

CITY COUNCIL MEETING
August 13, 2009, 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 13th, at 8:30 a.m. in the Council Chambers at 555 Walnut Street. Mayor Archibald was present and presiding with Councilmen Shane Price, Stormy Higgins, Joe Spano, Anthony Williams, Robert O Briley and Councilwoman Laura Moore. Also present were City Manager Larry Gilley, City Attorney Dan Santee, City Secretary Danette Dunlap, and various members of the City staff.

Councilmen Price gave the invocation.

Mayor Archibald introduced Drew and Steven Miller; Drew and Steven attend Bonham Elementary. Drew and Steven led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas. Drew and Steven are the twin sons of Sharon Miller, Child Advocacy Center and dad Steven Miller with Sears Recreation Center.

EMPLOYEE SERVICE AWARDS AND RECOGNITIONS

Mayor Archibald and City Manager Larry Gilley presented the following Service Awards:

<i>Nolan "Shain" Burks</i>	<i>Police Lieutenant, Special Operations</i>	<i>20 Years</i>
<i>Van Holdbrook</i>	<i>Police Sergeant, Patrol</i>	<i>20 Years</i>
<i>Wallace McDaniel</i>	<i>Police Officer, CID</i>	<i>20 Years</i>
<i>Stanley "Stan" Meiser</i>	<i>Police Officer, Patrol</i>	<i>20 Years</i>
<i>Rodney Smith</i>	<i>Police Officer, Special Operations</i>	<i>20 Years</i>
<i>James Young</i>	<i>Police Sergeant, Youth</i>	<i>20 Years</i>

DISPOSITION OF MINUTES

5.0 Mayor Archibald stated Council has been given the minutes from the Special Called Meetings of July 21st and 22nd, Regular Meeting July 23, 2009. There being no deletions, no addition, and no corrections Councilwoman Moore made a motion to approve the minutes as presented. Councilmen Higgins seconded the motion and the motion carried.

AYES: Councilmen Price, Spano, Williams, Higgins, Briley, Councilwoman Moore and Mayor Archibald

NAYS: None

CONSENT AGENDA

Councilmen Spano made the motion to approve consent items 6.2 through 6.11 as presented. Councilmen Williams seconded the motion, the motion carried.

AYES: Councilmen Price, Spano, Higgins, Williams, Briley, Councilwoman Moore and Mayor Archibald

NAYS: None

ABSTAINED: Mayor Archibald and Councilmen Shane Price abstained from the vote on item 6.11.

Resolution:

- 6.1** Approved a request to the Brazos G Regional Water Planning Group and the Texas Water Development Board seeking to evaluate the supplies available from Fort Phantom Hill Reservoir based on a two-year safe yield.

The City is a member of the Brazos G Regional Water Planning Group. The Brazos G Regional Water Planning Group is currently developing its 2011 Brazos G Regional Water Plan, which will become part of the 2012 State Water Plan, to be adopted by the Texas Water Development Board ("TWDB"). The 2011 Brazos G Regional Water Plan and 2012 State Water Plan will, in part, estimate the water supplies available to the City. Currently, such supplies are evaluated based on a one-year safe yield concept. A one-year safe yield identifies the maximum annual diversions available from a water supply source that will allow only one year of available diversions following the drought of record.

The City serves as a regional water supplier for many communities and industries located within West Central Texas, utilizing supplies available to the City from its Fort Phantom Hill Reservoir, West Central Texas Municipal Water District's Hubbard Creek Reservoir, and Colorado River Municipal Water District's O.H. Ivie Reservoir. In light of the recent drought and uncertainties associated with future drought conditions and global climate change, the City's supplies should be conservatively evaluated so that adequate planning for future demands can be addressed. Thus, the proposed resolution seeks to have the City Manager request that the Brazos G Regional Water Planning Group and TWDB evaluate the supplies available from Fort Phantom Hill Reservoir based on a two-year safe yield. Such evaluation will be used in adopting the 2011 Brazos G Regional Water Plan and the 2012 State Water Plan. A two-year safe yield will identify the maximum annual diversions available from Fort Phantom Hill Reservoir that will allow two years of available diversions following the drought of record.

Hubbard Creek Reservoir is essentially operated based on a two-year safe yield by contracting with Member Cities (Abilene, Anson, Albany and Breckenridge) at 85% of the one-year safe yield. Inflows to O.H. Ivie Reservoir over the past ten years have reduced the one-year safe yield of the reservoir by over 27%. Additionally, from 1993-2006, streams in the Abilene area experienced approximately a 20% reduction in stream flow from flows available during the previous drought of record lasting from 1943-1956. Thus, it is prudent for the City's supplies to be evaluated based on a conservative approach so as to ensure the City's available supplies are not overestimated during future drought conditions.

City Council approved the City Manager to request that the Brazos G Regional Water Planning Group and the Texas Water Development Board approve the evaluation of supplies available from Fort Phantom Hill Reservoir based on a two-year yield.

Resolution #26-2009 and captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE CITY MANAGER TO REQUEST THAT THE BRAZOS G
REGIONAL WATER PLANNING GROUP AND THE TEXAS WATER DEVELOPMENT
BOARD AUTHORIZE THE EVALUATION OF THE WATER SUPPLIES AVAILABLE
FROM THE FORT PHANTOM HILL RESERVOIR BASED ON A TWO-YEAR SAFE
YIELD ESTIMATE.

Oral Resolution:

- 6.2** Oral Resolution – City Council approved the fixed route Bus System revisions. Fixed route service is the primary service provided by CityLink Transit, the City’s public transit system. This is supplemented by the ADA demand-response service during the day and the evening demand-response service. CityLink has recently completed an in depth evaluation of the fixed route service. From this evaluation, system-wide revisions have been developed.

The current fixed route system has 11 weekday routes and 8 Saturday routes (3 weekday routes are not operated and the number of runs on the other routes are reduced). The revised fixed route system has 11 weekday routes and 7 Saturday routes. The Saturday routes are different than the weekday routes and include a cross-town route across the northern part of the City.

The revised route system covers generally the same area covered by the current system. However, service will be provided to some additional areas: the northeast Wal-Mart, Sunset Arbor Apartments, and a portion of S 7th Street from which service was removed in 2007.

Revisions will be implemented on Monday October 5, 2009.

Ordinance:

- 6.3** Ordinance amending Chapter 19, Nuisances, and 20 Offenses, of the Code of the City of Abilene (first reading); and setting a public hearing on August 27, 2009 at 8:30 a.m.

Currently, the City of Abilene regulates graffiti within Chapter 19, Nuisances, of the Code of the City of Abilene. If a property owner allows a nuisance to remain on his/her property, they will ultimately be cited for violating Chapter 19 and they will go through the abatement procedure set forth within that Chapter. HB 2086 is an omnibus bill for gang related activity that was signed by the Governor and the provisions become effective September 1st. One of those provisions sets forth the parameters under which a county or municipality may require a property owner to remove graffiti. A municipality will no longer be able to cite a property owner for allowing graffiti to remain on a structure, nor will they be able to require the removal without first offering to remove the graffiti for free.

Fortunately, the City and County jointly fund, and the County oversees, a successful graffiti eradication program. Changes, however, need to be made to our City Code to incorporate the procedure mandated by the state. There are many instances of graffiti that go unreported to the police, and we anticipate it is those situations that will ultimately be worked through the process outlined within the new section of the City Code we are recommending be added within Chapter 20.

AN ORDINANCE AMENDING CHAPTER 19, "NUISANCES AND ILLEGAL DUMPING", AND CHAPTER 20, "OFFENSES", OF THE ABILENE CITY CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW, PROVIDING A SEVERABILITY CLAUSE; AND CALLING A PUBLIC HEARING.

Award of Bids:

- 6.4** Bid Award #**CB-9038** – Midsize Wheel Loader for Stormwater. Council awarded the bid to Abilene New Holland, in the amount of \$248,569.00.
- 6.5** Bid Award #**CB-9039** – Backhoe Loaders for Various Divisions. Council awarded the bid to Abilene New Holland, in the amount of \$119,700.00.
- 6.6** Bid Award #**CB-9040** - Small Wheel Loaders. Council awarded the bid to Warren Cat, in the amount of \$360,297.00.
- 6.7** Bid Award #**CB-9042** – Water Truck. Council awarded the bid to Corley Wetsel, in the amount of \$72,015.00.
- 6.8** Bid Award #**CB-9043** – Platform Dump Trucks for Various Divisions. Council awarded the bid to Roberts Truck Center, in the amount of \$187,458.00.
- 6.9** Bid Award #**CB-9044** – Single Axle Dump Trucks for various divisions. Council awarded the bid to Roberts Truck Center, in the amount of \$194,100.00.
- 6.10** Bid Award #**CB-9048** – Roof replacement at the Abilene Zoo and the Hamby Wastewater Treatment Plant. Council awarded the bid to Item 1 – Abilene Zoo to Barr Roofing and Items 2 & 3 Abilene Zoo Jaguar Complex and the Hamby Wastewater Treatment Plant to Lydick-Hooks Roofing.

Resolution:

- 6.11** Regarding Section 147 (f) Approval of Tarrant County Cultural Education Facilities Finance Corporation Hospital Revenue Refunding and Improvement Bonds (Series 2009C)

Resolution #**27-2009** and captioned as follows:

RESOLUTION REGARDING SECTION 147(f) APPROVAL OF TARRANT COUNTY CULTURAL EDUCATION FACILITIES FINANCE CORPORATION HOSPITAL REVENUE BONDS (HENDRICK MEDICAL CENTER PROJECT) SERIES 2009A AND

SERIES 2009B, AND ITS VARIABLE RATE HOSPITAL REVENUE BONDS (HENDRICK MEDICAL CENTER PROJECT) SERIES 2009C.

REGULAR AGENDA

Mayor Archibald turned the meeting over to Mayor Pro-tem Moore due to a conflict of interest on Items 7.1 and 7.8. Mayor Archibald and Councilmen Price stepped down from the dais and did not participate in the discussion of the following two items.

7.1 Jon James, Director of Planning and Development Services briefed the City Council on the Case No. Z-2009-04, a request to rezone property and apply the Pine Street Corridor Overlay District to properties on Pine Street from North 6th Street to I-20.

Property along the Pine Street corridor has provided a variety of goods and services to the City's residents. Many different types of businesses have occupied this corridor, some for over 40 years. A large number of businesses are auto related, while others include retail shops, restaurants, financial institutions, medical facilities and educational institutions with a few residential properties intermixed. Rehabilitation of degraded properties has been ongoing for the last several years, spearheaded by Hendrick Medical Center, Development Corporation of Abilene and Hardin Simmons University.

The Future Land Use section of the Comprehensive Plan designates this general area as part of an Enhancement Corridor. In general, development and redevelopment within this district should serve as a connection between the downtown to the south, the hospital/medical uses and university along the corridor, and on the Interstate Corridor on the north. Uses are intended to include retail, restaurants, services, and medical, and office, research educational and related uses. Development in the area should be of high-quality with well designed buildings and attractive landscaping in a pedestrian-friendly setting. The City recently approved the overlay district regulations. This action will apply this new zoning classification to these properties.

Staff and Planning & Zoning Commission recommend approval.

Pine Street Corridor Overlay: Purpose

The primary purpose of this overlay district is to encourage high-quality redevelopment within the proposed district.

Proposed district boundary includes all properties with frontage on Pine Street from North 6th Street to Interstate 20.

Overlay District Regulations adopted: January 8, 2009

In general, development and redevelopment within this district should serve as a connection between the downtown to the south, the hospital/medical uses and university along the corridor, and on the Interstate Corridor on the north.

Uses are intended to include retail, restaurants, services, medical, office, research, educational, and related uses.

Development in the area should be of high-quality with well-designed buildings and attractive landscaping in a pedestrian-friendly setting.

