cunningham Road and approximately 1300 feet north of Mills Road. The Planning and Zoning Commission recommends approval (7-0).

Aimee Bissett, Interim Director of Planning and Development, stated that this was an initial zoning request for property located at 194 Cunningham. The change in zoning would be from RD-5X to NR-1. She presented location map, existing zoning map, proposed zoning map, future land use, and background of property. Analysis criteria for the zoning change were presented which the proposal met. The Planning and Zoning Commission as well as the Development Review Committee recommended approval.

The Mayor opened the public hearing.

No one spoke during the public hearing.

The Mayor closed the public hearing.

Council Member Roden motioned, Mayor Pro Tem Engelbrecht seconded to adopt the ordinance. On roll call vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously.

- C. A15-0012A Hold the second of two public hearings to consider annexing approximately 620.82 acres of land contained in eight of fifteen previously designated annexation areas. The individual parcels of land currently proposed for annexation received Non-Annexation Agreements in 2010, and either do not qualify for exemption under §43.035 of the Texas Local Government Code, or the owners of record failed to execute Non-Annexation Extension Agreements offered by the City. Four of the previously designated annexation areas contain approximately 478.78 acres of the parcels proposed for annexation, and these four areas are generally located in the northwestern quadrant of the City of Denton's Extraterritorial Jurisdiction (ETJ), Division 1, and were previously designated in a 2009 Growth Management Plan as PAA1, PAA2, PAA3, and PAA4. The remaining 142.04 acres of land currently proposed for annexation lie within unincorporated ETJ pockets located within the body of the City of Denton's corporate limits, previously designated in a 2009 Growth Management Plan as areas DH2, DH3, DH4, and DH11. (A15-0012A)

Aimee Bissett, Interim Director of Planning and Development, stated that this was the second public hearing for the annexation of 620 acres in 8 of 15 annexation areas. These were properties which previously had non-annexation agreements but at the time of the expiration of the agreements did not qualify for an extension or did not execute an extension. She reviewed the annexation areas. Since the first public hearing three properties had been removed from the proposed annexation. One property in DH2 was recorded in error by staff and the other two property owners in PAA1 upon expressing notification concerns were allowed to complete non-annexation agreements. The Service Plan to the annexed areas was presented along with the annexation schedule. Staff recommended annexation of the identified properties.

The Mayor opened the public hearing.

The following individuals spoke during the public hearing:

LaDonna Pockrus, 9080 Wolf Run, Ponder 76259 - not present but in opposition
Larry Pockrus, 9080 Wolf Run, Ponder 76259 – not present but in opposition
Nathan Harvey, 4353 Bonnie Brae St., Argyle 75226 – opposed
Pat deBaca, 9861 Jim Cristal Rd., Krum 76249 – opposed
Denny Dodd, 4923 Ganzer Rd. W., Krum – opposed
Annette Mulkey, 912 Cole Ave., Denton - opposed
Jane Trevino, 4597 Ganzer Rd. W., Krum 76249 - opposed

The Mayor closed the public hearing.

No action was required on this item at this time.

- D. Z14-0013 Hold a public hearing and consider a rezoning from Neighborhood Residential 2 (NR-2) to Neighborhood Residential Mixed Use 12 (NRMU-12) on an approximately 10.274 acre property located at the southwest corner of Teasley Lane (FM 2181) and Pennsylvania Drive. The Planning and Zoning Commission recommends denial (6-0). A supermajority vote by City Council is required for approval.

Aimee Bissett, Interim Director of Planning and Development, stated that this proposal was for a rezoning of the Vista Academy. She presented the location map, existing zoning map, proposed zoning, and purpose of the rezoning. A mixed use overlay was included which would only allow a school. The criteria for approval were presented which the proposal met. The future land use was for low residential NRMU-12 which did not conform to this use.

The requirements of the transportation provisions and the associated traffic constraints were presented. As of the date of formal notification, there were 57% of the property owners within 200 feet of the proposal in opposition. That amount would require a 3/4 majority vote of Council for approval. The Planning and Zoning Commission and the Development Review Committee recommended denial. The applicant had submitted a letter questioning to table the proposal until June 2nd to review engineering plans and entrance points. They wanted an opportunity to update their plans and written plans from TxDot.

