

**MIDLAND CITY COUNCIL  
MINUTES  
February 28, 2017**

**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 February 28, 2017.

Council Members present: Mayor Pro Tem Sharla Hotchkiss (District 3), Council Member Scott Dufford (At-Large), Council Member Jeff Sparks (District 1), Council Member John B. Love III (District 2), and Council Member J.Ross Lacy (District 4).

Council Members absent: Mayor Jerry F. Morales and Council Member Spencer Robnett (At-Large).

Staff members present: City Manager Courtney Sharp, City Attorney John Ohnemiller, Assistant City Manager Frank Salvato, Assistant City Manager Robert Patrick, City Secretary Amy Turner, Interim Fire Chief Chip Balzer, Finance Director Pam Simecka, Development Services Director Charles Harrington, Engineering Services Director Jose Ortiz, General Services Director Fred Reyes, Chief Information Officer Willie Resto, Building Official Steve Thorpe, Downtown Development Coordinator Cristina Odenborg, City Engineer Matt Carr, Fire Inspector James Howard and Public Information Officer Sara Bustilloz.

Mayor Pro Tem Hotchkiss called the meeting to order at 9:00 a.m.

1. Receive a presentation from staff in regards to the adopted 2015 Building Codes, specifically the requirement for buildings over 75 feet tall.

Interim Fire Chief Chip Balzer reported that the old fire code was replaced in 2015. He noted that as much fire prevention as they do they are still reactive and they have opportunities to prevent large fires by clearly marked unobstructed exits, limiting the number of occupants, emergency lighting, fire sprinklers and enforcement of existing codes. The code mandates fire sprinklers in new buildings or on a building with significant remodel or change in type of occupancy. On any high rise building, which is defined as over 75 feet tall, automatic fire sprinklers are designed to save lives and keep small fires small. Midland has 22 high rise buildings. Eight are fully sprinkled, seven are partially sprinkled and seven are not sprinkled. In 2015, the City adopted an ordinance requiring tall building owners to file a compliance plan within 365 days. Staff did not do a good job of sharing this information and to date, no compliance schedules have been filed.

It requires a lot of planning and capital to sprinkle a building. Staff is looking at restarting the clock to see all tall building owners fully comply and is suggesting adopting a guideline for compliance allowing three years to install a water stack, six years to provide water supply lines to each floor, sprinklers on 50% of all floors within nine years and all floors to be in full compliance within 12 years.

He shared an example of a fire sprinkler explaining that when it reaches 135 degrees the liquid inside boils and breaks the glass which allows the sprinkler to go off. Most fires will only have 1 or 2 sprinklers go off and keeps fires small. Staff will return with a document reflecting these changes.

2. Receive an update from Engineering Services on the partnering with TxDOT for the widening of Highway 349.

Engineering Services Director Jose Ortiz reported that there has been rapid growth north of town along State Highway 349. TxDOT plans to resurface and reconstruct the road from Loop 250 to the County line and the City would like to partner with them for safety enhancements including right and left turn pockets. He shared aerials of the area from 2013 and 2016 emphasizing the amount of growth not only to new construction of properties but also oil and gas wells added. TxDOT is receptive to the partnership. The proposed enhancements include curbing, right of way acquisition and medians in some areas. The overall project is nearly \$12 million and TxDOT will cover \$9.3 million. Staff is asking MDC to fund \$1.2 million. Staff will move forward with an item authorizing the City Manager to negotiate and acquire right-of-way and to enter into an advanced funding agreement with TxDOT. This project is expected to let in early 2018. Consensus was received to move forward.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:45 a.m.

## **REGULAR SESSION**

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., February 28, 2017.

Council Members present: Mayor Pro Tem Sharla Hotchkiss (District 3), Council Member Scott Dufford (At-Large), Council Member Jeff Sparks (District 1), Council Member John B. Love III (District 2), and Council Member J.Ross Lacy (District 4).

Council Members absent: Mayor Jerry F. Morales and Council Member Spencer Robnett (At-Large).

Staff members present at the annex table: City Manager Courtney Sharp, City Attorney John Ohnemiller, Assistant City Manager Frank Salvato, and Assistant City Manager Robert Patrick.

The Agenda Items were heard in the following order: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37.

Mayor Pro Tem Hotchkiss called the meeting to order at 10:00 a.m.

## **OPENING ITEMS**

1. Invocation – Council Member Jeff Sparks
2. Pledge of Allegiance

## PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to: None.

## CONSENT AGENDA

Council Member Lacy moved to approve Consent Agenda items 4 - 13 excluding 11; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

4. Approved a motion approving the following minutes:
  - a. Special City Council meeting of February 13, 2017
  - b. Regular City Council meeting of February 14, 2017
5. Approved a resolution approving a professional services agreement with Parkhill, Smith & Cooper, Inc. for the design phase of the Briarwood Paving and Drainage Project for the Engineering Services Department. (PURCHASING)

### RESOLUTION NO. 2017 - 054

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INC. FOR ENGINEERING SERVICES TO ASSIST THE ENGINEERING SERVICES DEPARTMENT WITH THE DESIGN PHASE OF THE BRIARWOOD PAVING AND DRAINAGE PROJECT (PHASE 2), INCLUDING THE PREPARATION OF CONSTRUCTION PLANS AND BID DOCUMENTS; AND AUTHORIZING PAYMENT THEREFOR IN AN AMOUNT NOT TO EXCEED \$474,207.79

6. Approved a resolution approving the purchase of ammunition for the Police Department. (PURCHASING)

### RESOLUTION NO. 2017 - 055

RESOLUTION AUTHORIZING THE PURCHASE OF AMMUNITION OF ASSORTED TYPES AND IN ASSORTED QUANTITIES FOR THE MIDLAND POLICE DEPARTMENT FROM THE RESPECTIVE LOW BIDDERS, GT DISTRIBUTORS, INC., KIESLER POLICE SUPPLY, AND ALTERED WHEEL, LLC, D/B/A STONE FLOWER ARMORY, AT A TOTAL COST OF \$108,164.42

7. Approved a resolution awarding a contract to the sole bidder, JFA Construction, L.L.C., for the replacement of existing railings with aluminum railings along the walkways and stairs above various treatment units within the Water Pollution Control Plant for the Utilities Department. (PURCHASING)

### RESOLUTION NO. 2017 - 056

RESOLUTION AWARDING A CONTRACT FOR THE REPLACEMENT OF CERTAIN EXISTING WALKWAY AND STAIR RAILINGS WITHIN THE WATER POLLUTION CONTROL PLANT TO THE SOLE BIDDER, JFA CONSTRUCTION, LLC, OF MIDLAND, TEXAS, IN THE AMOUNT OF \$126,258.08

8. Approved a motion approving the ratification of a contract for the removal and replacement of expansion joints between bleacher sections on the home and visitor

sides of the football stadium at the Scharbauer Sports Complex for the Community Services Department. (PURCHASING)

9. Approved a resolution amending the agreement for Clinic Services with Midland Memorial Hospital. (ADMINISTRATIVE SERVICES)

RESOLUTION NO. 2017 - 057

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE INTERLOCAL MANAGEMENT SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND MIDLAND COUNTY HOSPITAL DISTRICT, DOING BUSINESS AS MIDLAND MEMORIAL HOSPITAL, FOR CERTAIN MEDICAL AND WELL-BEING SERVICES; SAID AMENDMENT TO PROVIDE FOR A REDUCTION OF FEES, THE ADDITION OF SERVICES, AND PRICING FOR ADDITIONAL TESTING; AND AUTHORIZING PAYMENT THEREFOR

10. Approved a motion on request by Maverick Engineering, LLC to defer public water and wastewater improvements for Blackbird Estates, and to waive the corresponding financial security guarantee valued at \$238,339.00, an amount equal to the estimated cost of construction. The subject property is generally located at 4000 & 4002 Bluebird Lane in the City of Midland. (ENGINEERING SERVICES)
12. Approved a resolution authorizing the City of Midland to submit a grant application for the FY2018 Edward Byrne Memorial Justice Assistance Grant Program through the Office of the Governor of Texas Criminal Justice Division. (POLICE)

RESOLUTION NO. 2017 - 059

RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE OFFICE OF THE GOVERNOR, TEXAS CRIMINAL JUSTICE DIVISION, FOR FISCAL YEAR 2018 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM; SAID GRANT WILL BE USED TO PURCHASE TWO (2) DRIVING SIMULATORS FOR THE POLICE DEPARTMENT

13. Approved a resolution to accept a FY2017 grant award in the amount of \$88,700.00 from the Southwest Border High Intensity Drug Trafficking Areas (HIDTA) Program and appropriate funds. (POLICE)

RESOLUTION NO. 2017 - 060

RESOLUTION ACCEPTING A FISCAL YEAR 2017 GRANT AWARD FROM THE SOUTHWEST BORDER HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM IN THE AMOUNT OF \$88,700.00; SAID GRANT WILL BE USED TO ENHANCE AND COORDINATE DRUG CONTROL EFFORTS AMONG FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES; AND APPROPRIATING FUNDS

The following item was pulled from Consent Agenda and considered individually.

11. Consider a resolution to authorize execution of a Public Improvement Development Agreement with Graham Oil and Gas LP for future design and construction of public paving improvements on Bluebird Lane to serve Blackbird Estates. (ENGINEERING SERVICES)

RESOLUTION NO. 2017 - 058

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH GRAHAM OIL AND GAS LP FOR PAVING

IMPROVEMENTS TO BLUEBIRD LANE ADJACENT TO BLACKBIRD ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF BLUEBIRD LANE, APPROXIMATELY 520 FEET EAST OF NORTH MIDLAND DRIVE); AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

Council Member Lacy moved to adopt Resolution No. 2017 - 058; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

## SECOND READINGS

14. Consider an ordinance on second reading on a request by Francisco Gomez for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, generally located on the southeast corner of South Baird Street and East Florida Avenue. (DEVELOPMENT SERVICES) (First reading held on February 14, 2017.)

### ORDINANCE NO. 9637

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 1,140-SQUARE FOOT PORTION OF THE NORTH HALF OF LOT 11 AND LOT 12, BLOCK 187, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH BAIRD STREET AND EAST FLORIDA AVENUE), WHICH IS PRESENTLY ZONED LR-3, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9637.

Council Member Love moved to approve the second and final reading of Ordinance No. 9637 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Hotchkiss, Love, Dufford. NAY: Lacy, Sparks. ABSTAIN: None. ABSENT: Morales, Robnett.

15. Consider an ordinance on second reading on a request by Mac's BBQ & Catering for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in restaurant generally located on the north side of West Indiana Avenue, approximately 160 feet east of Carlton Street. (DEVELOPMENT SERVICES) (First reading held on February 14, 2017.)

### ORDINANCE NO. 9638

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS AN 8,319-SQUARE FOOT PORTION OF LOTS 16-18, BLOCK A, GARRETT PLACE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST INDIANA AVENUE, APPROXIMATELY 160 FEET EAST OF CARLTON STREET), WHICH IS PRESENTLY

ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9638.

Council Member Lacy moved to approve the second and final reading of Ordinance No. 9638 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

16. Consider an ordinance on second reading on a request by Goudeau Realty Holdings for a Special Exception to the Zoning Ordinance concerning parking regulations generally located southeast of the intersection of North Pecos Street and West Wadley Avenue. (DEVELOPMENT SERVICES) (First reading held on February 14, 2017.)

ORDINANCE NO. 9639

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 12A, BLOCK 2, KELVIEW HEIGHTS, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF NORTH PECOS STREET AND WEST WADLEY AVENUE), BY PERMITTING A REDUCED NUMBER OF PARKING SPACES; 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

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9639.

Council Member Love moved to approve the second and final reading of Ordinance No. 9639 in accordance with the Charter of the City of Midland; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

17. Consider an ordinance on second reading on a request by BRR Architecture for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District generally located northeast of the intersection of Northgate Avenue and Northcrest Drive. (DEVELOPMENT SERVICES) (First reading held on February 14, 2017.)

ORDINANCE NO. 9640

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1C, BLOCK 33, NORTHGATE ADDITION, SECTION 26, 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 NORTHEAST OF THE INTERSECTION OF

NORTHGATE AVENUE AND NORTHCREST DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9640.

Council Member Love moved to approve the second and final reading of Ordinance No. 9640 in accordance with the Charter of the City of Midland; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

18. Consider an ordinance on second reading on a request by Hutton Team, LLC for a vacation of the 0.046-acre portion of the alley right-of-way, generally located on the north side of Marlin Avenue, approximately 190 feet west of Rankin Highway. (DEVELOPMENT SERVICES) (First reading held on February 14, 2017.)

ORDINANCE NO. 9641

AN ORDINANCE VACATING AND ABANDONING A 0.046-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1, 2 AND 18, TRACT 6, REPLAT OF TRACTS 5 & 6, LINDSAY ACRES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF MARLIN AVENUE, APPROXIMATELY 190 FEET WEST OF RANKIN HIGHWAY); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$4,007.52; AND ORDERING RECORDATION BY THE CITY SECRETARY

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9641.

Council Member Love moved to approve the second and final reading of Ordinance No. 9641 in accordance with the Charter of the City of Midland; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

19. Consider an ordinance on second reading on a request by Hutton Team, LLC for a Special Exception from the Zoning Code concerning the side yard setback and parking regulations generally located northwest of the intersection of Rankin Highway and Marlin Avenue. (DEVELOPMENT SERVICES) (First reading held on February 14, 2017.)

ORDINANCE NO. 9642

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOTS 1, 2 AND 18, AND A 0.046-ACRE PORTION OF ALLEY RIGHT-OF-WAY LOCATED ADJACENT TO SAID LOTS, TRACT 6, REPLAT OF TRACTS 5 AND 6, LINDSAY ACRES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTHWEST OF THE INTERSECTION OF RANKIN HIGHWAY AND MARLIN AVENUE), BY PERMITTING A REDUCED SIDE YARD SETBACK AND A REDUCED NUMBER OF PARKING SPACES; 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

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9642.

Council Member Love moved to approve the second and final reading of Ordinance No. 9642 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

20. Consider an ordinance on second reading amending Title III "Departments", Chapter 1, Water Department. (UTILITIES) (First reading held on February 14, 2017.)

ORDINANCE NO. 9643

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES," OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO AMEND THE REQUIREMENT THAT NON-RESIDENTIAL CUSTOMERS THAT USE WATER FOR OUTSIDE LANDSCAPE IRRIGATION PURPOSES HAVE A SEPARATE WATER METER FOR SUCH PURPOSES AND SO AS TO LIST CURRENT WATER AND SEWER RATES; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ORDERING PUBLICATION; AND DIRECTING NOTIFICATION TO CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9643.

Council Member Love moved to approve the second and final reading of Ordinance No. 9643 in accordance with the Charter of the City of Midland; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

**PUBLIC HEARINGS**

21. Hold a public hearing and consider an annexation of a 120.625-acre tract of land out of Section 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas (Generally located on the west side of Arlington Road, approximately 1,800 feet south of State Highway 191.) This annexation item is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)

Development Services Director Chuck Harrington gave a brief overview of the item noting it was for the annexation of 120 acres to the west of Legacy which will allow for more home sites in the area. The item has been circulated to all departments for review and staff recommends approval. No letters of objection have been received.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:12 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

22. Hold a public hearing and consider an annexation of a 36.36-acre tract of land out of Section 35, Block 40, T-1-S, T&P, RR Co. Survey, Midland County, Texas (Generally located on the north side of Brandy Hill Road, approximately 330 feet east of State Highway 158. This annexation item is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)

Development Services Director Chuck Harrington gave a brief overview of the item noting this item is also for an annexation that would allow extending Grassland Estates



to the west. The item has been reviewed by all departments and staff recommends approval. No letters of objection have been received.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:13 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

23. Hold a public hearing and consider an ordinance on a request by University Food Services Inc. for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a theater, generally located on the south side of State Highway 191, approximately 1,300 feet east of North FM 1788. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9644

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 109,130-SQUARE FOOT PORTION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 42, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 1,300 FEET EAST OF NORTH FM 1788), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A THEATER 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

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9644.

Development Services Director Chuck Harrington gave a brief overview of the item noting this is for Wagner Noel. This item has been heard by Planning & Zoning and it was approved with conditions A through F. However, condition F should be removed because this is not for a restaurant. There was also some discussion about hours of operation. Staff has no objection if Council would like to change the hours noting he heard they wanted to make it go until 11:00 p.m. and that there may be a need for special Saturday performances and earlier matinees.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:16 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Lacy moved approval of the first of two readings of Ordinance No. 9644 in accordance with the Charter of the City of Midland with the amendment to remove condition F and change the hours from 12:00 p.m. to 12:00 a.m.; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

24. Hold a public hearing and consider a resolution on a request by Westlake Hardware for a Temporary Land Use Permit for Outdoor Retail Sales generally located on the north side of Andrews Highway, approximately 390 feet east of Whitney Drive. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2017 - 061

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR OUTDOOR RETAIL SALES ON LOT 1, BLOCK 5, PARK PLACE ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF ANDREWS HIGHWAY, APPROXIMATELY 390 FEET EAST OF WHITNEY DRIVE); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Development Services Director Chuck Harrington gave a brief overview of the item noting this item is for the annual outdoor retail sales of plant material through June 30th. They have more than adequate parking to accommodate for the loss of parking spaces and staff recommends approval.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:18 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Lacy moved to adopt Resolution No. 2017 - 061; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

25. Hold a public hearing regarding a proposed oil and gas permit to Fasken Oil and Ranch, Ltd (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Fee "CK" No. 1H) located 463 feet from the north line and 285 feet from the west line located in Section 30, Block 39, T-1-S, T&P RR CO. Survey, City of Midland and County of Midland, Texas (Generally located 453 feet south of Andrews Highway and 248 feet east of North Loop 250 West.) This is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave a brief overview of the item noting this is the first of two wells in this area. It has been reviewed by the Oil & Gas Advisory Committee and the applicant met all of the recommendations of the committee. The tank battery will not be located within the city limits but will be 3.6 miles to the west. Additional safety measures have been taken for their frac pond. They will be using closed loop drilling and will have a 32-foot acoustical barrier wall on the south and east sides. The surface is owned by a sister company of Fasken. There are some commercial buildings located within the 500-foot radius with the closest being 316 feet away. A letter of objection was received from the third building which is 461 feet from the well site.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:22 a.m.

Steve Hershberger, 600 N. Marienfeld, along with Mr. Patterson opposes the well site. Their first objection is for ground water. They have concern that drilling would affect the use of their water wells for both volume and quality of water. Their second objection is that significant portions of their land could be taken away from normal use and enjoyment of their property. They don't have sufficient information as to what will be at the drill site including pump jacks and accessory structures or where the tank battery will be located. Their final objection is regarding the frac pit and whether it would pose a pollution source to the ground water.

Doug Patterson, 4509 Cardinal Lane, reported he previously did not oppose oil wells because he didn't know anything about oil drilling. Last year he had a \$12,000 bill to

have his swimming pool chipped out and redone and was forced into connecting to City water. His water well dried up and the inside of his swimming pool looked like it was full of diamonds. His daughter lives at 5000 ½ Andrews Highway and he had to pay \$20,000 to have a RO system installed and he is now concerned about losing two more wells. When asked, he reported his business is parking lot maintenance with four employees.

Council Member Love asked Mr. Hershberger to explain significant use of his property being lost. Mr. Hershberger responded that under Texas law mineral estate has preference to surface owner. If there isn't adequate water for his business or residence they will be unusable. A pump jack takes up to two acres of land. Associated vessel storage, collection units, roads, electric lines and infrastructure all require more land that may encroach on their property and cause additional noise pollution. Additionally, they will need to access their land and their property and may require going through his land.

Tommy Taylor, Fasken Oil and Gas, reported these two wells set the stage for them to develop minerals for a section to the north owned by Manor Park. They are drilling on behalf of Manor Park. He met with Mr. Patterson and Mr. Hershberger in December. Their complaint was about water and Mr. Patterson feels that the scale in his swimming pool was a direct result of drilling wells to the west of his property. Mr. Taylor thought it looked like the scaling was because the water table was depleted in that area. Fasken also owns a water well in that area that is dry. A lot of people drilled wells during the drought to cut down their water bills and the water in the area is very poor. For this location they will put in a pond in a caliche pit with double lining and they will have the ability to tell if the pond is leaking. The tank battery will be located 3.5 miles to the west and .5 miles to the north of Highway 191. The only thing on the site will be the wells and a separate device for the pumping unit. The wells will be accessed from the south side off the service road and will not interfere with turning in front of his business. They are committed to not use any fresh water from the area because they know Mr. Patterson depends on that water. If Mr. Patterson has trouble with water they will supply him with water. If Mr. Patterson asks, according to the ordinance they will test his water well every year.

Roy Salazar, 403 W. Jax, stated his opposition to this well noting they can drill from three miles out and didn't see any reason to drill inside the City limits. He felt the City should be used for residences only.

There being no one else wishing to speak, the public hearing was closed at 10:37 a.m.

26. Hold a public hearing regarding a proposed oil and gas permit to Fasken Oil and Ranch, Ltd (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Fee "CK" No. 2H) located 556 feet from the north line and 734 feet from the west line located in Section 30, Block 39, T-1-S, T&P RR CO. Survey, City of Midland and County of Midland, Texas (Generally located 403 feet south of Andrews Highway and 823 feet east of North Loop 250 West.) This is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave a brief overview of the item noting this was the second well located to the east. This requires a variance for having a structure within 500 feet noting the structure is located 436 feet away. They are also requesting 24-hour fracing. They have one letter of support and the same letter of objection from Mr. Patterson.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:39 a.m.

Mr. Hershberger voiced his same objections as to the previous item.

John Boswell, 4610 N. Garfield, reported he heard Cameron Walker talk about roadways that would help ease traffic and remembered him noting there would be a cloverleaf in this area. He asked Council to consider that.

Council Member Love noted that a cloverleaf costs \$40-\$50 million and they are now looking at other ways to alleviate traffic in the area.

There being no one else wishing to speak, the public hearing was closed.

27. Hold a public hearing regarding a proposed oil and gas permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Mask HZ Unit No 1009H) located 230 feet from the north line and 1,730 feet from the west line located in Section 10, Block X, Hilliard Survey, City of Midland and County of Midland, Texas (Generally located 1,664 feet east of North Garfield Street Extension and 1,095 feet north of Passage Way Extension.) This is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave a brief overview of the item noting this property is located on the north side of the City limits and there are no houses or commercial structures within the 500 or 860-foot circles. The applicant is requesting no Road Repair Agreement since they will be accessing the property through Oxy's property. They are requesting a variance for 24-hour fracing. The Oil & Gas Advisory Committee has reviewed the item. No letters of objection have been received.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:43 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

28. Hold a public hearing regarding a proposed oil and gas permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (MCC HZ Unit No 1108H) located 285 feet from the north line and 1,978 feet from the east line located in Section 11, Block X, Hilliard Survey, City of Midland and County of Midland, Texas (Generally located 1,978 feet west of North State Highway 349 and 5,030 feet north of Mockingbird Lane.) This is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave a brief overview of the item noting this well is located to the east of the previous well on Midland Country Club property. There are no occupied houses or commercial structures. The applicant has a Surface Use Agreement with Midland Country Club. They are requesting the same variances and no City streets will be used to access the property. No letters of objection have been received.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:45 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

29. Hold a public hearing regarding a proposed oil and gas permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (MCC HZ Unit No 1109H) located 285 feet from the north line and 2,018 feet from the east line located

in Section 11, Block X, Hilliard Survey, City of Midland and County of Midland, Texas (Generally located 2,018 feet west of North State Highway 349 and 5,030 feet north of Mockingbird Lane.) This is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins gave a brief overview of the item noting it was the same as the last item and will share the same pad.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:46 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

30. Hold a public hearing and consider a resolution on a request by Robert Cory for a Temporary Land Use Permit for a Carnival generally located south of West Loop 250 North, approximately 200 feet west of North Midkiff Road. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2017 - 062

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A CARNIVAL ON LOT 1A, BLOCK 17, SKYLINE TERRACE, UNIT 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST LOOP 250 NORTH, APPROXIMATELY 200 FEET WEST OF NORTH MIDKIFF ROAD); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; AND PROVIDING THAT THE CHIEF OF POLICE SHALL ENSURE THAT ALL PARTICIPANTS ARE LICENSED PURSUANT TO TITLE V, CHAPTER 9 OF THE MIDLAND CITY CODE

Development Services Director Chuck Harrington gave a brief overview of the item noting it is for an annual carnival in the north parking lot of Midland Park Mall. The proposed location will not interfere with traffic and should not cause a nuisance to the neighbors. It will run May 11 to May 21 with the hours of 5:00 p.m. to 11:00 p.m. Monday through Friday and 1:00 p.m. to 11:00 p.m. Saturdays and Sundays. The item has been reviewed by all departments with no concerns expressed. No letters of objection have been received and staff recommends approval.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:48 a.m.

Rick Van Every with Simon Properties spoke in support of the item.

There being no one else wishing to speak, the public hearing was closed at 10:48 a.m.

Council Member Love moved to adopt Resolution No. 2017 - 062; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford. NAY: Lacy. ABSTAIN: None. ABSENT: Morales, Robnett.

31. Hold a public hearing and consider a resolution on a request by Robert Ahola-Magic Enterprises Inc. for a tent sale generally located on the south side of West Loop 250 North, approximately 220 feet west of North Midkiff Road. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2017 - 063

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A TENT SALE ON LOT 1A, BLOCK 17, SKYLINE TERRACE, UNIT 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST LOOP

250 NORTH, APPROXIMATELY 220 FEET WEST OF NORTH MIDKIFF ROAD); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Development Services Director Chuck Harrington gave a brief overview of the item noting this is for the semi-annual tent sale of rugs and artwork. The item was reviewed by other departments. Staff recommends approval. No letters of objection have been received.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:50 a.m.

Rick Van Every with Simon Properties spoke in support of the item.

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

Council Member Love moved to adopt Resolution No. 2017 - 063; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford. NAY: Lacy. ABSTAIN: None. ABSENT: Morales, Robnett.

32. Hold a public hearing and consider a resolution on a request by VIVID for approval of a Temporary Land Use Permit for a performance generally located north of the intersection of North Marienfeld Street and West Illinois Avenue. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2017 - 064

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A PERFORMANCE ON LOTS 2, 3, AND 4, AND A 0.30-ACRE PORTION OF NORTH MARIENFELD STREET RIGHT-OF-WAY LOCATED ADJACENT TO SAID LOTS, ALL OUT OF BLOCK 29, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTH OF THE INTERSECTION OF NORTH MARIENFELD STREET AND WEST ILLINOIS AVENUE); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Development Services Director Chuck Harrington gave a brief overview of the item noting this is for an choreographed inverted dance performance on the side of a building with a live band from MOSC on April 28<sup>th</sup>. They will have the consumption of alcoholic beverages and a minimum of four restrooms and two security guards. Staff recommends approval.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:53 a.m.

Elizabeth McLellan, 1402 Castleford, shared a video of Bandaloop that performs vertical dances on the side of buildings.

There being no one else wishing to speak, the public hearing was closed at 10:56 a.m.

Council Member Lacy moved to adopt Resolution No. 2017 - 064; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

33. Hold a public hearing regarding the cost and impact of (1) land, buildings, facilities, and improvements for use for sports and athletic purposes, including stadiums, ball parks, parks, and related infrastructure, and (2) the Scharbauer Sports Complex football/soccer stadium and baseball stadium, and related infrastructure. This public hearing is being held in accordance with the applicable provisions of Texas Local Government Code Chapter 505 as required for the May 6, 2017 special election regarding the City of Midland's Type B sales and use tax, which was ordered by City of Midland Ordinance No. 9636. This is a public hearing only. No further action will be taken. (COMMUNITY SERVICES)

Community Services Director Tina Jauz gave a brief overview of the item noting this was the next step to use 4b sales tax noting the City is required to hold a public hearing to speak about any funding of sports events that will be used. She reported they are discussing upgrades at Hogan Park, Beal Park and Reyes Mashburn Park as well as ongoing maintenance of the sports complex.

Mayor Pro Tem Hotchkiss opened the public hearing at 10:59 a.m.

Thomas Flournoy, 3302 N. Kansas Avenue, referring to an email sent to Council reported there is no substitute for honesty. He felt the 4b tax was illegal because it is forcing him to pay a tax for something he will never use.

Buddy Sipes, 902 Citation, reported he is not in favor of the 4b because the more facilities that are needed the 4b tax will have to stay to pay for maintenance of the new facilities.

Derick Parsley, 3417 N. Midland, didn't see the 4b tax going away any time soon and suggested using it for something more practical like fixing roads. Council Member Lacy noted that the 4b cannot be used for existing infrastructure but it could be used for building new roads.

Kinsey Holder, 4702 Graceland Drive, reported she doesn't think this tax is necessary noting it makes it hard to stay in the middle class like her family. She is a young adult trying to establish her own roots and more taxes make it hard. Midland already has a high cost of living.

William Israel, 6007 SCR 1185, reported he heard the Mayor speak about being fiscally responsible but wondered how much debt there would be. He suggested making the current tax go away and then bring back a new tax for the people to vote on.

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

Council Member Sparks clarified that the projects are potential projects and will go through the 4b committee first.

Council Member Lacy noted that the Council will vote on paying off the current 4b tax bond in April so the voters will have certainty that the debt will be gone.

## **MISCELLANEOUS**

34. Consider an ordinance establishing intersection stops at various locations within the City of Midland, Texas and authorizing and directing the Traffic Engineer to install

appropriate signs and markings at the designated locations. (ENGINEERING SERVICES)

ORDINANCE NO. 9645

AN ORDINANCE ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS AT THE DESIGNATED LOCATIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9645.

Traffic Engineer Mike Pacelli gave a brief overview of the item noting this is the first of two traffic items on today's agenda. The first is an update to the standard stop sign ordinance. There are 40 new stop signs and several yields that are being converted to stop signs for the sake of consistency in neighborhoods.

Council Member Lacy moved approval of the first of two readings of Ordinance No. 9645 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

35. Consider an ordinance establishing yield right-of-way signs at various locations within the City of Midland, Texas and authorizing and directing the Traffic Engineer to install appropriate signs and markings at the designated locations. (ENGINEERING SERVICES)

ORDINANCE NO. 9646

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

Deputy City Secretary Karla Mata read the caption of Ordinance No. 9646.

Traffic Engineer Mike Pacelli reported this is a companion item to the last item removing yields that are being added to stops.

Council Member Lacy moved approval of the first of two readings of Ordinance No. 9646 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Dufford, Lacy. NAY: None. ABSTAIN: None. ABSENT: Morales, Robnett.

**PUBLIC COMMENT**

36. Receive public comments where individuals may address the City Council on City related issues and projects not on the present agenda. 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. (Please limit comments to three minutes or less.)



Bridget Hyde, 2201 Humble, reported she is a 4th generation Texan with a background in geology and has worked as a petroleum geologist. She expressed deep concern about the leg proposed to run through Midland carrying 40 tons of high level radioactive waste to be stored in Andrews.

David Rosen, 5002 Thames Court, also spoke in opposition to the nuclear waste that is proposed to travel through Midland on its way to Andrews.

## **EXECUTIVE SESSION**

37. 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 Deliberate Economic Development Negotiations
    - a.1. Discuss business prospects that the City seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.
  - b. Section §551.071, Consultation with Attorney
    - b.1. Discuss with the city attorney pending or contemplated litigation involving the City of Midland.

Mayor Pro Tem Hotchkiss recessed the meeting to Executive Session at 11:26 a.m.

All of the business at hand having been completed, the meeting adjourned at 12:25 p.m.

PASSED AND APPROVED the 28th day of March, 2017.

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Jerry F. Morales, Mayor

ATTEST:

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Amy M. Turner, City Secretary