

# CITY OF DENTON CITY COUNCIL MINUTES

October 15, 2013

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, October 15, 2013 in the Council Work Session Room.

PRESENT: Mayor Burroughs, Mayor Pro Tem Kamp, Council Member Gregory, Council Member King, Council Member Hawkins

ABSENT: Council Member Engelbrecht, Council Member Roden

## 1. Citizen Comments on Consent Agenda Items

Cathy McMullen stated that Consent Agenda Item DD should be moved to Individual Items to give citizens an opportunity to speak on the item.

Amber Briggie stated that Consent Agenda Item DD should be move to Individual Items so citizens could speak on the item. The Council should consider protecting neighborhoods and not allow the company to transport water over city land.

## 2. Requests for clarification of agenda items listed on the agenda for October 15, 2013.

Council Member Gregory requested that Consent Agenda Item DD be pulled for individual consideration. He questioned if Consent Agenda Item A was the former biodiesel facility.

Scott Lebsack, Solid Waste Business Development Manager, stated that it was not the same building.

Council Member Gregory noted that Consent Agenda Items R-W were considered by the Public Utilities Board and asked for their recommendation.

Howard Martin, Assistant City Manager, stated that all were unanimously approved by the Public Utilities Board.

Council Member Gregory asked if there were any other city easements on the property.

Paul Williamson, Real Estate Manager, stated that this was a redeveloped tract and the easement abandoning was for electric service that was never put in the ground. All other current city easements would stay.

## 3. Receive a report, hold a discussion, and give staff direction on the criteria to the Tree Trusts mitigation option in Subchapter 35.13.7.A of the Denton Development Code (DDC), and a recommendation of amendments to Subchapter 35.13.7.A.7.f specifically related to tree mitigation standards for Tree Trusts.

Angie Kralik, Urban Forester, stated that staff had prepared an update on the Tree Trust mitigation option currently stipulated in the Denton Development Code. The current mitigation dealt with trees being removed that were 18 inches or larger and allowed for tree planting, payment into the tree fund or by applying for an alternative tree preservation plan.

The current Tree Trust requirements included (1) the Cross Timbers Forest no less than 1 acre, (2) be approved by the Development Review Committee chairman, (3) permanent easement limiting future activity, (4) tree trusts towards mitigation inches only, (5) required preservation would not count towards tree trust mitigation, and (6) floodplains, wetlands, and riparian areas were not eligible.

Mike Sultan, Consultant, presented additional information on the topic. He stated that there several areas of clarification needed. Those areas included (1) determining a value for tree credits and whether to go from inches to acres, (2) proportionality research in order to be fair and be appropriate, (3) future credits/accounting system for the tree inventory process, (4) process development/defined steps, (5) regulatory and propriety keeping projects in compliance, (6) allowances for minimal maintenance, and (7) charitable gifts/bequests and donations. The intent of the tree trust was flexibility for developers, preserve the tree canopy and protect the Cross Timbers. The project goal was to look at the tree trust to see how Denton could encourage its use.

Early conclusions found that the valuation method for trees being preserved did not exist, conservation easements were not the only method of land preservation, and the Cross Timbers were a small percentage of urban tree canopy. A review of the metric and value comparison for a proposed development was presented as an example of how the standard would apply.

Mayor Burroughs stated that there had never been a consideration for donating property to a tree trust. The consideration was to have a value on the treed property for others to use for their tree mitigation. The concept was if the property owner was willing to preserve the trees or the City acquired the property and held it as tree trust property, a future developer who wanted to develop property but could not mitigate, could buy credits from the tree trust. A “donation” was not the correct word to use for this program.

Sultan stated that there were opportunities where donations could work into the program but the word “preservation” should be used in this case.

Council Member King asked about a valuation which applied for property and what would be removed.

Sultan stated looking at the canopy was the best measure of a value.

Mayor Pro Tem Kamp felt that the canopy had already been addressed.

