

# CITY OF DENTON CITY COUNCIL MINUTES

July 20, 2010

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, July 20, 2010 at 3:34 p.m. in the Council Work Session Room at City Hall.

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PRESENT: Mayor Burroughs, Mayor Pro Tem Kamp, Council Member Engelbrecht, Council Member Gregory, Council Member Heggins, Council Member King, and Council Member Watts.

ABSENT: None

The Council convened in Closed Meeting to consider the following:

1. Closed Meeting:

A. Consultation with Attorney - Under Texas Government Code Section 551.071.

1. Consulted with City's attorneys regarding: (1) legal issues associated with the regulation of gas well drilling and production within the City Limits and the extraterritorial jurisdiction, including Constitutional limitations, statutory limitations upon municipal regulatory authority and statutory preemption of municipal regulatory authority; (2) Federal preemption (and limitations on that preemption) of certain municipal regulations relating to the compression and transmission of natural gas, and the location of gas pipelines; (3) analysis of risks and enforceability of such regulations, including impacts and strategies associated with local permit protections; (4) legal limitations associated with the setting of fees; and (5) other legal issues associated with Regular Session Item 4.B.
2. Consultation with the City's attorneys regarding legal issues associated with board and commission members and conflicts of interest and the release of confidential information where public discussion associated with these legal matters would clearly 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.

B. Deliberations regarding Personnel Matters - Under Texas Government Code Section 551.074

1. Deliberated and discussed the appointment, evaluation, reassignment, duties, procedures, discipline or removal and/or hear a complaint or charge involving officers of the City Council (Civil Service Commission, Health and Building Standards Commission, Denton Housing Authority, Historic Landmark Commission, Planning and Zoning Commission, Zoning Board of Adjustment).

Following the completion of the Closed Session, the Council convened in a Work Session at 5:12 p.m. to consider the following:

1. Requests for clarification of agenda items listed on the agenda for July 20, 2010.

Mayor Burroughs requested clarification on Consent Items V and W, which were utility metering items. He stated there was one reference to the 2009 CIP and asked if those funds were from the original 2005 CIP and had been reallocated for these purchases.

Jon Fortune, Assistant City Manager, stated that unlike the GO debt, utility debt was not handled by a bond election. There was an annual CIP adopted for utility system improvements and these projects were defined in the 2009 budget.

Council Member Gregory requested clarification for Consent Item P. He asked what type of video equipment was being purchased.

Jim Coulter, General Manager of Water/Wastewater, stated that these cameras were used at intersections and monitored approaching cars and signaled light changes when a car was coming at night. They helped trigger a response at the signal itself.

Burroughs asked if Consent Item L, the Interlocal Contract with the City of Mesquite, was extended to local suppliers and if they qualified for the 5% local vendor discount – either vendors from Mesquite or Denton.

Karen Smith, Senior Buyer, stated that a Denton business would not qualify for a local preference in a Mesquite contract. Only the city that was awarding the contract could consider local preference.

2. Receive a report, hold a discussion and give staff direction regarding nominations to the City's Boards and Commissions.

City Manager Campbell stated that an updated list containing nominations had been provided to Council. The Council made additional nominations to the Boards and Commissions which would be considered during the regular meeting.

3. Receive a report, hold a discussion, and give staff direction concerning the development of the FY 2010-11 Proposed Budget and Financial Forecast.

Bryan Langley, Director of Finance, stated that at the June 15 meeting there was a \$5.4 million budget gap between revenues and expenditures in the General Fund. Prior to June 15, estimated revenues were \$87.7 million and estimated expenditures were \$93.1 million, with the budget deficit about \$8.9 million. Staff had made a number of decisions and estimates in an effort to resolve some of these issues. He stated that on the revenue side they were looking at proposing a 2.5 cent property tax rate increase, which would generate about \$1.5 million. He stated that this figure would change based on the certified property values once they received them. Also included was a delay in the increase of the Over 65 Exemption from \$30,000 to \$35,000 which would add about \$150,000 in revenue to the General Fund.

He stated that at the last bond issuance, they had changed how they were issuing bonds; instead of issuing utility system revenue bonds they had changed them to Certificates of Obligation backed by the utility system revenues. They were able to transfer savings of \$180,000 associated

with the CO bond issuance from utility funds to the General Fund. These revenue adjustments resulted in a \$1.82 million increase in revenues.

Langley reviewed the savings on the expenditure side. They had discussed the transfer of the Keep Denton Beautiful Program from the General Fund to the Solid Waste Fund. This would result in a savings of \$263,956 to the General Fund and a cost to the Solid Waste Fund of \$359,000. They had discussed the delay of the Public Safety Training Facility, but did not have a cost on that yet. Discussion also included eliminating the Gas Well Transfer which was a savings of about \$500,000. They had looked at all travel and training budgets citywide and generated a savings of \$300,919. Efficiency team initiatives had saved approximately \$546,000. This resulted in the \$5.4 million deficit.

Langley reviewed additional reductions/savings discussed since June 15. He stated that miscellaneous expenditure adjustments had resulted in a savings of \$1,387. Other potential reductions/savings included the reduction of overtime by approximately one-third in the General Fund (10% in Police) which would generate \$431,580 in savings; eliminating the pay increases for the next fiscal year which would result in a savings of \$588,475 (Police and Fire STEP increases would still be funded); continued management of staff vacancies which was about \$1.6 million in savings; elimination of Council contingency funds for savings of \$17,500; use of EDP Marketing Funds for Downtown Incentive Grant for a savings of \$47,000; reduction of the General Fund contribution to the Chamber of Commerce for a savings of \$25,000; reduction in the transfer to Technology Services for \$295,341. Additional reductions in General Fund Departments in the amount of \$605,220 resulted in an overall savings of \$3.6 million.

Council Member Gregory stated that he would like to see a report on furlough days and what type of impact they would have on the budget.

Langley stated that additional revenue enhancements/increases that staff had looked at included: miscellaneous revenue adjustments of \$263,428; creation of an Airport Enterprise Fund and charge franchise fees, return on investment, and indirect costs of \$262,000; potential fee increases (net of additional FTEs related to gas well oversight) for \$500,000; possible sales tax revenue increase – actual amount had not been determined; transfer the Urban Forester from the General Fund to the Tree Mitigation Fund for additional revenue of \$78,513; capitalize parks labor in the amount of \$108,653.

Council Member King stated that a delay of the Over 65 Exemption along with a 2.5 cent property tax increase would be a hard hit for some citizens.

Council Members Gregory and Heggins stated that they would like to see what could be funded out of the Council's list of things.

Langley reviewed other funding needs that were outside the General Fund and the funding recommendations by staff. Staff recommended funding consultant costs for the Bicycle Master Plan for \$70,000 and the Downtown Implementation Plan (Traffic Study, Downtown Mobility Plan & Signage) for \$800,000 using existing bonds. They recommended funding an update of the Comprehensive Plan & Mobility Plan for \$150,000, the construction of the new Animal Shelter Facility for \$1,000,000, and Traffic Signalization & Signage for \$855,000 using Non-Airport Gas Well Funds. Staff recommended funding the increase in Street Maintenance

Funding for \$500,000 using existing bond fund interest income. They had also recommended funding the Regional Toll Revenue (RTR) matching funds for \$9,000,000 with the issuance of new bonds. Langley stated that there had been some discussion about implementing an Anti-Idling Ordinance for approximately \$154,235, but staff had not identified a funding source for that. He stated that there had also been some discussions about the New Convention Center & Hotel Facility and a cost had not been determined yet, but they needed to keep it under consideration.

City Manager Campbell stated that these were suggested ways to pay for topics that had been under discussion for some time and staff would like some type of direction from Council on these funding sources.

Council Member Watts stated that with the exception of the street funding needs, he had a problem funding anything else until the final budget came in especially when employees were going without a raise and property taxes were increasing. Some of these items were needs and some were wants.

Langley stated they had projected the Non-Airport Gas Well Fund Balance at the end of FY 2009-10 at \$2.7 million. If these projects were funded, there would be roughly around \$70,000 remaining.

4. Receive a report, hold a discussion, and give staff direction concerning proposed amendments to:
  1. Subchapter 3 of the Denton Development Code (DDC) regarding authority given to the Zoning Board of Adjustment;
  2. Subchapter 16 of the DDC regarding gas well development platting;
  3. Subchapter 22 of the DDC regarding gas well drilling and production;
  4. Subchapter 23 - Definitions - of the DDC; and
  5. the schedule of fees contained in Ordinances 2005-237, and 2009-098 (2006 City Fire Code) pertaining to gas well drilling and production within the City limits and the Extra Territorial Jurisdiction (DCA10-0003).

Mark Cunningham, Director of Planning and Development, stated that the Planning and Zoning Commission had conducted a public hearing on the proposed amendments and recommended approval, noting four areas of concern for consideration by Council: (1) a desire to remove consideration of variances by the Zoning Board of Adjustment; (2) a desire to limit the minimum separation distance that might be approved by waiver or variance, to no less than 500'; (3) a desire to limit adjustment to noise levels of daytime hours only; and (4) directed staff to re-review the proposal to reduce the duration of: (i) gas well plats in the ETJ from 2 years to 1 year from the date of approval; and (ii) gas well permits from 1 year to 6 months in the City limits.

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

There were no proclamations/presentations for this meeting.

**3. CONSENT AGENDA**

Council Member Gregory motioned, Council Member Heggins seconded to approve the Consent Agenda and accompanying ordinances and resolutions. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

Approved the appointment below.

- A. Consider and confirm the re-appointment by the City Manager of Darhyl Ramsey to the Civil Service Commission.

Resolution No. R2010-021

- B. Consider approval of a resolution of the City of Denton, Texas approving a revised city policy regulating Medical Examinations for the City of Denton employees; and declaring an effective date.

Resolution No. R2010-022

- C. Consider approval of a resolution of the City of Denton, Texas approving a revised city policy regulating Payroll Deductions for the City of Denton employees; and declaring an effective date.

Resolution No. R2010-023

- D. Consider approval of a resolution of the City of Denton, Texas approving a revised city policy regulating Overtime for the City of Denton employees; and declaring an effective date.

Resolution No. R2010-024

- E. Consider approval of a resolution of the City of Denton, Texas approving a revised city policy regulating Meal and Break Times for the City of Denton employees; and declaring an effective date.

Resolution No. R2010-025

- F. Consider approval of a resolution of the City of Denton, Texas approving a revised city policy regulating Solicitation by and to City of Denton employees; and declaring an effective date.

Ordinance No. 2010-165

- G. Consider adoption of an ordinance of the City of Denton authorizing and ratifying an agreement between the City of Denton, Texas and the Kiwanis for the purpose of hosting the Fourth of July Fireworks Show; providing for the expenditure of funds; and providing for an effective date. (\$1,400)

Ordinance No. 2010-166

- H. Consider adoption of an ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and the Friends of the Denton Public Libraries Organization for supplemental funding for the adult literacy program; providing for the expenditure of funds; and providing for an effective date. (\$550)

Ordinance No. 2010-167

- I. Consider adoption of an ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Fred Moore Day Nursery School; providing for the expenditure of funds; and providing for an effective date. (\$750)

Ordinance No. 2010-168

- J. Consider adoption of an ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Retired and Senior Volunteer Program to assist with funding of postage; providing for the expenditure of funds; and providing for an effective date. (\$200)

Ordinance No. 2010-169

- K. Consider adoption of an ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Court Appointed Special Advocates to assist with funding of utilities, phone cost, local travel for child visits and/or office supplies; providing for the expenditure of funds; and providing for an effective date. (\$600)

Ordinance No. 2010-170

- L. Consider adoption of an ordinance authorizing the City Manager to execute an Interlocal Cooperative Purchasing Program Agreement with the City of Mesquite, Texas under section 271.102 of the Local Government Code, to authorize participation in various City of Mesquite contracts for the purchase of various goods and services; authorizing the expenditure of funds therefor; and declaring an effective date (File 4509 - Interlocal Agreement with City of Mesquite).

Ordinance No. 2010-171

- M. Consider adoption of an ordinance accepting competitive bids and awarding a public works contract for the construction of the South Peak Flow Pump Station at the Pecan Creek Water Reclamation Plant; providing for the expenditure of funds therefor; and providing an effective date (Bid 4501 - Pecan Creek Water Reclamation Plant Peak Flow Pump Station awarded to the lowest responsible bidder meeting specification, Crescent Constructors, Inc. in the amount of \$803,000). The Public Utilities Board recommends approval (4-0).

Ordinance No. 2010-172

- N. Consider adoption of an ordinance rejecting any and all sealed proposals for a radio/telephone recorder system (including installation) for the City of Denton's Public Safety Departments (RFSP 4495); and providing an effective date.

Ordinance No. 2010-173

- O. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of additional radio communications equipment for the McKenna Park and Denton County Emergency Operations Communication sites which is available from only one source in accordance with the pertinent provisions of Chapter 252 of the Texas Local Government Code exempting such purchases from the requirements of competitive bidding; and providing an effective date (File 4516 - Purchase of Communications Equipment for 2 Channel Expansion awarded to Motorola, Inc. in the amount of \$169,642). The Public Utilities Board recommends approval (7-0).

Ordinance No. 2010-174

- P. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of traffic signal controllers and video equipment for the City of Denton Traffic Department, which is available from only one source in accordance with the pertinent provisions of Chapter 252 of the Texas Local Government Code exempting such purchases from the requirements of competitive bidding; and providing an effective date (File 4527 - Purchase of Traffic Controllers and Video Equipment awarded to Paradigm Traffic Systems, Inc. in the estimated amount of \$350,000).

Ordinance No. 2010-175

- Q. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of Retaining Wall Materials for construction of a Screening Wall at Phase 3, Cell A at the City of Denton Landfill which is available from only one source in accordance with the pertinent provisions of Chapter 252 of the Texas Local Government Code exempting such purchases from the requirements of competitive bidding; and providing an effective date (File 4532 - Purchase of Retaining Wall Materials for City of Denton Landfill awarded to Stone Strong, LLC in the amount of \$87,175.00). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2010-176

- R. Consider adoption of an ordinance of the City of Denton, Texas authorizing the City Manager or his designee, to enter into an Interlocal Agreement with Denton County for the County to provide property tax billing and collection services for the City of Denton; providing a savings clause and providing an effective date.

Ordinance No. 2010-177

- S. Consider adoption of an ordinance approving an assignment of a leasehold interest in an airport lease agreement at Denton Municipal Airport from Robby Ritchey to Alan Ritchey, Inc. located at 4849 Spartan, Denton, Texas at the Denton Municipal Airport and providing an effective date. The Airport Advisory Board recommends approval (7-0).

Resolution No. R2010-026

- T. Consider approval of a resolution of the City Council of the City of Denton, Texas appointing a primary and an alternate member as an official voting representative to the Regional Transportation Council (RTC) of the North Central Texas Council of Governments; and providing an effective date.

Ordinance No. 2010-178

- U. Consider adoption of an ordinance of the City of Denton, Texas authorizing the approval of a first amendment to professional services agreement between Chaing, Patel, and Yerby, Inc. (CP&Y) and the City of Denton, Texas, expanding the scope of services previously defined in the professional services agreement, which amendment allows CP&Y to provide engineering consulting services related to the landfill expansion to include, 1) hydrologic and hydraulic evaluations, 2) the preliminary sizing and location of a 4.5 million gallon flow equalization basin, and 3) analysis of the floodplain/floodway impacts of extending a landfill retaining wall and berm along the creek side of the flow equalization basin downstream to the headworks of the Wastewater Treatment Plant for an additional amount not-to-exceed \$41,050; providing for the expenditure of funds therefor; and providing an effective date (\$41,050 further professional engineering services, totaling \$104,050 when aggregated with the previous professional services agreement). The Public Utility Board recommends approval (7-0).

Ordinance No. 2010-179

- V. Consider adoption of an ordinance accepting sealed proposals and awarding agreements for the purchase of services relating to a Utility Meter Data Management Solution related to an automatic meter reading infrastructure system for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date. (RFSP #4448 - request for sealed proposals for Utility Meter Data Management Solution in an amount not to exceed \$395,030.). The Public Utilities Board recommends approval (5-0).

Ordinance No. 2010-180

- W. Consider adoption of an ordinance accepting sealed proposals and awarding an agreement for the purchase of an Advanced Metering Infrastructure System for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date. (RFSP #4485 - Advanced Metering Infrastructure System awarded to Trilliant Networks, Inc. in a five-year amount of not-to-exceed \$1,391,307.04). The Public Utilities Board recommends approval (5-0).

Approved the minutes listed below.

- X. Consider approval of the minutes of June 8 and June 15, 2010.

**4. PUBLIC HEARINGS**

- A. Continue a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for a zoning change from a Neighborhood Residential 3 (NR-3) zoning district classification and use designation to a Neighborhood Residential Mixed Use (NRMU) zoning district classification and use designation on tracts 256, 257, 258,



260 and 261 of the E. Puchalski survey, with an overlay district on those same tracts, plus tract 263, containing additional restrictions as noted; the area for the zoning change encompasses approximately 4.678 acres of land located at the northeast corner of North Bonnie Brae Street and West Oak Street, in the City of Denton, Denton County, Texas. The Planning and Zoning Commission recommended approval of the rezoning of six (6) of the seven lots from Neighborhood Residential 3 (NR-4) to Neighborhood Residential Mixed Use (NRMU) subject to overlay conditions, as provided in Exhibit 8 (5-1).

Mark Cunningham, Director of Planning and Development, stated that this public hearing was opened at the June 15 meeting and continued until the July 20 meeting in order to allow the applicant to meet with the neighbors and staff to reach some agreements on the restrictions to be placed on the development of the property. Some meetings had taken place and the applicant had offered some amendments to the proposal. The applicant had agreed to withdraw the property identified as 2286 W. Oak from the proposed rezoning.

Cunningham stated that the overlay restrictions had been changed since the June 15 meeting. Restriction #2 – Professional Services and Office use should be permitted on the entire property. Retail Sales and Services should be limited to 7,500 square feet and should be a permitted use within 140' of West Oak. Prior to obtaining a building permit for the above uses, a site plan should be approved by the Planning and Zoning Commission. The site plan should address the architecture of the structures, buffering of adjacent single family property, and Houston Street access. Restriction #3 – Uses not identified as prohibited or permitted should require approval of a Specific Use Permit. Restriction #4– Building Height should be limited to 40' and/or two stories. Restriction #5 – A 6 foot high solid screen fence (good side out) constructed with steel post and a decorative cap should be constructed in the required buffer yard in lieu of the required buffer shrubs. All required buffer trees should be planted in accordance with the requirements of the Denton Development Code. Restriction #6 – Access should be from Bonnie Brae and/or Oak Street. No access should be from Houston Street. Houston Place should not be extended and will not become a thru street to Bonnie Brae. Restriction #7 – Masonry columns approximately 26 feet on center and wrought iron style fencing should be constructed adjacent to the west end of Houston Street Right-of-Way. Restriction #8 – All new buildings should be architecturally compatible with each other including, but not limited to similar designs, materials, colors, and detailing.

Cunningham stated that two additional responses to public notification had been received, both in favor of the requested rezoning. This changed the percentage of property in opposition from above 20% to below 20%, no longer necessitating a supermajority vote if the Planning and Zoning Commission recommendation was considered.

The Planning and Zoning Commission recommended approval of the rezoning of six of the seven properties to NRMU, with the exception of 2286 W. Oak, with overlay restrictions.

The Mayor re-opened the public hearing.

The following individuals spoke during the public hearing:

Larry Reichhart, SpringBrook Planning Group, 2405 Mustang Drive, Grapevine, spoke on behalf of the applicant.

Rahna Raney, 2316 Houston Place, Denton – opposition

Andy Cooper, 2319 Houston Place, Denton – opposition

Thomas Collins, 2322 Houston Place, Denton – support

David Kaplan, 308 Marietta Street, Denton – opposition

Eugene Hargrove, 2025 Houston Place, Denton – opposition

JoAnn Nunnally, 2215 Houston Place, Denton – opposition

Willie Hudspeth, 623 Newton, Denton – support

Peter Hulstrand, 159 Cardinal Circle, Shady Shores – support

Comment Cards were received from the following:

Lynda Nolen, 2280 W. Oak Street, Denton – support

Mike Nolen, 2280 W. Oak Street, Denton – support

Gary Chang, 1600 W Hickory Street, Denton – support

Dora Sloan, 2202 Houston Place, Denton – opposition

Mrs. Tom Harpool, 2222 Houston Place, Denton – opposition

Leona Langford, Houston Place, Denton – opposition

Dr. Cecil Atkins, Denton – opposition

Andrea Schreiber, 308 Marietta, Denton – opposition

Karen Devinney, 1820 W. Oak, Denton – opposition

Elizabeth Gunter, 225 Jagoe Street, Denton – opposition

Pete Gunter, 225 Jagoe Street, Denton – opposition

Caroline Polliard, 1800 W. Oak, Denton – opposition

Helen Ikerd, 1722 W. Oak Street, Denton – opposition

The Mayor closed the public hearing.

Engelbrecht motioned, Gregory seconded to deny.

Kamp motioned to continue this item to the second regular meeting in September, Watts seconded.

Cunningham requested clarification on what the Council's expectation was when it came back in September. Council stated they wanted to see a consensus on how to keep Houston Place from coming through to Bonnie Brae. They requested clarification on the commercial property on the corner. They also requested history on a small area plan.

On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "nay", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried 6-1.

- B. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas concerning proposed amendments to:
  1. Subchapter 3 of the Denton Development Code (DDC) regarding authority given to the Zoning Board of Adjustment;

2. Subchapter 16 of the DDC regarding gas well development platting;
3. Subchapter 22 of the DDC regarding gas well drilling and production;
4. Subchapter 23 - Definitions - of the DDC;
5. the schedule of fees contained in Ordinances 2005-237, and 2009-098 (2006 City Fire Code) pertaining to gas well drilling and production within the City limits and the Extra Territorial Jurisdiction; and providing for a penalty in the maximum amount of \$2,000.00 for violations, thereof, severability and an effective date. (DCA10-0003) The Planning and Zoning Commission recommendation is pending the July 14, 2010 meeting.

Mark Cunningham, Director of Planning and Development, stated that staff had done an analysis of gas well drilling and production ordinance from seven area cities. The information in the fee comparison demonstrated that Denton's fees were extremely low in contrast with the other cities. Cunningham stated that staff had determined that due to the magnitude and complexity of the topic, it would be best to approach the task in two phases. Phase I would be to bring "quick fixes" to address immediate concerns and Phase II would be to do a comprehensive rewrite of Subchapter 22 and all associated gas well ordinances. He stated that the first step of "quick fixes" would be to address gas well fees, noise mitigation, separation distance (setback), ZBA authority, and screening requirement, fracturing and flaring restrictions, permanent tank and equipment height limitation, definitions, gas well plat, gas well site plan, and gas well permits.

The current fees were approved on September 6, 2005. The current fees were inadequate to cover the cost to provide these services. Staff was proposing fees that would recover the cost of service to perform inspections and reviews of plans, permits, and inspections relative to the gas well drilling and development within the City and within the City's ETJ. They were also proposing that a portion of those fees be used towards the funding of personnel to oversee the gas well drilling and development within the City and the City's ETJ. A fee comparison of cities within the metroplex showed that Denton's fees were extremely low in comparison with other cities. Current fees resulted in lost revenue for the City. He reviewed the current and proposed fees.

Cunningham reviewed the financial impact. It was projected that \$2,670,200 in annual revenue would be generated from gas well development plats/site plan reviews, and gas well SUP reviews, in conjunction with the proposed annual inspection and administration fees. The total cost-of-service associated with these activities was estimated to be \$2,668,414; resulting in an annual net revenue of \$1,786.

Cunningham stated that in order to eliminate conflicting language within the Development Code, it was necessary to amend existing terms, and to add several terms and their associated definitions. The definition for **Protected Use** would include: Any residence, church, public park, public library, hospital, or school. The definition for **Residence** would include: A home, abode, or place where an individual was actually living at a specific point in time. A structure or part of a structure containing dwelling units or rooming units, including single-family or two-family houses, multi-family dwellings, boarding or rooming houses, elderly living facilities, apartments or dormitories.

Cunningham reviewed the separation requirements (setback). Staff recommended increasing the minimum setback requirements to 1,000 feet between gas wells and any protected use (residence, church, public park, public library, hospital, or school), active potable freshwater wells, or a previously platted residential subdivision where one or more lots had one or more structures, from 500 feet to 1,000 feet. Except where more stringent separation distances were specified, the minimum separation distance from all other uses or features would be 500 feet. Staff recommended that provisions be made available to reduce the above minimum separation distances via the granting of a variance by the Zoning Board of Adjustment, or if all the property owners of the affected uses within the reduced separation area agreed to the reduction via a notarized waiver and the waiver was attached to the permit application. Staff also recommended that the separation requirement should not be reduced to less than 500 feet.

Cunningham stated that staff recommended that a gas well permit was valid for 6 months and should automatically expire, unless gas well drilling activities had commenced prior to expiration. If gas drilling activities had commenced under a valid permit, the permit must be renewed annually. If gas drilling activities had not commenced prior to the expiration of the permit, the permit could not be extended, however the operator could reapply for a new drilling permit, subject to all requirements of the DDC, as amended. Staff recommended that all well heads, storage tanks, separation facilities or other mechanical equipment located within 1,000 feet of any protected use, or any lot within a previously platted residential subdivision where one or more lots have one or more structures, or within 500 feet of all other uses or features, should be screened with an eight foot high opaque decorative masonry wall, if the use, lot or feature preexisted the commencement of gas well drilling activity.

Cunningham stated that staff recommended amending the Code regarding fracturing, flaring and tanks to read: Except in the case of an emergency, gas well flaring should only be conducted during day-time hours. Gas well fracturing could only be conducted during day-time hours. An operator was allowed to construct, use, and operate such storage equipment and separation equipment as shown on the approved Gas Well Development Site Plat or Gas Well Development Site Plan, except that permanent storage equipment and separation equipment could not exceed 8 feet in height. Staff recommended changing noise level standards to: Prior to the issuance of a Gas Well Permit, the operator should establish and submit to the City, a continuous 72 hour pre-drilling Ambient Noise Level measured 300 feet from the boundaries of the gas well drilling or production site. The 72 hour time span should include at least 1 24-hour reading during either a Saturday or Sunday.

Noise Management Standards would be amended to: Drilling or production, re-drilled or any equipment operated at any gas well drilling or production site might not exceed 75 dB, measured 300 feet from the boundaries of the gas well drilling or production site. If the pre-drilling ambient noise level that was submitted to the City was higher than 75dB, the noise generated from the gas well drilling or production site might not exceed the established ambient noise level by more than 5dB during daytime hours and 3dB during nighttime hours. Adjustments to the noise standards as set forth above might be permitted intermittently, during daytime hours only, except in the case of an emergency: permitted increases were - 10dB for 5 minutes, 15 dB for 1 minute, and 20dB for less than 1 minute.

Cunningham stated that staff recommended if gas well drilling or production had not commenced, a Gas Well Development Plat should expire one year from the date of approval.

The Gas Well Development Plat could not be extended. If the plat expired, then so should any permits associated with the plat. Upon expiration of a Gas Well Development Plat where gas drilling activities had not commenced, the applicant could reapply for a new Gas Well Development Plat, subject to all requirements of the DDC, as amended. If gas well drilling or production had commenced, the gas well drilling and production site should be subject to inspections by the City to ensure compliance with the Gas Well Development Plat.

Staff proposed that prior to the commencement of any gas well drilling or production, or the issuance of any gas well permits within the corporate limits of the City, the applicant should submit a Gas Well Development Site Plan for review and approval, in accordance with this Subchapter, and all other applicable local, state and federal standards, as amended. The Site Plan should automatically expire 1 year from the date of approval, unless a Gas Well Drilling Permit had been issued, and gas well drilling or production commenced. A Site Plan where drilling or production had not commenced prior to the first anniversary of the date of approval, could not be extended; however, the applicant could resubmit a new Site Plan for review and approval in accordance with all applicable requirements of the DDC, as amended. If the Site Plan expired, then so too should all permits associated with that Site Plan. If gas well drilling or production had commenced via a valid Gas Well Permit, the gas well drilling and production site should be subject to inspections by the City to ensure compliance with the Site Plan and all applicable standards of the DDC, as well as an Annual Inspection and Administration Fee. He stated that there were also some housekeeping amendments.

Cunningham stated that the Planning and Zoning Commission recommended approval of the proposed amendments and fees (5-2) subject to modifications to: 1) Limit variance request for setbacks to a minimum of 500 feet; 2) Allow variance requests to be reviewed and approved by the City Council and not the ZBA; 3) Limit adjustments to noise levels to daytime hours only; and 4) Review the proposal to reduce the duration of gas well plats from 2 years to 1 year, and gas well permits within the City from 1 year to 6 months. Staff recommends approval of all amendments as presented; however, staff does not support the condition related to the variance approval by City Council. Staff felt that fell under the authority of the ZBA.

The Mayor opened the public hearing.

The following individuals spoke during the public hearing:

Steven Soriano, 9532 East Riggs Road, Sun Lakes, AZ – opposition

Larry Reichhart, 1608 E. Windsor, Denton – opposition

Alan Ross, 10820 Glendale Drive, Denton – opposition

Harvey Layman, 10524 Gardner Trail, Denton – support

Margarete Neale, 731 Hillcrest, Denton – support

Dorothy Fersch, 9609 Lindenwood Trail, Denton – support

John Fersch, 9609 Lindenwood Trail, Denton – support

Michelle Jones, 301 El Paseo, Denton – opposition

Guy McElroy, 10808 Balentine St., Denton – opposition

David Kaplan, 308 Marietta, Denton – support

Andrea Schreiber, 308 Marietta, Denton – support

Eugene Hargrove, 2025 Houston Place, Denton – support

Jake Hendricks, 1014 Hillcrest, Denton – support

Ed Soph, 1620 Victoria Drive, Denton – opposition  
Martin Garza, 1717 Main, #2800, Dallas – opposition  
Eric DeLaughter, 8216 Primrose, Lantana – opposition  
Gilbert Horton, Devon Energy, 777 Main Street, Suite 2200, Ft. Worth – opposition  
Eva Cadwallader, 3920 Fawn Drive, Denton – opposition  
Becky Escott, 14001 N. Dallas Parkway, Dallas – opposition  
Katie Lichtsteiner, 14001 N. Dallas Parkway, Dallas – opposition  
Sharon Cook, 14001 N. Dallas Parkway, Dallas – opposition  
Bruce Walker, 9805 Grandview, Denton – support  
Kathleen Wazny, 9117 Perimeter Street, Denton – support  
Sharon Wilson, 1121 N. Locust, Denton – support  
Cathy McMullen, 805 Ector, Denton – support  
Robert Miklos, 1717 Main St. #2800, Dallas – opposition  
Brian Boylan, 6109 Pine Hills Lane, Denton – support  
Mark Carhill, Encana Oil & Gas and Devon Energy – opposition  
Jerry Earwood, 302 Mimosa, Denton – support  
Phillip Sweet, 9713 Grandview Drive, Denton – opposition  
Elma Walker, 9805 Grandview, Denton – support  
Jack Faegre, 10016 Hanford Drive, Denton – support  
Hatice Salih, 300 Northridge, Denton – support

Comment Cards were received from the following:

Cathy Graham, 9508 Edmondson Drive, Denton – opposition  
Sidney King Graham, 9508 Edmondson Drive, Denton – opposition  
Norm Beatty, 9512 Edmondson Drive, Denton – opposition  
Pam Beatty, 9512 Edmondson Drive, Denton – opposition  
Richard Burch, 4478 Country Club Road, Denton – opposition  
Janelle Burch, 4478 Country Club Road, Denton – opposition  
Carol Ann Soph, 1620 Victoria, Denton – opposition  
Randy Parker, 1209 C.R. 1304, Bridgeport – opposition  
Don Cole, 4109 Hampton Road, Denton – opposition  
Roy Gay, 9921 Crestview Drive, Denton – opposition  
Angela Gay, 9921 Crestview Drive, Denton – opposition  
Doris Dwyer Oldre, 9120 Grandview Drive, Denton – opposition  
John Harris, Dallas – opposition  
Gary Otwell, 8905 Landmark Lane, Denton – opposition  
Al Neale, 10309 Countryside Drive, Denton – opposition  
Amy Griffin, 400 W. Oak, Suite 400, Denton – opposition  
Nancy Views, Hillcrest, Denton – support  
Laura Anderson, P.O. Box 1480, Bridgeport – opposition  
Wendy Wharton, P. O. Box 1480, Bridgeport – opposition  
Nelda Hackett, P. O. Box 998, Argyle – opposition  
Creeda Faegre, 10016 Hanford Drive, Denton – support  
Wes & Wynelle Earp, Houston Place, Denton – support  
Oscar Gonzalez, Thomas Street, Denton – support  
Kim Wells, 305 Marietta, Denton – support  
JoAnn Nunnally, Denton – support

Dora Sloan, Denton – support  
Rebecca Harpool – support  
Leona Langford – support  
Adam Neale, 731 Hillcrest, Denton – support  
Ellen Ryfle, Denton – support  
Pam DeLaMore, Houston Place, Denton – support  
Rayna Raney, 2316 Houston Place, Denton – support  
Bruce Fiedler, 10012 Edmondson Drive, Denton – support  
Margaret Fiedler, 10012 Edmondson Drive, Denton – support  
Ray Rupert, 9212 Perimeter Street, Denton – support  
Mary Rupert, 9212 Perimeter Street, Denton – support  
Kathryn Sapp, 9409 Perimeter Street, Denton – support  
Sara Bagheri, 121 W. Hickory Street, Denton – support

The Mayor closed the public hearing.

Council Member Gregory motioned, Council Member Engelbrecht seconded to adopt the ordinance with the overlay restrictions recommended by staff.

Mayor Burroughs made a friendly amendment asking that the minimum separation distance be 250 feet.

Mayor Burroughs asked if Council Members Gregory and Engelbrecht were agreeable to the friendly amendment.

Both stated they were.

Council Member Watts expressed concern that oil and gas well operators/representatives were not included in the discussions.

On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Temp Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

- C. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, regarding the following matters, as they relate to the Fry Street Overlay District, Section 35.7.5 of the Denton Development Code (DDC):
  1. To update DDC references in the text of the overlay district (DCA10-0004); and
  2. To create a subarea of approximately 4.275 acres for a proposed mixed use development located on the block bound by Oak, Hickory, Fry, and Welch Streets, with an associated set of regulations specific to the proposed mixed use development (Z10-0009).

Mayor Pro Temp Kamp stated that she had asked for a legal opinion because as a director for Access First Capital Bank, there was a possibility that there would be some ATM machines for the bank in the development. She stated that the legal department had determined that she had no conflict of interest.

Chuck Russell, Planning Manager, stated that this request to amend the Fry Street Overlay District (12.42 acres) was to: 1) create a subarea of approximately 4.275 acres with associated standards for a proposed mixed use development; and 2) update Code references in the text of the Overlay District.

Russell stated that the applicant had requested modification of the Fry Street Overlay District in order to accommodate the proposed development. The requested modifications would allow the subject property to remain a contributing portion of the Overlay District, maintain the continuity of the District and afford opportunities for revitalization of the area. Staff felt that the best option was to allow the proposed project to proceed with some deviations from the existing Overlay District regulations and allow the applicant flexibility to create a high quality project while still offering the neighboring properties the protection afforded by the Overlay District.

The Fry Street Overlay District allowed for a maximum building height of three stories, with no overall building height to exceed 45 feet. The amendment proposed by the applicant was that no habitable structures could exceed four stories with a maximum height of 55 feet, and that no parking structures could exceed 60 feet in height. The proposed development included 194 residential units, comprised of (20) 1-bedroom units, (43) 2-bedroom units, (10) 3-bedroom units, and (121) 4-bedroom units. Based on the proposed composition of units, almost twice as much property (8.3 acres) would be required to accommodate the number and composition of units proposed. The proposed 194 units contained a total of 620 bedrooms on 4.274 acres. Density within the zoning district was calculated based on number of bedrooms, and as such, the proposed density was 72.5 units per acre. Since the zoning district allowed a maximum of 150 units per acre, the proposed density was significantly less than that allowed in the base zoning district. The project was also incorporating LEED design measures and lessening sprawl, therefore staff was in support of a density-based restriction for the subarea rather than the open space density calculations required currently.

The applicant had requested reduced parking based on other similar projects and the proposed development would incorporate bike-share programs and include lockers within the parking structure for bike storage for residents. Staff found the request for the reduced on-site parking acceptable.

The Fry Street Overlay District prohibited ground and monument signs; however, the applicant proposed to locate two monument signs at the main entrances to the development. Staff found that the proposed monument signs were of a size appropriate for the area that would contribute to the pedestrian-scaled and pedestrian-oriented design of the project. The applicant proposed changes that would allow signs to be mounted perpendicular to the walls of buildings and they would not encroach into the public right-of-way.

Due to the unpermitted clearing of trees by the prior owner and tree mitigation funds that were owed, along with the proposed site plan, the applicant was not able to meet the minimum preservation requirements on the site. Staff was recommending that the canopy be replaced through the planting of trees in public spaces within one mile of the subject property. The applicant would pay \$63,812.50 which would be placed in a mitigation fund specific to this project.



The Fry Street Overlay District did not incorporate architectural standards or requirements specific to the area. The residential units on Welch Street would require a sloped roof pitch. Each principal building façade or massing would incorporate at least two of the features identified on the image board provided in the backup. In addition, the parking garage would contain a façade that integrated the parking structure with the rest of the development.

Russell stated that the Code corrections included removal of references to the 1969 Code, and change to the Denton Development Code; removal of reference to the Code of Ordinances related to Solid Waste, and include reference to the DDC, where regulations were now incorporated; removal of reference to the Code of Ordinances related to Sign Regulations, and include reference to the DDC, where regulations were now incorporated.

The Planning and Zoning Commission recommended approval (6-1) of the requested amendments.

The Mayor opened the public hearing.

The following individuals spoke during the public hearing:

Josh Basfinder, 1011 Camino del Mar #268, Del Mar, spoke on behalf of the applicant

Michael Crank 1601 Stagecoach, Pantego – support

Rob Rayner, 1200 Woodrow #100, Denton – opposition

Mary Anderson, 924 W. Oak, Denton – opposition

Alex Payne, 923 Ridgecrest Circle, Denton – support

Charles Stafford, 1903 Williamsburg, Denton – support

Lee Capps, 915 W. Oak Street, Denton – opposition

John Ryan, 2128 Emerson Lane, Denton – opposition

Bob Clifton, 624 Newton, Denton – opposition

Gene Hartman, 116 Fry Street, Denton – support

Comment Cards were received from the following:

Michelle Jones, 301 El Paseo, Denton – support

Brock McKnight, 211 E. Oak Street, Apt. 9, Denton – support

The Mayor closed the public hearing.

Mayor Pro Tem Kamp motioned, Council Member Heggins seconded to approve the ordinance with the amendments as presented by staff. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

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

- A. In accordance with HUD 24 CFR Section 570.611 (d) (1)(i); receive a statement of disclosure of Community Development Coordinator Luisa Rodriguez-Garcia's conflict

of interest in the Community Development Block Grant Program through her spouse's position as Executive Director of the Denton City County Day School, a non-profit organization that receives CDBG funding.

Barbara Ross, Community Development Administrator, read the following public disclosure statement:

"The U.S. Department of Housing and Urban Development (HUD) has notified the City of Denton, Community Development Division that the City will receive a 2010-2011 allocation of Community Development Block Grant (CDBG) funds, a portion of which has been recommended to be allocated to the Denton City County Day School (DCCDS) for facility improvements. DCCDS provides day care services on a sliding scale fee for low and moderate-income families. The current executive director, Eduardo Garcia, is the spouse of a Community Development Division staff member, Luisa Rodriguez-Garcia. HUD has determined this to be a conflict of interest. The City of Denton is in the process of asking HUD for an exception to the conflict. One of the threshold requirements for an exception is that the conflict be publicly disclosed in accordance with 24 CFR Section 570.611 (d)(1)(i). In order to meet this public disclosure requirement, as Community Development Administrator, I, Barbara Ross, am hereby making this public disclosure as a part of the City's request for an exception from these conflict of interest provisions. I request that the City Secretary record this statement in the minutes of this meeting."

Ross stated that the Legal Department had reviewed this and determined that the interest was not in violation of any State or local law and had prepared a legal opinion which was an additional threshold requirement. Ross stated that they would be submitting a request to HUD next week to request an exception on this conflict of interest. She stated that no action was required by the Council.

B. Consider appointments to the following boards and commissions:

1. Airport Advisory Board
2. Animal Shelter Advisory Committee
3. Community Development Advisory Committee
4. Health & Building Standards Commission
5. Historic Landmark Commission
6. Human Services Advisory Committee
7. Library Board
8. Parks, Recreation and Beautification Board
9. Planning and Zoning Commission
10. Public Art Committee
11. Public Utilities Board
12. Traffic Safety Commission
13. Zoning Board of Adjustment

Mayor Pro Tem Kamp motioned, Council Member Gregory seconded to approve the nominations as discussed during the Work Session. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

C. Consider nominations/appointments to the Economic Development Partnership Board.

Mayor Pro Tem Kamp stated that the nominating committee recommended the following re-appointments: City Council representative – Mark Burroughs; Chamber of Commerce representative – Marty Rivers; UNT representative – interim president Lane Rawlins.

Mayor Pro Tem Kamp motioned, Council Member King seconded to approve the nominations. On roll call vote, Council Member Watts "aye", Council Member King "aye", Council Member Heggins "aye", Council Member Gregory "aye", Council Member Engelbrecht "aye", Mayor Pro Tem Kamp "aye", and Mayor Burroughs "aye". Motion carried unanimously.

D. Citizen Reports

1. Review of procedures for addressing the City Council.
2. Receive citizen reports from the following:
  - a). Bob Clifton regarding our City Charter -- Initiative, Referendum and Recall.

Bob Clifton, 624 Newton, spoke regarding the petition for Fry Street.

- b). Kathryn Newton regarding cyclist and pedestrian safety and rights.

Kathryn Newton, 2124 Savannah Trail, spoke regarding her husband being hit by a car while riding his bicycle. She requested that the City look at installing a four-way stop sign and a crosswalk at Hollyhill and Woodbrook and also look into installing a bike lane on Pennsylvania.

- c). Willie Hudspeth regarding concerns of Southeast Denton.

Mr. Hudspeth was not present.

- d). Lanisha Hudspeth regarding concerns of Southeast Denton.

Ms. Hudspeth was not present.

- e). Jordan Hudspeth regarding concerns of Southeast Denton.

Ms. Hudspeth was not present.

- f). Hagar Hudspeth regarding concerns of Southeast Denton.

Ms. Hudspeth was not present.

- E. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the City Council or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions

of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Mayor Burroughs requested that staff look into the appropriateness of additional stop signs and/or crosswalks on Hollyhill at Woodbrook.

Council Member Gregory asked for an update on the bike lane on Pennsylvania and if staff had received other similar requests.

- F. 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.

- G. Official Action on Closed Meeting Item(s) under Sections 551.071-551.086 of the Texas Open Meetings Act.

There was no official action on Closed Meeting items.

With no further business, the meeting was adjourned at 2:41 a.m.

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MARK A. BURROUGHS  
MAYOR  
CITY OF DENTON, TEXAS

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JANE RICHARDSON  
ASSISTANT CITY SECRETARY  
CITY OF DENTON, TEXAS