

CITY COUNCIL MEETING
August 24, 2006, 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 August 24, 2006, at 8:30 a.m. in the Council Chambers at 555 Walnut Street. Mayor Archibald was present and presiding with Councilmen Sam Chase, Joe Spano, Anthony Williams, Stormy Higgins, and Councilwomen Laura Moore and Celia Davis. Also present were City Manager Larry Gilley, City Attorney Sharon Hicks, City Secretary Jo Moore, and various members of the City staff.

Mayor Archibald gave the invocation.

Mayor Archibald introduced Taylor McLeod, a 5th grade student from Ortiz Elementary School, who led the Pledge of Allegiance. Shirley Dennis of Ortiz Elementary was also in attendance.

Councilwoman Davis stated her grandson, a 2nd grade student from Lampasas, Texas, sent "Flat Stanley" to visit her this week and that "Flat Stanley" is attending today's Council meeting to observe the Council deliberations.

DISPOSITION OF MINUTES

2.0 There being one correction, as submitted by City Secretary Jo Moore, and no additions or deletions to the minutes of the August 10, 2006 Regular Council Meeting Councilman Spano made a motion to approve the minutes as corrected. Councilman Williams seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Williams, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

CONSENT AGENDA

Councilman Chase requested that agenda item 3.8, "*Ordinance amending the "City of Abilene Sidewalk Master Plan" to add an appeal procedure; and set a public hearing for September 14, 2006 at 8: 30 a.m. "*", be removed from the Consent Agenda and considered separately.

Councilwoman Moore made a motion to approve consent agenda items 3.1 through 3.6, first reading of items 3.7 and 3.9 through 3.13, and items 3.14 through 3.17, as recommended by staff. Councilman Williams seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Williams, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

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Resolutions:

- 3.1 Oral Resolution authorizing the City Manager to execute URS Corporation Task Order 7, for Airport financial and planning services.
- 3.2 Oral Resolution authorizing the City Manager to accept a U.S. Department of Transportation Grant Offer and Agreement for a Small Community Air Service Development Program Grant.
- 3.3 Oral Resolution approving the Abilene-Taylor County 9-1-1 Emergency Communications District Revised FY 2006 and Proposed FY 2007 Budgets, contingent upon the 9-1-1 District Board's final approval of the budgets at its September 21, 2006 meeting.
- 3.4 Oral Resolution approving an Inter-local Agreement with Taylor County for Contracting the Purchase of Office Supplies and Furniture and designating the Purchasing Program Manager as the authorized contact representative.
- 3.5 Oral Resolution approving a fireworks display permit for Excitement Technologies Group (ETG), to be held at 2225 Oliver Jackson Boulevard located at Elmer Gray Stadium on September 9, 2006 at approximately 9:00 p.m.
- 3.6 Resolution accepting the Preserve America Grant and authorizing the City Manager to execute a Memorandum of Understanding with the Abilene Chamber of Commerce for the administration of the grant.

The Resolution is numbered **28-2006** and captioned as follows:

A RESOLUTION OF THE CITY OF ABILENE INDICATING A COMMITMENT TO THE PRESERVATION OF THE HERITAGE OF THE CITY OF ABILENE THROUGH THE ACCEPTANCE OF A PRESERVE AMERICA GRANT.

Ordinances:

- 3.7 Ordinance amending Section 23-260 of Chapter 23, Subpart D of the Abilene Municipal Code, Subdivision Regulations regarding the Adequate Public Facilities and Proportionality; and set a public hearing for September 14, 2006 at 8:30 a. m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT", SUBPART D, "SUBDIVISION REGULATIONS", 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.

- 3.8 **Removed from the Consent Agenda and considered separately:** Ordinance amending the "City of Abilene Sidewalk Master Plan" to add an appeal procedure; and set a public hearing for September 14, 2006 at 8: 30 a.m.

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AN ORDINANCE AMENDING THE “CITY OF ABILENE SIDEWALK MASTER PLAN”, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

- 3.9 **Z-2006-32** – Request to rezone property from RS-8/COR (Residential Single-family with Corridor Overlay) to LC/COR (Limited Commercial with Corridor Overlay), property located at 5909 Buffalo Gap Road; and set a public hearing for September 14, 2006 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.

- 3.10 **Appealed Item: Z-2006-33** – Request to rezone property from AO (Agricultural Open Space) to HC (Heavy Commercial) zoning, property located at 2549 Shirley Road; and set a public hearing for September 14, 2006 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.

- 3.11 **SNC-2006-01** – Request to change the name of “AISD Drive” to “Prof Bynum Way”, street located south of Luzon Street between S. Judge Ely Boulevard and Sunrise Avenue; and set a public hearing for September 14, 2006 at 8:30 a.m.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, FOR A STREET NAME CHANGE OF AISD DRIVE TO PROF BYNUM WAY, AS DESCRIBED BELOW AND CALLING A PUBLIC HEARING.

- 3.12 Ordinance amending Sections 23-303, 23-332, 23-344, 23-356, and 23-363 of the Zoning Ordinance regarding Historic Zoning Districts and the Landmarks Commission; and set a public hearing for September 14, 2006 at 8:30 a.m.

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

- 3.13 Ordinance amending Sections 23-306.4 and 23-306.5 of the Zoning Ordinance regarding tattoo parlors as a permitted use; and set a public hearing for September 14, 2006 at 8:30 a.m.

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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.

Bid Awards:

- 3.14 **Bid #CB-6071** – 10" water pipe for Water Department. The bid was awarded to Morrison Supply Company, Fort Worth, TX in the amount of \$28,416.00.
- 3.15 **Bid #CB-6073** – Lake Fort Phantom Miscellaneous Streets – Honey Bee and Mohegan. The bid was awarded to Bontke Bros. Construction Co., Abilene, TX in the amount of \$444,832.31.
- 3.16 **Bid #CB-6069** – CityLink Bus Farebox Revenue and Data Collection System. The bid was awarded to GFI Genfare in an amount not to exceed \$215,000.00.

Request for Proposal:

- 3.17 **RFP #CB-6070** – Online Auctioneer Service. The RFP was awarded to Rene Bates Auctioneers, Inc., McKinney, TX to charge for website auctions a fee of 5% of gross sales and on-site auctions for a charge of 8% of gross sales, and authorizes the City Manager to execute a three (3) year contract with the option to renew for two (2) additional one (1) year terms.

Item 3.8 Removed from the Consent Agenda and considered separately:

- 3.8 First Reading of an Ordinance amending the "City of Abilene Sidewalk Plan", and calling a public hearing for September 14, 2006.

The City of Abilene Sidewalk Master Plan adopted on August 10, 2006 includes a process for waivers of sidewalk requirements or deviations from the sidewalk standards, which must be approved by both the Planning Director and the City Engineer. At the direction of the City Council the proposed amendment to the Sidewalk Master Plan would provide an appeal to the City Council of a denial of a waiver or deviation. The proposed amendment states:

Amend the City of Abilene Sidewalk Master Plan by adding a new subsection F.3 in Section F. Exceptions & Waivers:

- a. A written appeal must be filed with the Planning Director within 10 days of the denial of the waiver or deviation.
- b. The appeal must provide justification for the requested waiver or deviations based on the criteria described in F.1. and F.2., above.
- c. The Council must make findings based on these criteria in order to approve a waiver or deviation.

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Councilman Chase stated the Council's agenda packet did not include sections F.1 and F.2 where the criteria is described, that the appeal providing justification for the requested waiver or deviations is based on, and that the amendment to the Plan is limited to allow only for technical appeals on technical grounds. Councilman Chase further stated that his intent in requesting the appeal to Council process was to include equitable appeals, not just technical appeals, and that the equitable appeal process be broad enough to include neighborhood associations, developers, etc.

Council and staff discussion included: 1) staff requesting clarification and input from Council on equitable appeal waivers and deviations; 2) Council noting the purpose of the amendment is not to generate a large number of appeals but to allow those situations, not related to technical issues, to be appealed to Council, and; 3) Council noting the ordinance before Council today is for first reading only and will be voted on following a public hearing at the Council's September 14, 2006 meeting.

Mayor Archibald requested the City Council provide input to the City Manager on the proposed amendment to the Sidewalk Master Plan prior to the September 14th Council meeting.

Councilman Chase made a motion to approve the first reading of the proposed Ordinance amending the "City of Abilene Sidewalk Master Plan" to add an appeal procedure; and set a public hearing for September 14, 2006 at 8: 30 a.m. Councilman Williams seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Williams, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

REGULAR AGENDA

4.1 A. Sharon Hicks, City Attorney briefed the Council on a Resolution calling for a November 7, 2006 Election to consider a Disabled or Senior (sixty-five (65) years of age or older) Tax Freeze, Providing for the Election Precincts and Locations of Polling Places, Early Voting; Providing for a Proclamation Notice and Publication of Notice of Election.

Ms. Hicks stated on September 13, 2003, Texas voters approved Proposition 13 which permits a county, city or junior college district to limit taxes for homeowners disabled or 65 years of age or older. Proposition 13 is now codified in the Texas Tax Code Section 11.261, and the law authorizes a City to call an election to allow the voters to decide whether to enact the tax freeze. The City of Abilene, Texas is authorized by law to hold such election on November 7, 2006 in conjunction with the state and county elections. A written Resolution has been prepared calling the election and providing for the ballot language to be as follows:

For or Against:

The City of Abilene establishing a limitation on the amount of ad valorem taxes imposed on the residential homestead of a person who is disabled or is sixty-five (65) years of age or older and receives a residential homestead exemption, as authorized by Article VIII, Section 1-b(h) of the Texas Constitution, formerly known as Proposition 13, now codified in Texas Tax Code Section 11.261.

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The proposed Resolution also sets the precincts and early voting places, provides for a proclamation notice and publication of the notice of the election. The City will share the cost of the election with the County. If passed, per information received by the Central Appraisal District, assuming 3% growth in the average home value, based on current projections, it is estimated that over the next five (5) years the average annual tax revenue loss would be \$206,000 or about ½ cent on the current tax rate.

Council and staff discussion included: 1) Mayor Archibald noted he had met with Chris Kyker, representative for the Texas Silver-Haired Legislature concerning the tax freeze issue and that Ms. Kyker had submitted a written statement on the issue; 2) Council questioned, if the tax freeze were approved by voters, what the impact would be to the \$15,000.00 exemption that seniors and disabled residents already receive and how the current and future budget would be impacted; 3) staff noting the \$15,000.00 is set by Council annually during the budget process and that a 15% exemption for homesteads is also allowed; 4) the tax freeze if approved would be a permanent freeze; 5) Council noting language is needed to clearly define the tax freeze issue and impact to all citizens; 6) Council noted the need for historical and current accurate data; 7) full disclosure of implications being needed in order to make projections and for voters to understand the impact; 8) the tax freeze resulting in a loss of tax revenue could range from \$200,000 to \$400,000; 9) staff noting Council could table the item until Monday, August 28th to allow staff to accumulate data in response to Council's questions and concerns, and; 10) if the election is not placed on the November 2006 ballot it could be called in conjunction with the May 2007 election.

Councilwoman Moore made a motion to table the Resolution calling for a November 7, 2006 Election to consider a Disabled or Senior (sixty-five (65) years of age or older) Tax Freeze, until the Special Called Council Meeting scheduled for Monday, August 28, 2006. Councilman Williams seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Williams, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

4.1 B. City Attorney Sharon Hicks, briefed the Council on a Resolution calling for a November 7, 2006 Election to allow the voters to recommend whether or not the Council should adopt an Ordinance to Ban Smoking in public places and places of employment; Providing for the Election Precincts and Locations of Polling Places, Early Voting; Providing for a Proclamation Notice and Publication of Notice of Election.

On January 22, 2004 the City Council held a public hearing regarding a proposed amendment to the City's Smoking Ordinance. After a lengthy hearing, the Council tabled the item. A report on the effects of secondhand smoke was released in June of this year by the U.S. Surgeon General which concluded that there is no safe level of exposure to secondhand smoke and the only way to adequately protect the general public from potentially deadly exposure is to ban smoking in most public places and places of employment. In light of these newest findings, states and cities are reviewing their smoking ordinances and the governmental entities' interest in protecting the public's health, safety, and welfare. There was discussion in 2004 about allowing the public to vote on the concept of a smoking ban in indoor and outdoor public places and places of employment. For a question

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concerning a smoking ban to be placed on the November 2006 ballot, the Council must decide to call an election not later than August 29th. The anticipated proposed ballot language reads as follows:

Do you support the City Council adopting an ordinance prohibiting smoking in public places and places of employment?

For

Against

If ordered, the City will share the cost of the November election with the County. Staff recommends the inclusion of a non-binding referendum regarding the banning of smoking in enclosed public places and outdoor public venues on the ballot for the November election.

Council and staff discussion included: 1) if a non-binding referendum were approved in November Council would then consider an ordinance outlining the specifics of the smoking ban. The ordinance would have two readings and a public hearing would be held (staff noted the public hearing would probably be held on the first reading to allow time for changes prior to the second reading and final decision); 2) Council noted some want a "binding" referendum, but the City Attorney is recommending the "non-binding" referendum (Ms. Hicks noted the basis for that recommendation), and; 3) various examples of areas where smoking would be banned and staff noted the intent of the referendum is to be all inclusive in banning smoking, with few exceptions.

Councilwoman Davis made a motion to approve the Resolution calling for a November 7, 2006 Election to allow the Voters to recommend whether or not the Council should adopt an Ordinance to Ban Smoking in public places and places of employment; Providing for the Election Precincts and Locations of Polling Places, Early Voting; Providing for a Proclamation Notice and Publication of Notice of Election, as recommended by staff. Councilman Higgins seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Williams, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

The Resolution is numbered **29-2006** and captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, ORDERING A SPECIAL ELECTION TO BE HELD IN SAID CITY ON NOVEMBER 7, 2006, FOR A NON-BINDING REFERENDUM FOR VOTER CONSIDERATION OF BANNING SMOKING IN PUBLIC PLACES IN THE CITY OF ABILENE TEXAS; AND PROVIDING FOR A PROCLAMATION NOTICE AND PUBLICATION OF NOTICE OF SAID ELECTION.

4.1 C. City Attorney Sharon Hicks, briefed the Council on an Ordinance considered on first reading calling for a November 7, 2006 Election to amend the Charter of the City of Abilene; Providing for the Election Precincts and Locations of Polling Places, Early Voting; Providing for a Proclamation Notice and Publication of Notice of the Election.

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The Charter was last amended in 1997 and since that time there have been state law changes that make certain sections invalid. Because the City is considering calling a special election to consider a disabled and senior tax freeze and will be conducting a Special Election on November 7, 2006 to consider a non-binding smoking referendum, it is an appropriate time to amend those charter sections that conflict with state law. Chapter 9 of the Texas Local Government Code allows the City to call a charter amendment election. The City is authorized by law to hold the election on November 7, 2006 in conjunction with the state and county elections. State law requires that a charter amendment election be called by an ordinance. The second reading of the ordinance would occur on August 28, 2006. The portions of the Charter sections currently being considered for amendments are as follows:

- **Sec. 9. Vacancies.**

Currently Reads:

Vacancies in the council or in the office of the mayor arising from any cause shall be filled for the remainder of the unexpired term by a special election called for such purpose, provided such vacancy occurs at a time more than one year prior to the regular expiration date of the term of office. If such vacancy occurs, with less than one year remaining as hereinabove set forth, then such vacancy shall be filled for the remainder of the unexpired term by a majority vote of the remaining members of the council; provided that no vacancy of any office in the council with an unexpired term of less than three months shall be filled in any manner prior to the next annual election. In any case where vacancies occur leaving less than five members of the council in office, or less than four councilmen and the mayor, the unexpired terms of all such vacant offices shall be filled by a special election called for such purpose.

Proposed Change:

All vacancies on council must be filled by election, pursuant to Article XI, Section 11, Texas Constitution.

- **Sec. 24. Annual elections.**

Currently Reads:

on the first Saturday in April of each year

Proposed Change:

on such date as prescribed by the election laws of the State of Texas.

- **Sec. 27. Canvassing elections and declaring results.**

Currently Reads:

not later than the first regular meeting following delivery of the votes to the city secretary

Proposed Change:

on such date as prescribed by the election laws of the State of Texas.

- **Sec. 28. Runoff elections.**

Currently Reads:

on the first Tuesday in May

Proposed Change:

on such date as prescribed by the election laws of the State of Texas.

- **Sec. 122. Public meetings.**

Currently Reads:

All meetings of the council and all boards or commissions appointed by the council shall be open to the public, except as herein provided. The following meetings may be in executive session:

- (1) Private consultations between the council, board or commissions when they seek legal advice with respect to pending or contemplated litigation, settlement offers, and matters where the duty, of a public body's counsel to his client dictates a private meeting, pursuant to the Code of Professional Responsibility of the State Bar of Texas.
- (2) Discussions with respect to purchases, exchange or lease, or value of real property, negotiated contracts for prospective gifts or donations to the governmental body, when such discussions would have a detrimental effect on the negotiating position of the governmental body, as between such body and a third person, firm or corporation.
- (3) Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing.
- (4) Meetings regarding the deployment of, or specific occasions for implementation of security personnel or devices.

Proposed Change:

All meetings of the council and boards or commissions appointed by the council shall be held in accordance with the laws of the State of Texas, commonly referred to as the Texas Open Meetings Act.

Councilman Higgins made a motion to approve the first reading of an Ordinance calling for a November 7, 2006 Election to amend the Charter of the City of Abilene; Providing for the Election Precincts and Locations of Polling Places, Early Voting; Providing for a Proclamation Notice and Publication of Notice of the Election. Councilman Spano seconded the motion and the motion carried.

AYES: Councilmen Chase, Spano, Williams, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, ORDERING A SPECIAL ELECTION TO BE HELD IN SAID CITY ON NOVEMBER 7, 2006, TO ALLOW THE VOTERS TO CONSIDER AMENDING SECTIONS OF THE CHARTER OF THE CITY OF ABILENE TO COMPLY WITH STATE LAW; AND PROVIDING FOR A PROCLAMATION NOTICE AND PUBLICATION OF NOTICE OF SAID ELECTION.

4.2 Paul Knippel, Director of Public Works briefed the Council on an ordinance considered on second and final reading to amend Chapter 32, "Utilities", Article VII, "Municipal Drainage Utility" of the Abilene Municipal Code.

In response to 1987 Amendments to the Clean Water Act (CWA), the U.S. Environmental Protection Agency (EPA) developed Phase I of the National Pollution Discharge Elimination System (NPDES) Stormwater Program in 1990. The Phase I program addressed sources of stormwater runoff that had the greatest potential to negatively impact water quality. In 1993, the Texas Commission on Environmental Quality (TCEQ) assumed primary responsibility for protecting the waters of the State and the program became the Texas Pollution Discharge Elimination System (TPDES). The City renewed its MS4 permit with the TCEQ on April 17, 2006. The Public Works Department is proposing an ordinance amendment to meet TCEQ mandated regulations promulgated in the City's Municipal Separate Storm Sewer System (MS4) permit. The addition of this ordinance amendment will provide the City with the enforcement capability to administer the MS4 permit. Mr. Knippel referenced corrected pages to the Ordinance Exhibit that Council had received. Staff recommends approval of the proposed ordinance.

Council and staff discussion included: 1) the ordinance clarifies the enforcement capabilities of the city, and; 2) the changes made to the exhibit were good for the public.

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

Councilman Williams made a motion to approve the ordinance considered on second and final reading to amend Chapter 32, "Utilities", Article VII, "Municipal Drainage Utility" of the Abilene Municipal Code. Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Williams, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

The Ordinance is numbered **40-2006** and captioned as follows:

AN ORDINANCE AMENDING CHAPTER 32, "UTILITIES", ARTICLE VII, "MUNICIPAL DRAINAGE UTILITY", OF THE ABILENE MUNICIPAL CODE, BY REPLACING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING A PUBLIC HEARING.

Council recessed for a break at 9:50 a.m. and reconvened at 9:55 a.m.

4.3 Jeff Armstrong of Planning and Development Services briefed the Council on an ordinance considered on second and final reading to amend Chapter 23, Subpart D, Subdivision Regulations, of the Abilene Municipal Code, regarding the Extra-Territorial Jurisdiction.

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Mr. Armstrong noted that although the ordinance regarding the ETJ and agenda item 4.4, the ordinance to establish Rural Residential Zoning districts to allow comparable standards within the city limits (and amending minimum lot size requirements in the Agriculture Open Space zoning district), are separate items on today's agenda, they are related. Dunkin, Sefko & Associates, the consulting firm hired to assist with the creation of a new Land Development Code, examined the Subdivision Regulations as part of a comprehensive review of all of the city's zoning and land development policies. As a result, they compiled a list of changes they felt should be completed by City Staff prior to the adoption of the full Code. The proposed amendments focus on some of the conceptual shortfalls of our current regulations, specifically focusing on development standards in the extra-territorial jurisdiction (ETJ). Staff's primary goal throughout the development of these amendments was to ensure consistent development standards between subdivisions within and outside of the city limits. Strategy #46 in the Comprehensive Plan offers the following specific recommendation:

Jointly plan and pursue intergovernmental agreements related to the City's extra-territorial jurisdiction (ETJ) with Taylor, Callahan, Jones, and Shackelford counties to:

- Direct the development of urban-intense uses within the City where a full range of existing services are available.
- Revise infrastructure requirements for development within the ETJ that are consistent with City standards.

The City's current regulations are not consistent between the City and the ETJ and provide an incentive to develop in the ETJ due to reduced requirements for the provision of infrastructure and drainage improvements. This causes problems in the future for both the residents and the City after annexation of these substandard developments. The proposed regulations extend the majority of City standards to new subdivisions in the ETJ, with a few exceptions for very large lot subdivisions. In conjunction, the proposal also includes two new zoning districts that would allow rural residential development within the city limits in appropriate locations. The Rural Residential zoning districts, RR-1 and RR-5, mirror the requirements for subdivisions of similar lot size in the ETJ to provide the balance necessary to promote more developments within the city limits without discouraging the rural atmosphere characteristic of ETJ developments. The intention of the proposal is not to limit development in the ETJ, but is to remove the incentives that create the dispersed or leapfrog pattern currently being experienced. In the long term, a more concentrated pattern of development will reduce infrastructure and service costs for the City as well as increasing the tax base to support future growth. Staff and the Planning and Zoning Commission recommend approval of the proposed amendments. The following is a summary of the recommended amendments:

- Required for all subdivisions regardless of size unless they meet the 10-acre exemption:
 - Preparation of the plat document with all required accompanying documentation, certifications, and signatures*
 - Right-of-way dedication in compliance with the Thoroughfare Plan*
 - Monumentation*
 - Dedication of easements necessary to provide utility service to each lot*
 - City drainage standards
 - Minimum diameter requirements for water lines as required by the City to include fire hydrants or taps for future fire hydrants as required

- Lots less than 1 acre:
 - Minimum lot frontage: 60 feet, 30 feet for irregular shape*
 - Full City Standards to include drainage, street construction, curb and gutter, minimum diameter for water lines, fire hydrants or taps for future hydrants, and sidewalks*
 - Sewer may be expected*, but easements may be required for possible service in the future
- Lots of 1-5 acres:
 - Minimum lot frontage: 100 feet, 45 feet for irregular shape
 - Streets designed to full standards, including curb and gutter
 - Double frontage lots prohibited on lots 3 acres in area or less unless backing up to an arterial or expressway
 - Water lines as required by City standards
 - No sewer lines required if requirements for septic system are met* and dedication of easement(s) for future sewer if deemed necessary by the City
 - Sidewalks required along arterial and collector streets only
- Lots of 5+ acres:
 - Minimum lot frontage: 150 feet, 45 feet for irregular shape
 - No sewer lines required if requirements for septic system are met* and dedication of easement(s) for future sewer if deemed necessary by the City
 - Possibility of street design to meet City rural street cross-section
 - No curb and gutter required*
 - Sidewalks required along arterial and collector streets only

Lots of 10 acres where there are no public dedications or private streets are exempt from platting. This 10 acre requirement has been in effect in the County for a few years. Current City ETJ regulations call for platting of lots up to 20 acres. This is a change in the City ETJ regulations, but complies with current State laws.

NOTE: Items with an asterisk () are current requirements that are not proposed to be changed.*

Council and staff discussion included: 1) this being a platting issue; 2) the controlling authority of the ETJ being identified as mandated by state law; 3) regarding water issues, how growth in the rural areas is accommodated, and; 4) some differences that may exist between the ETJ requirements and those within the city limits.

Mayor Archibald opened a public hearing on the item and the following individuals addressed Council:

- Dale Spurgin, County Judge, Jones County – Judge Spurgin stated his appreciation for the opportunity to address Council and to city staff for their excellent service. The Judge noted that he first became aware of the proposed changes through media reports and that he followed up with city staff on those reports and staff did provide some information on the proposed changes. Judge Spurgin addressed concerns related to the

proposed changes that included: 1) neither he or the Jones County Commissioners were aware that the ETJ extended 5 miles into Jones County, which is a large area for potential development and they are interested in being part of the process in looking at the development of the guidelines; 2) a section of a memo from Abilene staff to the P&Z Commission on July 12, 2006 reads “the staff’s primary goal throughout the development of these amendments was to level the playing field between subdivisions within and outside the city limits. Strategy #46 of the Comprehensive Plan offers this specific recommendation “jointly plan and pursue inter-governmental agencies agreements related to the city’s ETJ with Taylor, Callahan, Jones and Shackelford counties”. To direct the development of urban intensive uses within the city where a full range of existing services are available and the revised infrastructure requirements for development within the ETJ that are consistent with city standards”. Judge Spurgin stated Jones County, as far as he is aware, does not have an inter-local agreement with the City of Abilene for the ETJ sub-division. When he entered office in 2002 he did receive a call from Abilene staff member Elizabeth Grindstaff, indicating staff was working on that agreement, but he never received an agreement. With no agreement Jones County has not been contacted about these proposals. Judge Spurgin stated he had talked to Shackelford County Judge Ross Montgomery and Callahan County Judge Roger Corn and they indicated that he could express to the City Council that they have not been contacted about the proposed changes that are going to impact subdivision regulations within their counties. Judge Spurgin stated “We respectfully request to be included in the process of any proposed subdivision regulations impacting our counties”. Judge Spurgin also stated the maintenance of Jones county roads is left up to the commissioners if they are going to accept the roads and do maintenance based upon the subdivisions within his county and that road maintenance is not automatically accepted by the County. Judge Spurgin further stated they are not in a position to provide maintenance to paved streets; 3) the impact on rural water systems is a concern by the fact of requiring 6 inch water lines for subdivision regulations regardless of the size unless they meet the 10 acre exemption, the fact of a subdivision having a 6 inch water line being supplied by a smaller size supply line make for water quality issues relating to possible TCEQ violations. Jones County currently does not have flood plain maps and those may not be available until 2009 and the County cannot assist in flood plain or drainage designs. Judge Spurgin asked, if requirements are enacted, what the expected timeline for annexations to occur is. If areas are not annexed then an undue burden will be placed on property owners and developers to provide standards for areas that may never be within the city limits of Abilene; 4) Jones County believes this will have a negative impact on potential development in the southeast corner of Jones County. Jones County is prepared to participate in the process to address the concerns of the City of Abilene about leveling the playing field for development and they look forward to being partners with the communities within Jones County and the neighbors surrounding Jones County. Judge Spurgin stated “We respectfully request that the Abilene City Council table this issue, follow Strategy #46 in Abilene’s Comprehensive Plan that offers the specific recommendation to “jointly plan and pursue intergovernmental agreements related to cities ETJ with Taylor, Callahan, Jones and Shackelford counties”, and establish a committee to study this issue to include representatives from the City of Abilene, surrounding counties, water supply corporations, builders,

developers and property owners within the ETJ". Judge Spurgin concluded his remarks by stating "let's work together to find a solution that is beneficial to everyone and demonstrate a commitment of cooperation".

- Stan Egger, Taylor County Commissioner, Precinct 3 – Commissioner Egger stated he has had many opportunities to work with planning and zoning in regards to the recommendations for the ETJ. Commissioner Egger noted the development that has occurred in the ETJ and that he understands the concerns and needs related to the ETJ. Taylor County does have an agreement with the City of Abilene giving the city the authority within the ETJ. Commissioner Egger referenced the summary of recommendations, stating there are a few issues he would ask for further study on including: 1) the water line minimum requirements; 2) curb and gutter streets especially in tracts that are over 5 acres; 3) sidewalks in larger tracts in the more rural setting that would add a huge cost; 4) bonding requirements for rural areas needing time frames; 5) flood zones, through an agreement the city has given the county the permitting authority for addressing the flood zone but the County does not have maps of the area outside the city limits that indicate the flood ways and it may be several years before those are obtained. The County has given the authority to their environmental office to review the sewers, septic systems and for the flood plain management of the ETJ.
- Eddie Chase – Mr. Chase stated his concerns relating to the recommendations and noted he has not been a part of the process. Mr. Chase distributed, and reviewed, a copy of his concerns which included: 1) the wording "single ownership and described as a single tract", being inconsistent with house loan practices; 2) county roads not meeting the city's design and construction standards, and minimum lot requirements; 3) a septic plan for each lot not being needed, and; 4) the basis for not requiring all city drainage standards in the ETJ. Mr. Chase requested Council table the issue for further study.
- Tommy Harendt, Home Builder's Association – Mr. Harendt stated there is a huge difference between rural and urban subdivision needs. Mr. Harendt addressed various issues including: 1) purpose of curbs and gutters; 2) cost factors of sidewalks/curbs & gutters; 3) requirements not creating a level playing field, incentives needed for in town growth versus punishing ETJ growth; 4) benefits of growth outside city limits; 5) all ETJ's should not be treated the same, different requirements are needed, and; 6) a current annexation plan does not exist and needs to be addressed.

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

Council and staff discussion continued: 1) full implications of recommendations not being realized and further study being needed; 2) the planning and zoning commission being included in a further review process; 3) an annexation plan needs to be considered, and; 4) staff to conduct a review and study of all issues and concerns addressed today and to involve and communicate with involved parties.

Mayor Archibald recommended that Council table the item and requested that City Manager Larry Gilley take the lead in addressing the issues noted at today's meeting and to communicate with, and seek the needed input from, those that will be impacted (especially the counties and water districts) by this ordinance, prior to the issue being brought back to Council for consideration

Mayor Archibald noted that agenda item 4.4 is related to this issue and can be tabled also. Staff stated items 4.3 and 4.4 could be tabled with one motion.

Councilwoman Davis made a motion, as per Mayor Archibald's recommendation, to table **item 4.3**, *an ordinance considered on second and final reading to amend Chapter 23, Subpart D, Subdivision Regulations, of the Abilene Municipal Code, regarding the Extra-Territorial Jurisdiction*, and **item 4.4**, *an ordinance considered on second and final reading to establish Rural Residential Zoning districts and to amend the minimum lot size requirements in the AO (Agriculture Open Space) zoning district of the Zoning Ordinance*. Councilman Spano seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Williams, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

4.4 The ordinance considered on second and final reading to establish Rural Residential Zoning districts and to amend the minimum lot size requirements in the AO (Agriculture Open Space) zoning district of the Zoning Ordinance was tabled with the motion to table item 4.3.

4.5 Jeff Armstrong of Planning and Development Services briefed the Council on an ordinance considered on second and final reading to amend Section 23-313.2.C of the Zoning Ordinance, regarding setback requirements in the CU (College University) zoning district.

A building at Hardin Simmons University (HSU) in the development review process was shown to encroach approximately 7 feet into the setback area along Vogel Street. As this issue was being addressed various options were provided to the university to address the issue, one was to request a variance from the Board of Adjustment, and another was for the City to consider amending the ordinance regarding setbacks in CU (College University) zoning. The agent for HSU submitted a request to the Board of Adjustment and asked that the ordinance be amended. The Board of Adjustment approved the variance request. However, staff felt that since the proposed amendment has merit the process should be continued. The CU (College University) zoning district currently has the following setback requirements:

- From property lines along streets:
 - Arterial and Collector – 30 feet
 - Local – 25 feet
 - All other property lines – 0 feet

Staff is proposing to reduce the setback requirement along streets to 10 feet in the CU (College University) zoning district. CU (College University) zoning is unique in several ways that are similar to the CB (Central Business) zoning district, scale and density of buildings, mixed activities, and particularly high pedestrian activity. The CB (Central Business) zoning district has no

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setback requirements from lot lines along streets. However, staff is proposing that in CU (College University) zoning the setback be 10 feet instead of 0 feet to provide for landscaped areas, particularly landscaped areas along streets as proposed in the Community Appearance Ordinance. The 10 feet will also provide some separation for additional safety along higher speed streets that are common around college campuses, but less common in the CB (Central Business) district. Setback requirements in general are one of many things being considered for revision for the Land Development Code. However, this particular item is being considered at this time due to proposed construction of a new building on the campus of HSU. The proposed building would be approximately 18 feet from the property line along Vogel Avenue. The agent for HSU stated that they are supportive of the ordinance amendment, but submitted the variance request to cover all alternatives for help their situation. The variance request was approved on July 11, 2006 and although HSU does not have an immediate need for this proposed amendment, it is staff's opinion that the proposed amendment is still valid and supports moving forward with the amendment. Staff and the Planning and Zoning Commission recommend approval of an amendment to reduce the setback requirement from lot boundaries along streets to 10 feet.

Council and staff discussion included: 1) staff explained what a non street side property line is; 2) the 0' set back for all other property lines having been left in the ordinance intentionally, and; 3) staff being comfortable with the recommended 10' set back requirements along streets.

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

Councilman Williams made a motion to approve an ordinance considered on second and final reading to amend Section 23-313.2.C of the Zoning Ordinance, regarding setback requirements in the CU (College University) zoning district. Councilwoman Davis seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Williams, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

The Ordinance is numbered **41-2006** 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.

4.6 David Wright, Director of Finance briefed the Council on an Ordinance considered for second public hearing for the purpose of Setting A Tax Levy; and set a public hearing and vote for September 7, 2006 at 8:30 a.m.

Mr. Wright stated the FY 2007 Budget approved by Council on July 27, 2006 set the tax rate at 66.78 cents. State law requires that two (2) public hearings must be held prior to the final public hearing and vote. The first public hearing was held on August 10, 2006 and the second public

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hearing is being held at today's meeting. The final public hearing and vote will be held on September 7, 2006. Staff recommends that the City Council hold the public hearing in accordance with state law. No action is required by Council.

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

No Council action was required.

Mayor Archibald reiterated the final public hearings and vote on the budgets and tax rate will be held at a Special called Council meeting on September 7, 2006 at 8:30 a.m.

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.

The Council reconvened from Executive Session and reported no votes or action was taken in Executive Session.

4.1 B. Councilman Chase made a motion to reconsider and amend the ballot language to add the word "all" before the word public on **Agenda Item 4.1 B.**, *a Resolution calling for a November 7, 2006 Election to allow the Voters to recommend whether or not the Council should adopt an Ordinance to Ban Smoking in public places and places of employment; Providing for the Election Precincts and Locations of Polling Places, Early Voting; Providing for a Proclamation Notice and Publication of Notice of Election. The ballot language would read "Do you support the City Council adopting an ordinance prohibiting smoking in all public places and places of employment? For/Against.* Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

ABSENT: Councilman Williams

5.4 Larry Gilley, City Manager briefed the Council on the Texas Local Government Code, Chapter 142 Subchapter B, Meet and Confer Agreement with the Abilene Police Officers' Association.

Mr. Gilley stated on January 6, 2006 the Abilene Police Officers' Association presented a petition for the Council to consider approving the Meet and Confer process authorized under Texas Local Government, Code Chapter 142, Subchapter B. Council approved the petition on January 24,

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2006 and since that time a labor/management team consisting of City and Police Association representatives has been meeting to create a document addressing working terms and conditions of employment including wages, hiring, and promotional processes. A tentative agreement was reached between the City and the Association on August 15, 2006. The Association has ratified the agreement and pursuant to state law, now that it has been ratified by the Association, the Council must also ratify the agreement for it to be binding. The proposed contract covers fiscal years 2006-2007 and 2007-2008. Staff recommends Council approve by Oral Resolution the Meet and Confer Agreement between the City of Abilene and the Abilene Police Officers' Association.

Council and staff discussed the positive and productive process and benefits of the Meet and Confer agreement.

Councilwoman Davis made a motion to approve by Oral Resolution the Texas Local Government Code, Chapter 142, Subchapter B, Meet and Confer Agreement with the Abilene Police Officers' Association. Councilman Higgins seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Higgins, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

ABSENT: Councilman Williams

There being no further business, the meeting was adjourned at 12:10 p.m.

Jo Moore
City Secretary

Norm Archibald
Mayor