Kralik stated that canopy was in the Landscape Code for planting of new trees.

Environmentally sensitive areas - Denton had an estimated 17% tree canopy cover with 40% of the tree canopy cover within an environmentally sensitive area. Other areas to consider were undeveloped floodplain, riparian buffers, water related habitat, and upland habitat which would include the Cross Timbers.

Council Member Gregory stated that currently only Black Jack Oak and Post Oak were included in the Cross Timbers.

Sultan stated that correct and the City might consider removing that limitation. He continued that there were two processes for donating land. The first involved a conservation easement with the Texas Land Conservancy. This process was a four month process, involved a site visit, Board approval, draft easement, appraisal, baseline documentation report, endowment, execute an easement, IRS form for charitable deduction for a gift and annual monitoring.

Mayor Burroughs stated that a gift of land extremely was unlikely.

Sultan continued that the second process for donation was land donation alternatives. Those might include a fee-simple, land with a life estate, a bequest, a bargain sale, and conservation based development.

Council Member King questioned that even if an individual owned the land for 50 years the deduction of the value of the land would still apply.

Sultan stated that it would probably be a function of the land. He continued with tree banks. These were potential for trees, or tree canopy, on preserved land to serve as a tree bank through conservation easements or City purchased land. It would depend on where the money came from for an option.

Mayor Burroughs stated that the concept was that the City would allocate funding for a set amount for acquisition of tree stands. The City would have a tree bank and as developers needed mitigation, they could purchase the required mitigation and buy the tree credits. They paid the money to go into a fund to purchase other tree stands. The concept was that it would build on itself.

Council discussed the valuation of the trees, conservation easements, and the purchase of tree credits.

The recommendation was to recognize tree canopy as a true measure of value, consider tree species other than Cross Timbers, and offer credit for developed floodplain/ESA.

Mayor Burroughs stated that if a developer had a site and needed mitigation, part of the concept was that if he found property somewhere else or acquired credits, as long as it qualified to the standards, he could donate the trees to meet the mitigation issue.

Council Member Gregory stated that he was comfortable with the first two recommendations but was not sure about the third.

Mayor Burroughs felt that canopy was the true measure but it was difficult to determine what percentage should be preserved. He stated that the need was to start somewhere with a pilot plan and acquire a tract, preserve it, and then offer as mitigation to a developer who needed the credit. That money could then be used to acquire additional tree stands.

Mayor Burroughs suggested a citizen committee to go out and find pieces of property to preserve so the City could buy them. After a developer bought tree credits, the City could purchase more property.

4. Receive a report, hold a discussion and initiate the selection process to appoint members for the Tree Fund Advisory Committee.

Angie Kralik, Urban Forester, presented the overview of the issue. She stated that currently payments were made to the tree fund to mitigate for protected tree removal. The fund currently had \$1.167 million and had been acquiring development funds since 2004. The funds had been used once for the canopy coverage data done by UNT. The Development Code stated that currently the funds could not be used towards the purchasing of land for tree trusts. It indicated that the tree funds would be used for the purchase, planting and maintaining of trees on public property; could preserve wooded property; could be used to perform/maintain a city-wide tree inventory; and to educate citizens and developers on the benefits and value of trees. The funds could not be used to purchase land with the purpose of selling credits for a tree trusts.

Staff recommendations for the committee included (1) establish a 7 member committee with a recommendation that none of the citizens selected already serve on more than 2 city boards, commissions and/or advisory groups, and (2) members have a natural resource background, planning/land-use background, or development background. The committee would develop a process for tree fund expenditures, develop a matrix for selecting appropriate tree fund projects, and make recommendations to staff of potential properties to purchase with tree fund money.

Council Member Gregory questioned if the committee would be used as an on-going mechanism to locate land, etc.

