

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

**BRIEFING SESSION**

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:30 a.m. on March 28, 2017.

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

Staff members present: 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, Director of Airports Justine Ruff, Chief Information Officer Willie Resto, Municipal Court Administrator Jake Medrano, IS Manager Jennifer Frescaz, Traffic Engineer Mike Pacelli, Assistant Utilities Director Carl Craigo, and Internal Auditor Debbie Gotovac.

Mayor Morales called the meeting to order at 9:31 a.m.

1. Receive a presentation from staff regarding the Information Technology Roadmap.

Chief Information Officer Willie Resto reported the City of Midland is proactively moving towards becoming an eGovernment noting that each hour there is a technology failure it can cost up to \$100,000 in damage. He reviewed past initiatives including radio system upgrade, computers and accessories upgrade, central hardware upgrade, desktop software upgrade and wireless system. Items that have been approved but not yet implemented include the new telephone system, disaster recovery and fiber optics. He reviewed a list of items that they will be working on in the future noting that many of the items can be implemented sooner with the cost savings from the telephone system.

Mr. Resto emphasized that his predecessor did an excellent job of upgrading many systems and now he can move us into the future. The list he reviewed will be priorities for 2017 through 2022.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:56 a.m.

**REGULAR SESSION**

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

Council Members present: Mayor Jerry F. Morales, Mayor Pro Tem Sharla Hotchkiss (District 3), Council Member Scott Dufford (At-Large), Council Member

Spencer Robnett (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: None.

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, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 5, 6, 10, 11, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34.

Mayor Morales called the meeting to order at 10:04 a.m.

### **OPENING ITEMS**

1. Invocation - Reverend Pat Bryant, Travis Baptist Church
2. Pledge of Allegiance

### **PRESENTATIONS**

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
  - a. Mayor Morales presented a proclamation to Senior Link for National Service Recognition Day.
  - b. Mayor Morales, Council Member Hotchkiss and Council Member Love presented a proclamation to Negro Business and Professional Women's Club of Midland for Women History Day.

### **CONSENT AGENDA**

Council Member Love moved to approve Consent Agenda items 4 - 19 excluding 5, 6, 10, 11, 19; seconded by Council Member Robnett. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

4. Approved a motion approving the following minutes:
  - a. Regular meeting of February 28, 2017.
7. Approved a resolution awarding a professional services agreement for the Pavement Condition Index Survey for the Transportation Division. (PURCHASING)

RESOLUTION NO. 2017 - 067  
RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES  
AGREEMENT WITH TRANSMAP CORPORATION FOR PROFESSIONAL SERVICES

IN CONNECTION WITH THE PAVEMENT CONDITION INDEX SURVEY; AND AUTHORIZING PAYMENT THEREFOR IN AN AMOUNT NOT TO EXCEED \$149,497.68

8. Approved a resolution approving a contract for two (2) years for dry cleaning services for the Police Department, Municipal Court, Fire Department, Water and Wastewater Division, Garage Division and Transportation Division. (PURCHASING)

RESOLUTION NO. 2017 - 068

RESOLUTION AWARDING A TWO-YEAR SERVICE CONTRACT FOR DRY CLEANING SERVICES TO CARRASCO CORRALES DC, LLC, DBA PRISTINE CLEANERS, OF MIDLAND, TEXAS, AT A TOTAL COST OF \$190,177.10

9. Approved a resolution approving the purchase of spring seed for the Spraberry Farm. (PURCHASING)

RESOLUTION NO. 2017 - 069

RESOLUTION AUTHORIZING THE PURCHASE OF 8,750 POUNDS OF COTTON SEED AND 36,000 POUNDS OF HAY GRAZER SEED FOR SPRABERRY FARM FROM HELENA CHEMICAL COMPANY, OF STANTON, TEXAS, AT A TOTAL COST OF \$66,565.00

12. Approved a resolution correcting Resolution 2016-291 appropriating funds to the MAF Access Control System and Cable Upgrade Project. (AIRPORTS)

RESOLUTION NO. 2017 - 072

RESOLUTION AUTHORIZING THE APPROPRIATION OF \$23,845.00 FROM THE AIRPORT OPERATING FUND TO THE ACCESS CONTROL SYSTEM SOFTWARE AND CABLE UPGRADE PROJECT

13. Approved a resolution authorizing the execution of an Interlocal Agreement with the University of Texas of the Permian Basin to advertise or publicize the City of Midland for the purpose of developing new and expanded business enterprises. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2017 - 073

RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN, AS AUTHORIZED BY CHAPTER 791 OF THE TEXAS LOCAL GOVERNMENT CODE, TO ADVERTISE OR PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES

14. Approved a motion authorizing the acceptance of additional grant funds from the U.S. Committee for Refugees and Immigrants in the amount of \$54,360.00 to assist the Health and Senior Services Division with the delivery of Refugee Immunizations; and authorizing the execution of acceptance documents. (COMMUNITY SERVICES)

15. Approved a resolution authorizing the Midland Chamber of Commerce to hold the annual Star Spangled Salute at Hogan Park and where alcohol can be sold and consumed and authorizing the City Manager or his designee to notify the Texas Alcoholic Beverage Commission of the permission granted. (COMMUNITY SERVICES)

RESOLUTION NO. 2017 - 074

RESOLUTION AUTHORIZING THE MIDLAND CHAMBER OF COMMERCE TO HOLD THE ANNUAL STAR SPANGLED SALUTE AT HOGAN PARK ON JULY 4, 2017; AND AUTHORIZING THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES AT SAID EVENT

16. Approved a resolution approving the transfer of the Oil and Gas Well Permit and Road Repair Agreement issued to Trail Ridge Energy Partners II LLC (Current Operator). The following permit will be transferred to Lario Oil & Gas Company: Willow Lakes 191H generally located off Fairgrounds Road extension and East Mockingbird Lane extension. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2017 - 075

RESOLUTION APPROVING THE TRANSFER OF A CERTAIN OIL AND GAS WELL PERMIT FROM TRAIL RIDGE ENERGY PARTNERS II LLC ("OPERATOR") TO LARIO OIL & GAS COMPANY ("TRANSFeree"); AND APPROVING THE TRANSFER OF THE ROAD REPAIR AGREEMENT REGARDING SAID OIL AND GAS WELL PERMIT FROM OPERATOR TO TRANSFeree; THE OIL AND GAS WELL BEING WILLOW LAKES 191H; SAID OIL AND GAS WELL BEING LOCATED IN SECTION 19, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE NORTH FAIRGROUNDS ROAD EXTENSION, SOUTH OF THE MOCKINGBIRD LANE EXTENSION)

17. Approved a resolution authorizing and executing a Right-of-Way License between the City of Midland and Navitas Midland Basin, LLC., the pipeline is located within City of Midland property, Section 44, Block 38, T-1-S, T&P R.R. Co. Survey, Midland County, Texas. (ENGINEERING SERVICES)

RESOLUTION NO. 2017 - 076

RESOLUTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND NAVITAS MIDSTREAM MIDLAND BASIN, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 44, BLOCK 38, TOWNSHIP 1 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS

18. Approved a resolution authorizing and executing a Right-of-Way License between the City of Midland and Enterprise Crude Pipeline, LLC., the pipeline is located within City of Midland property, Sections 5 and 8, Block 38, T2S T&P R.R. Co. Survey, Midland County, Texas. (ENGINEERING SERVICES)

RESOLUTION NO. 2017 - 077

RESOLUTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND AND ENTERPRISE CRUDE PIPELINE, LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 5 AND 8, BLOCK 38, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS

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

5. Consider a resolution awarding an agreement for a retail study and analysis for the Development Services Department; and appropriating funds therefore. (PURCHASING)

RESOLUTION NO. 2017 - 065

RESOLUTION AWARDING A CONTRACT FOR A RETAIL STUDY AND ANALYSIS FOR THE DEVELOPMENT SERVICES DEPARTMENT TO BUXTON COMPANY OF FORT WORTH, TEXAS; APPROPRIATING \$50,000.00; AND AUTHORIZING PAYMENT THEREFOR

Council Member Sparks reported he didn't think this was a necessary item to spend money on. He asked if this item is being approved for three years or will it come back to City Council each year. He felt that rooftop data could be generated in house.

Development Services Director Chuck Harrington reported that staff is suggesting two years and it would come back to Council for approval. He noted that their report will include much more than rooftop information but can also provide credit card data showing where money is spent.

Lisa McCay of Buxton reported they have been in business for 25 years and they are the largest purchaser of consumer purchasing data. Their data includes household debt to income, expendable income, and how those dollars are being spent. They have 70 client cities in Texas and 800 across the nation. With their data over 35 million square foot of retail space has been landed in the last five years. Their rolling real time snap shots will allow the City to be proactive in getting big box retailers. She reported they also have labor statistics that can be used for job creation and business retention tools. Their information can help a retailer like HEB better stock their shelves depending on the consumers in their market.

Downtown Development Coordinator Cristina Odenborg reported she felt that Buxton could provide a lot of valuable data for the City that would help hone in on retail opportunities and find any gaps in retail that might exist. She recommended it.

Council Member Love moved to adopt Resolution No. 2017 - 065; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Morales, Dufford, Lacy, Robnett. NAY: Sparks. ABSTAIN: None. ABSENT: None.

6. Consider a resolution awarding a contract to the sole bidder, Andale Construction, Inc., for the High Density Mineral Bond Surface Treatment Project for \$863,468.67 plus \$1,727.88 in contingencies for a total of \$865,196.55 for the Transportation Division. (PURCHASING)

RESOLUTION NO. 2017 - 066

RESOLUTION AWARDING A CONTRACT FOR THE FY 2017 HIGH DENSITY MINERAL BOND SURFACE TREATMENT PROJECT TO THE SOLE BIDDER, ANDALE CONSTRUCTION, INC. OF WICHITA, KANSAS, AT A TOTAL COST NOT TO EXCEED \$863,468.67; AND AUTHORIZING PAYMENT THEREFOR

Council Member Lacy asked about the cost difference between the amount shown on the bid tab and the amount in the agenda memo.

Assistant Transportation Manager Gabe McClelland reported the bids came in 15% over their projected expense so they reduced the scope of the project to meet what they had budgeted. When asked about treating streets that recently had mill and overlay he reported that this product when placed on brand new streets protects the pavement and preserves the existing asphalt.

Council Member Love moved to adopt Resolution No. 2017 - 066; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

10. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Spraberry Farm and Plant Farm Improvements Project for the Utilities Department. (PURCHASING)

RESOLUTION NO. 2017 - 070

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE SPRABERRY FARM AND PLANT FARM IMPROVEMENTS PROJECT FOR THE UTILITIES DEPARTMENT

Council Member Love moved to adopt Resolution No. 2017 - 070; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

11. Consider a resolution approving a change order to the Utility Extension Program not to exceed \$340,000 for the Engineering Services Department. (PURCHASING)

RESOLUTION NO. 2017 - 071

RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER ONE WITH TEC EXCAVATION, INC. REGARDING THE UTILITY EXTENSION PROGRAM 02; SAID CHANGE ORDER TO PROVIDE FOR ADDITIONAL WORK BASED ON THE UNIT PRICES IN THE CONTRACT; AND AUTHORIZING PAYMENT THEREFOR IN AN AMOUNT NOT TO EXCEED \$340,000.00

Council Member Lacy asked why the project is being awarded to TEC. Civil Engineer Josh Ferguson reported TEC was the only bidder and staff felt comfortable with the company.

Council Member Love moved to adopt Resolution No. 2017 - 071; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

19. Consider a resolution authorizing the City Manager to acquire, on behalf of the City of Midland, beginning at the intersection of Big Spring (BS-349-C) and Mockingbird Lane, continuing approximately one half miles east to the intersection of Mockingbird Lane and Baca Street, continuing from said point approximately 1.8 miles north to the intersection of Martin County Line, continuing west along the County Line approximately 1.1 miles; then south approximately 2.1 miles to a point on Mockingbird Ln and finally, one half mile east from said intersection to arrive at the intersection of BS 349-C and Mockingbird Ln, appropriating funds in the amount of \$1,565,937 for right-of-way, roadway, and drainage construction. (ENGINEERING SERVICES)

RESOLUTION NO. 2017 - 078

RESOLUTION AUTHORIZING THE CITY MANAGER TO ACQUIRE, ON BEHALF OF THE CITY OF MIDLAND, ANY REAL PROPERTY INTERESTS NECESSARY OR APPROPRIATE, BY ANY INSTRUMENTS OF CONVEYANCE NECESSARY OR

APPROPRIATE, FOR THE USE AND BENEFIT OF THE PUBLIC FOR STREET, ROAD, PEDESTRIAN ACCESS, DRAINAGE AND PUBLIC UTILITY PURPOSES, AND FOR ANY OTHER ANCILLARY PUBLIC USE AS IS USUAL AND CUSTOMARY IN CONNECTION THEREWITH IN ANY PORTION OF MIDLAND COUNTY THAT IS LOCATED WITHIN APPROXIMATELY ONE-HALF MILE EAST TO APPROXIMATELY ONE-HALF MILE WEST OF THAT PORTION OF BUSINESS STATE HIGHWAY 349-C THAT BEGINS AT MOCKINGBIRD LANE AND ENDS AT THE NORTHERN BOUNDARY OF MIDLAND COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER TO OBTAIN APPRAISALS, NEGOTIATE, EXECUTE AND FILE ALL DOCUMENTS NECESSARY TO ACQUIRE SAID REAL PROPERTY INTERESTS, PURCHASE TITLE INSURANCE POLICIES AND HOLD THE CLOSINGS FOR SAID ACQUISITIONS; APPROPRIATING AND REALLOCATING FUNDS; AUTHORIZING PAYMENT FOR SAID APPRAISALS, REAL PROPERTY INTERESTS, TITLE INSURANCE POLICIES AND CLOSING COSTS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY HAS RECORDED, ALL INSTRUMENTS OF CONVEYANCE

Council Member Lacy asked where the funds were coming from. Engineering Services Director Jose Ortiz clarified that they are coming from the street improvement fund which contains fees that are assessed from developments. He noted it is hard to budget these funds since staff never knows for sure how much funds will be coming in.

Council Member Love moved to adopt Resolution No. 2017 - 078; seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

## **SECOND READINGS**

20. Consider an ordinance on second reading 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, on a 109,130-square foot portion of land 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 SueAnn Lopez read the caption of Ordinance No. 9644.

Council Member Hotchkiss moved to approve the second and final reading of Ordinance No. 9644 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, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

21. Consider an ordinance on second reading 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. (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 SueAnn Lopez read the caption of Ordinance No. 9645.

Council Member Lacy moved to approve the second and final reading of Ordinance No. 9645 in accordance with the Charter of the City of Midland; seconded by Council Member Hotchkiss. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

22. Consider an ordinance on second reading establishing yield right-of-way signs 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. (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 SueAnn Lopez read the caption of Ordinance No. 9646.

Council Member Love moved to approve the second and final reading of Ordinance No. 9646 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, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

## **PUBLIC HEARINGS**

23. 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 1800 feet south of State Highway 191.) This annexation item is a public hearing only. (DEVELOPMENT SERVICES)



Development Services Director Chuck Harrington gave a brief overview of the item noting this is for an extension of Legacy. This is the second public hearing and will be brought back next month for consideration.

Mayor Morales opened the public hearing at 10:39 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

24. 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. (DEVELOPMENT SERVICES)

Development Services Director Chuck Harrington gave a brief overview of the item noting this annexation is for the expansion of Grasslands to the west. This is the second public hearing and an item will be brought forward next month to finalize this process.

Mayor Morales opened the public hearing at 10:40 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

25. Hold a public hearing and consider an ordinance on a request by Memorial Christian Church for a zone change from 1F-1, One-Family Dwelling District, to LR-2, Local Retail District on land generally located west of the intersection of Andrews Highway and West Cuthbert Avenue. (DEVELOPMENT SERVICES)

#### ORDINANCE NO. 9647

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 2.59-ACRE TRACT OF LAND OUT OF BLOCK 6, JOHN AND MORAN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED WEST OF THE INTERSECTION OF ANDREWS HIGHWAY AND WEST CUTHBERT AVENUE); 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 SueAnn Lopez read the caption of Ordinance No. 9647.

Development Services Director Chuck Harrington gave a brief overview of the item noting the original applicant was interested in developing the location as a convenience store. Since then the original applicant backed out of their deal with the church and now the church would like to proceed to make it easier to sell their property. The zoning is consistent with the surrounding area and is in compliance with the comprehensive plan. The item has been reviewed by staff members and staff recommends approval of the zone change as requested.

Mayor Morales opened the public hearing at 10:42 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. 9647 in accordance with the Charter of the City of Midland; seconded by Council Member Robnett. The motion carried by the following vote: AYE: Hotchkiss, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: Love.

26. Hold a public hearing and consider an ordinance on a request by Davis Laabs for a Specific Use Permit, without term, for an accessory building used for living or sleeping quarters, generally located northeast of the intersection of Lincoln Street and Magnolia Avenue. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9648

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 25, BLOCK 5, RANCLAND HILLS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF LINCOLN STREET AND MAGNOLIA AVENUE), WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING 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

Deputy City Secretary SueAnn Lopez read the caption of Ordinance No. 9648.

Development Services Director Chuck Harrington gave a brief overview of the item noting there is a section in the code that allows for a second accessory building in residential in order to meet medical needs. In this case, the person requesting the Specific Use Permit has an existing building that they would like to convert into living quarters for their daughter who is a nurse and will be providing care for her parents. This item was circulated to other departments and the biggest issue will be working through the building permit process. They will not be allowed to rent it or use for any other use. Staff recommends approval.

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

Davis Laabs, 1601 Magnolia Avenue, reported he has lived there for 50 years and does not expect to move out any time soon. When they pass, their daughter will inherit the property.

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

Council Member Love moved approval of the first of two readings of Ordinance No. 9648 in accordance with the Charter of the City of Midland; seconded by Council Member Hotchkiss. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

27. Hold a public hearing and consider an ordinance on a request by Café Nitro LLC for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises

consumption, in a restaurant, generally located southwest of the intersection of Starboard Drive and Liberty Drive. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9649

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 2,241-SQUARE FOOT PORTION OF LOT 3A, BLOCK 1, GATEWAY PLAZA, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTHWEST OF THE INTERSECTION OF STARBOARD DRIVE AND LIBERTY DRIVE), 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 SueAnn Lopez read the caption of Ordinance No. 9649.

Development Services Director Chuck Harrington gave a brief overview of the item noting last November Cafe Nitro request a specific use permit for alcoholic beverage service in a restaurant. Now they wish to expand to their patio area and add an additional 20 patio seats and amend their hours of service from 11:00 a.m. - 10:00 p.m. to 10:00 a.m. – 10:00 p.m. This item has been reviewed by everyone with no objections. It is in compliance with the comprehensive plan and staff recommends approval.

Mayor Morales opened the public hearing at 10:52 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Love moved approval of the first of two readings of Ordinance No. 9649 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford.

Council Member Sparks moved to amend the motion by changing the start time on Sunday's to 11:00 a.m. seconded by Council Member Lacy. The motion to amend failed by the following vote: AYE: Hotchkiss, Sparks, Lacy. NAY: Love, Morales, Dufford, Robnett. ABSTAIN: None. ABSENT: None.

The main motion carried by the following vote: AYE: Hotchkiss, Love, Morales, Dufford, Robnett. NAY: Sparks, Lacy. ABSTAIN: None. ABSENT: None.

28. 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 - 079

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 item was previously approved on February 28<sup>th</sup> with the hours of the performance from 5:00 p.m. to 10:00 p.m. They are requesting to change the hours to 4:00 p.m. to 9:00 p.m. The Transportation Division worked to make sure this could be accomplished. No letters of objection have been received. Marienfeld will be reopened at 8:00 a.m. on Saturday morning. Staff recommends approval.

Mayor Morales opened the public hearing at 10:56 a.m.

Elizabeth McLellan reported she has approval from all parties surrounding the building noting they are all managed by the same team. They have now added a ground level dance performance team to supplement the vertical performance.

Austin Booker, 5309 ECR 136, is the property manager for the buildings in the area. The performance has received approval for the times and dates reported.

There being no one else wishing to speak, the public hearing was closed 10:58 a.m.

Council Member Love moved to adopt Resolution No. 2017 - 079; seconded by Council Member Hotchkiss. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

## **MISCELLANEOUS**

29. Consider an ordinance of the City Council of the City of Midland, Texas, approving a negotiated resolution between the Atmos West Texas Cities Steering Committee ("WTX Cities") and Atmos Energy Corp., West Texas Division (the "Company") regarding the Company's 2016 rate review mechanism ("RRM") filing. (CITY MANAGER'S OFFICE)

### **ORDINANCE NO. 9650**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS WEST TEXAS CITIES STEERING COMMITTEE ("WTX CITIES") AND ATMOS ENERGY CORP., WEST TEXAS DIVISION (THE "COMPANY") REGARDING THE COMPANY'S 2016 RATE REVIEW MECHANISM ("RRM") FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; ESTABLISHING A PROCESS FOR RENEGOTIATING THE RRM TARIFF IN 2017; REQUIRING THE COMPANY TO REIMBURSE WTX CITIES' REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE WTX CITIES' LEGAL COUNSEL

Deputy City Secretary SueAnn Lopez read the caption of Ordinance No. 9650.

Assistant City Manager Frank Salvato gave a brief overview of the item noting Brandi Price of Atmos was present to assist in answering questions. He explained the process noting a negotiated settlement has been reached and the average consumer will see a \$2.25 per month increase.

Brandi Price, Atmos, reported they have the ability to make rate changes once per year.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9650 in accordance with the Charter of the City of Midland; seconded by Council Member Hotchkiss. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

30. Consider a motion approving a proposed Preliminary Plat of The Park at 1788 South, Section 1, being a 111.92-acre tract of land generally located on the east side of Farm-to-Market Road 1788, approximately 500 feet north of County Road 150 - ETJ, Extraterritorial Jurisdiction. (DEVELOPMENT SERVICES)

Development Services Director Chuck Harrington gave a brief overview of the item noting a revised agenda memo has been distributed. This item is for a preliminary plat that is larger than 25 acres and requires City Council action. The applicant is proposing an investor park development which falls under the impact of AOZ-4 Airport Overlay Zone. The item was reviewed with the consultant to insure there were no issues and a statement will be added to the final plat notifying all parties that prior to any structures being built it must go through the process of approval for AOZ-4.

Council Member Love moved to approve a proposed Preliminary Plat of The Park at 1788 South, Section 1, being a 111.92-acre tract of land out of Section 29, Block 40, T-2-S, T&P RR Co Survey, Midland County, Texas (Generally located on the east side of Farm-to-Market Road 1788, approximately 500 feet north of County Road 150 - ETJ, Extraterritorial Jurisdiction); seconded by Council Member Lacy. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

31. Consider a motion on request by Aaron Burrell Land Surveyors, LLC to defer public paving, water, wastewater, sidewalk, and drainage improvements for Alex Taylor Addition, and to waive the corresponding financial security guarantee valued at \$66,814, an amount equal to the estimated cost of construction. The subject property is generally located approximately 325 feet north of the City of Midland corporate limits on the north side of Highway 80, approximately 3,000 feet west of the intersection with Tradewinds Boulevard, in Midland County, Texas. (ENGINEERING SERVICES)

Assistant City Engineer Jeff Cohen gave a brief overview of the item noting this is a small 1/2 acre plat in the ETJ that is for a heating and air business and requires a septic tank and has to plat. Staff agrees with the applicant to defer the wastewater and sidewalk and paving but think he should be responsible for water construction. The location is about 200 feet from Avalon Drive and staff believes the area will be developed soon and feels that all developers should pay for water. He clarified that the property is about 2,150 feet from the existing water line.

Aaron Burrell 215 W. Wall, representing Alex Taylor and Liberty Heating and Air, argued that Avalon would not be built in ten years noting that Tradewinds was expected to be developed, had two willing participants, and there is still no pavement on the ground. He felt Avalon would be tougher to developer because there are ten owners, 2 or 3 oil wells and a playa to go through. They are willing to give the City a 20-foot easement for a water line on their plat for no charge with the understanding that it will take longer than ten years to develop Avalon.

Discussion ensued that any money put in escrow would be rebated if the water line is not developed. If the owner wants City water, he will have to pay to connect at that time.

Council Member Sparks moved to approve a request by Aaron Burrell Land Surveyors, LLC to defer public paving, water, wastewater, sidewalk, and drainage improvements for Alex Taylor Addition, and to waive the corresponding financial security guarantee valued at \$66,814, an amount equal to the estimated cost of construction; seconded by Council Member Robnett. The motion carried by the following vote: AYE: Hotchkiss, Sparks, Morales, Dufford, Robnett. NAY: Love, Lacy. ABSTAIN: None. ABSENT: None.

32. Consider a resolution rejecting all proposals received for request for proposals 01-17, 02-17, 03-17, 04-17 and 05-17 for oil and gas leases and authorizing the re-issuance of request for proposals for these oil and gas leases at a later date for the Development Services Department. (PURCHASING)

#### RESOLUTION NO. 2017 - 080

RESOLUTION REJECTING ALL PROPOSALS RECEIVED IN RESPONSE TO THE REQUESTS FOR PROPOSALS FOR LEASES OF CITY-OWNED MINERALS IN THE FOLLOWING LOCATIONS: IN APPROXIMATELY 337.08 ACRES OUT OF SECTION 15, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTH OF WEST WADLEY AVENUE, EAST OF NORTH GARFIELD STREET, SOUTH OF LOOP 250, AND WEST OF NORTH A STREET); IN APPROXIMATELY 114.37 ACRES OUT OF SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTH OF WEST WADLEY AVENUE, EAST OF NORTH A STREET, SOUTH OF LOOP 250, AND WEST OF NORTH LAMESA ROAD); IN APPROXIMATELY 68.61 ACRES OUT OF SECTION 22, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTH OF WEST GOLF COURSE ROAD, EAST OF NORTH GARFIELD STREET, SOUTH OF WEST WADLEY AVENUE, AND WEST OF NORTH A STREET); IN APPROXIMATELY 9.11 ACRES OUT OF SECTION 23, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTH OF EAST GOLF COURSE ROAD, EAST OF NORTH A STREET, SOUTH OF WEST WADLEY AVENUE, AND WEST OF NORTH LAMESA ROAD); AND IN APPROXIMATELY 6.74 ACRES OUT OF SECTION 26, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTH OF ILLINOIS AVENUE, EAST OF NORTH A STREET, SOUTH OF EAST GOLF COURSE ROAD, AND WEST OF NORTH LAMESA ROAD); AND AUTHORIZING THE CITY MANAGER TO RE-ISSUE REQUESTS FOR PROPOSALS FOR LEASES OF SAID MINERALS

Council Member Lacy moved to adopt Resolution No. 2017 - 080; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett. NAY: None. ABSTAIN: None. ABSENT: None.

## **PUBLIC COMMENT**

33. 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.)

Gary Olgin, 1600 Delmar, spoke about potential upgrades to the skate park noting he is there nearly every day and picks up trash and covers graffiti every Sunday. He requested something nicer for the kids. Mayor Morales asked to sit down with him to fill him in on what is being proposed through the 4B.

Michelle Aguirre, representing Up with People, reported they are bringing 100 people from 20 different countries for a performance and they are in need of host families for the 100 kids for the week of April 10-17. She was directed to speak with the Public Information Officer.

## **EXECUTIVE SESSION**

34. 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 551.072 Deliberation Regarding Real Property.
    - a.1. Discuss the sale, exchange, lease, or value of real property related to potential mineral leases on City of Midland property.
    - a.2. Discuss the sale, exchange, lease, or value of real property described as Sections 2, 3, 4, 9, 10, 11, 13, 14 and 15, Block 37, T-3-S, T&P Ry. Co. Survey, Midland County, Texas.
  - b. Section 551.087 Deliberation Regarding Economic Development Negotiations
    - b.1. Discuss business prospects that the City seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Mayor Morales recessed the meeting at 11:26 a.m. to go to Executive Session

All of the business at hand having been completed, the meeting adjourned at 1:07 p.m.

PASSED AND APPROVED the 11th day of April, 2017.

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Jerry F. Morales, Mayor

ATTEST:

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Amy M. Turner, City Secretary