

**MIDLAND CITY COUNCIL
MINUTES
May 26, 2020**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., May 26, 2020.

Council Members present: Scott Dufford, Spencer Robnett, Michael Trost, Jack Ladd, Patrick Payton, John Norman, Lori Blong

Council Members absent: None

Staff members present: (Via Zoom) City Manager Courtney Sharp, City Attorney John Ohnemiller, Assistant City Manager Robert Patrick, Assistant City Manager Morris Williams

The meeting was called to order at 10:01 a.m.

OPENING ITEMS

1. Invocation – Dr. Darin Wood, First Baptist Church
2. Pledge of Allegiance

CONSENT AGENDA

Spencer Robnett moved to approve the consent agenda, excluding items 5, 8, 15; seconded by John Norman.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

3. MOTION APPROVING THE FOLLOWING MINUTES:
 - a. REGULAR CITY COUNCIL MEETING OF MAY 12, 2020

4. 2020-089 – RESOLUTION APPROVING A CONTRACT WITH TOMMY KLEIN CONSTRUCTION, INC., FOR EXTERIOR CONSTRUCTION WORK AT THE MARTIN LUTHER KING JR. COMMUNITY CENTER, THROUGH SOURCEWELL, AT A TOTAL COST OF \$103,122.00 (GENERAL SERVICES)
6. 2020-091 – RESOLUTION APPROVING THE SELECTION OF PARKHILL, SMITH & COOPER, INC., HDR ENGINEERING, INC., ENPROTEC / HIBBS & TODD, INC., FREESE AND NICHOLS, INC., JACOBS ENGINEERING GROUP INC., AND MAVERICK CIVIL & SURVEY, LLC D/B/A MAVERICK ENGINEERING, INC., AS RESPECTIVE FIRST CHOICES FOR PERFORMANCE OF ON-CALL ENGINEERING SUPPORT SERVICES FOR THE UTILITIES DEPARTMENT OVER THE NEXT FIVE (5) YEARS; AND PROVIDING THAT ANY AGREEMENT EXCEEDING \$100,000.00 SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (GENERAL SERVICES)
7. 2020-092 – RESOLUTION AWARDED A CONTRACT FOR TEMPORARY TRAFFIC CONTROL SERVICES TO FC TRAFFIC CONTROL, INC. OF AMARILLO, TEXAS, AT A TOTAL COST NOT TO EXCEED \$76,675.00; AND AUTHORIZING PAYMENT THEREFOR (GENERAL SERVICES)
9. 055-2020 – MOTION AUTHORIZING THE DIRECTOR OF AIRPORTS TO ADVERTISE A REQUEST FOR BIDS FOR THE MAF AIRFIELD PAVEMENT MARKING PROJECT (AIRPORT)
10. 056-2020 – MOTION AUTHORIZING THE ACCEPTANCE OF REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IN THE AMOUNT OF \$254,358.00 TO ASSIST THE CITY OF MIDLAND HEALTH AND SENIOR SERVICES DIVISION FOR ACTIVITIES IN SUPPORT OF CORONAVIRUS 2019 (COVID-19) RESPONSE; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL NECESSARY ACCEPTANCE DOCUMENTS; AND AUTHORIZING AND DIRECTING THE CITY TREASURER TO DEPOSIT THE FUNDS INTO THE GENERAL FUND (COMMUNITY SERVICES)
11. 2020-094 – RESOLUTION GRANTING VARIANCES FOR SIX OIL AND GAS WELLS TO BE LOCATED NO CLOSER THAN 226 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC (“OPERATOR”) TO DRILL SAID OIL AND GAS WELLS LOCATED IN SECTION 10, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 862 FEET AND 2,050 FEET WEST OF RANKIN HIGHWAY, AND BETWEEN 590 FEET AND 620 FEET NORTH OF DAYTON ROAD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DEVELOPMENT SERVICES)
12. 2020-095 – RESOLUTION GRANTING A VARIANCE FOR AN OIL AND GAS WELL TO BE LOCATED IN SECTION 3, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 2,433 FEET WEST OF SOUTH GARFIELD STREET AND 320 FEET NORTH OF WEST COUNTY ROAD 111) BY ALLOWING SAID OIL AND GAS WELL TO BE NO CLOSER THAN 491 FEET OF AN

OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL SAID OIL AND GAS WELL WITHIN THE CITY LIMITS; AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DEVELOPMENT SERVICES)

13. 2020-096 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO ENDEAVOR ENERGY RESOURCES, L.P. ("OPERATOR") TO DRILL FIVE OIL AND GAS WELLS LOCATED IN SECTION 4, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 590 FEET AND 591 FEET NORTH OF WEST INTERSTATE 20, AND BETWEEN 1,179 FEET AND 1,279 FEET EAST OF SOUTH MIDKIFF ROAD (DEVELOPMENT SERVICES)
14. 2020-097 – RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH ENDEAVOR ENERGY RESOURCES, L.P. REGARDING ITS APPLICATION TO DRILL OIL AND GAS WELLS WITHIN THE CITY LIMITS IN SECTION 4, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (DEVELOPMENT SERVICES)

The following items were pulled from Consent Agenda and considered individually.

5. 2020-090 – RESOLUTION AWARDED A CONTRACT TO 4X CONSTRUCTION GROUP, LLC, FOR THE LANDFILL CELLS FIVE AND SIX PROJECT FOR A TOTAL COST OF \$5,513,456.20; AND APPROPRIATING FUNDS FOR SAID PROJECT (GENERAL SERVICES)

Council Member Robnett noted there were quite a few bidders and wanted to understand the process of why a bidder from outside of Midland was not chosen.

Solid Waste Director Jeffrey Ahrlett reported they contracted with Parkhill Smith & Cooper (PSC) to design and run the bid process. The last cell they did was about half this size and the usual cost for the cells is around \$7 million. The low bid for this came in significantly cheaper at \$5.5 million.

Assistant City Manager Morris Williams reported that PSC was hired as the consultant and they vet the various companies to ensure that they can do the work without significant change orders coming in later.

Mr. Williams reported PSC does their due diligence to ensure there should not be any hidden costs and to ensure we are comparing apples to apples. General Services Director Regina Stephenson added there is no contingency in the contract so everything should be delivered as expected. When asked the difference between the lowest two bids, it was reported it was just under \$1 million.

Paul Iaquaniello, Vice President of Onyx, reported they were the second lowest bidder. He asked Council to consider that the lowest bid is 13% below the second lowest bid and the remaining bids were within 5% of each other. He felt the low bidder was missing something from their bid. They did not receive the bid to demolish the courthouse and the low bidder had a change order that made them the third lowest bidder. He is from Midland County and Onyx has been in Midland for over 20 years. He would like to see a local contractor

awarded the job. When asked if he had talked to PSC about his concerns, he reported he had, but PSC would be in a tough position to recommend the second lowest bidder that is \$900,000.00 higher.

City Attorney John Ohnemiller noted that change orders are capped at 25% of the contract. Because we go through a bid process, the City must have a legal reason to go with the second lowest bidder. There are two reasons: The first is the bidder was not responsive. Since PSC recommended this bidder that would be difficult. The second is for local bidder preference as outlined in State law. That does not apply because the difference is too great.

Council Member Blong asked if there would be consequences if this item was deferred. Assistant City Manager Morris Williams noted that PSC has already combed through the bid. This bid includes a lot of dirt work and there is not much opportunity for a change order. Their bid is just low.

Spencer Robnett moved to approve Resolution No. 2020-090 with the amendment to require any change orders to come back to City Council for approval; seconded by Scott Dufford.

The motion passed by the following vote:

AYE: Payton, Robnett, Dufford, Norman, Ladd, Blong

NAY: Trost

ABSTAIN: None

ABSENT: None

8. 2020-093 – RESOLUTION AUTHORIZING THE PROCUREMENT OF SERVICES NECESSARY TO FACILITATE THE EMERGENCY REPAIR OF DAMAGED STREET IMPROVEMENTS LOCATED AT OR ABOUT THE INTERSECTION OF GOLF COURSE ROAD AND MIDKIFF ROAD; APPROPRIATING AND ALLOCATING FUNDS; AND AUTHORIZING PAYMENT FOR SAID SERVICES IN AN AMOUNT NOT TO EXCEED \$850,000.00 (GENERAL SERVICES)

Council Member Ladd asked staff to share what was discussed last week. Engineering Services Director Jose Ortiz reported that sewer and storm drains were last improved in 1971. Normally, you can expect up to 35 years of service. There are areas that have far exceeded that number. There are 10 miles of corrugated pipes still in the ground and they are seeing an increase in failure to those pipes. About 80% of the infrastructure is past its prime. They now have a source of income to address some of these issues with the implementation of storm drain fees.

Jack Ladd moved to approve Resolution No. 2020-093; seconded by Spencer Robnett.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

15. 2020-098 – RESOLUTION AUTHORIZING THE EXECUTION OF COMMUNITY DEVELOPMENT BLOCK GRANT CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT CONTRACTS WITH CASA DE AMIGOS OF MIDLAND, TEXAS, INC., BOYS & GIRLS CLUBS OF THE PERMIAN BASIN, INC., SENIOR LIFE MIDLAND, INC., THE UNITED WAY OF MIDLAND, INC., AND WEST TEXAS FOOD BANK IN THE AMOUNT OF \$324,761.00; APPROPRIATING FUNDS FOR SAID CONTRACTS; AND APPROPRIATING \$150,000.00 TO THE CITY OF MIDLAND HEALTH DEPARTMENT (DEVELOPMENT SERVICES)

Council Member Blong asked how the specific parties were chosen. Community Development Block Grant Manager Isaac Garnett reported these are emergency funds received from HUD. The organizations selected were based on criteria. They have had a long relationship with the parties and felt comfortable moving forward with the recommendation. The parties will receive reimbursement for their expenses.

Spencer Robnett moved to approve Resolution No. 2020-098; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

SECOND READINGS

16. 10082 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOTS 2 AND 3, BLOCK 1, JADEN KATE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF NORTH ELKINS ROAD AND ARAPAHOE ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (First reading held May 12, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10082.

Patrick Brown, 212 Bayberry, reported he was available to answer questions.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10082; seconded by John Norman.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

17. 10083 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2A, BLOCK 1, CORPORATE PLAZA, SECTION 20, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER TO PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF CORPORATE DRIVE, APPROXIMATELY 550 FEET EAST OF NORTH BIG SPRING STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (First reading held May 12, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10083.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10083; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

18. 10085 – AN ORDINANCE APPOINTING A NEW CITY OF MIDLAND MUNICIPAL COURT ASSOCIATE JUDGE EFFECTIVE MAY 26, 2020; AND AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT WITH THE NEW ASSOCIATE JUDGE (CITY MANAGER'S OFFICE) (First reading held May 12, 2020)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10085.

John Norman moved to approve the second and final reading of Ordinance No. 10085; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

PUBLIC HEARINGS

The City Council will hold public hearings on the following items:

19. 057-2020 – RECEIVE PUBLIC COMMENTS, GUIDANCE AND RECOMMENDATIONS REGARDING THE 2020-2021 CDBG GRANT APPLICATION SUBMISSIONS AND THE FIVE YEAR CONSOLIDATED PLAN GOALS (DEVELOPMENT SERVICES)

CDBG Manager Isaac Garnett reported that every five years the City of Midland has to do a consolidated plan for projects needed for the next five years. Today we are here to solicit public comment and hold a public hearing. The plan is required to be submitted in August

along with the action plan. He reviewed staff recommendations for the plan noting they were recommending removing first time homebuyers program.

Mayor Payton opened the public hearing at 10:50 a.m.

Joey Hopkins, Habitat for Humanity, reported their clients are long time users of the home buyers assistance. The programs allows their clients to reduce their monthly mortgage payment over the life of the mortgage. It is a great program that serves their clients as well as MCDL and the public. This is an easy way for the City to help with affordable housing. They have built 160 homes valued today at \$23 million.

David Diaz, Midland Community Development Corporation, reported that just like Habitat for Humanity, they also rely on the first time home buyers program for their clients. They have generated over 150 homes that all pay taxes to the City. The program assures funding for the homebuyer and helps to move their families forward.