Pine Street Corridor Overlay Summary

More Flexible and Less Restrictive than current ordinance:

Setbacks

- No front setback required
- Rear setback can be reduced to zero

Landscaping

- Per the City's landscaping standards or through an urban-style wide sidewalk from building to curb with street trees in planters and/or tree wells

More Flexible and Less Restrictive than proposed LDC:

Driveway Access

- Single-family and two-family residential exempt
- Separation a minimum of 50 feet for driveways on different parcels
- Located a minimum of 25 feet from interior side and rear property lines (does not apply to a shared drive)
- Driveways shall be separated from adjacent street intersections as follows:
75 feet from arterial, freeway, frontage road, or collector;
50 feet from local streets

More Restrictive than current ordinance:

Land Uses

- Allowable uses per the underlying zoning district, except:
auto-related businesses (auto sales, auto repair, truck repair, etc.) are allowed only with a Special Exception

Building & Architectural Standards

- Building Materials
- Building Articulation

Signage

- Freestanding signs: one per street frontage (monument style) with a maximum height of 8 feet and a maximum area of 100 square feet
- Portable signs prohibited

Setbacks

Less Restrictive:

- No front setback required
- Rear setback can be reduced to zero

Landscaping

Less Restrictive:

- Per the City's landscaping standards
or
- an urban-style wide sidewalk from building to curb with street trees in planters and/or tree wells

Driveway Access

Less Restrictive than Proposed City Code:

- Single-family and two-family residential exempt
- Separation a minimum of 50 feet for driveways on different parcels (vs. 100 feet in proposed LDC, 200 ft for arterial portion)
- Located a minimum of 25 feet from interior side and rear property line (does not apply to a shared drive)
- Driveways shall be separated from adjacent street intersections as follows:
 - 75 feet from arterial, freeway, frontage road, or collector (75/150 ft)
 - 50 feet from local streets (75/150 ft)

More Restrictive (for Auto Related Uses Only)

Land Uses

Allowable uses per the underlying zoning district, except:
auto-related businesses (auto sales, auto repair, truck repair, etc.) are allowed only with a Special Exception
Note that such uses are NOT prohibited; only requiring a Special Exception to ensure compatibility.

Slightly More Restrictive than Current City Code

Building & Architectural Standards

Building Materials

- No concrete block or metal siding visible from the street
(City Code exempts Industrial and Heavy Commercial)

Building Articulation

- Variation every 50' and avoid large blank walls (City Code is similar, but only applies to buildings larger than 50,000sf)

Pine Street Corridor Overlay District

More Restrictive than City Code

Signage

Freestanding signs: one per street frontage (monument style) with a maximum height of 8 feet and a maximum area of 100 square feet (current ordinance allows 50' tall, 300sf)

Portable signs prohibited

(allowed by current sign ordinance, but upcoming draft ordinance prohibits citywide, per P&Z recommendation)

Frequently Asked Questions

1. I have an existing business on Pine Street. Will I have to change my building, driveways or parking Lot?

NO. Your business, building and property will not be affected unless the structure is expanded in size, relocated on the lot or completely torn down and replaced by a new structure.

2. I have an existing business on Pine Street without a sidewalk or a tree in front of my building. Do I have to install a sidewalk and a tree?

NO. A sidewalk would be required only if the building was expanded or removed and replaced.

3. I have an existing business on Pine Street and my customer's park on the street in front of the building, because I have no parking lot. Will I lose my parking space in front?

NO. You can continue to park in front of your building at least until you make major changes to the building.

4. If I change my business from one type of use to another, will I have to comply with the new standards?

NO. However, if you are converting your property to an auto related business, you will have to apply to the Board of Adjustment for a Special Exception.

5. If I sell my property will the new owner have to comply with these standards?

It depends on what physical changes the new owner makes to the property. If the building undergoes major renovation and expansion or is demolished to build a new structure the standards will be applicable, otherwise they will be able to continue just as the previous owner.

6. Does "Eminent Domain" play a role in acquiring property for this project?

NO. "Eminent Domain" has no relevance to the Pine Street Overlay – the City is not acquiring any property.

7. Is my property being rezoned from Industrial to Commercial?

NO. None of the properties along Pine Street are being rezoned, nor are the permitted uses for each zoning category being changed, other than the change for auto-oriented uses.

8. Does this project involve changes to Pine Street itself?

NO. This overlay district applies only to private property along Pine Street. Currently, a funded "street project" is planned for resurfacing the street. This street project is not part of the overlay district and does not include funds for landscaped medians, sidewalks, or streetscaping.

9. If a building, used for an auto-related business, is vacant and the use ceases for six months can the same auto-related use resume?

NO. A building would lose its auto-related use status after six months of vacancy and would have to apply for a Special Exception from the Board of Adjustment.

Council and Staff discussion included: 1) all current land owners have been grandfathered; 2) no changes to billboards; and 3) how would the purchase of property located across the alley and running along Cedar or Hickory effect Pine Street property? If the alley was closed then a re-plat would have to be done and a site plan would need to be submitted and would come under the Pine Street Overlay.

Mayor Pro-tem Moore opened the public hearing and the City Council heard from the following:

- Albert Pittman – Mr. Pittman stated that he was against this ordinance and made the suggestion that the ordinance only cover from North 6th Street to Ambler. Allow the north end of Pine to stay the way that it is. He also stated that he believes that Pine Street is taking care of itself and that if the Council did nothing that within the year it would be like the Council wants it to be.

- Tommy Stevens – Mr. Stevens voiced his concern over his customer parking and whether this ordinance will make him change the way they park. Mr. James explained that it would not affect his property unless he makes improvements.

Mayor Pro-tem Moore closed the public hearing.

Councilmen Williams made the motion to approve the Ordinance for Case No. **Z-2009-04**, a request to rezone property and apply the Pine Street Corridor Overlay District to properties fronting on Pine Street from North 6th Street to I-20. Councilmen Spano seconded the motion, motion carried.

AYES: Councilmen Spano, Williams, Higgins, Briley, Councilwoman Moore.

NAYS: None

ABSTAINED: Mayor Archibald and Councilmen Price

Ordinance **#20-2009** and is 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.

