

CITY COUNCIL MEETING
May 8th, 2014, 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 May 8th, 2014, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Archibald was present and presiding with Councilmen Shane Price, Joe Spano, Robert O. Briley, Anthony Williams, Kyle McAlister 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.

Kyle McAlister gave the invocation.

Mayor Archibald introduced Maliyah Liske who is a 5th grade student at Jane Long Elementary. Maliyah led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas.

EMPLOYEE SERVICE AWARDS

Mayor Archibald and City Manager Larry Gilley recognized the following City employees for their years of service.

<i>Kenneth Hutchins, Jr.</i>	<i>Water Utilities</i>	<i>20 Years</i>
<i>Marie Noe</i>	<i>Community Services</i>	<i>35 Years</i>

PROCLAMATION

Mayor Archibald presented the following proclamation:

National Police Week – Deputy Police Chief Doug Wrenn accepted on behalf of the Abilene Police Department.

DISPOSITION OF MINUTES

5.0 Mayor Archibald stated Council has been given the minutes from the April 24th regular meeting there being no deletions, no additions, and no corrections. Councilwoman Miller made a motion to approve the minutes as presented. Councilman Spano seconded the motion, motion carried.

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

NAYS: None

CONSENT AGENDA

Councilman Briley made the motion to approve consent item 6.1 through 6.3 as recommended by staff. Councilman Williams seconded the motion, motion carried.

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

NAYS: None

Resolution & Oral Resolutions:

- 6.1 Resolution:** City Council approved the Resolution denying the rate increase requested by Atmos Energy, Corp., Mid-Tex Division under the company's 2014 Annual Rate Review mechanism filing.

Abilene, along with approximately 164 other cities served by Atmos Energy Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC"). On or about February 28, 2014, Atmos Mid-Tex filed with the City an application to increase natural gas rates pursuant to the Rate Review Mechanism ("RRM") tariff renewed by the City in 2013 as a continuation and refinement of the previous RRM rate review process. The RRM tariff was adopted as an alternative to the Gas Reliability Infrastructure Program ("GRIP"), the statutory provision that allows Atmos to bypass the City's rate regulatory authority to increase its rates annually to recover capital investments. This is the second annual RRM filing under the renewed RRM tariff.

The Atmos Mid-Tex RRM filing sought a \$45.7 million rate increase system-wide based on an alleged test-year cost of service revenue deficiency of \$49 million. Of the total amount requested, almost \$37 million is attributable to the affected cities. The City worked with ACSC to analyze the schedules and evidence offered by Atmos Mid-Tex to support its request to increase rates.

In past years, cities have been able to reach a compromise with Atmos to reduce the rate impact from the requested RRM increases, and these compromises have also been lower than the rates that Atmos would have been entitled to under the GRIP filing. In this RRM filing, the Company demanded more than the \$31.5 million it would be entitled to if it had filed a GRIP case. The magnitude of the requested increase under the 2014 RRM filing, and the wide differences between it and the ACSC consultants' recommendations made a compromise much more difficult and ultimately impossible. As a result, though a good faith attempt was made by ACSC to reach a compromise with Atmos Mid-Tex, an agreement was not reached. In the absence of an agreement, the ACSC Executive Committee and ACSC's legal counsel have recommended that ACSC members adopt the attached Resolution denying the rate increase request.

Resolution [#11-2014](#)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, DENYING THE RATE INCREASE REQUESTED BY ATMOS ENERGY CORP., MID-TEX DIVISION UNDER THE COMPANY'S 2014 ANNUAL RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES PERTAINING TO REVIEW OF THE RRM; AUTHORIZING THE CITY'S PARTICIPATION WITH ATMOS CITIES STEERING COMMITTEE IN ANY APPEAL FILED AT THE RAILROAD COMMISSION OF TEXAS BY THE COMPANY; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES IN ANY SUCH APPEAL TO THE RAILROAD COMMISSION; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL

- 6.2 Oral Resolution:** City Council authorized the City Manager to execute the Advance Funding Agreement with TxDOT for South 11th Street enhancement project.

In November of 2012 the City Council approved a resolution authorizing the filing of an application with the

Texas Department of Transportation for the Transportation Enhancement Program. In July of 2013 the Texas Transportation Commission awarded Abilene a project for improvements along S 11th Street that will include sidewalks, ramps and other pedestrian amenities along one side of the street and designated bike routes, in existing lanes of travel, both directions, from South Treadaway Blvd., to Elmwood Street. The total estimated project cost is \$1,182,775. The federal reimbursement at 80% would cover up to \$946,220 of this project cost with local 20% match of \$236,556.

