

MINUTES
CITY OF GAINESVILLE
CITY COUNCIL MEETING
200 South Rusk
Gainesville, Texas 76240
January 15, 2008

The City Council of the City of Gainesville, Texas met in regular session on January 15, 2008 at 6:30 p.m. with the following persons in attendance:

MEMBERS PRESENT: Mayor Glenn Loch
Council Members Carolyn Hendricks, Vince Rippy, Beverly Snuggs, Woody Williams

MEMBERS ABSENT: Charles Draper, Jim Goldsworthy

STAFF PRESENT: Barry Sullivan, City Manager; Kay Lunnon, City Secretary; Bill Harris, City Attorney; Dan Parker, Finance Director, Ron Sellman, Public Services Director, John Noblitt, Planning Technician; Lynette Pettigrew, Main Street Director; Patrick McCage, Parks Supervisor, Steven Fleming, Interim Police Chief, Chris Cypert, Municipal Judge, Kent Sharp, GEDC Executive Director

OTHERS PRESENT: Andy Hogue, Kathy Floyd, Lennie Sewell, Eldon and Shirley Watson, Samuel Dick, Jim Robertson, Paula Winters, James Hughes.

CALL TO ORDER

Mayor Loch called the meeting to order with a quorum of members present. The absence of Councilmembers Draper and Goldsworthy was noted.

INVOCATION & PLEDGE OF ALLEGIANCE

Reverend John Hare, First Presbyterian Church gave the invocation. Mayor Loch led the pledge to the flag.

PROCLAMATION

Mayor Loch read a Proclamation designating January 21, 2008 as Martin Luther King Jr. Day in the City of Gainesville. James Hughes received the proclamation.

REPORTS

In response to a public request for information regarding maintenance of Pecan Creek over the past several decades, John Noblitt, Planning Technician, and Ron Sellman, Public Services Director made a report on the requirements for the City to be able to perform maintenance work on the Pecan Creek, Wheeler Creek, Elm Creek and Shadowood Creek waterways. Noblitt said before any type of maintenance can be performed the City is required to obtain approvals for access to the waterway. Those approvals include 1) a Corps of Engineers 404 permit, basically a wetlands permit, 2) right of entry from each property owner, and 3) any other additional approvals as necessary from state agencies such as the Texas Water Development Board, Texas Commission on Environmental Quality, Texas Parks and Wildlife, State Historic Preservation, and the Texas Department of Transportation.

Noblitt said the City currently has a Corps of Engineers (COE) maintenance agreement (404 permit) for Wheeler Creek. The City has no COE agreements in place for Pecan Creek, Elm Creek and Shadowood Creek. However, Noblitt said he understands that following completion of the channelization project the City will have a COE maintenance agreement for Pecan Creek.

Obtaining right of entry from property owners has been difficult for the City in the past due to property owners being unsure that access will be used for the appropriate purpose. In addition, Noblitt said that much of the property along Pecan Creek north of Belcher Street is owned by the railroad and right of entry access to those properties require a fee of four hundred dollars or more per property, depending on the urgency for the permit.

Additional approvals that may be required by other state agencies depend on the work to be performed, such as removal of vegetation might impact the environment, wildlife habitat, or involve historic archeology.

Noblitt said work logs researched in the City Public Services Department indicate maintenance work on Pecan Creek from 1992 to the present time was done mostly from Belcher Street south. Sellman said a recently implemented work order tracking system at Public Services Department now provides electronic recordkeeping and will make records easier to query in the future.

Summarizing the necessary approvals for each waterway, Noblitt said annual maintenance on Wheeler Creek is required and is currently under agreement with the COE. For maintenance on Elm Creek, the City must obtain the COE 404 permit, right of entry from property owners, as well as coordinate with the Texas Department of Transportation for their portion of the channel from Hwy 51 to I-35 along the Zoo, and with the Texas Commission on Environmental Quality and the Parks & Wildlife because of habitat impacts. Maintenance of Shadowood creek requires the COE 404 permit and right of entry from property owners. Noblitt said waterway maintenance records can be viewed in his department, or at Public Services Department, or obtained by request to the City Secretary.

Sellman said the new COE maintenance agreement for the re-channelization of Pecan Creek will probably include an area from south of Olive Street down to Moss Street. He said for those properties not included within the maintenance agreement, the City will have to follow the COE requirements to be able to access. Mayor Loch said having that maintenance agreement will make it much easier to access those areas but the City will also need to maintain areas not included in the agreement in order to keep more than just a portion of the creek cleaned out. Noblitt added that further north to Highway 82, the City is working with the Railroad Company toward a possible sustainable wetland agreement so the City can help maintain that area. He said that would also give the City access to the northern boundary of Pecan Creek within the city limits.

Councilman Rippe said considerable costs would be involved to clean out Pecan Creek from Belcher Street to Hwy 82, and those costs would need to be included in the next City budget. Sellman was requested to bring those cost figures to the Council.

Interim Police Chief, Steven Fleming reported on Police Department Gang and Drug Intervention efforts and the Criminal Alien Program (CAPS). Fleming said a narcotics division was implemented in the Police Department several years ago at the request of the City Council and officers were assigned to a special investigative unit. Due to gang activities in the City, the division has since been expanded to include gang investigation. A gang unit was created last August to help with the gang operations on the street and to curtail overtime expenses in the department. From October 2007 to the present time there have been 32 gang arrests. Fleming

said the SIU performs investigations and works with the Gang Unit to suppress gang operations on the street. SIU also does presentations to the schools and for the general public.

From October 2006 to October 2007 the department seized currency, vehicles, and obtained thirteen arrest warrants through drug seizures. From October 2007 to the present time the department has already received nearly the same amount of currency as received all last year. Fleming said his department has done an outstanding job. Fleming said drug seizures in the past three months are nearly equal to those obtained for the entire year from October 2006 to October 2007. He said the Patrol Division, Criminal Investigation Division, the Special Investigative Unit, and the Gang Unit have done an outstanding job.

Regarding the Criminal Alien Program (CAPS), Fleming said the Cooke County Sheriff's office is participating in a program similar to CAPS. The Federal unit ICE is called whenever an illegal alien is incarcerated. Fleming said it is strictly up to ICE whether or not a detainer is placed on the arrestee in association with a criminal offense. ICE has sole discretion. Fleming said there have been over forty arrests since last September, and they have either been deported or they are released. Fleming said his department has met with the Sheriff's office and they have stepped up to the plate as far as working with ICE. Fleming said the drug and gang business remains steady and he has not observed a decrease in these activities so far.

Before proceeding further with the Council agenda, Mayor Loch introduced new City Manager Barry Sullivan. Mayor Loch also called forward and recognized a young Boy Scout in the meeting audience, Samuel Dick.

CONSENT AGENDA

Council reviewed the Minutes of the Regular City Council Meeting of December 18, 2007, and approved them as written.

Councilmember Snuggs **moved to approve the Consent Agenda**, and was seconded by Councilmember Williams. The motion carried by a vote of 5 Ayes: Hendricks, Loch, Rippy, Snuggs, Williams; 0 Nays, and 2 Absent: Draper and Goldsworthy.

RESOLUTION NO. 01-15-2008 – BARRY SULLIVAN SIGNATORY TO CITY BANK ACCOUNTS

A RESOLUTION NAMING AND DESIGNATING BARRY SULLIVAN AS AN AUTHORIZED SIGNATORY OFFICER OF THE CITY OF GAINESVILLE TO TRANSACT BANKING ACTIVITIES ON BEHALF OF THE CITY OF GAINESVILLE.

The resolution is necessary to authorize City Manager Barry Sullivan as a signatory to banking accounts held on behalf of the City of Gainesville.

Councilmember Rippy **moved to approve the Resolution**, and was seconded by Councilmember Hendricks. The motion carried by a vote of 5 Ayes: Hendricks, Loch, Rippy, Snuggs, Williams; 0 Nays, and 2 Absent: Draper and Goldsworthy.

RESOLUTION NO. 01-15-2008 A – DELINQUENT TAX COLLECTION CONTRACT WITH JIM ROBERTSON

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF GAINESVILLE, TEXAS TO ENTER INTO A CONTRACT WITH JIM A. ROBERTSON, FOR THE COLLECTION OF DELINQUENT TAXES; PROVIDING FOR COMPENSATION FOR SERVICES REQUIRED THEREUNDER; PROVIDING FOR A CONTRACT PERIOD AND OTHER TERMS AND CONDITIONS CONTAINED THEREIN.

City Manager, Barry Sullivan said the contract is a standard agreement and recommended approval of the three-year contract with Jim Robertson for collection of delinquent ad valorem taxes. Robertson will receive 15% of the amount collected as payment. Snuggs commented that the Appraisal District appreciates the quick collection performance by Mr. Robertson.

Councilmember Snuggs **moved to approve the Resolution**, and was seconded by Councilmember Williams. The motion carried by a vote of 5 Ayes: Hendricks, Loch, Rippy, Snuggs, Williams; 0 Nays, and 2 Absent: Draper and Goldsworthy.

RESOLUTION NO. 01-15-2008 B – REQUEST FOR WAIVER OF LOCAL MATCH FUNDS WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR BRIDGE REPLACEMENTS AS PART OF THE PECAN CREEK CHANNELIZATION PROJECT
CONSIDERATION OF AND ACTION ON A RESOLUTION AUTHORIZING THE MAYOR, FOR AND ON BEHALF OF THE CITY OF GAINESVILLE, TO EXECUTE A REQUEST FOR WAIVER FOR LOCAL MATCH FUND PARTICIPATION REQUIREMENTS ON FEDERAL OFF SYSTEM BRIDGE PROGRAM PROJECT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR BRIDGE REPLACEMENTS AS PART OF THE PECAN CREEK CHANNELIZATION PROJECT.

Sullivan said this request is part of the Pecan Creek Channelization Project and will get a couple of bridges replaced. The waiver means that because the City will be spending money to replace other bridges in the project, TXDOT is requested to waive the City's ten percent match of \$146,247. Ron Sellman, Public Services Director, said total cost for the two bridge replacements is \$1.46 million for the two bridges. During reconstruction of the California Street bridge, a Federal on system bridge, TXDOT will detour traffic from the California Street to Broadway Street, an off system bridge. TXDOT is offering to pay for reconstruction of both bridges and waive the ten percent match by the City. Sullivan said the \$1.46 million will also apply toward the City's local match portion for the Corps of Engineers drainage project. Sellman said the Corps of Engineers has scheduled engineering design work for the channelization project to be completed by June and the letting date in September. Work could begin in October. HDR Engineering is doing the design work for the City and TXDOT has also hired HDR for the on system bridge design work as well. Rippy asked if this waiver would affect any input the City would have as to the design or aesthetics of the bridge. Sellman said at this time he does not know what the design looks like so far, but any additional design or aesthetics would probably add to the cost. Sellman said public participation meetings for input on the project will be held and input as far as aesthetics would be considered then.

Councilmember Hendricks **moved to approve the Resolution**, and was seconded by Councilmember Rippy. The motion carried by a vote of 5 Ayes: Hendricks, Loch, Rippy, Snuggs, Williams; 0 Nays, and 2 Absent: Draper and Goldsworthy.

ORDINANCE NO. 1193-01-2008 ESTABLISHING ARCHITECTURAL DESIGN GUIDELINES FOR HISTORIC COMMERCIAL AND RESIDENTIAL STRUCTURES
AN ORDINANCE ADDING ARTICLE VII. HISTORIC DISTRICT TO CHAPTER 15 PLANNING AND DEVELOPMENT OF THE CODE OF ORDINANCES OF THE CITY OF GAINESVILLE; ESTABLISHING ARCHITECTURAL GUIDELINES FOR HISTORIC COMMERCIAL AND RESIDENTIAL DEVELOPMENT WITHIN THE CITY OF GAINESVILLE; ESTABLISHING A FEE FOR APPLICATION REVIEW; DESIGNATING A PRESERVATION OFFICER; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE; CONTAINING A SEVERABILITY CLAUSE; MAKING AN OPEN

MEETING FINDING; PROVIDING FOR SUSPENSION OF THE CHARTER REQUIREMENT OF READING THE ORDINANCE ON THREE SEPARATE OCCASIONS. Mayor Loch announced third reading of the ordinance and Sullivan said since the last meeting, the only change to the ordinance has been to replace the wording historic with heritage. Snuggs expressed a constituent concern about the one hundred dollar fee and asked if the fee would apply every time he wanted to make a change. Noblitt said the intent of the ordinance is that the owner would present a completed plan prior to beginning work and that will prevent the charge for the fee for every change. He said the guidelines allow general maintenance items to be done under the standard building permitting process for repairs. He said the Heritage Preservation Officer will be able to help guide the owner through this process to make an informed decision, or the property owner can come to the Zoning Department any time for information about the process.

Councilmember Snuggs **moved to approve third reading and adopt the ordinance**, and was seconded by Councilmember Williams. The motion carried by a vote of 5 Ayes: Hendricks, Loch, Rippy, Snuggs, Williams; 0 Nays, and 2 Absent: Draper and Goldsworthy.

ORDINANCE TO PROHIBIT USE OF MOBILE TELEPHONES IN ACTIVE SCHOOL ZONE

FIRST READING OF AN ORDINANCE AMENDING THE CODE OF THE CITY OF GAINESVILLE, TEXAS, BY ADDING SECTION 52 ENTITLED "USE OF HAND-HELD MOBILE TELEPHONES IN SCHOOL ZONES" UNDER CHAPTER 11, ARTICLE IV, SCHOOL ZONES; PROHIBITING USE THEREOF; PROVIDING PENALTY FOR VIOLATION; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE; CONTAINING A SEVERABILITY CLAUSE AND MAKING AN OPEN MEETING FINDING; AND PROVIDING FOR SUSPENSION OF THE CHARTER REQUIREMENT OF READING THE ORDINANCE ON THREE SEPARATE OCCASIONS.

Sullivan stated the ordinance is presented at the request of Councilman Draper. The ordinance limits the use of cell phones in the school zone when the school zone is active and covers talking on the cell phone and text message sending and receiving. It does not apply to pushing one button for talking on a hands-free set.

Mayor Loch observed that many cities around the North Texas area are passing similar ordinances, and the ordinance applies only during the hours the school zone is active. Councilman Williams inquired whether there have been any wrecks in the school zone due to cell phone use, and Rippy asked if anyone has come close to hitting a child in a school zone because of cell phone use.

Steve Fleming, Interim Police Chief, said he was approached by Councilman Draper and Kanita Maxwell, a crossing guard at Edison School, who has witnessed drivers on cell phones driving with one hand while children are trying to cross the street. Fleming said he has not seen any accident reports occurring in any of our school zones because of cell phone use. Rippy asked how the ordinance would affect driver responsibility as compared to the law used in the past for failure to control the motor vehicle. Would this ordinance change responsibility or consequences? Fleming said with this ordinance, if an officer in the school zone witnesses a violation, he could issue a citation for the offense, but it would not be a state offense. Rippy asked if there have been any other reported activities inside cars that would also pose a hazard, such as turning around to discipline a child in the car or listening to an ipod. Rippy said he hesitates to pass an ordinance that deals with behavior instead of consequences. He said failure to control the vehicle is already a law that has been used effectively and responsibility as a driver to control our vehicle does not change. Rippy said he hates to start regulating behavior. Rippy

said he would move to approve first reading of the ordinance in order to hear Councilman Draper's support for the ordinance at the next reading.

Councilmember Rippy **moved to approve first reading of the ordinance**, and was seconded by Councilmember Snuggs. The motion carried by a vote of 5 Ayes: Hendricks, Loch, Rippy, Snuggs, Williams; 0 Nays, and 2 Absent: Draper and Goldsworthy.

ORDINANCE TO APPROVE A SETTLEMENT AGREEMENT BETWEEN THE CITY AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "THE COMPANY") REGARDING THE COMPANY'S STATEMENT OF INTENT TO CHANGE GAS RATES

FIRST READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS, ("CITY") APPROVING A SETTLEMENT AGREEMENT BETWEEN THE CITY AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "THE COMPANY") REGARDING THE COMPANY'S STATEMENT OF INTENT TO CHANGE GAS RATES IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE SETTLEMENT AGREEMENT; FINDING THE RATES TO BE SET BY THE TARIFFS TO BE JUST AND REASONABLE; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND LEGAL COUNSEL.

Sullivan reviewed the recent history of rate increases and adjustments by Atmos Energy. He said Atmos has requested rate increases seven times since 2004, and so, more than once a year, Atmos has come to the cities in Texas asking for a rate increase for gas. He said the idea behind passage of GRIP, the gas rate infrastructure program, was to allow gas companies to recover costs for investments in their infrastructure, but it was discovered that the gas companies have included non-allowable costs in their GRIP requests and have caused the cities to have to review and contest these charges to reduce their increase under GRIP. Atmos requested a \$52 million dollar rate increase in September 2007. After months of working with Atmos representatives, members of the Atmos Cities Steering Committee (ACSC) were able to reduce the amount of the rate increase requested by Atmos (in September 2007) by 80 percent and replace the piecemeal ratemaking "GRIP" with a rate review mechanism, a new formula for what is allowed when Atmos asks the cities for a rate increase. Attorneys for the ACSC recommend approval of the settlement agreement and tariffs.

Sullivan said this ordinance endorses a settlement agreement with Atmos for increased rates and approves tariffs that implement the terms of the settlement agreement. Attorneys for the ACSC recommend approval of the settlement agreement and tariffs. Sullivan said the impact to residential customers would be a 0.41 percent increase, roughly 29 cents. The City will receive a return on some of its litigation costs. March 1 is the deadline for the City to approve the ordinance and settlement.

Councilmember Williams **moved to approve first reading of the ordinance**, and was seconded by Councilmember Snuggs. The motion carried by a vote of 5 Ayes: Hendricks, Loch, Rippy, Snuggs, Williams; 0 Nays, and 2 Absent: Draper and Goldsworthy.

EXECUTIVE SESSION

The City Council did not convene into executive session.

CITY MANAGER'S COMMENTS

Barry Sullivan stated his appreciation for citizens and staff who have made him feel welcomed to Gainesville. He said he has received wonderful assistance from City staff.

Sullivan advised Council regarding receipt of a letter from Sterling Heights Apartments for a proposed application to build a tax credit housing development in Gainesville. Sullivan said we already have one of these in Gainesville and such developments do not pay all taxes, but require city services. Sullivan said he does not believe this is a good deal for the City, the school district, or the county. Sullivan said he has been contacted by the school district and recommends that the City join with GISD and other taxing units to share attorney costs to fight against the development. Sullivan said the item will be presented on the next Council agenda.

ADJOURNMENT

With no further comments and no further business to come before the City Council, the meeting adjourned at 7:23 p.m.

/S/

Glenn Loch, Mayor

Attest:

/S/

Kay Lunnon, City Secretary