

## CITY OF DENTON CITY COUNCIL MINUTES

February 18, 2014

After determining that a quorum was present, the City Council convened in a Work Session on Tuesday, February 18, 2014 at 3:00 p.m. in the Council Work Session Room at City Hall.

PRESENT: Mayor Burroughs, Mayor Pro Tem Kamp, Council Member Engelbrecht, Council Member Gregory, Council Member Roden, and Council Member Hawkins.

ABSENT: Council Member King

### 1. Citizen Comments on Consent Agenda Items

There were no citizen comments on Consent Agenda Items.

### 2. Requests for clarification of agenda items listed on the agenda for February 18, 2014.

There were no requests from the Council.

Item #4 was considered.

### 4. Receive an update, hold a discussion, and give staff direction on the design process for the proposed hotel and convention center.

Jon Fortune, Assistant City Manager, introduced the O'Reilly team and the architects for the project.

Tim O'Reilly reviewed the time frame of the project and stated that the team was working towards a maximum guaranteed price for the project.

David Hess, representing the architect firm, stated that they were working towards pre-preparation and site planning in terms of the architecture. Currently they WERE working on a 3D model of the proposed hotel and convention center. They had talked with UNT Design Review Board on the proposed architectural features. By April 15th the drawing needed to be ready to go out to general contractors to submit bids for the project. The plan was to still have 318 suites but flexibility was still incorporated into the plan in order to have some flexibility due to the pricing market when they were ready to proceed with that portion of the agreement. The conference center would be a 3-4 story building with the hotel being either 10-11 stories. The conference center layout and amenities of the hotel were reviewed

O'Reilly stated that there would also be a classroom for the UNT for students for the hospitality program.

Mayor Burroughs asked if that classroom space would be taken off the tax rolls.

O'Reilly stated that the classroom was very small and could only accommodate 50 students with two small offices. They too want to keep as much of the property revenue producing as possible.

Hess reviewed the elevation concept.

Council Member Roden asked who had the final say on the design.

O'Reilly stated that all three entities had to agree on the design or it didn't move forward. He felt that would not be a problem and that all three would agree on the final design.

Council Member Engelbrecht requested a narrative on how the final design was developed and a description of how the rooftop green space would be managed.

Council returned to the regular agenda order.

3. Receive a report, hold a discussion and give staff direction regarding a ban on wireless communication use while operating a motor vehicle in the City of Denton.

Mark Nelson, Transportation Director, stated that the texting ban concern originated with the Traffic Safety Commission. Once it became clear that the State legislature would not be doing anything, the Traffic Safety Commission wanted to proceed with the item to Council.

Two draft ordinances were presented for Council consideration. Both included a ban on all uses of handheld devices including talk, text, navigational and internet. One ordinance exempted the Interstate system and associated frontage roads. The ordinances provided for use of handheld devices by emergency personnel and for FCC purposes. Enforcement would depend on an observable offense. Staff was seeking direction on how to proceed.

Council had also requested an outreach to the community to solicit input and feedback on this issue. A month long survey on Engage Denton was done with feedback from a number of people in the community. Of the 300 responses 190 were in favor and 146 were not in favor.

Mayor Burroughs stated that in the information provided by staff, out of the 6,000 crashes, only about 100 involved distractions. He considered that as a function of it being an observable event.

Council Member Engelbrecht stated that it appeared to be determined by the officer or reported by the individual. He was not sure an individual would report such an incident. He felt that in terms of data, he was at a loss in terms if the correct thing was being regulated.

Council Member Hawkins questioned the cost to make an older vehicle hands free.

Nelson did not have that information.

Council Member Roden stated that there were not many bans around Denton. He questioned if staff had found other cities, short of legislation, that had creative campaigns to get at the desired behavior.

Nelson stated that he had not seen anything like that. He felt it was happening in some school districts but did not have any specific data.

Council Member Roden asked about the statewide rule for young drivers.

Nelson stated that anyone under 18 could not use a phone in a car.

Council Member Roden asked about enforcement of that in Denton.

Nelson stated that there were not many citations written for that.

Mayor Burroughs felt that as cars became modernized, they would be addressing the issue. In his opinion, ten years from now these types of devices would probably be outdated as technology was constantly changing. A ban was hard to enforce due to the surrounding cities and their regulations. He felt this issue had to be addressed on the state level and not on the local level. It would be hard to switch back and forth between various cities and where a caller happened to be. He was not in favor of proceeding beyond what the City had currently.

Council Member Roden stated that he struggled with doing nothing but was concerned about legislating it. He was in favor of trying to do something creative about it such as considering areas of the city such as downtown for a ban. If the City did not move forward with legislation he would suggest finding other ways to address it.

Mayor Pro Tem Kamp stated that there were already established zones in the school zones. She did not know how other zones could be established plus a ban would be hard to enforce with so many elements involved.

Mayor Burroughs suggested establishing a pedestrian zone around downtown and developing some signage for it with a statement of don't text and drive. Those signs could be placed on the corners and would not be a law but an intent on what the City was trying to do.

Council Member Engelbrecht suggested educational types of programs aimed at younger adults as part of process. He would like to find more information about deaths while texting and texting with accidents. The education process could look back at the seat belt program as a guide for the educational program.

Council Member Hawkins suggested some kind of campaign for people to sign up and receive stickers saying "I don't text and drive".

Mayor Pro Tem Kamp stated that there were educational materials at COG that could probably be used.

Council Member Gregory stated that he would like to move forward because it did not appear that the State would be doing anything. Laws were made when people were not self-regulated.

Council Member Roden stated that what started out as a ban on texting became a ban on the use of all wireless devices. It might be a problem enforcing a texting ban but it would still be there. He felt people would get behind a texting ban as opposed to an entirely wireless ban.

Mayor Burroughs stated that he would be in favor of just a texting ban.

Council Member Engelbrecht asked for a definition of texting for all alternatives.

Mayor Pro Tem Kamp stated that she would be in favor of a ban on texting while driving.

Council Member Engelbrecht suggested continuing to look at an educational program as well as a texting ban.

Mayor Burroughs stated that the consensus of Council was to come back with definitions of texting with a general direction of banning texting in the city limits while driving. Staff would also look into the suggestion of a sticker campaign for the educational side.

5. Receive a report, hold a discussion and give staff direction regarding proposed amendments to Chapter 13 ("Food and Food Service Establishments") of the City of Denton Code of Ordinances.

Kurt Hansen, Building Official, presented the information on the issue. The food code was adopted November 2012 with a six month review of the ordinance done in July 2013, an informal staff report in January 2014. He noted that there were 24 permitted mobile food establishments; 12 were full service with the others being smaller facilities. Key Council issues for mobile food establishments included commissary food vendor log, vendor/supplier, parking and itinerary. He indicated that Council Member Gregory had suggested a number of changes to the proposed ordinance.

The commissary definition was amended to indicate "a" commissary instead of "the" commissary. The vendor/supplier definition was proposed to be amended to indicate a business establishment approved by the City Health Officer as opposed to an approved business approved by the City Health Officer.

Class IV - Limited Service Pushcarts definition - Council Member Gregory had suggested removing the wording "at one location" from the definition.

Council Member Gregory suggested removing the wording "at one location" for Class Three and count on the Health Instructors to make sure the cart was equipped properly for the foods to sell.

Mayor Burroughs suggested developing criteria of what an acceptable chiller would be and what would be acceptable for the inspectors.

Hansen continued with the definition of "Person in Charge". Wording would be added for clarification that the person in charge would be defined by the T.F.C.F.

Itinerary changes – Hansen reviewed the current wording and provided the wording as suggested by Council Member Gregory.

Council Member Gregory stated that he did not see that proposed change in ordinance listed in the Consent Agenda.

Brian Lockley, Director of Planning and Development, stated that staff agreed with the change and that it should be included the ordinance.

Residential Construction Zones – Hansen stated that this change would allow to food to be sold in active construction areas.

Selling from Right-of-Way – the wording in the proposed ordinance would be changed to allow food vendors to sell from the right-of-way with written permission from the City Manager or his designee.

Council Member Gregory stated that his suggestion was lacking as there was a concern about people doing business on city property without proper remuneration to the City.

Class IV – Limited Service Pushcarts – Council Member Gregory’s recommendation was to remove the words “at one location for the life of a permit”. Staff was recommending no change to the wording that a limited service pushcart could operate at one location for the life of a permit or may be pushed by human power to various locations. These pushcarts could serve only a limited menu of non-potentially hazardous, prepackaged food items.

Council Member Roden asked if there had been a consideration for other alternatives for food on push carts.

Council discussed the allowing a Class IV Pushcart to have the same features as a Class III Pushcart based on potentially hazardous foods and the different aspects of Class IV and Class III limited service pushcarts.

Clean it- Store it – the current requirement was to go to a commissary on a daily basis. Council Member Gregory’s recommendation was to strike “at least daily”. Staff’s recommendation was to require that the interior had to be cleaned daily and stored at a location not used as a residence when not in operation.

Council Member Engelbrecht stated that a food truck could not be stored at a home.

Hansen stated correct as the object was to keep from having the food prepared in a home and using a home freezer to prepare the food.

Records of Commissary Visits – the recommendation was that documentation of each visit to a commissary be provided by the commissary providing the service, and would specify when and which service was provided.

Council Member Roden asked why the commissary had to provide the documentation. If there was no commissary in Denton, some creativity could be used to allow for several locations to provide the service.

Hansen stated that it would be easy for the mobile food establishment to just keep a running list of visits that never happened. The intent was that the person supplying the service would verify that the service was done.

Built-in Hose Requirement – the recommendation was to remove this requirement.

Parking Spaces required by CO - staff was recommending that no changes be made to this section.

Snow Cone-Ice Cream Vendor – this section would be moved to Section 169.28 in the ordinance.

Parking Surface, Not at Home – staff was recommending that the wording be amended that a mobile food preparation facility could not park on an unimproved surface without written approval from the City Manager or his designee unless selling for less than one hour at a site that was currently under construction. Section 169.26 would be amended to state that a mobile food preparation facility could not park at a residence.

Pay Re-Fee within 5 days – the staff recommendation was that payment of the re-inspection fee had to be made within 5 business days after the re-inspection was performed.

Council Member Roden stated that food trucks seem to be in the downtown area. He questioned if there was anything else in the ordinance that when enacted might have a problem or unintended consequences.

Following the completion of the Work Session, the Council convened into a Closed Meeting to discuss the following:

1. Closed Meeting:

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

1. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the potential purchase of certain real property interests located in the S. McCracken Survey, Abstract No. 817, City of Denton, Denton County, Texas, and generally located on the north side of N Loop 288, west of Sherman Drive. Consultation with the City's attorneys regarding legal issues associated with the potential acquisition and condemnation of the real property described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation. (69kV Transmission Line Re-build Project C8)
2. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the potential purchase of certain real property interests located in the T. Toby Survey, Abstract No. 1285, City of Denton, Denton County, Texas, and generally located north of Airport Road and east of Masch Branch Road. Consultation with the City's attorneys regarding legal issues associated with the potential acquisition and condemnation of the real property described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional

Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.

3. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the acquisition of real property interests located in the David Hough Survey, Abstract Number 646, generally located in the 2100 block of South Mayhill Road, in the City of Denton, Denton County, Texas. Consultation with the City's attorneys regarding legal issues associated with the acquisition or condemnation of the real property interests referenced above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and 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. (Mayhill Road Widening and Improvements project & Municipal Landfill)

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

1. Consult with and provide direction to City's attorneys regarding legal issues and strategies associated with Gas Well Ordinance regulation of gas well drilling and production within the City Limits and the extraterritorial jurisdiction, including Constitutional limitations, statutory limitations upon municipal regulatory authority, statutory preemption and/or impacts of federal and state law and regulations as it concerns municipal regulatory authority and matters relating to enforcement of the ordinance.
2. Consult with the City's attorneys regarding legal issues associated with existing and potential regulation of sexually oriented businesses where a public discussion of this legal matter would conflict with the duty of the City's attorneys under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

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

**1. PLEDGE OF ALLEGIANCE**

The Council and members of the audience recited the Pledge of Allegiance to the U. S. and Texas flags.

**2. PROCLAMATIONS/PRESENTATIONS**

A. Proclamations/Awards

1. Beulah Harriss Day

Mayor Burroughs presented the proclamation for Beulah Harriss Day.

2. 2013 Achievement of Library Excellence Award from the Texas Municipal Library Directors Association

Teri Gibbs, Director of Libraries, presented the details of the award received from the Texas Municipal Library Directors Association.

3. TAMS Science Experiment Boxes Days

Mayor Burroughs presented the proclamation for TAMS Science Experiment Boxes Days.

### 3. CITIZEN REPORTS

- A. Review of procedures for addressing the City Council.
- B. Receive citizen reports from the following:

1. B.C. Groves regarding City inspections.

Mr. Groves was not present at the meeting.

2. Steve Shafer regarding access on Ridge Lane.

Mr. Shafer was not present at the meeting.

### 4. CONSENT AGENDA

Mayor Burroughs noted that Item S would not be considered at this time.

Mayor Pro Tem Kamp motioned, Council Member Hawkins seconded to approve the Consent Agenda and accompanying ordinances and resolutions with the exception of Item S. On roll call vote, Mayor Burroughs "aye", Mayor Pro Tem Kamp "aye", Council Member Engelbrecht "aye", Council Member Gregory "aye", Council Member King "aye", Council Member Roden "aye", and Council Member Hawkins "aye". Motion carried unanimously.

#### Ordinance No. 2014-041

- A. Consider adoption of an ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Denton Startup Weekend; authorizing and ratifying the expenditure of funds; and providing for an effective date. (\$650)

#### Ordinance No. 2014-042

- B. Consider adoption of an ordinance authorizing the City Manager or his designee to execute on behalf of the City of Denton, Texas a Memorandum of Agreement ("MOA") contemplating a real estate conveyance from the City of Denton to the State of Texas, of a 15,740 square foot tract of real property, in the Eugene



Puchalski Survey, Abstract No. 996, City of Denton, Denton County, Texas, and being a portion of Lots 9, 10 and 19 of the Foxhunt Addition, generally located at the Northwest corner of Underwood Street and Kendolph Drive, Denton, Texas (the "Land"); authorizing execution of a deed without warranty (herein so called) conditionally effectuating such real estate conveyance; and providing an effective date. (I-35 Widening Project)

Resolution No. R2014-006

- C. Consider approval of a resolution allowing Destin Holdings DBA Sweetwater Grill & Tavern; WABL, LLC, DBA The Abbey Inn; DI2-Denton1, LLC, DBA Lone Star Attitude Burgers; and JCN Investments, DBA The Loophole Tavern to be participants allowed to sell alcoholic beverages at Mardi Gras on Walnut event, February 28, 2014, upon certain conditions; authorizing the City Manager or his designee to execute an agreement in conformity with this resolution; and providing for an effective date. Staff recommends approval.

Approved the Noise Exception listed below.

- D. Consider a request for an exception to the Noise Ordinance for the purpose of the Mardi Gras on Walnut Festival sponsored by various businesses on Hickory Street and Walnut Street. The event will be held on City property, on the 100 block of Walnut Street, on Friday, February 28, 2014, from 7 p.m. to 11:30 p.m. The exception is specifically requested to increase sound levels from 70 to 75 decibels and for an extension of hours from 10 p.m. to 11:30 p.m. Staff recommends approval of request.

Ordinance No. 2014-043

- E. Consider adoption of an ordinance approving a salary increase for Anita Burgess under the performance review provision of her employment agreement with the City; authorizing the expenditure of funds; and providing an effective date.

Ordinance No. 2014-044

- F. Consider adoption of an ordinance approving a salary increase for George C. Campbell under the performance review provision of his employment agreement with the City; authorizing the expenditure of funds; and providing an effective date.

Ordinance No. 2014-045

- G. Consider adoption of an ordinance approving a salary increase for Robin A. Ramsay under the performance review provision of his employment agreement with the City; authorizing the expenditure of funds; and providing an effective date.

Ordinance No. 2014-046

- H. Consider adoption of an ordinance authorizing the City Manager, or his designee, to execute on behalf of the City of Denton a First Amendment to an Airport Lease Agreement as approved by Ordinance 2012-055 on March 6, 2012 between the City of Denton, Texas and David Smith for the property located at 4862 Lockheed, Denton Enterprise Airport; and providing an effective date.

Ordinance No. 2014-047

- I. Consider adoption of an ordinance authorizing the City Manager, or his designee, to execute on behalf of the City of Denton an Estoppel Certificate to Nebrig Properties, L.P. and Inwood National Bank for a hangar located at 4650 John Carrell Rd. at Denton Enterprise Airport; and, providing an effective date.

Ordinance No. 2014-048

- J. Consider adoption of an ordinance authorizing the City Manager to execute a Cooperative Purchasing Program Agreement with the University of Texas at Arlington (UTA) under Section 771.003 of the State of Texas Government Code, and to authorize the City of Denton to participate in a UTA Interagency Cooperation Contract for Testing, Monitoring, and Analysis to Aid in the Development of Soil and Vegetative Cover at the City of Denton Landfill; authorizing the expenditure of funds therefor; and declaring an effective date (File 5480-Interagency Cooperation Contract with the University of Texas at Arlington in the three (3) year not-to-exceed amount of \$227,433). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2014-049

- K. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a purchase order through the Buy Board Cooperative Purchasing Network for the acquisition of a Peterbilt Model 348 Dump Truck for the City of Denton Streets Department; and providing an effective date (File 5484 awarded to Rush Truck Center, Crane in the amount of \$143,264.24).

Ordinance No. 2014-050

- L. Consider adoption of an ordinance of the City of Denton Texas, authorizing the City Manager to execute the "Second Amendment to Professional Services Agreement" for further engineering services to be utilized in the preparation, development and submittal of a permit application for lateral expansion and associated services pertaining to the City of Denton Landfill (MSW Permit #1590A); authorizing the expenditure of additional funds therefor in an amount not-to-exceed \$156,400; providing an effective date (File 4683-CP&Y, Inc. aggregating an amount not-to-exceed \$1,092,280). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2014-051

- M. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of Crafcro Polyflex III Sealant from Crafcro Texas, Inc., 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 5475-awarded to Crafcro Texas, Inc., in the unit price amount of \$0.60 per pound for an annual estimated amount of \$85,000 and a total three (3) year not-to-exceed amount of \$255,000).

Ordinance No. 2014-052

- N. Consider adoption of an ordinance awarding a contract under the Texas Multiple Award Schedule (TXMAS) program for the purchase of one (1) Backyard Digger Derrick for the City of Denton Electric Operations Department as awarded by the State of Texas (Contract TXMAS-11-23V050); providing for the expenditure of funds therefor; and providing an effective date (File 5470-awarded to Altec Industries, Inc. in the amount of \$131,559). The Public Utilities Board recommends approval (6-0).

Ordinance No. 2014-053

- O. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of one (1) Use of Force Simulator (funded 100 percent by a United States Department of Justice Congressionally Selected Award) for the City of Denton Public Safety Training Facility; providing for the expenditure of funds therefor; and providing an effective date (RFP 5198-awarded to VirTra Systems, Inc. in the not-to-exceed amount of \$278,310).

Ordinance No. 2014-054

- P. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of Electric Utility Fault Circuit Indicators for the City of Denton Distribution Center; providing for the expenditure of funds therefor; and providing an effective date (RFP 5432-awarded to Techline, Inc. in the three (3) year not-to-exceed amount of \$360,000).

Ordinance No. 2014-055

- Q. Consider adoption of an ordinance accepting competitive proposals and awarding a contract for the purchase of Refuse and Recycling Containers for the City of Denton Solid Waste Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 5409-awarded to Roll-Offs USA, Inc. in the three (3) year not-to-exceed amount of \$1,352,352). The Public Utilities Board recommends approval (6-0).

Approved the minutes listed below.

- R. Consider approval of the minutes of: January 7, 2014 January 14, 2014 January 29-30, 2014

This item was not considered.

- S. Consider adoption of an ordinance of the City of Denton, Texas amending Chapter 13 ("Food and Food Service Establishments") of the City of Denton Code of Ordinances by deleting Articles I, II, III, IV, V and VI in their entirety; adopting the Texas Food Establishment Rules promulgated by the Texas Department of State Health Services and making related deletions and amendments thereto; providing a severability clause; providing a savings clause; providing for a penalty not to exceed \$2,000 for violations of this ordinance; and providing for an effective date.

Resolution No. R2014-007

- T. Consider approval of a resolution of the City Council of the City of Denton, Texas, approving the 2013 Tax Increment Financing Reinvestment Zone No. One (Downtown TIF) Annual Report; and declaring an effective date.

Ordinance No. 2014-056

- U. Consider adoption of an ordinance ordering an election to be held in the City of Denton, Texas, on May 10, 2014, and if a runoff election is required, on June 21, 2014, for the purpose of electing Council Members to Places 5 and 6 and electing a Mayor to Place 7 of the City Council of the City of Denton, Texas; prescribing the time and manner of the conduct of the election to be in accordance with an agreement with the Elections Administrator of Denton County; providing a severability clause; providing an open meetings clause; and providing for an effective date.

Ordinance No. 2014-057

- V. Consider adoption of an ordinance ordering a Special Election to be held in the City of Denton, Texas, on May 10, 2014, to fill a vacancy in Place 2 for the unexpired term ending in May, 2015 and, if a runoff election is required, on June 21, 2014, for the purpose of electing a Council Member to Place 2 of the City Council of the City of Denton, Texas; prescribing the time and manner of the conduct of the election to be in accordance with an agreement with the Elections Administrator of Denton County; providing a severability clause; providing an open meetings clause; and providing for an effective date.

Ordinance No. 2014-058

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

**5. ITEMS FOR INDIVIDUAL CONSIDERATION**

- A. Consider an appeal of the denial of a Certificate of Appropriateness by the Historic Landmark Commission for installation of solar panels on the roof of a single family residence. The property is located at 1822 West Oak Street and is within a Neighborhood Residential 3 (NR-3) zoning district and the West Oak Area Historic District. The Historic Landmark Commission denied the request (6-3).

Brian Lockley, Director of Planning and Development, presented the details of the proposal. He stated that this was an appeal of the denial of a Certificate of Appropriateness by the Historic Landmark Commission for installation of solar panels. There had been three meetings of the Historic Landmark Commission where the property was discussed. In April 2011 the Commission approved a Certificate of Appropriateness for the construction of the house. In December 2013 the Commission reviewed a request for the installation of solar panels but continued the discussion to its January meeting in order to receive more information on how

surrounding communities dealt with this issue. At the January 2014 meeting, the Commission denied the request.

Proposed location of the panels – the Commission's discussion centered on the location of the panels and how the panels would look on the property. The panels could not be seen from the front of house but could be seen traveling east on Oak Street. The panels were black with a low mounting system.

The Commission indicated that it was not opposed to the use of the panels but to the installation of the panels. They did not match the color of the existing roof system. The Denton Development Code stated that for the West Oak Area Historic District solar panels could not have an adverse effect on the architecture of a building or the district as a whole. The nature of the conversation of the Commission was whether the panels had an adverse effect on those two items.

Staff had reviewed regulations from surrounding cities. Fort Worth standards for solar panels stated that they had to increase energy production in order to be installed. The requirements for Dallas indicated that they could not be visible from the street or must be set back or screened to a person standing at ground level on the opposite side of any adjacent right-of-way.

The property owner had done a survey which indicated that the majority of the area residents were not opposed to the panels. The Commission's concern was that many of the people surveyed were renters and not property owners and did not reflect feelings of the property owners. The Committee on the Environment had requested staff craft a policy for city council consideration with policies that would be reflective of community preferences. A consideration would be how solar panels could be incorporated into historic districts and structures without compromising historical integrity of buildings and structures. Neighborhood meetings for February and March were already planned to determine standards for those policies.

Council Member Gregory questioned how the planned neighborhood meetings would be noticed to the public.

Lockley stated that notices would be sent to all residents in the area.

Council Member Gregory asked about doing calls to that area for phone notifications.

Lockley stated that could be an option but that there was not a large number of residents in the area. Staff would also be sure to notify owners as well as renters.

Council Member Hawkins stated that Oak Street was one way and driving down it, the panels would not be seen. Only pedestrians would be able to see the panels.

Lockley stated that was correct.

Council Member Roden stated that this was a new house in a historic area and questioned if code provided for a certain amount of exemptions for new homes as opposed to the rules for established historic homes.

Lockley stated that the regulations were more for the appearance of the home, for compatibility of the architecture in the neighborhood.

Richard Gladden, property owner, showed a photo shop picture of how the panels would look on the property. He noted that at the December Commission meeting, one of the Commissioners had asked for a sense of how the residents and/or property owners felt about his request. The 2008 ordinance indicated that the installation would not have an adverse effect on the architecture of a building or the district as a whole. In response to that Commissioner's inquiry, he canvassed the neighborhood with a survey asking if his proposal would have such an adverse effect. Presently the response was 75 responses out of 89 properties with 52 of the 75 responses from homeowners as confirmed by Appraisal District. Only two people who own two properties were opposed. He questioned why the Commission wanted to deny his request. He felt the Commission voted on whether a new ordinance was needed rather than the adverse aspect of the feature.

Council Member Roden questioned if there was any direction given by the Commission on how to make the panels compatible or any suggestions on where to put them.

Gladden stated that between the December and January meetings they looked at the placement of the panels for the best usage of the panels. He did not want them on the front of building, there would not be enough energy produced on the north or east face. Ground mounting had the same problems with energy production. The proposed location was the best to maximize the energy production. He had also offered to change the color of the shingles to match the panels. He felt that the west facing roof did not adversely affect the district.

The following individuals submitted Speaker Cards:

Marsha Stevenson, 1920 W. Oak, Denton, 76201 – in support of the panels  
Paul Silvernale, 2010 W. Oak, Denton, 76201 - in support  
Joseph Willix, 3331 Prescott, Dallas, 75219- in support  
Paul Metzler, 1914 W. Oak, Denton, 76201 - in support  
Mary Anderson, 924 W. Oak, Denton, 76201 – in opposition

Council Member Roden asked Ms. Anderson what about the presentation she did not like and what she did like.

Anderson stated that she would like to see the panels in a continuous line.

Council Member Roden asked Anderson what she did not like about the application.

Anderson stated that she would like to see a large view of the panels and to consider better options.

Steven Friedson, 2044 W. Oak, Denton, 76201 – in opposition

Council Member Roden asked Mr. Friedson if there was something else he would like to see differently that would be acceptable.

Friedson stated that there were tiles that could integrate better with the roof. He felt an array on the ground in the backyard had not been investigated. That array would follow the sun as opposed to being fixed.

Elise Ridenour, 2044 W. Oak, Denton, 76201 – in opposition

Council Member Engelbrecht asked Ms. Ridenour if she was suggesting that tiles were more appropriate.

Ridenour stated that the tiles would not be appropriate as this was not a tile roof. She showed an alternative of a shingle collector instead of the panels.

Council Member King asked about the cost of the tiles and how effective they were.

Ridenour stated that the shingles were less effective and more had to be applied at a greater cost.

John Morris, 918 W. Oak, Denton, 76201 – in opposition

Michelle Lynn, 1401 Egan, Denton, 76201 – in opposition

Comment cards were submitted by the following:

Brendan Carroll, 2223 Houston Place, Denton, 76201 – in favor

JoAnn Nunnally, 2215 Houston Place, Denton, 76201 – in opposition

John Cavalier, 2222 Houston Place, Denton, 76201 – in favor

Tod King, 2222 Houston Place, 76201 – in favor

Helen Ikerd, 1722 W. Oak, Denton, 76201 – in opposition

Council Member Roden stated that each historical district had adopted its own rules and as those come on line, options could be added or taken away. Each district might have its own standard for solar panels. Different kinds of products had different standards. The difficulty from a product point of view was what might be possible today might be different in a year. Codifying that would be possible and he questioned how staff might approach that discussion.

Lockley stated that staff could provide direction on the technical aspect. Using a visual preference survey would help and knowing the energy savings from each method of panel would be important. Staff was currently doing research before going out to the public.

Council Member Roden asked what the rules were for the Commission to use for a decision.

Lockley stated that the panels could not have an adverse effect on the architecture of the building and on the district.

Council Member Roden stated that this was what was before the Commission when the application was submitted. He questioned if the application could be put on hold until the rules were changed and then consider the application.

City Attorney Burgess stated that if the proposal were denied, it would come back under the new rules for consideration. She would have to review a provision delaying a proposal and enacting new rules and reconsidering the proposal under the new rules.

Council Member Roden stated the matter of a policy needed more work but he was not comfortable backing up and redoing the rules with a current application.

Council Member Gregory questioned why the January minutes of the Commission indicated that the Commissioners were advised that they could not extend the item to the next meeting.

Lockley stated that there was a provision in the code that had to do with timing of applications of the Historic Landmark Commission.

Council Member Gregory stated that the minutes indicated might it might take nine months to a year to do all of the meetings that were suggested.

Lockley stated that a policy for the Committee on the Environment would be developed out of the meeting. From that, staff would develop the actual ordinance for council consideration.

Council Member Gregory stated that the real decision was not if the panels were attractive but whether there was an adverse effect on the home or on the district as a whole as that was all that was currently written for standards.

Lockley stated correct.

Mayor Pro Tem Kamp asked if any research had been done on the shingle panels.

Lockley replied not at this time.

Mayor Pro Tem Kamp stated that there obviously was other technology to consider. She was, however, in agreement with others that this was what was in front of them with an application going through the system and the process. The Committee on the Environment had asked for other options for the future but she did not think it was fair to ask the applicant to wait until a new policy was completed.

Mayor Burroughs questioned if the proposal was approval could the applicant reduce the amount of panels compared to what was proposed.

Lockley stated that the approval would be for solar panels on that western portion of the roof up to the level he needed. There was no limit on the area.

Mayor Burroughs stated that under the current rules, there was no regulation on the detail of the installation.

Lockley stated that was correct.



Gladden stated that he would cover as much as he could with the panel as shown in the photo. He would be willing to abide by those drawings with dimensions just as a contract and not vary from that.

Mayor Burroughs stated that the rules under this appeal were very minimal with not much direction due to the current regulations. He questioned if the applicant would agree to a condition of approval to install the panels as represented in the photo.

Gladden indicated that he would be in agreement to that condition.

Mayor Burroughs questioned if Council could add a condition of approval even if it was a voluntary condition.

City Attorney Burgess stated that a condition could be added to an approval.

Council Member Roden motioned, Mayor Pro Tem Kamp seconded to approve the appeal with the condition as noted by the Mayor concerning the installation to be as shown in the photo presented by the applicant. On roll call vote, Mayor Burroughs "aye", Mayor Pro Tem Kamp "aye", Council Member Engelbrecht "aye", Council Member Gregory "aye", Council Member King "aye", Council Member Roden "aye", and Council Member Hawkins "aye". Motion carried unanimously.

## **6. PUBLIC HEARINGS**

### Ordinance No. 2014-059

- A. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for an initial zoning designation of Neighborhood Residential 1 (NR-1) zoning district classification and use designation, on approximately 1.0 acres, at the southeast corner of S. Trinity Road and Lutha Lane, also known as 1055 S. Trinity Road, in the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; providing a severability clause and an effective date. The Planning and Zoning Commission recommends approval (6-0).

Brian Lockley, Director of Planning and Development, presented the details of the proposal. He stated that the request was for an initial zoning as NR-1 for an acre of land on Trinity Road and Lutha Lane. The subject site had a holding zoning designation of RD-5X which was the initial zoning of annexed property. He reviewed the future land use map, site photos, district comparison of RD-5 and NR-1, the finding that it met the conformation to the future land use element and adequate use of infrastructure. The proposal was recommended by the Planning and Zoning Commission and the Development Review Committee.

The Mayor opened the public hearing.

No one spoke during the public hearing.

The Mayor closed the public hearing.

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

**7. CITIZEN REPORTS**

- A. Review of procedures for addressing the City Council.
- B. Receive citizen reports from the following:

**8. CONCLUDING ITEMS**

- A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the City Council or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Council Member Engelbrecht requested a staff report on the work done as result of the Street Bond Committee. The report should include an overview picture of what had been done with street maintenance over the past year so far.

Council Member Roden stated that he had suggested an app for the type of information in the last budget year.

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

There was no continuation of the Closed Meeting.

With no further business, the meeting was adjourned at 9:34 p.m.

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MARK A. BURROUGHS  
MAYOR  
CITY OF DENTON, TEXAS

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JENNIFER WALTERS  
CITY SECRETARY  
CITY OF DENTON, TEXAS