Mayor Burroughs felt that there might be a point at which all the property on the map that was green would be looked at and then there would be no purpose for the committee. He suggested setting the committee up as a standing committee and when no longer necessary, it could be disbanded.

Kralik stated that the Park Board also made recommendations for the planting of trees on City property.

Mayor Burroughs stated that the backgrounds for the members were suggestions and not requirements.

Mayor Pro Tem Kamp asked if the meetings would be held on an as needed basis.

Kralik stated that was correct.

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

1. Closed Meeting:
  - A. Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071.

1. Receive a report and a presentation from Denton Municipal Electric staff regarding certain public power competitive and financial matters related to issuing a new Request for Proposals for Local Solar Energy Installations - 2013 by the City soliciting proposals for a solar-generated energy facility or facilities for the City of Denton, Texas; discuss, deliberate and provide staff with direction regarding such matters. Consultation with the City's attorneys regarding legal advice regarding such matters where a public discussion of this legal matter would conflict with the duty of the City's Attorneys to the Public Utilities Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.
- B. Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.
1. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the acquisition of real property interests located in the A.N.B. Tompkins Survey, Abstract Number 1246, Denton County, Texas (located generally in the 2400 block of South Bonnie Brae Street) in the City of Denton, Denton County, Texas; and 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 City of Denton and 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 proceedings or potential litigation.
- C. Consultation with Attorney - 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/or impacts of federal and state law and regulations as it concerns municipal regulatory authority and matters relating to enforcement of the ordinance.
  2. Consult with City's attorneys regarding legal issues and legal challenges arising out of municipal ordinances regulating the operation and location of credit access businesses, including Denton ordinance 2013-073 and possible amendments thereto, as well as the status and strategic considerations associated with litigation pending in the 16th District Court of Denton County, Texas styled ACE Cash Express v. City of Denton, cause no. 2013-10564-16.

**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. Proclamations/Awards

1. National Procurement Institute Achievement in Excellence in Procurement Award for 2013

Chuck Springer presented the award to the Council.

2. ReUse Day Proclamation
3. Presentation regarding ReUse initiatives

Mayor Burroughs presented the proclamation for ReUse Day. A demonstration ReUse initiatives including Trash N Fashion Show - clothes made from reusable materials - was shown to Council and the audience.

**3. CITIZEN REPORTS**

- A. Review of procedures for addressing the City Council.
- B. Receive citizen reports from the following:
  - 1) Kenneth Stout regarding street impact fees for street maintenance.

Ken Stout felt that the street impact fees for street maintenance should not be done. He was against instituting such a fee. He questioned how the fee would be collected.

**4. CONSENT AGENDA**

Mayor Burroughs noted that Item DD would be removed from the Consent Agenda and considered under Individual Items. He also noted that Item EE would not be considered.

Council Member King motioned, Council Member Hawkins seconded to approve the Consent Agenda and accompanying ordinances and resolutions with the exception of Items DD and EE. On roll call vote: Mayor Burroughs, Mayor Pro Tem Kamp, Council Member Gregory, Council Member King, Council Member Hawkins – “aye”. Motion carried unanimously.

Ordinance No. 2013-274

- A. Consider adoption of an ordinance approving a First Amendment to a Lease Agreement between the City of Denton, Texas and Master Recycling of Texas, Inc. to be executed by the City Manager relating to a certain 3.5 acre tract of land situated in the Gideon Walker Survey, Abstract Number 1330, and a certain 1.924 acre tract of land situated in the G. Walker Survey, Abstract Number 1330, in the City of Denton, Denton County, Texas; and providing an effective date.

Ordinance No. 2013-275

- B. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Denton Air Fair, Inc. for the payment and use of hotel tax revenue; and providing an effective date. (\$10,240) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-276

- C. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Denton Chamber of Commerce (Convention and Visitors Bureau) for the payment and use of hotel tax revenue; and providing an effective date. (\$783,100) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-277

- D. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Denton Black Chamber of Commerce for the payment and use of hotel tax revenue; and providing an effective date. (\$16,580) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-278

- E. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Denton Community Theatre, Inc. for the payment and use of hotel tax revenue; and providing an effective date. (\$23,010) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-279

- F. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and Denton Dog Days, Inc. for the payment and use of hotel tax revenue; and providing an effective date. (\$14,590) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-280

- G. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Denton Festival Foundation for the payment and use of hotel tax revenue; and providing an effective date. (\$82,820) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-281

- H. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Greater Denton Arts Council for the payment and use of hotel tax revenue; and providing an effective date. (\$117,780) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-282

- I. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Denton Holiday Festival Association, Inc. for the payment and use of hotel tax revenue; and providing an

effective date. (\$7,640) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-283

J. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Central Business District Association, Inc., d/b/a Denton Main Street Association for the payment and use of hotel tax revenue; and providing an effective date. (\$23,010) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-284

K. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and Music Theatre of Denton for the payment and use of hotel tax revenue; and providing an effective date. (\$5,000) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-285

L. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the North Texas State Fair Association for the payment and use of hotel tax revenue; and providing an effective date. (\$73,620) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-286

M. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Susan G. Komen for the Cure Advocacy Alliance (North Teas Affiliate) for the payment and use of hotel tax revenue; and providing an effective date. (\$10,000) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-287

N. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and the Tejas Storytelling Association, Inc. for the payment and use of hotel tax revenue; and providing an effective date. (\$50,610) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-288

O. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and Texas Filmmakers' Corporation for the payment and use of hotel tax revenue; and providing an effective date. (\$7,500) The Hotel Occupancy Tax Committee recommends approval (3-0).

Ordinance No. 2013-289

P. Consider adoption of an ordinance authorizing the City Manager to execute an agreement between the City of Denton and Denton County, Texas (Denton County Office of History and Culture) for the payment and use of hotel tax revenue; and providing an effective date. (\$108,570) The Hotel Occupancy Tax Committee recommends approval (3-0).



Ordinance No. 2013-290

- Q. Consider adoption of an ordinance authorizing the City Manager to execute a Professional Services Agreement (PSA) with Freese and Nichols, Inc. and the City of Denton for engineering and support services related to the Five (5) Year Capital Improvement Plan for transmission and substation projects for Denton Municipal Electric; and providing an effective date (File 5372-in an amount not-to-exceed \$12,150,000). The Public Utilities Board recommends approval (7-0).

Ordinance No. 2013-291

- R. Consider adoption of an ordinance abandoning and vacating an Electric Utility Easement (The "Easement"), granted by Denton County National Bank to the City of Denton, Texas, pursuant to that certain Easement dated April 22, 1976, and recorded in Volume 783, Page 343, Real Property Records, Denton County, Texas said Easement encumbering lands located in the Wm. Neil Survey, Abstract No. 970, Denton County, Texas and generally located at 325 West Hickory Street, and declaring an effective date. The Public Utilities Board will consider this item on October 14, 2013.

Ordinance No. 2013-292

- S. Consider adoption of an ordinance abandoning and vacating a Temporary Drainage Easement (The "Easement"), granted by Allegiance Hillview, LP. to the City of Denton, Texas, pursuant to that certain Easement, dated August 20, 2007, and recorded as Instrument No. 2007-104852, Real Property Records, Denton County, Texas, said Easement encumbering lands located in the Buffalo Bayou, Brazos and Colorado Railroad Company Survey, Abstract No. 192, Denton County, Texas and generally located at the 2600 block of Scripture Street and declaring an effective date. The Public Utilities Board will consider this item on October 14, 2013.

Ordinance No. 2013-293

- T. Consider adoption of an ordinance abandoning and vacating an Electric Utility Easement (The "Easement"), granted by Singing Oaks Apts. #1 to the City of Denton, Texas, pursuant to that certain easement, dated June 4, 1971, and recorded in Volume 624, Page 12, Real Properties Records, Denton County, Texas, said Easement encumbering lands located in the M. Yoachum Survey, Abstract No. 1442, Denton County, Texas, and generally located at 307 North Loop 288, and declaring an effective date. The Public Utilities Board will consider this item on October 14, 2013.

Ordinance No. 2013-294

- U. Consider adoption of an ordinance abandoning and vacating a Sanitary Sewer Easement (the "Easement"), granted by Henry S. Miller Company, Trustee to the City of Denton, Texas, pursuant to that certain easement, dated December 18, 1973, and recorded in the Volume 695, Page 350, Real Property Records, Denton County, Texas, said Easement encumbering lands located in the Gideon Walker Survey, Abstract No. 1330 and the Moreau Forrest Survey, Abstract No. 417, Denton County, Texas and generally located at the 5600 block of East McKinney Street, repealing City of Denton Ordinance No. 99-226 related to the purported

partial release of the easement, and declaring an effective date. The Public Utilities Board will consider this item on October 14, 2013.

Ordinance No. 2013-295

- V. Consider adoption of an ordinance abandoning and vacating (1) that certain Public Utility Easement, granted to the City of Denton, Texas by Rex C. Cauble, pursuant to that certain Easement dated December 5, 1972, and recorded in Volume 735, Page 515, Real Property Records, Denton County, Texas, insofar and only insofar as such easement covers and encumbers .443 acre tract of land, as described on Exhibit "B", attached hereto and made a part hereof (The "Exhibit B Abandonment Area"), and (2) that certain Public Utility Easement, granted to the City of Denton, Texas by Rex C. Cauble, pursuant to that certain easement, dated December 5, 1972, and recorded in Volume 735, Page 517, Real Property Records, Denton County, Texas, insofar and only insofar as such easement covers and encumbers 0.334 acre of land, as described in Exhibit "A", attached hereto and made a part hereof (the "Exhibit A Abandonment Area") (The easements described above are collectively referred to herein as the "Easements") (The Exhibit A Abandonment Area and the Exhibit B Abandonment Area are collectively referred to herein as the "Abandonment Area"), said easements encumbering certain lands located in the A. White Survey, Abstract No. 1406 and N. Wade Survey, Abstract No. 1407, Denton County, Texas, as more particularly described in the Easements, and generally located approximately 1600' northwest of the intersection of North Elm Street and Loop 288, and declaring an effective date. The Public Utilities Board will consider this item on October 14, 2013.

Ordinance No. 2013-296

- W. Consider adoption of an ordinance of the City Council of the City of Denton, Texas, approving guidelines for operation of the City of Denton Home Improvement Program and eligibility criteria; authorizing expenditures in excess of \$50,000 for projects meeting program guidelines and criteria; and providing for an effective date.

Approved the noise exception listed below.

- X. Consider a request for an exception to the Noise Ordinance for the purpose of performing music and announcements during the 25th Annual Holiday Lighting Festival to be held at the Denton Downtown Square. The Festival will begin at 5 p.m. and end at 9:30 p.m. on Friday, December 6, 2013. The request is for a variance in decibels, from 70 to 75 decibels for amplified sound. Staff recommends approving the request.

Ordinance No. 2013-297

- Y. Consider adoption of an ordinance approving an agreement between the City of Denton, Texas, and the Denton Chamber of Commerce regarding an Economic Development Partnership; and providing an effective date (\$227,467).

Ordinance No. 2013-298

- Z. Consider adoption of an ordinance of the City of Denton, Texas, authorizing the City Manager, or his designee, to execute a Purchase Agreement (herein so called), as attached to the ordinance and made a part thereof as Exhibit "A", by

and between the City of Denton (the "City"), and Harlan Properties, Inc. (the "Seller") contemplating the sale by Seller and purchase by City of (I) fee simple to a 4.69 acre tract; (II) a utility and slope easement encumbering 0.56 acre; and (III) a utility and drainage easement encumbering 0.02 acre, said tracts located generally in the 2400 block of South Bonnie Brae Street, in the A. Tompkins Survey, Abstract Number 1246, in the City of Denton, Denton County, Texas (the "Property Interests") for the purchase price of Two Hundred Thousand Dollars and No Cents (\$200,000.00); authorizing the City Manager, or his designee, to execute and deliver any and all other documents necessary to accomplish closing of the transaction contemplated by the Purchase Agreement; authorizing the expenditure of funds therefor; and providing an effective date. (Bonnie Brae Street Widening and Improvements - Parcel 25)

Approved the noise exception listed below.

AA. Consider a request for an exception to the Noise Ordinance for the purpose of the Industrial Street International Pop Festival (AKA Geezer Palooza), a music festival to benefit Serve Denton. The event will be held at 103 - 115 Industrial Street, on Sunday, October 20, 2013, from noon to 9 p.m. The exception is specifically requested to increase sound levels from 70 to 75 decibels and for amplified sound on Sunday. Staff recommends approval of request.

Approved the noise exception listed below.

BB. Consider a request for an exception to the Noise Ordinance for the purpose of amplified music for the 2nd Annual WakePoolooza to be held on Avenue A, between Mulberry and Hickory, on Saturday, October 19, 2013, beginning at 3 p.m. and concluding at 10 p.m. This request is for increased amplified sound from the allowable 70 decibels to 75. Staff recommends approval of the request for amplified sound up to 75 decibels.

Approved the noise exception listed below.

CC. Consider a request for an exception to the Noise Ordinance for the purpose of having music played during the Denton Plaza Party located at 508 S. Elm Street on two Saturdays, November 9 and November 16, 2013, from noon to 10 p.m. This request is for an extension in decibels from 70 to 75. Staff recommends approving 75 decibels to 10 p.m.

This item was not considered.

EE. Consider adoption of an ordinance authorizing the City Manager to execute an Interlocal Cooperative Purchasing Program Agreement with the University of North Texas Murphy Center for Entrepreneurship under Section 791.001 of the State of Texas Government Code, to authorize City of Denton contracts for the purchase of various goods and services; authorizing the expenditure of funds therefor; and declaring an effective date (File 5382-Interlocal Agreement with the University of North Texas Murphy Center for Entrepreneurship in the amount of \$26,400).

Resolution No. R2013-033

FF. Consider approval of a resolution for a change in Atmos Energy Corporation, Mid-Tex Division's ("Atmos") rates as a result of settlement between Atmos and the Atmos Texas Municipalities ("ATM") under the rate review mechanism; and providing an effective date.

Ordinance No. 2013-299

GG. Consider adoption of an ordinance accepting competitive bids and awarding a public works contract for the construction of the Southwest Elevated Storage Tank for the City of Denton; providing for the expenditure of funds therefor; and providing an effective date (Bid 5350-awarded to Landmark Structures I, L.P. in an amount not to exceed \$5,074,000).

Approved the minutes listed below.

HH. Consider approval of the minutes of:

September 10, 2013

September 17, 2013

Item DD was considered.

DD. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a temporary access permit (the "Permit"), by and between the City of Denton, Texas and EagleRidge Operating, LLC, a Texas limited liability company ("EagleRidge"), granting a license to EagleRidge to temporarily access certain City owned lands located in the James Edmonson Survey, Abstract Number 401 and the James L. Harris Survey, Abstract Number 555, located generally 1,800 feet southwest of the intersection of South Bonnie Brae and Vintage Boulevard, City of Denton, Denton County, Texas, in connection with the overland transport of water for gas well operations; and providing an effective date.

The following individuals submitted Speaker Cards:

Cathy McMullen, 805 Ector, Denton, 76201 - against the proposal

Adam Briggles, 1315 Dartmouth, Denton, 76201 - against the proposal

Ed Soph, 1620 Victoria, Denton, 76209 - against the proposal

Cheryl Amstut, 3228 Hornbeam, Argyle, - comment card only not a speaker - against

Mayor Pro Tem Kamp questioned if the water was going to be used for new well sites or current well sites.

Paul Williamson, Real Estate Manager, stated that he was not sure what the water was going to be used for.

Mayor Burroughs stated that there was nothing to indicate whether the water would be transported to any particular well site.

Williamson stated that there was no information regarding a specific well site.

Mayor Pro Tem Kamp motioned, Council Member Hawkins seconded to postpone Item DD in order to receive additional information whether the water would be used at new well sites. On roll call vote: Mayor Burroughs, Mayor Pro Tem Kamp, Council Member Gregory, Council Member King, Council Member Hawkins – “aye”. Motion carried unanimously.

## **5. ITEMS FOR INDIVIDUAL CONSIDERATION**

### Ordinance No. 2013-300

- A. Consider adoption of an ordinance 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 supplement for preparation of a Master Plan for Airport Development at the Denton Enterprise Airport; confirming agreement to pay additional project cost in the amount of \$114,241; and, providing an effective date. The Airport Advisory Board recommends approval (4-0).

Quentin Hix, Director of Aviation, presented the background information on the item. The ordinance would approve a supplement to a previously approved grant to Denton for a master plan for the Airport Development. Ten percent of the cost would be paid by the City and 90% would be paid by the grant. Additional work included scope of work for three items: environmental assessment for the west side of the Airport for a parallel runway; water/wastewater master plan at the Airport, and surface transportation master plan. The three additional planning efforts increased the City's portion to \$114,242.

Mayor Burroughs asked if the City's portion would be paid from the Airport gas well fund or a combination of proceeds from operations or just operations.

Hix stated that the funding would be from gas well royalty funds.

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

### Ordinance No. 2013-301

- B. Consider adoption of an ordinance of the City of Denton authorizing the City Manager, or his designee, to execute on behalf of the City of Denton an acceptance of an offer from the Texas Department of Transportation relating to a grant for the Routine Airport Maintenance Program; authorizing the City Manager to expend funds provided for in the grant program; and, declaring an effective date (TxDOT Project No.: AM 2014DNTO and CSJ No.: M1418DNTO). The Airport Advisory Board recommends approval (4-0).

Patrick Carreno, Airport Operations Manager, presented the information on the item. This was a yearly grant for help with small maintenance projects throughout the year. The grant was capped at \$50,000 with a \$50,000 City match. Funding would be used for concrete repairs, fencing, painting, asphalt, and maintenance money to maintain the airport.

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

## **6. PUBLIC HEARINGS**

### Ordinance No. 2013-302

- A. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, approving a Specific Use Permit to allow a Basic Utility; a DME electric substation, on approximately 5.44 acres of land within a Regional Center Commercial Downtown (RCC-D) zoning district classification and use designation, located on the north side of Pockrus Page Road, east of I-35, and directly west of the DCTA rail line, within the City of Denton, Denton County, Texas; and providing for a penalty in the maximum amount of \$2,000.00 for violations thereof, severability clause and an effective date. (S13-0002) The Planning and Zoning Commission recommends approval (6-0).

Brian Lockley, Director of Planning and Development presented the details of the proposal. He noted that this was an expansion of an existing DME substation. A specific use permit was required due to the definition of a basic utility. He reviewed the zoning map, site plan with the existing facility and the expanded facility. The expansion was needed in order to keep up with the existing demand and to provide services to the southern portion of the City. Several neighborhood meetings were held regarding the proposal. The Planning and Zoning Commission recommended approval with two conditions. Those conditions were that a perimeter masonry security wall would be constructed with a minimum height of ten feet and a minimum of 29% tree canopy on the area outside of the substation. Landscaping was not required inside the substation.

The Mayor opened the public hearing.

No one spoke during the public hearing.

The Mayor closed the public hearing.

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

### Ordinance No. 2013-303

- B. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, amending Subchapter 35.13.7.B.2 of the Denton Development Code pertaining to landscape maintenance standards; and providing for a penalty in the maximum amount of \$2000.00 for violations thereof, severability and an effective date. (DCA12-0004) The Planning and Zoning Commission recommends approval (6-0).

Brian Lockley, Director of Planning and Development, presented the details of the amendment. The amendment would clarify the requirement for routine landscape maintenance and would transfer the information from the criteria manual to the Denton Development Code. It was not increasing or changing any requirements - just moving the requirements to the Denton Development Code. He reviewed the current code, the current site design criteria manual language and the proposed code amendment. The Planning and Zoning Commission recommended approval as did staff.

The Mayor opened the public hearing.

No one spoke during the public hearing.

The Mayor closed the public hearing.

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

- C. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from a Neighborhood Residential 2 (NR-2) zoning district and use classification to a Neighborhood Residential Mixed Use (NRMU) zoning district and use classification; with an overlay on approximately 10.112 acres of land. The property is located at the southwest corner of Teasley Lane and Pennsylvania Drive, in the City of Denton, Denton County, Texas; and providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; providing for a severability clause and an effective date. (Z13-0003) The Planning and Zoning Commission made a motion of approval, however the motion failed (2-3).

Mayor Burroughs noted that there were not more than five members of the Council at the meeting so there was no super majority for this meeting. A supermajority was required because 20% of the neighboring property owners were in opposition to the proposal plus the proposal was denied by the Planning and Zoning Commission. Actions on this item included postponing, remanding or denying the proposal. A request by the existing applicant was to withdraw the proposal. It was kept on the calendar to provide for every opportunity for consideration of the item.

Mayor Pro Tem Kamp stated that Council wanted to give every opportunity for DATCU to come before Council with the proposal. She expressed her support for DATCU and with Dale Kimball. She hoped DATCU would remain in Denton.

Council Members King and Gregory expressed the hope that the DATCU would remain in Denton.

Council Member Hawkins expressed appreciative of all of volunteers for DATCU and hoped the relationship continued.

Mayor Burroughs felt the Credit Union had a long term legacy in Denton as a financial center for the northern portion of the Metroplex. He felt would be a shame if it moved to another city and hoped that it would stay in Denton.

Mayor Pro Tem Kamp motioned, Council Member King seconded to remand the proposal back to the Planning and Zoning Commission. On roll call vote: Mayor Burroughs, Mayor Pro Tem Kamp, Council Member Gregory, Council Member King, Council Member Hawkins – “aye”. Motion carried unanimously.

- D. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, approving a Specific Use Permit to allow an initial 51,200 square foot office building, with expansions proposed in the future, to include two (2) additions of approximately 16,000 square feet each, for a total of 83,200 square feet within a proposed Neighborhood Residential Mixed Use (NRMU) zoning district classification and use designation. The approximately 10.112-acre property is located at the southwest corner of Teasley Lane and Pennsylvania Drive, within the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; providing for a severability clause and an effective date. (S13-0001) The Planning and Zoning Commission recommends approval, with conditions (4-1).

Mayor Burroughs noted that this item was withdrawn from consideration.

## 7. CITIZEN REPORTS

There were no citizen reports at this point in the agenda.

## 8. 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 King and Mayor Pro Tem Kamp stated that October 20<sup>th</sup> would be the Industrial Street Pop Festival.

Council Member Hawkins invited everyone to attend the Day of the Dead Festival.

Mayor Burroughs stated that 770 people signed up to participate in the Mayor's Mile and that even with the rain, there was a good turnout.

- 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 Session.

With no further business, the meeting was adjourned at 8:20 p.m.

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MARK A. BURROUGHS  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS