

**CITY COUNCIL MEETING
May 12th 2016, 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 12th 2016, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Archibald was present and presiding with Councilmen Shane Price, Bruce Kreitler, Anthony Williams, Jay Hardaway, Kyle McAlister and Steve Savage. Also present were City Manager Robert Hanna, Interim City Attorney Stanley Smith, City Secretary Danette Dunlap, and various members of the City staff.

Mayor Archibald gave the invocation.

Mayor Archibald introduced Aileen Tirado who is a 5th grade student at Ortiz Elementary School. Aileen led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas.

PROCLAMATIONS AND PRESENTATIONS

Mayor Archibald presented the following proclamations:

May 12, 2016

Destination Imagination Teams Day – Kim Cheek, Wylie ISD Team Coordinator accepted the proclamation. Team members were in attendance.

May 2016

Building Safety Month – David Sartor Building Official accepted the proclamation. Staff from the building department were in attendance.

May 2016

Older Americans and Elder Abuse Prevention Month – Michelle Parker Area on Aging accepted the proclamation.

EMPLOYEE SERVICE AWARDS

Mayor Archibald assisted by City Manager Robert Hanna recognized the following employees for their years of service:

Rodney Goodman	Fire Captain	30 Years
Joey Kincaid	Fire Battalion Chief III	30 Years
Russell Watts	Fire Captain I	30 Years

DISPOSITION OF MINUTES

5.0 Mayor Archibald stated Council has been given the minutes from the April 26th Special Called Workshop and the April 28th Regular Council Meeting there being no deletions, no additions, and no corrections. Councilman Williams made a motion to approve the minutes as presented. Councilman Hardaway seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

CONSENT AGENDA

No items for consent agenda.

REGULAR ITEMS

7.1 Kent Sharp, CEO and Director of Development Corporation of Abilene (DCOA) briefed the council on the FY16 Semi-Annual Report of activities through March 31, 2016.

October 1, 2015 to March 31, 2106 Project Summaries:

- Abimar Foods, Inc. – Expansion at both the South 1st and North 1st street locations
- Lone Star Canvas & Sign Works – Expansion of building and a fabric laser digitizer to automate some of its process
- Texas State Technical College – Operating Funds for the new construction of the new Abilene Campus
- Hat Creek Carriers, LLC – Lease agreement for office space at 4109 Vine Street
- Strategic Plan – 5-year strategic plan completed by TIP Strategies of Austin
- Sale of Land on Hwy 351 – sold land – site of new Starbucks Café
- Dyess Air Force Base – applied for a grant to improve the Visitor’s Control Center located at the main gate – was not awarded
- Prairie Dog Pet Products – New Markets Tax Credit – assistance package for new plant and moving corporate headquarters to the Spec 3 building in the Five Points District.

BOARD OR COMMISSION RECOMMENDATION

The DCOA board approved the report during a board meeting on Tuesday, April 12, 2016

Councilman Williams made the motion to approve the FY16 Semi-Annual Report of activities through March 31, 2016 as presented. Councilman Price seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

7.2 Dana Schoening Director of Planning & Development Services briefed the council on the Ordinance for the amendment to the Land Development Code (LDC) to create and adopt standards for a Lake Fort Phantom Hill (LFPH) Overlay zone.

The Lake Fort Phantom Hill Area Plan (Lake Plan) was approved by the City Council in 2009. The plan established a vision of the lake area as a unique place within the City that would benefit from customized and higher development standards. The intent of the plan was to integrate and exploit both natural and developed assets of the area in ways that would protect and showcase its future potential.

The proposed overlay district is intended to implement standards envisioned within the Lake Plan. The overlay will over time influence development to balance competing interests and ensure that the lake develops as envisioned in the Lake Plan. Stakeholders, including the Neighborhood Association, have been actively included in the development of the overlay throughout this process.

City Staff, the Lake Association, and the Planning and Zoning Commission spent many meetings over many months to work through many issues and to develop the ordinance as presented. While there is general agreement on virtually all of the ordinance, Staff has highlighted two sections of the ordinance that we believe warrant additional discussion by the Council.

STAFF RECOMMENDATION

Staff recommends approval as requested.

BOARD OR COMMISSION RECOMMENDATION

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

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

- Kenneth Dunlap – against overlay zone
- Steve Yarnell – President of the Lake Association – spoke in favor of the overlay zone
- Diane Wilson – against the overlay zone
- Sonya Salisbury – against the overlay zone
- Seaton Higginbotham – spoke in favor of the overlay zone
- James Lang – against the overlay zone
- Ray Farmer – has some concerns not against all of the overlay zone
- Linda Vaughn – against the overlay zone
- Jimmy Lonzo – against the overlay zone
- Sam Chase – spoke in favor of the overlay zone
- Pete Olden – had questions regarding fencing
- Benny Wright - encouraged everyone to have a positive attitude and move forward (supports the overlay)
- Danny Hogue - opposed to the overlay; has auto repair shop near the lake
- Mary Hogue - need to do clean up around the lake
- Gary Chaney - opposed to the overlay; suggested we table the item
- Rebecca Wright - supports the overlay

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

Councilman Savage made the motion to deny the Ordinance for the amendment to the Land Development Code (LDC) to create and adopt standards for a Lake Fort Phantom Hill (LFPH) Overlay zone. Councilman Kreitler seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Hardaway, Savage and Mayor Archibald

NAYS: Councilmen Williams and McAlister

7.3 Ordinance & Public Hearing: Z-2016-17 A request to apply Lake Fort Phantom Hill (LFPH) Overlay zoning to all properties located within the city limits north of Taylor/Jones County line. Council pulled this item due to the Fort Phantom Overlay Zoning Ordinance not passing.

7.4 Dana Schoening Director of Planning & Development Services briefed the council on the Ordinance for **CUP-2016-02** A request from Joe Frazier for a Conditional Use Permit to allow for ‘Freight Containers’ on property zoned AO (Agricultural Open Space), located at 3750 Old Anson Rd.

The request is to allow for ‘Freight Containers’ for as many as 3 freight containers on the property. The AO district permits 1 freight container by right. Any additional freight containers require approval of a Conditional Use Permit. Freight containers must be setback a minimum of 200 feet from any property line and be of a neutral color. The freight containers will be able to meet this requirement.

STAFF RECOMMENDATION

Staff recommends approval as requested (as many as 3 freight containers) with no conditions.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval as requested by a vote of five (5) in favor (Bixby, Calk, Dunnahoo, Rosenbaum, & Famble) and none opposed.

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

Councilman Savage made the motion to approve the Ordinance for **CUP-2016-02** A request from Joe Frazier for a Conditional Use Permit to allow for 'Freight Containers' on property zoned AO (Agricultural Open Space), located at 3750 Old Anson Rd. Councilman Williams seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

Ordinance: **#20-2016**

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "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.

Conditional Use Permit: for 3750 Old Anson Road

7.5 Dana Schoening Director of Planning & Development Services briefed the council on the Ordinance **Z-2016-14** A request from Sherry I. Maloney to rezone property from HC (Heavy Commercial) & GC (General Commercial) to PD (Planned Development) zoning, located at 2549 & 2657 Shirley Rd.

The adjacent properties are primarily undeveloped with a few single-family homes to the north. The applicant is proposing to maintain the underlying HC zoning to maintain the auto repair shop uses and is also requesting to allow for up to 6 manufactured homes and for livestock on the northern property. The applicant intends to live here with many of her immediate family members.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval as presented by a vote of five (5) in favor (Bixby, Calk, Dunnahoo, Rosenbaum, & Famble) and none opposed.

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

- Sherry Maloney – owner of the property. Spoke in favor of the rezone

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

Council and Staff discussion included: 1) driveway issues; 2) number of single family homes to be placed on the property; 3) concerns of zoning the property to single-family and how that effects the zoning in future years; and

4) staff would like to have time to work through some legal questions regarding the zoning.

Councilman Hardaway made the motion to TABLE the Ordinance for Case Z-2016-14 a request from Sherry I. Maloney to rezone property from HC (Heavy Commercial) & GC (General Commercial) to PD (Planned Development) zoning, located at 2549 & 2657 Shirley Rd. Councilman Price seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

7.6 Dana Schoening Director of Planning & Development Services briefed the council on the Ordinance **Z-2016-15** A request from Jack Fuqua & Pat Andrews to rezone property from NR (Neighborhood Retail) & MF (Multi-Family Residential) to GR (General Retail) zoning, located at 3349 N. 12th St & 1141 N. Willis St.

The applicant is proposing to expand the funeral home site. It is a legal, non-conforming use currently that would require a change of zoning to allow for the expansion. The requested zoning would continue to allow for the church use.

STAFF RECOMMENDATION

Staff recommends approval as requested.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of five (5) in favor (Bixby, Calk, Dunnahoo, Rosenbaum, & Famble) and none opposed.

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

- Billy Enriquez – spoke in favor of the rezone

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

Councilman Hardaway made the motion to approve the Ordinance **Z-2016-15** A request from Jack Fuqua & Pat Andrews to rezone property from NR (Neighborhood Retail) & MF (Multi-Family Residential) to GR (General Retail) zoning, located at 3349 N. 12th St & 1141 N. Willis St. Councilman Williams seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

Ordinance: **#21-2016**

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: 3349 N. 12th St & 1141 N. Willis St

7.7 Dana Schoening Director of Planning & Development Services briefed the council on the Ordinance for **Z-2016-16** A request from Ax Properties, agent Tal Fillingim, to rezone property from RS-8 (Single-Family Residential)

to PD-4 (Planned Development) zoning, located at 3702 Antilley Rd.

The applicant is proposing to keep the existing home and to also allow for some additional patio homes along Harbour Town on the north side of the house. The request is to extend the limits of the existing PD zoning for the Fairway Oaks development. This would allow for 2 to 3 additional patio homes under the same regulations as the existing adjacent patio homes.

STAFF RECOMMENDATION

Staff recommends approval as requested.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval as presented by a vote of five (5) in favor (Bixby, Calk, Dunnahoo, Rosenbaum, & Famble) and none opposed

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

- Tal Fillingim – agent for the owner. Spoke in support

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

Councilman Price made the motion to approve the Ordinance **Z-2016-16** A request from Ax Properties, agent Tal Fillingim, to rezone property from RS-8 (Single-Family Residential) to PD-4 (Planned Development) zoning, located at 3702 Antilley Rd. Councilman Hardaway seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

Ordinance: **#22-2016**

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, CONCERNING PD-4 AND ORDINANCE NO. 1045 A PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE

Location: 3702 Antilley Rd

7.8 Wayne Lisenbee Director of Capital Improvements briefed the council on the Resolution authorizing the City Manager to utilize Alternative Project Delivery methods for the City of Abilene.

The Texas Government Code provides for alternative project delivery methods for construction projects other than competitive sealed bidding, including Construction Manager at Risk, Design Build, and Best Value Competitive Sealed Proposals. The Code, in section 2269.053, allows the governing body of a municipality to delegate its authority to determine whether an alternative project delivery method would provide the best value to the municipality regarding a certain project.

Mayor Archibald made the motion to approve the Resolution with amendment to the language of the Resolution by deleting “or designee” under Part 1, and authorizing the City Manager to utilize Alternative Project Delivery methods that will provide for the best value for the City. Councilman Williams seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#62-2016**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS DESIGNATING THE CITY MANAGER TO DETERMINE WHEN ALTERNATIVE PROJECT DELIVERY METHODS WILL PROVIDE THE BEST VALUE TO THE CITY OF ABILENE.

7.9 Michael Rice, Director of Public Works briefed the council on the Resolution awarding of bid **CB#1638** for the South 11th Street sidewalk project.

This project is from Elmwood Dr. to Treadaway Blvd. constructing sidewalk, curb ramps, driveway approaches and alley aprons to facilitate an ADA compliant sidewalk. Also included in the project is signage and thermoplastic pavement markings to allow a shared lane for bicycles, as well as traffic signal modifications at S. 11th St. and Treadaway Blvd. This project has 120 working days.

Councilman Price made the motion to approve the Resolution awarding the bid to Bontke Brothers Construction Company in the amount of \$901,259.00. Councilman Hardaway seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#63-2016**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDDING BID TO BONTKE BROTHERS CONSTRUCTION COMPANY, ABILENE, TEXAS

7.10 Michael Rice, Director of Public Works briefed the council on the Resolution awarding of bid **CB#1644** N. 5th Street & Victoria Street Reconstruction Project.

This contract will be for the reconstruction and re-alignment of N. 5th St. from Lillius St. to Grape St. and Victoria St. from N. 5th St. to N. 6th St. Also included in this contract is the removal of the previously aligned roadway, curb ramps, and sidewalk.

Councilman Savage made the motion to approve the Resolution awarding the bid to Bontke Brothers Construction Company in the amount of \$591,173.90. Councilman Hardaway seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#64-2016**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDDING BID TO BONTKE BROTHERS CONSTRUCTION CO., ABILENE, TEXAS

EXECUTIVE SESSION

Mayor Archibald recessed the Council into Executive Session at 2:19 p.m. pursuant to the Open Meetings Act for the following:

Consultation with Attorney - Sections 551.071

8) E.G., et al. v. Barry Bond, City of Abilene, and Abilene Independent School District, Case 1:16-cv-00068-BL, U.S. District Court, Northern District, Abilene Division, filed April 28, 2016

- A) Consultation with Attorney regarding ATMOS Settlement between ATMOS Cities Steering Committee and ATMOS Energy Corp., Mid-Tex Division.
- B) Regarding possible litigation with TML Intergovernmental Risk Pool

Personnel – Section 551.074
City Manager

The Council reconvened in Open Session at 2:49 p.m. and reported no votes or action was taken in Executive Session.

10.1 Robert Hanna City Manager, briefed the council on the Resolution Approving a negotiated settlement between The ATMOS Cities Steering Committee and ATMOS Energy Corp., Mid-Tex Division Regarding the Company's 2016 rate review mechanism filings

The City, along with other similarly situated cities served by Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “Company”), is a member of the Atmos Cities Steering Committee (“ACSC”). The Rate Review Mechanism (RRM) Tariff was originally adopted by ACSC member cities in 2007 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. The RRM Tariff has been modified several times, most recently in 2013.

Mayor Archibald made the motion to approve the Resolution Approving a negotiated settlement between The ATMOS Cities Steering Committee and ATMOS Energy Corp., Mid-Tex Division Regarding the Company's 2016 rate review mechanism filings. Councilman Savage seconded the motion, motion carried.

AYES: Councilmen Price, Kreitler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#65-2016**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY’S 2016 RATE REVIEW MECHANISM FILINGS; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; REQUIRING THE COMPANY TO REIMBURSE ACSC’S REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION 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 RESOLUTION TO THE COMPANY AND THE ACSC’S LEGAL COUNSEL.

10.2 Robert Hanna, City Manager briefed the council on the Resolution Authorizing the City Manager to negotiate and execute all documents or agreements, and pursue other legal action as may be necessary, regarding the City's rights and obligations under its property damage insurance coverage with the with Texas Municipal League Intergovernmental Risk Pool

Due to the complexity of property damage the City incurred, and the number of municipal buildings and roofs that received damage from the hail storm, it is reasonably anticipated that evaluation of and repair of the damaged property will not be commenced or completed by June 12, 2016.

Councilman Savage made the motion to approve the Resolution Authorizing the City Manager to negotiate and execute all documents or agreements, and pursue other legal action as may be necessary, regarding the City's rights and obligations under its property damage insurance coverage with the Texas Municipal League Intergovernmental Risk Pool. Councilman McAlister seconded the motion, motion carried.

AYES: Councilmen Price, Kreidler, Williams, Hardaway, McAlister, Savage and Mayor Archibald
NAYS: None

Resolution: **#66-2016**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE ALL DOCUMENTS OR AGREEMENTS, AND PURSUE OTHER LEGAL ACTION AS MAY BE NECESSARY, REGARDING THE CITY'S RIGHTS AND OBLIGATIONS UNDER ITS PROPERTY DAMAGE INSURANCE COVERAGE WITH THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL.

10.3 Resolution: Appointing Members to Various Boards and Commissions as Required by the Charter of the City of Abilene and Statutes of the State of Texas:

Abilene Economic Development Corporation

No action was taken on the board appointments.

There being no further business the meeting was adjourned at 2:54 p.m.

Danette Dunlap, TRMC
City Secretary

Norm Archibald
Mayor