

CITY COUNCIL MEETING
May 12, 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 May 12, 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.

Mayor Archibald introduced Jimmy Pruitt pastor of Morning Star Church who gave the invocation.

Mayor Archibald introduced Paige Garza a 5th grade student from Ortiz Elementary who led the Pledge of Allegiance. Paige's principal Karen Munoz was also present.

PROCLAMATIONS

Mayor Archibald presented the following proclamations:

- "National Public Works Week" May 15th – 21st – Bob Lindley.
- "Say-So Week" May 22nd – 28th – Alice Beard.
- "Older Americans Act Month" for the month of May – Gail Kiser, West Central Texas Council of Governments.

Mayor Archibald recognized Wendell Avasado City Administrator for Davao City, Phillipines. Mr. Avasado expressed his appreciation for the opportunity to be at today's Council meeting.

PRESENTATIONS

Mayor Archibald introduced Diane Dotson of the Regional Crime Victims Crisis Center.

Ms. Dotson briefed the Council on the Regional Crime Victims Crisis Center by reviewing the goals, history, the center's staff, the Board of Directors, the volunteers, the need for the Center's services, their support for Law Enforcement, volunteer training, cost and funding, victims assisted, secondary victims/children, and the center's funding request for FY 05/06.

No Council action was required.

Mayor Archibald stated the Secretary of Defense will announce the BRAC recommendations (base closing list) Friday May 13th. The Mayor further stated a press conference will be held in the Council Chambers at City Hall on Friday, May 13th at 2:00 p.m. to address the BRAC recommendations concerning Dyess Air Force Base. Those expected to attend include Congressman Randy Neugebauer, Mayor Norm Archibald, County Judge George Newman, Celia Davis, Chair of the Military Affairs Committee, and numerous civic leaders.

SPECIAL CONSIDERATIONS – 2005 CITY GENERAL ELECTION

Jo Moore, City Secretary, briefed the Council on the City's General Election that was ordered for May 7, 2005 for the purpose of electing the Mayor and Councilmembers to Council Place 3 and Council Place 4. Ms. Moore stated State election law allows in the event there is no proposition on the ballot, when no person declares as a write-in candidate and when each candidate on the ballot is unopposed then the City Council can by order declare the candidates elected to office and cancel the election. On March 24, 2005 Council did approve an order canceling the City's General Election and declared Norm Archibald elected to the office of Mayor, Anthony Williams elected to Council Place 3 and John Hill to Council Place 4. The Certificates of Election have been issued to Mayor Archibald, and to Councilmen Williams and Hill.

No Council action was required.

Ms. Moore presented to the Mayor and each member of the City Council their annual paycheck of one (\$1.00) dollar; then administered the Oaths of Office to Norm Archibald, Mayor, Anthony Williams, Council Place 3, and John Hill, Council Place 4.

DISPOSITION OF MINUTES

2.0 There being no corrections, additions, or deletions to the April 21, 2005 Special Council Meeting or to the April 28, 2005 Regular Council Meeting Minutes Councilman Southward made a motion to approve the minutes as printed. Councilman Williams seconded the motion, and the motion carried.

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

NAYS: None

CONSENT AGENDA

3.0 Councilwoman Moore made a motion to approve consent agenda items 3.1 through 3.5, and first reading of items 3.6 through 3.8 as recommended by staff. Councilman Higgins seconded the motion, and the motion carried.

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

NAYS: None

Resolutions:

3.1 Oral Resolution approving Payroll System upgrade with Hewitt-Cyborg and the report writer software upgrade with Datatron.

3.2 Oral Resolution authorizing the City Manager to execute a lease with the FAA for the Airport Traffic Control Tower and Terminal Radar Control Facility (TRACON).

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- 3.3 Oral Resolution ratifying a contract with Sabre, Inc. of Southlake, Texas, for consulting services to update the Abilene Air Service Study market analysis and carrier route analysis.
- 3.4 Resolution relating to a public hearing and approving a financing by the Stamford Higher Education Facilities Corporation for the benefit of Abilene Christian University and related matters.

The Resolution is numbered **11-2005** and captioned as follows:

RESOLUTION RELATING TO A PUBLIC HEARING AND APPROVING A FINANCING BY THE STAMFORD HIGHER EDUCATION FACILITIES CORPORATION FOR THE BENEFIT OF ABILENE CHRISTIAN UNIVERSITY AND RELATED MATTERS.

- 3.5 A. Approve a Resolution Directing Publication of Notice of Intention to Issue Combination Tax and Revenue Certificates of Obligation, Series 2005.

The Resolution is numbered **12-2005** and captioned as follows:

DIRECTING PUBLICATION OF NOTICE OF INTENTION TO ISSUE COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2005.

- 3.5 B. Approve a Resolution Directing Publication of Notice of Intention to Issue Combination Tax and Waterworks and Sewer System Revenue Certificates of Obligation, Series 2005.

The Resolution is numbered **13-2005** and captioned as follows:

DIRECTING PUBLICATION OF NOTICE OF INTENTION TO ISSUE COMBINATION TAX AND WATERWORKS AND SEWER SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2005.

Ordinances:

- 3.6 **Z-2005-13** – Ordinance to amend PDD-91 as follows, property located at I-20 and Hwy 351; and set a public hearing for May 26, 2005 at 8:30 a.m.
 - A. Amendment to add an additional 0.93 acre tract to the PDD (Planned Development District) zoning district.
 - B. Amendment to revise the sign requirements in the PDD (Planned Development District) zoning district (pending appeal).

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING", OF THE ABILENE MUNICIPAL CODE, CONCERNING PDD-91 AND ORDINANCE NO. 20-2004 A PLANNED DEVELOPMENT DISTRICT;

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CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.7 **Z-2005-15** – Rezone a 19 acre tract and a 2.85 acre tract from RS-6 (Residential Single-family) and HO (Historic Overlay) to PDH (Planned Development Historic District) zoning district, property located in the 2400 block of Old Anson Road; and set a public hearing for May 26, 2005 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, “ZONING”, OF THE ABILENE MUNICIPAL CODE, CONCERNING PDH-97 PLANNED DEVELOPMENT HISTORIC DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.8 **Z-2005-16** – Rezone a 1 acre tract from RS-8 (Residential Single-family) and AO (Agriculture Open Space) to RM-3 (Residential Multi-family) zoning district, property located at 6102 Buffalo Gap Road; and set a public hearing for May 26, 2005 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, “ZONING”, OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

Mayor Archibald noted the Retired Firefighter’s Association presentation would be given at approximately 10:00 a.m.

REGULAR AGENDA

- 4.1 Councilman Hill made a motion to remove item 4.1 from the table to consider amending 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. Councilman Williams seconded the motion, and the motion carried.

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

NAYS: None

- 4.1 Jon James, Director of Planning & Development Services briefed the Council on an ordinance considered on second and final reading 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.

Mr. James stated the Planning and Development Services Department is proposing an ordinance amendment regarding the regulation of placement and screening of freight containers, as well as providing a recommendation for the definition of freight containers. Mr. James further stated the Planning and Zoning Commission recommended ordinance would permit freight containers only

in HI (Heavy Industrial), LI (Light Industrial), HC (Heavy Commercial), and GC (General Commercial) zoning districts. Mr. James noted the ordinance also requires screening in certain cases from street right-of-way and other zoning districts, and would also require a building permit for a freight container and they would be required to meet all building and development regulations. Mr. James further noted, if the freight container is used for storage only it would be considered a “temporary structure” regardless of time it is in use. Mr. James stated in April 2005, the City Council sent this issue back to the Planning and Zoning Commission for additional comment and recommendation. The Planning and Zoning Commission re-heard this item at their May 2, 2005 meeting. Mr. James further stated all elements of the ordinance remain the same as the Council draft of April 14, 2005, except as modified by the following:

- Regulating freight containers as structures under the building code, but classifying them as temporary structures regardless of the length of time in use on the property. With the exception that any ventilation requirements would continue to apply and that building separation requirements would not apply between individual containers.
- Continue to regulate portable buildings as structures under the building code with no changes.
- Do not require screening from the right-of-way in industrial districts. No stacking of containers. Unscreened containers on a site should all be the same solid color with no signs, logos, or other markings. Required screening should be accomplished with landscaping rather than fences or walls.

Mr. James noted Council has reviewed Abilene’s ten comparative cities plus Amarillo’s regulations on this issue as well as the following options:

Options for Regulation of Freight Containers

	Permanent Structure	Temporary Structure	Outdoor Storage*
Building Code Requirements	Yes	Yes	No
Permit Required	Yes	Yes	No
Foundation Required	Only if greater than 400 sf or 10 ft height	No	No
Accessible	Yes	No	No
Ventilation Required	Yes	Yes	No
Lighting Required	Yes	No	No
Electric Required	No	No	No
Tiedown or other electrical safety mechanism required	Only if connected to electricity	Only if connected to electricity	Only if connected to electricity
Wind Load Requirements	Yes	No	No
Minimum Building Separation	Yes	Yes (not between containers)	No
Can Locate in Floodplain	Yes, with restrictions	Yes, with restrictions	Yes
Setbacks	Bldg Setbacks	Bldg Setbacks	Storage Setbacks (typically less)
Screening	Yes	Yes	Yes
Zoning Districts	Heavy Industrial, Light Industrial, and Heavy Commercial. P&Z also recommends General Commercial		

* Treating Freight Containers as outdoor storage would require additional ordinance changes. What is reflected on this chart is based on preliminary review of other communities that regulate freight containers as storage.
 Note: Portable buildings are currently regulated as either a Permanent Structure (if present greater than 6 months) or a Temporary Structure (if present less than 6 months).

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Staff recommends approval of the revised ordinance as recommended by the Planning and Zoning Commission, with the exception of excluding freight containers from the GC (General Commercial) zoning district. Mr. James noted the proposed ordinance before Council is as recommended by the Planning and Zoning Commission and should include the provision for “no stacking of containers”. That provision was inadvertently left out of the ordinance and would be included if Council approves it.

Council and staff discussion included: 1) the proposed ordinance focusing on freight containers only and not portable buildings; 2) ventilation issues, including their definition, importance and requirements; 3) controlling the number of freight containers in GC (General Commercial) zoning district, if approved to be in GC districts; 4) issues concerning freight containers being used as trash containers and for storage of old tires; 5) options for areas where screening by landscaping is not possible or greenery is not appropriate; 6) requiring only one permit for a freight container when it is removed and then replaced with another, if shown on original site plan; 7) painting of freight containers issues; 8) freight containers placed in an area for longer than 6 months being considered a permanent structure; 9) 10 pier cities survey and questions concerning having surveyed Amarillo; 10) freight containers location and set back requirements in various zoning districts; 11) permits involving other temporary structures; 12) provisions for temporary buildings (i.e., snow cone stands allowed to be in a location six months out of twelve months); 13) one time permit fee of \$50.00 if freight container is considered a permanent structure versus a \$50.00 permit fee for each container if the freight container is considered a temporary structure; 14) staff not knowing of any case where an individual has been trapped in a freight container; 15) possibly adding a provision to the proposed ordinance that would state “Unscreened freight containers on a site should be same color, containers should not have signs, logos or other markings visible from the right-of-way, other than small incidental labeling”; 16) concerns on restricting freight containers from an area if not compatible for landscaping; 17) consider options for landscaping or opaque fencing 6’ in height; 18) the time frame that a temporary structure versus a permanent structure could be located on the property not being addressed in the proposed ordinance but is addressed in the building code; 19) addressing needed additions (i.e., alternative screening) to the proposed ordinance before Council approves; 20) preference for applicant’s to make a case to the Site Plan Committee to allow for special exceptions with process allowing applicants to appeal staff’s decision; 21) staff noting the Planning and Zoning Commission recommendations for spacing between trees or hedges is reasonable, and; 22) staff reiterated an amendment to the proposed ordinance concerning the location time frame that distinguishes a temporary structure from a permanent structure is not necessary since it is addressed in the Building Code.

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

Councilman Hill stated he would move to approve the amendments to the Zoning Ordinance regarding the placement and screening of Freight Containers as recommended by the Planning & Zoning Commission but noted his preference for friendly amendments to the ordinance. Councilman Hill’s amendments included: 1) concerning screening of the containers that landscaping be utilized first but in the event landscaping is not practical or appropriate then a minimum of seven feet height opaque fencing material be required; 2) in GC districts the freight containers be in the same color

scheme that matches the primary structure color, and; 3) containers shall not be stacked (as recommended by the P&Z).

Council and staff discussed various aspects of Councilman Hill's motion including: 1) leaving ventilation requirements as recommended by the P&Z; 2) containers shall not have signs, logos, or other markings, other than small, incidental labeling, visible from the right-of-way or visible from adjacent properties with lesser intensive districts, and; 3) where landscaping would not be practical or appropriate then alternative screening of an opaque material requests may be submitted to the Site Plan Committee for approval.

Following Council and staff's discussion and consensus on the proposed ordinance and amendments Council recommended either the item be tabled until the next Council meeting in order to give staff time to prepare the ordinance as discussed and revised by Council or for staff to make the revisions and then bring them back to Council today following Council's consideration of the remaining agenda items.

Staff stated the revisions could be made today and Councilman Hill withdrew his motion to allow for consideration of those revisions.

Mayor Archibald stated in order to allow staff time to prepare the revisions Council would consider the final revisions to the proposed ordinance following the Executive Session.

Council recessed for a break at 10:20 a.m. and reconvened at 10:30 a.m.

Mayor Archibald stated the next item is a presentation only from the Retired Firefighter's Association and is not a public hearing and no action is required by Council.

Mr. Melvin Sanders, spokesperson for the Retired Firefighters addressed the Council stating over the years the City's share of contributions to the Firemen's Relief and Retirement Fund has been below what it has been for other city employees (Texas Municipal Retirement System) and that the retired firefighters are requesting fair/equal treatment and an increase in contributions to their retirement fund. Mr. Sanders reviewed what retirees currently receive, their net income and addressed retirees prescription drug and insurance costs. Mr. Sanders provided various statistical information and percentage comparisons. Mr. Sanders thanked the Council on behalf of the Retired Firefighters for allowing today's presentation.

Mayor Archibald noted Council will be considering the City's budget in sessions to begin in July and this as well as other issues will be part of the budget process. The Mayor stated appreciation to Mr. Sanders and the retired firefighters for their presentation.

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.

REGULAR SESSION

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

5.4 Councilman Williams made a motion to elect Councilman Southward as Mayor Pro Tempore and Councilman Chase as Deputy Mayor Pro Tempore. Councilman Hill seconded the motion and the motion carried.

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

NAYS: None

5.5 Mayor Archibald stated the appointments to the Bond Election Committee have been postponed until the May 26th Council Meeting.

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

Mayor Archibald stated due to his having a prior commitment in the City of Cisco Mayor Pro Tempore Southward would be presiding over the remainder of the Council meeting. Mayor Archibald left the meeting.

4.1 Mayor Pro Tempore Southward stated Council would resume discussion on item 4.1 and asked Jon James, Director of Planning and Development Services to brief the Council on the revised ordinance regarding freight containers. Mr. James distributed and reviewed the revised ordinance as discussed by Council.

Councilman Williams left the meeting.

Following further Council review and revisions to the proposed ordinance Councilman Hill made a motion to approve the ordinance considered on second and final reading 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 as approved by the Planning & Zoning Commission and amended by the City Council, as outlined below. Councilman Higgins seconded the motion, and the motion carried.

AYES: Councilmen Chase, Hill, Higgins, Councilwoman Moore, and Mayor Pro Tempore Southward.

NAYS: None

The Ordinance is numbered **21-2005** and 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.

Exhibit A

Amend Section 23-363 DEFINITIONS

ADD to Definitions Section:

Freight Containers

Any structure or storage receptacle designed or built to be generally intended for the shipment or transportation of products or goods; however, shall not include trucks, trailers, or rail cars.

ADD: Section 23-306.4

Freight Containers as a "C" Conditional Use in HI, LI, HC, and GC zoning districts.

ADD: Section 23-306.5.B ACCESSORY AND INCIDENTAL USE

(26) Freight Containers

- (a) Freight Containers in Commercial districts shall be screened from the public right-of-way, except alleys.
- (b) Freight Containers in any district shall be screened from adjacent properties with zoning designations other than HI, LI, HC, and GC.
- (c) Screening, as required in (a) and (b) above, shall be accomplished through the use of landscaping as indicated below:
 - (1) A continuous hedge with a mature height of at least five feet achieved within one year, and
 - (2) Trees with a mature height of at least ten feet spaced at twenty-foot intervals.
- (d) Alternative screening of a minimum seven feet height of an opaque material consisting of wood fencing and/or masonry walls may be approved by the Site Plan Committee where landscaping would be not be practical or appropriate.**
- (e) In HC or GC districts, freight containers shall be located in the rear of the main structure and shall be a solid color to match the dominant color of the principal structure.**
- (f) Freight containers shall not have signs, logos, or other markings, other than small, incidental labeling, visible from the right-of-way or visible from adjacent properties with zoning designations other than HI, LI, HC, and GC.**
- (g) A building permit shall be obtained for each container and each shall meet all building and development regulations, with the exception that building separation requirements

shall apply to separation from freight containers to other structures, not between multiple freight containers.

- (h) Freight containers used only for storage shall meet the building requirements as a “temporary structure”, regardless of the length of time it is in use on the property, with the exception that any ventilation requirements that would apply to a permanent structure also apply to a permanently placed freight container.

- (i) Freight containers shall not be stacked.**

There being no further business, the meeting was adjourned at 11:55 a.m.

Jo Moore
City Secretary

Norm Archibald
Mayor