MIDLAND CITY COUNCIL
MINUTES
August 27, 2013

REGULAR SESSION
The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:01 a.m., August 27, 2013.

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

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, 6, 7, 8, 9, 10, 16, 17, 19, 20, 21, 22, 23, 24, 25, 11, 12, 13, 14, 15, 18, 28, 29, 30, 31, 32, 33, 34, 26, 27, 35, 36.

OPENING ITEMS

1. Invocation - Pastor Douglas Lamb of Fannin Baptist Church

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 to Freddie Ezell in recognition of his many years of service and commitment to softball in Midland.

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.

   Cherry Hill, 4525 Corsair Court, has lived in Midland for 44 years and deeply loves Midland. She addressed issues of trash on roadsides and shared ways other communities address the same issue.

CONSENT AGENDA

Council Member Love moved to approve Consent Agenda items 5 - 25 excluding 11, 12, 13, 14, 15, 18; seconded by Council Member Sparks. The motion carried by the following vote:

AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:

   a. Regular meeting of August 13, 2013.

6. Approved a resolution approving plans and specifications and authorizing advertisement for a request for proposals for a Solid Waste Route Optimization service for the Solid Waste Department. (GENERAL SERVICES)

   RESOLUTION NO. 2013 - 253

   RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR REFUSE TRUCK ROUTE OPTIMIZATION SERVICES FOR THE SOLID WASTE DEPARTMENT

7. Approved a resolution approving a naming rights agreement for the Scharbauer Sports Complex baseball stadium for the Community Services Department. (GENERAL SERVICES)

   RESOLUTION NO. 2013 - 254

   RESOLUTION AUTHORIZING THE EXECUTION OF NAMING RIGHTS LICENSE AGREEMENT FOR THE BASEBALL STADIUM AT THE SCHARBAUER SPORTS COMPLEX; AND NAMING THE BASEBALL STADIUM SECURITY BANK BALL PARK

8. Approved a resolution approving the issuance of a request for qualifications for a Pavement Condition Index Survey for the Engineering Department. (GENERAL SERVICES)

   RESOLUTION NO. 2013 - 255

   RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR QUALIFICATIONS FOR A PAVEMENT CONDITION INDEX SURVEY FOR THE ENGINEERING DEPARTMENT

9. Approved a resolution allocating funds to the 2013 Facilities Renovations Project (9059). (GENERAL SERVICES)

   RESOLUTION NO. 2013 - 256

   RESOLUTION ALLOCATING $84,367.00 FOR THE CITY FACILITIES RENOVATION PROJECT (PROJECT 9059); AND THESE FUNDS ARE USED TO REPAIR AND REPLACE VARIOUS CITY FACILITIES

10. Approved a resolution approving the sole source purchase of two Holmatro rescue tools and repair parts for a third City owned Holmatro rescue tool from Metro Fire Apparatus Specialists, Inc. for the Fire Department. (GENERAL SERVICES)

    RESOLUTION NO. 2013 - 257

    RESOLUTION AUTHORIZING THE PURCHASE OF TWO (2) HOLMATRO RESCUE TOOLS, AND PARTS TO REPAIR THE CITY'S CURRENT HOLMATRO RESCUE TOOL, FROM METRO FIRE APPARATUS SPECIALISTS, INCORPORATED; SAID PURCHASE WAS NOT BID BUT PURCHASED AS A SOLE SOURCE; AND THE

COSTS FOR THE TWO (2) RESCUE TOOLS PLUS PARTS SHALL BE APPROXIMATELY $68,110.55

16. Approved a resolution acknowledging receipt of submission for preclearance from the U.S. Department of Justice regarding annexations effective July 9, 2013. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 263

RESOLUTION ACKNOWLEDGING RECEIPT OF SUBMISSION FOR PRECLEARANCE FROM THE UNITED STATES DEPARTMENT OF JUSTICE REGARDING ANNEXATIONS BY ORDINANCE NOS. 9141, 9158, 9159 AND 9160 EFFECTIVE JULY 9, 2013

17. Approved a resolution authorizing the City of Midland to negotiate a Professional Service Agreement with Kimley-Horn and Associates, Inc. to provide engineering, planning, administrative services and implementation for the City Wide Traffic Analysis Project. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 264

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE ENGINEERING, PLANNING, ADMINISTRATION SERVICES, AND IMPLEMENTATION FOR THE CITYWIDE TRAFFIC ANALYSIS PROJECT; AND AUTHORIZING PAYMENT THEREFOR IN THE AMOUNT OF $1,255,000.00

19. Approved a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of $5,520 with Devon Energy for drainage improvements to serve Devon Addition. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 266

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH DEVON ENERGY PRODUCTION CO., L.P. FOR DRAINAGE IMPROVEMENTS TO DEVON ADDITION; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

20. Approved a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of $29,751 with K.J. Hotel Properties for paving improvements to serve Belmont Addition, Section 17. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 267

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH KJ TEXAS PROPERTIES, LLC FOR PAVING IMPROVEMENTS TO SOUTH BAIRD STREET; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

21. Approved a resolution approving a Temporary Water Service Agreement with Sun Development, Inc. for development of a hotel. This property is positioned in the City of Midland ETJ, generally located at I-20 and Farm to Market Road 1788 (Warfield Truck Stop). (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 268

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND SUN DEVELOPMENT, INC. FOR SERVICES TO LOT 1, LESS 0.77 ACRES, BLOCK 1, WARFIELD INDUSTRIAL PARK, MIDLAND COUNTY, TEXAS (COMMONLY KNOWN AS 10400 WEST INTERSTATE 20); SAID PROPERTY IS OUTSIDE THE CITY LIMITS; SUN DEVELOPMENT, INC. HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; SUN DEVELOPMENT, INC. SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

22. Approved a resolution approving a Temporary Water Service Agreement with Sun Development, Inc. for development of an RV Park. This property is positioned in the City of Midland ETJ, generally located at I-20 and MF 1788 (Warfield Truck Stop). (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 269

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND SUN DEVELOPMENT, INC. FOR SERVICES TO AN APPROXIMATE 4.66-ACRE TRACT OF LAND OUT OF THE EAST HALF OF SECTION 18, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; SUN DEVELOPMENT, INC. HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; SUN DEVELOPMENT, INC. SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

23. Approved a resolution accepting a Public Water Easement by Pioneer Natural Resources USA, Inc. on property located near Big Spring Street and Veterans Air Park Lane. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 270

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 248.9 SQUARE FOOT PUBLIC WATER EASEMENT LOCATED IN LOT 1, BLOCK 1, WALLCO ADDITION, SECTION 11, MIDLAND, MIDLAND COUNTY, TEXAS; AND ORDERING RECORDATION BY THE CITY SECRETARY

24. Approved a resolution accepting a Public Drainage Easement by Pioneer Natural Resources USA, Inc. on property located near Big Spring Street and Veterans Air Park Lane. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 271

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 0.003-ACRE PUBLIC DRAINAGE EASEMENT LOCATED IN LOT 1, BLOCK 1, WALLCO ADDITION, SECTION 11, MIDLAND, MIDLAND COUNTY, TEXAS; AND ORDERING RECORDATION BY THE CITY SECRETARY

25. Approved a resolution accepting a Public Drainage Easement by North Financial

Business Partners, Ltd. on property at Big Spring Street and Veterans Air Park Lane. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 272

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 0.005-ACRE PUBLIC DRAINAGE EASEMENT LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND, MIDLAND COUNTY, TEXAS; AND ORDERING RECORDATION BY THE CITY SECRETARY

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

11. Consider a resolution authorizing 2013 FAA Grant #54 appropriations to certain capital improvement projects at Midland International Airport. (AIRPORTS)

RESOLUTION NO. 2013 - 258

RESOLUTION AUTHORIZING THE APPROPRIATION OF FEDERAL AVIATION GRANT #54 TO CERTAIN CAPITAL IMPROVEMENT PROJECTS AT MIDLAND INTERNATIONAL AIRPORT; AUTHORIZING THE REIMBURSEMENT OF AIRPORT FUNDS

Council Member Love stated he did not have sufficient information to vote on this item, and due to a lack of information, he would abstain from voting. His questions pertained to maps, bids and bid information.

Director of Airports Marv Esterly answered questions about the Midland Wildlife Management Plan noting it was still in draft form. The City fronted the FAA the money to complete the study and the FAA was now reimbursing the City. He answered questions about runway locations and the location covered by the Wildlife Management Plan.

Council Member Sparks moved to adopt Resolution No. 2013 - 258; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: Love. ABSENT: None.

12. Consider a resolution rejecting bids received for the project described as Taxiway P Aircraft Run-up (7084). (AIRPORTS)

RESOLUTION NO. 2013 - 259

RESOLUTION REJECTING THE SINGLE BID RECEIVED FOR THE PROJECT DESCRIBED AS TAXIWAY P AIRCRAFT RUN-UP (7084) AT THE MIDLAND INTERNATIONAL AIRPORT

Council Member Sparks asked for a quick explanation of the City's plans after rejecting the bid. Airport Director Esterly reported that all construction in the area is running high but the one bid they received was double what they had anticipated. It was discovered that the type of concrete was the reason. They will petition the FAA and ask for a waiver to use a different type of concrete that still has enough strength to house aircraft in that area. He answered questions about how estimates are made.

Council Member Sparks moved to adopt Resolution No. 2013 - 259; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales,

Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: Love. ABSENT: None.

13. Consider a resolution authorizing the execution of Amendment #5 to Parkhill, Smith & Cooper's Professional Services Agreement to include Airfield Lighting Cabling Replacement and Airfield Signage (7112), Rehabilitation Entrance Road Pavement and Guidance Signage Project (7113) and appropriate necessary funds. (AIRPORTS)

RESOLUTION NO. 2013 - 260

RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENT NUMBER FIVE TO THE PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INCORPORATED, FOR IMPROVEMENTS CONTAINED IN THE AIRPORT CAPITAL IMPROVEMENT PROGRAM; SAID AMENDMENT TO INCLUDE THE FOLLOWING PROJECTS: AIRFIELD LIGHTING CABLING REPLACEMENT AND AIRFIELD SIGNAGE (7112), REHABILITATION ENTRANCE ROAD PAVEMENT AND GUIDANCE SIGNAGE PROJECT (7113); AND APPROPRIATING NECESSARY FUNDS

Airports Director Esterly reported that all airfield lighting and some signs were being replaced, as well as the lighting cable and some street directional signs.

Council Member Dufford moved to adopt Resolution No. 2013 - 260; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

14. Consider a resolution awarding the project described as Emergency Roadway and Gates Rehabilitation (7082), at Midland International Airport, to Little Manufacturing, Inc. of Abilene, Texas, and appropriate the necessary funds. (AIRPORTS)

RESOLUTION NO. 2013 - 261

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH LITTLE MANUFACTURING, INC. OF ABILENE, TEXAS, FOR THE PROJECT DESCRIBED AS EMERGENCY ROADWAY AND GATES REHABILITATION (7082) AT THE MIDLAND INTERNATIONAL AIRPORT; THE COUNCIL PREVIOUSLY AUTHORIZED ADVERTISEMENT FOR BIDS FOR THE PROJECT; THE TOTAL ESTIMATED COST OF SAID PROJECT IS $764,835.50; AND APPROPRIATING FUNDS

Council Member Sparks moved to adopt Resolution No. 2013 - 261; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

15. Consider a resolution awarding the project described as NW Taxilane Extension Project Phase II (7083), at Midland International Airport, to Jones Bros. of Odessa, Texas, and appropriate the necessary funds. (AIRPORTS)

RESOLUTION NO. 2013 - 262

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH JONES BROS. OF ODESSA, TEXAS, FOR THE PROJECT DESCRIBED AS NW TAXILANE EXTENSION PROJECT PHASE II (7083) AT THE MIDLAND INTERNATIONAL AIRPORT; THE COUNCIL PREVIOUSLY AUTHORIZED ADVERTISEMENT FOR BIDS FOR THE PROJECT; THE CITY'S SHARE IS $941,297.92; AND APPROPRIATING

FUNDS

Airport Director Esterly answered questions about appropriations made to this project.

Council Member Morales moved to adopt Resolution No. 2013 - 262; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

18. Consider a resolution authorizing the City of Midland to enter into a Right-of-Way Contract with Pioneer Natural Resources. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 265

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND PIONEER NATURAL RESOURCES, USA INCORPORATED, A DELAWARE CORPORATION; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, INSTALLING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING UP TO TWO (2) PETROLEUM AND PETROLEUM BY PRODUCTS PIPELINE, FOR SALT WATER DISPOSAL AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 8, BLOCK 38, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 120 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

Council Member Love moved to adopt Resolution No. 2013 - 265 with the amendment to change Section 3 not to exceed 8" in diameter; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

26. Consider an ordinance on second reading on a request by David and Nancy Tyler for a Specific Use Permit Without Term for a Vineyard. (Generally located on the west side of Irvin Drive, approximately 240 feet south of East Loop 250 North.) (DEVELOPMENT SERVICES) (First reading held August 13, 2013.)

