

CITY OF DENTON CITY COUNCIL MINUTES

October 7, 2014

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, October 7, 2014 at 3:00 p.m. in the Council Work Session Room at City Hall.

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

ABSENT: Council Member Hawkins.

1. Citizen Comments on Consent Agenda Items

There were no comments from citizens on this item.

2. Requests for clarification of agenda items listed on the agenda for October 7, 2014.

Council Member Gregory asked about Consent Agenda Item G and if there were any Denton vendors on the list.

Chuck Springer, Director of Finance, stated that he would have to check but that the contract was through a State contract.

Council Member Gregory asked about Consent Agenda Item F and whether there were any plans to move from overhead lines to underground lines.

Brent Heath, Executive Manager of Energy Delivery, stated that they were doing that in the Sourthridge area at this time. There was also money budgeted to convert from overhead to underground in the Downtown area.

Council Member Gregory asked about older neighborhoods.

Heath stated that 57% of the distribution system was already underground.

Council Member Gregory asked if conditions made it prohibitive to do in older homes.

Heath stated that if a customer wanted to pay the differential to his home it could be done.

Council Member Gregory asked about Consent Agenda Item K and if a request for proposal was done.

Emerson Vorel, Director of Parks and Recreation, stated that a request for proposal was done and this was the firm chosen.

Council Member Roden stated that due to the success of the community and events being held in the community that the pace for noise variances was increasing. He questioned if there was a policy for the number of these the City was willing to tolerate in a given year.

Howard Martin, Acting City Manager, stated that the requests were taken as they were received. There was no set policy that limited the number in a particular year.

Council Member Roden felt that it might be a good topic for discussion.

Council Member Gregory stated that as the Downtown continued to develop with live music in restaurants, etc. a review of the sound ordinance in general and specifically as it related to the Downtown area might be needed. He felt that another concern to consider in a Work Session was a follow up on how many special events the City could accommodate in terms of overtime for police and fire and how thin was staff was being stretched in terms of public safety issues.

Mayor Watts suggested including a protocol for scheduling as well as the noise level. He asked about Consent Agenda Item N concerning the contract for professional legal services. He questioned if this agreement would cover Jim Morris and Terry Morgan.

City Attorney Burgess that Mr. Morris and Mr. Morgan had a contract between the two of them and this would cover both of them.

Mayor Watts questioned Consent Agenda Item H in regards to the smart meters in terms of how many were left to be converted.

Heath stated that there were 1,700 more to do which would complete the project.

Council Member Watts asked to have an Informal Staff Report to reevaluate whether or not to have a connect charge now that the meters could be turn on without having to go to the residences.

3. Work Session Reports

- A. SI14-0008 Receive a report, hold a discussion, and give staff direction regarding a City of Denton Code of Ordinances amendment and Denton Development Code amendment for the sale of all alcohol within the City's corporate limits.

Brian Langley, Director of Planning and Development, stated that staff was requesting direction on Denton Development Code and Code of Ordinances amendments relating to businesses that would no longer operate as a private club and to process a Code of Ordinances amendment for distance regulations between alcohol sales and established TABC protected uses such as churches, public or private schools and public hospitals.

If the local option election passes in November, the sale of all alcoholic beverages within corporate the corporate limits of the City of Denton would be permitted subject to the TABC requirements and any additional regulations adopted by the City. The TABC regulated all phases of the alcoholic beverage industry in Texas and exclusively governed the regulation of alcoholic beverages. Their regulations indicated that a city could not impose stricter standards on premises or businesses required to have a license or permit under their code than were imposed on similar premises or businesses that were not required to have such a license or permit. If the local option passed, private clubs would not have to retain their private club license from the TABC. A Denton Development Code amendment would be needed to permit bars as part of the use table. Package alcohol or liquor stores would be permitted in Denton as retail sales and services within the commercial land use category.

One question to consider was how to treat package liquor stores in terms of the Development code requirements. Package liquor stores would be considered retail uses and were allowed in the same zoning districts as a grocery or convenience store. Most existing retailers (grocery or convenience stores) may not have an interest in adding liquor sales because of the regulations imposed by the TABC Package Liquor Store License such as employees over 21 and limited hours. Cities could not expressly treat package alcohol sales differently than any other retail operation and package alcohol sales would be permitted where general retail was permitted.

Council Member Roden questioned why the City would have to follow the TABC code and not make distinctions within the retail code that would not violate the statute.

City Attorney Burgess stated that there were interpretative cases regarding the regulations that indicated that it would not just be the statute but also other cases to take into consideration.

Council Member Engelbrecht questioned the issue of allowable uses. If a business wanted to sell hard liquor would the hours of operation of the business be limited or the sale of the product limited.

City Attorney Burgess stated that it was her understanding that the hours were strictly controlled by TABC.

Lockley continued that the TABC did allow a city to prohibit the sale of alcohol in residential areas by Charter which would require a Charter amendment. The amendment could prohibit the sale within 300 feet of a church, public or private school, or public hospital by ordinance.

Mayor Watts questioned if the Local Option election was passed the City could regulate more in terms of distance.

Council Member Ryan stated that if an individual came into a beer/wine store and purchased a glass of wine or a beer, he could walk out with it but that could not be done in a private club if it was selling hard liquor.

Mayor Watts requested an Informal Staff Report on statutory regulations that currently were in place and what would be different if the Local Option election passed.

Council Member Gregory stated that the distance requirements focused on package sales as opposed distance requirements for bars/clubs. He questioned that if other retail sales were not allowed in residential areas would a charter amendment still be needed.

Lockley stated that there was a mixed use category that would allow residential dwellings in these types of commercial areas. Other areas could not have alcohol sales in residential areas. If the goal was to protect existing single family neighborhoods from these types of businesses, a charter amendment would be needed for a separation of the alcohol sales.

Council Member Gregory questioned if the goal would be to not allow sales of package liquor other than in downtown.

Lockley stated no. He reviewed what other cities did in terms of the sale of package alcohol. He stated that the approval process would be to adopt a Code of Ordinances amendment for distance regulations between alcohol sales and established TACB protected uses. A public hearing could be held on November 18th. A Denton Development Code amendment would be needed to address former private clubs. For that amendment, a Planning and Zoning Commission work session could be held on October 22nd with a public hearing on November 5th. Council would then hold a public hearing on December 3rd.

Mayor Watts stated that the consensus of the Council was to follow the direction suggested by staff.

Following the completion of the Work Session, the City Council convene in a Closed Meeting at 3:55 p.m. to consider the specific items listed below under the Closed Meeting section of this agenda.

1. Closed Meeting:

A. ID 14-0601 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; and 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 acquisition of real property interests located in the W. Roark Survey, Abstract No. 1087, J. Severe Survey, Abstract 1164, B.B.B. & C.R.R. Co. Survey, Abstract No. 196 and the J. W. Withers Survey, Abstract No. 1343, all in Denton County, Texas, generally located along a line running west to east, commencing at U.S. Highway 377 adjacent to the Fort Worth Drive Substation and continuing to the west right of way line of F. M. 1830 City of Denton, Texas. Consultation with the City's attorneys regarding legal issues associated with the acquisition or 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. (Denton Municipal Electric Fort Worth T1 Addition Expansion, Denton Municipal Electric Fort Worth Drive and FM 1830 Distribution, and Hickory Creek Detention Facility projects: Burch Family Farms Ltd.)[ID 14-0603]

B. ID 14-0562 Consultation with Attorneys - Under Texas Government Code, Section 551.071.

1. Consult with and provide direction to City's attorneys regarding legal issues and strategies associated with Gas Well Ordinance 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;

moratorium on drilling and production; other concerns about municipal regulatory authority or matters relating to enforcement of the Gas Well Ordinance; 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 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.

C. ID 14-0596 Consultation with Attorneys - Under Texas Government Code, Section 551.071

1. Discuss, deliberate, and receive information from the City's attorneys pertaining to sanitary sewer overflows and resulting enforcement action, and provide the City's attorneys with direction, 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 or legal proceedings.

Regular Meeting of the City of Denton City Council at 6:30 p.m. in the Council Chambers at City Hall, 215 E. McKinney Street, Denton, Texas.

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 14-0458 Presentation of an award from the Texas Department of Transportation Division to the City of Denton and the Convention and Visitors Bureau.

Margo Richards, Director of Tourism Division for the Texas Department of Transportation, presented the Texas Highways Magazine Top 40 Travel Destinations Readers' Choice award to the City of Denton. Denton was awarded the #2 spot of the list of destinations.

- B. ID 14-0544 Joy Comes to Denton Day

Mayor Watts presented the proclamation for Joy Comes to Denton Day.

- C. ID 14-0593 Fire Prevention Week

Mayor Watts presented the proclamation for Fire Prevention Week.

- D. ID 14-0595 Goodwill Industries of Fort Worth Helping People with Disabilities Day

Mayor Watts presented the proclamation for Goodwill Industries of Fort Worth Helping People with Disabilities day.

3. CITIZEN REPORTS

A. ID 14-0609 Receive a report from Bill Coville regarding restrictions on cutting trees.

Mr. Colville stated that he was interested in the tree ordinance for the city of Denton. He had a past City Urban Forester look at his property that had a row of hackberry trees. The current ordinance protected hackberry trees and he was now unable to cut them down. It was going to cost him \$16,000 to cut down the nuisance trees on the property. He suggested that the Council look at the list of protected trees and consider eliminating the nuisance trees that were unsafe.

4. CONSENT AGENDA

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

Ordinance No. 2014-315

A. ID 14-0579 Consider adoption of an ordinance of the City Council of the City of Denton, Texas, authorizing the City Manager to execute a third amendment to a contract for professional legal services with Constangy, Brooks and Smith relating to litigation styled Deborah Shaklee v. City of Denton, Cause No. 2013-20132-158; authorizing the expenditure of funds therefor; and providing an effective date.

Approved the noise exception request listed below.

B. ID 14-0582 Consider a request for an exception to the Noise Ordinance for the purpose of the Geezerpalooza music event held on Industrial Street and sponsored by the Geezerpalooza Committee. Live music will be played on the 100 block of Industrial Street on Sunday, October 19, 2014, from noon to 9 p.m. An exception is specifically requested for an increase in sound levels from 70 to 75 decibels and for amplified sound on a Sunday. Staff recommends approval of request.

Approved the noise exception request listed below.

C. ID 14-0583 Consider a request for an exception to the Noise Ordinance for the purpose of the Get Out the Vote rally sponsored by the Denton Drilling Awareness and the Pass the Ban groups. Live music will be played in Quakertown Park, located at 321 E. McKinney Street, on Monday, October 20, 2014, from 7 p.m. to 9 p.m. An exception is specifically requested to increase sound levels from 70 to 75 decibels. Staff recommends approval of request.

Approved the noise exception request listed below.

- D. ID 14-0584 Consider a request for an exception to the Noise Ordinance for the purpose of amplified sound during the Sigma Chi Fraternity 23rd annual Sigma Chi Fight Night. The event will be located in the parking lot behind Lucky Lou's located at 1207 W. Hickory Street beginning at 6 p.m. and concluding at midnight on Thursday, October 23, 2014. This request is for an extension of hours for amplified sound from 10 p.m. to midnight. Staff recommends approving request.

Ordinance No. 2014-316

- E. ID 14-0586 Consider adoption of an ordinance of the City of Denton, Texas authorizing the City Manager to execute a First Amendment to a Professional Services Agreement by and between the City of Denton, Texas and CDM Smith, Inc. for engineering services relating to the final design phase of the City of Denton Pecan Creek Water Reclamation Plant Phosphorus Removal Project; authorizing the expenditure of funds therefor; providing an effective date (File 5319 in the additional amount not-to-exceed \$269,240; aggregating a total not-to-exceed \$354,375). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2014-317

- F. ID 14-0587 Consider adoption of an ordinance accepting competitive proposals and awarding a public works contract for Directional Boring Services; providing for the expenditure of funds therefor; and providing an effective date (RFP 5570-awarded to Gardner Telecommunications, Inc. (GTI), in the three (3) year not-to-exceed amount of \$1,531,410). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2014-318

- G. ID 14-0588 Consider adoption of an ordinance awarding a contract under the Texas Multiple Award Schedule (TXMAS) Program for the purchase of mechanical (heating, ventilation and air conditioning), electrical, or plumbing (MEP) services to be performed at City of Denton facilities as awarded by the State of Texas Procurement and Support Services (Contract TXMAS 03FAC-10-070); providing for the expenditure of funds therefor; and providing an effective date (File 5652-awarded to Brandt Companies, LLC, in the annual not-to-exceed amount of \$1,500,000 for a three (3) year not-to-exceed amount of \$4,500,000).

Ordinance No. 2014-319

- H. ID 14-0589 Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the supply of Electric Meters, Current Transformers, Meter Sockets, and Automatic Metering Infrastructure (AMI) Equipment for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5584-awarded to HD Supply Power Solutions in the three (3) year not-to-exceed amount of \$4,307,685). The Public Utilities Board recommends approval (5-0).

Ordinance NO. 2014-320

- I. ID 14-0590 Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the supply of Electric Utility Overhead and Underground

Distribution Transformers for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5347-awarded to Techline, Inc. in the three (3) year not-to-exceed amount of \$4,500,000). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2014-321

J. ID 14-0591 Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the supply of Electric Utility Station Service Voltage Transformers for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5596-awarded to ABB HVIT in the three (3) year not-to-exceed amount of \$350,000). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2014-322

K. ID 14-0597 Consider adoption of an ordinance accepting competitive proposals and awarding a contract for Golf Contractor Services for the City of Denton Parks Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 5490-awarded to Premier Junior Golf Development, LLC in the three (3) year not-to-exceed amount of \$300,000).

Approved the Public Art Committee recommendation as below.

L. ID 14-0598 Consider approval of the Public Art Committee's recommendation to select Karmien Bowman as the artist for the outdoor sculptures titled "Leap Frogs" at North Lakes Park as public art for the City of Denton; and declare an effective date. The sculptures will cost \$26,000 and will be consistent with the City of Denton Public Art policy approved by Resolution R2013-021, and will be funded with Hotel Occupancy Tax revenues previously authorized and encumbered for such purpose. The Public Art Committee recommends approval with a vote of 6-0.

Ordinance No. 2014-323

M. ID 14-0603 Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Purchase Agreement, by and between the City of Denton, Texas, ("City"), as Buyer and Burch Family Farm, Ltd., (Owner") as Seller, to acquire (i) fee simple title to an approximate 1.074 acre tract (the "Substation Tract") located in the W. Roark Survey, Abstract No. 1087 and the J. Severe Survey, Abstract No. 1164, both in Denton County, Texas, located generally along the east line of U. S. Highway 377 adjacent to and east of the Fort Worth Drive Substation Addition, and (ii) fee simple title to an approximate 0.627 acre tract (the "Pump Station Tract") located in the B.B.B. & C. R. R. Co. Survey, Abstract No. 196 and the J. W. Withers Survey, Abstract No. 1343, both in Denton County, Texas, generally located west and adjacent to the G. C. & S. F. Railroad right of way and running to the west right of way line of F. M. Highway 1830, and (iii) an approximate 0.476 acre ingress and egress easement tract located in the J. Severe Survey, Abstract No. 1164, Denton County, Texas, located generally along the east line of U. S. Highway 377 adjacent to and south of the Fort Worth Drive Substation Addition, Denton County, Texas, and (iv) an approximate 1.802 acre electric utility and communication easement located in the W. Roark Survey, Abstract No. 1087, Denton County, Texas, located generally

east of the Ft. Worth Drive Substation Addition and (v) an approximate 1.793 acre temporary construction and access easement located in the W. Roark Survey, Abstract No. 1087, Denton County, Texas, located generally north of and adjacent to the 1.802 acre tract; (the "Property Interests"); all for the purchase price of One Hundred Sixty Six Thousand Five Hundred Eighty Four Dollars and No Cents (\$166,584.00), and other consideration, as prescribed in the Purchase Agreement (the "Agreement"), as attached to the ordinance and made a part thereof as Exhibit "A", (I) authorizing the expenditure of funds therefore; (II) providing a savings clause; and (III) providing an effective date. (Denton Municipal Electric Fort Worth T1 Addition Expansion, Denton Municipal Electric Fort Worth Drive and FM 1830 Distribution, and Hickory Creek Detention Facility projects: Burch Family Farms Ltd.)

Ordinance No. 2014-324

N. ID 14-0611 Consider adoption of an ordinance of the City of Denton, Texas authorizing the approval of a professional legal services agreement by and between Terry Morgan & Associates, P.C. and the City of Denton, Texas; providing for the expenditure of funds; and providing an effective date.

5. ITEMS FOR INDIVIDUAL CONSIDERATION

A. ID 14-0599 Consider nominations/appointments to the City's Boards and Commissions: Health & Building Standards Commission; Human Services Advisory Committee; Library Board; Parks, Recreation & Beautification Board; Public Art Committee; and Traffic Safety Commission.

Jennifer Walters, City Secretary, noted that positions on the various boards/commissions that were still vacant.

Council Member Roden motioned, Council Member Ryan seconded to approve the nominations as listed in the backup materials. On roll call vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Johnson "aye", Council Member Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously.

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 Ryan recommended a holding place on upcoming agendas items came forward on the convention center.

Council Member Roden requested a report on the request from the Community Market on the use of city facilities.

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

There was no continuation of the Closed Meeting.

With no further business, the meeting was adjourned at 7:06 p.m.

CHRIS WATTS
MAYOR
CITY OF DENTON, TEXAS

JENNIFER WALTERS
CITY SECRETARY
CITY OF DENTON, TEXAS