

CITY COUNCIL MEETING
August 25, 2011 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 25th, at 8:30 a.m. in the Council Chambers at 555 Walnut Street. Mayor Archibald was present and presiding with Councilmen Shane Price, Joe Spano, Anthony Williams, Robert O Briley, Stormy Higgins and Councilwoman Kellie Miller. Also present were City Manager Larry Gilley, City Attorney Dan Santee, City Secretary Danette Dunlap, and various members of the City staff.

Councilman Williams gave the invocation.

Mayor Archibald introduced Sophia Hassett a 4th grader at Ward Elementary School. Sophia led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas.

DISPOSITION OF MINUTES

5.0 Mayor Archibald stated Council has been given the minutes from the August 11th regular meeting there being no deletions, no additions, and no corrections. Councilman Price made a motion to approve the minutes as presented. Councilman Higgins seconded the motion, motion carried.

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

NAYS: None

CONSENT AGENDA

Mayor announced that Items 6.4 through 6.6 were pulled prior to the meeting. Councilman Spano made the motion to approve consent items 6.1 through 6.7 as recommended by staff with the exception of items 6.4 through 6.6. Councilman Williams seconded the motion, motion carried.

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

NAYS: None

ABSTAIN: Councilmen Price & Williams on Item 6.2

Oral Resolutions:

6.1 Ratifying the Meet and Confer Agreement between the City of Abilene and the Abilene Professional Fire Fighters Association. The agreement covers the two year period October 1, 2011 through September 30, 2013 (fiscal years 2012-2013).

The agreement provides for overrides to Chapter 143 Civil Service requirements that enhance the hiring and promotional processes for the fire department. Additionally, the agreement provides for some updating of previous agreement language to align with operational changes that have occurred in the department.

The proposed fiscal year 2012 budget currently under consideration by Council provides for a 3% across-the-board compensation increase for all employees, effective March 25, 2012. The agreement

reflects this compensation adjustment. The agreement also contains “reopener” language to allow for discussion regarding base pay during the City’s fiscal year 2013 budget process (for year two of the agreement). Council ratified the agreement with Fire.

6.2 Oral Resolution – Approved a Street Use License for Abilene Christian University for “Hero Artwalk” September 8, 2011 from 5:00 pm to 8:30 pm.

6.3 Oral Resolution – Accepted the Anticipated FY11 FAA Airport Improvement Program Grant 41 and authorizing the City Manager to accept a possible offer from the FAA for AIP Grant 41.

Accepting the FAA offer for this grant will obligate the City to fund its local share of project costs, as well as agree to grant assurances which the City is currently obligated to under previously accepted grants. The local 5% match is proposed to be funded with general obligation bonds. The dollar amounts of the local match will be detailed in the agenda memos awarding or otherwise approving the individual projects.

6.4 Oral Resolution – Authorizing the City Manager to execute Task Order 28 of the URS Corp engineering Contract. *Item pulled prior to the meeting.*

6.5 Oral Resolution – Bid Award **CB-1134** – Authorizing the City Manager to execute the Construction Contract with Epic construction for Taxilane EASI *Item pulled prior to the meeting.*

6.6 Oral Resolution – Bid Award **CB-1133** – Authorizing the City Manager to execute the Construction Contract with Duninick, Inc. for Taxiway C. *Item pulled prior to the meeting.*

Ordinance

6.7 Ordinance (*First Reading*) Creating a Municipal Setting Designation for the Pine Street Corridor and South Downtown Area and adjacent properties; and calling a public hearing on September 8, 2011.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH CERTAIN PROPERTY LOCATED IN AND AROUND THE PINE STREET CORRIDOR AND THE SOUTH DOWNTOWN REDEVELOPMENT AREA IN ABILENE, TEXAS AND SUPPORTING CERTIFICATION OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; CALLING A PUBLIC HEARING; AND PROVIDING AN EFFECTIVE DATE.

REGULAR AGENDA

7.1 Jon James briefed the council on the Ordinance Case **#Z-2011-16** a request from Hendrick Medical Center to rezone property from MU/COR (Medical Use with Corridor Overlay) to CU/COR (College University with Corridor Overlay) zoning located at 1718 Pine Street and a portion of 1117 N 18th Street.

Currently the properties are zoned MU/COR and have been developed with a pharmacy school owned by Texas Tech University. The applicant has future plans to extend their existing facility to the west. This rezoning would make the zoning consistent with the recently rezoned School of Nursing site to the south, and would allow for future building expansions.

Staff and Planning & Zoning Commission recommend approval.

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

Councilman Higgins made the motion to approve the Ordinance for Case **#Z-2011-16** a request from Hendrick Medical Center to rezone property from MU/COR (Medical Use with Corridor Overlay) to CU/COR (College University with Corridor Overlay) zoning located at 1718 Pine Street and a portion of 1117 N 18th Street. Councilwoman Miller seconded the motion, motion carried.

AYES: Councilmen Spano, Williams, Briley, Higgins, Councilwoman Miller

NAYS: None

ABSTAIN: Councilman Price and Mayor Archibald

Ordinance **#26-2011** and captioned as follows:

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART B, "LAND DEVELOPMENT CODE," 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.

Location: 1718 Pine Street and a portion of 1117 N 18th Street.

7.2 Jon James Director of Planning and Development Services briefed the council on the Ordinance for Case **#Z-2011-17**, a request from Chick-fil-A, Inc to rezone property from LI (Light Industrial) to GR (General Retail) zoning located at 1750 HWY 351.

Currently the property is zoned LI and has been developed with a commercial trucking facility. The property fronts on HWY 351 which is an arterial street The applicant has future plans to demolish the existing structures and redevelop the property.

Staff and Planning & Zoning Commission both recommend approval.

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

Councilman Spano made the motion to approve the Ordinance for Case **#Z-2011-17**, a request from Chick-fil-A, Inc to rezone property from LI (Light Industrial) to GR (General Retail) zoning located at 1750 HWY 351. Councilman Williams seconded the motion, motion carried.

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

NAYS: None

Ordinance **#27-2011** and captioned as follows:

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART B, "LAND DEVELOPMENT CODE," 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.

Location: 1750 HWY 351

7.3 Jon James Director of Planning and Development Services briefed the council on the Ordinance for Case #**TC-2011-02**, a request from Abilene Independent School District to abandon Clinton St. and the north to south alley rights-of-way (ROW) between N 8th Street and State Street.

Improvements have never been made to these dedicated ROW. The property that the ROW are on have been developed with a school and has never been used as a public ROW.

The applicant intends to close the subject ROW's to better reflect how the property has been developed. The interconnectivity and access of the area does not appear to be impacted in a negative way by the requests.

Staff, Plat Review Committee and Planning & Zoning Commission all recommend approval.

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

Councilman Briley made the motion to approve the Ordinance for Case # **TC-2011-02**, a request from Abilene Independent School District to abandon Clinton St. and the north to south alley rights-of-way (ROW) between N 8th Street and State Street. Councilwoman Miller seconded the motion, motion carried.

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

NAYS: None

Ordinance **#28-2011** and captioned as follows:

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF A PORTION OF PUBLIC RIGHT OF WAY; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH ABANDONMENT, AND CALLING A PUBLIC HEARING

Location: Clinton St and the N to S alley ROW between N 8th and State St.

7.4 Jon James Director of Planning and Development Services briefed the council on the Ordinance to amend Section 2.2.1 (Land Use Matrix) concerning Antenna Tower-Commercial.

A request was submitted for rezoning of a property to a Planned Development (PD) district to allow for a cell tower. The current zoning on the property is GR (General Retail), which the PD proposed to maintain while also allowing cell towers as a permitted use. Upon review of the request, staff determined that rezoning the property to the PD zoning would not be the most appropriate course of action. Instead, staff is proposing that the Land Use Matrix be amended to allow for cell towers in the GR zoning district with approval of a Conditional Use Permit (CUP).