Council Member Trost asked about the flooring at MLK. Mayor Payton asked all Council Members to put any requests or suggestions in writing to Isaac.

Council consensus was to keep the first time homebuyers program.

There being no one else wishing to speak, the public hearing was closed at 11:00 a.m.

20. 10086 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 12, BLOCK 30, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH CARVER STREET AND EAST WALL STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10086.

Council Member Robnett asked if Council needs to continue to see requests for zone changes for less restrictive zoning. City Attorney John Ohnemiller reported Council is required to review per state law.

Mayor Payton opened the public hearing at 11:03 a.m. There being no one else wishing to speak, the public hearing was immediately closed.

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10086; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

MISCELLANEOUS

21. 058-2020 – MOTION AUTHORIZING THE CITY MANAGER TO DEVELOP AND IMPLEMENT TEMPORARY HOTEL OCCUPANCY TAX COLLECTION PAYMENT RULES AND REGULATIONS SO AS TO PERMIT HOTELS (AS DEFINED IN THE MIDLAND CITY CODE) TO MAKE SUCH COLLECTION PAYMENTS TO THE CITY OF MIDLAND IN AN UNTIMELY MANNER WITHOUT INCURRING PENALTIES OR INTEREST (CITY MANAGER'S OFFICE)

Mayor Payton noted this item was discussed at the last meeting and it was stated that the Governor has suspended penalties and interest on the collection of hotel/motel payments. That is not true. The last time he suspended payments was in 2017 for a period of two weeks and he allowed not charging the tax for families that had been displaced or for emergency workers in the region affected.

Council Member Trost stated this was a local issue and some hotels are in distress and their occupancy remains at 12-15%.

Interim Finance Director Jennifer Fung reported that 10 of the 48 hotels have not paid their first quarterly payment of Hotel Occupancy Tax. One paid 15% and was asking for a penalty waiver and delayed payment for the remainder due. According to their research, the Governor is considering requests on a case-by-case basis. The taxes have already been collected by the hotels from their clients. The penalty and interest is 15%. There are three hotels that have not paid their 4th quarter payment from 2019.

Mayor Payton asked Ms. Fung if she were an accountant counseling a hotel, would she recommend they use the HOT taxes they collected for another purpose. Ms. Fung reported she would not. Mayor Payton emphasized that delaying payments would be like giving an interest free loan. He asked Ms. Fung if any other industry is treated that way. Ms. Fung replied no.

Michael Trost moved to approve Motion No. 058-2020; seconded by Jack Ladd.

The motion failed by the following vote:

AYE: Trost, Norman, Ladd

NAY: Payton, Robnett, Dufford, Blong

ABSTAIN: None

ABSENT: None

It was noted, if approved, the City Manager would determine the terms and percentages.

22. RECEIVE A PRESENTATION FROM CURRENTMEDIA REGARDING THE PROMOTION OF THE 2020 CENSUS (DEVELOPMENT SERVICES)

CDBG Manager Isaac Garnett reported that last October the State and Federal Government entered into a contract for the promotion of the census. Christi Callicoatte is present to share what they have done.

Christi Callicoatte reviewed all of the programs they ran to promote the census noting that the local media partners were great in helping to stretch their dollars by running special

stories. The State of Texas has a 54.7% completion rate and Midland has a 54.6% rate. The national rate is 60%. More information can be found on the Facebook page Midland 2020 Census.

Charlene Romero McBride reported that due to COVID-19 many of their events were canceled. They are considering extending the date of entry to later in the year, but if approved, it would impact redistricting dates. She explained some of the remote programs they have been operating. She thanked Council for their support.

Mr. Garnett noted that each individual counted brings in \$150,000.00 over a ten-year period.

EXECUTIVE SESSION

Mayor Payton recessed the meeting to convene to Executive Session at 11:26 a.m.

23. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:

a. Section 551.071, Consultation with the City Attorney

a.1. Discuss a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.

All the business at hand having been completed, the meeting adjourned at 11:45 a.m.

PASSED AND APPROVED June 9, 2020.

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary