

**MIDLAND CITY COUNCIL  
MINUTES  
December 13, 2011**

**BRIEFING SESSION**

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:00 a.m. on December 13, 2011.

Council Members present: Mayor W. Wesley Perry, Council Member Scott Dufford (At-Large), Council Member 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 Pro Tem Michael Trost (District 4). (Trost arrived at 9:03 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, Development Services Director Rick Crownover, Utilities Director Stuart Purvis, Planning Division Manager Cameron Walker, Building Official Steve Thorpe, GIS Manager Bill Hodge, City Engineer David Beard, Public Information Officer Tasa Watts, and Senior Planner Jim Compton.

1. Discussion of City Council 2012 Retreat (format of retreat, date(s), etc.).

City Manager Sharp noted that the City Council needed to start planning for their next retreat. The retreat was set for March 1-2, 2012. Ideas discussed for format included an opportunity for the Council to brainstorm; give each Council Member an opportunity to present ideas; hear input from Department Heads regarding staffing and equipment needs; have departments categorize their desires into wants versus needs; invite chairs from key boards and commissions to listen. Council will submit names for suggested facilitators to the City Manager.

2. Discussion and review of potential infrastructure deferral process.

Assistant City Manager Jim Nichols reviewed staff recommended proposal for the deferral process. He explained that the terms waiver and deferral have been used interchangeably but the new policy defines those two terms. A waiver negates the need to meet the standards and a deferral delays the implementation of the standards. He noted the intent of the policy was to protect the City and to ensure that a deferral does eventually happen and explained the forms of security that could be used. Discussion ensued about when waivers and deferrals might be used and the different forms of security and how the forms of security could impact small businesses.

Mayor Perry briefly discussed the order in which he would handle the regular session agenda.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:52 a.m.

**REGULAR SESSION**

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:01 a.m., December 13, 2011.

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

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 Regular Session Agenda Items were heard in the following order: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 23, 25, 26, 27, 28, 31, 32, 33, 11, 16, 21, 22, 24, 35, 36, 39, 74, 40, 41, 42, 44, 45, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58, 59, 52, 60, 65, 72, 73, 71, 62, 29, 30, 34, 37, 38, 43, 46, 51, 61, 63, 64, 66, 67, 68, 69, 70.

## **OPENING ITEMS**

1. The Invocation was voiced by Reverend Robert Pase of Grace Lutheran Church.
2. The Pledge of Allegiance to the Flag was stated.

## **PRESENTATIONS**

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
  - a. Presentation of Proclamation to retired employee Eddie Price.

Eddie Price was not present to receive his retirement proclamation.

## **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.

No public comments were made.

Mayor Perry announced that due to the long agenda any Public Hearing after Agenda Item #42 would not be heard until 12:45 p.m. at the earliest and Agenda Item numbers 53-59 would not start until 1:30 p.m. at the earliest.

## **CONSENT AGENDA**

Council Member Trost moved to approve Consent Agenda items 5 - 34 excluding 11, 16, 21, 22, 24, 29, 30, 34; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
  - a. Regular meeting of November 8, 2011.
  - b. Special meeting of November 21, 2011.
6. Approved a resolution to rescind Resolution 2011-261 and proceed with Fiscal Year 2012 General Purpose Certificates of Obligation Issue. (Finance)

### **RESOLUTION NO. 2011 - 293**

RESOLUTION CANCELLING AND RESCINDING RESOLUTION NO. 2011-261 AND APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE SERIES 2012 CERTIFICATES OF OBLIGATION IN AN AMOUNT NOT TO EXCEED THIRTY-ONE MILLION ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$31,150,000.00); AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO CAUSE NOTICES TO BE PUBLISHED AND POSTED

7. Approved a resolution authorizing reimbursement of the Water and Sewer Operating Fund from proceeds of the 2012 Certificate of Obligation proceeds. (Finance)

### **RESOLUTION NO. 2011 - 294**

RESOLUTION DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE DEBT; AND THE CITY OF MIDLAND REASONABLY EXPECTS TO REIMBURSE CAPITAL EXPENDITURES WITH PROCEEDS OF DEBT HEREFTER TO BE INCURRED BY THE CITY

8. Approved a resolution awarding a contract to the single bidder for the purchase and installation of two pivot irrigation systems for the Utilities Department. (General Services)

### **RESOLUTION NO. 2011 - 295**

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE PURCHASE AND INSTALLATION OF TWO (2) CENTER PIVOT IRRIGATION SYSTEMS FOR USE AT THE CITY'S SPRABERRY FARM FROM THE SOLE BIDDER, LAMESA IRRIGATION COMPANY, OF LAMESA, TEXAS, AT A TOTAL COST OF \$152,364.00

9. Approved a resolution awarding a contract for the purchase and installation of four complete side wheel roll irrigation systems for the Utilities Department. (General Services)

RESOLUTION NO. 2011 - 296

RESOLUTION AUTHORIZING THE PURCHASE OF FOUR COMPLETE SIDE-WHEEL ROLL IRRIGATION SYSTEMS AND SPARE PARTS FOR USE AT THE SPRABERRY FARM FACILITIES FROM MESA IRRIGATION, OF LAMESA, TEXAS, AT A TOTAL COST OF \$68,720.00

10. Approved a resolution approving an annual master agreement for an estimated quantity of 5/8", 1", 1 1/2", and 2" water meters with automated encoders for the Warehouse Division. (General Services)

RESOLUTION NO. 2011 - 297

RESOLUTION APPROVING THE PURCHASE OF SEVEN HUNDRED AND FIFTY (750) WATER METERS OF VARIOUS SIZES, ALL WITH ENCODER REGISTERS, FROM WESTERN INDUSTRIAL SUPPLY, L.L.C., OF ODESSA, TEXAS, AT A TOTAL COST OF \$128,809.00; THERE WAS ONE OTHER BIDDER WHO SUBMITTED A BID OF \$99,690.00 BUT IT IS THE CITY MANAGERS RECOMMENDATION THAT SAID BID DID NOT MEET SPECIFICATIONS AND SHOULD BE REJECTED; AND ADOPTING THE CITY MANAGER'S RECOMMENDATION

12. Approved a resolution approving plans and specifications and authorizing advertisement for bids for the renovation of Washington Park Pool. (General Services)

RESOLUTION NO. 2011 - 299

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE RENOVATION OF THE WASHINGTON PARK AQUATIC CENTER

13. Approved a resolution authorizing the execution of a professional services agreement with Midland Sports, Incorporated, of Midland, Texas, for professional marketing, promotion, and management services at the Scharbauer Sports Complex at a total cost of \$51,000. (Community Services)

RESOLUTION NO. 2011 - 300

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MIDLAND SPORTS, INCORPORATED , FOR PROFESSIONAL MARKETING, PROMOTION AND MANAGEMENT SERVICES AT THE SCHARBAUER SPORTS COMPLEX AT A TOTAL COST OF \$51,000.00

14. Received and filed the CDBG Annual Report. (CDBG)
15. Approved a motion directing staff to begin the annexation process for a tract of land approximately 28 acres. (Generally located at the northwest corner of Holiday Hill Road and Briarwood Avenue). (Planning)
17. Approved a motion on a request from the Texas State Independent Living Council (SILC) authorizing the City of Midland to support a grant from the Texas Department of Transportation that would increase employment and improve transportation services for individuals with disabilities living in the rural counties of Odessa and Midland. (Transportation)
18. Approved a motion on a request by West Company of Midland for Stadium Addition (Toyota of Midland), to approve items requested for deferral in the amount of \$11,707.00, and to waive the associated public improvement guarantee. This subdivision is generally located at the northeast corner of the intersection of West Look 250 and Network Dr. (Engineering)
19. Approved a motion on a request by West Company of Midland for Gateway Plaza (Section 3), to approve items requested for deferral in the amount of \$32,795.70, and to waive the associated public improvement guarantee. This subdivision is generally located at the northwest corner of the intersection of West Loop 250 and Business I-20. (Engineering)
20. Approved a motion on a request by West Company of Midland for Witcher Addition (Lot 2 & Lot 3), to approve items requested for deferral in the amount of \$112,194.00, and to waive the associated public improvement guarantee. This subdivision is generally located at the southwest corner of the intersection of Norden Drive and Liberator Lane. (Engineering)

23. Approved a resolution authorizing staff to re-advertise for bids for the Ward Street Bridge project. (Engineering)

RESOLUTION NO. 2011 - 307

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE WARD STREET BRIDGE PROJECT; SAID PROJECT WILL BE FOR THE REPLACEMENT OF THE BRIDGE DECK, REINFORCEMENT OF THE EXISTING BRIDGE STRUCTURE, IMPROVEMENTS TO PROTECT THE NEW STRUCTURE, AND IMPROVEMENTS TO BRIDGE RAILS AND SIDEWALKS

25. Approved a resolution to approve appointment of volunteers enforcing parking restrictions. (Police)

RESOLUTION NO. 2011 - 309

RESOLUTION APPOINTING INDIVIDUALS TO SERVE AS VOLUNTEERS TO ENFORCE AUTOMOBILE PARKING RESTRICTIONS AS AUTHORIZED BY CHAPTER 681 OF THE TEXAS TRANSPORTATION CODE

26. Approved a resolution approving award of the Raw Water Project at the Water Purification Plant to Archer Western Construction, LLC and appropriate funds. (Utilities)

RESOLUTION NO. 2011 - 310

RESOLUTION AWARDING THE RAW WATER PROJECT AT THE WATER PURIFICATION PLANT TO ARCHER WESTERN CONSTRUCTION, L.L.C., AT A TOTAL COST OF \$7,058,965.00

27. Approved a resolution approving the extension of the farm lease agreement with Kevin Cook for part of Section 12, Block 37, TWP-3-S, T&P RR Co. Survey located at the Spraberry Effluent Farm. (Utilities)

RESOLUTION NO. 2011 - 311

RESOLUTION AUTHORIZING AN AMENDMENT TO THE EXISTING SPRABERRY FARM LEASE EXTENSION AGREEMENT WITH KEVIN COOK, EXTENDING THE TERM OF SAID AGREEMENT THROUGH DECEMBER 31, 2012

28. Approved a resolution approving a one year farm lease agreement with Schumann Cattle Company for a 219.3 acre portion of the Plant Farm. (Utilities)

RESOLUTION NO. 2011 - 312

RESOLUTION AUTHORIZING THE EXECUTION OF A ONE-YEAR FARM LEASE AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND SCHUMANN CATTLE COMPANY FOR OPERATION OF THE CONNER FARM LOCATED IN SECTION 10, BLOCK 38, TWP-2-S, T&P RY. CO. SURVEY, MIDLAND COUNTY, TEXAS

31. Approved a motion on a request by Mayor Perry assigning a team comprised of Mayor Perry, Councilman Dufford, Councilman Morales, Courtney Sharp, Jim Nichols, and Stuart Purvis to review and evaluate the water RFP's recently received by the City. (City Manager)

32. Approved a resolution amending all three of the City of Midland's Section 457(b) Deferred Compensation Plan Documents in order to conform to final regulations issued by the Internal Revenue Service. (Administrative Services)

RESOLUTION NO. 2011 - 315

RESOLUTION AUTHORIZING THE ADOPTION OF REVISED AND AMENDED DEFERRED COMPENSATION PLANS OFFERED TO EMPLOYEES OF THE CITY OF MIDLAND, UNDER SECTION 457 OF THE INTERNAL REVENUE SERVICE CODE IN ORDER TO COMPLY WITH FINAL REGULATIONS WITH A COMPLIANCE DEADLINE OF DECEMBER 31, 2011

33. Approved a resolution authorizing the City Manager to execute a Right of Way License for the installation and maintenance of an oil & gas pipeline with Vitol Midstream, L.L.C. (Utilities)

RESOLUTION NO. 2011 - 316

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A RIGHT OF WAY LICENSE FOR THE INSTALLATION AND MAINTENANCE OF AN OIL & GAS PIPELINE ACROSS SECTION 44, BLOCK 38, T-1-S, MIDLAND COUNTY, TEXAS, WITH VITOL MIDSTREAM, L.L.C.

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

11. Consider a resolution approving the purchase of a Genie S-80X, 2WD, telescoping boom lift through HGAC from Equipment Depot LTD of Waco, Texas for the Garage Division. (General Services)

RESOLUTION NO. 2011 - 298

RESOLUTION APPROVING THE PURCHASE OF A TELESCOPIC BOOM LIFT FOR USE AT THE SCHARBAUER SPORTS COMPLEX THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL COST OF \$120,340.00; AND THIS ITEM WAS NOT ADVERTISED FOR COMPETITIVE BIDS BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

Council Member Dufford asked if the lift would be used primarily at the sports complex or more throughout the city. Community Services Director, Tina Jauz, responded that it would be used primarily at the sports complex or about 75 percent of the time and the other 25 percent of the time it would be used in other areas.

Council Member Dufford moved to adopt Resolution No. 2011-298 with the amendment to use 4B funds for the purchase; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

16. Consider a resolution authorizing the Midland Odessa Transportation Organization or MOTOR MPO to be designated as a Transportation Management Area or TMA. (Transportation)

RESOLUTION NO. 2011 - 304

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS IN SUPPORT OF THE MOTOR MPO MOVING FROM A NON-TRANSPORTATION MANAGEMENT AREA (NON-TMA) DESIGNATION TO A TRANSPORTATION MANAGEMENT AREA (TMA) DESIGNATION; AND, DIRECTING STAFF TO REQUEST AND OBTAIN THE NECESSARY CORRESPONDENCE FROM THE GOVERNOR OF THE STATE OF TEXAS, ALONG WITH A FORMAL LETTER OF REQUEST FROM THE MOTOR MPO TO THE UNITED STATES DEPARTMENT OF TRANSPORTATION REQUESTING SAID DESIGNATION

Council Member Trost asked if this could jeopardize receiving operating funds.

Robin Donnelly, 4905 Castleford, explained how transit funds are handled emphasizing that with the new designation they can plan future planning and construction.

Council Member Morales moved to adopt Resolution No. 2011-304; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Hailey, Sparks, Dufford, James, Perry. NAY: Trost. ABSTAIN: None. ABSENT: None.

21. Consider a resolution assigning a project number for the design and construction of drainage and paving improvements for Briarwood Avenue from Holiday Hill Road to Heidleberg Lane. (Engineering)

RESOLUTION NO. 2011 - 305

RESOLUTION APPROPRIATING \$36,413 FROM THE GENERAL FUND (001) UNAPPROPRIATED FUND BALANCE (5650) TO THE BRIARWOOD PAVING AND DRAINAGE IMPROVEMENTS PROJECT (8976)

Council Member Sparks moved to adopt Resolution No. 2011-305; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

22. Consider a resolution assigning a project number for the design and construction of drainage and paving improvements for Mockingbird Lane from Holiday Hill Road to Midland Drive. (Engineering)

RESOLUTION NO. 2011 - 306

RESOLUTION APPROPRIATING \$19,478 FROM THE GENERAL FUND (001) UNAPPROPRIATED FUND BALANCE (5650) TO THE MOCKINGBIRD PAVING AND DRAINAGE IMPROVEMENTS PROJECT (8977)

At the request of City Engineer Beard, Council Member Sparks moved to defer the item until the next meeting; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY:

None. ABSTAIN: None. ABSENT: None.

24. Consider a resolution accepting preclearance from the United States Department of Justice, Civil Rights Division, regarding the City of Midland's 2011 redistricting plan for the election of individual city council members and the configuration of individual districts. (Legal)

RESOLUTION NO. 2011 - 308

RESOLUTION ACCEPTING PRECLEARANCE FROM THE UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, REGARDING THE CITY OF MIDLAND'S 2011 REDISTRICTING PLAN FOR THE ELECTION OF INDIVIDUAL CITY COUNCIL MEMBERS AND THE CONFIGURATION OF INDIVIDUAL DISTRICTS

A brief discussion was held regarding the last time voting districts changed and how people were notified of the change.

Council Member James moved to adopt Resolution No. 2011-308 with the amendment to have town hall meetings and send out letters to the individuals who have been affected by the change; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

29. Consider a resolution approving the suspension of lease payments for AT&T Mobility Texas, L.L.C. while the Shell Tower is being relocated. (Utilities)

RESOLUTION NO. 2011 - 313

RESOLUTION APPROVING THE TEMPORARY SUSPENSION OF LEASE PAYMENTS FROM AT&T MOBILITY TEXAS, L.L.C., (AT&T), FROM JANUARY 1, 2012, THROUGH MAY 1, 2012, WHILE THE SHELL AVENUE ELEVATED WATER TOWER IS RE-COATED

Council Member James moved to adopt Resolution No. 2011-313; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

30. Consider a resolution approving the suspension of lease payments for WWC Texas RSA Limited Partnership while the Shell Tower is being relocated. (Utilities)

RESOLUTION NO. 2011 - 314

RESOLUTION APPROVING THE TEMPORARY SUSPENSION OF LEASE PAYMENTS FROM WWC TEXAS RSA, L.P., (VERIZON), FROM JANUARY 1, 2012, THROUGH MAY 1, 2012, WHILE THE SHELL AVENUE ELEVATED WATER TOWER IS RE-COATED

Council Member James moved to adopt Resolution No. 2011-314; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

34. Consider a motion authorizing the City Manager to approve the relocation of equipment for Clear Wireless L.L.C. from the Shell Elevated Tower to the Edgewood Elevated Tower while the Shell Tower is being recoated. (Utilities)

Council Member Sparks moved to approve a motion authorizing the City Manager to approve the relocation of equipment for Clear Wireless L.L.C. from the Shell Elevated Tower to the Edgewood Elevated Tower while the Shell Tower is being recoated; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

**SECOND READINGS**

35. Consider an ordinance on second reading on a request by Bourbon St. D.C. for a Specific use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on Lot 24, Block 53, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of N. Main Street and E. Texas Avenue.) (Planning) (First reading held November 8, 2011.)

ORDINANCE NO. 8953

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 24, BLOCK 53, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST

CORNER OF THE INTERSECTION OF NORTH MAIN STREET AND EAST TEXAS AVENUE), 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 LOUNGE 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 Secretary Turner read the caption of Ordinance No. 8953.

Council Member Morales moved to approve the second and final reading of Ordinance No. 8953 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

36. Consider an ordinance on second reading on a request by Alan Hale for a zone change from PD, Planned District for a Housing Development to an Amended Planned District on a 2.52-acre portion of Lot 3A, Block 1, Trinity Towers Manor, Sections 3, City and County of Midland, Texas. (Generally located near the northeast corner of the intersection of N. Loop 250 West and Sinclair Avenue on Manor Village Circle.) (Planning) (First reading held November 8, 2011.)

ORDINANCE NO. 8954

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3A, BLOCK 1, TRINITY TOWERS MANOR, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED NEAR THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND SINCLAIR AVENUE ON MANOR VILLAGE CIRCLE); 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

City Secretary Turner read the caption of Ordinance No. 8954.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 8954 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

37. Consider an ordinance on second reading establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; 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) (First reading held November 8, 2011.)

ORDINANCE NO. 8955

AN ORDINANCE ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT INTERSECTIONS; 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

City Secretary Turner read the caption of Ordinance No. 8955.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8955 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

38. Consider an ordinance on second reading removing yield signs at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; 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) (First reading held November 8, 2011.)

ORDINANCE NO. 8956

AN ORDINANCE ESTABLISHING YIELD RIGHT OF WAY SIGNS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT SAID INTERSECTIONS; 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

City Secretary Turner read the caption of Ordinance No. 8956.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8956 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

**PUBLIC HEARINGS**

39. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Los Conchos Ventures, LLC. for a zone change. (Planning)

ORDINANCE NO. 8958

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 19.71-ACRE TRACT OF LAND ("TRACT 1") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 12.97-ACRE TRACT OF LAND ("TRACT 2") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT; BY PERMITTING A 26.33-ACRE TRACT OF LAND ("TRACT 3") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 60.84-ACRE TRACT OF LAND ("TRACT 4") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A 1F-2, ONEFAMILY DWELLING DISTRICT; BY PERMITTING A 7.93-ACRE TRACT OF LAND ("TRACT 5") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 6.33- ACRE TRACT OF LAND ("TRACT 6") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 10.64- ACRE TRACT OF LAND ("TRACT 7") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A TH, TOWNHOUSE DISTRICT; BY PERMITTING A 19.73-ACRE TRACT OF LAND ("TRACT 8") WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 6, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED SOUTH OF MOCKINGBIRD LANE, BETWEEN HOLIDAY HILL ROAD AND ORIOLE DRIVE; 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 Walker gave an overview of the item noting that the Planning & Zoning Commission recommended approval by a vote of 6-1 and that there were 14 people who spoke in opposition to the item and 5 in favor. He also reported that more than 46 percent opposition had been received requiring a super-majority vote.

Discussion ensued regarding what buildings could be built in specific zones, the types of building materials required, and where fences would be constructed.

Mayor Perry opened the public hearing at 10:49 a.m.

Eric West, representing the developer, shared a PowerPoint presentation and giving Council an overview of the development.

Linda Holmquist, 4515 Cardinal Lane, reminded the City Council about a traffic review study conducted in 2008 and expressed concern about increased traffic on Oriole. She asked that their visual and zoning way of life be protected.

Georgia Corwin, 4516 Robin, noted that the property in the area is zoned AE and explained that people have livestock and that it is a different lifestyle. She expressed concern about resale value of their homes and noted that she had not been contacted by the developer until last week. She expressed concern about keeping their form of lifestyle, safety and population density.

John Sullivan, 4707 Tattenham, recommended that the developer put up a fence along Holiday Hill and Mockingbird, expressed concern about changing the zoning and asked Council to defer the item so that the neighbors could have further discussions with the developer.

Paul Lewis, 3501 Gulf, stated his objection to any new development that would require new water meters for as long as there is a shortage of water. He also noted his objection for all other public hearings where new water meters would be required.

Larry Adams, 4508 Meadowlark Lane, expressed concern regarding entry points to the development because it would require travel through residential neighborhoods to the east. He asked the item be deferred so that talks could continue with the developer and expressed a desire to have everything in writing. He also expressed concern about potential traffic issues.

Tim McNealy, 4515 Meadowlark Lane, felt the 13 acres would be used for retail, noted that the roads do not have curbs and spoke about a fence on the west side of Oriole noting a wall would be a good separator between the residence and retail. He asked that the item be postponed to continue talks with the developer.

Tom Galloway, 5013 Pimlico, stated that retail is all being shoved into the corner, noted that there is plenty of retail within a mile of their residence, and asked to have the item deferred to a later date to give an opportunity to talk to the developers.

Karen York, 4501 Mockingbird, noted that some of the people in their group are elderly and could not be present. They wanted the O-1 changed to a better transition zoning due to traffic issues and school systems property nearby.

Greg Bowler, 4510 Meadowlark, expressed concern over traffic issues, noted an open area would allow kids to get in and cause trouble and felt something taller than a six foot fence was necessary, and asked that the item be postponed.

There being no one else present wishing to speak, the public hearing was closed at 11:29 a.m.

City Secretary Turner read the caption of Ordinance No. 8958.

Council Member Hailey moved to defer the item until the next meeting; seconded by Council Member Trost.

Following discussion, Richard Dunham was invited forward to address concerns raised regarding Tract 2.

Richard Dunham, 4400 N. Big Spring, noted they have no foreseeable plans to develop Tract 2 until 4-5 years down the road. His plan was for an office complex because he felt that was the best transition and would create a buffer between the homes and the higher density properties. He noted he was not in favor of doing a PD but would be willing to move to another type of zoning. He noted that by putting in a fence along Mockingbird it would force the developer to put in a gated community. He noted he had agreed to build a second fence along Oriole which would be about \$250,000. He stated it appeared a fence along Mockingbird would need to be on north side of street which would be problematic.

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

40. Consider a motion approving a proposed preliminary plat of Greathouse Addition (Los Conchos Development), a 155.99-acre tract out of Section 7, Block "X", H. P. Hilliard Survey, Midland County, Texas. (Generally located on the south side of Mockingbird Lane, between Oriole Drive and Holiday Hill Road.) (Planning)

Council Member Morales moved to defer to the next meeting; seconded by Council

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

41. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Rodney Roberts for a zone change. (Planning)

ORDINANCE NO. 8959

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 2, GREEN HILL TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF HOLIDAY HILL ROAD AND MOCKINGBIRD LANE); 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 that no letters of objection had been received and that the request was supported by staff as well as the Planning & Zoning Commission.

Mayor Perry opened public hearing at 12:57 p.m.

Rodney Roberts, 4515 Bent Tree, applicant, stated he noticed a lack of retail services in the area and had been waiting for this opportunity. He plans to put a convenience store on 1.5 acres of the west end oriented to the southwest so that lights would be disbursed away from the current residential area. He also noted he would like to put in a coffee house, a cleaner, and a pizza place. He noted he would not move forward with this until Mockingbird comes through.

John Sullivan, 4707 Tattenham, expressed his concern with that corner being retail is fencing, noting that if it had a true buffer from noise and light he would be okay with it. He noted he represent 60 families who are annual members of a pool and complex and wanted to ensure that a fence is placed between Pemlico and the pool area. He recommended deferring the item to a future meeting.

Junior Urias, 5017 Pimlico, noted he was not concerned with lights or traffic but more concerned with a secure buffer.

There being no one else present wishing to speak, the public hearing was closed at 1:08 p.m.

City Secretary Turner read the caption of Ordinance No. 8959.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 8959 in accordance with the Charter of the City of Midland with an amendment to require a fence and landscape barrier on the north and east side of Tract 1 of similar style to Holiday Hill with details delineated before the next meeting; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

42. At approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Midland Bible Church for a zone change. (Planning)

ORDINANCE NO. 8960

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 4, MAYFIELD PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF WHITMAN DRIVE, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE); 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 Walker gave an overview of the item, noting that one letter of objection had been received expressing concern for potential vandalism. He stated that

the Planning & Zoning Commission unanimously recommended approval.

Mayor Pro Tem Trost opened the public hearing at 1:17 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8960.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8960 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, Sparks, Dufford, James, Hailey. NAY: None. ABSTAIN: Perry. ABSENT: None.

43. At approximately 10:39 A.M. hold a public hearing and consider an ordinance on a request by Gary Dawson for a Specific Use Permit Without Term for an accessory building for living or sleeping quarters. (Planning)

ORDINANCE NO. 8961

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 1, BLOCK 1, CAMELOT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE MILE NORTH OF BUSINESS INTERSTATE 20), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; 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 it was a Special Use Permit for an accessory building. He noted that no letters of objection had been received and that Planning & Zoning Commission had unanimously approved the item.

Mayor Perry opened the public hearing at 4:44 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8961.

Council Member Sparks moved to approve the first of two readings of Ordinance No. 8961 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

44. At approximately 10:42 A.M. hold a public hearing and consider an ordinance on a request by Sonny Aguilar for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge. (Planning)

ORDINANCE NO. 8962

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOTS 2 AND 3, BLOCK 27, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST OHIO AVENUE), 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 LOUNGE 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 that two letters of opposition had been received relating to parking issues.

Mayor Perry opened the public hearing at 1:21 p.m.

Gloria Salazar, 2504 Candle Tree Circle, stated that she would like to see this item passed noting she felt it was a very good cause. She stated that the area was in need of diversification and revitalization.

There being no one else wishing to speak, the public hearing was closed at 1:23 p.m.

City Secretary Turner read the caption of Ordinance No. 8962.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8962 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

45. At approximately 10:45 A.M. hold a public hearing and consider an ordinance on a request by InSite Tower, LLC. Specific Use Permit without Term for a Wireless Communication System. (Planning)

ORDINANCE NO. 8963

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 2, BLOCK 5, NORTHLAND SHOPPING CENTER, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF SCHARBAUER DRIVE AND NORTH "A" STREET), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A WIRELESS COMMUNICATION TOWER; 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 this item was for a cell tower on Midland County property. He stated that no letters of opposition had been received.

Mayor Perry opened the public hearing at 1:25 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8963.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8963 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Council Member James noted he had previously spoke about ensuring that the City of Midland has designated space on cell towers and wanted to clarify that the Ordinance was broad enough to meet those needs. City Attorney Stretcher suggested an amendment be made to include that language.

Council Member James moved to amend the motion by amending Section 2, item G to reflect that the City of Midland reserves the right to affix other suitable devices to a tower including but not limited to Wi-Fi; seconded by Council Member Sparks. The motion to amend carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

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

46. At approximately 10:48 A.M. hold a public hearing and consider an ordinance on a request by Matt Gallagher for a Specific Use Permit without Term for an accessory building for living or sleeping quarters. (Planning)

ORDINANCE NO. 8964

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 19, BLOCK 9, REPLAT OF BLOCK 9, 2 SECTION, MA-ND MAR TERRACE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF STANOLIND CIRCLE, APPROXIMATELY 350 FEET EAST OF CESSNA DRIVE), WHICH IS PRESENTLY ZONED 1F-1, ONE -FAMILY DWEL L ING DI STRICT , BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR AN ACCESSORY BUILDING TO BE USED FOR LIVING OR SLEEPING QUARTERS; 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 that no letters of objection had been received and that it was supported by both staff and the Planning & Zoning Commission.

Mayor Perry opened the public hearing at 4:46 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Council Turner read the caption of Ordinance No. 8964.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 8964 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

47. At approximately 10:51 A.M. hold a public hearing and consider a resolution on a request by Westlake Hardware, Inc. for a Temporary Land Use Permit for Outdoor Sales. (Planning)

RESOLUTION NO. 2011 - 317

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR OUTDOOR SALES ON LOT 1, BLOCK 5, PARK PLACE, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF ANDREWS HIGHWAY AND CUTHBERT AVENUE); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Planning Division Manager Walker gave an overview of the item noting that no letters of objection had been received.

Mayor Perry opened the public hearing at 1:32 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Hailey moved to adopt Resolution No. 2011-317; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

48. At approximately 10:57 A.M. hold a public hearing and consider an ordinance on a request by Mid-Cities Church 191 for Special Exception to the zoning code. (Planning)

ORDINANCE NO. 8965

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 1, BLOCK 1, WESTLAKE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF STATE HIGHWAY 191 AND NORTH COUNTY ROAD 1275), BY PERMITTING A BUILDING TO EXCEED THE MAXIMUM HEIGHT LIMIT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

Planning division Manager Walker gave an overview of the item no letters of objection

Mayor Perry opened the public hearing at 1:34 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8965.

Council Member James moved approval of the first of two readings of Ordinance No. 8965 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

49. At approximately 11:00 A.M. hold a public hearing and consider a resolution on a request by Erasto Martinez dba Triple M Construction for a proposed preliminary plat ON APPEAL of Country Sky Addition. (Planning)

RESOLUTION NO. 2011 - 318

RESOLUTION APPROVING A PRELIMINARY PLAT OF COUNTRY SKY ADDITION, SECTION 12, BEING A REPLAT OF LOT 27, BLOCK 4, COUNTRY SKY ADDITION, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF TUMBLEWEED TRAIL , APPROXIMATELY 780 FEET NORTH OF CACTUS TRAIL); THIS PLAT WAS DENIED BY THE PLANNING AND ZONING COMMISSION; AND THIS RESOLUTION IS AN APPEAL TO THE CITY COUNCIL

Planning Division Manager Walker gave an overview of the item, noting it was on appeal from the Planning & Zoning Commission. He stated that staff recommended approval because the minimum lot standards had been met.

Mayor Perry opened the public hearing at 1:38 p.m.

Glen Miller, 5505 San Saba Court, felt it was in the best interest to the area to keep lots the same size as those in the neighborhood.

Michael Strange noted his concerns were those as stated by Mr. Miller.

Cindy Klatt, Schuman Engineering, 408 N. Pecos, noted she is representing her client and that he bought the lot to divide it to build two nice homes. His intent is to increase the value of the properties while maintaining one-acre tracts.

Scott Powden, 4901 Widener Strip, noted he represented Mr. Miller on a lot sale and the question was asked if the lot could be subdivided and he was told that it was within the zoning regulations.

There being no one else present wishing to speak, the public hearing was closed at 1:42 p.m.

Council Member Trost moved to adopt Resolution No. 2011-318; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Dufford, Hailey. NAY: Perry. ABSTAIN: James. ABSENT: None.

50. At approximately 11:03 A.M. hold a public hearing and consider a resolution on a request by Arcelia Renteria for an Extension for a Special Temporary for a Manufactured Home. (Planning)

RESOLUTION NO. 2011 - 319

RESOLUTION AUTHORIZING A TEMPORARY SPECIAL PERMIT FOR A MANUFACTURED HOME ON LOT 9, BLOCK 1, HOLLOWAY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF TERRELL STREET, APPROXIMATELY 150 FEET SOUTH OF CUTHBERT AVENUE)

Planning Division Manager gave an overview of the item noting that a special temporary permit was originally granted in 2005, and then renewed in 2007 and 2009. He noted that there was a medical note on file for medical hardship reasons and that one letter of objection had been received.

Mayor Perry opened the public hearing at 1:50 p.m.

Don Easley, 4308 Princeton, representing Aubrey Easley, 1100 N. Terrell. He noted there were four owners of property in the area who have spent thousands of dollars to revitalize the area and they offered their objection.

Veronica Calix, 1108 N Terrell, (as translated by Rachel Stone), requested the item be denied noting that she and her husband have put in \$80,000 of improvements into their property and she did not want her home devalued.

There being no one else wishing to speak, the public hearing was closed at 1:52 p.m.

Council Member Hailey moved to adopt Resolution No. 2011-319; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Sparks, Dufford, James, Hailey. NAY: Perry. ABSTAIN: None. ABSENT: None.

51. At approximately 11:06 A.M. hold a public hearing and consider an ordinance on a request by Larry Mills for a zone change from PD, Planned District for a Transition District. (Planning)

ORDINANCE NO. 8966

AN ORDINANCE ADOPTING A SITE PLAN FOR LOT 1, BLOCK 83, WEST END, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF WEST WALL STREET AND "J" STREET); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; 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 overview of the item noting that no letters of

objection had been received and that staff supported the item.

Mayor Perry opened the public hearing at 4:48 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8966.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8966 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

52. At approximately 11:09 A.M. hold a public hearing and consider an ordinance on a request by SBC, L.P. for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District. (Planning)

ORDINANCE NO. 8967

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 4.68-ACRE PORTION OF THE REMAINDER OF LOT 1, BLOCK 6, WESTRIDGE PARK ADDITION, SECTION 6, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF CHAMPIONS DRIVE 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

Planning Division Manager Walker gave an overview of the item noting that no letters of objection had been received and that the Planning and Zoning Commission recommended approval.

Mayor Perry opened the public hearing at 3:11 p.m.

Larry Bell, 1700 W. Wall, noted he was available to answer any questions.

There being no one else present wishing to speak, the public hearing was closed at 3:11 p.m.

City Secretary Turner read the caption of Ordinance No. 8967.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8967 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

53. At approximately 11:12 A.M. hold a public hearing and consider a request by RSP Permian, L.L.C. (Bus Barn #2601) for a Permit to Drill an Oil and Gas Well within the City Limits located 733' FNL and 1905' FWL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the south side of Briarwood Avenue, approximately 870 feet east of Heidelberg Lane.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item.

Mayor Perry opened the public hearing at 1:59 p.m.

Steven Rea, 4214 Coyote Trail, noted he was speaking on item numbers 53, 54 and 55. He handed out a presentation and noted he was representing members of the Country Sky Addition. He reviewed sections of Ordinance 8769, showed where RSP could vertically drill, and shared pictures of what can go wrong at a tank battery or when drilling. He emphasized that they do not want drilling in their back yard and asked that horizontal drilling be implemented for this project.

Robert Simpson, 4206 Coyote Trail, gave the City Council a handout. He noted that the appraised value of the area has gone up and objected to the wells being drilled for not

only safety reasons but also property valuations. He noted that MISD accepted a \$1,500 donation from RSP for their education foundation.

Dr. Hal Jr. stated he requires an inhaler from having to breathe in gas fumes and noted there is a risk from gas escaping from the wells which he considers a serious health risk.

Jim Spradlin, representing RSP Permian, recommend being approved as submitted noting that the closest building is 464 from the bus barn.

Karla Burrow, 4001 Coyote Trail, asked the Council how they would feel if a well was in their backyard. She explained that they live two streets away and she can hear them all night long which disrupts her sleep.

Kelly Kuykendall, 409 E County Road 137, noted her opposition to drilling and asked the City Council to keep residential growth in mind.

Terry Donathan, 6610 Cactus Trail, stated that if Council allows a well to come into a residential area they should be ready for a well to come in on the 15th green at the golf course. He asked for the Council to protect the residents and to save their property values.

Ann Conder, 4201 Tumbleweed Trail, stated that she moved to country to allow her kids to play, not to see oil wells.

Charlie Stubbs, 4108 Tumbleweed Trail, stated that the well will be 300 feet from his bedroom and asked the Council to carefully consider approving a well that close to people's residences. He emphasized that it is dangerous and would devalue property.

There being no else present wishing to speak, the public hearing was closed at 2:25 p.m. No action was taken on this item.

54. At approximately 11:15 A.M. hold a public hearing and consider a request by RSP Permian, L.L.C. (Bus Barn #2602) for a Permit to Drill an Oil and Gas Well within the City Limits located 600' FNL and 525' FWL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the south side of Briarwood Avenue, approximately 450 feet west of Heidelberg Lane.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Oil & Gas Compliance Officer, Ron Jenkins, gave an overview of the item noting that the application had been reviewed by the Oil & Gas Advisory Committee. He stated the well site is near Mid Cities Church and that the applicant is asking for a waiver on landscaping due to the scarcity of water. He indicated that two letters of objection had been received, one from the person who donated the house to the church.

Mayor Perry opened the public hearing at 2:27 p.m.

Jim Spradlin noted that there was no way to do horizontal drilling as they did not have rights outside of the tract.

David Ham, 3411 Coyote Trail, asked for a show of hands of who was present regarding the wells. The majority of the people in the audience raised their hand.

There being no one else wishing to speak, the public hearing was closed at 2:29 p.m. No action was taken on this item.

55. At approximately 11:18 A.M. hold a public hearing and consider a request by RSP Permian, L.L.C. (Bus Barn #2603) for a Permit to Drill an Oil and Gas Well within the City Limits located 690' FNL and 1080' FEL, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the south side of Briarwood Avenue, approximately 600 feet west of Roadrunner Trail.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Oil & Gas Compliance Officer Jenkins gave an overview of the item noting that it had been approved by the Oil & Gas Advisory Committee except that landscaping should be required as recommended by the Committee. He noted that petitions had been received and they had been included in the Council's packet. He noted that five letters of objection had been received in addition to the petitions and that the tank battery would be located to the west in the County.

Mayor Perry opened the public hearing at 2:31 p.m.

Dr. Rea, again voiced his opposition to the wells and the variances.

Jim Spradlin again clarified that they cannot do a horizontal drill because they do not have mineral rights outside of the tract.

Mike Wallace, 200 Blackberry Circle, in response to questions about horizontal drilling noted that the oil comes from all 10 wells which are marginal but when they are put together, that is when it makes economic sense. He explained that horizontal drilling is for very specific zones when you know where the oil is located.

Craig Tellinghuisen, 4008 Coyote Trail, noted that everyone from the neighborhood was present because everyone is actively involved.

Steve Gray, representing RSP Permian, 125 Missouri, noted that first and foremost they are concerned about safety. He explained that the only variance was for planting of vegetation which was strictly due to water issues and explained that the mandatory fencing will be completed. He noted that they do not own the lease on the next section of property so they cannot do horizontal drilling.

Robert Wood, 4111 Tumbleweed Trail, asked that the Council not grant the exception to go within 500 feet.

Dr. Rea, stated that RSP has the capability of reaching outside of the community to do horizontal drilling.

There being no one else present wishing to speak, the public hearing was closed at 2:58 p.m. No action was taken on this item.

56. At approximately 11:21 A.M. hold a public hearing and consider a request by Pioneer Natural Resources (Mabee #3) for a Permit to Drill an Oil and Gas Well within the City Limits located 660' FNL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 349, approximately 1 mile north of Arapahoe Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Oil & Gas Compliance Officer Ron Jenkins gave an overview of the item noting it been to the Oil & Gas Committee, and that a waiver on fencing and landscaping had been requested. He noted that no city roads would be used and that no letters of objection had been received.

Mayor Perry opened the public hearing at 3:01 p.m. There being no one present wishing to speak the public hearing was immediately closed. No action was taken on this item.

57. At approximately 11:24 A.M. hold a public hearing and consider a request by Pioneer Natural Resources (Mabee E #4) for a Permit to Drill an Oil and Gas Well within the City Limits located 800' FSL and 1980' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 349 north of Arapahoe Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Mayor Perry opened the public hearing at 3:04 p.m. There being no one present wishing to speak, the public hearing was immediately closed. No action was taken on this item.

58. At approximately 11:27 A.M. hold a public hearing and consider a request by Pioneer Natural Resources (Mabee D #5) for a Permit to drill an Oil and Gas Well within the City Limits located 1880' FNL and 1980' FWL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 349, approximately 3/4 mile north of Arapahoe Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Mayor Perry opened the public hearing at 3:05 p.m. There being no one present wishing to speak, the public hearing was immediately closed. No action was taken on this item.

59. At approximately 11:30 A.M. hold a public hearing and consider a request by Pioneer Natural Resources (Mabee D #6) for a Permit to drill an Oil and Gas Well within the City

Limits located 1865' FNL and 660' FEL, Section 12, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 349, approximately 3/4 mile north of Arapahoe Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period at a regularly scheduled meeting. (Planning)

Mayor Perry opened the public hearing at 3:06 p.m. There being no one present wishing to speak, the public hearing was immediately closed. No action was taken on this item.

60. At approximately 11:33 A.M. hold a public hearing and consider a resolution on a request by Robert Anderson for a Temporary Land Use Permit for a Caliche Pit. (Planning)

RESOLUTION NO. 2011 - 320

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A CALICHE PIT ON A 128.08-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK 38, T-1- S, T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF ELKINS ROAD, APPROXIMATELY ONE-HALF MILE NORTH OF ARAPAHOE ROAD); MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Planning Division Manager Walker gave an overview of the item noting that staff recommended a one-year approval as proposed noting it is the maximum time for a Temporary Land Use Permit. He stated he had received phone calls from nearby owners but no letters of objection had been received.

Mayor Perry opened the public hearing at 3:19 p.m.

Robert Anderson, 10716 Highway 191, noted he owns the acreage and does not want to do a caliche pit but this is what has to do in order to use the caliche for a project and will later cover it up. He intends to put a pond where the pit was and again emphasized that he is only using this for his own projects.

Jake Stasny, Dallas, noted he was legal representation for several of the neighbors. He claimed that a temporary land use permit cannot be used for a caliche pit but instead was designed for items such as carnivals or moving vendors or something that can be set up and taken down without damaging the land. He explained that there were several state requirements that, to his knowledge, had not been enforced. He suggested that Mr. Anderson get his caliche from somewhere else.

Keith Petty, 2033 County Road 2300, stated they purchased their acreage for their dream home and did not want a commercial use in the area and did not want to lose the value of his home. He objected to filling the hole with a pond when water was such a valuable resource.

Ignacio Lopez, speaking on behalf of his parents, noted they moved in there in 1987. He stated there is a lot of material coming off of the property and being left in the middle of the road. He noted his parents want a place where their grandkids can grow up and be safe without having pollution and that it does not look like the ranch their parents originally purchased.

Jason Edwards, 6709 Elkins Road, stated that a caliche pit is not a temporary thing. If he fills up the pit with water he is using everyone's water and that is not good for the community.

Leonard Stasny, 6611 Elkins Road, stated he bought his property because it was zoned AE and is disappointed that someone else can turn the neighborhood into a commercial operation.

Pat Schneider, 906 Citation, stated she has owned property near the location for at least 25 years. She noted that she was nearly run off the road by a truck that was picking up caliche and it has created a bad traffic situation.

Cathy Stasny, 6611 Elkins Road, stated they have lived within the parameters of the zoning and requested that Mr. Anderson do the same. She spoke about other neighbors who were opposed to the caliche pit, stated it could be seen from her kitchen window, spoke about the traffic problems that have been generated and the damage the heavy trucks are causing to the roadway.

Hortencia Hernandez, 6801 N. Elkins Road, stated her property is 100 feet from the Caliche pit noting it way too close to her house. She expressed concern regarding dust

and traffic.

Robert Anderson stated he was not intending to devalue the land as he intended on building half-million dollar homes there. He also stated that the accidents people have referred to have nothing to do with his operations clarifying that he wants to do what is right for everyone.

Discussion ensued about whether a six month time frame could be used instead of a 12 month time frame and if there was anything in the law that prevented a property owner from digging up his own property. City Attorney Stretcher clarified that a property owner can use resources from their own property as long as those resources are not moved off the property or sold.

Robert Anderson reiterated that he is not selling the caliche but using it on his other projects. City Attorney Stretcher noted that if he is receiving compensation for those projects, then it is considered a sale.

Jake Stasny noted some of the procedures that he felt were necessary to have a caliche permit noting that Mr. Anderson had not asked the State for permission.

There being no one else wishing to speak, the public hearing was closed at 3:50 p.m.

Council Member Dufford moved to deny the Temporary Land Use Permit; seconded by Council Member Hailey.

Following a request for clarification it was determined that the owner can still dig on his property and pile the caliche up on his land, but he cannot move it off of his land or sell it.

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

## **DEVELOPMENT SERVICES**

61. Consider an ordinance amending currently adopted Energy Code to meet Texas state law requirements. (Code Administration)

### **ORDINANCE NO. 8968**

AN ORDINANCE AMENDING TITLE IV, "BUILDING REGULATIONS", CHAPTER 12, "ENERGY CODE", SECTION 2, "CHANGES AND ADDITIONS TO ADOPTED ENERGY CODE", OF THE CITY CODE OF THE CITY OF MIDLAND, TEXAS, SO AS TO REMOVE THE EXEMPTION FOR ADDITIONS, ALTERATIONS OR REPAIRS TO EXISTING RESIDENTIAL AND COMMERCIAL STRUCTURES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM FINE OR PENALTY OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Building Official Steve Thorpe gave an overview of the item noting that they were updating the code to match state law.

City Secretary Turner read the caption of Ordinance No. 8968.

Council Member James moved approval of the first of two readings of Ordinance No. 8968 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

62. Consider an ordinance on a City-initiated request to vacate a portion of E. Hamby Avenue and two alleys. (Planning)

### **ORDINANCE NO. 8969**

AN ORDINANCE VACATING AND ABANDONING A 0.62-ACRE TRACT OF STREET AND ALLEY RIGHT-OF-WAY LOCATED IN BLOCK 79, EAST MIDLAND ADDITION, AND BLOCKS 2 AND 4, GLENN FRANCIS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EAST GOLF COURSE ROAD AND NORTH JACKSON STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$2,718.80; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; RETAINING A GENERAL UTILITY AND DRAINAGE EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY

Planning Division Manager Walker gave an overview of the item noting that staff recommended in favor of the proposed vacation.

City Secretary Turner read the caption of Ordinance No. 8969.

Council Member James moved approval of the first of two readings of Ordinance No. 8969 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, Sparks, Dufford, James, Hailey. NAY: None. ABSTAIN: None. ABSENT: Perry.

63. Consider an ordinance on a request by Andrew Mellen for the vacation of the 0.10-acre north/south alley and a 0.02-acre portion of the right-of-way of N. Marienfeld Street adjacent to the east half of Block 31A, Homestead Addition, City and County of Midland, Texas. (Planning)

ORDINANCE NO. 8970

AN ORDINANCE VACATING AND ABANDONING A 0.025-ACRE PORTION OF MARIENFELD STREET RIGHT-OF-WAY ADJACENT TO THE EAST HALF OF BLOCK 31A, AND A 0.099-ACRE NORTH/SOUTH ALLEY ADJACENT TO LOTS 1-8, BLOCK 31A, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF LOUISIANA AVENUE AND MARIENFELD STREET); ADOPTING THE APPRAISAL BY THE CITYMANAGER OF \$2,612.50; RETAINING A GENERAL UTILITY AND DRAINAGE EASEMENT; AND ORDERING RECORDATION BY THE CITYSECRETARY

Planning Division Manager Walker gave an overview of the item noting that no letters of objection had been received and that the item was supported by staff.

City Secretary Turner read the caption of Ordinance No. 8970.

Council Member Trost moved approval of the first of two readings of Ordinance No. 8970 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

64. Consider an ordinance on a request by Andrew Mellen for the vacation of a 0.55-acre portion of the right-of-way of Stonewall Street, a 0.17-acre portion of the right-of-way of Garden Lane, and a 0.14-acre portion of north/south alley right-of-way all adjacent to Block A, Montgomery Addition, City and County of Midland, Texas. (Planning)

ORDINANCE NO. 8971

AN ORDINANCE VACATING AND ABANDONING A 0.55-ACRE PORTION OF STONEWALL STREET RIGHT-OF-WAY, A 0.16-ACRE PORTION OF GARDEN LANE RIGHT-OF-WAY, AND A 0.14-ACRE PORTION OF THE NORTH/SOUTH ALLEY RIGHT-OF-WAY, ALL ADJACENT TO BLOCK "A", MONTGOMERY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF GARDEN LANE AND FAIRGROUNDSROAD); ADOPTING THE APPRAISAL BY THE CITYMANAGER OF \$3,740.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

Planning Division Manager Walker gave an overview of the item.

City Secretary Turner read the caption of Ordinance No. 8971.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8971 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

65. Consider an amended annexation ordinance to indicate that a portion of the land proposed for annexation on the west side of FM 1788 and on the north side of SH 191 will remain in the city's extraterritorial jurisdiction due to the owners requesting an agricultural use exemption agreement with the City. (Planning)

ORDINANCE NO. 8972

AN ORDINANCE AMENDING ORDINANCE NO. 8925 OF THE CITY OF MIDLAND BY ATTACHING AN AGREEMENT EXECUTED BY THE CITY MANAGER OF THE CITY OF MIDLAND AND OWNERS OF APPROXIMATELY 309 ACRES OUT OF SECTION 37, BLOCK 41, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, PURSUANT TO SECTION 43.035 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING THAT THE PROPERTY SUBJECT TO SUCH AGREEMENT SHALL REMAIN IN THE CITY'S EXTRATERRITORIAL JURISDICTION; PROVIDING THAT, EXCEPT AS AMENDED, ORDINANCE NO. 8925 SHALL REMAIN IN FULL FORCE

AND EFFECT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO FILE A COPY OF THIS ORDINANCE IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND THE CITY MANAGER IS HEREBY AUTHORIZED AND DIRECTED TO EXECUTE THE AGREEMENT

Planning Division Manager Walker gave an overview of the item.

City Secretary Turner read the caption of Ordinance No. 8972.

Following brief discussion, Council Member Sparks moved approval of the first of two readings of Ordinance No. 8972 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

66. Consider an ordinance on a request from the Texas Department of Transportation establishing a temporary construction speed zone of 60 miles per hour on a portion of Interstate 20 within the City Limits of Midland, Texas. (Transportation)

ORDINANCE NO. 8973

AN ORDINANCE ESTABLISHING A TEMPORARY CONSTRUCTION SPEED ZONE OF 60 MILES PER HOUR ON A PORTION OF INTERSTATE 20 FOR A STATE HIGHWAY IMPROVEMENT PROJECT BY THE TEXAS DEPARTMENT OF TRANSPORTATION; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; 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.

City Secretary Turner read the caption of Ordinance No. 8973.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8973 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

**MISCELLANEOUS**

67. Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 9, "Collection from Commercial Customers", of the City Code of Midland, Texas, so as to replace the explanatory paragraph of Table 1. Standard Commercial Locations: Three Yard Containers. (Solid Waste)

ORDINANCE NO. 8974

AN ORDINANCE OF THE CITY OF MIDLAND AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION," CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 9, "COLLECTION FROM COMMERCIAL CUSTOMERS" FOR CLARIFICATION; AND ORDERING PUBLICATION

Solid Waste Manager Morris Williams gave a brief overview of the item.

City Secretary Turner read the caption of Ordinance No. 8974.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 8974 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, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

68. Approved a resolution amending Article VIII of the Airport Minimum Standards. (Airport)

RESOLUTION NO. 2011 - 321

RESOLUTION AUTHORIZING AN AMENDMENT TO ARTICLE VIII. PRIVATELY OWNED NONCOMMERCIAL HANGAR AND AVIATION FUEL DISPENSING FACILITY OF THE AIRPORT MINIMUM STANDARDS AT THE MIDLAND INTERNATIONAL AIRPORT

Council Member James moved to adopt Resolution No. 2011-321; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey,

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

69. Approved a resolution authorizing the execution of a Land Lease Agreement between Good Luck Investments L.L.C. and the City of Midland for a 0.28 acre tract of land. (Airport)

RESOLUTION NO. 2011 - 322

RESOLUTION AUTHORIZING THE EXECUTION OF A LAND LEASE AGREEMENT WITH GOOD LUCK INVESTMENTS L.L.C., FOR HANGAR DEVELOPMENT LOCATED ON A 0.28 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

Council Member Dufford moved to adopt Resolution No. 2011-322; seconded by Council Member Trost.

Council Member Dufford moved to amend the motion by authorizing the City Manager and City Attorney to negotiate the release section of the agreement consistent with discussion in executive session and give the City Manager authority to execute such an agreement; seconded by Council Member James. The motion to amend carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

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

70. Consider making appointments to various Boards and Commissions.

No appointments were made to boards and commissions.

71. Consider a request from Bluestem Energy Holdings, LLC. (Evans "J" #1) for a Permit to drill an Oil and Gas Well within the City Limits. (Planning)

RESOLUTION NO. 2011 - 301

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,322 FEET FROM THE SOUTH LINE AND 2,310 FEET FROM THE EAST LINE, SECTION 8, BLOCK "X", T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE); AND CONSOLIDATING SAID PERMIT UNDER AN EXISTING ROAD REPAIR AGREEMENT

Oil and Gas Compliance Officer Jenkins noted the item had been reviewed by the Oil & Gas Advisory Committee and that the landscaping was consistent with the surrounding land. He explained that no letters of objection had been received.

John Anderson of Blue Stem Energy, noted this well was being drilled in a vineyard and the previous wells were in a hay field.

Council Member Hailey moved to adopt Resolution No. 2011-301 with amendment to defer landscaping until requested by City manager within 3 years; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

72. Consider a request from Callon Petroleum (Annie #3) for a Permit to drill an Oil and Gas Well within the City Limits. (Planning)

RESOLUTION NO. 2011 - 302

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 849 FEET FROM THE NORTH LINE AND 2,087 FEET FROM THE EAST LINE, SECTION 48, BLOCK 41, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH FARM-TO-MARKET ROAD 1788, APPROXIMATELY 1 MILE SOUTH OF STATE HIGHWAY 191); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

Oil and Gas Compliance Officer Jenkins gave a brief overview of the item noting that a waiver for road repair was anticipated and that no letters of objection had been received.

Council Member James asked about landscaping and thought maybe the money could

be placed into a fund to be done at a later time when necessary. Discussion ensued about whose responsibility it would be to install the landscaping and if that burden would fall to the taxpayers.

Jimmy Wright, 5212 Mathis Street, noted he was the land manager for Callon Petroleum. He explained that they put in the appropriate landscaping at the request of the landowner but also understands the water restriction issues at this time and feels that it does not make sense to install landscaping now. He stated they would be open to putting the money into a landscaping fund.

Council Member James moved to defer the landscape for two years; seconded by Council Member Trost. The motion failed by the following vote: AYE: Morales, James, Trost. NAY: Hailey, Sparks, Dufford, Perry. ABSTAIN: None. ABSENT: None.

Council Member Hailey moved to adopt Resolution No. 2011-302 with amendment to defer landscaping until requested by City Manager within 3 years; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

73. Consider a request from Callon Petroleum (Annie #8) for a Permit to drill an Oil and Gas Well within the City Limits. (Planning)

RESOLUTION NO. 2011 - 303

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 671 FEET FROM THE NORTH LINE AND 1,197 FEET FROM THE EAST LINE, SECTION 48, BLOCK 41, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH FARM-TO-MARKET ROAD 1788, APPROXIMATELY 1 MILE SOUTH OF STATE HIGHWAY 191); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

Oil & Gas Compliance Officer Ron Jenkins noted that a variance was requested from the 500 foot minimum from a commercial building noting that it was 328 feet to the closest structure. He also stated that a waiver of road repair was being request and that no letters of objection had been received.

Council Member Hailey moved to adopt Resolution No. 2011-303 with amendment to defer landscaping until requested by city Manager within 3 years; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Sparks, Dufford, James, Perry. NAY: None. ABSTAIN: None. ABSENT: None.

**EXECUTIVE SESSION**

Mayor Perry announced that pursuant to Texas Government Code Section 551.101, the Council would hold an Executive Session, closed to the public, to discuss the above matters as permitted under the Texas Government Code Sections:

74. 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:

Mayor Perry recessed the meeting to Executive Session at 11:46 a.m. The entire Council met in Executive Session until 12:54 p.m. Mayor Perry reconvened the meeting to regular session at 12:54 p.m.

- a. Section 551.071, Consultation with the City Attorney:

1. Discuss with the City Attorney contemplated litigation with the U.S. Fish and Wildlife Service regarding the Dunes Sagebrush Lizard.
2. 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.

- b. Section 551.072, Deliberation Regarding Real Property

3. Deliberate the lease and value of approximately 0.28 acres 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, to Good Luck Investments, L.L.C, organized and existing under and by virtue of the laws of the State of New Mexico.

Mayor Perry recessed the meeting to Executive Session at 11:46 a.m. The meeting was reconvened to regular session at 12:54 p.m.

There being no other business to come before the City Council, the meeting was adjourned at 5:02 p.m.

PASSED AND APPROVED the 10<sup>th</sup> day of January, 2012.

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W. Wesley Perry, Mayor

ATTEST:

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Amy M. Turner, City Secretary