7.8 Ken Dozier, Fire Chief briefed the City Council on the Ordinance that amends Chapter 5, Ambulances, of the Code of the City of Abilene.

Currently the City of Abilene is served by Metro Care for all emergency care transport that originates within the city. Further, most non-emergency transport and transfer that occurs within the City is also performed by Metro Care. The City received a letter from a local hospital requesting certain amendments to Chapter 5 of the Code of the City of Abilene to allow more flexibility on the non-emergency transport and transfers that occur within the city. After reviewing the concerns, staff has drafted two exceptions to add to the five exceptions currently within Chapter 5. The exceptions allow certain transports and transfers to occur without the need to hold a license of necessity, which in turn, requires the holder to provide emergency transports that occur and will likely result in a cost savings to the patients.

Sec. 5-2 Exceptions.

(e) Which is transporting a patient who is picked up from a location within the City limits and transported to a location beyond the limits of the city; or,

(f) Which is transporting a non-emergency care patient from one location of a hospital's operations within the City to another location of the same or other hospital's operations within the city; or,

(g) Which is transporting a non-emergency hospice care patient from one location within the City to another location within the city.

Staff recommends approval.

Mayor Pro-tem Moore opened the public hearing and the City Council heard from the following:

- David Stevenson with Hendrick Medical Center. Hendrick's is in support of this amendment. Mr. Stevenson stated that this amendment will allow them to transfer patients across the street and will be in the best interest of their patients.

Mayor Pro-tem Moore closed the public hearing.

Councilmen Briley made the motion to approve the Ordinance amendment to Chapter 5, Ambulances, of the City Code. Councilmen Higgins seconded the motion, motion carried.

AYES: Councilmen Spano, Williams, Higgins, Briley, Councilwoman Moore.

NAYS: None

ABSTAINED: Mayor Archibald and Councilmen Price

Ordinance #27-2009 and captioned as follows:

AN ORDINANCE AMENDING CHAPTER 5, "AMBULANCES:", OF THE ABILENE CITY CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING A PUBLIC HEARING

Mayor Archibald and Councilmen Price returned to the dais and Mayor Archibald continued the meeting.

7.2 Jon James, Director of Planning and Development Services briefed the Council on Case No. Z-2009-10, a request from Susan Hill Payne, DDS, Agent: Tandem Realtors, to rezone property from RS-8 (Single Family Residential) to O (Office) zoning, located at 3201 Buffalo Gap Road.

Currently the property is zoned RS-8 and is undeveloped. All of the properties in the immediate area on the east side of Buffalo Gap Road are zoned RS-8 and are developed as such. The properties to the west of the subject property across Buffalo Gap Rd. are zoned for commercial type uses and have been developed with a bank and a dental office.

The Future Land Use section of the Comprehensive Plan designates this general area as low density residential. The requested O zoning is usually considered to be compatible with single family residential, however, past zoning history as recent as 2002, has shown that the property owners in this particular area on the east of Buffalo Gap Rd. have historically been strongly opposed to any commercial development on the east side of Buffalo Gap Rd. and there have been the same type of zoning requests denied in this general area for that reason. The requested zoning could also potentially create a traffic hazard at the corner of S. 32nd Street and Buffalo Gap Rd.

Staff recommends denial based on similar cases that have been denied in the past in this general area. This particular location, at the corner of Buffalo Gap Rd. and S 32nd Street, might be acceptable as a small node of non-residential. However, staff recommends that if approved, this not be viewed as opening up this corridor for an indefinite strip of non-residential zoning.

Planning & Zoning Commission recommended approval as requested by a vote of six in favor and none in opposition.

Mayor Archibald opened the public hearing and the City Council heard from the following:

- Dr. Susan Payne – Applicant. Dr. Payne expressed her desire to build on this property for her Dentist Office and requested approval.
- Shawna Abernathy – Tandem Realtors – Ms. Abernathy asked that Council approve the request to rezone from RS (Residential) to O (Office).
- Greta Holzberlein- Ms. Holzberlein runs a mobile service and shared concerns over the location of the suggested Dentist Office in regards to the red light location. Where will the driveway locations be located were some concerns that Ms Holzberlein voiced.
- Staff note – curb cuts will be decided during the site plan process and the applicant is willing to work with the City on this issue.
- Cathy Krieger – Ms. Krieger stated she had lived in this area in the past and has concerns for the children that cross at this intersection en route to Jackson, Madison Schools and the Red Bud Park.

Mayor Archibald closed the public hearing.

Council and Staff discussion included: 1) a dental office is lower traffic concern than other businesses might be; and 2) part of Safe Routes to school program with regards to sidewalks.

Councilmen Spano made the motion to approve the Case No. **Z-2009-10**, a request from Susan Hill Payne, DDS, to rezone property from RS-8 (Single Family Residential) to O (Office) zoning, located at 3201 Buffalo Gap Road. Councilmen Price seconded the motion, motion carried.

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

NAYS: None

Ordinance **#21-2009** 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.

7.3 Jon James, Director of Planning and Development Services briefed the Council on the Case No. Z-2009-11, a request from Aaron Waldrop, Agent: Tal Fillingim, to rezone property from AO (Agricultural Open Space) to RS-6 (Single Family Residential) zoning, located approximately 1400 feet west of Oldham Lane and 950 feet north of Hardison Lane.

Currently the property is zoned AO and is undeveloped. There is an existing single family subdivision to the east of the subject property and the request would be to extend the single family development to the west. The PDD zoning to the north also allows for single family development.

The future land use section of the Comprehensive Plan designates this general area as low density residential. The requested RS-6 zoning is compatible with the Future Land Use Map. The properties to the north and east have been developed with single family residences and the request is compatible with the surrounding areas.

Staff and Planning & Zoning Commission recommend approval as requested.

Mayor Archibald opened the public hearing and the City Council heard from the following:

- Tal Fillingim – Agent for the requestor. Mr. Fillingim reviewed the preliminary plat and the street layout for the new development. There will not be a cul-de-sac in this addition and Mr. Fillingim requested approval of the zone change.

Mayor Archibald closed the public hearing.