Council Member Johnson stated that a proposal in that area kept being denied due to traffic on Pennsylvania. If there was a problem today he questioned where the data was and what TxDOT would allow to be done.

The Mayor opened the public hearing.

The following individuals spoke during the public hearing:

Terry Wright, 1110 South Elm, Carrollton, 75006 - Presented reasons for tabling.
R. Von Beougher, 111 Hillside Dr., Lewisville, 75057 – engineer for the project - waiting for formal approval from TxDOT thus requesting postponement.
Lou B. Nelson, 2901 Carmel, Denton, 76205 - opposed
Charles Parker, 832 Southmont Dr., Denton, 76205 - opposed
George C. Goen, 2900 Pennsylvania Dr., Denton - opposed
Angela Samide, 2101 Miranda Place, Denton, 76210 - support
J. Virgil Strange, 531 North Locust Denton, 76201 - opposed
L. Dee Shipman, 3004 Dentin Dr., Denton, 76205 - opposed
Jerry Mohelnitzky, 3005 Destin Dr., Denton, 76205 - opposed

Comment cards were submitted by the following:

Kathryn Parker, 832 Southmont Denton 76205 - opposed
David and Carol Rowley, 3012 Pennsylvania Ct., Denton, 76205 - opposed
William and Lisa Schneider, 1166 Southmont Dr., Denton, 76205 - opposed
Randy Robinson, 2913 Denton Dr., Denton, 76205 - opposed
John and Sharon Rainey, 2909 Destin Dr., Denton, 76205 - opposed
Sandra Robinson, 2913 Destin Dr., Denton, 76205 - opposed
Charlie and Lynn Davis, 2904 Pennsylvania Ct., Denton, 76205 - opposed
Vivian Casper, 3004 Pennsylvania Ct., Denton, 76205 - opposed
Jeffrey Eckels, 1015 Egan St., Denton, 76201 - opposed
Evelyn Dunn, 1109 Sandestin Dr., Denton, 76205 - opposed

Charlie Davis, 2904 Pennsylvania Ct., Denton, 76205 also spoke in opposition.

Mr. Wright was allowed a 5 minute rebuttal. He indicated that the Traffic Impact Analysis Study showed 2.5 car trips for these schools. The traffic access would be off Teasley and not Pennsylvania. They were adding a fire gate in order to have two access points for emergency vehicles.

The Mayor closed the public hearing.

Council Member Johnson asked if the traffic impact analysis showed the need for a traffic signal at Pennsylvania.

Mike Bell, Planner, stated that TxDOT had indicated that it did not meet warrants now or as proposed.

Council Member Johnson asked if TxDOT had granted a median cut and curb cut.

Earl Escobar, Engineering Development Review Manager, stated that TxDOT indicated that they would consider a median opening and curb cut. It was conceptually approved but did not have final approval at this time.

Council Member Johnson felt that the use fit the neighborhood but the traffic did not. He suggested some kind of right turn lane be explored for Teasley in that location.

Council Member Hawkins motioned, Council Member Roden seconded to deny the ordinance. On roll call vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously.

- E. ID 15-327 Hold a public hearing inviting citizens to comment on the City of Denton's 2015 - 2019 Consolidated Plan for Housing and Community Development and the 2015 Action Plan for Housing and Community Development.

Barbara Ross, Community Development Manager, stated that this agenda item was to receive comments from the public regarding the 2015-16 Action Plan.

The Mayor opened the public hearing

There were no speakers.

The Mayor closed the public hearing.

There was no action needed on this item.

6. 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.

Council Member Johnson asked that as a short term measure within the next 60 days to have large simple signs indicating free public parking installed at all public lots within a block of the Downtown.

Council Member Johnson asked for a report on wayfinding signage especially on the four corners on the Downtown Square in terms of what could be done and what the cost would be.

Council Member Ryan requested staff investigate the lighting in that old tax office area.

Council Member Ryan requested a report on the City facilities greenness such as recycling and water conservation.

B. Possible Continuation of Closed Meeting of Closed Meeting topics, above posted.

The Council did not return to the Closed Meeting.

With no further business, the meeting was adjourned at 11:00 p.m.

CHIRS WATTS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS