MIDLAND CITY COUNCIL
MINUTES
July 24, 2012

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:30 a.m. on July 24, 2012.

Council Members present:	Mayor W. Wesley Perry, Mayor Pro Tem Jerry Morales (At-Large), Council Member Jeff Sparks (District 1), Council Member Vicky Hailey (District 2), Council Member John James (District 3), and Council Member Michael Trost (District 4).
Council Members absent:	Council Member Scott Dufford (At-Large).
Staff members present:	City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Director of Airports Marv Esterly, Downtown Development Director Genora Young, Transportation Manager Gary Saunders, Planning Division Manager Cameron Walker, Senior Planner Ken VanDyne, Building Official Steve Thorpe, City Engineer David Beard, Public Information Officer Persephone Dakopolos, and Multimedia Developer Ryan Stout.

1. Receive an update from Craig Farmer, Project Consultant of MOTOR MPO, regarding the State Highway 191 Corridor and Access Management Study.

   Dan Sefko, Director of Planning for Freese & Nichols, presented a PowerPoint summarizing the project and noting it was a collaborative effort between five entities.

   Craig Farmer reviewed the recommendations for land use and development controls, looked at economic and financial strategies and provided a short and long term action plan and a Capital Improvement Plan.

   Dan Sefko presented the top 10 list of the 80 recommendations that were made in the plan.

   Craig Farmer emphasized the importance of linking together transportation and commercial nodes noting that the nodes should have retail, commercial and housing. He explained that the other entities have adopted the plan or variations of the plan.

   Planning Division Manager Walker stated this would be placed on an agenda for City Council consideration. Mr. Sefko emphasized the importance of the City of Midland, County of Midland, City of Odessa and Ector County working together to require the same development standards so as not to give one entity an advantage over the others.

   City Manager Sharp noted a meeting had been scheduled with Odessa to address some of the issues discussed.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:55 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:05 a.m., July 24, 2012.

Council Members present: Mayor W. Wesley Perry, Mayor Pro Tem Jerry Morales (At-Large), Council Member Jeff Sparks (District 1), Council Member Vicky Hailey (District 2), Council Member John James (District 3), and Council Member Michael Trost (District 4).

Council Members absent: Council Member Scott Dufford (At-Large).

Staff members present at the annex table: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, and Assistant City Manager Jim Nichols.

The Agenda Items were heard in the following order: 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 6, 9, 13, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 30, 31.

OPENING ITEMS

1. Invocation – City Manager Sharp

2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:

   a. Mayor Perry presented a Proclamation for National Night Out to Police Chief Price Robinson and his staff.

PUBLIC COMMENT

4. Receive public comments where individuals may address the City Council on City related issues and projects. Any deliberation of or decision by the City Council regarding the item being discussed shall be limited to a motion to place the item on the agenda for a subsequent meeting.

   There were no citizens present wishing to speak.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5 - 19 excluding 6, 9, 13; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

5. Approved a motion approving the following minutes:

   a. Special Meeting of July 9, 2012.

   b. Regular Meeting of July 10, 2012

7. Approved a resolution approving plans and specifications and authorizing advertisement for bids for the construction of a commons area fence at the Scharbauer Sports Complex for the Community Services Department. (GENERAL SERVICES)

   RESOLUTION NO. 2012-225

   RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE CONSTRUCTION OF A FENCE AROUND THE COMMONS AREA AT THE SCHARBAUER SPORTS COMPLEX

8. Approved a resolution approving a contract for the base bid only from Reece Albert, Inc. for the 2011-2012 Street Improvement Mill/Overlay Project for the Engineering Services Department. (GENERAL SERVICES)

   RESOLUTION NO. 2012 - 226

   RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH REECE ALBERT, INCORPORATED, FOR THE 2011-2012 STREET IMPROVEMENT MILL/OVERLAY PROJECT AT A COST OF $2,253,322.65; AND AUTHORIZING AN ADDITIONAL TEN PERCENT (10%) CONTINGENCY FEE BRINGING THE TOTAL FUNDS AVAILABLE TO $2,478,655.00; AND ALLOCATING AND APPROPRIATING FUNDS

10. Approved a resolution approving the issuance of a Request for Proposal for the City-Wide Public Safety and Public Works Radio System Replacement for the Communications and Information Systems Department. (GENERAL SERVICES)

   RESOLUTION NO. 2012 - 228

   RESOLUTION AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS FOR THE REPLACEMENT OF THE CITY-WIDE PUBLIC SAFETY AND PUBLIC WORKS RADIO SYSTEM FOR THE CITY OF MIDLAND, TEXAS

11. Approved a resolution authorizing the execution of Land Lease Agreement for Airport Hangar Facility between COG REALTY LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 5) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas. (AIRPORTS)

   RESOLUTION NO. 2012 - 229

   RESOLUTION AUTHORIZING THE EXECUTION OF A LAND LEASE AGREEMENT WITH COG REALTY LLC FOR HANGAR DEVELOPMENT LOCATED ON A 1.35 ACRE TRACT OF LAND LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT, INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

12. Approved a resolution authorizing the execution of Airport Fuel Service Agreement between COG REALTY LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 5) Midland International Airport, Industrial Park Addition, Section 6, Midland

County, Texas. (AIRPORTS)

RESOLUTION NO. 2012 - 230

RESOLUTION AUTHORIZING THE EXECUTION OF AN AIRPORT FUELING AGREEMENT WITH COG REALTY LLC IN ORDER TO STORE AND DISPENSE ALL FORMS OF AVIATION PROPELLANTS AND FUELS FROM FIXED DISPENSERS ONLY TO COG REALTY LLC'S AIRCRAFT AT THE MIDLAND INTERNATIONAL AIRPORT, MIDLAND, MIDLAND COUNTY, TEXAS

14. Approved a resolution authorizing a reallocation of certain Community Development Block Grant funds from previous program years to the Community Development Block Grant fund 2012-2013 Program Year; the grant funds from previous program years to be reallocated total $22,326.00. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 232

RESOLUTION AUTHORIZING A REALLOCATION OF CERTAIN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM PREVIOUS PROGRAM YEARS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT FUND PROGRAM YEAR 2012-2013 IN THE AMOUNT OF $22,326.00

15. Approved the 2012/2013 Community Development Block Grant Application (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 233

RESOLUTION AUTHORIZING THE ADOPTION OF THE CITY OF MIDLAND'S 2012-2013 ACTION PLAN TO THE CONSOLIDATED PLAN FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS FOR FISCAL YEARS 2011-2015, (OCTOBER 2010-SEPTEMBER 2015); THE CONSOLIDATED PLAN WAS APPROVED BY RESOLUTION NUMBER 2010-197; AND AUTHORIZING THE EXECUTION OF AN APPLICATION FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

16. Approved a resolution appropriating Interest Earned on 2009 JAG Grant. (POLICE)

RESOLUTION NO. 2012 - 234

RESOLUTION APPROPRIATING INTEREST EARNED IN THE AMOUNT OF $58.00 ON THE 2009 JUSTICE ASSISTANCE GRANT FUNDS; THIS GRANT WAS ACQUIRED FOR THE PURCHASE OF NEEDED EQUIPMENT FOR THE MIDLAND POLICE DEPARTMENT

17. Approved a resolution authorizing the disposal of a City asset (Troxler 4640 – Nuclear Density Testing Gauge). (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 235

RESOLUTION AUTHORIZING THE ADVERTISEMENT FOR BIDS FOR THE SALE OF PROPERTY OWNED BY THE CITY OF MIDLAND DESCRIBED AS A TROXLER 4640 NUCLEAR DENSITY GAUGE; AND SETTING A MINIMUM BID AT $1,000.00.

18. Approved a resolution authorizing the City Attorney's Office to file all necessary documents in lawsuit. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 236

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO FILE ALL DOCUMENTS AND MAKE ALL NECESSARY APPEARANCES TO REPRESENT THE CITY OF MIDLAND IN A LAWSUIT STYLED, SHAYLA HAYNES, INDIVIDUALLY AND AS NEXT FRIEND OF JATAISHA WOODARD, A MINOR CHILD V. CITY OF MIDLAND, TEXAS, IN THE COUNTY COURT AT LAW, MIDLAND COUNTY, TEXAS; CAUSE NO. CC16654; AND RATIFYING ALL ACTIONS TAKEN TO DATE BY THE OFFICE OF THE CITY ATTORNEY AS PART OF SETTLEMENT NEGOTIATIONS

19. Approved a resolution denying the effective date of an Atmos West Texas proposed rate increase. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 237

RESOLUTION OF THE CITY OF MIDLAND, TEXAS, DENYING ATMOS ENERGY CORPORATION - WEST TEXAS DIVISION'S ("ATMOS WEST TEXAS") REQUESTED RATE CHANGE; REQUIRING THE COMPANY TO REIMBURSE THE CITY'S REASONABLE RATEMAKING EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND THE CITY'S LEGAL COUNSEL

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

6. Consider a resolution recording a vote on a proposal to consider an ad valorem tax rate for the Fiscal Year 2-12 - 2013 and establish dates to hold public hearings on the proposed tax rate; and to establish dates when there will be a record vote on the tax rate; and authorizing and directing the City Manager to post all appropriate notices. (FINANCE)

RESOLUTION NO. 2012 - 224

RESOLUTION RECORDING A VOTE ON A PROPOSAL TO CONSIDER AN AD VALOREM TAX RATE FOR THE FISCAL YEAR 2012 - 2013 AND TO ESTABLISH DATES TO HOLD PUBLIC HEARINGS ON THE PROPOSED TAX RATE; AND TO ESTABLISH DATES WHEN THERE WILL BE A RECORD VOTE ON THE TAX RATE; AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO POST ALL APPROPRIATE NOTICES

Finance Director Bob McNaughton noted that the proposed tax rate needed to be inserted into the resolution. The public hearings are scheduled for August 14th at 6:00 p.m. and August 7th at 9:00 a.m. The proposed rate is .461088 which is the effective rate plus 3.05%. The proposed rate is below the current rate of .47054. The difference between the effective rate and what the City is proposing is for the cost of six firefighters and the incremental cost of the debt the City issued.

Council Member Sparks moved to adopt Resolution No. 2012 – 224 with the effective rate of .461088; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

9. Consider a resolution authorizing the advertisement of a Request for Proposals (RFP) for the sale of Lots 3-A, 4-A and 5-A, Block 3, Midland International Airport Industrial

Park Addition, City of Midland, Midland County, Texas. File #5192-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 227

RESOLUTION AUTHORIZING THE ADVERTISEMENT FOR BIDS FOR THE SALE OF REAL PROPERTY DESCRIBED AS BEING LOTS THREE A (3A), FOUR A (4A) AND FIVE A (5A), BLOCK THREE (3), MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; ACCEPTING AN APPRAISAL SETTING THE FAIR MARKET VALUE OF THE PROPERTY AT $435,000.00; SAID PROPERTY TO BE DEVELOPED INTO HOTEL FACILITIES

General Services Director Robert Patrick reported that there was interest in the property. Airports Director Esterly reported the request was specific to build a hotel which would be the best use for the area. City Attorney Stretcher clarified that this property was being bid with the understanding that it could only be used for a hotel and if it was not used for that purpose within 18 months, the property would revert back to the City.

Council Member Morales moved to adopt Resolution No. 2012 - 227; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

13. Consider a resolution accepting $21,500 in grant funds from the Permian Basin Area Foundation for improvements to the porch and decking at the Scarborough Linebery House; and appropriating said funds to Project No. 7088 (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 231

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO ACCEPT $21,500.00 IN GRANT FUNDS FROM THE PERMIAN BASIN AREA FOUNDATION FOR IMPROVEMENTS TO THE PORCH AND DECKING AT THE SCARBOROUGH LINEBERY HOUSE; AND APPROPRIATING FUNDS

Council asked Frances Stapp of the Scarborough-Linebery House how the house was doing and if other maintenance dollars were needed. Frances reported that the house was doing well and that usage was currently down mainly due to the heat. She reported that invitations were going out for events, that school tours would be starting soon, and the calendar was full for the fall and Christmas. She reported that an older house is always in need of maintenance and that those issues were address as needed.

Council Member Morales moved to adopt Resolution No. 2012 - 231; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

SECOND READINGS

20. Consider an ordinance on second reading on a request by Babuhai A. Patel for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center. (Generally located near the southwest corner of the intersection of West Interstate Highway 20 and Camp Street. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9037

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING THE REMAINDER OF LOT 4, BLOCK 1, AMARON ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST INTERSTATE HIGHWAY 20 AND CAMP STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; 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

Deputy City Secretary Reyes read the caption of Ordinance No. 9037.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9037 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Brief discussion ensued regarding the use of the property noting that the Ordinance was for a shopping center. Staff and Council understood and agreed that the use would actually be for a hotel and asked that point be placed in the minutes.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

21. Consider an ordinance on second reading on a request by Brownstones Midland, L.P. for a zone change from C-3, Commercial District to PD, Planned District for Housing Development. (Generally located between South Pecos Street and South Marienfeld Street north of West Front Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9038

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-5, THE REMAINDER OF LOT 6, AND LOTS 7-12, BLOCK 110, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED BETWEEN SOUTH PECOS STREET AND SOUTH MARIENFELD STREET, NORTH OF WEST FRONT STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; 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

Deputy City Secretary Reyes read the caption of Ordinance No. 9038.

Council Member Trost moved to approve the second and final reading of Ordinance No. 9038 in accordance with the Charter of the City of Midland; seconded by Council

Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

22. Consider an ordinance on second reading on a request by Lamar Outdoor Advertising for a Specific Use Permit with Term for an Electronic Billboard/Billboard Sign. (Generally located on the northeast corner of the intersection of North Big Spring Street and West Dakota Avenue. - District 2) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9039

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 9, BLOCK 183, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST DAKOTA AVENUE), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR A BILLBOARD; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; 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

Deputy City Secretary Reyes read the caption of Ordinance No. 9039.

Council Member James moved to approve the second and final reading of Ordinance No. 9039 in accordance with the Charter of the City of Midland; seconded by Council Member Morales.

Council Member James reported that he and the City Manager met with the owner and discussed how the owner currently provides public service announcements to the community. He noted the meeting was to encourage use of this billboard for public service announcements regarding downtown events. After the meeting, he felt it was no longer important for them to use that billboard specifically for the promotion of downtown events and reported that the procedure for providing emergency announcements would be worked on between the City Manager and the owner to ensure a smooth notification process.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

23. Consider an ordinance on second reading on a request by Midland Community Development Corporation for a zone change from O-1, Office District to PD, Planned District for a Housing Development and to TH, Townhouse Dwelling District. (Generally located on both the north and south sides of Elm Avenue between North Tyler Street and North Carver Street. – District 2) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9040

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-12, BLOCK 8, AND A TO BE VACATED 0.3863-ACRE PORTION OF ELM AVENUE RIGHT-OF-WAY, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING

DEVELOPMENT; BY PERMITTING LOTS 1-13, BLOCK 7, AND A TO BE VACATED 0.1445-ACRE PORTION OF ELM STREET RIGHT-OF-WAY, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, TO BE USED AS A TH, TOWNHOUSE DWELLING DISTRICT; SAID PROPERTY BEING ALL OUT OF LYNSIDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS; SAID 0.3863-ACRE TRACT AND SAID 0.1445-ACRE TRACT BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID PROPERTY IS GENERALLY LOCATED ON BOTH SIDES OF ELM AVENUE, BETWEEN TYLER STREET AND CARVER STREET; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; 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

Deputy City Secretary Reyes read the caption of Ordinance No. 9040.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9040 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Discussion ensued about whether this was a Midland Community Development Corporation (MCDC) project and if it was an affordable housing project.

David Diaz, representing MCDC, clarified that this was a MCDC project. In the past MCDC provided housing to families that were at 80 percent or below of the median income. Because there were no federal funds involved with this property, the MCDC board decided to make 51% open to anyone and 49% would be made available to low income families.

Discussion ensued regarding the right-of-way. City Manager Sharp clarified that traditionally when the City abandons right-of-way, staff comes to the Council with the fair market value of that property. This item was different because at the last meeting there was a swap of right-of-way land for land the City needed for the channel.

Discussion ensued regarding the income ranges of the people who could live at the property. Mr. Diaz reported there was a push from HUD and the State of Texas to create mixed income neighborhoods and that incentives were being provided by the federal and state governments for mixed income communities.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

24. Consider an ordinance on second reading amending Title X, “Traffic Regulations”, Chapter Four, “Traffic Control Devices”, Section 11, “School Zones and Crossings”, of the Midland City Code, so as to designate each school zone and school crossing within the City and regulate the speed and movement of traffic therein; authorizing and directing the Traffic Engineer to install appropriate signs and markings; repealing Ordinance No.8920; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars ($200.00); and ordering publication. (ENGINEERING SERVICES)

ORDINANCE NO. 9042

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER FOUR, "TRAFFIC CONTROL DEVICES", SECTION 11, "SCHOOL ZONES AND CROSSINGS", OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE AND SCHOOL CROSSING WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 8920; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9042.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9042 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

PUBLIC HEARINGS

25. At approximately 10:30 a.m. hold a public hearing and consider an ordinance on a request by Basin Burger House, LLC. for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant. (Generally located on the southwest corner of the intersection of West Louisiana Avenue and North Colorado Street) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9043

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS THE NORTH 125 FEET OF THE EAST HALF OF BLOCK 29 AND THE ADJACENT VACATED 0.032-ACRE PORTION OF WEST LOUISIANA AVENUE RIGHT-OF-WAY, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; 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

Planning Division Manager Walker gave an overview of the item noting one letter of objection had been received and that the Planning & Zoning Commission and staff recommended support of the item.

Mayor Perry opened the public hearing at 10:58 a.m.

Ivan Arriola, 5613 Rio Grande, reported they were planning on selling all alcohols and that it would be a family casual restaurant, not fast-food.

There being no one else wishing to speak, the public hearing was closed at 10:59 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9043.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9043 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

26. At approximately 10:33 a.m. hold a public hearing and consider an ordinance on a request by David Alldredge for a Specific Use Permit, With Term, for the sale and on-premise consumption of alcoholic beverages in a restaurant. (Generally located on the east side of North Fairgrounds Road at the east end of East Wadley Avenue. - District 2) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9044

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 1, ALLDREDGE GARDENS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD AT ITS INTERSECTION WITH WADLEY AVENUE), WHICH IS PRESENTLY ZONED LR-3, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; 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

Planning Division Manager Walker gave an overview of the item noting the previous permit had expired and that the applicant was asking for a minor increase to the floor area. No letters of objection had been received and the Planning & Zoning Commission recommended approval.

Mayor Perry opened the public hearing at 11:02 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9044.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9044 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

27. At approximately 10:36 a.m. hold a public hearing and consider an ordinance on a city-initiated request to amend the City's Thoroughfare Plan from The City's Comprehensive Plan 2025, Chapter 4, The Thoroughfare Plan, "Plate 4-1". (DEVELOPMENT SERVICES)

ORDINANCE NO. 9045

AN ORDINANCE OF THE CITY OF MIDLAND, TEXAS, AMENDING THE MIDLAND COMPREHENSIVE PLAN 2025 AS AUTHORIZED BY CHAPTER 213 OF THE TEXAS LOCAL GOVERNMENT CODE; SAID COMPREHENSIVE PLAN ILLUSTRATING THE FUTURE DEVELOPMENT OF THE CITY OF MIDLAND; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

Planning Division Manager Walker provided an overview of the item noting the Consultant of Freese & Nichols, Mr. Dan Sefko, spoke during the briefing session. Staff was proposing an amendment to the Thoroughfare Plan adopted by the City's Comprehensive Plan in 2005 due to the population and housing growth since that time. He summarized previous discussions and gave a broad overview of major changes. He noted a number of agencies had input into the plan.

Mayor Perry opened the public hearing at 11:08 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9045.

Council Member James moved approval of the first of two readings of Ordinance No. 9045 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

DEVELOPMENT SERVICES

28. Consider an ordinance amending City of Midland Code of Ordinances 8-6-18 (A) 5. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9046

AN ORDINANCE AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH, AND DEBRIS ON LOTS" SUBSECTION A "PROHIBITED ACCUMULATIONS" PARAGRAPH 5 OF THE MIDLAND CITY CODE SO AS TO MODIFY THE TERM "DEBRIS" AND ADDING A NEW PARAGRAPH 6 SO AS TO CREATE PRESUMPTIONS AS TO OWNERSHIP, POSSESSION AND OCCUPYING; AND AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH, AND DEBRIS ON LOTS" SUBSECTION "B" "AFFIRMATIVE DEFENSES" SO AS TO ESTABLISH AFFIRMATIVE DEFENSES TO PROSECUTION AND SUBSECTION "C" "PENALTY" OF THE CITY CODE OF MIDLAND, TEXAS, CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS ($500.00); AND ORDERING PUBLICATION

Building Official Steve Thorpe gave an overview of the item noting this would help Code Enforcement better enforce removal of accumulated debris by further expanding the bulky debris list. He explained the process of issuing a citation and answered other questions.

Deputy City Secretary Reyes read the caption of Ordinance No. 9046.

Council Member James moved approval of the first of two readings of Ordinance No. 9046 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

MISCELLANOUS

29. Consider an ordinance approving the expenditure of $50,000 of TIRZ funds for the purpose of promoting Downtown events. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9047
AN ORDINANCE APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 AND THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT; AND APPROVING A GRANT OF $50,000.00 FROM THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 TO THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT PURSUANT TO THE PROMOTIONAL AGREEMENT

Planning Division Manager Walker provided an overview of the item noting in June the Tax Increment Reinvestment Zone Board authorized the expenditure of $50,000 for grant funding of downtown events and that staff recommended support.

Deputy City Secretary Reyes read the caption of Ordinance No. 9047.

Council Member James moved approval of the first of two readings of Ordinance No. 9047 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

Mayor Perry announced that Agenda Items 30 and 31 would be heard after Executive Session.

32. Consider a motion making appointments to various City of Midland Boards and Commissions.

No appointments were made.

EXECUTIVE SESSION

33. Mayor Perry announced that pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:

a. Section 551.074 Personnel Matters

a.1. Deliberate the employment, evaluation, duties, and salary of the Presiding Municipal Court Judge, the Associate Municipal Court Judge, the City Manager, the City Attorney and the City Secretary.

b. Section 551.071, Consultation with the City Attorney

b.1. Discuss with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe, and Dawson, litigation styled in Re: Heritage Consolidated, LLC, Case No. 10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.

c. Section 551.072 Deliberation Regarding Real Property

c.1. Discuss the sale, lease and value of two City of Midland-owned properties located east of the Midland Center described as:

(i) Bing approximately 0.884 acres, Block 053, Lots 013 through 023, Original Town Addition, Midland, Texas. Recorded in Volume 0858, page 0111, Midland County, Texas.

(ii) Being approximately 0.886 acres, Block 053, Lots 1 through 8 & 9 (N8 of W75), and the E65 of Lots 9 through 12, Original Town Addition, Midland, Texas. Recorded in Volume 0649, page 0762, Midland County, Texas.

Mayor Perry recessed the meeting at 11:24 a.m. to Executive Session and announced that the Council would reconvene in the Council Chambers at 1:00 p.m. to hear Agenda Items 30 and 31. The Council met in Executive Session until 12:50 p.m.

Mayor Perry reconvened the meeting into Regular Session at 1:05 p.m. All Council Members were present except for Council Member Dufford.

MISCELLANOUS (Continued)

30. Consider a resolution authorizing the Mayor to negotiate and execute a Chapter 380 Agreement with the TIRZ District. (City Manager's Office)

RESOLUTION NO. 2012 - 238

CONSIDER A RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A TEXAS LOCAL GOVERNMENT CODE CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE TAX INCREMENT REINVESTMENT ZONE NO. 1 (“TIRZ”) REGARDING THE TIRZ PURCHASING CITY-OWNED PROPERTY DESCRIBED AS BEING APPROXIMATELY 0.884 ACRES, BLOCK 053, LOTS 013 THROUGH 023, ORIGINAL TOWN ADDITION, RECORDED IN VOLUME 0858, PAGE 0111; AND/OR PROPERTY DESCRIBED AS BEING APPROXIMATELY 0.886 ACRES, BLOCK 053, LOTS 1 THROUGH 8 AND 9 (N8 AND W75), AND THE E65 OF LOTS 9 THROUGH 12, ORIGINAL TOWN ADDITION, RECORDED IN VOLUME 0649, PAGE 0762, ALL LOCATED IN MIDLAND, MIDLAND COUNTY, TEXAS; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS AND LEGAL INSTRUMENTS RELATED THERETO

Council Member James moved to adopt Resolution No. 2012 - 238; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: Hailey. ABSENT: Dufford.

31. Consider a resolution authorizing the Mayor to negotiate and execute an agreement with the Midland Development Corporation for the construction of a parking structure in downtown Midland. (City Manager's Office)

RESOLUTION NO. 2012 - 239

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE MIDLAND DEVELOPMENT CORPORATION FOR CONSTRUCTION OF A PARKING FACILITY AND RELATED INFRASTRUCTURE TO BE LOCATED ON PROPERTY DESCRIBED AS BEING APPROXIMATELY 0.884 ACRES, BLOCK 053, LOTS 013 THROUGH 023, ORIGINAL TOWN ADDITION, RECORDED IN VOLUME 0858, PAGE 0111; OR ON PROPERTY DESCRIBED AS BEING APPROXIMATELY 0.886 ACRES, BLOCK 053, LOTS 1 THROUGH 8 AND 9 (N8 AND W75), AND THE E65 OF LOTS 9 THROUGH 12, ORIGINAL TOWN ADDITION, RECORDED IN VOLUME 0649, PAGE 0762, ALL LOCATED IN MIDLAND, MIDLAND COUNTY, TEXAS, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE

Council Member James moved to adopt Resolution No. 2012 - 239; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: Hailey. ABSENT: Dufford.

All of the business at hand having been completed, the meeting adjourned at 1:09 p.m.

PASSED AND APPROVED the 14th day of August, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary