

**CITY COUNCIL MEETING**  
**December 7, 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 December 7, 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, Stormy Higgins, Anthony Williams, and Councilwomen Laura Moore and Celia Davis. Also present were City Manager Larry Gilley, City Attorney Sharon Hicks, Assistant City Secretary Renee Scott, and various members of the City staff.

Councilman Williams gave the invocation.

Mayor Archibald introduced Courtney Tuten, a 5<sup>th</sup> grade student from Bonham Elementary School, who led the Pledge of Allegiance. Courtney's parents, and principal Diane Rose, were also in attendance.

**EMPLOYEE SERVICE AWARDS**

Mayor Archibald, assisted by Assistant City Secretary Renee Scott, presented Employee Service Awards to the following individuals for their years of service:

25 Years	David Gage	Police Sergeant II Police Department
20 Years	Gary Worthington	Equipment Operator II Street Services

Mayor Archibald explained the order of today's agenda and noted there would be no public hearing held today on item 4.6, *Ordinance to amend Chapter 10 Fire Protection and Prevention, Article III: Fire Prevention Code, Division 2: Smoking*, but that a public hearing would be held at the December 21, 2006 Council meeting. The Mayor further stated there would be a 3 minute per speaker time limit on the public hearings for item 4.4, *Ordinance adopting an updated Three-Year Annexation Plan*, and item 4.5, *Ordinance to revise and update Chapter 19, "Nuisances", and to amend and move Chapter 18, Motor Vehicle and Traffic, Article III, Junked Cars, of the City of Abilene Municipal Code*.

**DISPOSITION OF MINUTES**

2.0 Mayor Archibald stated Council has been given the minutes from the November 2, 2006 Regular Council Meeting, the November 9, 2006 Council Tour and Council Workshop, and the November 16, 2006 Regular Council Meeting and Council Workshop. There being no corrections, additions, or deletions to minutes Councilwoman Moore made a motion to approve the minutes as presented. Councilman Williams seconded the motion, and the motion carried.

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

NAYS: None

**CONSENT AGENDA**

Councilman Spano made a motion to approve consent agenda items 3.1 and 3.2, first reading of item 3.3, and item 3.4, as recommended by staff. Councilman Chase seconded the motion, and the motion carried.

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

NAYS: None

**Resolutions:**

- 3.1 Oral Resolution authorizing the City Manager to execute a Professional Services Agreement with Tim Rice McClarty, AIA for Zoo improvements at a fixed fee of \$69,900.00
- 3.2 Resolution providing for the approval of an application for the grant funds from the State of Texas for a Selective Traffic Enforcement Program (S.T.E.P.).

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

A RESOLUTION OF THE CITY OF ABILENE, TEXAS PROVIDING FOR THE APPROVAL OF AN APPLICATION FOR THE GRANT FUNDS FROM THE STATE OF TEXAS FOR A SELECTIVE TRAFFIC ENFORCEMENT PROGRAM, "S.T.E.P.".

**Ordinance:**

- 3.3 Ordinance adopting Standards of Care for the City of Abilene's youth programs; and set a public hearing for December 21, 2006 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, ESTABLISHING STANDARDS OF CARE FOR CITY OF ABILENE YOUTH PROGRAMS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SAVINGS CLAUSE; AND CALLING A PUBLIC HEARING.

**Bid Award:**

- 3.4 **Bid #CB-7005** – Annual purchases of oil products. The bid was awarded as follows:
- Johnson Oil Co., Abilene, TX
    - 950 gallons of automatic transmission fluid – Unit Price \$6.696
    - 910 gallons of SAE 10W-30 – Unit Price \$7.074
  - Western Marketing, Inc., Abilene, TX
    - 495 gallons of tractor fluid – Unit Price \$7.54
    - 4300 gallons of A/W Hydraulic Oil – Unit Price \$5.66

- 605 gallons of SAE 5W-20 – Unit Price \$8.53
- 5800 gallons of SAE 15W-40 – Unit Price \$6.90
- 400 pounds (400 pound can) of chassis grease – Unit Price \$1.48
- 360 pounds (120 pound can) of chassis grease – Unit Price \$1.69
- 110 gallons of gear lube 80W-90 – Unit Price \$7.99

## **REGULAR AGENDA**

4.1 Jon James, Director of Planning and Development Services briefed the Council on **TC-2006-06**, an ordinance considered on second and final reading to abandon South 18<sup>th</sup> Street from the east line of the railroad right-of-way eastward approximately 555 feet to its eastern end.

Mr. James stated the portion of South 18<sup>th</sup> Street under consideration is surrounded entirely by Lauren Holdings property and it is utilized by the applicant as a construction and storage yard. The street is currently part of the yard area of the surrounding properties owned by the applicant. The request is to abandon the street to unify and secure the yard, including what is currently the street. The Plat Review Committee recommended the following conditions be placed on the abandonment:

- The right-of-way and all surrounding property be replatted.
- Dedication and construction of a new cul-de-sac or other proper street termination for South 18<sup>th</sup> Street.
- An accessible utility easement be maintained to accommodate all existing utilities or those utilities be relocated.

The Planning and Zoning Commission recommend approval of the request subject to the recommendation of the Plat Review Committee, plus the condition that any gates shall be located/relocated so as to not block the public right-of-way. Staff recommends approval of the request with the conditions recommended by the Plat Review Committee and the Planning and Zoning Commission as follows:

- All abandoned right-of-way and lots adjacent to the abandoned right-of-way must be replatted.
- An accessible utility easement must be dedicated to accommodate existing utilities unless they are relocated.
- A proper termination of South 18<sup>th</sup> Street must be dedicated and constructed east of the railroad right-of-way as approved by the City of Abilene.
- Any gates must be located/relocated so that they do not block the public right-of-way.

Council and staff discussion included issues involving the location and/or relocation (including potential cost) of the gate and the basis for the Planning and Zoning Commission, the Plat Review Committee, and staff recommendations.

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 Higgins made a motion to approve **TC-2006-06**, an ordinance considered on second and final reading to abandon South 18<sup>th</sup> Street from the east line of the railroad right-of-way eastward approximately 555 feet to its eastern end as recommended by the Planning and Zoning

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Commission, the Plat Review Committee, and staff. Councilwoman Moore seconded the motion, and the motion carried.

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

NAYS: None

The Ordinance is numbered **63-2006** and captioned as follows:

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.

4.2 Jon James, Director of Planning and Development Services briefed the Council on **Z-2006-45**, an ordinance considered on second and final reading to rezone property from LI (Light Industrial) and HI (Heavy Industrial) to HC (Heavy Commercial) zoning, property located at 2009 Industrial Boulevard.

Mr. James stated the applicant is currently in the process of constructing a new building that will house multiple retail spaces for lease. Although the subject parcel is located in the middle of a sizeable district of industrial zoning, the area has recently developed with primarily commercial and office uses. The LI (Light Industrial) and HI (Heavy Industrial) zoning districts allow only a limited amount of retail uses, and the applicant desires to rezone to a commercial zoning district that will provide more flexibility for future tenants of the site. The Comprehensive Plan does not provide a specific recommendation for future land use in this area. However, Industrial Boulevard is an arterial that connects the Enhancement Corridors of Buffalo Gap Road and South Treadaway Boulevard. In reviewing the zoning of the surrounding area, there appears to be a need for a transition to the golf course, high school, and residential area located to the north of the larger industrial district. Due to the volume of traffic along Industrial Boulevard, staff feels that commercial zoning may be more appropriate given its designation as an arterial and the recent trend toward less intense development. HI (Heavy Commercial) zoning district seems reasonable because of the remaining industrial uses in the area, but it begins to provide the necessary transition to less intense uses located further northwest and northeast of the parcel. Staff and the Planning and Zoning Commission recommend approval of the request.

Council and staff discussion included: 1) concerns surrounding the property located at 1885 Industrial being zoned LI (Light Industrial) and being able to remain as LI (Light Industrial) zoning; 2) staff noting the compatibility of LI (Light Industrial) zoning and HC (Heavy Commercial) zoning, and; 3) not having been contacted by the owner of the property at 1885 Industrial.

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

- Burl Harris, applicant – Mr. Harris stated the property owner of 1885 Industrial owns and operates a golf store at the location and is in favor of the proposed development as well as others in the area.

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

Councilman Spano made a motion to approve **Z-2006-45**, an ordinance considered on second and final reading to rezone property from LI (Light Industrial) and HI (Heavy Industrial) to HC (Heavy Commercial) zoning, property located at 2009 Industrial Boulevard. Councilman Higgins seconded the motion, and the motion carried

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

NAYS: None

The Ordinance is numbered **64-2006** and captioned as follows:

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 he and Councilwoman Moore would be abstaining from item 4.3, **Z-2006-46** – *Request to rezone property from RM-3 (Residential Multi-family) to O (Office) zoning, property located at 1658 Hickory Street.*

4.3 Jon James, Director of Planning and Development Services briefed the Council on **Z-2006-46**, an ordinance considered on second and final reading to rezone property from RM-3 (Residential Multi-family) to O (Office) zoning, property located at 1658 Hickory Street.

Mr. James stated the applicant proposes to convert the existing residential structure into a medical office and use the rear portion of the lot for additional parking. The subject parcel is bordered by single-family homes on two sides, and offices on the other two. Extension of the O (Office) zoning district further south would not constitute an incompatible encroachment into the existing neighborhood due to the fact that it will provide an additional buffer from the intensity of uses located further to the northwest. The Comprehensive Plan designates the area northeast of the subject parcel as a Special Activity Center that encompasses both Hendrick Medical Center and Hardin-Simmons University. Each Special Activity Center should promote its own unique character and provide a mix of supportive uses that are compatible with the primary assets of the area and the surrounding neighborhoods. The conversion of a single-family residential structure for medical office use represents a good compromise between the scale and character of the residential area while still allowing expansion of the viability of the regional medical services offered within the area. Staff and the Planning and Zoning Commission recommend approval of the request.

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

- Lee Fletcher, Property Manager for Hendrick – Mr. Fletcher stated the neighborhood is in a transition period due to the fact that a number of homes have been converted to

offices. Mr. Fletcher further stated that Hendrick recognizes and is sensitive to the fact that this area is still a neighborhood.

Discussion included: 1) Council's concerns regarding adequate parking and Mr. Fletcher noting that construction of a parking lot is budgeted; 2) Council expressed appreciation for the positive direction that Hendrick is heading in the neighborhood; 3) Council noting a correction to the map that was provided in the agenda packet concerning two properties that should have Hendrick's listed as the property owner; 4) Council noting a historic home owned by Dr. Jack Ramsay became the Hospice Organization in 1982, and; 5) staff noting some offices have been built in the area but many structures are original homes that have been converted to offices.

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

Councilman Chase made a motion to approve **Z-2006-46**, an ordinance considered on second and final reading to rezone property from RM-3 (Residential Multi-family) to O (Office) zoning, property located at 1658 Hickory Street as recommended by staff and the Planning and Zoning Commission. Councilman Higgins seconded the motion, and the motion carried.

AYES: Councilmen Chase, Spano, Higgins, Williams, and Councilwoman Davis

NAYS: None

ABSTAIN: Councilwoman Moore and Mayor Archibald

The Ordinance is numbered **65-2006** and captioned as follows:

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.

4.4 Jon James, Director of Planning and Development Services briefed the Council on an ordinance considered on second and final reading to adopt an updated Three-Year Annexation Plan.

Mayor Archibald requested a show of hands of the individuals that were in opposition of being annexed and twenty-six (26) hands were counted.

The Mayor stated that he had been provided a large notebook from residents that will possibly be affected by this annexation study. The Mayor noted that the decision to be made at today's Council meeting consists of whether or not to accept staff's recommendation that the City study whether or not the proposed areas should be annexed within the next 3 years. The Mayor further stated the Council is not deciding today to annex anyone's property. The study may determine that annexation is cost prohibitive, but the City will not know that until the study of the proposed areas is completed. The Mayor noted the earliest opportunity to consider annexation of the proposed areas would be thirty (30) days after December 7, 2009, and if the City decides to annex after three years the property owners would still have the opportunity to voice their concerns. The Mayor stated the Council desires to hear the concerns of those individuals in attendance at today's meeting and reiterated there would be a three (3) minute time limit for each individual's comments during the

public hearing. The Mayor then asked Jon James, Director of Planning and Development Services to present the item.

Mr. James stated state law requires cities to maintain a current Three-Year Annexation Plan in accordance with the requirements of Section 43.052 of the Texas Local Government Code. The City of Abilene's current Annexation Plan states that we have no specific plans for future annexations that are required to be in an Annexation Plan. Staff is proposing to update the City's current policy to remain in compliance with state law and to begin addressing the recommendations of the Comprehensive Plan by using annexation as a tool to manage future growth, ensure fiscal responsibility, plan for the cost-effective expansion of infrastructure systems, and to protect the Abilene Regional Airport and Dyess Air Force Base. Mr. James stated discussions with Fire Department officials determined that fire protection coverage is a major concern and will have to be addressed within the next three years, as well as the condition and deterioration of streets in various subdivisions. Mr. James reviewed the Three-Year Annexation Plan Timeline as follows:

- **November 6, 2006:**
  - Presentation to the Planning and Zoning Commission
- **November 16, 2006:**
  - Presentation to City Council (1<sup>st</sup> reading of proposed ordinance)
- **December 7, 2006:**
  - Presentation to the City Council (2<sup>nd</sup> reading and possible adoption)
- **January 1, 2007 through June 1, 2008:**
  - Notification of property owners and development of Final Service Plan
- **December 7, 2009 through January 7, 2010:**
  - Final Annexation proceedings

Mr. James stated the required 18-month public involvement process from January 1, 2007 through June 1, 2008 would include:

- Property owner notification
- Formally request service providers to prepare an inventory of services in the areas identified by the Plan
- City will compile inventory and make available for review
- Public hearings are conducted at two City Council meetings
- County Commissioner's Court appoints representatives from each area to negotiate projected service levels for their area
- City officials and appointed representatives prepare the Final Service Plan

Mr. James noted the following issues are under review, but are compliments to annexation, not a replacement:

- **Airport Zoning:**
  - City staff has been meeting with officials from Taylor County, Dyess, and other jurisdictions to study the creation of a Joint Airport Board that can apply airport zoning regulations
- **Applying City Development Standards to ETJ:**
  - Insufficient infrastructure may hamper future annexations and inhibit the long-term growth of the City

- **Voluntary Annexation Only:**

- Relying only on voluntary annexations will create problems for service providers and inhibit efficient and cost-effective provision of services as the City grows

The original staff recommendation proposed annexing areas A, B, C, and D. Staff has modified the ordinance proposal since the first reading held at Council's November 16<sup>th</sup> meeting to reflect the Council's recommendations to include Areas A, B, and E.

Council and staff discussion included: 1) Council clarifying the annexation plan's timelines and restrictions; 2) safeguards being in place as well as the opportunities for individuals to share their opinions; 3) the length of time required to develop a plan for areas C and D; 4) staff clarifying the study gives individuals a voice to negotiate with the City and to review what services are available; 5) staff stating the main reason for the new state law concerning annexation is to give individuals a voice; 6) Council noting the annexation plan may provide facts that annexation of the proposed areas would be cost prohibitive to the City; 7) staff noting the Comprehensive Plan designates the proposed areas as potential growth for the City; 8) the benefit of the study being to provide facts to assist in making good decisions; 9) the possibility of several properties in the future going through the annexation plan; 10) Areas C and E providing protection to the Airport but the possibility of putting the annexation plan on hold and quickly moving forward with the ETJ regulations; 11) staff clarifying the proposed annexation plan would not delay the ETJ regulation process; 12) Council's concerns of protecting the Airport and the need to quickly develop a joint board for airport zoning, without placing the proposed annexation plan on hold; 13) areas A, B, and E being viewed as lucrative properties having long term affects on the City; 14) Council's concerns regarding the fast growing subdivisions in the proposed area; 15) staff noting the ETJ regulations cannot enforce building issues, but the Airport Board can regulate limited zoning issues; 16) the residences south of the Airport being primarily zoned agricultural; 17) staff's explanation of the need to annex property before growth occurs so that zoning regulations can be enforced; 18) Council stating their understanding that the proposed annexation plan is needed, but not understanding why the Airport zoning and the ETJ regulations are compliments to annexation and not a replacement to annexation; 19) Council's feeling it is important to proceed with the ETJ regulations and the development of the Airport Zoning board before the Three-Year Annexation Plan is adopted; 20) staff reiterating the proposed Three-Year Annexation plan has is no specific time frame basis for why it was brought forward at this time; 21) Council's concerns regarding the proposed estimated costs from the City's engineer and that any existing problems could be solved by the enforcement of ETJ regulations complimented by the proposed annexation plan; 22) staff stating the decision to bring forth the proposed annexation plan was made by the adoption of the Comprehensive Plan and the timing of implementing the proposed annexation plan is up to the Council; 23) Council's concerns over the expense to repair the existing subdivisions that have deteriorating roads and the possibility of new subdivisions being built in the near future with same road construction problems existing, as well as the expense for services including water, fire and police; 24) Council's concerns over the name of Three-Year Annexation "Plan" versus "Study"; 25) the land use plan being approved by Council and the feeling that Council needs to be forward thinking and identifying property that needs to be annexed including Area E; 26) Council noted the need for the City to be pro-active, and; 27) Areas A and B would qualify for annexation on an earlier time frame due to the lack of residences in those areas.



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

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

- Michael Freeman, opposed – Mr. Freeman noted that individuals can copyright their land in their names to take their property out of commerce.
- Evelyn Tilbrook, opposed – Ms. Tilbrook stated she feels the annexation study is not something that needs to be done and stated she feels the Council needs to address the issues that deals within the city limits of the City of Abilene.
- Lowell Maxey, resident in Area B – Mr. Maxey stated he and his wife's opposition to the annexation plan and noted their favor towards the Airport. Mr. Maxey voiced his concerns of encroachment and noise, as well as his feelings of unjust authority utilized by the Planning and Zoning Commission in adopting rules and regulations.
- Dwain Vinson, Area E, opposed – Mr. Vinson stated although his residence is in Area B they are not interested in developing Area E.
- Volene Vogler, Area E – Ms. Vogler stated the use of her property is for farming, ranching and agriculture and requested Council reconsider taking Area E out of the proposed annexation plan.
- Jim Teigen, Area B – Mr. Teigen gave a power point presentation to Council that gave statistics on his background, noise concerns, accident potential, and encroachment of the Airport. Mr. Teigen requested Council deny the proposed annexation plan.
- Tom Clark, Area B – Mr. Clark expressed his appreciation to Council for the opportunity to voice his concerns and stated Council can call the process whatever they desire but he feels it is annexation. Mr. Clark stated Council was provided a book and that he appreciated the time they gave in reviewing it. Mr. Clark voiced his concerns involving city services to include the cost of water, sewer lines, fire and police protection and stated their property is agriculture and will provide no increase in revenue of development.
- Claudia Clinton, 1835 Colony Hill Road, opposed – Ms. Clinton stated her distrust in City staff and noted Areas A and B are very sparse. Ms. Clinton requested that the City study the idea first and further expressed her feelings that if staff had done that there would be no proposed annexation plan. Ms. Clinton further requested the word "annex" be taken out of the process.
- Doris Miller Allen, Area B – Ms. Allen stated they had built their home 34 years ago and that the noise is not a factor. Ms. Allen further stated many individuals have purchased property in the area to enjoy country life and she requested that Council

deny the proposed annexation plan so that they could live out their life in peace and tranquility.

- Wayne Sanford – Mr. Sanford stated that the City has control of growth in development through the ETJ regulations. Mr. Sanford noted anytime a plat is designed it has to go to City staff for approval. Mr. Sanford stated he feels that individuals who live in the rural areas should not have restrictions and let the individuals who wish to live the city do so. Mr. Sanford noted he owns a business in Abilene and contributes to the City in that regard.
- Joe Starkey – Mr. Starkey stated he chose to live outside the City and wishes to stay outside the City and would prefer the Council honor those wishes.
- Jim Goodman, man-power analyst for the USAF – Mr. Goodman stated he reviewed the City's unfunded list and didn't move out to the country to be in the city and feels that people in the city don't desire to pay higher taxes.
- Ken Barbian, Area A – Mr. Barbian stated the City annexed property he owns on Loop 322 in 1980 and he still does not have City services. Mr. Barbian requested Council consider the cost of streets and fire protection.
- James Ricker – Mr. Ricker stated he is in agreement with everyone that has voiced their concerns and is against the annexation.
- Vicki Carter, owner of property in the intercity area and Bacacita Farms – Ms. Carter noted an article in the Abilene Reporter News stating the population in the City of Abilene is decreasing. Ms. Carter further stated she feels the City wants to increase taxes and the individuals moved out to the country for a reason. Ms. Carter noted she currently is residing in the Sayles area and that the City has conducted street studies as well as adopting a sidewalk ordinance and Ms. Carter feels the sidewalk ordinance needs to be enforced. Ms. Carter requested Council develop the City of Abilene.
- Anita Nguyen, Area B – Ms. Nguyen stated she moved to the country to care for her children and animals and she does not desire to be in the city.
- Diana Sancill – Ms. Sancill stated she lives on 10 acres and requested Council leave their area out of the study and annexation.
- Melissa O'Neill, Miller Lane – Ms. O'Neill stated they moved out of the City to have the country life and requested Council keep them out of the annexation plan.
- A.W. Allen, 501 Allen Acres – Mr. Allen stated he worked for the City and returned to the country to enjoy the country life and feels there would be a great cost to the City to provide services.

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

Council discussion continued as follows: 1) Council having been presented a plan to study annexation and when the Comprehensive Plan was adopted it also addressed the future of the City; 2) Council acknowledging the plan has now been discussed by staff and the property owners; 3) staff having proceeded with the proposed annexation plan because Council has directed them to do so; 4) the need for annexation due to the growth and development east and west of 1750; 5) Council's feelings that the development of an Airport Zoning Board and ETJ regulations could solve problems in the area; 6) Council's desire to call the proposed annexation "plan" a "study"; 7) the area west of 1750 having the greatest potential for annexation; 8) Council's concerns involving the cost for the repair of streets in subdivisions and feels these issues can be addressed by the implementation of an Airport Zoning Board and ETJ regulations; 9) Council's concerns of moving to quickly with an annexation plan; 10) Council noting the need to be forward thinking as well as pro-active and not re-active; 11) the need to gain information through the study of the annexation plan over a 3 year period and the implementation of the Comprehensive Land Use Plan; 12) Council's concerns of the study not being worthy and in 3 years the uncertainty of what will happen; 13) concerns surrounding the great expense for city services; 14) the possibility of including in Council action today the development of an Airport Zoning Board, and; 15) the Mayor noting today's action would be to move forward with only the plan.

Councilman Williams made a motion to approve an ordinance considered on second and final reading to adopt an updated Three-Year Annexation Plan with the addition of Areas A (approximately 1,514 acres), B (approximately 649 acres), and E (approximately 1,273 acres). Councilman Higgins seconded the motion, and the motion carried.

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

NAYS: Councilmen Chase, Spano, and Councilwoman Davis.

The Ordinance is numbered **66-2006** and captioned as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, ADOPTING A THREE-YEAR ANNEXATION PLAN IN COMPLIANCE WITH SECTION 43.052 OF THE TEXAS LOCAL GOVERNMENT CODE; REPLACING THE ANNEXATION PLAN ADOPTED DECEMBER 16, 1999; AND PROVIDING AN EFFECTIVE DATE.

The Mayor stated item 4.6, *Ordinance to amend Chapter 10 Fire Protection and Prevention, Article III: Fire Prevention Code, Division 2: Smoking; and set a public hearing for December 21, 2006 at 8:30 a.m.* would be considered before item 4.5, *Ordinance to revise and update Chapter 19, "Nuisances", and to amend and move Chapter 18, Motor Vehicle and Traffic, Article III, Junked Cars, of the City of Abilene Municipal Code.*

4.6 Sharon Hicks, City Attorney briefed the Council on an ordinance considered on first reading to amend Chapter 10 Fire Protection and Prevention, Article III: Fire Prevention Code, Division 2: Smoking; and set a public hearing for December 21, 2006 at 8:30 a.m.

Ms. Hicks stated on November 7, 2006 the City of Abilene held an election to determine whether or not the voters supported the Council adopting an ordinance banning smoking in all public

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places and places of employment. The proposition passed 15,326 (68.62%) in favor of the ban to 7,007 (31.38%) against. Since that time, staff has drafted an ordinance to ban smoking in all public places and places of employment using a model ordinance drafted in accordance with American Cancer Society guidelines, as well as current smoking ordinances from various Texas cities. Ms. Hicks reviewed the summary of the ordinance which included the following:

- **Sec. 10-80 Purpose**—identifies the health issues surrounding smoking and secondhand smoke and why a ban should be implemented.
- **Sec. 10-81 Definitions**—primarily defines areas where smoking is prohibited or excepted.
- **Sec. 10-82 Prohibition of Smoking in Public Places**
- **Sec. 10-83 Prohibition in Places of Employment**
  - provides a non-exhaustive list of public places and places of employment where smoking is prohibited. States that employers must have a policy prohibiting smoking.
- **Sec. 10-84 Prohibition of Smoking in Seating Areas at Outdoor Events**—states that outdoor public events including seating areas are to be no smoking.
- **Sec. 10-85 Reasonable Distance**—provides that smoking cannot occur within a reasonable area from entrances, windows and ventilation systems from places where smoking is prohibited. As written, it is not less than 20 feet, but the model ordinance suggests 10 or 20 feet so council may want to change the distance.
- **Sec. 10-86 Application of Article to City Owned Facilities**—City facilities, including vehicles are subject to the smoking ban.
- **Sec. 10-87 Exemptions from Prohibition**—provides exceptions to the smoking ban. The first five are all identified in the model ordinance. The other three are more community specific that were derived from other municipal ordinances.
- **Sec. 10-88 Posting of Signs**—requires no smoking signs be posted at entrances to places of employment and public places.
- **Sec. 10-89 Health District Program**—provides for education of the ordinance.
- **Sec. 10-90 Enforcement**—identifies who can enforce the ordinance and who is responsible for enforcement.
- **Sec. 10-91 Non-retaliation**—provides that no person shall be discriminated against for exercising any rights under this ordinance.
- **Sec. 10-92 Violations and Penalties**—states that violations are Class C Misdemeanors.

- **Sec. 10-93 Other Applicable Laws**—states that the ordinance does not permit smoking where it may otherwise be restricted.
- **Sec. 10-94 Severability**—provides that if any provision is held invalid, it does not affect the remainder of the ordinance.
- **Sec. 10-95 Effective Date**—provides for an effective date and when signage is due. By Charter, Ordinances are effective 10 days after publication; however Council may choose to extend the otherwise normal effective date.

Staff recommends approval of the proposed ordinance.

Council and staff discussion included: 1) a review of Sec. 10-87 Exemptions from Prohibition; 2) Council's request involving the "Retail Tobacco Store" 10% of gross sales definition wording being added to Sec. 10-87 (Exemptions from Prohibition) No. 6.; 3) businesses having four weeks to comply with the proper smoke free signage; 4) French Robertson and the Middleton Prison Units being a smoke free environment versus the Taylor County jail allowing smoking and the possibility of enforcing the County Jail to be in compliance; 5) Taylor County jail officials have stated that smoking is offered to inmates as an incentive for good behavior; 6) Council's concerns of the impacts to county staff at the jail and staff noting the county has stated accommodations are made for staff; 7) Council's concerns over the justification for the difference in the exemption for the State units versus the county jail; 8) staff noting the state units are constructed differently than the county jail and the inmates are incarcerated for longer jail sentences in the state prison versus for shorter periods of time in the county jail and due to discipline problems the county has requested the exemption; 9) the state prison units being mandated under the Texas Department of Criminal Justice (TDCJ); 10) Council's concerns that the voters have stated they want a smoke free environment and feels the County needs to have the same rules; 11) Council's concerns involving the tobacco store exemption and feels tobacco stores are businesses established for the purpose of smoking; 12) Council's concerns of second hand smoke versus smoke free; 13) Council being in favor of 15 feet versus 20 feet for Sec. 10-85 Reasonable Distance, and; 14) Council's concerns of allowing exemptions at the Zoo, parks, golf courses, jail, and private clubs.

Councilman Chase stated the original model ordinance defined a private club as follows and, also stated he feels it should be included in the proposed ordinance:

- It means an organization whether incorporated or not, which the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sales alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee or similar body chosen by the members at an annual meeting. The organization has established by-laws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

Councilman Chase also requested staff survey other cities to see how they have addressed the issue.

City Attorney Sharon Hicks responded to the private club definition by stating that staff did not include the broad definition because the model ordinance also allows smoking in a private club, but only if they have no employees. Ms. Hicks further stated if Council so chooses, a provision can be added to address/define facilities that are operated by fraternal organizations (charitable, benevolent, educational, and non-profits). Ms. Hicks noted, however, it still does not address clubs of that nature that have employees.

Council and staff discussion continued as follows: 1) staff's concerns of not addressing a private club having employees; 2) Council requesting staff survey other cities on how they are handling the issue of private clubs; 3) addressing issues under a non-profit status; 4) Council's concerns of leveling the playing field and staff noting the desire of many businesses and business associations is to have a smoke free environment throughout and to not allow exemptions; 5) the need to ban smoking in and on all City facilities including the City golf course; 6) the Country Club golf course being considered an exemption that allows smoking; 7) the proposed ordinance moving forward at today's meeting with the possibility of Council making changes to the ordinance at the December 21<sup>st</sup> Council meeting, and; 8) staff stated clarification will be provided for second reading on December 21<sup>st</sup> on the following issues as discussed by Council today: 15 feet versus 20 feet for Reasonable Distance, City golf course and Johnson Park lake, private club, retail tobacco store, and the County Jail.

Mayor Archibald stated the proposed ordinance is a template and changes can be made at the December 21<sup>st</sup> Council meeting at which time a public hearing will be held. The Mayor requested Council to consider an implementation date and encouraged representatives from the media to encourage the public to dialogue with Council concerning this issue.

Councilwoman Davis made a motion to approve first reading of an ordinance to amend Chapter 10 Fire Protection and Prevention, Article III: Fire Prevention Code, Division 2: Smoking; and set a public hearing for December 21, 2006 at 8:30 a.m. Councilwoman Moore seconded the motion, and the motion carried.

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

NAYS: None

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF ABILENE BY ADOPTING A COMPREHENSIVE REVISION OF CHAPTER 10 FIRE PROTECTION AND PREVENTION, ARTICLE III: FIRE PREVENTION CODE, DIVISION 2: SMOKING.

Council recessed for a break at 12:00 p.m. and reconvened at 12:05 p.m.

Agenda Item 4.5 was considered after Item 4.6.

4.5 Jon James, Director of Planning and Development Services briefed the Council on an ordinance considered on second and final reading to revise and update Chapter 19, "Nuisances", and to amend and move Chapter 18, Motor Vehicle and Traffic, Article III, Junked Cars, of the City of Abilene Municipal Code.

Mr. James stated this is a comprehensive revision to the City's Nuisance Ordinance. These revisions reflect changes in state law, as well as incorporating prior directives from the City Council, neighborhood groups, citizens, and peer cities to enhance our ability to make a difference in the community on code enforcement issues. Staff held two (2) two-hour work sessions with representatives from the City of Abilene, Keep Texas Beautiful, Board of Building Standards, BFI, Texas Forest Services, Downtown Association, Amarillo Highland Neighborhood Association, Cedar Creek Neighborhood Association, Old Town Abilene Neighborhood Association, and Ft. Phantom Lake Neighborhood Association. In these sessions staff presented information to the groups outlining the areas of most concern to code enforcement officers and City staff. Staff received input from these groups on what they see as the biggest problems and what they think any ordinance changes should accomplish. Continuing dialogue has occurred with neighborhood association presidents and other interested citizens as staff developed the draft ordinance language. There have been revisions made to the proposed ordinance resulting from Council's comments at the November 16, 2006 Council meeting. Mr. James reviewed the significant changes as follows:

- Outdoor storage of appliances, furniture, and other items intended for use indoors
- Excessive accumulation of outdoor items
- Graffiti
- Illegal Dumping
- Junked Vehicles
- Dead or diseased trees
- Vehicles parked in yards

Staff recommends approval of the proposed revisions to the ordinance.

Council and staff discussion included: 1) clarification involving parking cars on driveways, streets, or behind fences if allowed; 2) the need for the proposed ordinance, if approved, to be enforced; 3) the possibility of associations existing that would help citizens come into compliance and Council helping to facilitate clean-up; 4) Council's understanding the City has allocated funds for in-fill and the possibility of setting aside funds for roll-off containers to help citizens who cannot afford the clean-up process; 5) the need for clarification concerning illegal dumping and the adoption of Chapter 365 the Texas Litter Abatement, and; 7) staff stating the Texas Litter Abatement states it is illegal to dump in an area, similar to City restrictions.

Councilman Chase stated the portion of Section 19-32, Penalties in addition to abatement, that reads as follows needs clarification. *"In case the owner or occupant of any lot, lots or premises under the provisions of this Chapter shall be a corporation and shall violate any provision of this Chapter, the president, vice president, secretary, treasurer of such corporation or any manager, agent or employee of such corporation shall also be severally liable for the penalties herein provided."*

Councilman Chase recommended the following wording be added (subject to City Attorney Sharon Hicks's review): *with actual or apparent authority to manage or control the actions of such corporation.*

That portion of Section 19-32, Penalties in addition to abatement, would then read as follows: *In case the owner or occupant of any lot, lots or premises under the provisions of this Chapter shall be a corporation and shall violate any provision of this Chapter, the president, vice president, secretary, treasurer of such corporation or any manager, agent or employee of such corporation with actual or apparent authority to manage or control the actions of such corporation, shall also be severally liable for the penalties herein provided.*

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

- Elizabeth Blonk, opposed – Ms. Blonk stated that she owns two cars, which are parked on her driveway and are always in need of repair. Ms. Blonk further stated her fence is in need of repair and she cannot afford to fix it due to other bills she has and due to the cost of raising her small children.
- Brad Carter – Mr. Carter requested Council approve the proposed ordinance and expressed his appreciation to Council for their comments concerning the neighborhood associations. Mr. Carter stated he feels the restrictions need to be made tougher and the Code Enforcement division needs more staff to have the capability to follow through with complaints and enforcement.
- Pete Stokes Acosta, Jr. – Mr. Acosta stated he agrees with the proposed ordinance but he disagrees with how the City is going to implement it. Mr. Acosta further stated he feels that citizens need to be helped out versus being issued citations that they cannot afford. Mr. Acosta noted there is a lack of communication between the City and the citizens.
- Robert Bailey, Old Town Neighborhood Association – Mr. Bailey referred to the City survey that is going out in their neighborhood and stated the City needs a major face lift. Mr. Bailey further stated he feels the City needs a full time zoning officer for enforcement issues and suggested repeat offenders on weed control be issued a fine (much like a traffic ticket) versus a lien being placed on their property. Mr. Bailey requested that the Code Enforcement officers set aside one day out of the month to follow up on complaints.
- Lydia Long, President of the Old Town Neighborhood Association – Ms. Long also referred to the City survey that is going out in their neighborhood and requested if Council approves the proposed ordinance that the City enforce it, so that neighbors are not calling in complaints against each other.



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

Council and staff discussion continued as follows: 1) allocating funds to assist citizens that cannot afford the clean up process and the possibility of appointing a group of individuals or hold a workshop to implement the allocation of funds as well as employing additional code enforcement officers or zoning officers; 2) CIP funding not being allocated for abatement uses; 3) the possibility of funds being allocated from the Community Enhancement division for abatement; 4) Council requesting staff review the possibility of allocation of funds; 5) a schedule for roll-off containers being made part of the ordinance; 6) Council's request for staff to develop an implementation plan to help citizens with funding, communication, and education in dealing with the clean-up process; 7) the possibility of placing clean up resources on the City's website; 8) the Office of Neighborhood Services Board being very active; 9) the possibility of "Clean Abilene" once a month being cost prohibitive versus twice a year, and; 10) the need for communication and working together.

Councilwoman Davis made a motion to approve an ordinance considered on second and final reading to revise and update Chapter 19, "Nuisances", and to amend and move Chapter 18, Motor Vehicle and Traffic, Article III, Junked Cars, of the City of Abilene Municipal Code, and following City Attorney Sharon Hick's review, to incorporate into Section 19-32, Penalties in addition to abatement, the words, "*with actual or apparent authority to manage or control the actions of such corporation*". Councilman Higgins seconded the motion, and the motion carried.

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

NAYS: None

The Ordinance is numbered **67-2006** and captioned as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE AMENDING CHAPTER 19, "NUISANCES", AND CHAPTER 18, "MOTOR VEHICLES AND TRAFFIC", ARTICLE XII, OF THE ABILENE MUNICIPAL CODE AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

### **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.

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

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5.4 Councilwoman Davis made a motion to approve Mayor Archibald's appointments and reappointments to various boards and commissions as listed below. Councilman Higgins seconded the motion, and the motion carried.

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

NAYS: None

**Abilene Economic Development Company, Inc.**

**2 Year Terms**

Re-Appoint:

- Susan Elgin, term expires January 2008
- Ruppert Rangel, term expires January 2008

Appoint:

- George Nichols, term expires January 2008

**Abilene Health Facilities Development Corporation**

**3 Year Terms**

Re-Appoint:

- Rosemary Suttle, term expires November 2009

**Abilene-Taylor County Child Advocacy Center Advisory Board**

**3 Year Terms**

Appoint:

- Dr. Jay Capra , term expires December 2008
- Susan Preston, Pediatric Nurse Practitioner, term expires December 2009

**Abilene-Taylor County Public Health Advisory Board**

**3 Year Terms**

Appoint:

- Dr. Peter K. Norton, M.D. , term expires November 2009
- Dr. Sandip Mathur, M.D., term expires November 2009

**Abilene-Taylor County Venue District Board**

**2 Year Terms**

Re-Appoint:

- County Commissioner Stan Egger re-appointed by Commissioners on November 14, 2006 as County representative, term expires November 2008
- David Polnick – Joint City/County re-appointment, term expires November 2008

**Airport Development Board**

**3 Year Terms**

- County Commissioner Stan Egger, re-appointed by Commissioners as County representative on November 14, 2006, term expires November 2009

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**Re-Appoint City Representatives:**

- Woody Gilliland, term expires November 2009
- David Lynn, term expires November 2009

**Animal Services Advisory Board**

**3 Year Terms**

**Re-Appoint:**

- Leah Herron (represents animal welfare organization), term expires November 2009
- Tom Rigsby (citizen at large), term expires November 2009
- Alvin O'Dell (represents required duties relative to daily operation for the animal shelter position), term expires November 2009

**Appoint:**

- Megan Santee (represents City official), term expires November 2007

**Board of Adjustment**

**2 Year Terms**

**Re-Appoint:**

- Wayne Bradshaw (Regular member), term expires November 2008
- Scott Hay (Regular member), term expires November 2008
- David Hejl (Regular member), term expires November 2008

**Appoint:**

- Brad Carter, Alternate member, term expires November 2007
- Dani Ramsey, Alternate member, term expires November 2008
- Rick Waldruff, Alternate member, term expires November 2007
- Brenda Coleman, Regular member, term expires November 2007

**Board of Building Standards**

**2 Year Terms**

**Re-Appoint:**

- Robert Roadcap III (Alternate Architect), term expires November 2008
- Perry Haynes (Engineer), term expires November 2008

**Appoint:**

- Pamela Yungblut, Realtor, term expires November 2008
- Bill North, Alternate Realtor, term expires November 2008
- Janet O'Dell, Banker, term expires November 2008
- Steve Ellinger, Architect, term expires November 2008
- Vanessa Faz, Alternate Banker, term expires November 2008

**Civil Service Commission**

**3 Year Terms**

**Re-Appoint:**

- Hubert Pickett, term expires November 2009

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**Community Access Task Force**  
**3 Year Terms**

Appoint:

- Dennis Regan, term expires May 2007
- Jerry Harris, term expires May 2007
- James Duffy, term expires May 2008

**Development Corporation of Abilene, Inc.**  
**3 Year Terms**

Re-Appoint:

- Joe Crawford, term expires November 2009

**Landmarks Commission**  
**3 Year Terms**

Re-Appoint:

- Dr. Michael McClellan (Historic Property Owner), term expires November 2009
- Phil Miller (Architect), term expires November 2009

Appoint:

- Tina Cargile, At-Large Alternate, term expires November 2007
- Laura Wardroup, At-Large Alternate, term expires November 2009

**Library Board**  
**2 Year Terms**

Re-Appoint:

- Maryanna Harrell, term expires November 2008
- Stewart Caffey, term expires November 2008
- David Scott, term expires November 2008
- Jeanie Stark, term expires November 2008
- Virginia Sadler, term expires November 2008

**9-1-1 Emergency Communications District Board of Managers**  
**2 Year Terms**

Re-Appoint:

- Jeff Wyatt, Cities representative, term expires February 2008

Appoint:

- Jim Bryan, Cities representative, term expires February 2008

**Office of Neighborhood Services Advisory Council**  
**2 Year Terms**

Re-Appoint:

- Bob Gomez (At-Large), term expires November 2008
- Susan Robinson (At-Large), term expires November 2008
- Sarah Mulkey (At-Large), term expires November 2008
- Brett Monroe (At-Large), term expires November 2008

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Appoint:

- Vanessa Roberts, McMurry representative, term expires November 2007
- Kelly Cheek, At-Large, term expires November 2007

**Planning and Zoning Commission**

**3 Year Terms**

Re-Appoint:

- Jack Harkins, term expires November 2007

**Reinvestment Zone #1 City of Abilene (TIF)**

**2 Year Terms**

Re-Appoint:

- Joe Canon, term expires November 2008
- Tom Craig, term expires November 2008
- George Nichols, term expires November 2008
- Bill Senter, term expires November 2008
- Tiffany Wagstaff, term expires November 2008
- Mike Young, term expires November 2008
- Charlie Wolfe, AISD representative, term expires November 2008

5.5 No action was taken on the performance evaluations for the City Manager, City Attorney, City Secretary, and the Municipal Judge.

There being no further business, the meeting was adjourned at 2:50 p.m.

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Renee Scott  
Assistant City Secretary

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Norm Archibald  
Mayor