

Pre-Council Work Session of the Mayor and City Council of the City of Abilene, Texas, to be held in the Basement Conference Room of City Hall on Thursday, **January 14, 1988**, at 8:30 a.m. to consider the following:

1. Discuss consent and/or regular agenda items.

Regular Meeting of the Mayor and City Council of the City of Abilene, Texas, to be held in the Council Chambers of the City Hall on Thursday, **January 14, 1988**, at 9:00 a.m.

CITY COUNCIL: Mayor Dale Ferguson; Council - Gary D. McCaleb, Betty Ray, Walter E. Wheat, Tom Ceniglis, Welton Robinson and Harold Nixon.

1. **Call to Order.**
2. **INVOCATION:** Councilman Gary McCaleb.
3. **Approval of Minutes:** Pre-Council Work Session and Regular City Council Meeting held December 17, 1987.

CONSENT AGENDA

All items listed below are considered to be routine by the City Council and will be enacted with one motion. There will be no separate discussion of items unless a Council Member or citizen so requests, in which event the item will be removed from the general order of business and considered in its normal sequence.

4. **Ordinances and Resolutions:**
 - a. Oral resolution to consider authorizing bridge replacements at Elm Creek and Nugent Road and at Rainey Creek and Lowden Street together with the execution of construction and maintenance agreements for same.
 - b. Oral resolution to consider purchase of riprap material for Phantom Dam repair.
 - c. Oral resolution to consider authorizing the City Manager to execute contract for ground storage pump station design in the Water Distribution System.
 - d. Consider on first reading - Request from the City of Abilene/Public Works Department - **TC-00188** - an ordinance for thoroughfare abandonment being 9-foot north-south alley located within Block 41, Continuation of Highland Addition, between South 10th and 11th Streets and Portland and Marshall Streets and set a public hearing for January 28, 1988, at 9:00 a.m.

- e. Consider on first reading - Request from the City of Abilene/Traffic and Transportation Department - **SNC-00288** - for a street name change ordinance being E.S. 15th Street, S. 15th Street/Berry Lane to South 14th Street, between Maple Street & S. Treadaway Boulevard and set a public hearing for January 28, 1988, at 9:00 a.m.
- f. Consider on first reading - Request from Bertha Martin, agent Oscar & Marie Brown - **Z-00388** - to add MX (Mixed Use) overlay to underlying RM-3 (Residential Multi-Family) district, located at 1749 Hickory Street and set a public hearing for January 28, 1988, at 9:00 a.m.
- g. Consider on first reading - an amendment to the Zoning Ordinance, Section 23-306.4, Permitted Uses and Section 23-306.5, Conditional Uses; concerning automobile glass sales and installation in a SC (Shopping Center) district and set a public hearing for January 28, 1988, at 9:00 a.m.

5. **Award of Bid:**

- a. Fuel products for Equipment Services and Abilene Transit Divisions, **Bid #224.**

REGULAR AGENDA

6. **Public Appearance:**

- a. J. C. Haines, to discuss City obligation to initiate paving in accordance with a 1980 contract and compensation for unreasonable delay.

7. **Ordinances & Resolutions:**

- a. **Public Hearing:** Consider on second and final reading - an ordinance amending Section 23-306.5.C(12) of the Zoning Ordinance, concerning Adult Entertainment Enterprises.
- b. **APPEALED ITEM:**
Public Hearing: Consider on second and final reading- an ordinance changing zoning district boundaries - **Z-4487** - Request from City of Abilene to rezone from GC (General Commercial) to RS-6 (Residential Single Family) district, located at 7702 Buffalo Gap Road.
- c. **APPEALED ITEM:**
Public Hearing: Consider on second and final reading - an ordinance changing zoning district boundaries - **Z-4587** - Request from Eddie Boykin to rezone from O (Office) to LC (Limited Commercial) district, located at 4741 Buffalo Gap Road.
- d. **Public Hearing:** Consider on second and final reading - an ordinance changing zoning district boundaries - **Z-4687** - Request from George Stewart to rezone from RS-6 (Residential Single Family) to RM-3 (Residential Multi-Family) district, located at 536 S. Mockingbird.

- e. **Public Hearing:** Consider on second and final reading - an ordinance amending Chapter 18, Traffic, of the Abilene Municipal Code, Section 18-301, Through Trucks Prohibited.
- f. **Public Hearing:** Consider on second and final reading - an ordinance creating Chapter 29.5, Swimming Pools and Spas, of the Abilene Municipal Code.
- g. **REMOVE FROM TABLE:**
Resolution authorizing agreement between Abilene Senior Citizens Advisory Committee and the Community Foundation for an endowment fund agreement and major project account agreement.

8. Other Business:

- a. Pending and Contemplated Litigation (see Notice for Executive Session, Litigation for listing subjects).
- b. Appointment and Evaluation of Public Officials (see Notice for Executive Session, Personnel for listing subjects).

ADJOURN

EXECUTIVE SESSION

(Personnel)

The City Council may consider the appointment, employment, reassignment, duties, discipline, or dismissal of the City Manager, City Attorney, Municipal Court Judge, City Secretary, and the City Board and Commission Members. A complete list of the City Boards and Commissions are on file in the City Secretary's Office.

After discussion of the appointment and evaluation of the Council Appointees and the Board and Commission members, in executive session, any final action or vote taken will be in public.

(Litigation)

The City Council may consider pending and contemplated litigation subjects. The following subjects may be discussed:

1. Stanley V. Taylor v. City
2. Velasquez v. City
3. Smithwick-Wheeler v. City
4. Maria Slaughtor v. City
5. Leonard Glenn Taylor v. City
6. James Hudson & AB Airlines v. City
7. State of Texas v. City
8. Ramsey v. City
9. Michael Mellen v. City
10. Patricia Partin v. City
11. Williams & Chambers v. City
12. Video Vue & American Video
13. McNutt v. City
14. Welch v. City
15. J. C. Haines v. City
16. City of Abilene v. Northeastern Software
17. Abilene Zoological Society v. Pinkerton's
18. Guadalupe Diaz v. City
19. Alicia Garcia v. City
20. Virginia Martin v. City
21. Frieda Hintz v. City
22. WTU Rate Request
23. City v. Board of Adjustment

Litigation is, by its nature, an on-going process, and questions may arise as to trial tactics which need to be explained to the City Council. Upon occasion, the City Council may need information from the City Attorney as to the status of the pending or contemplated litigation subjects set out above. After discussion of the pending and contemplated litigation subjects, in executive session, any final action, or vote taken, will be in public.

HC 9/18/87

PRE-COUNCIL WORK SESSION, THURSDAY
January 14, 1988, 8:30 A.M.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
BASEMENT CONFERENCE ROOM, CITY HALL

The City Council of the City of Abilene, Texas, met in a Pre-Council Work Session on **January 14, 1988**, at 8:30 A.M. in the Basement Conference Room of City Hall. Mayor Dale Ferguson was present and presiding with Councilman Gary D. McCaleb, Councilwoman Betty Ray, Councilmen Walter Wheat, Tom Ceniglis, Melton Robinson, and Harold Nixon. Also present were City Manager Jim C. Blagg, Assistant City Managers Rickey Childers and Roy L. McDaniel, City Attorney Harvey Cargill, City Secretary Patricia Hancock and various members of the City Staff.

The Council briefly discussed various consent and regular agenda items, and there being no further questions, the meeting was recessed to the City Council Chambers for the Regular Council Meeting.

REGULAR CITY COUNCIL MEETING
January 14, 1988, 9:00 A.M.
CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
CITY COUNCIL CHAMBERS OF CITY HALL

Mayor Ferguson reconvened the City Council of the City of Abilene, Texas, into Regular Session January 14, 1988, at 9:00 a.m. in the City Council Chambers of City Hall.

Invocation was given by Councilman Gary McCaleb.

Approval of the minutes of the Pre-Council Work Session and Regular City Council Meeting held December 17, 1987, was waived until the the next regular City Council Meeting.

Councilman Wheat moved approval of the consent agenda items, 4a through 4g, and 5a, as presented by the staff. The motion was seconded by Councilman Ceniglis and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.
NAYS: None.

4. Ordinances & Resolutions:

- a. Oral resolution to consider authorizing bridge replacements at Elm Creek and Nugent Road and at Rainey Creek and Lowden Street together with the execution of construction and maintenance agreements for same; authorize the appropriation of 1980 General Obligation Bond funds to cover the City's portion of the cost.

- b. Oral resolution authorizing the City Manager to expend up to \$30,000 to the West Central Texas Municipal Water District for the purchase of riprap material for future repairs to Fort Phantom Hill Dam.
- c. Oral resolution authorizing the City Manager to execute a contract with Jacob & Martin, Inc., Engineers, for ground storage pump station design in the Water Distribution System.
- d. Consider on first reading - Request from the City of Abilene/Public Works Department - **TC-00188** - an ordinance for thoroughfare abandonment being 9-foot north-south alley located within Block 41, Continuation of Highland Addition, between South 10th and 11th Streets and Portland and Marshall Streets and set a public hearing for January 28, 1988, at 9:00 a.m.

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF A PORTION OF PUBLIC RIGHT OF WAY; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH ABANDONMENT, AND CALLING A PUBLIC HEARING.
- e. Consider on first reading - Request from the City of Abilene/Traffic and Transportation Department - **SNC-00288** - for a street name change ordinance being E.S. 15th Street, S. 15th Street/Berry Lane to South 14th Street, between Maple Street & S. Treadaway Boulevard and set a public hearing for January 28, 1988, at 9:00 a.m.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, CHANGING THE NAME OF E.S. 15TH STREET, S. 15TH STREET/BERRY LANE TO SOUTH 14TH STREET.
- f. Consider on first reading - Request from Bertha Martin, agent Oscar & Marie Brown - **Z-00388** - to add MX (Mixed Use) overlay to underlying RM-3 (Residential Multi-Family) district, located at 1749 Hickory Street and set a public hearing for January 28, 1988, at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES, AS DESCRIBED BELOW; DECLARING A PENALTY, AND CALLING A PUBLIC HEARING.

- g. Consider on first reading - an amendment to the Zoning Ordinance, Section 23-306.4, Permitted Uses and Section 23-306.5, Conditional Uses; concerning automobile glass sales and installation in a SC (Shopping Center) district and set a public hearing for January 28, 1988, at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

5. Award of Bid:

- a. Fuel products for Equipment Services and Abilene Transit Divisions, **Bid #224**. The bid was awarded to Abilene Oil Distributors for the tanker delivery of regular and unleaded gasoline and number one and two diesel fuel, and bobtail load of number one diesel fuel; Gerlach Oil Company for bobtail loads of regular, unleaded gasoline, and number two diesel fuel; and to Fraley Butane for propane, all as recommended by staff.

Jim Blagg, City Manager, briefed the Council on a public appearance request from J. C. Haines, to discuss the City's obligation to initiate paving in accordance with a 1980 contract, and a request for compensation for unreasonable delay. In 1980, Mr. Haines requested a waiver from the subdivision regulations that were in effect at that time. The waiver was denied by the City Council; however, the staff was instructed by the City Council to work out a contract with Mr. Haines. The result of the negotiations is the contract to which Mr. Haines wishes to speak at the City Council Meeting. The contract is based on a preliminary plat of Pleasant Hills Estates approved in December, 1976. The street frontage is 1725 feet along a portion of Caldwell Road.

The intent of the contract was to provide a method of collection funds from the property owners for the installation of curb and gutter and street improvements on this section of Caldwell Road. Mr. Haines was required, under the contract, to collect \$5.00 per month from each of the lots owned by Mr. Haines or under contract of sale along Caldwell Rd.. Mr. Haines agreed to collect \$5.00 monthly and turn that money over to the City at least once per year. The contract stipulates that Mr. Haines will collect the \$5.00 per month from each lot for a period of 10 years. Mr. Haines, to date, has turned over \$1585 to the City. The last money turned over to the City was in March, 1983. The City agreed to initiate paving of this section of the street when 80% of the total money necessary was collected.

Mr. Haines contends that the City is obligated to pave this section of Caldwell Road before he puts up the money required in the contract. He attempted to satisfy that requirement with a "Customer's Draft" on May 4, 1987. However, this draft is only payable when the paving of Caldwell Road is completed. It is again in the opinion of the City Attorney and the City Manager that the "Customer's Draft" does not satisfy the requirements of the Contract. The contract clearly stipulates that the City is under no obligation to initiate or pave the road until such time as 80% of the money is collected and turned over to the City.

The City Manager recommends that if the City Council desires to release Mr. Haines from this 1980 agreement, that prior to any release Mr. Haines be required to either contribute money to the assessment fund in an amount equal to one-half of the paving of Caldwell Road or agree to pave the section of Caldwell Road himself and guarantee that paving with a Letter of Credit; this being in accordance with the existing subdivision regulations and would be required of anyone developing property within the City Limits of the City of Abilene.

J. C. Haines stated that his renters at the time of the contract stopped paying their share of the money required to be collected pursuant to the contract. Therefore, Mr. Haines is obligated to provide the money to the City and is ultimately responsible for the monies. He referred to a Customer's Draft in the amount of \$19,500, dated 5/4/87 showing his compliance with the contract. Therefore, he expects the road to be paved in accordance with the contract. In his opinion, there is enough development in the area to constitute paving of Caldwell Road.

The Council was of the consensus that Mr. Haines has not complied with the existing contract. The Council made it clear to Mr. Haines that if it voted to release Mr. Haines from the contract, he would be required to either contribute money to the assessment fund in an amount equal to one-half of the paving of Caldwell Road or agree to pave the section of Caldwell Road himself and guarantee that paving with a Letter of Credit. Since the City does not intend to pave Caldwell Road at the present time, it was the consensus of the Council to relieve Mr. Haines from the 1980 contract but require Mr. Haines to comply with the Subdivision Regulations in effect at the time of signing the 1980 contract or the existing Subdivision Regulations, whichever is appropriate.

Councilman Geniglis moved to deny Mr. Haines request that the City initiate paving of Caldwell Road; to relieve Mr. Haines from the 1980 Contract, but require Mr. Haines to comply with the subdivision regulations in effect at the time of signing the contract or the existing subdivision regulations, whichever is appropriate. The motion was seconded by Councilman McCaleb and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Geniglis, Robinson, Nixon, and Mayor Ferguson.

NAYS: None.

Lee Roy George, Director of Planning, briefed the Council on an ordinance considered on second and final reading amending Section 23-306.5.C(12) of the Zoning Ordinance, concerning Adult Entertainment Enterprises. The comments made by Mr. George are in written form titled "Exhibit 'A'", attached and incorporated as part of these minutes. The Planning and Zoning Commission and staff recommend approval.

Mayor Ferguson opened a public hearing to consider the aforementioned request, and the following individuals spoke in response to the request:

FOR:

- . James Radford, 2132 S. 35th Street.
- . James McMillon, 3424 Kinsington.

AGAINST:

- . Ron Kervin, 727 S. Treadaway, owner of Video Vue.
- . Don Kervin, employee of Video Vue and brother of the owner.

There being no one else present and desiring to be heard, the public hearing was closed.

Councilman Nixon moved to approve the zoning ordinance amendment as recommended by staff. The motion was seconded by Councilman McCaleb and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Geniglis, Robinson, Nixon, and Mayor Ferguson.

NAYS: None.

The Ordinance is numbered 1-1988 and is captioned as follows:

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY, AND CALLING A PUBLIC HEARING.

John Hancock, Principal Planner, briefed the Council on an appealed ordinance considered on second and final reading changing zoning district boundaries - **Z-4487** - Request from City of Abilene to rezone from GC (General Commercial) to RS-6 (Residential Single Family) district, located at 7702 Buffalo Gap Road. The Planning and Zoning Commission and staff recommend disapproval.

Mayor Ferguson opened a public hearing to consider the aforementioned request, and the following individuals spoke in response to the request:

FOR:

- . Ronald Miller, 7558 Buffalo Gap Road, speaking for himself and Mr. Homer Parris, who is a property owner in the area.

AGAINST:

- . Sharon Henson, owner of the property in question.
- . Wayne Sanford, 2230 Industrial Rd.
- . Scott Senter, Senter Realtors.

There being no one else present and desiring to be heard, the public hearing was closed.

Councilwoman Ray moved to refer the item back to the Planning & Zoning Commission to consider rezoning from General Commercial to Limited Commercial. The motion failed for lack of a second.

Councilman Wheat moved to deny the request to rezone property at 7702 Buffalo Gap Road from GC to RS-6, as recommended by staff. The motion was seconded by Councilman Ceniglis and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, and Mayor Ferguson.
NAYS: Councilman Nixon.

The request was **DENIED**.

John Hancock, Principal Planner, briefed the Council on an appealed ordinance consider on second and final reading changing zoning district boundaries - **Z-4587** - Request from Eddie Boykin to rezone from O (Office) to LC (Limited Commercial) district, located at 4741 Buffalo Gap Road. The Planning and Zoning Commission and staff recommend disapproval.

Before opening the public hearing, the Mayor asked Mr. Boykin to come forward. Mr. Eddie Boykin, agent for the proponent, requested the Council table the item.

Since the request has been advertised for public hearing, the Mayor opened a public hearing on the item and the following individual spoke against the request:

- Karen McLeon Larson, 2909 Red Oak Cr., spoke on behalf of petitioners against the zone change.

There being no one else present and desiring to be heard, the public hearing was closed.

Following the public hearing, Mayor Ferguson asked the staff to brief the Council on the item.

John Hancock, Principal Planner, briefed the Council on the item. A petition was received containing enough signatures from property owners which would require a 4/5ths vote of the Council to approve the ordinance.

Mr. Boykin clarified his request. He requests the Council table the item because he has some additional information to provide which would materially change the request which he believes would be favorable to the property owners. He said it is still going to be a donut shop and remain at the same location. The Council discussed the feasibility of returning the item with any new information from Mr. Boykin back to the Planning & Zoning Commission for their consideration.

Councilman Nixon moved to deny the request to rezone property located at 4741 Buffalo Gap Road from 0 to LC district. The motion was seconded by Councilman Wheat and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Nixon, and Mayor Ferguson.

NAYS: Councilman Robinson.

The request was DENIED.

John Hancock, Principal Planner, briefed the Council on an ordinance considered on second and final reading changing zoning district boundaries - **Z-4687** - Request from George Stewart to rezone from RS-6 (Residential Single Family) to RM-3 (Residential Multi-Family) district, located at 536 S. Mockingbird. The Planning and Zoning Commission and staff recommend approval of this request.

Mayor Ferguson opened a public hearing on the item and the following individuals spoke in response to the request:

FOR:

- Bill Perry, 278 S. Pioneer, representing the proponent. He stated that the proposed user of the property, which was to use it as an eating disorder rehabilitation center, has declined use of this property. Therefore, at the present time, there is no specific user in mind for the property.

AGAINST:

- David Jefferies, representing himself and his mother, 2849 S. 6th.

There being no one else present and desiring to be heard, the public hearing was closed.

The agent for the proponent requested an opportunity to withdraw the request.

Councilman Robinson moved to deny the request to rezone property located at 536 S. Mockingbird from RS-6 to RM-3 district. The motion was seconded by Councilman Wheat and the motion carried.

AYES: Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.
NAYS: Councilman McCaleb.

The request was DENIED.

James Condry, Director of Traffic & Transportation, briefed the Council on an ordinance considered on second and final reading amending Chapter 18, Traffic, of the Abilene Municipal Code, Section 18-301, Through Trucks Prohibited. Staff recommends approval.

Mayor Ferguson opened a public hearing on the item and the following individuals spoke in response to the request, and there being no one present and desiring to be heard, the public hearing was closed.

Councilwoman Ray moved to approve the traffic code amendment as recommended by staff. The motion was seconded by Councilman Nixon and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.
NAYS: None.

The Ordinance is numbered 2-1988 and is captioned as follows:

AN ORDINANCE AMENDING CHAPTER 18, "MOTOR VEHICLES AND TRAFFIC", OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING A PENALTY.

Mike Hall, Director of Community Services, briefed the Council on an ordinance considered on second and final reading, creating Chapter 29.5, Swimming Pools and Spas, of the Abilene Municipal Code. He also stated that staff will be returning to Council to request a change in the fee for swimming pools from \$36 to \$40 and add an additional fee for spas. He publicly thanked the citizens that served on the Swimming Pool Advisory Committee. Staff recommends approval.

Mayor Ferguson opened a public hearing on the item and the following individuals spoke in favor to the request:

- . Tom Willis, Chairman of the Citizen's Committee which worked to develop the ordinance.
- . Guy Crawford, 5241 Alamo Drive, representing Big Country Apartment Association which endorses the ordinance. He also thanked the staff for their cooperation.

There being no one else present and desiring to be heard, the public hearing was closed.

Councilman McCaleb moved to approve the ordinance creating Chapter 29.5 of the Abilene Municipal Code relating to Swimming Pools and Spas as recommended by staff. The motion was seconded by Councilman Robinson and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.

NAYS: None.

The Ordinance is numbered 3-1988 and is captioned as follows:

AN ORDINANCE CREATING CHAPTER 29.5, OF THE ABILENE MUNICIPAL CODE, SUCH ORDINANCE TO BE ENTITLED "SWIMMING POOLS AND SPAS", PROVIDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND NAMING AN EFFECTIVE DATE.

Councilman Wheat moved to remove from the table a Resolution authorizing agreement between Abilene Senior Citizens Advisory Committee and the Community Foundation for an endowment fund agreement and major project account agreement. The motion was seconded by Councilwoman Ray and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.

NAYS: None.

Mike Hall, Director of Community Services, responded to questions from the Council. Nancy Dark, Community Foundation, was present and addressed the Council. She stated that a similar agreement is in effect in Amarillo and seems to work well.

Councilman Ceniglis suggested an amendment to the wording on page 5 of the agreement. Ms. Dark responded that her executive board would have to consider that amendment. She stated several agencies have established endowment funds with the Community Foundation. In regard to Section 4 of the agreement the Board of Trustees of the Community Foundation has set their fee at 1% of the principal balance annually.

Vida Willis was present and addressed the Council. She asked about the Exhibit 'A' which transferred property or funds. The staff responded that there is no property or funds to be transferred, therefore, the Exhibit 'A' is blank. She also asked about the Foundation's tax exempt status. She appreciates the job the City has done with its Senior Citizens program and feels the agreement is not necessary. She feels the Community Foundation is not accountable to the City Council.

Ms. Dark responded that the Foundation's accountability is to the donor of the funds. Mr. Blagg stated that it appears the Council still has questions, therefore, staff requests Council to refer it back to staff to further discuss with Council.

Councilman McCaleb moved to direct the staff to work with the Council to answer all their questions. The motion was seconded by Councilwoman Ray.

AYES: Councilman McCaleb, Councilwoman Ray, Councilman Nixon.

NAYS: Councilmen Wheat, Ceniglis, Robinson, and Mayor Ferguson.

The motion FAILED.

Councilman Ceniglis moved to deny the resolution authorizing the agreements with the Community Foundation. The motion was seconded by Councilman Wheat and the motion carried.

AYES: Councilmen Wheat, Ceniglis, Robinson, and Mayor Ferguson.

NAYS: Councilman McCaleb, Councilwoman Ray, and Councilman Nixon.

The request was DENIED.

Mayor Ferguson recessed the Council into executive session in accordance with State Law, Sections 2e and 2g of the Open Meetings Act, to consider pending and contemplated litigation and the appointment and evaluation of public officials.

The Council reconvened from executive session and reported no action taken in Executive Session.

Councilman Wheat moved to ratify the appointments of David Watson and W. D. (Dub) Wofford as County Representatives to the Abilene-Taylor County Board of Health. The motion was seconded by Councilman Robinson and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.

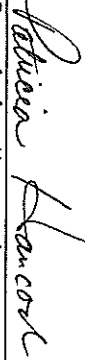
NAYS: None.

Councilman Robinson moved to approve the following individuals to the City Council's Committee on Signs: Christine Richardson, Mrs. Gay Robinson, Dennis Laster, Neil Lodge, Jimmy Loza, Larry Eubank, Marvin Smith, Karen Brittain, and Don Clowdus. The motion was seconded by Councilwoman Ray and the motion carried.


AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Robinson, Nixon, and Mayor Ferguson.

NAYS: None.

There being no further business, the meeting adjourned at 1:00 p.m.



Patricia Hancock
City Secretary



Dale Ferguson
Mayor

• STAFF IS, THEREFORE, OF THE OPINION THAT THE ORDINANCE IS ABOUT AS RESTRICTIVE AS WE CAN MAKE IT WITHOUT RUNNING THE RISK OF LOSING IT ALTOGETHER

• STAFF AND THE PLANNING COMMISSION RECOMMEND APPROVAL OF THE ORDINANCE BEFORE YOU THIS MORNING

● I HAVE SOME 25 LETTERS IN MY FILE FROM CITIZENS SUPPORTING THE PROPOSED ORDINANCE AMENDMENT. I WILL BE HAPPY TO READ ANY OR ALL OF THE LETTERS IF THE COUNCIL WISHES. I UNDERSTAND THAT A PETITION WITH A NUMBER OF NAMES HAS BEEN SUBMITTED CONCERNING THIS AMENDMENT MR. MAYOR, ALTHOUGH I HAVE NOT SEEN THE PETITION

○ I MUST ALSO CAUTION YOU MR. MAYOR AND MEMBERS OF THE CITY COUNCIL THAT WHILE I BELIEVE THIS PROPOSED CHANGE TO THE ORDINANCE WILL NOT DETRIMENTALLY EFFECT OUR ORDINANCE, ADDITIONAL CHANGES SUCH AS THIS ONE WILL BRIGH TO RAISE SOME QUESTIONS WITH REGARD TO THE VALIDITY OF THE ORDINANCE, ESPECIALLY IF WE REDUCE THE AREA AVAILABLE FOR SUCH USES MUCH BEYOND WHERE WE WILL BE IF THE ORDINANCE IS APPROVED

● I KNOW THAT THERE HAS BEEN SOME CONCERN THAT OUR RESTRICTIONS ARE NOT AS RESTRICTIVE AS THEY OUGHT TO BE AND THAT OTHER COMMUNITIES HAVE DONE THIS OR THAT WITH REGARD TO PORNOGRAPHY

● LET ME RESTATE SOME COMMENTS THAT I MADE FOR THE RECORD WHEN THE ORDINANCE WAS ADOPTED LAST YEAR:

1. THE ZONING ORDINANCE IS NOT THE VEHICLE THAT WILL RID ABILENE OF SEXUALLY EXPLICIT MATERIAL FROM BOOKSTORES, VIDEO STORES, AND DRIVE-IN GROCERY STORES. "THE EXISTING ORDINANCE IS NOT AN ATTI-PORN ORDINANCE"

2. THE ORDINANCE DOES NOT SET THE CITY OF ABILENE UP IN THE ROLE OF CENSOR TO REGULATE CONTENT OF MATERIAL IN ABILENE. THOSE CITIES THAT HAVE TRIED TO UTILIZE THEIR ZONING ORDINANCES FOR SUCH A PURPOSE HAVE HAD THEIR ORDINANCE OVERTURNED

3. THE ZONING ORDINANCE DOES NOT ARTICULATE WHAT IS PORNOGRAPHIC AND WHAT IS NOT

○ 4. THE ZONING ORDINANCE IS GEARED TOWARD REGULATING HEIGHT, AREA, AND PLACEMENT OF VARIOUS KINDS OF USES

5. COURTS HAVE TRADITIONALLY STRUCK DOWN ZONING ORDINANCES THAT HAVE BEEN UTILIZED TO TRY TO EXCLUDE CERTAIN KINDS OF USES

● THEREFORE, THE STAFF HAS DRAFTED AN ORDINANCE FOR YOUR CONSIDERATION THIS MORNING THAT WOULD INCREASE THE DISTANCE FROM THE CURRENT 600 FEET FROM SCHOOLS FOR ADULT ENTERTAINMENT FACILITIES TO 2,000 FEET

● THE PROPOSED CHANGE, AS DRAFTED, WOULD EFFECT ONLY ONE ADULT ENTERTAINMENT ENTERPRISE AND THAT IS THE NEW LOCATION OF VIDEO VIEW ON INDUSTRIAL BOULEVARD. THEREFORE A NEW AMORTIZATION SCHEDULE WILL NEED TO BE ESTABLISHED BY THE CITY COUNCIL FOR VIDEO VIEW ON INDUSTRIAL BOULEVARD

● AS I PREVIOUSLY STATED, THE ORDINANCE AMENDMENT BEGAN BY CITIZEN INQUIRIES ABOUT THE NEARNESS OF THE NEW VIDEO VIEW LOCATION ON INDUSTRIAL BOULEVARD TO COOPER HIGH SCHOOL

● FROM A ZONING STANDPOINT, SCHOOLS ARE ALLOWED AS A RIGHT-OF-USE IN MOST ZONING DISTRICTS AND IT IS UNUSUAL TO SEE A MAJOR HIGH SCHOOL LOCATED ON THE EDGE OF AN INDUSTRIAL DISTRICT WHERE ADULT ENTERTAINMENT ENTERPRISES CAN BE LOCATED

● I INFORMED THOSE WHO CALLED THAT ABOUT THE ONLY OPTION WAS TO INCREASE THE DISTANCE REQUIREMENTS FOR ADULT ENTERTAINMENT FROM THE CURRENT 600 FEET TO 1,000 OR 2,000 FEET AND THAT WE WOULD EXPLORE SUCH A POSSIBILITY

● THE PROPOSED ORDINANCE AMENDMENT BEFORE YOU WOULD NOT CHANGE THE AREA OF THE CITY AVAILABLE FOR ADULT ENTERTAINMENT ENTERPRISES TO A POINT WHERE OUR ORDINANCE WOULD BE JEOPARDIZED IN MY OPINION

● IF THE PROPOSED ORDINANCE IS APPROVED AS DRAFTED, THE AVAILABLE AREA FOR SUCH USES WOULD BE REDUCED FROM 5.0% OF THE CITY TO APPROXIMATELY 4.5% OF THE CITY AND FROM ABOUT 5.4 SQUARE MILES CURRENTLY TO APPROXIMATELY 4.87 SQUARE MILES. IN MY OPINION, THIS WOULD STILL LEAVE A SUFFICIENT AMOUNT OF LAND AREA AVAILABLE FOR SUCH USES

● A MAP IS ON THE WALL WHICH DEPICTS THOSE AREAS THAT WOULD STILL BE AVAILABLE FOR SUCH USES

ITEM 7A
SPEAKING NOTES

SECOND AND FINAL READING OF AN ORDINANCE AMENDING SECTION 23-306.5.C(12)
OF THE ZONING ORDINANCE CONCERNING ADULT ENTERTAINMENT ENTERPRISES

- THANK YOU MR. MAYOR AND MEMBERS OF THE CITY COUNCIL
- ITEM 7A ON YOUR AGENDA IS SECOND AND FINAL READING ON AN ORDINANCE AMENDING SECTION 23-306.5.C(12) OF THE ZONING ORDINANCE CONCERNING ADULT ENTERTAINMENT ENTERPRISES
- CURRENTLY THE ZONING ORDINANCE PROVISIONS REGULATING LOCATION OF ADULT ENTERTAINMENT ENTERPRISES REQUIRES A 600-FOOT SEPARATION BETWEEN SUCH USES AND ANY TRACT OF LAND USED FOR CHURCH, PARK, SCHOOL, HOSPITAL, AND RESIDENTIAL PURPOSES
- ALSO, THESE TYPES OF USES MUST BE SEPARATED FROM NORTH AND SOUTH 1ST STREETS BY 600 FEET, AND FROM EACH OTHER BY 1,000 FEET
- FINALLY, THESE TYPES OF USES ARE ONLY ALLOWED WITHIN HC (HEAVY COMMERCIAL), LI (LIGHT INDUSTRIAL), AND HI (HEAVY INDUSTRIAL) ZONING DISTRICTS
- STAFF ESTIMATES THAT WHEN TAKEN TOGETHER, THE CURRENT ORDINANCE PROVISIONS RESTRICT SUCH USES TO APPROXIMATELY 5% OF THE CITY, OR ABOUT 5.4 SQUARE MILES OF THE CITY'S 108 SQUARE MILES. APPROXIMATELY 246 BUSINESS LOCATIONS WERE ESTIMATED TO BE AVAILABLE WITHIN THE CITY LIMITS
- AS A RESULT OF CITIZEN INQUIRIES WITH REGARD TO LOCATION OF ADULT ENTERTAINMENT ENTERPRISES WITHIN 600 FEET OF SCHOOLS, THE STAFF EXAMINED THE EXISTING ORDINANCE AND HAS CONCLUDED THAT THE ORDINANCE COULD BE AMENDED TO INCREASE THE DISTANCE FROM SCHOOLS FROM THE CURRENT 600 FEET TO 2,000 FEET WITHOUT SERIOUSLY IMPAIRING THE ORDINANCE