Councilmen Higgins made the motion to approve the Ordinance for Case No. **Z-2009-11**, a request from Aaron Waldrop, to rezone property from AO (Agricultural Open Space) to RS-6 (Single Family Residential) zoning, located approximately 1400 feet west of Oldham Lane and 950 feet north of Hardison Lane. Councilwoman Moore seconded the motion, motion carried.

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

NAYS: None

Ordinance **#22-2009** 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.

7.4 Jon James, Director of Planning and Development Services, briefed the Council on the Case No. **Z-2009-12**, a request from Texas Ave-86, Agent: Scott Senter, to rezone property from O (Office) to GC (General Commercial) zoning, located at 5201 Texas Avenue.

Currently the properties are zoned O and GC and are undeveloped. There is an existing church facility to the west of the subject property and single family developments to the north and west of the subject property as well. There is also a node of commercial development at the intersection of Hwy. 277 S and Texas Avenue.

The Future Land Use section of the Comprehensive Plan designates this general area as low density residential. The requested GC Zoning is not compatible with the Future Land Use Map and GC is also not considered compatible with the existing single family development. The current O zoning

provides a buffer between more intensive commercial uses and the single family developments to the west. Although part of the subject property might be suitable for GC zoning, some uses allowed in GC zoning would not be compatible with the existing surrounding uses.

Mayor Archibald opened the public hearing and the City Council heard from the following:

- Bill Senter – Mr. Senter stated that he believed that the addition of the American Commercial College will greatly enhance the area. Mr. Senter discussed the restrictions that would happen if the back part of the property on the south west portion was the only portion that was allowed to go to General Commercial. Mr. Senter was asking that the front part of the property be allowed to also be zoned General Commercial over Office zoning.
- Ron Harman – representing American Commercial College – Mr. Harman believes that it will be a win, win for the College to move to this location. The ease of access will benefit the College.
- Tony Delgado with American Commercial College – Mr. Delgado explained that the College has been looking for places to relocate too, but they weren't successful in finding a building. This location will help students with easier access to the major highways. Mr. Delgado asked Council for approval.
- Judith Roberts – lives on Texas Avenue. Ms. Roberts explained that they had fought for Office zoning years ago and she didn't want to see General Commercial zoning in that area. Ms. Roberts stated that she didn't mind the College locating in the area and was supportive of the College.

Mayor Archibald closed the public hearing.

Council and Staff discussion included: 1) the five lanes of Texas Ave as a buffer between the development and the residential on the other side; and 2) landscaping and lighting are both essentially the same whether it is Office or General Commercial.

Mayor Archibald made the motion to approve the Ordinance for Case No. **Z-2009-12**, a request from Texas Ave-86, to rezone property from O (Office) to CU (College University and GC (General Commercial zoning, located at 5201 Texas Avenue. Councilmen Higgins seconded the motion, motion carried.

AYES: Councilmen Price, Spano, Higgins, Briley, Councilwoman Moore and Mayor Archibald.

NAYS: Councilmen Williams

Ordinance **#23-2009** 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.

7.5 Jon James Director of Planning and Development Services briefed the City Council on the Case No. **TC-2009-02**, a request from Desa L. Lee-Laird to close the 10' alley between Sayles Blvd. and Highland Ave. from S. 11th Street to S. 10th Street.

Improvements to this alley right-of-way have not been completed. The applicant owns property on the east side of the requested abandonment. The alley right-of-way is only 10' wide which is a substandard alley by today's City requirements. There is a curb cut at each end of the alley that access S. 10th St. and S. 11th St. but none of the adjacent property owners use the alley for access. The City has utility lines that run north and south in the existing alley right-of-way but does not collect refuse in the alley.

Staff initially recommended approval with the conditions of the Plat Review Committee. However, at the time of the recommendation, staff was not aware of any property owner opposition nor any existing access from the alley.

Plat Review Committee recommends approval with the following conditions:

- 1) All of the adjacent properties be replatted within 24 months.
- 2) An Open Drainage/Utility Easement be retained along the entire right-of-way.

Planning and Zoning Commission recommended denial by a vote of six in favor to none in opposition.

Mayor Archibald opened the public hearing and the City Council heard from the following:

- Larry Robertson on behalf of the applicant. Mr. Robertson gave the concerns of some of the neighbors on the block and the reason for their request to close the alley. Mr. Robertson stated that most of the residents don't use the alley for access and they have concern with others that might be going up and down the alley that might be strangers to the neighborhood.
- Greta Holzberlein – Ms. Holzberlein stated that she didn't believe that the alley needed to be closed.
- Cindy Haley – Ms Haley is opposed to the closing of the alley. Commercial deliveries are many times made from the alley. Ms. Haley also stated that the Browder's keep up their yards and improve the locations they own.
- Tom Choate – Attorney for the Browders – Mr. Choate explained that they will be using the rear entry into the property they have purchased. Mr. Choate also explained that the other properties have access to other major roads and the Browders are landlocked. Mr. Choate asked that the alley remain open.

Mayor Archibald closed the public hearing.

Mayor Archibald made the motion to uphold the denial from the Planning & Zoning Commission, on a request from Desa L. Lee-Laird to close the 10' alley between Sayles Blvd. and

Highland Ave. from S. 11th Street to S. 10th Street. Councilmen Williams seconded the motion, motion carried.

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

NAYS: None

7.10 & 7.11 Mindy Patterson, Director of Finance, introduced the item, recognized financial advisor Mr. George Williford of First Southwest Company and bond counsel representative Mr. Peter Tart of McCall, Parkhurst & Horton. Mr. Williford then briefed the Council on the credit rating from Standard and Poor and the positive results from the refunding earlier in the year which has resulted in rates that are much more favorable because the City has kept a good financial status with a strong policy and strong fund balance. Abilene is weathering the economic downturn a lot better than others.

The General Obligation Bonds will finance \$8,140,000 of the voter approved bonds for the purpose of constructing and improving streets, together with traffic improvements; constructing and equipping improvements at the airport; constructing, improving and equipping Lake Fort Phantom Hill Park/Boat Ramps Docks and Dyess Recreation Area; and constructing, improving the stormwater and drainage system together with the acquisition of land. Of the authorized \$29,820,000 in General Obligation Bonds \$6,000,000 was sold in July 2006 at the first sale, \$7,680,000 was sold in August 2007 at the second sale, and \$8,000,000 was sold in June 2008 at the third sale. This is the fourth and final sale. The annual Certificates of Obligation sale will finance \$10,650,000 in projects for the purpose of constructing, reconstructing and improving streets, including sidewalks, drainage and curb ramps; constructing, improving, and equipping park and recreation systems, including improvements at Lake Fort Phantom Hill, Johnson and Seabee Parks; HVAC replacement and major repairs and improvements to existing municipal buildings, including Cobb Sears and G.V. Daniels and equipping additions, extensions and improvements to the waterworks and sewer system; acquiring and installing computer equipment and software for Information Technology, Human Resources, and Finance departments; and acquisition of land located at 720, 724, and 726 Pine Street for Civic Center parking.

The General Obligation Bonds will be funded by a tax levy estimated at 1.58¢ for FY 2010. The annual certificates are being issued within the current certificate debt tax rate policy of 10.7¢. The \$6,000,000 for water and sewer projects will be funded from water and sewer revenue. Therefore no rate increase is necessary for this issue. The credit rating from Standard and Poor's is affirmed at AA+, and the rating from Fitch Ratings is AA, which is the rating agency the City's financial advisor is using instead of Moody's Investor Service. We are utilizing a projected 4.9% interest rate on the bonds and a projected 4.72% on the annual certificates.

Staff recommends passage of the ordinances authorizing issuance of \$8,140,000 in General Obligation Bonds and \$10,650,000 in Certificates of Obligation.

Councilmen Spano made the motion to approve the Ordinance authorizing the issuance and sale of City of Abilene Combination Tax and Revenue Certificates of Obligation, Series 2009. Councilmen Briley seconded the motion, motion carried.

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

NAYS: None

Ordinance #27-2009 and captioned as follows

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF ABILENE, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, **SERIES 2009**; LEVYING AN ANNUAL AD VALOREM TAX AND PROVIDING THE OFFICIAL STATEMENT; PROVIDING AN EFFECTIVE DATE; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT.

Councilwoman Moore made the motion to approve the Ordinance authorizing the issuance and sale of City of Abilene General Obligation Bonds, Series 2009A. Councilmen Price seconded the motion, motion carried.

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

NAYS: None

Ordinance #28-2009 and captioned as follows:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF ABILENE, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, **SERIES 2009A**; LEVYING AN ANNUAL AD VALOREM TAX AND PROVIDING THE OFFICIAL STATEMENT; PROVIDING AN EFFECTIVE DATE; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT

7.6 Jon James, Director of Planning Development Services, briefed the City Council on the Ordinance to amend Section 23-306 of the City of Abilene Zoning Ordinance regarding childcare centers.

Staff has been asked to review the zoning ordinance as it pertains to childcare centers in residential zoning. Childcare centers differ from a home-based daycare by providing services to more than 6 children. Currently, childcare centers are not allowed in single-family residential (RS) districts. Childcare centers are conditionally allowed in multi-family residential (RM) districts with one condition being that the use is located on or within two hundred (200) feet of a collector or arterial street.

Upon review, staff is proposing two options for amending Section 23-306 in the Zoning Ordinance. The first option is to allow childcare centers in single-family residential (RS) districts only on approval of a Special Exception by the Board of Adjustment. This would provide an opportunity for review to determine compatibility with the surrounding properties based on specific criteria, i.e. number of children, traffic, ingress/egress, and improvements to the building or site.

The second option is to require approval of a Special Exception by the Board of Adjustment to allow childcare centers to be located at a distance greater than 200 feet of a collector or arterial street in multi-family residential (RM) districts. This would provide an opportunity for review to determine compatibility with the surrounding properties.

In all cases, a childcare center must comply with applicable building codes.

Staff recommends denial of the first option and, while staff is comfortable with the existing regulation, we would support the second option.

Planning and Zoning Commission recommended denial of both options by a vote of six in favor to none in opposition. The Commission felt that existing regulations were sufficient and that an amendment to the ordinance for one individual was not appropriate.

Mayor Archibald opened the public hearing and the City Council heard from the following:

- Mary Cardona – Ms. Cardona is requesting a change in the zoning requirements for childcare centers. Ms. Cardona is requesting to be allowed to have 5 more children in her home childcare center. Ms. Cardona stated that she has a registered child care home.

Mayor Archibald closed the public hearing.

Council and Staff discussion included: 1) State standards change when different number of children are kept in the home; 2) City codes also can change when different thresholds are met, such changes can trigger different requirements such as handicapped accessibility, fire codes etc.; 3) Planning and Zoning was hesitant on a zone change request based off of one request that would affect the entire city; 4) discussion of a cap for the number of children; 5) Church daycares are allowed in residential neighborhoods as long as they are on church property; 6) hours of operation as part of the review process before the Board of Adjustment; 7) State Registered Child care home can keep 6 children; 8) State Licensed Child Care Home can keep 12 children; 9) that the applicants would need to obtain Special Exception approval from the Board of Adjustment; and 10) the Board of Adjustment would look at a list of eligibility requirements when they reviewed the applications.

Mayor Archibald made the motion to approve the both options that were presented and to add 1) a cap of 12 children 2) day time hours to the amendment for Section 23-306 of the City of Abilene Zoning Ordinance regarding childcare centers. Councilmen Williams seconded the motion, motion carried.

AYES: Councilmen Price, Spano, Williams, Councilwoman Moore and Mayor Archibald.
NAYS: Councilmen Briley and Higgins

Ordinance **#24-2009** 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

AMEND Section 23-306.4 Permitted Uses Chart

CHANGE: Kindergarten or Childcare Center

Permitted Uses Educational and Religious Uses	Parking Require- ments	AO	RR	RS	RM	MH	CU	O	LC	SC	CB	GC	HC	LI	HI	PDD	PI	MU
		Agricultural Open Space	Rural Residential District	Single Family Dwelling District	Multi-family Dwelling District	Mobile Home District	College/ University District	Office District	Unlimited Commercial	Shopping Center District	General Business District	General Commercial District	Heavy Commercial District	Light Industrial District	Heavy Industrial District	Planned Development District	Park Industrial District	Medical Use District
Kindergarten or Childcare Center	1.5/employee	C		C SE	C SE		C		C	C	C	C	SE	C	C	X	C	

AMEND Section 23-306.5 Conditional Use Provisions

CHANGE: Conditions for Kindergarten or Childcare Center

23-306.5. E (4) Kindergarten or Childcare Center

Kindergartens, child care centers, and nursery schools for more than six (6) children shall be permitted, subject to the following conditions:

- (a) Any outside recreation or play area shall be surrounded by a wall or fence at least six (6) feet in height. Openings shall not allow passage of a 4-inch (102 mm) sphere. (Ord. 33-2005, 7-14-05)
- (b) Ingress and egress shall be so designed as to eliminate interference with traffic on adjacent streets.
- (c) Located on or within two hundred (200) feet of a collector or arterial street, if in an RM district. If greater than 200 feet, the Board of Adjustment may approve through a Special Exception per (f) below.
- (d) Minimum lot size equals fifteen thousand (15,000) square feet, if in an RS or RM.
- (e) Meet State minimum standards for day care centers.
- (f) If located in an RS district, or in an RM district and located more than 200 feet from a collector or arterial street, the following conditions shall apply:
 - (1) The proposed childcare center shall care for no more than 12 children at any time
 - (2) A special exception must be approved by the Board of Adjustment.
 - (3) The Board of Adjustment shall make a determination that the proposed use is not detrimental to the visual environment or character of the area.
 - (4) The Board of Adjustment shall consider the following when reviewing an application for approval:
 - (a) Traffic
 - (b) Ingress & egress
 - (c) Improvements to the building and/or site
 - (d) Days and hours of operation
 - (5) The structure shall comply with all applicable building codes.

7.7 Jon James Director of Planning and Development Services briefed the City Council on the Ordinance amending Section 23-315 of the City of Abilene Zoning ordinance regarding parking of commercial vehicles.

Staff has been asked to review the zoning ordinance as it pertains to parking of commercial vehicles in residential zoning. Particularly, the request is to evaluate options for tow trucks and wreckers to park in residential zoning. Currently, commercial vehicles of over one and one-half (1 ½) ton manufactured capacity, truck tractors, road tractors and special mobile equipment as defined by the Texas Motor Vehicle Laws Uniform Act are prohibited from parking in residential districts.

Upon review, staff analyzed several options for amending Section 23-315 in the Zoning Ordinance with the most favorable option being to keep the manufactured capacity language and add an

exception to allow one vehicle of up to two and one-half (2 ½) tons manufactured capacity, parked on a paved surface off the street, providing 24-hour emergency towing response.

For any option, staff is greatly concerned about the size and weight of the vehicles travelling on residential streets and parking on residential properties. Residential streets are narrower than commercial streets and do not have the same construction standards to withstand the extra weight of these types of vehicles. Additionally, these vehicles will create added traffic obstacles and take away from the expected look and feel of residential neighborhoods. However, the safety factors involved with response time to accidents and potential secondary accidents are of legitimate concern. Allowing the emergency response vehicles in residential areas will keep response times low, will clear accidents quicker, and allow for greater overall safety.

Existing Ordinance Regulations

SECTION 23-315 OFF-STREET PARKING AND LOADING

23-315.2.J. Nature of Use (Ord. 57-1988, 12-1-88)

Required off-street parking areas in all districts shall not be used for the commercial sale, repair, dismantling or servicing of vehicles, equipment, material or supplies. The following vehicles are prohibited from being parked or stored on any lot in a residential district, including but not limited to:

Commercial vehicles of over one and one-half (1-1/2) ton manufactured capacity; truck tractor, road tractors and special mobile equipment as defined by the Texas Motor Vehicle Laws Uniform Act.

This provision shall not apply to and shall not prohibit the parking or storing of church and school buses and recreational equipment in residential areas.

Summary of Options

Existing Regulations: 1 ½ ton manufactured capacity

Proposed Option #1:

Eliminate manufactured capacity regulation for all commercial vehicles
- Staff very much opposed

Proposed Option #2:

2 ½ ton manufactured capacity for all commercial vehicles
- Staff opposed

Proposed Option #3:

Exception for tow trucks (24-hour emergency response)
- Of the three options, staff prefers this one
- P&Z recommended approval of this option

Peer Cities

San Angelo: All commercial vehicles, trailers, truck tractors, etc. prohibited

Midland: Not exceeding 1 ton or 22 ft in length (in front yard)

Odessa: Not exceeding 1½ ton, 17,000 GVW, or 32 ft in length

Lubbock: Not exceeding 1½ ton, 18 ft in length, 7 ft in width or 7 ft in height

Killeen: Not exceeding 1 ton

Grand Prairie: Not exceeding 1½ ton

Carrollton: Not exceeding 1 ton

Waco: One truck tractor parked entirely on private property

Denton: No more than 2 axles

Wichita Falls: No regulations (*recent ordinance denied by Council*)

Staff recommendations: Although the option still causes concern, staff can support this alternative.

Planning & Zoning Commission recommended approval of option number 3 changing the wording from “paved surface” to “improved surface” by a vote of six in favor to none in opposition.