Much of the retail areas in the City of Abilene are zoned GR and could potentially be suitable for cell towers. Final approval of any CUP is by the City Council following a recommendation from the Planning & Zoning Commission. Conditions may be added to the approval of any CUP in order to maintain compatibility with the area.

The use is identified in the Land Use Matrix as 'Antenna Tower-Commercial'. The amendment will add the CUP designation to the GR zoning district. The section proposed for amendment is Section 2.4.2.1 – Land Use Matrix.

Staff and Planning & Zoning Commission both recommend approval.

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

Councilman Price made the motion to approve the Ordinance amending Section .2.1 (Land Use Matrix) concerning Antenna Tower-Commercial. Councilman Higgins seconded the motion, motion carried.

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

NAYS: None

Ordinance **#29-2011** and captioned as follows:

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART B, "LAND DEVELOPMENT CODE," 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 2.1 (Land Use Matrix)

7.5 Odis Dolton Assistant Director of Finance briefed the council on the Ordinance approving a negotiated Resolution between the ATMOS Cities Steering Committee and ATMOS Energy Corp., Mid-Tex Division regarding the Company's 4th Annual rate review mechanism .

The City, along with approximately 154 other cities served by Atmos Energy Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"). On or about April 1, 2011, Atmos Mid-Tex filed with the City an application to increase natural gas rates pursuant to the Rate Review Mechanism ("RRM") tariff approved by the City as part of the settlement of the Atmos Mid-Tex 2007 Statement of Intent to increase rates.

The Atmos Mid-Tex RRM filing sought a \$15.7 million rate increase. The City worked with ACSC to analyze the schedules and evidence offered by Atmos Mid-Tex to support its request to increase rates. The Ordinance and attached rate and RRM tariffs are the result of negotiations between ACSC and the Company to resolve issues raised by ACSC during the review and evaluation of ACSC's RRM filing. The Ordinance resolves the Company's RRM filing by authorizing supplemental revenue of \$6.6 million to be recovered through the customer charge component of rates to cover direct incremental costs associated with a steel service line replacement program approved as part of last year's rate adjustment. All other relief requested by Atmos Mid-Tex is denied. Approval of the Ordinance will result in the implementation of new rates that increase Atmos Mid-Tex's revenues effective September 1, 2011. The tariffs will set monthly customer charges at \$7.50 and \$16.75 for residential and commercial customers, respectively.

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

Councilman Higgins made the motion to approve the Ordinance between ATMOS Cities Steering Committee and ATMOS Energy Corp., Mid-Tex Division regarding the Company's 4th Annual rate review Mechanism filing in all cities exercising original jurisdiction. Councilwoman Miller seconded the motion, motion carried.

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

NAYS: None

Ordinance # **30-2011** 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 FOURTH ANNUAL RATE REVIEW MECHANISM ("RRM") FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; 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; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; REPEALING CONFLICTING RESOLUTIONS OR ORDINANCES; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL.

7.6 Jon James Director of Planning and Development Services briefed the council on the Resolution amending the Comprehensive Plan and incorporating the Carver Neighborhood Plan as an attached Neighborhood Plan.

In cooperation with the residents and neighborhood organizations of the Carver Neighborhood, the 1998 Carver Neighborhood Plan has been updated for review and approval. City staff has updated demographic and other background information in the plan, as well as coordinating with neighborhood residents and organizations to provide substantial input into the process. This process of study, research, and data gathering, through community meetings, has culminated in a new plan that summarizes the accomplishments since the 1998 Plan was adopted and reflects an enhanced vision for the future of a thriving, vibrant neighborhood that can be attained through continued implementation of the plan.

The proposed plan is not regulatory and will not affect the zoning of depicted parcels. The sale of lots or tracts is a separate and distinct process. The Carver Neighborhood Plan will provide policy guidance for future development but shall not dictate outcomes.

Summary of New Strategies in 2011 Plan

- Designate neighborhood as an Infill Development Area and continue & expand support for redevelopment in the area, including support for more retail and a wider variety of housing types in the neighborhood
- Consider adoption of a Property Maintenance Code

- Continue & expand work on job recruitment, skills training, etc.
- Continue proactive police enforcement & enhance with proactive code enforcement
- Continue pursuit of historic/cultural preservation opportunities
- Encourage resident participation in available housing and rehab programs
- Continue to protect the integrity of this as a viable residential neighborhood by discouraging the encroachment of incompatible land uses
- Pursue infrastructure improvements, including sidewalks, street lighting, and transit routes

Staff recommends approval of the 2011 Carver Neighborhood Plan.

The Planning and Zoning Commission recommended approval of the Carver Neighborhood Plan with amendments by a vote of seven (7) in favor (Bixby, Famble, Glenn, Rosenbaum, Todd, Yungblut, McClarty) to none (0) opposed.

Council and Staff discussion included: 1) Property Maintenance Code; 2) Public transit; 3) street lights; and 4) Code Enforcement.

Mayor Archibald opened the public hearing and council heard from the following citizens:

- Florence Walker – spoke twice about the problems and visions for Carver Neighborhood.
- Petty Hunter – supported the vision of the Plan
- Lydia Long – asked that the City step up to the plate to help
- Robert Lilly – with Connecting Caring Communities – asking for help in the Neighborhood
- Margaret Suggs – spoke on problems she saw in the Neighborhood

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

Councilman Williams made the motion to approve the Resolution amending the City's Comprehensive Plan by adopting and incorporating the Carver neighborhood Plan as a Neighborhood Plan attachment. Councilman Spano seconded the motion, motion carried.

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

NAYS: None

Resolution # **16-2011** and captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE TO AMEND THE CITY'S COMPREHENSIVE PLAN ADOPTING AND INCORPORATING THE CARVER NEIGHBORHOOD PLAN AS A NEIGHBORHOOD PLAN ATTACHMENT

7.7 Megan Santee, Director of Public Works briefed the council on the application/permit to drill and or operate an Oil and or Gas well for Bullet Development LLC – Lytle-Rankin #1, Permit No. 713973.

Bullet Development, LLC of Abilene, Texas has submitted an application to drill the Lytle-Rankin #1 well on property owned by the Lytle Lake Water Control and Improvement District, located south of Diamondback Golf Club and Abilene Regional Airport. The application has been reviewed and approved by Staff. All owners of real property within the 500 feet of the proposed drill site has been notified of this application as required by Ordinance.

Mayor Archibald opened the public hearing and council heard from the following citizens:

- Larry Wellhausen – with Bullet Development – supports the drilling
- Charles Coody – owner of Diamondback Golf Course – supports the drilling

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

Councilman Price made the motion to approve the Permit to Drill for Bullet Development LLC – Lytle Rankin #1, Permit No. 713973. Councilman Spano seconded the motion, motion carried.

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

NAYS: None

7.8 Mindy Patterson, Director of Finance briefed the council on the hearing process in regards to the adoption of the tax rate. The next public hearing and vote on the tax rate will be held on September 8th at 8:30 a.m.

Councilman Spano put forth a proposal in regards to sales tax – that any excess sales tax revenue would be set aside into a separate fund. The proposed excess could be used for projects and initiatives approved by council.

Mayor Archibald opened the public hearing and the council heard from the following citizens:

- Charles Coody – would like to see the Economic Development funds split to a 4A & 4B Economic Development Corporations

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

No action need on this item.

EXECUTIVE SESSION

Mayor Archibald recessed the Council into Executive Session 10:32 a.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 11:10 a.m. and reported no votes or action was taken in Executive Session in regards to 551.072 Real Property.

There being no further business the meeting was adjourned at 11:10 a.m.

Danette Dunlap, TRMC
City Secretary

Norm Archibald
Mayor