MIDLAND CITY COUNCIL
MINUTES
October 23, 2012

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:01 a.m. on October 23, 2012.

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

Council Members absent: Mayor W. Wesley Perry (arrived at 9:01 a.m.), Council Member Scott Dufford (At-Large), and Council Member Michael Trost (District 4) (arrived at 9:05 a.m.).

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, Solid Waste Director Morris Williams, Downtown Development Director Genora Young, Acting Engineering Director David Beard, Assistant City Engineer Jeff Cohen, Transportation Manager Gary Saunders, Planning Division Manager Cameron Walker, Building Official Steve Thorpe, and Multimedia Developer Ryan Stout.

1. Receive a presentation from Charlene Romero McBride of the Hispanic Cultural Center of Midland, regarding program updates and capital projects.

   Charlene Romero McBride of the Hispanic Cultural Center noted her thankfulness for the building. She noted they were planning to focus on larger community events, reviewed programs they offer, and provided an update on events held in the last year. She explained the improvements and updates to the building and explained their upcoming patio project that will create a second renting venue that could generate revenue.

   Discussion ensued about their upcoming event Festival of Goblins, Souls, and Skulls.

2. Receive an update regarding the Tradewinds Boulevard Status.

   Senior Planner Ken VanDyne provided brief introduction and history of the Tradewinds Corridor reporting all of the changes that are happening in the area including Betenbough Homes, the new apartment complex and the future movie complex. He explained they hired a consultant to perform a traffic study of the area.

   Brook Baca, Dunaway and Associates, introduced himself.

   Barry Hudson, Senior Planner for Dunaway and Associates, provided an overview of the land use and proposed land use in the Gateway and Tradewinds Corridor and the recently approved roadway plan.

They reviewed 23 intersections with primary focus of what the proposed impact would be to streets and to the surrounding area. He reviewed the expected number of trips noting it would peak at over 15,000 in the afternoon hours. The figure did not include any special events at the sports complex. He reviewed other intersections throughout area and explained the proposed changes and intersection improvements and briefly reviewed their findings and recommendations.

Discussion ensued about TXDOT funding, potential MDC funding, and how Plano handled a similar situation.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 10:05 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:06 a.m., October 23, 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:

OPENING ITEMS

1. Invocation - Pastor Curtis Benninghoff, First United Pentecostal Church

2. Pledge of Allegiance

PRESENTATIONS

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

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.

   John Love, 1613 E. Oak, in reference to Agenda Item numbers 16 and 17 asked Council to consider studying the entire drainage system and not just those two areas.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5 - 19 excluding 11, 12, 16, 17, 18, 19; 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.

5. Approved a motion approving the following minutes:

   a. Regular Meeting of October 9, 2012.

   b. Special Meeting of October 16, 2012.

6. Approved a resolution approving a contract with WR Construction, Inc. of Lubbock, Texas for the construction of the commons area fence at the Scharbauer Sports Complex for the Community Services Department. 5247-12 (GENERAL SERVICES)

   RESOLUTION NO. 2012 - 344
   RESOLUTION AWARDING A CONTRACT FOR THE CONSTRUCTION OF THE COMMONS AREA FENCE AT THE SCHARBAUER SPORTS COMPLEX TO WR CONSTRUCTION, INCORPORATED, OF LUBBOCK, TEXAS, AT A TOTAL COST OF $194,000.00; AND ALLOCATING FUNDS

7. Approved a resolution approving a contract with American Seating Company of Grand Rapids, Michigan to provide and install seating at the Scharbauer Sports Complex for the Community Services Department. 5458-13 (GENERAL SERVICES)

   RESOLUTION NO. 2012 - 345
   RESOLUTION AWARDING A CONTRACT TO PROVIDE AND INSTALL SEATING AT THE SCHARBAUER SPORTS COMPLEX TO AMERICAN SEATING COMPANY AT A TOTAL COST OF $960,902.00

8. Approved a resolution approving a master agreement with Helena Chemical of Stanton, Texas for fertilizer for the Spraberry Farm. 5508-13 (GENERAL SERVICES)

   RESOLUTION NO. 2012 - 346
   RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE PURCHASE OF FERTILIZER OF ASSORTED TYPES AND IN ASSORTED VOLUMES FOR OPERATIONS AT THE SPRABERRY FARM, FROM HELENA CHEMICAL COMPANY OF STANTON, TEXAS, AT AN ESTIMATED TOTAL COST OF $114,750.00

9. Approved a resolution approving the purchase of an estimated annual supply of 2000 tons of Aluminum Sulfate from Chameleon Industries, Inc. of Mesquite, Texas for the Water Purification Plant. 5589-13 (GENERAL SERVICES)

   RESOLUTION NO. 2012 - 347
   RESOLUTION AUTHORIZING THE PURCHASE OF AN ANNUAL SUPPLY OF ALUMINUM SULFATE FOR PURIFYING CITY OF MIDLAND DRINKING WATER FROM THE LOW BIDDER, CHAMELEON INDUSTRIES, INCORPORATED, FOR A

TOTAL PRICE OF $505,000.00

10. Approved a resolution approving the 2013 City Council Meeting Dates (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 348
RESOLUTION ESTABLISHING THE DATES OF THE REGULAR CITY COUNCIL MEETINGS TO BE HELD DURING THE CALENDAR YEAR 2013; AND CHANGING THE REGULAR CITY COUNCIL MEETING OF DECEMBER 11, 2012 TO DECEMBER 18, 2012

13. Approved a motion on a request by Bradshaw and Associates, Inc. for Country Sky Addition (Section 16), to approve items requested for deferral in the amount of 18,745.00, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)

14. Approved a motion to create a one year blanket deferral for wastwater collection and paving improvements within the Country Sky Addition, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)

15. Approved a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services (engineering and surveying) for the paving and drainage improvements associated with extending Tradewinds Blvd. from Thomason Dr. to the Gateway Plaza development. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 351
RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR PAVING, UTILITY AND DRAINAGE IMPROVEMENTS ASSOCIATED WITH THE EXTENSION OF TRADEWINDS BOULEVARD FROM THOMASON DRIVE TO THE GATEWAY PLAZA ADDITION; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

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

11. Consider a resolution appropriating funds to Atmos RRM (Rate Review Mechanism). (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 349
RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND TO THE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF $200,000.00; SAID FUNDS REPRESENT REIMBURSEMENT FROM ATMOS FOR CONSULTING/LEGAL FEES ASSOCIATED WITH THE STEERING COMMITTEE'S ANALYSIS OF THEIR RATE REVIEW MECHANISM COSTS; THERE IS NO IMPACT TO THE GENERAL FUND

Following brief discussion regarding reimbursement of project funds, Council Member Sparks moved to adopt Resolution No. 2012 - 349; 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.

12. Consider a resolution authorizing the execution of an addendum to the agreement with Midland Sports, Incorporated for Baseball Park and Office Space at the Scharbauer Sports Complex. (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 350

RESOLUTION AUTHORIZING THE EXECUTION OF AN ADDENDUM TO THE AGREEMENT WITH MIDLAND SPORTS, INCORPORATED FOR BASEBALL PARK AND OFFICE SPACE AT THE SCHARBAUER SPORTS COMPLEX

Community Services Director Tina Jauz gave an overview of the item noting that the City had identified areas that could be used for additional advertising revenue and the amendment was to list those areas within the agreement.

Council Member Trost moved to adopt Resolution No. 2012 - 350; 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.

16. Consider a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services to develop a drainage study for the Midland Draw from A Street to Loop 349. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 352

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR THE DEVELOPMENT OF A DRAINAGE STUDY FOR MIDLAND DRAW FROM “A” STREET TO LOOP 349; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

Council Member Hailey, in follow-up to the public comment, asked that a city wide drainage study be considered.

Discussion ensued about the two areas proposed to be studied noting they would help with future development. In the late 90’s a City wide drainage study was prepared and solutions developed that were still viable but needed funding to implement.

Council Member Sparks moved to adopt Resolution No. 2012 - 352; 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.

17. Consider a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services to develop a drainage study for the Jal Draw from CJ Kelly Park to Loop 349. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 353

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR THE DEVELOPMENT

OF A DRAINAGE STUDY FOR JAL DRAW FROM C.J. KELLY PARK TO LOOP 349; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

Council Member Trost moved to adopt Resolution No. 2012 - 353; 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.

18. Consider a resolution to approve amendments to the Midland Police Department General Orders. (POLICE)

RESOLUTION NO. 2012 - 354

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, APPROVING CERTAIN AMENDMENTS TO THE GENERAL ORDERS OF THE MIDLAND POLICE DEPARTMENT; AND PROVIDING THAT THE CITY COUNCIL IS THE POLICYMAKING AUTHORITY OF THE CITY OF MIDLAND

Council Member Sparks asked for an explanation of the Police Department Vision Statement. Police Chief Price Robinson noted that the Vision Statement had been refreshed and now reflected the department in the core ways they do business. The Vision Statement is “The Midland Police Department will be recognized as a progressive law enforcement agency striving for a safer community and a better quality of life to ensure Midland is a safe place to live, visit, and conduct business.” The Mission Statement is “The Midland Police Department will develop personnel and manage resources to promote effective partnerships with the community to improve the quality of life through the delivery of fair and impartial police services while maintaining an atmosphere of respect for human dignity.”

When asked what it meant to be progressive, Chief Robinson responded that it meant to advocate change and progress as opposed to maintaining things the way they were. It could be in the area of technology, policies, equipment, etc. They have been accredited for the last 18 years as a top tier agency.

City Manager Sharp noted that he has charged all departments in the City to be the best of the best in the State of Texas and to be a benchmark City. He noted the Police Department is flagship with the certification committee and that they will be going next month to be reaccredited. He explained that the assessors who recently reviewed the Police Department had very high remarks of the Police Department especially in leadership. He noted the Department is being progressive enough to address the needs of the City and citizens now and into the future.

Discussion ensued as to whether there truly was no fiscal impact as stated in the staff memo. Police Chief Price responded that to the City there would be no Fiscal Impact as the increase for hiring off-duty officers as security to events would be borne by the company hiring the officers.

Discussion ensued regarding the change to Chapter 11, Section 11, with Chief Robinson clarifying the change was due to changes in state law.

Discussion ensued regarding probation for promotions and transfers. It was noted that employees who failed to make probation would be returned to their old position.

Council Member Sparks moved to adopt Resolution No. 2012 - 354; 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.

19. Consider a resolution approving an amendment to a task order with Arcadis U.S., Inc. and appropriate funds. (UTILITIES)

RESOLUTION NO. 2012 - 355

RESOLUTION APPROPRIATING $78,000.00 TO THE RE-EVALUATION OF T-BAR AND PAUL DAVIS WELL FIELDS PROJECT AND APPROPRIATING $65,900.00 TO THE SPRABERRY GROUNDWATER PROJECT

Following brief discussion, Council Member Trost moved to adopt Resolution No. 2012 - 355; 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.

PUBLIC HEARINGS

20. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Sagestar Development and Construction, LLC for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District on Lot 4A, Block 3, Westridge Park Addition, Section 15, City and County of Midland, Texas. (Generally located on the west side of Tradewinds Boulevard, approximately 630 feet south of Andrews Hwy.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9074

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 4A, BLOCK 3, WESTRIDGE PARK ADDITION, SECTION 15, 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 WEST SIDE OF TRADEWINDS BOULEVARD, APPROXIMATELY 630 FEET SOUTH OF ANDREWS HIGHWAY); 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

Planning Division Manager Cameron Walker gave an overview of the item noting the proposed development was for a hotel, that the building material met City Code, and that no letters of objection had been received.

Mayor Perry opened the public hearing at 10:58 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. 9074.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9074 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.

21. At approximately 10:33 A.M. hold a public hearing and consider a resolution on a request by Justine Blair Sosa for a Temporary Land Use Permit for an Outdoor Amusement Function on Lots 9 and 10, Block 2, Highland Addition, City and County of Midland, Texas. (Generally located on the east side of N. Big Spring Street, approximately 130 feet north of W. Cuthbert Avenue.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 356

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR AN OUTDOOR AMUSEMENT FUNCTION ON LOTS 9 AND 10, BLOCK 2, HIGHLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, APPROXIMATELY 130 FEET NORTH OF WEST CUTHBERT AVENUE); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Planning Division Manager Walker provided an overview of the item noting it was for a temporary land use permit for a private party to be held on October 27 from 2 p.m. to 1:30 a.m. One letter of objection had been received from the business next door, Tony's Bakery who stated concern for parking on his property, traffic flow and debris pick-up following the event. Mr. Walker explained that a TLUP application requires two checks, one for damages to public property and the second for property clean-up.

Mayor Perry opened the public hearing at 11:04 a.m.

Corvet Sosa Padilla and Justine Blair Sosa stated they were the applicants. They clarified the actual party would not begin until 8 p.m. and that Tony's Bakery closes at 2 p.m. on Saturday.

There being no one else wishing to speak, the public hearing was closed at 11:06 a.m.

Council Member Hailey moved to adopt Resolution No. 2012 - 356; 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

22. Consider an ordinance for the vacation of a 1,400 square foot portion of the right-of-way of West Ohio Street adjacent to Lot 12, Block 26, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of West Ohio Street and North Colorado Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9075

AN ORDINANCE VACATING AND ABANDONING A 0.032-ACRE PORTION OF WEST OHIO STREET RIGHT-OF-WAY ADJACENT TO LOT 12, BLOCK 26, ORIGINAL

TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST OHIO STREET AND NORTH COLORADO STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF $2,100.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

Planning Division Manager Walker noted the item was a request by the Brass Monkey. They are acquiring the right-of-way that the City is not utilizing nor does any franchise utility use, in order to provide additional parking. The appraised value is $2,100 and payment will be made prior to the second reading.

Deputy City Secretary Reyes read the caption of Ordinance No. 9075.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9075 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.

23. Approved a motion deferring consideration of the issuance of permits to RSP Permian, LLC to drill five (5) Oil and Gas Wells (#2603D, #2611D, #2612D, #2613D and #2614D) within the City limits, all located within Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas; and deferring consideration of the associated Road Repair Agreement and Right-of-Way License (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail). (DEVELOPMENT SERVICES)

Oil and Gas Compliance Officer Ron Jenkins reported that the public had been notified of the delay and this item would be heard on November 13, 2012.

Council Member Morales moved to approve a motion deferring consideration of the issuance of permits to RSP Permian, LLC to drill five (5) Oil and Gas Wells (#2603D, #2611D, #2612D, #2613D and #2614D) within the City limits, all located within Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas; and deferring consideration of the associated Road Repair Agreement and Right-of-Way License (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail); 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.

24. Approved a motion making appointments to various Boards and Commissions.

Council Member Trost moved to appoint Warren Ivey to replace Becky Ferguson effective December 1, 2012, Sharla Hotchkiss to replace Bill Woodruff effective December 1, 2012, and to reappoint Karen York to the Planning & Zoning Commission; 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.

EXECUTIVE SESSION

25. 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 551.087, Deliberation Regarding Economic Development Negotiations

a.1. Discuss business prospects that the City of Midland and/or the Midland Development Corporation seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

The meeting was recessed at 11:16 a.m. to Executive Session.

All of the business at hand having been completed, the meeting adjourned at 11:58 a.m.

PASSED AND APPROVED the 13th day of November, 2012.

____
W. Wesley Perry, Mayor

ATTEST:

____
Amy M. Turner, City Secretary