This oral resolution will allow City Staff to move forward with the project so that we can design and begin obtaining all necessary permits and clearances. No reimbursement is available for any work done prior to the enactment of this agreement. Bid awards for construction will be processed normally, including City Council review.

This is a cost reimbursement program with federal funding capped at \$946,220. The City will be responsible for any cost overruns. The City will be providing design, engineering, and construction letting for this project.

- 6.3 Oral Resolution:** City Council approved entering into a Professional Services Contract with Wilson & Company of Abilene, Texas to provide professional engineering services for reconstruction of Hardison Lane from Maple Street to Oldham Lane.

On March 27, 2014, the Engineering Division of the Public Works Department published a request for proposal for engineering services for the reconstruction of Hardison Lane from Maple Street to Oldham Lane. Three proposals were received and, following reviews and interviews of all three firms, Wilson & Company was selected as the successful proposer. Staff is recommending the City enter into a professional services contract for engineering services for construction plans and potential contract documents for the reconstruction of Hardison Lane from Maple Street to Oldham Lane.

REGULAR ITEMS

- 7.1** Jon James, Director of Planning and Development Services, briefed the council on the Ordinance for Case #**Z-2014-11** - on a request from William D. Tate, agent Wayne Sanford, to rezone property from PD (Planned Development) to RS-6 (Single-Family Residential) zoning, located at 1541 Lytle Acres Dr.

Currently the property is zoned PD and is undeveloped. The properties to the north and west are zoned RS-6 and are developed with residential uses. The property to the south is also zoned RS-6 but is currently undeveloped. The properties to the east are zoned RS-12 (Single-Family Residential) and developed with residential uses. The current PD zoning only allows for a "licensed small Assisted Living Facility having a minimum of 12 beds and a maximum of 16 beds". This approved use is no longer planned for the property. The change of zoning would allow for the property to be developed with single-family homes similar to the other properties in the area.

The Future Land Use section of the Comprehensive Plan designates the area as low-density residential. The requested zoning would allow for single-family residential development which is consistent with the adjacent uses. The requested zoning would be compatible with the adjacent uses and the Comprehensive Plan

Staff recommends approval as requested

The Planning and Zoning Commission recommends approval by a vote of 6 in favor (Bixby, Glenn, McClarty, Rosenbaum, Todd, and Famble) 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 for Case #**Z-2014-11** - on a request from William D. Tate, agent Wayne Sanford, to rezone property from PD (Planned Development) to RS-6 (Single-Family Residential) zoning, located at 1541 Lytle Acres Dr. Councilman McAlister seconded the motion, motion carried.

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

NAYS: None

[Ordinance #27-2014](#)

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "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: 1541 Lytle Acres Dr.

7.2 Jon James, Director of Planning and Development Services, briefed the council on the Ordinance for Case #**Z-2014-12** - on a request from LBHDS, LLC, agent Tigris Development, LLC, to rezone property from RS-6 (Single-Family Residential) & PD (Planned Development) to MF (Multi-Family Residential) zoning, located on the south side of the 4300 block of Antilley Rd

Currently the property is zoned RS-6 and is undeveloped. The property to the west is zoned RS-6 and was originally part of the area just zoned to RS-6. Beyond that, the adjacent property is zoned RS-8 and is being developed with a residential subdivision. The properties to the east are zoned GR (General Retail), NR (Neighborhood Retail) & RS-8 and includes a mix of retail, office and some residential development. The properties to the south are zoned AO and are currently requesting a change of zoning to PD that will include MD (Medium Density Residential), NR (Neighborhood Retail), NO (Neighborhood Office) and GR zoning. The properties to the north are zoned AO & RS-8 and include residential uses and the Wylie High School. The requested zoning would allow for multi-family residential development.

The Future Land Use section of the Comprehensive Plan designates the area as low-density residential. The requested zoning would allow for multi-family residential development. The MF zoning can be considered as transitional from the GR zoning to the east and the RS-6 zoning to the west. Therefore, the requested zoning would be compatible with the adjacent uses single-family residential uses and the Comprehensive Plan. However, traffic is a concern and the MF zoning would be separated from the GR zoning to the east due to topography and a floodway area.

Staff recommends approval as requested.

The Planning and Zoning Commission recommends approval by a vote of 5 in favor (Bixby, Glenn, McClarty, Rosenbaum, and Famble), none opposed, and 1 abstained (Todd).

Council and Staff discussion included: 1) landscaping; 2) buffer zones; 3) street locations; and 4) area concept of the acreage in the development.

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

- Chris Barnett – spoke in favor of the zone change, development will occur in two phases
- Ty Craft- developer – Mr. Craft addressed the concerns that council had regarding the buffering of lights from vehicles and explained the design concept.
- B. J. Prichard – Enprotec Hibbs & Todd Eng. – spoke in favor of the zone change.

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-2014-12 - on a request from LBHDS, LLC, agent Tigris Development, LLC, to rezone property from RS-6 (Single-Family Residential) & PD (Planned Development) to MF (Multi-Family Residential) zoning, located on the south side of the 4300 block of Antilley Rd. Councilman Price seconded the motion, motion carried.

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

NAYS: None

[Ordinance #28-2014](#)

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "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: south side of the 4300 block of Antilley Rd

7.3 Jon James, Director of Planning and Development Services, briefed the council on the Ordinance for Case #Z-2014-13 - on a request from Jennifer Salazar, agent Foxwood Development Services, to rezone property from RS-8/COR (Single-Family Residential/Corridor Overlay) to GR/COR (General Retail/Corridor Overlay) zoning, located at 4117 Antilley Rd

Currently the property is zoned RS-8 and is developed with a home. The property to the west is zoned GR (General Retail) and was rezoned recently to this district. The properties to the south and east are zoned GC (General Commercial) and includes a mix of office and restaurant development. The properties to the north are zoned RS-8 and are currently developed with residential homes as well as a church. The requested zoning would allow for retail development.

The Future Land Use section of the Comprehensive Plan designates the area as low-density residential. The requested zoning would allow for retail development. The property is close to the intersection with Antilley Rd which is considered a commercial node and is supported by a mix of retail, office, and institutional uses of a high quality design. The Buffalo Gap Corridor study indicates that retail zoning is allowable in nodes at intersections of major thoroughfares. The requested zoning would be compatible with the adjacent uses and the Comprehensive Plan.

Staff recommends approval as requested.

The Planning and Zoning Commission recommends approval by a vote of 6 in favor (Bixby, Glenn, McClarty, Rosenbaum, Todd, and Famble) 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 McAlister made the motion to approve the Ordinance for Case #Z-2014-13 - on a request from Jennifer Salazar, agent Foxwood Development Services, to rezone property from RS-8/COR (Single-Family Residential/Corridor Overlay) to GR/COR (General Retail/Corridor Overlay) zoning, located at 4117 Antilley Rd. Councilman Williams seconded the motion, motion carried.

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

NAYS: None

[Ordinance #29-2014](#)

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "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: 4117 Antilley Rd

7.4 Jon James, Director of Planning and Development Services, briefed the council on the Ordinance Case #Z-2014-14 - on a request from Ken Musgrave, agent Tal Fillingim, to rezone property from AO (Agricultural Open Space) to GR (General Retail) zoning, being approximately 3.88 acres located on the south side of the 2200 block of Hwy 351.

Currently the property is zoned AO and is undeveloped. The property to the south and east is zoned AO and used for farming purposes. The property to the west is zoned MF (Multi-Family Residential) and being developed as an apartment complex. The properties to the north are zoned GR, MD (Medium Density), and RS-6 (Single-Family Residential) and are currently developed with residential homes, duplexes, and self-storage warehousing. The requested zoning would allow for retail development.

The Future Land Use section of the Comprehensive Plan designates the area as low-density residential. The requested zoning would allow for retail development. The property is transitioning away from the commercial and retail uses that exist and that are being developed to the west. The Highway 351 Development Plan shows this property to be on the edge of the 'Mixed Use' area transitioning into the 'Residential' area. The apartment complex can be seen as a logical transition between the two areas. By allowing this zoning on the east side of the apartment complexes, additional transitioning would be expected farther to the east. No plans have been discussed for the adjacent property to the east. Therefore, the requested zoning would not be compatible with the Highway 351 Development Plan. Retail development may be appropriate as part of an overall plan for the larger area, but not as a standalone fragmented development.

Staff recommends denial.

The Planning and Zoning Commission recommends approval by a vote of 5 in favor (Glenn, McClarty, Rosenbaum, Todd, and Famble), none opposed, and 1 abstained (Bixby).

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

- Tal Fillingim – Jacob & Martin Engineering – spoke in favor of the zone change
- Ken Musgrave – spoke in favor of the zone change

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

Councilman Williams made the motion to approve the Ordinance for Case **#Z-2014-14** a request from Ken Musgrave, agent Tal Fillingim, to rezone property from AO (Agricultural Open Space) to GR (General Retail) zoning, being approximately 3.88 acres located on the south side of the 2200 block of Hwy 351. Councilman Price seconded the motion, motion carried.

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

NAYS: None

[Ordinance #30-2014](#)

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "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: 3.88 acres located on the south side of the 2200 block of Hwy 351

7.5 Jon James, Director of Planning and Development Services, briefed the council on the Ordinance for Case **#Z-2014-15** - on a request from Gerald Johnson, agent Tal Fillingim, to rezone property from AO (Agricultural Open Space) to RS-6 (Single-Family Residential) zoning, located at 5050 Oldham Ln.

Currently the property is zoned AO and is undeveloped. The properties to the north and west are zoned RS-6 (Single-Family Residential). The properties to the south and east are zoned AO and includes a mix of farmland, residential homes, and a church. The requested zoning would allow for single-family residential development consistent with the adjacent properties.

The Future Land Use section of the Comprehensive Plan designates the area as low-density residential. The requested zoning would allow for single-family residential development. The requested zoning would be compatible with the adjacent uses and the Comprehensive Plan.

Staff recommends approval as requested.

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

Mayor Archibald opened the public hearing and Agent Tal Fillingim spoke in favor of the zone change and there being no one else present and desiring to be heard the public hearing was closed.

Councilwoman Miller made the motion to approve the Ordinance for Case **#Z-2014-15** - on a request from Gerald Johnson, agent Tal Fillingim, to rezone property from AO (Agricultural Open Space) to RS-6 (Single-Family Residential) zoning, located at 5050 Oldham Ln. Mayor Archibald seconded the motion, motion carried.

AYES: Councilmen Price, Spano, Williams, Briley, McAlister, Councilwoman Miller and Mayor Archibald.
NAYS: None

[Ordinance: #31-2014](#)

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "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: 5050 Oldham Ln

7.6 Jon James, Director of Planning and Development Services, briefed the council on the Ordinance Case #Z-2014-16 - on a request from Exceptional Holdings, LP, agent David Ohre, to rezone property from PD (Planned Development) to GR (General Retail) zoning, located at 1102 E. Overland Tr,

Currently the property is zoned PD and is undeveloped. The PD zoning allows for uses in the LI (Light Industrial) zoning district. The properties to the north and east are part of the PD zoning that allows for industrial uses. The property to the south is zoned AO (Agricultural Open Space) and is vacant. Interstate 20 borders the property to the west. The requested zoning would allow for retail uses to include a restaurant. This zoning would also allow for development consistent with the nearby retail properties to the southeast.

The Future Land Use section of the Comprehensive Plan designates the area part of a Major Commercial/Business Center at the intersection of I-20 and Hwy 351. The requested zoning would allow for retail development to include a restaurant. The requested zoning would be compatible with the adjacent uses and the Comprehensive Plan.

Staff recommends approval as requested.

The Planning and Zoning Commission recommends approval by a vote of 5 in favor (Bixby, Glenn, Rosenbaum, Todd, and Famble), none opposed, and 1 abstained (McClarty).

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 for Case #Z-2014-16 – on a request from Exceptional Holdings, LP, agent David Ohre, to rezone property from PD (Planned Development) to GR (General Retail) zoning, located at 1102 E. Overland Tr. Councilman McAlister seconded the motion, motion carried.

AYES: Councilmen Price, Spano, Williams, Briley, McAlister, Councilwoman Miller and Mayor Archibald.
NAYS: None

[Ordinance #32-2014](#)

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "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: 1102 E. Overland Tr.

EXECUTIVE SESSION

Mayor Archibald recessed the Council into Executive Session 10:16 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 Executive Session at 11:23 a.m. and reported no votes or action was taken in Executive Session in regards to Section 551.072 Real Property.

No action from executive session.

10. Oral Resolution: Authorizing acceptance of the property located at 602 North 1st Street

Mayor Archibald made the motion to authorize the acceptance of the property located at 602 North 1st Street. Councilman Briley seconded the motion, motion carried.

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

NAYS: None

There being no further business the meeting was adjourned at 11:25 a.m.

Danette Dunlap, TRMC
City Secretary

Norm Archibald
Mayor