

**CITY COUNCIL MEETING
January 10th, 2013, at 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 January 10th, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Archibald was present and presiding with Councilmen Shane Price, Joe Spano, Anthony Williams, Robert O. Briley, and Stormy Higgins. Councilwoman Kellie Miller was absent. Also present were Deputy City Manager David Vela, City Attorney Dan Santee, City Secretary Danette Dunlap, and various members of the City staff.

Mayor Archibald introduced T'Kiya Smith, a 5th grader at Bassetti Elementary School with Big Sister, Natalie Johnson, who led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas.

EMPLOYEE SERVICE AWARDS

Mayor Archibald assisted by Deputy City Manager David Vela honored the following City Employee for their years of service.

Phillip R. Chapman	Tactical Operations, Fire	30 years
Dennis J. Woodard	Tactical Operations, Fire	30 years
Larry Bell	Tactical Operations, Fire	30 years
Gary Heslep	Criminal Investigation, Police	35 years

Mayor Archibald presented City Attorney Dan Santee with his 15 year service pin.

PRESENTATIONS

Mayor Archibald presented the following proclamations:

January 2013

Crime Stoppers Month

Rick Dorman, Executive Director Abilene Crime Stoppers, Inc. accepted the proclamation.

January 2013

National Mentoring Month

Tim Yandell, Executive Director Big Brothers/Big Sisters, accepted the proclamation.

DISPOSITION OF MINUTES

5.0 Mayor Archibald stated Council has been given the minutes from the December 20th regular meeting there being no deletions, no additions, and no corrections. Councilman Higgins made a motion to approve the minutes as presented. Councilman Price seconded the motion, motion carried.

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

NAYS: None

CONSENT AGENDA

Councilman Briley made the motion to approve consent items 6.1 through 6.2 as recommended by staff. Councilman Spano seconded the motion, motion carried.

AYES: Councilmen Price, Spano, Williams, Briley, Higgins, and Mayor Archibald
NAYS: None

Oral Resolutions:

- 6.1 Oral Resolution:** City Council authorized the City Manager to execute URS Corporation Engineering Contract Task Order 31 with the Abilene Regional Airport.

As part of the Airport's FY13 Airport Improvement Program (AIP), Task Order 31 provides authorization for URS to revise the previously designed Taxiways M, N and P Reconstruction Project. This project was originally designed as part of the airport's FY12 program, but there wasn't enough funding. Since then, FAA has significantly changed design standards for this type of project and denied our request for a waiver; therefore, URS must make changes to the original design so the City can bid this project next year. The fee for this service is a fixed fee in the amount not to exceed \$90,881.07.

- 6.2 Oral Resolution:** City Council approved an extended Street Use License agreement for Abilene Country Club located at Fairway Oaks Blvd to bore and install an irrigation line.

Abilene Country Club has submitted an Extended Term Street Use License (SUL) application for use of a portion of the public right-of-way on Fairway Oaks Blvd., between the north right-of-way line of Muirfield and the south right-of-way line of Cypress Point. The applicant wishes to bore underneath and install one six (6) inch and one eight (8) inch effluent irrigation line in two separate, specific locations under Fairway Oaks Blvd .for irrigation of applicant's golf course. No other private property owners or business tenants will be affected by this request. The Extended Term SUL Agreement will be for a term of ten (10) years from the date of execution, and the City may cancel the License Agreement at any time should it become necessary.

REGULAR ITEMS

- 7.1** Jon James Director of Planning and Development Services, briefed the council on an ordinance **Z-2012-31** - a request from LKC Group LLC, agent Harris Acoustics, to rezone property from AO (Agricultural Open Space) to GC (General Commercial), located at the northeast corner of Highway 83-84 and Beltway South.

The property is zoned AO and is vacant. The surrounding area is developed with a mix of residential and retail uses. There is an existing convenience store with fuel sales to the south and a retail building to the west across Highway 83-84. The remaining area is developed with single-family residential properties. The applicant is proposing to develop the property with a coffee shop. The applicant is requesting the GC (General Commercial) zoning to match the other corners of the intersection. Due to the adjacent residential uses, staff feels GR (General Retail) zoning would be more appropriate.

The Future Land Use section of the Comprehensive Plan designates this general area as part of a Gateway/Mixed Use entrance to the City of Abilene. This area remains under-developed with increasing activity occurring, primarily for non-residential development. However, there are existing residential uses surrounding the property to the north and east. Rezoning to GR would not have a negative impact on the

surrounding properties and would be compatible with the City's plans for this area, while still allowing for the proposed use.

Staff recommends approval of GR zoning.

The Planning and Zoning Commission recommends approval of GC zoning by a vote of 6 in favor (Famble, Glenn, Rosenbaum, Todd, Yungblut, and McClarty) and none opposed.

Mayor Archibald opened the public hearing and council heard from:

- Kevin Phillips owner of the property- spoke in support of the GC Zoning

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

Councilman Higgins made the motion to approve the Ordinance **Z-2012-31** a request from LKC Group LLC, agent Harris Acoustics, to rezone property from AO (Agricultural Open Space) to GC (General Commercial), located at the northeast corner of Highway 83-84 and Beltway South. Councilman Spano seconded the motion, motion carried.

AYES: Councilmen Price, Spano, Williams, Briley, Higgins, and Mayor Archibald
NAYS: None

Ordinance **#01-2013**

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "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: The northeast corner of Highway 83-84 and Beltway South

7.2 Jon James Director of Planning and Development Services, briefed the council on an Ordinance proposal to amend the Land Development Code to allow active outdoor recreation as a conditional use in residential districts.

Many of the swimming pools associated with residential subdivisions were developed as an amenity and accessory to the development. Over time, several of these swimming pools have become unmaintained, under-utilized or even unused. A request has been made to convert a neighborhood swimming pool to a commercial pool that would allow for anyone to use after payment of an entrance fee. This use is not permitted currently by the Land Development Code.

Commercial swimming pools are considered as 'Recreation – Outdoors (active)'. This includes activities that take place outdoors and use athletic fields (such as baseball diamonds), play courts (such as tennis courts), swimming pools, carnival-type games and rides, go-carts, golfing facilities, campgrounds and other similar uses. These may include accessory structures for restrooms, concessions, dressing, offices, and associated ticket/equipment purchase or rental. These uses are not permitted in any residential zoning districts.

Staff is proposing to allow ‘Recreation – Outdoors (active)’ with approval of a Conditional Use Permit in the residential zoning districts. The use would allow the possibility for conversion of neighborhood swimming pools that currently exist and are not being used, but with an individualized review by the Commission and City Council as a Conditional Use Permit. The section proposed for amendment is Section 2.4.2.1 – Land Use Matrix.

Staff recommends approval.

The Planning and Zoning Commission recommends approval by a vote of 6 in favor (Famble, Glenn, Rosenbaum, Todd, Yungblut, and McClarty) and none opposed.

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 the Land Development Code to allow active outdoor recreation as a conditional use in residential districts. Councilman Williams seconded the motion, motion carried.

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

NAYS: None

Ordinance #02-2013

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 2.4.2.1 The Land Use Matrix

ADD: Add the Conditional Use Permit designation to residential districts for the “Recreation – Outdoors (active)” use to the Land Use

LEGEND: P-Permitted, Blank-Not Permitted, C-Conditional Use Permit, TP-Requires a Temporary Permit, ☑-Conditions Apply See Ch.2 Art.5 Div.3

Permitted Uses	Agricultural Open Space	Rural Residential RR-5 & RR1	Residential Single-Family	Residential Single-Family	Patio Home	Residential Townhouse	Residential Medium Density	Residential Multi-Family	Manufactured/Mobile Home	College & University	Neighborhood Office	Office	Neighborhood Retail	General Retail	Medical Use	Central Business	Mixed Use	General Commercial	Heavy Commercial	Light Industrial	Heavy Industrial	Parking Requirements (also refer to Chapter 4, Article 2, Division 1)
	AO	RR	RS	PH	TH	MD	MF	MH	CU	NO	O	NR	GR	MU	CB	MX	GC	HC	LI	HI		
Cultural & Recreation Uses																						
Recreation – Outdoors (active)	☑	C	C	C	C	C	C	C	C	P				C	C		C	P	P			1/8 seating capacity

7.3 Jon James Director of Planning and Development Services, briefed the council on an Ordinance proposal to amend the Land Development Code related to regulations pertaining to child-care as a home occupation.

“Day Care Operations – Home-Based” are specifically identified in the Land Use Matrix of local zoning regulations, under the heading of “Accessory and Incidental Uses.” Home-based day care operations are permitted in all zoning districts where detached single-family homes are also allowed.

The particular provisions of the Land Development Code proposed to be amended are those which define and describe the type of day-care operations that are allowed in a caregiver’s home. The existing language has caused some confusion and misunderstanding about what is and is not allowed as home-based day care. Some have interpreted these standards as allowing no more than 6 children to be provided day care at a residence.

The State of Texas, however, has long regulated practically all types of day care for children, including those which are home-based. The State of Texas has several categories of home-based day care and in certain circumstances allows as many as 12 children to be provided care in a home. These include the caregiver’s own children. The actual number of children allowed to be provided care, in a home, is based on sliding-scale formulas that reflect:

- the age of children provided care; and
- whether children are provided all-day care or only after-school care.

Proposed amendments to the Land Development Code recognize the State of Texas’ significant role in regulating home-based day care. Proposed amendments generally allow home-based day care to the degree and intensity allowed by the State of Texas, while also recognizing that ordinary zoning limitations for home occupations are also applicable. These include limitations on signage and the outside appearance of homes where such business activity occurs.

Staff recommends approval.

The Planning and Zoning Commission recommends approval by a vote of 6 in favor (Famble, Glenn, Rosenbaum, Todd, Yungblut, & McClarty) and none opposed.

Council and Staff discussion included: 1) locations of home based day-cares; 2) concerns for neighborhoods and how they are affected; and 3) the state standards.

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 the Land Development Code related to regulations pertaining to child-care as a home occupation leaving the current code at 6 children with the exception that a Conditional Use Permit would be required to have more than 6. Councilman Spano seconded the motion, motion carried.

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

NAYS: None

Ordinance #03-2013

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 2.4.2.1 The Land Use Matrix

ADD: Add the Conditional Use Permit designation to multiple districts for the “Day Care Operation – Home Based” use to the Land Use Matrix

LEGEND: P-Permitted, Blank-Not Permitted, C-Conditional Use Permit, TP-Requires a Temporary Permit, -Conditions Apply See Ch.2 Art.5 Div.3

Permitted Uses	Agricultural Open Space	Rural Residential RR-5 & RR1	Residential Single-Family	Residential Single-Family Patio Home	Residential Townhouse	Residential Medium Density	Residential Multi-Family	Manufactured/Mobile Home	College & University	Neighborhood Office	Office	Neighborhood Retail	General Retail	Medical Use	Central Business	Mixed Use	General Commercial	Heavy Commercial	Light Industrial	Heavy Industrial	Parking Requirements (also refer to Chapter 4, Article 2, Division 1)
	AO	RR	RS	PH	TH	MD	MF	MH	CU	NO	O	NR	GR	MU	CB	MX	GC	HC	LI	HI	

Accessory & Incidental Uses

Day Care Operation – Home-Based	<input checked="" type="checkbox"/>	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C						
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AMEND: Section 2.4.3.3 – All Other Uses With Specific Requirements

REVISE: Revise the language for regulations pertaining to “Day Care Operation – Home Based” uses.

Chapter 2 – Zoning Regulations

Article 4 -- Use Regulations

Division 3 – Requirements Applicable to Specific Land Uses

Section 2.4.3.3 -- All Other Uses With Specific Requirements

~~(13) **DAY CARE OPERATION – HOME BASED:** Child day care operations for more than six (6) children shall meet all requirements for Day Care Operation – Center Based specified in Subsection 2.4.3.3.a(12) above.~~

(13) **DAY CARE OPERATION -- HOME BASED:** Child day care operations that are accessory and incidental to a residence shall be allowed as home occupations, so long as care for no more than 6 children (other than the caregiver’s own children) is provided at such residence.

Child day care operations for more than 6 children (other than the caregiver’s own children) may be conducted as an accessory to a residence, but only with approval of a Conditional Use Permit according to procedures outlined in Division 3 of Article 4 (Zoning Procedures) in Chapter 1 (General Provisions) of Abilene’s Land Development Code. In no circumstance, however, shall child day care operations permitted as accessory to a residence exceed limitations of required registration or licensing with the Texas Department of Family and Protective Services or other applicable state agency, including

restrictions on the number and age of children for whom care is provided. Such day care operations permitted as accessory to a residence shall furthermore be subject to: (a) all other standards relevant to required registration or licensing by the State of Texas, as well as (b) all limitations applicable to home occupations and stipulated in Section 2.4.5.2 of Abilene's Land Development Code.

AMEND: Section 5.1.1.3 – Land Use Definitions

REVISE: Revise the definition for home-based operation under the “Child Day-Care Operation” land use.

Chapter 5 – Definitions

Article 1 – Definitions

Division 1 – Definitions

Section 5.1.1.3 – Land Use Definitions

(36) CHILD DAY-CARE OPERATION: This is a general definition that means the care, supervision, training or education of an unrelated child or children under fourteen (14) years old for less than twenty-four (24) hours per day that occurs in a place other than the child's own home. This definition includes child day care provided to school-age children before and/or after the customary school day. This definition also encompasses each of the following two separate categories of use, for the purpose of Zoning Regulations:

~~a. Center Based Operation.~~

~~1. Child Care Center. An operation providing care for seven or more children under 14 years of age for less than 24 hours per day at a location other than the permit holder's home.~~

~~2. Kindergarten and Nursery School. An operation that provides an educational program that is four hours or less per day and more than two days a week for children two through six years.~~

a. Day Care Operation – Center Based. An operation providing care for children under 14 years of age, for less than 24 hours per day, and at a location other than the caregivers' or permit holder's home.

~~b. Home Based Operation.~~

~~1. Listed Family Home. A caregiver at least 18 years old that provides care in her own home for compensation, for three or fewer children unrelated to the to the caregiver, birth through 13 years, for at least 4 hours a day, three or more days a week, and more than nine consecutive weeks. The total number of children in care, including children related to the caregiver, may not exceed 12.~~

~~2. Registered or Licensed Child Care Home. The primary caregiver provides care in the caregiver's own residence from birth through 13 years. The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.~~

b. Day Care Operation – Home Based. An operation providing care for children under 14 years of age, for less than 24 hours per day, and at the caregiver's home.

7.4 Jon James Director of Planning and Development Services, briefed the council on an Ordinance proposal to amend the Land Development Code to allow digital conversion of billboards in the Buffalo Gap Corridor Overlay.

Digital billboards are an emerging trend for off-site advertising. Several new digital billboards and conversions of existing billboards have been installed in the City of Abilene. A request has been made to convert an existing billboard at the southeast corner of Buffalo Gap Road and Highway 83-84. This billboard falls within the Buffalo Gap Corridor Overlay which prohibits new off-site signs within the boundaries of the overlay district, with the exception of off-site group signs. Such conversion requires a permit and is considered a new sign.

Staff is proposing to allow digital conversion of billboards in the Buffalo Gap Corridor Overlay. The amendment would only allow for the conversion of existing billboards and would not permit new billboard locations in the Buffalo Gap Corridor Overlay. The Sign Regulations provide standards for the display of the images as well as the brightness of the signs. The section proposed for amendment is Section 2.3.4.1 – Corridor Overlay (COR) District.

Staff recommends approval.

The Planning and Zoning Commission recommends approval by a vote of 5 in favor (Famble, Glenn, Rosenbaum, Todd, and Yungblut) and 1 opposed (McClarty).

Council and Staff discussion included: 1) damaged signs and how they might be impacted; and 2) distances from other signs.

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

Councilman Williams made the motion to approve the Ordinance proposal to amend the Land Development Code to allow digital conversion of billboards in the Buffalo Gap Corridor Overlay. Councilman Spano seconded the motion, motion carried.

AYES: Councilmen Price, Spano, Williams, Briley, Higgins, and Mayor Archibald
NAYS: None

Ordinance **#04-2013**

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 2.3.4.1 Corridor Overlay (COR) District

REVISE: Revise the language in the Prohibited Signs section (letter 'b') to allow for digital conversion of an existing billboard.

(e) **Signage Requirements.**

4. Prohibited Signs

b. No new off-site signs shall be permitted within the boundaries of the overlay district with the exception of:

- off-site group signs;
- digital conversion of an existing billboard

EXECUTIVE SESSION

Mayor Archibald recessed the Council into Executive Session 9:54 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 10:26 a.m. and reported no votes or action was taken in Executive Session in regards to Section 551.071 Consultation/Litigation with Attorney and 551.073 Deliberations about Gifts and Donations.

There being no further business the meeting was adjourned at 10:26 a.m.

Danette Dunlap, TRMC
City Secretary

Norm Archibald
Mayor