

**MIDLAND CITY COUNCIL
MINUTES
July 26 2011**

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 8:33 a.m. on July 26, 2011.

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

Council Members absent: Council Member Jerry Morales (At-Large) and Council Member Vicky Hailey (District 2) (arrived at 8:39 a.m.).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Development Services Director Rick Crownover, Building Official Steve Thorpe, GIS Manager Bill Hodge, Public Information Officer Tasa Watts, Planner Brandon Melland, and Planning Division Manager Cameron Walker.

BRIEFING SESSION

1. Discussion about potential zoning code amendments regarding small wind energy conversion systems. (Development Services)

Brandon Melland explained small wind energy conversion systems (SWECS), discussed the potential of regulating setback sizes compared to lot sizes, reviewed tower designs, discussed potential limits to color, lighting and noise, and reviewed information received from other cities relating to SWECS regulations.

City Manager Sharp noted that there are currently no ordinances pertaining to wind energy and the City currently treats them like a cell tower. He asked Council if there was a desire to look further into zoning and move forward with adopting regulations pertaining to wind energy. The Council consensus was to move forward.

2. Discussion regarding Standing Rules regulating City Council meetings. (City Secretary)

City Secretary Turner shared Standing Rules from the City of Bryan. A discussion ensued about potential standing rules to include. Council direction was to draft standing rules and bring back for consideration.

3. Receive an update from Freese and Nichols regarding State Highway 191 Corridor Study. (Planning)

Craig Farmer with Freese and Nichols noted he had recently been hired by MOTOR to complete a SH 191 Corridor Study. He gave an overview of the Project SH 191 Corridor Study outlining upcoming public hearing dates for input and inviting everyone to participate. He stated they anticipate being done by July 2012.

The foregoing agenda items were discussed by the City Council with no formal action taken.

The Briefing Session was adjourned at 9:24 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:01 a.m., July 26, 2011.

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

Council Members absent: Council Member Jerry Morales (At-Large)

Staff members present at the annex table: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, and Assistant City Manager Jim Nichols.

MISCELLANEOUS

1. The invocation was voiced by Reverend Steve Mohr of Our Saviour's Lutheran Church.
2. The Pledge of Allegiance to the Flag was stated.
3. Presentation of special events, organizations, individuals, or periods of time.

PUBLIC COMMENT

4. Mayor Perry opened the floor for public comments to allow individuals to address the City Council on city-related issues and projects.

David Rosen, 5002 Thames Court, noted there has been discussion at the County Commission regarding selling the current library building and moving the facility to another location. He stated that 21 of the 26 people who spoke on issue, spoke against moving the library. He requested that City Council hold the County Commissioners feet to fire to protect the desires of the citizens and asked that the issue to be taken to a vote of the people.

There were no other requests by citizens to speak.

CONSENT AGENDA

Council Member Trost moved to approve Consent Agenda items 5a-9, 11, 13, and 15-17; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

- 5a. Approved the minutes of the special City Council meeting of July 5, 2011.
- 5b. Approved the minutes of the special City Council meeting of July 7, 2011.
- 5c. Approved the minutes of the regular City Council meeting of July 12, 2011.
- 5d. Approved the minutes of the special City Council meeting of July 14, 2011.
6. Adopted Resolution No. 2011-166. Caption of said resolution is as follows:

RESOLUTION NO. 2011-166

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH EXERPLAY, INCORPORATED, FOR THE PURCHASE AND INSTALLATION OF PLAYGROUND EQUIPMENT, SHADE STRUCTURES, SIDEWALKS, FENCING AND ASSOCIATED IMPROVEMENTS AT WASHINGTON PARK, AT A COST OF \$99,930.60. (General Services)

7. Adopted Resolution No. 2011-167. Caption of said resolution is as follows:

RESOLUTION NO. 2011-167

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH FIRST SERVICE AIR CONDITIONING CONTRACTORS, INCORPORATED, OF MIDLAND, TEXAS, FOR THE PURCHASE AND INSTALLATION OF A DIGITAL HEATING, VENTILATION AND AIR CONDITIONING SYSTEM AT THE SCHARBAUER SPORTS COMPLEX AT A COST OF \$112,000.00; FIRST SERVICE AIR CONDITIONING CONTRACTORS, INCORPORATED, WAS THE ONLY BIDDER. (General Services)

8. Adopted Resolution No. 2011-168. Caption of said resolution is as follows:

RESOLUTION NO. 2011-168

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH CAREER PATH, INCORPORATED, OF MIDLAND, TEXAS, FOR SUPPLYING SCHOOL CROSSING GUARDS FOR THE 2011-2012 SCHOOL YEAR, AT A COST OF \$340,000.00; CAREER PATH, INCORPORATED WAS THE ONLY BIDDER. (General Services)

9. Adopted Resolution No. 2011-169. Caption of said resolution is as follows:

RESOLUTION NO. 2011-169.

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH THYSSEN KRUPP ELEVATOR CORPORATION, OF MIDLAND, TEXAS, FOR THE PURCHASE AND INSTALLATION OF WHEELCHAIR LIFTS IN THE DUGOUTS AT CITIBANK BALL PARK AT A COST OF \$64,000.00; THYSSEN KRUPP ELEVATOR CORPORATION WAS THE ONLY BIDDER. (General Services)

11. Adopted Resolution No. 2011-170. Caption of said resolution is as follows:

RESOLUTION NO. 2011-170

A RESOLUTION AUTHORIZING A PURCHASE ORDER TO MAKE REPAIRS TO A CATERPILLAR 623 F SCRAPER USED AT THE CITY LANDFILL WITH WARREN CAT OF ODESSA, TEXAS, AT AN ESTIMATED COST OF \$69,409.87; THE PURCHASE ORDER WILL SERVE AS THE CONTRACT. (General Services)

13. Adopted Resolution No. 2011-171. Caption of said resolution is as follows:

RESOLUTION NO. 2011-171

A RESOLUTION AUTHORIZING THE DESIGN PHASE OF THE PROJECT DESCRIBED AS IMPROVEMENTS AT MIDLAND AIRPARK IN THE AMOUNT OF \$9,685.00; AND APPROPRIATING SAID FUNDS. (Airport)

15. Approved a motion approving the 2010 Downtown Midland Tax Increment Reinvestment Zone No. 1 Annual Report. (Planning)

16. Adopted Resolution No. 2011-172. Caption of said resolution is as follows:

RESOLUTION NO. 2011-172

A RESOLUTION AUTHORIZING THE ADOPTION OF THE CITY OF MIDLAND'S 2011-2012 ACTION PLAN TO THE CONSOLIDATED PLAN FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS FOR FISCAL YEARS 2011-2015, (OCTOBER 2010-SEPTEMBER 2015); THE CONSOLIDATED PLAN WAS APPROVED BY RESOLUTION NUMBER 2010-197; AND AUTHORIZING THE EXECUTION OF AN APPLICATION FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS. (Community Development)

17. Adopted Resolution No. 2011-173. Caption of said resolution is as follows:

RESOLUTION NO. 2011-173

A RESOLUTION ACCEPTING A GRANT AWARD IN THE AMOUNT OF \$10,560.00 FROM THE TEXAS ALCOHOLIC BEVERAGE COMMISSION TO BE USED BY THE MIDLAND POLICE DEPARTMENT TO ENFORCE UNDERAGE DRINKING LAWS; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND ALLOCATING GRANT FUNDS; NO CASH MATCH IS REQUIRED. (Police)

The following items were pulled from consent calendar and considered individually.

10. Council Member Trost asked what the containers would be used for. Solid Waste Manager Morris Williams responded the containers would be used for a combination of both residential and business.

Council Member Trost moved to adopt Resolution No. 2011-174; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said resolution is as follows:

RESOLUTION NO. 2011-174

A RESOLUTION APPROVING THE PURCHASE OF ONE THOUSAND (1,000) THREE CUBIC YARD REFUSE CONTAINERS WITH LIDS, ONE HUNDRED (100) ONE-AND-ONE-HALF CUBIC YARD REFUSE CONTAINERS WITH LIDS, AND ONE HUNDRED (100) THREE-AND-ONE-HALF CUBIC YARD REFUSE CONTAINERS WITH LIDS FROM ROLL-OFFS USA, INCORPORATED, OF DURANT, OKLAHOMA, AT A TOTAL COST OF \$490,000.00. (General Services)

12. Council Member Hailey noted that Council Members Dufford and Sparks wished to abstain from voting on this item.

Council Member Trost moved to adopt Resolution No. 2011-175; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Trost, Hailey, Perry, and James. NAY: None. ABSTAIN: Dufford and Sparks. ABSENT: Morales. Caption of said resolution is as follows:

RESOLUTION NO. 2011-175

A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN OIL AND GAS LEASE AGREEMENT WITH WINDSOR PERMIAN, LLC, TO LEASE LAND WITHIN AND AROUND MIDLAND AIRPARK AIRPORT FOR THE PURPOSES AND WITH THE EXCLUSIVE RIGHT OF EXPLORING, DRILLING, AND OPERATING FOR, PRODUCING AND OWNING OIL AND GAS. (Airport)

14. Consider adopting Roberts Rules of Order Newly Revised.

Council Member Hailey moved defer the item to the second meeting in August; seconded by Council Member Trost. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

SECOND READINGS

Mayor Perry noted that Item 18 would not be heard until after executive session.

19. Consider a request by the Midland First Church of the Nazarene for a zone change from PD, Planned District for a Shopping Center to O-2, Office District.

City Secretary Turner read the caption of Ordinance No. 8908.

Council Member Trost moved to approve the second and final reading of Ordinance No. 8908 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8908

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-28 AND LOT 29 LESS THE EAST 32 FEET THEREOF, AND THE VACATED 0.20-ACRE EAST/WEST ALLEY AND VACATED 0.57-ACRE PORTION OF BLUE HAVEN DRIVE, ALL OUT OF BLOCK 168, WILSHIRE PARK ADDITION, SECTION 11, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN O-2, OFFICE DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF LOOP 250 AND GRACELAND 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. (First reading held July 12, 2011) (Planning Division)

20. Consider amending the zoning of two land parcels located on the west side of Lamesa Road, approximately 500 feet north of Golf Course Road, from 1F-2, One-Family Dwelling District to LR-1, Local Retail District in order to allow the construction of a Dollar General Store.

City Secretary Turner read the caption of Ordinance No. 8909.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8909 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8909

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 23, BLOCK 2, LOMA LINDA ANNEX, AND A 0.99-ACRE TRACT OF LAND OUT OF SECTION 23, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED 1F-2, ONE FAMILY DWELLING DISTRICT, TO BE USED AS AN LR-1, LOCAL RETAIL DISTRICT

(GENERALLY LOCATED ON THE WEST SIDE OF LAMESA ROAD, APPROXIMATELY 500 FEET NORTH OF GOLF COURSE ROAD); 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. (First reading held July 12, 2011) (Planning Division)

21. Consider a request by Emma Ruth Stock for a Specific Use Permit, Without Term, to construct an accessory building as living and sleeping quarters.

City Secretary Turner read the caption of Ordinance No. 8910.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8910 in accordance with the Charter of the City of Midland; seconded by Council Member James.

Following brief discussion the motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8910

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF LOT 14, BLOCK 4, KIMBER-LEE, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF DURANT DRIVE, 90 FEET EAST OF WHITNEY DRIVE), WHICH IS PRESENTLY ZONED 1F2, ONE-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. (First reading held July 12, 2011) (Planning Division)

22. Consider a request by Western International for a Specific Use Permit, With Term, for the sale and on-premises consumption of alcoholic beverages in a bar.

City Secretary Turner read the caption of Ordinance No. 8911.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 8911 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8911

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 7, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 17, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF DEAUVILLE BOULEVARD AND WESTRIDGE BOULEVARD), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A BAR 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.

23. Consider a request for a zone change from PD, Planned District for a Shopping Center to LR-2, Local Retail District on Lot 3B, Block 25, Crestgate Addition, Section 22, City and County of Midland, Texas. (Generally located on the west side of N. Midkiff Road, approximately 600 feet north of W. Loop 250 North.)

City Secretary Turner read the caption of Ordinance No. 8912.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8912 in accordance with the Charter of the City of Midland; seconded by Council

Member Dufford. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8912

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3B, BLOCK 25, CRESTGATE ADDITION, SECTION 22, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 600 FEET NORTH OF WEST LOOP 250 NORTH); 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. (First reading held July 12, 2011) (Planning Division)

24. Consider a request by Midland Park Mall, L.P. for a zone change from PD, Planned District for Shopping Center to an amended Planned District on a 63.23-acre Tract out of Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of W. Loop 250 North and N. Midkiff Road.)

City Secretary Turner read the caption of Ordinance No. 8913.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 8913 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. Following brief discussion the motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, and Sparks. NAY: None. ABSTAIN: None. ABSENT: James and Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8913

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 63.32-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 17, SKYLINE TERRACE, UNIT 2, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOOP 250 NORTH AND NORTH MIDKIFF ROAD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION. (First reading held July 12, 2011) (Planning Division)

Mayor Perry noted it was not yet time for the Public hearings and moved to Item number 31.

DEVELOPMENT SERVICES

31. Consider the installation of stop signs at various intersections within the City of Midland.

Transportation Manager Saunders noted that the majority of the stop signs were for new housing and that each location was warranted.

City Secretary Turner read the caption of Ordinance No. 8914.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8914 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales and James. Caption of said ordinance is as follows:

ORDINANCE NO. 8914

AN ORDINANCE ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT INTERSECTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE;

PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION. (Transportation)

32. Request by Midland Energy Inc. to amend an approved oil and gas drilling permit (Resolution 2008-230) for Wimberley #1, Well #1 located 1073 FWL and 1230 FSL, Section 1, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located east of N. Lamesa Road and north of Loop 250.) (Code Administration)

Assistant Code Administration Manager Ron Jenkins gave an overview of the item noting the applicant was requesting a waiver from the requirement of installing a masonry fence.

Mayor Perry opened the floor for anyone who wished to discuss the item.

Rick Davis, 2509 Shell Avenue, Vice President of Midland Energy, Inc., stated they were requesting a variance from their permit that was previously issued under the old ordinance. He noted the old ordinance required an eight-foot brick or masonry fence and the new ordinance requires a chain link fence with tan slats. He asked for a variance from their existing permit to allow them to place a chain link fence with slats instead of the brick or masonry fence.

Mark Payne, 500 W. Illinois, Suite 300, noted he is about to start to build homes that are adjacent to the well site and felt the future homes would benefit from the masonry fence and landscaping. He further clarified that the well site is located near the entrance and visible to the residential areas and felt first impressions were very important and emphasized the importance of a stone fence as well as installing landscaping now.

Discussion ensued about the differences in the two ordinances specifically that old ordinance required an 8 foot masonry fence and the new ordinance requires a 7 foot chain link fence with slats and wire on top. The timeline of the project was discussed noting that the entrance roadway would begin development within the year.

Mr. Davis stated he felt he could work out something with Mr. Payne about the landscaping and felt they wanted to put in a chain link fence now and install a masonry fence down the road if the property ever develops noting that the City has the authority to come back to the oil and gas operator and ask for a different fence.

Council Member Dufford moved to approve a request by Midland Energy Inc. to amend an approved oil and gas drilling permit (Resolution 2008-230) for Wimberley #1, Well #1 located 1073 FWL and 1230 FSL, Section 1, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located east of N. Lamesa Road and north of Loop 250.); seconded by Council Member Hailey.

City Attorney Stretcher pointed out that there is a 24-month period after the permit is issued to require an upgrade of the fence.

Mr. Davis stated their bottom line is a request to be held to the current provisions of the new ordinance and if a structure is constructed within 500 feet of the well, then City may require changes. He amended his remarks to acknowledge that the variance would include a language change to within 24 months of construction.

Mike Cannon stated he was present on behalf of Midland Energy. He noted the permit was issued and Midland Energy accepted the fact that they were supposed to build a masonry brick fence but then they watched the development of the new ordinance and felt it was not inappropriate to ask Council to take second look at this situation. He asked that the item be deferred so that they could develop a solution with Mr. Payne and Midland Energy.

Council Member Dufford and Council Member Hailey requested withdrawal of their motion. Council consensus was received to withdraw the motion.

Council Member Sparks moved to defer the item for a maximum of 60 days to allow the two parties to come up with a satisfactory long-term solution; seconded by Council Member Hailey.

Both parties agreed to sit down to work out a compromise. Council Member Sparks offered to be the negotiator between the two parties.

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

PUBLIC HEARINGS

25. Consider a request by Texas Roadhouse for a zone change from PD, Planned District for Shopping Center to an amended Planned District on Lot 2E, Block 33, Correction Plat Northgate Addition, Section 21, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of W. Loop 250 North and Northcrest Drive.)

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

Mayor Perry opened the public hearing at 11:25 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8915.

Council Member Trost moved approval of the first of two readings of Ordinance No. 8915 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8915

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 2E, BLOCK 33, CORRECTION PLAT NORTHGATE ADDITION, SECTION 21, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST LOOP 250 NORTH AND NORTHCREST DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION. (Planning)

26. Consider a request for a zone change from AE, Agriculture Estate District to O-1, Office District on Lot 1, Block 1, Roper Addition, City and County of Midland, Texas. (Generally located at the southeast corner of the intersection of Briarwood Avenue and N. County Road 1250.)

Planning Division Manager Walker gave an overview of the item noting that staff has no objection of changing the zoning to Office District and stated that the intended use is for church offices. He noted that no letters of objection had been received.

Mayor Perry opened the public hearing at 11:27 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8916.

Council Member Trost moved approval of the first of two readings of Ordinance No. 8916 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8916

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 1, ROPER ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN O-1, OFFICE DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF BRIARWOOD AVENUE AND NORTH COUNTY ROAD 1250); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A

MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION. (Planning)

27. Consider a zone change from NS, Neighborhood Service District to LR-1, Local Retail District on Lots 4 through 7, Block 16, and Lots 20 through 23, Block 17, Greathouse Addition, Section 4, City and County of Midland, Texas. (Generally located on the north side of Briarwood Avenue and on both sides of Portico Way.)

Planning Division Manager gave an overview of the item noting two letters of objection had been submitted and that a number of phone calls had been received mostly from across Briarwood Avenue asking what it was about. He stated the majority of the people that called were not concerned about increased retail. He noted the two letters objected to additional retail.

Mayor Perry opened the public hearing at 11:32 a.m.

Herb Cartwright, 5001 Woodhollow, asked for clarification on where the zone change would be applied. The zone change area was shown on a map.

There being no one else present wishing to speak, the public hearing was closed at 11:34 a.m.

City Secretary Turner read the caption of Ordinance No. 8917.

Council Member Trost moved approval of the first of two readings of Ordinance No. 8917 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8917

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 4-7, BLOCK 16, AND LOTS 20-23, BLOCK 17, GREATHOUSE ADDITION, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED NS, NEIGHBORHOOD SERVICE DISTRICT, TO BE USED AS AN LR-1, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF BRIARWOOD AVENUE AND ON BOTH SIDES OF PORTICO WAY); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION. (Planning)

28. Consider a zone change from FD, Future Development District, to LI, Light Industrial District on a 7.81-acre tract of land out of Section 48, Block 41, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the west side of FM 1788, approximately 1 mile south of State Highway 191.)

Planning Division Manager Walker gave an overview of the item.

Mayor Perry opened the public hearing at 11:36 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

City Secretary Turner read the caption of Ordinance No. 8918.

Council Member Trost moved approval of the first of two readings of Ordinance No. 8918 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. Following discussion the motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8918

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 7.81-ACRE TRACT OF LAND OUT OF SECTION 48, BLOCK 41, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS AN LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF

FARM-TO-MARKET ROAD 1788, APPROXIMATELY 1 MILE SOUTH OF STATE HIGHWAY 191); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION. (Planning)

29. Consider a request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District on Lot 1B, Block 92, Permian Estates, Section 13, City and County of Midland, Texas. (Generally located on the northeast side of Thomason Drive, approximately 250 feet north of Wall Street.)

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

Mayor Perry opened the public hearing at 11:44 a.m.

Michael Postar, Lubbock, noted that they are building Phase 4 of affordable storage units.

There being no one else present wishing to speak, the public hearing was closed at 11:45 a.m.

City Secretary Turner read the caption of Ordinance No. 8919.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 8919 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said ordinance is as follows:

ORDINANCE NO. 8919

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1B, BLOCK 92, PERMIAN ESTATES, SECTION 13, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTHEAST SIDE OF THOMASON DRIVE, APPROXIMATELY 250 FEET NORTH OF WALL STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION. (Planning)

30. Mayor Perry noted that the public hearing regarding redistricting would be held at 7:00 p.m.

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

Section 551.087 Deliberation Regarding Economic Development Negotiations

Discuss business prospects and projects that the City seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives and the recapture of any previous incentives.

Mayor Perry recessed the meeting to executive session at 11:48 a.m. The meeting was reconvened at 12:17 p.m.

MISCELLANEOUS

33. Consider authorizing the City Manager to execute a Chapter 380 Agreement with Midland Park Mall (MPM).

Council Member Trost moved to adopt Resolution No. 2011-176 with the amendment that the amount be changed to \$250,000 with the caveat to allow the City Manager to negotiate with Midland Park Mall for in-kind contributions for public purpose in the same amount; seconded by Council Member James.

Following brief discussion, Council Member Trost moved to amend the motion to include the words "and execute contract"; seconded by Council Member James. The motion to amend carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales.

Alice Church, 5907 San Saba, representing Midland Park Mall, stated that they had originally asked for \$1.5 million and that \$250,000 would not go very far. She explained that if they allowed EZ Rider to use their parking lot for a Park and Ride the ground lease alone would be \$250,000 which doesn't leave more money for other public amenities. She noted that the beauty of a 380 Agreement is there is no downside and that money is only paid when there is an increase in sales tax. She asked that the amount be increased to \$500,000. She noted a mall is different than any other business as some members of the public will come just to allow their kids to play. Other cities have put money toward public restrooms, play areas or police substations.

A discussion ensued about Simon Properties matching funds with the City.

A motioned was made by Council Member Dufford to call the previous question; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hailey, Perry, Dufford, and Sparks. NAY: Trost and James. ABSTAIN: None. ABSENT: Morales.

The motion to adopt the resolution as amended carried by the following vote: AYE: Trost, Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales. Caption of said resolution is as follows:

RESOLUTION NO. 2011-176

RESOLUTION AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT WITH MIDLAND PARK MALL, L.P., A DELAWARE LIMITED PARTNERSHIP; AND ESTABLISHING AND PROVIDING FOR THE ADMINISTRATION OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND TO STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY OF MIDLAND, AS AUTHORIZED BY CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE; SAID FINANCIAL ASSISTANCE WILL BE IN THE FORM OF CAPTURING SALES TAX REVENUE GENERATED BY MIDLAND PARK MALL, L.P. RENOVATIONS AND REBATING A PORTION OF THAT INCREASE TO MIDLAND PARK MALL, L.P.; THE MAXIMUM AMOUNT OF SAID AGREEMENT SHALL BE IN THE AMOUNT OF \$250,000.00 WHICH WILL BE PAID TO MIDLAND PARK MALL, L.P. OVER A FIVE (5) YEAR PERIOD; SAID FUNDS WILL COME DIRECTLY FROM THE CITY OF MIDLAND'S GENERAL FUND. (City Manager)

34. Consideration of appointments to various Boards and Commissions.

No appointments were made.

RECESS/EXECUTIVE SESSION

35. Mayor Perry announced that the meeting would be recessed to the conference room for lunch.
36. Mayor Perry announced that pursuant to Texas Government Code Section 551.101, the Council would now hold an Executive Session, closed to the public, to discuss the following matters as permitted under the following Texas Government Code Sections:

Section 551.071, Consultation with the City Attorney

Discuss litigation styled City of Dallas v. Heather Stewart, Cause No. 09-0257, in the Supreme Court of Texas.

Deliberation Regarding Real Property, Section 551.072

Deliberate the purchase, exchange and value of real property described as Lots 7, 8, 9, 10, 11 and 12 of Block 39, Original Town Addition, an addition to the City of Midland, Midland County, Texas.

It was noted that the vote for Item 18 would take place in the basement conference room after executive session. Mayor Perry recessed the meeting to Executive Session at 12:34 p.m.

The entire Council met in executive session until 1:27 p.m.

Mayor Perry reconvened the meeting in regular session at 1:35 p.m., with the same members present.

18. Consider declaring certain structures as dangerous, dilapidated and public nuisances, and ordering their removal or securing.

Council Member Dufford moved to defer the second reading of the dilapidated structures ordinance; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Hailey, Perry, Dufford, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Morales and Trost.

Mayor Perry recessed the meeting at 1:45 p.m.

Mayor Perry reconvened the meeting at 7:02 p.m. in the Council Chambers at City Hall with the following Council Members present: Trost, Hailey, Perry, Dufford, James, and Sparks.

30. Public hearing to receive comments from the public regarding a proposed redistricting Illustrative Plan concerning proposed new boundaries for City of Midland Council Member districts.

City Attorney Stretcher noted that a court reporter was present and asked everyone to state their name for the record. He introduced Bob Heath.

Bob Heath of Bickerstaff, Heath, Delgado, Acosta, LLP, asked everyone to sign-in. He asked that anyone having comments to complete the comments sheet to ensure there would be a written record that would be forwarded to the Department of Justice. He noted that the Department of Justice reviews all redistricting plans and that each district should be relatively equal in population with no more than a 10% deviation from the largest and smallest precincts. He noted that the redistricting plan cannot discriminate against minorities and may not make things worse for minorities. He explained that the Census revealed that not all districts are in balance but that District 2 and District 4 were nearly the perfect size with less than a 1% deviation from the ideal district population. He explained that District 1 was too large by about 10% and District 3 was too small by about 10%. He reminded everyone that the plan cannot make things worse for minorities and that District 2 has a majority minority population and that it is nearly the ideal size. He stated there was no reason to change that district. He stated the easiest way to balance was to move population from District 1 into District 3 and explained that it is best to move whole voting precincts. He explained that the proposed plan is to move Voting Precinct 206 from District 1 to District 3 which brings both precincts into balance with a total deviation of 1.5% which is a relatively small deviation and that no one would be discriminated against because the minority district was left untouched. He felt this was constitutional and a solution that the Committee and the City Council felt was a good illustrative plan for public input and potential future adoption.

Mayor Perry opened the public hearing at 7:14 p.m. He named each person from the sign-in sheet asking if they would like to make any comments.

James Fuller, when called upon, stated he couldn't believe how easy the redistricting was accomplished.

There being no one else present wishing to speak, the public hearing was closed at 7:15 p.m.

All of the business at hand having been completed, the meeting adjourned at 7:15 p.m.

PASSED AND APPROVED the 9th day of August, 2011.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary