

**CITY COUNCIL MEETING**  
**December 21, 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 21, 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, City Secretary Jo Moore, and various members of the City staff.

Councilman Higgins gave the invocation.

Mayor Archibald introduced Anthony Zacniewski, a 5<sup>th</sup> grade student from Bowie Elementary School, who led the Pledge of Allegiance. Anthony's father, and principal Pam Paddock were also in attendance.

Mayor Archibald gave special recognition to Dan Weber, Director of Aviation, who is taking the position of Director of Aviation for the City of Dallas, and to City Attorney Sharon Hicks, who is leaving the city and going into private practice. The Mayor announced the time and location of receptions that will be held for both Mr. Weber and Ms. Hicks.

**DISPOSITION OF MINUTES**

2.0 Mayor Archibald stated Council has been given the minutes from the December 7, 2006 Regular Council Meeting. There being no corrections, additions, or deletions to the minutes Councilwoman Moore made a motion to approve the minutes as presented. Councilwoman Davis 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 requested item 3.11, ***Bid #CB-7000 – Vehicles for various divisions***, be removed from the Consent Agenda and considered separately.

Councilman Higgins made a motion to approve consent agenda items 3.1 through 3.7 and first reading of items 3.8 through 3.10, as recommended by staff. Councilman Williams 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 or his designee to execute a Purchase, License and Maintenance Agreement with Datamatic, Ltd., in the total amount of \$28,441.70 to provide six (6) handheld meter reading units and the first annual maintenance fee for the units.
- 3.2 Oral Resolution authorizing the City Manager to execute Change Order 2 to the Crowe Group, Inc. contract for the Terminal Improvements Phase IV project.
- 3.3 Oral Resolution authorizing the City Manager to execute Work Order 3 of the Air Service Market Services contract with Sabre, Inc.
- 3.4 Oral Resolution approving a Street Use License Agreement with Dickies Industrial Services to install monitoring wells within the public right-of-way within the area bounded by North 8<sup>th</sup> St., Plum St., North 6<sup>th</sup> St., and Pine St..
- 3.5 Oral Resolution authorizing the purchase of Health Laboratory Equipment from Physician Sales & Services at a price of \$95,170.
- 3.6 Oral Resolution authorizing execution of a professional services contract with Halff Associates for the Parks Master Plan for a fixed fee of \$85,860.00.
- 3.7 Resolution authorizing the establishment and implementation of a Car Rental Customer Facility Charge at Abilene Regional Airport.

The Resolution is numbered **41-2006** and captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,  
AUTHORIZING IMPLEMENTATION OF A CUSTOMER FACILITY CHARGE AT  
ABILENE REGIONAL AIRPORT.

**Ordinances:**

- 3.8 **Z-2006-47** – Request to rezone property from RM-3 (Residential Multi-family) to PDD (Planned Development District) zoning, property located at 1443 Hickory Street; and set a public hearing for January 11, 2007 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, “ZONING”, OF THE ABILENE MUNICIPAL CODE, CONCERNING PDD-117 A PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.9 **Z-2006-48** – Request to rezone property from MH (Mobile Home) to RS-6 (Residential Single-family) and RM-3 (Residential Multi-family) zoning,

property located along Duchess Avenue; and set a public hearing for January 11, 2007 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 **Z-2006-49** – Request to rezone property from AO (Agriculture Open Space) to GC (General Commercial) zoning, property located at 3334 E. Hwy. 80; and set a public hearing for January 11, 2007 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.

**Bid Award:**

**3.11 Removed from the Consent Agenda and considered separately: Bid #CB-7000,** Vehicles for various divisions.

Item 3.11 was removed from the Consent Agenda and considered separately at the request of Councilman Spano

Councilman Spano questioned David Wright, Finance Director concerning the possibility of utilizing the state law that allows a 3% local bidder preference in purchasing and awarding the bid in the aggregate to the local company. Mr. Wright stated the bids were on an individual basis and not on an aggregate basis and could not be awarded in the aggregate.

Councilman Spano then made a motion to approve **Bid #CB-7000** – Vehicles for various divisions as follows:

- **Lawrence Hall, Abilene, Texas:**
  - **Item 2** – (2) Midsize SUV's Total Price \$43,802.00
  - **Item 4** – (1) Midsize Pickup Truck Total Price \$10,811.00
  - **Item 6** – (5) Sedans Total Price \$80,590.00
  - **Item 7** – (1) Full-Size SUV Total Price \$29,650.00
  - **Item 8** – (3) Utility Trucks (Item 2) Total Price \$68,028.95
- **Grande Truck Center, San Antonio, Texas:**
  - **Item 1** – (2) Large Pickup Trucks Total Price \$38,125.00
  - **Item 3** – (1) Cargo Van Total Price \$15,445.00
  - **Item 8** – Utility Trucks (Item 1) Total Price \$41,677.00
  - **Item 8** – Utility Trucks (Item 3) Total Price \$25,220.00

Councilman Higgins seconded the motion, and the motion carried.

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

NAYS: None

### **REGULAR AGENDA**

4.1 Carl Scott, Recreation and Senior Citizens Administrator briefed the Council on an ordinance considered on second and final reading adopting the Standards of Care for the City of Abilene's youth programs.

Mr. Scott stated in August of 1997 the 74<sup>th</sup> Legislature enacted Section 42.041(14) of the Texas Human Resources Code which exempts youth programs operated by a municipality from child care state licensing requirements. The Texas Human Resources Code provides that in order for a municipality to be exempt from the state's licensing requirements, the governing body of the municipality must annually adopt standards of care by ordinance after a public hearing. The major difference between the City's standards and the State's is that the City has established standards for 6-13 years of age, whereas the state's standard is for 0-6 years of age. The Standards of Care Ordinance, which was first approved seven years ago, has functioned very well and no changes to the existing ordinance are necessary at this time. The Standards of Care requires that a certified leisure professional that is not affiliated with the City of Abilene make an independent inspection of the program to insure that the city is in compliance with our adopted Standards of Care. The Fire Department and Environmental Health Division also make inspections during the year. Jane Ann Sellars of Coppell, Texas conducted the independent inspection of the program in October and found no deficiencies. Staff and the Parks and Recreation Board recommend approval of the proposed ordinance.

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.

Councilwoman Davis made a motion to approve the ordinance considered on second and final reading adopting the Standards of Care for the City of Abilene's youth programs. Councilman Williams 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 **68-2006** and captioned as follows:

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.

4.2 Sharon Hicks, City Attorney briefed the Council on an ordinance considered on second and final reading amending Chapter 10 Fire Protection and Prevention, Article III: Fire Prevention Code, Division 2: Smoking.

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 places and places of employment. The proposition passed 15,326 (68.62%) in favor of the ban to 7,007 (31.38%) against. Ms. Hicks stated during first reading of the ordinance on December 7, 2006, Council appeared to have consensus on the majority of the ordinance with minor revisions. For second reading, staff has provided the ordinance that Council appeared to be in agreement with and separated those items that needed additional information. Following the discussion on first reading, staff:

- Included in **Section 10-81, Definitions:**
  - A. ***“Bar”*** added the sentence: **“For purposes of this ordinance, a bar includes any place where alcohol is consumed, whether purchased on or brought to the premises”.**
  - I. ***“Restaurant”*** added the phrase (after private and public school cafeterias) **drive-through or drive-in establishments where one can order from or eat in a vehicle,...**
  - J. ***“Retail Tobacco Store”*** added the sentence, **“Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales”.**
- Modified in **Section 10-87, Exemptions from Prohibition:**
  - 5. Retail Tobacco Stores:
    - a. in stand alone physical facilities or other retail space provided that smoke from the subject store does not infiltrate areas where smoking is prohibited under the provisions of this Article; and
    - b. **where sales of incidental products shall not exceed ten percent (10%) of total gross sales; sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales; and**
    - c. **where no alcohol is consumed on the premises.**

Staff recommends approval of the proposed ordinance in keeping with the voters wishes.

Mayor Archibald reviewed the non binding referendum language that was on the November ballot and stated that Council had extensive dialogue at the December 7<sup>th</sup> Council meeting concerning the non smoking ban. From that discussion came four (4) items that consensus has not been reached on and the need now exist to further define those items. The four items are:

- Private Clubs
- Jail Facilities
- City owned facilities including parks
- Retail Tobacco Stores

## **City Council Meeting**

**December 21, 2006**

**Page 6**

The Mayor stated this item does call for a public hearing and anyone wanting to speak on the issues would be allowed to do so and for the record they would need to state only their name prior to speaking. The Mayor explained the public hearing timing process and noted that each speaker would be allowed 3 minutes to address the Council. The Mayor encouraged the Council to write down any questions they may have that come up during the public hearing and those would be taken following the public hearing.

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

- Robert Briley – Mr. Briley distributed information on several Abilene businesses concerning prohibiting smoking within reasonable distances from their front doors. Mr. Briley spoke in favor of the non-smoking ban and addressed the need to protect citizens from second hand smoke.
- Kathy Graham – Sheriff's office administrator. Ms. Graham reviewed the history of smoking being allowed in the jail and provided information concerning when, where and why smoking is allowed. Ms. Graham referred to the allowed smoking as a tool utilized in the care of prisoners. Ms. Graham requested Council leave the tool in place.
- Chris Tullos – Mr. Tullos stated the ordinance needs to make sense for everyone and not just the majority. Mr. Tullos further stated choices are gifts and rights and should not be taken away.
- Homer Winkles – lounge owner. Mr. Winkles noted as a business owner he pays taxes on liquor and cigarettes and that he will place signs on his business informing the public that it is a smoking facility.
- Jim Madrin – Mr. Madrin stated he does not like the proposed ordinance, feels his rights are being violated, has been told by business owners that they will move if the ordinance passes and that this is depriving him of his freedom of choice.
- Harry Root, Jr. – Mr. Root stated he is against the ordinance and noted various concerns including the possibility of destroying businesses and that the voters may not have under what was on the ballot.
- Ron Ashmore – Mr. Ashmore stated voters were unsure of what they were voting on and that there was a low voter turnout. Mr. Ashmore addressed the inconsistencies in the ordinance and stated in regards to health issues that there are other things that affect health. Mr. Ashmore requested Council reconsider the ordinance.
- Leanna Lance – singer. Ms. Lance stated her concerns that businesses will close if the ordinance is approved.

**City Council Meeting**  
**December 21, 2006**  
**Page 7**

- Rhonda Simon – hair stylist. Ms. Simon stated there are other things much more dangerous than smoke (i.e. chemicals used in hair styling). Ms. Simon stated this has gone too far and that she is leaving Abilene.
- Mandy Ellifritz – Ms. Ellifritz stated many inaccuracies have been attributed to smoking and that a compromise is needed. Ms. Ellifritz referenced the ordinance established by the city of Lubbock and information she had provided to Council.
- David Mitchell – Mr. Mitchell stated a small percentage of voters actually passed this issue. Mr. Mitchell also stated statistics from the Surgeon General report are contradictory and that environmental contamination is limited.
- Becky Lott – Cabaret. Ms. Lott reviewed what some other cities are doing concerning the ban on smoking
- Tim McAtee – Mr. McAtee noted councilmembers involvement in non smoking issues and presented a poster illustrating his points that some Council members should abstain. Mr. McAtee also addressed various rights issues and various staff members activities and involvement.
- Chris McGinnis – representing owners of small bars. Mr. McGinnis stated it is his choice to go where smoking is allowed and that his business helps support his family.
- Barbara Manley – Ms. Manley stated she has a pacemaker and that it is her right to smoke and that smoking bans hurt business people.
- David Manley – retired from USAF. Mr. Manley stated there is no proof of anyone dying from second hand smoke.
- Kris Southward – Mr. Southward stated his appreciation to Council for having placed this item before the voters at a time when a large voter turn out was expected. Mr. Southward referenced the “total ban” wording on the ballot and encouraged Council to not start making exceptions to the total ban. Mr. Southward noted problems that will arise if exceptions are allowed, including being harder to police and setting a precedence for more exceptions to be requested.
- Dawn Diler - Ms. Diler stated her opposition to the ordinance noting that customers smoke and that the ban would put businesses out of business.
- Mack Magana - Mr. Magana noted that none of the Councilmembers smoke and questioned their right to address this issue. Mr. Magana stated this ordinance will hurt Abilene.
- Elton Hammer – Mr. Hammer stated the ordinance will hurt bar business and that they can’t survive if smoking is not allowed.

**City Council Meeting**  
**December 21, 2006**  
**Page 8**

- Glenda Wyrick - Ms. Wyrick stated this ordinance would take away citizens right and the freedom to choose should remain.
- Patrice Butler – Ms. Butler stated the ordinance would create an inconvenience and would make smokers sick by their having to go outside in the cold to smoke.
- Crystal McGinnis – Ms. McGinnis stated she is a cancer patient and that taking away smokers right to smoke would cause them stress. Ms. McGinnis further stated business owners should decide to allow or not allow smoking in their businesses.
- Jan Goforth – Ms. Goforth questioned where the freedom of speech and rights have gone and stated she is a small business owner and that the city does not provide them any help. Ms. Goforth further stated the bigger chain businesses get help and that they need help.
- Gary Tyler – Mr. Tyler stated he is for smokers rights but not for restaurants that have non smoking sections where the smoke from the smoking section comes into the non smoking sections and noted indoor smoke cannot be contained.
- Joe Killian – Mr. Killian addressed issues on rights violations.
- Lydia Long – Ms. Long stated her approval of the ordinance noting the voters voted for a total ban and also stated she hopes the Council will uphold the total ban, equally.
- Dr. Zane Travis – Medical Director. Dr. Travis stated he is an ex-smoker, a physician, a father and grandfather and he is in favor of individual freedoms but he is not in favor of having to breathe air that kills. Dr. Travis urged the Council to protect people by passing the ordinance banning smoking.
- Sherry Hirsch – school teacher. Ms. Hirsch stated the voters had a chance to vote and that they did not vote on no smoking just on no smoking in public places. Ms. Hirsch further stated people have a right to smoke but individual health rights also have to be considered.
- Mary Morris – Ms. Morris stated she works in a bar and depends on tips for her living and that people won't stay in the bar if they can't smoke. Ms. Morris asked Council how she will support herself if she doesn't get tips.
- Ralph McCleskey – M.D. Dr. McCleskey through a powerpoint presentation addressed secondhand smoking issues. Dr. McCleskey requested the Council pass the ordinance because the citizens of Abilene want smoking banned and that he is speaking on behalf of Smoke Free Abilene, 300 physicians, Abilene citizens, and 15,000 voters.
- Tony Schranz – owner of bowling alley. Mr. Schranz referenced the study that was done in Lubbock and stated the suggestion was that business owners be given a



choice. Mr. Schranz suggested the City Council review the Lubbock affidavit and study the business and health issues and offer choices.

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

Council recessed for a break at 10:20 a.m. and reconvened at 10:35 a.m.

Mayor Archibald stated appreciation to all that have been involved in the smoking ban issues and the Mayor acknowledged a signed petition that had been given to the Council. The Mayor reviewed the process and events that led to today's consideration of the non-smoking ban ordinance and stated the City Council concurs or agrees in principle on 95% of the ordinance before them. Exceptions to the ordinance that Council will be considering today were shown during the presentation by the City Attorney and will also include any that were brought up during the public hearing.

Councilman Anthony Williams noted that he will be leaving the meeting shortly but that he will return.

Council comments included: 1) appreciation to citizens for their input through attendance at the Council meetings, phone calls, emails, etc.; 2) this not being a rights or freedom issue but a public health issue; 3) the reason for leveling the playing field is to help and not hurt small businesses; 4) looking at this through a broader perspective and considering the rights of people to smoke and make choices; 5) being troubled by big government and that this ordinance is an attempt on prohibition which crosses the line; 6) the importance of rights within the realm of not offending others and the need to determine how to make this work for everyone; 7) the losses that will occur (businesses will close), and concerns over the impossibility of being able to police this law; 8) stating they will not abstain on the vote today, noting an understanding, and not sitting in judgment, of smoking addiction but agreeing that bad habits don't have to be pushed on to others, and; 9) Council being service oriented and their having studied every issue thoughtfully.

Councilman Anthony Williams left the meeting at 10:50 a.m.

Mayor Archibald stated Council will further define the issues beginning with considering allowing smoking in:

- **Jail Facilities**, defined as "Inmate areas of jails, prisons or detention facilities as designated by the responsible warden or sheriff so long as the smoke does not infiltrate areas where non-smoking inmates are located."

Council discussion included: 1) smoking outside the jail facilities would still be allowed; 2) no objections to smoking outside but concerns noted with health issues arising from smoking inside; 3) other cities having mixed uses; 4) problems that exist when jails are full and stress is high, smoking is utilized as a behavior control method; 5) smoking as behavior control can be accomplished outside and employees inside are protected, and: 6) state facilities don't allow any smoking.

Councilwoman Moore made a motion to amend the ordinance being considered "Chapter 10 of the Code of the City of Abilene, Article III, Division 2: SMOKING" to prohibit smoking inside jail facilities. Councilman Spano seconded the motion, and the motion carried.

**City Council Meeting**  
**December 21, 2006**  
**Page 10**

AYES: Councilman Spano, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: Councilmen Chase and Higgins.

ABSENT: Councilman Williams

Council considered Sec. 10-86 of the ordinance: Application of Article to City-Owned Facilities:

- **City owned facilities including parks**, defined as “All facilities, including zoos, park pavilions, playgrounds, golf courses, buildings and vehicles owned, leased or operated by the City of Abilene shall be subject to the provisions of this Article.”

As drafted the ordinance included an exemption for City owned **park pavilions** when leased for a private function not open to the general public.

Council discussion included: 1) clarification of “as drafted” wording in Council’s agenda packet material; 2) city owned facilities not being construed to include private boating on city lakes; 3) allowing smoking in city facilities leased for a private function not open to the general public (i.e. family reunions); 4) the city setting the example in not allowing smoking in city facilities where the city profits from the lease/rent of the facilities, and; 5) enforcement issues if smoking in city facilities is allowed for private functions.

Councilman Chase made a motion to reinstate language into the ordinance being considered “Chapter 10 of the Code of the City of Abilene, Article III, Division 2: SMOKING” to allow smoking in city owned park pavilions when leased for a private function not open to the general public. The motion died for lack of a second.

Mayor Archibald made a motion to leave in the ordinance being considered the language as provided in Sec. 10-86 of “Chapter 10 of the Code of the City of Abilene, Article III, Division 2: SMOKING” that defines areas where smoking is prohibited as **City owned facilities including parks**, “All facilities, including zoos, park pavilions, playgrounds, golf courses, buildings and vehicles owned, leased or operated by the City of Abilene shall be subject to the provisions of this Article.” 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

Councilman Williams returned to the meeting at 11:20 a.m.

Council considered modified Sec. 10-87 of the ordinance: Exemptions from Prohibition

**Retail Tobacco Stores:**

- a. in stand alone physical facilities or other retail space provided that smoke from the subject store does not infiltrate areas where smoking is prohibited under the provisions of this Article; and

City Council Meeting

December 21, 2006

Page 11

- b. where sales of incidental products shall not exceed ten percent (10%) of total gross sales; sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales; and
- c. where no alcohol is consumed on the premises.

Council discussion included: 1) the wording “where no alcohol is consumed on the premises” not being necessary and may be viewed as redundant; 2) the importance of, and need for, equality, and; 3) assuring that an unfair advantage is not given to any one business.

Councilwoman Moore made a motion to approve modified Sec. 10-87: Exemptions from Prohibition of Chapter 10 of the Code of the City of Abilene, Article III, Division 2: SMOKING:

**Retail Tobacco Stores:**

- a. in stand alone physical facilities or other retail space provided that smoke from the subject store does not infiltrate areas where smoking is prohibited under the provisions of this Article; and
- b. where sales of incidental products shall not exceed ten percent (10%) of total gross sales; sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales; and
- c. where no alcohol is consumed on the premises.

Councilman Williams seconded the motion, and the motion carried.

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

NAYS: None

Council reviewed exemption and definition information in the ordinance being considered regarding:

- **Private Clubs**

As drafted, there was an exemption for private clubs that have no employees, except when being used for a function to which the general public is invited. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Article.

Per Section 10-81, Definitions, ( C ) “**Employee**” means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her service for a non-profit entity.

The Model Ordinance defined private club as:

“Private Club” means an organization, whether incorporated or not, which is 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 sells 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 bylaws 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.

Council discussion included: 1) clarification, based on definition, of "private club"; 2) preference of "non profit" definition of private club; 3) issues concerning exempting clubs where volunteers or employees are members of the club; 4) key to private club being all volunteers with no employees, and; 5) if this is a health issue, to be consistent, smoking in private clubs should be excluded as in other facilities are.

Councilman Williams made a motion to include language to prohibit smoking in all private clubs in the ordinance being considered "Chapter 10 of the Code of the City of Abilene, Article III, Division 2: SMOKING". Motion died for lack of a second.

Councilwoman Davis made a motion to approve Sec. 10-87. Exemptions from Prohibition: "Private clubs that have no employees, except when being used for a function to which the general public is invited. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Article" and the definitions of "Private Club" and "Employee" in the ordinance being considered "Chapter 10 of the Code of the City of Abilene, Article III, Division 2: SMOKING" as follows:

**"Private Club"** means an organization, whether incorporated or not, which is 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 sells 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 bylaws 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.

**"Employee"** means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

Councilman Chase seconded the motion, and the motion carried.

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

NAYS: Councilman Williams

City Attorney Sharon Hicks noted a revision to the ordinance as previously discussed included under the definition of **"Bar"** the sentence: **"For purposes of this ordinance, a bar includes any place where alcohol is consumed, whether purchased on or brought to the premises"**. Ms. Hicks stated the ordinance will also reflect the original definition of **"Restaurant"** and that under Sec. 10-90. Enforcement D. the words "or its designee" have been added. Ms. Hicks further stated if approved the caption of the ordinance would be published on December 24, 2006 and the entire ordinance would be available on the city's web page.

Council reviewed Sec. 10-85. **Reasonable Distance**, of the ordinance being considered which states: Smoking is prohibited within a reasonable distance of not less than 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

## City Council Meeting

December 21, 2006

### Page 13

Council discussion included: 1) changing the reasonable distance to 50'; 2) on some property 50' would be beyond that property boundary; 3) businesses having the authority to extend reasonable distance, but minimum distance of 20' would be required, and; 4) businesses having the authority to prohibit smoking entirely.

Councilman Higgins made a motion to increase the reasonable distance where smoking is prohibited in the ordinance being considered "Chapter 10 of the Code of the City of Abilene, Article III, Division 2: SMOKING" to not less than 50 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited. Motion died for lack of a second.

Mayor Archibald reviewed all revisions, amendments, exceptions, definitions and modifications to Chapter 10 of the Code of the City of Abilene: Fire Protection and Prevention, Article III: Fire Prevention Code, Division 2: Smoking as approved by Council at today's meeting.

Councilwoman Davis made a motion to approve the ordinance, including all revisions, amendments, exceptions, definitions and modifications as approved by Council, considered on second and final reading 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. 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 **69-2006** and captioned as follows:

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.

Mayor Archibald noted the effective date of the ordinance is January 3, 2007 and the "No Smoking" signs as required under Sec. 10-88. Posting of Signs, are required to be posted within four (4) weeks after the effective date.

Council recessed for a break at 12:05 p.m. and reconvened at 12:10 p.m.

4.3 Mayor Archibald stated item 4.3, *an Oral Resolution approving the Development Corporation of Abilene, Inc. Report of Activities for the fiscal year ended September 30, 2006*, has been removed from today's agenda and will be considered at the January 11, 2007 Council meeting.

### EXECUTIVE SESSION

Mayor Archibald recessed the Council into Executive Session pursuant to Sections 551.071, 551.074, 551.072 and 551.087 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

## **City Council Meeting**

**December 21, 2006**

**Page 14**

officers, to consider the purchase, exchange, lease or value of real property, and to discuss contemplated business prospects and or economic development matters.

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

5.4 Councilman Williams made a motion to approve Mayor Archibald's board appointments 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 Health Facilities Development Corporation**

#### **3 Year Terms**

Appoint:

- Tim Lancaster, term expires 11/2009

### **Airport Development Board**

#### **3 Year Terms**

Appoint:

- Kirk Thaxton, term expires 11/2007

### **Development Corporation of Abilene, Inc.**

#### **3 Year Terms**

Appoint:

- Mike Schweikhard, term expires 11/2009

5.5 Councilman Chase made a motion to approve the appointment of Dan Santee as Interim City Attorney, effective December 26, 2006. Councilman Williams seconded the motion, and the motion carried.

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

NAYS: None

5.6 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 1:15 p.m.

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Jo Moore  
City Secretary

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Norm Archibald  
Mayor