

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, **February 9, 1989**, 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, **February 9, 1989**, 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 Walter Wheat.
3. **Approval of Minutes:** Pre Council Session, Regular City Council Meeting, and Special City Council Meeting held January 26, 1989.
4. **Awards:**

Special Recognition:
Certificate of Appreciation to Angie McKaughan

Employee Service Awards:

| | | |
|----------|------------------|--|
| 20 Years | Jim E. Aldis | Superintendent Maintenance Services |
| 20 Years | Bill Garner, Jr. | Equipment Operator II Refuse Division |

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.

5. **Ordinances and Resolutions:**
 - a. Oral resolution approving change order to the contract with Execution regarding telephone equipment for Law Enforcement Center, related to implementation of 9-1-1 service.
 - b. Consider on first reading - an ordinance amending Chapter 18, Motor Vehicles and Traffic, to add a section on "Modification of Traffic Regulations for Construction and Maintenance Activities."

- c. Consider on first reading - an ordinance amending Chapter 18, Motor Vehicles and Traffic, Section 18-285, "Increased Speed Limits", and Section 18-293, "Parking Prohibited At All Times"; of the Abilene Municipal Code.
- d. Consider on first reading - an ordinance changing zoning district boundaries - **Z-02188** - Request from Carl's Auto Supply to rezone from LC (Limited Commercial) to GC (General Commercial) district, located at 5100 Buffalo Gap Road, and set a public hearing for 6:00 p.m. February 16, 1989.
- e. Consider on first reading - an ordinance changing zoning district boundaries - **Z-00289** - Request from Partin & Associates, agent William L. Cogsdill, to rezone from AO (Agricultural Open Space) to GC (General Commercial) district, located in the 7000 block of Buffalo Gap Road, and set a public hearing for 6:00 p.m. February 16, 1989.
- f. Consider on first reading - an ordinance for thoroughfare closure - **TC-00389** - Request from Wilder Tire Company, agent CADCO Architects-Engineers, for a thoroughfare closure of a 20' alley between S. 12th & 13th Streets, and S. Treadaway & S. China Streets, and set a public hearing for 6:00 p.m. February 16, 1989.
- g. Consider on first reading - an ordinance for thoroughfare closure - **TC-00489** - Request from City of Abilene/Public Works Department for thoroughfare closure of portions of Curry Lane and Church Lane, and set a public hearing for February 16, 1989 at 6:00 p.m.
6. **Award of Bid:**
 - a. Water System Appurtenances, Bid #CB9017.

REGULAR AGENDA

7. **Ordinances and Resolutions:**
 - a. Resolution changing the name of the Abilene Municipal Airport to the Abilene Regional Airport.
8. **Other Business:**
 - a. Consider Resolutions requesting amortization and local optional exemptions for Video Vue.
 - b. Pending and Contemplated Litigation (see notice for Executive Session, Litigation for listing subjects), possible action.
 - c. Appointment and Evaluation of Public Officials (see Notice for Executive Session, Personnel for listing subjects), possible action.

FINANCIAL WORKSESSION

1. Presentation and acceptance of Comprehensive Annual Financial Report for FY 1987-88 and authorize payment to Davis, Kinard & Co.
2. Review First Quarter Financial Status for FY 1988-89, and discuss 1989 proposed bond sale.

ADJOURN

(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. Velasquez v. City
2. Maria Slaughtter v. City, Jim Blagg, Harvey Cargill
3. Alicia Garcia v. City
4. James Hudson & AB Airlines v. City
5. Lois Williams & Matthew Chambers v. City
6. Patricia Partin v. City
7. Virginia Martin v. City
8. Frieda Hintz v. City
9. Thornton v. City
10. Christopher Grant Carlson v. City
11. Martha Gillette v. Marietta Proctor
12. City of Abilene v. Board of Adjustment & Video Vue
13. Don Hobbs v. City
14. London Ray Wormsley v. Jorge Solis & Tim Burns
15. Donald J. & Gwendolyn Collins v. City & JamesN.Van Allen
16. City of Abilene v. Starlite Inn Motor Hotel
17. Cynthia Haile v. City
18. General Electric Co. v. City

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.

If personnel issues or litigation issues arise as to the posted subject matter of this City Council Meeting, an executive session will be held.

PRE-COUNCIL WORK SESSION, THURSDAY
February 9, 1989, 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 February 9, 1989, at 8:30 A.M. in the Basement Conference Room of City Hall. Mayor Dale E. Ferguson was present and presiding with Councilman Gary D. McCaleb, Councilwoman Betty Ray, Councilmen Walter Wheat, Tom Ceniglis, and Harold Nixon. Councilman Melton Robinson was absent. Also present were City Manager Jim C. Blagg, Assistant City Managers Rickey Childers and Roy L. McDaniel, City Attorney Harvey Cargill, Assistant City Secretary Debbie Hurley and various members of the City Staff.

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

REGULAR CITY COUNCIL MEETING
February 9, 1989, 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 February 9, 1989, at 9:00 a.m. in the City Council Chambers of City Hall.

Invocation was given by Councilman Walter Wheat.

There being no corrections, additions, or deletions to the minutes of the Pre Council Session, Regular City Council Meeting, and Special City Council Meeting held January 26, 1989, the minutes stand approved as printed.

Mayor Ferguson presented a Certificate of Appreciation to Angie McKaughan, Calltaker for the Police Department, for her role in lifesaving measures successfully performed on Tyler Buskin December 19, 1988.

Mayor Ferguson presented Employee Service Awards to the following individuals for their tenure of service to the City of Abilene:

| | | |
|----------|------------------|-----------------------|
| 20 Years | Jim E. Aldis | Superintendent |
| | | Maintenance Services |
| 20 Years | Bill Garner, Jr. | Equipment Operator II |
| | | Refuse Division |

Councilman Wheat moved approval of the consent agenda items, 5a through 5g, and 6a as presented by the staff. The motion was seconded by Councilwoman Ray and the motion carried.

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

NAYS: None.

5. **Ordinances & Resolutions:**

- a. Oral resolution approving change order to the contract with Executone regarding telephone equipment for Law Enforcement Center, related to implementation of 9-1-1 service.
- b. Consider on first reading - an ordinance amending Chapter 18, Motor Vehicles and Traffic, to add a section on "Modification of Traffic Regulations for Construction and Maintenance Activities."
- c. 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.
Consider on first reading - an ordinance amending Chapter 18, Motor Vehicles and Traffic, Section 18-285, "Increased Speed Limits", and Section 18-293, "Parking Prohibited At All Times"; of the Abilene Municipal Code.
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Consider on first reading - an ordinance changing zoning district boundaries - **Z-02188** - Request from Carl's Auto Supply to rezone from LC (Limited Commercial) to GC (General Commercial) district, located at 5100 Buffalo Gap Road, and set a public hearing for 6:00 p.m. February 16, 1989.
- e. 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.
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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.

- g. Consider on first reading - an ordinance for thoroughfare closure - **TC-00489** - Request from City of Abilene/Public Works Department for thoroughfare closure of portions of Curry Lane and Church Lane, and set a public hearing for February 16, 1989 at 6:00 p.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.

6. **Award of Bid:**
a. Water System Appurtenances, **Bid #CB9017**. The bid was awarded C & C Municipal as the most advantageous for the City, as recommended by staff.

7. **Ordinances and Resolutions:**
a. Fal Falcioni, Airport Manager, briefed the Council on a Resolution changing the name of the Abilene Municipal Airport to the Abilene Regional Airport.

Councilman Ceniglis moved to approve the resolution changing the name of the Abilene Municipal Airport to the Abilene Regional Airport, as recommended by staff. The motion was seconded by Councilman Nixon and the motion carried.
AVES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Ceniglis, Nixon, and Mayor Ferguson.
MAYS: None.

The resolution is numbered 6-1989 and is captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING THE NAME CHANGE OF THE ABILENE MUNICIPAL AIRPORT TO ABILENE REGIONAL AIRPORT.

8. **Other Business:**
a. Harvey Cargill, City Attorney, briefed the Council regarding various Resolutions regarding requests for amortization and locational exemptions for Video Vue. The following is a verbatim transcript of discussion and action on the item:

MAYOR: At this time, Item 8a is a Resolution requesting amortization and locational exemptions for Video Vue. At this time, I would like to state that Mr. Ron Kervin has requested locational exemption and amortization time for his adult entertainment businesses. Before reviewing the specific requests, I would like to consider the Resolution expressing the Council's intentions. I would like for a motion from the Council, please, on this.

COUNCILWOMAN RAY: So moved.

MAYOR: Betty has so moved. Is there a second?

COUNCILMAN WHEAT: Second.

ASSISTANT CITY SECRETARY: Councilman Wheat?

COUNCILMAN WHEAT: Yes.

ASSISTANT CITY SECRETARY: Councilman Ceniglis?

COUNCILMAN CENIGLIS: Yes.

ASSISTANT CITY SECRETARY: Councilman Nixon?

COUNCILMAN NIXON: Yes.

ASSISTANT CITY SECRETARY: Councilman McCaleb?

COUNCILMAN MC CALEB: Yes.

ASSISTANT CITY SECRETARY: Councilwoman Ray?

COUNCILWOMAN RAY: Yes.

ASSISTANT CITY SECRETARY: Mayor Ferguson?

MAYOR FERGUSON: Yes.

ASSISTANT CITY SECRETARY: The motion is carried.

The Resolution is numbered 7-1989 and is captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, REGARDING VIDEO VUE, AN ADULT ENTERTAINMENT ENTERPRISE.

MAYOR: At this time, I would like Mr. Cargill, our City Attorney, to begin the presentation of Mr. Kervin's request.

HARVEY CARGILL, JR.: Honorable Mayor and Councilmembers: Mr. Kervin's specific requests are for the following four (4) items:

- 1) amortization time for the 1700 Industrial Blvd. site;
- 2) locational exemption time for the 1700 Industrial Blvd. site;

Mr. Kervin's requests for amortization time and a locational exemption for the 1700 Industrial Blvd. site were timely filed.

- 3) locational exemption time for the 727 S. Treadaway site; and
- 4) waiver of the time requirements for requesting a locational exemption for the 727 S. Treadaway site.

As previously noted, Mr. Kervin's requests for amortization time and locational exemption time for the 1700 Industrial Blvd. site were timely filed. The 1700 Industrial Blvd. site is within 1000 feet of Cooper High School. As of January 1, 1989, except for the pending applications, the 1700 Industrial Blvd. site would not be a legally available site for adult entertainment.

Mr. Kerwin's request for locational exemption time for the 727 S. Treadaway site was not timely filed; such a request was due no later than December 1, 1987. His request for locational exemption time was filed in November, 1988. The 727 S. Treadaway site is within 270 feet of a residentially zoned lot, and as of January 1, 1988, the 727 S. Treadaway site was not a legally available site for adult entertainment enterprise.

This summary of timeliness is based on the Court pleadings wherein Mr. Kerwin states that he claims no rights under the Board of Adjustment decisions. That being the case, his application is not timely filed.

Additionally, the 727 S. Treadaway site is within 650 feet of Locust Elementary School and would not be a legally available site for adult entertainment as of January 1, 1989, regardless of the validity of the Board of Adjustment decisions.

Mr. Kerwin has continued to operate adult entertainment enterprises at 727 S. Treadaway and 1700 Industrial Blvd. since the original ordinance and amendment were passed.

In September, 1988, Mr. Kerwin filed suit in federal court to prevent the City from enforcing its adult entertainment ordinance. That case is presently pending.

Mr. Kerwin's attorney is Mr. Clyde DeWitt. Mr. DeWitt specializes in cases involving obscenity issues. Mr. DeWitt was representing Video Vue when the adult entertainment enterprise ordinance was originally passed in 1986. Mr. DeWitt appeared before the Planning and Zoning Commission and sent a letter that was presented to the City Council.

Prior to the Council meeting today, the Council was furnished copies of the following:

- (a) unnumbered, assorted pieces of paper that Mr. Kerwin filed with the City Secretary prior to November 1, 1988, requesting more time;
- (b) November 1, 1988, letter from Lee Roy George to Mr. Ron Kerwin, requesting supporting data;
- (c) November 15, 1988, letter from Mr. Kerwin to Lee Roy George responding to November 1, 1988 letter requesting more time for Treadaway and Industrial sites;
- (d) January 6, 1989 letter from Lee Roy George to Mr. Kerwin notifying him of February 9, 1989 meeting to consider his requests. In that letter, Mr. Kerwin was invited to review that data that he previously filed with the City Secretary;
- (e) copy of Mr. Kerwin's First Amended Complaint 1-88-0120W, with the Adult Entertainment Ordinance as Ex. A and the Amendment as Ex. B attached;
- (f) City's Answer to Plaintiff's First Amended Complaint 1-88-0120W;
- (g) Judge Woodward's Opinion in DeJa Vu and Reflections, March 31, 1988;
- (h) copies of the Adult Entertainment Ordinance, Page 87 through 94, Pages 255 through 258 and Page 25 of the Zoning Ordinance;
- (i) minutes of October 16, 1986 Council Meeting concerning the adoption of the Adult Entertainment Ordinance;

(j) minutes of the January 14, 1988, Council meeting concerning adoption of the Amendment to the Adult Entertainment Ordinance and staff comments.

On February 1, Mr. Kervin delivered an unsigned letter asking for the right to permanently operate at 727 S. Treadaway. If he is given that right, he says that he will cease distribution of sexually oriented materials which are unsuitable for minors at 1700 Industrial Blvd.; and dismiss the lawsuit in Federal Court. That's in page one of his letter.

The Adult Entertainment Enterprise Ordinance provides for periodic review and extensions of only one (1) year at a time. Mr. Kervin is asking to be taken out of the Adult Entertainment Ordinance and be given permanent legal status as "adult theater." The 727 South Treadaway site is illegal because it is within 270 feet of residentially zoned property. It is also illegal because it is within 650 feet of Locust Elementary School, as was pointed out by Mr. Lee Roy George, in questions and answers number 50 and 51, which were given to Mr. Kervin on January 26, 1989, by the City Secretary.

Mr. Kervin asked for a "locational variance." There is no such thing as a permanent locational variance as he requests.

In his letter, Mr. Kervin infers the ordinance encourages minors to be present at his adult theaters. Mr. Kervin must know that is not true.

The Adult Entertainment Ordinance defines the use of theaters by the type of movies shown.

If no "adult" movies, as defined by the ordinance, are shown at either location, the sites would be legal. Most certainly there are movies available that Mr. Kervin could show that would appeal to adults and not be "adult" oriented movies; otherwise the Mall of Abilene theaters and other theaters would not have movies to show.

The fallacy of Mr. Kervin's argument is apparent when you realize the kind of "adult" movies we are discussing.

Mr. Kervin is fighting for the ability to show movies characterized by a predominate emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," page 256 of the Ordinance.

Quoting from the Ordinance page 257, specified sexual activities are defined as: human genitals in state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, sodomy, acts of bestiality; fondling or other exotic touching of human genitals, pubic region, buttock or female breast.

Quoting from the Ordinance page 257, specified anatomical areas are defined as: less than completely and opaquely covered human genitals, pubic region, buttock, female breast below a point immediately above the top of the areola; and human genitals in a discernible erect state, even if completely and opaquely covered.

It does not follow, as Mr. Kervin argues, that if he isn't showing "adult" movies as defined by the ordinance, that he has to show movies that appeal to minors, such as "Cinderella" or "Snow White." These are a part of the inaccuracies and unspoken things Mr. Kervin's letter contains.

You can be assured, Mr. Kervin, the City Council is aware that the City cannot ban all "adult" movies from Abilene. The City can and is regulating where "adult" movies are shown.

At the time of adoption of the original Ordinance, Mr. George testified that there were 246 business sites in the City available for adult entertainment enterprises. At the time of adoption of the 2,000 foot amendment, Mr. George testified that 4.5% of the City, that is 4.87 square miles, was available for relocation sites for Video Vue. This would mean that in Abilene at least 200 sites are available where Video Vue could be relocated.

On January 26, 1989, Mr. George and Mr. McDaniel prefiled their testimony with the City Secretary.

On January 26, 1989, the City secretary gave Mr. Kervin a copy of the staff's prefiled testimony. He has had an opportunity to read that testimony and review it.

At this time Mr. Mayor, I would like to have Mr. George come forward and please present his prefiled testimony to the Council for its consideration.

MAYOR: Thank you, Mr. Cargill. Mr. George, do you swear the testimony you are about to give and the answers you gave to the questions you were asked are true and correct to the best of your knowledge?

LEE ROY GEORGE: I do, Mr. Mayor.

MAYOR: Mr. George, if you were asked these questions today, would your answers be the same?

LEE ROY GEORGE: They would be the same.

MAYOR: Does the Council have any questions of Mr. George?

HARVEY CARGILL: Mr. Mayor, with your permission, what I would like to do is ask that the Council consider the testimony that has been prefiled and given to the City Secretary and also Mr. Kervin in its review of Mr. Kervin's request. Mr. George, now, as far as the sites that are available at this particular location, how many sites would be available for relocation of Mr. Kervin?

LEE ROY GEORGE: By our estimate, approximately 200 sites are still available after the 2000 foot amendment that we made.

HARVEY CARGILL: Have you prepared a map to show where the two Video Vue sites are located?

LEE ROY GEORGE: Yes I have.

HARVEY CARGILL: How did you prepare this map?

LEE ROY GEORGE: This map was prepared by the computer from computer plots of digitized aerial photographs.

HARVEY CARGILL: Did you prepare it yourself?

LEE ROY GEORGE: Yes I did. These maps I have here I would like to show them if I might.

HARVEY CARGILL: Please show the Council where the two Video Vue sites are.

LEE ROY GEORGE: Mayor and members of the Council, this is a plot of the Video Vue location on S. Treadaway. The circles that you see on this map are a 600' circle and a 2000' circle with the land usage depicted in different colors. There is a legend on the left that shows various colors and what they depict. Yellow would be residential, green would be public and semi-public use; I would point out to you the locations of the school that we were talking about that is near Video Vue there on S. Treadaway. The zoning district boundary lines, I have a map of those, I didn't put them on this particular board, but I also have a copy of those I would like to introduce as evidence as well. The zoning district boundary line residential is down this alley right here, so you can see that Video Vue has always been within 600' of a residential area and is now within 2000' of the school. I wanted to point that out. On the back side, or the flip side of this is the Video Vue site on Industrial Blvd. As you can see, the site here in the cross-patched area, this would be Industrial Blvd., Treadaway here. This would be within 2000' of Cooper High School at this point. I might add that though it doesn't show it on this plot, there are a number of school activities that take place down on the far end of the school tract there, I believe there is a baseball diamond, some tennis courts, and other activities that take place almost within 600' of the site on Industrial Blvd. I also have zoning plots of these that I would like to introduce as evidence at this point. Again, these maps were generated from a computer plot of aerial photographs. I was really surprised at the accuracy of these maps in terms of horizontal distances. When we tried to plot things that are not shown on an aerial photograph such as lot lines, street right-of-way lines, I'd say they're supposedly accurate within +-2'. I would like to say for the record plus or minus 10' that they're accurate.

HARVEY CARGILL: Do you have other maps that you want to introduce as evidence at this time, Mr. George.

LEE ROY GEORGE: I also have the zoning maps here, showing the zoning along with those. I don't know whether you want to show them at this point or not, but I would like to introduce them for the record.

HARVEY CARGILL: If you want to introduce them, why don't you show them now.

LEE ROY GEORGE: As you can see, this is the Industrial site again, Cooper High School is zoned residential as you can see here, it's in a residential zoning district and the 600' radius almost connects with the RS. Certainly the 2000' does. I think there was some question in a letter that Mr. Kervin wrote about the closeness of Video Vue to Deja Vu and the Deja Vu Club is down here well 2000' away roughly from Video Vue. But this depicts the zoning pattern out

near the Industrial Blvd. site. There are two of those and then this one depicts the zoning that I tried to describe a moment ago on the map on the board there. As you can see, the residential boundary comes down the alley on the other side of Treadaway so that all of this is residential here. Video Vue being located here in the cross-axed area is certainly within 600' and has always been since the Adult Entertainment Ordinance was adopted, and now within 2000' of the school, which is located here. Thank you.

HARVEY CARGILL: Does the Council have any questions of Mr. George in regard to these maps or any of the testimony he has? If not, Mr. Mayor, at this point, I would again like to say that we'd like to introduce into evidence the maps that were explained to the Council and the prefilled testimony for its consideration of these requests. We'd like to call Mr. Roy McDaniel at this time to testify.

MAYOR: Mr. McDaniel, do you swear the testimony you are about to give and the answers you gave to the questions you were asked are true and correct to the best of your knowledge?

ROY MC DANIEL: Yes sir, I do.

MAYOR: Mr. McDaniel, if you were asked those same questions today, would you answer in the same manner?

ROY MC DANIEL: Yes sir I would.

MAYOR: Does the Council have any questions for Mr. McDaniel?

HARVEY CARGILL: Again, we would ask that the Council please consider the prefilled testimony of Mr. McDaniel's which was prefilled with the City Secretary, then was sent by the City Secretary to Mr. Kervin for his review and its review of the request of Mr. Kervin's. That's all we have from Mr. McDaniel at this time.

MAYOR: Thank you, Mr. McDaniel. At this time, I would like to advise the Council that personal feelings of the individual Councilmembers are not the issue here. The issue is whether Mr. Kervin has shown that he has not recouped his investment and whether he has shown that he is entitled to locational exemption. These are the only factors that we are to be considering with a fair and impartial mind. Is there anyone in the audience that would like to speak against Video Vue's request for amortization or locational exemption time? Yes sir.

DR. GARY LEONARD: I am Gary Leonard, I live at 3133 Ventura in Abilene. I want to thank the Councilmembers and Mr. Cargill, and anyone else that has worked on this, because I, too, am against this organization having it near schools. I feel that pornography is what Video Vue is all about, and pornography is a cancer in our society. Pornography, when someone becomes involved in it, can break up families, it ends up with kids being killed, it just is a cancer to our society. In my opinion, we don't need pornography in Abilene, which we are not talking about here, but we certainly don't need it near these schools. I think a good example of what happens to a person who becomes involved in pornography is this Ted Bundy, the serial killer. He began pornography with the Playboys and the Hustlers and the so-called soft-core pornography and he went all the way up until he could get no more excitement from what he saw in the videos and so forth and

then he made the big leap from fantasy into actually doing it. Just one more thing, I want to quote one thing that he said in an interview with Dr. Dobson. "He knows a lot of men in prison that were motivated to do violence like him, and without exception, every one was deeply involved in pornography."

MAYOR: Thank you. Is there anyone else who wishes to speak against this request. If not, Mr. Kervin, do you or your attorney wish to address the Council and ask question you may have. Mr. Kervin, would you like to be sworn in for this testimony? It is not required that you give sworn testimony, but if you wish to, you are privileged to.

RON KERVIN: Not really, no. I have here some signed statements by people on Cherry Street that y'all are trying to protect, that really could care less that I'm there. The issue here is not pornography to start with, it's zoning ordinances. My place on 1700 Industrial Blvd. was not initially picked by me, it was picked by Mr. George, actually. They OK'd the location, the Planning & Zoning people. It was conforming at the time. I've offered to close that location. If people don't want me near Cooper High School, I won't be near Cooper High School. At this point, I don't feel like I am an adult location on 727 Treadaway, that's why I went to federal court, Mr. Cargill will tell you that. What we have here today is, I can have one place or two places when I leave here, it's really up to y'all. Thank you.

MAYOR: Is there anyone else who wishes to come forward at this time? We have been given resolutions for granting or denying Mr. Kervin's request for amortization and location exemption time. The Resolutions denying the request and granting waiver time requirements are not complete. I think the fairest way to consider this issue is to first see if the Council believes Mr. Kervin has shown that he has met the Ordinance requirements for each request, and then we will know which resolution needs to be considered by the Council. It may be that the staff will need to redraft or draw some resolutions before we vote on final resolutions, depending upon the Council's direction. At this time, I would like to ask the Assistant City Secretary to ask for the comments from the Council starting with Dr. McCaleb.

HARVEY CARGILL: Mr. Mayor, let me help a little bit if I might. I'd like to suggest that we all look at 8a-21 and the reason I suggest we look at it is this is the resolution requirements for amortization. The ordinance provides that upon application by the owner, the City Council may at its discretion allow additional time to amortize investment in an adult entertainment enterprise if it makes the following findings: the owner has made every effort to recoup his investments in an adult entertainment enterprise; the owner will be unable to recoup his investment in an adult entertainment enterprise by the end of the amortization period; and all other applicable provisions of this ordinance will be observed. If the City Council grants additional time, the grant will be for a period not to exceed one calendar year. If such time is insufficient to amortize, an owner may thereafter apply for additional grants of time to recoup his investment in the adult entertainment enterprise. Such application will be made no later than 60 days prior to the expiration of the amortization time. These are the requirements of the ordinance that the Council has to consider in the request for the amortization at the 1700 Industrial Blvd. site.

MAYOR: At this time, I would like to again make the statement to the City Council that personal feelings of individual Council members are not the issue. The issue is whether Mr. Kervin has shown that he has not recouped his investment, and whether he has shown that he is entitled to locational exemption time. Again, I'd like to ask the Assistant City Secretary for the Councilmembers comments as to whether Mr. Kervin has satisfied the ordinance requirements for the 1700 Industrial amortization request; the 1700 Industrial locational exemption; and the 727 S. Treadaway locational exemptions.

ASSISTANT CITY SECRETARY: Councilman McCaleb, what are your comments on the 1700 Industrial site amortization request?

COUNCILMAN MC CALEB: It is my understanding as it was just pointed out by Mr. Cargill that the key part of this is whether or not the owner can demonstrate that he has made every effort to recoup his investment and at this point has not been able to. I see that as saying that our decision is based upon drawing a conclusion from the information that the owner presents to us to demonstrate whether or not he has recouped his investment. I have gone through all of the material that has been referred to which has been submitted based on this request, I've been through it and I have been back through it, I can't find any way to be able to determine that. I don't think there is anything; I don't think I'm able to draw a conclusion based on what he's presented that would say that he has not recouped his investment, so it seems to me that what we're dealing with here is a burden of proof on the owner to show that he has not recouped his investment. I don't feel he has done that, therefore, I don't feel the request for amortization request that he has made is appropriate.

COUNCILWOMAN RAY: I feel that I was not able to determine from the material presented anything about his recoupment of his investment, therefore I feel that he has not furnished me enough information.

COUNCILMAN WHEAT: I think Mr. Kervin has been given ample opportunity to present all the data necessary to determine whether or not he has recouped his investment, and according to the testimonies and the data that was filed, there was no way to determine whether or not he had or had not recouped his investment, and I feel that he's had ample time, and as far as I'm concerned, he hasn't proved to me that he has not recouped it, so I can just assume that he has recouped his investment.

COUNCILMAN CENIGLIS: In looking over the sales receipts and the tax receipts that were furnished to us by Mr. Kervin, I don't think I have been given enough information to say that Mr. Kervin has not recouped his investment.

COUNCILMAN NIXON: The information we received from Mr. Kervin was his rental agreement and expenses for telephone, utilities, and so forth, but nowhere did he give us a profit and loss statement showing what the return on his investment was. We have no statement in this material of how much he has invested, how much he would have to recoup from this. He's been in operation just a short time here, we realize that, but also we looked at this ordinance before, the testimony from another adult enterprise, the gentleman stood here and told us that the investments could be recouped in a very short time, maybe 3-6 months with this type of operation, so we really don't have enough information to see that he has or has not recouped his investment.

MAYOR FERGUSON: I cannot find any statistics as to Mr. Kervin's inventory, the value of the inventory. Without that information, it's a critical portion of determining recoupment of his investment. Without that and several other bits of information, I can't determine if he has recouped his investment or not, there's no way to determine that in my opinion.

HARVEY CARGILL: Mr. Mayor, if I might intrude just one more time, I would like to suggest that we look at 8a-24, and the reason why is again this tells us what the ordinance requires for a locational exemption specifically; and it provides the City Council may, in its discretion, grant an exemption from the locational restrictions if it makes the following findings: that location of adult entertainment enterprise will not have a detrimental impact on nearby property or be contrary to the public safety or welfare; the granting of exemptions will not violate the spirit and intent of this ordinance; that the location of adult entertainment enterprise will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight; the location of the adult entertainment enterprise will not be contrary to any program in the neighborhood conservation, nor will it interfere with any efforts of urban renewal or restoration; and all other applicable provisions of this ordinance be observed. The City Council will grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. This use of facts shall be decided on the basis of preponderance of the evidence. The decision of the City Council is final.

ASSISTANT CITY SECRETARY: Councilwoman Ray, what are your comments on the 1700 Industrial Blvd. site locational exemption request?

COUNCILWOMAN RAY: Again, I feel that the burden of proof is upon Mr. Kervin, and I feel that the questions stated in a previous reading have not been answered, he has not proven to me that it is not detrimental to the neighborhood involved.

COUNCILMAN WHEAT: When the Council first entered into this problem that we have, we went in with the idea that we were not going to try to ban these type of operations, but we do have a right to their locations. I think it has been pointed out by Mr. George that there's plenty of areas outside the restricted areas that the ordinance addresses to locate these type businesses, and I feel that to allow, or grant a locational exemption is direct contradiction to what the ordinance was designed for, so I don't feel that the locational exemption should be even approved or discussed, really.

COUNCILMAN CENIGLIS: On January 1, 1989, we passed an ordinance that this type of operation could not be closer than 2000' of a school, so it's actually been illegal since January 1, 1988. By granting an exemption, we'll violate the spirit and the intent of the ordinance, and I firmly believe that we will downgrade the value and the quality of the property in that area. We've got enough smut lying on our streets now, I can go out and clean up my lawn on Monday, and Tuesdays I find enough trash out there - old Playboy magazines and stuff, and other articles of sexual paraphernalia, so if we're going to allow these things around our schools, we're going to get our young people more involved in that, so I don't feel that the locational exemption should be granted to 1700 Industrial Blvd.

COUNCILMAN NIXON: Of course, it's been brought to our attention that this location is within 1000' of school property there near Cooper, and certainly it should not be available for an adult entertainment business this close to our school.

COUNCILMAN MC CALEB: In order to even consider a locational exemption, it seems that once again the burden of proof is on the person requesting that to demonstrate that it does not have a detrimental effect. I have not seen any of that information that would indicate that there was any proof submitted on that, the only thing in fact that I'm aware of at all is an opinion expressed, and yet on the other side of the ledger on this, we have a great deal of information about what can happen in neighborhoods and areas and the implications of this that would have either detrimental effect or affect the public safety or welfare of a particular area. Once again, I don't think that's been, the issue here has been addressed from the standpoint of the person requesting it, so I see no reason to grant the locational exemption.

MAYOR FERGUSON: After looking at Mr. George's maps and seeing the proximity of this location to one of our two public high schools, and looking at the intent of our ordinance, I can see no reason to give a locational exemption. I don't think it should be granted.

ASSISTANT CITY SECRETARY: Councilman Wheat, what are your comments on the 727 S. Treadaway site, locational exemption request?

COUNCILMAN WHEAT: Well, again I feel that the ordinance specifically points out that, or the map points out that a residential area another school location on the Treadaway site, again we would circumvent the ordinance in intent in granting the locational exemption, and the same thing applies to Locust Elementary as it would to Cooper High School and the residential area around this particular site, and I don't feel that Mr. Kerwin has shown that there is not a detrimental effect in that particular neighborhood, and grant should not be awarded to him for exception of this.

COUNCILMAN CENIGLIS: As Mr. George pointed out with his maps, 270' from the residentially zoned lots and only 650' from Locust Elementary, do not meet the type of locational restrictions that we want this type of business to be in. I feel, again, that there are enough other locations in Abilene where this business can be located at, and 727 S. Treadaway is not one of them.

COUNCILMAN NIXON: the 1986 Ordinance that we adopted plainly showed this location to be within the 600' distance from residential property, and I believe that it has been operated illegally since that particular ordinance was adopted, and of course this particular case that we're looking at today was not filed on time, he should have filed by december of 1987 for this locational exemption, so I'm not in favor of that.

COUNCILMAN MC CALEB: As Mr. Nixon just pointed out, there is apparently a question about the appropriateness of the timing of this request anyway, in that it seems to have already passed the deadline; however, even if it weren't, I would still have to say that much of what I just said about the other locational exemption would apply here. In addition to that, I would add that the responsibility that I feel as an elected member of this City Council is that we have a responsibility in designing ordinances that reflect what is in the best interests

of this City. The comments that I have heard from people have supported this ordinance, and I think they would like to see us continue to uphold what the ordinance was designed to do, I think that in this case this is a request that would have an undermining effect on the integrity of the ordinance, and so again, I see no reason to consider a locational exemption.

COUNCILWOMAN RAY: There again, even if it were filed properly, I don't believe that this would be a proper or appropriate part of a neighborhood and I think it would be detrimental to the neighbors and to the area, and should be denied.

MAYOR FERGUSON: Well, as has been stated, I think we have a reasonable ordinance, I think we have a good ordinance; I can at this time see no reason for granting the locational exemption to 727 Treadaway, so I would not be in favor of granting an exemption. Mr. Cargill, do you need any time to consider the issues involved here?

HARVEY CARGILL: Mr. Mayor, what I'll need some time to do is complete and draft a resolution that will capture what the Council's intent is on this issue, and what I'll try to do is get that ready after you complete the financial report.

MAYOR FERGUSON: We will go ahead with the next item on the agenda, and then come back to this before we vote.

FINANCIAL WORKSESSION

David Wright, Director of Finance, provided the Council with a Presentation of the Comprehensive Annual Financial Report for FY 1987-88, requesting acceptance of same, and authorizing payment to Davis, Kinard & Co. Mr. Wright introduced Bruce Huff and Don Ashmore of Davis, Kinard & Co., who gave a brief overview of the report. Following the presentation by Davis, Kinard & Co., Mr. Wright reviewed the First Quarter Financial Status for FY 1988-89.

Councilman Wheat thanked the firm and City staff for a job well done; the rest of the Council were in full agreement, expressing numerous positive comments.

Councilman Ceniglis moved to accept the Comprehensive Annual Financial Report for FY 1987-88, and authorizing payment to Davis, Kinard & Co. as recommended by staff. The motion was seconded by Councilman McCaleb and the motion carried.

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

NAVS: None.

Roy McDaniel, Assistant City Manager, briefed the Council on a 1989 proposed bond sale. He distributed charts to the Council reflecting proposed sale of the 1986 bond authorization, and projected General Obligation Debt Service and Interest and Sinking Fund Balance. No action was taken at this time.

Mayor Ferguson ordered a 5-minute break at this time to allow the City Attorney's office to complete draft of the Adult Entertainment resolutions.

The Council reconvened following a short recess, and proceeded with the following verbatim transcript:

MAYOR: Mr. Cargill, would you care to...

HARVEY CARGILL: Yes, sir, Mr. Mayor, I will. You have before you now three resolutions. The first resolution is a resolution denying the amortization time at 1700 Industrial Blvd. This is the same basic document you had in your packet, with the changes being thereafter on the last page where it talks of "...be it resolved by the City Council of the City of Abilene, Texas...", it goes on to say Mr. Ron Kervin has failed to show that he has made every effort to recoup his investment. Mr. Kervin has failed to show that he was unable to recoup his investment by January 1, 1989, Part 3, that Mr. Kervin has failed to show that he will abide by all provisions of the ordinance. It provides the resolution shall take effect immediately." This tracks the ordinance requirements, that in conjunction with the resolution that the Council has already approved points out to the court which is where we expect this will probably end up, that Council has prior to this point in time when we heard anything, hadn't decided or hadn't voted for in any way and decided the issue regarding amortization or locational exemption and that they will consider the comments of all and anyone who spoke, and that we think the Council has done. I believe this resolution captures what I heard the Council saying, and the comments that I heard in regard to the amortization. If you want, I can go ahead and explain the other two and you can either make motions either separately or all at one time, whichever the Council wants to do it.

MAYOR: Please do, go on.

HARVEY CARGILL: The second one is on the same site, that is, 1700 Industrial site, and it goes through and also points out and tracks the ordinance, and Mr. Kervin has failed to show that Video Vue will not have a detrimental effect on nearby properties, and Mr. Kervin has failed to show that this Video Vue location will be consistent with public safety and welfare, and Mr. Kervin has failed to show that the granting of the exemption will be consistent with and not violate the spirit and intent of this ordinance, and Mr. Kervin has failed to show that the location will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight; and Mr. Kervin has failed to show that he will comply with other applicable provisions of this ordinance.

Now, the one on the 727 S. Treadaway has the same language in it plus it has a provision dealing with a waiver. This is the one that was not timely filed. Now, this one the Council provides that the City Council specifically denies Mr. Kervin's request to grant a waiver in that the time requirements for a locational exemption and notes that Mr. Kervin's request is almost one year late and he has offered no explanation or excuse as to why his request was late, and that Mr. Kervin was specifically told at the Board of Adjustment meeting December 8, 1987, that he could apply for a locational exemption and that he knew of the deadline and purposely chose not to apply. It further notes, however, that even if the application had been timely filed, that the information that he submitted

is inadequate as provided for in the ordinance, and it goes through and tracks the ordinance and points out that he failed to satisfy the ordinance requirements.

These resolutions, we believe, Mr. Mayor, comply with what I understand the Council to be saying when we talked before, a few minutes ago; and we do recommend their approval.

MAYOR: With this, I believe we should vote separately, should we not, on each, first the amortization request at 1700 Industrial?

HARVEY CARGILL: I think you could either do it in one motion or three, it doesn't really matter.

MAYOR: In other words, we can lump them together?

HARVEY CARGILL: I think so, Mr. Mayor.

MAYOR: At this time, I would entertain a motion from the Council to deny the amortization request and the locational exemptions on both 1700 Industrial Blvd. and 727 S. Treadaway.

COUNCILMAN NIXON: I move approval of this resolution denying all three of these requests.

COUNCILMAN WHEAT: Second.

ASSISTANT CITY SECRETARY: Councilman McCaleb?

COUNCILMAN MC CALEB: Yes.

ASSISTANT CITY SECRETARY: Councilwoman Ray?

COUNCILWOMAN RAY: Yes.

ASSISTANT CITY SECRETARY: Councilman Wheat?

COUNCILMAN WHEAT: Yes.

ASSISTANT CITY SECRETARY: Councilman Ceniglis?

COUNCILMAN CENIGLIS: Yes.

ASSISTANT CITY SECRETARY: Councilman Nixon?

COUNCILMAN NIXON: Yes.

ASSISTANT CITY SECRETARY: Mayor Ferguson?

MAYOR FERGUSON: Yes.

ASSISTANT CITY SECRETARY: Motion carried.

The Resolution is numbered 8-1989 and is captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, DENYING AMORTIZATION TIME FOR VIDEO VUE'S INDUSTRIAL SITE.

The Resolution is numbered 9-1989 and is captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, DENYING LOCALIONAL EXEMPTION TIME FOR VIDEO VUE'S INDUSTRIAL SITE.

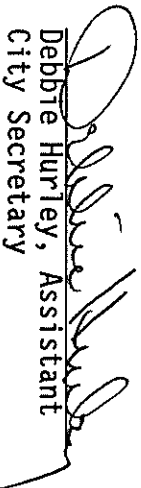
The Resolution is numbered 10-1989 and is captioned as follows:

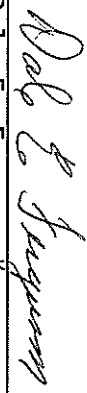
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, DENYING LOCALIONAL EXEMPTION TIME FOR VIDEO VUE'S TREADAWAY SITE.

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.

There being no further business, the meeting adjourned at 11:30 a.m.


Debbie Hurley, Assistant
City Secretary


Dale E. Ferguson
Mayor