

CITY COUNCIL MEETING
March 24, 2005, 8:30 a.m.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
COUNCIL CHAMBERS, CITY HALL

The City Council of the City of Abilene, Texas, met in Regular Session on March 24, 2005, at 8:30 a.m. in the Council Chambers at 555 Walnut Street. Mayor Archibald was present and presiding with Councilmen Sam Chase, Anthony Williams, John Hill, Stormy Higgins, Kris Southward and Councilwoman Laura Moore. Also present were City Manager Larry Gilley, City Attorney Sharon Hicks, City Secretary Jo Moore, and various members of the City staff.

Councilwoman Moore gave the invocation.

Mayor Archibald introduced Lorenzo Martinez a 5th grade student from Johnston Elementary who led the Pledge of Allegiance. Lorenzo's father, grandparents, and aunt were also present.

PROCLAMATIONS

Mayor Archibald presented the following proclamations:

- "Home Education Week" April 3rd – 8th – Kevin Willhelm
- "Community Development Week" March 28th –April 3rd – Sandy Bowen and Erica Bates
- "Autism Awareness Month" the month of April – Melissa Richardson, Melanie Trevino and Jeff Armstrong

DISPOSITION OF MINUTES

2.0 There being no corrections, additions, or deletions to the March 10, 2005 Regular Council Meeting Minutes Councilwoman Moore made a motion to approve the minutes as printed. Councilman Hill seconded the motion, and the motion carried.

AYES: Councilmen Chase, Williams, Hill, Higgins, Southward, Councilwoman Moore, and Mayor Archibald.

NAYS: None

CONSENT AGENDA

Councilman Chase asked if a member of the Abilene Bar Texas Criminal Defense Lawyer Association was present to request that item 3.6 be considered separately. No one from the Association was present and item 3.6 was not removed from the consent agenda.

3.0 Councilman Williams made a motion to approve consent agenda items 3.1 through 3.3, first reading of items 3.4 and 3.5, second and final reading of item 3.6, and item 3.7 as recommended by staff. Councilman Southward seconded the motion, and the motion carried.

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AYES: Councilmen Chase, Williams, Hill, Higgins, Southward, Councilwoman Moore, and Mayor Archibald.

NAYS: None

Resolutions:

- 3.1 Oral Resolution accepting Certification of Unopposed Candidates and approving an Order Canceling the May 7, 2005 General Election and declaring the unopposed candidates elected to office.
- 3.2 Oral Resolution authorizing the City Manager to sign the contract with Texas Trane of Lubbock, TX in the amount of \$42,500 for labor and an estimated \$6,000 for parts for Chiller overhaul at the Law Enforcement Center.
- 3.3 Resolution authorizing a contract amendment for the City's Solid Waste Disposal at the Abilene Landfill.

The Resolution is numbered **7-2005** and captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AMENDING THE LANDFILL AGREEMENT.

Ordinances:

- 3.4 Ordinance amending Chapter 32, Utilities, Article VI, Water Conservation Plan (Drought Contingency Plan), Division 2, Water Conservation Plan Procedures by adding 32-146, Target Water Use Goals and set a public hearing for April 14, 2005 at 8:30 a.m..

AN ORDINANCE AMENDING CHAPTER 32, UTILITIES, ARTICLE VI, WATER CONSERVATION PLAN, DIVISION 2, WATER CONSERVATION PLAN PROCEDURES OF THE CITY OF ABILENE MUNICIPAL CODE, BY ADDING CERTAIN SECTION AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENFORCEMENT; AND CALLING FOR A PUBLIC HEARING.

- 3.5 **TC-2005-1** – Thoroughfare abandonment of the east one foot of a north - south alley and the north one foot of South 4th Street right-of-way, property located at 342 Palm; and set a public hearing for April 14, 2005 at 8:30 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.

- 3.6 Ordinance amending Chapter 27, Refuse, Article II, Receptacles, Sec. 27-21. (Unauthorized Removal), to allow law enforcement officials to gather evidence from city receptacles.

The Ordinance is numbered **6-2005** and captioned as follows:

AN ORDINANCE AMENDING CHAPTER 27, REFUSE, ARTICLE II, RECEPTACLES, OF THE CITY OF ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTION AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE, DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

Bid Award:

- 3.7 **Bid #CB-5042** – 3200 feet of 20 inch diameter purple colored C905 PVC Water Pipe. The bid was awarded to Morrison Supply Co., Abilene, TX in the amount of \$82,144.00.

REGULAR AGENDA

4.1 An ordinance considered for a public hearing and discussion to amend sections 23-306.4 (Permitted Uses), 23-306.5B (Accessory and Incidental Use), and 23-363 (Definitions) of the City of Abilene Zoning Ordinance regarding the placement and screening of Freight Containers; and set a public hearing for April 14, 2005 at 8:30 a.m.

Mayor Archibald stated item 4.1 is scheduled today for a public hearing only with no Council action to be taken. The item will be brought before Council at the April 14, 2005 meeting for another public hearing, the second and final reading of the ordinance and Council action.

Jon James, Director of Planning & Development Services briefed the Council on an ordinance amendment regarding the regulation of placement and screening of freight containers in the City of Abilene. Mr. James noted the proposal provides a recommendation for the definition of freight containers, not to include trucks, trailers, or rail cars. Mr. James stated the staff recommended ordinance would permit freight containers only in HI (Heavy Industrial), LI (Light Industrial), and HC (Heavy Commercial) zoning districts, and also requires opaque screening (fencing, masonry walls, berms, and/or landscaping) of equal or greater height from any street right-of-way, or other properties zoned differently than HI, LI, or HC. Mr. James further stated the ordinance would require a building permit for a freight container and they must meet all building and development regulations. Mr. James noted if used for storage only, the freight container would be considered a “temporary structure” regardless of the length of time it is in use and that a building permit shall be obtained for each container and each shall meet all building and development regulations. Mr. James noted staff surveyed the ten pier cities and Amarillo on their requirements for freight containers and the results were as follows:

- five (5) regulate as buildings
- three (3) regulate as outdoor storage
- one (1) prohibits freight containers (except on construction sites)
- two (2) have no regulations

Staff recommends that freight containers not be allowed in the GC (General Commercial) zoning district, but if allowed should only be allowed in the rear and fully screened, as recommended by the Planning and Zoning Commission.

Council and staff discussion included: 1) screening from public right-of-way; 2) six month on-site requirements; 3) the percentage of lot areas that could be used for outdoor storage; 4) who would be affected if GC (General Commercial) zoning is allowed; 5) calculating an area (i.e., Academy) to determine how many freight containers could be placed using a 10% rule; 6) explanation of how 10% rule would be calculated; 7) the difference between temporary versus outdoor storage; 8) temporary storage being treated as a building (under temporary building requirements); 9) outdoor storage not being treated as a building (exempt from all building codes); 10) what rules will apply to what structures; 11) the definition of “temporary” and “permanent” structure would have to be known to be understood; 12) requested matrix will be more simple now due to the temporary structure recommendation change; 13) wording on Exhibit A sub-part (d) of the proposed ordinance confusing if the definition of “temporary structure” is not known; 14) temporary structures permit requirements; 15) the possibility of listing on Exhibit A of the ordinance after sub-part (d) what temporary structures are (the concern if building codes change the possibility of overlooking the change being made to the zoning ordinance); 16) outdoor storage requirements needing revision if electricity is added to the structures; 17) most of the requirements having been eliminated since the last Council meeting; 18) the length of required permits being annual or for life; 19) separate classes of permits probably expiring annually; 20) permit fee being \$50.00 per year per freight container; 21) the need to inspect freight containers for proper location, proper tie down, and to assure storage use only; 22) screening and height requirements in HI (Heavy Industrial); 23) both Building Inspection and the Code Enforcement Division being responsible for the inspections, with the majority of the inspections being done by Building Inspection; 24) the specifics for freight containers and sea containers; 25) freight containers being considered a temporary structure under the revised recommendations even if they have electricity and are tied down, and; 26) no permit fee for outdoor storage but may have screening requirements.

Following Council and staff discussion Mayor Archibald opened the public hearing and the following individuals addressed the Council:

- Robert Campbell – Abilene resident. Mr. Campbell stated he buys and sells sea containers and feels the City is overdoing the restrictions on the containers. Mr. Campbell addressed various issues dealing with the containers including safety and aesthetic issues, fire safety, rodents in containers, and fencing. Mr. Campbell further stated he feels the containers need to be categorized as outdoor storage and not have limitations placed on them.
- Steve Sitzes – Owner of Abilene Portable Buildings. Mr. Sites stated he is not against shipping containers, but feels once they are set on site they should be considered storage. Mr. Sitzes reviewed what has to be done to sell freight containers and wants to be allowed to operate by the same rules as the freight containers. Mr. Sitzes further stated if the freight containers have no regulations then he can't compete with them in selling his portable buildings.
- Ed Rush – Walmart Supercenter. Mr. Rush explained what the Walmart Supercenter uses the freight containers for, the feasibility of the containers and how Walmart had worked with the City to comply with the ordinance. Mr. Rush stated

screening could possibly look worse than the container itself and noted how containers could be matched with the buildings.

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

Council and staff discussion included: 1) staff explaining under the definition of “temporary structure”, the requirements that would have to be met (i.e. tie down, electricity) and that there are some provisions to eliminate the tie down restrictions; 2) the difference in requirements for freight containers used as storage versus portable buildings; 3) the ease of meeting requirements if a site plan exists, but if there is no site plan then the process being expensive and time consuming; 4) leveling the playing field by treating freight containers as portable buildings, which was staff’s original recommendation; 5) the two primary issues being compliance with building codes and aesthetics; 6) aesthetic issues (screening versus painting the freight containers and set back requirements), and; 7) staff requested Council’s clear direction in their proceeding with the proposals for the ordinance amendments.

Following discussion Mayor Archibald stated no Council action is required on this item today but that another public hearing, final reading of the ordinance and Council action will be placed on the April 14th agenda.

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.

4.2 Jon James, Director of Planning and Development Services briefed the Council on an ordinance considered for a public hearing and discussion to amend sections 23-306.5.B & H (Accessory and Incidental Use), and 23-363 (Definitions) of the City of Abilene Zoning Ordinance regarding the regulation of Itinerant Businesses; and set a public hearing for April 14, 2005 at 8:30 a.m.

Mr. James stated the Planning and Development Services Department is proposing an ordinance amendment regarding the regulation of itinerant businesses in the City of Abilene, as well as providing a recommendation for the definition of itinerant business. Mr. James noted the recommended ordinance would also establish a permitting process for these businesses, provides location standards, requires property owner permission and addresses set back requirements as well as other changes based on Council discussion at the March 10th City Council meeting. Mr. James further stated there will be no additional permit fee for non-profit organizations registered with the City and a \$100.00 per permit fee for all other businesses or organizations will be implemented. In addition, non-profit organizations may receive a blanket annual permit for all itinerant sales with their annual registration with the City as a non-profit organization. Staff and the Planning and Zoning Commission recommend approval of the ordinance amendments.

Council and staff discussion included: 1) staff noting that non-profits will be required to obtain written permission from store owner to sell items on their property; 2) the selling or

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prohibiting the selling of items in the City's right-of-ways, and the need to be fair to all; 3) selling of items in the right-of-ways being a violation of the City's current ordinance; 4) peoples rights issues (i.e., newspaper sales and solicitation by the homeless) versus the sale of items (i.e., purses and etc.) and private property owners rights, and; 5) concerns that the ordinance requirements will result in people moving from private property to the right-of-ways to conduct their business.

Following Council and staff discussion Mayor Archibald opened the public hearing and the following individuals addressed the Council:

- Joseph Gullick – Mr. Gullick stated he is concerned as a business manager in the Southwest Drive area with what is happening in the area and stated he will support the ordinance if that is what would be needed to keep people off of their parking lots and from soliciting in the area. Mr. Gullick questioned what structures the ordinance applies to (specifically snow cone stands).

Sharon Hicks, City Attorney explained under the definition it states that this ordinance does not apply to a structure for which a temporary permit has been obtained and snow cone stands would come under the temporary status.

There being no one else present and desiring to be heard the public hearing was closed. Mayor Archibald noted another public hearing, final reading of the ordinance and Council action on this item will be placed on the April 14th agenda.

No Council action required.

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.

4.3 Jon James, Director of Planning & Development Services briefed the Council on an ordinance considered for a public hearing and discussion to amend Section 23-356.2 (Board of Adjustment), of the Zoning Ordinance regarding approval standards for the Board of Adjustment; and set a public hearing for April 14, 2005 at 8:30 a.m.

Mr. James stated the Planning and Development Services Department is proposing an ordinance amendment regarding the Board of Adjustment. Mr. James noted specifically the amendment alters the criteria required to approve variances and special exceptions and requires the Board to make written findings of fact on their cases. Mr. James further stated previously there were 8 criteria for a variance and 5 for a special exception, with the proposed ordinance reducing each of those to 3 criteria that strictly conforms to the provisions of Section 211.008 of the Local Government Code. Staff discussed the proposed changes with the Board of Adjustment at their February 2004 meeting and although no vote was taken by the Board the consensus was in support of the proposed changes. Staff and the Planning and Zoning Commission recommend approval.

Mayor Archibald opened the public hearing and there being no one present and desiring to be heard the public hearing was closed.

No Council action required. This item will be placed on the Council's April 14th Agenda for second reading of the ordinance, public hearing and Council action.

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.

4.4 Tommy O'Brien, Director of Water Utilities briefed the Council on a resolution affirming the City Water Management Plan and approving the summary of the Water Management Plan to submit to TCEQ.

Mr. O'Brien stated water systems holding surface water rights in excess of 1,000 acre-feet per year must maintain and submit to the Texas Commission on Environmental Quality (TCEQ) a current Water Conservation Plan. Mr. O'Brien noted the purpose of the Water Conservation Plan (WCP) is to: 1) promote the wise and responsible use of water by implementing programs that result in quantifiable water conservation results; 2) develop, maintain, and enforce water conservation policies, and; 3) support public education programs that educate customers about water and wastewater facilities operations, water quantity and quality, and water conservation. Mr. O'Brien further noted Abilene's Water Management Plan, in Section VII Water Conservation, addresses past TCEQ requirements for a WCP and the requirements for water conservation planning are found in the Texas Administrative Code (TAC) Chapter 288, Subchapter A. Mr. O'Brien stated the Water Management Plan was originally adopted in 1986, revised in 1996, and last amended in 2001. Mr. O'Brien further stated in October 2004, the TAC was amended to require public water systems similar to Abilene to update their WCP to include specific five and ten-year goals for water use reduction. Mr. O'Brien noted the water use reduction goals are based on current utility profile data collected and analyzed as a part of the WCP review process. The updated WCP, complete with updated utility profile information and water use reduction goals, must be adopted by the public water system's governing body and be received by the TCEQ on or before May 1, 2005. Mr. O'Brien stated the City's Water Management plan is being revised to provide current utility data and to outline five and ten year conservation goals for municipal use in gallons per capita per day for Abilene users as well as Abilene's wholesale users and the proposed revisions to Abilene's WCP will meet the new TAC requirements. Staff recommends approval of the proposed resolution to: 1) affirm previous City Council approval of the original Water Management Plan as updated and amended through 2001, and; 2) to approve Exhibit A (titled "City of Abilene Water Conservation Plan Summary"), which incorporates current utility data and addresses the current TCEQ requirements for an acceptable Water Conservation Plan.

Council and staff discussion included: 1) Council's request that a complete updated Water Plan book be submitted to Council; 2) staff's explanation of the significance of the small goals addressed in the plan; 3) concerns with Council being asked to "reaffirm" this plan that appears to

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be contradictory to current water rationing; 4) staff's explanation of the State Water Conservation Plan and the Drought Contingency Plan, which is referred to by the City as the Water Conservation Plan; 5) staff will present to Council new issues and a full analysis at a later date, and; 6) noting that approving reaffirmation will not waive or modify Council's discretionary rights.

Following Council and staff discussion Councilman Chase made a motion to approve the written resolution affirming prior Council acceptance of the City's Water Management Plan and approving the summary of the Water Management Plan to meet the Texas Administration Code and Texas Commission on Environmental Quality requirements, but acknowledge that Council has discretion over the Plan and its implementation that is and can be more restrictive than the Water Management Plan reaffirmed by Council today and that the discretion is not being waived by this reaffirmation. Councilman Hill seconded the motion, and the motion carried.

AYES: Councilmen Chase, Williams, Hill, Higgins, Southward, Councilwoman Moore, and Mayor Archibald.

NAYS: None

The Resolution is numbered **8-2005** and captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AFFIRMING THE CITY'S WATER MANAGEMENT PLAN AS UPDATED AND AMENDED, APPROVING NEW AMENDMENTS TO THE PLAN AND ESTABLISHING AN EFFECTIVE DATE.

Council recessed for a break at 10:55 a.m.

Council reconvened at 11:00 a.m.

4.5 A. David Wright, Director of Finance presented to Council the Financial and Investment Policies and FY 2004 Financial Report. Mr. Wright introduced Becky Roberts with Davis, Kinard & Co., P.C. who assisted him with the presentations.

Mr. Wright briefed the Council on the new accounting standards GASB 34 passed by the Governmental Accounting Standards Board a couple of years ago. Mr. Wright noted these standards totally reformatted the City's entire audit report and the presentation of the audit information.

Mr. Wright then reviewed with Council the Statement of Net Assets as of 9-30-04 and the governmental and business-type activities as follows:

Governmental Activities

- General Fund
- Special Revenue Funds
- Debt Service Funds

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- Capital Projects
- Internal Service Funds

Business-Type Activities

- Water & Sewer Funds
- Solid Waste Services Fund
- Stormwater Services Fund
- Transit
- Internal Service Funds

Mr. Wright also reviewed the General Fund Balance Sheet, Revenues and Expenditures (Adjusted Revised Budget versus Actual Budget Basis), approved 2003-2004 Revised Budget and Revised Budget with Adjustments, Water and Sewer Fund Revenues and Expenditures, and the Self-Insurance Fund Balance Sheet. Mr. Wright commented that a workshop on Self-Insurance would be held at a later date. Mr. Wright noted under the General Fund staff's recommendation is to allow the 2004 surplus (\$175,924) to go into the Fund Balance.

Mr. Wright then briefed the Council on the history of the Equipment Replacement Fund which included the assets, liabilities and fund balances. Mr. Wright noted that the unrestricted balance is about \$5.7 million. This exceeds the \$5.2 million projected two years ago when the City began the lease financing program. A workshop on the financing program will be held at a later date.

Mr. Wright encouraged Council to read the following information provided by Davis, Kinard & Co.

- Transmittal Letter
- Financial Policy
- Investment Policy
- Management Discussion & Analysis
- Capital Projects
- Water & Sewer Capital Projects
- Overall Audit Opinion
- Advisory Comments

Mr. Wright stated the auditors, Davis, Kinard & Co., P.C., have issued their advisory comments for fiscal year ending September 30, 2004. The firm issues the letter on areas they believe should be reviewed or those that have been implemented based on previous year comments. Ms. Roberts then presented the auditors current year comments which included the Accounting Procedures and Detail Property Records information and the Prior Year Comments which addressed the new GASB Pronouncement on Financial Statement Reporting information. Mayor Archibald requested that Davis, Kinard & Co., P.C. report back to the Council, Mr. Gilley and Mr. Wright during the year as the auditors recommended processes and procedures are implemented by staff.

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Council and staff discussion included: 1) cost of recommended capital asset system; 2) changing of all systems would result in a cost of several million dollars; 3) a fully integrated system is at least one year away; 4) the need to upgrade the current payroll software to get through this calendar year, and; 5) not relying on Central Appraisal District building values since they are not kept current due to the tax-exempt status of the property. Should the City want to sell property, appraisals would be obtained at that time.

Mr. Wright noted that at a later date he would like to come back to Council with the financial policies for the Council to review and update as necessary.

Following Council and staff discussion Councilman Higgins made a motion to accept the FY 2004 Financial Report and approve the current Financial and Investment Policies. Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Williams, Hill, Higgins, Southward, Councilwoman Moore, and Mayor Archibald.

NAYS: None

4.5 B. David Wright, Director of Finance briefed the Council on the FY 2005 Financial Status.

Mr. Wright explained changes in the city organization that impacts, for comparison purposes, this year and last year's summary of revenue and expenditures as of February 28, 2005. Mr. Wright noted the "Modified Budget" as shown on the report under this years information is not the original budget adopted by the Council, but reflects changes due to the current re-organization of the City's Code Enhancement Division. Mr. Wright reviewed the revenue percentages, the fund balance information and the expenditure percentages. Mr. Wright stated in March the Council would receive a new report with more details, modifications and itemized Information.

Mr. Wright reviewed each of the following by category:

- General Fund FY 2004-2005
- Property Tax Collections FY 2004-2005 (includes Debt Service)
- Sales Tax Comparison
- Comparison of Revenues % of Budget Recognized FY 04 vs. FY 05
- Comparison of Expenses % of Budget Spent FY 04 vs FY 05
- Summary of Revenue and Expenditures for Budget FY 2005 as of February 28, 2005

Mr. Wright reviewed the Water Utility Summary of Revenue and Expenditures as of February 28, 2005 noting during budget sessions Council will be looking at various water related issues including the capital program.

No Council action required.

Councilman Hill left the meeting before Executive Session.

EXECUTIVE SESSION

Mayor Archibald recessed the Council into Executive Session pursuant to Sections 551.071, 551.074, and 551.072 of the Open Meetings Act, to seek the advice of the City Attorney with respect to pending and contemplated litigation, to consider the appointment and evaluation of public officers, and to consider the purchase, exchange, lease or value of real property.

Councilman Williams left the meeting during Executive Session.

REGULAR SESSION

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

5.4 No action taken was taken on the appointment to the Frontier *Texas!* Board.

There being no further business, the meeting was adjourned at 12:35 p.m.

Jo Moore
City Secretary

Norm Archibald
Mayor