

# CITY OF DENTON CITY COUNCIL MINUTES

April 14, 2015

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, April 14, 2015 at 1:00 p.m. in the Council Work Session Room at City Hall.

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

ABSENT: None.

## Work Session Reports

- A. SI15-0005 Receive a report, hold a discussion, and give staff direction regarding amending Section 169.18 Separation and Setbacks of Chapter 13 - Food and Food Service Establishments of the City of Denton Code of Ordinances.

Rodney Patterson, Building Official, presented information concerning the amendments. He noted that topics for discussion would include food truck separation and food truck parking on city rights-of-way and city property. He reviewed the history of distances recommendations. The current recommendation was 12 feet separation from buildings, 10 feet side to side separation between trucks and 5 feet front to back separation between trucks. Building Inspections staff had met with the Fire Marshall to formulate proposed separation distances.

Mayor Watts asked if the 10 foot separation include tables and chairs.

Patterson stated if it was reasonable to be able to clear the area of tables and chairs, it would be allowed but not if they were heavy tables.

Fire Marshal Behrens stated that the 10 foot distance was required by code for consumable materials but wooden materials would have to keep at the 10 foot separation.

Council Member Roden stated that provisions for a food truck park had not been created yet as a use. Whatever rules were adopted would apply for a future food truck park.

Paterson stated that was correct.

Council Member Hawkins questioned if the distance requirements would be met if a truck was parallel to a fence with 10 feet on the other side.

Patterson stated that would be an obstruction and would not be allowed.

Behrens stated that they were looking at access and safe distances from combustible materials.

Council Member Gregory asked if the five feet back spacing would apply if a truck parked on a street and was 5 feet from another car or vehicle.

Patterson stated yes it would apply for fire safety.

Patterson continued with on-street parking for food trucks. Meetings had been held with internal staff consisting of Building Inspections, Planning, Police, Fire and Economic Development to

look at possible locations for on-street parking of food trucks. Staff also met with Legal to determine licensing of units and appropriate fees for the use of City property. Building Inspections staff also held preliminary meetings with Engineering.

Council discussed current parking on streets and whether the food trucks might be in violation of current regulations. A discussion at a prior meeting was to allow on-street parking until permanent regulations were developed.

Council Member Johnson felt that there was not a lot of public input on the trucks parking on streets. There was not much opportunity for restaurants to provide input regarding parking near current restaurants. His concern was that the City had worked hard to create a thriving Downtown and needed more discussion in order to allow food trucks to park on city streets and compete with those who had made considerable investment in their businesses.

Council Member Roden asked if whether in the past year Council Member Johnson had seen food trucks in front of existing restaurants competing with those types of establishments.

Council Member Johnson stated that right now, if they were following the law, the trucks would not be doing it. As a City they should not encourage or allow it to happen. He understood the need for food trucks but was concerned with the tracking of sales tax, health inspections, etc. He understood the emerging business but did not want to allow them to park on a street. He questioned the purpose of the food truck, what the risk was and what the benefit was. The risk was the hurting of those businesses paying their own way. The reward was more food options but he did not them to have a competitive advantage over established restaurants.

Council Member Gregory stated that in prior discussions trucks would be allowed to set up in parking lots and have access to sidewalks. Restaurants did not lose business to the food trucks. He felt this was a fear that did not evolve.

Council Member Hawkins stated that as policymakers, Council passed ordinances when they might be worried about something that possibly might happen such as building inspection issues. He was worried that as a restaurant owner someone might pull up in front of his business and compete with him.

Council Member Johnson asked for information on the amount of sales tax paid and the health inspection status of the food trucks compared to existing restaurants.

Patterson presented proposed locations for the food trucks and reviewed currently used locations. Potential opportunities on Locust and Walnut, Oak Street, near City Hall West, and Hickory and Carroll were presented. Next steps in the process were to determine Council desired target location, meet with Engineering to determine feasibility and cost of each location and determine permit costs and duration. Once the preferred locations were determined staff would take them to the truck operators and established restaurants for discussion.

Council Member Roden stated that he was concerned about the City determining the locations. The nature of the food trucks was to gather near larger public gatherings. Another approach might be to declare that in certain areas no food trucks were allowed such as in the immediate Square area and the angled parking in the Hickory corridor. Outside of that, create a maximum

number of street parking permits for any given month/week or special events and let it develop from there.

Council Member Gregory stated that he was not a fan of trucks parking on streets to do business because of issues such as reimbursement of a city facility. Rather than the City picking out spots a brick and mortar with a food truck would apply to the City for a food truck parking spot. The City would need to be reimbursed for that spot similar to a loading zone permit. Some businesses were building spaces on their property for the trucks.

Council Member Ryan stated that he would rather say where the trucks could not go over saying where they could go. There was an opportunity through fees for a private/public partnership such as at the DCTA station. For locations near established restaurants a suggestion would be to look at hours of operations such as when the established location was closed. He also noted that some of the proposed areas might have issues with lighting and sidewalks.

Mayor Pro Tem Engelbrecht stated that larger cities had food trucks on public streets but he did not know how they were permitted or whether they were in areas where there were no other immediate restaurants. He felt further investigation was needed on university policies in regards to allowing food trucks on university property. He suggested also looking at the time between the closing of restaurants and the closing of bars.

Council Member Johnson questioned why the City would take an action that would give someone else who sells food in a truck an advantage over someone who made a sizable investment in the City.

Council Member Roden felt that citizens had overwhelmingly asked for food trucks. In terms of sales tax auditing he questioned if that would be done for existing locations or just for food trucks.

Bryan Langley, Assistant City Manager, stated that the Comptroller's Office performed the audits. The City did not do those.

Council Member Johnson stated that he would like to know how many trucks were registered, how much they were paying and the total aggregate amount paid. He was not familiar with the number of citizens who wanted these but the proposal today was whether to park on city streets.

Mayor Watts expressed a concern about the trucks being on public streets. Parking was scarce in the Downtown area and trucks parking on the street would be taking more spaces. The locations on public streets in the Downtown area was his major concern as using any of the proposed locations would be taking away parking locations that were needed. He requested more information on how many parking locations would be taken with the proposed locations.

Mayor Pro Tem Engelbrecht suggested considering food truck events as they were very successful and investigate food truck fairs in between other events.

Council Member Hawkins stated that he wanted to make sure they were looking into how this would affect established restaurants so as to not harm them as they were the backbone of the City.

Consensus of the Council was that they were in favor of the setback distances. More work was needed on the food trucks parking on the streets.

Mayor Watts suggested status quo with parking on the streets until the issue was resolved.

Council Member Gregory requested an Informal Staff Report on food truck itineraries.

Council Member Johnson stated that he was comfortable with the current ordinance and unless there was a consensus to change it, keep it as it currently was.

Mayor Watts stated that the Council's recommendations were that predetermined parking places were not an option, identify areas that were off limits and where they might be allowed. If parking was allowed on the streets, prepare data on where the trucks were going, where the trucks would park with the itinerary options and where acceptable areas might be located.

- B. ID 15-294 Receive a report and hold discussion on the Land Use Assumptions and 10-Year Capital Improvements Plan related to the implementation of Road Impact Fees.

PS Arora, Wastewater Division Manager, stated that the presentation overview would include (1) current DDC road exactions and requirements, (2) what was an impact fee, (3) DDC and impact fee comparison, (4) basic impact fee methodology, (5) land use projections and capital improvements plans, and (6) impact fee procedures.

Current DDC Road Exactions - new developments or higher intensity uses in an existing development created additional traffic. To accommodate this additional traffic, the proposed development needed to pay for necessary road improvements. This resulted in exactions for road improvements per the DDC. He reviewed the current DDC requirements for perimeter street improvements in terms of unimproved streets and new perimeter streets as defined by the Mobility Plan. The current DDC requirements for sidewalks, offsite street improvements, signal cost participation, and proportionality assessment were also presented.

A question to consider was in lieu of the current road exaction process was there a better way to recover these costs. Many cities in the Metroplex had adopted roadway impact fees. An impact fee was a one-time charge assessed to new development for a portion of costs related to a specific capital improvement program. It was a mechanism for funding the infrastructure necessary to accommodate new development in terms of funding of certain new facilities or expansions or recoupment of certain capital improvement costs.

Impact fees allowed cities to recoup a portion of the cost of providing infrastructure improvements necessary for new growth; ensured that fees were spent in the area where the development was located; provided a systematic, structured approach to assessment of fees; and facilitated growth paying for growth. The items payable with impact fees and items that could not be paid with impact fees were reviewed. The current DDC qualifications and the proposed impact fee qualifications were compared. In addition, the basic methodology for impact fees

which included service areas, land use assumptions and capital improvements plan was presented.

Impact fee service areas were areas to be served by an Impact Fee Capital Improvement Plan. Roadway service areas were limited to six miles by State law and money collected in each Service Area must be spent on Impact Fee Capital Improvement projects in that Service Area. An Impact Fee Service Area Map with various zones throughout the City was provided. Funds collected in one area had to be spent in that area but not at a particular address. Land use projections fully coordinated with the Planning Department and the Denton 2030 Comprehensive Plan update.

Development of a 10 year Roadway Impact Fee Capital Improvement Plan was required per Chapter 395 of the Texas Local Government Code. To accomplish this, the current Denton Mobility Plan had been updated using a Denton Specific Travel Demand Model. In order to optimize future flexibility, all capacity improvements included in the Mobility Plan were included in the Roadway Impact Fee CIP and would be eligible to utilize impact fee funds. Capacity improvements could include the addition of lanes, intersection improvements, or the extension of a new road.

Impact Fee Procedures – Council needed to approve a resolution to consider impact fees. A Capital Improvements Advisory Committee needed to be appointed. In addition, land use assumptions, CIP and impact fee recommendations were needed for the Committee. Public notices of hearings had to be published 30 days in advance with reports available to the public. The specifications for the public hearings and adoption were reviewed.

Mayor Watts felt there needed to be a discussion on whether to keep the Planning and Zoning Commission as the Capital Improvements Advisory Committee.

Arora stated that staff was seeking direction on the implementation schedule and whether presentations to any other organizations besides the Developers Committee were needed.

- C. ID 15-298 Receive a report, hold a discussion and give staff direction regarding an Interlocal Cooperation Agreement with Denton County Emergency Services District 1 (Argyle ESD) for firefighting and emergency medical services.

Robin Paulsgrove, Fire Chief, stated that the objective of this discussion was to develop a strategy that addressed fire protection and the associated impact on insurance rates, along with EMS responses. It was validated that there was an area in Denton that had a different Insurance Services Office (ISO) rating from the core City area. Robson Ranch had a higher rating due to its distance from current stations. At a prior meeting he had presented information that discussed partnering with Denton County EDS 1 (Argyle EDS) for a proposed location nearer Robson Ranch. An additional recommendation was to establish a medic unit at Station 7.

Parameters included in a partnership with Denton County ESD 1 were (1) provide first response through a contract for cost participation with the DC EDS 1, (2) utilize a formula in which the city's contribution diminished over time, (3) provide an exit clause to respond to changing needs and opportunities, and (4) utilize the Argyle station location in a future petition for an ISO rating revision.

He reviewed the service timeline that projected the steps in the project. The partnership with the Robson Communities would have a diminishing amount in the first four years to help out with higher Denton contributions. The costs associated with a medic unit for Station 7 were reviewed.

Recommendations included (1) enter into a contract with Denton County EDS 1 in April 2015, (2) enter into a Letter of Agreement to order an ambulance in April 2015, (3) propose an additional city medic unit at Station 7 in 2015-16 budget, (4) initiate a multi-year plan in the Denton Fire Department to prepare for an ISO 2019, (5) reinvigorate strategic relationships with county mutual and automatic aid partners and (6) participate in City's Cole Ranch and Hills of Denton development process.

Council discussed the provisions of the contract and the terms associated with the proposal, costs of the facility, and the funding for a medic and ambulance. They also discussed the ISO rating from the core of the City versus Robson Ranch.

Consensus of the Council was to proceed with staff recommendations.

- D. 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 Watts stated that the Denton Housing Authority had requested support for vouchers for homeless veterans. He requested a Work Session or a resolution for Council to approve this request of support.

Council Member Roden requested that the Leadership Denton presentation be made to the Mobility Committee or full Council.

Mayor Pro Tem Engelbrecht asked that the issue of employees parking on the Square be investigated.

Council Member Gregory stated that the Leadership Denton research dealt with people's perceptions regarding parking on the Square. He would like to have information regarding the reality of parking on the Square.

Council Member Hawkins asked that the cost of a parking garage be included in any Work Session discussion.

Following the completion of the 2nd Tuesday Session, the City Council convened in a Closed Meeting at 4:43 p.m. to consider specific items listed below under the Closed Meeting section of this agenda.

Closed Meeting:

- A. ID 15-181 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff, discuss, deliberate, and provide staff with direction regarding the potential acquisition of real property interests generally located in Denton, Denton County, Texas, N. Bonnie Brae St and Emery Dr to N. Bonnie Brae St and Riney Rd., for the construction, expansion and use of electric power transmission lines. Consultation with the City's attorneys regarding legal issues associated with the acquisition of the real property interests described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.[Bonnie Brae to North Lakes TM line]

- B. ID 15-182 Consultation with Attorneys - Under Texas Government Code, Section 551.071; Deliberations Regarding Real Property - Under Texas Government Code, Section 551.072.

Receive information from staff pertaining to the acquisition of real property interests related to the proposed expansion and reconstruction of Locust Substation generally located South East of Fort Worth Drive & West Collins Street, in the City of Denton, Denton County, Texas. Consultation with the City's attorneys regarding legal issues associated with the potential acquisition and/or condemnation of parcels of real property near the aforementioned location and more particularly described as: Lot 1, Block A of Garcia Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in document No. 2009-168 of the plat records of Denton, County, Texas.

- C. ID 15-206 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff, discuss, deliberate, and provide staff with direction regarding the potential acquisition of real property interests generally located in Denton, Denton County, Texas, East of Loop 288 and Spencer Rd to Pockrus Page Rd and HWY I-35E., for the construction, expansion and use of electric power transmission lines. Consultation with the City's attorneys regarding legal issues associated with the acquisition of the real property interests described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative

proceeding or potential litigation.[Pockrus to Spencer TM line]

- D. ID 15-223 Deliberations regarding Real Property - Under Texas Government Code Section 551.072; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff, discuss, deliberate, and provide staff with direction regarding the potential acquisition of real property interests in the E. Puchalski Survey, Abstract No. 996, City of Denton, Denton County, Texas, and being generally located in the 900 block of W. Collins Street (Block 4, Hillside Addition, City and County of Denton, Texas). Consultation with the City's attorneys regarding legal issues associated with the acquisition of the real property interests described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation. [DME Eagle substation - No action item assoc.]

- E. ID 15-300 Consultation with Attorneys - Under Texas Government Code, Section 551.071.

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

- F. ID 15-321 Deliberation regarding Personnel Matters - Under Texas Government Code Section 551.074.

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

This item was considered after the completion of the Special Called Meeting.

- G. ID 15-330 Consultation with Attorneys - Under Texas Government Code Section 551.071;



Deliberations Regarding Real Property - Under Texas Government Code, Section 551.072.

Discuss, deliberate and receive information from staff and provide staff direction regarding a development located in the 2800 block of Fort Worth Drive a portion of which is located within a floodplain where a public discussion of these legal matters would conflict with the duty of the City Attorney's 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 proceeding or potential litigation.

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

### **Public Hearings**

#### Ordinance No. 2015-107

- A. SI15-0010 Hold a public hearing and consider adoption of an ordinance to amend Ordinance No. 2014-137, as amended by Ordinance Nos. 2014-192, 2014-276, and 2015-103, to extend for an additional one hundred and nineteen (119) days, or such other reasonable date, the moratorium on the acceptance, processing, and approval of certain applications for gas well permits within the corporate limits of the City of Denton, Texas, and on applications for specific use permits, site plans, development plans of any nature or type, including applications for amendments to approved or pending gas well development plans, and on applications for Fire Code operational permits, as they relate to gas well drilling and production activities, subject to certain exemptions; providing a cumulative clause; providing a severability clause; and providing an effective date.

Darren Groth, Gas Well Administrator, presented the details of the moratorium and the dates of the prior extensions. The current moratorium would expire on April 21, 2015.

A revised draft set of regulations had been posted to City's website on March 30<sup>th</sup> to allow the public an opportunity to review the proposed regulations. Currently there were two bills in the Texas Legislature with the potential to adversely impact the draft set of regulations. If approved it would not happen before the current moratorium ordinance expired. An extension was necessary to allow staff sufficient time complete the proposed regulations.

The Mayor opened the public hearing.

Comment cards were submitted by the following:

Michael Hennen, 724 Thomas, Denton, 76201 - in favor

Ed Soph, 1620 Victoria, Denton - in favor

Rhonda Love, 1921 Hollyhill, Denton - in favor

The Mayor closed the public hearing.

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

- B. DCA14-0009g Continue a public hearing and consider adoption of an ordinance amending Subchapters 5, 7, 16 and 22 of the Denton Development Code, relating to Gas Well Drilling and Production, Definitions and Procedures; amending Ordinance No. 2013-248, relating to planning and development fees and road damage remediation fees relating to gas well drilling and production activities; adding new Subchapter 22A to the Denton Development Code, relating to Oil and Gas Pipelines, Definitions, Procedures; providing a cumulative clause; providing a severability clause; providing for a penalty; and providing for an effective date (DCA14-0009f). The Planning and Zoning Commission recommends denial (4-3). A supermajority vote by City Council is required to adopt a motion to approve this ordinance.

Mayor Watts announced that this was a continuation of a prior public hearing.

There were no speakers for the public hearing.

Council Member Ryan motioned, Mayor Pro Tem Engelbrecht seconded to continue the public hearing to the Council's June 16<sup>th</sup> meeting. On roll call vote, Mayor Pro Tem Engelbrecht "aye", Council Member Gregory "aye", Council Member Hawkins "aye", Council Member Johnson "aye", Council Member Roden "aye", Council Member Ryan "aye", and Mayor Watts "aye". Motion carried unanimously.

Council returned to the Closed Meeting at 7:00 p.m. to consider Closed Meeting Item F.

The Council returned to Open Session and with no further business, the meeting was adjourned.

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CHRIS WATTS  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON TEXAS