Mayor Archibald opened the public hearing and the City Council heard from the following:

- Jess Horton with Southwest Tow Operators Association. Mr. Horton stated that he felt that it was public safety for them to have a short response time. If drivers have to go to their yards to get the trucks then they have a greater response time. Mr. Horton stated that in not allowing an emergency towing vehicle to be able to respond quickly to an incident it creates a greater opportunity for a secondary accident to occur.
- Rex Moore – Mr. Moore believes that it can be a safety issue in the neighborhoods with the big trucks and children playing. Commercial vehicles are a distraction and a safety issue.
- Ms. Irma Amber. Ms. Amber stated that it doesn't take more than 15 minutes to get across town and having these trucks in neighborhoods bring down the looks.
- Danny Murillo with Sudden Impact & Towing – Mr. Murillo believes that the response time will take longer during the middle of the night because the driver will have to go to the yard to let the truck warm up and the air pressure to build for the air brakes. Mr. Murillo stated that time can be crucial in the response time to an accident. Larger wreckers are used on the Interstate 20 wrecks. Time can be crucial.
- Judy Moore – Ms. Moore talked about a tow truck driver that lives in her neighborhood. Her road curves around and the truck takes up more area, plus when the driver starts the truck in the middle of the night it causes all the dogs in the neighborhood to start barking. Ms. Moore also talked about the fact that children have only the street to ride their bikes in because their neighborhood doesn't have sidewalks and this can cause a safety issue.
- Irene Hooper – Dispatcher for a tow service. Ms Hooper talked about how calls can come in 24 hours a day and can be for someone locked out of their vehicle or have a flat tire and the vehicle driver is scared in the middle of the night. They want to get the tow truck there quickly. Tow trucks serve the community.
- Lydia Long – Ms. Long stated that this a zoning issue, whereby you don't want a business in a residential neighborhood. Ms. Long feels like it would be a slippery slope to allow tow trucks then what about 18 wheelers? Against operating a business out of a residential area and she didn't feel that she should have to defend her neighborhood.

- Ken Hooper with O'Bar Wrecking. He stated that they are here to serve the city. It takes longer to respond at night. He also stated that the ordinance has been in effect for a long time and times have changed. He asked that the City consider 6 pm to 8 a.m. for parking in neighborhoods.
- Judy Moore – suggested that they park the trucks at the fire stations, so that they could have the same response times.

Mayor Archibald closed the public hearing.

Council and Staff discussion included: 1) balance of neighborhoods desires and to work in connection with response to accidents and a need for a tow truck; 2) best interest of neighborhoods; 3) noise factors in the evening hours; 4) restriction during day time hours; 5) safety issue; 6) complaints received by Council members for loud trucks, speeding down City streets and the use of lights flashing; and 7) other business options for the tow truck companies – like finding commercial areas close to where their drivers live so that they don't have to go to their yards to get the trucks.

Councilmen Briley made the motion to deny the Amendment Section 23-315 of the City of Abilene Zoning Ordinance regarding parking of commercial vehicles. Councilmen Spano seconded the motion, motion carried.

AYES: Councilmen Price, Spano, Higgins, Briley, Councilwoman Moore and Mayor Archibald.

NAYS: Councilmen Williams

7.9 Odis Dolton, Assistant Director of Finance briefed the Council on the Ordinance in reference to ATMOS Cities Steering Committee.

The Atmos Cities Steering Committee (ACSC) and Atmos Mid-Tex created the Rate Review Mechanism (RRM) as an alternative to the GRIP surcharge process. The RRM process allows for a more comprehensive rate review and annual adjustment that will function as a substitute for future GRIP filings during a three-year trial period. Atmos Mid-Tex's current action represents the second filing pursuant to the three-year trial project.

There are two components to the RRM adjustment. The prospective component adjusts rates for known and measurable changes in Operations and Maintenance (O&M) and net plant investment. Atmos Mid-Tex and ACSC agreed to cap changes to expenses and invested capital at no more than 5%. The true-up component evaluates whether the Company has over or under recovered its earnings for the previous year. For purposes of the RRM true-up component, Atmos Mid-Tex rate of return on equity and its capital structure are frozen to avoid the parent company from manipulating the overall rate of return.

The purpose of the attached Ordinance is to approve rate tariffs and Proof of Revenues that reflect the negotiated rate change pursuant to the RRM process. As a result of the negotiations, ACSC was able to reduce the Company's requested \$20.2 million RRM increase by more than 70%. Approval

of the ordinance will result in rates that implement a \$2.6 million increase in Atmos' revenues effective August 1, 2009.

In addition to the RRM tariffs, the Ordinance also approves a revision to the Atmos Mid-Tex current Gas Cost Recovery ("GCR") tariff to allow the Company to recover certain hedging costs associated with natural gas futures through the GCR tariff. With regards to the revision to the GCR tariff, ACSC has advocated that the Company use hedging as a risk management tool to help mitigate volatile natural gas prices. The tariff change is consistent with ACSC's prior position.

Staff recommends the City Council approve the ordinance.

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

Councilmen Price made the motion to approve the Ordinance approving a negotiated resolution between the ATMOS Cities Steering Committee ("ACSC" or "Steering Committee") and Atmos Energy Corp., Mid-Tex Division regarding the Company's rate review mechanism filing in all cities exercising original jurisdiction. Councilwoman Moore seconded the motion, motion carried.

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

NAYS: None

Ordinance #26-2009 and captioned as follows

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, ("CITY") APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC" OR "STEERING COMMITTEE") AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "COMPANY") REGARDING THE COMPANY'S RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; APPROVING ATMOS' PROOF OF REVENUES; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL

7.12 Mindy Patterson, Director of Finance briefed the City Council on the Proposed 2009-10 Tax Rate.

FY 2010 Budget approved by Council on July 22, 2009 set the tax rate at 69.32¢. State law requires that two public hearings must be held prior to the final public hearing and vote. Another

public hearing will be held on August 27, 2009, with the final public hearing and vote to be held on September 10, 2009.

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

No action needed on this item.

EXECUTIVE SESSION

Mayor Archibald recessed the Council into Executive Session at 1:15 p.m. 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 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 at 2:20 p.m. and reported no votes or action was taken in Executive Session in regards to Section 551.072 Real Property, Section 551.071 Consultation with the City Attorney, Section 551.074 Personnel Matters and Section 551.087 Business Prospect/Economic Development. Councilmen Williams and Councilwoman Moore left before returning to the Open Session.

There being no further business the meeting was adjourned at 2:20 p.m.

Danette Dunlap, TRMC
City Secretary

Norm Archibald
Mayor