ORDINANCE NO. 9173

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF A 1.50-ACRE PORTION OF LOT 53, BLOCK 2, SKYVIEW DEVELOPMENT, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF IRVIN DRIVE, APPROXIMATELY 240 FEET SOUTH OF EAST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A VINEYARD; 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 Adriana Moreno read the caption of Ordinance No. 9173.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9173 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

27. Consider an ordinance on second reading on a request by Darrell Mann/GRACO for a zone change from PD, Planned District for a Shopping Center to Amended Planned District on Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas (Generally located on the north side of West Loop 250 N. approximately 1,200 feet west of Whitman Drive.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9174

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 20, BLOCK 5, NORTH PARK, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF LOOP 250, EAST OF BILLINGSLEY BOULEVARD); 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 Adriana Moreno read the caption of Ordinance No. 9174.

Senior Planner Jim Compton noted that at the last meeting, Council Member Love pointed out that the site plan had handicapped parking that was not near the building entrance. He recommended adding language to the ordinance to correct that issue.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9174 in accordance with the Charter of the City of Midland with the amendment to add flexibility for handicapped parking; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

28. At approximately 10:30 A.M. hold a public hearing and consider a resolution on a request by Steve Pepper / St. Ann's for a Temporary Land Use Permit for a Church Carnival and Fair and on Lot 13, Block 71, West End Addition, Section 15, City and County of Midland, Texas. (Generally located between W. Illinois Avenue and W. Texas Avenue, east of N. "O" Street.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 273

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A CHURCH CARNIVAL AND FAIR ON LOT 13, BLOCK 71, WEST END ADDITION, SECTION 15,

CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED BETWEEN WEST ILLINOIS AVENUE AND WEST TEXAS AVENUE, EAST OF NORTH "O" STREET); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Planner Madhuri Kulkarni gave a brief overview of the item noting that St. Ann's is requesting a Temporary Land Use Permit for their annual church carnival and fair to be held September 26-29. The event will have on-premises consumption of alcohol on Saturday. No major incidents were reported last year.

Mayor Perry opened the public hearing at 10:45 a.m.

Steve Pepper, 1906 W. Texas, representing St. Ann's noted he was available to answer questions. This will be the 65th fair and they will be raffling a 1965 convertible Mustang.

There being no one else wishing to speak, the public hearing was closed at 10:46 a.m.

Council Member Morales moved to adopt Resolution No. 2013 - 273; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

29. At approximately 10:33 A.M. hold a public hearing and consider a resolution on a request by Midland Downtown Farmers Market for a Temporary Land Use Permit for outdoor sales on Lots 1, 2, 10, 11 and 12, Block 58, Original Town, City and County of Midland, Texas. (Generally located on the south side of W. Texas Avenue, between N. Pecos Street and N. Marienfeld Street.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 274

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR OUTDOOR SALES ON LOTS 1, 2, 10, 11 AND 12, BLOCK 58, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST TEXAS AVENUE, BETWEEN NORTH PECOS STREET AND NORTH MARIENFELD STREET); MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

City Planner Madhuri Kulkarni gave a brief overview of the item noting the Midland downtown Farmers Market is located under covered parking on Texas Avenue and runs Saturday from 8:00 a.m. to 1:00 p.m. The applicant has requested the event be extended to 3:00 p.m. on certain Saturdays.

Mayor Perry opened the public hearing at 10:48 a.m.

Matt Hanson, 4605 E. Highway 80, noted he was available for questions. He confirmed that the owners of the property are okay with the time extension.

There being no one else wishing to speak, the public hearing was closed at 10:49 a.m.

Council Member Sparks moved to adopt Resolution No. 2013 - 274; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None.

ABSENT: None.

30. At approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Timothy Rogers & Sandra Javelly for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 929 square feet portion of Lots 7 through 9, Block 58, Original Town, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of W. Wall Street and N. Pecos Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9177

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 929 SQUARE FOOT PORTION OF LOTS 7-9, BLOCK 58, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST WALL STREET AND NORTH PECOS 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

City Planner Madhuri Kulkarni gave a brief overview of the item noting it was a request for a Specific Use Permit with term for the sale of alcoholic beverages in a café at WNB Tower with service hours of 10:00 a.m. to 9:00 p.m.

Mayor Perry opened the public hearing at 10:51 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9177.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9177 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

31. At approximately 10:39 A.M. hold a public hearing and consider an ordinance on a request by Jay Stewart for a zone change from PD, Planned District for a Housing Development on Lot 2, and from LR-2, Local Retail District, on Lot 4, to PD, Planned District for a Housing Development, all out of Block 8, Westridge Park Addition, Section 23; City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of Deauville Boulevard and Tradewinds Boulevard.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9178

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 2 AND 4, BLOCK 8, WESTRIDGE PARK ADDITION, SECTION 23, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD,

PLANNED DISTRICT FOR HOUSING DEVELOPMENT, IN PART, AND LR-2, LOCAL RETAIL DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND TRADEWINDS BOULEVARD); 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

Senior Planner Jim Compton gave an overview of the item noting it was for a zone change for a proposed 290-unit, 2 and 3 story apartment complex with a density of 17 units per acre. The item was unanimously approved by Planning & Zoning. One letter of opposition was received.

Mayor Perry opened the public hearing at 10:57 a.m.

David Smith, Dripping Springs, TX, representing the owner and developer reported the screening fence would be a six foot high cedar fence with brick pilasters along the side of the property and a wrought iron version on the frontage of Deauville. On the north side of the property that adjoins commercial buildings the apartments will be 3-story on the south side of the property, the apartments would be 2-story. He reviewed the amenities that would be included.

Doug Henson, 1811 Heritage, reported he worked with the principal, Jay Stuart, for two years and that they went through the platting process on a majority of the tract and Council previously approved it. Because they are adding a portion of land to the tract, they are before the Council again. He felt it was a good fit for the area and they have taken into consideration the line of sight for the portion that adjoins residential.

There being no one else wishing to speak, the public hearing was closed at 11:02 a.m.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9178.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9178 in accordance with the Charter of the City of Midland; seconded by Council Member Love.

Council Member Love asked if the building being located 135 feet from the property line is sufficient for line of sight issues. Senior Planner Jim Compton assured him it was and clarified that the property will need to be replatted to combine the two lots into one.

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

32. At approximately 10:42 a.m. hold a public hearing regarding a proposed oil and gas permit to Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps #4) located 330 feet from the north line and 1,831 feet from the west line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of the Passage Way, approximately 1,800 feet east of north of N. Midkiff Road.) This is a public hearing only.

No further action will be taken. (DEVELOPMENT SERVICES)

Mayor Perry noted the next item was located near his residence and would be abstaining. He left the dais.

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item noting this well was located to the north of two prior wells that had previously been approved by Council. One letter of objection had been received citing fresh water supply as their concern. The item has been reviewed by the Oil & Gas Advisory Committee.

Mayor Pro Tem Sparks opened the public hearing at 11:06 a.m.

Kara Spear, 2908 Passage Way, was opposed to drilling any wells inside the City limits noting it would make it a less desirable place to live both aesthetically and for safety reasons. She expressed concern for her water well. She asked if this item is approved that they access the well from behind the other wells located on the property, that a wall be built around the well and that the roads are repaired when they are finished.

Josh Harrison, 5112 Greentree Boulevard, addressed Ms. Spear's concerns noting that they will be planting trees around the well and the fence around the well will be cinderblock on 3 sides and chain link on the north side. They will test water wells before and after drilling. He explained their transportation routes as well.

Council Member James asked if Greentree Boulevard would be connected on the east and west side. Senior Planner Compton reported that in 1978, Greentree was designated as an arterial street but was downgraded to a collector street in the Comprehensive Plan of 2005.

There being no one else wishing to speak, the public hearing was closed at 11:13 a.m.

MISCELLANEOUS

33. Consider a resolution appealing the Building Official's denial of a building permit for the installation of a manufactured home on Block 10, Lot 12, East Midland Addition, commonly known as 1311 Walnut Lane. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 275

RESOLUTION AUTHORIZING THE ISSUANCE OF A BUILDING PERMIT FOR THE INSTALLATION OF A MANUFACTURED HOME ON LOT 12, BLOCK 10, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (COMMONLY KNOWN AS 1311 WALNUT LANE); AND PROVIDING THAT THE ISSUANCE OF SAID PERMIT DOES NOT UNDERTAKE TO ADJUDICATE PROPERTY RIGHTS; SAID PERMIT WAS DENIED BY THE BUILDING OFFICIAL AND THIS RESOLUTION IS AN APPEAL TO THE MIDLAND CITY COUNCIL

Building Official Steve Thorpe gave an overview of the item noting the request was to place a manufactured or mobile home on 1311 Walnut Lane. The permit was denied because the Code states that the property and the manufactured home shall be under the same ownership. According to Midland Central Appraisal District the property is owned by the Estate of Ramon Hernandez. Typically if a purchase has recently taken place the new owner can show closing papers and a copy of a Warranty Deed to prove

ownership. He requested Council deny the request and uphold enforcement of the ordinance as written. He expressed concern that if this is allowed it could set precedent for other people that cannot prove ownership. If Council chooses to allow the issuance of the permit he requested that back taxes, penalties, liens and interest be paid prior to the issuance of the permit. Mr. Thorpe explained about previous cases with Mr. Englestad. He also clarified that he has not received proof that prior taxes have been paid.

Council Member Sparks moved to adopt Resolution No. 2013 - 275; seconded by Council Member Trost.

Mayor Perry clarified that the motion is to approve overturning the Building Official's denial of issuing a building permit. Council Member Sparks asked to hear from the applicant.

Rex Wright, 508 W. Wall, noted he was representing Carl Englestad. He reported that this is a claim of title versus color of title. Mr. Englestad has taken possession of the vacant property that has shown all of the conditions of abandonment. The record owner is not paying taxes and not maintaining the property. Mr. Englestad has cleaned up the property, will install required sewer, water, electricity and driveways and is asking for permission to place a mobile home on the property. He explained that Mr. Englestad has started a process to claim adverse possession which is legal. This process will require a minimum of three years of claiming the property under color of title under adverse possession. By placing a mobile home on the property he is creating income which can then satisfy the liens against the property. The legal owner can come forward during this process and file a claim, and would have to reimburse Mr. Englestad for property taxes that have been paid.

Council Member Sparks asked if the City allowed Mr. Englestad to place a mobile home on the property and the owner of record comes back and wants his property, would the City would have any liability. City Attorney Keith Stretcher reported the City's position is that when a permit is granted the City is not adjudicating property rights, not authorizing trespass and not shielding from civil liability but is saying the applicant is complying with the City's condition and a permit is being issued.

Council Member Trost expressed concern about going against City codes and the ability to collect the $14,800 owed in liens.

City Attorney Stretcher clarified that when a property is sold that is when the City collects on liens. If a property is sold at a tax sale the minimum bid is for the amount of taxes owed and the City may not receive liens owed because property taxes preempt liens.

Discussion ensued about repayment of taxes if the legal owner surfaces, time limits the legal owner has to reclaim his property, and that this process denies others the right to obtain the property.

Mr. Wright noted that the taxes and liens have not been paid but after the permit is issued Mr. Englestad plans on using revenue from the property to pay taxes and liens. He is asking Council to recognize Mr. Englestad's adverse possession claim which began 1 ½ to 2 years ago.

Following discussion, the applicant requested his request be withdrawn. Consensus of Council was received to allow the applicant to withdraw his application.

34. Consider an ordinance establishing a maximum two-hour limit on parking during weekdays between the hours of 8:00 A.M. and 6:00 P.M. on a portion of the south side of Ohio Avenue from the west curb line of Colorado Street west to the north/south alley. (ENGINEERING SERVICES)

ORDINANCE NO. 9179

AN ORDINANCE PROVIDING THE MAXIMUM TIME LIMIT FOR PARKING ON A PORTION OF THE SOUTH SIDE OF OHIO AVENUE FROM THE WEST CURB LINE OF COLORADO STREET WEST TO THE NORTH/SOUTH ALLEY TO TWO HOURS; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; 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

Transportation Manager Gary Saunders gave an overview of the item.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9179.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9179 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

35. Consider a motion making appointments to various Boards and Commissions.

Council Member Sparks moved to recommend Cindy Lanning as chair of the Planning & Zoning Commission; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: Love, Trost. ABSENT: None.

EXECUTIVE SESSION

36. 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, compensation and duties of the City Manager, the City Attorney, the City Secretary, the Municipal Court Presiding Judge and the Municipal Court Associate Judge.

b. Section 551.087 Deliberate Economic Development Negotiations.

b.1. Discuss business prospects that the City seeks to have, locate, stay, or

expand in or near the City of Midland, Texas, and discuss possible incentives.

Mayor Perry announced that Executive Session would be held in the basement conference room and the meeting would be adjourned from there. He recessed the meeting at 12:23 p.m.

All of the business at hand having been completed, the meeting adjourned at 1:55 p.m.

PASSED AND APPROVED the 10th day of September, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary