

## CITY OF DENTON CITY COUNCIL MINUTES

October 28, 2014

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, October 28, 2014 at 11:30 a.m. in the Council Work Session Room at City Hall.

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

ABSENT: Council Member Gregory.

The Council convened in Closed Meeting to consider the items listed below:

### 1. Closed Meeting:

#### A. ID 14-0677 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 Gas Well Ordinance regulation of gas well drilling and production within the City Limits and the extraterritorial jurisdiction, including: Constitutional limitations, statutory limitations upon municipal regulatory authority; statutory preemption and vested rights; impacts of federal and state law and regulations; impacts of gas well drilling upon protected uses and vice-versa; moratorium on drilling and production; other concerns about municipal regulatory authority or matters relating to enforcement of the Gas Well Ordinance; settlement matters concerning gas well drilling in the City; surface development issues involving surface and mineral estates; and legal matters associated with a citizen's initiative regarding hydraulic fracturing where a public discussion of these legal matters would conflict with the duty of the City's attorneys under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

#### B. ID 14-0714 Consultation with Attorneys - Under Texas Government Code, Section 551.071.

Consult with and provide direction to the City's attorneys regarding legal issues associated with the Denton Development Code, Subchapter 15, relating to Signs and Advertising Devices 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.

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

### 2. Work Session Reports

#### A. ID 14-0715 Receive a report, hold a discussion, and provide staff with direction regarding the Denton Development Code, Subchapter 15, relating to Signs and Advertising Devices and possible amendments thereto.

Brian Lockley, Director of Planning and Development, stated that this item was an update to signs and advertising devices in the Denton Development Code. He reviewed current requirements and exemptions and provided the definition of a wind device sign. A permit for a

wind device was valid for 30 consecutive days with not more than 3 permits in a calendar year. An identification tag was issued by the Building Official and was attached to the device. Provisions of this section did not apply to the Texas or U. S. flags. He presented the language in the Code for exempted flags and information concerning the nature of codification of Customs and Rules for the U.S. Flag Code. The Flag Code was declaratory and advisory and did not prescribe conduct.

Mayor Watts stated that he assumed the Flower Mound code regulated the display of the American flag and questioned if it was advisory in nature or had an associated penalty.

Lockley stated that he did not know all of the details of their code at this time. The U.S. Flag Code also provided provisions for time and occasion for display. He provided pictures of various wind devices in the community. It was felt that any more than three flags went beyond patriotism and went into commercialism. Staff had research various area cities and how they addressed this particular issue. Staff was requesting direction to Subchapter 15 - Signs and wind devices.

Council Member Roden stated that the news media had presented Denton as out of the ordinary in regards to regulations but he had found similar regulations in many other cities. The purpose of regulation was about aesthetics and how the streetscape looked and not making a statement of patriotism.

Mayor Watts stated that the pictures showed a couple of different businesses displaying more than one American flag in both photos from 10/7/14. He questioned if they had applied for wind permits for those devices and if not, had they been given a warning.

Lancine Bentley, Code Enforcement Division Manager, stated that there were four other locations besides the Dallas Drive location that had multiple flags on display. The other three locations had removed the extra flags.

Council Member Hawkins asked if there was an exception for national holidays.

Lockley stated that it had been discussed internally but nothing in the ordinance at this point.

Council Member Hawkins asked about the Rotary flag program which put out more than the allotted amount.

Lockley stated that was an exception that applied during those types of holidays.

Council Member Ryan asked how the provisions applied to multi-family properties or properties with multiple tenant buildings.

Lockley stated that it was based on the premise and not on the use.

Council Member Engelbrecht assumed it would not be a problem to rewrite the code to allow for exceptions for patriotic holidays.

Lockley stated that could be done.

Council Member Engelbrecht asked about the businesses that took the flags down and whether there were other situations where the flags exceeded the allotted amount and were taken down.

Bentley stated that this was the first time there had been so many out at one time with complaints on them. There were not that many cases.

Council Member Roden stated asked if the sign ordinance had different standards in different parts of town.

Lockley stated that commercial uses looked at the type of uses permitted.

Council Member Roden suggested a concept of a different aesthetic concept for an overlay area. Take out of the patriotic concept and get into aesthetics. Dallas Drive was in his district and flags on it were the least of his concern. There were many other areas of concern in that location.

Lockley stated that there could be signage related to underlying zoning which allowed for different square footages based on types of sign. Different locations would have different standards for signs.

Council Member Roden stated that the ordinance could not specify one or two businesses and as policy makers it needed to be universalized. Whatever was done needed to be done across the board.

Mayor Watts felt that with the current issue, if the flags were advertising for the business they would not be having this discussion. The actual nature of the flags was dictating the discussion. The challenging part was the narrative to take up the flag. This was responsive government to a complaint received. For him the question was to try to define and regulate it in the meantime.

Council Member Johnson stated that Community Improvement Services was in a difficult situation when something had not been enforced for a long time and then tried to enforce it. There was a variety of opinions on the issue with an ordinance which put staff in a no win spot. He suggested considering not looking at the American flag as the same as other devices. An individual should be able to fly as many flags as he wanted to on his own property.

Council Member Ryan asked about the Flower Mound provisions which adopted the Federal guidelines and what the restrictions were.

Lockley stated that their provisions allowed three flag poles per lot.

Council Member Roden stated that beyond one flag was aesthetic. If the community wanted sky was the limit, so be it but from a policy perspective the community needed to know the consequence as it would apply to both businesses they liked and those they didn't like and in terms of advertising or not.

Council Member Engelbrecht suggested in the Code attempt to maintain the status of the American flag as patriotic. He felt that when the flag was displayed in multiples every day, it was no longer an icon but advertising. He was concerned that he did not want to lose the iconic status of the flag and was concerned if he saw hundreds of flags all the time one of the special days would not stand out. He did not want the flag to become background.

Council Member Hawkins stated that he did not have an agenda in this situation. He did not feel comfortable trying to regulate this and if someone wanted to flag an American flag then he should be able to do so. This was not a fight that the City should be trying to regulate.

Mayor Watts stated that he would rather error on side on trusting the community for now. He suggested looking at removing the regulation for now as the community had expressed their desires. If it went out of control the other way, Council would hear from the community on the opposite end. His direction would be to come back to remove the restrictions for health and safety and traffic with some kind of regulations for those areas. Have guidelines to work into the regulations.

Council Member Engelbrecht requested creating a spot on the website where individuals could comment on the issue. A report could be included on the site as well as the information on the State flag.

Council Member Ryan stated that he would like to incorporate of the guidelines into the provisions if possible.

Council Member Roden asked about a time frame for this amendment for a vote.

Lockley stated that the amendment would have to go through the Planning and Zoning Commission as this was a change in Development code.

Council Member Hawkins asked about the current citations and what would happen to those during this time.

City Attorney Burgess stated that criminal cases rested with the prosecutor who would take this discussion into consideration and would reach a conclusion.

Lockley stated that the Council direction was to look at exemptions and restrictions and determine whether the flags were on the property for safety placement. Design a website for feedback from community to use and bring back for recommendations. Staff would also look at lot footage to determine numbers and incorporate federal guidelines as needed. Additional citations would be held off at this time with a time frame of about 60-90 days.

Following the completion of the Work Session, the City Council convened in an Open Meeting.

### 3. Items for Individual Consideration

- A. ID 14-0708 Consider adoption of an ordinance approving an amendment to the proposed hotel/convention center professional services agreement for architect or engineer, Exhibit "F" of Contract No. 5447 and was attached to Ordinance No. 2013-334; providing a savings clause; and providing an effective date.

Jon Fortune, Assistant City Manager, stated that the purpose of this item was to consider approval of an amendment to the professional services agreement with O'Reilly to add \$75,000 to the design component to move the project forward. Staff had received a loan commitment letter and franchise commitment letter from O'Reilly.

Mayor Watts asked if the loan agreement had been posted on the website.

Fortune replied correct.

Council Member Hawkins asked what the dollars would be used for.

Fortune stated it was for a level of design for pricing of the convention center in order to keep from losing the pricing needed to move forward to the end of year. Between now and the end of the year staff wanted to start the architects to get to the next phase of design. That could be done for \$75,000 for the convention center. The hotel was \$145,000 which O'Reilly would spend so that the design could advance to the next step.

Council Member Ryan stated that according to the information sent out, the loan commitment was not a complete deposit. Starting the loan process in December would not get the project off the ground even if the City moved forward.

Fortune stated that his understanding was that the \$19,000 payment to the bank was to revise the Master Development Agreement. Staff was working on updating that agreement by November 11<sup>th</sup> and could have it ready to be revised by the 16th.

Mayor Watts felt that he was at the end of the rope and would not be voting to move forward but rather would recommend terminating the project and agreement. The last information he had received on the project decided it for him. He was not willing to spend \$19,500 for a review of the documents if the project was not going forward. The new Market Federal Tax Credit was a new element he had not heard of before. He could not agree to spend more money when the partner would not do it and felt that the information he continued to get was still pushing it out further. He could not move forward because he lost his confidence in the process of the developer. He had received all the information he needed to make a decision on the project and was in favor of terminating the project.

Council discussed the loan terms and associated changes in the Master Development Agreement. Council expressed concerns that not enough information had been presented to make a decision. They were hearing from citizens who were worried about being responsible for the debt. They also noted that there was not much support in general of the project in the community which remained a concern. Concerns were that the changing of the design from a three story facility to a one story reduced project lessened the support of the community.

Mayor Watts stated that the deal continued to morph for him and as it continued to move he was getting more questions instead of getting closer in terms. He had heard that there was a need for a convention center but was this was the particular project or deal that it needed to be in. There was an action item to consider on the agenda that would amend the ordinance. He questioned if that amendment would terminate the deal or the agreement or provide additional funds.

Fortune stated that if the ordinance were approved, staff would consider that as authorization to spend the money but not move forward with the project.

Mayor Watts asked what would happen if the ordinance was not approved.

Fortune stated that it would be less likely that they could meet the December window for the pricing. If the decision was delayed to November 11<sup>th</sup>, he was not certain what would happen with the contractor.

Council Member Hawkins motioned, Council Member Engelbrecht seconded postpone the item to the November 4, 2014 Council meeting. On roll vote, Mayor Pro Tem Engelbrecht “aye”, Council Member Hawkins “aye”, Council Member Johnson “aye”, Council Member Roden “aye”, Council Member Ryan “nay”, and Mayor Watts “nay”. Motion carried with a 4-2 vote to continue to November 4, 2014.

#### **4. 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 did not have any items.

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

There was no continuation of the Closed Meeting.

With no further business, the meeting was adjourned 4:17 p.m.

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CHRIS WATTS  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS